OFFICIAL REPORT

OF

THE TRIAL

OF

HENRY WARD BEECHER.

WITH NOTES AND REFERENCES,

BY

AUSTIN ABBOTT,

OF COUNSEL FOR THE DEFENSE.

TOGETHER WITH AN ACCOUNT OF THE COURT, AND BIOGRAPHICAL SKETCHES OF THE JUDGE, THE PARTIES, AND THEIR COUNSEL, AND OF SOME OF THE WITNESSES.

VOL. I.

NEW YORK:
GEORGE W. SMITH & COMPANY,
LAW BOOKSELLERS AND PUBLISHERS.
95 NASSAU STREET.
1875.

Entered according to act of Congress in the year one thousand eight hundred and seventy-five,
BY GEORGE W. SMITH,
In the office of the Librarian of Congress, at Washington.

TOBITT & BUNCE,
PRINTERS, STEREOTYPERS AND BINDERS,
131 WILLIAM STREET.

ADVERTISEMENT.

"The higher the crime or deeper the fraud, sought to be established, the more strigently the rules of evidence should be enforced." *

"Arguments respecting testimony are a delightful part of the practice of the law; they show the good generalship of the contending counsel."†

At the request of the Chief Justice, and with the approval of the attorneys of both parties, Mr. Abbott undertook the task of revising the official minutes of the proceedings in this case, and of illustrating the questions of law and rules of evidence, by the citation of authorities in such manner as (without transcending propriety in discussing the rulings in a cause as yet undecided) might add to the interest and value of the report, for the profession throughout the country.

The nature of the issue and character of the parties, and the dramatic incidents of the trial as portrayed in the evidence now reproduced in this authentic form, must have an unfailing interest to the general reader.

The report is prepared from the shorthand notes of Messrs. A. F. WARBURTON, WILLIAM F. BONYNGE, FRED. M. ADAMS, and TIMOTHY BIGELOW.

From these the editor, under the sanction of the Chief Justice, has omitted, in his discretion, conversations had in court on matters irrelevant to the proceedings, and distinct and separable matters involving neither the merits nor any question of law (such as the examination of jurors who

* *Blackburn* v. *Beall* (21 Md. 208).
† *Shirk* v. *Vanneman* (3 Seates, 196).

were rejected without any exception being taken, &c.), and has in some cases promoted the convenience of the reader by retrenching in form the examination of witnesses on preliminary or immaterial points of no general interest, and omitting repetitions. Explanatory references to the documents and testimony are added.

The report presents the most intelligible, accurate, and complete account of this remarkable case. The arguments of counsel and the notes of the editor, it is believed, embody all that is important to the professional reader, in respect to the trial of the question of adultery in actions of this nature or in proceedings for divorce, and they also present unrivaled models of the art of examination and cross-examination, and discussions of questions of *nisi prius* evidence, of almost every kind, by the most eminent advocates of the country, aided by all the resources of legal research.

In accordance with general public desire, the publishers have obtained from sources they believe well-informed, brief biographical notices of the Chief Justice, the parties, and the counsel engaged in the cause, and have accompanied these with portraits. For these the reporter has no responsibility.

GEORGE W. SMITH & CO.

The City Court of Brooklyn.

Tilton vs Beecher.

To Hon. W. Smith & Co.

Gentlemen,

Mr Abbott has laid before me the Corrected proofs and his method of Editing the Official Report of this Trial. The work has been performed, thus far, with such care and fidelity as may satisfy the most Exacting Critic. In perfecting this Report the Stenographers have made the necessary corrections in the transcripts of their Minutes; - some repetitions have been avoided and some matters, covering much space in the forms of questions and answers, on points not material

to the issues, have been reduced to narratives. In all other parts the testimony is given as the same was actually received. In revising the proofs and arguments Mr Abbott has had the friendly Co-operation of the other Counsel concerned in the Cause.

While I value that part of the Editors labors highly as necessary to a faithful presentation of the Case, another marked feature of the work impresses me yet more strongly. The questions of law, of Evidence and of Practice raised on the trial and worthy of Consideration, are illustrated in the Notes with liberal citations of authorities. Those citations,

some drawn from sources
not open to every student or lawyer,
sufficiently practical to show the
state of the law, on such questions,
such as are in some of the Sister-
States and in England, yet so
special as to indicate many
of its infelicities, conflicts and
modifications, evince a rare
and ripe culture and tend to trans-
form the Report of the trial into a
valuable book of the law. But
it required some discrimination and
power of Repression, a facile adap-
tation of the Spirit of the law to Each
particular topic and some vi-
vacity of Expression to intermarry
so much learning with the
Report without impairing its

popular character. This difficulty the Editor appears to have overcome. His large experience as a Reporter, legal writer and Critic; his relation to the Case as one of the Counsel and his apprehension of its peculiarities; his severe taste which leads him to reject, so far as the nature of the subjects discussed may permit, everything of a merely partisan character; and his love of the Law in its truth, purity and dignity, afford the highest possible assurances of the correctness and value of a work to which he is devoting so much time and attention.

With these views I take pleasure in commending

your Report, as adopted by
this Court, & my professional
brethren and subsequent readers.

Yours truly
J. Nelson
Ch. J.

LIST OF ILLUSTRATIONS.

THE CITY COURT OF BROOKLYN.

"THE CITY COURT OF BROOKLYN," created by statute in 1849, originally consisted of one judge, elected for the term of six years; and the mayor and two aldermen of the city had power to hold the court in the absence of the judge. In 1870, two additional judges were provided for by statute, the term of the judicial service was extended to fourteen years, and the power of the mayor and aldermen to sit in the court was taken away.

In respect to the subject-matter of suits and proceedings, this court now has "original jurisdiction, at law and in equity, concurrent and co-extensive with the Supreme Court, of all civil actions, and of all special proceedings of a civil nature," with, however, certain local restrictions. In respect to actions concerning the title to real property or injuries to real property, its jurisdiction is confined to property within the city (*L.* 1870, ch. 470, § 2). In respect to personal actions generally, it has jurisdiction if the cause arose or any of the defendants reside or are personally served with summons in the city,* or in case of a corporation if the corporation is doing business in the city, or is a foreign corporation having property or an agency there (*L.* 1870, ch. 470. p, 1045).

The constitutional amendment of 1869 expressly recognizes and continues this court, as a part of the judicial system of the State; but as it is spoken of in that instrument as a local court, an act of the legislature which empowered it to send original process throughout the State has been held by the Court of Appeals unconstitutional so far as it assumed to take away the previous territorial limits of jurisdiction (*Landers* v. *Staten Island Railroad Company*, 14 Abb. Pr. N. S. 346; *S. C.*, 53 N. Y. 450). The same court, in commenting on this decision in a subsequent case, say: "It does not detract from the usefulness of the court or its character to confine it in the exercise of its jurisdiction within the constitutional limits. It is an important and efficient tribunal in the city of Brooklyn, and by its ability and dispatch attracts to it much of the important and difficult litigation of that city, and the importance of the questions or the amounts litigated before it are not second to those which come before any court of the State. Its creation was the result of the necessity of a local court of a high character" (ALLEN, J., in *Hoag* v. *Lamont*, in MS.). Its jurisdiction is to be presumed.

* Whether the jurisdiction has been effectually extended to the limits of the *county*, and to personal actions where *any party* resides therein, has not yet been determined.

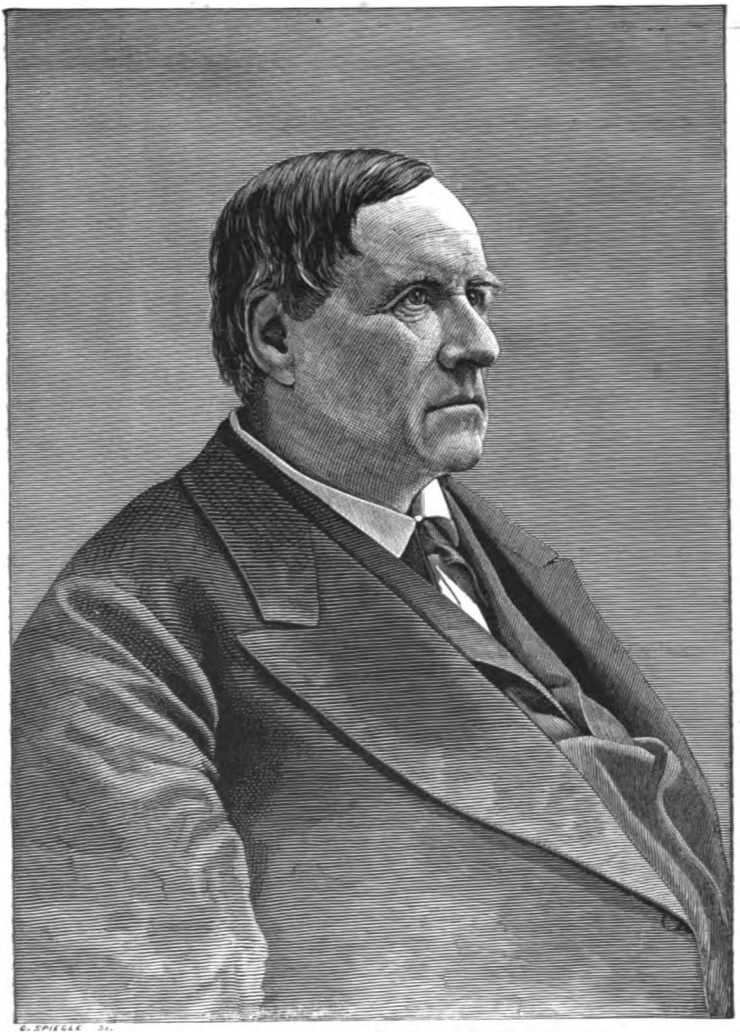
The statute of 1849 gave it the criminal jurisdiction of a county court of sessions, and the act of 1870 made it like that of oyer and terminer.

The court and its judges, have the like powers in relation to actions therein, and the process and proceedings therein, and powers over the docket of its judgments in the County Clerk's office, as the Supreme Court and its justices, in relation to actions, &c., in the Supreme Court; and all laws regulating practice, &c., in the Supreme Court, apply as far as practicable to this court. The judges have the powers of a Supreme Court judge at chambers.

Special terms are held by single justices, for the trial of issues of fact with or without a jury, and for the determination of motions, &c.; and general terms are held, necessarily by two of the judges, for hearing appeals from decisions at special term.

Appeals now lie from the general term of this court direct to the court of last resort (*L.* 1849, p. 171, ch. 125, § 6, amended 1 *L.* 1870, p. 1047–8, ch. 470, §§ 5, 6, and 7; amended again by 1 *L.* 1871, p. 556–7, ch. 282, §§ 3 and 8).

EDWARD W. BELL.



CHIEF JUSTICE NEILSON.

THE presiding judge, Hon. JOSEPH NEILSON, was born at Argyle, in this State, in 1815. He is of Scotch-Irish parentage, a union of races which has been singularly productive of energetic and able men. Descended from a notably long-lived and robust stock, his sturdy frame, and the vigor and determination which have formed the lines of his countenance, as their fittest expression, betoken stamina and vitality. His grandfather, John Neilson, the founder of the family in America, came from the north of Ireland in 1760, with a band of friends, and settled in Washington county in this State. They were strict Presbyterians, and brought with them their pastor, the Rev. Dr. Clark.

The eldest son, John Rogers Neilson, introduced a slight change in the family name by dropping the "i," thus making its spelling conform to its pronunciation, and his branch of the family have continued the change to this day. Of that branch, and the most illustrious of the name, was Samuel Nelson, who for the unexampled period of half a century continuously fulfilled the high functions of a Judge, serving both as Chief Justice of the Supreme Court of this State, and as Associate Justice of the Supreme Court of the United States. A son of his, Rensselaer R. Nelson, of St. Pauls, Minnesota, is one of the District Judges of the United States.

Samuel Neilson, the third son of John Neilson, was a physician, and a man of culture and scientific attainments. He removed to Canada and died there at the age of eighty-seven years. His son, the subject of this sketch, practiced law in Oswego until November, 1844, when he removed to the city of New York. An affectionate address, on that occasion, presented to him by the members of the bar of Oswego, was published in *The Oswego Palladium* and *The Albany Argus*. In his practice here he had a large and favorable experience; was often concerned in cases of grave importance, and was the trusted counselor of some of the foremost citizens in New York. Continuing his practice in New York, he fixed his residence at length in Brooklyn, and became identified with its interests professional, political, and social. When the reorganization of the City Court under the new constitution was proposed, he was selected as chairman of the meeting of the bar, held to consider the bill to be proposed for legislative action; and the plan of reorganization having been adopted, he was elected in 1870 one of the judges of the new court. At the end of Judge THOMPSON'S term, which extended from the old organization into the new, the place of Chief Judge was assigned to Judge NEILSON by his colleagues, Hon. ALEXANDER MCCUE and Hon. GEORGE G. REYNOLDS.

In person Judge NEILSON is rather below the medium height, and strongly built. A certain air of rugged energy and a manly and resolute bearing show him to be a man apart, and admirably befit his station. His voice is peculiar and at once attracts attention; capable of great softness of expression, it rises in rapid gradations when excited or aroused.

As to his mind it need hardly be said to any one who peruses these volumes, that it is distinguished for clearness and quickness of perception, strength of memory and accuracy of reasoning. He is possessed of great firmness of purpose, and, as a consequence, his patience is not easily disturbed.

In the transaction of the business of the court, he is usually indulgent toward counsel. But from the experienced lawyer he exacts courtesy, not merely towards himself, but towards the opposing counsel, towards the witnesses, and towards the jury. From the inexperienced he exacts careful preparation, and at times enforces this by censure. But he is kind and patient with the young practitioner, and we have heard him in private express great regard for the personal worth and abilities of some whom he had publicly censured. He is most pleased to have eminent counsel before him, partly because they exemplify the best results and workings of the science of the law, and partly because, as he expresses it, "they lighten the labor of the court." He has at all times confined himself to the sphere of action which is prescribed by the law and by all illustrious precedents: the "thus saith the law" is of great weight with him, so that even the defense of usury under a statute which he regards as impolitic and inequitable, is, when clearly proven, treated as if meritorious. He limits himself to the expounding of the law, usurping neither the office of counsel to discuss, nor of the jury to decide, the questions of fact. In his charges, as published and as printed on appeals, this regard for the office and duty of the jury is uniformly apparent. As an instance, his charge in the case of *Landers* against *The Staten Island Railroad Co.*, printed at large in Abbott's Reports (vol. 13, p. 338, N. S.), might be cited. On going over it carefully we are not able to discover any indication of what may have been his opinion as to the weight of the testimony, although the case grew out of a great calamity which might well have excited judicial as well as public sympathy. In *Homan* against *Earle* (13 Abbott's R. N. S., 402, opinion on appeal by Judge MCCUE) the same deference was paid to the jury, the facts and circumstances given to them to find whether, to the mutual comprehension and intent of the parties, the allegod promise of marriage had been made, there having been no expressed engagement. It was in this case that Judge NEILSON ruled that the contract to marry could be made without words.*

His Honor always blends the gentleman with the judge. He is uniformly courteous to the gentler sex; he holds that woman is man's equal in the finer intellectual traits, not his superior; that while the avenues open for her activity and usefulness should be extended, our recent laws disturbing the marriage relation, and allowing her to carry on business as a *femme sole*, and to employ her husband as clerk, agent, or servant, indicate no healthy progress. His moral sentiments are all in favor of the law of marriage and of divorce as it exists in New York to-day. He is of opinion that the laxity of legislation in some of our sister states on the subject of divorce is unwise and demoralizing. Indeed, in this and in other respects, he is somewhat of a Puritan. He holds to John Calvin, denying the austerities imputed to the Institutes, but supplements the

* Affirmed, 53 *N. Y. R.*, 267.

qualification that foreordination followed, as a necessary consequence, foreknowledge. He is not bigoted, however; believes that a pure spirit and devout worship are accepted without regard to mere creeds. He has no intellectual fear; feels no need of an *index expurgatorius;* reads Emerson, not for his opinions, but because he finds in him greater power and fertility of expression than in any other modern author. He has said that he believes Emerson must have read the Bible until his mind became imbued with its literary spirit; that not only he, but Walter Savage Landor, Daniel Webster, Rufus Choate, and, in latter days, who so uses the English language most powerfully, must have drunk largely at the same source; and that, in such instances, the benefit can be traced, as certainly as the indebtedness of Tennyson for graces of thought and expression can be, to the Greek. In a late conversation with critics at the Club, the judge repelled an attack upon some old-fashioned authors now fallen much out of use, and confessed his regard for Young's Night Thoughts and Harvey's Meditations, the companions of his youth. He also claimed that the human race, in its intuitive wants and strivings, had given a sufficient answer to modern skeptics, as in all ages, climes, and conditions of men, there had been a desire to propitiate an overruling power; all down the track of history, crumbling altars, from which the smoke of sacrifice had gone up.

He is known to have been a large and generous reader, not only in but out side of the law; Bacon, Milton, Johnson, Burke, Shakespeare are familiar to him: the best of later authors in history, poetry, and romance his favorite friends. He has aimed to acquire a correct and elegant English style, but not with a view to merely literary distinction: he has cultivated literature rather as an adjuvant to his professional pursuits, and has thus sought to maintain the literature and the literary character of the profession. Some of his utterances in the discussion of mere legal questions might be cited as models of composition. He loves to deal with principles, and sometimes writes a valuable opinion in a case on appeal without citing decisions, as if intent on vindicating the consistency of law with pure equity. Among his labors are contributions upon the general subject of codification. He holds that to reduce the law to simple statutory expression would render it rigid, unyielding, inapplicable to cases which might arise in complex commercial transactions; that it would be the substitution of strict rules needing interpretation for established principles, which are not bound nor limited by any set form of words. On this subject he wrote some carefully prepared articles for *The Albany Law Journal*, showing by the results of codification in France, Prussia, and elsewhere, that the very objects and purposes for which it was introduced have been defeated, and that the bulk of the authorities and precedents sought to be avoided has been thereby increased. He maintains that such would be the probable results of any scheme which has been yet suggested, and emphasizes the difficulty of reform by considerations as to the sources and growth of the law, saying:

"If a single day could possibly enable us to devise a good system, yet to realize its benefits, to illustrate its uses, to determine its application, and to give it force and utterance, would be the work of a century. The benefits of a legal reform are not to be speedily realized; its evils fall upon us suddenly. Time, though a necessary interpreter, continues dumb, until the conflict of opinion, of argument, of analysis, has rendered him articulate and intelligible. Our commercial and mercantile law was no sudden invention. It was not the work of a day, or of one set of minds. . . . . In the incipient, the

early existence of this system, a single maxim obtained force, others succeeded; one rule of right formed a nucleus around which other kindred rules might cling; the necessities of trade originated customs, customs ripened into law; a few feeble decisions of courts laid the foundation for others; the wisdom and experience of each succeeding generation improved upon the wisdom and experience of generations that were past; and thus the edifice arose, perfect in its parts, beautiful in its proportions. It has taxed the deliberative spirit of ages. The great minds of the earth have done it homage. It was the fruit of experience. Under it men prospered, all the arts flourished, and society stood firm. Every right and duty could be understood because the rules regulating each had their foundation in reason, in the nature and fitness of things; were adapted to the wants of our race, were addressed to the mind and to the heart; were like so many scraps of logic articulate with demonstration. Legislation, it is true occasionally lent its aid, but not in the pride of opinion, not by devising schemes inexpedient and untried, but in a deferential spirit, as a subordinate co-worker. The reformer who would seek to improve such a system in any material degree, mistakes his vocation. That task had better be left to time and experience. He will often find it impossible to know what to eradicate and what to spare, and in plucking up the tares, the wheat may sometimes be destroyed. 'The pound of flesh' may be removed, indeed, but with it will come, gushing forth, the blood of life."

Without assuming to state or estimate the extent and value of Judge NEILSON'S contributions to legal literature, we pause to refer to four articles in *The New York Legal Observer*, signed "J. N.," written with great force and beauty. The first, as to the revision of our statutes in 1830. Mere revision is approved if faithfully performed, but special reference is made to the abolition of our system of trusts, to the substitute adopted, and to the great litigation which followed the innovation. This article, at a time when the professional mind was somewhat exercised as to revision, was widely read and copied into other journals. The other three articles related to trusts to apply or pay over rents under the Revised Statutes (5 N. Y. Leg. Obs. pp. 281, 321, 370). The statute authorized a trust to receive and apply rents, but very many wills, representing large estates, contained the trust to receive and *pay over* the rents. The question came up in several important cases whether the trust to pay over was authorized, and it is a curious feature of our judicial history that on that question the judges of the largest learning and experience differed in opinion. Among the papers to which we have been permitted to refer, we find an acknowledgment of the value of Judge NEILSON'S contributions advocating the validity of a trust to pay over as a mode of application, by Chief Justice SAMUEL NELSON, who had taken the same ground in one of the first cases. In a letter bearing the date of March 24th, 1848, he says: "I have read your review and discussion of the construction of the provision of the statute (§ 55, sub. 3), with great pleasure. It is the fullest and most satisfactory, and I may add, conclusive, exposition of it that has come under my observation. In my judgment it is unanswerable." After referring to the great conflict of opinion which had arisen, he says: "Judge COWEN agreed with me, and if the question had arisen in his day it might have been decided according to your views. I can not but believe that when it does arise it will be eventually thus determined, and the full and able discussion in the numbers you have sent me will go far to give the professional mind the right direction on the subject." The question was thus finally determined by the Court of Errors, in a

case in which the late Marshall S. Bidwell was of counsel for the prevailing party, he using those articles in his points (*Leggett* v. *Perkins*, 2 N. Y. [2 Comst.] R. 297). In his dissenting opinion in that case, Judge BRONSON struggled hard in support of the views put forth by him and by Judge SAVAGE and Senators MASON and YOUNG in the early cases, and closed with these words—"and thus it happens that a great question which has been litigated more than fifteen years is at the last settled by a single vote."

But such articles, however valuable, were upon subjects considered, even by the learned in the profession, dry and difficult. We turn, therefore, as illustrative of the extent and range of his topics, to less technical subjects. In *The Albany Law Journal* of July 2nd, 1870, appears a review of Parker's "Reminiscences of Rufus Choate." The editor of the *Journal* prefaces the article with some commendatory remarks closing with these words: "It is full of terse suggestions to be pondered by students, and even by authors. It is, moreover, so happy in illustration, so genial and sprightly, that the criticism becomes as exquisite and pleasing as it is pungent and severe. It is gratifying to know that a lawyer of Judge NEILSON'S conceded learning and ability has had the time and the good taste to cultivate a style at once so forcible and so pure and musical."

It was, indeed, written in such tone and spirit as should refresh a drowsy student. But after indulging in wit, irony, and illustration quite sufficient to admonish Mr. Parker to use his pen with care thenceforth, Judge NEILSON stumbles upon a statement worthy of resentment, to wit: "That the jury advocate must to some extent be a mountebank, if not a juggler and a trickster," and says:

"Uncharitable things have been said of many great advocates; but, as an illustration, the worst thing ever said of Choate was, that he could play the *artful dodge* in reading an affidavit. That was but a rude description of fine, forcible, effective reading; reading which gives significance and character to vital passages, discloses the latent sense and spirit, aids the apprehension, and receives a certain, and it may be, a favorable interpretation. Such a reader, natural, yet artistic, 'tells the great, greatly; the small, subordinately;' and thus we have heard Macready play the artful dodge; thus Fanny Kemble Butler; thus the gentle Melancthon may have read; thus every pulpit orator, from Whitfield down.

"A merely clever man, with no high aims or love of truth; a wordy, sharp, false man, however adroit and plausible; the artful dodger, the mountebank, juggler, trickster, can never, in the proper sense, be a jury advocate. With all his gifts and acquisitions, the advocate must be a high-toned, moral man, not a harlequin; a vital utterance, not a mere sham. Jurors are representative men, coming from the entire circle of the social zodiac, and are practical, sensible, and often sagacious men, as fond of fair dealing in counsel as in suitors. Hence, in cases involving life, liberty, or character, an able advocate goes to the jury in a spirit akin to that with which Esther went in before the king to plead for her people. At such an hour he indulges in no mere fancies, his style becomes a reflect of his own mind and heart; if, as in Mr. Choate's efforts, a flash of poetic thought or beauty gleams forth, it is merely because the vision is in his spirit, and reveals itself as naturally as the simplest conception. He is not the less dealing with realities, after his fashion."

After remarks upon the tone and temper which should characterize such a work, as contrasted with those of Mr. Parker, the judge says:

"In personal delineation of this nature the true author is sympathetic; his purpose fills his heart and brain, takes possession of all his faculties: he feels as one of old did when he said, 'Woe is me if I preach not this gospel.' Thus inspired, he writes; the hand tremulous, the eyes suffused with tears."

Then, toward the conclusion of the review, he falls into a train of melancholy reflection, arising partly from the perusal of the work, and partly from recollections of his own intercourse with Mr. Choate, and writes thus:

"We have always had a fondness for Mr. Choate, the unique man of his day, so brilliant, yet so logical. Thanks to the author, we now see him in new phases of life, and learn many things about him unknown before. But we close the book, and muse in sadness. Poor Choate! What severance and alienation from sources of life, health, and elasticity! He had no Ashland, no Marshfield, no Sunnyside; no flocks or herds; no fields of golden grain; but the school, the closed study, the dusty street, the crowded forum; so half his nature was stifled in its growth, if not killed. How, through life, he turned blindly from the smiling mother earth, when, as only a true mother can, she would have comforted and soothed him! How he looked on coldly, while his school-fellows enjoyed sports ordained for him! How, in later years, he read, and read when a gorgeous sunset or a waving forest would have fed his famished spirit! How he brooded about books, as he passed inspiring landscapes, and felt no thrill as they spoke to him! How he treasured up and tried to love a piece of cold statuary, but had no interest in the perfection of form and motion—man's friend in service—though 'he trots the air, and the earth sings as he touches it;' though 'his neigh is like the bidding of a monarch, and his countenance enforces homage.'"

More recently the judge, having been invited to deliver the opening address at the annual exhibition of the Brooklyn Industrial Institute, did so, and the address was published. It was, indeed, a remarkable performance in respect to style and comprehensiveness. Having given such summary and illustration of our improvements, inventions, progress, mines, and mineral resources, in their relation to our national greatness as might well excite and satisfy our pride, he touches a higher note, and says: "But our highest claim to respect, as a nation, rests not in the gold, nor in the iron and the coal, nor in inventions and discoveries, nor in agricultural productions, nor in our wealth, grown so great that a war debt of billions fades out under ministrations of the revenue collector without fretting the people; nor, indeed, in all these combined. That claim finds its true elements in our systems of education and of unconstrained religious worship; in our wise and just laws, and the purity of their administration; in the conservative spirit with which the minority submits to defeat in a hotly-contested election; in a free press; in that broad humanity which builds hospitals and asylums for the poor, sick, and insane on the confines of every city; in the robust, manly, buoyant spirit of a people competent to admonish others and to rule themselves; and in the achievements of that people in every department of thought and learning."

But we need not further refer to Judge NEILSON'S contributions to legal, literary, or scientific subjects. His claim to rank among our most learned and upright lawyers and jurists has been, and long will be, recognized and respected.

There is that in his career which is inspiring alike to the profession and to the people whose rights and interests the profession guards. No man's success has been the product of work more faithful and of motives more single. He has

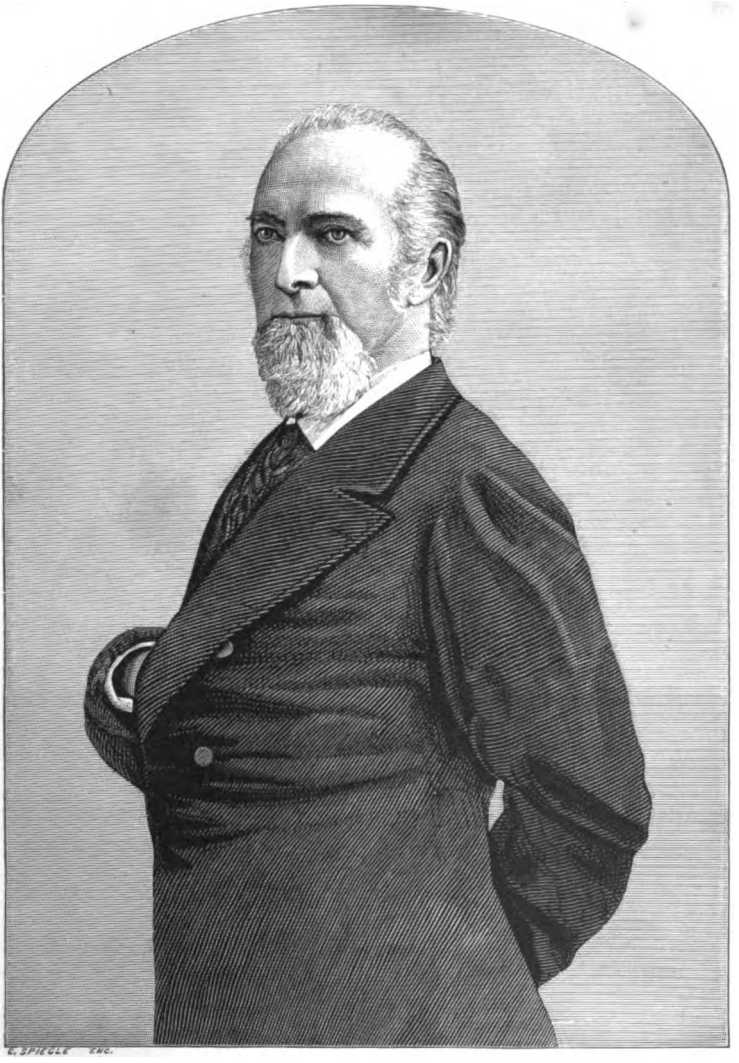
trod the upright course of the advocate and the jurist with no reliance upon or search after meretricious aids. His ascending progress has all been severely legitimate. That which is soundest and noblest in reason and in principle finds a cordial response in his sentiments and in his character. To the culture of the student he has added that enthusiasm for the right which informs with living soul the dryest technicalities in the domain of law. Whether at the bar or on the bench, his voice and pen have been devoted to upholding the fundamental principles and rights which, far exceeding their relevancy to the matters in hand, concern man as a free, responsible product of Deity, and organized society as founded upon Christian civilization. In his habits of study there are no sporadic characteristics: all is system. In his conduct of trials nothing comes as, or seems, drudgery: all is duty. What he did not receive as the Creator's blessing upon a virtuous ancestry and training, he has with reverence and hard labor wrought out for himself. The man and the magistrate are no distinct characters in him. He lives the justice which he administers; and, neither as a lawyer nor a writer, has he ever pursued a case or a theme an inch beyond the parallel on which it proceeds with truth. In the vigorous prime of his faculties and years, surrounded by most beautiful domestic associations, elevated officially for the greater part of a generation above the strifes of parties, and set to commend and expound their laws to the people, Judge NEILSON has, in the case to which these volumes are devoted, been intrusted with matters as delicate and imperative, and as far-reaching in their operations and consequences, as any that ever fell to the lot of jurist to decide.

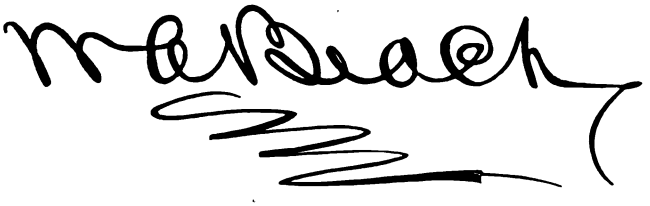
T. BIGELOW.

WILLIAM A. BEACH.

WILLIAM A. BEACH, the leading counsel for the plaintiff, has been for many years one of the prominent lawyers of the State. His marked characteristics, both of mind and of manner, have been clearly shown in course of the great trial. Full and accurate knowledge of legal principles, and familiarity with the decisions of courts, enable him to sustain his client's interests with eminent ability, aided by great keenness in perceiving the weak places of an adversary. His fluent delivery of strong, well-chosen English, with manner dignified and impressive, assist in convincing the court, upon legal questions, and doubtless affect favorably the minds of jurors, prior to the great oratorical effort of the close of a trial. Pitted against counsel of the highest reputation and ability, Mr Beach has fully maintained his former eminent standing, at the bar, amply justifying Mr. Tilton's judgment in securing his services. His features are strongly marked, and regular in outline, a massive head, partially covered with whitened hair, brushed backward, showing a broad, full forehead, a physique, to all appearance in full vigor, he has borne the wearisome combat with apparent ease, leading his corps of able and distinguished associates in full assault, or sturdily repelling his opponents' like attacks. The expression of his face at rest has been uniformly sorrowful, maybe from a full belief that his client has suffered great wrongs, and from regret for the occasion of bringing the lamentable occurrences under public and judicial investigation.

Mr. Beach was born at Saratoga Springs, December 13th, 1809, and is consequently in his sixty-fifth year, although he has the personal appearance of a much younger man. His professional studies were pursued in that village, and in the earlier years his practice was confined to the county of Saratoga, and those adjoining. From the outset, the power of advocacy gave him local prominence, since broadened, by changes of residence, to more extended fields of professional effort, and consequent connection with cases of public interest. His father, Miles Beach, was a pioneer of Saratoga, for years a leading, successful merchant. He died at the age of sixty-four years, having earned the highest respect and confidence of his fellow-citizens, and accumulated, for those days, a large fortune. The widow, born Cynthia Warren, now lives in the homestead, at the advanced age of eighty-seven years, still bright, in the full possession and exercise of unusual mental gifts, and in the enjoyment of remarkable physical vigor. At Saratoga,





Mr. Beach was associated in practice with the late Nicholas Hill, Jr.,* and Augustus Bockes, now a judge of the supreme court for that district. † Judge Porter, one of the counsel for Mr. Beecher, was then a leading lawyer of the same county, resident at Waterford. Life-long friends, the distinguished advocates, in the course of this trial, must have recalled their early intellectual struggles, in the old Court House at Ballston Spa, the shire town of the county.

In the spring of 1851, Mr. Beach removed to Troy, forming the partnership of Pierson, Beach & Smith, which, upon the retirement of Hon. Job Pierson, was succeeded by that of Beach & Smith. His firm, to the time of its dissolution in 1871, enjoyed a leading position in that locality, and Mr. Beach's reputation as a lawyer became among the first in the State For this period, he was the attorney and counsel of the railroad corporations at Troy, and in the prolonged and important litigations between the wealthy iron manufacturers, H. Burden & Sons, and Coring, Winslow, and Co., he continuously represented the interests of the former. The yearly conflict, in the State Legislature, relative to bridging the Hudson River, at Albany, was finally transferred to the courts, by the passage of an Act incorporating the Hudson River Bridge Company, and Mr. Beach then appeared as counsel for the city of Troy, in opposition to the undertaking. The Bridge Company was represented by Nicholas Hill, Esq., deceased, then a resident of Albany, and Hon. John H. Reynolds, now judge in the commission of appeals. The litigation involved the great question of State sovereignty, and was successful, before the late Justice Nelson, at chambers, he having granted a preliminary injunction. The trial, before Justices Nelson and Hall, brought a disagreement of opinion, which was certified to the supreme court of the United States, where an equal division of the judges, under the rules, effected the dismissal of the plaintiff's bill of complaint.

During Governor Horatio Seymour's administration, the state agent, Colonel North, and others, were summoned before a military tribunal at Washington, upon charge of tampering with soldiers' votes. Under the call of the Governor, Mr. Beach represented the State and the defendants, upon their trial. His effective management, and masterly argument, not only vindicated his clients, by their acquittal, but also gave the primary services and effective opposition, ending in the discontinuance of military inquisitions for authorized civil courts. He was again successful in the defense of Cole, ‡ for the murder of Hiscox, upon the second trial. In 1868, he defended Robert C. Dorn, Canal Commissioner, before the Court of Impeachment securing a verdict of not guilty. During a practice, in that part of the State, of twenty years, Mr. Beach was prominently connected with all the leading trials, his office doing a large and lucrative business. Solicitations to accept judicial position, were frequently declined, and political preferment, though often tendered, he always avoided, so reaching his eminent place, at the bar, by the active and uninterrupted practice of his profession.

In 1871, he yielded to often preferred requests, and changed his residence to this city. In this new forum, when called to meet the most eminent members of the legal profession, Mr. Beach has sustained his high reputation, as a wise and learned counselor, a brilliant and successful advocate. In the action of the *Erie Railway Company* v. *Commodore Vanderbilt*, familiarly known as the "five

* For notice of Mr. Hill, see 19 *N. Y.*, 593.

† Judge Bockes also sat in the Court of Appeals, in the year 1867, and his opinions in that court will be found in vols. 36 to 39 of the *N. Y. Reports*.

‡ See *Cole's Trial*, (7 Abb. Pr. N. S., 321).

million suit," he represented the defendant, with Charles A. Rapallo, Esq., now Judge of the Court of Appeals, obtaining a favorable judgment. On the important trial of *Bowen* v. *Chase*, involving the title to the valuable real estate left by Madame Jumel, Mr. Beach appeared for the plaintiff, opposed to the distinguished counselor Charles O'Conor; the long struggle, of over a month, was fruitless, as the jury disagreed. Employed for the people, upon the second trial of Edward S. Stokes, for the murder of James Fisk, Jr., in conjunction with the District Attorney, the jury returned a verdict of murder in the first degree, afterward reversed by the Court of Appeals.* With many other of the leading trials, including the Judge Barnard impeachment case,† Mr. Beach was prominently identified, rendering service without fee, in assisting Hon Charles O'Conor in the defense of Frank Walworth, grandson of Chancellor Walworth, long a prominent resident of Saratoga Springs, and a personal friend of Mr. Beach's family. Honest, as well as able, and earnest in performance of professional duty, dignified, while courteous in demeanor, he has materially added to his wide fame, in this, the greatest legal contest of this time and country.

M. B.

* *Stokes* v. *People* (53 N. Y., 164).
† Trial of George G. Barnard in Court of Impeachment. Published by Weed,

William H. Alberton

WILLIAM FULLERTON.

WILLIAM FULLERTON is a native of Orange county, in the State of New York. He was born in what was then known as the town of Minisink, in that county, in the year 1818. His boyhood was passed upon his father's farm. In 1838 he graduated at Union College, in the same class with the Hon. John K. Porter, who subsequently sat with him on the bench of the Court of Appeals, of this State, and who is now one of the leading counsel for the defense in this cause.

While in college, Mr. Fullerton in a great measure supported himself by teaching, during the vacations and a portion of the terms of his college course. For some time he had charge of the Columbia County Boarding School, at Chatham Four Corners, then one of the leading educational institutions in that section of this State.

After graduating at Union College, Mr. Fullerton entered upon the study of the law at Newburgh. He was admitted to the bar in 1841, and at once commenced the active practice of his profession.

During the early part of his professional career, he was made district attorney of his native county, which position he held for one term. He was soon recognized as one of the foremost men at the bar in the river counties in which he practiced, and until his removal to the city of New York in 1852, was constantly engaged in the trial of causes in these counties, appearing upon one side or the other of most of the leading cases.

In 1852 he was induced by Mr. Charles O'Conor to remove to the city of New York, for the purpose of uniting with him in the practice of the law. Mr. O'Conor's proposition of a partnership was made to Mr. Fullerton after the conclusion of an able argument by the latter, in an important and intricate cause at the general term of the supreme court at Brooklyn, in which Mr. O'Conor was opposed to him. Mr. Fullerton decided to accept the proposal of Mr. O'Conor, and soon after removed to New York city, and commenced the practice of his profession there with Mr. O'Conor, under the firm name of O'Conor & Fullerton.

Soon after the formation of the new firm, Mr. O'Conor was appointed U. S. District Attorney, and while in that position, he employed Mr. Fullerton to prosecute on behalf of the government, Capt. Daniel Maloney, who had been indicted for murder on the high seas. Maloney was defended by Mr. Ogden Hoffman, then considered the foremost jury advocate and orator of the New York

bar, assisted by Francis B. Cutting, whose eloquence and recognized legal abilities had won for him a reputation scarcely inferior to that of his illustrious associate.

By his conduct of this cause, and his masterly argument on behalf of the prosecution, Mr. Fullerton won the commendations of the late Judge NELSON, before whom the cause was tried, and at once established his reputation as a jury lawyer; and thus vindicated Mr. O'Conor's judgment from the criticisms which he had received from the public press at the commencement of the trial, for withdrawing from the management of so important a case, and intrusting the interests of the government to the hands of a young lawyer, who was then comparatively unknown in the city of New York.

Upon the expiration of Mr. O'Conor's term of office, a new firm was organized, composed of Mr. O'Conor, Mr. Fullerton, and Mr. Benjamin F. Dunning, the latter gentleman having been one of Mr. O'Conor's assistants while he held the office of U. S. District Attorney.

Mr. Fullerton now became actively engaged in the trial of causes in this city, and was soon recognized as one of the leading jurists of the State. He participated in the trial of many of the leading causes of the time, notably, the Mason Will Case* and the Thompson Will Case.†

In 1860 the firm of O'Conor, Fullerton & Dunning was dissolved, and Mr. Fullerton established the firm of Fullerton, Raymond & Knox. This was subsequently merged into the firm of Fullerton & Knox, Fullerton, Knox & Rudd, Fullerton & Knox, and since 1873, Fullerton, Knox & Crosby.

During the past fifteen years Mr. Fullerton is said to have participated in the trial of more causes than any lawyer who has ever lived in the city of New York for an equal period of time. He has been engaged, upon one side or the other, in most of the litigations recognized at the time as the celebrated causes of the day. His efforts in the Lawrence Will Case,‡ before the general term of the Supreme Court, on the appeal from the decree of the Surrogate rejecting the will will long be remembered by the judges who sat at that term, and by his professional brethren who were in attendance at the time of the argument, as one of the ablest forensic efforts ever made in the city of New York. In numerous complicated railway litigations and controversies which occupied the courts of this State for several years, Mr. Fullerton has borne a prominent part, the management of the interests of one or the other of the contending parties being most always intrusted to him.

In the celebrated case of *Milan* v. *Graham*, he succeeded in recovering a judgment of about $74,000 as damages for malicious prosecution. This is believed to be the largest verdict ever given in this country by a jury in such a case, and is believed to be the largest ever given in any country for a similar case. His connection as one of the leading counsel for the defense in the many indictments and civil proceedings which have been taken against William M. Tweed and others, is still fresh in the mind of the public.

In the summer of 1868, while absent in the woods of Canada on a hunting excursion, he was appointed by Gov. Fenton, justice of the Supreme Court, to fill a vacancy. By this appointment he became ex-officio a member of the Court of

* *Mason* v. *Jones* (2 Bradf. 181, 325). In this case a bill was filed by Mr. Fullerton to divide an estate valued at about $6,000,000. It nearly doubled in value before the case was decided.

† *Thompson* v. *Thompson* (21 Barb. 107; affirming 2 Bradf. 449).

‡ *Lawrence* v. *Norton* (45 Barb. 448).

Appeals, and sat in that court during the continuance of his term of office. At the election following his appointment, he was elected without opposition for the unexpired term of the justice whose death created the vacancy in the office;* after the expiration of his term of office, he declined a renomination, and at once resumed the practice of his profession in this city.

During his active practice of over twenty years in the city of New York, Judge Fullerton has been constantly associated with or opposed to all the leading lawyers of the State. He has well sustained the reputation which he has acquired, of being one of the foremost nisi-prius lawyers of the country. He is a most effective advocate, very quick, always ready, never taken by surprise, seizes at once upon the controlling facts and features of his case, and presses them with resistless force and energy upon the jury, never wearying them with petty details or considerations. As a cross-examiner, he has the reputation of having few equals, and no superior.

S.

* Judge Fullerton's opinions in the Court of Appeals are reported in volumes 37 to 39 of the *N. Y. Reports.*

ROGER A. PRYOR.

ROGER A. PRYOR was born in Dinwiddie County, Virginia, July 19th, 1828. He is descended from the ancient family of Bland, famous in the annals of Virginia. Col. Theodorick Bland, was an officer in the army of the Revolution, a member of congress and of the convention that framed the constitution. He was the friend and counselor of Gen. Washington, of the Marquis de La Fayette, Thomas Jefferson, and other distinguished men in the early history of our country. From the *Blands* spring many of the famous men of Virginia,—John Randolph, of Roanoke, Henry St. George Tucker, Gen. Robert E. Lee, and others. Young Pryor graduated from Hampden Sydney College, in 1845, and afterwards from the University of Virginia. He entered upon the practice of the law at Charlottsville, Virginia, but an affection of the throat obliged him to abandon it, and he became a journalist. His management of a small country paper, attracted the attention of the editor of *The Washington Union*, then the organ of the Democratic party under Gen. Pierce. Mr. Pryor was offered an editorial position in *The Union*, which he accepted in 1854. During his association with this journal, he wrote an article on the relation between the United States and Great Britain and Russia, as affected by the then pending English and Russian war. The tone of the article was anti-English. Appearing in the journal supposed to have the sanction of our government, it made a profound impression, especially as it appeared to indicate a sympathy with Russia on the part of President Pierce's administration. While editor of *The Union*, Mr. Pryor sustained friendly and confidential relations with President Pierce, who in 1855 appointed him on a special mission to Greece to adjust certain difficulties with that country. He was absent for a year in prosecution of this work, which he conducted with very great success, receiving the thanks of the government for his efforts.

Mr. Pryor returned from Europe in 1856. The country was then passing through the famous "Know-Nothing" Anti-Catholic political excitement which preceded our civil war. Henry A. Wise of Virginia, was candidate for governor in opposition to the "Know-Nothing" movement. Mr. Pryor purchased a share in *The Richmond Enquirer*, the leading newspaper of the south, and took an active and prominent part in the campaign, opposing the mad theories of the "Know-Nothing" Native-American party. The triumph of Gen. Wise, as governor, was the conclusive defeat of the Native-American movement, which then

Roger A. Pryor.

passed out of the politics of this country, and was succeeded by the anti-slavery agitation, that immediately assumed the alarming proportions which culminated in civil war. Mr. Pryor's connection with this campaign gave him a national reputation, and in 1857 he was elected to congress from the district formerly represented by John Randolph of Roanoke. Coming into congressional life with President Buchanan's administration, Gen. Pryor took an active part in affairs. Until the secession of the Southern States, he opposed, in the discussions of the time, all measures tending to the disruption of the Union, resisting the unwise counsels of extremists, pleading against violence and war. In the last speech he uttered in the house he used these words, which may be quoted as an illustration of his political opinions at a time when the animosities prevailed. "Imagine the complete subjugation of the south; after every spark of vitality is extinguished and her inanimate form lies prostrate before you, tell me what recompense do you gain for the sacrifice, what consolation for your fratricidal deed? From the respect due the memory of our common ancestry, for the sake of a land to be rent by the cruel lacerations of the sword, and in reverence of the virtues of a benign religion, we deprecate a conflict of arms! By the persuasions of these pious and pathetic importunities, we would soothe in every breast the spirit of strife, and invoke the pacific intervention of reason for the adjustment of our disputes." But the disputes between north and south had gone beyond the "pacific intervention of reason;" and when war became inevitable, and Mr. Lincoln called on Virginia for her quota of troops, Mr. Pryor urged her to stand in front of her southern brethren, and drew his own sword gallantly in her defense. He remained in Washington until the inauguration of Mr. Lincoln, having been re-elected to his seat in congress; and to the last enjoyed the friendship of some of the purest men of the hostile section, of Mr. Buchanan, Gen. Lewis Cass, Jno. P. Kennedy, Gen. Winfield Scott, and others. Like every true southerner he ardently took sides with his State. He was twice elected member of the Confederate congress, was made colonel of a regiment, and promoted brigadier-general after the battle of Williamsburg. He served in the memorable battles around Richmond and in the battle of Sharpsburg. In consequence of a misunderstanding with Jefferson Davis, Gen. Pryor resigned his commission and volunteered as a private soldier. For two years he served in the ranks, and fought in the battles around Petersburg, until he was captured and imprisoned in Fort Lafayette. A few weeks before the end of the war he was released from his imprisonment by order of President Lincoln, and remained at Petersburg on parole, until the surrender of Gen. Lee.

The war at an end, the south subjugated, the old political system destroyed, Gen. Pryor came to New York and entered upon the profession of the law—its practice having been interrupted by years of journalism, diplomacy, and military service. He is said to regard this epoch as the most remarkable of his eventful life. He came to a strange city, 35 years of age, with a large family, and broken in health from imprisonment and exposure—without a dollar—with no influential friends, and unlearned in the law of the state he had chosen. His indomitable courage did not forsake him, nor his regard for the best interests of his beloved State. His last political act was to address a letter to his former constituents in Virginia, urging them to accept gracefully the inevitable issues of the war, and to accord at once the right of suffrage to the negro citizens of the south, and to enter heartily upon the work of reconciliation and reconstruction. From that time to the present Gen. Pryor has devoted himself to the study and

practice of his profession, for which he is said to feel the greatest enthusiasm. During his practice here he has been connected with many notable cases, among others that of the man named Pratt, who shortly after the war, had been imprisoned in one of our forts on a charge of murdering some negroes in Jefferson, Texas. Gen. Pryor defended Pratt, and secured his attendance in court by a writ of *habeas corpus*. There was much excitement and prejudice against the prisoner, but his discharge was secured.

When the controversy between Mr. Tilton and Mr. Beecher assumed a legal aspect, Gen. Pryor was retained by Mr. Tilton, and took a prominent part in the case.

He made the argument before the Court of Appeals and the general term of the City Court resisting the granting to the defendant of a bill of particulars, as well as an argument before Judge NEILSON in favor of the competency of Mr. Tilton as a witness. Upon these two questions the case of Mr. Tilton depended largely. In both of these contests Gen. Pryor was opposed by Mr. Evarts, and his arguments gave him great celebrity as a profound and accomplished lawyer, succeeding in both of his motions. It is understood that his duty in the case was the preparation of law points, the study of authorities, and general consultation.

Gen. Pryor is a man of wide scholarship, an eloquent orator, a vigorous writer, of the highest personal character, and although a young man, he has taken a conspicuous part in the great events of the age.

In journalism, in diplomacy, in legislation, in war, and in the practice of the law, it has been his fortune to be called upon to assume responsible duties, and he has fulfilled them all with courage, dignity, ability, and honor.

E. W.

L. S. Morris

SAMUEL D. MORRIS.

SAMUEL D. MORRIS was born in Monmouth County, New Jersey. His father, Robert P. Morris, was a farmer, actually engaged in the pursuit of agriculture at the time of his son's birth. The early years of the subject of our sketch were spent upon his father's farm, in tilling the soil. Not richly endowed with wealth, the father and his sons were compelled to work winter and summer, early and late. Hence it was that young Samuel was unable to receive instruction in anything but the cultivation of the ground. However, arriving at the age of twenty-one, he acted upon a resolve long previously formed. He entered upon a regular course of schooling, at Leedsville, in his native State, with the same intense energy which has marked his subsequent career. After a few months spent at this place, he connected himself with the academy at Homdel, where he remained for six months, when the principal of the institution removing to Johnstown, N. Y., young Morris followed him, and remained under his charge until thoroughly prepared for a collegiate course. Selecting Rutgers' College as the institution at which to complete his education, he was admitted to the sophomore class. Having finished his course here, he went to the Law School at Ballston Spa, then in high repute as a training school for young lawyers, and under the able charge of Prof. J. W. Fowler. This was in 1849. In passing, we may remark that his prominence in the debates, which were a feature of the training at this school, gave him the highest prize within the gift of the school. Among his associates at Rutgers and the Ballston school, were Judge Bedle, now Governor of New Jersey, and Judge Larremore, of New York. A year later, July 3rd, 1850, Mr. Morris was admitted to the practice of the law at Plattsburg, N. Y.; and in the spring of 1851, he came to Brooklyn to enter upon his profession.

About the time of his settling in Brooklyn, Pierce had been nominated for the presidency, and our young lawyer, an ardent Democrat, entered most enthusiastically into the campaign. Upon the hustings nightly, in that vigorous canvass, his voice was heard urging the principles of the Democratic doctrine. His abilities and rare qualities as a speaker were thus made known to his fellow-citizens. His speeches, and the pronounced quality of his political doctrines, brought him into favorable notice.

In the following fall of 1853, he received the Democratic nomination for assembly, and, in the face of a strong and bitter opposition, was elected by an overwhelming majority. Three members then represented the interests of Kings county in the State assembly. The session in which he took part was exciting. Horatio Seymour was governor. The "Maine Law" excitement was

at its height, and the temperance interests were active and aggressive. In the discussions which ensued, Mr. Morris took an active part, and was appointed to the committee to which was referred the bill which had been introduced favoring the prohibitory law. That committee consisted of nine members, eight of whom reported in favor of the passage of the bill. Mr. Morris, however, offered a minority report to the contrary. The bill, however, was passed; but Governor Seymour promptly returned it with his veto, and in his message, followed very closely the line of argument employed by Mr. Morris in his minority report.

After the adjournment of the Legislature, Mr. Morris was appointed Corporation Attorney to the city of Brooklyn. In the spring of 1855, the Legislature having re-passed the Maine Law Bill, which was promptly signed by Governor Myron H. Clark, who had been elected as a temperance candidate, Mr. Morris was called upon, in the discharge of his duties, to enforce it. Believing it to be an unjust and despotic law, and that he could not remain in office and properly perform its duties without enforcing it, he resigned his office in May, 1855. He now set about the work of testing the constitutionality of the law, and he carried the celebrated "*Toynbee Case*" * to the Court of Appeals, which eminent and learned body declared the law to be unconstitutional. Thus was Mr. Morris' course and judgment, both in the Legislature and the office of Attorney, vindicated.

The great personal triumph of this opinion lifted him higher than ever in public esteem, and in the fall of 1855 he was elected judge of the County Court, and upon this bench he sat for the full term of four years. It was within his power to have accepted a renomination, but he declined it, and became a candidate for the district attorneyship, a position much more to the liking of his active and energetic disposition. His failure to receive the nomination his friends attributed to political trickery, and he ran upon an independent ticket. Disaster overtook the democratic party in this campaign, and John Winslow, a Republican, was elected. At the expiration of the term of Mr. Winslow, during which Mr. Morris had sedulously devoted himself to a large and growing practice, our subject was elected district attorney. This was in 1862; he was re-elected in 1865, and again in 1868, having served in this most important office three terms, or nine years.

The fact that Judge Morris was elected three times is sufficient to show the confidence reposed in him by the voters of Brooklyn, and we might, with justice, point to that fact alone as a record of honor. But Judge Morris' course as district attorney was marked by the greatest energy, the most rigid enforcement of the laws, and the most relentless pursuit of criminals.

Before his assumption of the duties of the office, the "*Diamond Murder*" had occurred. Sigismund Fellner, who had come to this country in 1861, because of domestic difficulties at home in Germany, brought with him a large amount of diamonds. Arriving in New York, he made the acquaintance of a countryman named Ratzky. A strong intimacy growing up between them, they came to Brooklyn to reside together. Not long after this, the body of Fellner was found floating off the New Jersey shore near Keyport. Ratzky was at once arrested upon suspicion, but had not been brought to trial when Judge Morris became district attorney. The new incumbent at once took up this work. A month was spent in the preparation of the case. The difficulty of this task will be ap-

* See *The People* v. *Toynbee* (20 Barb. 168; S. C. 13 N. Y. 378).

preciated when it is known that two years had elapsed since the commission of the crime, and much of the evidence had been scattered. Edwin James, the distinguished English advocate, had then but lately come to this country, and was in the full bloom of his deserved reputation as an able lawyer; he, with the late ex-Judge Stuart, were engaged for the defense. But notwithstanding their brilliant efforts for their client, so complete was the chain of evidence produced by the prosecution, that Fellner was convicted of murder in the first degree. So searching had been the examination into the case, so complete and minute, that even the clothes of Fellner were found after an expiration of two years, and brought into court.

In the case of *Yates*, who had been arrested for the murder of Curran, the policeman, this quality of sleuth-hound persistency and tireless energy, was even more manifest. This case was taken to the Court of Appeals, where a new trial was ordered.* Upon the second trial, Yates was convicted of murder in the second degree.

Probably no case in which Judge Morris acted as prosecutor, up to the time of the Tilton-Beecher case, ever excited greater attention than the "*Otero Murder Case.*" And this because of the mystery which at first surrounded the deed. Otero was a wealthy Cuban, who had come to this country upon business. During his stay in New York, he was enticed by two Spaniards, Gonzales and Salvador, whose acquaintance he had made, to Brooklyn, and was murdered by them in the city park. The two men were convicted. The general term of the Supreme Court reversed the decision of the court of oyer and terminer, but Judge Morris, carrying the case to the Court of Appeals, obtained a reversal of the decision of the Supreme Court, and the murderers were executed.†

Of other cases, which will be well remembered, was the *Skidmore Murder*, or "*Air-Gun Murder*," as it was better known. Skidmore, pending the trial, cheated the gallows by committing suicide in his cell.

On the 31st day of December, 1872, Mr. Morris yielded up the district attorneyship, which he had held for nine years, and has since devoted himself exclusively to his large practice both criminal and civil. Among the more recent cases in which Judge Morris has won much credit may be mentioned the defense of *Fanny Hyde*, and the prosecution of a large number of the claims of those who suffered from the disaster to the Staten Island ferryboat "Westfield."

Socially Judge Morris is one who surrounds himself with friends. Somewhat reserved and reticent in his intercourse with strangers, his friendships are of slow growth, but when grown, strong, healthy, and wholesome, lasting with life, and not overthrown by every summer breeze that blows from the west. His friendship once gained, his confidence once won, and there is revealed a warm heart beating with generous impulses, and a spirit accommodating, agreeable, and sacrificing.

Twice married, he has made for himself a happy home, and it is at his own fireside, perhaps, after all, that he is seen at the best advantage. The further fame and reputation he has won by his participation in the great Tilton-Beecher case, will be best determined when the passions and prejudices it has engendered, have had time to cool.

W. C. H.

* *Yates* v. *People* (32 N. Y. 509).
† *People* v. *Gonzales* (35 N. Y. 49).

THOMAS E. PEARSALL.

MR. THOMAS E. PEARSALL, of counsel for the plaintiff, is 32 years of age and is the only Brooklyn-born lawyer retained in this distinctively Brooklyn case. Though the junior of any of the other legal gentlemen in this controversy, Mr. Pearsall has nevertheless been in active practice at the bar for a dozen years, and in that time has become identified with many leading cases in the second judicial district. Mr. Pearsall was born in the city of Brooklyn in the year 1842. His ancestors for several generations have been Brooklynites, and his grandfather was the owner of that densely populated portion of the city, geographically and traditionally known as Pearsall's Farm. Had the property been devised from father to son, instead of sold, as it was long before Brooklyn's magnitude was foreseen, the possession of it by one family would rate them among the most affluent persons in any country. It was not to be so, however, and now thousands of people divide among them what was once the estate of a single gentleman, "situated some miles out of the town of Brooklyn."

Mr. Pearsall attended the public school of Brooklyn, and acquired a solid, practical education, up to the time when he resolved to choose his course in life. He was led towards the law; while only 15 years old he entered the office of Ex-Judge Samuel Garrison, of Brooklyn. In that office he remained as helper and student in one, till he had just attained his 21st year. He was then admitted to the bar, by examination at Poughkeepsie. For the first year he maintained professional relations with Mr. Garrison; but throughout the three years thereafter he conducted the legal business on his own account, with most flattering and increasing success, and during that period he was retained as attorney and counsel for one of the heirs under the will of Peter O'Hara, deceased; there was a large amount of property involved, the distribution of a large portion of which depended upon the construction of the will of the deceased. Opposed to Mr. Pearsall in this case was Hon. Henry C. Murphy. The case was carried by appeal to the Court of Appeals, and resulted in a decision in favor of Mr. Pearsall's client.*

On December 23d, 1867, he was tendered a partnership relation by Ex-Judge Samuel D. Morris, then district attorney of Kings county. The offer was accepted, and the relation has continued with pleasure and distinction to both gentlemen until the present time. From 1868 to 1872 Mr. Pearsall was the assist-

* *O'Hara* v. *Dever* (3 Abb. Ct. App. Dec. 407).

Thos. E. Sewall

ant district attorney of Kings county, and he discharged with intelligence and fidelity and great expedition, the duties of that office, in addition to his share in the private business of the firm of Morris & Pearsall. During the period last indicated, Mr. Pearsall has appeared in the Fanny-Hyde-Watson and the Irish-Anderson murder cases, and in other almost as celebrated civil and criminal issues. In the cases enumerated, the sides represented by Mr. Pearsall have been successful in the final result attained by the trial of the causes. In the case of *Tilton* v. *Beecher*, Mr. Pearsall for the plaintiff has been intrusted with much of the preparation of the evidence, and with part of the preparation and arrangement of the authorities relied on by the plaintiff's counsel in the many weighty law questions affecting the litigation. That he has discharged this onerous and not publicly-apparent duty with great research and with exhaustive skill, his professional associates and opponents have abundantly attested by their labors upon the subject, and their elaborate and prolonged development in the public trial of the case.

Mr. Pearsall is of medium height, compact build, and unaffected bearing; and both as a counsel and an advocate he has won great respect and a strong position, alike with his profession and with the public.

A. H. S.

THEODORE TILTON.

THE Tiltons are an old West of England family—large limbed and full-blooded; the sort of men who made Queen Elizabeth's yeomanry the strongest broad-sworders in Europe. In the year 1250 there was a progenitor of the race who built a stone church, which exists to this day. From him there has lately been traced an unbroken line of Tiltons, all of the earlier sort. Every one of them seems to have been nourished and thriven on a strong, simple, and conscience-making spiritual diet. They were churchmen of the state establishment and also, oddly enough, conservatives.

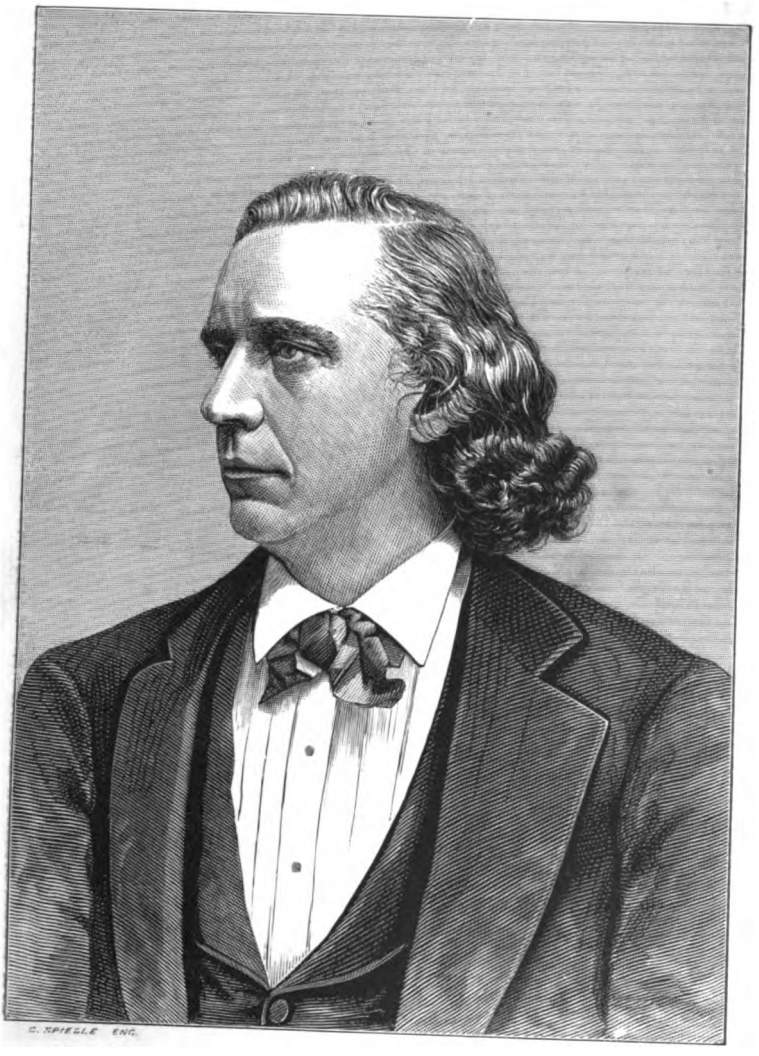
One might have expected to find the name here and there on the muster-roll of the Ironsides. But none of them fought under Cromwell. Their sword-arms smote for God and King Charles, and when the Revolution submerged their country, they were washed out of sight, for awhile, like tree-tops by a flood.

When the Restoration brought loyalty out of its hiding-places, the Tiltons came out likewise, but Charles the Second had a short memory, and among the many sacrifices which had no compensation, was theirs.

Shortly after the "May-Flower" spread her white wings westward for a second time, the Tiltons prepared sadly for emigration, and in the very day-break of the colonial period, some of them took passage for the unexplored forests of America. Two families of the parent stock made settlement in New England. A third fluttered for awhile like Noah's embassador, and at last found a refuge in New Jersey.

In the travail of revolution, the New England Tiltons stood manfully by the infant republic, the New Jersey Tiltons just as manfully by the mother country But when American Independence had been accomplished, the children of the Protestant Tiltons were numbered with its most faithful upholders.

Born in Monmouth, New Jersey, was Silas Tilton, the father of Theodore, For wife he took Eusebia Tilton, who stood in no relation to him though by coincidence her name was identical with his own. These parents are living to-day. The father is a large, grave, magisterial character, such as in early settlements would have controlled his neighbors. He is sober and reverend as a Puritan, rich in all the endowments of a practical religious faith, apostolic in his dignity, and severely plain as one of the forefathers of this American people. The mother is of a like physical and spiritual conformation. Her face is the face of George Washington over again, beaming with a glow of piety and wear-



Theodore Tilton

ing outward marks of resolution, force, and matronly virtue. These good people —now aged and venerable—are greatly respected in their neighborhood.

Their son, Theodore Tilton, was born on the 2d of October, 1835, in New York. They had also two other sons and a daughter—whereof the daughter, a stately and handsome lady, alone survives.

Theodore in his boyhood was sent to Public School, No. 1. There he soon mastered the rudiments of a common education, and thence he was promoted in 1849 to the Free Academy, afterward called the College of the City of New York.

It was while he was a child at Public School, No. 1, that he had a playfellow named Joseph H. Richards, whose sister Elizabeth, though small, was a kind and wise tutor of her brother and his friend.

In the same class with Tilton at the Free Academy was a bright, mischievous, amiable boy, with chestnut hair and laughing eyes, who was as quick as the first scholars, but inclined rather to play and merriment than to work. This was Frank Moulton.

Tilton loved both work and play. "His intensity in either occupation," says a friend, "was frightful." He would run and jump with the nimblest, and his tasks were always completed faultlessly. He was fond of learning for its own sake, and he cared at no time to succeed in mere emulation of others. His health was excellent, and his *physique* perfect. Nothing exhausted him, either in his recreations or his duties. He was early bent toward literature, and his classmates elected him to edit the college magazine. In debate he always shone. His remarkable predominance in discussion has been attributed to a resolution never to defend or advocate a subject unless he conscientiously believed in it. All his instincts, as well as all his energies, were always on the side for which he argued.

Among Tilton's classmates were a goodly number of embryo clergymen, to wit: the Rev. Franklin S. Rising, who was killed some years ago by a steamboat collision on the Ohio; the Rev. Joseph Anderson, a theological writer of the Congregational denomination; the Rev. Edwin Belfour, a leading Lutheran minister; the Rev. James Little, and the Rev. George Post. Also among his classmates was P. B. Wight, architect of the Mercantile Library in Brooklyn and the Academy of Design in New York.

In 1854 Theodore Tilton's class graduated, but Theodore refused to accept a diploma, regarding such a badge as part and parcel of the system of medals and prizes—a system which he then characterized as "unrepublican and deleterious." He said, "bright students need no prizes, dull ones are discouraged by them." His father offered him a gold watch if he would achieve a certain object. Tilton won the watch but refused it.

He had learned phonography before he was fifteen, and shortly after leaving college became the amanuensis of Rev. Samuel Irenæus Prime, D.D., editor of *The New York Observer*. Dr. Prime had been requested by the Harpers to prepare two volumes of oriental travels for their house, and to Tilton was intrusted the responsibility of arranging the author's manuscript for the press. So pleased was Dr. Prime with his skill, promise, and industry, that he retained his amanuensis in a subordinate post upon *The Observer*.

Meanwhile the Richards family had removed to Brooklyn, and the elder Tiltons contemplated returning to New Jersey. The intimacy between young Theodore and the small, shy, pensive maiden, who was nearly two years his senior, had been kept up without abatement. The present Mrs. Morse—then a

widow named Mrs. Richards—offered him a home under the same roof with her son and daughter. The Richards family was as religious as the Tiltons, and constantly attended the preaching of Henry Ward Beecher in Plymouth Church.

Frequenting Plymouth Church with Elizabeth Richards, and hovering on the outer edge of Mr. Beecher's friendship, Theodore Tilton became acquainted with Mr. Daniel Burgess, who desired to have Mr. Beecher's sermons reported, and who, to that end, employed Theodore. Every Sunday the young stenographer would sit in the Burgess pew and, on a small desk which he had therein contrived, reported the sermon. He was the first shorthand reporter who systematically "took" Mr. Beecher's discourses.

On his twentieth birthday, the 2nd of October, 1855, he was married by Mr. Beecher to Elizabeth Richards, the bride being twenty-one years and five months old.

In the spring of 1856, Henry C. Bowen, to whom Theodore Tilton had been heartily commended by Mr. Burgess, sent for Mr. Tilton and offered him $700 a year to do some literary work on *The Independent*. That journal was then conducted by three clerical editors—Dr. Bacon, Dr. Storrs and Dr. Thompson. Mr. Beecher contributed weekly articles over a star; hence the series was called "The Star Papers."

In 1861 the three doctors of divinity abdicated their triple seat, and Mr. Beecher became editor-in-chief, Tilton being employed as his assistant.

This was the period of the civil war, and *The Independent* was Northern and abolitional in its sentiment.

Tilton's ardent spirit was instantly engaged in the crusade, and he made his first speech in public in Willow Hall, Orange, New Jersey. In his twenty-third year he was introduced, in a warm and eloquent speech, by Wendell Phillips, as one of the apostles of emancipation. He spoke and wrote for the anti-slavery cause with all the fire of a strong and youthful mind. So conscientious was his devotion that he would not allow the Anti-Slavery Society to pay so much as his traveling expenses. His heart was moved to the service by a spectacle which he once beheld in the slave market of Richmond. A mother and her three children were put up for sale in three lots. Herself and her suckling babe were sold into one State, her little girl and her little boy into two others.

When Mr. Beecher went as a special ambassador to England, Theodore Tilton succeeded him in the editorial conduct of *The Independent*. During the troublous years of the war, he labored with tongue and pen for the national cause; and when the end, for which he had striven as zealously as any man, came, Theodore Tilton found himself one of the representative men of his country.

He lectured for six years on various literary, social, and philosophic topics, and steadily, year by year, his reputation increased. In 1870, Mr. Bowen, having bought *The Brooklyn Union*, urged Tilton to take charge of it as editor-in-chief. From that date to the present his history has already become public property.

Though his intellectual achievements have principally been ephemeral feats of journalism and oratory, Theodore Tilton has left here and there a more permanent impress upon the recollection of his countrymen. He has contributed to most of the leading magazines, and has published a volume of poems entitled "The Sexton's Tale;" a volume of essays entitled "*Sanctum Sanctorum*," and a novel entitled "Tempest Tossed." All of these have been very favorably re-

ceived—though as a polemical writer and as a lecturer he effected his greatest success.

At the period of his marriage he boarded for a year with his mother-in-law. Afterwards he removed to Oxford-street, then to No. 48 Livingstone-street. In 1866 he bought the house No. 174 Livingstone-street, in which he resides to this day.

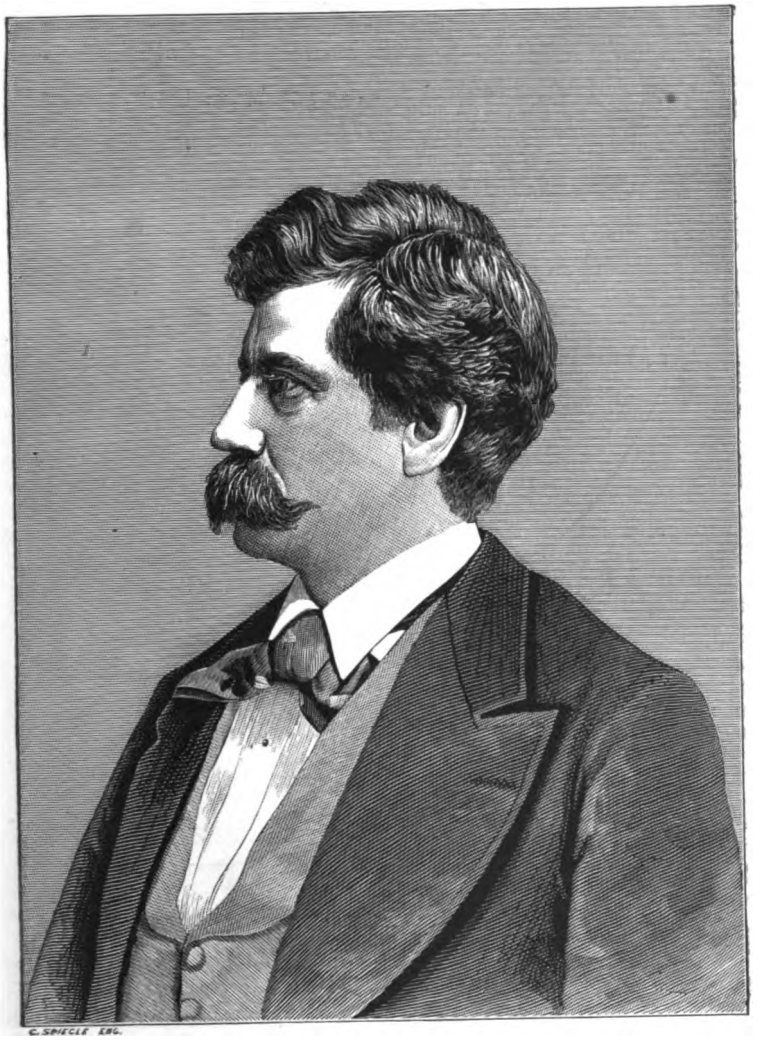
Four children were born to him and his wife Elizabeth—Florence, a lovely girl of eighteen; Alice, a promising child of fourteen; Carroll, a bright and handsome boy of ten, and little Ralph, the baby of this distracted household.

A. D. G.

FRANCIS D. MOULTON.

FRANCIS D. MOULTON, one of the prominent witnesses in this remarkable trial, belongs to an old and highly respected family of English descent, settled in Connecticut. His ancestors were wealthy farmers, of that plucky, independent, indomitable sort which gave character to the colonies and prepared the way for the Revolution and what followed it. They all had a good deal of the declaration of independence in them; and one of them raised a regiment of soldiers and did brave service at Bunker's Hill under the eye of the heroic Warren, whom he knew well, and of whom in after years he loved to tell. They were a hardy, long-lived race, and the Revolutionary officer, after he was ninety-five, walked two miles to dine with his son, and died after dinner, while sitting in his chair. His son lived to a hundred and four, and his son, the grandfather of Francis, died from the effects of a sudden cold at ninety-five. His father, Severn D. Moulton, a well-known New York merchant, is still active and energetic at the age of seventy-five. In fact, the Moultons have a habit of living long and well. His mother, Mrs. Catharine Moulton, was a singularly gentle, lovely woman, who made the sweetest impression upon all who knew her well by the grace and refinement of a nature that seemed to have more of heaven than earth in its composition—a woman who was good without trying to be so, and who did good without effort and without seeming to know it. Her spirit flowed as naturally into charities as a bird's heart into song. Her influence over her three children was characterized by gentleness, simplicity, and sincerity.

Francis, the second son, was born in New York, in 1836. His earlier years were spent under the immediate influence of his mother, who was his teacher also. In 1849 he entered the institution now known as the College of the City of New York. Its faculty at that time included, among others, Professor Ross and Gen. Franklin, graduates of West Point, Wolcott Gibbs, Horace Webster, and Theodore Irving. Delicate in health, and unused to severe application, he was more distinguished for the quickness of his wit and his sunny geniality of disposition than for scholarship. But he was a favorite with pupils and teachers, and when he graduated, in 1854, was awarded a medal for Latin, and another for mathematics. But he insisted that he was not entitled to either, the former belonging of right to Edward Belfour, now a Lutheran clergyman; Professor Rodney Kimball, of the Brooklyn Polytechnic Institute, being entitled to the latter. Indeed, he determined to right the wrong at a class supper, presenting the prizes to the scholars who had earned them; but before his purpose could be carried into effect, burglars entered his house and carried off the medals with other plunder. "Well," said young Moulton, "they are quite as much entitled



C. SPIEGLE ENG.

Francis D. Moulton

to the medals as I was." At his graduation he was assigned an English oration on an uncongenial subject, and when he mounted the stage he found that it had gone from his memory. He plucked up courage, however, and made an extemporaneous speech, which was received with unusual *eclat*. It was at college that he made the acquaintance of Theodore Tilton, and the two class-mates became fast friends. Unlike as well could be, their dissimilarities seemed to strengthen their intimacy and increase the ardor of their attachment.

After leaving college, Mr. Moulton thought first of studying law, and then of entering West Point; but ill-health blocked both paths. Resolved to go into business, he entered the service of Messrs. Woodruff & Robinson as office boy for $75 the first year. His industry, fidelity, and marked business capacity led to his steady promotion, till, in 1861, he was admitted to the firm as a partner. He soon assumed charge of the warehouse business of the firm, which increased enormously under his management. In 1870 he took an active part in securing an abatement of canal tolls at Albany. The provisions of the Canal Debt Funding Bill, which reduced the toll on wheat from 6 to 3 cents, and on corn from 4 to 2 cents, were obtained from the Legislature very largely by his exertions. His business ambition has always been high, and his position among merchants was prominent and honorable. Before his connection with this unfortunate scandal his prospects as a business man were regarded as unusually brilliant. He was married in 1860, and for several years has resided on Remsen street, Brooklyn Heights, his elegant home gaining additional attractions from the practice of a generous hospitality.

Mr. Moulton's connection with the present case began December 30, 1870, when Mr. Tilton confided his trouble to him, and sought his advice and assistance as a friend. Reticent in his habit, and unusually firm in his attachments, and discreet in his conduct, he naturally won the confidence of those who knew him, and Mr. Beecher felt sure that in him he had a safe counselor and devoted friend. The qualities of mind which made him the trusted friend of these two men in their difficulties are conspicuous in Mr. Moulton's character, and afford the key to his subsequent conduct. He is not a professor of religion, but his mother was a devout member of the Reformed Church, and his father is a Baptist, austere and exact in his conduct, and while at college he was superintendent of the Sunday-school of the Mount Pleasant Reformed Church. His literary tastes are unusually rare and cultivated, and he has an extensive acquaintance with the best authors, whose works he frequently quotes in conversation, and whose influence appears in the language of his testimony, which is remarkably terse and precise, and sometimes elegant.

W. T. C.

OFFICIAL REPORT.

By AUSTIN ABBOTT.

From the Notes of

A. F. WARBURTON, WILLIAM F. BONYNGE, FRED M. ADAMS, AND TIMOTHY BIGELOW.

For the Plaintiff:

WILLIAM A. BEACH.

WILLIAM FULLERTON. ROGER A. PRYOR.

SAMUEL D. MORRIS. THOMAS E. PEARSALL.

MORRIS & PEARSALL, *Plaintiff's Attorneys.*

For the Defendant:

WILLIAM M. EVARTS.

JOHN K. PORTER. AUSTIN ABBOTT.

BENJAMIN F. TRACY. THOMAS G. SHEARMAN.

JOHN L. HILL. JOHN W. STERLING.

SHEARMAN & STERLING, *Defendant's Attorneys.*

TABLE OF CONTENTS.

VOL. I.

OFFICIAL REPORT

OF THE CASE OF

THEODORE TILTON v. HENRY WARD BEECHER.

SUMMONS AND PLEADINGS.

THE CITY COURT OF BROOKLYN.

THEODORE TILTON, *Plaintiff*,
against
HENRY WARD BEECHER, *Defendant*.
} *Summons.—For Relief.*

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

Dated August 19th, 1874.

MORRIS & PEARSALL, *Plaintiff's Attorneys.*

COMPLAINT.

[*Title of the cause.*]

The plaintiff, complaining of the defendant, alleges:

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

II.—That the defendant, contriving and wilfully intending to injure the

plaintiff and deprive him of the comfort, society, aid and assistance of the said Elizabeth, the wife of the plaintiff, and to alienate and destroy her affection for him, heretofore on or about the 10th day of October, 1868, and on divers other days and times after that day and before the commencement of this action, at the house of the defendant, No. 124 Columbia-street, City of Brooklyn, and at the house of the plaintiff, No. 174 Living-ston-street, City of Brooklyn, wrongfully and wickedly, and without the privity or connivance of plaintiff, debauched and carnally knew the said Elizabeth, then and ever since the wife of the plaintiff, by means whereof the affection of the said Elizabeth for the said plaintiff was wholly alienated and destroyed; and by reason of the premises the plaintiff has wholly lost the comfort, society, aid and assistance of his said wife, which during all the time aforesaid he otherwise might and ought to have had and enjoyed.

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

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

MORRIS & PEARSALL, *Plaintiff's Attorneys.*

City of Brooklyn, County of Kings, ss.:

THEODORE TILTON, being duly sworn, says that he is the plaintiff in the foregoing entitled action; that he has read the foregoing complaint, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

THEODORE TILTON.

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

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

ANSWER.

[*Title of the cause.*]

The defendant answers to the complaint:

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

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

SHEARMAN & STERLING, *Attorneys for Defendant.*

State of New Hampshire, County of Grafton, ss.:

HENRY WARD BEECHER, being duly sworn, says:

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

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

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

HENRY WARD BEECHER.

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

HARRY BINGHAM, *Justice of the Peace.*

State of New Hampshire, County of Grafton:

AUGUST 29, 1874.

I hereby certify that I am Clerk of the Circuit Court of the said County, and that Harry Bingham resides therein, and is and was, at the time of taking the foregoing affidavit, a Justice of the Peace throughout the said State, and duly authorized by the laws thereof to take the said affidavit, and that I am well acquainted with the handwriting of the said Harry Bingham, and verily believe that the signature to the Jurat of the said affidavit is genuine, and that such affidavit purports to be taken in all respects as required by the laws of the State of New Hampshire.

In testimony whereof, I have hereunto set my hand and affixed the official seal of the said Court the date above written.

C. A. DOLE,

[L. S.] *Clerk of the Circuit Court for Grafton County, New Hampshire.*

APPLICATION FOR PARTICULARS.

ORDER FOR PARTICULARS OR TO SHOW CAUSE.

[*Title of the cause.*]

On the affidavits of the defendant and Olin J. Clauson, and on all the pleadings and proceedings, let the plaintiff deliver to the defendant's attorneys a statement in writing of the particular times and places at which he expects or intends to prove that any acts of adultery or criminal intercourse took place between the defendant and the wife of the plaintiff, and of the particular times and places at which he expects or intends to prove that the defendant confessed any such act of adultery or criminal intercourse, by the 22d day of October, 1874, at 10 o'clock in the forenoon, or show cause before a Special Term of this Court, to be held at the Court House in the City of Brooklyn, why such a bill of particulars should not be delivered, and why the plaintiff should not be precluded from giving evidence upon the trial of any such acts or confessions not specified in such bill of particulars.

And in the meantime let all proceedings on the part of the plaintiff in this cause be stayed.

J. NEILSON, *J. C. C.*

MOVING AFFIDAVITS.

[*Title of the cause.*]

City of Brooklyn, County of Kings, ss.:

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

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

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

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

IV.—Since the service of the complaint and answer herein, and on or about September 18th, 1874, the plaintiff, as I am informed and believe, published a statement over his own signature asserting that his wife and I had both confessed to him in detail specific times and places at which we had maintained improper relations with each other, which times and places, however, other than October 10, 1868, and the Saturday following, the plaintiff carefully refrains from mentioning, but professes to have within his own knowledge.

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

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

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

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

LUDOVIC BENNET, *Notary Public*, In and for the State of New York.

[*Title of the cause.*]

City and County of New York:

OLIN J. CLAUSON, being duly sworn, says:

I.—I am managing clerk in the office of Shearman & Sterling, the defendant's attorneys herein.

II.—The complaint in this action was served upon the defendant's attorneys on August 21st, 1874, and the answer was served on September 7th, 1874.

III.—On September 18th, 1874, *The Daily Graphic*, a newspaper published in the City of New York, printed and published a long statement signed with the plaintiff's name, and purporting to be his statement of the facts, and of some of the evidence in this action. In this statement, which, as I am informed and believe, was written and published by the plaintiff, he asserts that his wife confessed to him that she committed adultery with the defendant on October 10th, 1868, at his residence, and at her own home in Livingston-street, on the Saturday evening following, and "at intervals during the ensuing Fall and Winter, and in the Spring following;" and the plaintiff adds, in the said statement, the following words: "Furthermore, with great particularity, she mentioned the several places of these interviews, which I can not bring myself to chronicle here." In another portion

of the said statement, so made and published by the plaintiff, the following paragraph occurs: "Certain facts which Mr. Beecher gave me on that occasion, concerning his criminal connection with Mrs. Tilton—the times, the places, the frequency, together with other particulars, which I feel a repugnance to name, I must pass over." The interview in which this confession is alleged by the plaintiff to have been made by the defendant, is asserted by him to have taken place in his (the plaintiff's) study, but the time and place of said interview is not otherwise specified.

IV.—This action has been noticed for trial for the November Term of this Court. OLIN J. CLAUSON.

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

JOHN J. THOMASSON, *Notary Public*, N. Y. City and Co.

[*Title of the cause.*]

City of Brooklyn, County of Kings, ss.:

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

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

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

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

IV.—The insinuation in the aforesaid affidavit of the said Beecher that I intend to produce "manufactured evidence" and "false testimony" in support of my charge of adultery against him is unfounded and malicious. On the contrary, I believe, and so charge, that the real object and purport of said motion is to apprise said Beecher, in advance, of my evidence and witnesses, to the end that said evidence may be deceptively met by false and fabricated testimony on behalf of said Beecher, and that said witnesses may be tampered with or eloigned. My belief that such is the crafty design of my opponents is based on the fact that the greater part of the evidence which has been heretofore advanced in defense of said Beecher, has been false and fabricated; for example, the palpable falsifying of his own church records, by his recent Committee of Investigation, as pointed out in my published statement; also, by a false and calumnious charge against Francis D. Moulton, F. B. Carpenter and myself, as blackmailers and conspirators; also, by a pretended validity given to the silly fictions of the girl Bessie; also, by

inciting Mrs. Elizabeth R. Tilton to testify falsely that I had subjected her to imprisonment under lock and key, and had, in an inclement winter, deprived her of fire and food; also, by the false pretense that I used the said Beecher as an instrument to extort $7,000 from Henry C. Bowen; also, by the despicable attempt to connect me criminally with certain honorable women, both living and dead; also, by variously misrepresenting me to the public in false lights —for example, sometimes as a forger, and at other times as a lunatic—also, by repeated false oaths of denial by the said Beecher to the true charge which I have made against him, of sexual commerce with Mrs. Elizabeth R. Tilton, carrying his perjury to the extent of procuring against me, on his own oath, a criminal indictment by a grand jury, whereas he himself was and is the real criminal.

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

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

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

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

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

RUFUS M. WILLIAMS, *Notary Public.*

ARGUMENT ON THE MOTION FOR PARTICULARS.

BEFORE CHIEF JUSTICE NEILSON, SATURDAY, OCTOBER 24TH, 1874.

Mr. Shearman.—May it please your Honor, we have here an order to show cause, in the case of Tilton *v.* Beecher, why a bill of particulars should not be granted showing the dates at which the alleged offenses took place, made returnable Thursday last, and by a subsequent order modified to Saturday. I read our affidavits in support of the application. [The learned counsel here read Mr. Beecher's affidavit, *ante*, page 4.]

Mr. Morris.—We have one affidavit which I will read. [The learned counsel here read the affidavit of Mr. Tilton, *ante*, page 6.] That is all the affidavit we propose.

Mr. Tracy.—If your Honor please, before we proceed to the questions of law in this case, I desire to call your Honor's attention to some peculiarities of the affidavit that is read in opposition to this motion. And I desire to move to suppress it, as false, scandalous, and malicious. In one of the gravest and most important actions that has ever been brought, perhaps, in this country—one involving the gravest and most serious issues—the defendant, placing himself upon what he considers his clear legal rights, has made a simple and ordinary motion before your Honor, asking that he be permitted to know, in advance of the trial, the times when and places where it is to be averred and charged upon the trial that those acts of wrong were committed by him. In that complaint, as your Honor will perceive, there is but a single time stated. But the complaint in its general language is broad enough to cover all times and all places for six years. If that complaint is to stand without further particularity, the defendant must come to the trial of this action without knowing anything as to the time or place where he is to be prepared to deny that he committed the wrongful acts charged against him. Whether he is to be confronted with witnesses alleging that those acts were committed in the city of New York, in the city of Brooklyn, in the State of Connecticut, in the State of New Jersey, or in the State of Pennsylvania, are all matters upon which he must be profoundly ignorant until he stands confronted by the witnesses who are to accuse him upon the stand. In such a trial, we all know the dangers that a defendant must be called upon to meet and to confront. If he can be put to this trial without further information, then innocence confers no security. Indeed, it is a trap which would be more certain to lead to his conviction than if he was guilty, because, being guilty, he might be presumed, or might assume, to know the points from which the attack was to come, and defend himself against it. The importance of such information, therefore, is apparent; it must be apparent from the mere statement of the case. Our legal right to it we had come here prepared to assert. We supported that legal demand by an affidavit simple in its statement, permitting to ourselves no accusations against this plaintiff, casting no slurs upon him or upon his friends or supporters. We came here resting upon our solemn denial under oath that we had anywhere, at any time, any place, or on any occasion, ever committed the wrongful acts of which the defendant stands accused. We presented it, therefore, in its simplest form, placing ourselves upon our legal rights, and stating no fact beyond those that were simply necessary to raise the legal questions, and to entitle us to a decision in our favor. Our affidavits raise the question of law, and, as you Honor will perceive, it is only a question of law in this case. The only question that can be considered on this motion, is the question whether, under the circumstances of the case, the defendant being thus generally accused and asserting his innocence under oath, he is legally entitled to the information which he seeks. That is a question of law; it is raised by our affidavit. There is no statement of fact that could be introduced against it, because, your Honor, as every practitioner knows, would not assume to try the questions of fact in this case upon affidavits, and to attempt to answer

our affidavit on this motion would be to attempt to decide and adjudge the whole point at issue.

The defendant, then, swearing to his innocence in this case and his ignorance of the times and places to be alleged, asks for this information. Now, how are we met by this affidavit? Is there any fact stated in this affidavit which tends to show that our statement there is untrue, or that we are not legally entitled to this motion. What is the first fact that is stated? The committee of investigation of Plymouth Church is assailed and accused of having made a false and scandalous report in defense of Mr. Beecher, of having been a partial committee; and this affidavit proceeds to review at length, in a scandalous manner, the report of the Plymouth Church investigating committee. What possible relevance, if your Honor please, has that fact in this case? I submit to you that that part of this affidavit should be suppressed as scandalous and impertinent. It has no business in this motion; it has no bearing upon this issue. It is an outrage upon the administration of justice, that a court should be made the avenue of thrusting before the public such a slanderous, false, irrelevant, and impertinent accusation. That part of it, therefore, particularly, I ask that your Honor order to be suppressed and stricken from the affidavit.

Another part of the affidavit, which I remember without reading it, accuses Plymouth Church, as a congregation, an organized congregation, with an intention to manufacture false evidence in support of the defendant, or to purchase——

Mr. Morris.—No sir, not that.

Mr. Shearman.—"Intend to purchase false evidence;" those are the words.

Mr. Tracy.—Let us see [turning over the affidavit and reading],—"I further believe and charge that the said Beecher and his interested champions in Plymouth Church have plentiful and opulent means at their disposal to purchase and procure false evidence in the coming trial, and intend so to do."

Mr. Morris.—That does not charge the church.

Mr. Shearman.—It is simply whether a part of Plymouth Church, or the whole of Plymouth Church, intend to do so; legally, the difference is not important.

Mr. Tracy.—[Reading],—"I further believe, and so charge, that the said Beecher's present demand for a bill of particulars, unusual in such actions, as I am informed, and in this instance wholly unwarranted by justice, and purposely intended for a perversion of the truth, is further designed by the defendant to procure the postponement of a trial, &c." Now, I have specified the points of this affidavit, but there are more of them which a careful reading of it will disclose to your Honor. I ask that all this part of this affidavit which charges a combination to pervert truth and to purchase evidence, and which reviews and scandalizes the report of the investigating committee, be stricken from this affidavit before we proceed to this motion, and that the affidavit be carefully reviewed for that purpose.

JUDGE NEILSON.—I will hold that, and will consider it.

Mr. Morris.—I desire to be heard on that point.

JUDGE NEILSON.—You need not be excited now; consider it made and held.

Mr. Tracy.—The difficulty with that will be that this affidavit goes forth to the world as the affidavit on which the motion is heard and is published.

JUDGE NEILSON.—Well, how are we to prevent that?

Mr. Tracy.—I think no newspaper has a right to publish matter that is suppressed by the court.

JUDGE NEILSON.—I think I will hold it and determine it with the other, and in determining it express an opinion especially on the 6th and 7th. I do not see, at this moment, how those two are material.

Mr. Shearman.—If it please your Honor, we will now open the case on the questions of law. There are no new facts stated in this affidavit in reply; not one fact that is material to this case. Even assuming that those two passages that have been discussed are to be deemed material, they require no answer on my part.

JUDGE NEILSON.—Present your case as if they were stricken out; first, as to the committee, and second, as to the church.

Mr. Morris.—I do not understand your Honor as making any such order?

JUDGE NEILSON.—No, sir; I only suggest it. I will hear you on the subject.

Mr. Morris.—Yes, sir; I desire to be heard on that.

Mr. Shearman.—I do desire, your Honor, to call your attention to some other features of that affidavit, not specially with reference to any motion to strike out, because as to that, we shall not burden your Honor, except on the two points bringing in other persons. But this affidavit serves to characterize the whole end and object and purpose of this action. And the fact of this publication, which is now squarely admitted by the plaintiff, is another circumstance, which I think your Honor will take into account in deciding this motion. We do move upon the ground that we apprehend danger from false testimony. It may be said on the other side, in reply to our objections to their affidavits, that our affidavit is objectionable upon that ground. But we have used cautious language. We could say no less. The defendant can not come into this court without asserting, as he does assert, that the charge against him is entirely false. He could not stand in this court without saying that the testimony if any, against him, is manufactured testimony. He has carefully abstained from saying *by whom* it is to be manufactured. He has not, in his affidavit, cast one fling at the plaintiff, notwithstanding the plaintiff's many flings at him in the paper which has been referred to as the basis of this motion. The defendant has said that if any testimony of adultery is produced against him, it *must* be manufactured testimony and false testimony. It can not be otherwise; and there are no words in which he can express that essential fact in his defense more mildly than he has stated it in his affidavit. There is, therefore, no impropriety in the defendant's affidavit.

But look at the affidavit produced in reply. It begins with talking about the defendant's "dastardly acts," his "desperate defense." It asserts that

his affidavit is "utterly false, made with intent to deceive the public." We have contented ourselves with saying, within the limits of propriety, that the charge against us was utterly false. The defendant in this action, standing, as he has always done, in a position of decency, dignity, and honor, has not (whatever might be his own private belief) gone out of his way to assert in any proceeding in this court, that this plaintiff has made the charge knowing it to be false. He has left the plaintiff to answer to his Maker, and left it to the judge and to the jury who shall ultimately decide this case, to determine the question whether he knows this charge to be false or not. The defendant has simply said that *the charge was false*, and what less could he say? Does that justify an affidavit on the part of the plaintiff saying that the defendant's affidavit is false, and made with intent to deceive the court and the public? Such an allegation is utterly indecent. Again, it says that our insinuations are false and malicious; that the object of this motion is to enable the defendant to tamper with witnesses. Your Honor, when men make such accusations as that, when they use such language as that, it is a pretty good indication of what their own practice is.

JUDGE NEILSON.—There is a corresponding suggestion in your own affidavit.

Mr. Morris.—It is a direct charge. It was not a necessary fact at all in their affidavit.

Mr. Shearman.—I refer to what he said, "that there is danger of manufactured testimony,"—that is, testimony manufactured by the witnesses. It does not necessarily, nor presumptively, mean testimony manufactured by the plaintiff. If the plaintiff feels that the cap fits him, we can not help his putting it on. But *we* have not put in his name, nor any insinuations against him. Then we come to his allusions to witnesses who have testified before. He asserts that they have testified falsely, and mentions one by name. He, again, uses such language as this: "the defendant's despicable attempt," "the repeated false oaths and denials of Mr. Beecher," "his carrying his perjury to the extent of provoking an indictment,"—and such language as that. But I shall not dwell further upon that. I want, however, to call your Honor's attention, as a preliminary point, to a circumstance giving color to this case, and showing what, as counsel, I do take the responsibility of charging, in argument, although it would be an impropriety for the defendant to have put it in so many words in his affidavit,—my belief that perjured testimony is to be got up in this case. I want to show your Honor that in the management of this case on the part of the plaintiff, his practice has been entirely in violation of the rules that govern all courts; that it has been grossly indecent and does not entitle him to any favor, nor to any belief when he makes his application. We have charged that in *The New York Daily Graphic* of September 18, 1874, being a period of four weeks, exactly, after the plaintiff had selected his own forum and come before this court, he published a statement which we have here, and which occupies twenty-five columns of that paper, going into all the facts, as he called them, and all the evidence, as he claimed it to be, in this cause. Now, your Honor, that was a grossly indecent act; it was a willful contempt of court. If we had

chosen to prosecute him on that ground, instead of on libel, we could have put this plaintiff into prison. By the laws of the State of New York he is liable to imprisonment for that act alone, even though every word he put into that statement were true. And I cite, for the benefit of the counsel on the other side, a few cases in which this doctrine has been put into force. They are English cases, but the law remains just the same in the State of New York.

Mr. Morris.—You need not cite them for my especial benefit.

Mr. Shearman—In *Littler* v. *Thomson* (2 Beav. 129), when a suit had been brought, and one of the parties thereupon undertook to publish a charge of perjury in that case, he was brought up before the vice-chancellor, and committed for contempt of court in publishing that charge with relation to the case. In very recent volumes of the English Law Reports there are three cases (*Daw* v. *Eley*, 7 Eq. Cas. 49; *Tichborne* v. *Mostyn*, Id. 55; *Re Cheltenham Co.*, 8 Id. 586), in which parties and their counsel, were punished (in one case very severely) for making a publication with reference to the merits of the case in court. Counsel says he is familiar enough with cases; I need not cite them for his benefit. Then, I trust, for the sake of his reputation, for the sake of the honor of the court of which he is an officer, that he had no part, or lot in advising or permitting the publication of a statement like this. It was a scandal to the plaintiff's cause; it indicated his utter unwillingness to abide by the verdict of a jury in this case; it indicated the grossest contempt for your Honor's court; it showed that he was not willing to abide by the decision of the tribunal to which he himself had appealed, but that he felt the necessity of poisoning the minds of jurymen in advance, and of spreading his falsehoods before the public without daring to wait until the time should come to submit them to a jury. Now, I pass to the very merits, the legal questions involved in this case, although this is one that we say your Honor should consider.

I observe from the affidavit that the plaintiff is advised, presumably by his counsel, though he does not so state, that there is no warrant for a motion of this kind. The plaintiff is not learned in the law, and does not claim to cite authorities. It will trouble his counsel very greatly to produce authorities to show that in any action of this kind such an application has ever been denied. I submit to your Honor a number of authorities showing that in precisely such an action as this, this application has been granted, and that no other application will be granted by which the defendant could obtain relief.

In the first place, as to the general principles which govern this application for particulars. If we go back to the common-law (for it was a common-law practice), it was the rule that in any action whatever,—not merely actions of contract,—not even merely civil actions of tort, but even in criminal actions, bills of particulars could be granted.

Now, the only possible objections that the counsel can make to this application are, first, that this is an action for a tort, in which bills of particulars are not so frequent as they are in actions of contract, and secondly, I suppose, that the facts are within our knowledge. I shall proceed to show that those two objections have no foundation whatever.

In 1 Phillips on Evidence, 799, this subject is dealt with, and it is shown that the power of the court to order particulars is general; it is incident to the general administration of justice; it is entirely independent of statute, and this power applies to every species of action.

In *Commonwealth* v. *Snelling* (15 Pick. 321), there is a most able discussion of this subject by Chief Justice SHAW, in which the whole court concurred. That was a criminal action. Chief Justice SHAW in that case, discussing the whole subject, said that the court had power in any and every action, civil and criminal, no matter what might be its form, to require particulars of the claim or defense to be presented, and that whenever justice could not be done on the trial without the information to be obtained by means of a specification or bill of particulars, the court had power to direct such information to be seasonably furnished, and to require the proof on the trial to be confined to the particulars specified. In that case the whole court ordered a bill of particulars to be given by the defendant upon an indictment for libel. Now, notice, your Honor, the similarity between that case and this. It is even a stronger case. There the defendant was indicted for a libel in asserting that the prosecutor had been guilty of improprieties as a magistrate. The nature of the improprieties was stated, but the times and places were not stated in the libel. He was indicted: it was not a mere civil action, but an actual indictment, where he was entitled to plead broadly "not guilty." And the court in full bench, with Chief Justice SHAW at the head of it, compelled him to furnish particulars of the times and places at which he alleged that those improprieties on the part of the magistrate took place.

By the way, I may mention that the same rule was applied to an action of slander in *Early* v. *Smith* (12 Irish Com. L. Appendix xxxv.). In Pennsylvania the same rule has been laid down: so it has in England, and in Ireland. It is so stated in Tidd's Practice; it is so stated in *Vischer* v. *Conant* (4 Cow. 396)—as being a general power incident to the administration of justice in every court. There are one or two cases in which an application for a bill of particulars in an action of tort was denied, because in one case it appeared clearly by the declaration and by the affidavit furnished in reply to the motion that the party applying for the particulars had been offered, before the application, all the details which he needed. And all that is said by the court in that case that has any bearing upon the present case is, that in an action of tort the motion for particulars must be supported by affidavit, whereas, in an action upon contract, a party can demand a bill of particulars without any affidavit whatever, upon a simple exhibition of the pleadings.

Thus the rule stood generally at common-law. Has the Code of Procedure limited the power of the court? On the contrary, it has enlarged that power, because in Equity a bill of particulars would not be granted, as a general rule, —a very peculiar case had to be made out—on the ground that the course of examination in that court, where witnesses, as your Honor knows, were examined long before the trial, gave the parties abundant opportunity to be prepared to meet the evidence that would be produced on the trial. But that practice having been abrogated by the Code, and section 158 of the Code having declared that the court might, in all cases, order a bill of particulars,

it has been decided in *Mason* v. *Ring* (10 Bosw. 598), that the Code enlarges the power of the court instead of diminishing it, and that the court may now, in an *equitable*, as well as in a legal action, grant such an order. Under the Code, therefore, the court has the power, in any and every species of action; and it has merely to look into the case to see whether justice requires it.

Now, it is true that, in this state, there is not any direct precedent of a bill of particulars in an action for criminal conversation or for divorce. But the very fact that there is no precedent for such an application in a suit for divorce is a conclusive answer to the objection that there is no precedent here in an action for criminal conversation, because it shows that the two cases have been governed by about the same rules, and such has indeed been the fact. In an action for divorce, as your Honor is well aware, ever since the case of *Wood* v. *Wood* in the second of Paige, in which the practice was explicitly laid down, the plaintiff has been required to give the times and places at which the alleged acts of adultery have been committed, and he has been confined on the trial, strictly, to those which were thus alleged, with time and place. I do not mean to say that a variance of a few days would not be disregarded, or that any error that palpably did not mislead the defendant might not be amended; but, with that exception, the plaintiff was confined to those times and places, and that practice continues down to the present day in actions for divorce. In 17 Abb. Pr. 48, an anonymous case before Judge HOFFMAN, there was a complaint for divorce in which the plaintiff alleged two or three specific acts of adultery, with time and place, and then alleged several others in general terms. It was held that no evidence of the latter instances could be received. The same rule is laid down by Judge SUTHERLAND in *Hedden* v. *Hedden* (32 Barb. 203) in very strong terms. So much for an action of divorce.

Now, it might be that the same rule would be applied in an action of criminal conversation. I am free to say that I think it should. It is my opinion, founded upon the best examination I have been able to make of the cases in this state, that, when this cause comes on for trial, we could object to the plaintiff's producing any evidence of any act of adultery except this one of the 10th of October, 1868. But I shall show reasons presently why we ought not to be compelled to take that technical ground, and to narrow the issue in this way. We do not want to narrow the issue: we want to take in the whole issue, any issue that the plaintiff is prepared to make: we only want reasonable notice of it.

But now, to come to direct precedents of bills of particulars granted in actions for criminal conversation. Your Honor remembers the change that has been made within about sixteen years, in the practice of the courts in England with respect to divorce. When the Divorce Court was established in England the old action of criminal conversation was done away with, and every complainant in such a case was required to bring an action of the same nature in the Divorce Court—he was not allowed to bring it in a common-law court, and he was compelled to join the wife and the alleged paramour in one action. Against the paramour he could recover damages just as he used to in the old action of *crim. con.* and the same rules which applied to the old

action of *crim. con.* continued, in the main, to apply to this new action. Now, in this new action, which is in every respect (for the purpose of the present question) the same as the action of *crim. con.*, there are repeated precedents in England for granting bills of particulars. The first of these is *Higgs* v. *Higgs* (11 Weekly Reporter, 154). In that the co-respondent, as he is called (that is, the alleged paramour), moved for particulars of the alleged acts of adultery between him and the wife. The complaint there gave just such a general statement as is given here: it alleged that on a certain specific date the co-respondent had committed adultery with the respondent, and then it alleged that he did so at other times and places. The plaintiff was required to give a bill of particulars. In *Codrington* v. *Codrington* (3 Swab. & T. 368) the same principle was adopted; a bill of particulars was required. In *Sanderson* v. *Sanderson* (20 Weekly Reporter, 61) a bill of particulars was again ordered.

Now, if we compare the practice not only in this state but in England, and other states, in divorce suits, which of course, partake of the nature of this action, we find that a bill of particulars is one of the most common remedies granted to the defendant. There is a very old case in Pennsylvania, *Steele* v. *Steele* (1 Dall. 409). There it was held that the plaintiff should be required to give particulars. That was an action for divorce. In *Garrat* v. *Garrat* (4 Yeates, 244) the question is very learnedly discussed by the court. In *Hancock's Appeal* (64 Pa. State), the defendant allowed the trial to come on without demanding a bill of particulars, and then objected to evidence being brought in under general and vague allegations. The court held that the defendant had erred in not requiring a bill of particulars in advance of the trial, and, referring to this practice, said he might have had a bill of particulars, and ought to have applied for one. Turning to Massachusetts, we find *Adams* v. *Adams* (16 Pick. 254), and the same practice adopted in the case of *Gardner* v. *Gardner* (2 Gray, 434), and in *Harrington* v. *Harrington* (107 Mass. 329). In England, under the new divorce act, we find explicit authority to the same effect. I cite three cases: *Winscom* v. *Winscom* (3 Swab. & T. 380); *Grafton* v. *Grafton* (28 Law Times [N. S.], 144); *Sanderson* v. *Sanderson* (25 Id. 857). In all those cases bills of particulars were ordered upon the application of the defendant in a divorce suit.

Now, if it please your Honor, the case is just the same here. It can just as well be said in a divorce suit as it can be said here, "Why, the defendant must know the time and place at which she committed adultery." Of course she knows the times and places when she committed it, *if she ever did commit it.* But that is the very point in issue; that is the very question that we come in to contest, and there is no case in which it is so easy to be entrapped by false evidence, by evidence even that has imposed on the plaintiff, he believing it to be true, for such cases are known. I have no doubt there are persons who will volunteer out of their imagination, and for the sake of a little notoriety, to get up evidence themselves, get it up without compensation, get it up intending to impose upon the plaintiff or the defendant in a case like this. And it is to guard against just that danger that the defendant is always entitled to particulars of the case. I may mention that in the old, the very old

practice of the Court of Chancery, in the time of Chancellor KENT, when he was laying the foundations of practice, not having had experience in such cases, he was not struck with the force of this objection, and, in the case of *Germond* v. *Germond*, the Chancellor refused to confine the issue upon the trial to any specific acts of adultery. And the history of that case, which went through a long litigation, is most instructive upon this point. In 1 Paige, 88, Chancellor WALWORTH gives us its history, and mentions it as an impressive warning to the courts of the danger and folly of allowing parties to go to trial in cases where the issue of adultery is raised without specification, and particularity of dates. In that case of *Germond* v. *Germond*, the plaintiff charged his wife with having committed adultery on several occasions. He produced witnesses who swore to it; he produced one alleged paramour, who swore that he had committed adultery with his wife, and he got a verdict. The defendant being utterly unprepared to meet this evidence, except with her own oath, which you know at that time was not allowed, moved for a new trial, on the ground of newly discovered evidence; and there was a new trial, on which this testimony was conclusively shown to have been perjured. Again the plaintiff brought in new evidence; and he made quite a fight in the case. But his wife beat him before the jury; they did not believe the new evidence any more than they did the old. He got a new trial, still under these same vague issues, and a third time that case was tried, this time before a struck jury, and Chancellor WALWORTH speaks of it as a trial which showed beyond all question the gross perjury which had been committed on the two former trials, and as affording a most impressive warning against allowing any vagueness in the issues in the future. Accordingly, in the case of *Wood* v. *Wood*, Chancellor WALWORTH prescribed a rule for the future, requiring specific issues to be framed, stating dates and places, and, under that, divorce suits were tried down to 1848, when the Code was adopted; and, as your Honor is aware, the same practice prevails to this day. Down to this day, if this were an action for divorce, the wife of the plaintiff could compel him in his pleadings to be specific, and to confine himself to dates and places. Your Honor knows that the same rule applies in criminal cases—that the prosecutor is not allowed to come in with any vague allegations. It is certainly so in cases of adultery, as I shall show, by and by, in the State of Massachusetts. Adultery being a criminal offense there, the defendant, on indictment, is entitled to particulars of the times and places. Now, this is in the nature of a criminal action. In the case of *Morris* v. *Miller* (4 Burr. 2057), which is the leading case, Lord MANSFIELD held that the action of *crim. con.* was in the nature of a criminal action, the act being in itself a crime, and yet not punishable by statute. He said it partook so largely of the nature of a criminal action that he should apply the rules which governed criminal actions to this; and accordingly he laid down the rule that actual proof of marriage must be given; such proof as was then only required in prosecutions for bigamy, and which is only required now in prosecutions for bigamy, or in actions for divorce: he held that there must be positive proof of marriage, and that decision has been always followed, and is reiterated in a case in our own Supreme Court reports. That is upon the

ground that this is in the nature of a criminal action. Your Honor knows very well that in every criminal action the defendant is entitled, as a matter of course, to particularity in the statement of the case; that he is not called upon, and never can be called upon, to answer any vague charges of offenses committed at various times spreading over six years. What would be said of a prosecutor who should bring in an indictment alleging that the defendant had committed various larcenies during six years preceding the finding of the indictment? We know it could not be tolerated for an instant. Neither can it be tolerated in this case. I do not desire to burden your Honor with the numerous cases which I have cited showing that in actions for libel, in actions for slander, in actions for slander of title, in writs of dower (which, of course, are not actions on contract), in actions of ejectment, in actions of trover, in actions for trespass upon land, and in actions for escape from the custody of the sheriff,—in all those actions I show by abundant authorities that bills of particulars have been granted.

The court, therefore, has the power to grant a bill of particulars in this case. It is a simple question for its discretion; and the discretion of the court has uniformly been exercised on the side of granting a bill of particulars.

In my brief I go into the criminal cases and show quite a large number of instances in which bills of particulars have been granted. Those I pass over. I pass over also another class of cases in actions of contract in which issues of tort have been raised (fraud and the like), in which an attempt has been made to avoid giving bills of particulars. All those attempts have been overruled; and a bill of particulars ordered in every case.

Now, I submit to your Honor that this is pre-eminently a case in which a bill of particulars should be ordered. Without some such protection as this, how is it possible for the defendant to anticipate the nature of the issues he must meet? He may be met in this court by twenty witnesses testifying to acts spread over different periods for six years; he can not tell. Then when he comes into court he has to deny them solely upon his own oath. Perhaps he was absent out of the city at the time that some witness swears that he saw him commit adultery; perhaps he was in his own parlor among his friends. He has no time to get those friends; he has no time to refresh his own memory. It is not an easy matter for any man to cast his memory back five or six years, and tell where he was every day and every hour, especially for a man in the position of the defendant, who is in various places in quick succession, who is visiting frequently different cities, who is under constant engagements, and who has ten thousand things to remember every year, which he can not possibly recall without great diligence and great effort of mind. The consequence would be, therefore, that, if he went to trial on this vague, broad issue, he would be entirely unprotected save by his own unsupported denial. Now, your Honor, we have said that there is danger of false evidence, and I appeal to your Honor's own experience, both at the bar and in the court, as to whether these are not precisely the cases in which there is a thousand times more danger of perjury than in any other class of cases that are known. How many actions of divorce are there in which the most

explicit evidence is given of acts of adultery, and yet the court dismisses the prosecution with contempt, seeing clearly that the pretense is transparent, that the witnesses are false, and are either volunteers, or are hired to commit perjury in the case. There are innumerable precedents in the books. Take this case *Anon.* (17 Abb. Pr. 48), there before Judge HOFFMAN, there were three distinct acts of adultery proved most explicitly by witnesses, who testified with the utmost detail and circumstantiality ; and yet the judge rejected all their evidence, and held them every one to be unworthy of belief, and refused to grant the divorce. So in a case in New Jersey, in a recent volume of the New Jersey Equity reports, the witness testified, with great explicitness, to an act of adultery on the part of the defendant, and went into great detail as to where the lady went ; how he tracked her to this place, and that place, followed her in an omnibus, and tracked her to a house of ill-fame, and swore that it happened in broad daylight; yet the court rejected his evidence. The thing is common, and of every-day occurrence. There is no class of cases in which the danger of perjury is so great by the thousandth part, as it is in actions of *crim. con.* or of divorce.

It cannot be objected that the matter for which we seek a bill of particulars is more within the knowledge of the defendant than of the plaintiff. If this had any validity, it would have applied equally well to the various actions of divorce and of *crim. con.* which we have cited. Yet we have shown that in all those cases a bill of particulars was invariably ordered. In *Wood* v. *Wood* (2 Paige, 113), this objection was raised before Chancellor WALWORTH, and overruled. The Chancellor said that the plaintiff, having made this charge, was bound to know whether it was true or not; was bound to know what evidence he had to support it; that he had no right to come into court and make so grave and awful a charge as this against his wife, without having the evidence at hand by which he could support it. But in the present case, we show a case far stronger than any which has ever been brought before a court on a motion for particulars in such an action as this, because the plaintiff has volunteered in the public prints to say that he does know exactly the times and places at which adultery was committed; that he is able to specify them, and that nothing restrains him from specifying them but some mysterious and awful sense of delicacy on his part. He "cannot bring himself to name" these times and places! He *can* bring himself to say that his wife is a woman of bad character; he *can* bring himself to impeach the legitimacy of the very child that he kisses in the street; he can bring himself to say that he held a caucus with this defendant, and with his own wife, to decide whether this child was his or the defendant's; he can bring himself to make that public statement, and yet not say whether the child is his own or not; a child that he has repeatedly recognized in letters; a child that he has recognized for five years continuously as his own; a child whom he pets with some affection, whenever he thinks that by some such display he can make theatrical effect; he can publish that child's name in the newspapers, and leave this imputation on its legitimacy uncorrected; but he can not —his sense of delicacy, his sense of magnaminity, his sense of propriety, are so great—he *can not* bring himself to name *the particular time and place*

at which this event occurred! Why, he has charged it a hundred and a thousand times; he has gone around mourning and lamenting to every one; he has wept over his wife; he tells us in this statement that he went to Thompson's saloon, and over his dinner poured out his woes. In other restaurants, in all manner of places, he has informed the public, and he has informed his friends, that his wife has been unfaithful to him; that he don't know whether his children are his own, or another man's. He has no hesitation in printing twenty-five columns of matter devoted to dragging his wife in the gutter, and making himself out a cuckold! All that he has devoted his life to doing. But when it comes to particular times and places, his feelings are too much for him! He must forbear! He cannot bring himself to name any other time and place than the 10th of October, 1868! To specify the 25th of October also, is impossible for him. Now, if it please your Honor, this is an impudent pretense; and it plainly indicates what is the plaintiff's purpose. We have the right, on argument, to draw inferences from it; and I do not hesitate to say that the only natural inference from such a statement as that is, that the reason why he cannot bring himself to name those times and places, is that he expects to get witnesses to go on the stand, and frame for them a convenient time and place, and then himself to swear to a confession by the defendant (and by his own wife if he can get it in), corresponding to the times and places which he has hired witnesses to swear to.

If it is objected that the defendant should go to trial and rely on his right to object to any evidence of acts not specifically stated, I think there are abundant answers to that proposition. In the first place, the question is doubtful. There is no direct decision in the action of *crim. con.* in this state, as to what would be the course of the court in such a case. In an action for divorce, it is settled that the plaintiff would not be allowed to produce any other evidence than evidence of the act which he specifically assigned to a certain time and place, and I think the rule should apply to an action of *crim. con.* But, as I say, there is no decision upon that point in this state. In Pennsylvania, where our strict rules concerning pleadings in divorce do not apply, it has been decided that in actions of divorce, where such a vague allegation has been made, the defendant's only remedy is by a bill of particulars before the trial comes on. But even supposing that it were settled; that it were fixed law that he could only prove this one act upon the trial, why is the defendant to be subjected to the disadvantage of coming before the jury and there not offering to submit the record of his life? He does not object to this. He is willing and anxious to meet every issue that can be made against him before the jury; he simply wants to know what those issues are.

Then, again, the defendant is entitled to vindicate his whole character with reference to the plaintiff's wife, in this action. He is entitled to require the plaintiff to bring forward every possible charge which he can make at any future time. He should not be compelled to go to trial, and, by objecting to any evidence except as to this one act, leave the plaintiff free to come out in another lachrymose communication of twenty-five columns. The plaintiff has been before one jury already. He came before them saying they

were all honorable men, and that he knew they intended to do what was fair and just. But that did not restrain him from publishing twenty five columns to show that they were all rascals; that they were in collusion with the defendant to defraud and deceive the public. Nothing restrains him: he is a man absolutely unrestrained by any sense of morals or of honor. He is a man who can not be prevented from dragging his wife in the mud and mire of this wicked charge; he is a man that can not be prevented from disgracing his own children, though they cling to him beseeching him to leave their name unstained. I take his own statement that he has published, in which he avows his knowledge of these particulars, and I say that we are entitled to meet him, here and now, to know every issue that he ever intends to raise, and to contradict them all.

Again, it may be objected that our remedy was by a motion to make the complaint more definite and certain. But we could not do that without delaying the issue and consequently the trial of the case. We are not delaying the trial now: we moved immediately upon the service of the notice of trial, and we hope to have a decision which shall enable both parties to go to trial without the slightest delay. If we had moved to make the complaint more definite and certain, we should have been subject to two imputations: first, the imputation of an attempt to get delay, and second the imputation of unwillingness to meet the issue that the defendant committed adultery at *some* time. Now, that issue the defendant was willing and anxious to meet. He seized this opportunity, not only of denying that he committed the offense at the times and places alleged, but also at any other times and places; and he made his denial in language broader than the charge, for he denied that he had *ever* committed adultery, or that he had ever *attempted* to commit adultery, or to hold improper relations with the plaintiff's wife.

The defendant is a clergyman of world-wide fame. His reputation is a sacred trust. He is entitled to deny this charge in the broadest terms, and should not be driven to a motion to narrow the issue presented by plaintiff's complaint, and thus to narrow the denial he himself would make on oath. But having denied it, he is entitled to know what are the particular times and places at which it is proposed to prove that he committed this act, which he denies *ever* having committed. More than that, he has got to be prepared with confirmatory evidence. For the purpose of raising the issue his own oath was final and conclusive; but for the purpose of the trial his oath is not conclusive; he has got to know in advance what evidence he needs to call. He must know whether some day is going to be assigned, when his children were present with him, or when he was away,—when he was present in New York, or absent in Boston; he may need witnesses from all parts of the country to testify to his whereabouts, and what he was doing on the days he is to be charged with adultery. He is entitled to notice on that point; and he can not be prepared to meet the issue without having such notice time enough before the trial to enable him to collect his witnesses.

Again, the Code does not authorize a motion to make more definitive and certain where the defect is only that which occurs here. The motion to make more definite and certain is confined to cases where the complaint

does not show the precise nature of the claim. The Code does not require that particulars of the claim should be stated in the pleading, but only its precise nature. Now, here the precise nature, of course, was clear enough: it is a question of precise dates, and that is to be attained by a bill of particulars. Moreover, I cite a case in England,—a case of *crim. con.* exactly like this,—in which exactly such a general allegation was made. One date was given: it was alleged that the two defendants committed adultery, on the 25th of August, and that they committed adultery thereafter at divers times and places. The co-respondent (the alleged paramour), moved for an order requiring the complaint to be made more definite and certain, specifying those other times and places. The court denied that motion, upon the express ground that his remedy was by a bill of particulars. That is the case of *Hunt* v. *Hunt and Duke* (2 Swab. & T. 574).

Neither is this application made too late. It is made in abundant time before the trial. We have shown liberality to the plaintiff in delaying the motion to this time; because we have given him from the first of August (that is fully two months) to prepare his case; and now we ask him only a reasonable, a short time before the trial,—without asking that the trial shall be delayed at all, provided he uses promptness,—we ask him to give us the benefit of his efforts in searching for evidence, and to tell us now what dates and places he is prepared to prove in this case.

Permit me, in closing, to cite the language of two eminent judges with regard to these applications for particulars, and to say that the principle involved is such as to make our application more a matter of right than of mere discretion. Although the court has nominally discretion to grant or refuse this motion, yet that discretion has always been exercised upon legal principles. It is a legal discretion, and like the granting of an injunction or the other remedies which are ordinary in civil actions, it is guided by well-settled rules. Chief Justice ABBOTT, afterwards Lord Tenterden, said that "the first principle of justice is that a defendant should be informed what he is charged with." So Judge YEATES, of Pennsylvania, in delivering the opinion of the Supreme Court, granting a bill of particulars of adultery in a case of divorce, said, "It would be highly dangerous to the citizens in general, if they were compelled to answer criminal charges without being informed of the specific offenses against which they were called upon to defend themselves."

I submit, therefore, to your Honor, with all confidence, that our application for particulars of these dates and places is eminently reasonable, and fair, and just; that we can not safely go to trial without it; that to do so would be walking headlong, and with our eyes open, into a trap: I can not doubt that your Honor will grant this application.

Mr. Morris.—Might I inquire of the counsel under what section of the Code he applies?

Mr. Shearman.—Section 158.

Mr. Morris—[Reading the order to show cause]. The motion is made under section 158 of the Code. I suppose that there is no principle of practice better settled under the Code, than that that section applies strictly to an

account. The authorities are clear, uniform, and explicit that that section of the Code has reference solely to an account that can be stated in dollars and cents.

But, if your Honor pleases, before adverting to the authorities upon this subject, I desire to call your attention to a paragraph in the affidavit of the defendant. The counsel stated to your Honor that there was no charge or insinuation that the plaintiff in this case intended to produce false and fabricated testimony, and disclaimed any such intention, but claimed that the plaintiff himself might be imposed upon, and that such evidence would be adduced at the trial. Now, let me read: "I am advised by my counsel, and believe, that such a statement indicates the intention of the plaintiff to produce manufactured evidence in support of his allegation, and, by means of false testimony, to surprise my counsel." They come here with an affidavit in which they make the express charge against the plaintiff in this action, that he intends to make out his case by false and perjured testimony, and then they have the hardihood to get up in court here and denounce the meeting of that allegation by plaintiff's affidavit, fairly and squarely, as scandalous, before your Honor.

Another statement was made by the counsel: he did not give any particulars, but I suppose that I know to what he alluded when, in criticising or denouncing the course that has been pursued by the plaintiff in this action, he spoke of his taking cases in court and taking cases out of court. He refers, I suppose, to the charge that was made against the plaintiff of libel before Justice RILEY.

Mr. Shearman.—Not at all; I didn't think of it.

Mr. Morris.—To what case do you refer, then? What case has he taken in court and taken out?

Mr. Shearman.—This case here. He brought it into this court, and now he goes into the newspapers with it.

Mr. Morris.—Oh! that is what you mean?

Mr. Shearman.—That is just what I mean.

Mr. Morris.—I do not think it is necessary that I should say anything further in answer to the statement of counsel in regard to the character of the affidavit that has been produced here on the part of the plaintiff. This motion is founded solely upon the allegation that we intend to produce false and fabricated testimony, and we hurl that charge back against them, and say that we believe that they intend to produce false and fabricated testimony on the trial, or that they want and seek this information for the very purpose of enabling them to meet our testimony by fabricated testimony and by tampering with the witnesses. The very ground, if your Honor pleases, that they state why they should possess this information is the strongest possible reason that can be assigned why they are not entitled to, and should not have, the information.

Now, I suppose it is hardly necessary, although I will call your Honor's attention to some authorities, to show that in no case will a discovery be granted where the object is simply to apprise the opposite party of the evidence by which the case is to be sustained or defended; nor will it ever be granted

where the facts in the case are within the knowledge of the party seeking the discovery. They could have moved under another section of the Code (section 160), to have our complaint made more definite and certain, and that was their remedy, and their only remedy, except one that is now left to them: the examination of the party before trial. The practice of the court is to compel the plaintiff to make the complaint definite and certain, if it is not, where the motion is made in time. But, having answered, and having noticed the case for trial, they have waived that right absolutely; and under the rule of the court, they should have moved within twenty days after the service of the complaint, or they are estopped from taking advantage of that. Now, then, they ask your Honor, or claim the right under the 158th section of the Code to make this motion, because of the language of that section, that the court in any case may compel the party to furnish a bill of particulars. Now, the authorities are perfectly clear as to what that means: the courts have construed it. It simply means, in any case involving an account. The authorities to which the counsel has referred as to the English practice, have no application to this motion whatever. The practice there was similar and analogous to the practice under this section of the Code to make the complaint more definite and certain. The counsel has not referred to a single authority in this state, and cannot find an authority that sanctions any such practice as they seek to establish in this case. On the contrary, the decisions are uniform that no such remedy can be obtained.

Mr. Shearman.—Will you give me the authorities?

Mr. Morris.—I will refer to the authorities. Now, the motion is in the nature of a discovery. It is not, in any sense, an application for a bill of particulars within the meaning of the Code, but it is in the nature of a discovery. Well, now the Code points out how that remedy may be pursued in connection with the provisions of the Revised Statutes, and it relates to books and papers; to documents; to some data that the court can see are necessary to enable the party to prepare for his defense, or to prepare his answer, or to prepare even a complaint, if the evidence is in possession of the other party. But that application is confined exclusively to the inspection of such evidence, and is never tolerated to the extent of ascertaining the evidence that the party intends to produce at the trial of the cause. Now, I will furnish your Honor with the authorities, and take up but a little time in referring to them, but will refer to one or two to show your Honor what the practice in this State is.

Mr. Shearman.—I wish you would mention all your authorities, Mr. Morris; at least give me the references.

Mr. Morris.—I will call your Honor's attention to a case, *Willis* v. *Bailey* (19 Johns. 268): "This court has never gone further in directing the plaintiff to submit to the inspection of the defendant or his counsel, any paper in his possession than is contained in the rule granted in the case of *Lawrence* v. *Ocean Ins. Co.* (11 Johns. 245), note. . . . The necessity of it to enable the defendants to defend themselves was fully shown on affidavit, etc." . . . . "We never grant an order for a bill of particulars without the necessity of such order being shown on affidavit, for although the count may be general

the defendant may well know the grounds of the plaintiff's action. We do not think that in any case the judge at Chambers should grant an order upon the party to produce papers for the inspection of the other party, or that he should furnish copies of the papers in his possession. Such an application should be addressed to this court on regular motion. We have not adopted, nor do we mean to adopt, the English practice in this respect. But even, according to the practice there, the order in the present case would be incorrect, for the action not being founded on a written contract, if the plaintiff has in his possession any letters or papers they are mere items of evidence, and the party is not bound to furnish matters of evidence to his adversary." Now, that is precisely what they seek here; they wish to make us disclose mere matters of evidence that we intend to produce at the trial. I call your Honor's attention, also, to a case, *Powers* v. *Elmendorf* (4 How. Pr. 60): "By the Revised Statutes a similar power was conferred upon the Supreme Court (2 R. S. 199, § 21), but by the succeeding section it is declared that in the exercise of this power the court should be governed by the principles and practice of the Court of Chancery in compelling discovery. Under this restriction it has been understood that a party could only obtain a discovery of such papers and documents in the possession or control of his adversary as might furnish evidence in his own behalf upon the trial." That rule has been enlarged by the Code to this extent, that there are cases where it is proper for the court to compel a discovery, although the evidence might not tend to the benefit of the party seeking it. Where there are items of account or involved transactions between the parties, the right to be informed of the facts upon which the party relies; it is not confined to that class of evidence exclusively which tends to the benefit of the party seeking the discovery, and that rule has been enlarged. The rule, as stated in *Cooper's Eq. Pl.* 58, is this: "The rule in chancery is stated to be that a plaintiff, in a bill of discovery, shall only have discovery of what is necessary for his own title, as of deeds, etc.," and I say that that rule has been enlarged to the extent to which I have called the attention of the court, and in no other particular. This case goes on to state: "If this rule is to be applied to the construction of the provision of the Code already cited, it is obvious that the plaintiffs in these actions are not entitled to the discovery they seek; they do not pretend that the defendants have within their power any papers or documents which they wish to use in support of their title to the premises. On the contrary, they avow it to be their purpose in asking for this discovery to ascertain upon what evidence the defendants expect to protect their position." It was an application, as this is, simply to obtain the evidence that the opposite party intended to adduce in support of the claim, and the court says that that is not the practice, and can not be, and the court will not in any such case grant a discovery. I call the court's attention to another case, *Strong* v. *Strong* (1 Abb. Pr. N. S. 268), in which the court used very appropriate language: "That section does not require that they shall contain the evidence in relation to the matter to be tried, but divides such evidence into that relating to the merits of the action, and that relating to the defense, evidently intending by the former an application by the plaintiff, and in the latter, one by the de-

fendant. If it had been intended that either litigant had a right to know what evidence his adversary intended to introduce against him, such practice would have included the briefs, memoranda of law and facts of counsel, and instructions of their clients, as well as other documents, and indeed should extend to an oral examination of the parties themselves. The law has always considered sacred the rights of both parties to keep secret their preparations and means of attack and defense, the right of discovery being confined entirely to the evidence in the applicant's favor." The latter part of that sentence has been held differently by some courts. But the balance of it I submit is the well-established law, and that no authority in contravention of that principle can be cited in this state under our system of procedure.

I call your Honor's attention to another authority, *Meakings* v. *Cromwell* (1 Sandf. 698) : "On looking at the cases in chancery, we find the weight of authority decisive—that, although a party may claim a discovery of the grounds on which the plaintiff seeks to enforce his title, as to whether it be as heir, devisee, grantee, or the like, he can not require a discovery as to the evidence of his title." In a case in the 6th of Bosworth, and numerous other cases, the rule is held expressly to be, that where the information sought to be discovered must of necessity be within the knowledge of the other party, that there the discovery would never be granted, nor would the court require the party to furnish any particulars. And in the cases to which allusion has been made, your Honor will find that they proceed upon a different theory ; that it is simply for the purpose of making definite that which is indefinite in the pleadings relating to the cause of action; that where the charge is definite and clear and specific, the cause of action stated, and the facts relating to that within the knowledge of the party, that there the aid of the court can not be invoked. But this application, if your Honor pleases, proceeds upon an entirely new theory. They do not proceed upon the theory that this complaint is indefinite and uncertain. If that had been the theory of this application, they would not have put, nor would it have been necessary to have put this insinuation in their affidavit, that we intended to produce manufactured evidence, because the inspection of the complaint itself would have revealed the fact as to whether it was sufficiently definite and certain, or specific. So that your Honor will see that this application is made solely upon the foundation that we intend to produce false and perjured testimony upon the trial in support of our cause of action, and, in fact, the counsel avers that here—that that is their purpose. It is to meet that suggestion, that we intend to produce false and perjured testimony upon the trial, that this information is sought. Not that the complaint is not definite and certain, not that they don't know how to meet the facts in this case, not that they are not informed of the facts of this case, but they come into court here, and ask your Honor to assume, as a basis of granting this relief, that we intend to produce false and perjured testimony in support of our claim. I venture to say that your Honor has never before heard such an extravagant proposition advanced in any court.

They come in court here, and they say to your Honor, "Here is an action pending against us. We know all about the facts: we know every fact in

this case. But we are afraid that the plaintiff intends to produce false and perjured testimony. Therefore we want an order of the court compelling the plaintiff to reveal to us in advance the perjured testimony that he intends to adduce." That is the application; that is the groundwork of the application; that is the only foundation of this application. They make the infamous insinuation against the plaintiff that he intends to uphold his claim by false and perjured testimony, and therefore the court must assume that fact upon the mere basis of the insinuation of the party; the court must condemn the plaintiff in advance; must say to a litigant coming into court to assert his rights, "You intend to bring a false and perjured case: they have insinuated that against you, and sitting upon the Bench I will judicially determine that your case is a false and manufactured and perjured case, and I will pronounce it so in advance of the trial, and compel you to disclose the perjured testimony that you intend to bring in support of it." That is the position: there is no escaping it. That is the sole ground, and they aver it here: that your Honor, simply upon the basis that this case is to be supported by false, fictitious, and perjured testimony, must so determine in advance of the trial, and let the plaintiff come into court here branded as a suborner of perjury, and as a perjurer himself, judicially declared and determined. I say that the application is monstrous. And when they come in court here with such an insinuation as that against my client, we hurl it back in their teeth, and say, "That is what you mean: that is what you intend." We do it here: we will meet them upon that issue. We will meet them before twelve men upon the issue as to who in this case has committed perjury, and as to who upon the trial will commit perjury, and by the verdict of the jury upon that question we will be willing to stand. I say it is a monstrous proposition. When they accuse us of this diabolical design, we say, "You want to know all of our witnesses, and all the circumstances which we intend to bring in support of our case, in order that you may tamper with our witnesses, in order that you may be prepared with false testimony to meet it," and we say why we so believe, and we refer to the facts: we do not give a mere base insinuation, as they do, but we refer to the facts that entitle us to the belief that they intend thus to meet our case.

I regret that this statement that the counsel has harped about so much, so haunts the other side. I regret that it makes them so uneasy and so nervous. It would not, if it was a false statement. Then they could easily meet it. But it is because of the damning facts that it contains that it so haunts the other side, and it will haunt them until the day of their death. And when counsel say that my client subjected himself to punishment for contempt in making a statement of the facts in the papers, and hope that it was not done by my advice, I tell them that I sanctioned it, and that I take all the odium or blame if there is any attaching to that act, as a lawyer at the bar of this or any other court.

I have authorities to which I will call your Honor's attention (and I say there are no authorities to the contrary), holding that this section of the Code refers to an account, and if they wanted a more specific statement as to that they should have moved for it. If they want it now, let them examine the

plaintiff before trial. They have that right: they can do that. O! no, but they will say, "We don't want to examine him before trial, because he will perjure himself; because he will testify falsely. We can not examine him before trial." Well, the court will not relieve them from that situation. The law points out their remedy, and that is the only remedy they now have with reference to getting a statement from the plaintiff. But I think, if the counsel will read carefully (and I would commend that to their consideration),—if they will read carefully the twenty-seven columns of statement that the counsel has referred to, and digest that, I have no doubt that they will be possessed of all the information that they desire with reference to the facts of this case.

I have taken up more time than seems to me really necessary in speaking upon this point. They come here simply, as I said before, and say now to your Honor, "We know the facts of this case; they are all within our knowledge. We are better possessed of the facts than the plaintiff himself possibly can be; but he is going to perjure himself, and produce false and perjured testimony, and we want you so to decide and compel him to furnish us upon that theory his whole case." I submit, your Honor, that the motion should be denied.

Mr. Shearman.—Will you give me these other authorities?

Mr. Morris.—I will give you the other authorities to which I refer: *Young* v. *De Mott* (1 Barb. 30); *Strong* v. *Strong* (1 Abb. Pr. 233); *Willis* v. *Bailey* (19 Johns. 268); *Lawrence* v. *Ocean Ins. Co.* (11 Id. 245); *Blackie et al.* v. *Neilson* (6 Bosw. 683); *Meakings* v. *Cromwell* (1 Sandf. 700, 2 Abb. N. Y. Dig. 711); and *Kellogg* v. *Paine* (8 How. Pr. 329).

Mr. Shearman.—What point do you cite that for?

Mr. Morris.—Showing the meaning of that section; showing that it applies to matters of account—the bill of particulars under the 158th section of the Code. I refer also to *Hoyt* v. *Amer. Ex. Bank* (1 Duer, 652); *Brevoort* v. *Warner* (8 How. Pr. 321); *Thompson* v. *The Erie R. R. Co.* (9 Abb. Pr. N. S. 212); *The Commercial Bank of Albany* v. *Dunham* (13 How. Pr. 541); *Davis* v. *Dunham* (Id. 425); *Hunt* v. *Hewitt* (7 Exchequer, 236); *Wright* v. *Murray* (11 Id. 209).

Mr. Shearman.—Only a few words may be necessary from me in reply to the learned gentleman. In the first place, every case which he has cited, every case from which he read any extract, or of which he gave any explanation whatever, related purely to the proceeding for the discovery and inspection of documents, and had nothing whatever to do with a bill of particulars. In the second place, all the cases which the gentleman cites which do refer to a bill of particulars, he cites without saying for what purpose. Two or them, one in Sandford and one in Barbour, were decided before the amendment to section 158, and, indeed, before the Code went into effect at all. I do not see that they have much to do with his point that section 158 only relates to an account. I am tolerably familiar with all those cases, and I do not know what bearing they have upon this question at all; I am unable to see it. The only case which he says confines section 158 to matters of account (8th How. Pr. 329), I am tolerably familiar with, and it does nothing

of the sort. The only point in that case is, that it states how a bill of particulars should be made more certain when the one served was insufficient, that being a bill of particulars in relation to a matter of account. But it was not in the power of the court there to decide that a bill of particulars could only be given in a case of account, because the action was one of account, and a bill of particulars had already been granted. Now, a bill of particulars has not been confined to matters of account; nay, more, there are more cases in the books where bills of particulars have been granted where the action was not in relation to an account, than there are where it was. More than that, the very reason why that clause was added to the Code, "The court may in all cases order a bill of particulars," &c., was, that in the original hasty codification of 1848, provision was made only for items of account, and not for bills of particulars in other cases.

The gentleman excepts to the citation of English cases: I suppose on the ground that they are not authority. But from where did we get our authorities for any bills of particulars? Where did the precedents for the 19th of Johnson come from? Purely from the practice of the court of King's Bench; and (the gentleman may not be aware of the fact) the foundation of our practice was laid upon the practice of the Court of King's Bench in England, and at an early stage of our legal history the practice of that court was adopted by our Supreme Court in all cases where there was no rule to the contrary. That practice comes down to the present day. The Code expressly recognizes the power of the court to order a bill of particulars in all cases; and these decisions of the English court are precisely applicable to ours.

With regard to all that has been said concerning the theory that your Honor must judicially decide that the plaintiff is going to commit perjury if you grant this motion, I say there is no ground nor pretext for that, and there is none in the affidavit which we presented. I drew a distinction between what was stated in the affidavit, and the inferences which we drew from facts here as counsel. Our affidavit does assert the belief that the plaintiff intends to rely upon——

Mr. Morris.—The language of the affidavit is "intends to produce."

Mr. Shearman.—I accept the language as it is,—"intends to produce it." If he does *not* intend to produce false testimony, how can any evidence be introduced at all in this case, if the oath of the defendant be true? For he swears that he never did commit any of these acts. If he never did, then the plaintiff necessarily must produce manufactured and false evidence. But I say, again, it does not necessarily follow that the plaintiff himself manufactures that evidence or knows it to be false; and the affidavit does not so assert. Therefore it was no justification for counter-charges of falsity with knowledge, in the plaintiff's own affidavit. With regard to that affidavit of the plaintiff, it is a very striking circumstance that the gentleman who comes in and stands upon the technical law, as a reason for denying this information, comes into court with an affidavit so clearly wandering outside this case, so clearly going beyond its sphere,—drawn by the plaintiff himself, and evidently not read by the counsel before he came into court, with any care.

Mr. Morris.—The affidavit was drawn by myself and handed to the plaintiff and elaborated.

Mr. Shearman.—Exactly: the plaintiff wrote it out in his own handwriting, and comes into court with an affidavit intending to spread himself elaborately, taking the legal points suggested by his counsel, but going beyond what his counsel thought necessary. As the counsel says, his client "elaborated" that affidavit, simply for the purpose of spreading himself upon the record and throwing mud right and left.

Mr. Morris.—I say he did not go beyond what I advised him.

Mr. Shearman.—I can not follow the gentleman in his tactics. He said a while ago that the plaintiff *did* elaborate; now he says he did *not*. Now, we seek not to know the witnesses, not to find the documents; and therefore all the cases cited with regard to the discovery and inspection of documents are wholly irrelevant. We do not ask anything of the kind. We do not seek to know the name of a single witness, so that we might tamper with him. What we ask is that we shall have a venue and a date. That is granted to every person when he is tried for any crime. No indictment is allowed which asserts that the defendant "on various days, and at divers places picked the pockets of sundry persons." The indictment is always required to specify the time and place where the offense was committed, and the person upon whom it was committed.

Mr. Morris.—Would you in that case move for a bill of particulars?

Mr. Shearman.—In that case we could demur to the indictment.

Mr. Morris.—There would not have been any case charged.

Mr. Shearman.—In the old common-law practice, which still exists in full force in criminal cases, a demurrer was allowed for all manner of insufficiences, including want of particularity. But under the Code, the power of demurring to the complaint on account of the want of a date or a place, is taken away in civil actions. We have no longer that remedy under the Code. The only remedy we have, therefore, is either by a motion to make more definite and certain, or by a bill of particulars. I cite on that the case of *Hunt* v. *Duke* (2 Swab. & T. 574). What we seek, then, is to get this ordinary right, which, as the gentleman himself admits, we should have, as a matter of course, in a criminal action.

Mr. Morris.—I don't admit it.

Mr. Shearman.—We seek to get it by the remedy which the Code and the common-law provide. We seek to get it in the old-fashioned way, by getting a statement of the particular times and places; and I confess myself unable to notice a single argument advanced by the learned gentleman, or to find a single case among those cited by him, which in any way denies the power of the court to grant this motion, or which limits the discretion of the court, or guides it adversely to the conclusion at which we seek to arrive.

Mr. Morris.—In regard to delay, I will remind the court that they took about seventeen days to put in their answer, which it would only have taken about thirty seconds to draw.

Mr. Shearman.—That is a most unwarranted imputation, which I resent on behalf of my client, because, as is well known, at the time the complaint

was served he had left for New Hampshire; and the counsel knows (if he knows anything about the Revised Statutes) that there is a most special and complicated provision of law, with regard to the mode of verifying affidavits outside of this State. I am bound to believe he does not know it, judging from conversations which he has caused to be reported; but I say there is a most technical provision, and we had to send three times before we could get the verification in the form prescribed by law. On the day after receiving the complaint, we mailed the answer to our client in New Hampshire. He went, on the day after receiving it, seventeen miles to find an officer before whom he could verify it. That officer forwarded the paper for attestation to the wrong official. We sent it back; and this time it was certified by the proper officer, but in wrong form. We sent it a third time, and I personally superintended the matter in the White Mountains, to get it right. Of course we, as attorneys, might have verified the answer; but we did not propose to give the enemies of our client an opportunity to charge him with evading the responsibility of a denial under his own oath.

Mr. Tracy.—Since this argument has been in progress, my attention has been called to a case in this court of a similar character, in which one of your associates has settled the rule that even where an application has been made to make the complaint more definite and certain, and that is granted, the court will not then on the trial confine the plaintiff to the particular allegations in the complaint, but will allow them to travel outside. If that is the rule of this court, it makes it still more important to grant our application here, requiring them to give us a bill of particulars in which they shall state the times and places concerning which they propose to offer evidence.

Mr. Morris.—I have no doubt it would be of great advantage to you to know our evidence.

Mr. Tracy.—We do not seek to know their evidence, nor their witnesses, nor any discovery of papers and documents. We simply seek to know what is the right of every man charged with an offense which he denies; the time and place when it is alleged that offense was committed. That is essential, we say, to enable him to prepare for his defense, else he may be utterly surprised at the trial, both by the locality and the date assigned by the evidence.

DECISION OF THE MOTION.

On November 5, 1874, the Chief Justice delivered the following opinion:

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

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

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

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

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

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

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

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

Under the common-law system of pleading, especially where the common counts were used, a defendant might have been taken by surprise as to matters touching which he had the right to be informed, and some remedial practice for the suitor's protection was necessary. Courts of Equity, in the exercise of inherent powers, inaugurated a practice of the nature now invoked, and under legislative directions, the courts of law acquired the right to order a discovery and inspection of papers, but with special limitations, and to require bills of particulars in certain cases, especially as to the items of an account.

The elaborate brief handed in by the learned counsel for the defendant has a large collection of the cases in which such power has been exercised,

with interesting analogies and illustrations. But none of the cases apply to the legal question involved.

In his treatise on practice (vol. 2, p. 48), Mr. Shearman says:

"As a general rule, a bill of particulars will not be ordered in an action for a tort. (See *Pylie* v. *Stephen*, 6 Mees. & W., 813; *Stannard* v. *Ullithorne*, 3 Bing., N. C., 328; *Snelling* v. *Chennels*, 5 Dowl. P. C., 80.) Thus it will not be ordered in an action for injuries causing death (*Murphy* v. *Kipp*, 1 Duer, 659); nor, usually, in any action for personal injuries (Semble, *Derry* v. *Lloyd*, 1 Chit. Rep. 726 per Best, J.)."

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

This last proposition accords with several late cases, in which it has been held that such bills will not be furnished if the defendant already has, or, from the nature of the case, must have the best or fullest knowledge of the facts. Indeed, there are many exceptions, and as to the general theory, a late learned and prudent Judge has said: "The law has always considered sacred the rights of both parties to keep secret their preparations and means of attack and defense" (*Strong* v. *Strong*, 1 Abb. Pr., N. S., 238). As indicating the theory that the right of discovery at law has been regarded as matter proper for legislative direction, rather than for such direction as the court, in the exercise of its supposed inherent powers, might in each case choose to grant, our statutes as to compelling discovery in respect to betting and gaming (2 R. S., 926), and illegal brokerage (2 R. S., 979), usurious transactions (3 R. S., 73), and in respect to attorneys (3 R. S., 478, 479), might well be referred to.

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

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

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

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

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

The application is denied, but without costs.

The following order was accordingly entered :

At a Special Term of the City Court of Brooklyn, held at the Court House, City of Brooklyn, on the 30th day of October, 1874.

Present.—Hon. JOSEPH NEILSON, *Chief Judge.*

[*Title of the cause.*]

An order having been heretofore granted to show cause why, "the plaintiff should not deliver to the defendant's attorneys a statement in writing of the particular times and places at which he expects or intends to prove that any acts of adultery or criminal intercourse took place between the defendant and the wife of the plaintiff, and of the particular times and places at which he expects or intends to prove that the defendant confessed any such act of adultery or criminal intercourse," and said order to show cause having been heard by the court, on the return day thereof, upon reading and filing the affidavits of Theodore Tilton and Henry Ward Beecher, and Olin J. Clauson, and the pleadings in this action, and after hearing Thos. G. Shearman, Esq., and B. F. Tracy, Esq., for the defendant, and Sam'l D. Morris, Esq., for the plaintiff, and on motion of Morris & Pearsall, plaintiff's attorneys,—

It is ordered, that said motion to compel "the plaintiff to deliver to the defendant's attorneys a statement in writing of the particular times and places at which he expects or intends to prove that any acts of adultery or criminal intercourse took place between the defendant and the wife of the plaintiff, and of the particular times and places at which he expects or intends to prove that the defendant confessed any such act of adultery or criminal inter

course," be, and the same is hereby denied, without costs, on the ground that the court had no power to grant the same, and on the other grounds stated.

Enter J. N.

(A copy.) STEPHEN J. COLAHAN, *Clerk.*
[L. S.]

APPEAL TO GENERAL TERM.

From this order defendant appealed, and served the following notice :

[*Title of the cause.*]

GENTLEMEN : Please take notice, that the defendant appeals to the General Term of this court from the order entered herein on the 5th day of November, 1874, denying defendant's motion for a bill of particulars, and from every part thereof.

NEW YORK, Nov. 6, 1874.

Yours, &c., SHEARMAN & STERLING, *Defendant's Attorneys.*

To Messrs. MORRIS & PEARSALL, *Plaintiff's Attorneys.*

S. J. COLAHAN, Esq., *Clerk of the City Court of Brooklyn.*

AUGUMENT BEFORE REYNOLDS AND McCUE, JJ., ON THE APPEAL FROM THE DECISION OF NEILSON, Ch. J., ON NOV. 13th, 1874.

Mr. Shearman.—May it please the court, the question at issue is whether the plaintiff, after having publicly asserted his full knowledge of the times and places at which the alleged offenses were committed, and after stating that he had been informed of such times and places and occasions in full detail by the defendant and by his own wife, against both of whom he brings this shocking charge, shall be required to give notice before the trial, of the times and places at which he claims that these offenses were committed. Or to put the question in a less technical form, it is simply this:

Shall this defendant, who has lived for thirty years in this city an honored and stainless life, when now put upon trial for that which to him is dearer than life, have a fair, open, and square battle in the light of day, or shall he be assassinated in the dark, under the cloak of justice and the forms of law ?

This has seemed to my associates who are present (Messrs. Tracy and Hill), as well as to our seniors who are not present, Mr. Evarts, and Judge Porter, one of the gravest and most important questions that could arise in this (as we believe) most important cause. We may be entirely in error. The question may be as trivial as it seems to be considered by our opponents. The name and the honor of the one man who has made Brooklyn famous through all the civilized world, may be so cheap as not to be worthy of much consideration from the courts of this city, when they are put in peril. We had thought that one such man, whose words and whose life, up to this hour, have been an inspiration and an example to our young men, was worth more than countless gold, or acres of bricks and mortar. And we therefore supposed that any question which involved the giving or withholding of a fair trial to such a man, was of sufficient moment to justify a full argument, and rather more than one hour's judicial consideration. But perhaps we are

wrong, and such a question deserves only to be the subject of the jests which it suggests to some who sit in the high places of criticism.

This is an application for a bill of particulars which has been denied by Judge NEILSON, on the ground of want of power in the court to grant it. There has been some misapprehension as to what we seek in this case, arising from the use of the technical phrase "*bill* of particulars." In making our motion, and in arguing the question, we adopted the usual form, which means, however, not a bill of items, but a statement or notice of particulars, which we desire for our guidance in advance of the trial.

I. Our first point is that at common law the court has power to order a bill of particulars in any action, without regard to its nature, subject or form. This power is independent of statute; it is incident to the general administration of justice. 1 *Phillips on Evidence*, 799 ; *Commonwealth* v. *Snelling* (15 Pick. 321); *Hancock's Appeal* (64 Penn. St. 470) ; *Early* v. *Smith*, (12 Irish C. L. Appendix xxxv.); see *Wren* v. *Weild* (Law Rep. 4 Q. B. 213).

1. Chief Justice SHAW, in a leading case on the subject, said that the court had power, in any and every action, whether civil or criminal, to require particulars of the claim or defense to be furnished; and that wherever justice could not be done on the trial without the information to be obtained by means of a specification or bill of particulars, the court had power to direct such information to be reasonably furnished, and to require the proof, upon the trial, to be confined to the particulars specified. And in that case a bill of particulars was required upon an indictment for libel. *Commonwealth* v. *Snelling* (15 Pick. 321).

2. The rule of common law was that particulars might be obtained in any case where, from the generality of the pleadings, the parties could not otherwise come prepared for trial. *Tidd's Practice*, 526 ; *Vischer* v. *Conant* (4 Cow. 396).

II. Our second point is that the Code of Procedure does not diminish the power which the court had, at common law, to order a bill of particulars, but rather enlarges that power.

1. The Code provides that the court may "in all cases order a bill of particulars to be furnished by either party." *Code*, sec. 158.

2. This language does not relate merely to items of account. On the contrary, this clause was inserted by amendment in 1851, for the very purpose of enabling particulars to be obtained in actions where there was no accounts, and removing any doubt that might have existed as to the continuance of the practice of ordering bills of particulars.

3. But in addition to this, the Code provided that the former practice of the courts in civil actions, so far as consistent with the Code itself, should continue in force. And a decision just made in the Court of Appeals, and reported in the *Eagle* of to-day, establishes the doctrine for which we here contend, by holding that the power of the court to follow the former practice is not taken away, except by expressly inconsistent enactments in the Code (*Code*, sec. 469). In that case, the Supreme Court, General Term, having reversed an order allowing the defendant in an action for divorce to move after a certain time to open a default upon the ground that the Code

expressly excepted actions of divorce from the section permitting relief from default, the Court of Appeals overruled this decision, upon the express ground that by section 469 of the Code, the old practice was saved, and that the court had the power, under the general equity practice, since the Code as before, of granting relief in such actions.

4. The practice prevailing before the Code respecting bills of particulars, is therefore entirely applicable to proceedings under the Code.

III. Our third point is this. Some general and vague language in recent treatises on practice (one of which was quoted by the Judge, in his opinion at Special Term), may seem to throw doubt upon the propriety of a motion for a bill of particulars in an action not arising upon contract. But this is an error, arising partly from inadequacy of research upon the part of the authors, and partly from a misrepresentation of what they have said. It is never safe to adopt any such general language as an absolute guide. It is always necessary to go to the fountains of law, and to examine the cases in the reports in order to find what was actually decided, and avoid being misled by mere hasty expressions of opinion. Upon such examination, it will be found that bills of particulars have been repeatedly ordered in actions of tort, after mature consideration by the court, and that not only in the English courts, from which we derive our practice on this subject, but also in the courts of this and other states. Reserving for the present the consideration of actions for divorce and for *crim. con.*, it will be found that bills of particulars have been ordered in the following actions not upon contract :

1. In a civil action for libel. *Jones* v. *Bewicke* (Law Rep. 5 C. P. 32).

2. In a criminal indictment for libel. *Commonwealth* v. *Snelling* (15 Pick. 321). And I am informed by my associate (Mr. Tracy) that not only is it an occasional practice for the court to order particulars to be given in any criminal actions in the United States Court in this district, but in the Southern District of New York it is the uniform practice of the court to order them.

3. In an action for slander. *Early* v. *Smith* (12 Irish C. L. Appendix xxxv.)

4. In an action for slander of title. *Wren* v. *Weild* (Law Rep. 4 Q. B. 213).

5. In a writ of dower. *Vischer* v. *Conant* (4 Cow. 396).

6. In an action of ejectment. 2 *Burrill Pr.* 331 ; *Doe* v. *Philips* (6 T. R., 597) ; *Doe* v. *Broad* (2 Scott N. R., 685).

7. In an action of trover, to give particulars of the articles in question. *Humphrey* v. *Cottleyou* (4 Cow., 54).

8. In an action of trespass on land, to describe the *locus in quo*. *Kirwin* v. *Jones* (3 Hodges, 230); see also, *Johnson* v. *Birley* (5 Barn. & Ald. 540).

9. In an action for escape. *Davis* v. *Chapman* (6 Ad. & El., 767); *Webster* v. *Jones* (7 Dowl. & R. 774).

IV. Our fourth point is, that, if it were possible that the court had not power, or would not exercise the power, to order a bill of particulars in a civil action of tort, *a fortiori*, particulars could not be ordered in criminal proceedings. But we have already shown that particulars are ordered in such cases—a point which we can further illustrate :

1. Particulars were ordered in a prosecution for embezzlement. *Rex* v. *Hodgson* (3 Carr. & P. 442); *Rex* v. *Bootyman* (5 Id. 300).

2. So on an indictment for nuisance, particulars were ordered of the separate acts of nuisance which the prosecutor intended to prove. *Rex* v. *Curwood* (3 Ad. & El. 815); *Regina* v. *Flower* (3 Jurist, 558).

3. So on an indictment for being a common seller of liquor, particulars were ordered of the names of persons to whom liquor was sold. *Commonwealth* v. *Giles* (1 Gray, 466).

4. On an indictment for being a common barrator, where the gist of the offense is not in a single act, but in a course of conduct, defendant is entitled to particulars. *Goddard* v. *Smith* (6 Mod. 261); *Commonwealth* v. *Davis* (11 Pick. 432); see *Lambert* v. *People* (9 Cow. 578, 587).

5. We have already mentioned that the defendant in a criminal prosecution for libel has been required to give particulars of his intended justification. *Commonwealth* v. *Snelling* (15 Pick. 321).

V. Although there is no direct precedent reported in this state of an order for a bill of particulars in an action for criminal conversation, or for divorce, yet there are express precedents in England and in other states of this Union where the common-law prevails; and there are plain indications in the decisions of our own courts that it is the policy of the law, here as elsewhere, to give the defendants in such actions the benefit of precision and particularity in the charges brought against them.

There are very few such actions as this brought in this state; and I rejoice to be able to say so. The reason why actions for criminal conversation were so frequent in England, is that the injured husband, as a test of good faith, was required to bring an action for criminal conversation against the paramour of his wife before he could drag his wife before the court, in his pursuit of divorce.

1. In England, since the statute of 1858, actions to recover damages for criminal conversation, must be brought in the Divorce Court, and in conjunction with a petition for divorce, the wife and the alleged paramour being joined as co-respondents, the trial being had before a jury, and damages being recoverable as under the old practice. In such proceedings it has been repeatedly adjudged by the English Court of Divorce that the alleged paramour is entitled to a bill of particulars, when more than one act of adultery is alleged. *Higgs* v. *Higgs* (11 Weekly Rep. 154); see *Sanderson* v. *Sanderson* (20 Id. 261); *Codrington* v. *Codrington* (3 Swab. & T. 368); *Hunt* v. *Hunt* (2 Id. 574).

2. The right of the defendant in a divorce suit to demand a bill of particulars of the persons, times, places in a charge of adultery, and of periods of times in a charge of cruelty, has been repeatedly affirmed by the courts. *Winscom* v. *Winscom* (3 Swab. & T. 380); *Grafton* v. *Grafton* (28 Law Times, N. S. 144); *Sanderson* v. *Sanderson* (25 Id. 857); *Adams* v. *Adams* (16 Pick. 254); *Steele* v. *Steele* (1 Dall. 409); *Garrat* v. *Garrat* (4 Yeates, 244); *Hancock's Appeal* (64 Penn. St., 470); and see *Gardner* v. *Gardner* (2 Gray, 434); see also *Harrington* v. *Harrington* (107 Mass. 329).

3. The same object was secured in the Court of Chancery of this state, on the framing of issues in divorce suits, if full particulars were not given in the bill. See *Wood* v. *Wood* (2 Paige, 108, 112).

4. The rules and practice of the Supreme Court still require specific allegations of time and place in actions for divorce on the ground of adultery, and the plaintiff is confined to these allegations upon the trial. *Anon.* (17 Abb. Pr., 48).

5. The action of *crim. con.* has always been and still is treated as one partaking more of a criminal than a civil character; and the plaintiff has been held to that strict proof which is not demanded in ordinary civil actions. The same proof of marriage must be given in this action which is required in a prosecution for bigamy; and evidence which would abundantly suffice in any ordinary civil proceeding, where the fact of marriage came in question, is inadmissible in an action of *crim. con.* or divorce. 2 *Greenl. Ev.* sec. 461; *Bishop on Mar. and Div.* sec. 315; *Morris* v. *Miller* (4 Burr. 2057); *Dann* v. *Kingdom* (1 N. Y. Supreme, 492).

VI. This is pre-eminently a case in which the defendant is entitled to particulars of the charges to be brought against him. In actions for divorce, which are of a very similar nature, and for reasons which apply fully to this case, the courts uniformly require a particular and specific statement of the wrongful acts intended to be proved. Without some such precaution the defendant may easily be surprised at the trial by false witnesses, or even by witnesses laboring under a mistaken impression, charging him with being present at suspicious places which he never visited; and he would be unprotected save by his own unsupported denial. Every judge well knows that in actions of this kind, the danger of trumped-up testimony is immense. There are numberless precedents of false and manufactured testimony in this class of actions which are reported in the books; but what are these to the vast number which go unreported?

There is absolutely no class of cases in which the danger from perjured testimony of witnssses pretending to see the parties under guilty circumstances, in strange and solitary places, is so great as in actions for divorce, and for *crim. con.* But divorce suits are generally tried by referees, who give almost unlimited time for the detection and exposure of fraudulent evidence. Actions of *crim. con.* are always to be tried by a jury, which usually proceed continuously and rapidly, and, therefore, afford little time for the detection of perjury. The danger of false testimony is in such cases, therefore, greatly enhanced.

Upon this point permit me to read the following extract from the opinion of Chancellor WALWORTH, in the case of *Wood* v. *Wood* (2 Paige, 108): "As to the manner in which the adultery should be charged in the bill or answer, the case of *Germond* v. *Germond* (6 Johns. Ch. 347), has been cited; but it throws but little light on the subject. The extent of the decision in that case was, that the person with whom the adultery was committed need not be named, if his name was not known to the complainant. But the subsequent history of that cause, which was finally disposed of in 1828, may serve to illustrate the necessity and propriety of detailing the particular acts of adultery in the bill or answer with sufficient certainty to put the adverse party on his guard, so that he may be prepared on the trial of the issue to rebut or explain the circumstances given in evidence against him. On the

first trial, the defendant was surprised with a charge of adultery against her, said to have been committed with a man then dead, and a verdict was found for the complainant perfectly satisfactory to the judge who tried the cause. The Chancellor also thought there was no good reason for disturbing the verdict for any other cause than that the testimony was not warranted by the issue. It afterward turned out that the defendant was an innocent woman. The principal witness, on whose testimony the first verdict had been found against her, had written a letter to the husband, offering to furnish him with testimony sufficient to obtain a divorce if he would give him one thousand dollars; and this witness was originally named in the bill as the person with whom the adultery was committed. A second trial took place, in which the innocence of the wife was established by the verdict; but some irregularity having been discovered in obtaining the jury, a third trial was awarded. The cause was then tried by a struck jury. The same witness was called, and swore to adultery committed with himself as well as with the deceased person. But the time fixed by him when his own criminal connection took place, turned out to be when he was not old enough to commit adultery. It also appeared that two respectable persons had been offered from five hundred dollars to one thousand dollars, if they would seduce the defendant so that a divorce might be obtained. And the defendant was again acquitted, to the entire satisfaction of every person who had heard the trial.

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

There are also numerous cases in the reports of this State, of New Jersey, and of Great Britain, in which the most precise and unequivocal testimony of adultery has been brought forward, contradicted only by the defendant's oath, and yet rejected by the courts with contempt as inherently absurd.

VII. It can not be objected that the matters of which particulars are sought are more within the defendant's knowledge than in the plaintiff's.

1. This objection, if it had any validity, might have been raised and enforced in the various actions for divorce, and in the nature of *crim. con.*, which we have already cited, and in which particulars were invariably ordered. Unquestionably that objection was duly considered and overruled in those cases, upon the very ground already referred to, viz., the danger of manufactured evidence in such controversies. In *Wood* v. *Wood* (2 Paige, 113), this objection was raised and overruled, the Chancellor saying that the

plaintiff had no right to make such a charge, if he was entirely ignorant of particulars.

2. But in the present case the plaintiff has full knowledge of these particulars, and has boastingly published to the world his possession of that knowledge. He does not pretend to have forgotten these particulars; upon the contrary, he expressly says that he withholds them for the present. What could be his motive for thus withholding them? His pretense of delicacy is absurd. He has had no delicacy about dragging his wife through the mire and mud of this wicked charge. He has had no delicacy about exposing to the public the wounds of his bleeding heart, and the anguish of the home which he himself has deliberately shattered. Why, then, is he suddenly struck with a sense of delicacy when he comes to a mere question of dates and places? Charges of adultery, of debauchery, of criminal intercourse repeated and prolonged, he has not the slightest hesitation in throwing at his wife. He is not even restrained by his sense of delicacy from raising a question as to the legitimacy of a child which he has always acknowledged as his own, and still acknowledges. Nor does his sense of delicacy require him to say, in his published statement, what conclusion he reached as to the legitimacy of this child. But when it comes to the simple duty of specifying the times and places, his long-suppressed delicacy revolts, and he "can not bring himself" to do it.

His twin brother, Moulton (they were lovely in their lives, and in their deaths they shall not be divided), is equally explicit with regard to the confession of criminal intercourse, going into the most odious details. But when it comes to saying that these abominations happened on any day except the 10th of October, 1868, or in any other place than in Clinton street or Columbia Heights, then, like a mighty cloud, arises within the inner man of this plaintiff, this sense of delicacy which seals his lips. No delicacy restrains him from dragging his wife into the gutter and stamping on her there; no delicacy keeps him from proclaiming himself a cuckold before all the world; no delicacy prevents him from seeking to trample in the mire a man a thousand times nobler and purer than he is. He has no delicacy in saturating Brooklyn with a scandal which disgraces no one more than it does himself; no delicacy in asserting that he held a caucus with his wife and her alleged seducer to ascertain whether her child was his, or the child of another man; no delicacy in leaving us in ignorance until this hour, whether the child was his or not,—a child who bears the impress of the plaintiff's features on its face so vividly that if you saw its photograph you would suppose it to be the photograph of the once innocent child-face of Theodore Tilton. But the times and places of the alleged criminal intercourse, whether in Livingston street, or in Montague street, in the city of Brooklyn, or in the city of New York, delicacy forbids him to name. There is a ghastly hypocrisy in all this which the court can not but see plainly on the face of such a statement.

3. The very innocence of the defendant makes the want of particulars a trap for him. As was well said by Senator Spencer, in deciding a similar question: "How are they to prepare for their defense? It would be in vain that they should ransack their memories; for an innocent man would be the

least likely to suspect the transaction for which he is to be implicated." *Lambert* v. *People* (9 Cow. 578, 592). I can not plead this case (continued Mr. Shearman) as a common lawyer in a common cause. My feelings are too deeply involved. I ask pardon for transcending the usual bounds of my profession, and speaking for a moment from my heart, to say that I will stake my life and my reputation on this defendant's innocence. This plaintiff's wife, too, is innocent. Let those who will despise her for her inability to resist the will of her husband. She may be weak and timid, but I know of no purer woman to-day, and none whom I hold in higher honor for personal purity, unselfish devotion, and wifely fidelity, than Elizabeth Tilton.

And I can not act the cold part of a mere legal counsel for my client. I say unhesitatingly, that for one, if Henry Ward Beecher is to fall, I shall rejoice to fall with him. If he must be a victim to the vilest conspiracy of modern times, I do not wish to stand safely afar off. Let others stand in his gates in the day of his prosperity and pride. I am proud to stand with him when he is reviled and belied; and I ask no better fate than such as may fall to the lot of this man, with whom it is an honor to live, and for whom it would be a privilege to die.

But (said Mr. Shearman) I must return to the dry questions of law, and hope for your forgiveness if I have erred in sinking, for a moment, the lawyer in the man.

VIII. It may be objected that the defendant should go to trial, and rely on his right to object to any evidence of acts, not specifically stated with times and places in the complaint. Probably such an objection might be held good on the trial, but the defendant ought not to be required to take that risk.

1. The question is doubtful; there are one or two cases which hold, that in an action of this nature, if a bill of particulars is not demanded, the defendant is precluded from objecting at the trial to any range of proof. See *Hancock's Appeal* (64 Penn. St. 470).

2. Even if the decided weight of authority were to the contrary, yet the defendant should not be compelled to raise the objection for the first time at the trial, and have the question disputed before the jury, he being subjected to all the suspicion which might arise in their minds from his effort to narrow the issues, while, in fact, he is ready and willing to meet all issues of which he receives fair notice.

3. The defendant is enlitled to vindicate his character in this action, and to meet at once all charges and imputations which the plaintiff may hold or pretend to hold in reserve.

IX. The defendant was right in applying for a bill of particulars, instead of moving to make the complaint more definite and certain. The latter proceeding would not have been an appropriate or efficient remedy.

1. The complaint was not indefinite nor uncertain, within the meaning of the Code, upon that subject. The complaint showed "the precise nature of the plaintiff's claim." The Code does not require that the particulars of the plaintiff's claim shall be stated in the complaint, but only its precise nature. What the defendant needs to know is exactly that which is provided for by

the common-law practice of requiring a bill of particulars. The defendant needs to know, not the ultimate facts, but the evidence by which it is proposed to establish facts, and, as was said by SAVAGE, C. J., the proper function of a bill of particulars is to apprise the party of the evidence which is to be offered, so that there can be no mistake as to the preparation to be made to resist the claim. *Smith* v. *Hicks* (5 Wend., 48). See also *Matthews* v. *Hubbard* (47 N. Y., 428) ; *Kreiss* v. *Seligman* (8 Barb., 439).

2. This is not a question of pleading, but of orderly preparation for the trial. The pleading was well enough for its proper purposes. It might have been unjust to require more particularity from the plaintiff at the time of serving his complaint. But he has now declared himself ready for trial, and is therefore fully prepared to give particulars.

3. Accordingly, it has been held in an English case, precisely like this, where the complaint alleged one act of adultery with specific circumstances, and several others without the same particularity, that a bill of particulars was not merely the proper, but was the only, remedy ; and in that case a motion to require the pleading to be more definite and certain, by stating the dates of the subsequent acts, was denied upon this express ground. And this is an important decision, because the practice in the English courts is now almost precisely similar to our own. *Hunt* v. *Hunt* (2 Swab. & T., 574).

4. A motion to make the complaint more definite would not only have been inappropriate, but utterly ineffectual for the defendant's purpose, and would not have given him any of that protection against surprise which he has a right to claim. If the complaint had been ever so explicit in its averments of time and place, the plaintiff might, nevertheless, have introduced evidence of different times and places, for the court could not have accompanied the order to make the complaint more definite with an order precluding the plaintiff from giving testimony of acts occurring at other dates. Such an order the court has power to make when a bill of particulars is furnished; but there is no precedent, and no warrant, for a like order upon a mere motion for a correction of the complaint. And in the case in this court, which is referred to by the learned Judge below, this fact was pointed out by the Judge who decided that motion. It is true that the defendant may raise the question of surprise at the trial, but even if his application for a postponement is granted upon that ground, he would be subject to the disadvantage of having to try his cause piecemeal. What his counsel desire for him is to know, shortly before the commencement of the trial, precisely what allegations he is to meet, and then, having begun the trial, to go through with it to the end.

5. The defendant is a clergyman of world-wide fame and reputation. It was incumbent upon him, not for mere reasons of practice in this court, but for reasons connected with his public name and fame, to meet the charge of the complaint promptly, fully, and squarely. A general charge of criminal intercourse was made against him, and he was entitled to deny that fully, without reference to dates or places; and this he did, going even beyond the ordinary language of a general denial, so as to avoid any possible pretense that he sought to evade by reference to dates, and asserted in the most sweeping

language that he never, at any time or at any place, committed any of the acts charged against him. If he had moved for an amendment of the complaint, narrowing the issue, it might have been treated as significant evidence of his unwillingness to deny under oath the whole broad charge. That he has now done: and he is not now seeking to narrow the issue, but simply to know what the issue is, and what charges he must meet, not only with his own oath, but with confirmatory evidence. For the purpose of raising an issue for trial, his own oath was conclusive; but for the purpose of deciding the issue when raised, he must support his own oath by further testimony; and this it is impossible for him to do unless he has reasonable notice of the specific charges which he must meet.

X. The application was not made out of season, and was not, and could not be, denied on that ground. No doubt a good reason must be shown for an application made after issue joined; but sufficient reason is shown in this case. To have demanded a bill of particulars before answering would have subjected the defendant to the same imputation upon his character and courage which would have been the consequence of a motion to make the complaint more definite and certain. Such an application would have necessarily delayed his answer. It would not in any degree have been necessary for the purpose of enabling him to answer, because he knew very well that he had never been guilty, at any time or any place, of the acts alleged; and it would have seemed an act of bad faith on his part toward the court to ask for an extension of time to answer while a bill of particulars was being furnished, when his answer would have been in exactly the same form without particulars as with them. It was not for the purpose of pleading that the defendant needed particulars, it was for the purpose of preparing for trial; and it is not right or proper that an application solely for the latter purpose should be made, before pleading. This doctrine is uniformly recognized in applications for discovery of documents, *Thompson* v. *Erie R. R. Co.* (9 Abb. Pr. N. S., 230), and has recently been recognized by the Convention of Judges respecting the examination of parties before trial (Rule 21), and neither proceeding is allowed to be had before pleading, without showing specially that it is needed for that purpose, and not merely for the purpose of meeting the trial of the issues. And there is no doubt that a bill of particulars may be ordered after issue. *Yates* v. *Bigelow* (9 How. Pr. 186).

XI. With all respect to the learned judge below, we submit that his opinion was based upon misapprehension, at least so far as regards that part of it which deals with the application for particulars as to the times at which the plaintiff intends to prove that the alleged wrongful acts took place.

1. The opinion shows that the complaint was in proper form, and was well pleaded, thus disposing of the objection that we ought to have moved to make the complaint more general; and in this view we entirely concur.

2. The opinion next suggests that courts of law derive all their authority to require bills of particulars from legislative directions, and compares such proceedings with an application for the inspection of documents. But this is not correct. The power to order a bill of particulars was not derived from statute, but was a power always inherent in the court.

3. The citation from a treatise on practice, prepared by one of the counsel, while offering a fair ground of argument, can not be binding even on the counsel himself. If treatises on practice were written in language perfectly exact and full, twenty volumes would hardly suffice for one book of the kind. The authors can not possibly find time or room for more than mere suggestions, which must be followed up to the source of authority in order to arrive at certainty. In the case referred to by this treatise, it will be found that the reason for denying the application was not because the actions were in *tort*, but because in one case (1 *Duer*, 659) particulars were demanded of the precise injuries which caused the death of a person run over by a stage; and in the other cases nothing appeared to show that the party applying for particulars could be prejudiced for want of the details which he sought to know. So with regard to the language, that the defendant ought to show, by affidavit, "that he does not know what the plaintiff is suing for," it is plain that all that is meant is that the defendant must affirmatively show that he is so far ignorant of the facts upon which the plaintiff relies, as to render a bill of particulars necessary for his protection. This is shown beyond doubt, by reference to the cases cited.

4. All the other authorities cited by the learned judge, are cases upon the power of the court to order an inspection of documents, which in courts of law was, in the main, a purely statutory power, and which bears no analogy to the power of the court to order particulars. The times and places at which the main facts occurred, upon which the plaintiff relies, constitutes no part of his means of evidence, and certainly are not documentary facts. We ask for no documents, for no discovery, for no names of witnesses; and, with all deference, we are unable to see what bearing decisions or statutes upon the discovery of documents, or even the examination of parties, have upon our application.

5. The learned judge suggests that witnesses may be hostile, and refuse to disclose the facts before the trial. That might possibly be an excuse if any such state of facts were alleged; although the decisions in numerous cases are adverse to such a view, and especially so in cases involving the question of adultery, in which the courts of this and every other state accept no such excuse, but insist upon a precise statement of times and places before the trial. However this may be, there is no such state of facts here. We have proved that the plaintiff knows perfectly well the times and places at which he pretends that the wrongful acts have been committed. His affidavit admits this to be true, and does not suggest that he has a single hostile witness. This suggestion was considered and overruled in *Early* v. *Smith*, cited in the appendix to the 12th Irish C. L.

6. It is suggested that a bill of particulars is only allowed of the *claim*, and that in this case the claim is the damage and not the specific acts of injury. But we submit that this cannot be so. The learned judge says: "If the wrong be the conversion of personal property, the enumeration or description of it would be the bill of particulars of the claim," thus conceding that by claim is meant not merely the amount of money demanded, but the allegation of wrong done. For in an action for conversion, the plaintiff does

not demand the restoration of the property taken, but only claims the money value of that property. If, then, he can be compelled to give a particular description of the property taken from him, why cannot a plaintiff alleging an injury of the description alleged in this action, be compelled to state the particular instances on which that injury was committed?

7. It is suggested that the defendant can accomplish the same result as that which he now seeks by examining the plaintiff before trial. But this is not so, for while he could thus compel the plaintiff to state the particulars of the alleged confessions made to him, he could not require any pledge that further proof of wrongful acts would not be given upon the trial, nor could the court, upon the basis of such an examination, grant any order precluding such a proof. Moreover, by forcing the defendant into this course, the court would practically compel him to adopt the plaintiff as a witness, and to give the plaintiff an opportnnity of putting his own testimony before the jury without his personal attendance; and every lawyer knows how ineffective a cross-examination is when not conducted in the actual presence of the jury.

LASTLY—The order denying our motion should be reversed, and the plaintiff should be required to furnish a statement of the times and places at which he claims that the wrongful acts were committed. He knows them—he admits, nay, boasts the fact. He keeps back these particulars so as to dig a pit under our feet. This is not a cause which should be fought in a technical spirit, but one in which both sides should seek to develop the whole truth. If Henry Ward Beecher is indeed the monster of depravity which the plaintiff asserts, not for a moment will his friends protect him from exposure, or offer him any refuge, except in repentance. But we want to have the proof. We demand a full opportunity to test what may be offered as proof. We look upon this as the most momentous and awful issue ever presented to a court in this state. Better were it for the inhabitants of this city that every brick and every stone in its buildings were swallowed by an earthquake, or melted by fire, than that its brightest ornament, its most honored name, should sink into deep infamy. Yet even this would be better than to sacrifice truth and pervert justice. But before we consent to draw a pall over Brooklyn, to destroy the confidence of our children in all the officers of religion, and to make the name of our city a byword and a stench throughout all the world, we demand a full trial—a fair trial—a trial in which both sides shall come knowing what is to be met, and prepared to meet it; and then, but only then, are we confident that the truth will be made to appear, and that justice will be done.

Mr. Morris (for the respondent): The counsel has made a very long and elaborate argument that shows great research and industry, but I submit to the court that the real question involved in this application has not been presented by the counsel for the defense, and that the counsel has not cited, in all the authorities to which he has called the attention of the court, a single analogous case. The application in this case is simply and solely that the plaintiff be compelled to furnish the defendant with a statement of the evidence by which we seek to prove our claim. This is not like an action for

divorce where the act of adultery is the foundation of the action, the sole claim in it. This action might be complete, would be complete, without any allegation of adultery on the part of the defendant at all. The action is for damages for alienation of feeling of the wife of this plaintiff. It is for breaking up the home of this plaintiff. It is for winning the affections of the wife from her husband, and as I understand the law the action would be complete without the act of adultery. That is one of the evidences going to establish the claim that we make, precisely the same as if we introduced the correspondence between the parties. We might show gifts from the defendant to the wife, or any act showing that he had alienated or sought to alienate the affections of the wife from her husband. The claim is for the loss of society, the aid and the comfort of his wife and his home; and they ask that we specify the particular evidence in this case, the particular act or acts that go to make up the case; not the simple act of adultery, but the frequent visits at untimely hours, the marks of affection between the parties by gifts, appointments, &c. They could with equal propriety have asked that we furnish all the evidence by which we seek or shall seek to establish our claim with reference to acts by the defendant with the plaintiff's wife.

When we come into court shall we be prevented from proving frequent gifts, visits by the defendant to the plaintiff's wife in the absence of the plaintiff? Certainly not. Then why are they not entitled to know those acts as well as these? And if they are entitled to one branch of evidence, they are entitled to every branch. They go further and ask that we not only furnish them with this particular branch of evidence, but the times and places of the confessions of the defendant. Why limit it to that? Why not compel us to give every particle of our evidence? I was at a loss to know under what provision of law this application was made, and I asked the question and found it was made under section 158 of the Code relating to bills of particulars for the claim; but the defendant moves, not for a bill of particulars of the plaintiff's claim, but "that the plaintiff deliver to the defendant's attorneys a statement, in writing, of the particular times and places at which he expects or intends to prove that any acts of adultery took place betweeen the defendant and the wife of the plaintiff, and of the particular times and places at which he expects or intends to prove that the defendant confessed any such act. The defendant places his application upon the sole ground that the plaintiff intends upon the trial of this case to produce false, manufactured evidence, thereby telling the court that the plaintiff is going to attempt to sustain his case by false and manufactured testimony, and so trying to get a decision in advance of the trial, condemning the plaintiff upon that point. Therefore they would compel us in advance, because they believe we are going to produce false, manufactured testimony, to tell what testimony we shall offer in support of our points.

Mr. Morris here took up a copy of Judge NELSON's opinion, which is the subject of this appeal, and commented upon it, showing where it could not be overthrown. He then said for his first point:

I. As a general rule, a plaintiff in an action founded in tort will not be compelled to furnish a bill of particulars of his demand. *Murphy* v. *Kipp*

(1 Duer, 659). And the only actions founded in tort in which a bill of particulars has been allowed, is in actions for conversion of certain specified personal property. *Blackie* v. *Neilson* (6 Bosw. 681); *Humphrey* v. *Cottleyou* (4 Cow. 54).

II. When, from the nature of the action, it appears that the party seeking the bill knows as well, or better, than the adverse party, the very details which he seeks, an application for an order directing a bill of particulars to be served, will be denied. *Young* v. *De Mott* (1 Barb. 30); *Blackie* v. *Neilson* (6 Bosw. 681).

1. From the nature of this action, it undoubtedly appears that the defendant has better knowledge of the very acts he asserts to be informed of than the plaintiff could have.

III. The Code empowers the court, in its discretion, to compel a party to serve a bill of particulars of his claim. *Code*, sec. 158.

1. The plaintiff's claim, as stated in the complaint, is in substance as follows: That, by means of criminal intercourse with the plaintiff's wife, the defendant alienated and destroyed the affection of the plaintiff's wife for the plaintiff, by reason of which the plaintiff has wholly lost the comfort, society, aid, and assistance of his said wife which the plaintiff ought to have had and enjoyed, and has suffered great distress in body and mind, to the damage of the plaintiff $100,000.

2. The criminal intercourse alleged in the complaint is alleged as the means or method by which the defendant alienated and destroyed the affections of plaintiff's wife for plaintiff.

3. The plaintiff's claim or cause of action is for damages for the distress of body and mind caused by the alienation of his wife's affections and for the loss of the aid, comfort, society, and assistance of his wife.

See complaint.

IV. The various places where, and the various dates upon which, the criminal intercourse between the defendant and plaintiff's wife occurred, are not the plaintiff's claim within the meaning of section 158 of the Code. It is evidence on the part of the plaintiff to establish his claim, viz. the loss of his wife's affections and assistance, society, &c., and his distress of body and mind.

V. The various dates upon which, and the places where, the defendant confessed his criminal intercourse with plaintiff's wife, is no part of plaintiff's claim; this also, is a part of the plaintiff's evidence, by which he intends to prove his claim. It needs no argument to demonstrate this fact.

VI. The defendant seeks to discover the nature of the plaintiff's evidence. The action for discovery of evidence has been abolished (*Code*, section 389), and if the defendant desires information from the plaintiff to aid him in his defense of this action, his only remedy is under section 391 of the Code.

VII. In actions for divorce, the plaintiff's claim is for the criminal intercourse, and the courts require that the acts of adultery be stated in the complaint with particularity and precision.

1. An action by a husband for *crim. con.* is an action for an injury to the

person. *Delamater* v. *Russell* (4 How. Pr. 234); 2 *Kent*, 129; 2 *Code R.* 137; 3 *Bla. Com.* 138; 1 *Chit. Pl.* 138; 2 *Chit. Pl.* 265.

VIII. If the complaint was indefinite or uncertain, the defendant's remedy (if any) was under section 160 of the Code, to have the pleading made more definite and certain, and this should have been done before the defendant answered or noticed the cause for trial. *N. Y. Ice Co.* v. *N. Western Ins. Co* (12 Abb. Pr. 74); *Kellogg* v. *Baker* (15 Abb. Pr. 287).

IX. An omission to move to have a pleading made more definite and certain, is an admission that the party fully understands the charges against him, and is prepared to meet them. *Quintard* v. *Newton* (5 Robt. 72).

X. The only method by which a party can inform himself of evidence relating to the merits of an action, is under section 388 of the Code, and even under this section, a party will not be compelled to inform his adversary of the nature of the evidence he intends to introduce against him. *Strong* v. *Strong* (1 Abb. Pr. N. S. 233); *Willis* v. *Bailey* (19 Johns. 268).

1. In the case of *Strong* v. *Strong* (1 Abb. Pr. N. S. 233), ROBERTSON, Ch. J., says: "If it had been intended that every litigant had a right to know what evidence his adversary intended to introduce against him, such principle would have included the briefs, memoranda of law, and facts of counsel, and instructions of their clients. . . . The law always considered sacred the rights of both parties to keep secret their preparations and means of attack and defense."

XI. A party has no right to discover the manner in which his opponent's case is to be established, or evidence which relates exclusively to his case. *Hunt* v. *Hewitt* (7 Exch. 237); *Wright* v. *Manny* (11 Exch. 209).

XII. A party has no right to have an inquisitorial examination of his adversary's evidence with a view to ascertain if perchance something cannot be found which will possibly aid him. *Hoyt* v. *American Exchange Bank* (1 Duer. 652); *Brevoort* v. *Warner* (8 How. Pr. 321); *Thompson* v. *Erie Railway Co.* (9 Abb. Pr. N. S. 212); *Com. Bank of Albany* v. *Dunham* (13 How. Pr. 541); *Davis* v. *Dunham* (13 How. Pr. 425).

XIII. A party is not allowed to search his adversary's evidence, with a view of finding out some defect in the case put forward by him, nor for the purpose of enabling him to rebut the anticipated case of the other party. *Wright* v. *Manny* (11 Exch. 209); *Meakings* v. *Cromwell* (1 Sandf. 698); *Shadwell* v. *Shadwell* (6 C. B. N. S. 679); *Daniel* v. *Bond* (9 C. B. N. S. 716); *Scott* v. *Walker* (2 El. & B. 555).

It is a notorious fact that on the trial of this action, there will be examined numerous witnesses unwilling to criminate the defendant if avoidable, both as to the criminal intercourse between defendant and plaintiff's wife, and as to the defendant's confessions of said intercourse. And as to the times and places where some of the acts of intercourse were committed, the plaintiff is now ignorant, and will remain so until this court, by aid of its process, compels the said unwilling witnesses to disclose the same on the trial, and it would be doing the plaintiff great injustice to compel him to confine his evidence to certain times and places, as is shown from the following hypothetical case:

Suppose that the plaintiff should set forth in a bill of particulars that on the 10th day of August, 1872, the defendant had intercourse with the plaintiff's wife, at 50 Livingston street, Brooklyn, and that an unwilling witness should testify, by the compulsion of this court, under the solemnity of an oath, that the defendant had intercourse with the plaintiff's wife, on the 15th day of July, 1872, at 59 Livingston street, Brooklyn, this material evidence of the plaintiff would be stricken out, on the ground that the bill of particulars did not specify that particular time and place. In fact the plaintiff would be confined to asking the unwilling witnesses whether they knew of the defendant having intercourse with the plaintiff's wife at the times and places specified in their bill of particulars, and they being unwilling to criminate the defendant, could not truthfully answer that they had no knowledge of the defendant's committing said acts at the times and places specified, although they might, when compelled by this court to testify to said acts, having been committed on various other dates, and at various other places. The same argument will apply to confessions of said acts made by defendant at different times and places than those specified in a bill of particulars.

XIV. As stated under the third point, the claim of the plaintiff is for the loss of the "affections, comforts, society and assistance" of plaintiff's wife; and if the defendant had accomplished this without seduction, his liability would have been the same. His frequent visits, his presents, his various arts, by which he won her affections, are all evidence by which the plaintiff expects to support his claim, and the criminal intercourse is but an additional fact. The defendant has as much right to all the evidence as a part.

We submit the suggestion is absurd.

XV. The avowal of want of authority (in the order denying the motion) related to the second ground of the application, to wit, the confessions. The judge having been of opinion that in no case could the party who had disclosed his intention to prove the admissions of his adversary be required by order to state the times, places, and other circumstances.

XVI. The instances where plaintiff has been required to state the time and place of the perpetration of the wrong have been in cases in chancery, or for a divorce, etc. In this instance the question arises in an action at law, therefore the former practice does not apply.

Said Mr. *Morris* in closing his argument:

The counsel on the other side has gone out of his way to call the plaintiff names. He calls him a cuckold, while he is pleased to refer to the innocence of his client. [*Mr. Shearman* (interrupting).—"I don't call the plaintiff a cuckold; I say that he insists that he is one, falsely."] I say that the time has not come yet for this kind of talk; this is simply an argument on questions of law, but when the counsel seeks to hold the defendant up to contempt and scorn for having accused his wife of adultery, we hurl back the insinuation, and say it is not the plaintiff that has dragged down the name and soiled the reputation of his wife; it is not he that has cast her down. While he has ever spoken of her in kindness, the client that he so lauds brands her by stating that she thrust her affections upon him, and his

committee say that upon no theory of human responsibility can her evidence be reconciled, and the *Christian Union* says that her evidence is worthless. They have soiled her name—first seducing her from the plaintiff, and then casting her aside, that they might trample upon her as the worthless thing that they have made her.

Mr. Beach (also for the respondent).—I was surprised to learn that I was expected to submit the principal argument on the part of the plaintiff. I did not expect to participate in this discussion at all; therefore, my argument must consist of spontaneous impressions upon my mind produced by what has been said by the gentlemen who have addressed you. I come here, if your Honors please, as a "common lawyer," differently situated from the learned gentleman who has addressed you on the part of the defendant; and I may hope that I can present you, so far as I shall attempt any argument in this matter, a calm and temperate discussion, free from those ebullitions of passion and vindictive animosity which have characterized the counsel for the defense, and which are only justified upon the theory that his intimate friendship and ardent admiration for the distinguished gentleman accused by this action,—only justified by his own statement, that whatever may be the result of this trial, and whatever may be the character of the eminent client whom he represents, he will yet, whether he stands or falls, stand or fall with him. I can feel, sir, a great deal of sympathy and tolerance for the zeal and devotion upon the part of the counsel, but I have understood it to be a distinguishing characteristic, as well as the highest honor of our profession, that we lend ourselves only to the advocacy of what we believe to be true and just. Never before, in any court or in any case, have I found counsel—this gentleman will permit me to say—bad and unprincipled enough to say that, although his client may be convicted in a court of justice by a judicial determination of the bitterest wrong and the highest social crime that can be perpetrated in a civilized community, nevertheless, he will uphold him by his ingenuity and influence. Sirs, I make no such profession of devotion for the gentleman for whom I appear. I avow here no belief even in regard to the character of the accusation which he has made. I don't assume to say that Henry Ward Beecher has been faithless to his mission and his position, and has committed this great social crime. It would gratify, aye, and it would be the profoundest solace which could be addressed to the bereaved household and a crushed heart, if the examination upon the trial of this case should demonstrate the innocence of the wife of his home and bosom, and of his former friend—I may say companion. My client believes this charge to be founded on truth. He is suffering all the agonies of a believed wrong. I am bound to believe with him until this issue is determined by the final tribunal of a jury upon the question of fact. I am bound to believe that he is an injured man in his domestic and social relations, and to act in that belief, but I am not bound to say that the evidence will justify one or the other conclusion. Therefore, while I am very lenient to the enthusiasm of my learned friend; while I can excuse him for making an unjust and dishonoring accusation against myself (*Mr. Shearman.*—"No, sir; I make no such accusation.") Yes, sir, you did. Whenever the counsel charges me with affectation

of professional sentiment in this court, for the purpose of influencing public opinion, he does accuse me of dishonoring the profession.

I feel no enmity toward him, because I can pardon him for the delusion under which he suffers in this case. My client has been questioned for bringing this action with bitterness of invective seldom indulged in a court of justice, which would only be justified in the trial of a case of this magnitude, where its full enormities were disclosed beyond dispute. With a spirit, sir, which I think does not belong to a "common" lawyer, he has assailed my client for the institution of this action; he has said of him that he, the husband and the father, has unnecessarily disgraced and dishonored the family whom he had sworn to love and protect; that he has said, with a vindictiveness of language and a heat of spirit which does not belong to us "common" lawyers before the court. He has exhibited my client to the opprobrium and condemnation of this community for assailing the one man who seems alone to reflect honor and distinction on the city of Brooklyn; for assailing the gentleman whom he represents as worth all the national wealth of Brooklyn, and as by a thousand times excelling the worth of my humble and undistinguished client.

I answer it by asking my learned friend what shall a husband do when his household is assailed, and his peace of mind broken up by a wrong of this character? What must the husband do when a man of eminence and distinction, by the sanctity of his profession and by the influence of his Christian name and character, steals into the household, and upon its hearthstone engraves infamy and dishonor, seduces the wife of his bosom, and reflects degradation and shame upon the children whom she has borne? When in a court of justice he brings the seducer to the bar, and calls upon him to answer for the grievous and imperishable wrong which he has committed, is he to be taunted and shamed by the lips of the devoted friend of the seducer? No, sir; it is a shame to the moral sentiment of the community in which the alleged crime was committed! It is a dishonor to the heart and to the lip which dares accuse under such circumstances the wronged husband because he seeks to vindicate his honor or to appeal to the law to punish the aggressor upon his household.

Now, sir, as to the question, who provoked this disclosure, or as to who it was that made it necessary for Mr. Tilton to speak after he had borne the anguish and the horror of his shame and his loss with a Christian endurance, which might well be imitated by the community; that is to be considered hereafter. It is not presented for discussion here, and in a spirit which imitates that of my client I refrain from such discussion, because it is inappropriate. I might retaliate. It needs no uncommon faculty to see that there are emotions in this case which, if I chose to appeal to the public sentiment, would stir and warm the breast of every father and husband. But I will not imitate my friend. I leave all that for a more fitting and appropriate occasion, when I hope I shall have the opportunity to express those sentiments and to utter that malediction which I believe this defendant richly deserves.

Mr. Beach then passed to the consideration of the appeal. There were, he said, but two points involved—one of authority and one of discretion. He

referred to the Code as the ground of procedure in this case; to grant a bill of particulars in a case not provided for by the Code would be inconsistent with its spirit and practice. This practice is not governed by the decisions of other courts, whether in England or Pennsylvania.

The effect of a bill of particulars will be that upon the trial of this cause, this plaintiff can not step beyond the facts and times set forth in that bill. It would have a most restrictive effect. Does this plaintiff know all the times and places when the defendant stole into his family and filched away the virtue of his wife? Does the counsel believe that he can do it.

Mr. Beach then quoted from that part of the record giving an extract from the statement of the plaintiff in relation to the alleged confessions of guilt. Counsel had made a great ado over the fact that the plaintiff had stated that he could not bring himself to give those confessions in detail, because of their grossly sensual character. Was it not exactly what a sensible man would do under the circumstances? Do they not know that such confessions from his wife would not be evidence and inconsistent with the practice of the court? The facts sought to be ascertained by the bill of particulars were from their very nature known to the defendant.

We do not admit that we are, as counsel claims, familiar with the times and places when acts of infidelity were committed, beyond the times specified in the complaint; and thus a bill of particulars would shut us off from other sources of evidence which may be discovered, placing our cause in danger and operating disastrously upon our interests.

The grounds upon which the application for the bill of particulars are based is the affidavit of the defendant that he fears upon the trial of the cause the plaintiff would produce false and perjured testimony in support of his allegations. We meet this by the affidavit of Mr. Tilton that no such thing is intended. I hope the counsel for the other side, by his strenuous asseverations of his belief in Mrs. Tilton's innocence, will succeed in clearing her from the degradation which this defendant has thrust upon her. We have met the allegation of suborned testimony by the affidavit of Mr. Tilton; and I deny that we are to consider the defendant innocent; if he be guilty he is already possessed of the facts and circumstances of which he seeks to be informed by the bill of particulars.

Mr. Shearman was heard briefly in reply.

DECISION OF THE APPEAL.

On November 19, 1874, the following opinions were delivered:

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

Upon the argument before us, however, it was not claimed that the places were not sufficiently specified, and that part of the order relating to confes-

sions was expressly waived. Even if it had not been so waived, it would obviously be beyond the province of the court to make any such requisition.

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

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

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

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

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

In these cases it seems to be common to order particulars to be given. It is worth while to observe the manner in which the cause of action is stated in the petition (corresponding to our complaint) under their practice. Take, for instance, the cases cited upon the very able brief of defendant's counsel. In *Hunt* v. *Hunt and Duke* (2 Swab. & T.), the petitioner was charged, by way of recrimination, with having committed adultery with three persons named, without stating time or place. In *Codrington* v. *Codrington and Anderson* (3 Swab. & T.), the charge was that the respondent had committed adultery on divers occasions since April, 1859, with divers persons. Particulars were ordered, and the petitioner then alleged frequent acts of guilt between 1859 and 1862, with a person named, at Malta, and during a journey to Switzerland, Savoy, Sardinia, and Italy. Further particulars were ordered, *it appearing that the information on which the charge was founded was contained in a diary and certain letters of the respondent.*

In another case, *Winscom* v. *Winscom and Plowden* (3 Swab. & T.), the

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

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

In our state the complaining party in actions for divorce has always been compelled, *by the pleading*, to specify the circumstances of the offense alleged, as to time and place, with as great particularity as under the system of orders adopted elsewhere. We are not referred to a divorce case in this state where an order for particulars was applied for or made. I think, too, the learned counsel was mistaken in supposing that the settling of issues in a divorce suit ever served the purpose which is sought to be attained by an order. The issues were framed upon the pleadings; *these* were required to allege the offense with reasonable certainty of time and place, and if the charge was too vague, the defect was not remedied by supplying an issue containing the particulars, but the issue would not be awarded; *Codd* v. *Codd* (2 Johns. Ch. 224); *Wood* v. *Wood* (2 Paige, 108).

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

Of course, bills of particulars may be ordered in certain cases, and sometimes in actions of tort. We have been referred to two cases, decided by our Supreme Court, *Humphrey* v. *Cottleyou* (4 Cow. 54); was an action of trover for the conversion of a quantity of timber. A bill of particulars was ordered, and the plaintiff delivered an account, specifying so many sticks of different kinds, without giving dates or mentioning any time within which the several items arose. The court say the date of the items should be given with as much particularity as possible. If the day can not be stated, then the month or year. That was a case where the claim was susceptible of being resolved into particulars, or itemized, with approximate dates, as much so as an account for goods sold. The difference between such a case and this has been sufficiently discussed by Chief Justice NELSON in the Opinion at Special Term.

The other case was an action for dower, *Vischer* v. *Conant* (4 Cow. 396). "The count was in the (then) usual general form, without showing any land in certain." The court say the proper course was the same as in ejectment, where the declaration was equally general, that is, to ascertain, by a bill of particulars, for what particular land the plaintiff was proceeding.

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

Surely, an order requiring the plaintiff to specify what land he is claiming in a suit, does not go far as a precedent, for requiring a party to state the

exact date of a secret wrongful act, alleged to have been committed against him.

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

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

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

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

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

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

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

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

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

With all the uncertainties of human testimony no man can foresee the

chances and accidents of a trial; and, as to immaterial circumstances, great latitude should be allowed.

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

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

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

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

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

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

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

McCUE, J.—Appeal from an order made at Special Term denying the defendant's application to compel the plaintiff to furnish a statement of bill of particulars of the times and places when the several acts of adultery charged in the complaint were committed.

The action is for *crim. con.* The complaint alleges that the adultery was committed at the house of the plaintiff ; also at the house of the defendant—both situated in the city of Brooklyn—"on or about the 10th day of October, 1868, and on divers other days and times after that day, and before the commencement of this action."

The answer is a full denial of each and every act of adultery. The defendant's application was to compel the plaintiff to show cause why he should not deliver to the defendant's attorneys a statement in writing of the particular times and places at which he expects or intends to prove that any acts of adultery or criminal intercourse took place between the defendant and the wife of the plaintiff, and of the particular times and places at which he expects or intends to prove that the defendant confessed any such acts of adultery or criminal intercourse, or be precluded from giving evidence upon the trial of any such acts or confessions not specified in such bill of particulars. Before passing to the examination of the questions presented in this appeal, we think it proper to notice two objections raised to the defendant's application, since the early disposition of these objections will very much simplify our labor. The objections referred to are, first, that the defendant desired a bill of particulars of the confession made by the plaintiff's wife, which it is claimed could not be introduced against the defendant ; and, second, that the claim of the plaintiff is for the loss of affection, comforts, society, and assistance of his wife, and that if the defendant had accomplished this without seduction, his liability would have been the same." [See point 14, Respondent's printed points.]

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

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

These questions disposed of, we proceed to consider the single question presented on this appeal, viz.: has this court power, after issue joined in an action of *crim. con.*, to order a bill of particulars "of the divers other days and times" after the one particular day named in the complaint, when the criminal conversation is claimed to have taken place, and of the particular guilty acts which it is claimed the defendant has confessed? No objection is raised to the power of this court at General Term to review the

order appealed from. The order is sought to be sustained on the grounds :

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

Second—That the defendant's application should have been made under section 160 of the Code—"When the allegations of a pleading are so indefinite and uncertain that the precise nature of the charge or defense is not apparent, the court may require the pleading to be made definite and certain by amendment": and that having omitted to make the application before answering, the defendant has thereby accepted the complaint as sufficient, and has waived the right to require any amendment of the complaint.

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

With great respect we think this position erroneous. The complaint as a pleading is good, and follows the established forms; there is no indefiniteness or uncertainty in the nature of the charge; it is distinctly alleged that the defendant debauched the plaintiff's wife. This act is declared to have been committed on the 10th day of October, 1868, thus bringing it within the statute of limitations. Except for this purpose, the allegation of time would have been immaterial. Proof of the adultery, therefore, on or about the date particularly alleged, would establish the right of the plaintiff to recover. That fact established, the plaintiff has a perfect cause of action, and the other matter alleged in the complaint as to the loss of wife's affections, society, and services, enter into the cause only as bearing up the question of damages.

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

It matters not whether the defendant did or did not debauch the plaintiff's wife at divers other days and times between the 10th day of October, 1868, and the time of the commencement of the action. If guilty on the one day alleged, he is guilty of the wrong complained of, and the plaintiff is entitled to recover damages.

Even if the plaintiff should fail to establish the commission of an act of adultery on the 10th day of October, 1868, the charge is still definite and

distinct against him, and if the plaintiff can establish the commission of a single act of criminal conversation between said 10th day of October, 1868, and the time of the commencement of this action, his cause of action is thus fully established.

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

It does not follow that because the plaintiff is compelled to designate with some reasonable particularity those other days and times, that he is necessarily obliged to disclose the evidence by which his cause of action is to be sustained, and thus expose his preparation and means of attack. On the contrary, let us assume that one of these other days and times is the 10th day of October, 1869, and is so assigned by the plaintiff. What light is furnished to the defendant by which he can foresee in any way the proof by which the plaintiff on the trial proposes to establish the defendant's guilt.

The plaintiff has now undoubtedly the proof within his reach, by which he hopes to establish the fact ; but the names of the witnesses who saw the guilty act committed, or the circumstantial evidence by which the plaintiff, in the absence of direct proof, will endeavor to establish the defendant's guilt, are not disclosed. How can it be said that to give this date either absolutely, or with reasonable approximation, affords the defendant any opportunity to tamper with or eloign an unwilling witness, or enables him to manufacture testimony to meet facts and circumstances known only to the plaintiff, and not disclosed under the order applied for, and against which it seems to me impossible that he should be able to manufacture any available testimony ?

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

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

Undoubtedly the plaintiff might be examined before trial, but it is difficult to imagine any line of examination which would be permissible, which would give the defendant any information as to the days and times on which it is proposed to prove any guilty acts between the defendant and the plaintiff's wife. If we assume, for example, as we properly should, that the plaintiff is innocent of any collusion with the alleged guilty parties, that the defendant wrongfully and wickedly and without his privity or consent, committed this great wrong against him, and that to make out the case, he relies upon statements made to him by parties who themselves have witnessed the guilty acts, or upon circumstantial evidence, or upon both, can the plaintiff

be compelled to disclose either their statements or their circumstances? The statements of other parties are incompetent as evidence. We submit, therefore, that the examination of the plaintiff before trial does not give him the particulars he desires.

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

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

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

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

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

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

The concluding portion of the section has, however, a very important bearing upon the question under review. It was undoubtedly the object of the Code to simplify the practice and proceedings in the courts of our State, and to the extent and in the cases in which the Code undertook to lay down rules and regulations, all other statutory provisions inconsistent therewith

were repealed (sec. 468), but the rules and practice of the courts in civil actions, which were not inconsistent with the Code, were specially declared to be in force, subject to the power of the respective courts to modify or alter the same (sec. 469).

It is declared that the distinction between legal and equitable remedies should no longer continue, and that a uniform course of proceeding should apply in all cases. As originally framed, section 158 bore this heading: "How to State an Account in a Pleading," and provided only for the furnishing of the items of an account therein alleged. The title, so to speak, of the action clearly indicated and limited its offices. In 1851 the section was amended by providing for the delivery of a further account when the one delivered is defective, and further provided, "and the court may in all cases order a bill of particulars of the claim of either party to be furnished." It is evident that the Legislature meant, in this one section, to simplify and condense in the shortest possible form, but with the most enlarged application, such rules of practice as in its judgment were best calculated to bring about a furtherance of justice; and to the end that a party to the action, plaintiff as well as defendant, might be fully apprised of the full and particular claims made against him, the courts were authorized in all cases to order a bill of particulars of the claim of either party to be furnished. This provision does not apply to the nature of the charge, but rather to its extent. The precise nature of the charge, as already shown, is covered by section 158, as well as by section 142, which specifies that the complaint shall contain a plain and concise statement of the facts constituting the cause of action.

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

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

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

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

In the case of *Wood* v. *Wood*, an action for divorce (2 Paige 113), the Chancellor held that "the only safe and prudent course is to require the charge, whether of crimination or recrimination, to be stated in the pleadings

and in the issues in such a manner that the adverse party may be prepared to meet it on the trial," and that "neither party has a right to make such a charge against the other on mere suspicion, relying upon being able to fish up testimony before the trial to support the allegation."

In the case of *Early* v. *Smith* (12 Irish Law R. Appendix xxxv.), which was an action for slander, the defendant applied to the court for an order compelling the plaintiff to furnish the names, descriptions, and addresses of the persons in whose presence the slanderous words were spoken, as well as the time when and the places where they were spoken. The application seemed a novel one; no precedent for such an order was cited; but the court, after full examination, granted the order in a modified form — "though for the first time applied for."

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

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

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

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

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

To recapitulate the conclusions to which we have come:

1. The precise nature of the charge being apparent in the complaint, the defendant could not obtain the particulars sought under the provision of section 160.

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

3. That the discretion given to the court to order such bill of particulars, is a legal discretion to be exercised according to the well-established rules and practice of the court; and lastly,

That the order appealed from should be reversed; without costs, however,

ORDER.

The following order was accordingly entered:

At a General Term of the City Court of Brooklyn, held at the Court House, City of Brooklyn, on the 19th day of November, 1874.

Present,—Hon. GEO. G. REYNOLDS, } JJ.
" ALEXANDER MCCUE, }

[*Title of cause.*]

The appeal from the order entered in this action on the fifth day of November, 1874, denying the defendant's application to compel the plaintiff "to deliver to the defendant's attorneys a statement in writing of the particular times and places at which the plaintiff expects or intends to prove that an act of adultery or criminal intercourse took place between the defendant and the wife of plaintiff, and of the particular times and places at which he expects or intends to prove that the defendant confessed any such act of adultery or criminal intercourse," having been heard at the General Term,

It is now, on motion of Morris & Pearsall, attorneys for the plaintiff and respondent, after hearing Thomas G. Shearman, Esq., for the appellant, and Samuel D. Morris, Esq., and William A. Beach, Esq., for the respondent,

Ordered, That the said order be, and the same is hereby in all respects affirmed, with costs.

Enter, G. G. R.

(A copy.) STEPHEN J. COLAHAN, *Clerk.*

APPEAL TO COURT OF APPEALS.*

From the order of the General Term, defendant appealed, and filed the following notice of appeal and undertaking:

[*Title of the cause.*]

GENTN: Please take notice that the defendant hereby appeals to the Court of Appeals from the order of the General Term of this Court, made herein on the 19th day of November, instant, and entered herein on the 20th day of November, instant, affirming the order of the Special Term, made herein, on the 30th day of October, 1874, and entered herein on the 5th day

*The proceedings in the Appellate Court are inserted in their connection here on account of the importance of the questions involved, and because of their necessity to an understanding of the subsequent proceedings in this court.

of November, 1874, denying defendant's motion for a bill of particulars, and from every part thereof.

Yours, &c., SHEARMAN & STERLING, *Defendant's Attorneys.*

To S. J. COLAHAN, *Clerk of the City Court of Brooklyn.*

MORRIS & PEARSALL, *Plaintiff's Attorneys.*

[*Title of cause.*]

Whereas on the 19th day of November, 1874, in the City Court of Brooklyn, an order was made by the General Term thereof affirming the order made at Special Term on the 30th day of October, 1874, denying defendant's application for a bill of particulars; and the above named appellant feeling aggrieved thereby intends to appeal therefrom to the Court of Appeals. Now, therefore, Elmer H. Garbutt, of No. 161 St. James place, in the city of Brooklyn, and S. V. White, of No. 210 Columbia Heights, in the city of Brooklyn, do hereby, pursuant to the statute in such cases made and provided, undertake that the said appellant will pay all costs and damages which may be awarded against him on said appeal, not exceeding five hundred dollars.

Dated New York, Nov. 21, 1874.

ELMER H. GARBUTT.
S. V. WHITE.

City and County of New York, ss.: Elmer H. Garbutt, one of the subscribers to the foregoing undertaking, being duly sworn, says that he is a resident and house-holder within this state, and is worth the sum of one thousand dollars over all his debts and liabilities, and exclusive of property exempt by law from execution.

ELMER H. GARBUTT.

Sworn to before me this 21st day of November, 1874.

OLIN J. CLAUSON, *Notary Public, New York County.*

City and County of New York, ss.: S. V. White, one of the subscribers to the foregoing undertaking, being duly sworn, says that he is a resident and freeholder within this State, and is worth the sum of one thousand dollars over all his liabilities, and exclusive of property exempt by law from execution.

S. V. WHITE.

Sworn to before me this 21st day of November, 1874.

OLIN J. CLAUSON, *Notary Public, New York County.*

ARGUMENT BEFORE THE COURT OF APPEALS, DECEMBER 1ST, 1874.

Mr. Evarts (with whom were *Mr. Shearman* and *Samuel Hand*) for the appellant, argued the following points:

I. The order of the General Term is appealable to this court. 1. The order of the Special Term was expressly based upon the alleged want of power in the court to grant the defendant's motion. Nor is this qualified, in any material degree, by the words "and on the other grounds stated." These other grounds are not reasons of mere discretion. The decision was made, as appears from the opinion of Judge NEILSON, on the theory, first, that section 158 of the Code was the sole source of authority to the court, and that the Code did not give the court power to order particulars in such a case as this; and second, that the practice of the courts prior to the Code, established no precedent which would justify an order for particulars in this case, even if the Code were out of the way. Now the non-existence of any practice which would by analogy justify the order demanded by the defendant, would have established the want of rightful power in the court as effectually as the omission of such an authority from a statute creating a court of special jurisdiction. The courts have no such discretion as entitles them to invent an absolutely new practice for use in old and familiar proceedings. And Judge NEILSON'S decision proceeded entirely upon the ground that an order for particulars in this case would be just such an abuse of discretion as this. Mark his words. He does not say that to grant the motion would be merely "unwise" or "indiscreet." He says it would be "reprehensible," as a serious and dangerous innovation. This is not the language of a Judge who simply exercised an acknowledged discretion, denying the motion because of some peculiar facts or absence of fact which might exist or not exist in another action of the same nature. It is the language of a Judge who thinks that he is restrained by the law from granting the relief asked. 2. The General Term Judges being equally divided, the order of affirmance was purely formal, and their opinions must be laid out of the case. The fact that Judge REYNOLDS thought that the bill of particulars should be denied on discretionary grounds is wholly immaterial, because Judge MCCUE thought otherwise, and the divided court had no power to alter the decision of Judge NEILSON, either in form, substance, or motive. That decision, by the very terms of the order, stands "in all respects affirmed." 3. The order below is therefore made upon a matter of practice, "not involving any discretion," and it affects one of the most "substantial rights" which can be involved in any question of practice. *Code* sec. 11; *Russell* v. *Conn* (20 N. Y. 81); *People* v. *Central R. R. Co.* (29 N. Y. 418); *Beach* v. *Chamberlain* (3 Wend. 366).

II. At common law, the court has power to order a bill of particulars in any action, without regard to its nature, subject, or form. This power is independent of statute: it is incident to the general administration of justice. 1 *Phillips on Evidence*, 799; *Commonwealth* v. *Snelling* (15 Pick. 321); *Hancock's Appeal* (64 Penn. St. 470); *Early* v. *Smith* (12 Irish C. L. Appendix xxxv.); see *Wren* v. *Weild* (Law Rep. 4 Q. B. 213). 1. Chief Justice SHAW, in a leading case on the subject, said that the court had power, in any and every action,

whether civil or criminal, to require particulars of the claim or defense to be furnished; and that wherever justice could not be done on the trial without the information to be obtained by means of a specification or bill of particulars, the court had power to direct such information to be reasonably furnished, and to require the proof, upon the trial, to be confined to the particulars specified. And in that case a bill of particulars was required upon an indictment for libel. *Commonwealth* v. *Snelling* (15 Pick. 321). 2. The rule of common law was that particulars might be obtained in any case where, from the generality of the pleadings, the parties could not otherwise come prepared for trial. *Tidd's Practice*, 526; *Vischer* v. *Conant* (4 Cow. 396).

III. The Code of Procedure does not diminish the power which the court had, at common law, to order a bill of particulars, but rather enlarges that power. 1. The Code provides that the court may *in all cases* order a bill of particulars to be furnished by either party. *Code*, section 158. 2. This language does not relate merely to items of account. On the contrary, this clause was inserted by amendment in 1851, for the very purpose of enabling particulars to be obtained in actions where there was *no account*, and removing any doubt that might have existed as to the continuance of the practice of ordering bills of particulars. 3. But in addition to this express provision the Code provided that the former practice of the courts in civil actions, so far as consistent with the Code itself, should continue in force. *Code*, section 469. 4. The practice prevailing before the Code respecting bills of particulars is therefore entirely applicable to proceedings under the Code. This is settled by a recent decision of this court in a divorce suit, holding that the powers of the courts were not restricted by the Code, except by express language.

IV. Some general and vague language in recent treatises on practice (one of which was quoted by the Judge, in his opinion at Special Term), may seem to throw doubt upon the propriety of a motion for a bill of particulars on an action upon a *tort*. But this is an error, arising partly from inadequacy of research upon the part of the authors, and partly from a misrepresentation of what they have said. It is never safe to adopt any such general language as an absolute guide. It is always necessary to go to the fountains of law and to examine the cases in the reports in order to find what was actually decided, and avoid being misled by mere hasty expressions of opinion. Upon such examination it will be found that bills of particulars have been repeatedly ordered in actions of tort, after mature consideration by the court, and that not only in the English courts, from which we derive our practice on this subject, but also in the courts of this and other states. Reserving for the present the consideration of actions for divorce and for *crim. con.*, it will be found that bills of particulars have been ordered in the following actions of *tort:* 1. In a civil action for libel. *Jones* v. *Bewicke* (Law Rep. 5 C. P. 32). (Reversing the ruling of *Cleasby*, *B.*, at Chambers.) 2. In a criminal indictment for libel. *Commonwealth* v. *Snelling* (15 Pick. 321). 3. In an action for slander. *Early* v. *Smith* (12 Irish C. L. Appendix xxxv.). 4. In an action for slander of title. *Wren* v. *Weild* (Law Rep. 4 Q. B. 213). 5. In a writ of dower. *Vischer* v. *Conant* (4 Cow. 396). 6. In an action of ejectment. 2

Burrill Pr. 331; *Doe* v. *Phillips* (6 T. R. 597); *Doe* v. *Broad* (2 Scott N. R. 685). 7. In an action of trover, to give particulars of the articles in question. *Humphrey* v. *Cottleyou* (4 Cow. 54). 8. In an action of trespass on land, to describe the *locus in quo*. *Kirwin* v. *Jones* (3 Hodges, 230); see also, *Johnson* v. *Birley* (5 Barn. & Ald. 540). 9. In an action for escape. *Davis* v. *Chapman* (6 Ad. & El. 767); *Webster* v. *Jones* (7 Dowl. & R. 774).

V. If it were possible that the court had not power, or would not exercise the power, to order a bill of particulars in a civil action of tort, *a fortiori*, particulars could not be ordered in criminal proceedings. But we have already shown that particulars *are* ordered in such cases: a point which we can further illustrate. 1. Particulars were ordered in a prosecution for embezzlement. *Rex* v. *Hodgson* (3 Carr. & P. 442); *Rex* v. *Bootyman* (5 Id. 300). 2. So on an indictment for nuisance, particulars were ordered of the separate acts of nuisance which the prosecutor intended to prove. *Rex* v. *Curwood* (3 Ad. & El. 815); *Regina* v. *Flower* (3 Jurist, 558). 3. So on an indictment for being a common seller of liquor, particulars were ordered of the names of persons to whom liquor was sold. *Commonwealth* v. *Giles* (1 Gray, 466). 4. On an indictment for being a common barrator, where the gist of the offense is not in a single act, but in a course of conduct, defendant is entitled to particulars. *Hawkins P. C., B.* 1 c. 83, § 13; *Goddard* v. *Smith* (6 Modern, 261); *Commonwealth* v. *Davis* (11 Pick. 432); see *Lambert* v. *People* (9 Cow. 578, 587). 5. We have already mentioned that the defendant in a criminal prosecution for libel has been required to give particulars of his intended justification. *Commonwealth* v. *Snelling* (15 Pick. 321). 6. In the U. S. Circuit Court (Southern Dist.) it is the uniform practice to order bills of particulars in prosecutions for turning out barrels of spirits without payment of tax.

VI. Although there is no direct precedent reported in this state of an order for a bill of particulars in an action for criminal conversation, or for divorce, yet there are express precedents in England and in other states of this Union where the common law prevails; and there are plain indications in the decisions of our own courts that it is the policy of the law, here as elsewhere, to give the defendants in such actions the benefit of precision and particularity in the charges brought against them. 1. In England, since the Statute of 1858 (20 & 21 Vic., c. 85), actions to recover damages for criminal conversation must be brought in the Divorce Court, and in conjunction with a petition for divorce, the wife and the alleged paramour being joined as co-respondents, the trial being had before a jury, and damages being recoverable as under the old practice, though the husband is not allowed to put them in his pocket, but they are disposed of by the court, and generally invested for the support of the wife and children. In such proceedings it has been repeatedly adjudged by the English Court of Divorce that the alleged paramour is entitled to a bill of particulars when more than one act of adultery is alleged. *Bancroft* v. *Bancroft* (3 Swab. & T. 610); *Higgs* v. *Higgs* (11 Weekly Rep. 154); see *Sanderson* v. *Sanderson* (20 Id. 261); *Codrington* v. *Codrington* (3 Swab. & T. 368); *Hunt* v. *Hunt* (2 Id. 574); see also *Porter* v. *Porter* (3 Id. 596). 2. The right of the defendant in a divorce suit

to demand a bill of particulars of the persons, times, and places in a charge of adultery, and of periods of times in a charge of cruelty, has been repeatedly affirmed by the courts. *Winscom* v. *Winscom* (3 Swab. & T. 380); *Grafton* v. *Grafton* (28 Law Times, N. S. 144); *Sanderson* v. *Sanderson* (25 Id. 857); *Brown* v. *Brown* (Law Rep. 1 P. & D. 461); *Adams* v. *Adams* (16 Pick. 254); *Shaw* v. *Shaw* (2 Swab. & T. 642); *Greaves* v. *Greaves* (L. R. 2 Pr. & D. 423); *Latour* v. *Latour* (2 Swab. & T.); *Gray* v. *Gray* (Id. 554); *Hulse* v. *Hulse* (L. R. 2 P. & D. 259); *Steele* v. *Steele* (1 Dall. 409); *Garrat* v. *Garrat* (4 Yeates, 244); *Hancock's Appeal* (64 Penn. St. 470); and see *Gardner* v. *Gardner* (2 Gray [Mass.], 434); see also *Harrington* v. *Harrington* (107 Mass. 329). 3. The same object was secured in the Court of Chancery of this State on the framing of issues in divorce suits, if full particulars were not given in the bill.* See *Wood* v. *Wood* (2 Paige, 108, 112). 4. The rules and practice of the Supreme Court still require specific allegations of time and place in actions for divorce on the ground of adultery, and the plaintiff is confined to these allegations upon the trial. *Anon.* (17 Abb. Pr. 48). 5. The action of *crim. con.* has always been, and still is, treated as one partaking more of a criminal than a civil character; and the plaintiff has been held to stricter proof than is demanded in ordinary civil actions. The same proof of marriage must be given in this action which is required in a prosecution for bigamy; and evidence which would abundantly suffice in any ordinary civil proceeding, where the fact of marriage came in question, is inadmissible in an action of *crim. con.* or divorce. 2 *Greenl. Ev.* § 461; *Bishop on Mar. and Div.* § 815; *Morris* v. *Miller* (4 Burr. 2057); *Dann* v. *Kingdom* (1 N. Y. Supreme, 492).

VII. This is pre-eminently a case in which the defendant is entitled to particulars of the charges to be brought against him. In actions for divorce, which are of a very similar nature, and for reasons which apply fully to this case, the courts uniformly require a particular and specific statement of the wrongful acts intended to be proved. Without some such precaution the defendant may easily be surprised at the trial by false witnesses, or even by witnesses laboring under a mistaken impression, charging him with being present at suspicious places which he never visited; and he would be unprotected save by his own unsupported denial. Every judge well knows that in actions of this kind, the danger of trumped-up testimony is immense. There are numberless precedents of false and manufactured testimony in this class of actions which are reported in the books; but what are these to the vast number which go unreported? There is absolutely no class of cases in which the danger from perjured testimony of witnesses pretending to see the parties under guilty circumstances, in strange and solitary places, is so great as in actions for divorce and for *crim. con.* But divorce suits are generally tried by referees, who give almost unlimited time for the detection and exposure of fraudulent evidence. Actions of *crim. con.* are always tried by a

* The practice of bills of particulars was not adopted in Chancery, because there was no jury, and witnesses were examined out of court, at leisure, so that there was no chance for surprise. *Cornell* v. *Bostwick* (3 Paige, 162). But where, as in divorce suits, special issues were tried by jury, surprise was guarded against by particulars *in the issues*.

jury, and usually proceed continuously and rapidly. The danger of false testimony is, in such cases, therefore greatly enhanced.

VIII. It can not be objected that the matters of which particulars are sought are more within the defendant's knowledge than in the plaintiff's. 1. This objection, if it had any validity, might have been raised and enforced in the various actions for divorce, and in the nature of *crim. com.*, which we have already cited, and in which particulars were invariably ordered. Unquestionably that objection was duly considered and overruled in those cases, upon the very ground already referred to, viz., the danger of manufactured evidence in such controversies. In *Wood* v. *Wood* (2 Paige, 113), this objection was raised and overruled, the Chancellor saying that the plaintiff had no right to make such a charge, if he was entirely ignorant of particulars. 2. But in the present case, the plaintiff has full knowledge of these particulars, and has boastingly published to the world his possession of that knowledge. He does not pretend to have forgotten these particulars; upon the contrary, he expressly says that he withholds them for the present. What could be his motive for thus withholding them? His pretense of delicacy is absurd. He has had no delicacy about dragging his wife through the mire and mud of this wicked charge. He has had no delicacy about exposing to the public the wounds of his bleeding heart, and the anguish of the home which he himself has deliberately shattered. Why, then, is he suddenly struck with a sense of delicacy when he comes to a mere question of dates and places? Charges of adultery, of debauchery, of criminal intercourse repeated and prolonged, he has not the slightest hesitation in throwing at his wife. He is not even restrained by his sense of delicacy from raising a question as to the legitimacy of a child which he has always acknowledged as his own, and still acknowledges. Nor does his sense of delicacy require him to say, in his published statement, what conclusion he reached as to the legitimacy of this child. But when it comes to the simple duty of specifying the times and places, his long-suppressed delicacy revolts, and he "*can not bring himself*" to do it. Is it not obvious that his real motive is thus to advertise for evidence, and to prepare himself to match the testimony of perjured witnesses with his own declarations as to pretended confessions, corresponding to that testimony? 3. The very innocence of the defendant makes the want of particulars a trap for him. If he were guilty, he would know the times and places. But being innocent, it is *impossible* for him to know them, or to guess what dates may be assigned. As was well said by Senator Spencer, in deciding a similar question: "How are they to prepare for their defense? It would be in vain that they should ransack their memories; for an innocent man would be the least likely to suspect the transaction for which he is to be implicated." *Lambert* v. *People* (9 Cow. 578, 592).

IX. It may be objected that the defendant should go to trial, and rely on his right to object to any evidence of acts, not specifically stated with times and places, in the complaint. Probably such an objection might be held good on the trial, but the defendant ought not to be required to take that risk. 1. The question is doubtful; there are one or two cases which hold, that in an action of this nature, if a bill of particulars is not demanded, the

defendant is precluded from objecting at the trial, to any range of proof. See *Hancock's Appeal* (64 Penn. St. 470). 2. Even if the decided weight of authority were to the contrary, yet the defendant should not be compelled to raise the objection for the first time at the trial, and have the question disputed before the jury, he being subjected to all the suspicion which might arise in their minds from his effort to narrow the issues, while in fact he is ready and willing to meet all issues of which he receives fair notice. 3. The defendant is entitled to vindicate his character in this action, and to meet at once all charges and imputations which the plaintiff may hold or pretend to hold in reserve.

X. The defendant was right in applying for a bill of particulars, instead of moving to make the complaint more definite and certain. The latter proceeding would not have been an appropriate or efficient remedy. 1. The complaint was not indefinite nor uncertain, within the meaning of the Code upon that subject. The complaint showed "the precise nature of the plaintiff's claim." The Code does not require that the particulars of the plaintiff's claim shall be stated in the complaint, but only its precise nature. What the defendant needs to know is exactly that which is provided for by the common-law practice of requiring a bill of particulars. The defendant needs to know, not the ultimate facts, but the evidence by which it is proposed to establish facts, and, as was said by Chief Justice SAVAGE, "the proper function of a bill of particulars is to apprise the party of the evidence which is to be offered, so that there can be no mistake as to the preparation to be made to resist the claim." *Smith* v. *Hicks* (5 Wend. 48); see also *Matthews* v. *Hubbard* (47 N. Y. 478). *Kreiss* v. *Seligman* (8 Barb. 439; 5 How. Pr. 489). 2. This is not a question of *pleading*, but of orderly preparation for the trial. The pleading was well enough for its proper purposes. It might have been unjust to require more particularity from the plaintiff at the time of serving his complaint. But he has now declared himself ready for trial, and is therefore fully prepared to give particulars. 3. Accordingly, it has been held in English cases, precisely like this, where the complaint alleged one act of adultery with specific circumstances, and several others without the same particularity, that a bill of particulars was not merely the proper, but was the *only remedy;* and in that case a motion to require the pleading to be made more definite and certain by stating the dates of the subsequent acts, was denied upon this express ground. And this is an important decision, because the practice in the English courts is now almost precisely similar to our own. *Hunt* v. *Hunt and Duke* (2 Swab. & T. 574); *Green* v. *Green* (33 Law Jour. [Mat.] 83); to same effect *Leete* v. *Leete* (2 Swab. & T. 568); *Suggate* v. *Suggate* (1 Id. 489). 4. A motion to make the complaint more definite would not only have been inappropriate, but utterly ineffectual for the defendant's purpose, and would not have given him any of that protection against surprise which he has a right to claim. If the complaint had been ever so explicit in its averments of time and place, the plaintiff might, nevertheless, have introduced evidence of different times and places, for the court could not have accompanied the order to make the complaint more definite with an order precluding the plaintiff from giving testimony of acts occurring at other dates.

Such an order the court *has* power to make *when a bill of particulars is furnished;* but there is no precedent, and no warrant, for a like order upon a mere motion for a *correction of the complaint.* It is true, that the defendant may raise the question of surprise at the trial, but even if his application for a postponement is granted upon that ground, he would be subject to the disadvantage of having to try his cause piece-meal. What his counsel desire for him is to know, shortly *before the commencement of the trial,* precisely what allegations he is to meet, and then, having begun the trial, to go through with it to the end. 5. The defendant is a clergyman of world-wide fame and reputation. It was incumbent upon him, not for mere reasons of practice in this court, but for reasons connected with his public name and fame, to meet the charge of the complaint promptly, fully, and squarely. A general charge of criminal intercourse was made against him, and he was entitled to deny that fully, without reference to dates or places; and this he did, going even beyond the ordinary language of a general denial, so as to avoid any possible pretense that he sought to evade by reference to dates, and asserted in the most sweeping language that he never, at any time or at any place, committed any of the acts charged against him. If he had moved for an amendment of the complaint narrowing the issue, it might have been treated as significant evidence of his unwillingness to deny under oath the whole broad charge. That he has now done; and he is not now seeking to narrow the issue, but simply to know what the issue is, and what charges he must meet, not only with his own oath, but with confirmatory evidence. For the purpose of raising an issue for trial, his own oath was conclusive; but for the purpose of deciding the issue when raised, he must support his own oath by further testimony; and this it is impossible for him to do unless he has reasonable notice of the specific charges which he must meet.

XI. The application was not made out of season, and was not and could not be denied on that ground. No doubt a good reason must be shown for an application made after issue joined; but sufficient reason is shown in this case. To have demanded a bill of particulars before answering would have subjected the defendant to the same imputation upon his character and courage which would have been the consequence of a motion to make the complaint more definite and certain. Such an application would have necessarily delayed his answer. It would not in any degree have been necessary for the purpose of enabling him to answer, because he knew very well that he had *never* been guilty, at *any* time or *any* place, of the acts alleged; and it would have seemed an act of bad faith on his part toward the court to ask for an extension of time to answer while a bill of particulars was being furnished, when his answer would have been in exactly the same form *without* particulars as *with* them. It was not for the purpose of *pleading* that the defendant needed particulars, it was for the purpose of *preparing for trial;* and it is not right or proper that an application solely for the latter purpose should be made before pleading. This doctrine is uniformly recognized in applications for discovery of documents (*Thompson* v. *Erie R. Co.* 9 Abb. N. S., 230;, and has recently been recognized by the Convention of Judges respecting the examination of parties before trial (Rule 21), and

neither proceeding is allowed to be had before pleading without showing specially that it is needed for that purpose, and not merely for the purpose of meeting the trial of the issues. And there is no doubt that a bill of particulars may be ordered after issue. *Yates* v. *Bigelow* (9 How. Pr. 186).

XII. With all respect to the learned Judge at Special Term, we submit that his opinion was based upon misapprehension, at least so far as regards that part of it which deals with the application for particulars as to the times at which the plaintiff intends to prove that the alleged wrongful acts took place. 1. The opinion shows that the complaint was in proper form and was well pleaded, thus disposing of the objection that we ought to have moved to make the complaint more definite; and in this view we entirely concur. 2. The opinion next suggests that courts of law derive all their authority to require bills of particulars from legislative directions, and compares such proceedings with an application for the inspection of documents. But this is not correct. The power to order a bill of particulars was *not* derived from statute, but was a power always *inherent in the court*. 3. The citation from a treatise on practice, prepared by one of the counsel, while offering a fair ground of argument, can not be binding even on the counsel himself. If treatises on practice were written in language perfectly exact and full, twenty volumes would hardly suffice for one book of the kind. The authors can not possibly find time or room for more than mere suggestions, which must be followed up to the sources of authority in order to arrive at certainty. In the cases referred to by this treatise, it will be found that the reason for denying the application was *not* because the actions were in *tort*, but because in one case (*Murphy* v. *Kipp*, 1 Duer, 659) particulars were demanded of the precise injuries which caused the death of a person run over by a stage; and in the other cases nothing appeared to show that the party applying for particulars could be prejudiced for want of the details which he sought to know. So with regard to the language, that the defendant ought to show, by affidavit, "that he does not know what the plaintiff is suing for," it is plain that all that is meant is that the defendant must affirmatively show that he is so far ignorant of the facts upon which the plaintiff relies as to render a bill of particulars necessary for his protection. This is shown beyond doubt by reference to the case cited. *Snelling* v. *Chennells* (5 Dowl. 80). 4. All the other authorities cited by the learned Judge are cases upon the power of the court to order an *inspection of documents*, which in courts of law was, in the main, a purely statutory power, and which bears no analogy to the power of the court to order particulars. The *times and places* at which the main facts occurred, upon which the plaintiff relies, constitute no part of his means of evidence, and certainly are not *documentary* facts. We ask for no documents, for no discovery, for no names of witnesses; and, with all deference, we are unable to see what bearing decisions or statutes upon the discovery of documents, or even the examination of parties, have upon our application. 5. The learned Judge suggests that witnesses may be hostile, and refuse to disclose the facts before the trial. That might possibly be an excuse if any such state of facts were alleged; although the decisions in numerous cases are adverse to such a view, and especially so in cases involving the question

of adultery, in which the courts of this and every other state accept no such excuse, but insist upon a precise statement of times and places before the trial. However this may be, there is no such state of facts here. We have proved that the plaintiff knows perfectly well the times and places at which he pretends that the wrongful acts have been committed. His affidavit admits this to be true, and does not suggest that he has a single hostile witness. This suggestion was considered and overruled in *Early* v. *Smith*, cited in our appendix. 6. It is suggested that a bill of particulars is only allowed of the *claim*, and that in this case the claim is the *damage* and not the *specific acts of injury*. But we submit that this can not be so. The learned Judge says: "If the wrong be the conversion of personal property, the enumeration or description of it would be the bill of particulars of the *claim*," thus conceding that by *claim* is meant not merely the *amount of money* demanded, but the *allegation of wrong done*. For in an action for conversion, the plaintiff does not demand the restoration of the *property taken*, but only claims the *money value* of that property. If, then, he can be compelled to give a particular description of the property taken from him, why can not a plaintiff alleging an injury of the description alleged in this action be compelled to state the particular instances on which that injury was committed? 7. It is suggested that the defendant can accomplish the same result as that which he now seeks by examining the plaintiff before trial. But this is not so, for while he could thus compel the plaintiff to state the particulars of the alleged confessions made to him, he could not require any pledge that further proof of wrongful acts would not be given upon the trial, nor could the court, upon the basis of such an examination, grant any order precluding such a proof. Moreover, by forcing the defendant into this course, the court would practically compel him to adopt the plaintiff as a witness, and to give the plaintiff an opportunity of putting his own testimony before the jury without his personal attendance; and every lawyer knows how ineffective a cross-examination is when not conducted in the actual presence of the jury.

XIII. The opinion of Judge REYNOLDS, at General Term, does not dispute the *power* of the court to require particulars to be given, but holds that, as matter of discretion, such an order should not be made. The reasoning of this opinion may be briefly answered, although, as the order is based upon entirely different grounds, this may be a needless task. 1. The learned Judge labors under an entire misapprehension of the effect of a bill of particulars. He evidently supposes that, particulars once being given, the plaintiff would be rigidly tied down to a precise date and a precise place, notwithstanding he should make some slight mistake which did not mislead the defendant, and the correction of which could not operate as a surprise. This is not the case. The court would allow the bill of particulars to be amended in any way *before* the trial, and would disregard any variance *at* the trial, if the defendant was not misled thereby. 2. The learned Judge anticipates that the evidence to be produced by the plaintiff will be such as to cause him great embarrassment if particulars are given. Regarding it as probable that the plaintiff will prove confessions of an indefinite nature, the Judge argues that a bill of particulars will exclude evidence not pointing to

specific dates, which he assumes that these confessions will not do. But the answer to this is two-fold : (*a.*) An interpretation of a bill of particulars which should exclude a general confession mentioning no dates, is an absurdity of which no Judge trying this cause could be guilty. Such a confession would be competent to confirm circumstantial evidence pointing to any date, and would therefore be admissible in aid of evidence given under any imaginable bill of particulars. (*b.*) If the plaintiff has, in fact, no other evidence than such as is intimated by Judge REYNOLDS, it was his business to say so in his affidavit, and not to leave this fact to be guessed by the court. If for any other reason it was difficult or dangerous for him to give the particulars asked, he should have shown that in the same way. (*c.*) But, on the contrary, the affidavits showed that the plaintiff claimed to have a confession *specific* in its nature, giving *dates*, *places*, and minute particulars. And the plaintiff never pretended that he had the least difficulty in making out a statement of particulars, nor did even his counsel, on either of the two arguments now had, ever suggest the objection which Judge REYNOLDS has raised. 3. The learned Judge thinks that no support for our motion can be derived from the practice of Chancery on ordering feigned issues, because none were allowed if the bill did not allege adultery with certainty, citing *Codd* v. *Codd* (2 Johns. Ch. 224), and *Wood* v. *Wood* (2 Paige, 108). But in *Codd* v. *Codd* the bill specified *no time*, *place*, *or person*, and was therefore hopelessly vague; and in *Wood* v. *Wood* the Chancellor expressly decided that the feigned issue must be more specific than was necessary for the pleadings. The two cases together precisely establish our claim, viz., that if *no* time or place had been alleged, our remedy would have been by motion to correct the pleading, but that, as the case stands, our proper remedy is by bill of particulars, thus agreeing with *Hunt* v. *Hunt* (2 Swab. & T. 574). 4. The other objections of Judge REYNOLDS are fully answered by the very able and conclusive opinion of Judge MCCUE. 5. But the most conclusive answer to Judge REYNOLDS' opinion is given by Judge REYNOLDS himself. For, referring to the case of *Hunt* v. *Hunt* (2 Swab. & T. 574), in which it was alleged that Mr. Hunt had committed adultery with three women, whose names were given, "in and prior to December, 1861," and to *Adams* v. *Adams* (16 Pick. 254), in which the complaint alleged that the defendant had committed adultery "*at divers times for a period of eight years*," the learned Judge says : "Under a system which tolerates *such* pleading in an action for divorce, as is instanced in the foregoing references, the complaint *must of course be supplemented by a statement of particulars.*" In our case the plaintiff charges adultery on October 10th, 1868, "and on *divers other days and times* after that day, *for a period of six years*" ; and this pleading, it is agreed by all the Judges below, is "tolerated" by our system. Is it necessary to argue that "under a system which tolerates *such* pleading in an action for" *crim. con.*, "the complaint *must of course be supplemented by a statement of particulars*"? 6. It is said, however, that the stringent rules which govern actions for divorce should not be applied to this action. Why not? Is not the plaintiff in a *divorce* suit just as ignorant of precise times and places as the plaintiff in a *crim. con.* suit? Are not the facts to be proved precisely

the same? Have not the courts applied even more stringent rules of evidence to the proof of marriage in this action than they prescribe in cases of divorce? Is there not precisely the same danger of surprise in this action that there is in divorce? And, in view of the fact that the alleged paramour *can* appear as a witness for his own vindication in a divorce suit, while an innocent wife *can not* testify in an action of *crim. con.*, ruinous as it may be to her reputation, should not the courts require at least *as much* precision in this action as they would in one which gave the wife an opportunity to defend herself? What is there in this species of action—denounced, as it has been, by all moralists, of late years, as infamous and demoralizing—"a remedy worse than the disease"—that should entitle it to such favor from the court?*

Mr. Pryor, for the respondent, argued the following points:

I. The order, if appealable to this court, is reviewable here only by virtue and authority of subdivision 4, section 11, Code of Procedure. 1. "This court has not an unrestricted jurisdiction in the correction of errors, or the review of the orders and decisions of other tribunals. Its jurisdiction is regulated by statute *and is confined to the review of such orders and judgments as are expressly mentioned in the act conferring and regulating its powers.*" ALLEN, J., in *Paul* v. *Munger* (47 N. Y. 469, 471). 2. Subdivision 4, section 11, *in terms*, precludes a review by this court of an order "involving any question of discretion." 3. The application below proceeded upon the last clause of section 158 Code; and that clause, *in terms*, makes the allowing or denying the order a question of discretion with the original tribunal. *Blackie* v. *Neilson* (6 Bosw. 681); *Fullerton* v. *Gaylord* (7 Rob. 551); *Medbury* v. *Swan* (46 N. Y. 200). 4. That an order "involving a question of discretion" is not reviewable in this court, is settled by repeated adjudications. "Only such orders arising upon any interlocutory proceedings or upon any question of practice, are appealable as affect a substantial right, and do not involve any question of discretion." ALLEN, J., in *McCoun* v. *N. Y. C. & H. R. R. R. Co.* (50 N. Y. 177). "This court has steadily disclaimed the right to review, by appeal, an order of a Special Term in matters resting in discretion. . . . . This court declines to review discretionary orders as inconsistent with the constitution of the court, and its character as a tribunal in which questions of law only are to be considered." ANDREWS, J., in *Livermore* v. *Bainbridge* (15 Abb. Pr., N. S., 436); *Medbury* v. *Swann* (46 N. Y. 200) turned on the construction of the word "may," section 177 Code, and the effect of subdivision 4, section 11; and this court held that the word "may," in section 177, is permissive, not mandatory; and the right to set up new matter by supplemental pleading is not absolute, but discretionary, and not appealable to this court. "The questions were addressed to the discretion of the court, and the determination thereof by the

* In England, the old action of *crim. con.* was abolished, as indecent, in 1858, and an action substituted, in which the damages do not go to the husband, but are invested by the court for the benefit of the wife, while chaste, and of the children. Husbands there can no longer traffic in their own shame.

General Term can not be reviewed by this court." GROVER, J., in *Shuttleworth* v. *Winter* (55 N. Y. 624, 629); *Gray* v. *Fisk* (53 N. Y. 630). The allowance of a common-law writ of certiorari rests in the sound discretion of the court; and where the court below, in the exercise of its discretionary power, quashes the writ, after a hearing upon the merits, this court will not review the decision. RAPALLO, J., in *People* v. *Hill* (53 N. Y. 549). Specifically, in point, is *Barry* v. *Mutual Life Ins. Co.* (53 N. Y. 536), in which the court, *per* ALLEN, J., construes and defines the jurisdiction imparted to this court by subdivision 4, section 11 Code; and adjudicates that, under that provision, a discretionary order is not reviewable by the Court of Appeals. The effect of the amendment in 1870 of subdivision 4, section 11, by inserting the words "not involving any question of discretion," is propounded by this court, *per* RAPALLO, J., in *Townsend* v. *Hendricks* (40 How. Pr. 157). "We think the order not appealable to this court. It was discretionary with the court below whether to proceed summarily against the sheriff or leave the parties to litigate in the ordinary way." CHURCH, Ch. J., in *Mills* v. *Davis* (53 N. Y. 349); *Shuman* v. *Straus* (52 N. Y. 404); *Carrington* v. *Florida R. R. Co.* (52 N. Y. 533); *People* v. *Schoonmaker* (50 N. Y. 499); *Cushman* v. *Brundrett* (Id. 296); *Southwick* v. *Southwick* (49 N. Y. 510, 520); *Donley* v. *Graham* (48 N. Y. 658); *Taylor* v. *Root* (Id. 687); *Tauton* v. *Grok* (8 Abb. Pr., N. S., 385), and collection of authorities in note. *Colman* v. *Dixon* (50 N. Y. 572). *Brown* v. *Leigh* (*Ct. of App.*, 13 Abb. Pr., N. S., 305); *Bolles* v. *Duff* (42 N. Y. 256); *Hasbrook* v. *The Kingston, &c.* (*Ct. of App.*, 5 Abb. Pr., N. S., 399); *Van Dewater* v. *Kelsey* (1 N. Y. 543); *Schaettler* v. *Gardiner* (47 N. Y. 404). 5. If there be any decision of this court apparently in conflict with the authorities cited, it will be discovered on examination either: 1st, that the decision turned on some other paragraph of section 11 Code than subdivision 4; or, 2nd, that the right in controversy was *absolute* and not resting in the discretion of the court; or, 3d, that the decision occurred before 1870, when the words "not involving any question of discretion," were inserted in subdivision 4. 6. *Matthews* v. *Hubbard* (47 N. Y. 428) is not *contra*, because, 1st, it is not apparent, but the action was upon an account, in which event, probably, a bill of particulars is a matter of absolute right; 2nd, the bill of particulars having been given, plaintiff was restricted to recovery of the items stated; and, by expunging any item, he was deprived *pro tanto* of a right; 3d, no question of jurisdiction was raised or considered in this court.

II. Doubtless appellant's contention is that, although the application, being to the discretion of the court, its denial is not reviewable here; yet, inasmuch as the bill of particulars was refused for want of power in the court to allow it, the order of the General Term is appealable to this court. *Russell* v. *Conn* (20 N. Y. 81). But the position is untenable. 1. It is an universally true proposition of law, in support of which it were mere pedantry to adduce authority, that error, to be available on appeal, must appear on the face of the record under review. Hence, in *Wright* v. *Hunter* (46 N. Y. 409, 412), on appeal from an order at General Term granting a new trial, this court said that "where the return shows that questions of fact were legitimately before the General Term, and that the evidence was such that the court *may have*

reversed the judgment on facts, it is impossible to say, from an inspection of the record, that they committed an error of law in granting a new trial, though we should be of opinion that some of the exceptions were well taken." To the same effect are *Sands* v. *Crooke* (46 N. Y. 564), and *Downing* v. *Kelly* (48 N. Y. 433). Decisively in point is *Tracey* v. *Altmyer* (46 N. Y. 598). The appeal was from an order of the General Term, affirming an order denying a motion for a new trial on the ground of surprise and newly discovered evidence. From the opinion of the judge at Special Term, it appeared that the motion had been denied *solely* on the ground that it could not be made after entry of judgment. This the Court of Appeals held to be error: but proceeded to say, "the General Term had the power to review the order on the merits and upon any and every ground connected therewith. . . . . The order of the General Term is simply an affirmance of the order at Special Term. This is entirely consistent with the idea that the General Term considered the merits and determined the same and based the order of affirmance thereon. It was its duty to do so, and the presumption is that this duty was performed, until the contrary appears. It is incumbent on a party seeking a reversal of a judgment or order to show affirmatively that an error was committed to his prejudice. It is not sufficient to show that it may have been committed. . . . . For the reason that it does not appear, (but) that the General Term reviewed the order and passed upon the merits, the order appealed from must be affirmed." Pages 604, 605. *Laning* v. *N. Y. C. R. R. Co.* (49 N. Y. 521, 539), is of equivalent import. The appeal was from an order of the General Term denying a new trial. It appeared plainly from the opinion at General Term that its order of affirmance was grounded on an erroneous impression of a want of power. But this court ruled in the following language: "We are not authorized to review a judgment and reverse it for an alleged error which does not appear *upon the record*, and is not shown or arrived at save by expressions appearing in the opinion of the court." Accordingly the order was affirmed. *Cushman* v. *Brundrett* (50 N. Y. 296) is an equally explicit authority for the proposition, that an appellant, from a discretionary order, must show affirmatively that its allowance involved no exercise of discretion. 2. In fact, neither the order nor the opinion at Special Term shows that appellant's application was denied for lack of power in the court to grant it. In his opinion, Judge NEILSON only disclaims authority to compel respondent to specify the times and places of *appellant's confession of the adultery*, a power which indisputably no court possesses; a right which appellant himself renounced at General Term. The order at Special Term purports to proceed as well on a want of merits on the part of appellant as on a defect of power in the court—the latter being plainly predicated of the particulars of confession. The judge, it appears, did exercise his discretion, and upon the whole matter, although, as to one branch of the application, he repudiated the power as a speculative proposition. The order at General Term is a simple affirmance of the order at Special Term, and, in itself, imputes no want of power to the Court; while, as to the opinions of the Judges, MCCUE, J., expressly asserts the power, and REYNOLDS, J., waiving the question of power, grounds his conclusion on the merits of the motion.

8. The application having been made to the discretion of the court, and, it not appearing that its denial, or the affirmance of the denial, proceeded from the supposition of a want of power, but the reverse, this court has no jurisdiction to review the order, and the appeal should be dismissed.

III. If the court entertain the appeal, the order should be affirmed. 1. The application was not for *a bill of particulars*, but for a statement in writing of the times and places of the acts of adultery imputed to appellant. If the complaint was defective in these circumstances, the proper redress was by motion to make more definite and certain, pursuant to section 160 Code. *People* v. *Ryder* (12 N. Y. 433, 440, 442); *Prindle* v. *Caruthers* (15 N. Y. 425). 2. The term "particulars of the claim," section 158 Code, imports *ex vi termini*, a claim capable of being resolved into parts, fractions, particulars,—and it is these parts of a whole, these fractions of a unit, these *particulars* of a general, that the party may be required to furnish his adversary. But a cause of action for *crim. con.* is one, entire and indivisible, and is not susceptible of severance or separation into parts or particulars. The time and place of the wrong are mere accidents, which serve to discriminate and identify the claim; and if, by reason of their omission, the claim be indefinite and uncertain, the remedy is by application of section 160. 3. Hence, the present case is not within the intent or operation of section 158. And, for another reason, namely, that neither in professional nor in popular language is the word "claim" appropriate to the idea of a right of redress for a personal tort. A "claim" by a man for the seduction of his wife is a legal as well as philological solecism. *Murphy* v. *Kipp* (1 Duer, 659). "The office of a bill of particulars is to apprise the defendant of the *items* which the plaintiff intends to prove upon the trial, and to restrict his proofs to the matters specified." RAPALLO, J., in *Matthews* v. *Hubbard* (47 N. Y. 428). A demand for the *items* of adultery is a novelty in jurisprudence and an affront to common sense. "The use of a bill of particulars is to apprise a party of the specific *demands* of his adversary when the pleadings are general, and leave uncertain what is particularly *demanded*, and has no application whatever when the demand is specifically set forth in the pleading." SAVAGE, J., in the *People* v. *Waring* (4 Wend. 200). Here our demand is specifically stated in the complaint, namely, of redress for the seduction of respondent's wife; and no amplification of the complaint would make the demand more distinct and intelligible. A specification of the acts of criminal conversation might probably apprise appellant of the direction of our evidence, but would not make the claim or demand more clear. 4. If a party be in possession of facts or documents material to his adversary's case, that adversary may compel their disclosure or inspection by virtue of sections 391 and 388 Code. Did appellant desire to extract evidence for his defense from respondent, he might have recourse to these provisions. 5. The cases cited from foreign books by appellant's counsel illustrate his learning and research, but are altogether ineffectual to his present purpose. The judicial procedure of New York is determined and regulated by positive legislation; and there is no exigency in the administration of justice which is not supplied by the provisions of our own system. If the Code be silent on a point of procedure,

the antecedent practice is applicable ; but neither the Code nor the former practice affords any principle or precedent to authorize a bill of particulars in an action for a personal tort. The provisions of our law are abundant and effectual to accomplish every end contemplated by the more cumbrous machinery of other states and countries, *e. g.*, if a complaint in divorce for adultery fail to specify times, places or persons, the defect is remediable otherwise than by a bill of particulars. *Wood* v. *Wood* (2 Paige, 108.) Hence, a bill of particulars in a suit for divorce is unknown in the practice of New York. So, whenever a party is likely to be misled or surprised by the generality of the complaint in any action, he may invoke the operation of section 160 Code. Our system of procedure is complete and consistent, and needs no reinforcement from alien sources. 6. But, assuming, for argument, that section 158 Code applies to the present case, the bill of particulars was properly refused. 1st. When the defendant himself knows as well or better than the plaintiff the very details which he seeks, the motion will be denied. *Young* v. *De Mott* (1 Barb. 30); *Blackie* v. *Neilson* (6 Bosw. 681.) Here, of all persons save one, and that not the respondent, the appellant best knows the times when and the places where he committed the acts of adultery. Appellant's demand is simply absurd. 2nd. If it be answered that we have ascertained times and places from appellant's confession, the argument admits he knows times and places, and so is in no need of a specification. 3d. It is apparent on the papers that respondent's proof consists chiefly of appellant's admissions of the adultery. The case is conceivable, that a plaintiff's proof might consist exclusively of the adulterer's confession. Then, except the defendant chose to give time and place, he would escape chastisement, though with an avowal of guilt in his mouth. Now, in *crim. con.*, "it is not necessary to prove the fact to have been committed at any particular or certain time or place. *General cohabitation* excludes the necessity of proof of particular acts." 2 *Greenl. on Ev.*, sec. 41; *Cadogan* v. *Cadogan* (2 Hagg. Con. R., 4 note); *Rutton* v. *Rutton* (Ib., 6 note). "The confession of the defendant need not refer to any particular time or place ; it will be applied to all times and places at which it appears probable, from the evidence, that the fact may have been committed." 2 *Greenl. on Ev.*, sec. 45; *Burgess* v. *Burgess* (2 Hagg. Con. R., 223, 227). Thus, if a bill of particulars be required of respondent, and his only evidence consists of appellant's *general* confessions (which the law adjudges plenary proof), he can not, of course, furnish the particulars, and his complaint would be dismissed. 2 *Wait's Practice*, 351. Or should respondent give particulars of time and place, in respect of which he had been misinformed by the appellant or otherwise; then, no matter how clear and specific and conclusive the proof of adultery, it would be unavailing and he would fail in his action. *Matthews* v. *Hubbard* (47 *N. Y.* 428); *Bowman* v. *Earle* (3 Duer, 694). 7. Appellant denies the imputed adultery, alleges respondent means to fabricate a case and support it by false testimony, and demands the particulars of this fictitious claim. We suppose this to be the first instance of a demand of the times and places of the occurrence of an imaginary and non-existent fact. If the thing took place, then, from the nature of the case, appellant knows the times and places better than respondent. If the thing

never was, then it is impossible to predicate of it either time or place. Appellant's imputation of such wicked design was repelled and retorted by respondent; but in no event would a court, in advance of the trial, and on the wanton and unsupported assertion of his adversary, load a suitor with the infamy of meditated fraud and perjury.

DECISION OF THE APPEAL.

On December 1, 1874, the following opinions were delivered:

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

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

The best evidence on the first point is the order of the court denying the defendant's motion. This order recites, among other things, that an order had before been granted requiring the plaintiff to show cause why he should not deliver to the defendant's attorney "a statement in writing of the particular times and places at which he expects, or intends, to prove that any acts of adultery or criminal intercourse took place between the defendant and the wife of the plaintiff." It denies the motion, on the ground that the court has no power to grant the same, and on other grounds stated. If the words,

"and on the other grounds stated," had been omitted, it is very clear that the order would conclusively establish that the motion was denied solely on the ground of a supposed want of power to grant it. What qualification then, was intended by the insertion of these words? We must suppose that the learned judge referred to the grounds stated by himself in the opinion which he delivered contemporaneously with the order, and in which he set forth the reasons for his decision. Any other supposition would be unreasonable. This opinion presents with much force the reasons for holding that he had no power to grant the motion. But in no part of it does he say that he has exercised his discretion as to the merits of the application, and determined that it should be denied upon the merits. The learned judge, after commenting on the subject of bills of particulars in actions of tort, and showing that ordinarily they will not be granted in that class of actions, says: "But, as I have said, the question is as to the power of the court," and he proceeds to sustain his position, that the court has no such power, by arguing that the defendant could have obtained an adequate remedy by a motion under section 160 of the Code to make the complaint more definite and certain, and that that was the appropriate and sole remedy.

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

The language of the section is: "When the allegations of a pleading are so indefinite or uncertain that the precise nature of the charge or defense is not apparent, the court may require the pleading to be made definite and certain." It will be observed that it is only where the precise nature of the charge is not apparent that an application can be made under this section. It enables a party to obtain a definite statement in the pleading, of the nature of the charge intended to be made against him, but not of the particulars or circumstances of time or place. For this purpose a different proceeding is pointed out, viz., an application under section 158, which provides, among other things, that "the court may in all cases order a bill of particulars of the claim of either party to be furnished." It is evident that in the present case there was no occasion for an application under section 160 to make the complaint more definite and certain. There is no uncertainty or

indefiniteness in respect to the nature of the charge made against the defendant. The difficulty under which he claims to be laboring is that the complaint does not point out the times or occasions when the alleged offenses are claimed to have been committed, but avers simply that they were committed on the 10th of October, 1868, and divers other days and times after that day and before the commencement of this action, thus covering a period of very nearly six years, the action having been commenced in August, 1874. He denies that the acts charged were ever committed, but claims that for the purpose of preparing his defense it is necessary that he should be furnished with the particulars of the time and place in order that he may summon witnesses to rebut such evidence as may be brought against him, or explain the circumstances which may be proved, and upon which the plaintiff may rely to establish the charges.

In actions upon money demands, consisting of various items, a bill of particulars of the dates and description of the transactions out of which the indebtedness is claimed to have arisen is granted almost as a matter of course; and this proceeding is so common and familiar that when a bill of particulars is spoken of it is ordinarily understood as referring to particulars of that character. But it is an error to suppose that bills of particulars are confined to actions involving an account, or to actions for the recovery of money demands arising upon contract. A bill of particulars is appropriate in all descriptions of actions if the circumstances are such that justice demands a party should be apprised of the matters for which he is to be put on trial with greater particularity than required by rules of pleading. They have been ordered in actions of libel (*Jones* v. *Bewicke*, L. R. 5 C. P. 32); escape (*Davis* v. *Chapman*, 6 Adolph. & Ell. 767; *Webster* v. *Jones*, 7 Dowl. & R. 774); trespass (*Johnson* v. *Birley*, 5 Barn. & Ald. 540); trover (*Humphrey* v. *Cottleyou*, 4 Cow. 54); and in ejectment (*Vischer* v. *Conant*, 4 Cow. 396). Even in criminal cases the instances in which the courts have by analogy to the practice in civil actions ordered bills of particulars, are frequent, viz.: On an indictment for being a common barrator, where a general form of pleading is allowed. *Hawkins P. C.* Bk. 1, ch. 81, sec. 13; *Goddard* v. *Smith* (6 Mod. R. 261); *Commonwealth* v. *Davis* (11 Pick. 432). On an indictment for nuisance the prosecutor has been required to specify particulars of the separate acts of nuisance which he intended to prove. *Rex* v. *Curwood* (3 Adolph. & Ell. 815); *Regina* v. *Flower* (3 Jurist 558); and in a prosecution of embezzlement (*Rex* v. *Hodgson*, 3 Carr. & Payne, 422). And in England there is nothing more common at the present day than to order particulars to be filed in an action for divorce, either on the ground of cruelty or adultery, and this is done on the application either of the defendant, or, in cases where the wife is the defendant, of the person with whom she is alleged to have committed adultery, and who, under the statutes 20 and 21 Vict., chapter 85, is joined with her as co-respondent for the purpose of being mulcted in damages. These cases show very clearly the opinion of the English courts, that a bill of particulars can be ordered in an action of *crim. con.*, because section 33 of the statute last referred to expressly provides that where the alleged adulterer is named in the petition as co-respondent, the claim made by every such petition shall be heard and tried

on the same principles, in the same manner, and subject to the same or the like rules and regulations as actions for criminal conversation are now tried and decided in courts of common law. Under this provision particulars have been ordered on the application of the co-respondent as well as of the respondent. *Higgs* v. *Higgs* (11 Weekly R. 154); and see *Hunt* v. *Hunt & Duke* (2 Swab. & T. 574).

The cases in which the complainant has been required to furnish particulars on the application of the respondent, are too numerous to justify their citation here. There are nearly a dozen of them in volumes 2 and 3 of Swabey and Tristram's Probate and Divorce Court Reports, which we have examined, and a similar order was made by the Supreme Court of Massachusetts, in 1834, in the case of *Adams* v. *Adams* (16 Pick. 254). In this State, CHANCELLOR WALWORTH, in the case of *Wood* v. *Wood* (2 Paige, 108), laid down the rules which have since governed in actions between husband and wife for divorce, and rendered applications for bills of particulars unnecessary. It must be remembered that here, when the charge of adultery is denied, the issue must be tried by jury unless the parties consent to a different mode of trial, and it is even doubtful whether they should be permitted so to consent, but in a contested case the CHANCELLOR laid down the rule as follows:

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

The CHANCELLOR here speaks of setting forth the particulars in the answer because the case then before him was one of recrimination. In the case of the *Commonwealth* v. *Snelling* (15 Pick. 321), Chief Justice SHAW gave a very thorough examination to the subject of the practice of the courts of common law in requiring bills of particulars, and the principle upon which it is founded, and, after an extensive review of the authorities, came to the conclusion that the general rule to be extracted from them was that where in the course of a suit, from any cause, a party was placed in such a situation that justice could not be done at the trial without the aid of the information to be obtained by means of a specification or bill of particulars, the court, in virtue of its general authority to regulate the conduct of trials, had power to direct such information to be seasonably furnished. The authorities cited by him are decisions in civil cases, but by analogy he applied the principle to a criminal prosecution for libel, and sustained an order requiring the prisoner to furnish particulars of his justification of a general libelous charge against the magistrate.

The same rule is laid down in a recent case in the Court of Queen's Bench in Ireland, *Early* v. *Smith* (12 Irish C. L. Appendix xxxv.), where it was held, and on the authority of many of the same decisions which are cited by Chief Justice SHAW, that the rule which governs the courts in ordering particulars to be given, is, that in all cases, whether trespass, trover, or on the case, the court has a general superintending power and control, no matter what the form of the action may be. If the complaint or declaration is conceived in vague and general terms, without specifying the circumstances under or the occasions on which the plaintiff relies, and the defendant satisfies the court by affidavit, that either for the purpose of pleading or of defense at the trial it is necessary that the plaintiff be more specific and more clearly define his cause of action, the court has a general jurisdiction to order the plaintiff to give a more precise and specific description of that upon which he relies. In the case last cited, a bill of particulars was ordered in a case of oral slander. Although no precedent could be found for an order for particulars in such a case, the court determined that the circumstances presented to them brought the case by analogy within the reasons of those in which particulars had been ordered, and that therefore they were authorized to afford the relief required.

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

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

Analogous cases are to be found throughout the books in this state. It was long since recognized that in actions of ejectment, to ascertain the precise premises for which the plaintiff was proceeding, the constant course was to obtain a bill of particulars. *Vischer* v. *Conant* (4 Cow. 396), and so in actions of trover. *Humphrey* v. *Cottleyou* (4 Cow. 54). As I have already shown, there is no class of cases in which, in England, even at the present day, it is more common to order particulars to be furnished than in actions in which adultery is charged. If the charge is general and vague, particulars are always ordered. As early as the year 1692, in the case of the proceeding for divorce against the *Duchess of Norfolk* before the House of Lords of England (reported in 8 Hargrave's State Trials, 35, and Howell's State Trials,

vol. 12. p. 883); the Duchess demanded particulars of the charge against her. They were ordered. The complainant furnished a statement that the person charged to have committed the crime with the Duchess was John Germaine, of, &c., and that the times were between the months of June and December, 1685, and several times since, specifying places. The petition of her husband was presented in 1692. To this charge, covering six years, she answered that the charge as to time and place was too general, and did not answer the end of the order of the House of Lords. A further and more definite bill of particulars was then furnished, affording the complainant an extensive field for proof, but at the same time indicating to defendant the periods and occasions in respect to which she was called upon to defend herself.

Without following the line of English decisions, I come at once to those of our courts. In Pennsylvania, as early as 1784, in the case of *Steele* v. *Steele* (1 Dall. 409), after issue was joined in an action for a divorce for cruelty, the court held that notice ought to be given of the facts intended to be proved under the general allegations of the libel. In 1805, in *Garrat* v. *Garrat* (4 Yeates, 244), the libel charged that the respondent, on the 10th of June, 1799, at the county aforesaid, and at other times and places, committed adultery with Esther Palmer and other lewd women to the plaintiff unknown, and the court held that unless the complainant, before trial, specified in a written notice the time and places and attendant circumstances, she should be confined in the evidence to acts of adultery committed with Esther Palmer.

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

Most of the authorities which I have mentioned consist of adjudications prior to the amendment of 1851 to section 158 of the Code of Procedure, which is in these words: "And the court may in all cases order a bill of particulars of the claim of either party to be furnished."

It must be borne in mind that we are discussing simply a question of power; whether in the case before us the court below had power to order particulars to be furnished; not whether, upon the facts disclosed by the affidavits, the court below ought or ought not to have ordered particulars, but whether it had the power to so do. If it made a mistake in that respect we must correct it. If the Code had been silent upon the subject of bills of particulars, the 469th section would probably have sufficed to preserve the authority of the court to order particulars in all cases before accustomed. But the express authority conferred by section 158 to order particulars in all cases, especially when read in view of the cases in which particulars had been ordered, would seem to place the question beyond doubt.

Many of the arguments on the part of the plaintiff are more proper to be addressed to the court of original jurisdiction on the question of the exercise of its discretion than to this tribunal. It is claimed that an important element in the plaintiff's case consists of confessions made by the defendant, and that, if particulars are ordered, it will be necessary to prove that he confessed the acts to have been committed at the dates specified in the bill

of particulars. This is an imaginary difficulty. It would be absurd to suppose that any tribunal of ordinary intelligence would order a bill of particulars in such form as to exclude evidence of general confessions.

The same argument was used in case of *Codrington* v. *Codrington* (4 Swab. & T. 63). After an order for particulars had been granted the complainant delivered particulars in which he alleged that the respondent had committed frequent acts of adultery between 1859 and 1862 with one Lieut. Mildmay at Malta, and during a journey in Switzerland, Savoy, Sardinia, and Italy. Application was made for further particulars, and it appearing that the charge was founded upon the contents of a diary and letters of the respondent which had come to the petitioner's hands, it was ordered that unless the petitioner gave further particulars he should be confined in his proof to the confessions contained in the diary and letters.

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

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

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

A point is made on the part of the plaintiff which requires notice. It is contended that the General Term, in affirming the order of the Special Term, must be presumed to have passed upon the merits on the facts as well as upon the law of the case, and the decision in *Tracey* v. *Altmyer* (46 N. Y. 598) is cited in support of this point. The answer is that in the present case, it appears that the orders of the Special Term were reviewed by only two judges of the court; that they were divided in opinion, and that it was only by force of the statute specially applicable to the City Court of Brooklyn, Laws of 1870, page 1,047, section 6, that the order stood as affirmed, the two judges disagreeing.

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

CHURCH, CH. J., FOLGER, and ANDREWS, JJ., concurred.*

* As to rules of pleading in this class of cases, see *note*, p. 824.

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

Judge GROVER doubted the existence of the power, but concurred in the opinion of Judge ALLEN.

SECOND APPLICATION FOR PARTICULARS.

The following order was granted by Judge McCUE December 7th, 1874, upon the affidavits of Mr. Beecher (*ante*, page 4), Olin J. Clauson (*ante*, page 5), and Mr. Shearman below.

ORDER TO SHOW CAUSE.

[*Title of the Cause.*]

On the affidavits of the defendant and of Olin J. Clauson made October 17th, 1874, and now on file in this court, and on the affidavit of T. G. Shearman made December 7th, 1874, and all the pleadings and proceedings herein,

It is ordered that the plaintiff show cause before me at a Special Term of this court to be held at the Court House in the City of Brooklyn on the 10th day of December, 1874, at 10 A. M., why he should not deliver to the defendant's attorneys, at some reasonable time before the trial of this cause, a statement in writing verified by his oath of the particular times and places at which he expects or intends to prove that any acts of adultery or criminal intercourse took place between the defendant and the wife of the plaintiff; and why the plaintiff should not be precluded from giving evidence upon the trial of this cause of any such acts not specified in such bill of particulars, and why the defendant should not have such other relief as may be just; and in the meantime let all proceedings on the part of the plaintiff in this cause be stayed.

A. McCUE, *J. C. C.*

MOVING AFFIDAVIT.

[*Title of the Cause.*]

City and County of New York, ss.

THOMAS G. SHEARMAN being duly sworn, says:

1. I am one of the attorneys and counsel for the defendant in this cause.

2. A motion was heretofore made at a Special Term of this court for a bill of particulars in this cause, which motion was argued before Hon. JOSEPH NEILSON, Chief Judge, and was by him denied, and his order denying the same was, on appeal, affirmed by an equal division of this court at General Term.

3. Proceedings in this cause were stayed pending the appeal to the General Term from the said order of the Special Term, and an appeal was

taken by the defendant from the order of the General Term to the Court of Appeals; but no application was made for a stay pending such appeal, for the reason that the defendant was extremely unwilling to occasion any delay in this cause, and the defendant's counsel hoped to obtain a decision from the Court of Appeals some days in advance of the time fixed for the trial, which is Tuesday, the 8th of December instant.

4. The said appeal was argued in the Court of Appeals on Tuesday last, December 1st, 1874, and counsel for the defendant specially requested the court to decide the appeal at the earliest day possible, so as not to interfere with the trial in case the order should be affirmed.

5. I have just received a telegram informing me that the said order has been reversed by the Court of Appeals this day, but I do not know what, if any, order has yet been entered, and the remittitur can not be received until to-morrow, while the opinion of the court in all probability can not be obtained before Wednesday or Thursday next. I have requested Samuel Hand, Esq., who is counsel for the defendant at Albany, to forward the opinion at the earliest possible day, and I have no doubt that he will do so. But until the opinion is received the defendant's counsel can not know the extent and effect of the decision of the court, nor how far they will be warranted in applying for particulars, and can not, therefore, safely bring on the hearing of any motion for that purpose.

6. Wm. M. Evarts, Esq., is the senior counsel for the defendant, and as such, argued the appeal before the Court of Appeals, and he has chief control and regulation of this cause. He is now engaged at Washington in the argument of a case before the Supreme Court of the United States, in which the Government is interested, and which the Attorney-General insisted on bringing to argument this Term. It is not probable that Mr. Evarts can return before Wednesday, and it is possible he may not return until Thursday; and his associates in this case are unwilling to bring the motion for particulars to a hearing before Mr. Evarts' return, and before he has had an opportunity to read the opinion of the Court of Appeals.

THOS. G. SHEARMAN.

Sworn to before me, December 7, 1874,
OLIN J. CLAUSON, *Notary Public, N. Y. Co.*

ARGUMENT ON SECOND MOTION FOR PARTICULARS, BEFORE JUDGE MCCUE, THURSDAY, DECEMBER 10th, 1874. *

Mr. Shearman.—If the court please, this is a motion renewing an application for a "bill of particulars," as it is called, under an order that the plaintiff be required to show cause why he should not deliver to defendant's attorney, at some reasonable time before the trial, a statement in writing, verified by his oath, of the particular times and places at which he expects or intends to prove that any acts of adultery or criminal intercourse took place between the defendant and the wife of the plaintiff, and why he should not be precluded from giving evidence upon the trial of any such acts not specified in the bill of particulars, and why he should not have such other relief

* An intermediate motion relating to the time of trial is omitted.

as may be just. This order to show cause was obtained upon the affidavits formerly read, and with which your Honor, having sat on the appeal to the General Term, is familiar, upon the complaint, the answer, the affidavit of the defendant and the affidavit of O. J. Clauson, made Oct. 17, 1874, which set forth the statement of the plaintiff published in *The New York Graphic*, in which he alleged that these times and places were explicitly made known to him; and it was obtained, further, upon a new affidavit of Thomas G. Shearman, which is not very material to read, as it simply states the fact of the appeal to the General Term, the appeal to the Court of Appeals, the reversal of the order by the Court of Appeals, its remittance to this court for further action, the fact that we had not at the time of making this affidavit received the opinion of the court, and the reasons why the motion could not be made before Thursday, in consequence of the necessary delay in obtaining the opinion of the court and *remittitur*, and the absence of Mr. Evarts. Mr. Evarts has but just returned this morning. And I am sorry to say that the opinion of the Court of Appeals in an official form has not yet come down, although we applied for it immediately. I understand the fact to be that the opinion, as published in the newspapers, is the first draft of the opinion, and before the Judges send it out in an official form, they prefer to revise it, simply to see that there are no small mistakes, as to the volumes of reports, the dates, and such matters. I understand that the plaintiff has an affidavit, which he will now read.

Mr. Morris then read the following affidavit:

[*Title of the Cause.*]

City of Brooklyn, Kings County, *ss.*—Theodore Tilton, the above-named plaintiff, being duly sworn, deposes: That the sum total of the knowledge now possessed by him of the sexual intercourse between Henry Ward Beecher and Elizabeth R. Tilton, and of the times and places thereof, consist as follows:

First: Confessions of the said sexual intercourse made by Henry Ward Beecher to Francis D. Moulton, Emma R. Moulton, and Theodore Tilton, and others.

Second: Confessions of the said sexual intercourse made by Elizabeth R. Tilton to Emma R. Moulton, Martha B. Bradshaw, Florence Tilton, Theodore Tilton, and others.

Third: Written and printed papers, documents and letters by Henry Ward Beecher.

Fourth: Written and printed papers, documents and letters by Elizabeth R. Tilton.

Fifth: Written and printed papers, documents and letters by other persons.

Sixth: Acts, declarations, and conduct by said Henry Ward Beecher and said E. R. Tilton, respectively, tending to prove such sexual intercourse, without locating it in any time or place.

Seventh: And various circumstances not amounting to direct proof, derived from the acts, oral declarations, and written papers and documents of the said Henry Ward Beecher and of other persons, communicated to him, and admissible against him.

And deponent further says that the aforesaid confessions, made to others

than this deponent, did not, to this deponent's knowledge, nor did any or either of them, specify any time when or place where any sexual intercourse between the said defendant and the wife of this plaintiff occurred.

That the confession so made to this defendant, named but two specific occasions and but two places when and where such intercourse was had, namely, the one at the house of said defendant, in the city of Brooklyn, on the 10th day of October, 1868, and the other at the house of this plaintiff, in said city, on the 17th day of October, 1868.

But this deponent is not absolutely certain that the above are the precise dates given by said confessions, but is positive that they were about and very near to those two days.

Nor is this deponent positive that the places assigned to these dates were as above stated, it being possible that the intercourse stated above as occurring on the 10th October 1868 may have been at the house of this deponent, and that on the 17th October 1868 at the house of the defendant.

And this deponent further says, that the confessions so made to him admitted various acts of adultery by the said defendant with the said wife of this deponent between the said 10th of October 1868 and the spring of 1870, but did not particularize any time or place otherwise than as above stated.

That this deponent does not expect to be able on the trial of this action to prove by any eye-witness any such intercourse, or to prove any definite time or place when or where such intercourse occurred, except by the confessions aforesaid, and that the only proof of the adultery charged by the complainant within the control or knowledge of this deponent, or which he expects to be able to offer upon the said trial; and this deponent is unable to furnish any further or other statement "of the particular times or places at which he expects or intends to prove that any such acts of adultery or criminal intercourse took place between the defendant and the wife of the plaintiff," than is above given.

And this deponent respectfully says that any order for particulars as prayed by this motion which shall preclude this deponent from maintaining this action by proof of confessions, acts and declarations, and other testimony tending to prove the adultery named in the complaint, although such evidence may not indicate the time and place of its commission, would deprive this deponent of material testimony, and, as he is advised by his counsel, and believes, would injuriously and unjustly restrict his legal rights, and he therefore respectfully prays and insists, in case this court should grant any order for particulars, that a clause may be inserted therein to the following effect, viz.:

But this order is not to be so construed or applied as to prohibit the plaintiff on the trial of this action from introducing evidence of confessions, acts, declarations, writings and documents which may be admissible under the general rules of evidence as if this order had not been made, and which do not in terms refer to any particular act or time of adultery, but proving by such evidence the adulterous intercourse charged in the complaint, although it may not thereby appear to have been committed on any particular day or at any particular place.

Sworn to before me this 10th day of Dec., 1874, THEODORE TILTON.

GEO. W. RODERICK, Notary Public.

JUDGE MCCUE.—Won't you read that last paragraph again—that qualification in the order?

Mr. Morris read the paragraph called for.

Mr. Shearman.—If your Honor please, before coming into court I had drawn up an order which I shall propose, and which I intended to submit in the course of my argument, and I may as well submit the particular clause on this point now. After the usual order as to particulars, I have inserted this clause:

"But this order is not to be construed as precluding the plaintiff from giving evidence of any alleged confession on the part of the defendant, or any such criminal, wrongful, or improper acts, in which alleged confession no particular time or place shall be alleged to have been referred to."

To that, your Honor, we, of course, have no objection, because we offer it as right and fair, and in accordance with the decision of the Court of Appeals and the order which we ourselves have drafted. We must object to the word "acts" inserted by the gentlemen on the other side, because it is impossible that specific evidence of any acts should be given that should not point to a particular occasion, and there is an inconsistency in the language of his order because he proposes that he shall be allowed to introduce general evidence of acts which shall not refer to any specific acts—taking out the verbiage in his order. In every other respect that order as we have drafted it covers the entire ground proposed by the plaintiff.

JUDGE MCCUE.—Mr. Shearman, can not the proposed order be modified so as to make that perfectly clear, and to avoid that apparent inconsistency? I understand their order proposes to give in evidence acts which, however, do not tend to prove any particular act of adultery.

Mr. Morris.—What we propose is perfectly manifest. When we go to trial upon this case we want all the legitimate evidence to have its legitimate force. We do not want, after we have introduced our evidence, to have the order in such a shape that the court will say that the jury, notwithstanding they find that the adultery was committed, must go further and declare that it was committed upon a particular day. There is a manifest injustice in that. It does not require any argument.

Mr. Shearman.—Your Honor, I think we shall be willing to agree——

Mr. Evarts.—That is another matter, what the jury have to find; but really there does not appear to be very much difference.

JUDGE MCCUE.—It seems to me the difference can be reconciled.

Mr. Shearman.—It can, your Honor, in this way, by inserting after the word "acts" where it first occurs, where this proposed order says, "He shall not be restricted from introducing evidence of confessions, acts"—inserting there, "other than acts of adultery;" then it will be consistent with the latter part of the clause. With that modification, we have no objection to take it.

JUDGE MCCUE.—Mr. Morris, they enable you to prove all acts that may tend to prove the main fact in the case—that you can prove by any circumstantial evidence.

Mr. Evarts.—The point, if your Honor please, should be intelligible to

counsel alike, and to the court, it seems to me. We have never insisted, except to this extent, upon a bill of particulars—that we should know what acts of adultery are charged, with reasonable precision of place and circumstance; for instance, it might be on a journey, or during an absence of a week or fortnight, or what not. I do not refer to any circumstance of this particular case; but, in the experience of courts, that would be precise enough; as it was in *The Queen's case*, during a voyage from one part of the Mediterranean to the other. We have never, I trust, had any unprofessional views about this matter. Now we want to have the facts concentrated upon which all legal evidence is to bear; and that legal evidence, we admit, may be in part made up of statements—if they are admissible in evidence—and conduct, so to speak, that point and emphasize the evidence that bears upon these particular acts.

Mr. Morris.—Oh, yes; that is just the rock upon which we split.

Mr. Evarts.—But when my learned friend says that the jury are to be at liberty to find other acts of adultery, than these, why, he introduces us into a larger range of inquiry, which must be left for the trial, it seems to me.

Mr. Morris—This is the point. I see the difficulty, and your Honor must see it. If a particular day is to be named, and we go to trial, and we are restricted to proving the adultery upon that particular day, and the jury are instructed to find the act on that particular day, or not find against the defendant, we are deprived of the legitimate advantage of our evidence. For instance, we may, by such general acts, by letters and by documents, be able to clearly establish the intercourse between these parties; we may leave it free from any doubt, and yet, notwithstanding time is immaterial, wholly immaterial as to the act, yet if the jury are to go further, and say that before they can render a verdict they must find that it was committed on a particular day; that, I submit, would be unfair, and be depriving us of the advantage of the legitimate evidence; and the issue—the real issue—could not be tried and determined in this action. Now, what we want is this. We have obviated the objections that they have heretofore made with reference to surprise. We have given them a frank statement in our affidavit as to the evidence that we propose to offer upon that point, so that there can be no apprehension of surprise. Now, what we want is this: to go to trial where the issue is in such a form and shape that the jury, when we have introduced our evidence, may say that the defendant is guilty of adultery, although they are unable to say that it occurred upon any particular day, if it occurred within the time alleged in the complaint. Now, that is the issue; but if the jury are required to go further, and find that it was committed upon the particular day, this may be the result: the jury may be entirely unanimous that the defendant is guilty of adultery, and they may be as unanimous that they can not find it upon any particular day, and render a verdict in his favor. Now, we do not wish to go to trial where any such result as that is possible. All that we ask is to have this issue met fairly, where the evidence—the legitimate evidence—may have its legitimate force and legitimate weight. We do not want to go into the trial of this cause—it is not right that we should go into the trial of this cause--shackled. That is what we want; that is our view.

Mr. Evarts.—Your Honor sees at once that there is no such proposition of the law in the trial of this particular issue of adultery (I do not mean in this particular case, but this particular issue of adultery in any case or any other trial) dependent upon a fact for the results to follow in the judgment of the court. There is no such thing as a unanimous opinion of the jury that adultery has been committed without any opinion of the jury that it has ever been committed at any particular time or place. Now, that is the difficulty in this matter. There is no such thing as a conclusion of adultery without a conclusion as to the fact as produced in proof having occurred; and if it occurred, it occurred at some time or place. Now, that is within reasonable limits, as they say in *The Queen's case*. Let it be alleged, as there, that the adultery occurred during the voyage from one part of the Mediterranean to another, covering a space of a fortnight, if you please. Well, that is time and place, without the necessity of evidence that it occurred on this or that day, or in this or that part of the ship. Your Honor understands exactly what I mean. Now, if the jury in that case—if there had been a jury—if the peers who tried the case had not come to the conclusion that it was committed on that voyage, and they had not come to the conclusion that it was committed at Naples or at the other scenes of the alleged improprieties, why, then, they never could have come to a conclusion that it was committed in general. It seems to be an apparent fallacy, that there could be a conviction that there had been adultery, without any opinion that it had been committed at any of the times or places toward which proof was properly admissible.

But it seems to me, if your Honor please, without occupying the attention of the court by longer discussion, unless our friends wish to be heard, that the two views on this subject, as expressed by the counsel, might very easily be handed to your Honor, and in the light of these affidavits an order framed that would be certainly right.

Mr. Morris.—Mr. Evarts, may I ask you a question.

Mr. Evarts.—Yes, sir.

Mr. Morris.—Do you claim that if we furnish a bill of particulars naming the two dates contained in the affidavit, the 10th and 17th of October, that the jury, in order to find a verdict against your client, must find that adultery occurred on one of those two dates?

Mr. Evarts.—Certainly.

Mr. Morris.—That is the point.

Mr. Evarts.—I do not say it must be the very day. You can certainly allege it is on or about the 10th.

JUDGE MCCUE.—I do not understand that by the bill of particulars you are confined to the exact date.

Mr. Evarts.—No.

JUDGE MCCUE.—Allow me to make a suggestion, because it is very desirable if this can be settled without further controversy that it should be, to the end that there may be a speedy trial and disposition of this case. I understand the other side to claim this, that if you allege in any case that adultery was committed in the City of Washington, that it might be competent for you to prove that the parties traveled from New York to Philadelphia, and

from Philadelphia to Baltimore, at such times as they could have reached Washington at or about the time of the commission of the alleged offense. That would be proving acts of the defendant; but you would not be permitted under that to prove that adultery had been committed in Philadelphia or Baltimore.

Mr. Evarts.—That is it.

Mr. Morris.—As to the place there is no difficulty.

JUDGE MCCUE.—Now, I understand that they are willing that you should prove all acts tending to establish the truth of the allegations contained in your complaint, or the charges as to the commission of adultery, either at the plaintiff's house or at the defendant's house, at or about a certain date. I do not imagine that on the trial you would be limited to the exact day; I do not understand that.

Mr. Morris.—But that is the point. We have stated and limited ourselves on that to two points in our affidavit. Now, why should we be restricted any further? We say in the complaint that it commenced on the 10th of October, and that at various dates between the 10th of October, 1868——

Mr. Shearman.—And 1874?

Mr. Morris.—Well, of course, the counsel knows that the real period is from October, 1868, to 1870; about fifteen or sixteen months is the real period the evidence will all be confined to.

Mr. Shearman.—Are we to understand that it is conceded that it ceased then? I should like to know if it is admitted that there never was any improper intercourse after that date, or not, for the purposes of the trial; whether we are to have any dispute about it?

Mr. Morris.—The evidence, I say, will be confined to that point. I do not make that admission, because I am convinced that it would not be true, and I would not admit a falsehood. But this is the point, now, if your Honor pleases, and I do not see that there should be any difficulty. When we go to trial in this case we introduce our general evidence showing the relation existing between the parties, made up of various acts and circumstances, the conduct of the party with reference to the matter, from which, we say, there is only one legitimate deduction. Now, we do not want to have the jury told, "In order to give a verdict for the plaintiff you must find that the adultery was committed on the particular day, or about the particular day," if it was committed within the period. The only issue here is whether the defendant has committed adultery, or whether he has not, during the time that we allege. Now, why should there be any restriction at all as to the day? They know our evidence with reference to specific acts of adultery; we have disclosed that fully and frankly to them. Now, why should there be any restrictions? Most surely they do not in this case want a verdict in favor of the defendant which should be obtained by any restrictions being placed upon the jury which would prevent them from giving the evidence its legitimate weight. That is all we ask. Now, why should there be any restriction at all? Where is the occasion for it? They know the fact. We allege the only two days upon which we have specific information as to the commission of the act; we say it was committed at various times within a certain period. Now,

would it be any more specific if we should say that it was committed on the 10th of October, and on various days between the 10th of October and the first day of September, and on the first of September, and on various days between the first of September and the first of November? Would that give them any useful knowledge or information? Would there be any purpose to be served by it for us to allege or furnish them a bill of particulars of that kind? To what purpose? What information does it give them? Now, what earthly object, I ask your Honor, is there in having any restriction whatever here unless the purpose is to hamper us upon the trial with reference to our evidence? Heretofore they have said that they were afraid of surprise. There might be some force in that. They feared that we would bring witnesses here that they could know nothing of to prove the times and places from which we would deduce the inference of adultery, and that they would have no opportunity to meet that kind of evidence. Now, we frankly tell them that we propose no such thing. We disclose to them frankly and fully just how we propose to prove adultery in this case. Now, I ask, can it not be safely left to the court which is to try this case without any limitation? What is the purpose of limitation, I ask, under the circumstances, if it is not to get an advantage of us and to restrict us in some way, so that our evidence may not have its legitimate result or its due force?

Now, I submit in all candor to the court that with the facts now before the court, that have not been before the court before, with this statement that we have made—I submit in all candor to the court that I see no reason for the making of any order here whatever.

Mr. Shearman.—You are getting to the argument on the merits.

JUDGE MCCUE.—All this discussion has taken place upon the idea that your orders were so nearly alike that they could be accommodated.

Mr. Morris.—But they can not; for when I asked the counsel, Mr. Evarts, whether that is his view—that if we allege these two dates and then we introduce our evidence, whether the jury would be instructed, or must find the adultery to be committed on those dates, the answer is frankly, "on or about those dates." I say that it is a restriction that we ought not to submit to.

Mr. Evarts.—Name some date, some time, then.

Mr. Morris.—You do not want us to put in anything that we do not know anything about.

Mr. Shearman.—I suppose on the general discussion we have a right to open and close. Now, may it please your Honor, when we first appeared before this court with our motion it was thought on the other side a very fit subject for jesting. We have at last got to a point where it is treated seriously. This motion, for which there was no warrant, which had never been heard of before, which no respectable counsel would advocate, has been sustained not only by the opinion of your Honor at General Term, but your Honor's opinion has been fully confirmed by the Court of Appeals in a most able, learned, and exhaustive opinion. And I congratulate the plaintiff and his counsel in this case that after the lapse of some months they have got over their delicacy. They actually have come to the point where their delicacy will allow them to give these two dates, October 10 and October 17.

And that great mystery of delicacy which was shown by the moving papers, that mystery of darkness which this plaintiff could not bring himself to disclose, turns out to be nothing in the world but what he has disclosed long before, two months before his delicacy had so deeply affected him. And he never had anything more to tell; he knew nothing more, and yet he wanted to make the public believe that he had something dark and mysterious and dreadful behind, so shocking and so frightful that he dared not utter it.

Now, if it please your Honor, we have got past all that; and we have learned what he has, and if he had been frank about that there never would have been any necessity to have so much trouble before the court; the time of the court would not have been wasted, and there would not have been this so-called delay, although there has not been one day's delay, because there has not been a time when this cause could have been tried without an extra panel of jurors, as our opponents admit themselves, and there never has been a time when that panel could have been summoned.

Now, if it please your Honor, we come to the merits of this motion. Permit me to observe that there has been an entire misapprehension, not only upon the other side, but a misapprehension very widespread, as to the propriety of a motion such as this in this case; and as I have now to appeal to your Honor's legal discretion it is necessary that I should review some of those circumstances. I will do so very briefly. It is a singular fact that the origin of bills of particulars is not in actions on contract, is not in actions on account, but that in fact it was a modern innovation introduced into those actions from criminal or quasi criminal proceedings. The first book ever published in the law of England which refers to bills of particulars is a book exclusively on criminal law, Hawkins's Pleas of the Crown.

The first recorded instance in the law of England in which a bill of particulars was granted was in an action for divorce on the ground of adultery. Prior to the year 1692, in which that bill of particulars was ordered, and again a further bill of particulars ordered, there is no example in the reports of England (and as there were no reports in this country, therefore no example in the reports of the common law) of a bill of particulars being granted. Now, sir, the way in which bills of particulars came to be brought into actions on contract was this: More than forty years after this bill of particulars was granted in an action arising, or rather in a judicial proceeding arising on the ground of adultery——

Mr. Morris.—If the court please, I must interrupt the counsel. I did not expect to go into a general discussion, and it seems to me to be useless. The simple question is, we ask that the order made here, if one is made, shall not hamper us or restrict our verdict.

JUDGE MCCUE.—Do you concede that a bill of particulars ought to be granted?

Mr. Morris.—I concede upon the facts before the court that it ought not to be. I simply submit our statement upon that.

Mr. Shearman.—This is a very singular objection that the gentleman has to general discussion. We never can bring up the most trivial motion, we never can raise the question in the other branch of the court, whether your

Honor's order staying proceedings shall be respected, but the learned gentleman must rise and make a long speech in discussion of the general merits. Now he says that he does not concede that the bill of particulars should be granted. The learned judge who presided the other day in this case intimated that it was still a question of discretion; and I have no right to presume that your Honor is going to exercise your discretion in any particular way. When your Honor says that you have decided to grant this bill of particulars I shall postpone my remarks; until then I shall undertake to argue the question according to my views.

I say that more than forty years after a bill of particulars had been required in a judicial proceeding, a change was made in the practice in the courts of England by the Legislature interfering to compel all proceedings to be taken in English instead of Latin. One of the next results of that, at least one of the incidents that followed almost immediately after that, was that some shrewd practitioner invented what are commonly known as common counts in pleadings upon contracts. Prior to that time it was the custom to have only one or two counts, in which the plaintiff set forth his case very fully, in as many shapes as he saw fit, and in which he went into details. After that the practice of common counts was introduced, which meant the practice of setting forth in a very vague and general form some seven or eight different modes of pleading the same facts. Now, your Honor, it was after that practice was introduced that bills of particulars began for the first time to any appreciable extent to be introduced in actions upon contract, and there is an opinion of Judge BAYLEY in the Court of Queen's Bench as late as about the year 1827 or 1830 (in *Dowling & Ryland*), in which he speaks of the frequency of bills of particulars in actions on contract as being of comparatively modern date. But for 200 years prior to that time, bills of particulars had been in use in criminal proceedings, and for 140 years prior to that time they had been constantly required in proceedings for adultery; and we come down with an unbroken line of precedents in such cases, showing that it is from actions like this that proceedings for bills of particulars took their rise, and that this is not an importation into a new and foreign action of a proceeding known heretofore only in actions on contract.

The question of the power of this court to grant this order is settled. The question of legal discretion remains. Now, upon that we have again an unbroken line of precedents. I call upon the learned counsel on the other side to show, if they can, one single action in the history of the law, brought either for divorce or for criminal conversation, in which an application for particulars was made where the pleadings were vague, and was denied. I produce to your Honor, without having by any means exhausted the list, without desiring to weary you—I produce an unbroken line of precedents in which such bills of particulars were granted. I show you that bills of particulars were granted in cases where the pleadings were far more definite than in this case, and that the utmost precision and particularity is invariably required from any person who comes into court with such a charge as this, and that it is not allowed to any one to come into court, much less to go to a

trial, without being prepared to prove with reasonable particularity and precision this awful charge.

This is precisely one of those chargee which no man is allowed to take the responsibility of alleging until he is prepared with the proof. A man may be justified in coming into court with an action upon contract, with a claim for the price of a few groceries, or for the amount of a butcher's bill, without being quite certain that he has the witnesses to prove the precise and specific facts; but when he comes into court with a charge like this, a charge that either brands with infamy his own wife and another man, or brands with a thousand-fold infamy his own brow for having the audacity and the wickedness to make a false charge of this kind, the courts have always from the earliest day required him to come prepared to prove how, and when, and where this fearful fact occurred.

May it please your Honor, if I were to go back of the common-law precedents, it is a striking fact that there is a precedent nearly 2,500 years old in cases of this kind, and that it is recorded in a book concerning the inspiration of which there is a dispute between different branches of the church, but which is reverenced by two-thirds of the Christian world as an inspired volume, and read by the other one-third with respect as a book of authenticity.

I refer to the remarkable story of Susannah and the Elders. In that story, if your Honor please, there were as usual two witnesses. It is a singular fact, that whenever charges of this kind are to be got up witnesses always hunt in couples. It has always been so; there has always been the inevitable complainant and his mutual friend. Now, may it please your Honor, a certain council of Elders met in that case, and they wagged their grave and venerable heads, they heard the testimony of these two men in each other's presence, and it was very clear and very explicit; they had evidence as to the actual fact. But there was a young man named Daniel, the junior judge on the bench, who stopped them just as they were about to execute this unhappy woman, and demanded that these two witnesses be put out of court and called in separately, and that each should produce his bill of particulars. And what was the result? He called in first the great prototype of Mr. Tilton, and he demanded of him where this act took place. "Oh," says Mr. Tilton, "it was under an oak-tree." He then retired. The prototype of Moulton was called in without any opportunity for consultation, and his bill of particulars was demanded. "Certainly," says he, "it was under a cedar-tree." That judgment has made the name of Daniel famous ever since, and it was because the particulars were asked in that case, that justice was done. And wherever the particulars have been had, and the opportunity for collusion has been removed (as unfortunately it can not be in this case), the innocent have been invariably vindicated.

But, sir, we have confidence that with a proper statement of particulars in this case we shall have no difficulty in vindicating the innocence of our client. I say again that one unbroken line of precedents has come down to this time, and I submit to your Honor with deference that this is not a case for mere arbitrary discretion, but it is a case in which we are entitled, in the

proper, just exercise of judicial discretion, to this order. We show a state of facts which makes it right and proper, and they show that they are able, abundantly able, to give the particulars. We show that the practice of the courts is all one way, and they can not show a case to the contrary either in this state or any other; and we submit, therefore, that we are reasonably and properly entitled to this order.

May it please your Honor, I have drawn up a form of order which seems to us to be right and just, and in conclusion I beg to read it: "That the the plaintiff furnish to defendant's attorney forthwith, and at least —— clear days before the commencement of the trial of this action, a statement of particulars verified by the oath of the plaintiff, setting forth the particular times and places at which he expects or intends to offer proof that any criminal, wrongful, or improper act occurred between the defendant and the wife of the plaintiff, and that the plaintiff be and he hereby is precluded from offering any evidence at the trial of this action tending to prove the occurrence of any such criminal, wrongful, or improper act at any other time or place than such as shall be specifically set forth in the said statement of particulars."

Mr. Morris.—I propose to say a few words, if your Honor please. The order proposed by the counsel would have this effect——

Mr. Shearman.—Excuse me one moment. Of course, with the clause admitting evidence of confessions; I did not read that.

Mr. Morris.—Yes. The order proposed by the counsel would have this effect (and I can see no other purpose of any such order), of excluding practically all general evidence, and reducing it to the confession made by the defendant to the plaintiff. That is the practical result.

JUDGE MCCUE.—Let me relieve you to a certain extent; under the decision of the Court of Appeals, testimony of general confessions would be clearly inadmissible.

Mr. Morris.—I understand that, your Honor; I will come to that.

JUDGE MCCUE.—And whatever order I may make, if I determine to give the bill of particulars, I should not attempt to restrict you from the proof of any general acts or declarations which might have a tendency to prove the main issue.

Mr. Evarts.—That your Honor would leave to the laws of evidence?

JUDGE MCCUE.—That I would leave to be disposed of on the trial.

Mr. Morris.—But that is not the idea of counsel. This is the effect sought to be produced by the order, and this is the restriction sought to be imposed upon us, and we say it is onerous and unjust, and prevents an impartial trial of the issue in this case—a fair trial. That is, if we are allowed to introduce our general evidence, our general acts, declarations, and circumstances going to establish the criminal relation between these parties, and if that evidence is conclusive upon that point, if it is absolutely conclusive that, during the period alleged, this intercourse occurred between these parties, we are not entitled, under this restriction, to a verdict. It is against that that we complain.

JUDGE MCCUE.—Perhaps I did not make myself understood.

Mr. Morris.—I will make myself clear, if your Honor please. The po . is perf ctly clear, and I see it; that is the only purpose of this order. I sa your Honor, we may establish the guilt of the defendant beyond argu I say the counsel for the defendant may get up before the jury and adn i guilt of their client, and yet we may not be entitled to a verdict under order. That is what I assert, and I will make myself clear, . think, that point. Now, with this restriction, the jury can not say simply, ' have proved the adultery," and therefore give us a verdict, but they ar quired to go one step further, and find that it was committed on the par lar day alleged before they can find a verdict for the plaintiff. Well, w will be the argument? Why, the counsel will say to the jury, "Where is evidence that this was committed on the 10th, except the bare confession They exclude all others. Supposing we put in the bill of particulars an other day. "Where is the evidence?" will be rung in the ears of the jur "Where is the evidence that any adultery was committed on that particu ar day?" That will be the burden of the claim to the jury—"You must fi d, upon your oaths, that it was committed upon a particular day." Well, this general evidence does not point to any particular day. We say that we have a right to a verdict, if we establish the guilt of the defendant at any time within the period alleged in our complaint. But it would not only require the jury to go further after finding the guilt of the defendant, and say it was upon a particular day, but, in considering the main question of guilt, their minds would be hampered by the other consideration as to the time, as to the particular day when it was committed, and they would consider it as a mixed question; the time when it was committed and the fact of its commission are considered by the jury necessarily; it would be considered as a mixed question. Now I say that is not fair. I say that if we prove our case, as alleged in our complaint; that the defendant has been guilty of adultery at any time (because the day is not material, it is the act)—if we prove that the act of adultery was committed on any day, or at any time within the period alleged, we should be entitled to a verdict, and not be hampered by any such restriction. You see, at once, that the jury are not left free to consider the main question, because, as I say, their minds are considering the other question—the day. In looking at the evidence, their minds would be upon the day. "What is there in this evidence? How does this evidence point to that day?" Well, it don't point to the day; it points to the act.

The counsel says that we are reduced to two witnesses. By no means. The first witness we shall call upon the stand in this case—(I do not mean in person)—our first witness will be the defendant himself. And when we have exhausted the testimony of the witness that we shall first introduce, the defendant himself, we will claim that we have established the act of adultery without going one step further, though we shall go further. But the evidence outside that we shall offer in the first instance in that respect, does not point to any particular day. It points to the fact; it establishes the fact that he is guilty of adultery, but not upon any particular day. Within this period, it establishes the fact, within the period alleged in the complaint; not on any particular day. Is that evidence to be excluded? Or is the jury to say that

that evidence points to a particular day when it does not, when there is nothing upon the face of it that points to or indicates any particular day?

And yet it as clearly points to the act as though it was a declaration made by the defendant himself of the fact orally. Now, I object to going to trial in this case with any shackles at all. We say, let us meet the main question here, unhampered by any restrictive order. Let us meet the main question, the fact of adultery, and if we establish that to the satisfaction of the jury, we are entitled to our verdict. And it would be a great hardship; it might result, and would naturally, in the very injustice that I have indicated, by preventing the jury from giving the legitimate, natural weight to our evidence that it is entitled to.

Why this restriction? What is its purpose? Simply that the jury may be told that they must find that it was committed on the particular day alleged. We submit that, the parties being informed as to the points that they have contended for heretofore, there should be no restriction whatever. Your Honor has the discretion; the Court of Appeals say so. We do not argue that question. But I ask your Honor if, upon the facts now before you, it is right that we should be restricted in any particular. What is the object? Is n't it plain? Is n't it manifest? Is it intended to meet the issue fairly? If so, why do you want a verdict in favor of your client that he did not commit adultery on the particular day? If you get a verdict for your client, let that verdict be general. Let it be that he did not commit adultery on any day within the period alleged. Don't say that on five hundred days he may have committed adultery, but on the five hundred and first day we have failed to prove that he did so. That is not the contest here. The question is adultery or no adultery; not whether it is adultery on the 10th day of October or the 17th day of October, or on any other day, but is it adultery? We allege it. We say we are prepared to prove it. Give us the opportunity, but don't send us before the jury with shackles on, and don't hamper the jury and put chains upon them, but let them say whether there has been adultery on either one of those four or five hundred days, or at any time during that period. Do not compel them to say, "There has been adultery, but it was not upon that day, or we can't say upon our oaths that it was upon that day." As I said before, the result would be natural. Just this result may occur, the jury, every one of them, believing upon the evidence that the defendant was guilty of adultery, and every one of them unable to say, upon their oaths and consciences, that it occurred upon the particular day alleged, or stated in the bill of particulars. That may be the result. And I say that it is possible, under this restriction, that the counsel might admit to the jury that their client had been guilty of adultery, and yet have a verdict vindicating him, so far as such a verdict could vindicate him, from the charge. Now, that is what we protest against. We object to being hampered or restricted at all, upon this trial, with reference to our evidence. We wish to be left free to offer all competent evidence, and we want the jury left free to consider that evidence unrestricted or unhampered by any other consideration intermingled with it, but to consider the one, sole, single fact, "Is the defendant guilty of adultery, or is he not?" And as that fact is found, so let the jury pronounce. That is what we insist

upon, and we say that this order to restrict us would embarrass and hamper the jury. It would not leave the jury free to consider the evidence as they ought to be, but in considering it they must all the while be looking for the day, and trying to apply it to the particular day, and where, upon the face of the letters, and by the circumstances and the acts of the defendant, it does not point to a particular day, it can not have its legitimate weight with the jury.

Now, where the necessity, I ask again, in view of the statement that your Honor has now before you, of any order whatever in this case? It is a matter of discretion with your Honor. Because the Court of Appeals have said that you have the power, is that the reason why they should have this bill, when we come in now with the facts we have submitted to your Honor, which perfectly answer all the objections that they have heretofore raised? The sole ground upon which they have rested their application for a bill of particulars, the very ground upon which they put it in the moving affidavit, is that they anticipated false and manufactured evidence with reference to times and places. We come in and tell them what our evidence is upon that point. So that the very reason they aver in their moving affidavit, why they should have a bill of particulars, is thoroughly, fully, and completely answered. You say you are afraid of being surprised by such evidence; that we will bring forward witnesses to testify to these facts. We tell you our evidence upon that point. Where, then, the necessity of any order with reference to it? And what reason, I ask your Honor again, can there be in this case, except to hamper us and the jury; what reason is there in the restriction if it is not intended that the jury shall be required to say, before they can render a verdict, that it occurred upon the particular day it may be alleged in the bill of particulars. And that will be the burden of the argument upon the trial; the jury's minds will be called to that fact, and they will be reminded of the fact that there is not any evidence, that these letters that are introduced (whatever they may prove), prove adultery on the particular day averred in the bill of particulars; so that the minds of the jury will be drawn off of the main issue and the main fact in the consideration of this case, and we can not have the benefit of the evidence. Take, for instance, the very first letter that we shall introduce, probably,—take any letter. Your Honor has seen some of the evidence, and much of the documentary evidence has been published. Take the letter of Jan. 1, take the letter of Feb. 5, or June 1, or any other of the letters; and while, as we claim, they establish the fact beyond all question, there is nothing upon the face of those letters that indicate any particular day or any particular time; but, in connection with other facts and circumstances, they bring it within the period alleged in the complaint. Now, I ask, shall the jury be compelled to say that that has reference to a particular day, when there is nothing upon the face of the letters to indicate a particular day; and because that evidence does not indicate a particular day, shall the jury be told that they can not find a verdict unless they find the immaterial fact, the particular day, because it is an immaterial fact in this case? Now, that is the object, and the only possible object there can be in any order restricting us upon the trial here. It can have no other object; it can have no other effect than just the effect that I

have referred to, and, indeed, it is confessed here by counsel. Counsel say that that is what they claim. Counsel mean that we shall be compelled to prove upon the trial that the adultery was committed on the particular day, or, as modified by the expression of the counsel, at about the day. What does "about the day" mean? It all comes back to the fact that the jury must consider the evidence in connection with the date, when the evidence, the general evidence, does not point to any particular date, but points to the act and the fact itself, not the day, or the date, or the particular time, but to the fact; and why should we be deprived of the natural effect of our evidence? Why shall not the jury take this evidence and say and determine the one particular fact, and that alone: Does this evidence establish the fact alleged in the complaint, to wit, that the defendant committed adultery with the wife of the plaintiff during the period alleged in the complaint? What other purpose, I ask, is there in the order? What other effect can it have? And, if it has that effect, then we are deprived of the benefit of our evidence. The jury are not left free to consider the force and the effect of our evidence, the force and the effect of the act, and all the circumstances going, as we say, to establish the main fact.

Now, why, in a case of this kind, should there be any restriction of the kind? Should not the whole question be left to the court who tries the case, and, especially, since we have so fully met the objection that they have heretofore raised, or the consideration why they should have a bill of particulars because they were afraid that we were going to produce false and manufactured evidence with reference to times and places which they would be unable to meet upon the trial? We say, in answer to that, there is the evidence and the only evidence that we have with reference to the particular point that you raise. Now, what more do they ask? What more have they a right to than that? We say you need have no apprehension upon that point. There is our evidence. We disclose it to you. It don't make any difference whether we have heretofore refused to disclose it. We didn't believe they had a right even to that much; we don't now believe they have a right even to that much; we don't believe it is a case where the court ought, under any circumstances, to exercise the discretion to give a bill of particulars; but we waive that consideration, and we furnish them the evidence; we furnish them the fact; and now they chide us because we do furnish them with the fact, and thus take away any possible excuse that they may have for asking a bill of particulars in this case. Now, why not leave it as it is? They have got all the information they can have, and what object is there except to get some advantage with reference to the trial and the determination and the consideration of the evidence? If it is to have no effect upon our evidence, if the jury are to be left free and unhampered to consider the effect of all our evidence, then there is no necessity for the order. If the effect is to hamper or restrict us in any degree, however slight, then the order should not be granted and that that is the effect of it, I think I have clearly shown to your Honor, that the jury would not only be required, under the order, to find the fact, the material fact, and the only material fact, but they must go one step further and find an immaterial fact, before they can pronounce judgment upon

the material fact. Now, we don't think that is proper. We say they are not entitled to any such restrictive order as that. All we ask is the opportunity to go to trial here unhampered, and then we are ready.

Mr. Evarts.—If the court please, in this case, as in every other case, the burden is upon the plaintiff to prove his allegations, and not upon the defendant to disprove any charges that can or may be made against him. All evidence on the defendant's part, that went beyond pertinency to the charges of the plaintiff, would be ruled out as irrelevant. If, then, this plaintiff in this case is unable to assign and to prove any act of adultery within the general rules of law and evidence, this case must be dismissed with a verdict for the defendant; the defendant would not be permitted to go on and prove that all other charges, imputations, and insinuations that had been made against him were equally false. So much, then, for the suggestion that it will be an unsatisfactory verdict for this defendant, and for his counsel, and for the public, that he is discharged from the imputations legally made against him in this suit. Those are the only imputations that he had an opportunity to meet, and when he has met those, and the verdict is for him, he is discharged until some other legal and definite charge is made against him, and that is the difference between a trial in court, under the constraint of the law, under the control of the Judge, under the solemnity of oaths, under the practiced supervision on the one side and the other of competent counsel to see that proof relating to issues, and ending in satisfactory results, is produced. Now, my learned friend says that, under the restrictions which may be adopted, they might be limited in their proof, and the defendant might rise in court and by his counsel admit that within the pleadings he had been guilty of adultery, and still the verdict would be in his favor. Is your Honor asked to put a restriction upon the defendant's proof of his own guilt, or his admissions of his own guilt, within the issues of these pleadings? No, only that the defendant may be advised of what points in fact and conduct of his are alleged to be the basis of the plaintiff's complaint, and of the plaintiff's proof against him. Now, there are several curious suggestions in regard to the impropriety of your Honor exercising a discretion in this case, to the end and effect that is claimed by the plaintiff's counsel. It is said that the affidavit which has been read here is substantially a sworn bill of particulars, and no other should be required. All we ask is that your Honor should make it a fixed bill of particulars, not flexible, not to be evaded, not to be forgotten, not to be neglected. They give as a reason why, in the discretion of the court, there should not be an order for a bill of particulars for the defendant's protection, the fact that it will do no injury to the plaintiff, for he has sworn that he has no other occasions or times on which he expects to fix this guilt except these. All we ask is that that be so ascertained. But, then, our learned friends object that beyond the limitation to the facts and acts as described within the bill of particulars there will be some shadow of injurious influence of suppression or distortion upon the evidence that they may adduce bearing on those facts. What is there in your Honor's order that undertakes to invade the domain of counsel or the discretion of the presiding Judge at the trial as to the range of evidence, general in the shape of confessions,

general in the shape of conduct, general in the shape of relations between the parties accused, from which there converges upon the acts of adultery moral and actual proof of their commission? Nothing whatever. The law takes care of that. It having ascertained the times and occasions in the actual physical connections of these parties in which you propose to fix the guilty conduct that results in a verdict; then the law of evidence applicable in these cases, well understood, doubtless well to be applied, by the learned judge who will preside, whoever he may be, determines from what sources, in what shape, from what witnesses the evidence shall be received tending to prove that those facts exist. Now, nothing is better settled than that in cases of this kind (the actual sexual contact not being expected to be proved in the general experience of life), proximate acts are admitted, engaged affections, habits, relations, deviations from the ordinary proprieties of life, all that converges; but still, upon the principle that only as to a time and place reasonably ascertained, and within just limits, proof on one side and the other may be properly adduced to bear upon the jury's determination of the principal act.

Now, my learned friends say that it is within sixteen months, and that that is not a very long range for a man to be prepared with evidence to meet any unexpected suggestions. Well, but their complaint is six years, and not *sixteen* months; and now we are brought down to what we have been striving to get at, that this plaintiff has no knowledge and no facts that will prove adulterous connection except at the times and places named. That ought to be, certainly, a very gratifying thing to him. We have had vague notions of long-continued adulterous connection. Now, there is no evidence, there is no knowledge concerning time and place, concerning the range of adulterous connection that goes beyond the reasonable embrace of these periods. Say, take the month of October, and at one or the other house. We have no desire to have any unreasonable limitations; but when this is disclosed as being all within the knowledge which led to the action, all that the plaintiff upon his responsibility is willing to propound articulately, then to be met with a charge that there had been adultery committed in the years 1873, 1872, 1871, 1870, and 1869, is simply an introduction into the trial of a fact that is not within the cause of action as proposed, and now exposed by a bill of particulars. Well, now, I will agree, it seeming to be settled that under that judicial discretion which your Honor is to exercise,—not a personal discretion, the case is such that a bill of particulars is proper, why all that belongs to the particular case as produced in the affidavit of this plaintiff makes it more proper, because it is no injury to him, and it is only suitable that your Honor should see that it is necessary *ex abundanti cautela*, for otherwise it is not necessary at all; and a reasonable proviso in this limitation of the facts to be proved is not to be considered as suppressing any rightful evidence bearing upon that fact.

Mr. Morris.—One suggestion, if your Honor please. The counsel has begged the whole question and issue between us. He says that if the defendant is acquitted according to the general rules of evidence and law, that will be the vindication, because we have no right to go beyond that.

That is just what we are claiming here. We are claiming that we may be permitted to go to trial, governed by the rules of evidence and by the general principles of law well established, and it is just what they are trying to prevent us from doing. They are trying to interpose here restrictions. Now, the law with reference to these cases is well settled, and the evidence——

Mr. Evarts.—I must object to this, if your Honor please. I close the case.

JUDGE MCCUE.—Mr. Morris wants to say a few words in reply.

Mr. Morris.—We object to the restriction; and according to the suggestion of the counsel he is not entitled to a bill of particulars, but only to the rights that the law, as well settled, guarantees him, and the general rules of evidence. That is all we ask, that we be governed and controlled by the well-settled principles of law, and by the rules of evidence established, without any restrictive order at all in the case.

JUDGE MCCUE.—Let me ask if Mr. Moulton's or Mr. Tilton's statement of October or September is in the papers before the court, or extracts from it?

Mr. Shearman.—Extracts from it.

DECISION OF THE MOTION.

On December 11, 1874, Judge MCCUE delivered the following opinion:

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

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

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

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

In view of the affidavit of the plaintiff read on this motion, it will be sufficient for him to state in the bill of particulars to be furnished that the two acts of criminal intimacy alleged to have taken place on the 10th and 17th days of October, 1868, were committed on or about those days, and at either one or the other of the places mentioned in the affidavit; or, as suggested by

one of the counsel for the defendant, it may be regarded as sufficient to say that these acts were committed during the month of October, 1868. Such a statement fairly acquaints the defendant with the charge he is to meet. I think it not improper to remark here that the frankness with which the defendant's counsel concede that such a statement may be regarded as a reasonable compliance with the rule proper to be applied in such case as this renders this application more easy of disposition than it seemed to be when the motion was first made at Special Term.

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

The radical difference in the proposed orders submitted by the respective counsel seems to be this: The plaintiff insists that he shall not be precluded from giving evidence of acts of the defendant, by which the adulterous intercourse, charged in the complaint, may be established, "although it may not thereby appear to have been committed on any particular day, or at any particular place;" while on the other hand the defendant insists that if by acts it is intended to prove specific acts of adultery, the bill of particulars should state these acts with the same fairness with reference to time, place, and circumstance, as is suggested in relation to the two acts alleged to have been committed in the month of October, 1868. I can not well understand how any act of the defendant can be offered as proving directly and specifically the adulterous intercourse charged in the complaint, "although it may not thereby appear to have been committed on any particular day or at any particular time." Such seems to be the plaintiff's proposition. Such proof would necessarily not only establish the commission of the adultery, but also with some degree of certainty, both the time and place.

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

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

In the shape in which the former motion was made, there was force in the objection, for it was then asked that the plaintiff should be confined in his proofs to the times mentioned in the bill of particulars. On the present

application, however, it is not sought to deprive the plaintiff of the benefit of the general confessions of the defendant. Such a rule might indeed "shield a defendant from just responsibility." We propose no such restraint.

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

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

No costs of this motion.

The following order was accordingly entered:

At a Special Term of the City Court of Brooklyn, held at the Court House in the City of Brooklyn, on the 10th day of December, 1874.

Present: Hon. ALEXANDER MCCUE, *Judge.*

[*Title of the cause.*]

On reading and filing the affidavit of Thomas G. Shearman, verified December 7th, 1874, and the affidavits of the defendant and of O. J. Clauson, verified October 7th, 1874, on the part of the defendant, and the affidavit of Theodore Tilton, verified December 10th, 1874, on the part of the plaintiff, and on the order to show cause granted herein, December 7th, 1874, and the remittitur from the Court of Appeals, upon the appeal from the order theretofore made in this cause denying the motion for a bill of particulars, and after hearing Mr. Evarts, Mr. Shearman, and Gen. Tracy, of counsel for defendant, and Mr. Morris, of counsel for plaintiff, it is

Ordered that the plaintiff furnish to the defendant's attorneys within three days from the time of the service of a copy of this order on them, a statement of particulars, verified by the oath of the plaintiff, setting forth the particular times and places at which he expects or intends to offer proof that any specific acts of adultery occurred between the defendant and the wife of the plaintiff, such designation to be made as indicated in the decision on file; and that the plaintiff be, and he hereby is precluded from offering any evidence at the trial of this action to prove the occurrence of any specific act of adultery at any other time or place than such as shall be set forth in the said statement of particulars.

But this order is not to be construed as prohibiting the plaintiff from introducing, on the trial of this action, testimony, which may be admissible under the general rules of evidence, as to any acts (other than specific acts of adultery), declarations, writings, documents, or any alleged confessions on

the part of the defendant of any such criminal, wrongful or improper acts, in which alleged confessions no particular time or place shall be alleged to have been referred to.

(A copy.) GEO. W. KNAEBEL, *Deputy Clerk.*

APPEAL TO GENERAL TERM.

From this order plaintiff appealed, and served the following notice:

[*Title of the cause.*]

GENTLEMEN: Please take notice, that the plaintiff appeals to the General Term of this court from the order entered herein on the 11th day of December, 1874, requiring the plaintiff to furnish to defendant's attorneys a statement of particulars, and from every part thereof.

Dated, Brooklyn, Dec. 12th, 1874.

Yours, &c.,

MORRIS & PEARSALL, *Plaintiff's and Appellant's Attorneys.*

To Messrs. SHEARMAN & STERLING, *Defendant's and Respondent's Attorneys.*

And to the *Clerk of the City Court of Brooklyn.*

ARGUMENT BEFORE NEILSON, CH. J., AND REYNOLDS, J., ON THE APPEAL FROM THE DECISION OF MCCUE, J., ON DECEMBER 28, 1874.*

Mr. Pryor.—If your Honors please, the action, as the court is well aware, is for criminal conversation. After issue joined, and after the cause was noticed for trial—I mention this fact because the lapse of itself furnishes a sufficient legal reason why the order should be reversed—after issue joined, and the cause was noticed for trial, a motion was made at Special Term for an order requiring the plaintiff to furnish the defendant with a bill of particulars. The order was granted, and it is from that order that the present appeal is taken. The order is in these words:

"*Ordered*, that the plaintiff furnish to the defendant's attorneys, within three days from the time of the service of a copy of this order on them, a statement of particulars, verified by the oath of the plaintiff, setting forth the particular times and places at which he expects or intends to offer proof that any specific acts of adultery occurred between the defendant and the wife of the plaintiff, such designation to be made as indicated in the decision on file, and that the plaintiff be, and he hereby is, precluded from offering any evidence at the trial of this action to prove the occurrence of any specific act of adultery at any other time or place than such as shall be set forth in the said statement of particulars. But this order is not to be construed as prohibiting the plaintiff from introducing, on the trial of this action, testimony, which may be admissible under the general rules of evidence, as to any acts (other than the specific acts of adultery), declarations, writings, documents, or any alleged confessions on the part of the defendant, of any such criminal, wrongful, or improper acts, in which such alleged

* An intermediate argument on a motion relating to the enforcement of Judge MCCUE'S order, is omitted.

confessions no particular time or place shall be alleged to have been referred to."

The questions involved in this appeal having been argued so elaborately and exhaustively by the counsel for the respective parties, and having been considered and determined by your Honors, I deem it unnecessary to detain you longer than to submit to you one or two general observations. And at the threshold, I beg to protest that we do not object to the terms or the phraseology of this order; that our objection is leveled, not against the construction of the so-called restrictive clause put upon the order, but that the ground, and the sole ground, of our objection is the order itself, and that our contention is that no order requiring a bill of particulars should have been granted. This order either means something or it means nothing. Now, a bill of particulars, *ex vi termini*, imports a restriction upon the party's proof. By its own inherent energy, by its proper office and effect, it limits the party to the proof of the specifications alleged, and precludes him from giving evidence of other acts or of other times or of other places. If it have not this effect, of what utility can the order be to the defendant? On the contrary, if it have not this stringent and specific effect, then the bill of particulars is worse than no bill of particulars; because when the bill of particulars specifying the times and places is propounded to the defendant, it is propounded to him with this object, that he shall be prepared and admonished as to the points of our attack, in order that he may provide himself with the means of repelling those attacks. But if we, on the trial, after having admonished him that we design and intend to prove the acts of adultery at a particular time and at a particular place, may vary from that admonition, and may give proof of acts of adultery at other times and other places, what is the result? We have misled the defendant. He has prepared himself to resist a particular attack and to repel particular proof, and now when you allow us on the trial to give evidence of other acts at other times and other places, all his preparation and provision go for naught. Wherefore, then, precisely as no direction is not so bad as misdirection, just in the same proportion and just in the same manner will a bill of particulars upon the construction here suggested be worse than no bill of particulars at all; for whereas, if there be no bill of particulars, the defendant will come with proof of his general innocence, armed and equipped to repel the allegation of adultery at any time or at any place during his entire career; yet, when by your bill of particulars you have indicated and guaranteed to him that only specific acts of adultery at particular times and particular places are to be proved, you mislead him, and he would have a just cause of complaint. But this bill of particulars is not the innocent thing this construction would indicate it to be. The learned gentlemen, upon the other side, are men of too much earnestness and ability and practical sense to expend their energies in beating the air. They have not put forth the exertion and the learning and the talent which they have displayed in this case merely to grasp an air-drawn dagger. They have contended for a definite purpose and for a substantial advantage. They did not

invite the struggle at the Special Term and renew it at your General Term, and continue it at the Court of Appeals, and now here again revive it merely to realize a barren victory. No, sirs; they contemplate, I say, a definite purpose, and they anticipate a decisive advantage. Now, what is that purpose and what is that advantage? It is set forth in the order from which the appeal is taken with sufficient explicitness. That purpose is specifically and critically this, that no matter how abundant and overwhelming the proof of the general fact of adultery on the trial may be, nevertheless, we can not recover a verdict nor entitle ourselves to a verdict unless we go further and prove the fact of adultery to have been committed at some particular place and at some particular time; and their object is to restrict us to proof of the acts of adultery at that particular time and at that particular place. That is their contention, that is their position, a position which, I say, is embodied in the order, and a position which they will not repudiate. Now, then, that being the position, that being the effect of this order, that being its intended and necessary operation, tell me, please your Honors, where in this case stands this plaintiff? We object to this order, because it robs the plaintiff of his legal rights, and virtually and in effect denies him any and all redress for the wrong of which he complains. What is the gravamen of this action; what is the wrong of which the plaintiff complains? That wrong is that his wife has been debauched by the defendant. The charge he makes is that the defendant is guilty of adultery with his wife. His wrong is not that the adultery was committed on this day or at that place, but his wrong—if wrong he has sustained—consists in the general fact that his wife has been debauched, and that his life has been blasted. What does it signify him, if the wrong has been committed, whether it was committed at this place or that place, at this time or that time? What does it import if it was committed on the 10th of October, 1868, or the 20th of October; whether it was committed on Columbia Heights or in Livingston street? What does it avail to mitigate the guilt of this defendant, if indeed he be guilty, to say and prove: "True, the fact was committed, the adultery was perpetrated, but it was perpetrated at another time and at another place." And what does it avail if the plaintiff has sustained this wrong, if indeed the deed has been done, what does it avail to alleviate the sorrow and the suffering and the injury he has sustained, to be told, "True, your wife has been debauched; true, the defendant has had criminal conversation with her, but it was not at this time, it was at another time; it was not at this place, it was at another place." Thus, if your Honors please, the wrong of which this plaintiff complains, the grievance which he alleges, the injury for which he seeks redress, is the substantive fact that adultery has been committed by the defendant with his wife, a fact which is not mitigated or qualified by the irrelevant and immaterial predicates of time or circumstance. That was the issue which the plaintiff tendered to the defendant, and that was the issue which the defendant with alacrity and with courage accepted. Your Honors can not but remember, for it was a memorable circumstance, that when the defendant prepared and promulgated his answer to the public—you can not but remember the electric effect which it produced, how it reanimated and reassured

the confidence of his friends, how it smote dismay to the hearts of his enemies.

But, if this defendant had in his answer said, "I did not commit adultery on the 10th of October, 1868, or on the 17th of October, 1868; I deny that I committed this crime on those days or at the places alleged," would his answer have been received with the applause—would it have produced the encouragement which it did produce in the country? No, sir. The effect to which I have adverted results from this—when the defendant prepared and promulgated his answer, he did it in these direct and manly words: "That this defendant never had, at any time or at any place, any unchaste or improper relations with the wife of the plaintiff, and never attempted or sought to have any such relations." Thus it was that the defendant, at the commencement of this action, understood the issue. He did not consider that this great controversy was to be determined by accidental circumstances—was to turn upon outside and irrelevant issues. He understood otherwise and he tendered to us the defiant and manly declaration, "I am innocent—not innocent as to the time and place; but I am innocent as to the fact, and I challenge an investigation of my entire career." That was the position that the defendant then took; but whether it be that his confidence is in the inverse ratio to the proximity of the trial, unquestionably now, whereas at the commencement of this fight he was willing to have the battle waged, they come by this bill of particulars, and ask that the true question, and the great question, shall be eliminated from the trial, and that the issue shall hang suspended upon an accidental and immaterial circumstance. That is to say, they desire to have the issue changed from the substance of the charge to the circumstance of the charge. Now, if your Honors please, the kind and the quantum of evidence by which the plaintiff is to support his allegations, and to make manifest the wrong he sustains, is prescribed by the rules of evidence, those rules which are as unimpeachable and immutable as any precept of your positive jurisprudence, rules in which is found the surest safeguard of the rights, and the liberties, and the property of citizens, those rules of evidence propounded by elementary text-writers, and illustrated and enforced by all tribunals, and pre-eminently by Lord Stowell, the great master of ecclesiastical law; those rules say—I quote the words—"General cohabitation excludes the necessity of proving particular facts;" "that it is not necessary to prove, in order to maintain this action, that the adultery was committed at any particular or certain time or at any particular or certain place." Further, these writers and these courts propound that general evidence, not indicative on its face of any particular time or place, is admissible, not only admissible, but although this general evidence does not point to any particular time or place, the jury may find a verdict for the plaintiff, and may find the fact committed at all times and at all places to which the evidence may be applicable. Now, the gentlemen on the other side pretend, "We do not desire or propose to restrict the introduction of your proof." Nay, more, they go further, and say, "We are willing to give your general evidence all its probative force." But observe, your Honors, they contend, "Although your general evidence be admissible,

and although we concede to it all its legitimate probative force, yet, nevertheless, since you have got to prove the act committed at some particular time and place, then since this evidence, although it is proof of the act, falls short of, does not reach to a demonstration of the time and place, therefore the defendant must have a verdict." That is their contention. Now, where I repeat upon this construction, and imputing this operation to the order under appeal, where does the plaintiff stand? You have seen where he stands, in the view of the general laws of evidence. You have seen what are the rights and what is the redress that those laws guarantee to him. And what is the remedy? what are the rights which he has under this bill of particulars? He must prove not only the general fact of adultery, but he must prove by competent and sufficient evidence that the fact of adultery was committed at some particular time or some particular place; otherwise the defendant must have a verdict. Well, now, how can this plaintiff prove the details of the adultery? Adultery is not a thing perpetrated in the public eye. When the adulterer goes about his business he does not summon the world to witness his exploit; least of all does he invite the injured husband to be the spectator of his own disgrace and infamy, but instead he retires into a corner, and drawing around him the curtain of darkness and concealment, he consummates his iniquity. Such is common sense, such is human experience. But further than that, these gentlemen know, and the world knows, that this plaintiff does not in point of fact pretend to have any personal knowledge as to the times and places at which the acts of adultery were committed. On the contrary, having avowed and disclosed all his testimony, these gentlemen see, and the public sees, that it is impossible for him by legal evidence to prove the time and place; wherefore, when these gentlemen, by the bill of particulars, exact as a condition of a verdict for the plaintiff that he must show the time and the circumstance, they impose an impossible condition, they decree his defeat in advance, and it would be more candid and more compendious at once to dismiss his complaint. If your Honors please, this is no trivial cause. This defendant is no ordinary personage. This controversy involves issues of momentous magnitude, and it is no rhetorical exaggeration to say that the eyes of Christendom are directed in anxious expectation to its event. This issue is fraught with everlasting and unutterable ruin to one or the other of these parties. Wherefore, then, since such grave interests are implicated in the decision of this cause, should not the controversy be determined upon the great fact in issue, and not upon a collateral question, the place where and the time when? The great fact in issue is, did the defendant commit the act of adultery, and not where did he commit it, or when did he commit it? The eclipse of an illustrious name, the degradation of an exalted character, is not a catastrophe which any well-ordered mind can contemplate with complacency, because it impeaches our common humanity, it shakes and unsettles our faith in the integrity of human virtue. Hence, we all have an interest in the defendant's exculpation.

This defendant, if he be innocent, is entitled to a vindication; he is entitled to an absolute and complete vindication—not a vindication which finds that he did not commit the act of adultery in Livingston-street, that he

did not commit the act of adultery on the 10th of August, 1868, but a vindication which ascertains and proclaims that he never committed this act (in his own language), at any time or at any place. A petty thief seeking to escape the penitentiary may congratulate himself if he be let go by a flaw in the indictment or variance in the proof; but this defendant can be content, and the world will be content, with no such acquittal. What he wants and what the world demands is a settlement of the issue raised by the pleadings, a decision, a determination of the fact alleged by the plaintiff and denied by the defendant, namely, that he committed the act of adultery. When he gets that vindication, he will be restored to the pedestal of power and popularity which he so long occupied and graced; but until he gets that vindication, if he escape from the fangs of justice by a variance in the proof or a defect in the indictment, he will go a fugitive with the indelible mark of Cain branded upon his brow. So, then, it is due to the defendant, it is due to the plaintiff--who, if the defendant is guilty, has sustained the most enormous wrong which one man can inflict upon another—it is due to the plaintiff that it shall be investigated by an impartial tribunal, and determined by the country, not whether the wrong was perpetrated upon him on one day or another, at one place or another, but it is his right to have tried and decided the great fact whether he has sustained the wrong at all. The gentlemen on the other side can not complain of surprise. They might complain of surprise if this order be allowed to stand with a clause permitting us to give proof of another time and place; but if there be no order, if there be no bill of particulars, they can not complain of surprise. Why, what are the facts? With a candor unparalleled in the history of litigation, this plaintiff has deployed and developed in classes and categories every tittle of evidence by which he proposes to substantiate his case; and not only that, but he has catalogued and named every solitary witness whom he proposes to produce upon the trial. How, then, can these gentlemen be surprised? The considerations that I have suggested to your Honors are pertinent to the exercise of your discretion in affirming or reversing this order; and that you may exercise your discretion, that you may review the exercise of the discretion of the judge below in granting the order, is specifically not determined but assumed as a postulate in the case of *Tracey* v. *Altmyer*, reported in 46 New York, 598.

These arguments, then, that I have briefly and hurriedly submitted to your Honors go to show that the granting of the order in this case—conceding to the court the power to order a bill of particulars in this species of action—yet these considerations go to show that allowing the order will be a practical denial of justice to the plaintiff as well as to the defendant, for that matter: that it will exclude all consideration of the real question in controversy. For that reason we ask your Honors not to modify the order, not to seem to abate its ferocity, not to restrict its operation, but we ask for an order of reversal, pure and simple.

Mr. Shearman.—It is an old maxim of war, may it please your Honors, that it is dangerous to change front in the presence of the enemy. Either the learned gentlemen on the other side have vast confidence in their case, or they have great confidence in our inability to meet it, or they are preparing

to run away. For they have made the most complete change of front in the presence of the adversary which I have ever known in all my experience. Only a few days ago, and though your Honors were not holding General Term, you heard the outcry of counsel with regard to the terms of this order, and the whole argument was directed to the question of the terms of the order. Now, it is acknowledged, with a frankness that would have been commendable if it had been used at the beginning, that would have been commendable if another line had not been taken before the court and before the public, and that may, perhaps, be even a little commendable coming even now, and so late, from a gentleman who, I really believe, always tries to be frank and candid, that their objection is not to any particular terms of the order, not to any supposed special defect which could be obviated in granting any order for any bill of particulars whatever, but to any and to all orders for particulars in this case.

Mr. Beach.—If you have got that idea, you may as well dismiss it, for we do object to the particular terms of this order.

Mr. Shearman.—It is the misfortune of this case that no two of the plaintiff's counsel, so far as I have had any experience, are ever able to agree.

JUDGE NEILSON.—It reminds me of Dickens's remark in "Bleak House," about the case of Jarndyce *agt.* Jarndyce; there never were two persons who conversed a minute about it without disagreeing.

Mr. Shearman.—The gentleman who has spoken says that we have decreed his client's defeat in advance. May it please your Honors, part of that is true. His client's defeat is decreed in advance, but it is not we who have decreed it; it is the essential falsehood of his case; it is the laws of nature and of God operating upon him and making him afraid to come into court when he has to come to a manly and a square battle. No, your Honors, this is not the entertainment to which he invited himself. He invited himself to a battle which should be all on one side. He thought that, with his pompous strut across the stage of life, at one blow he could crush the man whom he hated. But he found his mistake. He found that his adversary stood up stronger than he ever stood, with friends who before would have given him money, but who would now lay down their lives for him by thousands. He found that this man had more courage than he ever showed before; that he had awakened a sleeping lion; that he was to battle in the open day, and upon an open field. And when he found that that was the proposed entertainment, then we saw, and now see, all manner of excuses devised to enable him to discontinue his suit. We accept the concession of the learned gentleman that the conviction of our client by real evidence or in the judgment of God, would be a terrible calamity. We accept his concession that this is no trivial cause; we thank him for that, and it does credit to the gentleman, whose perception, I have noticed, is keen and just about those matters. It is no trivial cause, and this is no trivial question. It deserves to be treated with dignity and examined with care. But, may it please your Honors, we have no fear of any such calamity. We entertain no apprehensions on this subject. The clouds have passed away for us, and we see daylight clearly, and, as we said the other day, no matter what the decision of your Honors

may be upon this question, we are going to this battle, and we are going to fight it out, if we can only persuade the plaintiff to stand up long enough to receive our blows.

But there is one part of the gentleman's concession to us which I beg leave respectfully to disclaim. He says that our client needs a vindication, and should have it here. We beg to assure him, your Honors, that we do not think that our client needs any vindication, and that we do not believe that any possible result which can take place in this tribunal, or in any earthly tribunal, can make any difference in the ultimate fate of our client. We look back upon a long line of precedents of this kind, and from the days of Athanasius, who is considered the patron saint of orthodoxy, and who was accused in precisely the same way, we come down through a long list of brilliant names—for this has been a favorite charge against the clergy from the beginning of Christendom to the present time—we look through that long array and we find many who were accused, and some who were convicted by tribunals. But we find no judge or jury that ever convicted a clergyman who stood up for his own name, and for the name of the innocent woman who was accused in relation with him; we find no case of a clergyman who stood up like a man and asserted his innocence, and whose people stood by him, and who had faith in his God, whose name does not shine brighter at this day than ever, while the memory of those who attempted to convict him rots and rots. And we have no fear, we say it with all respect, of judges or juries. We ask no favor of any judge or of any jury. We care not what shall be the decision of judge or jury. We know in our own hearts, our client knows, and God knows his innocence, and we take no such concession as that he needs a vindication in this case. No, your Honors, we are not seeking a vindication. We seek to do that duty which every man, clergyman as well as others, should do when called into a court of justice. We are pursuing on behalf of our client the regular line of professional duty, we are pursuing the line which we should adopt in any case. We do not turn to the right hand nor to the left. His vindication has come. His vindication is in the hearts of his people, who never can be shaken by any adverse result. But, your Honors, they are perfectly correct in saying that they are defeated, even here, as a thing decreed in advance, and they show it by their manner and by their unwillingness to meet the issue. If I understood the gentleman correctly, he made the preliminary objection that our motion was too late. I think I have heard from one of the counsel now present something about our skulking behind technicalities. If I am incorrect, I will refer to the report.

Mr. Fullerton.—You are correct, sir.

Mr. Shearman.—Yes, sir; we have heard something of skulking behind technicalities. To say that a motion which is made one month before the trial is nevertheless too late because it was not made before notice of the trial was served, is, I suppose, not skulking behind any technicality whatever. The question of the time of a motion may not be a technicality, but I have always understood that it was. I have always understood that that objection had to be raised in the court below. I have a verbatim report of the argument before his Honor Judge McCue, and I haven't the slightest recollection,

after reading that several times, that any such objection as this was made below, so I will pass that over without wasting more time.

Coming, then, to the purely legal questions involved in this case, we respectfully submit that the decision of the Court of Appeals—the *decision* proper—having settled the question of the *power* of the court to grant this bill of particulars, the opinion of his Honor Judge RAPALLO (which was concurred in by a majority of that court, and which was only dissented from, so far as an expression of doubt might raise dissent, by his Honor Judge GROVER), goes much further than the decision, and shows plainly, by necessary logic, that is not merely in the power of this court to grant the order which his Honor Judge MCCUE has granted, but that, in the exercise of a wise judicial discretion, this court is bound to grant such an order.

JUDGE NEILSON.—I do not wish to interrupt your argument, but I am not prepared to believe that it rests with the Court of Appeals to make any such determination.

Mr. Shearman.—Well, I propose to argue that, and I understand that your Honors will not necessarily be convinced by everything that I say.

JUDGE NEILSON.—I don't think the Court of Appeals can do more than they have done, to wit, decide that courts of first resort have the power in the exercise of a wise discretion to grant, in all actions for torts, including this peculiar case, particulars. But it would not rest with that court, whatever the reasoning or illustration might be in the giving of the opinion, to instruct us that we should grant it in this case, because no such question was before the court. That would be depriving us of the very discretion which they attribute to us.

Mr. Shearman.—May it please your Honors, I do not claim that the Court of Appeals could, or did, or would, or that I should myself undertake to establish that this court was bound to make an order for a bill of particulars in every case in which it was applied for. I take this ground—that if I satisfy your Honors that this is a case entirely within the line of precedents; that this is a case in which, by the uniform practice of courts from which we derive our system of practice—that being a system which the Court of Appeals has recognized as binding upon this court, so far as the question of power is concerned, I claim that this would then stand in precisely the same position in which it would if I were arguing an appeal from an order for an injunction. In every case, the granting or refusing of a prayer for an injunction rests in the sound discretion of the court, and I would not come into court and presume to say that, simply because I made an application for an injunction, I should get it, or that the court would be bound to grant it. But I should insist, respectfully, if I made out a case for the granting of an injunction similar to those in which injunctions had five hundred times before been granted and never refused in any reported case, that your Honors were morally bound to grant that injunction. Now, that is what I claim in that; nothing more. I will cite upon that point a case not cited in my brief: *The People* v. *The N. Y. Central Railroad Company* (29 N. Y. 418). The court say there, speaking of a question of pure discretion, that the discretion of the court is not "a mere arbitrary, unregulated discretion, but a judicial

discretion, to be exercised upon certain conditions," and depending upon legal principles and rules. If it please the court, that was a much stronger case than the one now before you, for this reason, it was a question of an extra allowance of costs. The language of the Code there is very strong. In putting the discretion upon the court, it says that "the court may, in its discretion, grant a further allowance not exceeding five per cent.," and it was in regard to those words that the Court of Appeals used this language; said that it was not an arbitrary, unregulated discretion, but a judicial discretion, to be exercised upon certain conditions. In the case now before your Honors the Code does not use the words, "in the discretion of the court," it simply says the court may in all cases order a bill of particulars. The word "may" embraces, I submit, a certain presumption of legal discretion, but the other section of the code actually puts the words "in its discretion" into the body of the section. And yet the Court of Appeals held there, where the discretion of the court was expressly recognized by the statute, that the court had only a legal discretion, to be exercised in accordance with the rules. I refer again to the opinion of the Court of Errors in *Tripp* v. *Cook* (26 Wend. 143), particularly at page 152, where Senator Verplanck, citing CHIEF JUSTICE MARSHALL with approbation, says that, "the judicial discretion . . . never means the arbitrary will of the judge. It is always a legal discretion to be exercised in discerning the course prescribed by law." I might refer your Honors to many cases in which the word "may," when used in reference to private rights, has been held to mean must, not "must" in such a strict sense that the court may not use any discretion, but "must," in such sense that, unless the court sees a reason for not granting the favor which the statute says may be granted, that then it must be granted. Of course, I am speaking of matters of substantial right; I am not speaking of matters like opening a default, or allowing an amendment to a pleading, although, even in questions of amendments of pleadings, the General Term has recently decided that those orders are appealable.

But, furthermore, if this were a mere matter of arbitrary discretion, that would be at once the end of this appeal, and we should be entitled to dismiss the appeal. We do not make any such motion for the reason that we do not believe that Judge MCCUE or any judge had a purely arbitrary discretion to grant or deny this motion. We believe it must be granted or denied in accordance with the examples of the precedents.

Now, then, looking at the opinion of the Court of Appeals, we find this long line of precedents, part of which were cited to your Honors on a previous occasion, but which on going to the Court of Appeals were more than doubled —we find that all those precedents are cited as authorities binding on the court on the question of power, and showing that they are cited with approval on the matter of discretion. The only question, therefore, which remains to me is, do we come within the range of those authorities, or do we not? As to that I am not prepared to trouble your Honors with a brief on this occasion, having understood that this question was not to be raised to any extent on this argument. But, nevertheless, I may refer your Honors to a few cases in a long and unbroken line of decisions by the Massachusetts courts. I will not

at this time refer to the Pennsylvania reports, but your Honors have the brief which we used on the previous occasion, and you will remember that in all those cases there is one unbroken line of authorities to show that particulars are granted in particular cases, under circumstances like these. The Court of Appeals added an authority dating from the year 1692, and Judge RAPALLO states that, in his opinion, at the present day there is no class of cases in which particulars are so frequently ordered as in actions of divorce and of the nature of *crim. con.* If I understood the objections which were raised by my learned friend on the other side, after all, his objection to an order for particulars does not go to the order itself. He does not particularly object to stating, if I understand him, the times and places concerning which he intends to offer specific proof at the trial. But he thinks that there is some peculiar and magic effect in this bill of particulars which will shut out his general evidence. He seems to think that if he could prove a course of general cohabitation between the defendant and the plaintiff's wife, showing that they lived together in the same house during the course of two years, that he would not be entitled to the legitimate effect of that evidence, in consequence of the inserting in this case of the bill of particulars.

Mr. Pryor.—No, I don't say that; that is not the question.

Mr. Shearman.—That is certainly what I understood to be the effect of the gentleman's argument.

Mr. Pryor.—The question is, what would be the effect of a bill of particulars furnished in compliance with the terms of this order?

Mr. Shearman.—There can be no doubt at all that if they proved that the plaintiff and defendant had lived in the same house, and had occupied the same room during the course of two years, without showing anything more, a jury would be entitled to find a verdict in this case in favor of the plaintiff.

Mr. Pryor.—That is not the question.

Mr. Shearman.—Then I am so dull that I am unable to comprehend the question. If they can produce any general evidence which is equivalent to that, there is nothing in this order to prohibit them from doing it; and there is nothing in this order that limits the effect of their evidence in any way whatever. It limits simply the kind of evidence that they may produce, and it does not limit by excluding anything except such things as they have now, under the sworn affidavit of the plaintiff, stated to the court that they have not in possession and can not produce. Now, supposing that there were no bill of particulars in this case whatever, and supposing we went to trial upon the facts as they are, with a stipulation on the part of the other side that they would produce no evidence except such as was mentioned in the plaintiff's affidavit; they would not claim then that that stipulation limited the effect of the evidence that they produced, but yet the result would be just the same as would be produced by this order for a bill of particulars.

This order nowhere in its terms declares what shall be the effect of evidence produced. It excludes nothing in the world except proof of specific acts of adultery occurring at places not named. If they can prove a general course of adultery without a specific act, they are at liberty to introduce it by the very express terms of this order, and there is not a word in this order

which says what shall be the effect of that proof of general acts. The fact is, may it please your Honors, they are endeavoring to anticipate a question which may arise at the trial, and which may not. They are endeavoring to get an order in our behalf which shall be more favorable to them than if they had no order at all, because the question which they anticipate is this: If they come in with general and vague evidence looking in the direction of adultery, but without any specific evidence—that is, without any such evidence as to prove that those parties were even seen in the same room together —without any evidence to prove that they were found under suspicious circumstances, without any evidence that they confessed to the act of adultery at any particular time; they claim that if they come in with that general evidence it will not be allowed its full effect. It will be allowed just as much effect with the bill of particulars as it would without the bill of particulars. It may be that we shall be so preposterous as to claim on the trial that there must be some evidence which shall satisfy the jury that this alleged act of adultery took place somewhere on the habitable world. It may be that we shall not be content to have evidence in which the plaintiff shall admit that this adultery never took place anywhere on the globe, but nevertheless affirms that it did take place. It may be that we will object to the suggestion that there can be some spiritual adultery without the parties ever meeting each other. I have heard a very singular proposition advanced by a gentleman who certainly desires to be considered sane, and is considered sane by his friends. I am assured by one of the most respectable members of the bar in this city that he has heard this gentleman say that adultery could be committed by parties who were at the time forty miles apart.

Mr. Pryor.—Christ said so; adultery of the heart.

Mr. Tracy.—Is that the kind that you are after?

Mr. Shearman.—Exactly. I will come to that. But, if it please your Honors, there is a very remarkable article in a well-known newspaper called *The Independent*, which I beg leave to cite, because it may be introduced as a sort of legal authority. In *The Independent* of Dec. 1, 1870, a paper which, it is rumored, was at that time edited by the plaintiff in this suit, there is a very remarkable leading article, one worthy of being cited in the courts of law. It is on the subject of adultery of the soul. It is an article which maintains that the courts ought to grant divorces, or rather that divorce ought to be granted without any intervention of the courts when there is adultery of the soul,—that adultery of the soul is very much worse than adultery of the body. This article is very eloquent on that subject. It expatiates on the great injury that is done to parties who are mismated, by reason of one or the other committing this adultery of the soul. It says that the greatest question which is to come before modern times is the question what is to be the destiny and what the fate of parties who are fastened together by the terms of law, but who, nevertheless, are not mated in their souls—"married but not mated." And it proceeds at great length to set forth this new theory, that there may be an adultery of the soul which is far more guilty than the adultery of the body, and which should be recognized as a cause of divorce. Now, we concede, as the learned gentleman has said, that the Scrip-

tures do declare that the man who looks on a woman to lust after her has committed adultery with her already in his heart. But that is hardly sufficiently tangible to bring in a court of justice, and therefore when we come before the jury we shall ask that they shall be satisfied that adultery of the body was committed, and not merely adultery of the soul.

When we go before that higher tribunal that sits above all judges and all juries, before that tribunal from which alone we expect the final vindication of this defendant, and from which we believe, with all our hearts, that we have it now, then we will commit to that tribunal the question whether there was adultery of the soul. But we do not propose to submit that to any twelve men created on this earth. We do not propose to submit to them any question except whether there was adultery of which they can take cognizance, which is in its nature capable of being proved by material evidence, and which, therefore, necessarily occurred at some time and in some place. But we do not say that we are going to ask the jury to be satisfied that it took place at a particular time or at a particular place. We decline to commit ourselves to any such proposition before going into the trial. It is time enough to raise these questions on the trial. The plaintiff has already sworn that he knows of no specific evidence except with relation to October 10, and 17. Notwithstanding that affidavit, he can put in his particulars any places, any dates that he chooses. He can name any times in his bill of particulars, which he has not yet served. He has delayed the service of this bill of particulars until we are close upon the beginning of the trial, and now he has the opportunity to put in all the evidence which he may have collected together, even since that affidavit. To that we do not object.

We simply object to going to trial without any kind of notice of specific times and places, if he means to prove any. He is at perfect liberty to withdraw all the specific times and places if he chooses, and go to the jury on the questions of general evidence, and if he does that he will find that there is nothing in this order which limits the effect of that evidence at all, nothing whatever, because the only precluding clause is this, that he "shall not be allowed to offer evidence to prove the occurrence of any specific acts of adultery at any other time and place" than that which he sets forth in his bill. That is all the effect of this order. Now, if he names no specific time, and no specific place, but goes to trial with his general evidence, which he says is his strong point, the jury can not be asked to put that evidence in connection with any particular time or any particular place named in the bill of particulars, because he has not named any. They can not be asked to fasten that down in the way that he is afraid they will be asked to fasten it down. And if he produces evidence of general cohabitation, or of general licentiousness, or these general confessions which he claims are so explicit, all that will have its proper effect and will not be limited by any bill of particulars whatever. Now, it is said, and very truly said, that we ought not to be satisfied without as much evidence on our side as we can possibly produce, that the defendant never committed these alleged acts. We do not intend, may it please your Honors, to go into court without proving, so far as lies in the nature of things, so far as it is possible for us to prove, that the defendant

never at any time or at any place, committed these acts. But how can we prove that except by his own word? The wife is shut out from testifying. The law shuts her mouth. There is nothing except the testimony of the defendant himself. In the nature of things there can be no corroborative testimony. In order to support his case with the jury, he wants, therefore, that species of corroborative testimony which arises from negativing so far as possible, all the direct and specific evidence which the plaintiff may produce. If, therefore, the plaintiff has any such direct and specific evidence, isn't it fair he should let us have it a week before the trial? He has had his witnesses, he says, in attendance repeatedly; he complains that they were summoned on other occasions and attended in court. Surely he knows what they were going to testify. He has made an affidavit as to what he can prove and what he can not prove. He does not inform us that any change has taken place since then. Why, then, shall he not repeat in the bill of particulars just what he has stated in his affidavit? Why shouldn't he accept the offer we made the other day to take his affidavit just as it was, and have it served as and for the bill of particulars in this case, and there stand? We take his own word. We are willing to take the statement which he himself has made, and ask nothing further. And as for all those questions concerning the effect of general evidence, the judge who tries this case will be abundantly able to dispose of them when the question arises. It does not now arise. This is not the time nor the place for the discussion of any such question.

We respectfully submit that there has been nothing thus far said which shows that a moderate order for particulars should not be granted, and we submit that the order of his Honor below is extremely moderate; that it is limited even to an extent that is dangerous to us. Your Honors will see that he is only required to give the dates of specific acts of adultery, and under that he might take a course which would be extremely dangerous. He might prove, or attempt to prove, a visit between the parties under circumstances which he would describe as suspicious, and from which a suspicious juryman might infer that the act itself was committed at that time; and yet the plaintiff not claiming that the specific act of adultery took place at that time and at that place, we should still fall into a trap. Well, our eyes are open as to that; we understand that we are in that danger; we understand that there is a possibility even yet of certain fictitious and dangerous evidence being produced. But we have got all that we expect to get in this case; we do not appeal, and in what way can this be dangerous? What is to prejudice them in requiring them, if they have any evidence as to the specific act—requiring them to give a short notice to us before trial. I submit this to your Honors, confident that, although I appear before two judges who have on a former occasion taken a different view of the case, yet that we shall receive that justice and that fair treatment which I know your Honors will always give. We do not fear to go before any place or before any tribunal. We have confidence not only in our general case, but we have confidence in the merits of this application, and submit it to your Honors accordingly.

JUDGE REYNOLDS.—Mr. Shearman, do I understand you to concede that this order does not limit in any way the effect of any general evidence?

Mr. Shearman.—The order does not. I do not understand that the order does at all.

JUDGE REYNOLDS.—That if, for instance, it should be proved the defendant had confessed his guilt without naming the circumstance of the time or place, if the jury should believe that he had made such a confession, and should believe that the confession was true, that then the jury would be at liberty to find for the plaintiff, and must find for the plaintiff, although they could not say that it was done at the time specified in the bill of particulars?

Mr. Shearman.—I concede this, your Honors, and the only reason I do not make a full concession is that I have not my senior associates with me.

JUDGE REYNOLDS.—I ask that question because it might be very material for us to know what would be contended to be the force of this order. If it could have any such effect as that we might think it was wrong, and might think otherwise if it was conceded that it had no effect upon the general proof but merely to require the plaintiff to point out the particular times and places.

Mr. Shearman.—I concede, we are all willing to concede, that this order does not limit the effect of the general confessions. We do not concede at present, though we may concede at the trial, that the complaint itself and the nature of the action, do not limit those general confessions. For example, we may claim at the trial—I do not say that we shall or shall not—we may claim at the trial that the effect of the complaint is, and the effect of the nature of the action is, that the jury are not at liberty to find the defendant guilty upon evidence of general confessions, unless they are also satisfied that the acts confessed occurred at some place named in the complaint.

JUDGE REYNOLDS.—Well, the complaint says within a certain period.

Mr. Shearman.—Yes, sir; within a certain period. Then we should take that ground about the complaint. We do not claim that the order for particulars will have any such limiting effect. On the other hand, we do not want a clause introduced such as they have proposed on the other side, defining the effect of this order so as to increase the plaintiff's rights. We do not want a clause added so that the jury shall be bound to find a verdict upon any general confession, if they believe that confession to be true, notwithstanding they are not satisfied that it occurred at any particular time or at any particular place. We do not want to have that stated in advance; we want to leave that for the judge at the trial. We want a ruling upon the trial upon that subject in case we think it fit to raise the question. We may never raise the question.

JUDGE REYNOLDS.—Suppose they do not want an order made which may raise an exception to any charge which might be made upon the trial as to the effect of any proof, and therefore they do not want a legal obstacle interposed by an order which does not correspond to the general rules of pleadings and evidence.

Mr. Shearman.—We simply do not want this order for particulars to affect that question one way or the other. We want that left open at the trial, and I do not know whether we shall ever raise it.

JUDGE REYNOLDS.—If I understand you to concede that this does not limit the effect of the general evidence, I do not see how anything is left for the trial.

Mr. Tracy.—The same questions would be left for the trial then as if there were no bill of particulars at all. The question would still remain whether the plaintiff could recover on a mere admission that adultery had been committed, without any evidence at all in the case pointing to the time or place.

JUDGE REYNOLDS.—Without regard to the order?

Mr. Tracy.—Yes, sir; without regard to the order.

Mr. Shearman.—There are sometimes curious men in a jury, and we want to anticipate this possible case, that the jury might come in, we will say, with a verdict that they believe this confession to be true, and then, being polled, nine of them should say, "Well, we do not believe that this adultery ever took place within the limits of the United States; we think it took place somewhere outside of the United States"—there not being a particle of evidence that either party was outside of the United States during that period. We certainly shall go as far as that, and we may go as far as this, to say that we do not want the jury to find a verdict of guilty, and then, being polled, or a specific issue being submitted to them, to find that a majority or all of them did not believe that this adultery took place in the city of Brooklyn or in the city of New York, when we might have been prepared, if we had known that any such idea would have come into their minds, with evidence to show that these parties never under any circumstances or at any time met together outside of the two cities of New York and Brooklyn. You can see that in the mind of a stupid juryman, such as we unfortunately have sometimes, such a question as that might arise. He might say, "I concede there is no evidence that these parties ever met in Brooklyn; there is no evidence that they ever met in New York; but I don't think any man could ever have written these letters unless he was guilty of something, and I am going to find him guilty of something." Now, this is a sublunary act, and we object to proof of adultery which is said to have taken place not on the earth. We want to be prepared for adultery that occurred on the earth, and we do not want a juryman to come in and say that there was adultery of the soul; that he must find these parties guilty because they wanted to commit adultery, although they never did so.

Mr. Beach.—If your Honors please, in construing this order and determining upon its effect, I trust your Honors will not be governed by any declarations or opinions which may be made or expressed by our friends upon the other side. The difficulty will be, if any such standard of judgment should be assumed by this court, that when we come to the trial of this case we shall have no such definite presentation of their opinion in the form of a stipulation or otherwise as will control the otherwise possibly injurious effect upon our rights of the order. I do not apprehend that your Honors will be thus controlled, because the explanation of my learned friend does not seem to be quite as clear and perspicuous as the question before your Honors would seem to require. He seems to apprehend that the plaintiff in this case is pursuing the defendant upon the theory of his spiritual adultery, or adultery of the soul, and imagines, when we prove the penitent and remorseful confession of the defendant to his acts of adultery with the plaintiff's wife, that some stupid juryman will believe in the truth of that confession, and fancy

that that adultery has been committed in the moon, or somewhere else than upon the face of the earth, and wishes your Honors to anticipate this stupidity under the direction of an intelligent court, on the part of the jurymen who may be impaneled in this case. Is not that, sirs, trifling with this serious and important question? Why will not our friends upon the other side frankly express to your Honors that they are willing, upon the trial of this case, to meet the issue whether or not, in the absence of all other proof, with the proven and deliberate and clear confession of the defendant to acts of adultery with our wife, we shall be entitled to recover? Why are our friends continually harping upon the question of time and place and circumstance, and why by specially-worded orders are they endeavoring to limit the application of our proof only to those particular times and circumstances which are specified in our bill of particulars? No, sirs; the plaintiff has abundantly indicated, by the affidavit which he presented to his Honor who granted this order, his willingness to disclose to this defendant his entire proof. He has said in that affidavit that he has no evidence, no ocular evidence of an act of adultery. He has disclosed all the species and classes of proof he expects to introduce. He has said that he does not expect to prove any specific time or place at or when this adultery was committed, except by the confession of this defendant pointing to two occasions in the month of October, 1868, and he begged his Honor in that affidavit, if any order for a bill of particulars was to be granted, so to limit and explain it that the true merits of this issue and the true rights of this plaintiff should not be embarrassed by any technicalities upon the trial of the case. Now, your Honors, this question has all been discussed upon its merits and upon authority, and in my judgment a great deal too much talk already has been had in this case.

Upon every occasion when a question has arisen before judge or court, it has been seized for a public display of confidence, of belief, of hope, of religious devotion in the innocence of this defendant. A system of tactics seems to have been pursued upon the part of this defense by which they hope to control the judicial and the public mind, and to influence any jury who may be called upon to pass in this case by these public professions of confidence. To-day my friend says "Henry Ward Beecher is vindicated." Vindicated, how and when? Why, in the judgment of a mighty church, which, day by day, throws its collective and its individual influence to operate upon public sentiment, and through counsel indoors and out of doors, who profess not only their entire confidence in his innocence, but declare here and everywhere that whatever may be the result of the judicial examination now progressing, the faith of his congregation can never be shaken in his innocence. I do not much admire that system of conducting a law-suit. My friend professes to want a manly and an open warfare, and yet by this Chinese manner of contention with drums and cymbals and shouts they attempt to convert this into an arena for public discussion, and into a court held by the public at large. If Henry Ward Beecher is to be vindicated, sirs, it is not to be done by such means. If this trial is to result in a satisfactory conclusion under the law and to the public sense, there must be a bold and a brave trial of this issue, without any resort to technicalities or concealment. It is said by my friend,

'Why don't you accept our proposition that your affidavit shall be adopted as a bill of particulars?" Why, a lawyer would at once perceive, sirs, that while we have made an entire revelation of our sources of proof, yet if they should be put into the form of a bill of particulars, the technical effect of that instrument would be to restrict us in the very manner of which we complain. The object of a bill of particulars, as disclosed by the cases cited by my learned friends to your Honors, is to prevent any surprise, any misapprehension in regard to the character of our proof upon the part of the defendant. How can he get it more clearly than by our affidavit? How can we disclose to him, to prevent any sort of surprise upon the trial, more perfectly and completely than we have done it under oath, all that we expect to prove? And why with this security against surprise do our learned friends still insist that there shall be a technical instrument in the form of a bill of particulars, whose effect will be to restrict us to proof of the particular times and places in which we allege the act of adultery to have been committed? Again, it is said by my learned friends that we proposed in thirty minutes to furnish a bill of particulars. We do, sirs, if your Honors require it. In as short a time as it will take to draw it up we are ready to furnish it, if your Honors think it a proper case for a bill of particulars. All we are contending against is a bill of particulars in such form, general and unlimited in its technical effect, as will circumscribe the range of our proof and nullify the legal effect which, without the bill of particulars, would be given to it; and the limitation which was suggested in the affidavit by Mr. Tilton upon this motion originally, would admit proof which, according to the general rules of evidence, in the absence of a bill of particulars, would be admissible. Then why do they object to that? Do they desire to shut out that class of proof which under the general rules of evidence in cases of this character is proper to maintain the issue? And if their purpose is not by some form of language, by some technicality of expression to restrict proof, why do they insist upon particular times and places, and why did they ask but the other day that an order should be granted excluding us from all proof except such as referred to the two particular places and times specified in that affidavit? Sirs, the purpose of this defense was revealed in that motion; and if it had been followed by an order, it would have been an inevitable necessity that nine-tenths of the evidence which we propose to give in support of this complaint, and which is legitimate to sustain the accusation it makes, would be ruled out without any discretion upon the part of the trial judge upon that trial. But my friend has been very much distressed upon this and other occasions with the idea that the counsel on the part of the plaintiff are dissentient and inharmonious. It is not the first time that counsel has intimated it, and this is not the first time when I say to him that that suspicion is entirely unfounded. There never has been any disagreement, sirs. The line of policy to be pursued by the plaintiff in this case has been perfectly understood and agreed upon by all of the counsel, without any disagreement or embarrassment. With the design to make this discussion as limited as possible, before coming into court this morning, between my learned colleague, Gen. Pryor, and myself, it was suggested that he should discuss more particularly the question as to the

propriety of a bill of particulars, and that I, in a very brief manner, should suggest to your Honors the difficulty which we entertain wi h the order as made by Judge McCue. If my learned friend will be kind and courteous enough hereafter to refrain from the imputation of this idea of controversy and difficulty between my learned colleague and myself, I shall feel personally very much obliged to him, for I assure him that, however much inferior we may be in the management of our case, we are yet bringing to it the concentrated and harmonious action of all our powers. And before looking to this order, sirs, will you permit me to allude very briefly to one single other topic introduced by my learned friend. I think something is to be pardoned, sirs, to the enthusiasm which seems to control that gentleman. It seems to be instigated by the warmest friendship and the highest confidence in the virtue and integrity of his client. I do not object to that, sirs, but I do object that he should take these occasions to convey a false impression in regard to the character of that client, and to the motives impelling him. His vindication is perfect, according to my learned friend. There is no necessity for him to enter upon his exculpation, or to meet this accusation in the form of this action. He is perfectly vindicated here, and he is sure of a victorious vindication hereafter. It may be, sirs. I can not say that I should regret it. I think I should rejoice, sirs, if upon this trial it should be satisfactorily established that Theodore Tilton is deceived and that Henry Ward Beecher is a virtuous pastor. It would seem to be impossible, but if any such result could be accomplished, I should be the last man to regret it. But I object, sirs, that Mr. Beecher shall be unreasonably glorified. I do not think he is entitled to the heroic character which is to-day bestowed upon him by my friend. Having no occasion for vindication he yet enters heartily and bravely into this contest to preserve the reputation of a woman, but the very first step which he took in that direction by his public declaration was to stigmatize that lady as indecorous and adulterous enough to force her love upon him, and then, through the action of his committee to further stigmatize her with the idea of unworthiness in veracity.

Mr. Shearman.—Will the gentleman allow me—he has interrupted me on three or four occasions—I beg leave to stigmatize that assertion, so far as it relates to my client, as utterly untrue.

Mr. Beach.—What assertion ?

Mr. Shearman.—The assertion that he stigmatized the lady as having acted in an indecorous or improper manner, or which allows that he had any adulterous inclinations. There is not a word of foundation for it. I know what is the supposed foundation. It is that he asked the question, "Should I in self-defense turn around upon this lady, and charge her with having sought me ? Should I do it ?" he asks. And I may say here that in private he turned around and said, "I should have deserved to be kicked out of creation if I had." That is what he said. He repudiated the idea that he ever would do it under any such circumstance.

Mr. Morris.—That he could have done it ?

Mr. Shearman.—No, nor that he could have done it. The truth is that

he treated the idea with scorn, and it has been brought up against him in this way.

Mr. Morris.—It is his own statement.

Mr. Beach.—I think the judgment that he formed and expressed upon himself is very accurate.

Mr. Shearman.—It would have been; but it is equally true of all men who attempt to pervert it.

Mr. Beach.—I am not aware of perversion, nor do I act as I am instructed. I do not act upon the system of professional ethics which seems to govern my friends, and do whatever my client bids me and what the necessity of his case seem to require of me to do. I may be mistaken in my construction and in the public opinion which has been expressed upon the construction of Mr. Beecher's language.

Mr. Tracy.—Your are quoting your client, and not ours; that is all.

Mr. Beach.—That is a very great mistake, too. I happen to have industry and discrimination enough to read both sides of this case. But my friends, sirs, too, think that a gentleman in argument can make no professional declaration unless he is moved entirely under the instructions of his client.

Mr. Shearman.—Will the gentleman pardon me again? I know too much of my senior friend Beach to believe that he would ever make a statement so derogatory to a lady or so derogatory to a gentleman. I know he never gets so disrespectful as that, unless he is bound to by the necessities of the case; and permit me to say that in the course of a long series of consultations with Mr. Beecher, there never fell one word from his lips other than that of the most unqualified and absolute respect for Elizabeth Tilton, from the beginning of this case down to the present time. I know that for a fact.

Mr. Beach.—It is a pity he had not infused that sentiment into his Committee, sir.

Mr. Shearman.—He could not control them; they were not his Committee.

JUDGE NEILSON.—There must be silence.

Mr. Beach.—Now, again, I ask your Honors' attention to the Order, for a moment: "*Ordered*, that a bill of particulars be furnished, verified by the plaintiff under oath, setting forth the particular times and places at which he expects or intends to offer proof that any specific acts of adultery occurred," &c., "and that he be precluded from offering evidence at the trial of any specific act of adultery at any other time and place than shall be set forth in the statement." Now, clearly, this requires us in our bill of particulars to state the times and places at which we expect to prove an act of adultery, and that we "shall be excluded from all other proof upon the trial except such which points to a specific act of adultery," &c. Now, will your Honors give signification and effect to the term "specific"?

JUDGE NEILSON.—The opposite of it is "general."

Mr. Beach.—Suppose, then, I prove, sirs, by circumstances, that, upon a certain occasion when no parties were present, Mr. Beecher was seen at an unseasonable hour, in the absence of Theodore Tilton, coming from the house of Mrs. Tilton, or being in it, in aid of the confession of adultery, and then, in support of it, proving these circumstances of intimate or indecorous inter-

course. What does that prove, your Honors? I have the confession of this defendant to the adultery, and I prove that on a particular occasion, at 1 o'clock at night, without any cause or reason, he was seen privately in the house of Mr. Tilton, and at that unseasonable hour emerging from it under circumstances of concealment. Does it not tend to prove an act of adultery on that occasion? Does it not tend to prove a specific act of adultery on that occasion? And who will deny it? And what is the difference, sirs, between an act of adultery and a specific act of adultery? An act is specific. There is no such thing as a general act of adultery. An act of adultery is limited to one occasion, and it must be committed at a time and place; and when I give circumstantial evidence indicating any particular time or place when an act of adultery confessed to have been generally committed, was committed, I am giving evidence to prove a specific act of adultery and nothing else.

Mr. Tracy.—Why not put that in the bill of particulars, then, that time and place?

Mr. Beach.—Put that in the bill of particulars! Are we, sirs, to put in our bill of particulars, as a specific act of adultery, with place and circumstance, all the evidence which we shall give in regard to the association of these parties? Is there any rule of law which requires it? Is there any rule of law which requires the plaintiff in a bill of particulars to specify all his evidence? No, sirs; it calls for acts, for specific acts of adultery, for acts which are to be proven by direct evidence, by that sort of evidence which leaves no verge or scope for a change of time or place or circumstance; and therefore we should be met under this order with the objection at once that we had not specified, as the gentlemen now suggest that we ought to specify. Now, if your Honors will refer to a single paragraph of Judge McCue's opinion, you will see that he intended to do just this. For he says, "I can not well understand how any act of the defendant can be offered as proving directly and specifically the adulterous intercourse charged in the complaint, although it may not thereby appear to have been committed on any particular day or at any particular time. Such seems to be the plaintiff's proposition. Such proof would necessarily not only establish the commission of adultery, but also, with some degree of certainty, both time and place." I prove, in support of the confession which we expect to give in evidence, that for a series of months during the lecture season of the winter, in the absence of Mr. Tilton, Mr. Beecher was seen daily, and for hours each day, visiting Mrs. Tilton. I give in evidence observations made by parties in regard to the familiarity of their intercourse, the frequent occurrence of that conduct, signs, trust, confidence, which can not be described except by an ocular observer, all occurring at Mr. Tilton's house, if you please. How am I to specify the particular time or occasion? Would it aid the defendant in this case for me to specify in the bill of particulars, and would your Honors approve a bill of particulars of that character, wherein I should state our intention to prove particular acts of adultery on every day, if you please, for three months during the supposed winter season when those visits occurred?

Well, sirs, we prove the confession. The confession, in itself, does not

point to a particular time and place. My friends have our bill of particulars specifying two occasions. What is to prevent them from saying to the jury on the submission of this case to them, and if it should unfortunately happen that there should be a juryman of the stupidity anticipated by my learned friend, what would be the result of the argument upon that juryman? "You have given us two particular times and occasions when you say these adulterous acts were committed. The law limits you to the proof of them, so far as specific acts are concerned, and your confessions must be shown to apply to those two particular acts; those times and those occasions, or they are useless in this case." The bill of particulars excludes them from the consideration of the jury except under that limitation, and how is it to be answered? Your Honors may instruct them differently upon the trial. No matter how direct and positive that instruction may be, we have the jurymen of my learned friend upon the panel; and they will be very apt in this case to act with somewhat of independence, and perhaps obstinacy. The whole result of the trial would be periled by that argument. Now, sirs, ought we, when we have thus disclosed, and from the beginning evinced our willingness to make the defendant, under our oath, entirely acquainted with the whole scope of our evidence—ought there to be in a case of this character an order which shall, under any possible, conceivable circumstance, operate to embarrass either the proposition of proof upon the trial or the consideration of that evidence by the jury? I think I may assume that your Honors will not be disposed to approve any such order; and if, with the illustration which I have given, and with many other examples which will occur to the reflection of the court, your Honors do not perceive that this order, in its exclusion in regard to specific acts, will effect the result which we anticipate and produce the embarrassment which we fear, I am not able to make it any clearer. But again, sirs: "But this order is not to be construed as prohibiting the plaintiff from introducing on the trial of this action testimony which may be admissible under the general rules of evidence as to any acts other than specific acts of adultery, declarations, writings, documents, or any other alleged confessions on the part of the defendant of any such criminal, wrongful, or improper acts, in which alleged confessions no particular time or place shall be alleged to have been referred to." Well, now if you apply Judge McCue's commentary upon this term "specific acts," in his opinion you will perceive—and I think it correct—you will perceive that it excludes entirely all the circumstantial evidence which we may offer upon the trial, because I submit, sirs, that there can be no circumstance of the character to which I have alluded proved upon the trial which will not in a greater or less degree point to what is called an act of adultery, and a specific act of adultery. If it points to any single isolated act of adultery it points to a specific act. "The general rules of evidence as to any acts other than specific acts of adultery, declarations, writings, documents, or any alleged confessions on the part of the defendant,"—well, sirs, suppose we prove that Mrs. Tilton made a confession; that that confession was stated to Henry Ward Beecher, and he made no denial, but by silence and by conduct accepted it as true; are we not entitled to prove it?

Are your Honors going to rule by this order the question against us? And yet that order does it. We are to prove only confessions on the part of the defendant, and it can not be said that the example which I present is a confession, within the natural significance of the terms used in this order, and we shall be met at once upon the trial with this order of exclusion shutting out that material condemning evidence. Your Honors will not approve that; and this whole restriction, if your Honors will be kind enough to look at it with some critical attention, is confused and obscure. "Evidence admissible under the general rules of any acts other than specific acts of adultery, declarations, writings, documents, or any alleged confessions on the part of the defendant of any such criminal, wrongful, or improper acts." There seems to be, sirs, some grammatical inaccuracy in this clause; it is not properly connected, and at any rate would require amendment. That, however, is comparatively an immaterial question. Now, I can only say, sirs, while I am convinced that the object of a bill of particulars has been already obtained by the affidavit which was filed upon this motion upon behalf of Mr. Tilton, while I believe that a just exercise of discretion on the part of this court would refuse any bill of particulars, yet if we are mistaken in our ideas of legal propriety, we trust your Honors will make such a qualification of this order, such a clear and unambiguous restriction of its effect, that we may be permitted to present our full and complete evidence against this defendant. I would have preferred, sirs, if I myself was to be the judge, that instead of trying this issue—important, I admit, not only to individuals but the community—upon this civil action, this issue of damages as against Mr. Beecher, that we should have been arraigned upon our criminal indictment, giving a full opportunity for a presentation of all the proofs and an occasion for a perfect vindication of Mr. Beecher, if indeed he is not guilty, and exposing Mr. Tilton to a just retribution if he has made this charge falsely. I believe, sirs, the proposition was made in court when I was not present, upon a former occasion, at once to discontinue this civil action if the District-Attorney would move the criminal complaint. It is not pleasant, sirs, for Mr. Tilton to stand in the attitude of claiming money from Mr. Beecher for the debauchery of his wife. It was the only means left to him for his own vindication and for the punishment of this defendant. Unfortunately, sirs, our laws do not punish criminally acts of adultery of this character, and there is no other remedy for the injured husband but to resort to this action which my learned friend on the other side so intensely detests. So far as the idea of receiving compensation for the wrong done to him, Mr. Tilton abhors this action just as intensely as my learned friend, and would be very glad by any arrangement in regard to the trial of these actions to escape the necessity of appearing in the false attitude which the necessities of the case impose upon him. At all events, your Honors, I beg you by the discretion which is vested in you to give him in this case such an opportunity for the presentation of the whole evidence, of the entire facts in regard to this alleged offense, as will result in such a verdict and judgment of this court as will satisfy the ends of justice and the morality and honorable sentiments of the community.

JUDGE NEILSON.—I wish to say to the learned counsel that although, in view of all the various arguments that have been had in reference to this matter, some of which we have heard, and some of which we have read, we have a decided conviction in respect to it, as the counsel may well believe; yet we think it due to the argument that we have just heard to take time to deliberate upon it, and therefore we will endeavor to decide this to-morrow at 11 o'clock. We are quite impressed with the idea that this order can not stand in the form in which it now is, and if there should be an order it may require correction and modification, and that is a delicate duty upon our part, if we find it to be a duty, which requires care and time.

DECISION OF THE APPEAL.

On December 29th, 1874, the following opinions were delivered:

NEILSON, CH. J.—This is an appeal from an order of the Special Term requiring the plaintiff to furnish a bill of particulars.

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

The Court of Appeals, Judges ALLEN and GROVER dissenting, reversed my order as to the other claims to discovery on the ground that the particulars had been denied because of a supposed want of power. The closing words of the order were not, it seems, well chosen, the expression "for want of power and on the other grounds stated" having been taken to refer not to two modes of treatment, the one under restraint for want of authority and the other having regard to the merits and the discretion which should have been duly exercised, but to one and the same ground of rejection, namely the mere want of authority. It appears, therefore, that the Court of Appeals reversed the order because of that disavowal of authority; that the doctrine of the court of last resort is that the courts of first resort may, in the exercise of a wise discretion, order particulars to be furnished in actions for torts, including cases of this character. That is the extent of the decision. But that court did not, and could not, determine that the application which had been denied should have been granted, but left the discretion to be exercised by this court in granting or refusing such application untrammeled and untouched. In many of the cases cited in the elaborate opinion of Judge RAPALLO, the bill or narration was so vague and general that something supplemental was necessary to enable the defendant to know what the real character of the charge was. When the particulars ordered in such cases in

aid of the pleading were furnished, that pleading and the particulars, combined, became as definite and certain as the bill or complaint in use with us is required to be when first presented. Such cases do not, therefore, touch the question whether the complaint before us should be supplemented by the particulars, nor were they cited with a view to that question, but simply to show that the court may, as occasion arise, order the particulars.

If this practice can be conveniently and usefully applied to most actions for torts, it is not to be assumed that it can be well applied to such a case as this. The nature of the offense, the secrecy and studied concealment attending its perpetration, constitute an objection. A good cause of action may exist for such a wrong, to be proved only by circumstantial evidence, and the plaintiff be utterly unable to comply with an order to give particulars as to time and place. It would, we apprehend, be so in most instances, the cases in which the particulars could be safely given being quite exceptional. The bill of particulars, when furnished, performs a double office: first, to advise the defendant; secondly, to limit the plaintiff. It may be a shield; it may be a sword. Before ordered it should appear that the applicant needs the information, and that the other party can give the particulars and be held by them as in a firm grasp, in the prescribed circle, without materially impairing his rights. If the subject-matter be such as in its nature admits of general or reliable information, a thing open as the day, the particulars may be ordered without hesitation. On the contrary, if from the nature of the subject the act or offense and the circumstances are not to be thus seen, known, or resolved, the order should be granted with great hesitation or be withheld.

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

this affidavit on file gives to the defendant the desired information. This the counsel concedes by his offer to accept that affidavit as the bill of particulars.

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

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

As the defendant has thus all the information which could be extorted by the orders of the court, should he be content, or should that as to time and place be put in the form of particulars? The change in form will not add one jot or tittle to the information as given. The advantage gained might be one which the defendant in the exercise of his own judgment would reject, one which might operate oppressively upon the plaintiff on the trial. A special and theoretical suggestion in favor of the particulars remains to be noticed. It is said that as the defendant is innocent he may be surprised on the trial, may be confronted by fabricated testimony as to acts never dreamed of by him; that if a statement of the times and places be given he might be prepared to prove that at such times he was absent from the state. Such apprehensions, peculiar to a nervous suitor, do not deserve much attention. The statement that plaintiff intends to introduce fabricated testimony was fully met by his affidavit, and we must respect that denial. The case is not in this respect peculiar; the like suggestion, for aught that we can see, might be made in half the cases on our calendar. I have too much faith in the ordeal to which unknown witnesses may be subjected on the trial to accept such a suggestion. In few cases could a defendant be as free from a chance of being taken by surprise. As the case is expected to last some weeks in its trial, there would be ample time for the defendant to recover from any casual surprise and meet any unexpected testimony.

On the hearing at the Special Term, Judge McCUE granted the order from which this appeal is taken. After his usual method, he wrote an opinion, an opinion entitled to great respect. But the order as framed does not in terms, or in the sense and spirit, conform to the opinion. It is much less liberal than the opinion, and is in several respects objectionable.

First, The plaintiff is required to state the particular times and places as to which he expects and intends to offer proof of specific acts of adultery. The requisition is somewhat in contrast with the opinion, from which it would appear that the very day need not be stated, yet more strongly to be contrasted with the more liberal rule stated in the case in *Humphrey* v. *Cottleyou* (4 Cow. 55): "In a bill of particulars, the date of the items should always be given with as much particularity as possible. If the precise day

can not be stated, the month or year probably can." On the trial the order would be of binding force, and would control.

Secondly, The next clause in the order precludes plaintiff from offering any evidence at the trial to prove any specific act of adultery at any other time or place than stated in the particulars.

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

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

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

REYNOLDS, J.—The Court of Appeals has decided that this court "has the power, if it sees fit, to order particulars to be furnished," and has remitted the case to this court to decide "whether in the exercise of its discretion it should grant or refuse the order applied for." Upon the former appeal I considered the question carefully, and came to the conclusion that this is not a proper case for the exercise of that power. With great respect for the views of my brother MCCUE to the contrary, I still think that the order ought not to be made, and for reasons given in the opinion then filed by me. After all the statements and affidavits that have been made in this matter, I think there is more danger that an order so exacting as to be at all effectual would work hardship and injustice to the plaintiff than that the defendant without it would suffer from surprise upon a trial which, as the counsel upon both sides suppose, is to last for weeks. The usual course of procedure and the rules of evidence will, I think, conserve the rights of both parties. I am, therefore, in favor of reversing the order appealed from.

The following order was accordingly entered:

At a General Term of the City Court of Brooklyn, held at the Court House, City of Brooklyn, on the 29th day of December, 1874, present the Hon. JOSEPH NEILSON, Ch. J., and Hon. GEO. G. REYNOLDS, J.

[*Title of the cause.*]

The appeal from the order entered in this action on the 11th day of December, 1874, requiring the plaintiff to furnish "a statement of particulars, setting forth the particular times and places at which he expects or intends to offer proof that any specific acts of adultery occurred between the defendant and the wife of the plaintiff, and that plaintiff be precluded from offering evidence at the trial of this action to prove the occurrence of any

specific act of adultery at any other time or place than such as shall be set forth in the said statement of particulars, having been heard at the General Term of this court,

It is now, on motion of Morris & Pearsall, attorneys for the appellant, after hearing Roger A. Pryor and William A. Beach, Esqs., of counsel for appellant; Thomas G. Shearman and B. F. Tracy, Esqs., of counsel for respondent,

Ordered, That the said order appealed from be and the same is hereby, reversed, without costs.

(A copy.) GEORGE W. KNAEBEL, *Acting Clerk.*

THE TRIAL.

IMPANNELING THE JURY.

The cause having been called before McCUE, J., and sent before NEILSON, Ch. J., the examination of the proposed jurors was commenced.

[The circumstances relative to the calling of the cause, the proceedings had thereon, the transfer of it from part 1 of the court, and the exceptions which were taken in respect thereto, are omitted, as not necessary for the purposes of this publication; and the numbering of the days in the margin accordingly commences with the proceedings actually reported. In the following account of the impanneling of the jury, some examinations which raised no question of law, and conversation not material to such questions, are omitted without further indication.]

The Clerk first called from the combined panels—WILLIAM HARKNESS—and swore him to truly answer such questions as might be put to him touching his qualifications as a juror in this cause.

Mr. Shearman.—We desire to suggest, if your Honor please, that in order to avoid the responsibility or annoyance of each side raising somewhat formal objections to the jurors, some of whom may think that they ought to be sufficiently well known to avoid the necessity of putting such questions to them, that, if it meets the approbation of the other side, it might be as well for your Honor to put certain formal questions to every juror, such as his age, residence, occupation, citizenship, whether he has heard of this case before, and whether he has formed and expressed an opinion.*

JUDGE NEILSON.—I appreciate the delicacy of counsel in the suggestion made, but jurors will all understand that it is the duty of counsel to put such questions. Even the best known citizen that may be called will understand that it is the duty of counsel to put such questions to him, and I think that counsel had better put the interrogatories themselves.

* To avoid the necessity of challenging every juror, the court may be asked to propose uniform questions to every juror; and after their answers, either party may challenge at his option. "It is a frequent thing for the court to prescribe certain questions to be put to every juror, which he is to answer; and no specific cause of challenge is stated until these answers are given." This usage has been adopted on some occasions in the United States courts, and probably prevails throughout the State. *Per* MITCHELL, J., in *Carnal* v. *People* (1 Park Cr. 272, 282); Supreme Court, 1851, EDMONDS, MITCHELL, and KING, JJ.

In *Probst's Case* (Trial for Murder, of Dearing, Official Report, Oyer & T., Phil., 1866), a juror had been examined, and said he had formed an opinion; and counsel insisted that he was incompetent. ALLISON, P. J., put the question: "Notwithstanding the opinion [*or*, impression] that you have formed, can you enter the jury-box and decide the guilt or innocence of the defendant upon the evidence which may be submitted to you, and upon that alone, uninfluenced by the impression or opinion which you say you have formed of the guilt or innocence of the defendant?" The juror answering in the affirmative, the challenge was withdrawn, and the juror accepted.

Mr. Beach.—I dissent from the idea that this duty should be assumed by the court. For myself, I feel no delicacy in examining any gentleman who may be called as a juror, both as to the formal and meritorious questions going to his qualifications as a juror, whenever I shall deem it necessary. This juror has been sworn as upon a challenge for principal cause. I do not know who has interposed the challenge. We find it interposed. But I have no objection to each juror being so sworn, as he is called, to answer questions as to challenge for principal cause, and as to the favor, both.

JUDGE NEILSON.--That will be more convenient.

Mr. Evarts.—Our view is that the counsel for the plaintiff has to determine first whether he will challenge the juror and put interrogatories.*

WILLIAM HARKNESS called. Counsel for the plaintiff not interposing any challenge, Mr. Shearman challenged for principal cause.

Q. State your age and place of residence? A. I am 35 years of age; I reside at No. 127 St. Felix-street.

Q. What is your occupation? A. The business of painting and paper-hanging.

Q. Are you acquainted with either of the parties to this suit? A. I am not, sir.

Q. Have you heard of the controversy which forms the subject of this suit? A. I have.

Q. How long ago? A. From the very commencement of the publication in the papers.

Q. To what publication do you refer as the first? A. I disremember what the first publication was; I think it was the publication of a statement of Mr. Tilton which was published in a paper here; I think that was the first.

Q. Do you refer to his letter to Dr. Bacon? A. I think I do.

Q. Then you never read the Woodhull-Claflin paper? A. I heard of it, but never took any notice of it to read about it; the first I took notice of particularly was this letter.†

Q. Did you not inform yourself of the substance of the story contained in the Woodhull-Claflin paper? A. No, sir.

Q. Prior to the publication of this letter of the plaintiff to Dr. Bacon, you were not aware that there was any such charge or not; the charge made by the plaintiff against the defendant? A. No, sir; more than what I saw in the paper. I did not take particular notice of it.

Q. Have you formed any opinion upon that subject? A. I have.

Q. Have you expressed that opinion? A. I have.

JUDGE NEILSON.—Unless counsel enlighten me to the contrary, I think this juror should stand aside.

* It is immaterial in civil cases which party challenges first. In 1 Cow. 439, Note, Cowen also says "that the one who first begins must finish all his challenges before the other begins; otherwise he is precluded from making any further challenges." But this is not according to the present practice.

In criminal cases the prisoner has the first right of challenge. *Rex* v. *Brandreth* (32 How. St. Tr. 774); *Macfarland's Tr.* (8 Abb. Pr. N. S. 57, 58).

† In the Macfarland case it was assigned as ground of challenge to the favor that the juror sympathized with considerations which entered into the prosecution, and that he had a bias in favor of persons on the side of the prosecution. Jurors were accordingly questioned as to the Astor House marriage, and their acquaintance with Mr. Frothingham.

Mr. Beach.—Is your opinion formed on what you read in the newspapers? A. Yes, sir.

Q. Is that a fixed and definite opinion that would disqualify you from passing upon this case on the evidence and the law as given by the court, according to your oath? A. No, sir.

Q. Do you think that you could hear this case fairly and impartially, and under the instructions of the court as to the law, decide it according to the evidence? A. I think I could, sir.

Mr. Evarts.—That does not remove the objection. We are not called upon to remove an opinion that is formed. The law decides, I think, that this juror is not impartial, and his own opinion that he might or might not come to a different conclusion on the law and the evidence does not reinstate him in that impartial attitude toward the case.

Mr. Beach.—The counsel, I think, combines the two forms of challenges. Whatever may be the effect of this opinion upon a challenge to the favor, upon a challenge to the principal cause I understand the rule to be settled that an opinion formed and expressed on the reading of a newspaper, not of a definite and fixed character, in regard to which the juror testifies that he can pass upon the evidence under the instructions of the court as to the law, without being influenced by it, is not a disqualification upon the challenge for principal cause. I do not know, sir, that that is a question which is necessary to be pressed. I am quite willing that the cause of disqualification, where a challenge is interposed to the favor, may be considered upon the challenge for principal cause.*

* Where strict practice is pursued, a challenge, to be in proper form, should specify whether it is for principal cause or to the favor. *Freeman* v. *People* (4 Den. 9). But to omit the statement or to err in it, is not necessarily fatal unless the objection is taken at the time. *People* v. *Mallon* (3 Lans. 224); *People* v. *Christie* (2 Park. Cr. 579). And after a challenge for principal cause on a ground involving alleged bias, has been overruled, the same party may challenge the same juror to the favor, and examine him as to the same matter. *Carnal* v. *People* (1 Park. Cr. 272). All causes for principal challenge relied on by one party must be taken together at one time; and all causes for challenge to the favor, relied on by one party must be taken together and tried at one time, excepting fresh causes arising after trial of those first assigned. *Carnal* v. *People* (1 Park. Cr. 272).

By the *New York Statute* of 1873, all challenges of jurors, both in civil and criminal cases, shall be tried and determined by the court only. Either party may except to such determination, and upon a writ of error or *certiorari*, the court may review any such decision the same as other questions arising upon the trial. *Laws of* 1873, ch. 427, § 1. This statute has not dispensed with the distinction in substance and in form between the two classes of challenges. *Tweed's Trial*, DAVIS, J.

In strict regularity the challenging party should state the cause of challenge, so that when it goes upon the record the other party may demur or traverse. If without formal plea or demurrer he adduces evidence tending to disprove the challenge he is treated as having joined issue on it. *People* v. *Mather* (4 Wend. 229, 240). The rule stated in some of the cases, *Freeman* v. *People* (4 Den. 9), and amplified in *Wait's Practice*, vol. 3, p. 107, that whichever class the challenge belongs to, the ground of it must be distinctly assigned in interposing the challenge, is not enforced in practice. The court may require it, but it is not usually required; and if not required the challenge is good without assigning a ground. *Carnal* v. *People* (1 Park. Cr. 272), and authorities there collected. And assigning one ground of bias does not preclude the challenging party from proving another. *Thorn's Case* (4 City H. Rec. 81).

JUDGE NEILSON.—That will save time. I think that this juror must stand aside.

The Clerk then called CHARLES E. FOSTER. Sworn on the challenge for principal cause.

Mr. Evarts.—Our understanding of the law is that the plaintiff is first to determine whether he will challenge.

JUDGE NEILSON.—I think that is so, gentlemen, the vital thing all the time being to get at the merits of the juror.

Mr. Beach.—Q. Where is your residence? A. In Cumberland-street.

Q. Where is your business? A. No. 29 Howard-street.

Q. Have you read the publications about this controversy? A. I read very little of it. I have been abroad.

Q. When did you go abroad? A. Last April, and I returned in the Fall.

Q. Have you read any of the publications connected with this case? A. Very little.

Q. What publications have you read? A. I can not recall anything but a general idea.

Q. Have you read any of the statements made by other persons? A. I only know the case by hearsay.

Q. Have you conversed with any other persons about it? A. Not particularly that I remember; I may have done so.

Q. Since you came home did you have any conversation with any person on the subject-matter of this trial? A. No, sir.

Q. Have you read any of the statements of Mr. Tilton? A. I have not.

Q. Or of Mr. Beecher? A. I have not.

Q. Did you read the report of the Committee? A. No, sir.

Q. Are you acquainted with either of these parties? A. No, sir.

Q. Have you formed any opinion in regard to the merits of this controversy? A. I have not.

Q. Have you expressed any impression as to the guilt or innocence of the defendant? I don't think I have; I may have done so.

Q. What is your age? A. Twenty-three years.

Q. Are you married? A. I am not.

Q. Do you belong to any religious denomination?* A. I belong to Dr. Cuyler's church.

* Membership of the same church or society as one of the parties is not ground of challenge for principal cause, but is competent to be proved in support of a challenge to the favor, and it will be for the judge to say whether under the circumstances he deems the juror indifferent. See following authorities. *Purple* v. *Horton*, 13 Wend. 9; (*Supreme Ct.* 1834, opinion by SAVAGE, J.) Action for slander. *Held*, That a Freemason is not disqualified as matter of principal cause from sitting as a juror, where another Mason is a party, even though they be of the same degree. Blackstone's statement, that being of the same society or corporation, is enough to exclude, is not as a general rule sound, in the present state of society.

In the same case, a challenge on the same ground was submitted to triers who heard the oath which is taken by all Masons to aid each other, &c., and they held the juror indifferent. *Held*, no error.

In the *Morgan Trials* on an indictment for conspiracy to kidnap, one of the trials reported as *People* v. *Mather*, 4 Wend. 229, a juror was challenged for principal cause on the ground that he was a member of the society of Freemasons and of the degree of Royal Arch; and reliance was placed on the rule in *Black*

Q. Do you happen to have read anything of the proceedings of the council of the church? A. I think I glanced over the paper once or twice. I don't remember the particulars.

Q. Do you feel no sufficient interest in this question to read the proceedings published in the newspapers? A. I was away so long that I took no interest. I have been abroad, off and on, for five years.

Q. I am requested to ask you whether you are acquainted with Alderman Whitney, in your vicinity? A. I am.

Q. Have you had any conversation with him in regard to the case? A. No, sir.

Q. When were you summoned as a juror? A. I think on Friday morning—New Year's morning.

Q. Since that time you have conversed with no person in regard to your having been summoned? A. I have mentioned the fact to several persons.

Q. You had no conversation following the mentioning of that fact? A. No, sir.

Q. To whom did you mention it? A. To a great many people; I don't remember particularly.

Q. This service of the summons, you say, was by a copy left at your residence? A. It was handed to me New Year's morning.

Q. Who handed it to you? A. The servant girl.

Q. Who was present? A. My father.

Q. Have you heard any expression of opinion in regard to this case? A. I have.

Q. From whom? A. My father, and I think I have from several others.

Q. Those expressions of opinion from your own family, did they arise in the subject of conversation about this case, or from previous conversation with your family? A. Yes, I think they did; they read the papers.

Q. They read the papers and discussed the contents, and expressed an opinion? A. They did.

Q. Did you make any reply or comment upon this? A. I think I did.

Q. Was it favorable or unfavorable to one side or the other? A. I think they were favorable to one side.

Q. And you expressed an opinion favorably to one side? A. I am scarcely able to express an opinion.

Q. But you did? A. I did.

Q. And that was founded on communications made by, or conversations had upon the subject of this controversy with your family? A. It was.

Q. From those communications made, you expressed an opinion? A. Yes, sir.

Q. Do you entertain that opinion now? A. I am hardly capable of saying whether I have an opinion or not. I see nothing to change my opinion.

Q. Was the opinion you expressed honest at the time? A. I think it was.

stone. The court held that "society" meant such as are recognized by law. Mr. Spencer offered to prove that the society of which the juror and defendant were both members was incorporated. After argument the court overruled the objection; and on trial of a challenge to the favor, the obligations of Freemasonry having been proved, the triers rejected the juror. *Edw. Jurym. G.* 95.

Q. An opinion actually entertained? A. Well, I think so. I expressed an opinion; I think it was my opinion.

Q. Do you entertain that opinion now? A. I suppose I do.

Mr. Shearman.—Was this opinion a fixed opinion or a mere impression? A. It was a mere impression.

Q Was that impression so strong that it would require any evidence to remove it on the trial of this case, or not? A. No, I don't think it was.

Q. Do you think on the trial of this case you would listen to the evidence as if it was merely a new case, and without reference to the parties? A. I think I should.

Q. Was that anything more than a hypothetical impression formed, on the assumption that the facts might be as stated to you? A. My opinion was formed upon what I heard.

Q. Did you suppose you had heard the real, full statement of the case? A. I suppose I had heard a true statement.

Q. But not a full statement? A. Not a full statement.

Q. Then do you suppose that, upon a full statement being given, it might appear very different, or do you suppose that nothing would change your views? A. I have not thought about that.

Q. This was simply an impression of what was told you? A. Yes; that is all.

Q. Have you any bias which would require evidence to remove that impression? A. I have not.

Mr. Beach.—Did you believe what was told you at the time you expressed that opinion? A. Yes; I had every reason to believe it.

Q. Did you believe it? A. I. did.

Q. And you expressed your opinion on what you heard? A. I did.

Q. Have you changed that opinion? A. No, sir.

Q. Would it require evidence to change it? A. Yes, sir.

JUDGE NEILSON.—Mr. Shearman, what do you think about this juror?

Mr. Shearman.—It seems to me that this juror has nothing but an impression formed upon outside statements. He admits that these outside statements are not evidence, and are mere hearsay upon which he could not condemn any one. An ingenious question has been put to show that he requires evidence to remove the impression, but the juror does not mean that it requires any evidence in order to prevent him from acting impartially in this case. His meaning is, that in consequence of his long absence, and hearing only what has floated around in the city, he has formed some slight impression. I do not suppose that we can ever get a juror that has not formed some slight impression; and we, for our part, are willing to take those who have formed a slight impression which does not require evidence to remove. We prefer taking men who have read the newspapers to those who say they have not. That class of jurors who would state that they have not read or thought at all of the case, or formed any impression from what they read, would be rather suspicious. I can refer your Honor to the case of *The People* v. *O'Brien.**

* 36 N. Y. 276; S. C. Abb. Pr. N. S. 368; Affg. 48 Barb. 274.

Under that head, I think, your Honor will find that a juror situated precisely like this was found competent.

Mr. Beach.—He is competent upon a challenge as to principal cause, but this is a challenge as to favor as well, and under that challenge the rule is universal that a juror must be indifferent as between the parties. I supposed that principle was settled by your Honor and by the senior counsel upon the part of the defendant upon the challenge to the last juror, and I very readily acquiesced in it, because I desire, so far as possible, to get a quality of jurors in this case which will be fully approved by the law. This juror has been absent and has not kept pace with the publication of this controversy in the press, but he receives in his domestic associations, from his father and other members of the family, who have read the newspapers, a communication in regard to the facts which they had ascertained from publications, and he says that he believed the statement then made to him, that he then formed and expressed an opinion in regard to the merits of this litigation, and that opinion abides with him still; and he would not abandon it until evidence sufficient was produced to him to remove it. If your Honor, under these circumstances, can say that this is a mere hypothetical impression, and that this juryman stands indifferent as between these parties, and can pass impartially upon the case according to the evidence, why, I shall acquiesce in your Honor's decision; but we consider that this presents a very strong and a very marked case of a decided bias and impression, resting upon a fixed and deliberate opinion upon facts communicated to him from sources upon which he was bound to rely, and upon which he did rely.

JUDGE NEILSON.—I think that the juror must be set aside.

Mr. Shearman.—We except.

LOUIS H. ROBINSON, called and affirmed on the challenge for principal cause.

Mr. Morris.—Where do you reside? A. No. 302 Gates-ave.

Q. What is your business? A. Real estate broker.

Q. Where is your place of business? A. I issue my cards from my residence.

Q. Have you read anything concerning this controversy? A. Well, partially.

Q. What have you read? A. I could not tell you. At the time of the controversy or of the publications I was laboring under severe pain, in consequence of an injured foot.

JUDGE NEILSON.—And having leisure, you read? A. When I was relieved from the pain I read occasionally.

Mr. Morris.—You read some of the statements? A. I don't think I did read any of them in full.

Q. In part? A. In part, possibly.

Q. Do you recollect whose statement you read? A. I do not; not having read the matter in connection, I did not charge it on my mind, and let it all go.

Q. Any of the local papers? A. I occasionally pick up one when I happen to be where I have a little leisure.

Q. You have heard the question talked about? A. Yes, sir.

Q. And have taken part yourself in the conversations? A. Yes, sir.

Q. And heard opinions expressed with reference to the matter, have you not? A. Yes, sir.

Q. And expressed opinions yourself? A. Well, I have, in order to test the opinions of others, for argument's sake, to see what they thought.

Q. And the opinions that you have expressed were opinions relating to the merits of the controversy—the truth or falsity of the accusation? A. Well, yes, sir; that is, in order to see what the persons thought about it.

Q. Were the opinions that you expressed honest opinions? A. They were not such as if I had read the matter carefully; I should require more to form an opinion.

Q. My question is whether the opinions you expressed were honest opinions—whether you honestly entertained the opinions you said you did? A. They were merely to elicit information, as I hadn't full information on the subject, to see what the opinions of others were.

Q. Did you believe in the truth of the opinions you expressed or did you not? A. They were not based upon conviction.

Q. Do you mean to say you have expressed opinions to parties that you didn't believe to be true and that were not honest opinions? A. I can not say that they were dishonest; they were simply to elicit information.

Q. Did you believe in the truth of the opinions that you expressed, or did you not? A. I don't know that I can answer that any better than I have.

Q. Did you believe in the truth of the opinions that you expressed, or did you not? A. I didn't express them as an opinion formed.

Q. You have expressed opinions; I want an answer to that question. Did you believe in the truth of the opinions that you expressed, or did you not? You can answer that question directly—yes or no. A. Well, that would not express my opinion.

Q. Did you believe in the truth of the opinions that you expressed at the time that you expressed them, or did you not?

Mr. Hill.—I submit that he has stated that if he answers yes or no that will not express his conviction.

The Juror.—No, it will not; I did not possess sufficient information to form an opinion.

Mr. Morris.—Did you or did you not believe in the opinion you expressed? When you expressed an opinion that opinion related to the truth or falsity of the charge; you expressed your belief either in its truth or falsity? A. Will you allow me to explain?

Q. When you expressed your opinion, you expressed an opinion as to the truth or falsity of the charge, did you not? A. I could not answer that question that way.

Mr. Shearman.—I understand the juror to say he has expressed an opinion.

JUDGE NEILSON.—Expressed an opinion argumentatively.

The Juror.—Yes, it was not a conviction—it was not an opinion.

Mr. Morris.—That opinion you did express was an argumentative opinion. Did it relate to the truth or falsity of the charge; did you express your belief in that argumentative opinion that the charge was true or false? A. It was on condition that the evidence was brought in to support it; I can answer as far as that.

Q. Did you read the facts, that you read, in the newspapers? A. I didn't read anything that was a sufficiently connected account of the transaction that I could form an opinion upon, without such evidence as would be produced in court.

Q. Did you elicit opinions from others, when you expressed your opinion in that way for the purpose of drawing them out? A. Sometimes I did.

Q. Did you believe in the truth or correctness of their opinions? A. I thought they were premature.

Q. How many such conversations have you had? A. I could not tell you that.

Q. It has been a matter of repeated conversation and discussion in your presence, has it not? A. Yes, sir.

Q. Almost daily? A. Well, no, not daily.

Q. Almost daily? A. No, sir.

Q. Every week? A. Perhaps as often as once a week I would hear some allusion to it.

Q. And sometimes it has been much oftener than that? A. Yes, sir, sometimes.

Q. With whom have you discussed the matter? A. I have talked with a gentleman by the name of Clark; I don't know what his other name is.

Q. Talked with many others? A. I talked with Marcus H. Lang.

Q. What induced you to take this interest in the matter, in stating these opinions of yours augumentatively, for the purpose of drawing out the opinions of others; what induced you to take so much interest in the discussion of this matter? A. Because it was a matter that seemed to be of general interest; I had an inquiring mind, to see if I could reach some base for a conclusion.

Q. You were examining the matter in reference to making up your mind as to the truth or falsity of the accusation; is that it? A. Perhaps that might be the object.

Q. That being your purpose, you sought the sources of information that were communicated to the public, didn't you? A. No, sir; I have not had time so that I could do that.

Q. You have read about it? A. I have read some portions of it.

Q. What portions have you read? A. Well, I read portions of the testimony before the Committee.

Q. Did you read the Committee's report? A. I did not.

Q. Any portion of it? A. I did not; the papers and reports that contained that I missed.

Q. You heard the result of that investigation? A. Yes, sir.

Q. Did you concur in the result, or did you form any opinion in reference

to that result, as to whether it was correct or incorrect? A. No, sir, that I could not do, because I had not information to justify me in doing it.

Q. How recently have you talked with any persons upon this subject? A. I think that the conversation I had with Mr. Clark was on Wednesday or Thursday last.

Q. What was that conversation about? A. It was on the general merits of the case.

Q. Did you express an opinion to Mr. Clark on that occasion? A. I don't think I did.

Q. Don't you know whether you did or not? A. The conversation was like all other conversations I had.

Q. Do you know whether you did express an opinion or not to Mr. Clark on that occasion? A. I don't think I did.

Q. Did he express an opinion? A. No, sir; the question was a sort of running question on the merits of the case, and the probable course of evidence.

Q. Were you summoned at that time as a juror in this case? A. No, sir.

Q. Have you talked with any person since you were summoned? A. No, sir.

Q. You are sure of that? A. Nothing more than speaking of my being summoned.

Q. To whom have you mentioned that subject? A. I mentioned it to Mr. Lang; I think I said I had received the summons.

Q. When you mentioned it to him did you have any conversation with him in reference to the matter? A. Well, no, sir.

Q. None whatever? A. No remark.

Q. No conversation upon the subject whatever when you mentioned it to him? A. He made the remark that he was glad of it.

Q. I am asking what was said? A. I made no remark.

Q. There was no conversation between you and him on the subject at that time? A. No, sir; I was going to tell you what he said.

Q. I don't care about what he said; is he the only person to whom you have spoken since you were summoned? A. No, sir; I have spoken to a gentleman where I am living; I told him I had the summons, and showed it to him.

Q. Did you talk the matter over with him? A. No, sir; I simply stated that I had the summons. I refrained from making any remark on the subject since that.

Q. Are you a member of any religious denomination? A. I am not.

Q. Are you in the habit of attending any? A. Well, not recently.

Q. When did you commence talking about this matter, and reading about it—do you recollect about when it was? A. Well, no, I could not fix on any date.

Q. Do you recollect what was the first thing you heard about it, or read about it? A. The first that my attention was called to it was the conversations that I would hear concerning the charges against Mr. Beecher.

Q. Do you mean to say that you never read those charges? A. No, sir;

I didn't read anything of them until about the time of the statement concerning or in reply to Dr. Bacon.

Q. That was the first? A. Yes, sir.

Q. Did you read the letter to Dr. Bacon? A. I think I did.

Q. You read that? A. Yes, sir.

Q. The whole of it? A. I think I did; I would not say positively.

Q Did you read the last statement of Mr. Tilton? A. No, sir.

Q. Did you read Mr. Beecher's statements? A. I think I read one of Mr. Beecher's statements.

Q. Which one did you read? A. The one in reply to the letter of Dr. Bacon.

Q. Any other statements, or portions of them? A. I don't remember now that I have.

Q. Do you mean to say that you have read these letters and these statements, and have been conversing about this matter ever since, and have formed no opinion? A. No decided opinion.

Q. What do you mean by "decided opinion"? A. I mean this, that I have no line of information upon which I could make or pass a sound judgment—a judgment that would satisfy me.

Q. Did you have any impression as to the truth or falsity of the charge; did the letters that you read of Mrs. Tilton or Mr. Beecher make no impression on your mind as to their truth or falsity? A. No, sir; because they were not in a shape that would profit me, or that I could pass a decided judgment upon.

Q. What do you mean by not being in shape? A. That is, they were not legal evidence; they were not in such form as that I would require to place a judgment upon in a court like this.

Q. Do you mean to say you formed no opinion, that they made no impression upon your mind, that you had no idea as to whether they were true or not? A. No, sir.

Q. No impression on the subject? A. No, sir; I could not form an opinion.

Q. I am asking you now for your impression. Do you mean to say that you have read these things and have conversed about them, and have stated your opinion for the purpose of drawing out the opinions of others, and that you have formed no impression whatever as to the merits of the case? A. Yes, sir; that is what I mean, because the evidence has not been in a shape—it has been so mixed that it could not be separated, as a man could by hearing it.

Q. You mean this, don't you, that evidence might be given in court different from the facts as you have read them? A. Yes, sir.

Q. And that you would form then your judgment upon the facts as you should hear them in court? A. That is what I mean.

Q. That is all you mean in reference to that? A. Yes, sir.

Q. But you don't mean to say you didn't form any impression upon those facts as they were, assuming them to be true? A. I could not assume them to be true.

Q. You didn't assume them to be either true or false? A. No, sir.

Q. Is that what you mean? A. That is what I mean.

Mr. Evarts.—How long have you lived in Brooklyn? A. I have lived here ten years on the 1st of April last.

Q. What is your age? A. My age is 56.

Q. I understand you that you have heard more or less on both sides about this case? A. Yes, sir.

Q. And have talked more or less with people on both sides about this case? A. Yes, sir.

Q. And that you have no opinion concerning the merits of the case that rests in your mind as any determination on the subject? A. No, sir.

Mr. Evarts.—We suppose he is a good juror.

Mr. Beach.—I wish to know frankly from you whether, as an intelligent gentleman, having read upon this subject and discussed it, being so far interested as to test the opinion of others by an expression of your opinion argumentatively, whether you have received no impression in regard to the truth or falsity of these charges in this case? A. I answered that I have supposed these statements as made were partial; that the individual making the statements had presented his own case in as favorable a light as possible; hence I could not receive it sufficiently strong upon which to base a judgment.

Q. Instead of answering my question you argue it. I wish you to answer the question frankly, whether, from all your discussions and knowledge of this subject as an intelligent man, you have received no impression in regard to the merits of this controversy? A. I don't know that I can answer it any more positively than I have done.

Q. You can answer it yes or no?

JUDGE NEILSON.—I think you can. Have you, or have you not, that impression? A. I have certainly formed no impression that would preclude me——

Mr. Beach.—We will judge of that. It is not for you to judge of that.

The Juror.—I don't know but I ought to understand that as well as anybody.

Mr. Beach.—I don't know but you do, but unfortunately you are not the judge in this matter. Will you answer my question, as a frank, intelligent gentleman, whether you have had so much communication and discussion upon this subject without having received any impression in regard to the merits of it? A. No, sir, I have not.

Q. You have not received any impression? A. Not any impression; that is, for the reasons that I have already stated.

Q. I mean this question, altogether irrespective of your present position, irrespective of the question whether you could act impartially as a juryman in this case. I merely want to know whether, as an intelligent reader and observer of events, having discussed this subject as you say you have, you have received no impression upon your mind in regard to the truth or the falsity of these charges against Mr. Beecher? A. I don't think I have.

Q. You mean to say that you have not? A. I think not.

Mr. Beach.—You say you are the best judge on that subject. You ought to know.

Mr. Tracy.—I submit the counsel ought not to argue with the juror.

Mr. Beach.—That I will do. That is the very thing we do in putting questions—we argue with the jury. [To the juror.] You say you are the best judge on this subject, and I, therefore, ask you to say distinctly, not in an indirect and uncertain mode, whether you have, or have not, accepted or received any such impression?

Mr. Tracy.—We submit the juror has answered that question.

JUDGE NEILSON.—Perhaps he has, but let him say yes or no.

The Juror.—It strikes me, your Honor, I ought to explain on what ground——

JUDGE NEILSON.—You have explained.

Mr. Evarts.—He has answered the question yes or no.

The Juror.—I have not formed any opinion that would not be removed by any evidence that might be given.

JUDGE NEILSON.—He doesn't ask you that. He asks you from what you have heard and read, and from this discussion, you can now say whether you have, or have not, formed any impression? A. With that explanation I say no.

Mr. Beach.—Have you any bias in favor of either the one or the other of those parties? A. No, sir.

Q. No prejudice in any way upon the subject? A. No, sir.

Q. Do you know of any matter or thing which would in any way influence your action as a juryman beyond the evidence in this case? A. I don't know that I do.

Q. And you mean to say that you could, without any partiality, or feeling, or bias, in favor of either party, sit and act as a juryman in this case? A. Yes, sir.

Q. Perfectly free from any influence and all impression in regard to it? A. Yes, sir.

Q. Perhaps it is a repetition; but I should like to put to you the question whether or not, on either of the occasions when you expressed any opinion upon this subject, you believed that opinion to be correct and entertained it —whether it was a sincere opinion?

Mr. Evarts.—That we went over.

JUDGE NEILSON.—I think he went over that.

Mr. Beach.—I ask permission to go over that again.

JUDGE NEILSON.—Very well; I desire to be very liberal.

The Juror.—I have stated.

Mr. Beach.—Can you not answer directly that question, yes or no? A. It strikes me that the court should understand the reasons for asking these questions, simply to elicit the opinions of others; it was not an opinion that I expressed, but simply a remark passed to see what reply I should get.

Q. Do you mean to say that you have not expressed any opinion of your own upon the subject? A. Not any opinion of my own.

Q. Never expressed any? A. No, sir.

Q. Never suggested any? A. I don't think I have except in that way and for that purpose.

Q. Have you expressed any? A. No, sir.

JUDGE NEILSON.—I think he actually means to say that he has not expressed any opinion of his own, but that, lawyer-like, he has put it argumentatively. I think this is a competent juryman. What do you think of it, gentlemen?

Mr. Beach.—He seems to be so.

The Clerk was proceeding to swear in the juror, when Mr. Fullerton said: We have come to an arrangement between ourselves in regard to the swearing in of the jurors.

JUDGE NEILSON.—Stand aside. You will attend to-morrow morning at 11 o'clock, and in the meantime be very careful not to speak with any one about this case.

Mr. Fullerton.—The understanding among counsel is that the right of peremptory challenge shall be reserved until the panel is full.

JUDGE NEILSON.—There is no objection to that?

Mr. Evarts.—No; we consent to that.

JUDGE NEILSON [to the juror].—You are not to converse with any one, directly or indirectly, on this subject; you are not to read anything about the subject in the papers, and if any person speaks to you on this subject, you are to report to me, to the end that he may be punished. Bear that in mind, and attend to-morrow morning at 11 o'clock.

Mr. Morris.—It seems to me the orderly way would be that the juror should remain in court, and not be discharged.

JUDGE NEILSON.—Yes, he may remain.

GRIFFIN B. HALSTEAD called and sworn on challenge for principal cause.

Mr. Morris.—Where do you reside? A. No. 340 Pacific-st.

Q. What is your business? A. Hardware.

Q. Have you read anything concerning this controversy? A. I have.

Q. Have you formed an opinion with regard to the merits? A. I have not.

Q. What have you read of the matter? A. Most of the publications.

Q. From what you have read, have you formed an impression with regard to it? A. I do not understand your question.

Q. Have you formed an impression? Has what you read created an impression upon your mind as to the truth or falsity of the accusation? A. I think at the time some of them did.

Q. Has anything occurred since to remove that impression? A. Well, only by being similarly impressed by the papers on the other side.

Q. I do not understand what you mean by being similarly impressed on the other side. Which did you read first of either side? A. I do not know that it would be proper for me to answer that question.

Q. What statements have you read upon the subject? A. I read Mr. Tilton's letter to Dr. Bacon, and I think about that time a reply from Mr. Beecher, if I am not mistaken, and the Committee's report, and two letters from Mr. Moulton, or statements—I forget what; almost all.

Q. *Mr. Tilton's* last statement? A. I think so.

Q. I mean the long statement he made? A. I think I did, sir.

Q. What else did you read upon the subject? A. I don't think any other of the papers published, with the exception of the editorials and comments published in the newspapers.

Q. What newspapers are you in the habit of reading? A. *The Herald* and our daily papers in Brooklyn—*The Brooklyn Eagle* and *The Union*.

Q. I understand you to say from what you have read and heard of these statements and letters and editorial comments, you have formed an impression in reference to the merits of the controversy? A. Impressions I have formed.

Q. Do these impressions abide with you? A. I have several impressions now.

Q. And it would require some evidence to change these impressions? A. You mean the same kind of evidence that I have had?

Q. No. I mean it would require some evidence to remove the impression you have with reference to this matter? A. It may.

Q. Have you conversed on this subject? A. Frequently.

Q. And you have expressed in conversation your impression upon the subject to parties with whom you have conversed? A. I think not, sir.

Q. You have heard others express their opinions? A. I have, sir.

Q. And have you on those occasions concurred or dissented from the opinions thus expressed? A. I have generally dissented from them.

Q. And did you dissent from the opinions thus expressed because your impressions were of a different character? A. Not always, sir.

Q. Sometimes? A. I can not recall a case where I did.

Q. You say they expressed their opinions and you dissented? A. I don't know that I dissented; I told them we could not judge from these *ex parte* statements.

Q. Do you belong to any religious denomination? A. Yes, sir.

Q. What church do you attend? A. The Methodist Church.

Q. I understand you to say that in reading these various statements and comments, you formed an impression which you have now at this time by you? A. I don't wish you to understand me so; I said I formed impressions, not an impression.

Q. Those impressions you have still at this time with you? A. I suppose I have, sir.

Q. I will ask you this one further question. Have you now any bias or feeling one way or the other that would at all influence your action as a juror? A. No, sir.

Mr. Morris.—We withdraw our challenge.

JUDGE NEILSON.—Have the counsel on the other side any objection?

Mr. Tracy.—We accept the juror, reserving our right, of course, as to a peremptory challenge.

STEPHEN LEWIS, called and sworn on challenge for principal cause.

Mr. Fullerton.—Where do you reside? A. No. 754 Myrtle-avenue.

Q. What is your occupation? A. My business is bakery, and keeping a grocery store.

Q. How long have you been engaged in that? A. I am not in business in Brooklyn; my business is in New Jersey. I reside here; my family live here.

Q. How long have you resided here? A. About 15 months.

Q. Before that, where did you reside? A. In New Jersey.

Q. Have you read anything in regard to this controversy? A. I have.

Q. Have you read all that has been published, or nearly all? A. No; I have not read all. I have read part.

Q. Have you formed an opinion in regard to the merits of the controversy? A. I can not say that I have really formed an opinion.

Q. Have you formed such an impression as will interfere with your deciding the case according to the evidence, under your oath? A. I think not.

Q. Do you attend divine service in Brooklyn? A. I attend more or less; I come home about once a month, and then I go to church here.

Q. Do you attend church in Brooklyn? A. Yes, sir; I attend the Methodist Church in Thompson-avenue.

Q. Are you a communicant of that church? A. I don't belong to that church; I have my letter from another church, and I have not joined this, but my family have all joined.

Q. Are you acquainted with either of the parties to this controversy? A. I have seen Mr. Beecher twice, and I think I heard him preach twice; I have seen Mr. Tilton for the first time to-day, I think.

Q. When I ask if you are acquainted with either of them, you say you have seen Mr. Beecher. Is that your only acquaintance with him? A. My only acquaintance; I never spoke to him.

Q. How long since you attended his church and heard him preach? A. Two months ago.

Q. After this controversy commenced? A. Yes, sir.

Q. How many times did you go? A. I have been there twice. I had some friends who came from the country and they wanted to hear Mr. Beecher, and I went with them.

Q. How long ago was it the last time you went? A. I think two months ago; it may be a little more.

Mr. Fullerton.—We withdraw our challenge.

Mr. Evarts.—Did I understand you to say that you attended here only once a month? A. Yes; or sometimes less than that—once in six weeks; my business is in New Jersey.

Q. You spend the greater portion of your time there? A. Yes, sir.

Q. And your family are here all the while? A. Yes, sir.

Q. Now do you say that you have neither formed nor expressed an opinion? A. I think I have not expressed any opinion about it.

Q. Have you formed an opinion? A. No, I think not; I think I have said this much—that I presume every man innocent until he is proved guilty; I think I have not expressed any opinion.

Q. Have you heard this matter discussed in your own family and elsewhere? A. I have not in our own family; I have heard it spoken of in the store sometimes; I am not in the store a great deal; I travel through the country, making collections and obtaining orders.

Q. So that you consider your mind substantially free from any impression or opinion bearing either way on this cause? A. I think so; I think I could decide as quick for one as the other, according to the testimony.

Mr. Evarts.—I think this gentleman is a good juryman.

JUDGE NEILSON.—The juror will take his seat.

[The caution given to the jurors by the CHIEF JUDGE before adjournment on this and subsequent days is omitted.]

SECOND DAY, JANUARY 6, 1875.

ANDREW MACKEY called and sworn on the challenge for principal cause.

Mr. Morris.—Where do you reside? A. No. 515 Fulton-street.

Q. What is your business? A. Real estate and insurance broker.

Q. Have you read anything concerning the controversy now on trial? A. No, sir.

Q. You have not read anything of it at all? A. No, sir; nothing more than the headings in the papers.

Q. Where have you been during the last five or six months? A. At the time I heard of this, or at the time that this took place, when it came out in the newspapers, I was absent in Morris County, New Jersey.

Q. When did you return to this State? A. I think about the middle of October.

Q. Do you take any of the local papers here? A. Yes, sir.

Q. What paper? A. I take *The Union* and *The Argus*, and occasionally *The Eagle*.

Q. Have you read anything in those papers concerning it? A. No, sir.

Q. Have you heard the matter discussed by others—talked about? A. I have, sir.

Q. Frequently? A. Yes, sir; I have frequently.

Q. Have you taken part in any of the conversations on the subject? A. No, sir.

Q. Never have taken any part in any of the discussions or conversations? A. No, sir; not at all.

Q. Have never said anything about it to any person, or any person to you? A. No, sir; nothing more than to hear it discussed between the different parties.

Mr. Hill said that he could not hear Mr. Morris, his back being toward him.

Mr. Morris.—If I face you my back will be toward the witness.

JUDGE NEILSON.—The counsel had better stand when examining the witness, and then every one will hear.

Mr. Morris.—Q. Now, from what you have heard about the matter, have you formed any impression as to the merits of the controversy? A. Not the least, sir; that would be a thing impossible for me to do.

Q. Are you acquainted with any of the parties? A. No, sir.

Q. With any of the relatives of any of the parties? A. No, sir.

Q. Have you had any business with any of them? A. No, sir.

Q. Your business as insurance broker and real estate broker has not brought you in contact with them? A. No, sir; never.

Q. Do you attend any church? A. Occasionally I do, sir.

Q. What denomination? A. Well, different denominations.

Q. Any regular one? A. No, sir.

Q. Have you spoken to any person upon the subject since you have been summoned here as a juror? A. No, sir.

Q. Has any one spoken to you upon the subject? A. No, sir.

Q. Are you acquainted with Alderman Whitney? A. No, sir; I know there is such a man, but I am not acquainted with him.

Q. No business relations with him? A. No, sir; none whatever.

Q. Then I understand you to say you have no impression one way or the other with regard to this case? A. No, sir; nothing at all.

Q. And have never expressed any? A. No, sir; never.

Q. Have you any feeling, bias, or prejudice that would interfere with your rendering an impartial verdict upon the evidence? A. No, sir; not the least.

Q. No feeling or prejudice toward either party? A. Not the least, sir; I don't know no more about the case than the child unborn.

Mr. Beach.—That is all.

Mr. Hill.—What paper did you read when absent in Morris County, New Jersey? A. I usually took *The Herald* once or twice a week.

Q. What were you doing there? A. I was out there for the benefit of my health.

Q. And were there how long? A. I was there about four or five weeks.

Q. During what period of time were you there? A. I went there the latter part of September—along in September some time.

Q. And returned when? A. Returned about the middle of October.

Q. Who took charge of your business while you were away? A. I left it in the charge of my bookkeeper.

Q. I see that you took *The Union* and *The Argus*, and sometimes read *The Eagle*? A. Yes, sir.

Q. Have you avoided reading anything about this controversy? A. I have, sir.

Q. Carefully? A. Yes, sir.

Q. Conscientiously? A. Yes, sir.

Q. In any of the papers? A. Yes; I would simply look at the headings of it, and that is all.

Q. What did you get from the headings generally? A. Nothing; but I would just see the reports of it.

Q. Just that it was in the newspapers? A. Just that it was in the newspapers; my business was so that it would not allow me to sit down and read the whole article through at a time.

Q. Do you say you have read absolutely nothing about it? A. No, sir; that I can say certain—cheerfully.

Q. Not even the editorials? A. No, sir.

Q. What have you done when people have talked to you about it? A.

Well, I have listened to people arguing the matter—debating the matter—nothing more.

Q. You have debated the matter? A. No, sir, I have not.

Q. What did you do when people talked about it? A. I listened to the conversation.

Q. Then it was a conversation only on one side in respect to this case? A. Yes, sir.

Q. How long did such conversations continue? A. I can not say, sir.

Q. As near as you can recollect? A. I can not say how long they continued.

Q. How many such conversations have you heard? A. Frequently—every day I would hear more or less.

Q. Almost every day? A. Almost every day I would hear it debated between different parties.

Q. Are you acquainted with Mr. Morris, one of the counsel? A. I have known the gentleman several years.

Q. How long have you known him? A. I have been a resident of Brooklyn myself for 27 years.

Q. That does not answer my question quite? A. I have known Mr. Morris for some 15 or 16 years.

Q. Ever employed him as counsel? No, sir, I never have; he has acted as counsel for my brother at one time, I believe, but he was never counsel for me.

Q. This was a subject which you were somewhat interested in, was it not—this controversy? A. No, sir.

Q. Not at all? A. No, sir.

Q. You know Mr. Tilton as a prominent man? A. No, sir.

Q. You do not know him as a prominent man? A. No, sir; I was once introduced to Mr. Tilton, but I don't think that I would recognize him if I saw him.

Q. You have heard a great deal about this? A. Yes, I have heard the matter talked of.

Q. Also about Mr. Beecher? A. Yes, I have heard the matter talked of.

Q. And you knew that this was a very serious controversy? A. I never expressed any opinion.

Q. But you knew it was a very serious controversy, in which the public were generally taking a very great interest? A. I have never expressed an opinion.

Q. Did you not know that fact? A. I heard a great deal of talk about it; I must confess that.

Q. You heard as much talk about it as about any matter during the last summer? A. That is a question I can not very well answer; I paid no attention to the matter whatever.

Q. Not even to those conversations of your friends? A. No, sir.

Q. Did you not treat them respectfully even when they were speaking about it, so as to listen to what they had to say? A. I just listened to them, and that was all; I did not pass any opinion.

Q. Did they express any opinion to you about it? A. No, sir; not in my presence.

Q. Mention some of the gentlemen with whom you have talked about it? A. As I said before, I did not talk to any one about it.

Q. Mention some one who has talked to you? A. It would be impossible for me to name all that have talked to me about it.

Q. Name some of them; are they so numerous that you can not remember them? A. I can not begin to remember one.

Q. You can not remember a single individual? A. No, sir.

Q. Did you talk to your bookkeeper about it, or he to you? A. No, sir.

Q. Never mentioned it? A. No, sir.

Q. Perhaps you would be good enough to mention why you have avoided this subject so much? A. For the very reason that I took no interest in the matter whatever, and my business calls me to something else.

Q. Are you very much engaged with your business? A. Yes, sir; I am, I am indeed, sir.

Q. Are you in a large business? A. Not so very large; I am trying to do all I can.

Q. Whom do you do business for? Name some of your customers. A. I do business for Judge Pierrepont of New York—one of my men; I do business for Joseph M. Greenwood, and also for Mr. A. B. Embree, of Fifth-ave., New York; I do business for more or less people around in Brooklyn.

Q. That is three gentlemen; name some more? A. Well, I do business for Mr. Thomas C. Clark.

Q. Who else? A. Several others.

Q. Name some of them? A. I do business for a gentleman in Massachusetts.

Q. Name him? A. Capt. Joseph H. Nickerson.

Q. The next one? A. I do business—for the life of me, I can not name them all unless I had my book here.

Q. You have now named six or seven. Who else? A. I do more or less business with the different insurance companies—the Firemen's Trust, the Phœnix, and the Continental.

Q. With whom in the Fireman's Trust? A. With the president.

Q. What is his name? A. Mr. Felzer; he is not the president; he is the surveyor.

Q. Who is the president of that company? A. I transact all my business with the secretary.

Q. Who is he? A. E. Y. Wood.

Q. Then you do not do much business with the surveyor? A. I do more or less with all of them.

Q. The president also? A. Yes, sir.

Q. What is his name? A. I think his name is Mr. Furnald; I never saw him but once or twice in my life; I am not positive.

Q. What other officers of that company are you acquainted with? A. Mr. Wood and Mr. Felzer are really about all the officers of the company that I am acquainted with.

Q. Take the next insurance company? A. The Phœnix; I transact more or less business with them.

Q. Name the individuals with whom you do that business? A. I don't know that I can, there are so many I transact business with.

Q. They are numerous; you can name some? A. I could very easily find out if I had my diary here, but I have not got it.

Q. You can not remember the names just now? A. No, sir.

Q. Not any of the names of the Phœnix people at all? A. I don't know that I can. I can recollect Mr. Dutcher of the Continental Company very well.

Q. We will take up that by and by. You can not recollect a single name of the Phœnix Company? A. Upon my word, I can not.

Q. You were looking at some memorandum just now? A. Yes; I thought I had an envelope of the Phœnix Company in my pocket.

Q. And that was the way you proposed to refresh your memory as to the names of men that you have done considerable business with? A. Yes, sir; I do more or less business with all the companies.

Q. Do you finally now say that you can not remember the names of the officers of the Phœnix Insurance Company with whom you did business? A. I might remember, but I can not say positively; I would not like to say positively.

Q. How many years have you done business with them? A. I have transacted business with the Phœnix for the past 14 or 15 years; they were formerly tenants of ours.

Q. How many times have the officers of that Company changed in the mean time? A. That I can not say.

Q. How many different individuals did you meet in transacting business with the Phœnix Company? A. Different seasons there would be different men there—different clerks and different bookkeepers.

Q. Can you name anybody who was ever President of the Phœnix Insurance Company, that you did business with, or when you did business with them? A. Yes, sir.

Q. Name one? A. Stephen Crowell.

Q. How long ago was that? A. That was—I would not be positive as to the date; I know he used to pay me rent in checks.

Q. How long ago was it you collected rents from him? A. I think it was in 1866; it was when the property was sold there; I will not be positive as to the date.

Q. Have you ever had any business with Mr. Crowell since that time? A. Yes, sir.

Mr. Beach.—It seems to me, if your Honor pleases, that this examination is degenerating into too much detail on collaterals; I can not see the relevancy of these inquiries made of the juror.

Mr. Hill.—I will return to it again presently; I do not propose to weary you.

JUDGE NEILSON.—I propose to allow the counsel a good deal of latitude.

Mr. Beach.—Certainly; I do not object to that at all; but there must be some end to these inquiries.

Mr. Hill.—Have you done anything for the Phœnix Insurance Company, or any of the officers of it, during the past year? A. Yes, sir.

Q. How many transactions? A. I think only one.

Q. When was that? A. I think last October.

Q. How soon after you left Morris County, N. J.? A. Well, it was, in fact, a renewal that had come to my office before I returned.

Q. It was simply a renewal? A. A renewal of an insurance policy.

Q. Sent to your office? A. Yes, sir.

Q. So you did not see any of the officers in connection with it? A. No, sir.

Q. Did you do any business with Mr. Pierrepont within the last year? A. Yes, sir.

Q. When was that? A. I generally see him four times a year, and sometimes a dozen times a year.

Q. It was to pay him rent or collect rent? A. I pay him rent and collect rent for him also.

Q. Did you see him to pay him rent during the last year? A. Yes, sir.

Q. Is that all you did for or with him? A. That is all.

Q. When did you do business with Mr. Greenwood last? A. I settled with Mr. Greenwood every month; I should be settling with him now if I was not here.

Q. Simply paying him money that you would have collected for him? A. Yes, sir.

Q. That is all? A. Yes, sir.

Q. When did you last do business with Mr. Embree? A. I think about the 18th or 20th of last month; I drawed a check for him for his estate in Brooklyn.

Q. Simply to send him a check? A. Yes, sir.

Q. When before that? A. Every month for the last five years.

Q. Simply to send him checks? A. Yes, sir; and sometimes I would give them to him.

Q. That is all your business with him? A. Yes, sir.

Q. When did you see Mr. Clark? A. I think it is two months ago since I settled with him.

Q. Simply to send him money that you collected for him? A. Yes, sir.

Judge Neilson.—Allow me to suggest that I think the real point of any such examination is to enable counsel or their agents to make inquiries about the juror, who may be a stranger to them. I therefore suggest whether it is necessary to go into minute transactions.

Mr. Hill.—My object was to see if the juror was so much engrossed in business that he could not take any part in the discussions of this case, or in reading the newspapers. [To the juror.] When did you do business with Mr. Nickerson? A. That I can not express very well; I gave him a check within the last two or three months.

Q. Your business was simply to give him checks? A. Yes, sir.

Q. Now about the Continental Insurance Company; what did you do with that? A. I had more or less business transactions with them.

Q. Simply the renewal of policies or taking out policies of insurances? A. Both.

Q. What officer did you meet in closing business with them? A. I generally transacted my business with Mr. Dutcher, the secretary of the company.

Q. What is his name? A. Silas B. Dutcher, I think.

Q. Any other officer? A. I saw them all—I remember the president, Mr. Campbell.

Q. Did you do business with him? A. Yes; I transacted business with all of them.

Q. Within a year? A. Yes, sir.

Q. Who else have you done business with during the last year? A. That would be a thing entirely impossible for me to say; I transact business with a great many people.

Q. That is the best answer you can give to the question? A. Yes, sir; these are the principal ones.

Q. Do you mean that you have been entirely occupied with these transactions you have named here, so that you have had no time to read the newspapers? A. I do, sir.

Q. You were fully engrossed with this business you have named? A. In general, I look over the advertisements in the papers and the daily transactions and so on; and any long affair I do not notice.

Q. Do you ever read the editorials in the newspapers? A. Very seldom, lately.

Q. Have you ever read anything in the newspapers? A. Oh, yes, sir.

Q. What interests you usually? A. Well, the advertisements as a principal thing; real estate is the principal thing that takes my attention.

Q. Real estate advertisements? A. Yes, sir.

Q. What else? A. If I see a very interesting piece there—a little short piece—I might be induced to read it.

Q. How do you know that it is interesting until you read it? A. I generally measure the length of it before I commence.

Q. You judge of it by the length? A. Yes, sir.

Q. Do you read the telegraph reports? A. Sometimes.

Q. Generally, do you? A. No, sir; not generally; the gold market is the principal thing—the gold market and real estate take my attention.

Q. Are you interested in the gold market personally? A. No, sir.

Q. Now, about how much time during the day do you devote to the business you have named? A. I do not suppose I stay in my office more than one or two hours during the whole day.

Q. Is that the amount of time you devote to your business? A. No; I devote all my time to my business.

Q. What else are you doing? A. Going round on business and seeing business men.

Q. Are you a married man? A. No, sir.

Q. Have you ever been married? A. No, sir.

Q. Do you attend any church or religious organization of any kind? A. Oh! yes, sir; I go to church frequently.

Q. Where? A. Different places; I belong to no denomination whatever.

Q. Where have you been to church? A. Sometimes I go to one church and sometimes to another.

Q. That you have said before; name some church? A. I have been to Dr. Talmage's, that is one.

Q. How much do you go there; generally? A. Not generally, exactly; I have had a little interest in selling him the property close by the church.

Q. So that you went to church there? A. I was there once; I was there the Sunday it burned down.*

Q. You went to church the Sunday it was burned down? A. Yes, sir.

Q. The fire began early in the morning? A. I can not say exactly, what time it began, but I know I began to get out pretty quick.

Q. The fire began before the service? A. That I do not know.

Q. Did you go to the fire or to the church? A. I went to both.

Q. Now, did you not know when you went to the church on that occasion that it was on fire, and did you not hear the alarm? A. No, sir.

Q. Where do you live? A. No. 515 Fulton-st.

Q. How many blocks is that from the church? A. I guess about 5 or 6 blocks.

Q. Did you hear the alarm before you went there? A. No, sir.

Q. Did you get inside the church? A. Yes, sir; I was in nearly an hour.

Q. Before the alarm of the fire? Yes, sir.

Q. Who preached that morning? A. Dr. Talmage himself.

Q. You recollect that fact distinctly? A. Yes, sir; as near as I can recollect.

Q. I want your recollection about it; do you remember with accuracy who were present that morning? A. I could name half a dozen.

Q. Name them? A. I could name them then; but the parties can not be found now; I do not know where to place them.

Q. You can not name one of the individuals that can be found? A. I suppose they could be found if I knew where to find them.

Q. Did Mr. Morris attend divine service that morning? A. That I can not say.

Q. Or Mr. Pearsall? A. That I can not say.

Mr. Morris.—I was not there that morning.

Mr. Hill.—I guess you were not at church.

Q. How long had you been in the church before it took fire? A. That I can not tell.

Q. Was the church full of people? A. Yes; it was crowded.

Q. The general congregation? A. Yes, sir.

Q. Did you have any business there that morning? A. No, sir.

Q. Simply to go to church? Yes, sir.

Q. Now, don't you know that that church caught fire before 10 o'clock on Sunday morning? A. No, sir; I don't know anything at all about it.

Q. Will you swear it did not? A. No, sir; I would not.

* The church was burned about the usual time for the assembling of the congregation.

Q. Will you swear that you were there at all that morning? A. I will, sir.

Q. And inside of the church? A. Yes, sir.

Q. And stayed an hour, and that Dr. Talmage preached? A. No, sir; I won't say that Dr. Talmage preached.

Q. And that there was a church full? A. That the church was full; but I won't say that Dr. Talmage preached, for, in the first place, I don't know the man.

Q. Well, somebody preached a sermon there that morning to which you listened? A. Yes, sir; the church I know was crowded at the time.

Mr. Shearman.—I will submit to the counsel whether they want us to go any further with the examination.

Mr. Beach.—I don't know why that question is put.

JUDGE NEILSON.—I do not suppose they do wish you to go any further.

Mr. Shearman.—I suggest that we should hardly press a juror who testifies to a fact which every one in this court-room knows about.

JUDGE NEILSON.—I do not know anything about it. I do not know when the church was burned.

Mr. Hill.—I will ask some more questions. [To the Juror.] Don't you know that church caught fire——

Mr. Beach.—No, sir; wait one moment.

JUDGE NEILSON.—We have heard enough on that subject, Mr. Hill; that don't go to the question whether this is a disinterested juror or not.

Mr. Hill.—Q. Where else do you go to church? A. Oh, I have been to different churches, sir.

Q. Name some of them? A. Well, I have been to Dr. Hall's church, Holy Trinity.

Q. Well, when; within how long? A. Well, I could not say, sir; I don't keep a memorandum.

Q. Which Dr. Hall do you mean? A. Church of the Holy Trinity here.

Q. What other? A. I have been to Dr. Cuyler's church.

Q. When to Dr. Cuyler's? A. I could not say the last time I was there; I can't keep track of these things.

Q. Within a year? A. Oh! yes, sir.

Q. Where else? A. Well, to other different churches all over the city.

Q. Name them? A. I go to a German church, once in a while, on the Heights.

Q. On Henry-street? A. Yes, sir.

Q. When have you been there? Well, I was there a short time ago.

Q. Where else? A. Well, other churches; I could not name all I go to.

Q. Let me call your attention to it again; you have named not to exceed twelve gentlemen or institutions with whom you do business; with most of these, you say, it was merely to pay them money which you had collected, and I suppose that it would occupy but very little time? A. Yes, sir.

Q. And I understand you to say that you have heard a great deal of talk upon this subject—you can not recollect the individuals? A. No, sir.

Q. You have heard talk nearly every day about it? A. Yes, sir.

Q. Now, I would like to ask you again if you have not made answers to

some of the individuals who have talked with you on the subject? A. Oh, I might have, perhaps, said a word, some time or another.

Q. You may, perhaps, have said a word? A. Yes, sir.

Q. Did ever any man ask you what you thought about this business? A. No, sir.

Q. Out of all the people that you talked to? A. Yes, sir; I have been very cautious since I have been subpœnaed on the jury, sir; I was on the other panel.

Q. What other? A. The panel of 1,000.

Q. That was called before? A. That was called before; yes, sir; and then I was called again on the 500; and I have never expressed an opinion——

Q. How long ago was that panel called? A. Well, I could not say, sir; the Clerk of the Court can answer that question.

Q. Well, were you very cautious about it before? A. I was, sir.

Q. You tried to be very cautious? A. Yes, sir; I took no part on either side.

Q. Well, I mean that you made special effort to be cautious? A. Yes, sir; I did.

Q. Well, now, what did you make the special effort to be cautious for? A. Because it was nothing interesting to me at all to read the matter, and I did not do so; I merely looked at the heading of the paper, and that was all.

Q. You say you might have made answers to some individuals who talked to you? A. I might have; yes, sir.

Q. Don't you remember that you made answers to a good many? A. No, sir.

Q. Well, what answers did you make to them? A. I merely laughed the matter off.

Q. Is that what you call an answer? A. Well, a thing that I didn't know how to answer; I didn't know how to answer it, because I knew nothing about the case; I didn't know what answer to say.

Q. Have you never talked with Mr. Troy upon this subject? A. Mr. Troy?

Q. Yes, sir; Mr. Troy, the lawyer? A. Well, I won't say that I haven't; I might have and might not.

Q. Now, don't you recollect that you did, and that within two months, in Brooklyn? A. No, sir, not within two months.

Q. Within three months? A. It might be three months.

Q. Now, where was the place? A. That I could not name.

Q. Wasn't it at your office? A. No, sir.

Q. At his? A. No, sir.

Q. Did he speak about the case, or did you? A. If the case was spoken about at all, he must have introduced it.

Q. Didn't you make answers to him about it? A. No, sir; oh! I might have; well, I say no—I might have.

Q. Didn't you tell him, yourself, upon that occasion, or upon the occasion that you now refer to——

Mr. Beach—He doesn't refer to any occasion.

Mr. Hill.—Well, he refers to an occasion within three months.

Mr. Beach.—Oh! no, he doesn't.

JUDGE NEILSON.—You mean conversation instead of occasion?

Mr. Hill [to the juror].—Didn't you tell Mr. Troy within three months what you thought about this case? A. No, sir.

Q. Or what you thought about the controversy? A. No, sir.

Q. Or what you thought about Mr. Tilton? A. No, sir.

Q. Or Mr. Beecher? A. No, sir.

Q. Or express any notion about it at all? A. Nothing at all, sir, whatever.

Mr. Hill.—I ask your Honor that the disposition of this juryman may be suspended for the present. I ask that your Honor's decision upon the question raised by this challange should be suspended for the present, until inquiry can be made.

Mr. Beach.—That is a most remarkable proposition, your Honor. These gentlemen come here with a score of retainers, with their copy of the lists, with their committees and gentlemen who have made examinations in regard to this panel, and now ask, in the midst of the examination of a challenge, that it shall be suspended to allow them to go out and make inquiries. If that course is to be pursued here, we of course must return the same request to your Honor whenever a gentleman happens to be upon the stand with whom we are not entirely familiar, and we object to it most strenuously as a bad precedent in the case.

Mr. Fullerton.—Besides, they have their remedy, sir; the matter is in their own hands.

JUDGE NEILSON.—Doubtless they wish to preserve their challenge, however, of course.

Mr. Shearman.—That is preserved by consent.

JUDGE NEILSON.—That is preserved by consent, but they would not want to apply it.

Mr. Beach.—There was an occasion, sir, yesterday when I should have been very glad if I had supposed it regular to have made such an application to the court. But the gentlemen saw fit to force us into the position in regard to that juryman in which we are now placed, without any opportunity—knowing nothing of him—to make an examination which would have enabled us to decide as to the course of inquiry we should have pursued in regard to him. We come here without any examination in regard to this panel, simply trusting to what we may elicit when the juror is upon the stand.

JUDGE NEILSON.—I think the juror may take a seat for the present. [To the juror.]—Take a seat in that first chair.

Mr. Hill.—One moment; I haven't quite finished.

JUDGE NEILSON.—I think your examination has been very extensive. I suspend him at your request; I am granting your request.

Mr. Beach.—What do we understand, your Honor?

JUDGE NEILSON.—He may call a witness as to this juror, if he sees fit.

Mr. Hill.—Do you mean now?

Mr. Morris.—Well, we ask them to go on and try the issue now, before we call another juror; that is the regular way.

JUDGE NEILSON.—Well, he asks, if you call a witness, to call him now.

Mr. Evarts.—No doubt we would do it, if it was in our power to do so. The objection is that we may not be ready.

Mr. Morris.—But you can't do otherwise; this is an issue on trial now.

Mr. Evarts.—There is no occasion for haste, if your Honor please. If this were the twelfth juryman, there would be some propriety in the request. Why should we go on now? We must have nine or eight more jurymen, as the case may be.

JUDGE NEILSON.—Is it strictly regular to go on and leave this open?

Mr. Beach.—Do I understand your Honor to suspend the examination upon this issue as to the challenge of the juror.

JUDGE NEILSON.—That is what I do.

Mr. Beach.—We beg to object to that proceeding, and insist that if there is any more evidence to be given in regard to this juror upon this preliminary examination, subject to peremptory challenge hereafter, that that evidence be produced now, or that that examination in regard to him be considered closed.

Mr. Hill.—May I suggest to your Honor that at any time before the jury is impanneled, the court has discretion upon that subject as to how and when this issue arising upon the challenge should be tried. I submit to your Honor that under the circumstances, we know but little of a general character in reference to the juryman who is under examination, and I submit it to your Honor as a reasonable request that opportunity for examination be given in view of what this witness has disclosed.

JUDGE NEILSON.—That is not the practice.

Mr. Hill.—I am not aware that any ruling has been made against it, and I submit that the whole subject is at least within your Honor's discretion.

JUDGE NEILSON.—And it would be so with each other juror. If you hav any witness in respect to this juror, call him now; and he must not be called to some collateral matter, as, for example, whether he did business with a certain insurance company. That won't do. That don't go to the point whether he is a proper and disinterested juror or not.

Mr. Shearman.—If it please your Honor, we understood that you were granting us some little favor. Allow us to submit that allowing us to call witnesses now is not granting us any favor at all; that we have as a matter of right. I suppose if your Honor gives us a little time, you will give us an hour.

JUDGE NEILSON.—Well, then, putting it on that ground, and with the understanding that it shall not be repeated in respect to any other juror, we will hold it in that way.

Mr. Pryor.—If your Honor please, if these gentlemen will say that they have witnesses to traverse any material statement that this witness has made touching his indifference between these parties, or in respect to this matter, why, then we might be disposed to consent to a relaxation of the rule. But I do not understand that they say that they know of any witnesses who will contradict this juryman. Nor do I understand them to say that he has made a

misstatement, as to the disposition of his mind between these parties; but they want an adjournment to see if upon a career of inquisition they may not discover something to his discredit. Now, I object to it.

JUDGE NEILSON.—It must be something that goes to the question whether he is qualified as a juryman.

Mr. Beach.—Will your Honor please consider for one moment whether this is a judicious course to be taken in regard to the impanneling of this jury. Under the approval of your Honor, we yesterday made an arrangement by which we should present our challenges to the individual jurymen as they were called, and if no cause was then found against their qualifications as a jury, that they should take their seats, subject to peremptory challenge. Now I understand the application to be when the source of examination through the juror himself has been entirely exhausted, that your Honor shall suspend the examination under that challenge for the purpose of allowing the parties to make an outside investigation in regard to the qualifications of the juror. Now, if that privilege is to be accorded in this case, we ask that we have the same privilege, and that either party have the same privilege in regard to every juryman who is called and takes his seat as a qualified juror under the examination to which he is subjected. When they attempt hereafter to interpose any challenge, for favor or for principal cause, to a juror who has been thus called and taken his seat, it will be time enough to discuss the right which may be claimed by counsel. But I suggest to your Honor, with great respect, that we shall never succeed in obtaining a jury in this case if, after the examinations which are had here, lengthy and protracted as they are, we shall be permitted to investigate the public in regard to evidence which may be presented against either one of the jurors who may have taken his seat; and with great respect, sir, we insist that it is an unusual, extraordinary, and embarrassing course of proceeding to be adopted by the court.

Mr. Hill.—I can only say that, in response to the suggestion of Mr. Pryor, fairness requires that I should state that I have had no personal interview with any individual in regard to the matter; but I have had interviews with other individuals who furnished me information which the court ought to know about before this question is disposed of.

JUDGE NEILSON.—Now, you will please understand that I consider this a departure from the proper, strict course, and, as Mr. Shearman was discreet enough to put it, as a favor—not to be followed hereafter, however—not to be a precedent. But if you call a witness it must be to show that this juror has a bias, or has expressed an opinion—not a witness to show he transacts business with an insurance company, or does not; that is immaterial.

Mr. Beach.—Do I understand that that is a special favor granted to this defendant, and not to be conceded to us under similar circumstances?

JUDGE NEILSON.—Not conceded to them. They shall not regard it as a precedent. They shall not claim it hereafter, if it is granted now.

Mr. Beach.—Well, sir, how shall we understand?

JUDGE NEILSON.—I do not say I would not accord you the same privilege; but if a witness is called, it must be to the point that this man has expressed an opinion,—not that he has been at church, or has not been.

Mr. Beach.—Well, what limit is there to this liberty, this license? How long is this question to be open?

JUDGE NEILSON.—One hour. Now call the next juror.

Mr. Shearman.—Allow me to say we do not think of asking this favor without being willing to grant it at another time to the other side. We therefore ask on our part that your Honor make that exception in their favor.

CHARLES B. WESTMAN, called and sworn on a challenge for principal cause.

Mr. Fullerton.—You reside in Brooklyn? A. Yes, sir.

Q. Carry on business in Brooklyn? A. No, sir; in New York.

Q. What is your business? A. The manufacture of telegraph instruments and light machinery.

Q. How long have you resided in Brooklyn? A. Well, I was born in Brooklyn and resided most of my life here.

Q. Have you read anything in regard to the controversy between the parties to this action? A. Yes, sir.

Q. The most that has been published? A. Well, as a general thing, I have not interested myself very much in it.

Q. Have you formed any opinion in regard to the merits of the controversy? A. No, sir.

Q. Did you receive any impression from reading? A. Well, I have received a slight impression in conversation with others.

Q. Does that impression still exist? A. No, sir.

Q. How did you get rid of it? A. Well, I am in the habit of reading the papers a great deal, and of course it was something that interested me at the time; but my business has been so that I have had to pay some attention to that too.

Q. You did not read it, then, with any very great interest? A. No, sir; it was merely at the time I was reading it I took interest in it.

Q. But you did not read it with a view of forming an opinion? A. No sir.

Q. You say you did not form an opinion? A. No, sir.

Q. Well, do you think that you could take your seat in the jury-box and determine this controversy according to the sworn evidence that might be here before you? A. Yes, sir.

Q. Without being influenced one way or the other by any previous opinion or impression that you had formed or received in regard to it? A. Yes, sir.

Q. You would not be embarrassed, then, from the fact that you had read and received impressions in regard to the case, in disposing of it? A. No, sir.

Q. Well, have you no impression now, one way or the other in regard to it? A. Well, I can't say that I have.

Q. Well, you ought to know whether you have or not? A. No, sir; at the present time I have not. If I have it is so slight that I could not call it an impression.

Q. Have you any acquaintance with either of the parties? A. No, sir.

Q. Where do you attend divine service? A. Well, I am not in the habit of attending regularly at any church. Once in a while I feel like going to church; it is according to wherever my fancy takes me.

Q. Where have you been in the habit of going when you felt inclined to go? A. Well, I went to Dr. Carroll's church, Bedford-avenue; the Baptist Church, corner of Washington and Gates-avenues; Universalist Church, in Clermont-avenue, and churches around the neighborhood where I live.

Q. Are you a man of family? A. Yes, sir.

Q. Does your family attend service? A. Yes, sir; my wife does.

Q. Generally with you? A. Whenever we can get a chance to get out together.

Q. Where does she go when you can't attend her? A. Well, she has been in the habit of attending Dr. Carroll's church, in Bedford-avenue, with her mother and father.

Q. Are you acquainted with Dr. Carroll? A. Well, I am slightly acquainted with him; I know him very well by sight.

Q. And is your wife a communicant of that church? A. No, sir.

Q. Any of your family communicants of that church? A. None; only my wife's family; they all belong to the church, and are regular members.

Q. They belong to that church? A. Yes, sir.

Q. Well, does the doctor make pastoral visits at your house? A. Not to my house.

Q. He does to your mother-in-law's? A. Yes, sir.

Q. Where does your mother-in-law live? A. I believe it is No. 648 Bedford—it is in Bedford-avenue, corner of Monroe-street.

Q. Is your father-in-law living? A. Yes, sir.

Q. What is his name? A. Gelhardt—Chas. F. Gelhardt, I believe.

Q. Haven't you talked this over in your family frequently? A. Yes, sir.

Q. With your mother-in-law? A. Yes, sir; I believe I did.

Q. And your father-in-law? A. Yes, sir.

Q. And haven't you expressed opinions to them? A. Yes, sir.

Q. And they have expressed opinions to you? A. Yes, sir.

Q. Decided opinions? A. Well, I can't say whether they were very decided or not; of course it was just in conversation, reading the papers.

Q. Did you all agree, or did you take different sides? A. No, sir, I generally disagreed with them.

Q. And warm discussions? A. Oh, no, sir.

Q. Well, a little animated? A. Well, generally, my father-in-law; I like to talk to him, and get him a little excited, and I argued with him once in a while.

Q. And did you excite him? A. Yes, sir.

Q. And did he excite you? A. Well, no, sir.

Q. You kept cool? A. Yes, sir.

Q. Didn't all that controversy tend to fix in your mind a decided opinion in regard to this case? A. No, sir; at that time I had none. I felt as if I had formed a kind of opinion myself, but still it was not anything decided. I would read the papers over—I would read one side of the story, and I would

think that, and then I would read the other side; and it left me in doubt which was right.

Q. When were you summoned as a juror? A. I don't remember exactly; but I think it was the day before New Year's.

Q. By whom were you summoned? A. That I don't know; but it is by the Sheriff——

Q. Didn't you know the officer? A. I did not know the officer that served the summons.

Q. Did you have any conversation with him about it? A. No, sir.

Q. Have you held any conversation or controversy with any person since you were summoned? A. Only so far as business is concerned that I have excused myself; I have papers in New York there, and of course when parties came to me and wanted to know the reason my work was not done, I would excuse myself, stating that I was drawn on the jury, but at that time I did not know it was in this case.

Q. Beyond that have you held any conversation with any person or persons with respect to the case? A. I did last night; I had some business with a gentleman last night; he asked me how the case was going on; and I told him they were just drawing the jury.

Q. Is that all the conversation you have had since you were summoned? A. Yes, sir.

Q. Is that all you had with him? A. Yes, sir, that was all; and then his wife or his mother asked me whether Mr. Beecher was there or Mr. Tilton was there; that was about all the questions they asked me.

Q. Did you express any opinion to them? A. I expressed no opinion.

Q. Did they express any opinion to you? A. No, sir—Well, the lady—she is a member of Mr. Beecher's church I believe; and she said that——

Q. I didn't ask what she said; did she express any opinion to you? A. No, sir, not exactly an opinion.

Q. Did she make any assertion in regard to it? A. No, sir; she merely asked me what I thought about the case.

Q. Well, did you tell her? A. I told her I had no business to think just at the present time.

Q. Is that the answer you made her? A. Yes, sir; as near as I can recollect, it was to that effect.

Q. You gave that answer because you were summoned as a juror? A. Yes, I made the remark to the gentleman; he asked whether I was on this panel; I told him I was on this panel, and that was the reason I could not see to his work; but I said "I don't think there is much chance of me getting on, because I have expressed an opinion." I stated that to him.

Q. You told him you had expressed an opinion? A. That I had expressed an opinion.

Q. You did not expect to get on, then, did you? A. No, sir.

Q. For that reason? A. Yes, sir.

Q. Well, when did you express the opinion to which you then referred? A. Well, it was, as near as I can recollect, in conversation among the folks at the house.

Q. You referred then to these discussions with your father-in-law's family, did you? A. Yes, sir; and may be parties in the shop that came there; they have asked me about the case, and of course I have had to answer them; but I don't remember what conversation; I know that at that time I must have expressed an opinion.

Mr. Fullerton.—We withdraw the challenge.

Mr. Evarts.—He seems to me to be a good juryman.

Mr. Fullerton.—Then there is no objection to him.

The Juror.—I would like to be excused, if you could.

Mr. Fullerton.—Well, you ask too late; you ought to have spoken a little sooner.

HENRY THYER, called and sworn on a challenge for principal cause.

Mr. Fullerton.—Where do you reside? A. No. 76 Noble-street, Greenpoint.

Q. Where do you carry on business? A. I don't carry on any business in particular.

Q. Retired from business? A. No, sir; I keep a boarding-house there.

Q. In this city? A. Yes, sir.

Q. How long have you been engaged in that business? A. About two years.

Q. I take it for granted that you have read the controversy between the parties to this action? A. As far as things go, I certainly did read the papers; but never took no interest in it.

Q. What papers have you been in the habit of reading? A. I generally take *The Argus;* sometimes I have read *The Sun.*

Q. *The Sun* of New York? A. Yes, sir.

Q. And *The Argus* of this city? A. Yes, sir.

Q. Did you read the statements made by the respective parties? A. As I stated just now, I read them, but never took any interest in either side.

Q. Did you read all the statements of the parties? A. No, sir.

Q. Did you read the report of the Committee? A. No, sir, I have not.

Q. Have you formed any opinion in regard to it? A. Well, sir, I have not; that is, honestly speaking.

Q. Did you get no impression from what you read? A. Not the least whatever; I never took no interest in it.

Q. Have you conversed with a good many persons on the subject? A. No, sir.

Q. Discussed the matter in your boarding-house with any one? A. No, sir; not at any time whatever.

Q. Nor with any member of your family? A. No, sir.

Q. Never received any impression one way or the other? A. Not the least whatever; I never took no interest in it.

Q. Are you acquainted with either of the parties? A. No, sir; I am not.

Q. Are you a little hard of hearing? A. No, sir, I am not.

Q. Where do you attend church? A. The Presbyterian Church, when I go to church, in Kent-street, Greenpoint.

Q. A regular attendant? A. No, sir, I am not.

Q. Do you attend any other church? A. No, sir, I do not.

Q. Where do your family attend? A. Nowhere at all; my children go to the Presbyterian Church, but my wife does not go to church.

Q. What Presbyterian Church? A. In Noble-street.

Q. Who is the pastor of that church? A. I could not tell you; my children attend the school, but I do not go there myself.

Q. Did you see these statements that you say you have not read? A. I did see the statements, but, as I said before, I never took no interest in them whatever.

Q. Where did you see them—in what shape? A. I read them in *The Sun* and likewise in *The Argus*, but never took no interest in it whatever.

Q. How does it happen you did not take an interest in a subject that agitated the community to such an extent as this did? A. Because I didn't think it was to my benefit to do so.

Q. Don't you interest yourself in public questions? A. No, sir; I do not.

Q. How are you engaged during the day? A. I am an iron-finisher; I work for John H. Keyser, and have been working for him for the last six years and six months.

Q. Please state what is his business again? A. A stove founder.

Q. In this city? A. Yes, sir; John H. Keyser, of Tweed notoriety—one of the parties in the Tweed case.

Q. Where did you work for him? A. In Noble-street, at the foundry, as a stove-man.

Mr. Fullerton.—We withdraw the challenge.

Mr. Evarts.—He seems to us to be a good juryman.

The juror was accepted.

IRA DOWN.—Called and sworn on the challenge for principal cause.

Mr. Pryor.—Where do you live? A. No. 170 Duffield-st.

Q. Where do you do business? A. I am retired from business.

Q. What was your business? A. Farmer, Suffolk county.

Q. How long since you retired from business? A. Ten years.

Q. How long since you have resided in Brooklyn? A. Between one and two years.

Q. Have you a family? A. A wife and one child.

Q. You have heard of this controversy, have you? A. I have read it in *The Tribune*. I take *The Tribune* every morning.

Q. What have you read of it? A. I have not read but very little.

Q. You have read but very little? A. I have been the most of the time in the Christian Association; I have been gone about half the time from home to the Christian Association.

Q. Where? A. Myrtle-ave.

Q. What were you doing there? A. I was at a meeting every afternoon; we have a meeting every day the year round, Sundays and all.

Q. You are a member of some church? A. I belong to the Presbyterian Church in Mattituck, where I came from.

Q. Have you formed a connection with any Presbyterian church in Brooklyn? A. No, sir.

Q. You have not got any letters yet? A. No, sir.

Q. Do you remember what articles you read in *The Tribune* touching this matter? A. I could not tell you; I have read but very little; I have a good deal of headache, and my eyes trouble me, and I have taken but very little interest in it.

Q. Do you remember whether you have read the statement of either of the parties? A. What little I read, sometimes I read the one and sometimes the other.

Q. Did what you read make any impression on you? A. It did not.

Q. Made no impression upon you? A. No, sir.

Q. Did it make any impression on you at the time? A. No, sir.

Q. What do you mean by saying it made no impression upon you? A. One I would read a little, and then I would think I would read on the other side, so I kept reading on both sides and formed no opinion.

Q. You kept the balance even in that way? A. Yes, sir.

Q. When you read one statement, before you read the other statement, your mind inclined that way? A. Very little.

Q. So no impression was made upon you in any way by anything you read? A. No, sir.

Q. Do you remember whether you read Mr. Beecher's statement? A. A very little of it.

Q. Did you read any of it? A. Perhaps one-tenth of it.

Q. How much was one-tenth? A. I don't know. There is a great deal covered over with it.

Q. Did you read Mr. Tilton's statement? A. I should think I read about one-tenth of that; a little of it I looked over.

Q. Did you read the report of the Church Committee? A. No, sir.

Q. Did you read any of the evidence that was developed before this Church Committee? A. No, sir.

Q. What Christian Association is this you speak of—the Young Men's Christian Association? A. Yes, sir.

Q. What denomination? A. All denominations, I think.

Q. Composed of all? A. Yes, sir.

Q. May I ask why you have not got your letter of dismissal from the former church you belonged to? A. You may; in the first place, I have been one or two years in Brooklyn, and before that I was one or two years in Babylon, Long Island; and I have been moving around, and for that reason I have not got any.

Q. What church do you attend here? A. Talmage's.

Q. Do you attend that church habitually? A. Part of the time.

Q. Do you ever go to any other church? A. Yes, sir.

Q. Will you mention any other church you go to? A. Washington-street.

Q. Which one in Washington-street—who is the pastor of it? A. A new pastor; I don't think I know his name. I have been there perhaps five or six times, and to Johnson-street perhaps five or six times, in a year.

Q. Do you ever attend Dr. Van Dyke's church? A. No, sir.

Q. Or Dr. Carroll's? A. No, sir.

Q. Have you ever discussed this controversy, or any branch of this controversy with any person? A. I don't know as I could call any name now; I think I have heard them say a few words; I think I told him I didn't know anything about it, I heard so much on both sides.

Q. Did you ever hear any other person propound any opinion on it? A. I think I have, a very few.

Q. Have you heard the matter discussed much? A. No, sir.

Q. Very little? A. Very little.

Q. Did you hear it discussed in the rooms of the Christian Association? A. I never heard a word said about it since I have been here.

Q. Do you know Mr. Nicolls? A. No, sir.

Q. He keeps a hardware store in Myrtle-avenue and Duffield-street; do you know him? A. No, sir.

Q. You do not know him? A. I think I do know him.

Q. He keeps a store, does he not? A. I think he does.

Q. What sort of a store? A. Grocery, I think.

Q. Grocer? A. Yes, sir.

Q. Did you ever talk with him about this matter? A. I have heard him talk some.

Q. Did you make any response to him? A. I think it is very likely I have said a few words.

Q. Did he declare any opinion upon the matter? A. Yes, sir; he did.

Q. He declared a pronounced opinion, did he not—a decided opinion? A. Yes, sir.

Q. What reply did you make to him, or did you make any reply to him? A. I think I said a very few words; none of any consequence.

Q. Did you indicate whether you dissented from or concurred with his opinion? A. Not either way.

Q. Do you remember what he said? A. No, sir; I don't.

Q. Did the declaration of Mr. Nicolls's opinion to you make any impression upon you? A. No, sir.

Q. Do you remember, when Mr. Nicolls expressed an opinion whether that was then your opinion or not? A. I didn't have any opinion either way, as I said, on either side.

Q. Have you endeavored to avoid forming an opinion? A. No, sir.

Q. How often do you see Mr. Nicolls? A. I trade there considerably. He don't come in there until about 1 or 2 o'clock. Perhaps I see him once a fortnight, or once a week; sometimes oftener, and sometimes not as often; I don't go in there very often—once in a great while.

Mr. Fullerton.—I offer this letter in evidence.

The Witness.—Yes, sir.

Mr. Fullerton.—In whose handwriting is the paper? A. Theodore Tilton's.

Q. Can you remember now how often you have discussed it with him? A. Within six months I think I have been in there perhaps from four to six times talking with other persons, and may be once or twice he has spoken to me about it—may be six times in six months.

Q. How long did those discussions generally last? A. May be I would stay in one minute, and transact my business and go out.

Q. Did you make no reply to him? A. No, sir; once or twice he has spoken to me, and may be I would stay three minutes in there.

Q. Did you make no reply to him? A. I could not recollect what I did say—not a word now—I took so little interest in it.

Q. You won't say you did not reply to him? A. No, sir, I won't say I did not; I could not recollect what I said to him, I took so little interest in it.

Q. Are you sure that on some one of those discussions you didn't make any reply to him? A. I would not be sure either way.

Q. What do you think—what is your impression? A. Well, I would think—as he would be talking, perhaps I answered him in some form or other; I think I did; I don't generally let anybody talk without I say a few words; I don't know but I have.

Q. What is the answer you say you may have given him; what did that express, or contain, or import; did it convey an opinion that you had? A. No, sir.

Q. Your answer did not indicate any opinion on your part at all? A. No, sir.

Q. Did you ever tell him not to discuss the matter with you? A. I don't think I did. I thought, as I was in his store, I could go out as soon as I had my business done, and need not come in again unless I had a mind to.

Q. When did you have your last discussion with him? A. I think it is one or two months since a word has been spoken.

Q. When did he last mention the subject to you? A. I think it has been as long as two months.

Q. When did he last mention it in your presence? A. I think that it is as much as two months—I think it is.

Q. Do you consider that the interests of Christianity are involved in this trial? * A. No, sir.

Q. Do you conceive that the character of the Christian ministry is involved in this trial? A. No, sir.

* In *People* v. *Christie* (2 Park. Cr. 579; S. C. 2 Abb. Pr. 256 [*Supreme Ct.* 1855], CLERKE, MORRIS and MITCHELL, JJ., opin. by MORRIS, J.), which was an indictment for riot arising out of prejudices between Roman Catholics and others, defendants were members of a society of Hibernians and Catholics. *Held*, competent to ask a juror, "have you any bias or prejudice against Roman Catholics?" and that it was error to allow him to refuse to answer, upon the ground that his answer would tend to disgrace him. The court says, "The right to an impartial jury is not to be sacrificed to the fear or apprehension of wounding the feelings of others. . . . There is neither dishonor nor disgrace attached to the fact that a man had formed an opinion upon any subject which agitated public consideration."

Q. Do you take any religious newspaper? A. No, sir.

Mr. Evarts.—He seems to be a good juror.

The juror then took his seat, accepted.

GEORGE HULL, called and sworn on a challenge for principal cause.

Mr. Pryor.—Where do you live? A. No. 102 Devoe-st.

Q. What is your business? A. Carpenter.

Q. How long have you lived here? A. About 23 years.

Q. Have you ever heard of this controversy? A. I have, sir.

Q. Did you ever read anything about it? A. I did.

Q. Did what you read make any impression upon your mind? A. It did.

Q. Did you form an opinion touching the controversy? A. I did not.

Q. Have you ever formed an opinion? A. I have not.

Q. You had an impression? A. I had.

Q. What is the difference between an opinion and an impression, in your view? A. When a man forms an opinion, he has something to form an opinion from.

Q. When he forms an impression, he forms it without any cause at all? A. Well, not a positive cause.

Q. What produced this impression upon your mind? A. Articles that I read.

Q. What articles did you read? A. I read articles in relation to this controversy between Mr. Tilton and Mr. Beecher.

Q. Which articles—statements of the parties or newspaper articles? A. The newspaper articles published; their statements I presume it was—some of them.

Q. Have you read any of the statements of the parties themselves? A. I have.

Q. Did you read Mr. Beecher's statement? A. I did.

Q. Did you read Mr. Tilton's statement? A. I did not.

Q. You have read only Mr. Beecher's statement; did you read the testimony before the Church Investigating Committee? A. Not fully.

Q. Did you read any of it? A. Very little.

Q. What did you read of it? A. I am not able to tell.

Q. Did you read the report of the Committee? A. Not fully; only the conclusion.

Q. You read the conclusion? A. Yes, sir.

Q. Did it make any impression upon you? A. The report of the Committee?—no sir.

Q. None whatever? A. No, sir.

Q. What has become of the impression you say you arrived at? A. It still remains.

Q. May I ask you as to the tenacity or strength of that impression—is it a very mild impression or a pretty tenacious one? A. It is very tenacious.

Q. And you still retain that impression? A. Yes.

Q. I suppose it would require some argument or evidence to remove that impression? A. It would.

Q. Notwithstanding you had this impression, you would fairly listen to the evidence, would you not, and would you not conscientiously render a verdict according to the evidence, irrespective of this present impression? A. I would.

Q. Do you attend any church? A. I do.

Q. Which church? A. The First Baptist Church of Brooklyn.

Q. Who is the minister? A. The Rev. Dr. Reed.

Q. Are you a communicant of that church? A. Yes, sir.

Q. Do you know either of the parties in this controversy? A. I do not.

Q. You have heard of both of them? A. Yes, sir.

Q. You have no prejudice against either of them? A. None at all.

Q. Your mind is indefinite and even as between them both? A. It is.

Mr. Pryor.—We withdraw our challenge.

Mr. Shearman.—We are willing to accept the juror.

JUDGE NEILSON.—Take your seat, sir.

JUDGE NEILSON.—Now, Mr. Shearman, have you got witnesses in regard to the qualifications of the juror, Andrew Mackey?

Mr. Pryor.—I understand that the defendant has not challenged him yet.

JUDGE NEILSON.—The juror was examined on the challenge.

Mr. Pryor.—On what ground is the challenge? It is not enough to say that he does not stand indifferent; it must be shown.

JUDGE NEILSON.—That juror has denied that he has formed or expressed any opinion. The counsel are at liberty to prove that he has expressed an opinion.

Mr. Beach.—We withdraw our challenge to the juror.

Mr. Shearman.—Then we challenge the juror.

JUDGE NEILSON.—Now you are at liberty to prove that the juror has expressed an opinion.*

SILAS B. DUTCHER, called by defendant as a witness, and sworn.

Mr. Hill.—Have you seen *Mr. Mackey*, the juror? A. I have.

Q. Were you in court when he was examined? A. I was.

Q. Did you hear him mention the fact of his having done business with you? A. I understood him to have mentioned my name.

Q. Is it true that he did business with you?

Mr. Beach objected to the question as irrelevant and immaterial.

Mr. Hill.—The statute provides that the jurors shall be free from all legal exception, and shall be of fair character and approved integrity. The juror has stated that he has done business with Mr. Dutcher, and we propose to show that he has not.

Q. Are you connected with an insurance company, Mr. Dutcher? A. No; I am not.

Mr. Beach.—But there is a Mr. Dutcher connected with an insurance com-

* When a juror has been challenged, a witness may be called to prove the ground of challenge. *Supreme Ct.*, 1823, Pringle *v.* Huse (1 *Cow.* 432); Oyer & T. 1823 (People *v.* Fuller (2 *Park Cr.* 16).

pany. The juror said that he thought his name was Silas B. Dutcher. However, we withdraw our objection.

JUDGE NEILSON.—I wish to ask the learned counsel whether he thinks it proper now to call witnesses to all the collateral topics to which he examined the juror?

Mr. Shearman.—We take the ground that the statute is very broad, and prohibits the Commissioners of Jurors from bringing any person who is not of fair character, of approved integrity, and of sound judgment, and well informed. Now, when we show, if we can show, that this juror has sworn to having had dealings with Silas B. Dutcher—a gentleman as well known in Brooklyn as your Honor yourself—concerning whose name it is almost impossible that any man of tolerably sound judgment, and in the least well-informed, could make a mistake, and when we then show that he has had no dealings with that gentleman, I think we raise a strong presumption that he is either not of approved integrity, or not at all well informed—not well informed about his own business. It raises a presumption as to his incapacity in the transaction of business required by a juror, because he can not transact his own business in a sufficiently intelligent manner to recognize his own customers.

JUDGE NEILSON.—Suppose the juror, in good faith, in answering your interrogatory, made a mistake?

Mr. Shearman.—Certainly he can show it is a mistake. But suppose a juror should come and state that he was engaged by Joseph Neilson of Brooklyn.

JUDGE NEILSON.—Please to leave me out.

Mr. Shearman.—Well, suppose that he stated that he was engaged by William M. Evarts, a lawyer in New York, and we then ask him if he could see him here in court, and he said he could not, would not that go to the question whether the juror was of sound judgment or well informed? The point we have to make in regard to this juror is a delicate one, and it is, that he is not of sound judgment.

JUDGE NEILSON —They do not object to your examining Mr. Dutcher.

Mr. Hill.—Has this gentleman, Mr. Mackey, ever had any business with you? A. No, sir.

Mr. Beach.—Are you connected with any insurance company? A. I am not.

Q. Do you know a Mr. Dutcher connected with an insurance company? A. I know there is one.

Q. What company is he connected with? A. My impression is that it is with the Continental.

Mr. Morris.—In what office is Mr. Dutcher? A. I do not know.

THOMAS E. PEARSALL called as a witness on the trial of the challenge of *Mr. Mackey*, and sworn.

Mr. Hill.—Where do you reside? A. No. 105 Sixth-avenue.

Q. Do you attend Dr. Talmage's church in Schermerhorn-street? A. I do.

Q. How long have you attended it? A. Ever since it was built.

Q. Did you attend the church which was there upon that site before the fire? A. I did.

Q. For how long? A. From the time that church was built.

Q. Did you attend the church the morning of the fire, at the time it was destroyed? A. No, sir; not until I heard of the fire.

Q. What time did you go there? A. I don't know, sir; I heard the bells ring for the fire, and looked out of my window and saw the fire and went to it.

Q. What time did you get there, to your knowledge? A. I think the fire occurred about the time that we go to church.

Q. Do you know whether there was any preaching there that morning at all? A. I don't think there was.

Q. Do you know whether Mr. Talmage attended his church to preach that morning? A. I do not know, sir.

Q. Was the fire before the service or after? A. It was before the service; it was just at the time of the morning service that the fire began.

Q. The bells were just ringing for church? A. Yes.

Q. It was a very sudden fire? A. Yes; the same as all fires.

Q. It entirely destroyed the building? A. It took a long time, as I understood, before it developed itself; the fire got down from the cellar at the floor.

Q. And the fire continued and the building was burned up before any service was held? A. Yes, sir.

Mr. Morris.—The congregation had gathered partly before the fire? A. I do not know, sir.

Q. Did you understand they were in the church at the time of the fire? A. I don't know; I was attracted to church by the fire.

Q. Do you know Mr. Dutcher, connected with an insurance company? A. I do, sir.

Mr. Shearman.—Are you acquainted with Mr. Mackey? A. I am, sir.

Q. How long have you been acquainted with him? A. All my life, I think, almost.

Q. Have you been well acquainted with him? A. No, sir; I know where he is, and I know that he has a real estate office in Fulton-ave.

Q. Have you done business with him? A. I don't think we have ever done business with each other; I may have done some business with his brother a year ago.

WILLIAM RICHARDSON called as a witness on the trial of the challenge of *Mr. Mackey*, and sworn.

Mr. Hill.—Do you reside in this city? A. I do, sir.

Q. Do you recollect the occasion when Dr. Talmage's church in Schermerhorn-st. was destroyed by fire? A. Yes, sir.

Q. When did you hear the alarm of fire? A. I think the fire occurred Dec. 21, 1872, about 10 minutes after 10 o'clock in the morning. I was on my way to church at the time.

Q. Are you sure of the date? A. I am sure it was the Sunday nearest to the 21st of December, and I think that was the exact date.

Q. Did you go to the fire? A. I did not then.

Q. Did you go there afterward, to be sure that that was the alarm? A. I did, immediately after service.

FRANK BENSON called as a witness on the trial of the challenge of *Mr. Mackey*, and sworn.

Mr. Hill.—Where do you reside? A. In Boerum-place.

Q. Where is your business? A. In the billiard room of Mr. John B. Riley.

Q. Do you know Andrew Mackey? A. I know the gentleman.

Q. Have you seen him? A. Yes, sir.

Q. He has been at your place? A. Yes, sir.

Q. Did you ever hear him speak about the Tilton-Beecher scandal? A. I have heard him make some few remarks about it.

Q. When? A. I can not say exactly the date.

Q. How long since? A. Two or three months, it may be.

Q. Who commenced the conversation? A. I can not say; I may have begun it myself.

Q. Did Mr. Mackey express any opinion about it? A. He did.

Q. A decided opinion? A. How decided it was I do not know; he expressed an opinion to me.

Mr. Shearman.—If your Honor please, this is our testimony, and we think that we have shown that the juror has expressed an opinion.

Mr. Beach.—The character and extent of that opinion, whether it relates to the merits of the case, does not appear. If the juror has fallen into an error as to the particular period of the burning of Dr. Talmage's church, it does not affect him. There is no evidence that he has expressed any opinion in the case to form a disqualification.

JUDGE NEILSON.—I think there is sufficient to show that the juror must stand aside. We must have a jury that is free from all question. You are excused, Mr. Mackey.

AUSTIN PACKARD called and sworn on a challenge for principal cause.

Mr. Beach.—Have you formed any opinion in regard to the merits of this case? A. I don't know that I have.

Q. Do you know that you have not? A. I know I have not fully.

Q. From what you have read and heard of the case, have you received any definite impression in regard to its merits? A. Not definite; no sir; I should require more testimony to come to a correct conclusion in regard to the facts in the case.

Q. I judge from what you say that you have at least a qualified impression? A. I have read it, and had an impression, of course. I have not a final impression, what would be necessary to form a correct conclusion.

Q. What is your business? A. Manufacturer of ships' stoves.

Q. Are you acquainted with either of the parties to this action? A. No, sir.

Q. Have you any association in any way, directly or indirectly, with them, business or social? A. No, sir.*

* Intimate acquaintance with a party,—*held*, a ground of incompetency (*Thorn's Case*, 4 City H. Rec. 81). Friendship or clientage is not a disqualification as matter of law (*Regina* v. *Geach*, 9 Carr. & P. 499).

Q. Are you a church member? A. No, sir.

Q. Are you a member of a religious organization? A. I have a seat in Mr. Halsey's church, in Franklin-ave.

Q. Do you think your mind is in that condition that you could hear and decide on the evidence in this case if you were sworn as a juror, without feeling any bias or prepossession from any impression you have received? A. I don't know of anything that would affect it.

Q. Have you been accustomed to talk upon this subject? A. I have had street conversations—car conversations.

Q. It is a subject that could hardly be avoided. Have you had any special discussion upon the subject with any friend? A. No, sir; I don't know of anything particular affecting this case.

Q. You know there have been various publications by the different parties connected with the controversy? A. Yes, sir.

Q. Upon reading these publications have you expressed any opinion in regard to their character or effect, or credibility? A. I don't know that I have; I don't recollect of doing so now.

Q. Do you now recollect to have formed any opinion in regard to these publications? A. Well, I don't know that I have formed any opinion on the subject other than that it was part of a scandal.

Q. You have received from those nothing but that transient impression which every intelligent man receives from reading publications? A. I don't know of anything else; I have no partiality for either of the parties.

Mr. Beach.—I withdraw the challenge, sir.

Mr. Evarts.—How long have you lived in Brooklyn? A. Some 26 or 28 years.

Q. Is the business you carry on carried on also in Brooklyn? A. Yes, sir; I have been in the business for 40 years.

Q. So that your business and residence is that of a Brooklyn man? A. My business is in New York.

Q. You go to New York to your business for the day? A. Yes, sir.

Mr. Evarts.—We think he is a good juryman, if your Honor please.

JUDGE NEILSON.—Take a seat, sir.

JOHN WINSECKEL called and sworn on a challenge for principal cause.

Mr. Beach.—Are you acquainted with either of the parties? A. No, sir.

Q. Are you attached to any church congregation? A. No, sir; I belong to a church.

Q. What church? A. The Catholic Church.

Q. You have heard something, I suppose, of this case? A. Oh! yes; I have heard something.

Q. And read something about it? A. Yes.

Q. Have you formed any opinion in regard to its merits? A. No, sir.

Q. You have received no decided impression in regard to the truth of the charge against Mr. Beecher? A. No sir.

Q. Have you any bias or prejudice which would influence your judgment if sitting as a juror under oath? A. No, sir.

Q. You have none? A. No, sir.

Q. What is your business? A. I am a fire insurance agent, and do business in real estate.

Q. Where is your place of business? A. No. 459 Grand-street, over in Williamsburgh.

Q. How long have you resided in Brooklyn? A. Twenty years.

Q. Are you a man of family? A. Yes, sir.

Q. Have you conversed to any considerable extent upon the subject of this difficulty? A. I don't like to be on this jury; I would like to be free if I could.

Q. Have you been in the habit of talking about this subject? A. No, sir; sometimes a little, of course, when we read something in the papers.

Q. But what you read never led you to express any opinion in regard to it? A. No, sir; to nobody.

Q. And, so far as you know, your mind is perfectly clear to hear and decide this case upon the evidence, if you sit as a juryman in it? A. Yes, sir.

Mr. Beach.—We withdraw our challenge.

Mr. Shearman.—What is your age? A. Forty-eight.

Q. Did you come to this country from Germany? A. Yes, sir.

Q. When did you arrive? A. 1854, I guess in October.

Q. You are naturalized? A. Yes, sir.

Q. What papers did you read? A. *The New-Yorker Presse*, a German paper.

Q. Did that paper express an opinion on this case? A. No, sir.

Q. Does that paper express any opinion on the subject of the character of clergymen generally? A. I don't know; if it did it could not affect me; I only read it one year.

Q. You attend the Catholic Church? A. Yes, sir.

Q. Do you attend with any regularity? A. No, sir.

Q. Do you attend nearly every Sunday? A. Yes, sir.

Q. What church do you attend? A. Montrose-avenue Church.

Q. Who is the pastor, or pastors, of that church? A. There are three or four of them.

JUDGE NEILSON.—Who is the leading pastor in that church? A. Father May.

Mr. Shearman.—Is it a German Catholic Church? A. Yes.

Q. Do you understand English perfectly when you are accustomed to talking? A. I think I do.

Q. I notice you only read a German paper. Are you accustomed to reading English? A. Yes, a little.

Q. You don't read English papers? A. Yes.

Q. You read it quite familiarly, I suppose? A. Yes, sir; when I like I read it.

Q. How long have you been engaged in your present business? A About eight years.

Q. You said you were a fire insurance agent; are you agent for any particular company? A. No, sir.

Q. You canvass for business generally? A. Yes, sir; I take any company when I get the insurance, where I like it.

Q. With what companies do you mostly do business? A. With the Williamsburgh City Fire Insurance Company, and with the Kings County Company, and the Continental Company, and a little with the Citizen.

Q. Do you do business with the Continental here, or with the main office? A. With the main office, No. 102 Broadway.

Q. Are you acquainted with any of the officers there? A. Yes, sir, with one.

Q. What is his name? A. He is the man that stands behind the counter; I don't know his name.

Q. Probably one of the clerks? A. Yes, sir.

Q. Are you acquainted with any of the officers of the Williamsburgh City Insurance Company? A. I know them, because I can name them.

Q. Are you acquainted with any of the officers of the Kings County Company? A. Yes, sir.

Q. Can you give the names of any of them? A. I know the President of it, Mr. Backhouse.

Q. You are acquainted with him? A. Yes, sir.

Q. What did you read about this case in the papers you read? Did you read editorials or statements? A. I read some some months ago, not much; that that I read I forget, because I have no interest in it.

Q. Can you tell us which of the statements you read? A. No, sir.

Q. Did you read a letter to Dr. Bacon? A. No, sir; I don't read stories in the papers, or history, or the particular things that come in the papers; I don't like it.

Q. You don't spend much time studying the newspapers? A. No, sir.

Q. Have you heard other people talk about this case? A. Yes, sir.

Q. Can you recollect any person that talked with you about it—can you mention any person that did? A. No, sir.

Q. Can you recollect what opinions they expressed? A. No, sir; I could not recollect.

Q. You don't know whether they expressed any opinion or not? A. No, sir.

Q. What did they say about it if they didn't express an opinion? A. I forget it, because I didn't have any interest in it.

Q. Can you recollect the names of one or more persons who spoke to you about it? A. No, sir.

Q. Did you say you were married? A. Yes, sir.

Q. Did you ever talk about it at home? A. Yes, sir; may be at home I did.

Q. Did any of your family express an opinion about it? A. No, sir, not one.

Q. What kind of books do you read; will you mention two or three of your favorite books? A. I don't read much books, except what books I pray in church with—a praying-book.

Q. But not other books? A. No, sir; I have done that before, but not now.

Q. Don't you read any German authors? A. No, sir.

Q. Never read Schiller? A. No, sir.

Q. Nor Goethe? A. No, sir.

Q. Do you know who they are? A. I had books once for sale and I sold them, and that is all.

Q. Do you know who Schiller was? A. No, sir.

Q. Do you know who Goethe was? A. No, sir; I forget it.

Q. Do you know any of the name of Heine? A. No, sir.

Q. Never read any of his books? A. No, sir.

Q. Nor any of Lessing's? A. No, sir.

Mr. Beach.—It seems to me that this is a very exceptional manner of examining a juror. It don't require a literary man to be a juror.

Q. Your prayer-book is in German, is it not? A. Yes, sir.

Q. Do you read any English books? A. Sometimes.

Q. Can you mention any? A. I didn't read them for a long time; I did before—five or six or ten years ago.

Q. You have not read any English books for about ten years A. No, sir.

Q. What English newspapers have you read? A. I have looked in *Frank Leslie's News.*

Q. How often do you read that? A. I see only the pictures in it, and read a little bit of it.

Q. You look at the pictures, but don't read it? A. I read it a little, but not much; I am not a reader.

Mr. Evarts.—This gentleman seems to be qualified, so far as indifference goes, but your Honor is aware, and our learned friends are aware, that this case is not of the ordinary run of cases, and it is quite important that every juryman should have a pretty complete familiarity with our language, for a great deal of criticism will be used upon the meaning of words, first as to their import and their just construction. It does not strike us, and I presume Mr. Winseckel will agree with us, that he has that familiarity with the language that a proper trial of the case should require. That is my view. What do you say to that, Mr. Winseckel; is that your opinion?

The Juror.—I am satisfied.

Mr. Beach.—What is your view—that you don't want to sit—is that it? A. Yes, sir.

Q. You understand the English language perfectly when it is spoken to you? A. Yes, sir.

Q. And you can speak it fluently? A. If I hear it.

Q. And if you hear a skillful counsel make a criticism on a letter, you would be able to understand it? A. Yes, sir.

Q. Even if it should be my learned friend on the other side who speaks with so much clearness? A. Yes, sir.

Mr. Evarts.—He ought to be able to understand counsel on both sides.

Mr. Beach.—Very good. That should not be a cause of objection, though, on the part of my learned friend.

Mr. Evarts.—I don't know about that. However, if your Honor please, the case is, as we know, a peculiar one. There will be a great deal of dis-

cussion about the reading of letters, and there is an immense quantity of writing to be read; and this gentleman says to us frankly that he don't read English books; that what books he reads are German, and he is in that line. He has a pretty good knowledge of our language for the purpose of our business and for this interview we are holding with him; he speaks with intelligence and clearness and correctness, and apparently understands readily; but, although that is the question we really want disposed of, I ask whether we should not better have jurymen who are wholly familar with our language.

JUDGE NEILSON.—I think there is a good deal in that suggestion, although this gentleman is, on the legal question, competent—fairly so—yet it is a thing to be considered by counsel whether he has a sufficient familiarity with our language to make a desirable juryman.

Mr. Beach.—He has testified to that familiarity on the stand, and has sworn to it; he has testified he could understand criticisms.

JUDGE NEILSON.—It is an appeal to the judgment of the counsel rather than the court. I hardly think I would be justified in letting him stand aside.

Mr. Beach.—I think I must take the risk of being so stupid that he could not understand me. I insist it is a new qualification to be indulged, and if we must select gentlemen, and gentlemen only, who have high literary excellence, and not be governed by the ordinary qualifications belonging to a juryman, we will have some difficulty in selecting proper men.

Mr. Evarts.—If my learned friend thinks the juryman's statements here exhibit his knowledge of the language adequately, perhaps I ought to pursue the inquiry in that direction. [To the juror.] Now, your knowledge of our language has been gained in ordinary life, and for the purposes of business, has it not? A. Yes, sir.

Q. And you have no knowledge of English literature? A. No, sir.

Q. Did you ever read an English author? A. Oh! yes, sir, I do.

Q. What? A. I read some English books before I came to this country.

Q. That was to learn English, was it not? A. Of course.

Q. And now of late, during the last ten years, have you had any habit of reading English literature—works of English writers? A. Yes, sir, that is so.

Q. What works were they? A. Some of them in the fire insurance office, and I got some papers from lawyers.

Q. That we don't call literature. What do you consider literature to be?

Mr. Beach.—I object to that question as incompetent.

JUDGE NEILSON.—I think it is proper.

Mr. Beach.—I except, if your Honor please.

Q. What is literature? A. I thought you meant a letter.

Q. What do you mean? A. I don't know.

Q. Do you know what the English word "condone" means? A. Yes, sir; it is a part of a country—condone—county; you could not expect that I am a lawyer over here.

Mr. Evarts.—I don't see, if your Honor please, that the counsel, and what

is more, that the witnesses, who have occasion to speak in language and concerning language that is not in the ordinary course of business affairs, could feel that they would be thoroughly understood by this juror.

Mr. Beach.—If it is to be accepted as a test that a gentleman called as a juror can not give the significance of any particular word which may be submitted to him, there are few jurors in this audience who will be available. I don't think it would be difficult, by a question of that character, to embarrass anyone, for almost any person in this assembly might perhaps be embarrassed somewhat in regard to the signification he could give to the word. I am quite sure that I might be; I don't know whether my learned friend would.

JUDGE NEILSON.—The embarrassment grows out of the circumstance that this gentleman is a German; and although evidently a very fair and sound man, he is one who has not had occasion to consider our language to any great extent, and is not acquainted with the meaning of words, perhaps, to any great extent, nor as to the terms and documents which might be in dispute, and I think it might be more satisfactory to both parties if we should exclude him. He is not legally exempt; in a legal sense he is qualified, unless it arises from a want of acquaintance with the language, and there is something in that.

Mr. Beach.—I submit there is not. I don't suppose we are to use language either in the bar or on the bench that the ordinary intelligence of the community can not understand.

JUDGE NEILSON.—No, we can inform the ordinary understanding.

Mr. Beach—I suppose so, and I suppose there is no difficulty in making this gentleman understand any idea or criticism which counsel or court may choose to present, and if a high and exalted standard of literary qualifications is to be established as the test of competency of jurymen in this or any other case, it is a new rule.

Mr. Evarts.—When we start with the proposition that the juryman called does not find the language in which our proceedings take place, and in which this evidence is given (it is not our language we give to the juryman, but we find it as it is now expressed), when he does not find that language his native tongue, then it is not introducing a standard of any great literary attainment. The question is whether his proficiency in our language acquired has made him conversant with the whole range of the language so as easily to understand it. It is a grave matter, and of course it is not a question of partisanship; it is a question to be determined upon the qualification of jurors as fixed by the statute. I thought the question I asked resulted in a statement of the witness that he didn't understand.

JUDGE NEILSON.—You asked if he understood a single word?

Mr. Evarts.—I asked him if he understood the word "literature," and he didn't give us any definition of it. I asked him if he knew what "condone" meant, and his answer showed he didn't understand the word for he said it was "county, part of a State." That is the test that is applied to him; I do not wish to make any reflection on him which I do not feel. Certainly I would make a very poor figure sitting on a jury in Germany, even if

I had been there ten years. It is within the question of his qualification to determine in respect to his knowledge of the language we use.

JUDGE NEILSON.—I think there is a question about that, and a serious question, and I think we should do ourselves justice best by having this witness excused, although it is not easy really to see the legal ground upon which I do it. I do it with great reluctance. [To the proposed juror.] You are excused.

Mr. Beach.—Your Honor finds the challenge true, and we except.

JUDGE NEILSON.—Yes, sir.

Mr. Beach.—If your Honor please, before proceeding with the further call of this panel, I desire to say that since the acceptance of the juryman, Louis H. Robinson, we have received information, in contradiction of his declaration upon the stand, that he has expressed a decided opinion upon the case.

JUDGE NEILSON.—I shall receive the evidence when you are prepared to offer it.

Mr. Evarts.—Your Honor will see that the situation is not exactly suitable to that proposition. Mr. Robinson was examined and his examination was closed. It is like an impeachment of Mr. Robinson. There is no jurisdiction to hear and impeach Mr. Robinson, that I know of.

JUDGE NEILSON.—It is a question of legal right. If I have the legal right to hear it, I will do so.

Mr. Beach.—To put it in shape, I now ask permission of your Honor to renew the challenge to Mr. Robinson.

JUDGE NEILSON—On the ground stated?

Mr. Beach. —Yes, sir.

Mr. Evarts.—We object to a re-trial of this question, once disposed of. There is no power to re-try it. We were obliged to ask that the trial itself should not be concluded on Mr. Mackey, for that reason.

JUDGE NEILSON.—In the case of Mr. Mackey, you had, as was supposed, some reason for further considering the question. In this case, it does not appear the counsel had any reason, or supposed they had any reason, to continue the question; and if the question arises properly at all, it arises as to a question of fraud. The witness has stated that he declared no opinion. If he has declared an opinion, I ought to have the power to permit the examination.

Mr. Beach.—It has been several times urged, on the part of one of my learned adversaries, upon a false theory and an erroneous understanding of the facts, that the counsel on the part of the plaintiff were not entirely harmonious and accordant. I have corrected that impression several times; but I beg leave now to return the regret so repeatedly stated and feelingly expressed by my learned friend. In the case of Mr. Mackey, it was asserted by one of the counsel for the defendant that it was competent at any time before the juror was sworn in the case, if new revelations in regard to his qualifications came to the knowledge of counsel, to renew the challenge. That being so, the objection now made by Mr. Evarts certainly is not well founded.

Mr. Hill.—That was before the examination of the juror was concluded.

Mr. Beach.—If it be necessary, I can very readily produce authorities to show that even after the examination of the juror is concluded, evidence may be introduced.

Mr. Hill.—I suppose the learned counsel refers to some remarks I addressed to the court on the examination of Mr. Mackey. So far as my recollection goes, and I think my recollection is correct about that, I claimed it was a matter of discretion in the court to hold the issue open—nothing more.

Mr. Beach.—I hope the gentleman will read the report of what he said, when it comes out.

JUDGE NEILSON.—You may produce your evidence, Mr. Beach.

Mr. Evarts.—Has your Honor the statement that the counsel for the plaintiff renews his challenge to Mr. Robinson, and that we object?

JUDGE NEILSON.—Yes; on the ground stated, that new matter has come to his knowledge.

Mr. Evarts.—We take exception to the re-opening of the question as to his competency.

JAMES W. FLINN was called by *Mr. Beach* as a witness on the trial of the challenge of *Mr. Robinson*, and sworn.

Mr. Hill.—We think that Mr. Robinson, being the first witness called upon this subject, his attention has not been called to any expression of opinion made to this gentleman.

Mr. Morris.—He said that he had expressed no opinion to any one.

Mr. Hill.—Is it not proper that Mr. Robinson should be examined first.

JUDGE NEILSON.—I don't think that the technical rule strictly applies here.

The defendant's counsel took exception.

Mr. Beach.—Do you reside in this city? A. Yes, sir.

Q. How long have you lived here? A. Twenty years.

Q. What is your occupation? A. I am a cooper.

Q. Do you know this gentleman, Mr. Louis H. Robinson? A. Yes, sir.

Q. You understand what this suit is about between Tilton and Beecher? A. Yes, sir.

Q. Have you kept pace with the publications that have appeared in regard to it? A. Yes, sir.

Q. Do you know whether or not at any time Mr. Robinson has expressed an opinion in regard to the merits of this case?

Mr. Hill.—We now object on the ground that I named at the time that the witness was sworn—that Mr. Robinson ought to be first interrogated on this subject.*

JUDGE NEILSON.—I decline to apply that technical rule to this case.

Mr. Evarts.—We except.

Mr. Beach.—State whether, in your presence, at any time, Mr. Robinson expressed any opinion on the merits of this controversy? A. Yes, sir, he has.

Q. When was it? A. I think it was in the month of September last.

* For the ground of this rule, usually applied to witnesses see *The Queen's Case*, 2 Broderip & B., 284, 300.

Q. Where? A. At the office of Mr. Francis Swift, real estate agent, No. 520 DeKalb-avenue.

Q. Was there a discussion there on the subject? A. Yes, sir.

Q. What was the character of that opinion expressed by Mr. Robinson? A. Mr. Robinson was very emphatic in expressing his opinion as to the guilt or innocence of either of the parties in this case.

Q. Who were present, if any one? A. Mr. Francis Swift was present; Mr. Joseph F. Ellory, and a gentleman named Decker, and myself, were present at the time.

Mr. Evarts.—What is your business? A. Cooper.

Q. How long have you lived in Brooklyn? A. About 20 or 21 years.

Q. How long have you known Mr. Robinson? A. Personally about eight years; seven or eight years.

Q. Well acquainted with him? A. Not intimately.

Q. How often did you see him or meet him? A. Very often; I am not intimate with the gentleman at all; I have conversed with him; he has been at my house on business matters the first time I became personally acquainted with him.

Q. How long did this conversation occupy? A. Probably half an hour or three-quarters of an hour.

Q. What was the occasion that brought you all together there; had you any business together? A. No, sir; I stopped there on way going to my business in the morning.

Q. What place was it? A. A real estate office.

Q. Have you had some business there? A. I stopped in there, as I often do, on no particular business.

Q. In reference to real estate? Was it Mr. Robinson's office? A. No, sir.

Q. Whose office was it? A. Mr. Francis Swift's.

Q. Was Mr. Robinson there when you came there? A. I think he was.

Q. And did he go out before you did? A. No, sir.

Q. You left him there? A. Yes, sir.

Q. And were you there half an hour? A. Yes, sir.

Q. Did you do any business there of any kind? A. No, sir.

Q. Was the entire talk about this Tilton-Beecher suit? A. I think it was the subject of conversation during the entire time I was there.

Q. So that there was no one there who had anything to do except to talk of this for half an hour? A. At that time, no, sir.

Q. No excitement in the real estate market? A. No, sir.

Q. You say that he expressed an opinion on the merits. Did all of you express an opinion on the merits? A. Yes, sir; there was a diversity of opinion, of course.

Q. I do not ask you that. I asked if each of you expressed opinions on the merits of this case? A. Yes; I think they all did; I don't know but that there was probably one or two of the company that did not have anything to say while I was there.

Q. How many did the company consist of? A. Five I am positive of.

Q. And three out of the five you think did? A. Yes, sir.

Q. Who was the third one? A. I think Mr. Decker and Mr. Ellory.

Q. They could not both be third? A. Myself and Mr. Robinson and Mr. Decker and Mr. Ellory.

Q. That makes four? A. Two did not converse.

Q. Did you express an opinion? A. I think I did.

Q. And did you part with the same differences of opinion that you had when you began? A. I can not say anything about what Mr. Robinson's opinion was—whether he had changed it all or not.

Q. You had not changed yours? A. No, sir; not different from what it was during the time.

Q. You had not changed and the others had not changed? A. Not that I know of.

Q. Why do you remember that this was in September? A. That is the nearest that I can date the circumstance; it was shortly after the statement that appeared of Mr. Tilton's in reply to the Committee.

Q. What is called his last statement? A. Yes, sir; I can not fix the exact date, of course.

Q. And was that reply of Mr. Tilton the principal subject? A. The subject of conversation originated on that.

Q. Do you think every one there expressed fixed opinions; did every one that spoke express fixed or definite opinions, or was it general conversation? A. No, sir; none so emphatic as Mr. Robinson.

Q. Why do you say it was on the merits; what do you mean by the merits? A. The merits of the statements which had been made and of the case at issue.

Q. It was concerning it. But was it not an opinion concerning the character of one or the other of these men? A. Yes, sir.

Q. Not an opinion as to the truth or falsity of the charges? A. Yes, sir.

Q. It was in regard to the truth or falsity of the charges? A. Yes, sir.

Q. You mean you are sure of that? A. Yes, sir.

Q. When did you first hear of being a witness on this subject? A. Not until this afternoon.

Q. Was it from anything you had said or done? A. I believe it was—some remark that I had made in relation to an inquiry respecting a challenge of one of the jurymen that had been sworn, and the conversation which transpired upon that, and then I was requested to be present.

Q. Who introduced the subject to you of being a witness here? A. The counsel for the plaintiff.

Q. Without your informing anybody? A. No, sir; I made a statement; I happened to refer to the subject.

Q. Did you make that statement to one of the counsel? A. Yes, sir; in going out and inquiring the cause of one of the jurors being requested to withdraw.

Q. You went to the counsel and made your statement? A. In the corridor, going out.

Q. Are you one of the panel here? A. No, sir.

Q. Then you are here as a witness in consequence of the statement you have made? A. Yes, sir.

Mr. Morris.—We have sent for other witnesses, who have not yet come.

JUDGE NEILSON.—You can hold this matter in suspense, and we will examine other jurors.

Mr. Hill.—How much time shall they have?

JUDGE NEILSON.—A short time. We will probably get the jury entire to-night, from present appearances.*

JOSEPH F. BURRILL called and sworn on a challenge for principal cause.

Mr. Beach.—What is your occupation? A. Real estate and insurance.

Q. What is your age? A. Twenty-six years.

Q. Are you married?† A. Yes, sir.

Q. Do you keep house? A. Yes, sir.

Q. Have you formed any opinion from what you have heard and read concerning this case? A. Yes, sir.

Q. Is that a deliberate opinion, formed upon what you have read? A. I can not say that it is.

Q. I would like to get some idea as to the strength or tenacity of your opinion? A. The opinion I have is not a settled conviction.

Q. Have you read attentively the various publications? A. No, sir.

Q. To what extent have you read them? A. I glanced over the headings casually; that is all.

Q. Have you heard much discussion on the subject? A. Considerable—yes, sir.

Q. In which a variety of opinions have been expressed? A. Yes, sir.

Q. Do you think that the impression you have received upon the subject might perhaps influence your reception of the evidence, if you were a juror? A. No; I do not think it would.

Q. Do you think you could receive and consider the evidence with as much impartiality as if you had not formed any impression upon the subject? A. I do.

Q. How would you divest your mind of this impression? A. The impressions I have are neither *pro* nor *con.* at present.

Q. They are, as I understand you, impressions in regard to the truth or falsity of these charges against Mr. Beecher? A. Yes; they were at the time.

Q. How have they been removed? A. By reading the different sides of the story—the different papers.

Q. But when you came to the end of your reading you state you had an impression? A. Yes, sir.

Q. You have that impression still? A. I have an impression; yes, sir.

Q. You have the same impression which you formed? A. It was different

* For further testimony as to Robinson, see p. 205, *post.*

† If divorced, or living in separation, the juryman might not be a desirable one; but a direct question on that point might perhaps be resisted with effect as tending to his "dishonor, discredit, disgrace or disadvantage." 3 *Blackstone's Com.*, 363. But see *People v. Christie* (2 Abb. Pr. 256).

between the time that this case commenced and the present time—various impressions.

Q. But there was one last impression, which exists now? A. I can not say that.

Q. You did say so a moment ago? A. That is not what I intended to convey.

Q. What did you intend to convey? A. I meant to convey the idea that I read an article in a paper, and it leaves a certain impression on my mind—not a settled impression.

Q. I do not talk of settled impressions; do you say that you have no impression at this time? A. I say I have no settled impression.

Q. I do not ask you about the force of your impression? A. Yes, I had an impression.

Q. That is, an impression as to the truth or falsity of these charges? A. No.

Q. It is not an impression as to whether Mr. Beecher was guilty or not? A. If you should ask me that question, I should say I could not tell you.

Q. You could not tell me what the impression on your mind is? A. If you should ask me whether I consider Mr. Beecher guilty or not, I could not say.

Q. I ask you if the impression, that you say you received, was regarding the guilt or innocence of Mr. Beecher? A. Yes, sir.

Q. When did you form that last opinion? A. I can not tell you that.

Q. Do you say that in the course of your reading and reflection upon this subject your impression with regard to the guilt or innocence of Mr. Beecher has changed? A. Well, sir, as I stated before, I never had any settled impression.

Q. You will be good enough to answer my question? A. Yes, sir, if I can understand it.

Q. There is little difficulty in understanding it; I ask you if you mean to say that your impression in regard to the question of Mr. Beecher's guilt or innocence of the charges imputed to him has at any period of your consideration of this subject changed? A. Yes, sir, it has.

Q. When did that change take place? A. It has taken place probably half a dozen times since the thing commenced.

Q. When did you finally settle upon the impression that you say you have now? A. I say I am not settled at all at present.

Q. You say that you have got an impression now? A. Certainly.

Q. I ask you when that impression was impressed upon your mind? A. I can not answer you that; I do not know exactly what time.

Q. You say that impression is as to the merits, if I may so express myself, of this question? A. Yes, sir.

Q. How are you able to determine what effect that impression would have upon your action as a juryman, or upon your reception of the evidence? A. I thought the matter over myself; I thought it over, and asked myself that question—whether I was perfectly unbiased and unprejudiced in the matter.

Q. Do you think that a person who has an impression as to the guilt or

innocence of another is unbiased? A. I think I could relieve myself of the impression.

Q. It would require some considerable effort? A. It would if it were a strong impression.

Q. Would it not any way, if you have an impression as to the guilt or innocence of the party? A. If the impression was very strong, I suppose it would.

Q. How are you to determine as to the strength or mildness of the impression upon your future opinions and actions? A. Upon my own candid opinion; I asked myself and answered it.

Q. If you took your seat in the jury-box, you would take your seat with an impression that was final, of his guilt or innocence? A. I don't think I would.

Q. You say you have an impression in regard to his guilt or innocence? A. I say I have not a settled impression.

Q. I don't ask as to a settled impression. You have an impression? A. Not at the present time.

Q. You have said to me that you had an impression now upon the question of Mr. Beecher's guilt or innocence. Is that true? A. It is not true exactly. As I said before——

Q. Will you please to answer my question? A. You can consider it in different ways.

Mr. Tracy.—We object to this style of examination. The court and every one knows what the juryman has said. It is hardly proper for counsel to repeat what he has said, and then go on and ask him to reason upon it.

Mr. Beach.—I don't ask him to reason. I said that he had made a certain statement, and I asked him if that was true.

Q. I have understood you to say to me two or three times that you had an impression upon the subject, and that impression related to the guilt or innocence of Mr. Beecher. I ask you now if that is correct? A. Yes, sir, I have an impression.

Q. Is that an impression in regard to the guilt or innocence of Mr. Beecher? A. Do you mean whether it is an impression for or against Mr. Beecher? Is that the idea?

Q. Is it an impression as to whether the charge made against Mr. Beecher is or is not true? A. Yes, sir; I have an impression that way.

Q. Then you would take your seat as a juryman, if sworn, with that impression? A. Yes, sir; but with a full knowledge that I can do justice.

Q. That impression has been formed by the intelligence which you have received, either from reading the newspaper statements or hearing the discussions of others, by the exercise of your intelligence? A. Yes, sir.

Q. And you are able to divest yourself of that impression without receiving any further evidence upon the subject? A. I have not settled in my mind one way or the other.

Q. Please to answer my question. You stated that you have an impression on a given subject, formed by the exercise of your intelligence, from evidence that you have received. Now I ask you if you are able to divest your mind

entirely of that impression, without receiving some further evidence? A. Yes, sir, I think I should be.

Q. You think you can? A. Yes, sir.

Q. That is, having formed an intelligent impression from evidence, you think, without any further consideration, that you can drive it entirely from your mind? A. Yes, sir.

Q. So that that impression would not exist at all in your recollection? A. Oh, yes; probably the impression would exist.

Q. How would you drive it from your mind? A. I might think differently.

Q. Oh, you might think differently! but would you think differently without receiving some further evidence? A. From the present, do you mean?

Q. Yes, having formed an intelligent impression in regard to a given subject, would you think differently from that, without further considera tion? A. I might.

Mr. Shearman.—We object. The word "impression" is not defined by the law; and the gentleman knows that the distinction runs along in the mind of the jurors between an impression and an opinion; and a line of examination has been taken to show that jurors might have an impression without forming an opinion. Now, this juror, who seems remarkably intelligent and honest, states that he has some impression. I have not the slightest knowledge of what that impression is. It is probably an impression such as any intelligent man would derive. This juryman says that he has had half a dozen impressions. He appears to be in that state of mind which the gentleman on other occasions has manifested a desire to obtain in jurors. The juryman has heard and seen so much contradiction on one side or the other, that he now comes to a state of mind in which he has lost any impression save a vague and indistinct one, and may be said really to have no opinion at all. We have not objected to the length of the examination. But now we object to its continuance after the witness has fully answered the questions.

JUDGE NEILSON.—I think the counsel may continue the examination.

Mr. Beach.—I think my last interrogatory to you was whether, having, as you say, an impression in regard to the guilt or innocence of Mr. Beecher, you think you could, without further evidence or consideration, divest your mind entirely of that impression? A. I think I could.

Q. Erase it entirely from your mind? A. Yes, sir.

Q. So that it would not exist there at all? A. Yes, sir, I think so.

Q. How would you do it—forget it? A. Yes, sir; I have in other cases, and I have no doubt I could in this.

Q. You have no doubt you could, by the exercise of your will, forget the impression? A. Yes, sir.

Q. That you mean as your deliberate answer? A. Yes, sir.

Q. Did you ever make that experiment to yourself? A. No, sir; but I have in instances where I have tried to call up events past, and found that they had slipped my mind altogether.

Q. But the question was, Mr. Burrill, whether, by an exercise of your

mind—your will—you could forget an impression which you now entertain? A. No, sir; I did not understand you in that way; I could not; no.

Q. Well, you answered in that way? A. Well, excuse me; that wasn't what I intended, because I could not, by exercising my will, forget anything; it would be apt to more firmly impress it on my mind.

Q. That was my idea; now, having that impression upon your mind, if you took your seat as a juror in this case, would you not have that impression there? A. I should have the same impression that I have now; yes, sir.

Q. And would that impression be removed until you had received some evidence calculated to change it? A. It is not an impression that is one way or the other, at present.

Q. That is, you have got an impression that is not one way or the other? A. I have a slight impression; but, as I said before, it is neither for nor against.

Q. Didn't you say, sir, that it was an impression in regard to the guilt or innocence of Mr. Beecher? A. Yes, sir.

Q. Have you not, then, an impression either that he is guilty or that he is innocent, one or the other? A. I have not a fixed impression.

Q. Have you an impression to that effect?

Mr. Tracy.—Now, your Honor, I submit that this examination has proceeded far enough on this line. I object to the form of the question. When the juror says that he has no settled impression, that is declaring that he has no impression which this court can regard as a trial of the competency of this juror; and he said it repeatedly, and over and over again, that he has no settled impression, no fixed impression one way or the other on the subject of the guilt or innocence of this defendant. Now, if he has a shadowy impression in regard to this case, the question is whether he has any fixed opinion or a fixed impression. I submit that we have spent half an hour on this examination of a question that we have no right to consider at all. The question here is, whether this juror has got an opinion, and not an impression. It is a matter that does not concern this court or us, whether this juror has got an impression in this case or not. The legal question to be raised before this court as a trier is, whether this juror has got an opinion. He has said that he has got no opinion. When he is pressed further, he says he has no fixed or settled impression. He says he has read much upon these questions; and the different articles which he has read have, of course, impressed his mind differently from time to time. He could not be human and read, if they didn't. But he says that after reading all he has read, he has no settled or fixed impression in the case. Now, the counsel is proceeding here by the half hour to speculate with this juror as to what he is able to do mentally, and what he is not able to do mentally. This is not a school for instruction in mental philosophy, nor is this court, nor the counsel, acting as professors in that science. We are ascertaining here, if we can, a practical question, and that is whether this juror has got an opinion. And I submit that he has declared over and over again he has none. And when he says he has got no settled opinion and no fixed impression, we submit that that is an answer to the question whether he has got any impression in this case or any opinion in this case.

Mr. Beach.—I agree, sir, that this is not a school of mental philosophy. It has rather seemed to be hitherto a school of literature and language. My learned friend announces with so much confidence and emphasis the law upon this subject, that I am a little intimidated in the expression of what I understand it to be. With great respect, the counsel, I think, has fallen into the error which has prevailed before of mingling the two classes of challenge. He is entirely correct in his statement of the law as applied to a challenge for principal cause, and, I submit to your Honor, entirely incorrect in its application to the challenge for the favor. It is not the same, sir, except in degree.

Mr. Tracy.—Oh, I say they are not; the challenge to the favor is the question whether or not the juror has got any bias.

Mr. Beach.—Certainly; undoubtedly.

Mr. Tracy.—The other is whether he has got any opinion.

Mr. Beach.—Well, let us see if we can not settle this thing definitely. [Reading.*] "Challenges to the polls for principal cause, should be entered on the record, so that questions of law arising thereupon, may be reviewed by writ of error or otherwise, as the case may require. But the challenges in this case were for *favor*, and not for *principal* cause. 'The challenge to the polls for favor, is of the same nature with the principal challenge *propter affectum*, but of an inferior degree. The general rule of law is that the juror should be indifferent; and if it appear probable that he is not so, this may be made the subject of challenge either principal or to the favor, according to the degree of probability of his being biased' (1 Cow. 439, *note*). Now the causes of favor, as is said by Lord COKE, *are infinite;* and where that which is alleged does not, in judgment of law, imply a disqualifying bias, it must be left to the conscience and discretion of the triers, upon hearing the evidence, to find the juror favorable or not favorable. The question for the triers is whether the juror is, as he assuredly should be, altogether indifferent, and if they find he is not, it is their duty to reject him. If the prosecutor of an indictment has been lately entertained at the house of the juror, this is cause of challenge to the favor. That the juror is a fellow-servant with the party sued goes to the favor. Actions pending between the juror and the party challenging, which imply malice, ill-will, or revenge, as slander, assault and battery, and the like, are causes of principal challenge, otherwise they are but to the favor. That a party is tenant to the juror, goes to the favor; and so does the fact that the juror is indebted to the party," &c. An impression that the prisoner is guilty, or a hypothetical opinion adverse to him, though not a ground of principal challenge, may be given in evidence to show bias on a challenge for favor, and it is then for the triers to determine whether the juror is indifferent or not. Speaking of the charge of the court to the triers, which it is not material to submit, the opinion says, "Besides the tendency of such a charge must be to prejudice the prisoner on the question to be decided by the triers, for it virtually places them in the position of per-

* The learned counsel here read from *People* v. *Bodine* (1 Den., 281, 305), in which the following cases are cited: *Ex parte Vermilyea* (6 Cow. 555); *The People* v. *Vermilyea* (7 Id. 108); *Same* v. *Mather* (4 Wend. 239); *Same* v. *Ruthbun* (21 Id. 545, 546); 1 *Chit. Cr. Law*, 544, 549 4th Am. Ed.; 1 *Trials per Pais.*, 195 (1 Vent., 309), (3 Salk., 81); *The Earl of Shrewsbury's Case* (Bulst. R. pt. 1. p., 10).

sons sitting in judgment on what had immediately before been determined by the court. It should never be lost sight of that triers are to ascertain the real state of the mind of the juror, to determine whether he is truly impartial and indifferent between the parties—without favor or bias to either, &c."

But that is explanatory, sir, or confirmatory of the views which we entertain in regard to the challenge to the favor. Now, I am endeavoring to show by this juror that he has an impression in regard to the merits of this action, one way or the other, of a character which would be likely to influence his action as a juror, that sort of impression which produces what the law calls a bias, a tendency, an inclination to the one side or the other; that sort of impression which destroys the entire indifference with which a juror should take his seat in the panel. And I deny utterly that the doctrine is as set forth by my learned friend, and I deny under the evidence we have had in this court-room that it is impossible for intelligent men to have lived in the city of Brooklyn without receiving that character of impression which would disqualify them to sit as jurors in the case.

Mr. Tracy.—Who have read the statements?

Mr. Beach.—Why, sir, we have a gentleman of very great intelligence and high respectability, I judge, now seated upon this panel, who stated to this court and the counsel that he had read the articles published upon this subject, and that he yet was free from any impression in regard to the merits of this action. It is possible for men to read contradictory statements in regard to a subject with which they are entirely unacquainted without receiving any impression in regard to the truth of the matter involved, holding their minds equally balanced and indifferent regarding these publications and rumors, as the emanations of parties interested, *ex parte* in their character, entitled to no efficient influence upon the judgment of intelligent men. And it is not difficult to find such jurors, sir, although there may be many others who from other causes, from associations, relations to the one party or to the other, or though other considerations, have read these communications with a different spirit, with the spirit of a partisan, with a spirit of prejudice, and may have formed such impressions or such opinions as would radically influence their action as jurymen. And how is this, or any other, man to tell, sir, when he has received a clear impression through the intelligent exercise of his judgment upon evidence, submitted to it, in favor of the one side or the other side to a controversy—how is he able to say with what readiness he can divest his mind of that impression? It is sufficient that he has it, sir. The necessary effect must be to give a tendency and a bias to his mind, and it must influence his judgment. And the idea that an impression of that kind can be divested from the mind by the mere exercise of will, or of memory, or forgetfulness, is an absurdity. "In the case of the juror Taylor, in *Freeman* v. *People* (4 Den. 34), evidence was given tending to show that he had decided impressions against the prisoner, and a pretty strong belief of his guilt; and in the case of *Beach* (Ibid.), the evidence, although less decisive, was of the same character." Then the legal positions were laid down by the court which have already been stated. I will read them, sir, because they are but

a re-expression of the sentiments presented by the learned counsel: "The court charged the triers in the case of the juror Taylor, among other things, that the resort to the triers by the prisoner's counsel was in the nature of an appeal from the opinion of the court on the facts, and that a hypothetical opinion formed by the juror did not disqualify him." The court say then: "As to the legal positions laid down by the court, and which have already been stated, it seems to me they can not be maintained. I would not be understood to hold that a hypothetical opinion necessarily disqualifies a juror. It clearly does not. If such was its effect, it would uphold a challenge for principal cause, which it will not. Still, it is some evidence of bias, and upon which triers, in their discretion, may set a juror aside."

Now, sir, this gentleman, perhaps not precisely understanding the questions which have been from time to time put to him, has given very discordant and conflicting accounts of the state of his mind, of the character of the impression which he has received. I think I may appeal to your Honor's recollection of what the juror has said, without repeating upon that subject. I am pursuing this examination for the purpose of ascertaining, if I can, and satisfying the court what is the character and the extent and the force of these impressions, and to learn how it is that this gentleman is able to say that with an impression upon the question of guilt or innocence, he can yet, in the jury-box, exercise his judgment impartially upon the evidence. It may be possible, sir; I do not deny it. I am not a professor, as my friend may suppose, of mental philosophy, but I am asking some very plain, and, I think, direct questions to ascertain that point, and if I am proceeding further than the court shall seem to regard proper, why, I certainly shall discontinue it.

JUDGE NEILSON.—I think you had a right to examine, to ascertain the condition of this juror's mind, and to ascertain precisely what the character of that impression is, whether it would leave him entirely indifferent or not between the parties. Any examination tending to illustrate that, I think would be proper.

Mr. Beach.—Mr. Juryman, I understand you to say now, that, having this impression of which you have spoken, it would accompany you into the jury-box if you were selected as a juryman; and I ask you by what effort of mind or will you think you could divest yourself of that impression? A. Well, I should try to be thoroughly impartial.

Q. Certainly: you would make an effort to be impartial? A. I don't think I should have to make any effort at all to do so; I think that I could be so without an effort.

Q. That is, do you think that if you have an impression in regard to the guilt or innocence of Mr. Beecher, that you are yet impartial upon the question?

Mr. Evarts.—We object to that question, if your Honor please. The inquiry is concerning the impression that is or is not in his mind; not concerning an abstract question that there might be an impression in a man's mind concerning the guilt or innocence that could not be removed from it at his will. We shall all agree about that. We are inquiring into a question of fact, and the

mode which this witness adopts time after time, is to say: "There is not in my mind any impression on this subject that requires any effort to remove. If there was such an impression, then I would be open to this inquiry. But there is, in fact, inseated in my mind no impression covering this question of the guilt or innocence of Mr. Beecher that requires an effort or power of my will to remove." Now, I do not care how much he is probed on that. That is an inquiry of estimating the force of the impression that is in his mind. But these inquiries as to whether an impression that might be imagined in his mind would be of that degree of vigor that it could not be resisted without an effort of the will, does not bear upon the inquiry before the court.

JUDGE NEILSON.—I think you could not get at the mind of the juror, its tone and complexion, without a free inquiry as to the impression, its character, its extent, and whether it could be readily dismissed, and how or why it should be dismissed. I think that is the extent of the examination counsel can indulge in.

Mr. Beach.—I understood you to say that you had an impression in regard to the guilt or innocence of Mr. Beecher? A. Yes, sir.

Q. Yes, sir; it is the twentieth time that I have asked it——

Mr. Tracy.—Then how long is it to be asked?

Mr. Beach.—Just so long as the juror changes his answer.

Mr. Tracy.—He has not changed his answer or position.

Mr. Beach.—I say he has.

JUDGE NEILSON.—I propose to allow in regard to this juror, as in regard to every other (as a good deal of latitude has been allowed heretofore) that degree of examination, searching or otherwise, which may be requisite to test his real condition.

Mr. Beach.—Your Honor must perceive, I think, that there has very much embarrassment as to the course of this examination arisen from what I think are the inconsistent and changing answers of the witness; and very much of it from the interruptions upon the other side. I shall not be deterred, however, from pursuing it, so long as your Honor will permit me.

Mr. Tracy.—Can we have one question settled in this case, whether the counsel shall be content with putting a question to the juror and getting an answer, or whether he shall be at liberty to put the same question and have it answered and re-answered without any limitation whatever. I submit that the rules of examination for a juror should not be more stringent than the rules on the cross-examination of a hostile witness, and there the counsel are limited to putting a question and getting an answer; and when they have once put a question and had an intelligent answer to it, they are required to move on and put another. Now, I submit whether that rule should not be applied to the counsel in this case.

JUDGE NEILSON.—Well, you apply that rule in its strict and broad sense, and you put a counsel at the mercy of the witness or juror who makes an answer, and one which may not satisfy your conscience, and, therefore, you wish to probe his mind further and see whether that is really the state of his mind.

Mr. Tracy.—The question is whether he can go further by repeating the

same question, or whether he shall probe it further by putting a further and additional question. The question is here, whether we make any headway in this examination by allowing the counsel to repeat the same question and have repeated answers to it.

JUDGE NEILSON.—The general rule is not to repeat, of course.

Mr. Tracy.—Then we submit that that rule should be applied in this case.

Mr. Beach.—[To the juror.] I understand you to say, sir, that you have an impression as to the guilt or innocence of Mr. Beecher?

Mr. Shearman.—We object to that question.

Mr. Beach.—The gentleman must not interrupt my question.

Mr. Shearman.—Oh! yes, sir.

Mr. Beach.—Not until I have finished it.

JUDGE NEILSON—I think you can ask the juror whether that is what he meant to say.

Mr. Beach.—I am going to ask that if I can ever get a chance to do it. [To the juror.] I understood you to say that you had an impression as to the guilt or innocence of Mr. Beecher which would accompany you into the jury-box if you were selected as a juryman, and that you could relieve your mind, you thought, from that impression if called to act as a juryman. Did I understand you correctly? A. I intended to answer that question by saying that the impression that I have is not a settled impression.

Mr. Beach.—Well, what shall I do, sir? If I repeat that question I shall be rebuked by my learned friend; and I have got no answer to it.

Mr. Evarts.—The witness should not be blamed; he has given you that answer.

JUDGE NEILSON.—You have a right to distinguish between what he calls a settled impression and what you call a mere impression, and get at the weight of each, if you can.

Mr. Beach.—Now, pardon me, sir, for repeating that question. I can call it to your mind, perhaps without reiterating it. Will you answer it? Is that what you intended to state?

The Juror.—What I did state?

Mr. Beach.—I understood you to say that you had an impression upon the guilt or innocence of Mr. Beecher which would accompany you into the jury-box if you were sworn as a juror, and that you, in your opinion, could divest your mind of that impression. Am I correct or not? A. No, sir; I did not intend to answer you in that manner.

Q. Well, is it true that you have an impression in regard to the guilt or innocence of Mr. Beecher? A. Yes, sir; I have an impression.

Q. Is it true that that impression would accompany you into the jury-box if you were selected as a juror? A. Well, sir, supposing my impression was that I should not decide the matter either way——

Mr. Beach.—Don't put a question to me; I can not answer you either way.

The Juror.—I can not answer unless I understand what you ask.

Q. Well, you say you have an impression? A. I have an impression that I could not decide the question either way.

Mr. Tracy.—That is what the juror means by saying he has not an impres-

sion; that he has no impression which would enable him to decide the question.

JUDGE NEILSON.—Are you content to take the answer given in that form?

Mr. Beach.—No, sir. [To the juror.] Would the impression which you say you have if you were selected as a juror accompany you into the jury-box; would you still entertain it? A. Yes, sir.

Q. Do you think you could relieve your mind of that impression without hearing evidence upon the subject?

Mr. Tracy.—That is objected to.

JUDGE NEILSON.—I think he may answer that.

Mr. Tracy.—We take an exception.

Q. Do you think you could relieve your mind from that impression without hearing evidence upon the subject? A. Yes, sir, I do.

Q. Do you mean that you could throw it off at will? A. Well, I haven't the power of will to throw off any definite impression that is fixed upon my mind, but, as I stated before, the impression that I have is neither for nor against. That is the idea that I intended to convey,

Q. How can it be neither for nor against when you say it is upon the question of the guilt or innocence of Mr. Beecher?

Mr. Tracy.—That we object to.

JUDGE NEILSON.—Take it.

Mr. Tracy.—Note our exception.

The Juror.—That is the question, as you say, whether Mr. Beecher is innocent or guilty.

Mr Beach. Yes, sir.

The Juror. Whether I have an impression upon that point?

Mr. Beach.—Yes.

The Juror.—Yes, sir.

Q. It must be, then, for or against Mr. Beecher, mustn't it?

Mr. Tracy.—We object to that question as not a question of fact, and argumentative.

The Juror.—I do not see as it necessarily must be so.

Mr. Beach.—He says that he has an impression in regard to the guilt or innocence of Mr. Beecher, and I ask him if that impression is not for or against Mr. Beecher.

The Juror.—I say no, it is not.

Q. When it is upon the question of his guilt, do you mean to say that it is neither for nor against him? A. That is what I intended to convey—exactly what I mean.

Q. Well, how then can you say that it is an impression in regard to his guilt or innocence? A. Why, because, as I said before, I could not decide the question in my mind.

Q. It is not the question of a decision, it is a question of whether the impression is upon the question of his guilt or innocence. Now, you say that you have an impression upon that question of the guilt or innocence of Mr. Beecher; isn't it for or against him?

Mr. Tracy.—That question has been asked and answered a dozen times.

JUDGE NEILSON.—I do not quite understand the juror, and I think he ought to answer again. I think he ought to reveal himself fully and without reserve.

Mr. Evarts.—Perhaps your Honor might ask him the question and go through the same process with better results.

Mr. Beach.—Well, as the gentleman thinks my questions are not intelligible to the witness, perhaps he would do me the favor to put them. I understand the gentleman to suggest that if his Honor would put the questions he might get a better response.

Mr. Evarts.—No; I only suggest that you might avail yourself of his assistance.

Mr. Beach.—Yes; but I do not choose to avail myself of it. [To the juror.] Now, I repeat the question: you say that you have an impression in regard to the guilt or innocence of Mr. Beecher. I ask you is not that impression for or against him? A. No, sir.

Q. You understand the question which I put to you, do you? A. I understand you to ask whether, in my mind, at the present time, I have any judgment for or against Mr. Beecher?

Mr. Beach.—I did not ask you for any judgment.

The Juror.—Well, a judgment conveys the same meaning as an impression.

Mr. Beach.—It does, eh?

The Juror.—I should think so; of course it is not a definite judgment or a definite impression.

Q. No, it is not definite? A. No, sir.

Q. But if "impression" conveys the same idea as "judgment," you have a judgment on the subject, then? A. No; I have no judgment at all.

Q. Well, you have an impression you say? A. Yes, sir.

Mr. Beach.—I don't see that I can make myself understood by this juror. I think the criticism of my learned friend must be correct.

Mr. Evarts.—Well, I thought that was so. Your minds don't work together.

Mr. Beach.—That is just what I suspected was the case with this juryman. [Turning suddenly to the juror.] A. Can you tell me the meaning of the word "condone"? A. I can, sir.

Mr. Beach.—Answer that? A. Yes, sir, I can.

Q. What is it? A. I should think it meant to forgive.

Mr. Beach.—You got that right. Did you ever study law? A. No, sir, I never did.

Q. Well, you can give me the definition of literature too, can't you? A. Yes, sir.

Q. Well, let us have that.

Mr. Evarts.—It is not a question of this witness's knowledge of the English language.

JUDGE NEILSON.—No, I think that question is reserved for your side—the question about literature.

Mr. Evarts.—We put it to the German. It was not a joke, it was a duty. But this is a farce.

JUDGE NEILSON.—Well, what is to be done with this juryman?

Mr. Beach.—Let us see whether it is a farce. Your Honor has heard the examination of this juryman in regard to his understanding of an impression, and the effect of an impression upon his mind, and the power of his will in divesting himself of its influence. Is it a farce for me, sir, after the contradictory answers of this witness, to attempt to ascertain the extent of his intelligence, no matter whether he is a German, or an Englishman, or an American? I am not subject to that criticism, and while the gentleman may think himself in the same course of proceedings, pursuing his duty, he has no right to charge me with pursuing a farcical examination of the juror.

JUDGE NEILSON.—Well, on reflection he would assent to that, no doubt, but do you want to examine the juror further?

Mr. Beach.—No, sir; I do not know that I do.

JUDGE NEILSON.—I think he will have to take a seat; I do not quite understand the juror, but still I don't see that I can reject him.

Mr. Beach.—Do we understand your Honor to say that he is a qualified juror?

JUDGE NEILSON.—I don't see that he is disqualified.

Mr. Beach.—He has an impression, your Honor, as to the guilt or innocence of the party.

JUDGE NEILSON.—Now, ask him that question squarely.

Mr. Beach.—He has answered it twenty times, as the counsel say. Still I will ask the witness if the court requires it, though by reading the records of the examination it would be apparent. Did you not answer that you had an impression in regard to the guilt——

JUDGE NEILSON.—"Have,"—not "had." "Had," relates to the past. Has he an impression now and here?

Mr. Beach.—Did you not say that you now have an impression in regard to the guilt or innocence of Mr. Beecher? A. I have not.

Mr. Tracy.—I object. Are we to renew that examination?

JUDGE NEILSON.—Yes, until we understand this juror.

Mr. Tracy.—Your Honor told the counsel that he should ask the juror whether he had an impression in regard to the guilt or innocence of the defendant. The question which the counsel puts is not that question at all. The question is what the juror has said about it. Now, what he has said about it we heard.

JUDGE NEILSON.—The learned counsel put it in that form, because he said he had already answered, and answered it more than once.

Mr. Tracy.—He had closed his examination on that point.

Mr. Beach.—No, I had not closed. [To the Juror.] Did you not say that you had an impression in regard to the guilt or innocence of Mr. Beecher? A. Yes, sir.

Q. You have it now, have you?

JUDGE NEILSON.—Say yes, or no.

A. No, sir, I have not.

Q. You haven't it now? A. I have not the same impression; no sir.

Q. Have you not now an impression in regard to the guilt or innocence of Mr. Beecher? A. Looking at it as you do, I should say no; I have not.

Q. Well, I want you to look at it in the nature of my question and in its simple understanding. I ask you if you have not now an impression in regard to the guilt or innocence of Mr. Beecher? A. No, sir; I have not at the present time.

Q. Did you not swear that that impression would accompany you into the jury-box? A. The impression, as I said before, was neither for nor against Mr. Beecher.

Q. But did you not say that it was an impression in regard to his guilt or innocence?

Mr. Tracy.—We object. This is a renewal of the entire examination.

JUDGE NEILSON.—I think you gentlemen ought to be a little more patient with your opponent. I think he has a right to examine this juror. I don't think it is proper to interrupt every question he puts. Allow me further to say that I allowed a very great latitude to Mr. Hill in cross-examining the juror, because I saw in the peculiarities of that juror some reason for it. I see the same reason here. I think we ought to proceed without this constant objection. The learned counsel has some judgment in regard to this.

Mr. Beach.—Well, they don't think so. [To the Juror.] Now, did you not, and have you not, repeatedly said in the course of your examination, that you had an impression in regard to the guilt or innocence of Mr. Beecher? A. I say I had several impressions between the commencement of this case and the present time.

Mr. Beach.—Now, sir, I am forced to repeat that question; I can not get an answer to it.

JUDGE NEILSON.—Well, you have sufficient language to put it in some other form; I would try some other form; I think then you won't be subject to the objection.

Mr. Beach.—I can not put it in another form, because I am asking him as to what he already testified. [To the Juror.] Will you please answer that question. Have you not testified, since you have been upon that stand, that you then and there had an impression in regard to the guilt or innocence of Mr. Beecher? A. I did not intend to, if I have; I have not intended to convey any such impression.

Q. And you mean to say that now you have no impression in regard to the guilt or innocence of Mr. Beecher? A. Yes, sir; I think I can safely say that.

Mr. Beach.—Why, I would ask your Honor to look at the examination of this juror on the record. He has said it half-a-dozen times, and has said half-a-dozen times that that impression would accompany him into the jury-box if he was selected as a juror. And without meaning any disrespect to anybody, I say it is the most astonishing declaration that ever came from the witness-stand.

Mr. Evarts.—Are you through with the examination?

Mr. Beach.—Yes, sir.

Mr. Evarts.—Is your Honor still of the opinion that the juror is qualified?

JUDGE NEILSON.—You may have occasion to examine him, because I do not know that I have the same opinion; but I would like to look at the notes.

One of the counsel suggested that, as it was past the usual time for adjournment, his Honor should examine the record during the interval between the adjournment and to-morrow morning, to which the court assented.

Mr. Evarts.—Then, after looking at the notes, to-morrow morning we will go on with the examination.

THIRD DAY—JANUARY 7, 1875.

JOSEPH H. BURRILL, the juror whose examination was begun but not closed at the adjournment of the court yesterday, was recalled.

Mr. Beach.—It was intimated last evening, if your Honor please, by Mr. Evarts, that you should indicate your opinion in regard to the competency of this juror at the opening of the court.

JUDGE NEILSON.—I was about to ask if the gentleman wished to put any further inquiries.

Mr. Beach.—I would suggest to your Honor that the ordinary and proper course would be first to finish the examination of the juror.

JUDGE NEILSON.—Yes; have you any questions to put, Mr. Evarts?

Mr. Evarts.—Your Honor recollects that when the juror was examined you expressed the opinion that he was qualified. I, after further examination, asked if your Honor had still that opinion, and I understood your Honor to say that you would examine the evidence. I will now take your Honor's opinion as to whether you consider the juror eligible, or I will go on and examine further.

JUDGE NEILSON.—You can examine further, if you think it proper to do so.

Mr. Evarts.—[To the Juror.] You have been asked in regard to your opinion on this case—whether you have one, whether you have formed an opinion in this case, and I have understood you to say that you have not formed an opinion? A. I said that I have previously, but I have not at present.

Q. I understood you to say also that you had had impressions made upon you in the case? A. Yes, sir.

Q. Now, if you mean to say you have now formed an opinion in this case, that is another matter; have you formed an opinion in this case? A. I have not formed a settled opinion; I have not.

Q. Well, I understand you to say you have had, in your readings from time to time of different parts of this published matter, different impressions upon it? A. Yes, sir.

Q. Now, your impression concerning this case at the present time, is it one that affects your judgment concerning the guilt or innocence of the defendant here? A. No, sir.

Q. Are you without bias or leaning one way or the other in this matter? A. I am, sir.

Q. You have considered the matter, have you, deliberately in that point of view? A. I have, sir.

Q. And you say to the court that you have no opinion one way or the other concerning the guilt or innocence of this defendant? A. Yes, sir.

Mr. Evarts.—We suppose he is a good juror.

Mr. Beach.—I understood you to say yesterday that you had now an impression which you had formed in regard to the guilt or innocence of Mr. Beecher; did I understand you correctly? A. Will you allow me to tell you——

Q. No, sir; I want you to answer me that question. A. Well, that impression does not affect the direct guilt or innocence of Mr. Beecher—it does not.

Q. It does not affect the direct guilt or innocence? A. No, sir.

Q. I was asking you as to what you stated yesterday. Were these questions put to you? [Reading.] "I have understood you to say to me two or three times that you had an impression upon the subject, and that impression related to the guilt or innocence of Mr. Beecher. I ask you now if that is correct? Yes, sir, I have an impression. Is that impression in regard to the guilt or innocence of Mr. Beecher? Do you mean whether it is an impression for or against Mr. Beecher; is that the idea? Is it an impression as to whether the charge made against Mr. Beecher is or is not true? Yes, sir, I have an impression that way." Did you so testify? A. Not as I understand it there—no, sir, I did not.

Q. You did not so testify? A. Not as I understood your reading.

Q. The question is not as to your understanding; the question is whether you testified as there? A. I can not tell that, sir; I can not tell how that was, I am sure, about the report; it was not as I understood it, I say now.

Mr. Beach.—I do not know, if your Honor please, whether it would be necessary or admissible for me to press the examination of this witness in regard to the statements he made yesterday on this subject.

JUDGE NEILSON.—I think it is not necessary, Mr. Beach. I have looked over the notes, and I think it is my duty to say that the challenge to the favor must be sustained. The juror tells us at one stage that he has formed an opinion; at another stage that he has an impression; at another stage that he has an impression still; afterward he qualifies that. I really think it is due to both parties that the juror should stand aside.

Mr. Evarts.—Your Honor, then, says that the challenge for principal cause is not sustained.

JUDGE NEILSON.—No, sir.

Mr. Evarts.—We ask hereafter that the learned counsel will favor us by discriminating between their challenges.

Mr. Shearman—We except to your Honor's sustaining the challenge to the favor.

JUDGE NEILSON.—Had we not better proceed now with the examination of witnesses in regard to the fitness of Mr. Robinson.

Mr. Morris.—Yes, sir; we are ready to proceed on that.

STEWART ROWLEY called as a witness on the trial of the challenge of *Mr. Robinson*, and sworn.

Mr. Morris.—You are one of the Aldermen and Supervisors of the City of Brooklyn? A. Yes, sir; for the Seventh Ward.

Q. Are you acquainted with Louis H. Robinson?

Mr. Hill.—One moment; there is no challenge before the court.

JUDGE NEILSON.—There is, and we have examined a witness on it yesterday.

Mr. Hill.—Which is it; is it upon principal cause, or to the favor?

JUDGE NEILSON.—How do you understand that, gentlemen?

Mr. Beach.—I do not think that they are entitled to have us discriminate now. We have examined a witness already on the subject.

Mr. Morris.—And as it was expressly arranged by both parties that this form of challenge should be pursued.

M. Hill.—Does your Honor say that they shall not specify which form of challenge?

JUDGE NEILSON.—At Mr. Evarts's suggestion we will do that hereafter.

Mr. Evarts.—I want to know whether the pending challenge includes both.

Mr. Beach.—Under the arrangement between counsel it of course includes both.

Mr. Morris.—My question was whether your are acquainted with Mr. Robinson? A. I am.

Q. Have you at any time heard him express an opinion as to the truth or falsity of the charges that we are now trying against Mr. Beecher? A. I have.

Q. Was that a decided opinion? A. I considered it so.

Mr. Evarts.—Where was this? A. In my office, at the corner of Fulton and Raymond-sts.

Q. What is your business? A. Real estate broker.

Q. When was it? A. At various times ever since the commencement of the talk about this matter.

Q. Was the conversation a casual one that then arose between you, on one side and the other? A. That is all; it was a discussion upon that question, as upon any public topic.

Q. You, neither of you, had any interest in the matter except as citizens? A. No personal interest that I know of; I had not, and I presume, he had not.

Q. You talked about each stage of the matter as it was then in the papers, whatever was uppermost? A. Yes, sir; we commented upon whatever appeared from time to time.

Q. Had you expressed opinions also to him? A. Yes, sir.

Q. And which of you began the discussion? A. I think at times I began, and at times he did; I presume that I began it oftener than he did.

Q. And of course you made no memorandum about the matter? A. I never wrote a word about it.

Q. And nothing occurred at any of those times to make any special impression upon either of you, I suppose? A. Well, I think that the nature of our conversation would make an impression upon either of us; I do.

Q. You mean that there was a difference of opinion between you and Mr. Robinson that was likely to be thought of? A. Yes, sir, I do.

Mr. Beach.—Were those opinions which were expressed by Mr. Robinson, any of them expressed after your opinion had been announced to him? A. They were.

Q. Please indicate what was the earnestness and decision upon the part of Mr. Robinson with which those opinions were uttered. A. I don't know that I understand you exactly.

Q. How decidedly or impressively were they expressed? A. Mr. Robinson when interested in a question always expresses himself very decidedly, and is very positive, and with a great deal of force, and perhaps I am given to the same failing, and I think in a conversation between us two, where we are opposed upon a question, it would make an impression upon both of us.

Q. Was that the case in this conversation? A. It was, sir; it made no impression upon me, whatever it did on him.

EUGENE D. BERRI called as a witness on the trial of the challenge of *Mr. Robinson*, and sworn.

Mr. Morris.—You are in the carpet business? A. Yes, sir.

Q. Are you acquainted with L. H. Robinson? A. I am, sir.

Q. Have you at any time heard him express an opinion with reference to the truth or falsity of the charges made against Mr. Beecher? A. I have, sir.

Q. And that opinion—did it appear to be a decided opinion? A. Yes, sir.

Q. Can you tell about when it was? A. That I can't do, sir.

Mr. Beach.—Within about what time? A. I can't say, sir.

Q. Can you say whether within a year? A. Yes, sir; it was within a year.

Q. Can you limit the time to a shorter space? A. Well, sir, if you allow me. I didn't expect to be called here, and I did not know that Mr. Robinson would be called as a juror, so I had not examined the thing in my mind at all until I saw him on the stand.

JUDGE NELSON.—You can, perhaps, state whether it was prior to or after the publication of some of these statements? A. It was after some of the statements had been published.

Mr. Beach.—Did you hear him express his opinion on more than one occasion? A. I can't say; I know that I heard him once, but I can't say whether I heard him more than once.

Mr. Evarts.—Did you fix the time when this conversation occurred? A. No, sir; I had no reason to.

Q. It was not very recently, then? A. No, sir.

Q. Was it not as early as midsummer, at least? A. No; I think not.

Q. And how did it occur; and where were you and Mr. Robinson—what brought you together? A. Well, I met him frequently on the avenue, coming down—walking down in the morning, or it might be going up; and it was on one of these meetings, I think, that this occurred.

Q. And was it in reference to some publication then newly made that you were talking? A. No, sir; a general opinion.

Q. On the general subject? A. Generally.

Q. What made any impression on your mind; you do not remember every one that you talked with about this matter, do you? A. No, sir; Mr. Robinson is a very positive man.

Q. And are you, also? A. Well, I try to be.

Q. And, except this casual talk on the street, you have no knowledge of anything whatever? A. No, sir.

BENJAMIN F. CLAYTON called as a witness on the trial of the challenge of *Mr. Robinson*, and sworn.

Mr. Beach.—Do you reside in this city? A. Yes, sir.

Q. Is your occupation in this city? A. Yes, sir.

Q. How long have you lived here? A. About 16 years.

Q. Do you know Mr. Robinson, the juryman spoken of? A. I do, sir.

Q. How long have you known him? A. Five or six years.

Q. Have you heard him express any opinion in regard to the charges of adultery made against Mr. Beecher in this action? A. I have, sir.

Q. Upon more than one occasion? A. I think only one.

Q. About when was that, sir? A. I think it was early in the summer.

Q. And where was it? A. At my office in Montague-st.

Q. How did the conversation in which that opinion was expressed happen to arise? A. I do not recall the particular circumstances, only he was there and the subject was casually mentioned.

Q. Do you remember at what stage of the publications in regard to this subject it occurred? A. My recollection is, it was during the pendency of the investigation before the committee.

Q. And after the investigation had proceeded to some extent? A. Yes, sir.

Q. What was the length of the conversation between you? A. It was only a few minutes; it was not extended.

Q. Was the expression of opinion upon the general merits of the question? A. I think it was, sir.

Q. Can you give us an idea as to the decision and emphasis of that opinion? A. Nothing more than it was unequivocal.

Q. Was that expression of opinion on the part of Mr. Robinson before or after you had expressed an opinion on the subject yourself, if you did express any? A. I can not say as to that; the conversation was of very short duration—only a few moments.

Mr. Evarts.—Did you express an opinion? A. I think I did, sir.

Q. And that was all there was about it? A. That is about all; we did not discuss the matter.

JUDGE NEILSON.—Mr. Evarts, do you propose to be heard on this question?

Mr. Evarts.—Yes, sir, I propose to examine Mr. Robinson.

MR. ROBINSON was recalled, and *Mr. Evarts* was about putting a question to him, when *Mr. Morris* said that there was another witness present whom they wished to examine.

ANDREW J. DECKER called as a witness on the trial of the challenge of *Mr. Robinson*, and sworn.

Mr. Morris.—Are you acquainted with Mr. Robinson? A. Yes, sir.

Q. How long have you known him? A. About six years, I suppose.

Q. Have you at any time heard him express an opinion with reference to the charges brought against Mr. Beecher? A. I heard him in a very animated discussion one day with another gentleman; he was arguing upon one side very earnestly, and my impression is that he had an opinion in regard to the guilt or innocence.

Q. About when was that? A. It was after the second Tilton *expose*—whatever you call it.

Q. Mr. Tilton's statement? A. I think the next morning or two after.

Q. Did he express at that time an opinion of his belief? A. I do not remember one word that was said in the argument, because I did not think of it afterward at all; I did not pay any further attention to it than that; but I know that he talked very earnestly, as he always does on anything almost, and I concluded from what he did say that he was impressed very much on one side.

Mr. Evarts.—What is your business? A. I am buying and selling real estate on my own account.

Q. That brought you in connection with Mr. Robinson? A. Not at this time.

Q. How did this come up between you? A. It did not occur between us.

Q. But this affair—how came you together? A. We met there by accident or chance, as we often do at different places.

Q. Where was it? A. No. 520 DeKalb-avenue.

Q. What sort of a place is that? A. Real estate office.

Q. Whose office? A. Mr. Garret Swift's.

Q. There was a number of persons there? A. Yes, sir; several.

Q. And was it just after Mr. Tilton's last statement came out? A. Yes, sir; I think within a day or two, because the other party said he had just read it.

Q. That was the freshest statement? A. Yes, sir; the latest.

Q. That was the principal subject talked of? A. Yes, sir.

Q. And about that statement the talk was? A. Yes, it commenced about that.

Q. Did it go any further than that—talking about that statement? A. Of course; they talked more or less about the guilt or innocence of the parties.

Q. I do not know that of course they did. A. Excuse me for saying that, but that is what they did do.

Q. A word of what they said you can not remember? A. No, sir; I did not wish to hear it; I did not think it worth remembering.

Q. It was a mere casual conversation that you can not recollect anything of? A. I can not recollect a word either of them said.

Q. Was Mr. Flinn a party to this conversation? A. Yes, sir.

Q. This, then, is the very Flinn conversation? A. Yes, sir.

This closed the testimony against the impeached juror, who was then himself put on the stand.

LOUIS H. ROBINSON was then recalled for further examination.

Q. You have heard, now, Mr. Decker, in addition to those whom I have named to you; now have you any recollection about these conversations, or any of them? A. I have a very distinct recollection of that conversation stated by Mr. Flinn; it had entirely passed out of my mind, however, until his testimony yesterday.

Q. And do you remember that Mr. Decker was there? A. I do, sir.

Q. Now what have you to say about that conversation? A. Well, sir, I called on Mr. Swift to leave him a diagram of some property, according to agreement, and these gentlemen were in the office, and the conversation was commenced while I was in conversation with Mr. Swift, and Mr. Flinn was very vehement, as he always is, and mischievously I took up the argument against him, and I had said but a very few words before he intimated that I told a falsehood. Well, if there is anything on earth that affects me quicker than that, I don't know it, and I felt to retort by provoking him, more out of mischief than anything else.

Q. And that was all of it? A. That was about all of it.

Q. It did not come to blows? A. No, sir. That I never do.

Q. Now, you have said that you have conversed with various people, and expressed opinions so and so to draw out theirs, and so forth? A. I have said so; yes, sir.

Q. Was this conversation with Mr. Flinn of that nature? A. Well, it was, with the exception of the retort provoked by his intimation.

Q. After he told you you lied, why, then it became personal? A. It was no lie direct, but in a way that was very positive.

Q. Now, these other conversations in the street with Mr. Berri, and somewhere with Mr. Rowley, &c., have you any recollection about those conversations? A. Well, I have frequently talked with Mr. Rowley in his office, and, as I stated in my first examination, I have not been able to have a connected reading of the proceedings in this matter, and being of an inquisitive mind I wished to learn what I lacked within my own information, and therefore held these conversations to elicit the opinions of those that I talked with.

Q. It was with these gentlemen as with any others, as you mentioned in your first examination? A. Yes, sir.

Q. Well, you have heard all those, and what do you now say as to your being free from opinion on one side or the other of this matter? A. I can not state any different from what I have already stated.

Q. You state as you have already stated? A. Yes, sir; but if allowed, I would state that I would far prefer not sitting upon this jury, and could I have framed a conscientious excuse in the beginning, I most assuredly would have done it.

Mr. Evarts.—We all see it is not for the interest of any gentleman to be on the jury. We think, sir, that he is a good juryman, and that this method of inquiry——

Mr. Beach.—I propose to ask a question or two. [To juror.]—You speak of this interview with Mr. Flinn; it originated, I think, while you were in conversation with the proprietor of the office in which it occurred? A. Yes, sir.

Q. Mr. Flinn was somewhat excited and passionate, I understand you to say, before you mingled in the conversation? A. Yes; he was apparently very earnest.

Q. And advocating or expressing his opinion upon one side? A. Yes, sir

Q. And then, after you had heard that expression of opinion from him, you became connected in the conversation? A. Yes, I made some casua remark as I rose——

Q. Wait—one moment; did you express any opinion upon the merits of this matter in that conversation? A. I don't recollect that I did.

Q. Well, do you mean to deny the assertion of Mr. Flinn that you did? A. I mean this, whatever I said——

Q. I will get at that in a moment; did you upon that occasion express an opinion upon the merits of this controversy? A. Well, I can't call it an opinion; I can't admit that it was an opinion.

Q. Well, did you express your views upon the subject of the controversy? A. I can't admit that they were my views, because——

Q. Did you express any views upon the merits of the controversy, whether they were your views or not? A. I might have remarked——

Q. I don't want what you remarked; now I want you to answer that question directly.

JUDGE NEILSON.—[to the Juror.] Say yes, or no.

Q. Did you upon that occasion express any views as to the merits of this controversy? A. Well, I can not say that they were my views.

Q. I did not ask whether they were your views. I asked if you expressed any views? A. I probably did.

Q. You probably did? A. I probably observed such and such conditions——

Q. No matter what you observed? A. I don't recollect what the expressions were.

Q. I don't ask you what they were. Now, you say this was done by you after Mr. Flinn had in a pretty animated and decided manner expressed his views? A. Yes, sir.

Q. Then your views were not expressed for the purpose of drawing him out? A. Well, it was to elucidate what further he had to offer.

Q. And that, I understood you to say to Mr. Evarts, was done in a mischievous manner? A. After he had cast that intimation upon me.

Q. That mischievous spirit don't exist now, I suppose? A. No, sir.

Q. A gentleman has been sworn, Mr. Rowley, I think—Alderman Rowley—who says that you on various occasions expressed to him very decided opinions in regard to the merits of this controversy; is that correct? A. Mr. Rowley is a very——

Q. Well, answer me whether that is correct or not? A. Well, could I not show the manner in which I expressed——

Q. Oh! we will see about that. You will have an opportunity to do that. If I don't allow it, counsel on the other side will, or the court. A. It was in opposition to him——

Q. Can't you answer my direct question? Alderman Rowley says that you on various occasions expressed decided, animated opinions upon the merits of this controversy. Is that true or not? A. Argumentatively it is true.

Q. That is, after you had learned his opinion, you upon one occasion

argumentatively expressed an opinion of your own to draw him out? A. This was at different stages.

Q. Well, was it after that? A. Yes, sir.

Q. What is your age? A. My age is 56 last March.

Mr. Evarts.—These conversations, I understood you just now to say, were at different stages with Alderman Rowley? A. Yes, sir.

Q. And when he expressed an opinion, if he did, did you ask his reasons or argue the matter with him? A. Well, we argued the matter; yes, sir.

Q. And that was the nature of the conversation? A. That was the nature of the conversation.

Mr. Beach.—That is all, your Honor.

JUDGE NEILSON.—Do you wish to make any suggestion on the subject, Mr. Evarts?

Mr. Evarts.—Yes, if your Honor please. I understand the juryman to occupy precisely the same position now that he did when your Honor suspended the examination. It was understood that he had talked about this matter at different stages of it to a variety of people, and had expressed opinions in those conversations of the nature and to the extent and with the purpose that he indicated; and the result of it all was that he had never formed or expressed an opinion that was a conclusion of his own mind, concerning the merits of the case—the whole case. This was at different stages; he would talk about this statement, or that statement, about this man or that; now about Tilton, or Moulton, or Beecher, as it might be. Now, if besides having the examination of the party proposed as a juror himself, and the discussion of his intelligence and his conscience upon the subject, we are to have evidence adduced about casual conversations held while the matter was *in fieri*, and which were expressed at this or that stage of it, concerning this or that feature of it, your Honor will see at once that we get into a region where there is no security and no definiteness whatever. Of course people will talk, and it is not at all probable that two persons talking will prove precisely the same results of the interview to the court on one side or the other, and the nature of the matter frequently prevents any probing question—it was a general statement, whether it was emphatic or decided, or this, that, or the other. But, as your Honor perceives, we all withhold necessarily any probing of the actual language or side or position that was taken.

JUDGE NEILSON.—I think the juror must stand aside, under all the circumstances.

Mr. Evarts.—For principal cause?

JUDGE NEILSON,—Yes, sir.

Mr. Beach.—No, sir; not for principal cause.

Mr. Evarts.—Well, where is the favor? It is either for principal cause or not principal cause. It is the formation and expression of opinion.

JUDGE NEILSON.—Well, I think it is on the ground of principal cause. Mr. Robinson, you are excused from serving.

Mr. Evarts.—We except. Your Honor notes our exception to this refusal?

JUDGE NEILSON.—Yes, sir.

Mr. Beach.—I hope your Honor will not place this question improperly in any embarrassing attitude.

JUDGE NEILSON.—No; I have no right to do so. The juror, on the whole, I think, should be excused.

Mr. Beach.—Yes, sir; but it is on the challenge which was made both for principal cause and favor, jointly.

JUDGE NEILSON.—It is on the challenge which was before us.

Mr. Evarts.—Your Honor will understand that we have, with great respect to the trier—the court acting as trier—a right to know which challenge is sustained; because our exceptions will stand upon that. I do not myself see any connection with the favor. Are we to understand that your Honor decides, on the challenge for principal cause, against the juror?

Mr. Beach.—I hope your Honor will let this matter rest, as it does upon the record, upon the challenge that was actually made under the understanding between counsel, and that upon that challenge you will find it true.

JUDGE NEILSON.—Very well; it does necessarily stand so. Both challenges were, by consent, deemed on hand.

Mr. Evarts.—I agree to that. I do not find any fault, of course, your Honor. But then it does not follow that both challenges are sustained.

Mr. Beach.—There was but one challenge.

Mr. Shearman.—May it please your Honor, we desire two separate exceptions. We except (1), upon the ground that your Honor declines to state whether this challenge is sustained on the ground of principal cause or for favor, as we understand your Honor's ruling; we except (2), if your Honor sustains the challenge on the ground of principal cause, for the reason that upon that ground it is not sustained; we except (3), if your Honor sustains the challenge for favor, upon the ground that after a juror has been impanneled, after a juror has taken his seat, and the challenge has been disposed of, and another juror has been called and challenged and examined, it is not in your Honor's power or discretion to admit a challenge to the favor; and we except finally upon the ground that this challenge can be sustained, neither upon principal cause nor favor; that it can not be considered upon any other ground than the question of fraud in the juror, which question we understand your Honor not to have passed upon and not to have sustained, and, therefore, we except upon the ground that no such proof has been made out to your Honor's satisfaction.

JUDGE NEILSON.—In my judgment, if a juror upon being examined declares he has not formed or expressed any opinion, although being of an inquiring turn of mind he has made inquiries and has argued the question with his neighbors, and so is received upon the jury, it is competent afterward, before the jury is finally impanneled, to inquire into that question as a question of fraud, and that no juror can by disavowing the formation or expression of an opinion untruly get upon the jury and remain there, and you take the exceptions as you wish.

Mr. Shearman.—We take the exceptions. If your Honor will understand, we do not object to your statement at all.

Mr. Morris.—We ask to call witnesses upon the same challenge as to an

other juror who has passed examination. I will state to your Honor that we have been at the trouble of getting the witnesses here from a distance of fifty or sixty miles in the country.

JUDGE NEILSON.—It must appear that this matter to which you purpose to call witnesses has come to your knowledge since the juror has been accepted.

Mr. Morris.—Precisely; I will state this to the court, and I can speak for myself, and I think for my associates, that we knew not a single name that was on this panel until we came into the court. We had not seen the list, and knew not one name that was to be on the panel.

JUDGE NEILSON.—My inquiry was whether this matter you propose now to inquire into came to your knowledge since the juror took his seat.

Mr. Morris.—Certainly, sir; last evening.

Mr. Tracy.—What juror is it, may I be allowed to inquire?

Mr. Morris.—Stephen Lewis.

ROBERT J. TICKNOR was then called and sworn as a witness on the trial of the challenge of *Stephen Lewis.*

Mr. Shearman.—We do not intend to delay your Honor, but we object, as we did in Mr. Robinson's case, and your Honor notes our exception?

JUDGE NEILSON.—Yes, sir.

Mr. Shearman.—The same as in the case of Mr. Robinson.

Mr. Evarts.—We understand the challenge of Mr. Lewis is renewed.

Mr. Morris.—Yes, sir.

Mr. Shearman.—Then we ask that the ground be stated, whether it is for principal cause or for favor.

JUDGE NEILSON.—That you have a right to ask.

Mr. Beach.—I think it ought not to be when it is the mere continuation of the examination of a juror who was admitted under the original understanding between the parties.

Mr. Evarts.—It is wholly in your Honor's discretion to allow this, and it is also in your Honor's discretion to require them to specify which ground of challenge they call witnesses to.

JUDGE NEILSON.—I think they should specify which ground of challenge.

Mr. Pryor.—But, if the court please, it is in your Honor's discretion to exercise that inherent power which exists in this court to inquire at any time before this juror is impanneled whether the court has not been imposed upon. Your Honor has a right to this investigation, and your Honor has a right to permit us to institute it upon the theory that the court has been imposed upon, and to see to it that no improper juror gets into that panel irrespective of any challenge or any disposition of any challenge heretofore made.

Mr. Evarts.—Whenever the court proceeds *sua sponte*, I shall not attempt to regulate its action. When counsel propose motions to the court, we shall ask the discretion of the court to be applied to control their action.

Mr. Pryor.—That is all very well, but my observation was proper, I take it, and made in a respectful way. I say the court has the inherent power to solicit this investigation, irrespective——

JUDGE NEILSON.—Well, that I can not deny—that I have the inherent

power. Of course it would be impossible to deny that; but when this juror was examined or impanneled, both challenges were had in hand. We will regard it so now, if necessary, and distinguish in the end. Will you proceed and examine the witness now?

Mr. Morris.—[To the witness, Ticknor.] Where do you reside? A. Bricksburg, Ocean county, N. J.

Q. What is your business? A. Painter and paper-hanger.

Q. Also justice of the town? A. Yes, sir.

Q. Are you acquainted with Mr. Stephen Lewis, the juror? A. Yes, sir.

Q. How long have you known him? A. I suppose about six years—five or six.

Q. Have you at any time heard him express——

Mr. Shearman.—One moment. What was that question?

Mr. Morris.—I haven't asked it yet.

Mr. Evarts.—Well, we won't have any leading questions, if you please. They are witnesses now.

Q. Have you, or have you not, at any time heard Mr. Lewis express an opinion as to the truth or falsity of the charges against Mr. Beecher? A. Yes, sir.

Mr. Shearman.—One moment; we object, on the same ground we did yesterday, that this question can not be asked until Mr. Lewis has been put upon the stand, and his attention called to this particular conversation.

JUDGE NEILSON.—I decline to apply that technical rule.

Mr. Shearman.—We except.

Q. About when was it that you heard him express that opinion? A. I heard him on several times.

Q. And how recently? A. Some two or three days before New Year's, I think. It was one or two days before New Year's, in the evening.

Q. Between Christmas and New Year's? A. Yes, sir.

Q. The last time? A. The last time, yes, sir.

Q. And about how many times have you heard him express his opinion with reference to the truth or falsity of the charge? A. I suppose about five or six times.

Q. And in the expression of those opinions, what was their nature, decided or otherwise? A. Well, he was always decided to be a champion for Mr. Beecher.

JUDGE NEILSON.—One moment. Don't tell which way he is.

Q. No; the question is whether his opinions were decided opinions, or not—positive? A. Yes, sir, always decided.

Q. Always decided and positive. Have you heard him argue the matter? A. Yes, sir.

Mr. Evarts.—Don't lead him.

Q. Whereabouts were those opinions expressed? A. In Mr. Lewis's own store.

Q. At what place? A. Bricksburg, Ocean county, New Jersey.

Q. About how far is that from here? A. I suppose in the neighborhood of 50 miles.

Q. You sent me a telegram yesterday stating these facts, didn't you? A. Yes, sir.

Q. And how was your attention drawn to the subject then? A. By the newspapers and our citizens speaking of this case.

Cross-examined by *Mr. Evarts.*—Have you a shop of your own there? A. At my own house, yes, sir.

Q. And how long have you lived there? A. A little over eight years.

Q. What acquaintance have you with Mr. Lewis? A. Why, I saw him sometimes three or four times a day, and in the evening.

Q. At his shop and yours? A. At his shop, and on the street, and different other stores.

Q. That is the bakery? A. Yes, sir, he is a baker.

Q. You mean you go there to the bakery? A. Well, citizens—we dropped in in the evenings, to pass away an hour or two through the day.

Q. Now, you all of you talked there about this case, I suppose, more or less? A. Yes, sir.

Q. Do you know anybody down there that has not talked about this Beecher case? A. Well, it was a general conversation at times; whenever the subject was——

Q. Can you name now, in the circle of your acquaintance in that village—if it be a village—one that has not talked about this Beecher case? A. Well, I guess there is a great many that I never heard speak of it.

Q. Well, I ask you if you know any man there that has not talked about it? A. Yes, sir.

Q. Well, how did you find that out. That has not talked with you? A. Well, I never heard him say anything.

Q. But you have no reason to think that he has not talked with somebody on the subject? A. I could not tell that.

Q. Now, did you ever have any occasion to talk with Mr. Lewis on this subject except a casual interest? A. No more than the general conversation that was going on.

Q. Same as you would with anybody else? A. Yes, sir.

Q. And is there any other conversation than this within a short time that you remember the circumstances of, and what was said? I do not mean that you should repeat what was said, but was there any conversation that is present in your mind, except the general talk about the matter? A. Well, the subject was brought up by parties present, and Mr. Lewis took part in the conversation.

Q. And you expressed opinions? A. I did.

Q. And the other people? A. Yes, sir.

Q. And Mr. Lewis? A. Yes, sir.

Q. Now this last time you say was between Christmas and New Year's? A. Somewhere about that time.

Q. Well, are you certain? A. I could not say the precise day; it was either Wednesday or Thursday, I think, if I am not mistaken.

Q. You are sure it was between Christmas and New Year's? A. Yes, sir.

Q. And you think either the Wednesday or Thursday before New Year's? A. Yes, sir.

Q. And where did that occur? A. In Mr. Lewis's store.

Q. Was anybody there? A. Yes, sir.

Q. Who? A. Mr. Freeland and Mr. Marston, Mr. Lewis's partner; Mr. Brigham, Mr. George Taylor, I believe, and myself; that is all.

Q. Well, was the conversation excited by any particular occurrence or fact about the case that had arisen just then? A. Nothing more than the subject was brought up in reference to the newspaper reports; that is all.

Q. Well, was there anything about the jury, or anything of that kind? A. No, sir.

Mr. Evarts.—I do not know when Mr. Lewis was served; I do not know whether that has appeared, if your Honor please—the day he was served.

Q. It had not, however, anything to do with that about the jury? A. No, sir.

Q. Or about Mr. Lewis being on the panel, or anything of that kind? A. No, sir.

Q. Was there anything said about the jury, or anything of that kind? A. No, sir.

Q. I do not know when Mr. Lewis was served; I do not know that that appears; it had nothing to do with that about the jury? A. No, sir.

Q. Or about Mr. Lewis being on the panel, or anything of that kind? A. No, sir.

Q. Did all of you express opinions then? A. I do not think that we did.

Q. You might all, I suppose; you all took a hand in the conversation? A. Just as conversation generally takes place; one has a say, and another one has his say.

Q. You do not remember how many expressed opinions, or how many did not, except that Mr. Lewis did? A. Mr. Lewis and myself.

Q. Did you differ in opinion? A. Yes, sir.

Q. And has that generally been your conversation on one side and the the other of the case? A. Not at all times.

Q. How long was this conversation between Christmas and New Year's? A. This last time?

Q. Yes. A. I suppose for about three-quarters of an hour or an hour.

Q. As long as that? A. Yes, sir.

Q. What time of day was it? A. In the evening.

Q. Sitting around the fire? A. Yes, sir.

Q. You did not talk all that time about the Beecher case, did you? A. I suppose on the Beecher case we spoke about 30 minutes; I guess in the neighborhood of that.

Q. What did you talk about the other quarter of an hour? A. I guess several things.

Q. You do not remember about that; there was no excitement between you, was there? A. I think Mr. Lewis got quite excited.

Q. Did you get excited also? A. I did not get excited until he referred to things that had nothing at all to do with the case.

Q. When he introduced irrelevant matter then you got excited, but what

really related to the case did not disturb you? A. It did not disturb me; it seemed to disturb Mr. Lewis.

Q. You didn't finally get excited? A. Not until he referred to other things.

Q. You did get excited? A. Afterward; yes, sir.

Q. At what stage of the half hour's discussion did you get excited? A. Toward the latter part of it.

Q. About 15 minutes or 30? A. About the last 3 or 4 minutes.

Q. When did he get excited? A. About the middle of it.

Q. You kept cool 10 minutes after he got excited? A. Yes, sir.

Q. Have you been something of a champion on the Tilton side of this business? A. Not that I know of.

Q. You have been impartial? A. Yes, sir.

Q. You telegraphed this? A. Yes, sir.

Q. And to Mr. Wallace? A. Yes, sir.

Q. You volunteered, therefore, in the matter? A. I did not volunteer; I did not suppose I should be sent for; I thought it was an act of justice to telegraph.

Q. But still you did volunteer—no one came to you? A. There were several came to me and spoke to me about telegraphing.

Q. They did? A. Yes, sir.

Q. Then there is a faction down there? A. No faction at all about it; the citizens had heard the way Mr. Lewis had expressed himself, and they thought it an injustice to this case to allow him to sit here as a juror, and that is the reason they took this course.

Q. And they put you forward to make this telegram? A. Yes, sir.

Q. You did not expect to be called as a witness? A. No, sir; I did not at the time.

Q. Does any subpœna run over to New Jersey to make people come here?

Mr. Morris.—That is a legal question, I submit.

JUDGE NEILSON.—He came voluntarily.

JAMES H. FREELAND, called as a witness on the trial of the challenge of *Mr. Lewis*, and sworn.

Mr. Morris.—Where do you reside? A. Bricksburg, Ocean County, N. J.

Q. How long have you resided there? A. About five years.

Q. What is your business? A. Sash and blind manufacturer.

Q. Are you acquainted with Stephen Lewis? A. I am.

Q. How long have you known him? A. About five years.

Q. Have you, or have you not, at any time heard him express his opinion with reference to the merits of the charge against Mr. Beecher? A. I have.

Q. When was the last time, as near as you can state? A. I am very positive it was the last night of the year 1874.

Q. The 31st of December? A. Yes, sir.

Q. Was Mr. Ticknor present at that time? A. He was.

Q. Have you heard him express his opinions on other occasions? A. Several times.

Q. Will you state whether the opinions were of a positive nature? A. I have always judged so, sir.

Q. Did you know whether he had been summoned as a juror at that time? A. I did not.

Q. Have you heard Mr. Lewis discuss this subject with his partner and other parties? A. I have.

Q. On more than one occasion? A. Several occasions.

Q. And what was the nature of those discussions—animated? A. Well, in some cases they would be. On this night that I speak of, the last night of the year, he was a good deal animated about it.

Q. And expressed his opinion with a good deal of positiveness? A. Yes, sir.

Q. Did you know of the telegram being sent? A. I did not.

Q. You came over here on request? A. I did.

Q. Mr. Ticknor spoke to you about coming? A. Mr. Ticknor came to my house, and that was the first I knew anything about the affair.

Q. Did he show you a telegram he had received? A. He did.

Mr. Evarts.—Has this matter been talked about down at Bricksburg a good deal? A. Quite a good deal.

Q. For the last three or four months, I suppose? A. Yes sir; ever since almost it first came out.

Q. And whenever there came out a new paper you would talk about that, I suppose? A. Yes, sir.

Q. And following that down you read everything out? A. We are people that read everything we can get a hold of.

Q. And you talked about it more or less? A. More or less.

Q. Did you take part in this conversation on the last night of the year? A. Not at all.

Q. Were you not of the company? A. I was in the company; the conversation was entirely between Mr. Lewis and Mr. Ticknor at that time.

Q. And did they both get animated? A. Well, I could not say I thought Mr. Ticknor was very much excited over it; he, of course, after there was a thrust made at him about another matter, why, it made him feel, perhaps, a little irritated.

Q. A thrust did you say? A. It was thrown as regards other parties.

Q. That made him mad? A. I can not say that he was particularly mad; he felt it a little.

Q. Considerably mad—he was mad? A. I didn't consider him mad, what I call a mad person.

Q. What did you call him? A. A man mad, he generally gets up and moves around sometimes and talks pretty loud.

Q. Was he angry? A. No, I don't know that he was angry.

JUDGE NEILSON.—Was he vexed? A. He was a little vexed.

Mr. Evarts.—But placid still? A. Yes, sir.

Q. How long did this discussion last between Mr. Ticknor and Mr. Lewis? A. I could not tell you, for I came away before they finished up; I left before they finished up; I could not tell you how long.

Q. You don't know how the anger went on finally? A. No; I can not tell.

Q. This was a neighbors' meeting, I suppose, the last night of the year? A. Where we generally go to get our bread and such things; we frequently meet there.

Q. Was it in the shop? A. It was in the store.

Q. And was it an interview of customers that were there, or how was it? A. As I said before, there was but Mr. Ticknor and the other gentleman held any part in it.

Q. It was a social meeting? A. No, sir.

Q. It was in the baker's shop? A. Yes, sir.

Mr. Beach.—I have an affidavit which, with permission, I will submit to your Honor in regard to a witness who could testify on this subject, as we understand, in regard to an opinion upon the merits expressed in this matter by Mr. Lewis since he was sworn in as a juryman. Will your Honor look at the affidavit, and say whether it is proper to keep the question open to obtain that witness, who can not be secured to day?

Mr. Evarts.—We are entitled to see that affidavit I think.

Mr. Beach.—I don't think you are entitled to see it, but I don't object to your seeing it.

JUDGE NEILSON.—Do you wish to be heard on the subject of the fitness of the juror, or what shall be done, if anything, in regard to him?

Mr. Evarts.—In regard to Mr. Lewis?

JUDGE NEILSON.—Yes.

Mr. Evarts.—We will recall Mr. Lewis.

STEPHEN LEWIS recalled.

Mr. Evarts.—You have heard your neighbors here testify? A. Yes, sir.

Q. You know them? A. Yes, sir, both.

Q. And they were in the habit of coming to your shop? A. Yes, sir.

Q. They were customers, were they? A. Well—yes, sir, they were customers.

Q. They have talked about your discussions in this Beecher matter? A. Yes, sir.

Q. What have you to say on that subject? A. If I can tell my story I would like to tell it.

Mr. Evarts.—Very well, go on.

The Juror.—Mr. Ticknor is in the habit of coming into the store and talking about everybody; that is his habit, and if you want proof of that I can get it, and even about me; he came in there that evening and he began talking, and the first word he said was, "The Beecher trial won't come off;" I said, "You don't know whether it will come off or not; you had better wait and see."

Mr. Beach.—Is this course of narrative to take place? If he gives the conversation, or any part of it, we are entitled to the whole of it; I make no objection to that course of inquiry, but I wish to understand that we can pursue it with other witnesses.

JUDGE NEILSON.—I don't know whether the counsel intended to ask the gentleman to give the conversation or not.

Mr. Evarts.—The juror has absolutely been impeached before your Honor, and I put him on the stand to give his statement concerning the occurrences upon which these neighbors of his testified.

JUDGE NEILSON.—You can examine him fully.

Mr. Evarts. –The only point excluded, and that is properly excluded, is what his opinions were, as expressed.

JUDGE NEILSON.—Yes, sir.

Mr. Beach.—I trust your Honor will not announce that as a ruling in the case. If this witness is to be permitted to give any part of the conversation relating to the merits of this controversy, I am sure you will not rule we are not entitled to give the whole of it; and if that precedent is established with regard to this witness, I suppose we would be entitled to recall the witnesses who have already testified, and have from them a narrative of what transpired.

JUDGE NEILSON.—I will see what the counsel desires to call out.

Mr. Evarts.—State what transpired, omitting any opinion of yours or the witness's about the Beecher and Tilton matter.

The Juror.—That is, either side?

Q. Yes, sir, as to the merits; what they were. A. Mr. Ticknor commenced talking about this case, and I told him he had no business to talk anything about it until after it was tried; it was time enough then to know who was guilty and who was not; and he went on and made statements that he knew certain parties were guilty, because his friends had told him so and so.

Q. Other people? A. The people—his friends; I told him he knew nothing about the case, and neither one of us knew anything about the case; that I didn't believe the statement he told me was true, and he got offended about it, and at last I told him I didn't want him to come there and talk in that way; he even talked about me and others, and I didn't want to hear any more of his talk; I didn't make any statement that Mr. Beecher was guilty or innocent; I made a statement that he didn't know whether he was or not, and that I didn't know, and that we could tell better after the trial; that is the statement that I made.

Mr. Beach.—Did you hear the testimony of Mr. Freeland? A. I did.

Q. Did you on that occasion, the last day of the past year, at your store, express an opinion upon the merits of this charge against Mr. Beecher? A. No, sir.

Q. You did not? A. Not whether I thought he was guilty or innocent.

Q. Upon the merits of the charge? A. I suppose that is what I consider the merits.

Q. That is as to whether or not he had committed any act of adultery such as is charged against him? A. Yes, sir.

Q. You did not express any opinion on that point? A. I did not on that point, whether he was guilty or not guilty.

Q. Against whom did Mr. Ticknor make any charge upon that occasion? A. I didn't know as I was allowed to tell that; I thought I was not to tell who the charges were against. I am willing to tell.

JUDGE NEILSON.—You can name the person.

The Juror.—He made the charge against Mr. Beecher.

Mr. Beach.—Against whom, other than Mr. Beecher or Mr. Tilton, did he make any charge? A. Nothing in particular then at that time.

Q. How did this conversation open? A. It opened by his making a statement that he knew a certain party was guilty, because friends of his had told him so; that they had seen through the windows such and such things.

Q. You seem to have some little spirit about this question? A. I do, about anything that I think is wrong; I think a person has no business to talk about folks until they know something about them—either party.

Q. You have not, either with your partner or with these gentlemen who have been sworn, talked for or against either of these parties, then? A. I never said——

Q. Have you talked for or against either of these parties? A. Yes, sir; I have.

Q. Then you do talk for or against people? A. Not on the merits of the case—not on whether he is guilty or innocent.

Q. Do you know Leonard K. Cluff? A. Yes, sir.

Mr. Evarts.—Now, Mr. Beach, I think we will look at that affidavit.

Mr. Beach.—As a matter of courtesy I will let you look at it.

Mr. Evarts.—I will look at it as a matter of courtesy.

Mr. Beach.—I don't think you are entitled to it, but you can look at it as a matter of courtesy.

JUDGE NEILSON.—The counsel ought to see it, inasmuch as I have seen it.

Q. Did you, in his presence, on or about the 1st day of this month, express any opinion or belief of your own in regard to Mr. Beecher being innocent? A. Not that I know of, sir.

Q. Do you swear that you didn't? A. To Mr. Cluff?

Q. Yes, sir; in the presence of Leonard K. Cluff? A. I don't think I did.

Q. Do you swear that you didn't? A. To the guilt or innocence?

Q. Yes, sir? A. No, sir.

Q. No, not guilt; I don't put it in that form. Did you to that gentleman, on or about the time I mention, express any opinion or belief in regard to the guilt or innocence of Mr. Beecher? A. Nothing more than——

Q. I don't want "nothing more than;" I want an answer, yes or no? A. I will answer it yes or no, but I want to answer it as I said it.

JUDGE NEILSON.—You are bound to answer this question, and you can explain afterward.

The Juror.—I want to answer it in a way that it will be understood.

Mr. Beach.—Did you to that gentleman, or in his presence, on the occasion I have mentioned, express any opinion or belief in regard to the innocence of Henry Ward Beecher? A. I don't think I did.

Q. Do you swear you did not? A. I have sworn that I did not.

Q. Will you swear that you did not? A. Not what I should understand as an opinion.

Q. Do you understand my question? A. I understand your question, but I don't understand what you want to make from it.

Q. I want you to answer that question. A. I have answered it.

Q. Will you swear positively that you did not? A. What is the rest of it? I want to hear the whole of it.

Q. The question I put to you was whether you, to Leonard K. Cluff, or in his presence, on the occasion I have mentioned, expressed any opinion or not in regard to the innocence of Henry Ward Beecher? A. No belief nor no statement of that kind that I believed.

Q. Any opinion or belief I said, sir? A. No, sir.

Q. You did not? A. No, sir.

Q. You swear positively you did not? A. I do, not as an opinion or belief.

Q. I asked you whether you expressed an opinion or belief in regard to the innocence of Henry Ward Beecher? A. I answered it.

Q. Answer it now? A. Opinion or belief?

Q. Yes, sir. A. I did not.

Q. Have you had repeated discussions upon this subject with your partner? A. My partner has held discussions, more or less.

Q. Have you not held discussions with him? A. Not as to the merits of the case, I have not; I have held discussions with him.

Q. Have you had discussions with him upon the question whether or not Mr. Beecher was innocent? A. Yes, sir; I have had questions.

Q. You have had discussions with him? A. Yes, sir; I have had discussions.

Q. I understand you to say that you have had discussions with your partner in regard to the innocence of Mr. Beecher? A. Yes, sir.

Q. Have those been frequent? A. He speaks about it frequently.

Q. Have those discussions been frequent? A. Not very frequent, because I have not been there a good deal of the time.

Q. How many times should you think? A. I could not tell how many times. He speaks of it frequently.

Q. About how often have those discussions occurred? A. It is a matter I could not tell you about, how often.

Q. You said they were not very frequent? A. Not very.

Q. I want to get your idea of frequency, and, therefore, I ask you about how often they have occurred? A. Well, occasionally, once in a week or two, perhaps.

Q. For what period—from the commencement of this matter? A. I have made up my mind not to argue with him much; I don't say much to him.

Q. You have said perhaps once in a week or two, and I ask covering what period of time—the last year? A. Yes, sir; I should think it has been a year since we commenced about it.

Q. You and your partner were of different opinions upon the subject, were you not? A. Yes, sir; different opinions on some parts of it.

Q. Were you of different opinions upon the subject in regard to which this discussion was had, the innocence of Mr. Beecher? A. I never formed any opinion in regard to it.

Mr. Beach.—I didn't ask you whether you had formed any opinion.

Mr. Evarts.—It is a proper answer.

Mr. Beach.—I submit it is not.

Mr. Evarts.—You make him assume there was a difference of opinion, and he says he has none.

Mr. Beach.—On the contrary, the witness answered a moment ago there was a difference of opinion.

The Juror.—Yes, sir; but this was of innocence or guilt. I didn't mean to be understood as saying any such thing.

Mr. Beach.—I ask you if the opinions of yourself and your partner, as expressed in these discussions, differed? A. They would on some points; yes, sir.

Q. Will you state a point upon which they differed? A. Well, they would be points he would bring up about some particular thing.

Q. I want to know upon what particular subject you differed? A. I was trying to tell you.

Q. Can you mention one subject upon which you and your partner differed other than the innocence of Mr. Beecher?

Mr. Tracy.—That assumes they did differ on the subject.

Mr. Beach.—It assumes no such thing. [To the juror.] Can you mention any subject upon which you and your partner differed in opinion other than the innocence of Mr. Beecher? A. When my partner said a certain party was guilty I have always argued that he did not know, not that I knew whether he did or did not.

Mr. Beach.—I move to strike out that answer.

Mr. Evarts.—Counsel has no right to make question and answer both.

Mr. Beach.—That remark is made with great emphasis, but I don't see the pertinency of it.

JUDGE NEILSON.—I think I will let it stand.

Q. Can you mention any subject connected with this controversy upon which you and your partner differed, except that of the innocence of Mr. Beecher? A. I want to understand the question, and then I will answer it. The question you ask is whether we have had any arguments or any conversations except on the innocence or guilt.

Mr. Beach.—No, that was not the question. You have not got within gunshot of it.

The Juror.—I would like to hear it again.

Q. Can you now mention any subject connected with this controversy upon which you and your partner differed in opinion except the subject or question of the innocence of Mr. Beecher? Can you now mention one? A. I think I can.

Q. What was it? A. I think there has been talk about things—about this affair that I did not agree with him about.

Q. I want to know what it was; I want you to mention it.

JUDGE NEILSON.—What was the point—the topic?

Mr. Evarts.—He says he has answered that. It was on the very point whether he had a right to make up his mind.

Mr. Fullerton.—The witness will get on without that.

Mr. Beach.—Your Honor can very well see the object of that interruption. Perhaps it may effect its object, and instruct the witness.

JUDGE NEILSON.—No, that is not intended.

Mr. Beach.—Your Honor has a right to assume that. I have a right to indulge my own opinion on that subject. [To the juror.] Well, sir, we are waiting.

The Juror.—Well, so be I.

JUDGE NEILSON.—Perhaps the witness does not remember your question.

The Juror.—I am not very clear of comprehension, I believe, to day; I don't think I am.

Mr. Beach.—You don't understand the question. You are not very clear of comprehension to-day? A. I don't exactly understand what your question is; if I did, I would try and answer it.

Mr. Beach.—I have exhausted my intelligence in an endeavor to make you comprehend it, and I will leave it as it is.

Mr. Evarts.—Is that all?

Mr. Beach.—Yes, sir, that being the only side of the case on which counsel can make themselves understood.

Mr. Beach.—When were you summoned as a juror? A. My wife sent a summons to me to Bricksburg.

Q. When did you receive it? A. I received it on Friday.

Q. What day of the month was that? A. I think the first day of the month. I received it Friday night.

Mr. Evarts.—Friday night you received your summons? A. I think it was; and then I had a letter from my wife on Saturday noon.

Q. That is the first you knew about it? A. Yes, sir; that is the first I knew about that.

JUDGE NEILSON.—[To the juror.] It was served at your residence? A. Yes, sir; it was served here in Brooklyn, and then it was sent to me.

Mr. Evarts.—On your original examination you said this: "Q. Have you formed an opinion? A. No, sir, I think not; I think I have said this much, that I presumed every man innocent until he is proved guilty. I think I have not expressed any opinion." Is that your opinion? A. Yes, sir; on the merits of the case that is the truth, whether he was guilty or not guilty.

Q. As to you and your partner, was the point on that subject of whether you knew enough to form an opinion? A. Yes, sir, it has been the subject. I told him I did not think he had any right to form an opinion, nor I either, until the case was tried; I argued in that way.

Q. Did your partner agree to that?

Mr. Beach.—I object to that question.

Mr. Evarts.—I won't insist on it. [To the juror.] Have you formed or expressed an opinion concerning the guilt or innocence of Mr. Beecher? A. I never have formed any opinion or expressed any, that he was guilty or not guilty.

Mr. Beach.—And never have formed or expressed an opinion as to his innocence? A. No, sir; I said this much: I said I had seen nothing in the evidence that I could make up my mind upon that he was guilty.

JUDGE NEILSON.—[To the juror.] What was the statement you made? A.

The statement I made was that I had not made up my mind whether he was guilty or not, and that I thought no one else had a right to do so, and I argued that with my partner.

Mr. Beach.—Is this witness rendering an argument?

JUDGE NEILSON.—No, he is making an explanation.

J. H. FREELAND was recalled.

Mr. Evarts.—We object to this witness being recalled.

JUDGE NEILSON.—What is the point?

Mr. Beach.—The point is to recall this witness, after the juryman has been heard, to see if he has any change of recollection, which is exceedingly proper.

Mr. Evarts.—That I object to. I believe that is a well-settled proposition of law, that you can not have the last say on the same point, for I will recall him again, and then we will go on in that way indefinitely.

JUDGE NEILSON.—The general rule is as Mr. Evarts says.

Mr. Beach.—Not where witnesses primarily differ on the question of impeachment, or as to declaration. It is the uniform practice to recall them and let them, understanding the testimony of each one, refresh, and perhaps rectify, their recollections.

Mr. Evarts.—I think not.

Mr. Beach.—It was the constant practice of Judge Cowen to let witnesses stand together upon questions of this character on the witness-stand, and let them explain as between themselves, and there is eminent justice in that.* [To the witness.] You have heard the testimony of Mr. Lewis in regard to the

* Mr. Justice COWEN, in his note to 2 Phil. on Ev. 774, quotes the rule stated by TINDAL, C. J. in *Angus* v. *Smith* (1 Mood. & Malk. 473), "that before you can contradict a witness, by showing that he has at some other time said something inconsistent with his present evidence, you must ask him as to time, place, and person involved in the supposed contradiction;" and that "it is not enough to ask him the general question, whether he has ever said so and so,"—and goes on to say, "The editor [meaning himself] can not speak from any extensive knowledge as to the practice on this head in the American courts. So far as he has been acquainted with the practice, and especially where he has had any control in the conduct of it, he has uniformly observed a very strict conformity to the above rule of *Angus* v. *Smith*, not unfrequently ordering both the principal and opposing witness upon the stand at the same time, and directing the question to be specifically repeated and explained, sometimes instituting a kind of colloquy between the witnesses."

Mr. Taylor says (2 Taylor on Ev. 1279, § 1332), "In former times, when the evidence of witnesses called on opposite sides was directly conflicting, the court would often direct that the witnesses should be *confronted*. . . . . This practice which is still recognized in the Ecclesiastical Courts and Courts of Probate, and which prevails largely in the County Courts, where it is often productive of highly useful results, has, for some unexplained reason, grown into comparative disuse at *nisi prius*. This is to be regretted; for the practice certainly affords an excellent opportunity of contrasting the demeanor of the opposing witnesses, and of thus testing the credit due to each, while it also furnishes the means of explaining away an apparent contradiction, or of rectifying a mistake, where both witnesses have intended to state nothing but the truth."

In *Annesley* v. *Anglesea* (17 How. St. Tr. 1350) four witnesses, whose testimony was conflicting, were placed together on the witness-stand for the purpose of confronting them with each other.

The confronting of witnesses is also sanctioned by Mr. Stephen in his *Commen-*

conversations about which you and others have spoken. Will you please state whether or not your recollection is changed upon the question whether or not Mr. Lewis, upon the occasion to which you referred, expressed an opinion upon the question of the guilt or innocence of Mr. Beecher?

Mr. Evarts.—Don't answer, Mr. Witness. I object to that question, and will take your Honor's ruling on it.

JUDGE NEILSON.—Yes, he may answer it.

Mr. Evarts.—We except.

The Juror.—Ask the question again.

Q. The question is whether, after hearing the statement of Mr. Lewis, your recollection is in any way changed upon the question whether or not Mr. Lewis, upon the occasions you referred to, expressed an opinion as to the guilt or innocence of Mr. Beecher? A. No, sir.

Q. It is not changed? A. No, sir.

JUDGE NEILSON.—Do you wish to be heard on the question as to whether this juror shall stand aside or not?

Mr. Evarts.—If the court please, there can be, possibly, no greater evidence of intelligence and integrity than this juryman has shown, and all the disparagement that has been brought against him in regard to discussions concerning the general subject of the Tilton-Beecher case, or the Tilton-Beecher trial, ends precisely as it ended when he was examined by himself yesterday, that he had formed and expressed no opinion on the merits of the guilt or innocence, but had only gone so far as to say that a man shall be presumed innocent until he is proved guilty, and rebuked the rash judgment of those who had volunteered opinions without true evidence before them.

Mr. Shearman.—May it please your Honor, I rise at the first opportunity when there is any applause on our side to request that it may never be allowed under any circumstances. We wish to maintain, as I know your Honor does, the true dignity of a court of justice.

JUDGE NEILSON.—It will never be allowed with my consent, but where we have this large mass of jurymen not yet called, and so many people present, it is difficult to prevent it; but after the jury shall be impanneled, and the attendance in court much reduced, I think I shall be found equal to the preservation of perfect order, and the removal of any person who commits any breach of decorum. I don't wish to hear any argument in reference to this juror. My own firm conviction is that he should stand aside.

JUDGE NEILSON.—Let us not hear any renewed applause.

Mr. Hill.—May we ask if this judgment is on the principal cause?

JUDGE NEILSON.—It is to the favor, and on the ground of misapprehension, or fraudulent intention to occupy a seat as a juror.

Mr. Shearman.—We except.

taries, vol. 3, p. 548. In speaking of the common-law method of taking evidence, he says, "Besides all this, the occasional questions, of the judge, the jury, and the counsel, will sift out the truth much better than a formal set of interrogatories previously penned and settled; and the *confronting* of adverse witnesses is also another opportunity of obtaining a clear discovery, which can never be had upon any other method of trial."

CHRISTOPHER FITTER called and sworn on a challenge for principal cause.

Mr. Fullerton.—You are a resident of Brooklyn? A. Yes, sir.

Q. What business are you engaged in? A. Wood and willowware.

Q. Where? A. No. 56 Fulton-street.

Q. You have heard of this Tilton and Beecher controversy, so called? A. Yes, sir.

Q. And read a good deal on the subject? A. Yes, sir; a good deal.

Q. Read the newspapers and the statements of the parties? A. Yes, sir.

Q. Have you formed an opinion in regard to the merits of the controversy? A. No, sir; I don't think I have.

Q. You ought to know better than anyone else? A. Well, I have not; no fixed opinion; no, sir.

Q. Have you never expressed any opinion? A. Not seriously.

Q. In what way did you express it, if at all? A. Well, I perhaps expressed myself both ways in a joking manner, and have talked a good deal on the subject.

Q. Have you heard any controversies or discussions? A. A good many, sir.

Q. In which sides were taken? A. Sometimes one side and sometimes the other.

Q. Have you in your mind no impression now one way or the other in regard to it? A. I have not; no, sir.

Q. Not even an impression? A. I have really not any impression on my mind.

Q. Didn't you believe anything you read? A. Well, I could not believe both sides; I didn't know which to believe.

Q. I didn't ask you to believe both sides—did you believe either side? A. I don't know that I believed either side; I could not say that I did.

Q. I refer the matter to you, of course; you know better than anyone else whether you believed either the one side or the other in this controversy, from what you have read of their statements? A. I have not really believed either side.

Q. Have you in a measure believed one side rather than the other? A. I could not say that I did.

Q. I understand you to say now that you have no belief one way or the other as to the merits of this controversy; that your mind is open and free to conviction. A. That is really so.

Q. And you think you could go into the jury-box and render a verdict according to the evidence in this case, entirely uninfluenced by what you have heard and read upon this subject, do you? A. I should think so.

Q. I want to know whether you don't feel, when you come to reflect upon this subject, that your mind leans either to one party or the other? A. It does not, but I should think that I should not serve on the jury on account that I have talked a great deal about the case, and read most everything about it. I think I ought not to serve on the jury.

Q. Have you expressed opinions about it? A. I have, in a joking way.

many a time, and talked upon it more than, perhaps, I ought to ; but I have never done it a great deal.

Q. If you have only talked and expressed opinions jocosely, why do you think you ought not to serve, if you entertain no predisposition one way or the other ? A. That is my feeling about it.

Q. That you ought not to serve ? A. I think so.

Q. Do you think, upon the whole, now, that you can not be entirely impartial in consequence of what you have read and what you have said upon the subject ? A. I think I could ; yes, sir.

Q. Do you belong to any religious denomination ? A. I belong to a church.

Q. What denomination ? A. The German Church.

Q. Are you a German born ? A. Yes, sir.

Q. How long have you been in this country ? A. I have been here about 27 years.

Q. What is your occupation ? A. I am in the wood and willowware business.

Q. Do you ever attend any other than the German Church ? A. I frequently attend the Franklin Avenue Presbyterian Church ; I occasionally go there ; I attend generally my own church.

Q. Did you ever attend Mr. Beecher's church ? A. Only once, to hear him preach, and once to a concert.

Q. How long ago was that ? A. Some time last summer.

Q. After this controversy commenced ? A. I think it was when they first began to talk about it in the papers, before Mr. Tilton's statement came out ; it was considerably before that.

Q. And you did hear him preach then ? A. Yes, sir.

Q. Did you go with any one, or did you go alone ? A. I think I went all alone myself—yes, sir.

Q. What prompted you to go at that particular time ? A. I had often wished to hear Mr. Beecher preach, and I thought I would go on Sunday.

Q. Have you ever been since to hear him ? A. No, sir.

Q. You didn't form any opinion at that time as to whether these charges were true, or not, after having heard him preach ? A. No, sir.

Q. Do you know either of the parties—acquainted with them ? A. No, sir ; only by sight ; I have seen Mr. Tilton, I think, once or twice, and I have seen Mr. Beecher once or twice in my life ; that is all.

Q. You have no special acquaintance with either of them ? A. No, sir, I don't think I ever spoke to the gentlemen in my life.

Q. When were you summoned as a juror ? A. I think the day before New Year's, in the evening.

Q. Have you held any conversation with any one upon the subject since you were summoned ? A. I have, slightly ; I guess it has been mentioned.

Q. Any conversation or discussion in which the merits of the controversy were canvassed ? A. No, sir ; I didn't wish to converse with any one much about it, only as occasion would happen.

Q. You have expressed no opinion even in a joke since that time? A. No, sir; not since that time.

Q. Has any one visited you in reference to it? A. No, sir.

Q. Has any one proposed to converse with you in regard to the subject-matter since you were summoned? A. No, sir.

Q. State your residence, if you please? A. No. 27 Park-av.

Mr. Fullerton.—We withdraw the challenge, sir.

Mr. Evarts.—I will ask him a few questions.

Mr. Beach.—Do you challenge him?

Mr. Evarts.—No, sir.

Mr. Beach.—Then you have no right to examine him.

Mr. Evarts.—Then I will challenge him.

Mr. Beach.—What challenge do you interpose?

Mr. Evarts.—I will interpose the same one you did.

Mr. Fullerton.—That won't do, because by and by your Honor will have to discriminate in regard to that.

Mr. Evarts.—What was your challenge?

Mr. Beach.—I don't propose to answer.

JUDGE NEILSON.—It is entered as to the favor generally. Will that enable you to interrogate him?

Mr. Evarts.—Yes, sir. [To the juryman.] How long have you lived in Brooklyn? A. I think either since 1851 or 1852; at that time I lived in Williamsburgh.

Q. This side of the river you have lived? A. Yes, sir.

Q. Since 1852? A. 1852 anyhow; I think it was 1851.

Q. Is your wood and willowware business carried on here or in New York? A. On this side.

Q. And where? A. No. 56 Fulton-street.

Q. How long has it been there? A. It has been at this house about two years, and we were at another house a little further down in the same street before.

Q. For a longer time? A. Yes, sir.

Q. What is the name of your firm? A. Fitter & Lynnes.

Q. Has it been of that name for some years? A. Yes, sir; since we have been in that business over here.

Q. How long have you been in your present dwelling-house? A. About five years, I think.

Q. How long have you been an attendant at the German church of which you have spoken—that very congregation, I mean? A. Since it was organized.

Q. How long was that? A. I guess about four or five years.

Q. And prior to that, where did you go? A. I generally attend the German church. I was no particular member of any church before that.

Q. And you are now a communicant in that church? A. Yes, sir.

Q. You are a housekeeper, and a man of family, I suppose? A. Yes, sir.

Q. You say the opinions you have expressed have been by joke, as it were. I suppose you mean by that you expressed lightly opinions? A. Yes, sir.

Q. Not serious? A. Not serious.

Q. And you have not engaged in any serious discussions to get at a conclusion one way or the other, have you? A. No, sir; I don't think I have. I have been in a good many discussions about it, though, with gentlemen.

Q. But still it has been only casual? A. Yes, sir.

Q. And your own feeling is that you have no opinion or bias one way or the other? A. No, sir, I have not, I am sure.

Q. Then, is there anything in this objection of yours that you ought not to be on this jury? What is the basis of that? A. It is this; that I think that I have talked too much about it. In my business different people came in and got talking about it, and I have joked about the matter more than I should, and these gentlemen here may think, perhaps, I have formed an opinion and expressed my opinion.

Q. You mean you have talked more about it than you should if you had known you were to be a juror? A. Yes, sir, by all means.

Q. Otherwise you have not talked too much about it? A. I can not say.

Mr. Evarts.—If your Honor please, that does not seem to be an objection. We withdraw the challenge.

JUDGE NEILSON.—[To the juror.] Take a seat, sir.

SAMUEL FLATE called and sworn on a challenge for principal cause.

Mr. Pryor.—Where is your residence? A. No. 214 Ryerson-street.

Q. Are you in business? A. No, sir.

Q. What are you doing? A. I am working for a roofer.

Q. In Brooklyn? A. Yes, sir.

Q. Are you a gentleman of family? A. Yes, sir.

Q. Have you heard anything about the controversy between these gentlemen? A. I have heard a little, sir.

Q. Have you read anything about it? A. Very little I read.

Q. You have not read much? A. No, sir.

Q. Can you recollect what you read? A. No, sir; all I read is the heading of the papers.

Q. You have read nothing but the heading of the papers? A. No, sir; that is all.

Q. Have you read any newspaper articles? A. No, sir.

Q. Do you take any newspaper? A. No, sir; I don't make a practice of taking a newspaper.

Q. You sometimes buy it? A. I happened to see the heading to the paper.

Q. And when you saw the heading of the paper you avoided reading it? A. Yes, sir.

Q. Have you any impression in regard to the merits of this controversy? A. No, sir.

Q. None whatever? A. No, sir.

Q. Have you heard the matter discussed? A. No, sir.

Q. You never discussed it with any person? A. No, sir.

Q. Have you formed any opinion about the merits of the controversy? A. No, sir; I have not.

Q. Have you expressed any opinion in reference to it? A. No, sir.

Q. Do you know either of the parties to the controversy? A. I do not.

Q. You have heard of them? A. I have heard of them; yes, sir.

Q. You have no feeling against one or the other? A. No, sir.

Q. May I ask if you belong to any church? A. Yes, sir.

Q. What church? A. I don't make it a practice much of going to any one; I don't be particular as to which one.

Q. But you belong to a church? A. Yes, sir.

Q. Which church do you belong to? A. I belong to St. Patrick's Catholic Church.

Q. You don't go very frequently? A. No, sir.

Q. You are not conscious of any bias or inclination toward either of these parties? A. No, sir.

Q. None whatever? A. No, sir.

Q. You are conscious that you could do entire justice between them as a juror? A. Yes, sir.

Mr. Pryor.—We withdraw our challenge.

Mr. Evarts.—We challenge on our part.—[To the Juror.] How old are you? A. I am 24 years of age.

Q. Are you a housekeeper? A. Yes, sir.

Q. A man of family? A. Yes, sir.

Q. And how long have you lived in the place that you have given us as your residence, No. 214 Ryerson-street? A. I have lived there since March.

Q. Where had you lived before that? A. Marcy-avenue.

Q. Always in Brooklyn? A. No, sir; I have only been two years in Brooklyn.

Q. Where had you lived before that? A. Paterson, New-Jersey.

Q. Were you married in Brooklyn, or married in New-Jersey? A. I was married in New-Jersey.

Q. Are you conducting the business of a roofer on your own account? A. No, sir.

Q. In whose employment are you? A. Nicholas Connor.

Q. Where is his place? A. In Sanford-street, No. 5.

Q. Have you never talked with any parties about this litigation? A. I have not had any conversation with anybody about it.

Q. You say you saw the head-lines? A. Merely the heading of the paper.

Q. And then let it go? A. Let it go.

Q. Had you no interest in the matter at all? A. No, sir, I had not; I had no interest in reading the paper at all.

Q. You read the papers on some subjects, don't you? A. Very seldom.

Q. Have you made this matter a subject of conversation in your own family? A. Well, they have spoken about it; yes, sir.

Q. Have you parents living with you? A. No, sir.

Q. Or only yourself and wife and children, if you have children? A. Only myself and wife; my wife's aunt is living with us.

Q. And it has been a subject of conversation with her? A. No, sir; I never had no conversation with her.

Q. What was the number of your residence in Marcy-ave.? A. I think it was 119.

Q. Where did you live in Paterson? A. I lived in No. 91 Jefferson-st.

Q. In whose employment were you in Paterson? A. In Mr. Hoxie's.

Q. In the same business? A. No, sir.

Q. What business? A. Contractor.

Q. What is Mr. Hoxie's first name in Paterson? A. I could not tell you.

Mr. Evarts.—We submit the question to your Honor.

JUDGE NEILSON.—[To the Juror.] Take one of those chairs.

A. R. CASE called and sworn on a challenge for principal cause.

Mr. Pryor.—Where do you live? A. No. 482 North Second-st.

Q. What is your business? A. Druggist.

Q. On your own account? A. Yes, sir.

Q. How long have you been in business there? A. Four years on my own account.

Q. Do you keep house? A. Yes, sir.

Q. Where do you live? A. In the same building.

Q. Have you heard about this suit? A. Yes, sir.

Q. Have you read anything about the controversy between the parties to this suit? A. Yes, sir.

Q. Have you read much or little? A. Considerable.

Q. Has what you have read made any impression upon you? A. Yes, sir.

Q. Does that impression still remain? A. I don't mean to say the same one remains that I had.

Q. Have you an impression now as to the merits of the controversy between these parties? A. Very slight, if any.

Q. Have you any, do you think? A. I think not.

Q. You think you have no impression. You have no opinion as to the merits of the controversy between these parties? A. I think not.

Q. No opinion as to which is right or wrong? A. No, sir.

Q. You once had an impression? A. Yes, sir; a good many of them.

Q. You fluctuated then. Has your opinion changed from what you have read during the progress of this controversy? A. Yes, sir.

Q. You have had one last impression, of course. When did you get rid of that last impression? A. It is very hard to say.

Q. Are you conscious when it departed from you? A. No, sir.

Q. Are you positive that you have no impression now? A. As to the merits of the case, I am, sir.

Q. None whatever? A. As to the truth or falsity of some of the newspaper publications I have.

Q. As to the truth or falsity of the newspaper publications you have. Do you mean the statements of the parties? A. No, sir; I never read those thoroughly.

Q. You have an impression as to the truth or falsity of some of the newspaper articles on the subject. Is that what you mean? A. Yes, sir.

Q. Do you mean editorials? A. Yes, sir.

Q. You have no impression as to the truth or untruth of the allegations made by these parties against each other? A. No, sir.

Q. None whatever? A. No, sir.

Q. Do you know either of the parties? A. No, sir.

Q. You have heard of them, of course? A. Oh, yes, sir.

Q. Have you any prejudice against either one or the other? A. No, sir.

Q. None whatever? A. No, sir; not that I know of.

Q. Do you belong to any church denomination? A. Do you mean to be a communicant in any church?

Q. Yes, sir. A. No, sir, I do not.

Q. Are you a member of any congregation? A. Yes, sir.

Q. Which? A. The Ainslie Presbyterian Church.

Q. Who is the pastor of that church? A. Mr. Buchanan; J. M., I think, are his initials.

Q. Did you ever converse with anyone about this matter? A. I suppose I have, with a great many of them.

Q. Did you ever discuss it with any person? A. What do you consider a discussion—remarks made by people?

Q. No, sir; did you ever argue on either side with any one? A. To no great extent; customers would come in, and I have spoken to them, and another customer coming in it would be dropped.

Q. Did you ever declare any proposition in regard to the merits of this controversy to any one? A. I would not like to say I have not; I have taken part in a good many conversations, and may have said a great deal one way or the other.

Q. Did you ever avow any opinion in regard to the merits of the controversy in discussion with any person? A. I would not like to say positively either way.

Q. What is your impression? A. My impression is that I have expressed opinions a number of times to different persons.

Q. That is to say, you have expressed contrary opinions? A. I mean to say I have expressed different ideas in regard to articles that I have read.

Q. Did you ever hold any discourse or discussion with any person with regard to the truth or untruth of the allegation made by Mr. Tilton against Mr. Beecher? A. It would be very hard to say.

Q. What is your belief in regard to that? A. I think it is very likely I have said there would be a great deal of difference between the evidence in the courts and in what had been published.

Q. Did you ever express any opinion of your own during the progress of the discussion upon the main question? A. I may have.

Q. What is your opinion—I mean what is your recollection of the impression? A. My recollection is not positive enough to say decidedly either way.

Q. You can not say decidedly either way? A. Such a mass of people have——

Q. Is it not probable, according to your own conscience now, that you

have expressed some opinion to some person? A. On the truth or falsity of the statement?

Q. Yes, sir. A. I may have had at some time; I would not say I had or had not.

Q. Can you not recall some person you talked the matter over with? A. I might recall a hundred.

Q. Have you discussed it in your own family? A. Very little.

Q. Have you talked of it in your own family? A. It has been spoken of.

Q. Have you not expressed an opinion to some member of your family as to the truth or untruth of the main charge? A. I think not.

Q. Is your mind now entirely free from any inclination toward one or the other of these parties in regard to the truth or untruth of the charge? A. Yes, sir.

Q. The balance of your mind, so to express it, is entirely even, and does not incline one way or the other? A. I think so.

Q. Have you any bias between them? A. I don't think I have.

Q. Have you read any paper upon the subject of this case? A. The papers published? Yes, sir.

Q. What papers did you read? A. I take *The Tribune* daily, and *The Herald* on Sundays; and I have read other papers.

Q. Did you read all the discussions and speculations on it? A. In the papers?

Q. In *The Tribune*, for example? A. Yes, sir; the different editorials in *The Tribune*.

Q. Did those editorials make any impression upon your mind? A. They probably did when I read them.

Q. You don't remember when you got rid of those impressions that you had? A. No, sir; not at any particular time.

Q. Can you recall the tenor and drift of any one article you read? A. No, sir.

Q. In *The Tribune*—any one article? A. Not perfectly.

Q. Have you any recollection? A. Not enough to state.

Q. Do you remember whether these articles favored one side or the other? A. I think, at different times, differently; they took different sides at different times.

Q. Have you talked with any one since you were summoned as a juror? A. Not about the merits of it; I have talked about being summoned.

Q. You have not talked about it since the trial? A. No, sir; customers make remarks to me in different ways, and I may have made some answer; I haven't had any conversation.

Q. Has any person opened a discussion upon the matter with you since you have been summoned as a juror? A. No, sir.

Q. When did you last read anything upon it? A. I can not tell; I read the papers every day—a portion of it.

Q. Don't you think that you have read everything published in *The Tribune* upon it? A. No, sir; perhaps, every editorial published in *The Tribune*, but only portions of the different statements.

Q. Did you read Mr. Tilton's first statement? A. Not the whole of it.

Q. Have you read his letter to Dr. Bacon? A. I can't say positively; I might and might not.

Q. Did you read Mr. Tilton's second statement? A. Not the whole of it.

Q. Did you read Mr. Beecher's statement? A. Not the whole of it. One answer will answer for all—whatever has been referred to particularly in the editorials, I might have referred to and read.

Q. You don't remember whether at the time you read those articles in *The Tribune* your mind concurred with the conclusions of the writer or not? A. I think the writer of them had no evidence to form such a settled opinion as that.

Q. You have a recollection that you thought at some time the editor expressed an opinion that went beyond the evidence? A. I do not know that I considered that it was evidence he formed his opinion upon.

Q. You thought the opinion expressed by him was baseless—unfounded? A. Yes, sir, to form so strong an opinion.

Q. Therefore you still have the opinion that the opinion propounded then by the editor was unfounded? A. I don't think that I am competent to judge.

Q. Were you competent then? A. I paid more attention then than I have since.

Q. Have you changed the opinion you then had, that the editor went beyond the evidence? A. I didn't consider it evidence that he was talking on; I considered it merely newspaper statements.

Q. Are you still of opinion that the opinion then stated by the editor was without foundation to stand upon? A. I considered it was a mere newspaper statement.

Q. Is that your present opinion? A. Yes, sir.

Q. Had you any opinion as to the justification or want of justification of the opinion propounded by the writer of the article, or the editor? A. Let me understand thoroughly.

Q. You say you read Mr. Tilton's last statement? A. Not the whole of it.

Q. Did you read any of the testimony disclosed before the Investigating Committee? A. I may have read extracts from it, the same as from the rest published.

Q. Did you read any of the evidence developed? A. I say I may have read extracts from it, as it was referred to.

Q. Did you read the whole of it? A. No, sir.

Q. Did you read the report itself? A. I can not say.

Q. Did you read the conclusion of the report? A. I can not say.

Q. Do you know the conclusion of the Committee--that the report arrived at? A. Yes, sir.

Q. Did you, when you read that, have any opinion touching that conclusion or not? A. About as much of an opinion as I had of the rest that was published.

Q. What was that? A. That it was not the same as evidence in court.

Q. You have no opinion whether the conclusion arrived at by the Committee was correct, or justified, or not? A. Not to my recollection.

Q. Do you remember whether the conclusion at that time accorded with your then conviction?

Mr. Shearman.—That is asking exactly what the opinion was. It necessarily asks that; for the Committee, we all know, arrived at some conclusion. Now, the witness is asked whether his views accorded with that conclusion. It is asking him for his own conclusion directly.

Mr. Pryor.—Not directly—pardon me; perhaps indirectly. We withdraw our challenge.

Mr. Evarts.—We challenge the juror for principal cause.

Q. Have you stated how long you have been in Brooklyn? A. With the exception of four years that I was in the United States service, since 1859.

Q. During the war, you were in the United States service? A. Yes, sir.

Q. As a soldier? A. Yes, sir.

Q. In what regiment? A. In the Marine Corps.

Q. That is the designation of the service? A. Yes, sir.

Q. Who was your immediate superior officer there? A. Do you mean commissioned officer? Major Garland at the time when I first joined the service.

Q. He was a Major in the Marine Corps? A. Yes, sir.

Q. Was your service on shipboard always? A. Not altogether.

Q. How long have you been a housekeeper? A. Nearly six years.

Q. At the same place where you now live? A. Yes, sir; No. 482 North Second-street.

Q. Of what members does your family consist? A. My wife and two children.

Q. No other adult persons? A. With the exception of a servant and a clerk that boards with me.

Q. So that there has been no opportunity for discussion except between yourself and your wife? A. That is all, sir.

Q. You have no inmates there? A. Except the clerk that boards with me.

Q. He is some of your family? A. He boards with me.

Q. Have you attended this same congregation or place of religious worship during the whole of the time you have been in your present house? A. Whenever I have attended church anywhere, with any regularity.

Q. Is your wife a member of that church? A. Yes, sir.

Q. Have you a pew there? A. Yes, sir.

Mr. Shearman.—Is your place of business the same as your house? A. Yes, sir.

Mr. Evarts.—He seems to us to be a good juror.

JUDGE NEILSON.—Take your place.

EDWARD WHELAN called and sworn on a challenge for principal cause.

Mr. Pryor.—Where do you live? A. No. 558 Franklin-avenue, Brooklyn.

Q. Where do you do business? A. In Schermerhorn-street.

Q. What is your business? A. Builder.

Q. How long have you lived in Brooklyn? A. Over 20 years.

Q. Are you a gentleman of family? A. No, sir; I am not.

Q. Do you keep house? A. Yes, sir.

Q. You heard of this controversy? A. Yes, sir.

Q. Have you any person residing with you, composing your household? A. Yes, sir, my brother and mother.

Q. Have you read anything about this controversy? A. I have read in the commencement.

Q. How much have you read; do you remember? A. I read up about as far as Mr. Beecher's examination.

Q. His statement? A. Yes, sir.

Q. Did you read the evidence delivered before the Investigating Committee of the church? A. No, sir.

Q. Did you read the report of the Committee? A. No, sir.

Q. When you ceased reading, had you any impression as to the merits of the controversy? A. I had no opinion as to the respective merits of either one; I was entirely undecided about the matter; at first I had some impression, when I read Mr. Tilton's statement, and Mr. Beecher's statement entirely removed that impression, so that I would be entirely neutral.

Q. Your mind is entirely unbiased? A. Yes, sir; I have not the shadow of a bias on either side.

Q. Are you acquainted with either of the parties? A. No, sir.

Q. Where do you attend church? A. I attend the Catholic Church.

Q. Who is your minister? A. Rev. Father Moran.

Q. Do you go to hear Mr. Beecher? A. I heard him once in my life—ten or twelve years ago.

Q. You have no feeling against either of these parties? A. Not the slightest.

Q. You are not conscious of any bias or inclination in your mind that would prevent your doing impartial justice between the parties? A. Not the slightest, sir.

Q. Have you discussed the matter with any persons at all, sir? A. I may have spoken about the matter in the beginning, but never discussed it.

Q. Have you ever avowed an opinion upon the merits of the matter? A. No, sir; if ever I expressed an opinion, it was a regret that the thing should occur in the community.

Q. You never expressed your opinion as to whether the one or the other was right or wrong? A. No, sir.

Q. Can you recollect whether you ever talked with Mr. Keady upon the subject? A. I do not remember that I have; if I have, it was very casual.

Q. You know Mr. Keady? A. I do, well.

Q. You can not recollect whether you ever had any conversation with him on the subject? A. None that I can remember now upon that, of any consequence.

Q. Do you remember the fact that you had any conversation? A. I do not.

Q. And you do not remember that you ever had any? A. I have not the slightest recollection that I ever spoke to him as to the merits or demerits of the case.

Q. You are quite sure you never expressed any opinion as to the merits of the case to Mr. Keady, or to any other person? A. I do not remember that I have.

Q. You know Mr. Keady? A. Yes, sir.

Q. What is his business? A. A lawyer, sir.

Q. You can not remember that you had any conversation with him? A. I do not remember.

Q. Are you sure that you had no conversation with him? A. I can not just swear; I do not remember it now.

Q. Are you sure you had not a talk with him on the subject since you were summoned as a juror? A. I am sure I had not.

Q. Are you positive you had not a talk with him during the last fifteen days on the subject? A. I am sure I have not.

Q. Have you any intimate acquaintance with Mr. Keady? A. Yes, sir.

Q. You frequently held conversations with him? A. Not very frequently; I met him probably once in two or three weeks.

Q. It is possible that you may have had a conversation about this controversy with Mr. Keady? A. It is not at all possible, sir; I had not.

Q. Has Mr. Keady talked to you, or in your hearing, upon this subject? A. Never in my life.

Mr. Pryor.—It seems to us that the juror is good.

Mr. Evarts.—How long have you lived in your present residence? A. At least five years.

Q. How long have you lived in Brooklyn? A. Over twenty years.

Q. What is your business? A. I am a builder, a house builder.

Q. Is your place of business at your residence? A. No, sir; my place of business is right here, at No. 62 Schermerhorn-st., a carpenter and builder.

Q. Are you a regular attendant at any church? A. Oh! yes, sir.

Q. You have, I presume, a respect for the Gospel and the Christian religion? A. Certainly, sir.

Mr. Evarts.—He seems to us to be a good juror.

Mr. Beach.—Do you think that the Gospel or the Christian religion has any particular interest in this litigation? A. I think it ought not.

Mr. Shearman.—You think that the Gospel could stand even if one particular minister could not?

JUDGE NEILSON.—You may take your seat.

The juror took his seat.

WILLIAM H. DAVIS called and sworn on a challenge for principal cause.

Mr. Pryor.—Have you heard anything about this controversy? A. I have, sir.

Q. I thought so; have you read anything? A. I have, sir.

Q. Have you read the statements published by the respective parties? A. Some of them.

Q. Did you read Mr. Beecher's statement? A. I did.

Q. And Mr. Tilton's? A. I did.

Q. Both of them? A. I believe both of them.

Q. Did you read the report of the Church Investigating Committee? A. I did not.

Q. No part of it? A. No part of it.

Q. Have you formed an opinion as to the facts charged—the controversy or dispute between these parties? A. At one time I had a slight opinion.

Q. What has become of that opinion? A. That was removed after revelations.

Q. Then did you contract another opinion? A. I did not.

Q. It has left your mind in a state of balance? A. In a state of balance.

Q. And you are perfectly poised now? A. I believe so.

Q. No inclination one way or the other? A. I believe not.

Q. No impression for or against either party? A. I believe not.

Q. No bias toward either; do you know personally either of the parties? A. I believe not.

Q. You have heard Mr. Beecher preach? A. I have once in my life.

Q. How long ago? A. Twelve years ago.

Q. Not since? A. Not since.

Q. Where do you live? A. No. 662 De Kalb-avenue.

Q. Is that your residence? A. It is.

Q. Are you engaged in business? A. I am.

Q. What business? A. Real estate.

Q. How long have you been engaged in real estate? A. About four years.

Q. How long have you resided in Brooklyn? A. About twenty-two years.

Q. And have you no opinion now in regard to the truth or untruth of the charges made in this controversy? A. I don't think I have.

Q. You really, conscientiously do not think you have? A. I don't think I have.

Q. How long since you divested yourself of the decided opinion you once had?

JUDGE NEILSON.—He did not say he had a decided opinion.

Mr. Beach.—Did you say you had a decided opinion? A. No; a slight opinion.

Q. How long since you lost that slight opinion? A. About midsummer.

Q. Do you know the occasion of your losing that opinion? A. Yes, sir.

Q. What was it? A. Counter statements.

Q. From whom? A. I do not remember now.

Q. You do not remember from which party that counter statement proceeded? A. No; I do not.

Q. Have you debated the matter since with anybody? A. I have talked of it sometimes.

Q. Have you never avowed any opinion or impression to any one in regard to it? A. I think not.

Q. Are you sure? A. I might say I was sure.

Q. You are sure? A. I will say so.

Q. Have you heard other persons discuss it in your presence? A. Probably I have; it is common talk.

Q. Have you ever maintained any proposition in regard to it? A. I think not—no.

Q. Did you ever argue it yourself with any one? A. Not for any length of time; I have spoken about it.

Q. Did you ever argue it? A. No, I think not.

Q. Do you know what you have said about it? A. I do not think I do, because I took no interest in it.

Q. You took interest enough to read about it? A. Yes, sir.

Q. Then you lost your interest after reading about it? A. Yes, sir.

Q. After reading various statements, you lost your interest about it? A. Yes, sir.

Q. You have not inquired about it since? A. No, sir.

Q. Or talked about it since? A. I probably have in the meantime.

Q. Have you mentioned it to any one since? A. I do not know that I have

Q. What is your opinion on that subject—whether you have mentioned it or not? A. Whether I have mentioned it? I may have done so; I do not remember doing so.

Q. You do not remember doing so? A. I do not.

Q. Do you mean that it is possible you have? A. It is possible.

Q. No, is it probable? A. It is probable.

Q. Well, with whom did you probably talk about it? A. Well, I see a great many people in the course of my business; it is a subject that is in everybody's mouth, and anybody is likely to mention it to me; I can't remember who.

Q. You don't remember any one person with whom you talked about this matter? A. I can't—that I can call back—yes; a Mr. Fitzgerald, right opposite where I live.

Q. What is his business? A. Real estate.

Q. When did you talk with Fitzgerald about it? A. On the afternoon that I received the notice on this jury.

Q. What was that conversation? A. That conversation was that "They have got me on this jury."

Q. Is that all? A. No, sir, he says, "Indeed!" he saw the man step up my stoop; I was in his office. He says, "I have got my opinion; they could not take me on the jury;" that is all.

Q. What did you say to him? A. Well, I said, "I have got no opinion that I know of."

Q. In reply to that you said that you had no opinion? A. I had no opinion.

Q. And are you quite sure that you have no opinion now? A. Well, I think not; try me.

Q. Well, are you sure? A. Try me, sir.

Q. But I can't see into your heart, sir? A. Well, I think I have no opinion.

Mr. Pryor.—I take your word.

The Juror.—Yes, I think I have no opinion.

Mr. Pryor.—Only I ask you to be as positive as you can? A. I will try to be so.

Q. Are you absolutely sure that you have no opinion? A. I have no opinion.

Q. Have you no impression? A. No impression now.

Q. Now? A. Nor haven't had for some time.

Q. How long since you had an impression? A. Not since midsummer.

Q. Have you talked this matter with your family? A. No, sir.

Q. Where do you go to church? A. When I go, I go to the Episcopal.

Q. Do you go often? A. No, sir.

Q. Do you belong to any church? A. No, sir.

Q. Does your family belong to any? A. No, sir.

Q. What Episcopal church? A. I am not particular; I go to any that I happen to be nearest to, passing.

Q. Do you confine your attendance to the Episcopal church? A. No, sir; I am not very particular about that.

Q. Then you go to other churches? A. Yes, sir.

Q. You say you have no inclination toward one or the other of these parties? A. Not the slightest.

Q. You have no liking for one more than the other? A. No, sir.

Q. You have no prejudice against either of them? A. No, sir.

Q. Is your wife a member of any church? A. No, sir.

Q. You conscientiously believe that you would go into the jury-box without any impression whatsoever? A. I think so.

Q. Not the faintest? A. Not the faintest.

Q. Have you a distinct recollection of the evidence that you once read now? A. No, sir.

Q. That has faded from your mind? A. That has faded from my mind.

Q. Do you think that your mind is in a state of entire absence of prepossession or prejudice, as it was before you read anything on the subject? A. I know it is.

Q. You know it is? A. Yes, sir.

Mr. Beach.—The challenge is withdrawn, your Honor.

Mr. Evarts.—We propose to challenge. [To the Juror.] You say that you are in real estate? A. Yes, sir.

Q. Do you mean, by that, you buy and sell real estate with your own money, or are a broker? A. I should qualify that by saying that I do more in collecting and renting; that is my principal business; I do not keep an office, a regular office.

Q. Are you an owner of real estate? A. I am, sir.

Q. In this city? A. In this city.

Q. Well, you collect rents also for other people, I suppose? A. For other people.

Q. For what estate or estate owners do you collect rent? A. I collect rent for Mr. J. Coughlan in Van Buren-st., near Marcy-ave.; I collect rent for a party by the name of Spotten, in Broadway, near Thirty-first-st., I don't remember the number.

Q. Broadway in this city? A. No, sir, in New York.

Q. His first name? A. S. Spotten.

Q. What number Broadway? A. I don't remember the number.

Q. Broadway, near Thirty-first-st.? A. Yes, sir.

Q. Does he keep a store there? A. He keeps a store there.

Q. Now, where is your place of business? A. Do you want any more, sir? I can give you somebody nearer than that, now I think of; there is Mr. Johnson in DeKalb-ave., near Throop.

Q. Give us his first name? A. Edward Johnson.

Q. Well, sir, any more? A. I can't think of any more just now.

Q. You have been in that business four years? A. About four years.

Q. Where is your office? A. My office is at my residence.

Q. You have no other office? A. No, sir; private house.

Q. Have you any office at all—you have a residence? A. A residence; I receive calls there, yes.

Q. Now, have you a family? A. I have a wife.

Q. How long have you been married? A. Between nine and ten years.

Q. And what family live there with yourself and your wife? A. Do you want the tenants of my property; do you want any tenants?

Q. No, I don't know anything about your——

The Juror.—I can give you a dozen names, if you want, within the last two years.

Q. I mean in this family? A. In that same house?

Mr. Evarts.—This household; who constitute your family? A. The name of Gilchrist did at that time.

Q. At what time? A. Last summer.

Q. Well, my question is what your family is composed of? A. Now, sir, at the present time?

Q. Yes, now? A. My mother, my wife, and myself.

Q. And nobody else? A. Nobody else.

Q. Now, before you took up the business you are now in, what had been your employment? A. Picture-frame gilder.

Q. Where carried on? A. I carried that business on in Canal-st., No. 188.

Q. In New York? A. In New York.

Q. Alone, or in partnership? A. Alone.

Q. What, the name of William? A. William H. Davis.

Q. How long did you carry it on there? A. About 15 years, I think.

Q. Have you ever lived in other cities than New York? A. I have lived in the city of London, England.

Q. Are you an Englishman? A. I am an Englishman; I have lived in the principal cities of the southern part of the world, I may say, but the longest time I have lived has been in London and New York.

Q. How long since you were naturalized? A. About 20 years ago.

Q. In New York? A. In Brooklyn.

Q. Well, in the state of New York? A. Yes, sir.

Q. Have you lived in any other cities in the state of New York? A. I have lived in Toronto a few months, but my home at that time was in Brooklyn.

Q. What business did you carry on there? A. Same business—gilding, picture-frame manufacturer.

Q. At Toronto? A. At Toronto.

Q. Had a shop there? A. Had a shop there.

Q. Three or four months? A. Three or four months; six months, possibly.

Q. Did you go there to make it a permanent place of business? A. No, sir.

Q. Did you go there for a particular job of gilding? A. Yes, sir.

Q. What was that job? A. On the court-house; working on the court-house; for the court-house.

Q. You were to work on the court-house? A. I worked for another party there at that time, about 18 or 19 years ago.

Q. Have you ever lived in Buffalo? A. I have been to Buffalo; through Buffalo.

Q. Have you ever lived in Buffalo? A. No, sir, I have not.

Q. Have you been there much? A. No, sir; only once.

Q. Where were you going when you went through Buffalo? A. I went to Buffalo, stayed there over night, and went the next day to Toronto.

Q. And that is the only time you have been there? A. That is the only time I have been in Buffalo.

Q. Have you ever lived in Chicago? A. No, sir.

Q. Have you ever been there? A. No, sir.

Q. Now, you say that you at one time had an opinion in this case? A. Yes, sir.

Q. And that it was changed? A. Yes, sir.

Q. By a counter statement? A. Yes, sir.

Q. And you don't remember which side that came from; that counter statement? A. No, sir; I don't remember what was the cause of that.

Q. But it was a statement counter to your opinion? A. It was a statement counter to my opinion.

Q. And changed it? A. And changed it, yes; left me without any opinion.

Q. And you don't remember which side that opinion was on? A. I do not.

Q. You remember which side your opinion was, don't you? A. I don't remember anything about that matter, for a reason that, I think, will be sufficient to you, sir.

Q. What is that? A. The reason is that in the early part of September I lost all my children suddenly, and that put that matter entirely out of my head.

Q. Well, you mean to say that you do not now remember which side your opinion was? A. I could upon a little reflection probably, but I haven't given the thing a consideration; I did not expect to be called on this panel, as I served here last midsummer. If I had expected to have been called on this panel, I might have been more observing.

Q. What happened to your business as a gilder that changed your pur-

suit? A. Well, sir, it is hard to say whether I gave it up, or it gave me up; it was one thing or the other.

Q. It came to an end? A. It came to an end.

Q. Was it the only means of livelihood or making money that you had, that business, at that time? A. No, sir.

Q. What other pursuits were you engaged in? A. I had some property in Brooklyn.

Q. When you were a gilder? A. Yes, sir.

Q. Had you any other employment? A. No, sir.

Q. Pursuit of any kind? A. No, sir.

Q. You lived in London, in England? A. I did, sir.

Q. What is your age? A. My age is 48.

Q. When did you arrive in this country? A. I forget the date; I have been here about 23 years.

Q. Were you married when you came? A. I was, sir.

Q. To your present wife? A. No, sir.

Q. When did your wife that came with you from England die? A. She died in 1857.

Q. And your present wife was a Brooklyn person or a New York person? A. A New York person.

Q. Now, you say that you met with a calamity in the loss of your children this present season? A. Yes, sir.

Q. Did you lose all your children? A. I lost them all—all my young children by the second wife.

Q. Have you grown children? A. Yes, sir; I have two sons

Q. You are a housekeeper; do you occupy with your family the whole house? A. I do not, sir; I let the third floor.

Q. To whom? A. To a young man that is in the grocery store on the corner of Marcy-avenue and DeKalb.

Q. What is his name? A. His name is Mackintosh.

Q. Now, can you give us a little more exactly the time that you were naturalized? A. I don't think I can, sir; I can bring the papers with me at any time; I think it must be about 1856—'56 I think it must be; I can't be certain about that.

Q. When did you arrive here? A. Been here about 23 years.

Q. Well, that would make it rather a rapid naturalization? A. Twenty-three; it may be twenty-four years I have been here; I can't say exactly.

Mr. Shearman.—Did we understand that you did own real estate? A. I do own real estate, sir.

Q. Where is it, if you please? A. On DeKalb-avenue; some on Quincy-street, some on Greene-avenue.

JUDGE NEILSON.—Anything to suggest, gentlemen?

Mr. Beach.—We have none, sir.

Mr. Evarts.—We do not withdraw the challenge; it is for your Honor to dispose of.

JUDGE NEILSON—[To the juror]. Take a seat, sir.

EDWARD BLUNT called and sworn on a challenge for principal cause.

Mr. Pryor.—Where do you live? A. No. 231 Thirteenth-st., Brooklyn.

Q. Do you keep house? A. I do.

Q. Have you a family? A. I have.

Q. Wife and children? A. Wife and children.

Q. Are you in business? A. At No. 77 Beekman-st., New York City.

Q. What is the business? A. Paints; paint business.

Q. Have you read about this controversy? A. I did at the first part.

Q. Have you talked about it? A. Very little.

Q. When did you cease reading about it? A. That I could not tell.

Q. Do you know what you read about it? A. I only remember that when they first commenced the trouble I then read some about it.

Q. Can you tell what publications you read, what papers you read; I do not mean newspapers? A. Yes, sir, I read the *New York Times.*

Q. No, no; I do not mean newspapers, but what statements or productions? A. No, sir; I could not.

Q. Do you remember whether you read Mr. Tilton's letter to Dr. Bacon? A. No, sir; I did not read that.

Q. Did you read Mr. Tilton's first statement? A. I think not.

Q. Did you read Mr. Beecher's statement? A. I did not.

Q. You have not read that? A. No, sir; I read lately a statement or an extract from some paper that they said was written by Mr. Beecher.

Q. Yes, a short editorial? A. Yes, I think I saw that; picked it up in a paper in the library one day.

Q. Did that make any impression upon your mind? A. Hardly.

Q. Have you any impression upon your mind now in regard to the merits of this controversy? A. Well, that is a hard question for me to answer, the way it is put.

Q. Have you any opinion as to the truth or untruth of the charge against Mr. Beecher? A. No, sir.

Q. You have none whatever? A. No, sir.

Q. Have you any inclination of opinion? A. I would like to qualify that; not any more than I had before the whole affair commenced.

Q. Before what? A. Before these troubles commenced.

Q. Had you any opinion then? A. Knew nothing about them then.

Q. Therefore you have no opinion at all; is that it? A. No, sir.

Q. None whatever? A. No, sir; I haven't, any more than hearing the same stories of any one else.

Q. You have no leaning toward one or the other of the parties? A. No, sir; none at all.

Q. Have you any prejudice against either of them? A. Well, hardly.

Q. Do you know either of them personally? A. I do not.

Q. Do you go to Mr. Beecher's church? A. I have been there once in fourteen years.

Q. How long ago? A. That is the last year.

Q. What church do you attend? A. Unitarian Church.

Q. Which one? A. Formerly Dr. Farley's, now Mr. Putnam's, corner of Pierrepont-st., and Monroe-place.

Q. Are you a member of the church? A. I am.

Q. And your family—your wife a member of the church? A. Yes, sir.

Q. I suppose you attend pretty regularly? No, sir; I don't.

Q. Are you clear that your mind and judgment has no bias or inclination toward either one or the other of these parties? A. Yes, sir.

Q. That you have no feeling toward one or the other? A. No, sir; I have no feeling.

Q. Or against one or the other? A. No, sir; I have not.

Q. That you have no opinion, or conviction, or judgment, in respect to the truth or untruth of the charge of Mr. Tilton against Mr. Beecher? A. Well, I can hardly answer that; I have never investigated it, or read much about it; paid no attention to it from the first particularly.

Q. That is very clear; but beyond that, have you any opinion as to the truth or untruth of that charge? A. Well, I think if my opinion went any way, that I should doubt charges until I heard them myself.

Q. Then you have not an opinion now? A. Well, I haven't thought one way or the other about it, or paid any attention to it.

Q. But I thought I understood you to say that you had an opinion? A. I I would put my mind down on to the opinion, I should not believe it without it is brought to my notice.

Q. Well, haven't you put your mind down on it? A. No, sir, I haven't.

Q. Didn't you put your mind down on it just now, when you told me—when you spoke of it? Are you not revolving the subject now? A. I can't very well, as I haven't read all the charges and the proofs, or anything of the kind.

Q. But the issue is presented to you now whether he is guilty or not guilty; have you any opinion upon that now? A. No, sir, I haven't.

Q. Positive opinion? A. No, sir.

Q. And you feel conscientiously that you could go into the jury-box and pronounce an opinion upon the evidence, untrammeled and unembarrassed by anything you now feel or know? A. The evidence I would receive?

Q. Yes, sir? A. Yes, sir, I could.

Q. You are not conscious that when you would go into the jury-box you have an inclination or disposition one way or the other? A. No, sir; I have not.

Mr. Pryor.—That will do, sir. We withdraw the challenge.

Mr. Evarts.—We make the challenge. [To the Juror.] Mr. Blunt, how long have you lived in Brooklyn? A. I was born here, sir.

Q. Then how old are you? A. Thirty-four.

Q. And how long have you been married? A. I have been married since 1867; 1866 I should say.

Q. And how long have you lived in your present residence? A. This is the second year I am in it.

Q. Where did you live before? A. In Bergen-street.

Q. And have you parents living here? A. My mother is living, not in the city; at Bay Ridge, near here.

Q. But they were residents here when you were born? A. Yes, sir.

Q. Where is your place of business? A. In Beekman-street.

Q. In New York? A. In New York; yes, sir.

Q. What number? A. No. 77 Beekman-street; I was at No. 78; I have moved across to No. 77 Beekman-street.

Q. And what firm? A. The firm are manufacturing American rubber paint.

Q. What firm? A. The firm was Blunt & Moore; it was then dissolved, and I have taken it alone now.

Q. You are alone now? A. Yes, sir.

Q. It was formerly William R. Blunt? A. No, sir; that is my brother; the firm was formerly Blunt & Moore.

Q. Who is the clergyman at Dr. Farley's church now? A. Mr. Putnam.

Q. And how long have you been an attendant in that congregation? A. As a member of the church?

Q. Well, an attendant? A. Well, I went to it when I was a boy; my father went to it.

Q. Brought up in that denomination? A. Yes, sir.

Q. Your wife the same? A. My wife is rather Quakerish; she now attends the Unitarian Church.

Q. Now, have you abstained purposely from reading this? A. No; I didn't like it, and not only that, but I hardly had the time; all the papers I read would be going down in the cars mornings, and I would generally glance over, and when I got over to business I paid no more attention to it.

Q. And what papers have you been in the habit of reading? A. The *New York Times*.

Q. And you are free from feeling on one side or the other? A. Well, I have no feeling toward one way or the other.

Q. Have you any personal acquaintance with either? A. I have not, sir.

Q. At what number in Bergen-street did you live? A. I think it is either 279 or 379, which I don't remember, between Fourth and Fifth-avenues.

Mr. Evarts.—I withdraw the challenge.

JUDGE NEILSON.—Take your seat there, sir. I would ask the counsel whether these twelve jurymen stand as the jury in the case?

Mr. Morris.—No, sir.

Mr. Shearman.—It is agreed to make the peremptory challenges to-morrow morning.*

FOURTH DAY, JANUARY 8, 1875.

Mr. Morris.—We will excuse Mr. Austin Packard.

JUDGE NEILSON.—Retire, Mr. Packard.

* In a civil action each party is entitled to *two peremptory* challenges (1 L. 1847, p. 130, c. 134). The right is absolute, and continues till the juror in question is sworn (*Lindsley* v. *People*, 6 Park. Cr. 233).

MICHAEL BURNS called and sworn on a challenge for principal cause.

Mr. Beach.—You understand the nature of this litigation? A. Well, I have heard a little of it as I came in the court Monday.

Q. Do you understand what the suit is about? A. I have heard since I came in here.

Q. Have you heard of it before? A. I have a little of it; yes, sir.

Q. But have paid but little attention to it? A. Very little.

Q. Have you read the accounts, upon either side, which have been published? A. I have read a little, and I would like to explain why I read so little of it; I haven't read much in six or seven years; my eyesight got weak, and I couldn't read but three or four lines at a time; that is the reason I have not read it.

Q. It was not entirely, then, from want of interest in the question? A. No.

Q. Have you heard conversations upon the subject? A. A little; not much.

Q. No lengthened discussions or controversies? A. No, sir; I have not.

Q. Have you received any impression or formed any opinion? A. Not the slightest.

Q. And your mind is entirely unbiased and uninfluenced in regard to the truth of the charges against Mr. Beecher? A. As free as the wind, sir.

Q. What is your business? A. I haven't got any business at present; I have retired out of my business about four years ago; my last business was building houses and selling them—when I could.

Q. That was in prosperous times? A. It is a little bad now; it don't pay to build.

Q. You are a man of family, I take it, sir? A. Yes, sir.

Q. Are you a professor of Christianity? A. Yes, sir.

Q. To what church are you attached? A. I belong to the St. Vincent De Paul's Roman Catholic Church, North Sixth-st.

Mr. Beach.—We withdraw our challenge.

Mr. Evarts.—We renew the challenge. [To the juror.] How old are you? A. I am 57 years, sir.

Q. And how long have you lived in Brooklyn? A. I have lived here about 28 or 29 years.

Q. Were you born in this country? A. No, sir; I was born in Ireland.

Q. Have you lived here ever since you came? A. I have lived in the state of New York, between here and Dutchess county, since I came to this country, in 1836.

Q. I don't know that you have given us your present place of residence? A. No. 80 North Eighth-st., Williamsburgh, Eastern District, Brooklyn.

Q. How long have you lived there? A. Since 1863.

Q. Now, haven't you talked about this business more or less? A. I have a little, but a mere trifle.

Q. In your own family? A. Well, my wife and me might speak about it sometimes.

Q. Well, had she any opinion about the matter? A. No, sir; she is getting pretty old now; she don't talk much.

Q. Are you and your wife the whole of your family at present? A. Me and my wife, sir; my children are all married, and keep house for themselves.

Q. Living here in Brooklyn? A. Yes, sir.

Q. Well, have you talked with them about the matter? A. No; I have heard my son say something about it, once in a while, but did not pay any particular interest or attention to it.

Q. Then you, as a family, have not taken any particular interest in the matter? A. Not the slightest.

Q. Haven't taken sides in it? A. No, sir; one is as friendly to me as the other.

Q. Well, in regard to your associates and friends in your church, have you talked there about it? A. Not the slightest.

Q. There is no feeling there on the subject? A. Not a particle, sir.

Q. Now, you haven't been absolutely doing nothing for four years, have you? A. No, sir; it takes all my time fixing up my own little places.

Q. Have you any connection with any of the lawyers here specially? A. Not the slightest, sir; I have seen Mr. Morris a few times, but I do not know as I ever saw any of the other gentlemen.

Q. Well, you stand indifferent as to the whole case and all its surroundings? A. Yes, sir.

Mr. Evarts.—We submit the case to your Honor.

JUDGE NEILSON.—[To the juror]. Take a seat in the jury-box, sir.

Mr. Beach.—At this moment we don't propose to interpose any further challenges; we may before the jury is finally completed.

Mr. Evarts.—We will take your Honor's direction about that as to the exhaustion by one party or the other of their challenges now.

JUDGE NEILSON.—That will be the rule, I think.

Mr. Evarts.—That the plaintiff must exhaust his before we make ours?

JUDGE NEILSON.—Isn't that the rule?

Mr. Beach.—It is not.

Mr. Evarts.—That is our notion.

Mr. Beach.—Your Honor will perceive that, upon this subject of challenges, by the order which you have made, you have imposed upon the plaintiff the whole duty and obligation of initiating the examination in regard to jurors. We have considered it, sir, rather onerous, so far as the mere performance of labor is concerned. It would have been eminently fair, I think, if the rule of alternation had been adopted in regard to challenges; it would have been an equitable division of labor at any rate. But in regard to this right of peremptory challenge, sir, I apprehend it is not a subject of discretion on the part of the court. At any time before the jury is sworn, at any rate, we have the absolute right to interpose a challenge.

JUDGE NEILSON.—Yes; I suppose you have.

Mr. Beach.—We shall not exercise it now.

Mr. Evarts.—If your Honor please, does your Honor understand that the challenge for principal cause and for favor is exhausted?

JUDGE NEILSON.—Yes, unless something new has come to your mind.

Mr. Evarts.—I am not speaking in reference to our side in particular, but

only as to the situation in which we stand on both sides now in reference to peremptory challenges, that we should understand whether the challenges for favor are now over unless upon something that comes to our knowledge after this.

JUDGE NEILSON.—Is that so understood, gentlemen?

Mr. Evarts.—In other words, if our learned friends propose to offer any evidence, or renew challenges for favor, that they should do it now. I suppose we are entitled, on both sides, to have that matter over and understood to be over when we come to our peremptory challenges; otherwise we might be somewhat in the dark in regard to it, and we shall agree that if something comes to the knowledge of our learned associates and our learned opponents between now and the actual impanneling of the jury, perhaps it is always in time.

JUDGE NEILSON.—You agree to that, gentlemen, in substance?

Mr. Beach.—I do not think that I should agree to a proposition which is not sound practice. If anything has come to our knowledge since the last session of the court, which we should in any emergency see fit to present to your Honor's discretion as a matter of challenge to any gentleman on the jury, we should have a right to do so.

JUDGE NEILSON.—I understand that to be admitted.

Mr. Beach.—No, he wants to limit it to any subject which should come to our knowledge after this particular moment.

JUDGE NEILSON.—I think it should be after we closed yesterday, treating both sides in that way.

Mr. Evarts.—It is not perfectly clear that neither side should be compelled to exhaust his peremptory challenges until the body of the jurors upon which that challenge is to be exercised is determined, and if my learned friends have the purpose of renewing a challenge for cause against any one of these gentlemen, to save the expression of intelligence coming to either side, between the present moment of determining their action and decision and the final conclusion of the matter, because a new state of facts and knowledge is thus imposed; but why there should be a reservation in respect to knowledge now possessed, although it has only been acquired since we adjourned, does not strike me with any very great force.

JUDGE NEILSON.—It seems to me each of you ought to be at liberty to avail yourselves of any objection which rests on information which comes to you after the jurors have taken their seats, dating back as far as yesterday afternoon.

Mr. Evarts.—That we agree to. And now the question as to the time of exhausting it; whether before or after the peremptory challenges.

JUDGE NEILSON.—Either, I think, as best suits your convenience, so as to get at the vital thing irrespective of the form.

Mr. Evarts.—[To the last accepted juror.] Mr. Burns, we won't trouble you any longer.

The Clerk.—Mr. Burns, you are excused, and if you desire you can retire.

JOHN F. TAYLOR called and sworn on a challenge for principal cause.

Mr. Fullerton.—Where do you reside? A. In Williamsburgh.

Q. Have you read more or less in regard to this controversy? A. Yes, sir; I have read more or less.

Q. Formed an opinion? A. A modified opinion.

Q. What is your occupation? A. I am a cork dealer and manufacturer.

Q. Do you belong to any religious society? A. No, I do not.

Q. Do you attend divine service? A. Sometimes.

Q. What denomination? A. I go to some of the churches in Bedford-avenue of different denominations.

Q. Please to speak a little louder, so that these gentlemen can hear you. I didn't understand what denomination. A. I go to churches of different denominations in Bedford-avenue, and some other churches in the city.

Q. Have you ever attended Plymouth Church? A. Only once, sir.

Q. How long ago was that? A. Over 20 years.

Q. You say you have a modified opinion? A. Yes, sir.

Q. Do you mean to say that it does not exist now as it did originally? A. I consider my mind at present neutral.

Q. Well, that would indicate that you have no opinion at all? A. Not for or against either party.

Q. How did you mean to be understood, then, when you said you had a modified opinion? A. In the same sense.

Q. That it was no opinion at all? A. It is pretty nearly the same, I should judge, as no opinion at all.

Q. Did you ever entertain any opinion upon the subject? A. Yes, sir.

Q. At one time you did? A. Yes, sir.

Q. And it yielded to something, did it? A. Yes, sir; reading further left me without any accurate opinion to go by—that I could go by, at least, so as to decide on which party there was right or wrong.

Q. When were you summoned as a juror? A. I think it was on Thursday before New-Year's; I think so, Wednesday or Thursday.

Q. Have you conversed with any one, since you were summoned, upon the subject? A. I think not.

Q Did you converse with many persons prior to your being summoned? A. No, not many; I have got but a few associates and acquaintances—no opportunity to converse much.

Q. Did you ever participate in any discussion on the subject? A. Yes, sir; I exchanged some words in relation to it.

Q. On more than one occasion? A. It might have been more than one occasion.

Q. Do you recollect of more than one? A. Not distinctly.

Q. In that discussion sides were taken? A Yes, sir; no, I don't know that there was any discussion; I don't think there was. It was simply a conversation about it.

Q. An exchange of views? A. Just about like that.

Q. And without combating the views of each other? A. Nothing of that kind; oh! no.

Q. Won't you state, Mr. Taylor, what you have read upon this subject,

please, a little more particularly? A. I think I read the statement by Mr. Tilton, and I think I read that by Mr. Beecher, but the opinions of both were so positive and so opposite that I could not decide between them, not knowing either party—not knowing anything about them—no means of deciding on which side there was fact or fiction.

Q. Which did you read first? A. I suppose whichever appeared first; I forget which that was.

Q. Don't you recollect? A. I believe Mr. Tilton's statement appeared first; I think so—I won't be positive.

Q. Did you read the Bacon letter? A. I may have done, but I have no distinct recollection at all of its contents; I don't know what it contains; I don't know now.

Q. How early was it that you formed the opinion which you speak of? A. I suppose it must have been just about as soon as ever the statement was made, and then that opinion changed when a counter statement was made.

Q. Do you mean to be understood that your opinion changed? A. Certainly I do.

Q. That is, from one side to the other? A. Just as any person's would when they would see evidence on one side and evidence on the other, and not know on which side the truth was.

Q. Do you mean to be understood that you gave up your opinion, or that you changed it from one party to the other? A. No, sir; I must not be understood as meaning that. I mean that it left my mind undecided either way. I could not tell on which side there was right or wrong.

Q. Do you know either of the parties to the controversy? A. No, sir.

Q. You have no acquaintance either with Mr. Tilton or with Mr. Beecher? A. Nothing whatever or in relation to any persons associated with them.

Q. How? A. No acquaintance with any person associated with them in any manner, nor with their churches, if they belong to churches, both sides.

Q. Did I ask you how long you had lived in Brooklyn? A. I don't think you did.

Q. Please state, then? A. About eighteen years.

Q. Have you carried on business during all that time? A. No, sir.

Q. Where did you carry on business before you entered into business in Williamsburgh? A. I was with a firm in New York as a workman.

Q. What firm was that? A. Sparkman & Truslow.

Q. Are you a man of family? A. Yes, sir.

Q. Does your family attend divine service? A. Not regularly.

Q. When they do attend, where do they attend? A. They go to Lee Avenue chiefly.

Q. What denomination? A. I believe they are Dutch Reformed; I think that is the name they have; they sometimes go to Dr. Porter's church.

Q. Is that Dr. Carroll's? A. It may be; I don't know the name of the pastors.

Q. Have you discussed this matter in your own family? A. No, sir; no discussion; I have got only a daughter, that is all—a grown-up girl.

Q. What is her age? A. It may be about twenty or twenty-two.

Q. Is your wife not living? A. No, sir.

Q. Your family consists, then, of your daughter and yourself? A. Yes, sir.

Q. Is your daughter unmarried? A. Yes, sir.

Q. Have you ever discussed the matter with her? A. Never a discussion; no, sir. I have mentioned it, and that is all; no discussion about it whatever.

Q. Have you ever expressed to any one an opinion? A. Oh! yes; at first I did, as I mentioned, I think.

Q. Frequently? A. No, the opportunities were not frequent.

Q. When you did express one, was it a decided opinion? A. It was not; it could not be decided, because I had no means of making it decided. It was a newspaper report, and I receive with a good deal of reservation reports of newspapers, until they meet with further confirmation.

Q. This was not a newspaper article that you saw, was it? I understood you to say it was the statements of the parties? A. Well, as published in the papers—that is all.

Q. Did you express opinions frequently? A. No, I had no opportunity to express them frequently.

Q. Now, be kind enough to tell me to whom you expressed the opinions that you did express? A. They were strangers who happened to come in about work or business, and that is about all, as near as I know. It never interested me to say so very much.

Q. Can you recall the names of these persons? A. No, I could not.

Q. How came the subject to be introduced? A. Because it is a popular subject, I suppose, or one of those things that people will talk about, may be.

Q. Do you know whether you introduced it or whether your visitors introduced it? A. I do not.

Q. Can't you tell upon any one occasion whether you or he introduced the subject? A. I don't think I could call that to mind. I may have done so; not caring enough about it to recollect sufficiently, it passed out of my mind.

Q. Do you think if you went upon this jury that you could render a verdict strictly according to the evidence that would be adduced before you, without reference to anything that you have read or heard upon this subject? A. Yes, sir.

Q. And uninfluenced by any opinion, whether modified or otherwise, which you may have formed in regard to it? A. I think I am entirely free to decide according to such facts as I hear.

Q. Without bias or prejudice? A. Entirely, I think; yes, sir.

Q. Give us your address, if you please? A. No. 56 Boerum-street.

Q. And your place of business, please? A. Pearl-street, No. 300.

Mr. Morris.—Boerum-street is in Williamsburgh? A. Yes, sir.

Mr. Fullerton.—We withdraw the challenge.

Mr. Shearman.—We are satisfied.

JUDGE NEILSON.—Take a seat, sir.

Mr. Beach.—We are waiting, sir, under the supposition that our friends on the other side are consulting, but they apprise us that they are waiting for us, and we therefore peremptorily challenge Mr. Ira Down.

The Clerk.—Mr. Down, step aside, sir.

WILLIAM T. JEFFREY called and sworn on a challenge for principal cause.

Mr. Fullerton.—Have you formed an opinion in regard to this controversy? A. I have, sir.

Q. Is it a very decided one? A. Well, it is not very decided; no, sir.

Q. Would it yield to evidence? A. Yes, sir.

Q. Do you think that you could enter the jury-box and decide the case according to the evidence, and it alone, uninfluenced by any opinion that you may have formed? A. I think I could.

Q. You would try to do so, at least? A. Yes, sir.

Q. Have you discussed this matter frequently? A. Yes, sir.

Q. Warmly? A. Not very warmly; no, sir.

Q. Taken sides? A. Yes, sir.

Q. Always been upon one side, I suppose? A. Yes, sir.

Q. Has your opinion changed at all in its degree since the controversy commenced? A. Well, yes, sir.

Q. Is it stronger or weaker than it was in the first instance now? A. I think it is weaker than it was at first.

Q. Giving way somewhat. Where do you attend Divine services? A. I go to the Episcopal Church most of the time.

Q. Are you a man of family? A. No, sir.

Q. Where do you carry on business? A. In New York.

Q. Alone or in partnership? A. I am alone.

Q. What is your business? A. I am a flour broker.

Q. Where do you carry it on? A. 17 Moore-st.

Q. Where do you reside? A. 158 Elliott-place.

Q. How long have you resided in Brooklyn? A. I have been here 12 years.

Q. Have you ever attended Plymouth Church? A. I never have yet at service. I went there once to hear Dickens read, and I went to an organ concert there.

Q. You are a regular attendant at the Episcopal Church? A. Yes, sir.

Q. Who is pastor of the church where you attend? A. Rev. Dr. Browne of the church that I belong to.

Q. Are you acquainted with either of the parties to this controversy? A. No, sir.

Q. Not even a speaking acquaintance? A. I know them by sight, that is all.

Q. Does your father's family reside here? A. I live with my mother; I have no father.

Q. You reside with your mother? A. Yes, sir.

Q. She resides in Brooklyn? A. Yes, sir.

Q. Where does she attend service? A. She goes to the Church of the Redeemer, Fourth-ave.

Q. An Episcopal Church? A. Yes, sir.

Q. What have you read upon this subject? A. Well I have read about all the newspaper articles—the reports.

Q. Did you read the statements of the parties? A. Yes, sir.

Q. Have you ever expressed an opinion? A. Yes, sir.

Q. Frequently? A. Well, several times; yes, sir.

Q. How recently have you expressed one? A. I think within a month.

Q. Not since you were summoned? No, sir.

Q. When were you summoned? A. I was summoned, I think, it was the evening before New Year's Day.

Q. To whom did you express the opinion within the month past? A. I could not say particularly who.

Q. Don't you remember? A. I can name one man; yes, sir.

Q. Name him, please? A. His name is Henry Dillon.

Q. Where does he reside? A. I don't know where he lives; he lives in Brooklyn somewhere.

Q. Where was it? A. At the New York Produce Exchange.

Q. In New York? A. Yes, sir.

Q. Was it a discussion on this subject? A. We were talking it over; yes.

Q. He expressed an opinion? A. He did.

Q. And you expressed an opinion? A. I did.

Q. Did you differ in opinion? A. Yes, sir.

Q. Did you discuss it at all? A. We talked about it a few minutes.

Q. Well, that is the way to discuss—to talk about it? A. Yes.

Q. Did you discuss it? A. Yes, sir.

Q. You expressed your views and he his? A. Yes, sir.

Q. Pretty warmly? A. No, sir; not warmly.

Q. How long did the discussion last? A. Perhaps a few minutes.

Q. Any third person present? A. I don't remember that there was.

Q. About how long ago was that? A. It was within a month; I can not say exactly how long it was, but as I remember it was within a month.

Q. Do you think that is the last time that you have expressed an opinion? A. I think it is; yes, sir.

Q. Now, Mr. Jeffrey, you are an intelligent gentleman and understand the duties of a juror. I put the question to you again, and you must be the judge, of course, whether you think you have control over your own mind sufficiently—and conclusions whatever they may be—to go into the jury-box, and decide this question according to the sworn evidence of the witnesses that come before you, unbiased, unprejudiced, and uninfluenced in the slightest degree by any preconceived opinion that you may have formed? A. I think I could.

Q. And you will try to do so? A. Yes, sir.

Q. I will put this question to you: judging from what you know of yourself, do you not think that you would receive with greater favor that evidence which was in harmony with your present view than you would that which was antagonistic to it? A. I do not think I would, sir.

Mr. Fullerton.—We withdraw the challenge.

Mr. Evarts.—Are you in business alone? A. Yes, sir.

Q. What line of your business are you in? A. I am a selling flour broker.

Q. And you are a member of the Produce Exchange? A. Yes, sir.

Q. How long have you been so? A. I have been a member for over 10 years.

Q. And acquainted with all the dealers there? A. Most of them; yes, sir.

Q. Have you any connection with Mr. Moulton, or any of his firm or partners? A. No, sir; I know them by sight--all of them; that is, I say all of them; I know one Mr. Woodruff, and one Mr. Robinson, and Mr. Moulton by sight.

Q. You know them as you do other business men? A. Yes, sir.

Q. They have to do with the Produce Exchange? A. Yes, sir.

Q. Was not Mr. Moulton a clerk of it, or secretary, or something? A. I think not.

Q. I don't mean now, but hasn't he been? A. I do not remember that he ever was.

Q. Well, it is no matter; it is of no consequence. Your acquaintance with them is the same as with other merchants, and only by sight? A. Yes, sir.

Mr. Evarts.—We will withdraw the challenge.

The juror took his place in the box.

Mr Evarts.—Mr. Westman, you may retire.

The juror, Westman, left the box.

JOHN H. HUCKE called and sworn on a challenge for principal cause.

Mr. Fullerton.—Do you reside in Brooklyn? A. I do, sir.

Q. And carry on business here? A. Yes, sir.

Q. In connection with any one, or alone? A. Alone.

Q. What is your business, please? A. Grocer.

Q. Where is your place of business? A. No. 548 Bedford-avenue.

Q. Have you read some in regard to this controversy? A. I have.

Q. A good deal? A. I can not say that I have read a good deal; I have read some of it.

Q. Conversed a good deal about it? A. Conversed some; yes, sir.

Q. And discussed the question, have you? A. At times.

Q. Have you formed an opinion? A. No, I have not.

Q. Did what you read make no impression upon your mind at all? A. At times it has.

Q. Well, how did you get rid of those impressions thus formed? A. Well, I have changed them according as I have read different statements, that is, different articles in the papers.

Q. Your present condition, then, is that you have no opinion upon the subject; is that it? A. No; I can't say as I have.

Q. Have you got any impression upon the subject? A. No; not at present.

Q. Neither impression nor opinion? A. No, sir.

Q. Have you ever expressed an opinion? A. I have, I guess; I am not sure as I have; I am not sure as I have not.

Q. Don't you remember in any of these controversies or discussions which you may have had in regard to this matter, that you have expressed an opinion? A. I do not remember as I have.

Q. In these discussions, did you take sides? A. Yes, sir; I think I did at times.

Q. You were in favor of either one party or the other? A. At times I have been in favor of one, and other times I have been in favor of other parties.

Q. Did you so express yourself? A. I believe I did.

Q. Did you say you believed one or the other of the parties was innocent or guilty, as the case might be? A. Well, I could not say as to the innocence or guilt, but I thought things looked reasonable one way, and then I thought things looked right the other way.

Q. Do you belong to any religious denomination? A. No, sir, I do not belong; I am not a member of any religious denomination.

Q. Do you attend service anywhere? A. I do.

Q. Where? A. Different places—wherever my mind leads me to.

Q. Where does your mind lead you? A. As a general thing, to the De-Kalb Methodist Church.

Q. DeKalb-avenue? A. Yes, sir.

Q. Who is the pastor of that church? A. A Mr. Platt; I don't know his other name.

Q. Where else do you attend? A. I attend the Henry-street German Church at times, and I attend the Baptist Church on Bedford-avenue.

Q. Are you German born? A. I am.

Q. How long have you been in this country? A. Twenty years.

Q. You are a citizen? A. I am.

Q. Do you know either of the parties to this controversy? A. I do not; no, sir.

Q. Not even a speaking acquaintance? A. I do know them by sight.

Q. You have no speaking acquaintance? A. No, sir.

Q. When were you summoned? A. The last day of the old year, I think.

Q. Have you conversed with any one since you were summoned? A. No, sir—well, yes, I have conversed, you know; that is, I have said that I had been summoned, if that is any conversation.

Q. Is that all? A. Yes, sir.

Q. You have gone no further than that? A. No, no discussion on the subject since that.

Q. Who summoned you? A. That I don't know, I am sure. The sheriff's name is on the paper.

Q. Did you have any conversation with him? A. I think I have not. I said, "Oh, pshaw!" That is about all the conversation I had.

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

Q. Where does you wife attend divine service? A. She attends St. Patrick's Church, on Kent-avenue.

Q. Have you ever been to Plymouth Church? A. I have.

Q. How frequently? A. Twice in my life.

Q. When was the last? A. About four years ago, I guess.

Q. Have you ever discussed this matter with your wife? A. I don't know as I have; being a delicate subject, I don't like to talk about it.

Q. Have you discussed it with any one within the past month? A. I don't know as I have; I might have, but I can not say as I have.

Mr. Fullerton.—We withdraw the challenge.

Mr. Evarts.—Do you think that you could act impartially between these parties? A. I think so.

Q. Notwithstanding you have read a good deal, heard a good deal, and talked a good deal? A. Yes, sir; I think I could.

Q. And have had opinions one way and the other? A. Yes, sir.

Q. What is the state of your mind on the subject that makes you feel confident that all this past impression that has operated upon you leaves no results? A. Well, I don't know; I can not say as I have any impression at present about it. It is immaterial to me. I have no interest either which way or the other.

Q. It is immaterial to you in a personal sense, but on the responsibility of a juror, we want to know whether you stand indifferent and clear, with your mind unaffected by the impressions and opinions that you have heretofore had? A. Well, I do; yes, sir.

Q. How long do you think you have been so clear that you could be entirely impartial? A. I don't know, I am sure. I have never taken a great interest in it, or discussed the matter with any force, that I had any interest in it, you know.

Q. You say you are a grocer. Are you a wholesale grocer or a family grocer? A. I am a retail grocer.

Q. What is called a family grocer? A. Yes, sir.

Q. How long have you carried on business at your present place? A. About six years.

Q. In the same place? A. Yes, sir.

Q. Have you a partner? A. No, sir, I have not.

Q. Is your business an active one? A. Well, yes, we have got something to do.

Mr. Shearman.—What street is it near, please? A. On the corner of Lafayette-avenue.

Mr. Evarts.—You came here from Germany? A. I did.

Q. How old were you when you came here? A. I was 18 years old when I left home.

Q. Did you understand English when you came here? A. No, sir, I did not.

Q. You learned it altogether here? A. Yes, sir, I did.

Q. And learning it here, I suppose, as you became of that age, you have learned it in the way of your business? A. That is the only way.

Q. Only in that way? A. Yes, sir.

Q. Are you acquainted with our language so as to catch and understand everything that the lawyers and witnesses will say in this complicated case? A. I am pretty well acquainted with the language.

Q. I see that you understand and talk very well, no doubt, for ordinary purposes. The question is whether in a case such as you understand this to be, you think you have that complete knowledge of our language that a juror

should properly have? A. Well, I understand everything in the business or anything like that. I understand it pretty well. You have to judge yourself whether I am capable of understanding your language.

Q. You certainly talk very well. You know the letters and papers are all to be criticised as to what they mean, what a fair view, and what the shades of interpretation are to be. Now you must give us an honest opinion? A. Well, my opinion I give you. You must form your own opinion.

Q. I mean on this subject of language? A. That is what I mean. I think I can understand what you say, unless you go in too much of a dictionary way.

Q. You have served as a juryman? A. Never.

Q. Never served as a juryman? A. No, sir; I have not.

Q. No experience in that way? A. No, sir.

Mr. Evarts.—We submit it to your Honor. He is a very candid and intelligent gentleman—no doubt about that. The only point that I see, that I am a little dim about, is the intelligence about the language in this peculiar case.

Mr. Beach.—We hold him to be a competent juror, sir.

JUDGE NEILSON.—Your challenge was withdrawn, was it?

Mr. Fullerton.—Yes, sir.

JUDGE NEILSON.—The thing that troubles me is that the gentleman has read so much about it and conversed so much about it. If you feel satisfied on both sides that that impression is gone, as he seems to be satisfied——

Mr. Evarts.—I can not say that we feel that, but then he answered it pretty reasonably; but still I wish distinctly to submit this whole question in regard to this gentleman to your Honor.

JUDGE NEILSON—[To the juror.] You have no impression about it, I understand you, either way? A. I have not; no.

Q. Touching the question involved? A. That I understand.

Q. You think you stand perfectly unbiased and free? A. Yes, sir.

JUDGE NEILSON.—I think you can take a seat.

Mr. Beach.—Some information, sir, has come that has been communicated to counsel upon both sides, which may possibly require some conference on the subject connected with the jury, and if your Honor would now give us our intermission, during that time we probably can make some arrangement.

[After an intermission:]

Mr. Evarts said: The result, if your Honor please, of some joint consideration of matters laid before counsel on both sides, touching, perhaps, the question only of partiality, has led us to the conclusion that Mr. Blunt and Mr. Hucke may both be excused.

JACOB DURYEE called and sworn on a challenge for principal cause.

Mr. Fullerton.—I put the same question to you, whether you have formed an opinion as to the merits of this controversy between Mr. Tilton and Mr. Beecher? A. Yes, sir.

Q. Is it a decided, fixed opinion? A. No, sir.

Q. What is the opinion based on? A. On what I read.

Q. And what did you read? A. I read the papers generally.

Q. Did you read the statements of the several parties? A. Yes, sir.

Q. Where do you reside? A. No. 155 Sackett-street.

Q. What is your occupation? A. Storage.

Q. Are you alone in business, or in connection with anybody? A. Alone.

Q. What is the general character of the business—general storage business? A. The storing of general merchandise.

Q. Are you acquainted with either of the parties? A. No, sir.

Q. Have you not a speaking acquaintance with either of them? A. No, sir.

Q. And where do you attend public worship? A. Strong Place, Baptist.

Q. In this city? A. Yes, sir.

Q. Who is the pastor of that church? A. Mr. Anderson.

Q. Are you a communicant? A. No, sir.

Q. Are your family communicants? A. No, sir.

Q. No member of them? A. No, sir.

Q. What does your family consist of? A. My wife, an adopted and only child, a son.

Q. Have you discussed the subject with any person? A. No, sir.

Q. Did you ever enter into any discussion as to the merits of this controversy? A. No, sir.

Q. Either at home or away from home? A. At home I have, very little.

Q. With your wife? A. With my wife.

Q. Was that an animated discussion? A. No, sir.

Q. Did you take different sides? A. No, sir.

Q. On the same side? A. Well we took the same side, I suppose.

Q. You agreed in regard to it, did you? A. I don't know; we have had so little conversation about it that I don't know what to say about that; I can not make any decided answer.

Q. Did not what you read make an impression on your mind? A. It has made an impression.

Q. A decided impression? A. Not a decided impression.

Q. Does it not rise to the dignity of an opinion? A. No, sir; and that impression still remains; what little impression I had still remains.

Q. Do you think that, notwithstanding that impression, from all that you have read and from all that you have heard upon the subject, that you could go into the jury-box and decide this case without bias or prejudice, on the evidence alone? A. I can.

Q. Would that impression have no influence upon you at all? A. Not at all.

Q. How would you get rid of it? A. By examining my own mind, and throwing it off according to the evidence given; the impression is so slight that I am perfectly balanced so far as that is concerned.

Q. This has created a good deal of excitement in Brooklyn, has it not? A. I know it.

Q. Have you not participated to a greater or less extent in that excitement? A. No, sir; nothing more than a passing remark I might have made about it.

Q. Where have you made those passing remarks? A. I have not made

them in any place in particular. Any friend that I met might speak about it, and I would make a passing remark.

Q. Upon the merits of the controversy? A. Why, "what is your opinion"? I would make it in a joking way.

Q. Did you ask in a joking way what somebody's opinion was? A. No, sir; if my opinion was asked I have spoken in a joking way on both sides; I have made that remark.

Q. You would answer in a joking way? A. Yes, sir; I have answered in a joking way on both sides.

Q. Did you think it was a matter to be joked about? A. No, sir; for I didn't pay much attention to it one way or the other.

Q. Can you name any person to whom you have addressed those joking remarks? A. No, sir; I could not.

Q. Does your business bring you in contact with a great many people every day? A. Yes, sir.

Q. And has it not brought you into conversation with them? A. Very little indeed; I don't remember any conversation I have had.

Q. Whether you remember the conversation or not, don't you remember the fact that you have had a conversation or conversations? A. Not that I know of; I never had any conversation with any one.

Q. Has it not been almost a daily occurrence that this subject was talked over between yourself and your patrons at your place of business? A. No, sir, it has not, for I have not done it; I have not talked it over. What I read, I keep to myself.

Q. You have, you say, an impression which does not rise to the dignity of an opinion. I suppose that impression would go with you into the jury-box, would it not? A. No, sir, I think not.

Q. What would you do with it—how would you get rid of it? A. I would get rid of it according as the evidence would be given in; as the evidence was given, I would throw off the impression I have; it is so slight, it don't amount to anything in my own mind; my mind is perfectly clear.

Q. When you heard evidence that was calculated to convince you, you would give up the opinion and yield to the evidence; is that it? A. According to the evidence I should.

Q. I say as a sworn juror you would yield up your impressions to the evidence? A. Certainly.

Q. And be governed and controlled by the evidence whenever it overcame the impression? A. Certainly I should.

Mr. Evarts.—He hardly says that.

Mr. Fullerton.—He does say that. I put him the question, or he would not answer it. [To the juror.] Would it require much or little evidence to remove your present impression? A. I hardly know how to answer that question.

Q. Nobody can answer it for you? A. Whatever the evidence is, it would remove it; evidence would remove any impression I had before; any impression I have had before, evidence would remove it from me.

Q. Would it require much to remove it, or a little? A. Well, that I could not say; I could not answer that.

Q. But your impression would remain until the evidence did remove it? A. Yes, sir.

Mr. Fullerton.—Well, I will leave it there.

Mr. Evarts.—You are in the storage business. Have you any particular acquaintance or connection with the firm of Woodruff & Robinson, or Mr. Moulton, or any of those people? A. No, sir.

Q. They are in the same business? A. Yes, sir.

Q. Have you paid much attention to this matter to form any responsible judgment about it? A. No, sir.

Q. Has there, at any time, been in your mind anything more than the casual impression that the last reading gave you? A. Nothing more.

Q. And you now say to the court that you have no impression resting upon your mind that would interfere with your accepting the evidence as it arose, and deciding according to it? A. Yes, sir.

Mr. Evarts.—We think he is a good juryman, sir.

JUDGE NEILSON.—I think he has an impression that does not leave him indifferent between the parties, and the challenge to favor is sustained. [To the juror.] Stand aside, sir.

Mr. Shearman.—We except, if your Honor please.

CHESTER CARPENTER called and sworn on a challenge for principal cause.

Mr. Beach.—Has your attention been directed to this controversy between Mr. Tilton and Mr. Beecher? A. Yes, sir.

Q. Have you read considerable concerning it? A. I have.

Q. Have you been so far interested in it as to keep up with the current of publications on the subject? A. Yes, sir.

Q. Have you imbibed any impressions in regard to the truth of the charge against Mr. Beecher? A. I have.

Q. Have those been deliberate, upon consideration of the matter brought to your attention? A. Yes, sir.

Q. And you have that impression now? A. No, sir.

Q. You have not? A. No, sir.

Q. Well, how did you get rid of it? A. I got rid of it by investigation.

Q. By investigation? A. By investigation and what I read.

Q. That is, you have an impression? A. I had an impression, and I have by argument discussed the subject and have been decided upon it; I have changed that view.

Q. When was it that you were decided? A. Well, I was decided after Mr. Beecher's statement came out.

Q. Decided after Mr. Beecher's statement came out? A. After both of them came out.

Q. After the whole subject came out? A. After the whole subject came out.

Q. I understood you to say that you had a decided opinion after the whole subject came out—did you say so? A. Yes, sir.

Q. Then you have learned nothing new if the whole subject was exhausted? A. I have changed my view.

Q. I did not ask you about that—you have learned nothing new after the whole subject was exhausted? A. No, sir.

Q. Then the state of your information, after the whole subject was exhausted, remains precisely the same? A. No, sir.

Q. Not the state of your information? A. Oh! my information on that subject—yes, sir.

Q. And that was how recently that you adopted that opinion upon the consideration of the whole subject? A. I have changed my view——

Q. I am not asking you about "change;" please leave out that word for a little while; I ask you about when it was that you last had this decided opinion upon a consideration of the whole subject? A. I could not state the time.

Q. Tell me as near as you can? A. Well, it is within two months—about two months, I should think.

Q. Now, then, sir, will you please tell me by what means you have come to change that opinion? A. Well, sir, I came to change it the last sermon I read of Mr. Beecher's upon theatres, upon the Sabbath day and theatres; I changed my whole views.

Q. You changed your whole views? A. I did.

Q. You adopted other views I suppose? A. I have not gone over, I am neutral; I have no opinion.

Q. Wait, wait; I know that; we do not suppose that, of course; but when you changed the views you did entertain—those decided views—did not you adopt other views? A. Well, yes, sir, I may say I did.

Q. Then you simply changed your opinion? A. I changed my opinion thus far, that I left the impressions that I had had, that I had formerly formed; I left them; they were removed, I think.

Q. Did I understand that you had heard that sermon? A. No, sir; I read it.

Q. Have you heard Mr. Beecher preach? A. Yes, sir.

Q. How recently? A. Not within two or three years.

Q. Three or four years? A. Three years, I guess.

Q. Are you attached to any congregation, Mr. Carpenter? A. Yes, sir, I am; the Presbyterian Church in Classon-ave., corner of Monroe-st., Dr. Duryea.

Q. You are a communicant? A. Yes, sir.

Q. If I understand you, having a decided opinion one way upon this subject, the reading of a sermon purporting to be delivered by Mr. Beecher changed the views which you then entertained? A. I had an impression; I had not decided so; I said this; I discussed that in my family, and other places; the remark I made was this: "If Mr. Beecher is guilty, I hope it will all come out and be proved; but the law says he is innocent until he is proved guilty;" my family are divided on the subject, and have been, my sons and daughters, and I have taken that ground and told them that, but the impressions I have had have been removed.

Q. It is the present state of your mind, whether it is indifferent or not as between these parties, that we wish to ascertain. Do you think your mind is free and unbiased to receive the evidence which might be presented upon both sides of this question, and canvass it fairly and impartially? A. I do, wholly on the evidence.

Q. That you could decide this case without any prejudice or bias, wholly upon the evidence, under the instructions of the court as to the law? A. Yes, sir.

Q. And you have no self-doubt or self-scruple upon that subject? A. No, sir.

Mr. Beach.—We withdraw our challenge, sir.

Mr. Shearman.—We accept the juror. We suppose, from what accidentally came out, he has a slight prepossession against us.

Mr. Beach.—Don't make a speech to the jurymen.

Mr. Shearman.—Well, you drew it out.

Mr. Beach.—Well, you needn't comment upon it.

JUDGE NEILSON.—It is possible to discover which way the bias is, I think.

JOHN MCMURN called and affirmed on a challenge for principal cause.

Mr. Beach.—What is your occupation? A. Grocer.

Q. Have you formed any opinion upon this case? A. No, sir.

Q. You haven't had occasion to read much about it? A. Yes, sir; I read some of it.

Q. Well, how extensively have you read—have you read all the statements of the parties about it? No, sir.

Q. Read anything more than occasionally? A. No; nothing more.

Q. Well, have you talked much about it? A. No, sir.

Q. What sort of a grocery do you conduct? A. A retail grocery.

Q. Family stores? A. Yes, sir.

Q. And whereabouts? A. No. 99 Rochester-avenue.

Q. And is your dwelling in the same building? A. Yes, sir.

Q. You have a family, I take it? A. Yes, sir.

Q. Children? A. Yes, sir.

Q. Daughters? A. No, sir.

Q. Well, haven't you had occasion, at any time, to converse about this case? A. Well, not of any consequence.

Q. Has it been the subject of any conversation in your family? A. No, sir.

Q. Have you had any discussion or contention with any person in regard to it? A. I never had, sir.

Q. No debate? A. No, sir.

Q. And have you no opinion or impression in regard to its merits? A. No, sir; I have no opinion, and all the impression I had was like any other exciting news we read out of the newspapers.

Q. And do you think you could, as a sworn juryman, act impartially between the parties upon the evidence submitted to you? A. I think I could, sir.

Mr. Beach.—We withdraw our challenge.

Mr. Evarts.—Where do you carry on your business? A. No. 99 Rochester-avenue.

Q. Whereabouts is that—what part of Brooklyn? A. Well, at Bedford side.

Q. In Bedford? A. Yes.

Q. How long have you carried on your business there? A. I have been there a little over six years.

Q. And where before that in that business? A. On the corner of Franklin-ave. and Butler-st.

Q. Same line of business? A. Yes, sir.

Q. What style of grocery is it? A. Retail.

Q. Yes, but what you call a family grocery store? A. Yes, sir.

Q. Provision store also? A. Yes, sir.

Q. Well, is it a retail liquor—— A. No, sir.

Q. Nothing of that kind? A. No, sir.

Q. Now, haven't you read more or less of this? A. I have, sir.

Q. And don't the people that come to your store talk to you about it? A. They do not.

Q. Don't take any interest in it up in that region? A. I don't know what they do.

Q. But you don't? A. I do not.

Q. Well, in your own family is there any interest in it? A. No, sir.

Q. Yourself and your wife don't talk about it? A. No, sir.

Q. What religious society do you belong to? A. I am a Presbyterian.

Q. What church? A. Well, I don't attend any one just particularly now.

Q. Well, don't your family have sittings in some church? A. They do.

Q. What is that? A. To Mr. Faulkner.

Q. How about your not having any opinion—have you never had any opinion? A. I never had any opinion of this thing or any other exciting object like this—don't have anything to do with it.

Q. Never had an opinion in your life? A. Oh! I might—different things—but I don't have opinions on newspaper reports.

Q. How long have you lived in New York state? A. Something nearly 30 years.

Q. And what countryman are you? A. I am an Irishman.

Q. North of Ireland? A. Well, you might call it the North—middle states.

Mr. Evarts.—Well, I will call it the North. We have no objection to him.

JUDGE NEILSON.—Let this juror take his seat, gentlemen. You now have twelve jurymen. Are you content?

Mr. Beach.—We are, sir.

Mr. Shearman.—We are content, your Honor.

The list of the jury thus impanneled and entered on the minutes, is as follows:

1.	GRIFFIN B. HALSTED,	Hardware,	340 Pacific-street.
2.	HENRY THYER,	Boarding-house,	76 Noble-street.
3.	GEORGE HULL,	Builder,	102 Devoe-street.
4.	CHRISTOPHER FITTER,	Willowware,	527 Park-avenue.
5.	SAMUEL FLATE,	Roofer,	214 Ryerson-street.
6.	A. R. CASE,	Drugs,	N. Second cor. Ewen-street.
7.	EDWD. WHELAN,	Builder,	558 Franklin-avenue.
8.	WM. H. DAVIS,	Real estate,	662 DeKalb-avenue.
9.	JOHN F. TAYLOR,	Corks,	56 Boerum-street, E. D.
10.	WM. T. JEFFREY,	Flour,	158 Elliott-place.
11.	CHESTER CARPENTER,	Flour,	360 Van Buren-street.
12.	JOHN MCMURN,	Grocer,	99 Rochester-avenue.

Mr. Beach.—After a consultation between counsel on both sides.] If your Honor please, the subject has been somewhat under discussion as to what disposition should be made of the jury during the pendency of this trial, and counsel upon both sides seem to consider that it would be a very great hardship upon these gentlemen to ask the court to confine them together during the long period which may be occupied in the progress of the trial. But for myself, sir, and my associates, I ask your Honor to impress upon the jury the importance of refraining from any communications with any person upon the subject-matter of the trial, and from listening to any conversation or discussions which may be instituted in their presence. I understand it, sir, to be a very common artifice of those who wish to influence jurymen to start those discussions in their presence, and it seems to me that the jury should be instructed, upon the part of your Honor, to avoid being present at any such debates, and to make an effort to escape the exercise of any possible influence which the friends of either party may endeavor to exert. And, with great respect, I solicit such injunction from your Honor as will be likely to impress the jury and to lead them to make a report to your Honor of any effort that shall be made, directly or indirectly, towards influencing either one of them. So far as we are concerned, if your Honor shall think proper to give such instructions to the jury, we shall be willing to trust to their integrity and honor to obey those instructions.

JUDGE NEILSON.—My own impression would be very strong in favor of holding the jury in some convenient place, and not allowing them to separate; and the only qualification of that judgment on my part is the term for which the trial may continue. Having somewhat to do, too, with the season of the year, it might be oppressive to the jury, as has been suggested. I would like to understand that I have the consent of the counsel on both sides to allow this jury to separate upon receiving now and being reminded hereafter of the injunction which has been suggested.

Mr. Evarts.—We consent upon our part. We understand that to be the ordinary course in civil cases.

JUDGE NEILSON.—Then, gentlemen, you have heard the suggestions that have been made; you understand that you are impanneled as a jury in this case with the concurrent approbation of the counsel upon both sides. They look to you as their arbiters in this matter, and the trust reposed in you is a

very sacred one; it will tax your judgment and independence, firmness and integrity, to the uttermost; and it will behoove you as jurymen to bear this constantly in mind, and to feel, as I trust you may, the solemn responsibility that rests upon you. Now, it is my duty to say to you that you ought not to converse upon this subject with any person, upon any question involved in this case, or in reference to the case itself; that you ought not to read about it in the papers or elsewhere; that you ought not to allow any person in your presence to make statements in respect to it, and if any person does intrude himself upon your attention with a view to making statements in your hearing, it is your duty to report that circumstance and that person to me, to the end that he may be punished. And should you fail in the observance of this direction, it would be a grave offense on your part against the administration of justice. I have, as the learned counsel on both sides have, entire confidence in your perfect integrity to observe these suggestions as far as may be in your power. When we adjourn, gentlemen, we adjourn until 11 o'clock on Monday morning, at which time you will assemble in this place, and take your seats.

I wish to say to the reporters whose places have not yet been fully adjusted, that I would like to see them on Monday, between 10 and 11 o'clock.

I am obliged to say to the audience in attendance that as they, each of them, perhaps may well understand, we shall require in the course of this investigation perfect quiet and order; that the first persons entitled to be present are the parties and their counsel; second, their friends connected with them in this investigation, and the witnesses. That after and beyond that, the members of the bar claim a priority; and the admission beyond that must be upon tickets or orders obtained either from one of the attorneys in the case on either side, or from the court. And I make this statement because the multitude of our friends now here may see that it would be unwise and useless to attend here Monday morning. It is utterly impossible to conduct a cause of this importance in the presence of so many people —quite impossible. We must have perfect order, perfect quiet; and that can not be obtained where there is so large an attendance. And besides, gentlemen, there is no occasion to waste the time, even if you have an interest in it, because you find it all spread very fully, and, so far as I have observed, correctly in the papers.

Mr. Evarts.—If your Honor please, are all these jurymen sworn in this cause now?

JUDGE NEILSON.—I understand they are. But perhaps, for safety, it would be well to swear them collectively now. I will do so.

Mr. Beach.—I understand the jury were all sworn in when they were called.

Mr. Evarts.—They took the oaths administered here, I understand; but the question is, whether they were sworn the other day.

JUDGE NEILSON.—Stand up and be sworn in the case.

Mr. Mallison.—Gentlemen, please rise and be sworn: You, and each of you, solemnly swear that you will well and truly try this issue of Theodore Tilton, plaintiff, against Henry Ward Beecher, defendant, and a true verdict give, respectively, according to the evidence, so help you God.

OPENING ADDRESS OF MR. MORRIS FOR PLAINTIFF.

FIFTH DAY, JANUARY 11, 1875.

JUDGE NEILSON.—Are counsel prepared to proceed?

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

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

Mr. Morris.—May it please the court—Gentlemen of the jury: I congratulate you that we have at last reached a stage in this trial where it becomes my duty to present to you the general features of the case on the part of the plaintiff, and your duty to listen, as I have no doubt you will attentively, to the facts as I shall narrate them to you in what I have to say in my opening address. It is not necessary that I should remind you of the great importance of the case that is now being tried, and the solemn duty that is devolved upon you as jurors. You are now called from your various avocations to discharge one of the most important duties that has ever or will ever devolve upon you as citizens. This is no ordinary case that now engages the attention of this court, and the attention of the entire community. This is no contest between litigants to determine the right of property, nor is it a contest to determine the right to personal liberty. It is above and beyond that—more far-reaching in its consequences than any case ever tried in this country. There is not a home in this broad land, nay, there is not a home in Christendom that is not interested in the result of your deliberations. This is a trial that involves, as I said, not the right to property or liberty, but it is a trial the consequences of which reach to the very foundations of society. The home, the marriage relation, with all that is dear in that relation, is upon trial in this case. Upon the result of your verdict to a very large extent, also, will depend the integrity of the Christian religion. The plaintiff comes in court, and, through the ordinary forms of law, says in effect that his home has been destroyed; that his wife's affections have been taken from him; that his children have been scattered; that a once happy home is now desolate; and that the bright visions that he had once of attaining distinction and positions of honor have all been blighted; that he once had a happy family—none more

so in the land—but he comes to you this morning, not from that once happy family, but he comes to you this morning from a voiceless home and a cheerless fireside, and he asks you, as fathers and as brothers, and as husbands, to consider his case. And against whom is this terrible charge? Is it against some casual acquaintance, some casual friend? No: but he comes here and makes this charge against one of the foremost preachers in the land, against the man who in his youth united him in matrimony, at whose altar he received baptism. His spiritual adviser, his spiritual father, taking advantage of this sacred relation has become, instead of his protector and his comforter, his destroyer. And who is it that makes the charge? It is no unknown person, no insignificant individual that comes in court and arraigns at the bar of justice the defendant in this case, but he is a man, as well as the defendant, of pre-eminent abilities; a man who had risen while yet a young man to great distinction in the land as a writer and as an author, whose pen was always upon the side of the oppressed, and whose voice, as did the voice of the defendant, thundered against tyranny and oppression. Four years ago, no man of his age in this land had before him so brilliant a prospect as had Theodore Tilton. Gifted by God as few men are gifted, intellectually and physically, he had before him a most brilliant career; but all at once a cloud settled down upon his household like a pall, the bright visions have faded, and where once there was sunshine, there is now darkness, and misery, and desolation. Before the wife of the plaintiff fell a victim to the wiles of the seducer, no man in this land had a more happy home than he possessed. I will not detain you, gentlemen, at this stage of the case, or, indeed, at all in the opening, in picturing to you the home of Theodore Tilton prior to the 10th of October, 1868. During the progress of the trial you will learn, from the evidence, the nature and the character of the home that has thus been destroyed and desolated. Suffice it to say, that during all their married life, down to the period that I have indicated, they had one of the happiest of homes, a family of children growing up about them, loved by their father and mother as few children are loved. What, gentlemen—what will you say is the just retribution for a man who destroys such a home? And in this case there are features which render the crime more heinous than in most cases of this character. Mr. Tilton was a boy, grew up under the eyes of the defendant; when but a child became a member of his church; when but a child almost, before of age, he married the girl that he loved, and from that time henceforth was associated with the defendant in the closest relations, associated with him in the editorship of a religious journal for many years; a frequent visitor at his house, looking upon him almost as a father, and admiring him above all men living, placing that implicit confidence in him which can only come from admiration and absolute faith. When separated by the ocean before this terrible calamity, before the violation of this friendship and the destruction of this home, the two men spoke of each other and wrote of each other as only men who had mutual confidence and admiration would speak and write of each other.

It has been said that this action has been instigated because of enmity that the plaintiff had towards the defendant, and yet during all this period prior

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

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

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

Dr. Lushington, a high authority, observes:

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

Mr. Bishop says:

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

* *Bishop on Mar. & Div.*, vol. 2, § 613.
† *Davidson* v. *Davidson* (Deane Ecc. R. 132, 135).
‡ *Bishop on Mar. & Div.*, vol. 2, § 619.

In a celebrated case, Dr. Lushington used this language:

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

Lord Stowell, a high authority, used this language which I find in the 2nd of Greenleaf on Evidence, § 40, from which I will read a paragraph. He observes:

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

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

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

Chief-Justice GIBSON says:

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

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

"The distinction, then, between direct and circumstantial evidence is this. Direct or positive evidence is where a witness can be called to testify

* *Bramwell* v. *Bramwell* (3 Hagg. Ecc. 618, 629).

† The opinion of Lord Stowell (Sir Wm. Scott), here quoted from, will be found in *Lovedon* v. *Lovedon* (2 Hagg. Consist. R. 1). The case was decided in 1810, and is deservedly regarded as of the first authority.

‡ *Commonwealth* v. *Harman* (4 Pa. St., 269).

§ *Commonwealth* v. *Webster* (59 Mass., 295, 310).

to the precise fact which is the subject of the issue on trial, that is, in a case of homicide, that the party accused did cause the death of the deceased. Whatever may be the kind or force of evidence, this is the fact to be proved. But suppose no person was present on the occasion of the death, and of course no one can be called to testify to it; is it wholly unsusceptible of legal proof? Experience has shown that circumstantial evidence may be offered in such a case; that is, that a body of facts may be proved of so conclusive a character, as to warrant a firm belief of the fact, quite as strong and certain as that on which discreet men are accustomed to act, in relation to their most important concerns. It would be injurious to the best interests of society, if such proof could not avail in judicial proceedings. If it were necessary always to have positive evidence, how many criminal acts committed in the community, destructive of its peace and subversive of its order and security, would go wholly undetected and unpunished? The necessity, therefore, of resorting to circumstantial evidence, if it be a safe and reliable proceeding, is obvious and absolute. Crimes are secret. Most men, conscious of criminal purposes, and about the execution of criminal acts, seek the security of secrecy and darkness. It is therefore necessary to use all other modes of evidence besides that of direct testimony, provided such proof may be relied upon as leading to safe and satisfactory conclusions; and, thanks to a beneficent Providence, the laws of nature, and the relations of things to each other are so linked and combined together, that a medium of proof is often furnished, leading to inferences and conclusions as strong as those arising from direct testimony." *

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

"Full confessions of guilt, by an accused party, are in the nature of *direct* evidence, and therefore do not properly fall within the scope of the present work. A brief notice, however, of the character of these statements, and their effect as proof, will not be out of place. Confessions of this kind, when deliberately and voluntarily made, are justly regarded as constituting the highest and most satisfactory species of evidence that can be presented before a tribunal. They combine the statement of the physical facts which form the basis of the charge (and which is substantially the deposition of a witness to those facts), with that other most important species of evidence which can never be directly reached and brought to view by any other means,

* The leading cases in this State, on the nature and cogency of circumstantial evidence are *People* v. *Bodine* (1 Edm., 36, 46, 69); *Ruloff* v. *People* (18 N. Y., 179); *People* v. *Bennett* (49 Id. 137, 144); *People* v. *Kennedy* (32 Id., 141). See also *Wills Circumstantial Ev.*, p. 313; *Trial of Courvoisier* (1 Townsend's Mod. State Trials, 244); *Commonwealth* v. *Schoeppe* (1 Legal Gazette R., 433, 447); *Commonwealth* v. *Twitchell* (1 Brews., 551, 570); *Commonwealth* v. *Harman* (4 Pa. St. 269); *McCann* v. *The State* (1 Morris' State Cases, 486, 498); *James* v. *The State* (2 Id., 1741, 1746); *The People* v. *Videto* (1 Park. Cr., 603-4); *The People* v. *Jefferds* (5 Id., 518, 530); *Trial of Emil Lowenstein* and trials there cited by Mr Moak, pp. 209-242.

namely, that which presents the *motives* and *intents* which instigated and directed the criminal act, and these avowed by the party, who, of all others, has the strongest interest to conceal them." *

Now, I have told to you briefly the general character of our evidence:—First, the act of the party accused. Secondly, the confessions of the party accused: and with this very imperfect outline of our case, the nature of our case, the general character of our evidence, I will proceed to call your attention more specifically to the facts of the case.

The case opens on the 3d day of July, 1870, with the confession made by the wife of the plaintiff, though not communicated to the defendant until some time afterwards. On the 3d of July, 1870, the wife of the plaintiff, with an over-burdened heart, confesses her guilt to the plaintiff; and here, gentlemen, I would call your attention to a circumstance that seems to me to posse s great significance. Up to this date, the relations of the plaintiff and def ndant had been most cordial. Nothing had occurred to interrupt the harmony of their friendship and their good feeling toward each other, so far as the plaintiff knew. He and his wife were members of the church of the defendant; but after the 3d day of July, 1870, the plaintiff never crossed the threshold of Plymouth Church, until the 31st of October, 1873, when he appeared there for the purpose of confronting the pastor of that church, and asking him in the presence of his congregation, if he, the plaintiff, had ever spoken falsely concerning him. Why was it, that the plaintiff, all at once, without any outward—without any apparent cause, so far as the public knew, so far as any member of the church knew; a member of the church, who was an admirer up to that time of the defendant, who admired him beyond all other men, who placed implicit confidence in him, who trusted him, who looked upon him almost as a father (he was his spiritual father); all at once ceases to attend the ministrations of Plymouth Church—why was it? He had received some wound. Something had occurred that induced him to keep away from Plymouth Church, and he kept away. He had received a wound. There was a cause. That wound had pierced his heart, but for the sake of his children, whom he loved as he loved his life, he carried that wound in his heart; but he could not listen to the ministrations of the man who had brought this great sorrow, this ruin upon him, and he bears it in silence. He stays away from the church, and he goes to his home and about his avocation with this arrow through his heart. Well, gentlemen, for months he bore in silence this great sorrow and this great wrong, and for that, too, he has been arraigned; for that, too, he has been abused and traduced, because he did not strike down the seducer of his wife; because he rose to a higher Christian plane, and because he could forego revenge; because he carried out the Christian doctrine—for that he is arraigned.

But I will leave those elements of this case to be handled by a man who can do it with much more force and power than myself. But he carries this wound until the 30th of December, 1870. On the night of the 30th of December, 1870, the plaintiff confronts the defendant with a renewed confession of his wife, and accuses him of having committed adultery. What did

*Burrill, Circ. Ev. 495.

the defendant do? What would an innocent man have done, then and there, if the charge had not been true? Would he have denied it? Yes. Would he have hurled it back with indignation? Yes. Did he? No. There is no pretense, never has been from that moment until the present, that he attempted to deny it there, or that he did deny it in the most indirect manner. The charge is made; what are the circumstances immediately following the making of that charge? The defendant visits the wife of the plaintiff, then sick in bed. She gives him a retraction. He returns to the house of Mr. Moulton, where this charge had been made against him. Not a word escapes his lips with reference to it. After he had his interview with Mr. Tilton, in which he was directly accused of this crime, and before he leaves the house, he says to Mr. Moulton, "Have you seen Mrs. Tilton's confession?" "I have." "This will kill me, this will kill me!" No denial either to Mr. Tilton or Mr. Moulton: but this exclamation, "This will kill me, this will kill me!" If a man ever could be called upon to deny so infamous a charge as that was, don't you think that that was the time and there was the place at which to have made that denial? But what is the next step in the history of this case? Why, the following night Moulton goes around to the house of the defendant and accuses him of having taken a mean advantage, of having acted meanly towards Mr. Tilton in procuring the paper, and asks that it be delivered up to him. He goes there as the avowed friend of Tilton, a comparative stranger to the defendant, and he asks that he deliver up this paper to him. What does he do? Does he show him the door? Oh, no! Does he ask him why he accuses him of meanness, and what he means by such talk in his house—he, a comparative stranger, coming there as the friend of Tilton? Does he ask him? No. What does he do? Hands him the paper and then invites him to come and see him again. Think of it! And the next night, January 1st, 1871, he goes to the house of the defendant. He is invited into his study. What does he do? Does he inquire whether Moulton has brought an apology from the plaintiff to him or not, for his conduct? Oh, no! He writes for the plaintiff, not an apology, but a letter of contrition, and it commences, "My dear friend Moulton:"—the man who was a comparative stranger to him; the man who the night previous had obtained from him this paper; aye, had obtained it, as it is claimed by threat—he says to this man, who twenty-four hours prior had accused him of meanness—of taking a mean advantage—who had demanded this paper, and had obtained it from him—"My dear friend Moulton: I ask, through you, Theodore Tilton's forgiveness, and I humble myself before him, as I do before my God. He would have been a better man in my circumstances than I have been. I can ask nothing except that he will remember all the other hearts that would ache. I will not plead for myself; I even wish that I were dead. But others must live and suffer. I will die before any one but myself shall be inculpated. All my thoughts are running toward my friends—toward the poor child lying there praying with her folded hands. She is guiltless, sinned against, bearing the transgression of another. Her forgiveness I have. I humbly pray God that He may put it into the heart of her husband to forgive me. I have trusted this to Moulton in confidence." Gentlemen, might we

not stop here? Would it be necessary, if we simply wanted to make out our case against the defendant, to go one step further, one step beyond that letter, to prove his guilt? But we will go further. There are some circumstances which it is necessary, in connection with this part of the case, that I should explain to you. It must be conceded, from this letter, that the defendant had done some wrong, aye some terrible wrong, to the plaintiff. What was it? The plaintiff says that it was adultery. Mr. Moulton says that it was adultery. Mrs. Morse, in effect, says the same thing, and every act of the defendant, of the plaintiff, and of Moulton, during the three years and a half that followed, is in harmony with the fact of adultery, and utterly irreconcilable with any other theory of the case, and no human ingenuity can devise any other explanation. It is impossible. You have got to blot out the English language and all its meaning. So long as it stands, no other explanation can be devised than the meaning we attribute to it. Why, adultery is the one sole fact that accounts for Moulton's connection with this case for the four years that he strove to save the defendant, with a fidelity unparalleled. Take out that word "adultery," and what sense or meaning is there in his connection with the case, or was there ever any? It is the whole point, it is the focus, it is the lever, upon which, for the four years, this whole case worked. Why did Mr. Beecher, the defendant here, want to go to Moulton's day after day, twice a day sometimes, to see him, to make arrangements, to plan and to plot to conceal something, if that something was not adultery? Tell me why. Oh! but it is said that Mr. Moulton has denied that there was any truth in the charge; that Tilton has denied it. Of course Moulton has. What was he there for? Was he employed by Beecher, the defendant, to admit it; was he called in to expose the facts and to give them to the world? Oh! no; his mission was concealment. That is why he was wanted. That is why Moulton was required—he, not a member of the Church—it was to conceal, and not to make known. He was the possessor of a secret that could not be trusted by this Christian minister to a single other person on earth. There was no man on the globe to whom he could go. There was something so terrible about this secret, whatever it was, that he could not go to his church and ask their counsel and their advice, but he must have Mr. Moulton to manage this great secret; and Mr. Moulton did manage it—and successfully for four years—and saved the defendant to Plymouth Church as certainly as the sun shines in heaven to-day, as I will show you before I get through. Long before this would Plymouth Church have been without a pastor if it had not been for the fidelity of Francis D. Moulton.

But, gentlemen, we are not left in the dark altogether about this from another standpoint. He declares that all the acts, and all the letters to which your attention will be called for the four years concerning this subject, represent but two points—first, the grief of the defendant, and, secondly, the honor of Mrs. Tilton—the honor of Mrs. Tilton and the grief growing out of the facts that involved her honor. Well, it is said, gentlemen, that great grief was caused by injudicious advice. Mr. Tilton had lost his editorship of *The Independent* and of *The Union;* and the defendant had counseled that

—his family had been nearly broken up—and the defendant had advised it. And, beyond that, there was an intimation that I have never yet been able to solve, and hope the counsel for the defendant will be in this case—of some undefinable cause; at one time, it was that he had been informed that she had conceived an undue affection for him; at another, "that his blind heedlessness and friendship had beguiled her heart;" and, at another, an intimation that she "thrust her affections upon him unsought"; and all this jumble of phrases and of words without any statement as to what caused this great contrition on the part of the defendant, on the 1st of January, '71. When he says that his "blind heedlessness and friendship beguiled her heart," what does he mean? What does that fact import? What is the meaning of it? Blind heedlessness and friendship beguiling the heart of the wife of the plaintiff! How was that manifested—that fact on her part? What was done in consequence of that? What did she do? What did he do? How did it develope itself, and how was it manifested? Does he mean to say, or doesn't he, that the woman tempted and he did fall? I presume that my learned friends upon the other side will have some explanation—at least I hope so—for I have never been able yet to discover one. But at the time that this letter was written, Mr. Tilton's family had not been broken up; he was living with his family; and although his contract with Mr. Bowen was ended, and his loss of the position of editor had taken place, it was entirely without the influence of the defendant, and therefore furnished no cause and no reason for this great grief which he manifested. But there is one singular fact in this case that I will call your attention to right here, as it comes in appropriately at this point. This letter was written on the first of January, '71, and it is claimed, and has been claimed, that the feeling that produced that letter was brought about by the advice which Mr. Beecher had given Mrs. Tilton to separate from her husband. The point that I wish to call your attention to in this connection is this: that the advice, if ever given at all, was not until after the 27th of January, 1871, as the documentary evidence that we shall introduce before you will conclusively establish. So that you have the strange anomaly of the defendant's mourning over wrongs not yet committed, if they were wrongs; over acts not yet done. But let us assume that such advice was given at the time, and that he had counseled Bowen to dismiss Tilton, and that Bowen had taken the advice, and that he was responsible for the loss of place on the part of the plaintiff, and that he had attempted to cause a separation on the part of Mrs. Tilton from her husband. Upon what facts did he base his action? You must recollect that, up to this time, Tilton was editor of *The Independent*, a Christian newspaper, a religious paper; that it was the representative congregational paper of the land; and Mr. Beecher being of that denomination, and a prominent member of it, it was his duty to see, so far as he could—and especially as for many years he himself had been its editor—it was especially his duty to see that no unfit or improper man occupied the position of editor of that paper. And now, gentlemen, I want you to bear with me while I call your attention to some specific facts right here with reference to that point; some of the declarations we shall show you, of the defendant him-

self. In reference to this matter, he declared that the "leaders" that Tilton had written in *The Independent* had aroused a storm of indignation among the Congregationalists of the North-west; and that he had indignantly himself disclaimed all responsibility for the views expressed by Mr. Tilton—in other words that Tilton's course in that paper was such that he found it necessary to protest against it, and to disavow all connection and all responsibility for the views contained in that paper, as expressed by Tilton. He says that he believed "Tilton denied the Divinity of Christ, the inspiration of the Scriptures, and most of the articles of the orthodox faith; while his views as to the sanctity of the marriage relation were undergoing a constant change in the direction of Free Love." He says that "Bessie Turner had given him such an account of Tilton's cruelty to his family as to shock him; that with down-cast look she said that Tilton had visited her chamber in the night, and sought her consent to his wishes; that he immediately visited Mrs. Tilton at her mother's, and received an account of her home life, and of the despotism of her husband, and of the management of a woman whom he had made housekeeper—that it seemed like a nightmare dream to him. The question was, whether she should go back, or separate forever from her husband." He asked permission to bring his wife to see them—whose judgment in all domestic relations he thought better than his own, and, accordingly, a second visit was made. "The result of the interview was that his wife was extremely indignant towards Mr. Tilton, and declared that no consideration on earth would induce her to remain an hour with a man who had treated her with the one hundredth part of the insult and cruelty. Bowen had narrated the affair at Winsted, Connecticut; and, like stories from the North-west and Chicago, were brought against Tilton, in his own office." "Without doubt," he says, "he believed these allegations; and so did I. The other facts stated seemed to me a full corroboration." He believed, at that time, taking his declarations, that Theodore Tilton had been guilty of "promiscuous immoralities." He had declared that he was "bankrupt in character and morals;" and added to all this, he knew—assuming his innocence—that on the 30th of December, 1870, he had accused him falsely of one of the most diabolical crimes that he could conceive of, and that he had induced his saintly wife to join in the lie for the destruction of the defendant. And, in view of all these facts before him, he says that he went off into this paroxysm of grief because he had given this advice; and because he had thus counseled Bowen to discharge him from *The Independent*. I ask you, as fathers and as Christian men, if in view of these facts he had not given the advice that he says he did, and an hundredfold more emphatic, he would not have deserved the condemnation of Christendom? If he did give that advice he did what was his bounden duty as a Christian minister to do. If he did thus counsel Bowen, he did that which it was his bounden duty as a Christian minister to do; and he would have been unfit for his high calling had he omitted to have given such advice—had he permitted, from his standpoint, Mr. Tilton to have remained one hour connected with that religious paper, if he could have prevented it, or his wife living with him one hour, if he could have prevented it. Why, gentlemen, think of it for a

moment. The defendant here, the greatest preacher of the land, knowing a man, then a member of his church, to be a libertine, to be a bankrupt in morals and in character, to be everything that is bad, everything that makes a man despicable—think of his bowing down before such a man simply because he had done his duty, and done it but tardily at that; because he had advised a separation, and counseled dismissal of this libertine, this bankrupt in character and in morals, this free-lover, this bad man; think of his bowing down before him and asking his forgiveness as he asks the forgiveness of his God. No, gentlemen, no; that is not the reason. You know it, I know it, every man in the land knows it. Yet, in view of all these facts, we hear the exclamation that "the case, as it then appeared to my eyes, was strongly against me!" What case? How against him? There was a case at that time, if his theory be correct, but that was a case not against him but against the plaintiff, and that case was made out conclusively from his point of view, if it be correct, by Mrs. Tilton, by Bessie Turner, by Henry C. Bowen, by Mr. Tilton's course in *The Independent*, and by the false accusation that he had made against the defendant. That was the case then,—if we are to accept these allegations and these facts,—that was the case, then, made against Tilton, the plaintiff, and not against the defendant. The case was all in favor of the defendant. If he did what he says, he was deserving of the thanks of every good man and of every good woman, and if he had done it tenfold more strongly, and vigilantly, and determinedly, he would have been entitled to still greater thanks. No, gentlemen, that was not the cause of his grief. Let me call your attention to the facts. Here is this terrible letter, written on the 1st of January, 1871. To whom is it entrusted? To Mr. Moulton, a comparative stranger to him at that time; they had had but two interviews, one was on Friday night, the 30th of December, when Mr. Moulton went to Mr. Beecher's house and said: "Mr. Tilton wants to see you." "It is Friday night; I have got my prayer-meeting to attend to, and I can not go." "But Mr. Tilton wants to see you." He calls a person: "Go and tell so and so to take charge of the prayer-meeting," and he goes off, with no more explanation than that, in company with this comparative stranger, abandoning his prayer-meeting to other parties. Didn't he know, didn't he suspect? That is the first interview Moulton has with him, when he calls at his house and says that Mr. Tilton wants to see him. Without explanation he abandons his prayer-meeting, turns it over to some one else, and goes with Moulton and receives the charge of adultery with Mr. Tilton's wife. The other interview was the night following, when Moulton got the paper back from Mr. Beecher. Those were the two interviews with reference to this matter, and then this letter is intrusted to him in confidence. Why intrusted to him in confidence? Why should it be in confidence, if it didn't relate to some secret that he didn't want the world to know? If Moulton, by the possession of that had not become the possessor of some terrible secret, why was it entrusted to him? Gentlemen, do you believe for a moment that had this been any less than the charge we bring, Mr. Beecher would not have consulted some of his trusted parishioners and asked their advice as to how to act in the emergency, whatever it was, other than the one we charge and shall prove to you to be

true—adultery? Why, he says that there was no man on the globe with whom he could talk on this subject. Strange! What terrible subject is this about which he can talk to but a single man on the globe, and that man not a trusted parishioner of his, but a comparative stranger, who has become possessed of some secret. He was shut up to every human being. He could not go to his wife; he could not go to his children; he could not go to his brothers and sisters; he could not go to his church. Mr Moulton was the only person to whom he could talk on this subject. With reference to his advice to Bowen, with reference to his advice for separation, he could go to his wife. He did go to her, because in those matters he relied upon her judgment, only coinciding with her. What was this terrible subject about which he could talk to no human being on the globe except to this comparative stranger outside of his church? Where was the trusted parishioner of 25 years' association THEN, who should stand by him in his hour of trouble? No man on earth, no one to whom he could talk on this subject but the one man, Moulton. If the other side can conceive of any other secret on earth about which a minister of the gospel can not talk with even his wife, or with his brothers and sisters, or with members of his church, I hope it will be revealed upon this trial. On the 30th of December, 1870, Mr. Beecher went forth from Moulton's with the exclamation, "This will kill me," the charge upon him made by Tilton being adultery with his wife. The first communication you have from the defendant to the plaintiff, or for the plaintiff, after this charge is made is. "I humble myself before you as I do before my God." A man comes to you and accuses you falsely of an infamous crime, and the next communication you have with him you say, "I humble myself before you as I do before my God, and hope He will put it in your heart to forgive me!" Gentlemen, it is nonsense to argue that point, and I shall not pursue it further. It was not advice either to Mrs. Tilton or counsel to Mr. Bowen; it was something beyond that. When he asked Theodore Tilton's forgiveness, what did he mean? Forgiveness of what? Forgiveness for having received a false accusation? No! forgiveness for a wrong that he had inflicted upon Mr. Tilton, which called for the deepest humiliation and the most absolute contrition that a man could give. "He would have been a better man in my circumstances than I have been." What does that mean, gentlemen? In what circumstances would Mr. Tilton have been a better man than Mr. Beecher? What does he refer to? What terrible thing had Mr. Beecher done that should lead him to exclaim that Theodore Tilton would "have been a better man in my circumstances than I have been." Why, Theodore Tilton was bankrupt in morals and in character; he had been guilty of promiscuous immorality; he was everything that was bad; he was so brutal to his wife that the bare recital shocked Mr. Beecher; he had attempted a gross outrage upon a person in his house. If their theory be true, he had done everything that was bad, and yet he says that this man, this libertine, this infidel, would "have been a better man in my circumstances than I have been."

What circumstances does he mean? What terrible thing had he done that outweighed all those charges that were brought against Theodore Tilton by the defendant? What led him to exclaim that even this bad man would

have been a better man in his circumstances than he was? Oh! yes, it was true. There is not a word in that letter; there was not a word uttered by that penitent man on that night that was not true. It was true, and he would have been a better man. What had he done? Why, he had debauched the wife of his trusted parishioner, and she a confiding member of his church. He, taking advantage of his position and of his high calling, had debauched that woman, it is true, and he says Theodore Tilton "would have been a better man in my circumstances than I have been;" he (Tilton) would not have done that—that is what he means. But he will die before any one else will be inculpated. How was Mrs. Tilton inculpated, and who was it that inculpated her? "She is guiltless, sinned against, bearing the transgressions of another. Her forgiveness I have." Oh! say the counsel, of course she could not have been guilty of the crime of adultery, and yet he guiltless. Well, gentlemen, we shall present to you during the progress of this trial, an authority high upon that subject, an authority no less than the defendant himself, who says that by no means does it happen in all cases that the seduced is an accomplice in the crime, but the sufferer. And so here, she is represented, not as guilty, because of the power that was exercised over this confiding child of the church by a strong and powerful will, because she, having implicit faith in him, yields; she is the sufferer, it is not her fault. Such is the meaning of this, "She is guiltless, sinned against, bearing the transgressions of another. Her forgiveness I have." I have her forgiveness for having thus seduced her; having thus used my high office; having thus used my power and influence over her to get possession of her virtue. I am guilty; she is guiltless; I have asked her forgiveness; I have it to-day. And now I ask that God may put it into the heart of her husband to forgive me as she has forgiven me. Whatever the offense, it is perfectly clear that the defendant is the sinner, and that Mrs. Tilton was the sufferer. He says, Mrs. Tilton is "guiltless, sinned against." It was with Mrs. Tilton, not her husband, that the sin was committed. It was some offense in which there was guilt, sin. She was bearing the transgressions of another. Somebody had been guilty of transgressions with her, which she, not her husband, had to bear. The only question is, who was the transgressor? Hear the answer, "Her forgiveness I have."—I am the transgressor. He declares that he is forgiven for sin and transgression and guilt with Mrs. Tilton. Can there be anything plainer than this? Is it necessary that we should attempt to argue or present a proposition so clear and unmistakable as this? "She is guiltless, sinned against"—I have sinned against her. She is bearing the transgressions of another. I am the transgressor, and her forgiveness I have. She has forgiven me for sin, for transgression, and for guilt, and now will God put it into the heart of her husband to forgive me also for the sin, for this transgression, of which I have been guilty.

It can not be said, gentlemen—and that is the only possible explanation which I can see to this—it can not be said that the defendant in this case does not understand the meaning of the English language; that he did not know what he was talking about when he wrote these words of repentance and contrition—when he was pouring out the honest feelings of his heart and

his heart's sorrow for the great wrong that he had done. No, he fully understood the import of every word that he uttered on the first of January, 1871. "I have trusted this to Moulton in confidence." Why give this to Moulton in confidence? Why should this confidence be reposed in him about a matter relating to business or mere advice in regard to family jars? No, it was the secret—the secret that he said would kill him on the night of the 30th of December, when he left the house of Mr. Moulton to go to the sick-bed of this woman that he had debauched. Had Mr. Moulton been, on that night, the bearer from Mr. Tilton of a similar letter; had he come to Mr. Beecher and said, "Mr. Beecher, here is a letter I have brought you from Tilton, a letter of regret, a letter of sorrow, a letter of contrition, and he asks your forgiveness for what he did to you on the 30th of December, two nights ago," there would have been some sense in it upon their theory. Oh! no, nothing of the kind, but Mr. Beecher falls down upon his knees before this man and commences his letter with an appeal to him, and closes with a prayer to God that he may soften his heart towards the man who has wrought this great ruin in his family.

AFTERNOON SESSION.

Mr. Morris resumed his argument as follows:

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

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

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

Well, gentlemen, having called your attention very briefly and very imperfectly to the first stage in the history of this extraordinary case, as throwing a light back, reflecting upon the three or four days that had just passed in which was encompassed so much of grief and of sorrow, let us see what the first act of the defendant is in reference to this matter. What is the first thing he does in reference to this matter, after the writing of this letter of contrition, of January 1st, 1871? Let us see whether he acted as a guilty man would naturally act, or whether he acted as an innocent man would naturally have acted under the circumstances. Assuming now for the moment that a false accusation had been made against him, what would he have done? After reflection, would he not have gone to some person of whom he could have taken advice, would he not have sought out some trusty member of his congregation, some legal gentleman of his flock, and have told them, as he might have done in the sacredness of his confidence, what wrong had been committed against him, and counseled and advised with them as to what should have been done with such a villain? And do you think if he had been innocent, that would have not been the course? But what does he do? Why, he acts as naturally he would after having committed the wrong that we charge him with. He says: "I have sent this letter of contrition to Mr Tilton. I have poured out my soul to him in sorrow and in grief, and I have asked his pardon and forgivness; but I will do more for him. I have had an interview with Henry C. Bowen, to whom I have made some statements concerning Mr. Tilton. I will at once undo that." And so on the 2d of January he writes a letter to Mr. Bowen, in which he says: "I should be unwilling to have anything I said, though it was but little, weigh on your mind in a matter so important to his welfare."

Mr. Beach.—What is the date of that?

Mr. Morris.—January 2nd, 1871. The very next day after writing this

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

facts, and there was fear of her tattling; it was dangerous to have her here. That is the reason that it was desired and desirable that she should be removed from this city, and she was sent to Ohio, the defendant paying her expenses.

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

The evidence upon that point is too full, too clear, and too complete. That suggestion will be dropped here, as it has been by the previous investigation, and you will hear nothing of that in this case, and I will pass from that point.

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

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

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

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

And so all through, from the beginning to the end, is she confessing her guilty relations with the defendant; and he takes this letter to Mr. Moulton, as relating to the secret which he then had in charge. Do you doubt what these parties have been talking about? Do you doubt what the secret is, and what the crime is that has been committed in view of these facts? Mrs. Tilton has confessed her guilt,—first to her husband, then to her mother. Mrs. Morse is writing to the defendant about it as though he understood it, and Mr

Beecher has confessed it, as we say, in writing, over and over again, and verbally to Mr. Tilton, the plaintiff, to Mr. Moulton, and to another.

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

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

Mr. Evarts.—That is to Moulton?

Mr. Morris.—That is a letter to Moulton written at Mr. Beecher's request, and shown to Mr. Beecher for the purpose of reassuring him that Mr. Tilton did not intend to expose this great secret, and he says there that he will discountenance any project by whomsoever made for the exposure of the secret —of Mr. Beecher's great secret—"notwithstanding the great wrong that he has done to Elizabeth and myself." Well, gentlemen, on the same day the

defendant writes two letters, and the writing is as plain and unmistakable as the writing upon the wall. There is no mistake about what the party is writing. There is no mistake as to the wrong of which he speaks. There is no mistake as to the crime which he has committed. February the 7th, mark you, now, gentlemen, while Mr. Tilton had forborne to strike, while he had agreed not to expose the secret of Mr. Beecher, the wrong that had been done his family, there was no reconciliation at the time. There was no forgiveness, as is apparent in Mr. Beecher's letter. Mr. Tilton had simply forborne to strike, because in striking he must necessarily strike his own family and bury them in the common ruin. This is written to Mr. Moulton:

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

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

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

"Theodore will have the hardest task in that case, but has he not proved himself capable of the noblest things?" Why would Theodore have the hardest task? Why should it be harder for him? So far as Mr. Beecher and Mrs. Tilton were concerned, there was no difficulty. Reconciliation as between them, was easy. But Theodore would have the hardest task. Why should he have the hardest task? Why, because it was against him and against his household that this great wrong had been committed. "True, he would have the hardest task in such a case, but has he not proved himself capable of the noblest things?" What noble thing had Mr. Tilton done from the 30th of December, 1870, till the 7th of February, 1871? What noble thing had he done that should call out this encomium upon his nobility? What had he done? Why, he *had* done a noble thing. He had shown himself capable of the noblest things. In what respect, and why, and how? Why, because knowing of the crime which had been committed against him, knowing the desolation which had been brought upon his household, he forbore to strike down the assassin of his home and of his happiness. Ah! he had forborne more than that, gentlemen. Not only had he forborne to strike down the assassin of his home and his happiness, but, for the sake of his family, for the sake of his children, he had forborne to expose the man to the scorn of the world. I hope they will be able to explain what this

language means, if it does not mean what I have attributed to it. Certainly thus far no explanation has been vouchsafed, because it was all a muddle before his committee, as he could not recall the precise workings of his mind. You, gentlemen, will have no difficulty in recalling the precise workings of his mind when he wrote this letter, and when he wrote these words: "He will have the hardest task in such a case." Indeed it would be a hard task. It would be rather too much to expect of human nature, a man against whom such a wrong as that had been committed, to expect friendship; but few in the world have been able to rise to that plane of divine forgiveness, and when men do stay the hand against the destroyer of a home, when they do forbear to strike down the seducer who has destroyed that home, they are held up to ignominy because of the exercise of those noble attributes, as has been done in this case; but, thank God, we are in a tribunal where it will not be available any more. "I wonder if Elizabeth knows how generously he has carried himself toward me?" In what had this generosity consisted? I will explain it to you. When he speaks of the generosity with which he had carried himself towards him, he refers to the same facts as when he said: "Has he not proved himself capable of the noblest things?" Of course it means that. It can not mean anything else, because, prior to the 30th of December, 1870, he had declared him to be bankrupt in character, utterly worthless, it was no noble act that he had done prior to that of which he speaks, but it was generous, forbearing and noble acts after the 30th of December and prior to the 7th of February, 1871; and I ask you, again, what had he done during that time save to stay his hand and not to cast off his wife, and not to expose the destroyer of his home to the scorn and to the just punishment that would follow such an exposure on the part of a virtuous and Christian community? This man that was everything that was bad on the 30th of December, or on the 27th of December, all at once is transformed into a perfect man, capable of the noblest things, generous beyond expression, and the only one act other than these that I have indicated that he did during that period was to charge the defendant to his face with having seduced his wife, and brought ruin upon his own home. And for this charge of seduction and debauchery of the wife, and the desolation of the home, called a perfect man, generous beyond expression, capable of the noblest things. Explain it, if you can, upon any other theory than that which I have presented. Explain it if you can. If to falsely charge a man with the most diabolical crime known, the most infamous crime, and that man a minister of the Gospel,—if to accuse such a man, I say, of such a crime falsely, is to transform a man from a brute, a libertine, and a bankrupt, into a perfect man, capable of the noblest things, generous beyond expression—if such an act is capable of thus transforming a man, then there is some sense in the language, upon the theory of the defense; otherwise not. No, gentlemen, "of course I can never speak to her again without his permission." Why not? Why not? Why not? Why, because at some time or other, at some indefinite period that can not be stated, in some indefinite way that can not be explained, Mr. Tilton had sent word to him that he should never enter the house again. If that word had been sent, why should he never enter the house again? What had occurred between these parties,

these men who for so many years had loved and admired each other, the devoted friends, pastor and parishioner,—what, I say, had occurred that he should forbid him ever to enter the house again? But with that explanation, we proceed:

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

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

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

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

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

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

He had tied up the storm. How had he tied up the storm? Why, he

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

it? "The past is ended, but is there no wiser, higher, holier future? May not Moulton be the priest in the sanctuary of reconciliation?" What does all this mean, gentlemen? Tell me what it means. Take those letters, without knowing anything of the case, or without knowing anything of the parties, each letter without signature or date, and what would you say the parties were talking about? Why, the one sin of adultery, not to be named in their correspondence, except in the manner in which it is named, and it is named, to common intelligence, as plain as though "adultery" ran through every letter and was incorporated in every sentence of this correspondence for three or four years.

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

Well, gentlemen, I come now to consider another period in this case, running from February 7th to the 2nd of April, 1872. As a part of this arrangement to keep the secret from the public, it had been agreed that neither Mr. Beecher should write to Mrs. Tilton, nor she to him, without the knowledge of Mr. Moulton; that they should have no communication with each other without his permission, and you will see by the letter of February 7th, Mr. Beecher says that it is written by permission, and that he can never speak to her again without Theodore's permission, and, therefore, it becomes important to ascertain what relations these parties assume to each other after that period. The matter seemed to have been reasonably settled. Theodore had written this letter of February 7th. Mr. Beecher had written to Moulton, and he had written to Mrs. Tilton, and there seemed to be a prospect that this secret would forever be buried, and it inspired a feeling of security on the part of the defendant, and, as a consequence of that, a clandestine correspond-

ence ensued between him and the woman whom he had debauched, and the first letter upon that subject was written to him March 8th, in which she says: "My dear Friend: Does your heart bound towards all as it used? So does mine." I will not stop to read the whole of these letters. I will only call your attention to the ideas contained in them. Mr. Beecher replies, and I will read but a sentence or two of this letter:

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

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

"My Dear Mrs. Tilton: If I don't see you to-morrow night, I will next Friday. I will be gone all the forepart of next week.

Truly yours, H W. B."

Why, I ask, if there was no improper relation between these parties does

he take the pains to inform her that she might write him now, because it is safe; and it is safe because he is home alone with his sister? Why was it not safe, if he expected a proper correspondence with a Christian woman, one of his own parishioners? Why does he take the trouble to inform her that it is safe to do it then, because then he is home there with his sister! And after the scenes of the few months prior, after the agony that he had gone through on the 30th of December, when he says, in his letter of February 7th he never expected to see her again, or be alive many days, that he could never speak with her again without her husband's permission, and he didn't know then whether it would be prudent or proper, without the knowledge of that husband, and without the knowledge of the man whom God had sent him, and to whom he had trusted the secret—he writes such a letter to a woman who had accused him with having had improper relations with her, and then, in such a letter, putting in a slip making an appointment for a meeting. Gentlemen, we expect in this case to be judged by the same rules that you judge other men by. We expect in this case that you will judge the defendant by the same rules that you yourselves would be judged by, the same rules that you would judge other men by. We do not expect that in this case you will say that because he is a great man, because he has a great name, and that his fame extends thoughout the land, that you will withdraw him in considering this case from the ordinary rules that you would apply to other men. Why, if any one of you should be caught in such a correspondence as that with another man's wife, upon that alone, without anything else, you would be pronounced an adulterer. That would be the judgment of your fellow-man, and it would be a righteous judgment. Mark you, gentlemen, this letter, too, is written by the man who says on the 1st of January, 1871, that he so blamed himself because he believed that his counsels had tended to produce social unhappiness, because he had been the cause of all the ruin and all the desolation that had overtaken Tilton. He was then in paroxysms of grief from the ruin that he believed himself, though unconsciously, he says, to have been the cause of—a home well-nigh ruined and desolated by his confessed acts; and yet, writing to that woman, the mother, the head of that home, such a letter as that, without asking any explanation, without giving any explanation, without so much as making allusion to all this that had preceded, that had so frenzied him, that had driven him almost mad, in fear of losing his mind—such a letter as that under such circumstances, as though nothing had ever occurred between them, on the contrary, she saying, "Does your heart bound towards all as it used? So does mine." He replying, "If you want to write, it is safe now; you can do it. I am alone here with my sister, and it is permitted to you to do it. If I do not see you to-morrow night, I will on Friday; I am going away and can not be there before." If that was you, gentlemen, any man on that jury, what do you think would be said of you by your neighbors? The knowledge of this fact alone, stripped of every other consideration, stripped of every other fact, what would be the judgment of mankind upon such acts? Well, gentlemen, the very circumstance and fact that there was this clandestine correspondence, under the circumstances, is strong evi-

dence that there had been an improper intimacy between these parties, because if there had been no improper intimacy between these parties—with a knowledge on his part, as he says, that his counsel, his presence, had tended to produce this sorrow and this grief in the family, he would have been very careful before he would have renewed that intimacy. Certainly. Why, he had been forbidden, you recollect, ever to enter the house again; had been forbidden ever to speak to her again; and could not speak to her, and could not come to the house, and yet he says he will be there. He writes to her and renews this intimacy clandestinely, without the knowledge of the husband, without the knowledge of the man to whom this secret had been confided. But that is not all; she writes another letter to him, in which she undertakes to frame excuses for having confessed, for having communicated the fact to her husband. The date of this is May 3d, 1871.

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

Mr. Morris.—March 8th, 1871.

Mr. Shearman.—There is no date to that.

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

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

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

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

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

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

Mr. Morris.—I read portions of that only.

Mr. Beach.—You have not read May 3rd.

Mr. Morris.—Oh, no [reading]: "My future, either for life or death, would be happier could I but feel that you forgave, while you forget me. In all the sad complications of the past year my endeavor was to entirely keep from you all suffering; to bear, myself alone, leaving you forever ignorant of it. My weapons were love, a larger, untiring generosity and nest-hiding. That I failed utterly we both know, but now I ask forgiveness."

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

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

These clandestine letters were discovered after Mrs. Tilton deserted her home on the 11th of July last, and that was the first knowledge the plaintiff had that there had been any communication between the defendant and his

wife. I have already, gentlemen, called your attention to the character of these letters, and sufficiently indicated their meaning. But I will pass on to some other topics. I have been speaking, gentlemen, of the facts embraced (with the exception of the one letter to which I have just called your attention), within the period between February 7th and April 2d, 1872. The next letter in the order of these events is written by Mrs. Morse to Mr. Beecher, and by him delivered to Mr. Moulton, as the custodian of his secret, and I will call your attention to a paragraph of it as being to my mind very significant. She commences :

"MY DEAR SON"——

Mr. Shearman.—Is that January, 1871 ?

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

Mr. Shearman.—1871 ?

Mr. Morris.—1871. It commences:

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

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

Gentlemen, in any ordinary case, where parties are judged by the ordinary rules of evidence, in any case that you might be called upon to try between people of less distinction, with one-half the evidence that I have detailed to you, you would not hesitate for a moment in putting the seal of your condemnation upon the destroyer. But we dare not stop even here. It would seem as though the case was proven over and over again by the confession of the defendant, by the confessions of his victim, by the knowledge communicated by her mother, by these letters, which are plain, clear, and unmistakable

Yet, I say, we dare not stop, even here, and I propose, from this period onward, to present to you evidence still more conclusive than any that has preceded it; evidence so clear, so conclusive, so convincing, that you will not hesitate for a single moment to give us that justice which we claim at your hands. We come here from a blighted and a desolate home. The children of my client are scattered in different parts. He will return to-night to as cold, as cheerless, and as desolate a home as there is in the land. And from that home he will come, in the morning, to meet you, fathers, and brothers, and husbands; you coming from your happy homes, he from his desolate one. Until then I will close my remarks.

SIXTH DAY, JANUARY 12, 1875.

If the court please—Gentlemen of the jury: You observed, must have observed, yesterday, that I was laboring under a very severe indisposition, which, I regret to say, I am this morning; and in my hurry to get through with my part of the labor in this case I omitted some points to which I should have called your attention, and I will briefly call your attention to some of those points now, before pursuing the discussion, at the point I left off at the close, yesterday. I called your attention to the interview had on the 30th of December, 1870, between Mr. Tilton and Mr. Beecher at Mr. Moulton's house, when Mr. Tilton accused Mr. Beecher of adultery. I omitted to call your attention to the fact as to how that interview was brought about. On the 26th of December Mr. Tilton wrote a letter to Mr. Beecher, at the suggestion of Mr. Bowen, demanding, for reasons which he explicitly knew, his retirement from the pulpit. Prior to this, Mr. Tilton and his wife had agreed that the secret should be buried; they had agreed for the sake of their family, for the sake of their children, that it should not be exposed, and she, fearing that this action on his part, although in the interest of another, might lead to complications and to disclosures that would involve her own secret, at her own solicitation this interview was sought, and it was a friendly interview. Its purposes were not to expose the secret or the crime which Mr. Beecher had committed, but, on the contrary, to put him upon his guard as against another man from whom he feared certain stories that were afloat; and it was in consequence of this understanding and this arrangement that this interview was had; and the letter which Mrs. Tilton wrote the same night, the 30th of December, 1870, shows that it had been understood and agreed between her and her husband that this secret should not be made known. And it was with this letter in his possession, and the letter written the next morning by Mrs. Tilton, that Mr. Moulton had his interview with Mr. Beecher on the night of the 31st of December, 1870, and the closing line of this letter is, "You and I both are pledged to do our best to avoid publicity." So that you will perceive that this interview and the statement of these facts to Mr. Beecher was not for the purpose of exposing, but to carry out the pledge that he had made to his wife, that these secrets should not be exposed, and so to put him on his guard against another, that that purpose might be attained. I called your attention briefly from that point to the leading facts and features in this

case, and I will not trouble you now by recapitulating those facts, except to call your attention to one fact which I omitted to mention, and that is, that the letter to which I adverted yesterday, containing a clear, explicit, and unequivocal confession of guilt on the part of Mrs. Tilton, was written when her husband was some five or six hundred miles away from her.

During the period of which I was speaking at the adjournment of the court, to wit, in 1871, trouble began to brew in another quarter. Inquiries began to be made by certain members of Plymouth Church. Some were suggesting that action should be taken with a view of dropping Mr. Tilton's name from the record; and in the Fall of 1871 there was a meeting held by the Examining Committee for the purpose of considering the propriety of dropping his name from the roll of membership of Plymouth Church. Mr. Beecher, at his request, was appointed at that time a Committee to wait upon Mr. Tilton, and, as he said, to remonstrate with him, and induce his return again to the church, into which he had not entered since the 3rd of July, 1870. That was the proper course to have been taken by the Committee and by Mr. Beecher, if the object had been, as then stated, to remonstrate with Mr. Tilton and induce his return again to the church; but I shall be able to show you, I think, to your satisfaction, that there was another purpose, another object, another point to be gained by this action, and that was the concealment of the crime that we charge against Mr. Beecher. True, as it is said, if a brother has gone astray, you should remonstrate with him: "If thy brother shall trespass against thee, go and tell him his fault between thee and him alone. If he shall hear thee, thou hast gained thy brother, but if he will not hear thee, then take with thee one or two more, that in the mouth of two or three witnesses every word may be established." In this case there were not two or three more taken. The defendant knew when he was appointed on that Committee to remonstrate, as he said, with Mr. Tilton, with a view of inducing his return into the church, he knew that it was as impossible to have him return to that church as it is to move the mountain. He knew that that man had received such a wound in his heart, and at his hand, that he never again could sit and hear the man who had thus inflicted this wound, explain the law as it was thundered from Mount Sinai, or the teachings of the Master from the Mount. Action was delayed for a considerable time. Members were anxious to have a report of this Committee who was to remonstrate with the erring brother, and during the interval, instead of trying to induce him to return again to the church, what does he do? He appeals to his friend Mr. Moulton to induce him to leave the church, to resign his membership from the church, and he writes Mr. Moulton a letter, appealing to him to use his offices to induce Mr. Tilton to resign from the church:

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

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

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

Mr. Morris.—December 3rd, 1871.

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

That is, Bowen the weaker for it.

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

Do facts like these need any comment? The defendant, the pastor of his church, securing himself to be appointed as the sole Committee for the avowed purpose of inducing Mr. Tilton's return to the church, and at the same time, while delaying the report, planning, plotting, devising means to have him withdraw from the church. But finally a report is made; that he had seen Theodore, and that he had had great troubles, pecuniary and otherwise, and it would be better for the Committee not to take further action at that time; and the advice was taken, and once more they have succeeded in staving off, preventing an investigation that would reveal the truth. The reason of this action on the part of the church was the publication of the biography of Mrs. Woodhull, and Mr. Beecher, fearing that if action was taken it would incense Mr. Tilton, and thus lead to an exposure of the whole difficulty, he was anxious to avert the threatened catastrophe and keep off the day of judgment; and the device succeeded, for a time at least. But it was only a temporary success. As were all the devices that were resorted to during the four years succeeding the commission of this crime, it was but temporary.

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

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

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

"If you think it is best that I should preside at the meeting, I will do so. I don't want to do it; I would rather not do it, but if you say so, I must do so. I leave all to your judgment. Though it may involve my reputation in the estimation of many; though it may subject me to criticism, as it undoubtedly will; though it may injure me in public estimation to preside as requested, yet, as you say, as you advise, so will I do." What do you think, gentlemen, must have been the secret entrusted to Mr. Moulton that would induce Mr. Beecher so completely, so absolutely, to abandon himself to him, placing his reputation in his hands, laying aside his own judgment as to what was proper in his situation, leaving it all with him, having no mind, no judgment, no will of his own with reference to his action, but leaving it all with Moulton? At this time, bear in mind, gentlemen, it was more than a year after the letter of contrition had been written; it was after the biography had been written that so much has been said about; it was after Tilton had presided at the Steinway Hall meeting—in fact, it was after he had done everything that identified his name with this woman, and all for Mr. Beecher's sake. But that is not all. After this—after Mr. Tilton himself had ceased to have anything to do with Mrs. Woodhull, we find a friendly letter from her to Mr. Beecher dated June 3d, 1872, in which she calls upon him for aid and assistance in the difficulties with which she was surrounded then in the Gilsey House. The proprietors threatening to turn her out, she calls upon him for aid long and long after Mr. Tilton had ceased to have anything to do with her, and after he says that he had had an interview in which she was angry and threatening, because he had peremptorily refused to preside at the meeting. And yet, notwithstanding this angry talk between them and this peremptory refusal to preside at the meeting, we find an invitation from her, and he turning it over to Mr. Moulton to decide for him, long after Mr. Tilton had ceased to have anything to do with her—a friendly communication from her; an appeal to him for aid.

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

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

What does that mean? In 1872—the 3d of February, 1872—over a year after it is alleged that Mr. Tilton had made a false accusation against the pastor of Plymouth Church, you find them having this friendly conversation, and Mr. Tilton assuring Mr. Beecher that he may go on with his work without apprehensions from him. Gentlemen, was that the language and the assurance of a man who had made such a false accusation? No; it was the

language of the man who had been injured and wronged to the man who had thus injured and wronged him, saying to him: "Notwithstanding the great wrong that you have inflicted upon me, I forbear; go on with your work; I shall not expose the crime that you have committed against me." If it don't mean that, gentlemen, pray what does it mean? And then, speaking in a desponding mood, expressing his apprehensions that the friendship of Mr. Moulton may be cooling towards him, he says:

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

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

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

Do you believe, gentlemen of the jury, that it was possible for an innocent man to have penned that letter? Do you believe that that letter was written by a man understanding the full force and meaning of every word that he penned?

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

It was the note, as he says in the letter, a note of warning, that he had received from Elizabeth, and fearing that there was danger ahead, he pours out again his soul to his friend, hoping thereby that the appeal might be effectual. If he had said in this letter, "I fear Theodore Tilton will expose the fact of my criminal relations with his wife," it would not have been a more clear and conclusive confession of guilt than it is. "If my destruction would place him all right, that shall not stand in the way." Place him all right? What had been done to him? Why, the pretense is that the wrong had been done to the defendant, to Mr. Beecher by Mr. Tilton, yet, with conscious guilt, with the consciousness of having wrought this great ruin, he says, "If my destruction will place him all right, that shall not stand in the way." If my destruction will place him all right?—how place him all right? But while he is willing to do this, while he is willing, if his destruction would place him all right to be destroyed, he reminds his mutual friend that that would not remedy the evil; that Mrs. Tilton and the children would be left to a blight; that their future would be clouded; that his destruction would not prevent the exposure of the secret. He would be destroyed—"I would be destroyed, but he would not be saved;" because my destruction would lead to the exposure of the very thing that we seek to avoid. But, "I am willing to step down and out. No man can offer more: this I do offer." A man than whom none in the country possessed greater power in his station, at the head of one of the largest churches, engaged in other enterprises, his name co-extensive with civilization—this man offering to step down and out, to vacate his position and retire into private life, if the man who on the 30th of December, 1870, falsely accused him of an infamous crime, desires it. Think of it for a moment! An innocent man occupying such an elevated position accused by a member of his own church, falsely, of an infamous crime, and after more than a year of planning and plotting with that member to keep the facts secret, offering to give up everything, church, paper, the "Life of Christ," and every work in which he is engaged, at the bidding of the man who had made this false accusation! If the theory of the other side be true, had Mr. Tilton offered himself up as a sacrifice, there would have been some propriety in the offering. But for the man thus injured to offer himself up as a sacrifice to the man who had injured him, I submit, gentlemen, is more than human nature can conceive.

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

"I am in the full flush of mental vigor, at the very acme of fame; I have dedicated my life to the cause of religion and morality; I am at the head of

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

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

What does that mean—"this horror of great darkness"—in which he spent most of the time? It was the brooding over the crime that he had committed; it was the vision, ever present before him, and haunting him day and night; that was the great darkness—the "horror of great darkness," in which he spent most of his time. He saw children worse than orphaned; he saw a home desolated, children scattered, happiness destroyed, hopes blighted; he saw his own high station stained; his robes soiled; his own family disgraced; and he saw Christendom blush at the crime that he had committed. No wonder that he lived most of the time in the horror of great darkness.

"Life would be pleasant if I could see that rebuilt which is shattered." What is it that has been shattered, and what had he to do with the shattering? What does it mean? The answer has already been given in the mind of each one of you, gentlemen. It was the home that had been shattered, and it was he who had shattered that home, and "Oh! if I could see that rebuilt, life would be sweet, but as it is, I live in the horror of great darkness." "To live," he exclaims, "on the sharp and ragged edge of anxiety, remorse, fear, and despair, can not be endured much longer." Every word penned there so carefully was understood fully by Mr. Beecher when he penned that letter. No man understands the meaning of the English language better than he, and when he used that terrible word "remorse" he confessed his guilt. The word itself is a confession of guilt, and implies a crime behind it to cause or produce the feeling of remorse. The very meaning of the word is "to bite

again." Remorse is something which keeps biting its victim, gnawing him, preying upon him. As Crogan says: "When remorse is blended with the fear of punishment, and rises to despair, it constitutes the supreme wretchedness of the mind." This is the remorse that Mr. Beecher felt; a remorse blended with the fear of punishment, that is a constant dread of discovery, for discovery carried with it its own punishment, and no wonder that it should engender in him, as one author describes it, "the supreme wretchedness of the mind." No wonder that it should, as another author describes it, "draw him nigh to the grave." There are many kinds of human wretchedness. There is poverty, sickness, bereavement. There are various types of anguish, agony, heart trouble; but remorse is "the supreme wretchedness of the mind," and that was Mr. Beecher's condition of mind when he used that word "remorse." When he used that word he confessed to all that is contained in it. He confessed to a criminality capable of producing the supreme wretchedness of the mind; a guilt which makes remorse possible; a guilt which gnaws and preys upon him, "biting like a serpent, stinging like an adder." What was there at this time and at this period that should place him upon "the ragged edge of anxiety and remorse, fear and despair," so far as the world knew? So far as the world knew, Mr. Beecher was at the acme of his fame. None of these facts which subsequently were made public and so disturbed him had at that time been made public or were known. Bear in mind that at the time he was living in the "horror of great darkness, suffering the torments of the damned;" "was upon the ragged edge of despair, fear, and remorse," the Woodhull publication had not been given to the world, because that was not published until the 2d of November, 1872. Bear in mind that at this time that he was suffering the torments of the damned, Mr. Tilton's letter to Mr. Bowen, relating charges of moral delinquency made by Mr. Bowen, had not yet been made public, because that did not see the light of day until the 20th of April, 1873. Bear in mind that Mr. West had not at that time notified Mr. Beecher that he intended to prefer charges against Mr. Tilton and Mr. Bowen, in which was the specification averring that on the 3d of August, 1870, Mr. Tilton had told Mrs. Bradshaw that he had discovered a criminal intimacy between Mr. Beecher and Mrs. Tilton, to which specification her name was attached as a witness. Bear in mind that at this time Mr. Tilton had not appeared at Plymouth Church, and there confronted its pastor with the question whether he had spoken falsely of him or not. Bear in mind that at this time the council that so disturbed the defendant had not yet been called, nor, until November, 1873, were the initiatory steps looking to that council taken. Bear in mind that Mr. Tilton's letter to Dr. Bacon had not been published, because that was not published until the 24th of June, 1874. At the time that he was living in this "horror of great darkness," at the time that he was suffering "the torments of the damned," none of those things had been made public. They had just passed through a successful pew-renting of the church. He had delivered a course of lectures to the theological students of New Haven with great success, and which had added greatly to his already great fame. They were thinking of making preparations to celebrate what was known as the "silver wedding," the twenty-

fifth year of his ministrations in that church; and at this time, when to the world he was at the height of his prosperity, surrounded by powerful friends, with resources unlimited, with fame as broad as christianity and civilization —at this moment, at this time, thus situated, thus circumstanced in the eyes of the world, standing as the foremost preacher of the age, with nothing, so far as the world knew, to cast a shadow across his pathway, he offers to give it all up; he offers to "step down and out" at the mere suggestion of Mr. Tilton.

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

Oh! but it is said that Mr. Beecher was a coward, and that is what led him to do these foolish things; and that suggestion, gentlemen, calls up another thought in my own mind. Bear in mind that these letters are written by Mr. Beecher voluntarily; they are written to the man who has been entrusted with the secret, whatever it be, and therefore it was at the time an honest expression of Mr. Beecher's feelings. If he had been an innocent man, do you think he would voluntarily have written such a letter as that to Mr. Moulton? If he had been an innocent man, do you think that he would have deliberately sat down and written such a letter as that? Why, no; if he had wanted to have seen Moulton he would have seen him; but if innocent he would not have written such a letter as that. And in all the letters he has written during the four years, all the conversations that he has had to Moulton, there is never one intimation that he is fearful of a false accusation being made; no intimation of that. Every letter and every act is based upon the theory of some great wrong committed by him, and not an intimation anywhere in any letter written to a third party, his devoted friend, the man sent to him by God as he says—not an intimation in any of those letters that he was fearful of a false accusation being made against him. Why, gentlemen, is it necessary upon such facts as these to dwell? An innocent man sitting down and writing such a letter as that to a friend, and that friend, one in whom he placed implicit, unbounded, unquestioning faith, without ever alluding to the fact. Oh! would he not have said, "Frank, this is too bad; you know that this is false—that this charge is false; it is too bad that I should suffer in consequence of that. Stop your friend, stop him." Moulton—he knew that this charge was true, or he knew that it was false—and Mr. Beecher believed that Mr. Moulton knew whether it was false or not. Did Mr. Beecher suppose for a moment that Mr. Moulton did not know whether the charge was true or false? Do you suppose that if his mind was hesitating upon that point, whether Mr. Moulton was aware of the truth or falsity of the charge,

that he would not have informed Mr. Moulton of the fact? It is evident that he supposed that Mr. Moulton knew or believed the charge to be true, and if he supposed that Mr. Moulton believed the charge to be true, and it was false, why didn't he undeceive him? Why didn't he say, "Moulton, you are laboring under a misapprehension here. You believe that this charge is true. It is false; it is false!" No, he says nothing of the kind; but he proceeds upon the assumption that the charge is true, and that Mr. Moulton knows it to be true, and he sits down and he writes such a letter as that voluntarily to him. I ask you, gentlemen, again, do you want any further evidence of the truth of the charge that we bring against Mr. Beecher than that letter, with the surrounding circumstances under which it was written?

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

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

But, gentlemen, this letter but breathes the spirit of all his letters upon this subject. Every letter, if written to Moulton in pure friendship, contains some allusion to this dark subject. On March 25th, 1872, he writes to Mr. Moulton, in which he says:

"I have been doing ten men's work this winter, partly to make up lost

time, and partly because I live under a cloud, feeling every month that I may be doing my last work."

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

During this time of which I am now speaking another difficulty arose. As I said a little while ago, it has been a succession of difficulties to keep down this fact. They have had to resort, first to one device, and another and another, and as one was put away another arose because of the impossibility of concealing permanently such a crime. Mr. Tilton had lost his situation. There was a penalty attached to the contract, and that had not been adjusted or settled; and Mr. Tilton had instructed his lawyers, Judge Reynolds of this court, and Mr. Ward, to commence suit. That was another cause of alarm. Fearful that that would lead to the exposure of the secret, the defendant was anxious that some measures should be taken to prevent a suit between Mr. Tilton and Mr. Bowen, and finally an arbitration was entered into, Mr. Claflin, Mr. Storrs, I think, and Mr. Freeland being the arbitrators. At the conclusion of that arbitration, or after that arbitration, another device was resorted to to keep down the scandals that were being afloat at this time, and a covenant was entered into, signed by Mr. Bowen, by Mr. Beecher, and by Mr. Tilton, and I will call your attention to a sentence of the portion signed by Mr. Beecher.

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

Mr. Beach.—When was that?

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

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

What, I ask, did he, on the 2d of April, 1872, revoke, as towards Mr. Tilton? Bear in mind, that at that time Mr. Tilton had written the Woodhull biography. If Mr. Beecher had for that condemned him, he revoked it all. Bear in mind that before that Mr. Tilton had presided at the Steinway Hall

meeting, at which Mrs. Woodhull delivered her lecture. If Mr. Beecher condemned Mr. Tilton for that act on the 2d of April, 1872, he revoked it all. If Mr. Tilton had excited Mr. Beecher's indignation by proclaiming free-love doctrines so that *The Advance* had to be started to supersede *The Independent* in the Northwest, he revoked it all. Had he said that prior to this Mr. Tilton was bankrupt in character and morals, on the 2d of April, 1872, he revoked it all. Had he charged Mr. Tilton with promiscuous immoralities, he revoked it all. Had he told Mr. Bowen that he was not fit to edit *The Independent*, because of his free-love doctrines, because of his promiscuous immoralities, because of his brutality to his wife, because of his denying the inspiration of the Scriptures and the Divinity of Christ, on the 2d of April, 1872, he revoked it all. Had he accused Mr. Tilton with having, on the 30th of December, 1870, charged him falsely with an infamous crime, he revoked it all, and proclaims solemnly that he was a Christian gentleman. All these things had transpired prior to the 2d of April, 1872, and if Mr. Beecher up to that time knew of or had said anything derogatory to the Christian character of Mr. Tilton, he revoked it all, he was a Christian gentleman. And, but a few days after, in his own paper, he says of him :

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

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

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

Now, gentlemen, I will proceed to examine some of the facts occurring in a later stage of the history of this case: On the 2d of November, 1872, was published in what is known as *The Woodhull & Claflin Weekly*, a story in which Mr. Beecher was accused of adultery with Mrs. Elizabeth R. Tilton. At the time that this publication appeared Mr. Tilton was absent from the city and absent from the State. He was in one of the New England States, engaged in the Presidential campaign, when the story came out accusing his pastor with adultery with his wife. What did Mr. Beecher do in connection

with that story, and with that publication; and what, if an innocent man, ought he to have done, is the question that now concerns you. Did he, on that occasion, act as an innocent man, or did he on that occasion act as a guilty man? What ought he, as a Christian minister, to have done? Bear in mind, gentlemen, that he was accused of the crime of adultery with the wife of the man he declared but a short time prior to have been a Christian gentleman, and an honored member of his church! And he accused of adultery with the wife of a member of his church—what should he have done? What did he do? He did nothing. He waited until Mrs. Tilton returned. Ah, yes, he did! Because the very night of the publication of that story a meeting of his trusted members, some of whom afterwards figured on the committee, was called together at the house of Mr. Halliday, and they are there informed that they had best take no notice of the story, but try and live it down—try and live it down—fearful that his church would take some action, would say to him, "This scandal must be investigated. Here you are charged with adultery with the wife of a member of this church, and she a member of this church," therefore, before any steps could be taken in that direction, this other device was resorted to. Another device, and that was to try and live it down. It may be that the church, it may be that the pastor of Plymouth Church, with his power, with a church that would stand by him right or wrong, guilty or innocent; it may be with all this immense power he could live it down, they could live it down, but how, I ask you, in the name of kind Heaven, could the woman live it down? You recollect, gentlemen—if you do not, I will state to you the fact—that after the publication of this story, there was a universal demand throughout the land—a universal call upon Mr. Beecher to speak but one reassuring word, and deny this charge. Every appeal that could be made for the cause of morality, for the sake of religion, by all that he held dear on earth, by every consideration that could be addressed to him, he was adjured to deny the truth of the story. But not a word, not a word. While the cause of religion was suffering from this scandal, and while the trusted member of his church was suffering in the estimation of all womanhood, he remained silent, as silent as the grave, and when Mr. Tilton returned, he induced him, or tried to induce him, to publish this statement:

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

Was Tilton the man then to deny that story? Who knew absolutely, unqualifiedly, whether the story was true or whether it was false? Mr. Beecher, and against him the charge was hurled, and against a member of his church—what was his duty? What should an innocent man have done under such circumstances? Why, he would have branded it as false at the earliest possible moment. He would not have said, "I can not do that because it proceeds from so low an origin." Oh! no. It was in the paper. I care not what paper, or what the character of the paper was; it was in the paper, and it was his duty, being innocent, to have denied the story and not stop to question its authority. But after that, it appeared in many respectable

journals of the land, and those in which it did not appear united in the call upon him to say one word, and give one assurance that there was no truth in the story, that his friends in his behalf, and in the behalf of morality, might deny it. But no; no denial, no denial. Very truly Tilton replied to him:

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

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

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

AFTERNOON SESSION.

Mr. Morris resumed his argument as follows:

Gentlemen of the Jury: I was calling your attention at the adjournment of the court to the efforts made by the defendant to prevent an investigation into the facts connected with the Woodhull publication. Although that examination was delayed for a time, yet it was but a little while before a Committee was appointed, of which the defendant was a member. That Committee was appointed in December following the publication of the Woodhull story. Mr. Beecher had made efforts to have a statement made by Mr. Tilton for the purpose of relieving the story, as far as Mr. Tilton was able, of its odious features; and Mr. Tilton prepared a card, which was submitted to Mr. Beecher, which was designed for publication.

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

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

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

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

The real point to be avoided is an investigation on the part of the church, and then a council. Such a proceeding as this would be a conflagration.

What would make the conflagration but the revealment of the fact and the crime which we charge him with? Certainly no advice that he may have given Mrs. Tilton; certainly no counsel that he may have given Mr. Bowen; certainly no false charge would make a conflagration, because no man lived who dared make such a false charge against such a man, situated as he was. No; the conflagration would be the revealment of the truth that has been revealed, and that will be revealed now to you in this trial. Indeed, it has been a conflagration, but it has been a conflagration because the truth has come out. It is because the facts demonstrate beyond cavil the truth of the charge that has been made against Mr. Beecher, of his adultery with the wife of Theodore Tilton.

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

And now, gentlemen, I come to a period in the history of this case, if possible more conclusive, more absolutely conclusive, against the defendant than any fact to which I have directed your attention, the period closing with the 22nd of June, 1873. Within this period are contained facts and events that leave no possibility of doubt as to the truth of our charge and the guilt of the defendant. The covenant which I have called your attention to had been entered on the 2nd of April, 1873, but notwithstanding this covenant, Mr. Bowen was whispering these stories against Mr. Beecher, and another device had to be resorted to, and this time the device was to find an excuse for publishing the covenant as against Mr. Bowen, to stop his mouth, not as against Mr. Tilton to stop him, and for that purpose a plan was agreed upon, and this was the plan. Mr. Carpenter, to whom Mr. Bowen had repeated these stories, was in company with Mr. Claflin and Mr. Cleveland, and Mr. Moulton, to go and see Mr. Bowen, confront him with these stories, and, unless he retracted them, to publish the covenant as against him. In pursuance of this arrangement, Mr. Beecher, on May 25th, 1873—a Sunday—sent Mr. Cleveland with his horse and buggy over to New York to hunt up Carpenter, and that night the interview was held with Mr. Bowen, in the presence of Mr. Carpenter, Mr. Cleveland, and Mr. Claflin; and Mr. Bowen not denying the charges that he had made against Mr. Beecher, the covenant was published. Mr. Beecher on the same day that he sent his horse and buggy after Carpenter, writes a note to Mr. Moulton, in which he says:

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

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

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

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

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

"*To the Editor of the Brooklyn Eagle:* Samuel Wilkeson, a business partner of Henry Ward Beecher, authorized the publication of a part of a document touching the relations of Mr. Beecher and Henry C. Bowen. This document, without the addition of another, of which I presume Mr. Wilkeson had no knowledge, grossly misrepresents Mr. Beecher's relations to myself. The extent of this misrepresentation, even by well meaning-journals, is shown by the following extract from the *New York Express:*

"'Something under the circumstances was due to the public, Mr. Beecher should remember, as well as to his peculiar friends, Mr. Bowen and Mr. Tilton; and hence, while it was well enough to forgive them for the great—we had almost said the irreparable, injury they have done him, it is to be regretted that he did not bring the alleged slanderer or slanderers into open court, to be dealt with there as they deserved.'

"The above indicates the feeling of a great many good men and women as to my supposed unjust behavior towards Mr. Beecher, and is based on the notion that I have slandered a clergyman, that I have retracted the slander, and that I have been forgiven by him and magnanimously restored to his confidence. This impression, which is now becoming general, is a grievous wrong to me and my family. No longer can I consent to remain in a false position before the public. I therefore append the following statement by Mr. Beecher."

Mr. Evarts.—What is the date of that?

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

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

"THEODORE TILTON."

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

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

"May 31, 1873. To the Trustees of Plymouth Church: I tender here

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

"HENRY WARD BEECHER."

With that he goes to Moulton on Saturday night, May 31st, 1873, and delivers it to him. Moulton then chides him and calls him a coward. He takes this card, Theodore Tilton being present, not in the same part of the house with him, but there at Moulton's—he takes this card, this letter of resignation, and shows it to Mr. Tilton. That is what Mr. Beecher proposes to do to end this. Theodore Tilton turns to Mr. Moulton and says:

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

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

In connection with this fact let me call your attention to the fact that the charges referred to by Mr. Beecher as being the occasion for writing this letter of resignation, on the 30th of May, 1873, to wit, the charges preferred by Mr. West against Mr. Tilton, were not made until the 17th of the following October. The plea to which he refers as being the cause, and concerning which Mr. Moulton thought the committee would be divided, was not made until the 20th of October following, and at the time that this letter of resignation was written the charges had not been made; no steps had been taken towards making them. Talk had been had in the church with reference to investigating the facts connected with the Woodhull publication, in reference to Mr. Tilton's connection with the church after the publication of the biography, but the first notification that Mr. Beecher had, or intimation that these charges were to be preferred, was on the 25th of June, 1873, and the charges were made the following October, the plea the 20th of October. No, gentlemen, it was not to save Mr. Tilton from the investigation of these charges that Mr. Beecher wrote his letter of resignation and was willing to resign from Plymouth Church and retire to private life, but it was because Mr. Tilton was going to publish his letter of contrition, which he regarded, and which is a confession of his guilt; that is all. Mr. Tilton proposed to make

no accusation against him; he made no accusation in this card; he made no charge whatever. He let Mr. Beecher be his own accuser. He says:

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

Appalled at the prospect, driven to frenzy at the idea of that letter being made public, he writes his resignation, and offers to retire from Plymouth Church, and it was only the course taken by Mr. Moulton and the courage that Mr. Moulton infused in him on that occosion, that saved Mr. Beecher to Plymouth Church. On the 31st of May, 1873, Henry Ward Beecher would have ceased to be the pastor of Plymouth Church had it not been for Francis D. Moulton, of whom that very church subsequently cried out: "Kill him! kill him!" Do you doubt, gentlemen, what this letter of contrition refers to? Do you doubt its meaning and its import when the mere idea of its publication drove the author of that letter to resign from his church, from his position; willing to give up his ministry and retire to private life simply because a recent publication made it no longer possible for him to maintain these secrets? The publication he refers to was the "tripartite covenant," and the comment resulting from that, unfavorable to Mr. Tilton, and Mr. Tilton's determination at last, to relieve himself from this unjust odium, or compel Mr. Beecher to relieve him; and when that was brought to his mind, and he could see no way out of it at that time, wearied with his sufferings he determined to put an end to them in this way, by resigning his ministry and retiring to private life.

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

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

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

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

What did he mean when he enjoined upon him with this earnestness not to leave his children to a blight? Why, he implored him not to make a confession, that would reveal the guilt, not to do as another faithful member of his church was advising him to do, make a confession to his church of the crime that he had committed. Mr. Tilton implored him not to make such a confession, because such a confession would leave his children to a blight. And that is what he means when he says that Tilton had enjoined upon him with the utmost earnestness and solemnity, not to betray his wife, nor leave his children to a blight. "Don't confess your crime; if you do, you leave my children to a blight." He promised not to confess, and but for that promise, or but for that appeal, in all probability, he would have yielded to the appeal of another who counseled him to confess before his church, as he had stated he had confessed before his God, and obtain its forgiveness, as he professed to have obtained the forgiveness of his God.

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

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

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

On the evening of June the 1st, 1873, Mr. Carpenter, to whom I have alluded, attended Plymouth Church. After the service was over, Mr. Beecher called Mr. Carpenter aside and said to him in great anxiety, "Have you

seen Theodore?" He replied, "No;" and then Mr. Beecher said, "He is going to publish my letter." Mr. Carpenter replied, "Well, what of it?" The answer came, "It will be my ruin and his, too, because he can not rise on my ruin." What, I ask you, in view of these accumulated and accumulating facts, does that letter refer to, the bare publication of which is going to destroy its author and destroy the man for whom it was written? What does it mean? "It will be my ruin and his too." How will it be his ruin? How will it ruin either Mr. Beecher or Mr. Tilton, except there is but the one inference to be drawn from that letter? And there is but the one inference, and that is the existence of criminal relation between Mr. Beecher and Mrs. Tilton, the knowledge of which would ruin both, would cast a blight upon both, and ruin his family. After church he goes around to Mr. Moulton's in company with Mr. Carpenter, and on his way exclaims:

"I can bear anything but the sufferings of others for my fault. If Theodore will not do this thing, publish that letter; if he will withhold it, I will divide my fame and my fortune with him."

Oh! what terrible thing does this letter allude to that should induce such expressions; that should make him fear that the knowledge of its existence would bring ruin upon him? To suppress its publication, he would divide his fortune and divide his fame. What, what, I ask you, does it allude to? Need I tell you, as sensible, reasoning, intelligent men, that there is but one crime, but one domestic crime, that a man can be guilty of, the disclosure of which would lead to such consequences as the publication of this letter would have led in the estimation of Mr. Beecher at that time? Well, he went around that night, the evening of the 31st of May, 1873, to Moulton's, his faithful friend and true, as Mr. Beecher said as late as the 5th of July last, putting his arms around his neck, in the presence of Mr. Robinson, "God never raised up a truer friend to man than he."

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

"To the Editor of *The Brooklyn Eagle:* June 2nd, 1873. DEAR SIR—I have maintained silence respecting the slanders which have for some time past followed me. I should not speak now but for the sake of relieving another of unjust imputations. The document that was recently published bearing my name with others, was published without consultation either with me or with Mr. Tilton, nor with any authorization from us. If that document should lead the public to regard Theodore Tilton as the author of the calumnies to which it alludes, it will do him a great injustice. I am unwilling that he should even seem to be responsible for injurious statements whose force was derived wholly from others."

The unjust imputations referred to in this card were that Mr. Tilton had slandered Mr. Beecher, had accused him falsely of committing crime, and had been forgiven by him. To relieve him from these unjust imputations of having done him a wrong, he published this, and he says, in effect, "Mr. Tilton has not slandered me, Mr. Tilton has not wronged me, and I should be

very sorry if the public should receive that impression, that he has slandered me, because others, and not he, are to blame; he has not slandered me." This, gentlemen, was June 2, 1873. It was the day after the writing of the letter to which I have called your attention. It was two days after the writing of the letter of resignation. With the publication of that, Mr. Tilton was satisfied, and the card that he intended to publish was withheld. All that he asked was that he should not be held up as having slandered Mr. Beecher, when he had not slandered him; that he should not be put in the attitude of having been magnanimously forgiven by Mr. Beecher, when it was he who had shown the magnanimity toward Mr. Beecher. All that he asked was not that the secret be exposed, but that Mr. Beecher would say some word, however little, to relieve him from this unjust imputation. And when Mr. Beecher spoke the word that he did in that card on Monday, June 2d, Mr. Tilton refrained from publishing his card or rather refrained from publishing Mr. Beecher's own accusation against himself. As might naturally be expected, the publication of such a card from Mr. Beecher at such a time, and under such circumstances, caused a good deal of anxious inquiry on the part of members of the church. They could not understand why it was that Mr. Beecher should publish a card of that kind, relieving Mr. Tilton from the imputation of having slandered him, of having spoken falsely against him. They could not understand this, because at that time, June the 2d, 1873, or prior to that time, Mr. Tilton had published the Woodhull biography. Upon the publication of that, steps were taken in the church to have his name dropped from the roll of membership. He had presided at the Steinway Hall meeting, which had subjected him to a good deal of criticism. His letter to Bowen had been published, in which Bowen made certain charges of moral delinquency against Mr. Beecher. His letter to a complaining friend had been published, in which he said:

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

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

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

It was after all these things had taken place, it was after Mr. Tilton had done all these things, on the 2d of June, 1873, that Mr. Beecher published this card concerning him, relieving him from all these unjust imputations, giving it to be understood by the world that he had never injured him, never spoken untruthfully of and concerning him, which was the truth.

So that you see, gentlemen, that it was the most natural thing in the world that Mr. Beecher's friends should be astonished, knowing the facts. Knowing that Mr. Tilton had accused him of adultery with his wife, knowing that he had done these things, I say it was the most natural thing in the world that they should be astonished at such a letter at such a time from Mr. Beecher in regard to Mr. Tilton. But he had no alternative. Better to resort to that device; better bear the criticisms that that letter evoked; better bear the blame which that would call down upon him,—better do anything than have his letter—his own letter—published to the world. It would proclaim his guilt. It was to prevent that catastrophe that he consented to the publication of this card. He had no alternative—"Do that, or I will do this" was the command of Mr. Tilton upon that occasion. Guided by the wise counsels of Mr. Moulton, he published this card.

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

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

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

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

"If the papers will hold off a month we can ride out the gale, and make safe anchorage, and then, when once we are in deep, tranquil waters, we will all join hands in a profound and genuine *Laus Deo*, for through such a wil-

derness only a Divine Providence could have led us undevoured by the open-mouthed beasts that lay in wait for our lives"

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

"Sunday, A. M." [No date—upon the same point]—"Your interview last night was very beneficial, and gave confidence. This must be looked after. It is vain to build if the foundation sinks under every effort."

Your interview gave confidence; your interview with Halliday last night gave confidence. How did it give confidence? Why, by that faithfulness which characterized his course for four years, he had allayed Mr. Halliday's suspicions, and that had given confidence. That is the point that must be looked to. Under no consideration must the truth be known, and whenever, by any device, whether by an evasive answer, or by a suggestion made by his friend, succeeds in suppressing the truth, then he is sent of the Deity to protect and to save him! But, as I said, at last the charges came, and one specification of those charges is, that he had stated that he had discovered a criminal intimacy between Mr. Beecher and his wife, and the name of as respectable, as Christian a woman as lives in the city of Brooklyn was given as a witness. And with this fact upon the records of the church, he has been denounced throughout the land as having preferred a false charge, and never until after the Investigating Committee was appointed, having accused his pastor of the crime of adultery with his wife. There is the record, known and read of all connected with the church. Well, this charge made by Mr. West, not yielding to the counsels and the persuasions of Mr. Beecher, but actuated by a conscientious sense of his own duty—created another contingency. Other devices must be resorted to to prevent this investigation, because, if this investigation goes on, most assuredly the truth must come out. What device can we resort to? Again he turns to his God-sent friend, Moulton, and the device is arranged and agreed upon by Mr. Beecher, by Mr. Moulton, and by Mr. Tilton. And this is the device. Mr. Tilton is to write a letter stating that four years ago he had withdrawn voluntarily from the church, since which time he had not been a member, and, therefore, was not amenable to their process. Such a letter was written; and for that device, when Mr. Beecher the next day met him, he clasped him by the hands and exclaimed, "Theodore, God inspired you to write that letter." Well, that was a successful device. It prevented the investigation into the truth of the charge that Mr. West had made against Mr. Tilton of slandering the pastor of the church. But what was to be done in order to prevent, in the conclusion of that matter, any reflection upon Mr. Tilton? A simple preamble reciting the facts of his having voluntarily withdrawn from the Church, and then a resolution that the record be corrected in accordance with the fact was agreed upon.

But on the 31st day of October, when the Committee were to make their report, Mr. Tilton hearing that a different report was to be made by the Committee, and that he was to be placed in the attitude of having shrunk from his duty and of having avoided investigation or trial by this special plea of

non-membership, wrote a letter to the committee which was shown to Mr. Beecher, a sentence of which I will read:

Mr. Beach.—What is the date of it?

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

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

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

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

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

On the 20th of July, 1874, the defendant declared that he could not delay for an hour to defend the reputation of Mrs. Elizabeth R. Tilton, upon whose name, in connection with his, her husband had attempted to pour shame. And yet, when the publication was made on the 2d of November, 1872, the defendant did not rush to the defense of the honor of this Christian woman. And when Mr. West, in 1873, charged that Mr. Tilton had charged him with having committed adultery with his wife, giving the name of the witness, he then did not rush to the defense of the honor of Elizabeth R. Tilton. She, a member of his church, charged with this crime, he charged with this crime with her—instead of coming to her defense, the defense of her honor, he resorts to every device that he can imagine for the purpose of avoiding the investigation, for the purpose of preventing the opportunity of vindicating her chastity; if he could, to keep the thing buried up, and in his own language, "thought that the church had better try and live it down," while her

reputation for chastity remained under this cloud. No attempt, then to defend the honor of Mrs. Elizabeth R. Tilton. And when these charges are made, coming from such a source as they did, the church, anxious for an investigation, the opportunity then presented him of vindicating the honor of Elizabeth R. Tilton, does he do it? No; but he tries to prevent it by a trick, by a device of words, leaving her to rest under this charge of having been debauched by her own pastor! No attempt then to rush to her rescue. Too late now to say that he could not rest for one hour when her honor was attacked, but must rush to her rescue. Too late now to play the role of the defender of the honor of Elizabeth R. Tilton! The day is past. Years ago the opportunity was presented, because the charge was made against him when her husband was away in a distant state; when it was his duty; when he was called upon by every obligation of honor, of manhood, to defend then Elizabeth R. Tilton, and if the infamous charge was false to brand it as false. But he does not do it; he is as silent as the grave. And so when opportunity after opportunity presents itself, she all the time resting under these charges and these imputations, instead of rushing to her rescue and defending her honor, he tries to prevent the opportunity, to set aside the opportunity in which he might defend her honor, and leaves her to sink lower and lower in the depths of infamy. Too late, I say, now, to play the role of defender of the honor of Elizabeth R. Tilton.

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

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

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

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

And so you see, gentlemen, the terrible anxiety and terrible agony that

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

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

"Mr. Storrs has determined to force a conflict, and to use one of us to destroy the other, if possible. I am in hopes that Theodore, who has borne so much, will not consent to be a flail in Storrs' hands to crush me."

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

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

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

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

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

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

SEVENTH DAY, JANUARY 13, 1875.

If the Court please, Gentlemen of the jury: I shall not detain you much longer in what I have to say to you. At the adjournment of the court yesterday, I was calling your attention to the efforts that had been put forth by the defendant in this case to prevent an investigation, on the part of his church, into the charges of immoralities, which had been made against him, and I had also called your attention to the fact as to how unavailing, during the four years that have passed, have been all the efforts to bury up the fact that we now present to you. As I stated, one difficulty after another presented itself, and no sooner had a threatened investigation been averted by some trick, by some device, than another difficulty arose, and thus they continued to accumulate until at last the dread secret had to be made public; and I had called your attention to the manner in which it was made public, not by a charge against Henry Ward Beecher, but by simply publishing a part of Mr.

Beecher's letter of contrition, which was accepted by everybody almost as being a confession of guilt. The publication of that portion of the letter of contrition aroused such a spirit of inquiry both in and out of the Church, that finally Mr. Beecher was compelled to take action with reference to the matter, and on the 11th day of July, 1874, was published a letter addressed to six gentlemen, three of his congregation and three of the society, requesting them to make a thorough investigation in reference to the letter of apology or contrition; and you must remember when that letter was published in the papers, with what satisfaction it was received by the friends and advocates of Mr. Beecher. "At last," they say, "we are to have the truth. At last he has taken steps to have a thorough investigation. Now we will know the truth. Now we will know the foundation for these rumors that have been floating about for the last four years. Now we will have a settlement forever of this matter."

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

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

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

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

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

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

That statement was not made because of the criticism made by an astute lawyer that adultery was not a crime at common law, and, therefore, that statement did not fully meet the question and cover the ground; and from the time that this committee was appointed, from the time that the Bacon letter was published, on the 24th of June, 1874, down to the 16th of July following, we find Mr. Beecher in consultation with Mr. Moulton day after day, time after time, writing him letters with reference to the matter. On the 10th of July he writes him a letter wanting to see him. On the same day he writes another letter, requesting him to come around to his house to assist him. On the following Monday he writes another letter, and on July the 13th he writes still another :

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

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

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

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

But that is not all. When Mr. Beecher was informed that Mr. Tilton was preparing a statement to make before the committee presenting the

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

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

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

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

parties who could establish the truth of the charge, were not requested to appear before the committee.

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

But, gentlemen, we do not rest our case upon the testimony furnished by Mr. Beecher himself alone. We go further than that; we will put upon the stand Mr. Carpenter, whose veracity, I apprehend, will not be questioned in this court, and to him, we say, Mr. Beecher made his confession. But, gentlemen, we shall not stop there; you will hear Mr. Beecher's story and you will hear the plaintiff's story. They are both interested in this transaction, and you will take that fact into consideration in weighing their testimony. Certainly, no man in this case has so deep an interest as has the defendant. These facts you will take into consideration—they are both interested parties, and you will give their evidence such weight as you think it entitled to. And, gentlemen, let me call your attention in this connection to one fact, that when you weigh the testimony of a witness you will look and see the motive there may be for departing from the truth. You see the motive that the defendant had that this crime be concealed? What motive can you suggest, what motive will my learned friend suggest? None has been suggested up to this time that I am aware of—none has yet been con-

ceived. What motive will they suggest why Theodore Tilton should have made a false charge against Henry Ward Beecher—Theodore Tilton, a man of culture, of education, of refined feelings, of poetic temperament, a man bold, a man truthful, a man loving his family as but few men love their families—I ask the other side to give a motive, if they can, why Theodore Tilton, thus situated, would make a false charge against his wife of such infamy that would bequeath to his children that he loved, as only a father can love, a heritage of shame and disgrace, and while added to all that he should drag down his own name in infamy by making a false charge against his life-long friend, his revered pastor?

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

No, gentlemen, you have seen in the recital that I have made, that, so far from his wanting to make a false accusation, notwithstanding the great wrong that he had suffered, notwithstanding the wound that he had received in his heart, he so loved his children that he was willing to bear his suffering and conceal the wrong that had been done to him and his family; and you have seen the devices that he resorted to in connection with the defendant and with Mr. Moulton, whose mission it was to keep this secret from the public knowledge. No, gentlemen, I will not detain you any longer upon that point; it would be a waste of time. Mr. Beecher has himself given the lie to any such insinuation, and when on the 1st of January, 1871, he humbled himself before Theodore Tilton as he did before his God, and called upon God to put it into his heart to forgive him, it put forever out of the question that he was fearing a false charge. And when he said: "I wonder if Elizabeth knows how generously Theodore has borne himself towards me. I wish to God that we three could be made friends again. Theodore, in that case, would have the hardest task," he put forever out of consideration the idea that it was a false charge that he was afraid of. And when, on the 2d of April, 1872, two years or two years and a half after this accusation was made against him, he said: "If I have said anything injurious to the reputation of Theodore Tilton, or have detracted from his standing and fame as a Christian gentleman, I revoke it all." . . . "God knows that I have put more thought, and judgment, and earnest desire into my efforts to prepare a way for Theodore and Elizabeth than I ever did for myself a hundredfold." He stamped the seal of falsehood upon any such insinuations, and when he said to her, "Theodore will hide you in his heart of hearts," he forever set at rest the idea that he was afraid of a false accusation. "If my destruction would prepare a way for him, that shall not stand in the way;" those who know him best are sure that he is honest, that he is manly, that he is straight-forward, that he is generous. He is a Christian gentleman, large hearted, forbearing, long-suffering, honest, manly, and straight-forward, and that is the introduction that the defendant gives to the plaintiff when he goes upon the stand to tell his sad story to you of the past five years.

But, gentlemen, we go still further than this. We shall put upon the stand Mr. Moulton, about whom you have heard so much in all this transaction, this friend whom the defendant said God had sent to preserve him,

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

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

And even then, after the first statement had been made, with all these facts presented, knowing what still remained, knowing in his own heart and soul that Francis D. Moulton told the truth, and would tell the truth with reference to this matter, he opens, even at that late day, a negotiation in order to take Mr. Moulton out of the case, that all the batteries might be turned upon Theodore Tilton, defenseless and powerless as he was, that he might be crushed and go down with the ruin of his family. For that purpose communication is opened with him, and his agent, Mr. Cleveland, is sent to Boston with full documentary power to act conclusively in his behalf in nego-

tiating with Mr. Moulton. Upon what basis was this negotiation to proceed? With the charge of blackmail resting upon him? No. That falsehood was to be retracted. Mr. Moulton was to be set right before the community, and Mr. Tilton was to be left to fight this battle alone. But he failed. It failed. Oh! the efforts that have been made in this case to suppress the truth and to prevent an honest investigation of the facts! But, thank God! we are here now before this tribunal, and we will have the facts, and we will have the truth, and we will have an honest verdict, and we will have an honest condemnation of the crime that has been committed against my client.

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

Mr. Beach.—Who?

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

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

Same date:

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

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

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

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

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

"July 7th, 1873.—My dear Frank: The country is beautiful, the birds as good to me as David's harp. I only need some one to talk to, and that one is you."

"July 14th, 1873.—My dear Frank: For a thousand encouragements, for

services that none can appreciate who has not been as sore-hearted as I have been, for your honorable delicacy, for your confidence and affection, I owe you so much that I can neither express nor pay it."

I will not stop to call your attention to all.

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

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

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

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

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

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

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

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

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

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

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

> "If to be a thrall of love and
> Faith, too generous to defend
> Itself from him she loved, be sin,
> What hope of grace may the seducer win!"

Gentlemen of the jury, I feel that I have detained you already too long; I certainly have detained you too long for my own strength and my own health; but I felt it my duty to present to you the considerations that I have presented to you, and if I have exhibited any warmth in the presenting of them to you, you will pardon me, I am sure, because I come to you with a heart full of grief and full of sympathy for the suffering and the wrong that my client has

endured. I thank you, gentlemen, for the strict attention that you have paid to the imperfect presentation I have made of this case. I regret, for the interests of my client, that this duty had not devolved upon one of my abler associates; yet I have the satisfaction of knowing that I have brought to the task a conscientious devotion to the interests of my client, that nothing but a firm conviction of the justness of this case could have inspired. Oh! gentlemen, what a scene is this, what a spectacle we behold here to-day? On the one side you see a man of vast prosperity, surrounded by powerful friends, with unlimited resources. On the other side you see a man powerless and poor, coming to you from a desolate home. Already he has been made the victim of a foul charge, then the victim of a foul slander, and then again the victim of a foul persecution, unparalleled for power and relentlessness. And what has he done? Why, he was the chance possessor of a loving and beloved wife, of a happy and of an innocent home, which his bosom friend, his life-long bosom friend, his pastor, his spiritual adviser, taking advantage of that friendship, taking advantage of his absence and taking advantage of his sacred calling, has dispossessed and despoiled him of. That home is desolated, the hopes of that family blasted, the pillars of that household have been pulled down upon the idols of his worship, and naught but desolation reigns there! Oh, gentlemen, you who have children, you who know what it is to return from your daily labors to the bosom of your happy family, can appreciate the wrong and the suffering that my unhappy client has endured; but it is to you, as fathers, and as brothers, and as husbands, that we come with our case, and as you love your homes, as you love your families and your children, as you regard the sacredness of your homes, and as you reverence virtue, and respect the sanctity of the family altar, I call upon you in the name of all that has been violated, I call upon you in the name of Christianity, by the teachings of the Saviour upon the Mount, by the law thundered from Mount Sinai, by every consideration that is near and dear to us on earth, I call upon you to brand the seducer as his crime deserves to be branded.

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

TESTIMONY ON BEHALF OF PLAINTIFF.

AFTERNOON SESSION.

AUGUSTUS MAVERICK, called and affirmed on behalf of plaintiff:

Mr. Fullerton.—Mr. Maverick, where do you reside? A. In this city, sir.

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

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

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

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

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

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

Q. Who performed the ceremony? A. Mr. Beecher.

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

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

Mr. Fullerton.—There are some things that I desire to prove that are not admitted there. [To the witness.] Have you been intimate with his family since his marriage? A. Not for the past six or seven years, not to say intimate. I have been in the habit of going to the house occasionally, but for the last five or six years only very occasionally.

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

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

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

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

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

Q. How frequently did you visit him after his marriage? A. Very

* The fact that the marriage is admitted, does not make it error to allow proof of it, although such proof is superfluous. See *Blossom* v. *Barrett* (37 *N. Y.* 484).

seldom; I made an occasional visit; I can not say that I was upon visiting terms, that is, to be in the habit of frequent and intimate visits; it is not my custom with any one, and he was in the same position.

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

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

[There was no cross-examination.]

FRANCIS D. MOULTON, called and sworn on behalf of plaintiff. In answer to introductory questions of the usual character, the witness testified that he resided at 49 Remsen-st., in the city of Brooklyn, and that he had lived in Brooklyn for about ten years. That he formerly resided in Forty-ninth-street, New York, in which city he was born. That he is now engaged in business in Brooklyn and New York, with the firm of Woodruff & Robinson, of which he has been a member since 1864, having been connected with the firm for ten years previous, as clerk. That he was married to his present wife, Emma Moulton, in 1861. That he became acquainted with the plaintiff in 1849, while a student at the New York Free Academy, and had been intimately acquainted with him ever since, and is acquainted with his family.

Mr. Fullerton.—How many children has he? A. Four or five.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Q. You knew of no estrangement? A. None, sir; no.

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

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

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

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

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

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

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

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

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

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

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

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

Q. Where? A. At his house.

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

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

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

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

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

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

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

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

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

Q. Very well. Now go on with the narration. A. I said, "Theodore Tilton is at my house, and wishes to see you to-night." He said: "This is Friday night; this is prayer-meeting night; I can not go to see him." "Well," I said, "he wants to see you with regard to your relations with his family, and with regard to the letter that he has sent to you through Mr. Bowen. I think you better go to see him." I said: "You better send somebody down to attend to your prayer-meeting for you," and he did.

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

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

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

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

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

JUDGE NEILSON.—[To the witness.] Say yes or no, sir.

A. Yes.

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

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

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

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

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

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

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

[Some incidental conversation in search for papers is here omitted.]

Q. How long was Mr. Beecher up in this front room of which you have

spoken, with Mr. Tilton, on that occasion? A. Well, I should judge, about an hour, sir.

Q. Was there any other person present that you know of? A. With him and Mr. Tilton?

Q. Yes, sir? A. No one that I know of, sir.

Q. And during that interview where were you? A. Down in the parlor.

Q. Was any one with you? A. No, sir.

Q. Did you remain in the parlor until Mr. Beecher came from the front room? A. Yes, sir.

Q. And where did he go when he left the upper front room? A. I went out with him to Theodore Tilton's house, sir.

Q. Where did you meet him after he first left the room? A. I met him at the foot of the stairs.

Q. In the hall? A. In the hall; yes, sir.

Q. Did anything pass between you? A. Yes, sir.

Q. State what was said? A. He asked me if I had seen the letter of confession of Elizabeth, and I told him I had, and he said, "This will kill me."

Q. Anything else said before you left the house? A. No; we walked out together.

Q. And where did you go in company with him, if anywhere? A. Went down to Theodore Tilton's house, sir.

Q. What did he say on the way there after you left the house? A. He said to me, "This comes upon me as if struck by lightning," and I talked with him again about what Bowen had said.

Q. Repeat it? A. I told him again—I told him that I thought it very strange that Mr. Bowen should have made such charges against him to Mr. Tilton and not have told him anything about it. I said I thought it was very treacherous on Bowen's part toward Tilton. I told him that Bowen had promised to sustain the charges that he had made, and that is the substance of what was said. Neither of us, I think, were disposed to talk much, sir.

Mr. Evarts.—[To the witness.] All observations of that kind——

The Witness.—I beg pardon, sir; I stand corrected.

Q. Have you related all that was said that you now remember before you reached Mr. Tilton's house? A. Yes.

Q. Let me ask you, was anything said as to the substance of the interview between Mr. Beecher and Mr. Tilton, when you were not present? A. Why, he told me that Mr. Tilton had told him of the confession of his wife to him.

Q. Just repeat now what he said upon that subject? A. Mr. Beecher told me that Mr. Tilton had told him that Elizabeth had confessed, and had read to him what either was a confession or a copy of a confession of Elizabeth of sexual intercourse between them; and he told me that Theodore had told him of the reasons for sending to him the letter through Mr. Bowen. That is all that I remember just now.

Q. When you went to see Mr. Beecher that night, had you any paper in

your possession that had been given to you by Mr. Tilton? A. By Mr. Tilton? Yes, a letter from Mrs. Tilton.

Q. Did you give it to Mr. Beecher? A. No, sir.

Q. Did you show it to him? A. No, sir; I didn't.

Q. Do you know whether Mr. Tilton kept a copy of that paper of which you now speak, which he gave to you? A. He made a copy of it, I think; he made a copy of it.

Q. Where did he make it? A. He made it at my house.

Q. At the time that he gave the original to you? A. Yes, sir; he took a copy of it.

Q. And what did you do with that paper which you took from him, and of which he made a copy? A. I kept it until after the "tripartite covenant," and returned it to Mr. Tilton.

Q. And when you arrived at Mr. Tilton's house, did you go in? A. No, sir; I did not go in.

Q. Did Mr. Beecher go in? A. He did; yes, sir.

Q. And where did you then go? A. I went home.

Q. Did he tell you of his object in going there? A. He told me that Theodore had given him permission to go to Elizabeth for confirmation of the story; nothing further than that.

Q. After leaving him there, where did you go? A. After leaving him at Mrs. Tilton's?

Q. Yes, sir. A. I said that I went to my house.

Q. You went back to your house? A. Yes, sir.

Q. Did you see Mr. Beecher again that night? A. I did; yes, sir.

Q. How long after you left him at Mr. Tilton's house? A. Within an hour, I should think.

Q. And where did you see him? A. In my parlor.

Q. He returned to your house, did he? A. Yes, sir; he did.

Q. Tell me what occurred then between you? A. I went into the parlor with him, and I said to him: "Well, have you seen Elizabeth?" and he said he had. That was all he said.

Q. No further conversation? A. No.

Q. How long did he remain there with you? A. Long enough to say that, and go to the front door, and go out again; I don't know; a very short time, sir.

Q. And where did you go with him then? A. I went with him to his house.

Q. Did you go in? A. No, sir.

Q. What conversation, if any, did you have on the way to his house? A. Well, it was nothing but a repetition of the other conversation about Bowen, and he asked me to be friendly to him. I said I would be.

Q. Do you recollect his words when he asked you to be friendly with him? As near as you can repeat them I wish you would do so. A. He said he wanted me to be a friend to him in this terrible business.

Q. And did you part with him at his own house? A. Yes, sir.

Q. When did you next see him? On the evening of December 31.

Q. That was the next day? A. Yes, sir.

Q. After these interviews of which you have spoken? A. Yes, sir.

Q. Now, Mr. Moulton, up to that period did Mr. Beecher say anything upon the subject of his having given any advice in reference to any domestic difficulty between Tilton and his wife, or in reference to any dismissal from an editorship, or any other relation to a newspaper? A. No, sir; no.

Q. He said nothing upon either of those subjects up to that time? A. No, sir.

Q. Now we come to the 31st, and where did you first see him then? A. At his house.

Q. How did it happen that you went to his house? A. Well, I received a note from Theodore Tilton on the morning of the 31st of December, asking me to return to him the confession of Elizabeth which I had.

Mr. Evarts.—Well, we don't want the contents of the paper.

Mr. Fullerton.—No, I only want to know how it happened that you went to Mr. Beecher's house on the morning of the 31st? A. On the 31st, not on the morning of the 31st.

Q. Well, on the 31st. A. I went there because I had been informed by Mr. Tilton——

Mr. Evarts.—No matter what you had been informed.

JUDGE NEILSON.—You went there in consequence of information?

Mr. Fullerton.—Did you go there in consequence of something that occurred between you and Mr. Tilton? A. Yes, sir.

Q. What occurred whilst you were there? A. I saw Mr. Beecher, and I said to him: "I think that before we terminate this interview, your judgment will be that it is a very strange one." And I said to him: "Do you remember that I asked you last night if anybody had seen the letter that Mr. Tilton sent to you through Mr. Bowen, and your answer was that nobody save myself had seen it;" and he remembered that. I said: "Mr. Beecher, I want to read to you a letter from Elizabeth Tilton, asking for the return of the paper which I have and the paper which she gave to you last night at your dictation," and I did read that paper to him, and I said to him, "I will read to you also another letter, in which Mrs. Tilton has informed her husband——"

Mr. Evarts.—No, no; if he read the letter——

Mr. Fullerton.—He is telling what he said to Mr. Beecher.

Mr. Evarts.—No.

Mr. Fullerton.—Yes, sir; I beg your pardon! He is stating just what he said to Mr. Beecher. He said: "I will read to you another letter."

The witness resuming: Yes, sir. "I will read to you a letter in which Mrs. Tilton informs her husband that she has given you a letter of retraction," and I read that also to him.

Q. You read that also to him? A. Yes, sir.

Q. What did he reply to that? A. He said he was surprised. I said to him, "Mr. Beecher, I think you have been guilty of a great meanness in getting the permission of a husband to visit his house, and then going there to his wife and procuring from her what you know to be a lie. Now," I said to

Mr. Beecher, "that won't save you." I said to him: "I did not see this morning much of the guidance of God in what you did, but perhaps it will all turn out for the best, for I hold the confession of Elizabeth Tilton, and if you will return that recantation to me, I will burn both in your presence, or I will preserve both," and he said to me, "In case of my death, this would be the only defense that my family would have against such a charge." And I said to him: "Mr. Beecher, I do not think that now you ought to take merely selfish counsel of yourself. The truth is the truth; you have got to abide by that. Where is the retraction?" I said to him, "I want it." He went to the closet and got the retraction, the paper that he got from Elizabeth Tilton the night before, as he said, and handed it to me. I told him I would protect the confession—I would not give that up to Tilton—and I would protect this paper that he gave me, with my life; and sitting there, sir, I felt my pistol in my pocket, and I said, "To this extent, with my life." [Placing his hand upon his pocket.]

Mr. Evarts.—You mean you took it out? A. Yes, sir; I took it out; I felt it in my coat pocket, and I put it on my knee.

Mr. Fullerton.—Go on with the narration. A. He said, "Of course, if this charge is made against me—if Theodore should make any charge against me—my defense would be the technical one of general denial; but with you, since you know the truth, I throw myself upon your friendship, and what I believe to be your desire to save me." And he told me there, he said to me in addition, that his intercourse, that he considered his sexual intercourse with Mrs. Tilton as natural, an expression of his love for her, as the words he used; and he said he felt justified in it on account of the love that he held for her, and which he knew she held for him; and said he, at the close of the conversation, "My life is ended. When to me there should now come honor and rest, I find myself upon the brink of a moral Niagara, with no power to save myself, and I call upon you to save me."

Q. State, if you please, what degree of emotion he manifested, if any? A. A very great degree of emotion.

Q. How did it manifest itself? A. In excited conversation.

Q. In any other way? A. Not that I know of.

Q. I did not know but what he wept on that occasion.

Mr. Evarts.—Well——

The Witness.—Well, yes, he did weep.

Q. Look at the paper which I show you and say whether it is one of the three of which you have spoken in your testimony. [Handing witness a letter.] A. Yes, sir; that is one of them.

Q. In whose handwriting is that letter? A. Elizabeth Tilton's.

Mr. Fullerton.—I propose to read it in evidence. [Reading.]

"MY DEAR FRIEND FRANK: "Saturday Morning.

"I want you to do me the greatest possible favor. My letter which you have, and the one I gave Mr. Beecher at his dictation last evening, ought both to be destroyed. Please bring both to me, and I will burn them. Show this note to Theodore and Mr. Beecher. They will see the propriety of this request.

Yours truly,

[Letter marked "Exhibit No. 1."] E. R. TILTON."

Mr. Evarts.—[To Mr. Fullerton.] Did he say how he received it?

Mr. Fullerton.—How did you receive that note from her? A. I think from Elizabeth Tilton direct.

Q. From whom? A. From Elizabeth Tilton directly.

Mr. Evarts.—Not personally, do you mean? A. Yes, sir.

Q. At her house? A. Yes, sir.

Q. That is your recollection of it? A. Yes, sir.

Q. Received it at her house from her? A. Yes, sir.

Mr. Fullerton.—What else occurred during this interview at Mr. Beecher's house on the 31st? A. What is the question?

Q. What else occurred, if anything, at Mr. Beecher's house on the morning of the 31st? A. There was not anything occurred on the morning of the 31st; it was in the evening.

Q. Well, what occurred on the 31st? A. Nothing that I remember further than that.

Q. Did you go away and leave him at his house? A. I did; yes, sir.

Q. And where did you go? A. Went home to my house.

Q. Did you take with you the letter which Mr. Beecher gave you, called the retraction? A. Yes, sir.

Q. And what did you do with it? A. Read it to Theodore Tilton, whom I found there.

Q. And after that what did you do with it? A. Kept it.

Q. When did you next see Mr. Beecher after that interview? A. I think it was January the 1st, sir—the evening of January the 1st. I don't remember seeing him before that—the afternoon or evening of January the 1st.

Q. Where did you see him? A. At his house.

Q. How did it happen that you went there on January the 1st? A. By his invitation.

Q. And when was that invitation extended to you? A. December the 31st.

Q. When you were there on the occasion you have already spoken of? A. Yes, sir.

Q. He invited you to come the following day? A. Yes, sir.

Q. And what time in the day, as near as you can remember, was it when you went there? A. It was towards evening, sir, I think.

Q. Did you have an interview with him? A. Yes, sir.

Q. In what part of his house? A. In his study.

Q. Is that on the first or second floor? A. It is on the second or third floor, sir—I believe second floor or third.

Q. State, if you please, what that interview was? A. I told Mr. Beecher that I had taken the retraction to Mr. Tilton, and that I had told Mr. Tilton that it would have been very foolish for him to have carried his threat of the morning into execution. I told him that Mr. Tilton was pleased with my having procured the retraction, and I told Mr. Beecher that Mr. Tilton seemed to me to be——

[*Mr. Evarts* objected.]

Mr. Fullerton.—No, sir, not at all; it is what he narrated to Mr. Beecher. A. I told him that I thought that—I told him that Tilton had told me

that he had made up his mind that, no matter what came to himself, he would undertake to protect the reputation of his wife at all hazards. Then Mr. Beecher said to me that he was in misery on account of the crime that he had committed against Theodore Tilton and his wife and family; he said that he would be willing to make any reparation that was within his power; he said that Mr. Tilton, he thought would have been a better man under the circumstances in which he had been placed than he had been; that he felt that he had done a great wrong, because he was Theodore Tilton's friend, he was his pastor, he was his wife's friend and pastor, and he wept bitterly; and I said to him, "Mr. Beecher, why don't you say that to Mr. Tilton; why don't you express to him the grief you feel, and the contrition for it? You can do no more than that, and I think I know Theodore Tilton well enough to know that he would be satisfied with that, for I know he loves his wife." Mr. Beecher told me to take pen and paper, and to write at his dictation, and I did write at his dictation the letter of January 1st, 1871.

Q. What was done after you wrote that letter? A. I read the letter to him, and he read it, and then he signed——

Q. Never mind, we will show that in a moment. You say you read it to him? A. Yes, sir.

Q. Did you read it as it was? A. Yes, sir; and as it is.

Q. Did he take it and read it? A. Yes, sir.

Q. Do you mean to be understood that you read it to him, and that he read it afterwards for himself? A. Yes, certainly.

Q. And did he write anything himself upon that paper or those—add anything to that letter? A. Yes, sir.

Q. Is that the letter of which you speak? A. Yes, sir, that is it.

Q. What part of it is in the handwriting, if any, of Mr. Beecher; the words at the foot of the last page? A. Yes, sir.

Mr. Fullerton.—I propose to read it in evidence.

[Letter submitted to Mr. Evarts.]

Q. Before reading the letter I want to ask you if you wrote it down as he dictated it? A. Word for word.

Mr. Fullerton.—[Reading.]

"BROOKLYN, Jan. 1, '71.

"In trust with F. D. Moulton.

"MY DEAR FRIEND MOULTON

"I ask through you Theodore Tilton's forgiveness, and I humble myself before him as I do before my God, he would have been a better man, in my circumstances than I have been—I can ask nothing except that he will remember all the other hearts that would ache—I will not plead for myself. I even wish that I were dead, but others must live and suffer. I will die before any one but myself shall be inculpated. all my thoughts are running towards my friends toward the poor child lying there and praying with her folded hands; She is guiltless, sinned against, bearing the transgressions of another. Her forgiveness I have, I humbly pray to God that he may put it into the heart of her husband to forgive me.

"I have trusted this to Moulton in confidence.

"H. W. BEECHER."

[Paper marked "Exhibit No. 2." The signature and preceding line were separated from the body of the writing.]

Now, let me ask you, if those words which I read last, to wit: "I have trusted this to Moulton in confidence. H. W. Beecher," is what he wrote upon that paper? A. Yes, sir.

Q. In your conversation with Mr. Beecher, before the writing of that letter, you spoke something of a threat having been made; what threat did you refer to?

Mr. Evarts.—Did he repeat it to Mr. Beecher?

Mr. Fullerton.—Yes, sir.

Mr. Evarts.—If he repeated it to Mr. Beecher, he may testify to it; otherwise, not.

Mr. Fullerton.—I should not attempt to prove it, if he had not.

Mr. Evarts.—Yes, but I want the witness to understand that.

A. I told Mr. Beecher that Mr. Tilton had said that for the offense of having gone to his wife and procured that retraction, he would smite him.

Mr. Fullerton.—And in your narration to Mr. Beecher, I understood you to say that you told him that you had said to Theodore that it was better that he had not put that threat in execution? A. Yes, certainly.

Mr. Evarts.—That it would have been foolish.

Mr. Fullerton.—Yes, whatever it was. [To the witness.] Now what was done after this paper was signed? A. Well, I left the house after having bid Mr. Beecher good-by at the head of the stairs. The last thing that he said to me was this, that he wanted me to do my utmost for peace.

Q. And then did you separate? A. Yes, sir; that is all that I at present remember that he said.

Q. Now, up to this time, did Mr. Beecher say anything upon the subject of having given advice in regard to any domestic difficulty between Mr. and Mrs. Tilton, or in respect of Tilton's dismissal from *The Independent* and *The Brooklyn Union*? A. Not that I remember, sir.

Q. Did anything more occur on January the 1st than you have now related? A. No, not that I at present remember.

Q. When, if at all, did you show this letter of January 1st to Mr. Tilton? A. On the same evening.

Q. And when did you see Mr. Beecher next again? A. I think on January 2d. I called at his house.

Q. A little louder? A. I called at his house on January the 2d, in the afternoon.

Q. And how did it happen that you went there January 2d? A. By invitation.

Q. Oh! well state——? A. Mr. Beecher invited me on January 1st to come January 2d.

Q. And in pursuance of that invitation you went? A. Yes, sir.

Q. What occurred on the 2d of January? A. I told Mr. Beecher that Mr. Tilton's disposition seemed to me to be one that would insure the keeping down of the story; that I thought he had nothing to apprehend from Mr. ——. I told him that I thought he had nothing to apprehend from Mr. Tilton, because Mr. Tilton seemed still intent upon protecting his family.

Q. Well, what else, if anything? A. That is the substance of what I remember.

Q. Where did that interview take place? A. Up in his study or chamber, I forget which; in his study, I think.

Q. When did you next see him after January 2d? A. Ah! January the 2d Mr. Beecher asked me if I thought that it would be safe to have the sale of Plymouth pews go on.

Q. And when did he ask you that question? A. Asked it of me at the head of the stairs, on the evening of January the 2d.

Q. Well, tell us all he said upon that subject, if there was anything more? A. There was nothing more.

Q. What reply did you make? A. I told him that I thought it would be perfectly safe to have the sale of Plymouth pews go on; I felt perfectly assured that Mr. Tilton would do nothing against him or against his family.

Q. Did you learn from him, or did you then know, of your own knowledge, when the sale was to take place? A. No; I don't remember that I did know; it was to take place some time during the next week.

Q. Up to this time had Mr. Beecher told you when these relations existing between himself and Mrs. Tilton ceased?

Mr. Evarts.—Well, we would like to have the conversations, if there are any.

Mr. Fullerton.—Well, there are some, and we will go on and give them.

A. He told me that, sir, on January the first.

Q. Now what was said upon that subject? A. He said that Elizabeth Tilton had sent for him to come to her house, and told him that she believed that their relations were wrong, and he told me that he said to her, "If you believe these relations wrong, then they shall be terminated;" and he told me that he prayed with her, prayed to God with her, for help to discontinue their sexual relations.

Q. Anything else said at that time? A. And that he had from that time discontinued his intercourse with her.

Q. Did he say when that occurred? A. I think in July, 1870.

Q. Now, in any of these interviews was a letter which Mr. Tilton had written, or proposed to write, to Mr. Bowen, the subject of conversation? A. I told Mr. Beecher on January the second that Mr. Tilton was writing a letter to Mr. Bowen.

Q. Did you tell him the substance of that letter as you understood it? A. Yes, sir.

Q. What did you say upon that subject? A. I told him that I should try to control that letter; that I should not only do that, but do everything else that was in my power, according to my best judgment, to prevent any outbreak.

Q. Well, if you stated what you understood the contents of that letter to be, or what they were to be to Mr. Beecher, I want you to give the conversation? A. Why, I told him that Mr. Tilton intended to write to Mr. Bowen the substance of the interview between himself and Oliver Johnson, and that he intended to publish the letter, in order to give to the public an exact account of the severance of his relations with Mr. Bowen, and I told him (Mr. Beecher) that I should undertake to keep out of that letter anything that concerned Mr. Tilton and his family and Mr. Beecher.

Q. Now, what were the relations existing between Mr. Bowen and Mr. Tilton before they were severed?

[Objected to by defendant's counsel.]

Mr. Fullerton.—I suppose that is proper, as spoken of in this conversation?

Mr. Evarts.—Anything that he said to Mr. Beecher on that subject.

Mr. Fullerton.—Well, I can prove something else besides that; I can prove the outside fact of those relations.

Mr. Evarts.—I don't know that you can.

Mr. Fullerton.—It does not follow that I can not prove it because you don't know it. If you have any objection, why, we will hear it, of course.

Mr. Evarts.—Whatever he saw, whatever he heard, is good evidence, provided the subject itself is admissible. But to ask his general statement about what the relations of Mr. Bowen and Mr. Tilton were is not evidence. How is he to find out what the honest relations were between Mr. Bowen and Mr. Tilton. Whatever he saw or heard between raises the question then whether the subject is admissible. But his judgment does not.

Mr. Fullerton.—I do not ask his judgment; I ask the fact as to the relations existing between Mr. Bowen and Mr. Tilton. They now come in question.

JUDGE NEILSON.—Well, I think you ought to be content with the general statement that they were friendly, or that they were not; if you go beyond that, it ought to be shown to have been communicated to the defendant—the conversation.

Mr. Fullerton.—Why, sir, I suppose it is competent for me to show that Mr. Bowen was the proprietor of *The Independent.*

JUDGE NEILSON.—Certainly.

Mr. Fullerton.—And that Mr. Tilton was in his employ as an editor. I propose to show, also, that he had a relation to *The Brooklyn Union*, and another newspaper in this city.

Mr. Evarts.—I have no objection to that—their relations.

JUDGE NEILSON.—Well, go on.

Mr. Evarts.—You can prove them by him or by anybody else.

Mr. Fullerton.—Well, that is what I propose to do. I suppose the gentleman understands some things without my saying much about them. He spoke of severed relations with Mr. Bowen. [To the witness.] Now, I want to know what those relations were. A. He was associated with Mr. Bowen as editor of *The Union.*

Mr. Hill.—Was then, or had been? A. He had been, sir.

Q. Now, as to *The Independent?* A. He had been editor of *The Independent*, and had made a contract as contributor to *The Independent.*

Q. Now repeat, if you please, what you said to Mr. Beecher in regard to this proposed letter of Mr. Tilton to Mr. Bowen, respecting what had theretofore taken place between them? A. I told him that he intended to publish that letter to make clear the reason for the severance of their relations.

Q. And it was that letter, that I understand you, that you were going to try to control? A. Yes, sir.

Q. So as to keep out of it anything of the personal matters between Mr. Beecher and Mr. Tilton—is that it? A. Yes, sir.

Q. Very well, now, what else occurred at that time, if you remember anything else? A. I don't remember just at present anything else.

Q. Do you know anything, or did you learn anything from Mr. Beecher in regard to a letter which he had written to Mr. Bowen? A. He told me that he had written a letter to Mr. Bowen explaining—taking back something that he had said about a lady to Mr. Bowen. He had told me previously—I omitted that, sir—he had told me previously that he had sympathized—as I told him before, the interview of December 31st, and then he told me on January 1st that he had mentioned a lady's name to Mr. Bowen. Bowen and I told him that that was very unjust, and he said he would take it back, and on January 2d, he told me that he had written to Mr. Bowen taking it back.

Mr. Evarts.—Unjust to whom? A. Unjust to the woman, sir.

Q. Well, did he show you the letter? A. Yes, sir, he showed me the rough draft of the letter, either on that occasion or a day or two afterwards.

Q. Look at the paper now shown you, and say whether that is the rough draft he showed you? A. Yes, sir; that is it.

[Paper shown to defendant's counsel.]

Mr. Fullerton.—[Reading.]

"BROOKLYN, Jan. 2d, '71.

"MY DEAR MR. BOWEN,—Since I saw you last Tuesday, I have reason to think that the only cases of which I spoke to you in regard to Mr. Tilton, were exaggerated in being reported to me, and I should be unwilling to have anything I said tho' it was but little, weigh on your mind, in a matter so important to his welfare. I am informed by one on whose judgment and integrity I greatly rely, and who has the means of forming an opinion better than any of us that he knows of the whole matter about Mrs. B." Shall I——

JUDGE NEILSON.—No; do not give the name at length.

Mr. Evarts.—What does your Honor say?

JUDGE NEILSON.—Not to give the name at length; there is no occcasion for it.

Mr. Evarts.—Well, they must have the responsibility of reading letters or not reading them.*

Mr. Beach.—We take the responsibility, sir, of giving the initials of the name.

Mr. Evarts.—Will your Honor allow the letter to be imperfectly read?

Mr. Beach.—If you want it, read it.

Mr. Evarts.—Not at all; we don't read the letter, or offer it. The responsibility is with the counsel to read the letter or omit the letter.

JUDGE NEILSON.—It does not follow, however, that the letter is to be omitted because it may contain the name of a third person, which name ought not to be given publicly. A letter might contain matter material and proper to be given, and contain the name of a third person not proper to be given. So, for the present, I make the suggestion to the counsel.

* Compare *Rex* v. *Fletcher* (4 Carr. & P. 250); *Rex* v. *Clewes* (Id. 221); *Rex* v. *Hearne* (Id. 215, S. C. 19 Eng. Com. L. R., 482, 485, 501); *Rex* v. *Walkley* (6 Carr. & P., 175).

Mr. Evarts.—Your Honor does not intend to rule that letters can be imperfectly read?

JUDGE NEILSON.—No.

Mr. Fullerton.—It is not an imperfect reading of the letter; it is a withholding of the whole name in the interest of decency and propriety, not to arraign a person here who ought not to be arraigned.

Mr. Evarts.—Your Honor does not now rule that they have a right to read the letter imperfectly?

JUDGE NEILSON.—I rule that, if the letter be at all material, they may read it, omitting the name of the third person referred to.

Mr. Evarts.—To that we except.

JUDGE NEILSON.—The name of the third person referred to not being at all material.

Mr. Evarts.—That we don't know.

Mr. Beach.—We give the whole letter in evidence, and we read such part as we choose.

Mr. Fullerton.—Yes, sir; and the gentlemen can read the whole name if it subserves their purpose.

JUDGE NEILSON.—If you put in a paper, and read a few lines of it, it is all put in by you. The other side, if they desire, can read the rest of it, because you have put it in.*

Mr. Evarts.—Your Honor will allow us either to except, or else have it understood that the whole letter is considered as read.

JUDGE NEILSON.—Oh! the whole letter is in.

Mr. Evarts.—And considered as read?

JUDGE NEILSON.—But they read such portion now as they chose, and if you read any portion of it you will be reading the document which they put in.

Mr. Evarts.—I understand we will consider it all in.

JUDGE NEILSON.—Yes, sir.

Mr. Fullerton.—[Resuming the reading.]

"I am informed by one on whose judgment and integrity I greatly rely, and who has the means of forming an opinion better than any of us that he knows the whole matter about Mrs. B——, and that the stories are not true, and that the same is the case with other stories—to this I do not wish any reply. I thought it only due to justice that I should say so much. Truly yours,

"H. W. BEECHER."

[Letter marked "Exhibit No. 41."]

Q. Now, when did you next have an interview with Mr. Beecher, and where? A. Within the next—within that week; I do not remember the day; I think it was the third or fourth.

Q. And where? A. At my house.

Q. Under what circumstances? A. Mr. Beecher came to the house to see me; I was at home, and Mr. Tilton was there, and they met in my presence.

Q. State whether, so far as you know, that meeting was accidental or not between those two gentlemen? A. It was accidental.

Q. Now, what occurred? A. Well, Mr. Tilton was not cordial, sir.

* *Darby* v. *Ouseley* (1 H. & N., 1; S C., 2 Jur. N. S. 497); *Pendleton* v. *Weed* (17 N. Y., 72); *Dewey* v. *Hotchkiss* (30 N. Y., 497).

Q. Now, what occurred? A. Well, Mr. Tilton was not cordial.

Mr. Evarts.—What occurred? A. Do you mean what was said.

Q. No; we want the facts first. I do not want what took place.

Mr. Fullerton.—Well, I will submit that the witness had stated there was a want of cordiality between these parties on that occasion, and I want to ask him now how that was manifested.

Mr. Evarts.—Not in the first place; we are certainly entitled to the facts first. I will ask the court to decide between us.

Mr. Fullerton.—I am proceeding in the proper way, and I very much dislike these interruptions, without cause, on the part of counsel.

Mr. Evarts.—If your Honor please, the counsel gets a construction, and then proceeds to give the facts. Since an issue has been made, I submit that counsel can not give a construction of what occurred, and then proceed to give the facts. He may give the construction, and then, possibly, not give the facts. We will have the facts first, as the law requires, and then we will put our construction on them, and the jury will put theirs.

Mr. Fullerton.—It is a fact in this case whether upon this occasion these parties met cordially or not. It is a fact whether Mr. Tilton greeted Mr. Beecher cordially, or not. That is a fact in this case.

JUDGE NEILSON.—Well, that is a fact, the answer as to which depends on the opinion of the witness, and it would be more proper to ask, therefore, what the indications of a want of cordiality were.

Mr. Fullerton.—I was asking him this very thing.

JUDGE NEILSON.—Very well, go on.

Mr. Fullerton.—How was that want of cordiality manifested? A. In Mr. Tilton not recognizing Mr. Beecher.

Q. Go on with the narration, please. A. I said to Mr. Tilton in Mr. Beecher's presence: "Mr. Tilton, I think that your conduct here is wrong; you have no business in my house to treat with such absolute discourtesy Mr. Beecher. You have read his letter of contrition. He has, in my opinion, done everything that a man could do, up to the point of making a public statement of the facts. You can not require any more. I think that, having received such an explanation from him of his feelings towards you, you should greet him at least civilly." And Mr. Beecher said, "Theodore, I hope that my expression of feeling towards you in my letter you will feel to be a sincere expression. I will do anything within reason that you may ask me to do to make reparation for the wrong I have done you. I don't see what I can do, but if there is anything proper that I can do, I should like to have you indicate it." That was the substance of the conversation between Mr. Beecher and Mr. Tilton and myself, and the result of that conversation between Mr. Beecher and Mr. Tilton was that Mr. Tilton told Mr. Beecher that he certainly intended to protect his family, and that was the substance of it.

Q. What degree, if any, of emotion was manifested on that occasion? A. There was emotion manifested by Mr. Tilton, for he turned upon me very fiercely, and said, "How can you expect me to greet this man cordially?"

Q. What was the state of Mr. Beecher's mind, as indicated by any outward emotion? A. Sorrowful, sir. He was in tears.

Q. Have you related now, all that occurred at that time, as you remember it? A. As far as I at present remember; yes, sir.

Q. Did you see Mr. Beecher after that, and if so, when and where? A. I saw him very frequently at my house.

Q. Give us the next meeting that you recollect of? A. It was before the 10th of January.

Q. What occurred then? A. I read to Mr. Beecher the letter which Mr. Tilton had written to Mr. Bowen.

[Letter handed to witness.]

Q. Look at the paper I now show you, and say whether that is the letter you then read to him? A. Yes, sir, that is it. This letter recalls a fact that I don't know whether I mentioned, or not, that Mr. Beecher returned to me the letter that Mr. Bowen gave to him.

Q. Repeat that? A. Mr. Beecher returned to me the letter that Mr. Bowen gave him—the letter written by Mr. Tilton on December 26th.

Mr. Evarts.—Do you mean he did at this time? A. No, sir; January 1st, I think it was.

Mr. Fullerton.—I offer this letter in evidence.

Mr. Evarts.—He means to say that is the very paper he showed to Mr. Beecher.

The Witness.—Yes, sir.

Mr. Fullerton. In whose handwriting is the paper? A. Theodore Tilton's.

Mr. Fullerton.—I will now read the letter from Mr. Tilton to Mr. Bowen, dated Brooklyn, Jan. 1st, 1871:

"BROOKLYN, Jan. 1, 1871.

"MR. HENRY C. BOWEN,

"SIR, I received last evening your sudden notices breaking my two contracts one with *The Independent*, and the other with *The Brooklyn Union*.

"With reference to this act of yours, I will make a plain statement of facts.

"It was during the early part of the Rebellion (if I recollect aright) when you first intimated to me that the Rev. Henry Ward Beecher had committed acts of adultery for which, if you should expose him, he would be driven from his pulpit. From that time onward your references to this subject were frequent, and always accompanied with the exhibition of a deep-seated injury to your heart.

"In a letter which you addressed to me from Woodstock, June 16, 1863, referring to this subject, you said: 'I sometimes feel that I *must break silence*, that I *must* no longer suffer as a *dumb man* and be made to bear a load of grief *most unjustly*. One word from me would make a *revolution—throughout Christendom*, I had almost said—and *you know it*. . . . . You have just a little of the evidence from the great volume in my possession. . . . . I am not pursuing a phantom, but solemnly brooding over an awful reality.'

"The underscorings in this extract are your own. Subsequently to the date of this letter, and at frequent intervals from then till now, you have repeated the statement that you could at any moment expel Henry Ward Beecher from Brooklyn. You have reiterated the same thing not only to me but to others.

"Moreover, during the year just closed, your allusions to the subject were uttered with more feeling than heretofore, and were not unfrequently coupled with your emphatic declaration that Mr. Beecher ought not to be allowed to occupy a public position as a Christian preacher and teacher.

"On the 26th of December, 1870, at an interview in your house, at which Mr. Oliver Johnson and I were present, you spoke freely and indignantly against Mr.

Beecher as an unsafe visitor among the families of his congregation. You alluded by name to a woman, now a widow, whose husband's death you had no doubt was hastened by his knowledge that Mr. Beecher had maintained with her an improper intimacy. You avowed your knowledge of several other cases of Mr. Beecher's adulteries. Moreover, as if to leave no doubt on the mind either of Mr. Johnson or myself, you informed us that Mr. Beecher had made to you a confession of his guilt, and had with tears implored your forgiveness."

Mr. Fullerton.—I propose not to read a part of that letter, gentlemen, I shall omit, commencing with the words, "after Mr. Johnson retired from this interview." . . . . [The letter then continues.]

"During your recital of the tale you were full of anger towards Mr. Beecher. You said with terrible emphasis that he ought not remain a week longer in his pulpit. You immediately suggested that a demand should be made upon him to quit his sacred office: you volunteered to bear to him such a demand in the form of an open letter which you would present to him with your own hand; and you pledged yourself to sustain the demand which this letter should make, namely, that he should, for reasons which he explicitly knew, immediately cease from his ministry of Plymouth Church, and retire from Brooklyn.

"The first draft of the letter did not contain the phrase 'for reasons which he explicitly knew;' and these words,(or words to this effect), were incorporated in a second, at your motion. You urged furthermore (and very emphatically) that the letter should demand not only Mr. Beecher's abdication of his pulpit, but cessation of his writing for *The Christian Union*—a point on which you were overruled. This letter you presented to Mr. Beecher at Mr. Freeland's house. Shortly after its presentation, you sought an interview with me in the editorial office of *The Brooklyn Union*, during which, with unaccountable emotion in your manner—your face livid with rage—you threatened with a loud voice that if I ever should inform Mr. Beecher of the statements which you had made concerning his adultery, or should compel you to adduce the evidence on which you agreed to sustain the demand for Mr. Beecher's withdrawal from Brooklyn, you would immediately deprive me of my engagement to write for *The Independent* and to edit *The Brooklyn Union*, and that in case I should ever attempt to enter the offices of those journals you would have me ejected by force. I told you that I should inform Mr. Beecher or anybody else, according to the dictates of my judgment, uninfluenced by any threat from my employer. You then excitedly retired from my presence. Hardly had your violent words ceased ringing in my ears, when I received your summary notices breaking my contracts with *The Independent* and *The Brooklyn Union*. To the foregoing narrative of facts, I have only to add my surprise and regret at the sudden interruption, by your own act, of what has been, on my part, towards you, a faithful friendship of fifteen years.

Truly yours,

[Signed.] THEODORE TILTON."

[Letter marked "Exhibit No. 3."]

Q. Did you state to Mr. Beecher what Mr. Tilton proposed to do with that letter? A. Yes, sir.

Q. What did you say to him upon that subject? A. I told him Mr. Tilton intended to publish it.

Q. What did Mr. Beecher say? A. Mr. Beecher said that the statement that he had ever confessed to Mr. Bowen, was entirely untrue; he said that he had had differences with Mr. Bowen, and a settlement with Mr. Bowen, and that Mr. Bowen had never raised with him, at any such settlement, any question of adultery; he said that he presumed that he knew what one portion of the letter referred to; I said to him, "Now, I have a business matter under the contracts to settle with Mr. Bowen of Mr. Tilton's, and I don't want to proceed to court with that claim, if taking it into court is going to rip up your relations with Mr. Tilton's family; I don't want to do that; I

would rather pay him what Mr. Bowen owes him than to do that, but, Mr. Tilton," I said, "feels that he wants to publish this letter. He feels that he has taken out of it all that concerns you and your relations with his family. He wants to leave, and he is willing to leave you and Mr. Bowen in conflict," but I told him that I did not approve of that. I told Mr. Beecher that I wanted to settle all matters peacefully—the Bowen question peacefully—that Mr. Bowen had acted, in my opinion, I told him, treacherously towards him, and treacherously towards Mr. Tilton. He then told me that he thought it would be necessary for him, in order that I might be guided properly in the transaction between Mr. Tilton and Mr. Bowen—that it would be necessary to tell me the truth about a certain charge made by Mr. Bowen.

JUDGE NEILSON.—Is that part of the conversation necessary?

Mr. Fullerton.—I don't propose to have it.

JUDGE NEILSON.—Omit it.

Mr. Fullerton.—Let him go a little further.

Mr. Evarts.—What is that?

JUDGE NEILSON.—Part of this conversation which may be material may be given, without introducing that part of it which relates to a third person, and which may not be material.

Mr. Evarts.—We know nothing about it. We would like to have the conversation.

JUDGE NEILSON.—All that relates to these parties is proper. That which relates to a third party ought to be omitted. I think the part that is germane to the question may be given, and the rest be left out.

Mr. Fullerton.—That was my view, if your Honor please. [To the witness.] Go on, now, please, and I will tell you when to stop. A. He said he thought it would be necessary to tell me the truth with regard to himself, and to what he supposed Mr. Bowen referred in the letter in the language that he used to Mr. Tilton and recited in the letter.

Q. What language did he call your attention to? A. Give me the letter and I will show it you; I can not repeat it.

Q. [Handing letter to witness.] Point out the part that he called your attention to. What part of the letter did Mr. Beecher call your attention to by way of explaining it? A. He said he presumed he knew to what Mr. Bowen referred in this part of the letter: "After Mr. Johnson retired from this interview you related to me the case of a woman whom you said (as nearly as I can recall your words) that Mr. Beecher took in his arms by force and accomplished upon her his deviltry."

Q. Did he then go on to explain that? A. Yes, sir.

Mr. Fullerton.—I will not ask what the explanation was.

Mr. Evarts.—Well, if your Honor please, is that the way in which it is to be left?

Mr. Fullerton.—No, not necessarily, if the other side will take the responsibility of calling it out on cross-examination.

JUDGE NEILSON.—You can call out now what you think is material.

Mr. Fullerton.—I have called out what I think is material.

Mr. Evarts.—We don't understand that to be right—to characterize a con-

versation as an explanation, and there leave the matter. What we are entitled to is proof of what occurred between this party and Mr. Beecher on that subject.

JUDGE NEILSON.—On this subject.

Mr. Evarts.—On that passage in this letter.

JUDGE NEILSON.—On the subject that we have to deal with?

Mr. Evarts.—On that passage in that letter which they have introduced as giving a conversation between Mr. Beecher and Mr. Moulton on that subject, to wit, that it was a conversation in which Mr. Beecher explained that.

JUDGE NEILSON.—If the word "explained" was used, that justifies you in taking the view you do.

Mr. Evarts.—Now, they can omit calling the witness's attention to that clause in that letter, and omit interrogating him whether there was a conversation between them; but they can not introduce it and introduce the fact that they went on to converse about it, and then dispose of it as a conversation or explanation on Mr. Beecher's part.

JUDGE NEILSON.—No, it should not appear as a matter of explanation.

Mr. Evarts.—They must give the evidence, or omit it.

JUDGE NEILSON.—The word "explanation" is used as giving a coloring you don't intend, perhaps, but which, at any rate, is not proper.

Mr. Fullerton.—I am quite willing it should be eliminated from the testimony, and I want it distinctly understood by your Honor that this is omitted out of consideration to a third person, who ought not to be dragged into this controversy, and if she is dragged in, it will not be by me. I propose the court shall understand my object in omitting that part of the narration. I don't mean it shall be said of me that I am afraid of its effect on my client by any means, but it is in the interest of propriety that no third person should be brought into this controversy, unless it is actually necessary to elucidate the truth between these parties.

Mr. Evarts.—If you will state that all that relates to the Proctor matter, that will be the end of it. That has been considered by another court.

JUDGE NEILSON.—We don't propose to receive Miss Proctor here.

Mr. Evarts.—I don't want, if your Honor please, a mutilation of evidence. If this witness has to be judged by this jury, he is to be judged by what he states, without the suppression of anything.

Mr. Beach.—Your Honor will permit me to say, unless this should be adopted as a precedent establishing a principle, in which I do not concur, that I should say a word in regard to it. I insist that we have a right to give the whole or any part of any statement or declaration that may have been made by Mr. Beecher which we deem material to the particular matter under investigation; that it is not a rule of evidence that we should give all of what may have been said in a confession to which we have directed the attention of a witness. The material part—that which we consider essential to the interests of the party we represent—we may call out upon our examination, and if there be any part of it omitted appearing to the other side to be essential to their interests, it is entirely competent for them to give it in evidence;

but it is not the rule of evidence that we shall give the whole of what Mr. Beecher may have said upon any particular occasion, material or immaterial to the particular issue under investigation.

JUDGE NEILSON.—I understand it to be so, and to be a fundamental principle.

Mr. Evarts.—I agree to that; but that is not the point of the inquiry. They may ask him what he did say, and then take what he said and stop at a certain point, and then, if we choose to call out the rest of the conversation, it comes to us.

Mr. Beach.—Mr. Evarts, will you permit me to suggest to you (as I do not wish to say anything further) that we may ask if Mr. Beecher made an explanation in regard to a given fact, and refrain from calling out that explanation?

Mr. Evarts.—No, sir.

Mr. Beach.—I insist upon that proposition. We are not bound to call it out unless we choose. We may say he acted in regard to a particular matter without calling out what that action was. It may be we opened the subject as far as to permit the opposite party to give it in evidence, but we are not compelled to produce it; we are not compelled to give them any part of the declaration or any part of the acts of Mr. Beecher further than we may choose to go.

JUDGE NEILSON.—Undoubtedly, and yet it would be unsafe if you are allowed to ask a witness whether the defendant made an explanation, because, in truth, what he might understand to be an explanation might not be so.

Mr. Beach.—Suppose I ask if he made a declaration in regard to it, am I bound to call out that declaration?

JUDGE NEILSON.—That would be better, doubtless; but what has disturbed your opponents, I think, is the word "explanation," which has gone on the minutes,—the statement that he has made an explanation which admits of an inference adverse to him.

Mr. Fullerton.—I have already stated that that might be struck out.

JUDGE NEILSON.—The clause in which that word occurs must be struck out.*

Mr. Fullerton.—No, sir; not the clause, but the explanation. What we wish to omit has no bearing upon the issue in this case.

Mr. Evarts.—Ah, ah, that will depend.

Mr. Fullerton.—That depends on the facts we will adduce in evidence.

Mr. Evarts.—It will depend on the truth or falsity of your testimony.

Mr. Fullerton.—And the truth or falsity of our testimony you may test to the uttermost.

Mr. Evarts.—And we will test it by facts, but not by explanation.

Mr. Fullerton.—Test it in your own way, without heralding what you are going to do so vociferously.

JUDGE NEILSON.—With my permission, neither of you will test anything that is not material to the issue we are trying. I don't intend to admit anything that is not material to the issue now before me.

* See note on the omission of names, p. 350, *ante*.

Mr. Evarts.—Is not the truth or falsity of the testimony material?

JUDGE NEILSON.—Yes, sir, undoubtedly, but not evidence affecting third persons. I don't desire to decide a question as to third persons, or to have third persons' names implicated beyond what is necessary.

Mr. Evarts.—That we agree to. We have no desire to mention their names, or to have anything to do with third persons. Let them omit calling his attention to any conversation of Mr. Beecher on that subject. Leave it out, or else bring it in.

Mr. Fullerton.—No, I wish to have it appear his attention was called to it, and that he said something, and that something we don't deem important to the general issue, and we omit it.

Mr. Evarts.—Then we ask, why, if his attention was called to it, it is not material? Why do you want to leave out the explanation?

Mr. Fullerton.—Because I think it is proper to do so.

JUDGE NEILSON.—[To the stenographer.] Strike out from and after, "What did he call your attention to?" You may take an exception, Mr. Fullerton, if you desire to do so.

Mr. Evarts.—That phrase ought to be struck out.

JUDGE NEILSON.—Yes, from and after that. [This was done.] After all, you have what comes within the rule as stated by yourselves.

Mr. Fullerton.—I think not, sir. If your Honor please, I don't mean, if any effort of mine can prevent it, that this witness shall be placed in a false attitude, and that is what my adversaries are seeking to accomplish, in my judgment.

JUDGE NEILSON.—I don't see it in that light.

Mr. Fullerton.—It may be very fair for them in the conduct of their cause; I shall not criticise their course; I am only saying I don't mean Mr. Moulton shall be placed in an attitude he ought not to occupy with reference to this branch of the case. I don't mean that it shall lie in their power, when we are through with this case, to say that he has, on any occasion heretofore, made a statement of this interview in which he has related something that took place which he has omitted here, unless it appears here that he omitted it because he was reqnested to do so

JUDGE NEILSON.—That appears now, and it saves your right.

Mr. Fullerton.—I don't think so; I don't think it clearly appears.

JUDGE NEILSON.—Really, as the case now appears, it does not seem to me to be material. If it becomes material hereafter to protect the witness, we can consider that.

Mr. Evarts.—Requested by whom, your Honor?

JUDGE NEILSON.—Requested by the court. I desire to leave this third person out altogether.

Mr. Evarts.—Does your Honor undertake to say I requested this witness to leave a part of that out?

JUDGE NEILSON.—No; it appears on the minutes that it was left out at my suggestion. It appears, also, that the learned counsel, out of consideration to the witness, thinks that it ought to come in in some degree, and apprehends that if it does not it might operate hardly on the witness, and I

have suggested to him that hereafter, if the case should call for any such protection of the witness as claimed now, even though it is now ruled out at my instance, the witness should be protected to that extent.

Mr. Fullerton.—It don't appear on the minutes. If your Honor will allow the reporter to read it we can tell better whether our object is accomplished or not.

JUDGE NEILSON.—It is all there, and we can refer to it.

Mr. Evarts.—Do I understand your Honor to say that it appears at a certain stage of the examination of this witness that the court requested him not to proceed further with his statement?

JUDGE NEILSON.—Yes, sir; because it relates to a third person.

Mr. Evarts.—Will your Honor be so good as to note our exception?

JUDGE NEILSON.—Yes, sir; and because it is not material to the very question before us.

Mr. Evarts.—Will your Honor please note our exception to that direction of the court in respect to that order of the evidence?

JUDGE NEILSON.—Yes, sir; and also the exception of the plaintiff's counsel to the order I have made striking it out.

Messrs. Beach, Morris, and *Pryor* [speaking together.]—We don't want any exception.

Mr. Fullerton.—Now, have you given us all that was said by Mr. Beecher at that interview when this letter of Mr. Tilton to Mr. Bowen was read, with the exception of what has been omitted by request? A. No, sir.

Q. Go on then with the narration? A He said he thought the publication of the letter would result in mischief, and I told him that I would undertake to prevent its publication; that I thought I could induce Mr. Bowen without a suit to pay that money, and I would endeavor to do it, and he said he hoped I could, or words to that effect.

Q. What money was it? A. Money under the contracts due Mr. Tilton. I told Mr. Beecher that I had waited upon Mr. Bowen at *The Union* office with reference to that money, and Mr. Bowen told me he didn't owe Mr. Tilton any money.

Q. Anything more at that time? A. Not that I remember just at present.

Q. Then we will proceed to the next interview between yourself and Mr. Beecher, if there was one, and state when it was and where? A. There were frequent interviews; I don't remember the next one particularly.

Q. At any one of these interviews that you have spoken of, or at any subsequent interview, was the girl Bessie Turner spoken of? A. Yes, sir; there was a girl named Bessie Turner spoken of.

Q. When—in what interview? A. I think the interview was subsequent to the one we have just narrated.

Q. And when was it, as near as you can tell? A. I should think it was before the 15th of January.

Q. And where did it take place? A. It took place in my house.

Q. State what it was, if you please? A. I told Mr. Beecher, or rather in an interview between Mr. Beecher and myself, he had told me something

that Bessie Turner—I don't remember what it was he told me—he told me Bessie Turner had said something to him concerning Mr. and Mrs. Tilton, and I told Mr. Beecher that Mr. Tilton thought Bessie Turner was a dangerous person to have about; that she was what Mr. Tilton termed—I remember his term—"a prattler," and knew (so Mr. Tilton told me) of the facts as between Mr. Beecher and Mrs. Tilton, and I said to Mr. Beecher, I thought she was better out of the way than here, and Mr. Beecher said he thought so too, and Mrs. Tilton then told Mr. Tilton (so Mr. Tilton told me) that the best place for her was out West at school, and I told Mr. Beecher that Mr. Tilton could not afford to pay her expenses, and he said to me, "Well, I will pay the expenses, or I will do anything that is necessary to keep this story down," and he approved; he said that he thought it was a good plan to send her to school, and he would pay the bills.

Q. You may state whether she was afterwards sent away to school? A. Yes, sir; she was, to Ohio.

Q. Who superintended that? A. Who superintended the sending of her to school?

Q. Yes, sir. A. I suppose Mr. Tilton did; I didn't.

Q. Did you superintend or have anything to do with it? A. No, sir.

Q. What connection had you with the payment of the expenses of it afterwards, if any? A. I paid the expenses.

Q. Of her schooling? A. Yes, sir; and Mr. Beecher paid me.

Q. How many different payments did you make, do you recollect? A. I don't remember; I paid all the bills that were presented.

Q. Afterwards how did you receive your money from Mr. Beecher? A. By check and currency.

Q. How did you receive the bills? A. I think generally from Mrs. Tilton.

Q. Did you ever receive them any other way than through Mrs. Tilton; if so, state them? A. No, sir; I don't think so.

Q. State whether you forwarded the money or your check on to Ohio, in payment of it; state how it was done? A. I generally forwarded the checks to the order of the principal of the school.

Q. Then what did you do afterwards towards reimbursement? A. Mr. Beecher reimbursed me.

Q. What did you do? Did Mr. Beecher come without any solicitation on your part, or did you send him word, or write him a note? A. Sent him word.

Q. How did he make the payments to you? A. Generally in checks.

Q. Sometimes otherwise? A. Yes, sir.

Q. How otherwise? A. In currency.

Q. And how long did that continue? A. For two or three years, I think.

EIGHTH DAY, JANUARY 14, 1875.

FRANCIS D. MOULTON recalled, and the direct examination resumed.

Mr. Fullerton.—In your evidence yesterday you spoke of a letter—December 26, 1870—written by Mr. Tilton to Mr. Beecher, and of which Mr. Bowen was the carrier; look at the paper I now show you, and say whether it is the letter to which you then referred [handing witness a letter]? A. Yes, sir.

Mr. Fullerton.—I propose to read it.

DEC. 26, 1870, BROOKLYN.

HENRY WARD BEECHER,

SIR, I demand that, for reasons which you explicitly understand, you immediate cease from the ministry of Plymouth Church, and that you quit the city of Brooklyn as a residence.

(Signed) THEODORE TILTON.

[Letter marked "Exhibit No. 4."]

Q. You also spoke of a letter written by Mrs. Tilton to her husband on the night of the 30th of December, which you showed to Mr. Beecher, or read to Mr. Beecher. Look at that letter and say whether it is the one to which you refer [handing witness a letter, marked "Exhibit No. 6"]. A. Yes, sir.

Q. You also spoke of a letter yesterday which you obtained from Mr. Beecher, and which he, the night before, had got from Mrs. Tilton. Look at the paper I now show you, and say whether that is the paper to which you then referred [handing witness a letter, marked "Exhibit No. 5"]. A. That is the paper, sir.

Mr. Fullerton.—"Exhibit No. 5" is as follows:

DEC. 30, 1870.

Wearied with importunity, and weakened by sickness, I gave a letter inculpating my friend Henry Ward Beecher, under assurances that that would remove all difficulties between me and my husband. That letter I now revoke. I was persuaded to it almost forced when I was in a weakened state of mind. I regret it and recall all its statements.

(Signed) E. R. TILTON.

I desire to say explicitly Mr. Beecher has never offered any improper solicitation, but has always treated me in a manner becoming a Christian and a gentleman. (Signed) ELIZABETH R. TILTON.

Mr. Fullerton.—"No. 6" is as follows:

DEC. 30, 1870—Midnight.

MY DEAR HUSBAND, I desire to leave with you before going to sleep a statement that Mr. Henry Ward Beecher called upon me this evening, asked me if I would defend him against any accusation in a *council of ministers*, and I replied solemnly that I would, in case the accuser was any other person than my husband. He (H. W. B.) dictated a letter which I copied as my own, to be used by him as against any other accuser except my husband. This letter was designed to vindicate Mr. Beecher against all other persons save only yourself. I was ready to give him this letter because he said with pain that my letter in your hands addressed to him dated December 29, "had struck him dead and ended his usefulness."

You and I both are pledged to do our best to avoid publicity. God grant a speedy end to all further anxieties. Affectionately,

(Signed) ELIZABETH.

Q. Do you remember now anything that occurred when you read to Mr. Beecher that last letter? A. He seemed surprised, sir; that was all.

Q. Did he say anything? A. He thought it strange that Mrs. Tilton should have imparted any such information to her husband. He said that.

Q. I now show you "Exhibit No. 1" [handing it to witness], which was put in evidence yesterday, and ask whether that was read at the same time of the reading of the last letter which was handed to you? A. It was.

[Mr. Fullerton here read "Exhibit No. 1," which will be found on p. 344, *ante.*]

Q. Your attention was called yesterday, at the close of your examination, to the interview with Mr. Beecher at your house some time in January, 1871; was there another meeting of the same parties at your house during that month? A. I do not remember, sir, just at the present moment; I think there were several; I think there were two meetings in that month between them.

Q. You are able now to state what occurred at the next one in order; I refer to one particularly when Mr. Beecher brought some letters and delivered them to you? A. There was—I will try and recall the date; I think about January 27.

Q. Of 1871? A. Yes, sir.

Q. What occurred then? A. There was a consultation between Mr. Beecher and Mr. Tilton and myself with regard to a letter of Mrs. Morse, which Mrs. Morse had sent to Mr. Beecher; it was after January the 27th.

Q. Where was that meeting? A. It was at my house, sir, in Clinton-street.

Q. And how was it brought about? A. Brought about by a statement in the letter itself. The letter was brought to me first by Mr. Beecher, and it contained a statement that Theodore had——

Mr. Evarts.—No matter. It will speak for itself.

Q. If in consequence of anything——? A. In consequence of a statement in the letter, I thought it was necessary to have Mr. Beecher see Mr. Tilton, and they did meet, and the statement of the letter—the statement that the letter contained—was read to Mr. Tilton, and he indignantly denied——

Mr. Evarts.—What took place.

Mr. Fullerton.—He is telling what took place.

Mr. Evarts.—No.

Mr. Fullerton.—He certainly is.

JUDGE NEILSON.—Omit the the word "indignantly."

Mr. Fullerton.—I don't think the statement was read to Mr. Tilton when he was not there.

The Witness.—Mr. Tilton denied the statement that the letter contained.

Q. Was this while Mr. Beecher was there? A. Yes, sir.

Mr. Evarts.—Now, if your Honor please, if he is speaking of that interview, we are entitled to have a statement of what each party said.

Mr. Fullerton.—It is not worth while, Mr. Evarts, to state that, because I am going to give it. It is my branch of the case.

Mr. Evarts.—I understand it. It is a part that is not your branch of the case that I do not like.

Mr. Fullerton.—I can't help whether you like it or not. I shall give it in evidence if I am permitted.

Mr. Evarts.—I want the rules of evidence to be observed, and whatever the matter of evidence shall be I will not interrupt.

JUDGE NEILSON.—Now, the conversation when Mr. Tilton and Mr. Beecher were both present the plaintiff can give.

Mr. Evarts.—I want it given as a conversation, and not characterized by the witness.

Mr. Fullerton.—It has not been characterized by the witness at all.

JUDGE NEILSON.—Yes; by the word "indignantly."

Mr. Fullerton.—Yes, sir; that he has a right to use under the authorities.

JUDGE NEILSON.—Let him give the conversation first.

Mr. Evarts.—Yes, sir.

Mr. Beach.—Let us see if we are in error, sir.

JUDGE NEILSON.—I don't think we are.

Mr. Beach.—Well, if your Honor please, these interruptions, these reflections upon the propriety and accuracy of the statements made by the witness, and our examinations, may, perhaps, have an unfortunate influence; and I do not wish any such impression to be entertained. The witness stated that there was a letter produced, that an extract was read from that letter in the presence of Tilton and Beecher and this witness, and that Mr. Tilton denied the truth of that extract. Now, does your Honor hold that that is not competent and regular evidence?

JUDGE NEILSON.—Oh! no.

Mr. Beach.—Very well, sir.

JUDGE NEILSON.—The primary duty, of course, is to give the conversation. It naturally may appear, and perhaps should appear, whether it was a gentle, friendly conversation, or otherwise.

Mr. Beach.—Undoubtedly, sir. We intend to give all that conversation; but that fact, sir, that a paragraph was read from that letter, and was denied by Mr. Tilton, is competent to be given in evidence.

JUDGE NEILSON.—I do not think that was objected to.

Mr. Beach.—Yes, sir; it was objected to.

Mr. Evarts.—We will see, if your Honor please. It is perfectly competent for them to say: "This extract which I now read was read to Mr. Tilton, and he denied it." It is not competent to say that an unnamed extract of the letter was read, and he denied it. What occurred in the actual collision of minds between these parties is to be spread before the jury as it occurred; and the occurrence was not the reading of an unnamed part of a letter, but the reading of an actual part of a letter, and which we now want read, and then we will take what Mr. Tilton said about it.

JUDGE NEILSON.—It is a question, then, as to the order of proof. There is really no disagreement between you.

Mr. Evarts.—There is no disagreement that the occurrence between the parties is to be given. And it is no answer, when I object to their giving something that is short of and different from that, that they intend afterwards to give what they have a right to give.

JUDGE NEILSON.—Well, the extracts denied may come in.

Mr. Fullerton.—[Handing witness a letter.] See whether the paper I

now hand you is the letter to which you refer? A. That is the letter, sir.

Mr. Evarts.—If your Honor please, this is a letter—I take it for granted that it is in the handwriting of Mrs. Morse—this is a letter from Mrs. Morse, the mother of Mrs. Tilton, to Mr. Beecher, which, as I understand it, was brought by Mr. Beecher, and was presented at this interview, and some portion of it was then read to Mr. Tilton. That is the point of the present examination. Now, this letter of Mrs. Morse's is not evidence against Mr. Beecher. That, I take it, we understand; but so far as it furnishes a part of the interview between the parties, why, it forms a part of what is evidence, that is, what passed between Mr. Tilton and Mr. Beecher, and I do not understand that it is now offered in any other way.

Mr. Fullerton.—Well, I offer it in evidence to be used for any purpose. It is proper when it is in——

JUDGE NEILSON.—It can only be proper if it was talked of in that interview. In and of itself it is not evidence.

Mr. Fullerton.—It is quite impossible, if your Honor please, for me to show the propriety of this letter without referring to its contents. I will state in general terms, however, that it refers to this difficulty between these parties, and consequently becomes a part of the *res gestæ*.

Mr. Evarts.—We agree that it is pertinent.

Mr. Fullerton.—Well, I agree that you will not interrupt me. I am talking. It becomes important, therefore, as being a production of Mrs. Morse, sent to Mr. Beecher, referring to this difficulty, the letter having been handed by him to Mr. Moulton, and the conversation which ensued, and which I shall proceed to give in evidence, shows the propriety of introducing the whole letter in evidence in this case.

JUDGE NEILSON.—I think when your examination closes, we can reconsider the question.

Mr. Evarts.—Yes. I reserve my point, if your Honor please.

JUDGE NEILSON.—Certainly.

Mr. Fullerton.—In the first place, then, Mr. Moulton, I will ask you to point out to me that part of the letter—— A. The whole of the letter was read, you understand.

Q. I understand the whole of the letter was read, but point out the paragraph in the letter which made it necessary in your judgment, as you state, to send for Mr. Tilton, in order that his attention might be called to it.

JUDGE NEILSON.—Or rather which Mr. Tilton denied.

Mr. Fullerton.—Well, sir, it is the same thing.

Mr. Evarts.—The part that we read?

Mr. Fullerton.—He did not deny anything that was not read to him.

The Witness.—You wish me to mark it, sir, or read it?

Q. Just mark it, so that I can read it in evidence. A. [Marking the letter.] Between the first two marks there.

Q. Have you now marked that paragraph in red? A. I have.

Mr. Evarts.—I will look at it.

Mr. Fullerton.—Yes, sir [handing the letter to Mr. Evarts].

Q. I want you to state all the conversation that occurred between you and Mr. Beecher before you sent for Mr. Tilton, and also that which occurred after Mr. Tilton arrived there? A. Mr. Beecher brought me that letter from Mrs. Morse, and he said to me, "Here is a letter from Mrs. Morse which I would like to have you read," and I read it, and read the statement which I have marked, as well as the balance of the letter, and I said to Mr. Beecher, "I am sure that this can not be true; in my own mind I am sure it can not be true."

Q. What did you refer to then? A. The letter, or statement, with regard to Theodore Tilton.

Q. The statement that you have marked? A. Yes, sir; I said, "There is a sentence in the letter which I know to be untrue; it contains an untrue statement, and I judge that the statement with regard to Mr. Tilton is quite as untruthful as that; but we can see Theodore, and find out from him directly; if he has done that he has done wrong;" and I sent for Theodore, either that day or some subsequent day; at all events, he came to an interview between Mr. Beecher and myself, and he did there deny——

Mr. Evarts.—Well?

The Witness.—Pardon me.

Q. He there made the denial that you have referred to? A. Yes, sir; he said it was not true that he had told twelve persons, and he said who he had told.

Mr. Evarts.—They have not read the letter yet.

The Witness.—I beg pardon!

Mr. Fullerton.—It is proper for him to state that, whether we have read it or not.

Mr. Evarts.—I think not.

Q. What did Mr. Tilton say? A. He said he had not told twelve persons, and he told Mr. Beecher who he did tell—who he had told.

Mr. Fullerton.—I read the extract marked, "I know of twelve persons whom he has told." Now, your Honor will perceive that without the context that has no meaning.

Mr. Evarts.—Well, read the rest.

Mr. Fullerton.—That Mr. Tilton could not deny but it was all read.

Mr. Evarts.—Well, why didn't he mark it?

Mr. Fullerton.—That was marked in the first instance.

Mr. Evarts.—If your Honor please, what we would like to have is, definitely, the passage of this letter that was read to Mr. Tilton and that he denied.

Mr. Fullerton.—I have read it.

JUDGE NEILSON.—I understand that is the passage just read. Then we have the conversation and you have the clause.

Mr. Fullerton.—Yes, sir; and I have read the clause in evidence.

Mr. Evarts.—But I do not understand; I have not heard the witness say that was the clause.

JUDGE NEILSON.—[To the witness.] The clause which was read—is that the one marked, and that you say was denied? A. Yes, sir.

Mr. Evarts.—If the witness will take the letter and read what was denied, then we shall know.

JUDGE NEILSON.—Very well; pass the witness the letter. [Letter handed to witness.]

The Witness [reading]—

"I know the publicity that he has given to this recent and most crushing of all troubles is what has taken the life out of her. I know of twelve persons whom he has told."

That—"I know of twelve persons whom he has told"—was the statement which Mr. Tilton denied.

Mr. Evarts.—That is all that was read? A. The whole of the letter was read.

Mr. Evarts.—Your Honor understands us to say distinctly that we are entitled to the passage of the letter that was read to Mr. Tilton before he denied it.

JUDGE NEILSON.—Well, you have the denial, and you have the clause of the letter; you have them taken together.

Mr. Evarts.—Yes, sir. Now, I have not got the clause of the letter yet.

Mr. Fullerton.—Well, that's not my fault.

JUDGE NEILSON.—I understood the witness to read the clause in question.

Mr. Evarts.—I have not so understood it. He says that is the clause that he denied; I want the clause that was read to him before he made his denial.

Mr. Fullerton.—He has stated that that is the clause that he read to him, and the clause which he denied.

JUDGE NEILSON.—[To the witness.] Now, restate that, so that we may understand you perfectly. A. If you will give me the letter again.

Mr. Evarts.—We want what was read before his denial.

The Witness.—The whole letter was read before his denial; the specific allegation of the letter that he denied was, "I know of twelve persons whom he has told."

Mr. Fullerton.—Now, in making that denial what did he say? A. He told Mr. Beecher that it was not true; said that it was not true that he had told twelve persons, and he mentioned to Mr. Beecher the names of the parties whom he had told, and I remember that Oliver Johnson's name was one mentioned.

Q. Anyone else? A. I think Mrs. Bradshaw.

Q. Anyone else? A. Don't remember, sir.

Q. What other conversation was had at that time? A. Mr. Tilton said to Mr. Beecher that Mrs. Morse was a dangerous woman—a woman liable to come down to Plymouth Church at any time and denounce his relations with her daughter, and that that letter ought to be carefully answered; the answer ought to be well considered, and that it ought to be kind—kind as it could possibly be made; and the answer was written by Mr. Beecher and submitted to Mr. Tilton, at that interview, I think—at all events, it was submitted to Mr. Tilton and to me.

Q. Did anything else occur? A. Not that I remember particularly.

Mr. Fullerton.—I now offer the letter in evidence.

Mr. Evarts.—We object to it as evidence against Mr. Beecher, otherwise than as it formed part of this interview.

JUDGE NEILSON.—Why, isn't that so, Mr. Fullerton?

Mr. Fullerton.—Why, sir, we hold that the bringing of that letter to Mr. Moulton, and sending for Mr. Tilton, and the conversation which followed, render the letter evidence in this cause as a part of the *res gestæ*. I want to go on and prove that there was no denial of the allegations in that letter.

JUDGE NEILSON.—Well, why don't you go through with that proof before you offer it?

Mr. Fullerton.—I am through.

JUDGE NEILSON.—Nothing that Mrs. Morse could write would be evidence in this case, of course. The question is whether what occurred at this interview was sufficient to make it evidence. It is so as to the clause in question. I think that is the extent of it, as the proof now stands.

Mr. Fullerton.—I will take a further question. [To the witness.] In that conversation was there a denial by Mr. Beecher of any of the allegations in that letter? A. No, sir; there was no denial.

Mr. Evarts.—I object to that form of asking.

JUDGE NEILSON.—We will take it.

Mr. Evarts.—"What took place?" should be the question.

Mr. Fullerton.—Well, that is what did not take place.

Mr. Evarts.—If he said anything about the letter, or anything was said to him about the letter, we have a right to it.

JUDGE NEILSON.—Yes, it ought to be given.

Mr. Fullerton.—What reply, if any, did Mr. Beecher make to the suggestion of Mr. Tilton or yourself that Mrs. Morse was a dangerous person—that this letter ought to be answered kindly? A. He agreed with it.

Q. What did he say? A. He said that he knew Mrs. Morse was a dangerous woman; he had told me so before.

Q. He had told you so before? A. Yes, sir.

Q. In one of your interviews with him? A. Yes, sir.

Q. Subsequent to the 30th of December, 1870? A. I don't remember; I think not, sir—yes, subsequent to the 30th.

Mr. Fullerton.—I think if your Honor will read this letter you will see that it is evidence in this cause.

Mr. Beach.—I don't suppose, sir, the question arises here, as to the extent and effect of this paper as evidence. That it is made evidence in the cause by the testimony of the witness, seems to me perfectly clear. Mr. Beecher brings this paper to Mr. Moulton, consults with him about it; Mr. Tilton is called in to the consultation; Mr. Beecher, through Mr. Moulton, submits this letter to the consultation of Mr. Tilton; they confer about it, about all its terms and statements; they consult as to the proper mode of answering it; prepare and agree upon an answer. Can there be any doubt, sir, that that is, so far an adoption of the letter, a part of the transaction in which these

parties were then engaged, as to render it admissible in evidence for the purpose of explaining their acts and declarations—submitting to the Court and jury the subject-matter of that interview under the consultation then had between them? It is true, sir, that the statements of Mrs. Morse, uncorroborated and unadopted either by the specific admission or by the equally clear and conclusive acts of Mr. Beecher, would not be evidence against him; but he brings this paper, submits all that it contains to the consideration of the two parties who were engaged in consultation with him; and, without a word of dissent or denial, adopts it *in toto*, and prepares an answer which I suppose we may submit to your Honor. Now, that is one transaction in regard to one subject-matter, closely linked with the issue between these parties—bearing directly upon the subject-matter of the controversy between them. Suppose, sir, that instead of a written letter, Mrs. Morse had been present at that interview and made these declarations in the presence of Mr. Beecher, and he heard them without a word of denial; and he then made an answer, such as is contained in the responsive letter which he wrote to Mrs. Morse; would there be any doubt, if Mrs. Morse had been there speaking, instead of writing, that everything she said to Mr. Beecher bearing upon the subject-matter of this controversy would be competent in evidence?

JUDGE NEILSON.—No doubt of it, at all.

Mr. Beach.—Well, sir, this is precisely the same.

JUDGE NEILSON.—Not quite. Besides, the responsive letter you speak of is not before us yet.

Mr. Beach.—Ah! your Honor, but the statements in the letter are produced by Mr. Beecher, read in his presence, and submitted to in silence without any denial. Suppose, sir, that that letter had contained an allegation against Mr. Beecher that he had had sexual intercourse with the wife of Mr. Tilton, and he does not deny it; isn't that statement evidence, sir? And upon what principle of law will it be excluded? If a party hears an allegation to his prejudice in regard to a matter in controversy in court and fails to resist the allegation, is it to be said that it is not competent evidence against him? Isn't it a clear and unequivocal admission? Silence, sir, under such circumstances is confession. Silence is an adoption of the allegation made when the party is called upon by every interest dear to him to speak. And that is just the condition, sir, of this evidence. I assume for the moment, sir, that in that letter there is a clear imputation of guilt as against Mr. Beecher? If that be so, and under the evidence of the witness, he failed to deny or explain, submitted silently to that imputation, is it to be said that that is not evidence? And does it make any difference that the charge is presented against him in the form of a writing, a record, instead of a parol accusation? Surely no distinction in principle can be drawn from the two examples. And it is upon that theory, sir, that in this letter are contained material statements by Mrs. Morse, which, if untrue, it was for the interest of Mr. Beecher then to deny and to resent, and if he failed to do it the law implies an acknowledgment of its truth. At any rate, it is a question, sir, to be submitted to the jury under all the circumstances of the event. And I am told, sir, and, if your Honor will be kind enough to

send for the authority if you are in any doubt about it, the case of Kelley v. The People, in the 55th of New York, is said to be an analogous case.*

JUDGE NEILSON.—I can well understand that if Mrs. Morse were present, and made such a charge in the conversation, it would be the defendant's interest to deny it.

Mr. Beach.—Then it seems to me, your Honor, that you concede the principle.

Mr. Evarts.—I have not been heard yet.

Mr. Beach.—Well, I haven't perceived that you failed to take abundant opportunity to be heard. I was suggesting to his Honor that if he conceded that Mr. Beecher would be called upon to answer a parol declaration in regard to a matter material to himself, that no distinction can be drawn as between a parol and a written statement or accusation. I am entirely at a loss to see the discrimination in principle between the two examples.

The reason of the rule is that a matter is brought to the attention of a party interested which demands from him an answer under circumstances calling upon him either to assent to or to deny the truth of that matter. Well, sir, this was presented to Mr. Beecher under circumstances which certainly called upon him for explanation or denial, if any of the allegations contained in the letter of Mrs. Morse were untrue. It was a matter, sir, of common interest to the parties then assembled—two of them at least. It was a matter about which they were consulting. It was a matter about which they mutually devised an answer; and if Mr. Beecher failed upon that occasion to make any proper explanation or denial, or if he did qualify or affect, by anything which he said upon that occasion, any of the declarations in that letter—why, of course, they must be evidence; and, with the letter and the explanation or denial, they must be evidence, either in his favor or against him.

JUDGE NEILSON.—The obligation to make, on the spot, an oral denial or explanation is modified by the general purpose of making a written answer, the conference being had about the spirit, tone and care with which that answer should be framed; and I learn from the argument, generally, that some answer was made.†

* *Kelly* v. *People* (55 N. Y. 565), affirming *Ormsby* v. *People* (2 N. Y. Supreme Ct. R. 157).

† The general rule on which tacit admissions are received is thus stated by OGDEN, *J.*, in the Opinion of the Court of Errors, in New Jersey, in 1857, *Donnelly* v. *State* (2 Dutch., 601, 613): "When a matter is stated in the hearing of one, which injuriously affects his rights, he understands it and assents to it wholly or in part by reply, both are admissible in evidence; the answer, because it is the act of the party who is presumed to have acted under the force of truth, and the statement, as giving point and meaning to the action. So also silence, unless it be accounted for by some of the circumstances which have been specified [viz.: if made in course of judicial inquiry, or when circumstances existed which rendered a reply inexpedient or improper, or that fear, doubts of his rights, or a belief that his security would be better promoted by silence than by response, govern him at the time, in which case the testimony should not be admitted], or by other sufficient reasons, may be taken as a tacit admission of the facts stated; because a person, knowing the truth or falsity of a statement affecting his rights, made by another in his presence under circumstances calling for a reply, will naturally deny it if he be at liberty to do so, if he does not intend to admit it."

Mr. Beach.—Yes, sir.

JUDGE NEILSON.—And when you purpose to make a written answer to a letter, I think it supersedes in a great degree the duty of making a present answer orally.

Mr. Beach.—Well, sir, we propose to give the answer. We can not give them, as my associate says, both at once.

Mr. Evarts.—My objection was not such as to preclude the letter. I simply said that the letter was not evidence against Mr. Beecher, except so far as it was made evidence by what occurred with him in regard to it.

Mr. Beach.—Well, I agree to that.

Mr. Evarts.—That's all I said.

Mr. Beach.—The difficulty is, that the court went much further.

Mr. Fullerton.—I will read it in evidence, then.

Mr. Evarts.—Your Honor, then, notes that it is admitted only for that purpose.

Mr. Fullerton [reading]:

"MR. BEECHER. As you have not seen fit to pay any attention to the request I left at your house now over two weeks since, I will take this method to inform you of the state of things in Livingston street. The remark you made to me at your own door, was an enigma at the time, and every day adds to the mystery. 'Mrs. Beecher has adopted the child.' 'What child?' I asked. You replied, 'Elizabeth.'

"Now I ask, what earthly sense was there in that remark? Neither Mrs. B. yourself, or I can or have done anything to ameliorate her condition. She has been for the last three weeks with one very indifferent girl. T. has sent Bessie with the others away, leaving my sick and distracted child to care for all four children night and day, without fire in the Furnace, or anything like comfort, or nourishment in the house. She has not seen any one. He says, 'She's mourning for *her Sin.*' If this be so, one twenty-four hours under his

In *Commonwealth* v. *Kenny* (12 Metc., 53 Mass., 235, 1847), after speaking of express declarations of the accused, the Court (Opin. by Ch. J. SHAW) say: "In *some* cases where a similar declaration is made in one's hearing, and he makes no reply, it may be a tacit admission of the facts; but this depends upon two facts: (1) Whether he hears and understands the statement, and comprehends its bearing; and (2) whether the truth of the facts embraced in the statement is within his own knowledge or not; whether he is in such a situation that he is at liberty to make any reply, and whether the statement is made under such circumstances and by such persons as naturally to call for a reply if he did not intend to admit it. . . . So if the statement (is) by a stranger whom he is not called on to notice; or, if he is restrained by fear—by doubts of his rights—by a belief that his security will be best promoted by his silence, then no inference of assent can be drawn from that silence."

In *State* v. *Hamilton* (55 Mo., 14 Post, 520, 1874), which was a trial on an indictment for murder, *held*, that "it is not in all instances, where declarations are made in the presence and hearing of a person, that those declarations can be given in evidence against him; they frequently call for no reply, and sometimes they are impertinent and deserve no notice. Unless it is shown that the party is immediately concerned, and that unless he did speak, his silence might fairly be construed into an admission, the declarations will not be admissible."

In addition to the reasons for silence, indicated in the foregoing decisions, may be mentioned that of the sickness of the person in whose presence the conversation took place. In a case of this character, her silence was held not admissible in evidence. *Lawson* v. *State* (20 Ala. N. S., 65, Supm. Ct., 1852, Opin. by GOLDTHWAITH, *J.*). See also, *Twyman* v. *Twyman* (27 Mo., 6 Jones, 383), as to the hope of reconciliation as a reason for an admission.

shot, I think, is enough to atone for a lifelong Sin, however heinous. I knew that any change in his affairs would bring more trouble upon her, and more suffering. I did not think for a moment when I asked Mrs. B. as to your call there, supposing she knew it, of course, as she had said you would not go there without her.

"I was innocent of making any misunderstanding if there were any, you say, keep quiet. I have all through her married life done so, and we now see our error. It has brought him to destruction, made me utterly miserable, turned me from a comfortable home, and brought his own family to beggary. I don't believe if his honest debts were paid he would have enough to buy their breakfast. This she could endure, and thrive under, but, the publicity he's given to this recent and most *crushing* of all *trouble* is what's taken the life out of her. I know of 12 persons whom he has told, and they in turn have told others. I had thought, we had as much as we could live under from his neglect and ungovernable Temper. But this is the death-blow to us both, and I doubt not Florence has hers. Do you know when I hear of your cracking your jokes from Sunday to Sunday, and think of the misery you have brought upon us, I think with the Psalmist 'There is no God.' Admitting all he says to be the invention of his half-drunken brain, still the effect upon *us* is the same, for all he's told, believe it. Now he's nothing to do, he makes a target of her night and day. I am driven to this extremity, to pray for her release from all suffering by God's taking herself for if there's a heaven I know she'll go there.

"The last time she was in this house, she said, 'Here I feel I have no home, but on the other side I know I shall be more than welcome.' Oh! my Precious Child! How my heart bleeds over you in thinking of your sufferings. Can you do anything in the matter?

"Must she live in this suffering condition of mind and body, with no alleviation? You or any one else who advise her to live with him when he's doing all he can to kill her by slow torture is anything but a friend.

"I don't know if you can understand a sentence I've written, but I'm relieved somewhat, by writing. The children are kept from me, and I have not seen my darling child but once since her return from this house.

"I thought the least you could do, was to put your name to a paper, to help to reinstate my brother. Elizabeth was as disappointed as myself. He's still without employment, with a sick wife, and five children to feed, behind with the rent, and everything else behindhand.

"If your wife has adopted Lib, or you sympathize with her, I pray you to do something for her relief, before it's too late. He swears so soon as her breath leaves her body, he will make this whole thing public, and this prospect, I think, is one thing which keeps her living. I know of no other. She's without nourishment for one in her state, and in *want*—actual want. They would both deny it, no doubt. *But it's true.*"

[Letter marked "Exhibit No. 7."]

Mr. Fullerton.—Now, is that all of the letter—I see there is no signature to it? A. All that I had of it, sir.

Q. It is all that Mr. Beecher brought to you? A. I believe it to be all that he brought; yes, sir.

Q. Now, was there any other or further conversation at that time in reference to the contents of this letter? A. Yes, sir; I said to Mr. Beecher, when he brought me the letter, at the time that he brought me the letter, that I knew that the allegation with regard to their being in want was untrue; I said to him, "I know that Mr. Tilton has a balance with our firm."

Mr. Evarts.—This is not the interview with Mr. Tilton? A. No; the interview with Mr. Beecher; Mr. Beecher said it was useless for him to undertake to live if this story was going from mouth to mouth, and he wanted to be satisfied -he said he wanted to be satisfied that Mr. Tilton had not stated,

as that letter says he did, the fact to twelve persons, and I tried to comfort him by saying—and I said to him: "Mr. Beecher, you may rest assured that it is untrue; I know that Mr. Tilton would not do it. I know that he has told me to whom he has told the story, and that is all there is of it, and you need not be anxious about it, in my opinion." And then I sent for Mr. Tilton—it was either that day or a day or two afterwards; at all events, he came——

Mr. Fullerton.—Well, at the meeting between yourself, Mr. Tilton, and Mr. Beecher, what else was said in regard to the contents of this letter; in regard to the charge brought by Mrs. Morse, if any? A. There was nothing said about the charges brought by Mrs. Morse.

Q. What conversation was there? A. Mr. Tilton said that he certainly had not said that to twelve persons—not mentioned the fact to twelve persons.

Q. And then he went on to state to whom he had told the story? A. Yes, sir.

Q. And you have mentioned the names of two persons? A. Two parties; yes, sir.

Q. Do you recollect whether he named any other person to whom he had told it? A. I do not remember now.

Q. And what did Mr. Beecher say when he was informed that it had been communicated to Mr. Robinson and Mrs. Bradshaw; what did Mr. Beecher reply when he was informed of the names of the two persons to whom Mr. Tilton said he had communicated this story? A. I do not remember his reply, sir; it was an expression of regret that it had been told to anybody.

Q. Who is Oliver Johnson? A. Oliver Johnson is now one of the editors of *The Christian Union.*

Q. What was his position at that time? A. At that time I think that he had resigned from *The Independent;* he had been one of the editors of *The Independent,* managing editor of *The Independent;* at the time that Mr. Tilton told Mr. Beecher that he had told Oliver Johnson, Oliver Johnson was in *The Independent.*

Q. And Mrs. Bradshaw, who was named, did she reside in Brooklyn? A. She did; yes, sir.

Q. In that conversation was anything said by Mr. Tilton with reference to the charges of neglect to his family? A. Yes, sir.

Q. What was said upon that subject? A. Mr. Tilton denied that he had neglected his family.

Mr. Evarts.—What was said to him and what did he say? A. Well, sir, as nearly as I could remember his words, he said that he had not neglected his family; that his family were not in want; and he said to Mr. Beecher, I remember, "You know that they are not"—turning to me, "You know that I am not in want."

Q. Meaning you? A. Yes, sir.

Mr. Fullerton.—I have understood you to say that at that time another letter was produced there by Mr. Beecher? A. There was a letter, sir, produced, I think, at that interview.

Q. What letter was that? A. I do not remember, sir, distinctly enough about that letter to speak of it.

Q. [Handing letter to witness.] Look at the paper I now show you, and say whether it is the reply to the letter of Mrs. Morse to Mr. Beecher? A. Yes, sir.

Q. In whose handwriting is it? A. Mr. Beecher's.

Q. Is that the original draft? A. Yes, sir.

Q. As amended? A. Yes, sir.

Q. When was that prepared—at that time—that meeting? A. At that time; yes, sir.

Q. While you were together? A. I believe so; yes, sir.

Mr. Fullerton.—I offer it in evidence.

"MRS. JUDGE MORSE

"*My Dear Madam* I should be very sorry to have you think that I had no interest in your troubles. My course toward you hitherto should satisfy you that I have sympathized with your distress. But Mrs. Beecher and I after full consideration, are of one mind, that, under present circumstances, the greatest kindness to you, and to all, will be in so far as we are concerned to leave to time the rectification of all the wrongs, whether they prove real, or imaginary."

[Letter marked "Exhibit No. 8."]

Mr. Evarts.—Is that the draft?

Mr. Fullerton.—That is the original draft as amended.

The Witness.—I remember at that interview Mr. Tilton specifically said to Mr. Beecher, "it will be necessary in writing that letter to so write it that if it should be lost, or come into anybody else's possession, it would not disclose the fact of any sin on your part."

Q. I understand you to say that this occurred about the last of January, 1871? A. Yes, sir; somewhere about that. My recollection is that the letter was brought to me, and that then some time elapsed between that and the interview.

Q. The interview between the three? A. Yes, sir.

Q. When did you next see Mr. Beecher? A. I don't remember when I next saw him, I saw him so frequently.

Q. I call your attention to February 7, 1871. Did anything occur on that day; I refer to the day when three letters were written? A. I received a letter from Mr. Beecher on February 7; I had an interview with him before February 7.

Q. State what took place before February 7; intermediate to this last interview when the Morse letters were produced on February 7, state what occurred between you and Mr. Beecher? A. Mr. Beecher said that he wanted to be satisfied of Theodore's spirit towards him; that he was in a state of uncertainty about it, and I said to him, "I want to have Tilton in writing on this question; I want him to commit himself somewhere;" and I had, even anterior to the 27th of January, spoken to Mr. Tilton about it.

Mr. Beach.—[To the witness.] Unless you told that to Mr. Beecher, you need not state it? A. Yes, sir; I said to him, "I have repeatedly asked Theodore to give me a paper stating what his views were." Mr. Beecher said he would

like that, too, and that explains the letter of February 7, of Theodore Tilton to me. That is what I remember about that letter.

Mr. Fullerton.—Is that the letter which he wrote to you and of which you have last spoken? A. Yes, sir; that is it, and just previous to February 7th I had a conversation with Mr. Beecher—I don't remember the date—with regard to the necessity of having matters go on properly at Livingston-street, and Mr. Beecher said, "I think that as Elizabeth is not admitted to consultations, inasmuch as she does not hear from us directly, that she ought to be assured that the spirit of Theodore towards her is kind," and he said, "I will write a letter to Elizabeth placing the situation before her." That is the substance of the conversation which led to the letter of February 7 by Mr. Beecher to Mrs. Tilton.

Q. This letter written to you by Mr. Tilton on the 7th of February—did you show it to Mr. Beecher? A. Yes, sir.

Q. When was it shown to him? A. Shortly after; about as soon as I received it; I don't remember the date.

Mr. Fullerton.—I offer it in evidence.

"BROOKLYN, Feb. 7, '71.

"MY VERY DEAR FRIEND: In several conversations with me, you have asked about my feelings towards Mr. Beecher, and yesterday you said the time had come when you would like to receive from me an expression of them in writing. I say, therefore, very cheerfully, that notwithstanding the great suffering which he has caused to Elizabeth and myself, I bear him no malice, shall do him no wrong, shall discountenance every project (by whomsoever proposed) for any exposure of his secret to the public, and (if I know myself at all) shall endeavor to act toward Mr. Beecher as I would have him, in similar circumstances, act toward me. I ought to add that your own good offices in this case have led me to a higher moral feeling than I might otherwise have reached.

Ever yours affectionately,

THEODORE TILTON.

To FRANK MOULTON."

[Letter marked "Exhibit No. 9."]

You have spoken of a letter written to you by Mr. Beecher on that same 7th of February, 1871. [Handing letter to witness.] Please look at that and say whether it is the letter referred to by you? A. Yes, sir; that is the letter.

Mr. Evarts.—There is no date to this letter.

Mr. Fullerton.—No; I offer it in evidence, and read it.*

"MY DEAR MR. MOULTON: I am glad to send you a book which you will relish, or which a man on a sick-bed *ought* to relish. I wish I had more like it, and that I could send you one every day, not as a repayment of your great kindnesses to me, for that can never be repaid, not even by love, which I give you freely.

"Many, many friends has God raised up to me; but to no one of them has he ever given the opportunity and the wisdom so to serve me as you have. My trust in you is implicit. You have also proved yourself Theodore's friend and Elizabeth's. Does God look down from heaven on three unhappy creatures that more need a friend than these?

"Is it not an intimation of God's intent of mercy to all, that each one of these has in you, a tried and proved friend? But only in you are we three united. Would to God, who orders all hearts, that by your kind mediation, Theodore, Elizabeth and I could be made friends again. Theodore will have the hardest

* The paper bore a memorandum in lead pencil—"February 7, 1871."

task in such a case; but has he not proved himself capable of the noblest things?

"I wonder if Elizabeth knows how generously he has carried himself toward me? Of course, I can never speak with her again, except with his permission, and I do not know that, even then it would be best. My earnest longing is, to see her in the full sympathy of her nature, at rest in him, and to see him once more trusting her, and loving her with even a better than the old love. I am always sad in such thoughts. Is there any way out of this night? May not a day-star arise? Truly yours always, & with trust and love,

(Signed) HENRY WARD BEECHER."

[Letter marked "Exhibit No. 10."]

Q. You have also spoken of a letter written on that same day by Mr. Beecher to Mrs. Tilton. [Handing letter to witness.] Look at the paper now handed to you and say whether that is the letter that he wrote on that day to that lady? A. That is the letter.

Mr. Fullerton.—I put in evidence the letter of February 7, from Mr. Beecher to Mrs. Tilton.

"BROOKLYN, Feb. 7, '71.

"MY DEAR MRS. TILTON: When I saw you last, I did not expect ever to see you again, or to be alive many days. God was kinder to me than were my own thoughts. The friend whom God sent to me—Mr. Moulton—has proved, above all friends that ever I had, able and willing to help me in this terrible emergency of my life. His hand it was that tied up the storm that was ready to burst upon our heads. I am not the less disposed to trust him, from finding that he has *your* welfare most deeply and tenderly at heart. You have no friend (Theodore excepted) who has it in his power to serve you so vitally and who will do it with so much delicacy and honor. I beseech of you, if my wishes have yet any influence, let my deliberate judgment in this matter weigh with you. It does my sore heart good to see in Mr. Moulton an unfeigned respect and honor for you. It would kill me if he thought otherwise. He will be as true a friend to your honor and happiness, as a brother could be to a sister's. In him we have a common ground. You and I may meet in him. The past is ended. But is there no future? no wiser, higher, holier future? May not this friend stand as a priest in the new sanctuary of reconciliation, and mediate and bless, you, Theodore, and my most unhappy self? Do not let my earnestness fail of its end. You believe in my judgment. I have put myself wholly and gladly in Moulton's hands, and there I must meet you. This is sent with Theodore's consent, but he has not read it. *Will you return it to me, by his hands?* I am very earnest in this wish, for all our sakes, as such a letter ought not to be subject to even a chance of miscarriage. Your unhappy friend,

(Signed) H. W. BEECHER."

[Letter marked "Exhibit No. 11."]

Q. What was said, if anything, to you with reference to a permission to write that letter? A. Mr. Beecher wanted me to get Theodore's permission to write it.

Q. And did you? A. I did; yes, sir.

Q. And when you conveyed to Mr. Beecher the knowledge that Theodore had consented, what was said between you? A. He said he would write the letter.

Q. How did it get into your possession, if it got there? A. It was sent to me by Mr. Beecher, or delivered to me personally by Mr. Beecher; I don't remember. Do you mean at first how did it get into my hands, or how last?

Q. How first you have answered? A. Yes, sir; certainly.

Q. Now, Mr. Moulton, prior to that time, had anything been said about

any intercourse between Mr. Beecher and Mr. Tilton, or Mrs. Tilton, and how it was to be brought about, if at all? A. Oh! yes, sir.

Q. State, if you please, what that was? A. Sir?

Q. What arrangement was made with Mr. Beecher, if any, upon that subject? A. The arrangement between Mr. Beecher and myself was this, that there was to be no interchange.

Mr. Evarts.—State what took place.

Mr. Fullerton.—Yes, state what took place.

The Witness.—I told Mr. Beecher that I thought he had better not hold any correspondence with Mrs. Tilton without Theodore's consent, and he said he thought that would be right. That is what there was about that.

Q. When was that arrangement made? A. Some time anterior to February 7th, in the early part of the controversy.

Q. I asked you how you obtained that letter—from whom? How came it afterwards in your possession? A. It was returned by Theodore Tilton to me.

Q. Do you know whether Mrs. Tilton received it? A. I do not know; Theodore Tilton said he delivered it to her.

Q. What did you do with the letter? A. I gave it to Theodore Tilton.

Q. For delivery? A. For delivery.

Mr. Evarts.—It was open, I suppose?

Mr. Fullerton.—Sealed?

The Witness.—It was an open letter.

Q. I am requested to ask you when Mr. Tilton returned to you the letter addressed by Mr. Beecher to Mrs. Tilton? A. Shortly after the date of it.

Q. [Handing letter to witness.] Look at the paper now shown you, and say from whom you received it? A. From Mr. Beecher.

Q. When? A. After my return from the——after April the 15th some time——I think that was the date I returned from the South. It was after my return.

Q. You may state when you left for the South, and when you returned from the South? A. I think the date of my departure was March 2d, 1871, and I returned April 15th.

Q. During that period, where were you? A. In Florida and Georgia—generally South.

Q. How long after your return was it that this letter now in your hand was given to you by Mr. Beecher? A. Not very long. I don't remember the date.

Q. What did he state when he gave it to you? A. He said he had received it from Elizabeth.

Q. Did you make any observation at the time? A. No; I don't remember that I did; I think I made an observation like this, that it was an act of good faith on his part to give it to me.

Mr. Fullerton.—I offer the letter in evidence.

"Wednesday.—MY DEAR FRIEND: Does your heart bound *toward all* as it used? So does mine! I am myself again. I did not dare tell you till I was *sure;* but the bird has sung in my heart these *four* weeks, and he has cove-

nanted with me never again to leave. "*Spring has come.*" Because I thought it would gladden you to know this, and not to trouble or embarrass you in *any way*, I now write. Of course I should like to share with you my joy; but can wait for the Beyond.

"When dear Frank says I may once again go to old Plymouth, I will thank the dear Father."

[Letter marked "Exhibit No. 12."]

Mr. Evarts.—There is no date to that letter?

Mr. Fullerton.—There is no date to it.

Mr. Fullerton.—In whose handwriting is that letter? A. Elizabeth Tilton's.

Q. And do you observe there the words at the head of it, "Received March 8th"? A. Yes, sir.

Q. In whose handwriting is that? A. Mr. Beecher's.

Q. Was that on the letter when he handed it to you? A. Yes, sir.

Mr. Evarts.—Is the letter signed?

Mr. Fullerton.—The letter is not signed.

Mr. Evarts.—If your Honor please, all these letters that we have seen are obviously letters that were contained in envelopes, as you can see by their shape that they are not complete sheets that were folded and addressed, and as yet no envelopes have been introduced. I call attention to it, and of course I would like to have the envelopes.

Mr. Morris.—We have them.

Mr. Evarts.—Well, we would like to have them.

Mr. Fullerton.—[Handing envelope to witness]. Look at the envelope I now show you, and say in whose hand the superscription is? A. In Mr. Beecher's.

Q. [Handing letter to witness.] Look at the letter I now show you, and say in whose handwriting it is? A. Mr. Beecher's.

Mr. Fullerton.—I offer this in evidence. I read the letter.

Mr. Evarts.—We understand this letter is now offered to be read as having been enclosed in that envelope.

Mr. Fullerton.—I don't offer it as having been enclosed in that envelope now. I have proved the envelope to be in the handwriting of Mr. Beecher, and I have proved the letter to be in his handwriting also.

JUDGE NEILSON.—You didn't interrogate him as to the connection of the two papers.

Mr. Fullerton.—No, sir; because he does not know.

Mr. Evarts.—I asked for envelopes that accompanied the letters to the parties, and I want the envelopes and the letters to go together.

Mr. Fullerton.—Whenever the time comes for me to prove that letter was sent in that envelope, I shall do so; I can not do it with the present witness.

Mr. Evarts.—You proposed it.

Mr. Fullerton.—No; I proposed it so far as to put it in evidence, and have them marked for identification, so as to be ready to go a step further and put them in evidence.

Mr. Evarts.—I want them connected.

JUDGE NEILSON.—On the assumption that you will do that, it is proper.

Mr. Beach.—If the gentleman wants them connected, let him connect them.

Mr. Evarts.—You bring new papers and put them in the witness' hands. After I have asked for the envelopes and letters, then you produce this letter

and that envelope and put them in this witness' hands. I observe there is no such relation between the two papers as necessarily connects them, and then I ask you if you put them together as one letter, as they are, as I suppose, and I don't want you to separate them hereafter.

Mr. Fullerton.—I don't propose to separate them hereafter.

Mr. Evarts.—Then go on.

Mr. Fullerton.—I will go on when it suits me to go on; I don't propose to take orders from you in that spirit. I think you have a little forgotten yourself to day.

Mr. Evarts.—Go on; I waive my objection.

Mr. Fullerton.—I have proceeded, if your Honor please, in an orderly course. I put the envelope in the hands of the witness, and I proved the superscription to be in the handwriting of Mr. Beecher. I then proposed to have it marked for identification. I proved by the same witness a letter in the handwriting of Mr. Beecher, which I propose to read in evidence now, and if it subserves our purpose hereafter, and not without, we shall prove by another witness that that letter was in that envelope.

JUDGE NEILSON.—Meantime this envelope is marked for identification.

Mr. Fullerton.—That is all that we propose to do with it now, except either on our own motion or on the dictation of my adversary.

JUDGE NEILSON.—Counsel don't intend to dictate.

Mr. Fullerton.—It looks very much like it. [Reading.]

"The blessing of God rest upon you! Every spark of light and warmth in your own house will be a star and sun in my dwelling! Your note broke like *Spring* upon Winter, and gave me an inward rebound toward life. No one can ever know—none but God—through what a dreary wilderness I have wandered! There was Mt. Sinai—there was the barren sand—and there was the alternation of hope and despair, that marked the pilgrimage of old. If only it might lead to the Promised Land!—or, like Moses, shall I die on the border? Your hope and courage are like medicine. Should God inspire you to restore and rebuild at home—and while doing it—to cheer and sustain outside of it, another who sorely needs help in heart and spirit, it will prove a life so noble as few are able to live, and, in another world, the emancipated soul may utter thanks!

"If it would be of comfort to *you*, now and then, to send me a letter of true *inwardness*—the outcome of your inner life, it would be safe—for I am now at home here with my sister; and it is *permitted to you* and will be an exceeding refreshment to me—for your heart experiences are often like bread from heaven, to the hungry. God has enriched your moral nature. May not others partake?"

[Letter marked "Exhibit No. 13."]

Mr. Fullerton.—That letter, if the court please, is also without signature.

Q. Do you know anything of the writing of that letter? A. No, sir.

Q. Your permission, then, was not obtained, nor, so far as you know, was Theodore's obtained for the writing of that letter? A. No, sir.

Mr. Fullerton.—I desire to have the envelope marked for identification.

[Envelope marked "No. 13," for identification.]

Q. [Handing paper to witness.] I now show you another paper, and ask you whose handwriting it is? A. Elizabeth Tilton's.

Q. Did it come into your possession at any time? A. Yes, sir. Did it what, sir?

Q. Did it come to you in your possession? A. It came into my possession; yes, sir.

Q. From whom did you receive it? A. From Mr. Beecher.

Mr. Fullerton.—I offer the letter in evidence.

Mr. Fullerton.—[Reading.]

"Friday, Apr. 21, 1871.

"MR. BEECHER:

"As Mr. Moulton has returned, will you not use your influence to have the papers in his possession destroyed? My heart bleeds night and day, at the injustice of their existence."

[Letter marked "Exhibit No. 14."]

Mr. Fullerton.—No signature.

Q. [Handing letter to witness.] I hand you still another letter, and state to me, if you please, in whose handwriting it is? A. Elizabeth Tilton's.

Q. From whom did you receive it, if anyone? A. From Mr. Beecher.

Q. When? A. Does it bear date? I did not look to see whether it bore date.

Q. May 3d, 1871? A. About that time, sir.

Mr. Fullerton.—I offer it in evidence.

"BROOKLYN, May 3, '71.

"MR. BEECHER

"My future either for life or death, would be happier, could I but feel that you *forgave* me while you forget me. In all the sad complications of the past year, my endeavor was to entirely keep from *you* all suffering, to bear myself alone, leaving you forever ignorant of it. My weapons were love, a larger untiring generosity, and *nest-hiding!*"

[To Mr. Shearman.] "Nest-hiding" is underscored, I believe, Mr. Shearman?

Mr. Shearman.—Yes, sir.

Mr. Fullerton.—And an exclamation mark after it?

Mr. Shearman.—Yes, sir.

Mr. Fullerton.—[Continuing the reading of the letter.]

"That I failed utterly we both know. But now I ask forgiveness."

[Letter marked "Exhibit No. 15."]

Q. Do you remember, some time after the receipt of this letter that has been shown to you, of a poem that was published in *The Golden Age*, Theodore Tilton being the author? A. Yes, sir.

Mr. Evarts.—How is that relevant, if your Honor please—a poem by Mr. Tilton?

Mr. Fullerton.—His Honor don't know as well as I do how it is relevant.

Mr. Evarts.—Of course not.

Mr. Fullerton.—Perhaps I had better tell; I have not got to that point yet. I will state to your Honor, when it is proposed to be read, what the pertinency of it is.

Q. Do you recollect that poem? A. Very well, indeed, sir.

Q. State what followed between you and Mr. Beecher, if anything, after the publication of that poem? A. I saw Mr. Beecher.

Q. Where? A. Walking over to New York with him—I had crossed from the Brooklyn shore with him.

Q. What did he say in regard to that poem? A. He said that he was very sorry that it had been published; that it almost broke his heart to read it; that he thought that Theodore Tilton ought not to have published it; that he considered it virtually a telling of the story of himself and Elizabeth. He said he thought it was indelicate for Theodore to have done it. I guess I said that, by the way, myself; yes, sir, I said that.

Q. That it was indelicate? A. Yes, sir; I said it.

Q. Was there anything said about it being a breach of the understanding about keeping the matter secret? A. No, sir; not that I remember.

Mr. Fullerton.—I now offer the poem in evidence.

It is entitled, "Sir Marmaduke's Musings. By Theodore Tilton":

"I won a noble fame,
But, with a sudden frown,
The people snatched my crown,
And in the mire trod down
My lofty name.

I bore a bounteous purse,
And beggars by the way
Then blessed me day by day,
But I, grown poor as they,
Have now their curse.

I gained what men call friends,
But now their love is hate,
And I have learned too late
How mated minds unmate,
And friendship ends.

I clasped a woman's breast,
As if her heart I knew,
Or fancied would be true,
Who proved—alas, she too!
False like the rest.

I now am all bereft—
As when some tower doth fall,
With battlements and wall,
And gate and bridge and all—
And nothing left.

But I account it worth
All pangs of fair hopes crossed—
All loves and honors lost—
To gain the heavens at cost
Of losing earth.

So, lest I be inclined
To render ill for ill—
Henceforth in me instil,
Oh God, a sweet, good-will
To all mankind.

"Sleepy Hollow, November 1, 1871."

[Poem marked "Exhibit No. 16."]

AFTERNOON SESSION.

FRANCIS D. MOULTON'S direct examination was resumed.

Mr. Fullerton.—[Handing witness a paper.] The paper being shown you, I ask whether you ever saw it before? A. Yes, sir; I have seen it before.

Q. Where? A. It was sent to me by Mr. Beecher.

Q. In whose handwriting is it? A. Henry Ward Beecher's.

Q. Did you have any conversation at the time? A. About that time we had conversations; yes, sir.

Q. Anything to which the letter may relate? A. Yes, sir; with reference to dropping Theodore Tilton's name from the roll of the church.

Q. State what that conversation was, if it were prior to the writing of the letter in question. A. Mr. Beecher said he was exceedingly anxious that Mr. Tilton should take some action by which his name should be dropped from the roll—voluntary action on his part. The conversation that I had with him on that subject was some time prior to this note.

Mr. Fullerton.—I offer it in evidence.—[Handing the letter to defendant's counsel.]

Q. In that conversation did Mr. Beecher give any reasons why he thought that course was advisable; if so, state what they were? A. Mr. Beecher said he thought it would save trouble in the church if they were free from responsibility for him. He said that if he was no longer a member of the church, why, then, they could not investigate him as a church. He said he thought there would not be any safety unless he did have his name dropped from the roll of the church by letter, in keeping the scandal down—the facts in regard to Mr. Beecher and Mrs. Tilton.

Mr. Fullerton.—[Reading the letter.]

"MY DEAR FRIEND: There are two or three who feel anxious to press action on the case. It will only serve to raise profitless excitement where we need to have quieting.

"There are already complexities enough. We do not want to run the risk of the complications wh. in such a body, no man can foresee, and no one control. Once free from a sense of responsibility for *him*, and there would be a strong tendency for kindly feeling to set in, wh. now is checked by the membership, without attendance, sympathy, or doctrinal agreement.

"Since the connection is really formal and not vital or sympathetic, why should it continue, with all the risk of provoking irritating measures? Every day's reflection satisfies me that this is the course of wisdom, and that T. will be the stronger, and B. the weaker for it. You said that you meant to effect it. Can't it be done promptly? If a letter is written it had better be very short, simply announcing withdrawal—and, perhaps with an expression of kind wishes—&c. You will know. I shall be in town Monday and part of Tuesday. Shall I hear from you?

"Dec. 3, '71."

[Letter marked "Exhibit No. 17."]

Q. What occurred after the writing of that letter, if anything? A. I think I met Mr. Beecher after the letter, and told him that I would try to effect his wishes in that matter with Theodore Tilton.

Q. Was anything done? A. I think it was subsequent to the letter. Yes, sir; something was done. Theodore Tilton wrote a letter—I don't remember to whom, whether it was to the trustees of the church or not—but wrote a letter disavowing connection with it.

Mr. Evarts.—No matter about the letter; it will speak for itself.

The Witness.—Yes.

Q. There is still another letter, Mr. Moulton. [Handing witness a letter.]

State whether you know anything of it? A. It is in Henry Ward Beecher's handwriting.

Q. The envelope also? [Handing witness the envelope.] A. Yes, sir; the envelope also.

Mr. Fullerton.—I offer it in evidence.

"20 JAN., '72.

"'Now may the God of *Peace* that brought again from the dead our Lord Jesus, that great Shepherd of the sheep, through the blood of the everlasting covenant, make you perfect in every good work to do his will, working in you that which is well-pleasing in His sight through Jesus Christ.'

"This is my prayer, day and night. This world ceases to hold me as it did. I live in the thought and hope of the coming immortality and seem to myself, most of the time to be standing on the edge of the other life, wondering whether I may not at any hour hear the call 'Come up hither.'

"I shall be in New Haven next week to begin my course of lectures to the theological classes, on preaching. My wife takes boat for Havana and Florida, on Thursday.

"I called on Wednesday, but you were out.

"I hope you are growing stronger and happier. May the dear Lord and Saviour abide with you. Very truly yours,

H. W. BEECHER."

[Letter marked "Exhibit No. 18."]

Mr. Fullerton.—I also read envelope.

Brooklyn, January 20, 8 P.M. New York, Mrs. Elizabeth Tilton, Livingston-street, Brooklyn.

[Marked "Exhibit 18," for identification.]

Q. Still another letter, Mr. Moulton, and state in whose handwriting it is? [Handing witness a letter.] A. In the handwriting of Henry Ward Beecher.

Q. To whom was that letter written? A. Written to me.

Q. Did you receive it? A. I did.

Q. From him? A. Yes, sir.

Mr. Fullerton.—I offer it in evidenee.

"MONDAY, Feby 5, '72.

"MY DEAR FRIEND: I leave town to-day—and expect to pass thro. fr. Phila. to New-Haven. Shall not be here till Friday.

"About three weeks ago I met T. in the cars going to B. He was kind. We talked much. At the end, he told me to go on with my work without the least anxiety, in so far as his feelings and actions were the occasion of apprehension.

"On returning home from New-Haven,(where I am three days in the week, delivering a course of lectures to the theological students), I found a note from E. saying that T. felt hard toward me, and was going to see or write me before leaving for West. She kindly added, 'Do not be cast down. I bear this almost always, but the God in whom we trust will *deliver us all safely*. I know you do and are willing abundantly to help him and I also know your embarrassments.' These were words of warning, but also of consolation, for I believe E. is beloved of God, and that her prayers for me are sooner heard than mine for myself or for her. But it seems that a change has come to T. since I saw him in the cars. Indeed, ever since he has felt more intensely the force of feeling in society and the limitations wh. environ his enterprise, he has growingly felt that I had a power to help wh. I did not develop, and I believe that you have participated in the feeling. It is natural that you should. T. is dearer to you than I *can* be. He is with you. All his trials lie open to your eye daily. But I see you but seldom, and my personal relations, environments, necessities, limitations, dangers, and perplexities you cannot see nor imagine. If I had not gone through this great *year of sorrow*, I would not have believed that anyone could pass

thro. my experience, and be *alive*, or *sane*. I have been the center of three distinct circles, each one of wh. required clear-mindedness and peculiarly inventive or *orignating* powers, viz.:

" 1. The *great* church.

" 2. The *newspaper*.

" 3. The *Book*.

" The first I could neither get out of, nor slight. The *sensitiveness* of so many of my people would have made any appearance of trouble, or any remission of force an occasion of alarm, and notice, and have excited, when it was important that rumors sh. die and everything be quieted.

" The newspaper I did roll off, doing but little except give general directions, and in so doing, I was continually spurred and exhorted by those in interest. It could not be helped.

" The Life of Christ, long delayed, had locked up the capital of the firm, and was likely to sink them. Finished it *must* be. Was ever book born of such sorrow as that was? The interior history of it will never be written.

" During all this time, *you*, literally, were all my *stay* and *comfort*. I should have fallen in the way but for the courage wh. you inspired and the hope wh. you breathed.

" My vacation was profitable. I came back. hoping that the bitterness of death was passed. But T.'s troubles brought back the cloud—with even severer suffering. For, all this fall and winter I have felt that *you* did not feel satisfied with me, and that I seemed both to you and T., as contenting myself with a cautious or sluggish policy, willing to save myself, but not to risk anything for T. I have again and again probed my heart to see whether I was truly liable to such feeling, and the response is unequivocal that I am not.

" No man can see the difficulties that environ me, unless he stands where I do. To *say* that I have a church on my hands is simple enough—but to have the hundreds and thousands of men pressing me, each one with his keen suspicion, or anxiety, or zeal; to see tendencies wh. if not stopped, wd. break out into ruinous defense of me; to stop them without seeming to do it; to prevent any one questioning me; to meet and allay prejudices against T. wh. had their beginning years before this; to keep serene, as if I was not alarmed or disturbed; to be cheerful at home, and among friends, when I was suffering the torments of the damned; to pass sleepless nights often and yet to come up fresh and full for Sunday,—all this may be *talked* about, but the real thing can not be understood fr. the outside, nor its wearing and grinding on the nervous system.

" God knows that I have put more thought, and judgment, and earnest desire, into my efforts to prepare a way for T. and E. than ever I did for myself, a hundredfold!

" As to the outside public, I have never lost an opportunity to soften prejudices, to refute falsehoods, and to excite kindly feeling, among all whom I meet. I am thrown among clergymen, public men, and generally, the makers of public opinion, and I have used every rational endeavor to repair the evils wh. have been visited upon T., and with increasing success.

" But the roots of this prejudice are long. The catastrophe wh. precipitated him from his place only disclosed feelings that had existed long. Neither he, nor you, can be aware of the feelings of classes in society, on other grounds than late rumors. I mention this to explain why *I know* with *absolute* certainty—that no mere statement, letter, testimony, or affirmation, will reach the root of affairs and reinstate them. TIME and WORK WILL. But chronic evil requires *chronic remedies*.

" If my destruction wd. place him all right, that shall not stand in the way. I am willing to step down and out. No one can offer more than that. That I do offer. Sacrifice me without hesitation if you can clearly see your way to his safety and happiness thereby.

" I do not think that anything would be gained by it. I should be destroyed, but he would not be saved. E. and the children would have their future clouded.

" In one point of view, I could desire the sacrifice on my part. Nothing can possibly be so bad as the horror of great darkness in wh. I spend much of my

time. I look upon death as sweeter-faced than any friend I have in the world. Life would be pleasant if I could see that rebuilt which is shattered. But to live on the sharp and ragged edge of anxiety, remorse, fear, despair, and yet to put on all the appearance of serenity and happiness, can not be endured much longer.

"I am well-nigh discouraged. If you, too, cease to trust me—to love me—I am alone—I had not another person in the world to whom I could go.

"Well, to God I commit all. Whatever it may be here, it shall be well there. With sincere gratitude for your heroic friendship and with sincere affection, even tho' you love me not, I am yours (tho' unknown to you).

(Signed) H. W. B."

[Letter marked "Exhibit No. 19."]

Q. I omitted to ask you a question in reference to the last letter but one which I read in evidence, which is marked "Exhibit 18," in which occurs this sentence: "My wife takes boat for Havana and Florida on Thursday." Was that letter written with your knowledge or approbation? A. No, sir; I didn't know anything about the letter.

Q. In whose handwriting is the paper I now hand you? [Handing witness a paper.] A. Henry Ward Beecher's.

Mr. Fullerton.—[Reading the paper.]

"MY DEAR MRS. TILTON: If I don't see you to-morrow night I will next *Friday*—for I shall be gone all the fore part of next week.

Truly yours, H. W. B."

[Letter marked "Exhibit No. 20."]

Q. Again, in whose handwriting is the paper that I now show you? [Handing witness a paper.] A. In the handwriting of Mr. Beecher.

Mr. Fullerton.—[Reading the letter.]

"MONDAY.

"MY DEAR FRIEND: I called last evening as agreed, but you had stepped out. On the way to church last evening I met Claflin. He says that B. *denies* any such treacherous whisperings, and is in a right state.

"I mentioned my proposed letter. He likes the idea. I read him the draft of it (in lecture room). He drew back and said, better not send it. I asked him if B. had ever made him statement of the very *bottom* facts,—if there were any charges I did not know. He evaded, and intimated that if he had, he hardly would be right in telling me. I think he would be right in telling *you*—ought to. I have not sent any note and have destroyed that prepared.

"The real point to avoid is, to an appeal to church, and then a *council*.

"It would be a conflagration and give every possible chance for *parties*, for hidings and evasions, &c., and increase an hundred-fold the scandal, without healing anything.

"I shall see you as soon as I return.

"Meantime I confide everything to your wisdom—as I always have, and with such success hitherto that I have full trust for future.

"Don't fail to see C. and have a full and confidential talk,

"Yours, ever,

[Letter marked "Exhibit No. 21."]

Q. That letter was addressed to you, I believe? A. Yes, sir.

Q. When was it received, as near as you can tell? A. I don't remember, sir. If you will let me look at the letter, perhaps I can tell you something about it. [Looking at the letter.] It was received before May 25th, 1873. I fix the date by this fact, that Mr. Bowen was reported to be reiterating the charges against Mr. Beecher, and I had a conference with him shortly after this letter, I think.

Q. Do you know, from anything that occurred between you and Mr. Beecher, who Mr. B. is in that letter? A. Yes, sir; Mr. Bowen.

Q. And who is C. named in that letter? A. Mr. Claflin.

Q. Do you know what proposed letter there was at that time, which is spoken of in this communication? A. There was a proposed letter to Mr. Bowen.

Mr. Evarts.—Well, what passed between you and Mr. Beecher? A. Mr. Beecher and myself had a conference, and he said he thought he should write a letter to Mr. Bowen with regard to his stories against him.

Mr. Fullerton.—Is that what is referred to in this letter?

Mr. Evarts.—Well, let us hear the conversation.

Mr. Fullerton.—You understand it. We will come right to it. [To the witness.] Now I want to call your attention to a publication of Mrs. Victoria Woodhull some time in 1872. Do you remember it? A. I remember there was a publication from Victoria Woodhull in one of the New York papers or in two of them—*The Times* or *The World*, or both.

Q. Do you recollect the date of it? A. No; I don't remember the date just now. In 1872.

Mr. Shearman.—The 22d of May, 1871.

Mr. Fullerton.—Yes. [To the witness.] Did you read that publication? A. Yes, sir. Are you talking now about the publication of 1871 or 1872?

Q. I am talking about the card. A. Yes, sir, I read it.

Q. May 22d, 1871, as my attention was called to the date? A. Yes, sir.

Q. Look at the paper I now show you and say whether it is a correct copy from the newspaper as you recollect it. [Handing witness a paper.] A. Yes, sir; I remember that.

Mr. Fullerton.—I offer that in evidence. It is from *The World*, Monday, May 22d, 1871.

A Card from Mrs. Woodhull.

"*To the Editor of the World:*

"SIR:—Because I am a woman, and because I conscientiously hold opinions somewhat different from the self-elected orthodoxy which men find their profit in supporting and because I think it my bounden duty and my absolute right to put forward my opinions, and to advocate them with my whole strength, self-elected orthodoxy assails me, vilifies me, and endeavors to cover my life with ridicule and dishonor. This has been particularly the case in reference to certain law proceedings into which I was recently drawn by the weakness of one very near relative, and the profligate selfishness of other relations. One of the charges made against me is that I lived in the same house with my former husband, Dr. Woodhull, and my present husband, Col. Blood. The fact is a fact. Dr. Woodhull being sick, ailing and incapable of self-support, I felt it my duty to myself and to human nature, that he should be cared for, although his incapacity was in no wise attributable to me. My present husband, Col. Blood, not only approves of this charity, but co-operates in it. I esteem it one of the most virtuous acts of my life; but various editors have stigmatized me as a living example of immorality and unchastity. My opinions and principles are subjects of just criticism. I put myself before the public voluntarily. I know full well that the public will criticise me and my motives and actions in their own way and at their own time. I accept the position. I except to no fair analysis and examination, even if the scalpel be a little merciless. But let him that is without sin cast the stone. I do not intend to be made the scapegoat of sacrifice to be offered up as a victim to society by those who cover over the foulness of their

lives and the feculence of their thoughts with a hypocritical mantle of fair professions, and by diverting public attention from their own iniquity in pointing the finger at me. I know that many of my self-appointed judges and critics are deeply tainted with the vices they condemn; I live in the house with one who was my husband; I live as a wife with one who is my husband; I believe in spiritualism; I advocate free love in its highest, purest sense, as the only cure for the immorality, the deep damination by which men corrupt and disfigure God's most holy institution of sexual relation. My judges preach against 'free love' openly, practice it secretly; their outward seeming is fair inwardly they are full of 'dead men's bones and all manner of uncleanness.' For example, I know of one man, a public teacher of eminence, who lives in concubinage with the wife of another public teacher of almost equal eminence. All three concur in denouncing offenses against morality. 'Hypocrisy is the tribute paid by vice to virtue.' So be it. But I decline to stand up as the 'frightful example.' I shall make it my business to analyze some of these lives, and will take my chances in the matter of libel suits.

I have no faith in critics. But I believe in public justice.

VICTORIA C. WOODHULL.

"(Dated) NEW YORK, May 20, 1871."

[Letter marked "Exhibit No. 22."]

Q. After the publication of that card, I ask you what occurred with reference to yourself, Mr. Tilton, and Mr. Beecher? A. Mr. Tilton came to me and said that he had been sent for by Victoria Woodhull, that he had gone to see her, and that she had poured out upon him stories derogatory to the character of Mr. Beecher, and had connected his (Mr. Tilton's) wife's name with Mr. Beecher as it was connected in this article. I saw Mr. Beecher about it. I told him that I thought it would be necessary in some way to influence that woman against the publication of the stories; that I thought I ought to see her, and he said he hoped I would, and I did see her in consequence of my consultation with Mr. Beecher.

Q. Up to that time had you ever seen her? A. I saw her once before I saw Mr. Beecher; once or twice.

Q. Well, go on and state what occurred. A. With Mr. Beecher?

Q. Yes, sir. A. I have stated what occurred.

Q. After seeing her did you see Mr. Beecher? A. Yes, sir; I saw her after I saw Mr. Beecher, and I saw Mr. Beecher after I saw her.

Q. That is what I wanted to call your attention to. What did you state to Mr. Beecher as having occurred between yourself and Mrs. Woodhull? A. I told him that I had said to Mrs. Woodhull that the stories against Mr. Beecher had their original foundation in stories told by Mr. Bowen; that when Mr. Bowen was asked to present the evidence upon which he based his stories, he did not present that evidence, and I told him I had worked a fair influence upon the woman, that I had undertaken to show her how wrong it would be to be vindictive; there was nothing to be gained by that, and said to him that I thought that I found her amenable to moral influence, which I undertook to use upon her, and he expressed his gratification.

Q. What did he say? A. He said that he was gratified that I had had the interview with her, and thanked me for it.

Q. Nothing was published, I believe, after that—for some time, at least? A. No, sir. I believe there was, sir, a kindly article published in Woodhull & Claflin's paper concerning Mr. Beecher.

Mr. Evarts.—Well, unless the article is to be produced, we don't care for it.

Mr. Fullerton.—I ask you if you recollect of anything else that occurred after your interview with Mr. Beecher, and that you have last spoken of in regard to this matter before the publication of Mrs. Woodhull in the autumn of 1872? A. I don't at the present moment remember.

Q. Then, sir, what occurred in November, 1872, with reference to Mrs. Woodhull? A. There was a publication in Woodhull & Claflin's paper.

Q. In regard to this? A. Yes, sir; in regard to Mr. Beecher, Mrs. Tilton, and Mr. Tilton.

Q. Now, what occurred upon that publication? A. I saw Mr. Beecher shortly after the publication.

Q. State what occurred between you? A. Mr. Beecher said that he had come to consult with me as to what it was best to do with reference to that publication; what reply could be made to it, if any reply could be made. He said he saw no hope for him since that story had been published. I told him that I thought silence would kill that story; and that if he kept silent with regard to it, simply pointing to his past life as an answer to it, and saying that if that was not an answer he did not choose to make any; that it would kill that story, in my opinion, so far as any evil effect of it upon him was concerned. We consulted frequently concerning it, and did not arrive at any other conclusion than that silence was best. I said to Mr. Beecher, "If I say anything about it, I think this will be the best thing for me to say uniformly; that if the story is true, it was infamous to tell it, and if it was false, it was diabolical to have told it; and that if his life was not an answer to it, I could not choose to make any—I should not choose to make any to anybody." Mr. Beecher said to me that he thought it would be judicious for me to make such reply as that; and I met him after this conversation, and, told him that I had made such reply as that to several parties, and it appeared to satisfy them. I told him that I had been pressed close by one or two people, and I had denied that he was an impure man, had denied that outright: I did.

Q. Well, I want to ask you whether in this article published by Mrs. Woodhull, illicit intercourse between Mr. Beecher and Mrs. Tilton was charged?

Mr. Evarts.—Oh! the article should be produced.

Mr. Fullerton.—Well, if you want the article——

Mr. Evarts.—We don't want the article.

Mr. Fullerton.—You can have the whole of it in, or have that part in. I propose to leave it out if you will admit an answer to that question, and pay no further attention to it.

Mr. Evarts.—I can not agree to any substitute for evidence.

Mr. Fullerton.—I propose to give that in evidence, sir; whether that was charged in that paper. It is not necessary that we should produce it here.

JUDGE NEILSON.—Does the learned counsel stand upon the objection that the paper would best show?

Mr. Evarts.—Yes, sir.

JUDGE NEILSON.—Then you can not do it. You must produce the paper; if you produce the paper, and identify it, you can eliminate that one sentence.

Mr. Fullerton.—Well, sir, we will go on, then, with the evidence, and introduce the paper to-morrow.*

Q. I want to ask you what reply Mr. Beecher made, if anything, when you informed him that you had denied flatly to two or three persons that he was an impure man? A. He thanked me for the pains I had taken.

Q. Now, during these interviews between you and Mr. Beecher with reference to that publication, where was Mr. Tilton? A. Mr. Tilton, I believe, in the beginning, was in New Hampshire.

Q. And when he returned did he participate in any way? A. Yes; he was present at an interview between Mr. Beecher and myself.

Q. What took place at that interview? A. Mr. Tilton said to Mr. Beecher that he was not at all responsible for that story. Mr. Beecher said he did not believe he was. Mr. Tilton asked Mr. Beecher how he thought it was best to meet that story. Mr. Beecher told him he did not see exactly how to meet it, at that interview—that is what was said there. I told Mr. Tilton that I thought it was best to be silent, not to attempt any reply to the story. That is the substance of what occurred there.

Q. Do you recollect whether there was a proposed card to publish in reference to it? A. There was, subsequent to that interview.

Q. When was this interview that you now speak of? A. Some time subsequent to that; some time during that month, or the first part of December.

Q. When was the interview at which the proposed card——

Mr. Beach.—That is the one he has given the date of, isn't it?

Witness.—I say it was some time in the latter part of November or December.

Q. Subsequent? A. Yes; subsequent to this interview; yes, sir.

Q. When was the interview at which the card appeared, or was proposed? A. Some time after this interview, sir—the first interview, of which we have spoken, between Mr. Tilton and Mr. Beecher; the latter part of November or December.

Mr. Beach.—Well, which was the latter part of November? A. The last, sir.

Mr. Evarts.—When was the other? A. On election day, I think, sir.

Q. That would be earlier? A. Yes, sir.

Mr. Fullerton.—What occurred when the card was proposed? A. Mr. Tilton declined to publish any card; he declined to consider such a card, and he said it would only lead to further controversy, and he could not denounce those women to save Mr. Beecher from the result of his crime.

Q. What did Mr. Beecher reply to that? A. I don't remember his reply.

Q. What paper is that that is now handed you? A. It is the handwriting of Henry Ward Beecher with regard to the proposed card for Theodore Tilton to make. Mr. Tilton told Mr. Beecher at that interview that he knew perfectly well the circumstances under which he (Mr. Tilton) had come in contact with Mrs. Woodhull, and he said that Mr. Beecher must under-

* *See*, p. , *post*.

stand that such a card as that would be a very unjust card, and an untrue card for him to publish.

Mr. Fullerton.—I shall offer it in evidence.

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

[Card marked "Exhibit No. 23."]

Mr. Evarts.—That was the proposed card for Mr. Tilton to publish? A. Mr. Beecher's proposed card; yes, sir.

Q. For Mr. Tilton to publish? A. Yes, sir; he recommended, certainly, Mr. Tilton to publish it.

Q. It was not to be signed by Mr. Beecher, it was to be signed by Mr. Tilton? A. To be signed by Mr. Tilton; yes, sir.

Mr. Fullerton.—When Mr. Tilton said to Mr. Beecher, "You know the circumstances under which my acquaintance with Mrs. Woodhull commenced," did he state those circumstances? A. Yes, sir.

Q. What did he say? A. He said that he had formed the acquaintance of Victoria Woodhull in the beginning in consequence of the card which originally appeared in *The World*, and that from that time onward up to the spring of 1872, he had undertaken to use his utmost influence upon her, in a kindly way, for the purpose of suppressing the story concerning Mr. Beecher and his wife, and that it was not an unguarded enthusiasm, and that Mr. Beecher knew it was not an unguarded enthusiasm that led him to Mrs. Woodhull, but that he went to her for the purpose of protecting his family, and himself, and Mr. Beecher, from the result of a story which she originally threatened.

Q. Did anything else occur at that interview, which you have not related, that you remember? A. Nothing, but that Mr. Beecher was deeply affected at the interview.

Q. How was he affected? A. Did not see any hope; did not see how the story was to be suppressed, he said, and he wept as usual.

Q. I now call your attention to December, 1872, about the 20th, a consultation between yourself and Mr. Tilton and Mr. Beecher in regard to a statement? A. What is the date, sir?

Q. About December 20th? A. 1872?

Q. Yes; about a proposed statement that was—— A. Oh! yes, I remember it.

Q. Where did that interview take place? A. Took place at my house in Remsen-street.

Q. State, if you please, what occurred. A. There were present Mr. Tilton, Mrs. Tilton, Mr. Beecher, and myself. Mr. Tilton had communicated to me his intention of publishing what he had written, which was a story of the whole affair—the account of the whole affair. He had made one alteration in it of statement from the exact truth, or had stated the exact truth in language that was delicate, and he wanted Mr. Beecher to hear it read before its publication, and Mr. Beecher, at my invitation, came to the house to hear it read, and Mr. Tilton said to Mr. Beecher, "I will read to you one passage from this statement, and, if you can stand that, you can stand any part of

it," and he read to him a passage from that statement, which was about as follows as nearly as I can recollect.

Mr. Evarts.—The statement will speak for itself.

Mr. Fullerton.—What did he read?

Mr. Evarts.—The statement will state.

Mr. Fullerton.—No, what did he read?

Mr. Evarts.—Exactly, let us have the statement.

Mr. Fullerton.—No, but he read from something. What did he say when he read?

JUDGE NEILSON.—I think it is a verbal communication directly to Mr. Beecher, and therefore it is admissible.

Mr. Evarts.—No, I do not understand it so. He had a written paper from which he read. We want that written paper.

The Witness.—Well, Mr. Tilton stated——

Mr. Evarts.—Don't argue the question.

The Witness.—I beg pardon.

Mr. Evarts.—We think we are entitled to the written paper, and that parol evidence of its contents can not be given.

Mr. Fullerton.—I am asking what Mr. Tilton said, or read to Mr. Beecher on that occasion

JUDGE NEILSON.—Well, ask him what he said.

Mr. Fullerton.—Well, what did he say when he read?

[Objected to.]

JUDGE NEILSON.—Can you tell what he said, independently of the paper? A. Yes, sir.

Mr. Evarts.—Independently of reading from a paper, what did he say; that is, what other than what he read——

Mr. Fullerton.—No, that is not my proposition.

Mr. Evarts.—Well, I know that is not your proposition.

Mr. Fullerton.—It would not be extraordinary, if you did know it, because I have stated it very plainly.

Mr. Evarts.—But his Honor has said——

Mr. Fullerton.—I know his Honor has said, and you have said, and now I have a right to say, without interruption. We all have rights here.

Mr. Evarts.—Of course you have rights here.

Mr. Fullerton.—Well, it don't seem to be of course, from the way you addressed me now. Now, I propose to give in evidence what occurred between the parties on that occasion, and, if Mr. Tilton said or read anything. I want the witness to repeat what he said and what he read. I am not giving in evidence the document by any means. I do not propose that, and, even if I did, it is not such a document as it is necessary to produce here, in order to give it in evidence. What I desire to know is this—what communication was made, in any possible form, by Mr. Tilton to Mr. Beecher, that called from him a reply.

JUDGE NEILSON.—What is the answer to that?

Mr. Evarts.—The only answer on our part is that we want it according to the rules of evidence. It is stated that Mr. Tilton had written what is charac-

terized as a full statement, or a true statement, or something of that nature which he proposed to publish. That I understand the witness has said, and he had it then there, and the conversation was concerning that paper and its publication. Thereupon Mr. Tilton undertook to read to Mr. Beecher a part of that paper, saying, "If you can stand that part of the paper, you can stand the rest." That is what this witness has testified to. Now, we want that paper and the part of it that was read as it appeared in that paper, and it is not competent to recite out of a written paper, by oral proposition, what the written paper is the best evidence of. Mr. Tilton's statement and this witness' hearing, were a statement by the one and a hearing by the other of what was written on a paper, and not an independent statement, nor so proposed. Now, my learned friends either are going to give that statement in evidence, or not, or that part of that statement in evidence, or not. When they produce that paper we will examine it and consider the question whether the whole or the part is admissible, if the whole or the part shall be proposed. But now our objection is that the oral statement of this written paper can not be given in evidence unless the foundation for it is laid by showing the loss or destruction of the paper.

Mr. Fullerton.—My proposition, sir, is embraced in these few words: I propose to show what communication was made by Mr. Tilton on that occasion to Mr. Beecher. I do not care whether it originated in his own mind or whether it was read from a paper, printed or written; it makes no difference. What it was that he said to him is what I have a right to, and what I propose to prove.

JUDGE NEILSON.—I think the witness can state what was said to Mr. Beecher, although he stated matter that had been incorporated in writing.

Mr. Evarts.—But, if your Honor please, he stated that he read from the paper.

JUDGE NEILSON.—Well, it was a paper which was proposed. It does not appear to have been adopted or acted upon—an unperfected thing.

Mr. Evarts.—I do not know that, sir. If your Honor knows more about it than we ——

JUDGE NEILSON.—I said it does not appear.

Mr. Fullerton.—You knew it at the time——

Mr. Evarts.—He had written a paper which was a true statement, and which he proposed to publish. How your Honor knows it was an imperfect paper, I am sure I do not understand.

JUDGE NEILSON.—I did not say I knew it was. I said it did not appear to have been perfected. I think this witness can state anything which Mr. Tilton said to the defendant on that occasion.

Mr. Evarts.—Although it was reading from a paper?

JUDGE NEILSON.—Although part of it had been written on a paper; yes, sir.

Mr. Evarts.—We except.

Mr. Fullerton.—Now go on.

Mr. Evarts.—Let it be understood that our exception is to a repetition by this witness of anything that was read as a part of that paper.

JUDGE NEILSON.—That is your objection. My ruling is that he may state anything that was said by the plaintiff to the defendant on that occasion.

Mr. Evarts.—Although it includes the recital of what was read from that paper?

JUDGE NEILSON.—Although it may include the recital of what had been written.

Mr. Evarts.—What was read from the paper, if your Honor please, is what our point is. Our point, and we certainly are entitled to it, is that if this witness testifies that Mr. Tilton read from a paper, that that paper, as evidence of what he read, must be produced, and not the witness' memory.

JUDGE NEILSON.—Suppose that, prior to a conversation upon any question in interest, the witness makes a memorandum to assist in the conversation. Is it to be doubted that he may go on with that conversation and use the paper, if need be, and prove what the conversation was without the production of the paper?

Mr. Evarts.—The point is to take your Honor's ruling. I understand your Honor to have decided; but my objection is to the recital by this witness of a part of a paper that was read without the production of the paper.

JUDGE NEILSON.—My ruling is simply that he may state, if he can, all that the plaintiff said to the defendant on that occasion. That is all.

Mr. Fullerton.—That is my question.

Mr. Evarts.—Certainly, your Honor proposes I shall either have the evidence excluded or my exception?

JUDGE NEILSON.—You take my ruling, of course.

Mr. Evarts.—Ah! but your Honor refuses to rule upon my point, and states to me that you only rule upon something else. Now, I make an objection, and I bow to your Honor's ruling upon it, but I am entitled to one or the other.

JUDGE NEILSON.—I rule simply that he may state, if he can, all that the plaintiff said to the defendant on that occasion.

Mr. Evarts.—And you don't rule that he may state any part of what was in that paper?

JUDGE NEILSON.—That is not involved in the proposition.

Mr. Evarts.—Very well, then, I shall object to his reciting anything that was in that paper under your Honor's present ruling.

JUDGE NEILSON.—It is not a question of reading; it is a conversation between the parties.

Mr. Fullerton.—What communication did Mr. Tilton make to Mr. Beecher at that interview? A. Mr. Tilton said to Mr. Beecher——

Mr. Evarts.—Wait a moment. Did he read from a paper?

Mr. Beach.—Wait one moment.

JUDGE NEILSON.—I think he may put that.

Mr. Fullerton.—You have no right to interfere with my witness.

Mr. Evarts.—I have a right to.

Mr. Fullerton.—No; he is going on to state what Mr. Tilton said.

Mr. Evarts.—Now, I have a right to the point of law, and I propose to have it.

Mr. Fullerton.—I propose you shall not interrogate my witness whilst he is in my hands.

Mr. Evarts.—Well, I propose to interrogate your witness whilst he is in

your hands, to raise that question whether he is repeating from what is written, and it is the every-day check of a witness who is proceeding to make a statement, to ask whether that was in writing.

JUDGE NEILSON.—Undoubtedly, where a writing exists affecting the interest of the parties.

Mr. Evarts.—So I shall interrupt any witness with that ruling.

Mr. Fullerton.—Well, you have done it; now we will go on.

Mr. Evarts.—Now, just answer the question.

Mr Fullerton.—State what Mr. Tilton said?

Mr. Evarts.—No; answer the question whether it was in writing?

JUDGE NEILSON.—I don't see why you should take such an interest in this question; it seems too simple to talk about.

Mr. Evarts.—Does your Honor rule that I have no right to ask whether it was in writing?

JUDGE NEILSON.—Not with that view; your question has been taken down and exception——

Mr. Evarts.—Well, if the witness now states anything that was in writing, I object to it.

JUDGE NEILSON.—Well, that saves your rights, perhaps.

Mr. Fullerton.—Go on and state what communication—what did Mr. Tilton say to Mr. Beecher upon that occasion? A. Mr. Tilton said to Mr. Beecher, "Mr. Beecher, there is one thing in this statement which if you can stand, you can stand any part of it. Elizabeth has stated that you solicited her to become a wife to you, together with all that that implies, and I will read to you that part of the statement," and he did read to Mr. Beecher that part of the statement.

Q. Now, what did Mr. Beecher reply? A. And Mr. Beecher said, "Theodore, you might just as well state the fact as to put it in that way," and Mr. Beecher said to me after that interview that he would not stand in the position of a man who had solicited favors from a woman, and be put in the position of one who had been rejected by her, and I told him I sympathized with that view of the case.

Q. What reason, if any, did he give for making that? A. He gave the reason to me, sir, subsequent to the interview; he went on at that interview and said to Mr. Tilton, "Mr. Tilton, of course you can do just as you please, but I think you ought not to publish that; it will kill me if you publish it."

Mr. Fullerton.—I shall have to put in the original, perhaps, at some future time.

Mr. Beach.—Did I understand that Mr. Tilton was present at this time? A. Yes, sir.

Mr. Fullerton.—I call your attention to a still further interview in the month of December, 1872, when Mr. Carpenter was present. Do you recollect such a meeting? A. When what, sir?

Q. Do you recollect such a meeting—when Mr. Carpenter was present? A. In the latter part of December, 1872?

Q. Yes? A. A meeting with reference to a paper, do you mean?

Q. Yes? A. Yes.

Q. Before I go to that, however, let me ask you what reason Mr. Tilton assigned for writing the statement referred to in your last interview? A. Mr. Tilton said he thought it would be necessary to give the public some information concerning the story of Victoria Woodhull; that was the reason he gave.

Q. Now go to the interview where—— A. I had a further conversation with Mr. Beecher on that subject.

Q. Well, state it. A. Yes; I had a further conversation with Mr. Beecher on the subject of that document, and I told him that I had said to Theodore Tilton that he must not publish it, that it would be cruel to publish it as against his family and as against Mr. Beecher; and that I had received from Theodore Tilton a promise that he would not publish it, and I had him put it—I told Mr. Beecher I had him put it—into a certain spot, and agree not to take it from that spot without my consent, and Mr. Beecher thanked me for this interference in his behalf.

Q. It was not published, was it? A. No, sir.

Q. Now, the other interview in 1872, at which Mr. Carpenter was present—what occurred then?

Mr. Beach.—The latter part of December, 1872? A. Mr. Carpenter spoke with Mr. Beecher about the establishment of——

Q. First tell us how you got together? A. I do not know; I believe Mr. Carpenter and Mr. Beecher came together to my house.

Q. What Mr. Carpenter was it? A. Mr. Carpenter the artist—Frank Carpenter.

Q. Now, state what occurred. A. He wanted Mr. Beecher—he said to Mr. Beecher: "Will you entertain the idea of going into a newspaper? Wouldn't it save all trouble if you should resign your ministry and go into a paper?" And Mr. Beecher said he was willing to take such a subject as that into consideration; and that was the substance of what occurred at that interview.

Q. Well, what was said about the paper? Give us the interview at length, as well as you can recollect it. A. I don't remember much more about it than that.

Q. Do you recollect what time in December this was? A. The latter part of December.

Q. What, if anything, was said at that time about the length of time that Mr. Beecher had been pastor of the Church? A. I think something was said about the 25 years that he had been a pastor.

Mr. Evarts.—By whom? A. By Mr. Carpenter. Mr. Carpenter referred to his illustrious career—said to Mr. Beecher, "You have had an illustrious career as a preacher; and now it seems to me that you could step from the pulpit into a journal, and save all these stories against yourself from being told"—put it in that view—in some such way as that; I forget the substance of it.

Mr. Fullerton.—Did you hear anything more about that proposition afterward? A. Yes, sir.

Q. From whom? A. From Mr. Beecher and from Mr. Carpenter.

Q. When they were together? A. No; I do not remember that they were together.

Q. What did Mr. Beecher say in regard to it at any subsequent time? A. I had an interview with Mr. Beecher in regard to it myself. I discountenanced the proposition; told him he had not better accept any such proposition; the place for him to work was in the pulpit—that is where he belonged, and to go out of the pulpit would be a virtual confession of the Woodhull story and the rumors against him.

Q. What did he reply to that, if anything? A. Well, that is what he told Mr. Carpenter—that is what he said he would tell Mr. Carpenter, and I believe he did tell Mr. Carpenter.

Mr. Evarts.—That you do not know anything about it? A. I do not know anything about that—whether he told Mr. Carpenter or not.

Mr. Fullerton.—Do you recollect what was termed as "The Letter of My Complaining Friend," which was published in December, 1872? A. Yes, sir; I remember something about it.

Q. Did you have any conversation with Mr. Beecher afterward about it? A. Yes, sir.

Q. Did you see the letter in the newspaper? A. Yes, sir.

Q. See if you recognize that as a reproduction of it?

Mr. Evarts.—What is the date of that?

Mr. Fullerton.—That is December, 1872.

Q. Do you recognize that as the letter? A. Yes, sir.

Mr. Fullerton.—I offer it in evidence. [Reading.]

"No. 174 Livingston Street,
Brooklyn, December 27, 1872.

"My Complaining Friend:

"Thanks for your good letter of bad advice. You say, 'How easy to give the lie to the wicked story, and thus end it forever.' But stop and consider. The story is a whole library of statements—a hundred or more—and it would be strange if some of them were not correct, though I doubt if any are. To give a general denial to such an encyclopædia of assertions would be as vague and irrelevant as to take up *The Police Gazette*, with its twenty-four pages of illustrations, and say, 'This is a lie.' So extensive a libel requires, if answered at all, a special denial of its several parts; and furthermore, it requires, in this particular case, not only a denial of things mis-stated, but a truthful explanation of the things that remain unstated and in mystery. In other words, the false story, if met at all, should be confronted and confounded by the true one. Now, my friend, you urge me to speak; but when the truth is a sword, God's mercy sometimes commands it sheathed. If you think I do not burn to defend my wife and little ones, you know not the fiery spirit within me. But my wife's heart is more a fountain of charity, and quenches all resentments. She says, 'Let there be no suffering, save to ourselves alone,' and forbids a vindication to the injury of others. From the beginning, she has stood with her hand on my lips, saying, 'Hush!' So, when you prompt me to speak for her, you countervail her more Christian mandate of silence. Moreover, after all, the chief victim of the public displeasure is myself alone, and, so long as this is happily the case, I shall try with patience to keep my answer within my own breast, lest it shoot forth like a thunderbolt through other hearts. Yours truly,

Theodore Tilton."

[Copy of letter marked "Exhibit No. 24."]

Mr. Fullerton.—What occurred between yourself and Mr. Beecher with

reference to that letter? What newspaper was it published in? A. In one of the Brooklyn papers.

Q. Do you recollect which one? A. I think I saw it in *The Eagle*, sir.

Mr. Fullerton.—*The Brooklyn Eagle?*

Q. What occurred between yourself and Mr. Beecher after the publication of that letter? A. I saw Mr. Beecher, and he said that he regretted the publication of it very much—he thought that that letter might lead to further inquiry; he said he thought it might lead to further inquiry into the matter—might lead to the telling of the whole story. I told him that I considered the letter a very injudicious one for Theodore Tilton to write; agreed with him that he ought not to have written it in the interests of peace.

Q. Is that all of that interview that you recollect? A. That is the substance of it.

Q. Do you recollect the publication of what is termed the tripartite agreement? A. I do.

Q. What occurred, if anything, between yourself and Mr. Beecher in regard to it? A. With reference to the publication of the tripartite——

Q. What occurred between you after the publication of the tripartite agreement? A. O! after the publication of the tripartite covenant?

Q. Yes, sir. A. Mr. Beecher was at my house, came to my house on Saturday morning, May 31, I think it was—I think the publication of the tripartite covenant was on May the 30th—came there, I believe, because I sent for him. I sent for him because Theodore Tilton had said to me that the publication of the "tripartite covenant" placed him in the position of a man forgiven for some crime by Mr. Beecher, and that he would not stand in that position.

Q. Did you state so to Mr. Beecher? A. I told Mr. Beecher at the house—Mr. Tilton told Mr. Beecher that at the house.

Q. When Mr. Tilton told Mr. Beecher this he was present? A. Yes.

Q. Just explain again. A. Certainly, sir.

Q. Now, you and Mr. Tilton and Mr. Beecher met there together? A. Yes, sir. I think I sent for Mr. Beecher in consequence of Mr. Tilton having told me that this "tripartite covenant"—the publication of it—put him in the position of a man forgiven by Mr. Beecher for some crime; he was not content to stand in such a position; that that was not the truth, and he would not stand in that position.

JUDGE NEILSON.—Then Mr. Beecher came? A. Yes, sir.

Q. And you had an interview? A. Yes, sir.

Mr. Fullerton.—Now what occurred?

Mr. Evarts.—The question is whether Mr. Tilton was there? A. Yes, sir.

Mr. Fullerton.—After you told him what Mr. Tilton said with regard to the effect of that tripartite agreement? A. I was giving the reason for sending for Mr. Beecher. Now Mr. Beecher comes, or has come to the house, and he is present with Mr. Tilton, and Mr. Tilton said to Mr. Beecher, "Mr. Beecher, the publication of this 'tripartite covenant' puts me in the position of a man having been forgiven by you for some crime. Now you know that that is not true; I can not stand in any such position as that, and I won't stand in any such position as that. Now I want you to set that right or

will publish this card." And he had a card for publication, into which was incorporated part or the whole of the letter of contrition, part of it, I think, of January the 1st, 1870.

Q. The letter that has been put in evidence of January 1, 1870? A. Yes, sir——; and Mr. Beecher said: "Theodore, I don't see what can be done—what I can do? If you will indicate anything that I can do, I'm willing to do it; but, really, I don't see how I can. I don't think that you are right about it; I don't think that it puts you in that position." And Theodore said: "Well, it does put me in that position; and that's precisely what I shall do, unless—I shall publish this document unless you set the matter right; you ought to do it; and I won't stand in that position." And Mr. Tilton, I believe, left that interview, and left me alone with Mr. Beecher, or else Mr. Beecher and myself went up into my study from the room in which we originally were; and Mr. Beecher said to me, that there seemed to be no end of complications; that as fast as we got out of one thing we seemed to get into another; that he had not been a party to the publication of the tripartite covenant—that he had not been a party to it; and if Theodore published that letter, it would simply be his death.

Mr. Beach.—Whose death? A. Mr. Beecher's death; I beg pardon, sir; and I told him that I did not think it was worth while to give way to his feelings; that was what he generally did whenever an emergency came; and that if I had followed his advice, followed his fears, I should have given up the case long ago. I told him not to be distressed about it, for I thought we would find some way out; we had met difficulties before, and I told him that I thought it was not any more difficult to meet this matter than it was the Woodhull story; and if we meant to do right, one toward the other, I thought we could find a way that would settle the difficulty. If my recollection serves me right, Mr. Beecher came that Saturday night and said to me, with great despondency, that he had made up his mind to resign from Plymouth Church, and he showed to me a copy of the letter of resignation, showed to me a draft of a letter of resignation which he had prepared to be presented to the trustees or some parties in the church, proper parties; and I said to him that that would not do at all—that that was a virtual confession of the crime—and said that it was an act of cowardice on his part to do it—he ought not to do it—he ought to stand and undertake to prepare some sort of document that would meet the necessities of the case, and I told him that I thought such a card as that could be prepared. I think that Theodore Tilton was in the house on Saturday night, and I told him of Mr. Beecher's proposed action. I went downstairs; I think he was in my front room, and Mr. Tilton objected to the resignation, particularly to that part of it which said that Mr. Beecher——

Mr. Evarts.—Well, it was a written paper, you know.

Witness.—Yes, sir. Can I say what Mr. Tilton said?

JUDGE NEILSON.—Not unless there is consent.

Mr. Fullerton.—Before we go any further, state whether that is the proposed card of Mr. Tilton.

Mr. Morris.—That is a copy that I made myself from the——

Mr. Fullerton.—I will substitute the original for it.

Mr. Evarts.—Well, we will not quarrel about it; go on. This copy is allowed to be used for the moment in place of the original, which is not at hand, but the original is to be produced; otherwise it goes for nothing.*

JUDGE NEILSON.—Yes, sir. [Paper handed to witness.]

The Witness.—That is, I remember, sir, about it.

"*To the Editor of the Brooklyn Eagle:*

"Samuel Wilkeson, a business partner of Henry Ward Beecher, authorized the publication of part of a document touching the relations of Mr. Beecher and Henry C. Bowen. This document, without the addition of another (of which I presume Mr. Wilkeson had no knowledge), grossly misrepresents Mr. Beecher's relation to myself. The extent of this misrepresentation, even by well-meaning journals, is shown by the following extract from *The New York Express:*

"'Something, under the circumstances, was due to the public, Mr. Beecher should remember, as well as to his peculiar friends, Mr. Bowen and Mr. Tilton, and hence, while it was well enough to forgive them for the great—we had almost said, the irreparable injury, they have done him, it is to be regretted that he did not bring the alleged slanderer or slanderers into open court, to be dealt with there as they deserve.'

"The above indicates the feelings of many good men and women as to my supposed unjust behavior towards Mr. Beecher, and is based on the notion that I have slandered a clergyman, that I have retracted the slanders, and that I have been forgiven by him and magnanimously restored to his confidence. This impression, which is now becoming general, is a grievous wrong to me and my family. No longer can I consent to remain in a false position before the public. I therefore append the following statement by Mr. Beecher:

"'BROOKLYN, Jan. 1st, 1871.

"'MY DEAR FRIEND MOULTON: I ask, through you, Theodore Tilton's forgiveness, and I humble myself before him as I do before my God. He would have been a better man in mine circumstances than I have been. I can ask nothing except that he will remember all the other breasts that would ache. I will not plead for myself. I even wish that I were dead. But others must live to suffer. I will die before any one but myself shall be implicated. All my thoughts are running towards my friends—towards the poor child lying there and praying with her folded hands. She is guiltless—sinned against. Her forgiveness I have. I humbly pray to God that he may put it into the heart of her husband to forgive me. (Signed) "'H. W. BEECHER.

"'I have entrusted this to *Moulton* in confidence.'

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

"THEODORE TILTON.

"174 Livingston-street, Brooklyn, June 2d, 1873."

[Paper marked "Exhibit No. 25."]

Q. [Handing paper to witness.] Do you recollect whether anything was said about the erasure in that letter of January 1st, 1870, which appears there? A. Yes, sir; Mr. Theodore Tilton said that the introduction of that clause, if I remember rightly, would be a virtual confession, or statement of adultery between Mr. Beecher and his wife, and, therefore, it was stricken out.

Mr. Fullerton.—The words "bearing the transgression of another" were stricken out—erased. The whole sentence is as follows: "She is guiltless,

* The original was subsequently produced, and is here substituted for the copy that was first read.

sinned against, bearing the transgression of another. Her forgiveness I have." The words "bearing the transgression of another" are erased.

Mr. Evarts.—Are they erased there?

Mr. Fullerton.—Yes, sir. I asked him if anything was said at that interview about the reason why those words were erased.

Mr. Evarts.—Erased in that supposed publication?

Mr. Fullerton.—Yes, sir. [To the witness.] They were erased in that supposed publication, were they not, Mr. Moulton? A. Yes, sir.

Q. What followed that interview? A. The next thing that followed was the letter of June 1st, from Mr. Beecher.

Q No; I ask your attention to the same night. Was there not a proposed resignation on the part of Mr. Beecher? A. I have said so, have I not?

Q. Well, I believe you have. Who prepared that proposed resignation? A. Mr. Beecher himself.

Q. Where did you see it first? A. In his hands.

Q. What did he say at the time? A. He said he had made up his mind that he would not try any longer to stand up against this story; that if Theodore Tilton was going to publish that, he might as well resign.

Q. [Handing paper to witness.] Look at the paper now shown you, and tell me what it is? A. This is a copy which I dictated in order that Theodore Tilton might consider exactly what the document was.

Q. From what did you dictate it? A. I dictated it from my memory of the document itself.

Mr. Fullerton.—[To defendant's counsel.] Now, gentlemen, we have noticed you, I believe, to produce the original.

[The original was not produced.]

Mr. Fullerton.—We will read from it. It is the reproduction of the original from his memory.

Q. What became of the original? A. Mr. Beecher kept it.

Q. You did not keep it? A. No, sir, I did not.

Mr. Evarts.—I understand Mr. Moulton to have spoken of a resignation which was there before him.

Mr. Fullerton.—Yes, sir; and which he took away.

Mr. Evarts.—Yes, sir; and which he took away, and that became the subject of comment. What do you propose to do with this?

Mr. Fullerton.—I propose, in the first place, to read from the original, if you produce it in obedience to the notice given to you for that purpose; and, if you do not produce it, I propose to read from this copy.

Mr. Evarts.—We have no such paper.

Mr. Fullerton.—No such paper as what?

Mr. Evarts.—No such paper as your witness speaks of.

Mr. Fullerton.—Where is the notice to produce? I call for the production of the paper described in our notice?

Mr. Evarts.—We have no such paper.

JUDGE NEILSON.—Has notice been given?

Mr. Beach.—The notice to produce is admitted.

Mr. Fullerton.—Can you state the contents of that resignation which was

proposed by Mr. Beecher on that occasion? A. Yes, sir; I can substantially.

Q. Do it as nearly as you can.

Mr. Evarts.—Wait one moment. He can recite from memory, if he can, of course, the best way he can; but when you put a paper into his hands, we want to inquire where that was made, and when.

Mr. Beach.—That is right; let him examine the witness.

Mr. Evarts.—You have a memorandum now put into your hands? A. Yes, sir.

Q. Where do you produce that from? A. I produce it from my possession.

Q. How long have you had it in your possession? A. I have had it since May 31, 1873.

Q. How came you to make that paper? A. I made it in order to submit to Mr. Tilton what Mr. Beecher proposed to do, at Mr. Tilton's solicitation.

Q. Was not Mr. Tilton present when this paper, as you call it, of Mr. Beecher was read? A. No, sir; he was not.

Q. It was not at that meeting, then? A. No, sir; it was not at the meeting between Mr. Beecher, Mr. Tilton, and myself.

Q. When did you write that? A. May 31, 1873, I think—Saturday evening, if my recollection serves me.

Q. Why didn't you send for the original? A. I didn't write it; I dictated it from memory to Mr. Tilton.

Q. It is in Mr. Tilton's handwriting? A. Yes, sir.

Q. Written down by him at your dictation? A. Yes, sir.

Q. Why didn't you send for the original? A. Because I went downstairs to see Mr. Tilton to tell him what it was. Mr. Beecher said he didn't want to see Mr. Tilton, and I went downstairs, knowing about this letter of resignation, wanting to tell Mr. Tilton what it was. Mr. Tilton said, "Tell me what it is; let me look at it." That is as near as I can recollect the circumstances under which this was dictated to him.

Q. Mr. Beecher, Mr. Tilton, and yourself were in the house together? A. Yes, sir; Mr. Beecher was upstairs.

Q. And the paper you have spoken of, was that there? A. Yes.

Q. Why didn't you have it brought down, and show it to Mr. Tilton? A. Because I didn't think it was necessary.

Q. You thought it better to dictate it to him? A. I didn't go down for the purpose of dictating it.

Q. You didn't send upstairs for the original? A. No, sir, I didn't.

Q. That is the memorandum that you now speak by, is it? A. Yes, sir; this is the memorandum I speak by.

Mr. Evarts.—That is not a copy of the paper. It is a mere question of the witness' memory.

Mr. Fullerton.—I think you misunderstood a question put by the counsel on the other side. The question he put to you was this: "You, Mr. Tilton and Mr. Beecher were in the house together," to which you replied: Yes, sir.

Q. You don't mean you were in the same room? A. No, sir.

Q. Give me a copy of the proposed resignation that Mr. Beecher produced there?

Mr. Evarts.—Your memory of it.

JUDGE NEILSON.—State your recollection of its contents.

Mr. Beach.—He can refer to the memorandum.

The Witness.—It is this:

"I tender herewith my resignation of the sacred ministry of Plymouth Church. I have stood among you in sorrow for two years in order to save from shame a certain household; but since a recent publication makes this no longer possible, I now resign my ministry and retire to private life."

Q. That is as near as you can recollect the original resignation of Mr. Beecher? A. Yes, sir; and that states substantially what was in the original paper.

NINTH DAY, JANUARY 15, 1875.

JUDGE NEILSON.—Are the counsel ready to proceed?

Mr. Fullerton.—May it please your Honor, we are somewhat embarrassed this morning on our side, by the absence of Judge Morris—who is quite ill and unable to leave his bed—in the presentation of our documents, Judge Morris having been very familiar with them, having put his marks upon them so that he could manipulate them with convenience, and we shall have to ask your Honor's indulgence a little, probably, from time to time, on account of that embarrassment.

JUDGE NEILSON.—I very much regret his illness.

FRANCIS D. MOULTON recalled, and the direct examination resumed:

Mr. Fullerton.—Mr. Moulton, at the adjournment last night, you were detailing what occurred after the publication of the tripartite agreement, and had spoken of the proposed resignation from Plymouth Church, and of an interview which you had with Mr. Tilton in your house. I want to ask you, first, whether you reported the substance of that interview with Mr. Tilton to Mr. Beecher? A. I did; yes, sir.

Q. And what did you say to him? A. I said that Mr. Tilton strongly objected to the publication of the resignation, on the ground that it was a clear statement, in his opinion, of the shame of his wife.

Q. What did Mr. Beecher reply to that? A. The reply of Mr. Beecher to that, sir, I do not remember; but I said to Mr. Beecher, "Clearly, that is the case, sir; clearly, if the resignation should be published, it would be a virtual confession of the fact of your relations with Mrs. Tilton, and it ought not to be done."

Q. Did you communicate to Mr. Beecher anything else that Mr. Tilton said in regard to that proposed publication? A. I told Mr. Beecher that Mr. Tilton was quite violent; Mr. Tilton said that he would shoot Mr. Beecher if he did it. I think that I mentioned that to Mr. Beecher. That is what Mr. Tilton told me, at all events.

Q. The publication did not follow, I believe? A. It did not follow.

Q. What was said about a counter-statement of any kind? A. I said to

Mr. Beecher that I thought it would be possible to frame a card that would cover the case, and at all events there was between that time and Monday to consider it, and we had better consider it.

Q. Was a card proposed? A. There was, on Sunday—I think it was Sunday afternoon—Sunday evening.

Q. Who proposed the card? A. I had told Mr. Tilton, sir, that I thought it would be wrong for him to publish the letter which he threatened to publish.

Q. Which I read in evidence yesterday? A. Yes, sir; I told him I thought he ought not to do it. I thought he ought to undertake to find a different way, and he promised me at last that he would try, and he did; and he did prepare a card which would be satisfactory to him, which I submitted to Mr. Beecher on Sunday night; and I said to Mr. Beecher, "I think that will cover the case." In the meantime I had received a letter from Mr. Beecher.

Q. Is the letter now shown you the one that you speak of? [Handing witness a letter.] A. Yes, sir; that is the letter.

Mr. Fullerton.—I propose to read it.

Mr. Evarts.—Is that from Mr. Beecher?

Mr. Fullerton.—Yes, sir.

Mr. Evarts.—This is the one you say you received in the meantime? A. I received it on the morning of June the 1st, Sunday morning, while I was in bed.

Q. Before the interview with Mr. Beecher? A. Of Sunday—yes, sir.

Mr. Fullerton.—[Reading the letter.]

"SUNDAY MORNING, June 1, '73.

"MY DEAR FRANK: The whole earth is tranquil and the heaven is serene—as befits one who has about finished his world-life. I could do nothing on Saturday—my head was confused. But a good sleep has made it like crystal. I have determined to make no more resistance. Theodore's temperament is such, that the future, even if temporarily earned would be absolutely worthless, filled with abrupt changes, and rendering me liable at any hour or day to be obliged to stultify all the devices by wh. we saved ourselves. It is only fair that he should know that the publication of the card which he proposes would leave him far worse off than before.

"The *agreement* was made after *my* letter, thro. you, was *written*. He had had it a year. He had condoned his wife's fault. He had enjoined upon me with the utmost earnestness and solemnity not to betray his wife, nor leave his children to a blight. I had honestly and earnestly joined in the purpose. Then, this settlement was made, and signed by him. It was not my making. He revised his part so that it should wholly suit him, and signed it. It stood unquestioned and unblamed for more than a year. *Then it was published.* Nothing but that. That which he did in private, when made public excited him to fury, and he charges me with *making him appear* as one *graciously pardoned by me!* It was his own deliberate act, with which he was perfectly content till others saw it, and then he charges a grievous wrong home on me!

"My mind is clear. I am not in haste. I shall write for the public a statement that will bear the light of the judgment-day. God will take care of me and mine. When I look on earth it is deep night. When I look to the heavens above I see the morning breaking. But, oh that I could put in golden letters my deep sense of your faithful, earnest, undying fidelity—your disinterested friendship! Your noble wife, too, has been to me one of God's comforters. It is such as she that renews a waning faith in womanhood. Now, Frank, I would not have you waste any more energy on a hopeless task. With such a man as T. T

there is no possible salvation for any that depend upon him. With a strong nature, he does not know how to govern it. With generous impulses, the undercurrent that rules him is self. With ardent affections, he can not love long that wh. does not repay him with admiration and praise. With a strong theatric nature, he is constantly imposed upon with the idea that a position—a great stroke—a *coup d'état* is the way to success.

"Besides these he has a hundred good things about him, but these named traits make him absolutely *unreliable*.

"Therefore, there is no use in further trying. I have a strong feeling upon me, and it brings great peace with it, that I am spending my *last Sunday* and preaching my last sermon.

"Dear good God—I thank thee—I am indeed beginning to see rest and triumph. The pain of life is but a moment, the glory of everlasting emancipation is worldless, inconceivable, full of beckoning glory. Oh my beloved Frank—I shall know you there—and forever hold fellowship with you, and look back and smile at the past. Your loving

H. W. B."

[Letter marked "Exhibit No. 26."]

Q. What time in the day did you receive that letter? A. In the morning, sir.

Q. Did you see another letter written on that day by Mr. Beecher? A. This letter was inclosed in a letter to my wife, I believe.

Q. Did you see the letter addressed to your wife? A. Yes, sir; I have seen it. I saw it then, I believe.

Mr. Fullerton.—I will not produce it now. You have spoken of a card which was prepared at the time. Look at the paper now shown you and say whether it is the one. [Handing witness a paper.] Was the card published? A. There was a card published; yes, sir; substantially the card which we considered that night; some alteration from it—some alteration of it, rather.

Q. Under what circumstances did the alteration take place? A. Mr. Beecher said to me that he thought there were some words or phrases that might be left out judiciously, and they were left out.

Q. And then published? A. Yes.

Q. After the emendations that you speak of? A. Yes, sir.

Q. Look at that paper, and say whether that is the card? [Handing witness a printed paper.]

Mr. Evarts.—Is that the printed paper?

Mr. Fullerton.—Yes, sir.

Mr. Evarts.—Haven't you the original?

Mr. Fullerton.—That is the original.

Mr. Evarts.—No; I understand Mr. Tilton wrote a card.

Mr. Fullerton.—Where is the card that was written, do you know? A. I saw it a few days ago in Mr. Tilton's possession.

Mr. Fullerton.—[To Mr. Tilton.] Well, let me have that.

Mr. Tilton.—I think Mr. Moulton has it.

Mr. Fullerton.—That is one of the embarrassments growing out of Judge Morris' unfortunate illness. I will produce it before I get through.

Mr. Evarts.—Well, I would like it now.

Mr. Fullerton.—Perhaps you would like it, because we haven't got it.

Mr. Evarts.—No, you have got it; the witness says you have.

The Witness.—I say I saw it.

Mr. Evarts.—We would not like to have this evidence go on without that paper.

Mr. Fullerton.—I can read it from the newspaper, and substitute the original, if that will answer your purpose.

JUDGE NEILSON.—You can do that by consent, sir, if the counsel consent to it.

Mr. Fullerton.—This is the original of the card that was published.

Mr. Evarts.—Oh, well, you have not proved that.

Mr. Beach.—I think we have.

Mr. Evarts.—It is a part of the matter, no doubt; but Mr. Tilton wrote a card which was the very matter that was proposed to Mr. Beecher's consideration, and was the topic of conversation, and some changes being made between the parties there, it was afterwards published. Now, we want the transaction as it occurred.

Mr. Beach.—We proposed just now to produce the card as amended by Mr. Beecher, and published. When we find the other, we will produce that.

JUDGE NEILSON.—Won't that be satisfactory, sir? If the other is not found, it is to be stricken out or reconsidered.

Mr. Evarts.—Well, I do not want to accumulate too many instances of that kind. We have one lying over.

JUDGE NEILSON.—Will you hold that in reserve?

Mr. Beach.—We are under no obligation to produce the one that was originally drawn and amended by Mr. Beecher; still, we are willing, and intend to do it.

Mr. Evarts.—That is another matter.

JUDGE NEILSON.—It is proper that it should be produced, undoubtedly

Mr. Evarts.—Yes, sir, I think so.

Mr. Fullerton.—Shall I read the one that was published?

Mr. Evarts.—Are we to have the other?

Mr. Fullerton.—It is not here.

The Witness.—It was not published from the manuscript that Mr. Tilton furnished, sir.

Mr. Evarts.—No; I understand that.

JUDGE NEILSON.—There was a copy sent to the printer.

The Witness.—Mr. Beecher made a letter himself, sir, acting upon the idea of Mr. Tilton's proposed card.

JUDGE NEILSON.—That paper you will produce when you can find it.

Mr. Fullerton.—Yes, sir. [Reading the card from the newspaper.]

"*To the Editor of the Brooklyn Eagle.* "June 2, 1873.

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

[Marked "Exhibit No. 27."]

Q. What was the "document recently published"? A. The "Tripartite Covenant."

Q. This card that you now speak of, as I understand you, was prepared and published after the proposed resignation from the ministry? A. Yes, sir.

Q. The next day, was it not? A. Published on June the 2d, sir—Monday, June the 2d.

Q. Now, was there another card published soon after that? A. Yes, sir; there was a card published after that.

Q. State the circumstances under which that card was prepared? A. What card do you refer to, sir?

Q. The second card of Mr. Beecher, following June 2d? A. There was the card that I have in mind now, sir, that I am referring to, if you will allow me to speak of that.

Q. Yes, sir. A. It was the card with reference to the visit of Mr. Bowen to Mrs. Woodhull.

Q. That is the one, sir; you are right. Now, tell the circumstances under which it was prepared, and the circumstances which led to its preparation, as you learned them from Mr. Beecher. A. There was an account in the paper of Mr. Bowen and Mr. Claflin visiting Mrs. Woodhull together, for the purpose of getting evidence.

Mr. Evarts.—What is the object of this?

Mr. Fullerton.—It is only introductory, sir, to the meeting with Mr. Beecher.

The Witness.—And this account in the paper of the visit of Mr. Bowen and Mr. Claflin to Mrs. Woodhull's, for the sake of getting evidence against Mr. Beecher, I thought rather serious; and I saw Mr. Beecher in regard to it, and I said to him, "I think, Mr. Beecher, we can make very short work of such business; I think, and you think, that Mr. Bowen has not any evidence in his possession against you, and we better publish a card in *The Eagle*, calling upon anybody with any papers or evidences against you to produce them;" and Mr. Beecher prepared a card with reference to that matter, which met with my approval, and I took it down to *The Eagle* office.

Q. Look at the paper now shown you, and say if it is the card that you speak of? [Handing witness a card.] A. This is the card as it was prepared; yes, sir.

Mr. Fullerton.—I propose to read it. Go on and finish the narration. A. Mr. Beecher was out of town, or was going out of town, upon the day that I saw Mr. Kinsella, of *The Brooklyn Eagle*, and Mr. Kinsella himself altered the phraseology somewhat, and we jointly took the responsibility of printing it with the alterations; and I saw Mr. Beecher subsequently, and he said that he approved of the alterations, and thanked me for my kind offices in the matter; and Mr. Beecher said to me, furthermore, "Of course Mr. Tilton won't produce any documents." "Well," I said, "of course he won't; he hasn't got any that I know of, original documents, to produce, and of course I won't."

Mr. Evarts.—What conversation is this? A. The conversation with Mr. Beecher, Mr. Evarts.

Q. At what interview? A. At the interview, at the preparation of this card.

Q. When that paper was there? A. Yes; certainly.

Mr. Fullerton.—The proposed card reads as follows:

"BROOKLYN, June, 1873.

"I have seen in the morning papers that application has been made to Mrs. Victoria Woodhull for certain letters of mine, supposed to contain information respecting certain infamous stories against me. She has two business letters, one declining an invitation to a suffrage meeting, and the other declining to give her assistance solicited. These, and all letters of mine in the hands of any other persons, they have my cordial consent to publish. I will only add, in this connection, that the tissue of stories and rumors which have, for a time, been circulated about me, are grossly untrue, and I stamp them, in general and in particular, as utterly false."

[Marked "Exhibit No. 28."]

Q. In whose handwriting is the interlineation in that card that I have just read, or proposed card? A. Mr. Beecher's.

Q. The erasures,—do you know anything of them? A. They were made by Mr. Beecher.

Mr. Evarts.—I understand, Mr. Moulton, that that paper as it reads, omitting what is erased and reading that pencil interlineation, is as it came from Mr. Beecher? A. Yes, sir; that is precisely the paper which I took to *The Brooklyn Eagle* office.

Q. And the alterations there made were not made on this paper? A. No, sir; I have a copy of the article as Mr. Kinsella changed it, and wrote it in pencil.

Mr. Fullerton.—It has just been shown to you, has it not, in print? A. Yes, sir; that is the article.

Mr. Fullerton.—I now read the card as amended and published.

The Witness.—There is omitted, sir, from that lead pencil memoranda of mine some of the sentences that occur in the original letter. I did it to save time.

Mr. Fullerton.—[Reading.]

"*To the Editor of the Brooklyn Eagle:*

"SIR—In a long and active life in Brooklyn, it has rarely happened that *The Eagle* and myself have been in accord on questions of common concern to our fellow-citizens. I am for this reason compelled to acknowledge the unsolicited confidence and regard of which the columns of *The Eagle* of late bear testimony. I have just returned to the city to learn that application has been made to Mrs. Victoria Woodhull for letters of mine supposed to contain information respecting certain infamous stories against me."

Mr. Fullerton.—I think there is some misapprehension about this. I shall have to ask the witness whether that part of it in parenthesis was published? [Handing witness the book.]* A. No, sir.

Q. That was not published? A. No, sir.

Q. Then I am to read it without the parenthesis? A. Without the parenthesis.

Mr. Evarts.—Haven't you got the very publication?

Mr. Fullerton.—It does not seem to be here.

Mr. Evarts.—The newspaper itself; that will show.

* The book referred to here and several times subsequently in the course of the trial, is the pamphlet containing the "statements" of Mr. Tilton and Mr. Moulton, and other papers relating to the affair, entitled: "The Great Brooklyn Romance:" J. H. Paxton, New York.

Mr. Fullerton.—It is not here.

The Witness.—I can tell you for what purpose those parentheses were introduced.

Mr. Evarts.—Well, that is no matter.

Mr. Fullerton.—Not at present.

Mr. Evarts.—If your Honor please, there is some danger of getting into a little confusion and doing injustice, perhaps, to one side or the other. The direct and satisfactory evidence of what was published in *The Eagle* would be, of course, the production of the newspaper, and then we could all see for ourselves what it was. I had supposed this printed letter or note, which we are all familiar with, was what was published in *The Eagle*, but it seems that we can not trust it for that—that as Mr. Moulton says it is not the same; therefore, if they could give us the copy of *The Eagle*, we should be glad, and then we could see.

JUDGE NEILSON.—It would be better, no doubt, sir.

Mr. Evarts.—Otherwise there may be some confusion.

Mr. Fullerton.—I will defer this branch of the case until we get a copy of *The Brooklyn Eagle*. Probably it would be well to strike out what was read from the card.

JUDGE NEILSON.—From the printed card?

Mr. Fullerton.—From the printed card; when it is produced it will all go in together.

JUDGE NEILSON.—Yes, sir, it may as well.*

Mr. Fullerton.—I call your attention now to the 25th of June, or to an occurrence that took place about that time. Do you recollect anything that occurred in reference to Mr. West? A. I believe Mr. West preferred charges against Mr. Tilton.

(1)† *Mr. Evarts.*—Well, what occurred with you? I suppose—— A. Mr. Tilton brought around to my house the charges of Mr. West about that time.

Mr. Fullerton.—Look at the paper now shown you, and say whether it contains the charges thus produced to you by Mr. Tilton?

Mr. Evarts.—Does he name that as the paper that was produced?

Mr. Fullerton.—I say that.

Mr. Evarts.—I assume you are going to connect it.

Mr. Fullerton.—Oh! certainly.

The Witness.—Yes, sir; that is the paper.

Q. State whether you showed those charges to Mr. Beecher? A. I don't remember that I did.

Q. How? A. I don't remember that I showed them to Mr. Beecher.

Q. Did you have any conversation with him in regard to it? A. Yes, sir; I had conversation with him in regard to it.

Q. What was that conversation? A. He said that the whole matter had better go over until Fall, and in the meantime, during the vacation, I thought we could get along with that subject—try to find a way. I told him I should recommend——

* The card was afterwards put in evidence as "Exhibit 55." See p. 468, *post*.

† Passage from (1) to (2) afterward read. See p. 474, *post*.

Mr. Evarts.—I understand that this is one of the papers that Mr. Tilton brought you; these very papers? A. Those are the papers; that is, as I remember.

Q. You showed them to Mr. Beecher? A. I don't know that I showed them to him; no, sir.

Q. But you spoke to him about the papers Mr. Tilton had brought you? A. I spoke to him about Mr. West's charges.

Mr. Fullerton.—Did you state to him the substance of the charges? A. Yes, sir, I told him; I had a full conversation with Mr. Beecher about it.

Mr. Evarts.—They don't seem to have been shown to Mr. Beecher?

Mr. Fullerton.—Did you state the substance of the charges to Mr. Beecher? A. Yes, sir; I did, certainly; I have answered that.

Q. And what was said by him in reply? A. Why, he hoped that he would be able to find a way to get over that matter during the summer.

Q. And what was proposed? A. I proposed that Mr. Tilton should—or I said that Mr. Tilton proposed to me that he should write a letter saying that he declined, on the ground of non-membership. (2)

Q. Of Plymouth Church? A. Yes, sir; non-membership—that he would decline, on the ground of non-membership, an investigation; I thought that was the way out.

Mr. Evarts.—Well, I understood you to say that it was Mr. Tilton suggested—did I understand you to say that Mr. Tilton suggested that as a way of escape from the dilemma? A. Yes, sir; Mr. Tilton said so.

Mr. Beach.—That he should write a letter declining? A. Yes, sir; he was willing to do that. I told Mr. Beecher that Mr. Tilton would be willing to write a letter stating that he would decline an investigation, on the ground of non-membership.

Mr. Evarts.—You said that because Mr. Tilton had told you so? A. Yes, sir; certainly.

Mr. Fullerton.—I read the charges in evidence:

"BROOKLYN, Oct. 16th, 1873.

"MR. THEODORE TILTON.

"*Dear Sir:* At a meeting of the Examining Committee of Plymouth Church held this evening the Clerk of the Committee was instructed to forward to you a copy of the complaint and specifications made against you by Mr. Wm. F. West and was requested to notify you that any answer to the charges that you may desire to offer to the Committee may be sent to the Clerk on or before Thursday, Oct. 23rd, 1873. Enclosed I hand you a copy of the charges and specifications referred to.

Yours, very respectfully, D. W. TALLMADGE, Clerk.
393, Bridge-st.

"*Copy of the Charges and Specifications made by Wm. F. West against Theodore Tilton.*

"I charge Theodore Tilton, a member of this church, with having circulated and promoted scandals, derogatory to the Christian integrity of our pastor and injurious to the reputation of this church.

"SPECIFICATIONS.

"1st: In an interview between Theodore Tilton and Rev. E. L. L. Taylor, D.D., at the office of *The Brooklyn Union*, in the spring of 1871, the said Theodore Tilton stated that the Rev. Henry Ward Beecher preached to several (seven or eight) of his mistresses every Sunday evening. Upon being rebuked

by Dr. Taylor, he reiterated the charge and said that he would make it in Mr. Beecher's presence if desired.

"Witness: Rev. E. L. L. TAYLOR, D.D.

"2nd: In a conversation with Mr. Andrew Bradshaw at his residence in the latter part of November 1872, Theodore Tilton requested Mr. Bradshaw not to repeat certain statements which had previously been made to him by Mr. Tilton, adding that he retracted none of the accusations which he had formerly made against Mr. Beecher, but that he wished to hush the scandal on Mr. Beecher's account, that Mr. Beecher was a bad man and not a safe person to be allowed to enter the families of his church that if this scandal ever were cleared up, he (Mr. Tilton) would be the only one of the three involved who would be unhurt by it, and that he was silently suffering now for Mr. Beecher's sake.

"Witness: ANDREW BRADSHAW.

"3rd: At an interview with Mrs. Andrew Bradshaw, in Thompson's dining-rooms in Clinton-street on or about the 3d day of August, 1870, Theodore Tilton stated that he had discovered that a criminal intimacy existed between his wife and Mr. Beecher. Afterward, in November 1872, referring to the above conversation, Mr. Tilton said to Mrs. Bradshaw that he retracted none of the accusations which he had formerly made against Mr. Beecher.

"Witness: MRS. ANDREW BRADSHAW."

[Two papers attached and each marked as "Exhibit No. 29."]

Mr. Fullerton.—State whether any reply to this letter of Mr. Tallmadge was prepared? A. I think there was, sir.

Q. Now, by whom? A. I think that the letter was prepared by Mr. Tilton.

Q. Was Mr. Beecher consulted in regard to it? A. I think I saw Mr. Beecher with regard to it; yes, sir.

Q. It was published, wasn't it? A. It was published; yes, sir.

Mr. Evarts.—You mean to say that you did see Mr. Beecher? A. Yes, sir; that is my recollection, that I saw Mr. Beecher.

Mr. Fullerton.—[Addressing defendant's counsel.] Gentlemen, that is embraced in our notice to produce. [Showing Mr. Evarts a paper.] Plymouth Church had it.

Mr. Evarts.—Yes, but Plymouth Church is not the defendant.

Mr. Fullerton.—I thought it was so considered—by the church, at all events.

Mr. Evarts.—No; we have never thought either Plymouth Church or the Christian religion was defendant here.

JUDGE NEILSON.—That has been my view of the case.

Mr. Fullerton.—Well, perhaps not.

Mr. Evarts.—A notice to produce papers that belonged to Mr. Beecher to have, of course we shall meet. But a notice to produce papers that, on the very face of them, are in the archives of Plymouth Church is not a notice to the defendant to produce papers in his possession.

JUDGE NEILSON.—It has no force or effect.

Mr. Fullerton.—Well, sir, we shall produce—get the paper in court some way.

Mr. Evarts.—You can very easily. Mr. Tallmadge can be subpœnaed.

Mr. Fullerton.—I call your attention to something that occurred in October, 1873, growing out of a publication in *The New York Sun*, without stating what it was. A. Growing out of a publication in *The New York Sun?*

Q. Yes, sir; on the subject of expelling Mr. Tilton from Plymouth Church. Do you recollect an interview in regard to that subject? A. I don't remember that.

Q. Do you recollect that Mr. Beecher was sent for, and considered at your house, in connection with Mr. Tilton, this proposed action of Plymouth Church in regard to the membership of Mr. Tilton? A. I remember that there was to be a meeting at Plymouth Church in October. I don't remember the extract from *The Sun;* whether it was in October, 1873, or not, I don't remember; but there was to be a meeting at Plymouth Church, in which the charges against Mr. Beecher were to be considered.

Q. Against Mr. Beecher? A. Against Mr. Tilton, that is, were to be considered; I had an interview with Mr. Beecher in the presence of Mr. Tilton, I think, concerning what was to be done at that meeting.

Q. Now state what that interview was, please? A. An understanding—I said to Mr. Beecher that I thought that the proper way out of it was simply to drop Mr. Tilton's name from the roll of the church, and Mr. Beecher agreed to that; that is as I remember the——

Q. Well, how would that prevent any action?

Mr. Evarts.—Oh! well, that is not proper.

Mr. Fullerton.—What was said upon that subject? A. That his not being a member of the church, I said—if he was not a member of the church, the charges against him could not be investigated, and consequently there could not be any exposure of the facts in the case as between himself and Mrs. Tilton.

Q. A few moments ago you spoke of a proposed letter by Mr. Tilton, in which he should decline the trial at Plymouth Church, on the ground of non-membership? A. Yes, sir.

Q. Do you know whether such a letter was written, or not? A. I think it was written; yes, sir.

Q. Did you go to Plymouth Church that night? A. I did not, but I had a conversation with Mr. Tilton.

Q. Did you have a conversation with Mr. Beecher in regard to the action of Plymouth Church that night? A. I had a conversation; I have repeated it; yes, and agreed with Mr. Beecher as to what the course should be, in the presence of Mr. Tilton.

Q. No, I am speaking of what occurred at Plymouth Church that night? A. Oh! no; I was not at Plymouth Church that night.

Q. Did you have a conversation with Mr. Beecher as to what did occur? A. Afterwards; yes, sir; with Mr. Beecher afterwards.

Q. Now, let us see what that conversation was? A. He said that Mr. Tilton had come down there—told me the circumstances; he said that Mr. Tilton had come down to the church, and had said in the presence of the congregation that if he had slandered his pastor, he was there to answer for it, and Mr. Beecher said, "I made to him as full and generous a reply as I knew how to make." That is the substance of what——

Q. How long was that after the meeting at Plymouth Church? A. Not very long after; I don't remember how long.

Q. Well, was it within a few days? A. Within a few days; I should say within a day or two.

Q. Now the next event in the order of time that I want to call your atten-

tion to was the proposed Council of the Church. Do you recollect that? A. I recollect that there was to be a Council of churches.

Q. And did you have an interview with Mr. Beecher in regard to it? A. Yes, sir.

Q. State what occurred? A. Mr. Beecher did not want—Mr. Beecher said he did not want Theodore to take any part in that Council; that if he could maintain silence—not utter a word—until after the dissolution of the Council—that if that could be bridged over, he thought everything would be safe; that is substantially what I remember about it.

Q. Did he speak of Dr. Storrs in that conversation? A. After Dr. Storrs had made a speech before the Council, I received from him a letter concern ing Dr. Storrs' speech; I had said to Mr. Beecher, sir, that I understood that Dr. Storrs would consider it necessary to be severe——

Mr. Evarts.—Well, this is not drawn out by any question.

Mr. Fullerton.—Yes; it is drawn out by a question. I asked him whether, in that interview, he said anything in regard to Dr. Storrs.

Mr. Evarts.—Whether Mr. Beecher did?

Mr. Fullerton.—Yes.

Mr. Evarts.—Well, how is that material?

Mr. Fullerton.—That will appear after it comes in evidence.

Mr. Evarts.—Oh! yes; but on the face of the matter it is immaterial.

Mr. Fullerton.—It was in connection with this Church Council.

JUDGE NEILSON.—I think we will have to take it, and see whether it is.

Mr. Fullerton.—Go on and state, if you please, what he said in regard to it. A. Yes, sir; that Dr. Storrs intended to be severe on Mr. Tilton, and I told Mr. Beecher that I did not think that would be a proper course for Dr. Storrs to pursue; that I thought it was not ingenuous for him to do it.

Q. Go on and finish the conversation. A. And he said he thought it would not be right for Dr. Storrs to do it; that is, before the speech of Dr. Storrs was made, sir, now that I am speaking of; then Dr. Storrs made his speech, and followed the letter.

Q. Look at the letter which I show you now, and see in whose handwriting it is? A. Mr. Beecher's handwriting. Is that all you want to know?

Q. Letter written to you? A. Yes, sir.

Q. Did you receive it about the time of its date? A. I did.

[Letter submitted to defendant's counsel.]

Mr. Fullerton.—Have you any objection to it, gentlemen?

Mr. Evarts.—I suppose not.

Confidential.

"MY DEAR FRANK: I am indignant beyond expression. Storrs's course has been an unspeakable outrage. After his pretended sympathy and friendship for Theodore he has turned against him in the most venomous manner—and it is not sincere. His professions of faith and affection for me are hollow and faithless. They are merely *tactical*. His object is plain. He is determined to *force* a conflict, and to use one of us to destroy the other if possible. That is his game. By stinging Theodore he believes that he will be driven into a course which, he hopes, will ruin me. If ever a man betrayed another. I am in hopes that Theodore who has borne so much, will be unwilling to be a flail in Storrs's hand to strike at a friend. There are one or two reasons, emphatic, for *waiting* until the end of the Council before taking *any* action.

"1. That the attack on Ply. Church and the threats against Congregationalism, were so violent, that the public mind is likely to be absorbed in the ecclesiastical elements, and not in the personal.

"2. If Plymouth Church is *disfellowshiped*, it will constitute a blow at me and the *church*,—far severer than at him.

"3. That if Council does *not disfellowship* Plymouth Church, then, undoubtedly Storrs will go off into Presbyterianism, as he almost without disguise, *threatened* in his speech, and in that case, the emphasis will be *there*.

"4. At any rate, while the fury rages in Council, it is not wise to make any move that would be *one* among so many, as to lose effect in a degree and after the battle is over one can more exactly see what ought to be done. Meantime I am *patient*, as I know how to be, but pretty nearly used up with inward excitement and must run away for a day or two and hide and sleep, or there will be a funeral. Cordially and trustingly yours,

H. W. B.

"March 25, 1874.

"No one can tell under first impressions what the effect of such a speech will be. *It ought to damn Storrs.*"

[Letter marked "Exhibit No. 30."]

Q. There is another letter Mr. Moulton [handing letter to witness], which you will please look at and say in whose handwriting it is? A. In the handwriting of Mr. Beecher.

Q. To whom is it addressed? A. To me.

Q. Did you receive it about the time of its date? A. I did; yes, sir.

Mr. Fullerton.—I read it in evidence.

"SUNDAY NIGHT, March 29, 1874.

"MY DEAR FRANK: Is there to be no end of trouble? Is wave to follow wave in endless succession? I was cut to the heart when C. showed me that shameful paragraph from *The Union*. Its cruelty is beyond description. I felt like lying down and saying, 'I am tired—tired—tired of living, or of trying to resist the devil of mischief.' I would rather have had a javelin launched against me, a hundred times, than against those that have suffered so much. The shameful indelicacy of bringing the most sacred relations into such publicity, fills me with horror.

"But, there are some slight alleviations. The paragraph came when the public mind was engaged with the council and with Theodore's letters. I hope it will pass without further notice. If it is *not taken up* by other papers it will sink out of sight and be forgotten; whereas if it be assailed it may give it a conspicuity that it would never have had. But, I shall write Shearman a letter, and give him my full feeling about it. I must again as I have heretofore been indebted to you for a judicious counsel on this new and flagrant element. My innermost soul longs for peace; and if that can not be, for death that *will* bring peace. My fervent hope is that this drop of gall may sink through out of sight and not prove a mortal poison.

"Yours ever,

"H. W. BEECHER.

"I have written strongly to Shearman, and hope that he will send T. a letter unsolicited. I am sick, head, heart and body, but must move on! I feel this morning like letting things go by the run!"

[Copy of letter marked "Exhibit No. 31."]

Q. Now, Mr. Moulton, state if you please, whether you saw the paragraph in *The Union*, to which reference is there made? A. I did.

Q. State the substance of it?

Mr. Evarts.—We would rather have the paragraph.

Mr. Fullerton.—It is not necessary, if your Honor please, that we should

produce these newspapers that are incidentally referred to. That is not the rule. I only wanted to know the subject-matter of the article.

JUDGE NEILSON.—The subject-matter we have got; I think the paper ought to be produced.

Mr. Fullerton.—It is referred to as a collateral matter.

JUDGE NEILSON.—It is not remotely collateral. I think the paper should be produced. You can introduce it hereafter.

Q. After receiving that letter, did you see Mr. Beecher? A. Yes, sir; I saw him.

Mr. Evarts.—The paper is in the letter.

Mr. Fullerton.—The paragraph from *The Union* is as follows——

Mr. Evarts.—We consent to this being read as if the paper was here. We only want to object to memory as to accuracy. We understand that to be the same.

Mr. Fullerton.—[Reading.]

"At the close of the service, a *Union* reporter approached Mr. Beecher, for the purpose of getting his views as to the council, but he declined to be interviewed. Mr. Shearman, the Clerk of the Church, however, was communicative. He said he had received no intimation, as yet, what course the council would pursue. In regard to the scandal on Mr. Beecher, he said, so far as Tilton was concerned, he (Tilton) was out of his mind, off his balance, and did not act reasonably. As for Mrs. Tilton, she had occasioned the whole trouble while in a half-crazed condition. She had mediumistic fits, and while under the strange power that possessed her, often spoke of the most incredible things, declared things possible that were impossible, and among the rest had slandered Mr. Beecher. Mr. Tilton himself had acknowledged that all the other things she had told him in her mediumistic trance were false and impossible; then why, asked Mr. Shearman, should the scandal on Mr. Beecher be the only truth in her crazy words?"

Q. What, if anything, did Mr. Beecher say to you in regard to that publication? A. He thought it was outrageous—he said it was.

Q. If you can recollect anything else he told you, please state it. A. He said he would write; I don't remember whether I saw him before he wrote the letter or not, but I had a conversation with him concerning that paragraph—whether it was before or after the receipt of this letter I don't remember; and I said to him: "Mr. Beecher, you know that that statement is false with regard to Theodore, and you know that it is false with regard to Elizabeth Tilton, and Theodore Tilton, unless it is corrected, will make trouble about it. It is an outrage; I am not surprised at it as coming from Mr. Shearman at all; I don't think he is above such matters." That is what I told Mr. Beecher, and Mr. Beecher said to me that he thought it was an outrage; that he thought it was a cruelty; that it caused him an almost unspeakable agony, and he wept over it, and I told him that I should go to see Mr. Shearman about it, and I did go to see Mr. Shearman about it.

Mr. Evarts.—No matter what passed between you and Mr. Shearman.

The Witness.—I am not going to say anything about that, sir; I saw Mr. Beecher after I had seen Mr. Shearman, and I told Mr. Beecher that Mr. Shearman refused to read the paragraph when I placed it before him on his desk, and I told Mr. Beecher that I had subsequently taken Mr. Tilton to see Mr. Shearman, and that Mr. Shearman had made an explanation to Mr.

Tilton, which Mr. Tilton denounced as false; and I saw Mr. Beecher subsequently, and I told him of a letter which Mr. Shearman had given to me to give to Mr. Tilton, which Mr. Tilton had refused to receive, on the ground that it contained a deliberate falsehood, and that unless Mr. Shearman did write another letter taking it back, as it should be retracted, that Mr. Tilton would make trouble about it; and I told Mr. Beecher subsequently that Mr. Shearman had written a letter of retraction, and had received back from me the letter which he wrote at first, and which Mr. Tilton stigmatized as a falsehood; and Mr. Beecher said to me also that it was his opinion that Mr. Shearman was a mischief-maker.

Mr. Evarts.—You have not stated when this was? A. In an interview I had with him concerning this paragraph in *The Union*.

Q. When? A. Shortly after the paragraph in *The Union* appeared.

Mr. Beach.—I suppose we have that correspondence, if it is desired to fix the date.

The Witness.—The date of Mr. Shearman's letter would fix it.

Mr. Fullerton.—[Handing a book to witness.] Look at that and see if it will fix the date of Mr. Shearman's letter?

Mr. Evarts.—The date of the conversation is all that is necessary.

Mr. Fullerton.—That will enable him to fix the date of the conversation.

The Witness.—It is dated April 2d, 1874.

Q. Does that enable you to state when the conversation of which you have spoken took place? A. The conversation was before Mr. Beecher's letter a short time, or after Mr. Beecher's letter a short time.

Mr. Evarts.—It was all one conversation, was it? A. No, sir; there were several conversations.

Mr. Fullerton.—His statement is directly contrary to that.

Mr. Evarts.—I would like to have the line drawn between what is in one and what is in the other.

Mr. Beach.—That is sufficiently indicated by his examination so far.

Mr. Fullerton.—Can you give the dates of these several conversations of which you speak? A. I can not; but they were quite near together.

Q. Were you present when either of Mr. Shearman's letters was delivered? A. Present when Mr. Shearman's letter was delivered to Mr. Tilton?

Q. Yes, sir. A. Mr. Shearman gave to me that letter of April 2d.

Mr. Evarts.—I suppose this is all irrelevant.

JUDGE NEILSON.—It is a mere incident in the order of dates. I think he may answer what he knows about it, because it connects the chain.

The Witness.—Mr. Shearman gave me the letter to deliver to Mr. Tilton.

Q. Who was present when you delivered the letter of April 2d to Mr. Tilton?

Mr. Evarts.—Your Honor will see that it is all immaterial, and I would like to state my views in regard to it. All this matter arises out of a reporter's paragraph in *The Union;* it is not a paragraph printed by Mr. Shearman or by anybody; it is a reporter's statement of an interview with Mr. Shearman, as I understand it, in *The Brooklyn Union*, which is a paper here—*The Christian Union*, is it?

Mr. Fullerton.—*The Brooklyn Union.*

Mr. Evarts.—*The Brooklyn Union*, a political paper—a secular paper. What Mr. Beecher says about that is good evidence of course, and that we have; but what passes between Mr. Tilton and Mr. Moulton and Mr. Shearman afterwards, getting before the public what, it was complained, was improperly represented in that paragraph of the report of the interview, we suppose is wholly immaterial.

Mr. Beach.—Undoubtedly. We don't offer anything of the kind.

Mr. Evarts.—All this seems to me to be of that kind of character.

Mr. Beach.—Oh! no.

Mr. Fullerton.—The gentleman will see the propriety of this evidence when I inform him that I expect to prove by the witness that Mr. Beecher was present when the letter was delivered. My question, to which Mr. Evarts objected, was, when this letter was delivered.

JUDGE NEILSON.—I think he can answer that; yet the general view presented by the counsel is correct, unless it is connected.

Mr. Evarts.—We think it is all wholly immaterial.

Mr. Fullerton.—Who was present when this letter of April 2d was delivered? A. I think Mr. Beecher was present.

Mr. Evarts.—You mean to say he was present? A. I think he was present; my recollection is that he was present.

Mr. Evarts.—I can not chase after these interviews—a mere notion that a man was present.

Mr. Fullerton.—You can make objections, beyond all doubt.

Mr. Evarts.—The witness is not willing to say he (Beecher) was present.

JUDGE NEILSON.—The witness says he thinks he (Beecher) was present. [To the witness]. State your best recollection in regard to it? A. My best recollection is that he was present. I remember the conversation when Mr. Beecher, Mr. Tilton, Mr. Shearman, and myself were present.

Q. Was that when this letter was delivered? A. I am not clear as to that. I am quite clear as to Mr. Beecher being present when the letter was delivered.

Mr. Fullerton.—[Handing a letter to witness.] Look at the letter and state? A. My impression is, I showed this letter to Mr. Beecher before it was delivered to Mr. Tilton, and not that he was present when it was delivered.

Mr. Fullerton.—Now, I propose to read it in evidence.

"BROOKLYN, April 2, 1874.

"DEAR SIR: Having seen a paragraph in *The Brooklyn Union* of Saturday last, containing a report of a statement alleged to have been made by me concerning your family and yourself, I desire to assure you that this report is seriously incorrect, and that I have never authorized such a statement.

"It is unnecessary to repeat here what I have actually said upon these subjects, because I am now satisfied that what *I did* say was erroneous, and that the rumors to which I gave some credit were without foundation. I deeply regret having been misled into an act of unintentional injustice, and am glad to take the earliest occasion to rectify it.

"I beg, therefore, to withdraw all that I said upon the occasion referred to,

as incorrect (although then believed by me), and to repudiate entirely the statement imputed to me, as untrue and unjust to all parties concerned.

Yours obediently,

"Theodore Tilton, Esq." T. G. SHEARMAN.

[Copy of letter marked "Exhibit No. 32."]

Q. Do you recollect what is known in this controversy as "the Bacon letter"? A. Yes, sir.

Q. When was that letter written, in point of time? A. In June of 1874.

Q. When did you first become acquainted with its existence? A. The day after its publication.

Q. From whom did you receive your information? A. From Theodore Tilton.

Q. By the Bacon letter, are we to understand it as a letter written by Theodore Tilton to Dr. Bacon? A. Yes, sir.

Q. Did you have any interview with Mr. Beecher upon that subject? A. Yes, sir.

Q. State, if you please, what that interview was, and when it was? A. I remember an interview in my study, at which Mr. Shearman, Mr. Tilton, Mr. Beecher, and myself were present. Mr. Tilton said to Mr. Beecher that he knew perfectly well that he (Tilton) was not the creature of his magnanimity, as Dr. Bacon alleged; that he was not a dog and a knave—had not been in his treatment of Mr. Beecher; and that he could not rest under that imputation, and wanted Mr. Beecher to set the matter right with Dr. Bacon; and that if he did not, he (Theodore Tilton) should. That is substantially the conversation that I remember. That is the first conference, and then I saw Mr. Beecher afterwards about it.

Q. Don't you recollect anything else that took place at that first interview? if there was any reply to the observation, I want you to state it. A. Mr. Beecher said that he didn't see what reply he could make; that the case was full of embarrassments; that if he should make a reply to Dr. Bacon, it would be considered as something like a confession; he made some reply of that sort; I don't remember the exact language he used, but he plead his embarrassments; the general impression in my mind is that he was surrounded by embarrassments which made it difficult for him to do it.

Q. What was referred to when he spoke of not being the creature of Mr. Beecher's magnanimity; that he wasn't a dog or a knave? A. His own action in regard to Mr. Tilton's family; Mr. Tilton referred specifically to his action with reference to his family.

Q. Did he not refer to Dr. Bacon's articles that had appeared in *The Independent* from time to time? A. Yes, sir; that was the subject of the conversation; but the direct reference that was made in regard to Mr. Tilton's not being the creature of his magnanimity was, that he (Mr. Beecher) knew that he (Tilton) was not the creature of his magnanimity, on account of his knowledge of Mr. Tilton's relations with his family.

Q. This proposed letter of Mr. Tilton, called the Bacon letter, was in reply to these various articles in *The Independent*? A. Yes, sir.

Q. Was the Bacon letter there then under consideration? A. I don't remember that it was.

Q. Was it afterwards produced, what Mr. Tilton proposed to publish? A. No, sir; it was not produced at that time.

Q. At any subsequent time was it produced? A. I don't think it was to Mr. Beecher.

Q. Did you have any conversation with Mr. Beecher in regard to the contents of it? A. I had an interview with Mr. Beecher, more than one interview, in which I said I would undertake to prevent the writing of it.

Q. State what you said to him in that conversation? A. I said I would undertake to prevent the reply to the Bacon letter; that I did not think Mr. Tilton should reply to it.

Q. You said, "reply to the Bacon letter"? A. I said to Mr. Beecher, I would undertake to prevent Mr. Tilton making any reply to the Bacon letter—to Dr. Bacon.

Q. Tell us all that occurred on that subject in that interview, when you proposed to prevent the reply to Dr. Bacon? A. I told Mr. Beecher that Mr. Tilton had said to me that if he replied to Dr. Bacon, he should tell the whole truth with regard to Mr. Beecher's relations with his family; that I considered that would be an outrage, if Theodore Tilton did it, upon his family; that he ought not to do it, and that feeling that way I should undertake to prevent the writing of it, and that if I could not prevent the writing of it, that I would try to prevent the publication of it; and Mr. Beecher said to me, he hoped that I would prevent the writing of that letter.

Q. What occurred then in regard to it? A. After that I saw Mr. Tilton, and I told him I thought he ought not to think of writing a reply to Dr. Bacon; that it was better for him to undertake to live it down; that I did not think the effect of Dr. Bacon's letter in *The Independent* and his speech at the college would have such an effect on him in New England as he expected it would have, and I communicated what I had said to Mr. Tilton to Mr. Beecher, and Mr. Beecher said that he agreed with me; that he thought it would not have the effect upon Theodore Tilton in New England that he thought it would have; that Dr. Bacon did not have such an extensive influence as he, Theodore, *thought* he had. Then I saw Mr. Tilton after the letter had been fully prepared; I had not seen it during its publication, and he said to me, "I think that I ought to read to you the letter." I said, "Well, if you have written it, then I would like to hear it read."

Mr. Evarts.—We don't want anything stated that is not connected with Mr. Beecher.

The Witness.—I am going to connect it with Mr. Beecher.

JUDGE NEILSON.—Pass over to your conversation with Mr. Beecher; that will cover the whole ground.

The Witness.—I said to Mr. Beecher that I had heard the Bacon letter read before its publication; that I had undertaken, and did succeed, in having taken from that letter the phrase, "He has committed against my family a revolting crime," and of having substituted in its place a statement that instead of that he had committed an offense. I told him that that was as much as I had been able to do with Mr. Tilton, and that is the substance of what occurred.

Mr. Evarts.—That was after the publication? A. After the publication; I told Mr. Beecher that the letter, as originally read to me, contained the words, "has committed against me and my family a revolting crime," and I told Mr. Beecher the reason for my having substituted the word "offense" for "crime."

Mr. Fullerton.—In the Bacon letter? A. In the Bacon letter.

Mr. Beach.—What did you tell him? A. I said that I had an idea that if he stated that he, Beecher, had committed against him and his family a revolting crime, that as that was the truth there would be no escape from that; but if the word "offense" was used, and the apology followed the charge of offense in the words of the Bacon letter, seeing that would be considered honorable but for the attack on him by Mr. Beecher in his church, I thought that might afford a basis for reconciliation—that the use of that word "offense" would.

Q. [Handing paper to witness.] State whether you recognize the paper now shown you—whether you recognize the Bacon letter, so called? A. Yes, sir; that is it, I think.

Mr. Fullerton.—I propose to read that letter in evidence. [Reading.]

"SIR,—I have carefully read your New Haven address concerning the late Council, and also your five essays on the same subject, just concluded in *The Independent*.

"The numerous and extraordinary mispresentations of my position which these writings of yours will perpetuate to my injury, if not corrected, compel me to lay before you the data for their correction:—misrepresentations which, on your part, are of course wholly unintentional, for you are incapable of doing any man a willful wrong.

"In producing to your inspection some hitherto unpublished papers and documents in this case, I need first to state a few facts in chronological sequence, sufficient to explain the documentary evidence which follows.

"I. After I had been for fifteen years a member of Plymouth Church, and had become meanwhile an intimate friend of the pastor, knowledge came to me in 1870 that he had committed against me an offense which I forbear to name or characterize. Prompted by my self-respect, I immediately and forever ceased my attendance on his ministry. I informed him of this determination as early as January, 1871, in the presence of a mutual friend, Mr. Francis D. Moulton.

"The rules of Plymouth Church afforded me a choice between two methods of retirement:—one, to ask for a formal letter of dismissal; the other, to dismiss myself less formally by prolonged absence. I chose the latter. In so doing, my chief desire was to avoid giving rise to curious inquiries into the reasons for my abandoning a church in which I had been brought up from boyhood; and therefore I did not invite attention to the subject by asking a dismissory letter, but adopted the alternative of silently staying away—relying on the rule that a prolonged absence would finally secure to me a dismissal involving no publicity to the case.

"Several powerful reasons prompted me to the adoption of this alternative, among which were the following:—The pastor communicated to me in writing an apology, signed by his name. He also appealed to me to protect him from bringing reproach to the cause of religion. He alleged that an exposure would forbid him to re-ascend his pulpit. These, and other similar reasons, I had no right or disposition to disregard; and I acted upon them with a conscious desire to see Mr. Beecher protected rather than harmed.

"II. At length my absence from the church—an absence of which not three members of the congregation, beside the pastor, knew the cause—began to excite comment in private circles.

"Some of the members hinted that I had lapsed into a lamentable change of

religious views—whereas my views continued to be the same as they had been for many years previous; and though they had long before ceased to find their honest expression in the formal creed which I had professed in my childhood at the altar of Plymouth Church, yet my religious faith had not changed from that early original more than the views of some of the most honored members and officers of the same church had changed within the same time.

"Other persons insinuated that I had adopted un-Christian tenets concerning marriage and divorce--whereas, touching marriage, I have always held, and still hold, with ever-increasing firmness, the one and only view common to all Christendom; and touching divorce, the substance of what I held was, and still is, the needful abrogation of our unjust New York code, and the substitution of the more humane legislation of New England and the West.

"Other persons fancied that I had become a spiritualist of an extravagant type—whereas I have never yet seen my way clear to be a spiritualist at all—certainly not to be so much a spiritualist as some of the most prominent members of Plymouth Church are known to be.

"All these suppositions—and many others—but never the right one—became current in the church (and still are) to explain my suddenly sundered membership, the true reason for which has been understood always by the pastor, but never by his flock.

"III. At length, after many calumnious whisperings near and far (since evil tales magnify as they travel), a weekly paper in New York, in November, 1872, published a wicked and horrible scandal—a publication which some persons in the church ignorantly attributed in its origin and animus to me; whereas I had previously spent many months of constant and unremitting endeavor to suppress it—an endeavor in which, with an earnest motive but a foolish judgment, I made many ill-directed sacrifices of my reputation, position, money, and fair prospects in life—for all which losses of things precious, since mine alone was the folly, let mine alone be the blame.

"IV. In May, 1873, occurred the surreptitious publication of a tripartite agreement signed by H. C. Bowen, H. W. Beecher, and myself—an agreement which, so far as I was concerned, had for its object to pledge me to silence against using or circulating charges which Mr. Bowen had made against Mr. Beecher. This covenant, as originally written, would have bound me never to speak, not only of Mr. Bowen's, but also of my own personal grievances against Mr. Beecher. I refused to sign the original paper. My position in the amended paper was this: Mr. Bowen had made grave charges against Mr. Beecher. These charges Mr. Bowen had been induced to recall in writing. I cheerfully agreed never to circulate the charges which Mr. Bowen had recalled.

"V. In August, 1873, Mr. William F. West, a member of Plymouth Church, hitherto a stranger to me, came to my residence accompanied (at his request) by my friend Mr. F. B. Carpenter, and told me that when the summer vacation was over he (Mr. W.) meant to cite me before the church on the charge of circulating scandals against the pastor; declaring, in Mr. C.'s presence, that Mr. Beecher had acted as if the reported scandalous tales were true rather than false, and urging that I owed it to myself and the truth to go forward and become a willing witness in an investigation. I peremptorily declined to join Mr. West in his proposed investigation, and declared that as I had not been a member of Plymouth Church for several years, I could not be induced to return to that church for any purpose whatever, least of all for so distasteful a purpose as to participate in a scandal. Mr. West had meanwhile discovered that my name still remained on the church roll*; from which circumstance he determined to assume that I was still a member, and to force me to trial. Accordingly, a few weeks later, he brought forward charges which were nominally against myself but really against the pastor:—charges which, if I may characterize them by the recently published language of the present clerk of Plymouth Church, were 'an indirect and insincere method of investigating one man under the false pretense of investigating another.'

"Some leading members, including especially the pastor, desired my co-operation in defeating Mr. West, and I cheerfully gave it. To this end, I wrote—with

their pre-knowledge and at their urgent desire—a letter declining to accept a copy of the charges addressed to me as a member, on the ground that I had, four years previously, ceased my connection with the church. For this letter, I received, on the next day after sending it, the pastor's prompt and hearty thanks. An understanding was then had between Mr. Beecher and myself, in an interview at the residence of Mr. Moulton, that Mr. West's indictment against me was to be disposed of in the following way, namely, by a simple resolution to the effect that whereas I had, four years previously, terminated my membership; and whereas by inadvertence my name still remained on the roll; therefore resolved that the roll be amended in accordance with the fact. This was to put Mr. West's case quietly out of court without bringing up the scandal.

"To my surprise and indignation, I learned on the morning of October 31, 1873, that the report which was to be presented at the church meeting to be held on that evening, would not be in the simple form already indicated, but would declare that whereas I had been charged with slandering the pastor; and whereas I had been cited before the church to meet the charge; and whereas I had pleaded non-membership as an excuse for not appearing for trial; therefore resolved that I should be dropped, &c.

"This gross imputation, thus foreshadowed to me, led me to appear in person at the church on that evening, there to await the reading of the forthcoming report. This report, when it came to be read, brought me the following novel intelligence, namely, 'whereas a copy of the charges was put into the hands of the said Tilton on the 17th of October, *and a request made of him that he should answer the same* by the 23d of October," &c.

"I do not know to this day whose hand it was that drew the above report, and therefore I am happily saved from an offensive personality when I say that the statement which I have here quoted is diametrically the opposite of the truth; for instead of my having been requested to answer the charges, I had been requested *not* to answer them.

"After the public reading of the above report I arose in the meeting and said in Mr. Beecher's presence that if I had slandered him I would answer for it to his face;—to which he replied in an equally public manner that he had no charge whatever to make against me.

"VI. Next, growing out of the church's singular proceedings in this case came the Congregational Council of which you were Moderator.

"—The above facts and events—which I have mentioned as briefly as possible, omitting their details—will serve as a sufficient groundwork whereon to base the correction of the unjust and injurious statements which you have unwittingly given of my participation and responsibility in the case. With the Congregational theories and usages which you have so ably discussed, I have no concern—you are probably right about them. But as to all the essential facts growing out of my relationship to Plymouth Church, you have been wholly misinformed—as you will see by the following proofs:

"I. You say that I retired from the church, giving no announcement of my so doing to any proper officer; in other words, that I stole out secretly, letting no one in authority know of my purpose. Your language concerning me is as follows:

"'His position was that he had terminated his membership four years previously—*not by requesting the church* (as by its rules he might have done) *to drop his name from its roll*,' &c.

"You then ask:

"'Is this the beautiful non-stringency of the covenant which connects the members of that church with the body, and with each other? What sort of a covenant is that which can be dissolved at any moment, not merely by mutual consent, nor by either party giving notice to the other, but by a silent volition in the mind of either?'

"The above is a thorough mis-statement of the manner in which I left Plymouth Church.

"On the very first occasion of my meeting the chief officer of the church after my retirement from it, I gave notice to him of that retirement. At a later

period, I repeated this notice to other officers of that body. In evidence of this fact I adduce the following extract from a recent card by Mr. Thomas G. Shearman, clerk of Plymouth Church, published in *The Independent* of June 18, 1874. He says:

"'Long before any charges were preferred against him, Mr. Tilton distinctly informed the clerk of the church and various other officers and members (myself included) *that he had withdrawn, and that his name ought to be taken off the roll.*'

"II. You say that I have either 'a malicious heart or a crazy brain.' I know the fountain-head of this opinion. While the Council was in session in Brooklyn, the following startling paragraph appeared in *The Brooklyn Union* of Saturday, March 28, 1874:

Mr. Fullerton.—I need not read the article from *The Brooklyn Union*, which was read awhile ago.

Mr. Evarts.—No, sir.

"My attention was not called to the above paragraph until after the Council had adjourned, and its members had gone to their homes. At first, I was not willing to believe that the clerk of Plymouth Church—the same officer whose name had been officially signed to all the documents which the church had just been sending to the Council—could have been guilty of so great an outrage against truth and decency as the above paragraph contained:—particularly against a lady whose devout religious faith and life are at the farthest possible remove from spiritualism or fanaticism of any kind. Accordingly I procured the following sworn statement by the reporter certifying to the accuracy of his report:—

Mr. Fullerton.—I don't propose to read the report.

Mr. Beach.—I don't know why you should not read it.

Mr. Fullerton.—With the consent of my learned opponents, I leave out part of this letter, only stating that the correspondence resulted in the letter of Mr. Shearman, which I have heretofore read.

Mr. Evarts.—There is no object in reading it.

"III. You ask, 'when did Mr. Tilton cease to be responsible to the Plymouth Church?' I answer that I first ceased my responsibility to that church when I terminated my membership four years ago. I afterwards voluntarily renewed my responsibility to the church on the evening of Oct. 31, 1873, by appearing in person at one of its public meetings, and offering to answer then and there, in the pastor's presence, the charge that I had slandered him. Less than two months ago, I still further renewed my responsibility to Plymouth Church, as will appear by the following correspondence:

"BROOKLYN, May 4, 1874.

"*Rev. Henry Ward Beecher, Pastor of Plymouth Church; Rev. S. B. Halliday, Associate Pastor; and Mr. Thomas G. Shearman, Clerk:*

"GENTLEMEN,—I address, through you, to the church of which you are officers, the following statement, which you are at liberty to communicate to the church through the examining committee, or in any other mode, private or public.

"The Rev. Leonard Bacon, D.D., LL.D., Moderator of the recent Congregational Council, has seen fit, since the adjournment of that body, to proclaim, publish, and reiterate, with signal emphasis, and with the weight of something like official authority, a grave declaration which I here quote, namely:

"'It was for the Plymouth Church,' he says, 'to vindicate its pastor against a damaging imputation from one of its members. But with great alacrity—the pastor himself consenting—IT THREW AWAY THE OPPORTUNITY OF VINDICATION.' . . . 'That act,' he continued, 'in which THE PLYMOUTH CHURCH THREW AWAY THE OPPORTUNITY OF VINDICATING ITS PASTOR, was what gave occasion for remonstrance from neighboring churches.' . . . 'There are many,' he says also, 'not only in Brooklyn, but elsewhere, who felt that the

church had not fairly met the question, and by evading the issue had THROWN AWAY THE OPPORTUNITY of VINDICATING ITS PASTOR.'

"The Moderator's declaration is thus made three times over that the Plymouth Church, in dealing with my case, THREW AWAY ITS OPPORTUNITY OF VINDICATING THE PASTOR.

"This declaration, so emphatically repeated by the chief mouth-piece of the Council, and put forth by him apparently as an exposition of the Council's views, compels me, as the third party to the controversy, to choose between two alternatives.

"One of these is to remain contentedly in the dishonorable position of a man who denies to his former pastor an opportunity for the vindication of that pastor's character :—an offense the more heinous because an unsullied character and reputation are requisites to his sacred office.

"The other alternative is for me to restore to his church their lost opportunity for his vindication by presenting myself voluntarily for the same trial to which the church would have power to summon me if I were a member :—a suggestion which (judging from my past experience) will subject me afresh to the unjust imputation of reviving a scandal for the suppression of which I have made more sacrifices than all other persons.

"Between these two alternatives—which are all that the Moderator leaves to me—and which are both equally repugnant to my feelings—duty requires me to choose the second.

"I therefore give you notice that if the pastor, or the examining committee, or the church, as a body, desire to repossess the opportunity which the Moderator laments that you have thrown away, I hereby restore to you this lost opportunity as freely as if you had never parted with it.

"I authorize you (if such be your pleasure) to cite me at any time within the next thirty days to appear at the bar of Plymouth Church for trial on the charge heretofore made against me, namely, that of 'circulating and promoting scandals derogatory to the Christian integrity of the pastor and injurious to the reputation of the church.'

"My only stipulation concerning the trial is that it shall not be held with closed doors, nor in the absence of the pastor.

"I regret keenly that the Moderator has imposed on me the necessity for making this communication, for nothing but necessity would extort it.

"The practical good which I seek to achieve by this proposition is, that whether accepted or declined, it will in either case effectually put an end forever to the Moderator's grave charge that Plymouth Church has been deprived through me of an opportunity to vindicate its pastor, or that its pastor has been, by any act of mine, deprived of an opportunity to vindicate himself.

"Truly yours, THEODORE TILTON."

"To the above communication I received the following reply from the Clerk of the Church :

"'BROOKLYN, May 18, 1874.

"'DEAR SIR : Your note of the 4th instant, enclosing a letter addressed to Mr. Beecher, Mr. Halliday, and myself, was duly received.

"'This letter has been read by Mr. Halliday, with whose concurrence it has been submitted to the Examining Committee ; and we all deem its contents to present a question which should be decided by that committee, and which should not be submitted to the pastor of the church, to whom, therefore, the letter has not been shown, though he has been advised of its substance.

"'Having consulted the members of the committee, I am informed by them that they see no reason for accepting your proposition, or even for laying it before the Church.

"'Whatever view may be taken of the case by others, the Examining Committee and the Church have seen no necessity for vindicating any member of the church from charges which no one has made, and the church has never, in the twenty-seven years of its history, adopted such a course. No one can, therefore, hold you responsible for the loss of an opportunity to the Church to do that which it never yet has done, and probably never will do.

"'We do not understand your letter as implying that you have any charges to make, but to the contrary. If the Committee had so understood it, they would have readily entertained and fully investigated them.

"'It is proper to add that your name was dropped from the roll, not simply because of the statements made by you *after* charges had been preferred against you, but because months, if not years, *before* any charges were made, you distinctly stated to various officers and members of the church, that you had permanently abandoned your connection with it, thus bringing yourself expressly within the terms of our rule upon this subject. Yours truly,

"'MR. THEODORE TILTON.' THOMAS G. SHEARMAN.'

"As the above communication by Mr. Shearman seemed to bear no official but only a private signature, I addressed to him the following note:

"'174 LIVINGSTON-STREET, BROOKLYN, May 23, 1874.

"'*Mr. Thomas G. Shearman, Clerk of Plymouth Church:*

"'SIR,—My recent communication addressed to the Pastor, the Associate Pastor, and the Clerk of Plymouth Church, is acknowledged by you in a note which you seem to have signed merely as a private individual, and not as an officer of the church.

"'I call your attention to the fact that I did not address you in your private capacity, but solely as the Clerk of Plymouth Church.

"'I therefore respectfully request to be informed by you, definitely and in writing, whether or not I am at liberty to regard your letter as an official reply to mine. Truly yours,

THEODORE TILTON.'

"Mr. Shearman's reply was as follows:

"'81 HICKS STREET, BROOKLYN, May 29, 1874.

"'DEAR SIR: In reply to your inquiry whether my letter of 18th inst. was an official answer to yours of 4th inst., I beg to say that I did not feel at liberty, without the express authority of the church itself, to sign that letter as its clerk.

"'In so far as the letter stated that your proposition of May 4 was declined, it was official: since as Clerk of the church I declined then, and decline now, to lay the proposal before the church itself, holding myself responsible to the church for so doing.

"'The remainder of the letter of 18th inst. must be regarded as my individual statement of what I believe to be the unanimous opinion of the officers of the church.

Your obedient servant,
THOMAS G. SHEARMAN.

"'MR. THEODORE TILTON.'

"It will thus be seen that Mr. Shearman, in answer to my inquiry, characterizes his previous letter to me as partly official and partly unofficial—though how he could originally have expected me to draw the dividing line between its two parts without this subsequent explanation, I am at a loss to understand. But the official portion of his letter (now that it has been pointed out to me) is sufficient to answer your query, 'When did Mr. Tilton cease to be responsible to the Plymouth Church?' I respectfully submit that, setting aside all previous cavils and technicalities concerning the church-roll, I may be fairly said to have ceased my responsibility to Plymouth Church when the Clerk of that church officially informed me that my voluntary offer to return and be tried was officially declined.

"IV. In your five essays you were led, through ignorance of the facts, to make several other erroneous and injurious statements concerning my case; but the corrections and explanations which I have already given will of themselves correct the others.

"—It now remains for me to give you some reasons why I have been prompted, after years of reticence, to lay before you the grave matters contained in this communication. Nothing could induce me to make my present use of the foregoing facts except the conviction which the events of the last year, and particularly of the last half year, have forced upon my mind that Mr. Beecher, or his

legal and other agents acting in his interest and by his consent, have shown themselves willing to sacrifice *my* good name for the maintenance of *his*. I have come slowly to this judgment—more slowly than my personal friends have done; but that I am not mistaken in it, you shall see by a few illustrative instances:

"I. I have already shown you how the church, at a public meeting, on Friday evening, Oct. 31, 1873, by an official document which was published the next morning in every leading journal in New York, gave the public falsely to understand that I had been cited to answer charges, when I had really been requested *not* to answer them:—a piece of ecclesiastical misrepresentation, which was the more grievous to me because it was subsequently accepted by the Council as authentic, and because it is still widely believed by the public.

"II. Mr. Beecher's journal, *The Christian Union*, published this official falsehood to a wide circle of readers, and took no notice of the correction which I addressed at the time in a brief note to the Council. Let me ask you to weigh the peculiar gravity of this omission by that journal. My case, as presented to the Council by the two protesting churches, was based by them, not on any private or accurate knowledge of the facts, but solely on the published mis-statements of those facts by Plymouth Church. I was described by the two churches to the Council as follows:

"'Specific charges of grossly un-Christian conduct are presented against him by a brother in the church, *to which charges he declines to answer*," &c.

"You will remember that I promptly addressed to you a reply to the above, in which I used the following explicit words:

"'Gentlemen of the Council, every man among you knows that I did *not* decline to answer.'

"You, as Moderator of the Council, courteously gave me the ecclesiastical reasons why my letters could not be officially laid before that body; but can you give me any honorable reason why my defense should not have been published in *The Christian Union?* If every other American journal should be destroyed, and only the files of *The Christian Union* should remain, that journal's report of my case would represent me as a culprit, first, who had slandered a clergyman; next, who had been summoned before the church to answer for this calumniation; next, who had evaded this summons by resorting to the safe-shelter of non-membership; and last, who on account of this moral poltroonery, had been dropped from the roll. Such is the record which Mr. Beecher's journal contains of my case, up to date.

"III. During the Council, and when there seemed a probability that Plymouth Church would receive condemnation and be disfellowshipped by the neighboring churches, Mr. Beecher inspired a message from his church to the Council, closing with these words:

"'We hold that it is our right, and may be our duty, to avoid the evils incident to a public explanation or a public trial; and that such an exercise of our discretion furnishes no good ground for the interference of other churches, *provided we neither retain within our fellowship, nor dismiss by letter, as in regular standing, persons who bring open dishonor upon the Christian name.*'

"This adroit insinuation against me is what you, as Moderator of the Council, know to have been the turning point in the fortunes of Plymouth Church before that tribunal. The Council's verdict borrows almost these identical words. It says, 'The accused person has not been retained in the church, nor commended to any other church.' You too quote these words—borrowed thus doubly from the Church's plea and from the Council's verdict—and you then logically say, 'Therefore the abnormal method in which the charges against him [me] were disposed of was overlooked.' In other words, the Council, on reading the above excusatory petition sent up to it by Plymouth Church, found in it the one and only ground for retaining that church within the Congregational fellowship; and this one and only ground was because Mr. Beecher's final appeal to the Council represented me as a person who had neither been retained in his church, nor been recommended to any other, but who was dropped from the roll for bringing 'dishonor on the Christian name.' This document—constituting Plymouth Church's ungenerous defense before the Council—was ac-

cepted by you in good faith, and has since led you to point against me the following cruel words:

"'The Plymouth Church,' you say, 'made it known that they were no longer responsible for the dishonor which he has brought or may bring on the name of Christ. They dropped him from the roll of the church. In one word, they excommunicated him, for such a dropping from the roll was excommunication from the church.'

"You never could have uttered the preceding injurious words against me, had not Mr. Beecher and his church-agents given you the materials for so doing by ingeniously putting before the Council a document which you as Moderator interpreted as being only another way of Plymouth Church's saying that I had brought dishonor on the Christian name, and had therefore been excommunicated.

"Do not misunderstand me. I will not say that, in my unsuccessful management of this unhappy scandal, I have brought no 'dishonor on the Christian name'—the one name which, of all others, I most seek to honor. With infinite sorrow I look back through the last few years, and see instances in which, by the fatality of my false position, I have brought peculiar 'dishonor on the Christian name'—all which I freely acknowledge, and hope yet to repair. But I solemnly aver—and no man shall gainsay me—that the reason why Plymouth Church avoided an investigation into the scandal with which *I* was charged, was not because *I*, but another man, had 'brought dishonor on the Christian name.' And yet this other person, a clergyman, permitted his church to brand me before the Council with an accusation which, had I been in his place, and he in mine, I would have voluntarily borne for myself, instead of casting on another.

"III. I will adduce a further instance by a quotation from a letter which I had occasion to address to Mr. Beecher, dated May 1, 1874:

"'*Henry Ward Beecher*:

"'SIR,—Mr. F. B. Carpenter mentions to me your saying to him that under certain conditions, involving certain disavowals by me, a sum of money would or could be raised to send me, with my family, to Europe for a term of years.

"'The occasion compels me to state explicitly that so long as life and self-respect continue to exist together in my breast, I shall be debarred from receiving, either directly or indirectly, any pecuniary or other favor at your hands.

"'The reason for this feeling on my part you know so well that I will spare you the statement of it. Yours truly,

THEODORE TILTON.'

"IV. Take another instance. You will perceive that in Mr. Shearman's letter, given above—the letter officially declining my offer to return to the church to be tried—he says, under date, May 18, 1874:

"'Your note of 4th inst., enclosing a letter addressed to Mr. Beecher, Mr. Halliday, and myself, was duly received. *This letter has been read by Mr. Halliday, with whose concurrence it has been submitted to the Examining Committee.*'

"And yet, a month and a half after Mr. Halliday saw this letter, and a month after Mr. Shearman had officially replied to it, *The Brooklyn Union* of June 19th contained the following singular statement by a reporter who visited Mr. Halliday:

"'In an extract,' says *The Union*, 'from a letter written to *The Chicago Tribune*, it is stated that Mr. Tilton had addressed a note to the "trustees of Plymouth Church." *The Tribune's* correspondent declares that Mr. Tilton "not only expresses his willingness but desire to answer any summons as a witness during the next thirty days." A *Union* reporter (Mr. Tilton not being accessible) called on Rev. Mr. Halliday to-day, and, upon presenting the extract to him, was assured that the person who corresponded with *The Chicago Tribune* must have been misinformed. The very fact of his stating that the letter was addressed "to the trustees of the church," he said, "was an absurdity." The trustees only attended to temporalities of the church. *If Mr. Tilton had written such a letter, of which, however, he had no knowledge, it would have been either addressed to the church, to its pastor, or to some member or members.* At the last Friday evening meeting no such letter had been presented for consideration, and

he was certain none had since been received, although he must say he had been absent in Massachusetts about a week. *He added that he had reason for believing that Mr. Tilton felt "a little sore about what Rev. Mr. Bacon had said of him. But whether he would take to writing letters about it he couldn't say."'*

"And yet Mr. Halliday, according to Mr. Shearman's testimony above given, had read my letter forty days before thus denying that he had ever seen or heard of it.

"A similar statement to the above appeared in *The Brooklyn Eagle* at the same time (June 20) as follows:

"'The trustees of Plymouth Church deny that Theodore Tilton has addressed a letter to them offering himself as a witness, and expressing a desire to answer certain charges against Mr. Beecher, during the next thirty days. They say that the whole story is false from beginning to end.'

"The above are recent specimens—not solitary or unique—of the manner in which Mr. Beecher's agents have not hesitated to use the Brooklyn press, on numerous occasions, to misrepresent and pervert my case to the community in which I reside, and to the public at large.

"V. Furthermore, I regret to point you to the evidence that Plymouth Church, or rather the attorney who now acts as its clerk, is attempting to make up a false but plausible record concerning this case for the purpose of appealing to it in future to my disadvantage. It was to this end that Mr. Shearman ingeniously incorporated in his letter to me, dated May 18, 1874, the following words:

"'We do not understand your letter as implying that you have any charges to make, but the contrary. *If the Committee had so understood it, they would have readily entertained and fully investigated them.*'

"The manifest object of the above record is to enable the church to say, a year or five years hence, that if I ever had any charges to make against Mr. Beecher, the church had long ago given me an abundant opportunity to make them. Mr. Shearman is still more bold in his communication to *The Independent*, dated June 18, 1874. He therein says of the church:

"'Its officers have, in the proper way, without parade, *given every facility for investigation that could reasonably be desired even by the most captious critics.*'

"The above statement by Mr. Shearman is made in a letter which was put forth by him ostensibly in my interest, and which I am already accused of having inspired. This leads me to disavow the declaration which I have last quoted, as insincere, and at variance with the truth.

"VI. Not to multiply instances needlessly, there is one other to which my self-respect compels me to allude with painful explicitness. In your New Haven speech you characterized Mr. Beecher as the most magnanimous of men, and in the context referred to me as a knave and dog. You left the public to infer that I had become in some despicable way the creature of Mr. Beecher's magnanimity. Early in April last I called Mr. Beecher's attention to the offensiveness and injuriousness of your statement, and informed him that I should insist on its correction either by him or me. In order to provide him with an easy way to correct it, involving no humiliation to his feelings, I addressed to you the following letter:

"'BROOKLYN, April 3, 1874.

"'*Rev. Leonard Bacon, D.D.:*

"'MY DEAR SIR,—I have just been reading *The Tribune's* report of your Yale speech on the Brooklyn Council, in which occurs the following paragraph:

"'Another part of my theory is that Mr. Beecher's magnanimity is unspeakable. I never knew a man of a larger and more generous mind. One who was in relations to him the most intimate possible, said to me, "If I wanted to secure his highest love, I would go into a church-meeting and accuse him of crimes." This is his spirit. But I think he may carry it too far. A man whose life is a treasure to the Church Universal, to his country, to his age, has no right to subject the faith in it to such a strain. Some one has said that Plymouth Church's dealing with offenders is like Dogberry's. The comparison was apt: "If anyone will not stand, let him go and gather the guard, and thank God that

you are rid of such a knave." So of Lance, who went into the stocks and the pillory to save his dog from execution for stealing puddings and geese. I think he would have done better to let the dog die. And I think Mr. Beecher would have done better to have let vengeance come on the heads of his slanderers.'

. . . .

"'Setting aside the satire and mirth, if there be any criticism directed toward me in these words in sobriety and earnestness, then I beg you to do me the following act of justice:

"'Please forward to Mr. Beecher the letter which I am now writing, and ask him to inform you, on his word of honor, whether I have been his slanderer—whether I have spoken against him falsely—whether I have evaded my just responsibility to Plymouth Church—whether I have treated him other than with the highest possible fairness—and whether he has not acknowledged to me, in large and ample terms, that *my* course toward *him* in this sorrowful business has been marked by the magnanimity which you apparently intimate has characterized *his* toward *me*.

"'If you will write to Mr. Beecher as I have indicated, I will thank you for a line as the words or substance of his reply.

With great respect, I am truly yours,

THEODORE TILTON.'

"In reply to the above letter, you sent me the following:

"'NEW HAVEN, April 10, 1874.

"'*Theodore Tilton, Esq.:*

"DEAR SIR.—Not being in Mr. Beecher's confidence, I have doubted what I ought to do with your letter written a week ago. I was not—and am not—willing to demand of him that he shall admit me to his confidence in a matter on which he chooses to be reticent. But as the letter seems to have been written for *him* quite as much as for *me*, I have now sent it to him without asking or expecting any reply.

. . . . . .

"'With the best wishes for your welfare, I am,

Yours truly,

LEONARD BACON.'

"It is now between two and three months since I received from you the foregoing letter; and as I have not heard that Mr. Beecher has made a reply, either to you or to me, I am at last forced to the disagreeable necessity of borrowing a reply in his own words as follows:

"'BROOKLYN, Jan. 1, 1871.

"'I ask Theodore Tilton's forgiveness, and humble myself before him as I do before my God. He would have been a better man in my circumstances than I have been. I can ask nothing except that he will remember all the other breasts that would ache. I will not plead for myself. I even wish that I were dead.

. . . . . .

H. W. BEECHER.'

"The above brief extract from Mr. Beecher's own testimony will be sufficient, without adducing the remainder of the document, to show that I have just ground to resist the imputation that I am the creature of his magnanimity.

"In conclusion, the common impression that I have circulated and promoted scandals against Mr. Beecher, is not true. I doubt if any other man in Brooklyn, during the whole extent of the last four years, has spoken to so few persons on this subject as I have done. A mere handful of my intimate friends—who had a right to understand the case—are the only persons to whom I have ever communicated the facts. To all other persons, I have been dumb—resisting all questions, and refusing all explanations.

"If the public have heretofore considered my silence as inexplicable, let my sufficient motive be now seen in the just forbearance which I felt morally bound to show to a man who had sent me a written and absolute apology.

"But my duty to continue this forbearance ceased when the spirit of that apology was violated to my injury by its author or his agents. These violations have been multitudinous already, and they threaten to multiply in the future—

forcing me to protect myself against them in advance—particularly against the cunning devices of the Clerk of the Church who, acting as an attorney, appears to be conducting this business against me as if it were a case at law.

"Had the fair spirit which I had a right to expect from Plymouth Church—at least for its pastor's sake—been shown toward me, I would have continued to rest in silence on Mr. Beecher's apology, and never during the remainder of my life would I have permitted any public word of mine to allude to the offense or the offender.

"But the injurious measures which the author of this apology has since permitted his church to take against me, without protest on his part—measures leading to the misrepresentation of my case and character by the church to the Council, and by the Council to the general public—involving gross injuries to me, which have been greatly aggravated by your writings—all these indictments, conjoining to one end, have put me before my countrymen in the character of a base and bad man—a character which, I trust, is foreign to my nature and life. Under the accumulating weight of this odium, unjustly bestowed on me, neither patience nor charity can demand that I keep silent.

"In your capacity as ex-Moderator of the Council, and as its chief expositor, you have labelled the theme of your animadversions 'the celebrated case of Theodore Tilton.'. You have declared that 'the transaction with all its consequences belongs to history, and is in every way a legitimate subject of public criticism.' If, therefore, your estimate of the historic importance of the case is true (though I hope it is not), I now finally appeal to you as its chief historian not to represent me as playing an unmanly or dishonorable part in a case in which, so far as I can yet see, I have failed in no duty save to myself.

Truly yours, THEODORE TILTON."

[Letter marked "Exhibit No. 33."]

Mr. Evarts.—Before we adjourn, will you allow me to suggest to the counsel that we would like to see, on the termination of the recess, the original papers which are substitutes for those just read?

Mr. Fullerton.—That will be done, unless the illness of Mr. Morris continues.

AFTERNOON SESSION.

FRANCIS D. MOULTON'S direct examination resumed.

Mr. Fullerton.—Before the recess you stated that you promised Mr. Beecher, if possible, to prevent the publication of the Bacon letter. If you used any efforts in that direction, you will please now state them? A. I went to *The Golden Age* office after the——

Mr. Evarts.—We don't understand that to be admissible.

Q. Did you make efforts in pursuance of your promise to Mr. Beecher to prevent the publication of that letter? A. I did.

Mr. Evarts.—That we object to.

Mr. Beach.—Did you apprise Mr. Beecher of the efforts you made? A. Yes, sir; I told him what I had done.

Mr. Fullerton.—What did you report to Mr. Beecher that you had done in that direction?

Mr. Evarts.—We want to get it right.

Mr. Fullerton.—We want to get it right.

Mr. Evarts.—Yes, but we don't want to get wrong first.

Mr. Fullerton.—I have a right to show what he did and what he reported.

The Witness.—I said to Mr. Beecher that I went to *The Golden Age* office the day after the letter had been read to me to suggest further alterations to

Mr. Tilton—changes that I deemed necessary; and I said to him that after I had made these suggestions to Mr. Tilton, he told me that the paper had gone to press. I told Theodore that I thought—I said to Theodore that the letter ought not to be published, that I had told him that the night that he had read the letter to me in the presence of witnesses, and that I had said that to him in the presence of witnesses, and that I had said the same thing to him the day after I had heard the letter read; that he insisted on its publication; and I said to Mr. Beecher, "I have done the best I could. I have procured the introduction in this letter of the word 'offense' in place of the words 'that he has committed against me and my family a revolting crime."

Q. Had you done, previous to that conversation with Mr. Beecher, what you reported to him to have done? A. Certainly.

Q. Take the Bacon letter and point out specifically the alterations which you suggested, and which were made in pursuance of your suggestion? A. [Reading from the Bacon letter.] "In producing to your inspection some hitherto unpublished papers and documents in this case, I need first to state a few facts in chronological sequence, sufficient to explain the documentary evidence which follows: 1. After I had been for fifteen years a member of Plymouth Church, and had become, meanwhile, an intimate friend of the pastor, knowledge came to me in 1870 that he had committed against me an offense which I forbear to name or characterize." It read, sir, in the original manuscript, if I remember correctly—the substance of it I do remember correctly—"knowledge came to me in 1870 that he had committed against me and my family a revolting crime."

Mr. Evarts.—Is the original manuscript in existence? A. I don't know, sir, whether it is or not.

Mr. Evarts.—We would like to have that, if it is.

Mr. Fullerton.—Now, if any other alteration was made, please state it? A. Well, sir, I forget the alterations. Perhaps if I should read the letter carefully——

Mr. Evarts.—He has not testified to any but this one.

Mr. Fullerton.—Well, Mr. Evarts, I did not say he had. I only asked him, if any other alterations were made, now to state them.

Mr. Evarts.—No, this is the point: This matter he has stated as having been a subject talked about between him and Mr. Beecher, but this is the only alteration that he has spoken of as being the subject between him and Mr. Beecher.

Mr. Fullerton.—I still do not see the occasion of the interruption.

JUDGE NEILSON.—You might avoid the objection by asking him whether he reported any other alteration to Mr. Beecher, and, if so, what?

Mr. Evarts.—Exactly.

Mr. Fullerton.—That is true. I might incorporate two questions into one, but I do not know that that is absolutely necessary in the trial of a cause.

JUDGE NEILSON.—I think the testimony must be limited to the alterations he reported to Mr. Beecher.

Mr. Fullerton.—I propose to limit it.

Mr. Evarts.—One he has testified to.

Mr. Fullerton.—I am aware of that. It is not worth while to indicate to

me what he has testified to. I understand it perfectly well. I don't want interruptions for the sake of interruptions.

Mr. Evarts.—No.

Mr. Fullerton.—Now, if there was any other alteration made in that document before it was printed, I want you to point it out? A. I did tell Mr. Beecher that I had suggested other alterations. I don't remember what they are now, but I told him what they were.

Q. What occurred subsequently to that in reference to the Bacon letter? any conversation you may have had with Mr. Beecher in regard to it, you may now detail, if you please. A. Mr. Beecher said that the Bacon letter was a dead shot; I remember that expression.

Q. In what conversation did he make use of that term? A. When he came to talk to me about—when he came and said to me—asked me what reply I thought it was best to make to the Bacon letter, if any.

Q. And what reply did you counsel? A. I said to Mr. Beecher, "I recommend the same policy that we pursued in regard to the Victoria Woodhull letter or document—silence."

Q. Was any other course proposed? A. Yes, sir; I submitted to him a paper which I had dictated to Frank Carpenter, and I said: "Mr. Beecher, if anything is said I deem it most judicious that this should be said," and I read to him that which I had dictated to Mr. Carpenter.

Q. In whose handwriting was that paper? A. That paper was in Carpenter's handwriting. Mr. Beecher asked me for a copy of it.

Q. Did you give him a copy of it? A. I did give him a copy of it.

Q. In whose handwriting was the copy? A. It was in my handwriting.

Q. Look at the paper now shown you and say whether it is the original of that paper? A. Yes, sir; that is the original.

Q. What occurred between you and Mr. Beecher with reference to this proposed card after the interview of which you have just spoken? A. Well, I have not finished that interview.

Q. Well, please finish it? A. I said Mr. Beecher asked me for a copy of it. I gave him a copy of it, with an alteration or two in it, and he said that he would make a copy of it in his own handwriting—make a copy of that copy in his own handwriting, and submit it to some of his friends.

Q. Did he afterwards state whether he had submitted it to his friends? A. I don't remember whether he did or not, sir.

Q. What occurred with reference to that card at any time after that? A. I met Mr. Beecher on July the 5th, I think, and I said, "Well, Mr. Beecher, you have not uttered from your pulpit, or anywhere—given utterance to the words that I prepared for you; at least I have not seen any such expression;" and he said, "No, you advised silence particularly." "Yes," I said, "I advised silence, but I think you have had a good opportunity to make that expression;" and I said, "At the Friday evening prayer-meeting your church seemed to be in entire sympathy with you, and I think you might have availed yourself of that occasion to have made that expression." And he said, "Well, I am not to blame for that. You advised silence, and I have followed the course you advised."

Mr. Fullerton.—I now offer the paper in evidence.

The Witness.—I had a subsequent conversation with Mr. Beecher about it, and I told him that I had seen Gen. Tracy concerning a reply to the Bacon letter, and that I had asked Gen. Tracy if he had submitted the paper to him, and I said to Mr. Beecher that Mr. Tracy's reply was that he had seen a paper in which he thought he detected my handiwork, and that Gen. Tracy had said to me that the words "I have committed no crime," really said nothing in denial of the fact as alleged by Mr. Tilton against—or as to the fact between Mr. Tilton and Mr. Beecher—or Mr. Beecher and Mrs. Tilton's relations; that as nearly as I could remember the words he said, "I have committed no crime," did not mean anything, because adultery was no crime under the common law. That is as nearly as I could repeat it, and I said to him that I had told Gen. Tracy that I did not think that was a good objection; that I thought the community would accept that card as a distinct denial—that utterance, rather—that that utterance would be accepted by the community as a distinct denial, and that it ought to be made, or some such utterance should be made, since Beecher assented—since Mr. Tilton assented to peace if that utterance was made, or if silence was kept.

Q. You are now relating the conversation that you had with Mr. Beecher, in which you repeated the conversation that you had with Mr. Tracy? A. Precisely.

Q. And did you have that conversation with Mr. Tracy as you repeated it to Mr. Beecher? A. I did.

Mr. Fullerton.—I will now read this.

Mr. Tracy.—There has been an alteration in this.

The Witness.—Two unessential changes.

Mr. Tracy.—The one he gave to Mr. Beecher ought to be the one produced.

Mr. Evarts.—Let us understand about it. I hold in my hand what is considered as an original paper, in a certain sense. [To the witness.] It is a paper in the handwriting of Mr. Carpenter, as I understand it? A. Yes, sir.

Q. It was written by him from your dictation? A. Yes, sir.

Q. That is, he wrote it down from what you said to him? A. Yes, sir.

Q. This was shown to Mr. Beecher? A. I read it to him.

Q. Well, read it to him? A. Yes, sir; and I made a copy of it.

Q. And made a copy of it which was an exact copy of it? A. No; it was with one or two unessential alterations in the grammatical construction; that is all—the words.

Q. That we don't know much about? A. No.

Mr. Evarts.—This paper was shown to Mr. Beecher, and this paper can be read. Whenever the paper given to Mr. Beecher is to be read, why, that will have to be produced. It was changed.

Mr. Fullerton.—I read as follows:

"This church and community are unquestionably and justly interested through the recent publication by Theodore Tilton in answer to Dr. Leonard Bacon of New Haven.

"It is true that I have committed an offense against Theodore Tilton and giving to that offense the force of his construction, I made an apology and reparation such as both he and I at the time deemed full and necessary. I am con-

vinced that Mr. Tilton has been goaded to his defense by misrepresentations or misunderstanding of my position towards him. I shall never be a party to the reopening of this question, which has been honorably settled as between Theodore Tilton and myself. I have committed no crime, and if this society believes that it is due to it that I should reopen this already too painful subject or resign, I will resign. I know as God gives me the power to judge of myself that I am better fitted to-day through trials and chastening to do good, than I have ever been."

[Letter marked "Exhibit No. 34."]

Q. At whose suggestion, if at anyone's, did you submit that paper to Mr. Tracy? A. What is the question?

Q. At whose suggestion, if at anyone's, did you submit that paper to the consideration of Mr. Tracy? A. My own.

Q. And what was said by Mr. Beecher in regard to that act? A. He approved of it.

Q. What did he say, and what did you say to him? A. I said to him that I had submitted the paper to Mr. Tracy, and he said nothing further with regard to it; I don't remember that he made any reply.

Mr. Evarts.—One moment, Mr. Fullerton. Isn't there some misunderstanding? I understand Mr. Moulton as testifying that he asked Mr. Tracy if Mr. Beecher had submitted it to him.

JUDGE NEILSON.—Mr. Tracy told him that he had seen the paper.

Mr. Fullerton.—That is not inconsistent.

Mr. Evarts.—I am only asking to get at the fact. Now, I understand him to say that he submitted the paper? A. That I submitted the paper to Mr. Tracy?

Q. Yes, sir. A. I asked him if he had seen any paper.

Mr. Evarts.—Your Honor sees that I am correct about it.

JUDGE NEILSON.—The counsel accept your correction.

Mr. Fullerton.—Go on and state what further was said, if anything, to Mr. Beecher, in regard to that paper? A. I said that I had asked Mr. Tracy whether—I repeated the exact conversation as nearly as I could to Mr. Beecher that I had had with Mr. Tracy, and I told him what Mr. Tracy had said, and that I did not consider his objection was a good one; that was all.

Q. Had Mr. Tracy been in any way connected with this controversy prior to that time? A. He had; yes, sir.

Q. And is that a reason why you suggested Mr. Tracy's name in that connection? A. That is the reason that I went to Mr. Tracy; yes, sir; one of the reasons.

Q. When did Mr. Tracy's connection with the case first commence? A. After the Victoria Woodhull publication.

Q. The autumn of 1872, that was, I think? A. Yes, sir; November, 1872.

Q. Under what circumstances did he become connected with it? A. My partner, Mr. Woodruff, after the publication of the Victoria Woodhull story, came to me and said that I was severely criticised for my position with regard to it, and that several of his friends and of my friends thought that I should say something, make some statement with regard to it, and I said I didn't want to do it.

Mr. Evarts.—That has nothing to do with this, if your Honor please.

Mr. Fullerton.—I shall connect them all with Mr. Beecher.

Mr. Evarts.—The Judge has indicated several times that the best way is to begin with Mr. Beecher's connection.

JUDGE NEILSON.—I think so. I think you could have him state what he reported to Mr. Beecher that occurred between him and Mr. Woodruff, without repeating the conversation.

Mr. Fullerton.—I can do it in that way, and I certainly will do it in that way if your Honor so instructs me, but it is not the natural order of events, and I think we are entitled, on our side, to all the force and effect growing out of the natural statement of the events as they took place.

JUDGE NEILSON.—You expect to connect it?

Mr. Fullerton.—I think your Honor will give me the credit for intending in good faith to connect Mr. Beecher with all that I prove by Mr. Moulton with reference to this matter.

JUDGE NEILSON.—If you are so advised, you can go on.

Mr. Fullerton.—I do not want you, Mr. Moulton, to state anything that was said to you that you did not communicate to Mr. Beecher.

Mr. Evarts.—If he is asked the question what he did communicate to Mr. Beecher, we will take it.

Mr. Fullerton.—You may take it, I think, in another way.

Mr. Evarts.—I think not.

Mr. Fullerton.—You may.

Mr. Evarts.—We will except to any other way.

Mr. Fullerton.—I don't want to put the cart before the horse.

Mr. Evarts.—You may put the cart and never bring the horse, and that we don't want.

Mr. Fullerton.—You don't want either cart or horse.

Mr. Evarts.—I want both, or not have either.

Mr. Fullerton.—We mean to have our horse go first, if possible, and you will see what he draws into the case. I want to prove by this witness what was said to him which he afterwards communicated to Mr. Beecher, and I think there will be no misapprehension about it at all. I do not design to prove anything that was said to him that was not communicated to Mr. Beecher.

JUDGE NEILSON.—Well, in the meantime, it is just as well, and of course it is more correct, to ask him what he communicated to Mr. Beecher in respect to his conversation with Mr. Woodruff, and there you have the whole matter.*

* The reason of the rule is that the former conversation quoted in the presence of the party is not, in and of itself, competent, but it becomes admissible because necessary in its character as matter of inducement, to give point and meaning to the answer which the party made to it, or to the act with which he followed it when it was quoted to him. See *Donnelly* v. *The State* (2 Dutch, 601, 613).

In practice it is not unusual to allow the previous conversation to be called for and stated, following it up by testimony that its substance was subsequently communicated to the party; but as matter of right it is only that which was actually said or done in the presence of the party which is admissible under this rule. It is the communication to the party and not the prior fact, constituting

Mr. Fullerton.—I have the whole matter also, if your Honor please, in the question: "State what was said to you which you afterwards communicated to Mr. Beecher?"

JUDGE NEILSON.—I think you should take the other course.

Mr. Fullerton.—I will; I will acquiesce very cheerfully. [To the witness.] Now what did you state to Mr. Beecher which had been stated to you? A. I said to Mr. Beecher that my partner, Mr. Woodruff, was very anxious that I should make some statement with regard to the Victoria Woodhull publication, inasmuch as many of his friends and many of mine, or several of his friends and several of mine, had criticised my position in reference to the story; that they not only criticised me but they criticised the firm, for my relation to the story; and I said to Mr. Beecher that Mr. Woodruff recommended me under the circumstances, to take counsel in the matter; and I said to Mr. Beecher that I had asked Mr. Woodruff whom he would recommend, and he said that he would recommend Mr. Tracy; and I said to Mr. Beecher that I thought Mr. Tracy was a good man to consult on the subject; that he had a good cool head on his shoulders, and I thought would give good advice; and I said to Mr. Beecher, "If you have no objection, I will consult with Gen. Tracy, but to consult with Gen. Tracy, and to get his best advice upon the subject, it will be necessary to tell Gen. Tracy the truth. If you have no objection, then, I will assent to my partner's wish, and consult with Gen. Tracy," and he said that he had no objection if I thought it was best, and I said that I did not see that I had any other course to pursue; my partner wanted me to do it, and I thought it was necessary to take advice, and that I did not know any better man to consult on the subject than Gen. Tracy. I informed Mr. Beecher afterwards—I said to Mr. Beecher afterwards that I had told my partner that I was willing to consult with Gen. Tracy, and that he had made an appointment with Gen. Tracy, and I had seen Gen. Tracy on the subject of the Victoria Woodhull story.

Q. In company with your partner? A. With my partner, yes sir; and I told him what transpired at that interview between Mr. Woodruff, Gen. Tracy and myself.

Q. Now, relate what you told him? A. I said to Mr. Beecher, "I told Mr. Tracy the truth of the matter; I told him the fact in the case as it was, that you had been guilty of sexual intercourse with Mrs. Elizabeth Tilton, and he said, in the presence of my partner, that if that was true it must be concealed at all hazards," and I said that Mr. Tracy said that although he did not recommend lying, this was one of the cases in which lying was justifiable. And I said that my partner replied to that that he would not consent that I should publish a card with my name affixed to it denying that which was the truth; he would not allow that; and that Mr. Tracy had said, "Why can't Moulton and Tilton go to Europe for a couple of years?" I also informed Mr. Beecher afterwards, and said to him that we had had a consultation at our house—at my house—in my study, between Gen. Tracy, Mr. Woodruff, and

the subject of the communication, which is admissible. The fact that the alleged prior conversation never took place, and that the communication made to the party was wholly fictitious, would not necessarily render it inadmissible. See *Burgess* v. *Burgess* (2 Hagg. Consist. 223); *Croft* v. *Croft* (3 Hagg. Ecc. 310).

myself and between Mr. Tracy, Mr. Woodruff, Mr. Tilton, and myself, and that at that interview I had told Mr. Tracy again the truth, and had laid before Mr. Tracy the letter of contrition.

Q. Of January 1, 1870? A. January 1, 1870; yes, sir; that I had laid before Mr. Tracy that letter.

Q. 1871? A. 1871, I mean; January 1, 1871; I said that I had told him the truth with regard to the whole matter, and that no conclusion at that interview was arrived at; that we had tried to devise a reply to the Victoria Woodhull story, but had not at that interview succeeded; and I told him that I had communicated the fact to Mr. Tilton, that I had told Gen. Tracy the fact in the case, and that Theodore Tilton had denounced me for so doing, and had said to me that I had no business to reveal the guilt of Elizabeth to Mr. Tracy, without his consent, and that I had pacified Mr. Tilton by telling him that I had considered it my duty to take the best advice I could on the question, not only for Mr. Beecher's sake—that I did not consult Mr. Tracy as Mr. Beecher's friend at all, particularly, but as the friend of all the parties, as a man capable of advising with reference to that which had better be done. I told him that after a while Theodore was willing to see Gen. Tracy, and that he went upstairs and did see Gen. Tracy in the presence of Mr. Woodruff and myself; and I told him that the first question that Mr. Tilton—the first sentence that Mr. Tilton, or about the first sentence that Mr. Tilton uttered, after the usual salutations between gentlemen was, "Mr. Tracy, I do not understand the etiquette of your profession, but, as I understand it, since these facts are to be laid before you, a part of which have been laid before you—or all the fact and part of the papers have been laid before you—I understand that you will not, under any circumstances, in case Mr. Beecher and myself come into collision, act as his counsel," and that Mr. Tracy had said, "Certainly not."

Q. What reply, if any, did Mr. Beecher say to this? A. Mr. Beecher said to me that he was glad that Theodore had assented to that conference; that he hoped some good would come out of it, but that he did not see himself what reply could be made, and that he considered, perhaps, that the policy of silence was the best for all concerned.

Q. Is that all that took place that you can now remember with reference to that branch of the case? A. I told Mr. Beecher that Mr. Tracy had said to Mr. Tilton in the presence of Mr. Woodruff and myself at that interview that the interests of all concerned demanded a denial of that story. That is all that I remember.

Mr. Evarts.—You mean of the Woodhull story? A. Of the Woodhull story; yes, sir.

Mr. Fullerton.—Then we will return to 1874 again, and take up the narrative where we left it off. Do you recollect a meeting in the month of July of that year, where Mr. Beecher and yourself and Mr. Robinson were parties? A. You have reference to July the 5th?

Q. July the 5th? A. Yes; I remember that.

Q. State where that meeting occurred? A. Between Mr. Robinson, Mr. Beecher, and myself?

Q. Yes, sir. A. After Mr. Beecher and myself had left the house, we walked through Remsen-street, around into Montague Terrace, and there met Mr. Robinson, and after some remarks which I do not distinctly remember, between Mr. Robinson and Mr. Beecher, Mr. Beecher put his hand over my shoulder and said, "Mr. Robinson, this is the best friend God ever raised up to a man. If it had not been for him I do not think I would be alive to-day."

Q. Which of the Mr. Robinsons? A. Mr. Jeremiah P. Robinson.

Q. State whether Mr. Beecher knew from you at that time that Mr. Robinson had been put in possession of these secrets? A. Yes, sir; I had told him that I had told both Mr. Woodruff and Mr. Robinson.

Q. Your two partners? A. Yes, sir.

Q. Which Woodruff? A. Franklin Woodruff.

Q. Which Robinson? A. Jeremiah P. Robinson.

Q. When did you tell Mr. Beecher that you had thus communicated the secret to those two gentlemen? A. Oh! it was quite early, sir; I don't remember.

Mr. Evarts.—He did not use the word "secret."

The Witness.—It was 1870, I think, I told him—1871, rather.

Q. That you told Mr. Beecher? A. Yes, sir.

Q. And what did you tell him? A. I told him that my partners were very anxious to know what was going on; I told him that I had consulted with Mr. Robinson in the very beginning in regard to the letter of January 1, 1871, to Mr. Bowen.

Mr. Evarts.—Tilton's letter? A. Yes, sir; and that Mr. Robinson had advised very kindly that Mr. Tilton carry his own case entirely out of that letter, and not appear in it.

Mr. Fullerton.—What did you tell Mr. Beecher you had told Robinson? A. I told him that I had told him the fact concerning his relations between Elizabeth Tilton and himself.

Q. What did you tell him that you had told Mr. Woodruff, your other partner? A. The same.

Q. Look at the letter now shown you and say in whose handwriting it is? [Handing witness a letter.] A. Mr. Beecher's, sir.

Q. Was it received by you? A. Yes, sir.

Q. And about its date? A. Yes, sir.

Q. Before reading that letter I want to ask you whether at any time up to its receipt Mr. Beecher had said anything to the effect that you had failed to serve him faithfully or properly? A. No, sir.

Q. Had he criticized in any way your conduct in the management of the affair in his behalf? A. No, sir.

Mr. Fullerton.—[Reading the letter.]

"PEEKSKILL, July 7, 1873—Monday, 7 P. M.

"MY DEAR FRANK: I have just arrived. I called Saturday ev'g to learn that you wd. not return till Monday. Can you come up Tuesday, or Wednesday, or Thursday? Let me know by letter or telegram. The trains are—A. M., 8, 9:10, 10:45; P. M., 2, 4, 4:15, 5:30, 6:20, and 7. The 4 P. M. is express and good train, if you come in afternoon you should allow 45 minutes from City Hall to reach 42d station, and about an hour from your store.

"I have not seen you since the card. I will take good care of you—and even

if others don't think so much of you as I do, I will try and make up. My vacation is begun—and am I not glad? Next week we expect company.

"The drouth is severe—no real soaking since the last of May, and things are suffering—but, yet the country is beautiful. The birds are as good to me as David's harp—I only need some one to talk to, and that one is *you*.

"Come when you can, and, coming or going, believe me, faithfully and affectionately yours, H. W. B."

[Letter marked "Exhibit No. 35."]

Q. I want to ask you what card Mr. Beecher referred to in that last letter: "I have not seen you since the card"? A. The card in *The Brooklyn Eagle*, I think it refers to.

Q. That letter bears date July 7th, 1873? A. The card in *The Brooklyn Eagle* of June the 2nd, I think it refers to.

Mr. Fullerton.—I want to get at the number of that so as to connect it with that letter. Mr. Pearsall can give you the number of that. It has been read in evidence.

Mr. Pearsall.—A card in *The Eagle* of June, 1873?

Mr. Fullerton.—Yes, sir.

Mr. Pearsall.—"No. 27," *The Eagle* card, June, 1873.*

Mr. Evarts.—June 2nd, 1873. It has not been read yet.

Mr. Fullerton.—A copy of it has been read.

Mr. Evarts.—The proposed card has not been read. You commenced reading one, apparently from *The Eagle*, and then a question arose.

Mr. Beach.—The card as published was read—June 2nd, 1873.

Q. Was that card proposed by any one, that you now hold in your hand? A. Yes, sir; by Theodore Tilton.

Q. Did it come into your possession at the time? A. Yes, sir.

Q. Under what circumstances? A. From Theodore Tilton.

Q. Did you show it to Mr. Beecher? A. Yes, sir; I showed it to Mr. Beecher.

Q. And what did he say in regard to it? A. This was the card that he said would kill him if it was published.

Q. Was there any card published just prior to July, 1873, when he wrote you the letter, in which he says, "I have not seen you since the card"? A. Yes, sir; it was a card with reference to Mr. Bowen's visit to Victoria Woodhull with Mr. Claflin.†

Mr. Fullerton.—That connects it; that's what I want.

The Witness.—Yes, sir.

Mr. Evarts.—We do not understand that the card of June 2, 1873, published in *The Eagle*, has been read; you commenced reading it.

Mr. Fullerton.—Certainly; that is right.

Mr. Fullerton.—Look at the paper now shown you, and say in whose handwriting it is? A. Mr. Beecher's.

Q. Addressed to you? A. Yes, sir.

Q. And did you receive it about the time of its date? A. Yes, sir.

Mr. Evarts.—Is this the letter of July 9th?

Mr. Fullerton.—Yes, sir; the letter of July 9, I propose to read.

* *Ante*, p. 404.

† Exhibit 28, *ante*, p. 405.

Mr. Fullerton.—[Reading.]

"THURSDAY EVENING, 9 July, '73.

"MY DEAR FRANK: Why not come on Saturday and spend Sunday? You must get your comfort out of nature and me, and not notice any withholding of countenance elsewhere.

"I preach in the village in the morning, but you can lie on the hillside—in peace.

"The afternoon and evening will be open for all gracious influences—wh. forests hide, or heavens distil. The birds are not yet silent, though their pipes are somewhat feebler. Flowers are burnt, grass withered, grain reapt, grapes not ripe, strawberries gone, blackberries not come, raspberries in good condition and abundant also water-melons, and besides, a demijohn of—water!

"I want to see you and show you a letter, &c. Do you learn what Bowen is doing? Will he publish? Find out if anything is on hand.

Truly yours, H. W. B.

"Send me a line Friday if you shall come, so that I may *meet the train*, otherwise—pay your own hack hire."

[Letter marked "Exhibit No. 36."]

Q. [Another paper handed to witness.] In whose handwriting is the letter now in your hand? A. Mr. Beecher's.

Q. Addressed to you? A. Yes, sir.

Q. Did you receive it about the time of its date? A. Yes, sir.

Mr. Fullerton.—I offer it in evidence. [Reading.]

"MY DEAR FRANK: I looked for you on Saturday, and received your *note* this morning—Monday.

"Howard writes that T. T. has sent to Mr. Halliday a note announcing that he did not consider himself for two years—a member of the church.

"There is also, a movement to let the other party go to trial; and also, to give him an avoidance of trial by some form of letter, I don't know what. I have not been consulted. I do not mean to meddle. It is *vacation*. Governor Claflin and wife of Massachusetts will be here this week. I am getting at my writing again—at work on my book. I despaired of finishing it. I am more encouraged now. For a thousand encouragements, for service that no one can appreciate who has not been as sore-hearted as I have been, for your honorable delicacy, for confidence, and affection—I owe you so much that I can neither express nor pay it. Not the least has been the great-hearted kindness and trust which your noble wife has shown, and which have lifted me out of despondencies often—tho. sometimes her clear truthfulness has laid me pretty flat.

"I mean to run down some day, and will let you know beforehand, that I may not *miss* you—for to tell the truth, I am a little heart-hungry to see you—not now, because I am *pressed*, but because I love you, and will ever be faithfully yours,

HENRY WARD BEECHER.

"Peekskill, July 14, '73."

[Letter marked "Exhibit No. 37."]

Q. [Paper handed to witness.] In whose handwriting is the paper you now have? A. Mr. Beecher's.

Q. To whom is it addressed? A. To me.

Q. Did you receive it about the time of its date? A. I did.

Mr. Fullerton.—I offer it in evidence. [Reading.]

"FRIDAY NOON, Oct. 3, 1873.

"MY DEAR FRANK: I have this morning got back, sound and fresh—and want to send my love to you and yours. I should see you to-morrow, but shall be out of town till evening. God bless you—my dear old fellow!

H. W. BEECHER."

[Letter marked "Exhibit No. 38."]

Q. [A paper being handed to witness.] In whose handwriting is that letter? A. Mr. Beecher's.

Q. Well, I won't ask to whom it is addressed. Did you receive it from him? A. I did. Yes, sir.

Mr. Fullerton.—[Reading.]

25, '73.

"My Dear Van Moltke: I have seen Howard again. He says it was not 'fr.' [an abbreviation for "from," I suppose,] from Theodore that *Gilkison* got that statement; but from *Carpenter!* Is he reporting that view? I have told Claflin that you wd. come with Carpenter if he could be found; and at any rate *by nine* to-night (to see Storrs), but I did not say anything about Storrs. I sent Cleveland with my horse and buggy over to hunt Carpenter. Will you put Carpenter on his guard about making such statements? From *him* they bear the force of coming from headquarters.

Yours truly and ever,

H. W. Beecher."

[Letter marked "Exhibit No. 39."]

Mr. Beach.—It is "25, '73"—marked "May 25th, 1873?" A. That is the date of it, sir.

Mr. Fullerton.—Can you tell when the Von Moltke letter was received? A. May 25th, 1873.

Q. Did you ever see the paper before which you now have in your hand? A. Yes, sir.

Q. From whom did you receive it? A. From Mr. Beecher.

Q. When? A. About the time that it was written; I forget the date. The date is October 24th. I fixed the date of it at one time. I think it was in 1872 or '3, somewhere there. I can fix the date after.

Q. Where were you when he delivered it to you? A. In my house.

Q. What did he say at the time that he delivered that letter to you, in regard to it? A. He said I had better take it; he didn't want any such letter around him.

Q. Did he give any reason? A. It was a dangerous letter, he said, to have around.

Q. Do you know the handwriting? A. The handwriting of Mrs. Morse.

Mr. Evarts.—Well, this is a letter from Mrs. Morse, addressed to Mr. Beecher, and handed by him to Mr. Moulton. Of course, it goes no further in evidence than the fact that such a letter was written by her and received by him.

Mr. Fullerton.—Yes, sir. It is as follows:

"October 24th

"My Dear "Son": You must pardon me for the request I now make. Can you help me in any way by the first of November? I am still alone, with no prospect of any one, with a rent of $1,500 and an income of $1,000; the consequence is, with other expenses, I shall be by the first of the month terribly behind hand, as I agreed to pay in monthly instalments.

"I know full well I have no claim upon you in *any way*, excepting your sympathy for my lonely and isolated condition. If I could be released from the house, I should gladly do so, for I am convinced it is too far out. All who have been to see my rooms say so. My darling spent most of yesterday with me. She said all she had in the way of money was $40 per week, which was for food and all other household expenses aside from rent, and this was given her by hand of Annie Tilton every Saturday. If you know anything of the amount it takes to

find food for eight people, you must know there's little left for clothing. She told me he T. didn't take any meals home from the fact she could not get such food as he liked to nourish his brain, and so he took his meals at Moulton's. Just think of that! I am almost crazy with the thought. Do come and see me. I will promise 'the secret of her life' which she calls it shall not be mentioned. I know it's cruel to bring it up as you must have suffered intensely and we all will I fear t'll relieved by death. Do you pray for me? If not, *pray do.* I never felt more rebellious than now, more need of God's and human help. Do you know I think it strange you should ask me to call you 'son?' When I have told darling, I felt if you could in safety to yourself and all concerned, you would be to me all this endearing name. Am I mistaken?—Mother."

[Letter marked "Exhibit No. 40."]

Mr. Evarts.—Is there a date on that last letter—a date by the writer?

Mr. Fullerton.—I don't know; if there is, I read it. Yes, sir, October 24, '71, is written.

Mr. Beach.—No, not on the letter itself.

Mr. Evarts.—How do you fix the 1871?

Mr. Fullerton.—Do you know when you received that letter? A. I fix the date of the letter, sir—I can not fix it in any other way than by referring to the time when Annie Tilton—when Mr. Tilton was giving through Annie Tilton to his wife an allowance of $40 a week. I think it was 1871, sir. I can fix the date before I get through with my testimony, positively.

Q. [Another paper handed to witness.] Where did Mr. Tilton reside in October, 1871? A. Livingston street.

Q. 174? A. Yes, sir.

Q. And where did Mrs. Morse reside at that time? A. I don't remember the number of the house, nor where.

Q. How? A. I don't remember just at present, sir, where.

Q. Did she reside with him? A. I don't think she did; no, she did not reside with him.

Q. What paper have you in your hand now? A. A letter from Mr. Beecher, sir.

Q. To whom? A. To me.

Mr. Fullerton.—[Reading.]

"Saturday, Sept. 30, '71.

"MY DEAR FRIEND: I feel bad not to meet you. My heart warms to you, and you might have known that I should be here if you love me as much as I do you. Well, it's an inconstant world. Soberly, I should be glad to have you see how hearty I am—ready for work and hoping for a bright year. I have literally done *nothing* for three months, but have 'gone to grass.' Things seem almost strange, to come back among men and see business going on in earnest. I will be here on Monday at 10 A. M.

I am, my dear Frank, truly and gratefully yours,

HENRY WARD BEECHER.

[Letter marked "Exhibit No. 41."]

Q. [A paper handed to witness.] In whose handwriting is that letter? A. Mr. Beecher's.

Q. Was it addressed to and received by you? A. It was.

Mr. Fullerton.—[Reading.]

"BROOKLYN, Tues. evg, 2 Jan. '72.

"MY DEAR MOULTON: 1. I send you V. W.'s letter to me—and a reply which I submit to your judgment. Tell me what you think. Is it too long? Will she

use it for *publishing?* I do not wish to have it so used. I do not mean to speak on the platform of *either* of the two suffrage societies. What influence I exert I prefer to do on my own hook; and I do not mean to *train* with either party, and it will not be fair to press me in where I do not wish to go. But I leave it for *you*. Judge for me—I have leaned on you hitherto, and never been sorry for it.

"2. I was mistaken about the *Ch. Union* coming out so early that I could not get a notice of *G. Age* in it. It was *just the other way*, to be delayed, and I send you a rough proof of the first page, and the *Star* article.

"In the paper to-morrow a line or so more will be inserted to soften a little the touch about *The Liberal Christian*.

"3. Do you think I ought to keep a *copy* of my letter to V. W.? Do you think it would be better to write it again and not say so much? Will you *keep* the letter to me and *send* the other if you judge it wise? Will you send a line to my house in the *morning* saying what you conclude? I am full of company. Yours truly and affectionately, H. W. B."

[Letter marked "Exhibit No. 42."]

Q. Now, what letter was it that was enclosed to you when that was received? A. A reply to Victoria Woodhull's letter asking that he preside——

Q. "I send you V. W.'s letter to me,"—what letter was that? A. Victoria Woodhull's letter asking him to preside at a meeting, or to be present at a meeting.

Q. And he enclosed to you, as I understand it here, his reply to that letter? A. Yes, sir.

Q. What did you do with the letter and the reply? A. I replied to the letter.

Q. How long was that prior to the meeting? A. To the suffrage meeting?

Q. Yes. A. I forget how long it was prior.

Q. Well, was it a long or short time? A. Not a very long time.

Q. Some days or weeks? A. A few days, I think, or weeks; a few weeks. Will you let me look at the letter, sir, please? I received with this letter also the rough proof of the first page of *The Christian Union*.

Q. The proof of the article? A. Yes, sir.

Mr. Fullerton.—[Paper handed to witness.] In whose handwriting is that letter? A. Mr. Beecher's.

Q. Addressed to you? A. It is, sir.

[Letter submitted to Mr. Evarts.]

Mr. Fullerton.—[Reading.]

"SUNDAY MORNING, Feb'y 16, '73.

"MY DEAR FRANK: I have tried three times to see you, this week, but the fates were against me. I wanted to store up a little courage and hopefulness before my three weeks' *absence*. I revisit my old home and haunts, and shall meet great cordiality. I enclose check subject to your discretion. Should any accident befall me, remember how deeply I feel your fidelity and friendship—your long-continued kindness and your affection. With kindest remembrances to Mrs. M., I remain always yours, H. W. BEECHER."

[Letter marked "Exhibit No. 43."]

Q. What check is therein referred to? A. What is the date of it, sir?

Q. February 16th, 1873? A. I do not have any record of it here, sir; there was a check enclosed in it; I thought I had it on this memorandum. I have not.

Q. Do you recollect what check it was? A. No, I don't; not just now.

Q. Well, do you know what the check was for? A. I suppose it was for Bessie Turner's school bill; I don't remember what it was for; I can find out.

Q. [Paper handed to witness.] In whose handwriting is that letter? A. Mr. Beecher's.

Mr. Fullerton.—[Reading.]

"MY DEAR FRANK: My papers are all here, and it would be far more convenient to have you here, if you are not too tired. Do come.

Yours, H. W. BEECHER."

[Letter marked "Exhibit No. 44."]

Q. [Paper handed to witness.] In whose handwriting is that letter? A. Mr. Beecher's.

Mr. Fullerton.—[Reading.]

"FRIDAY MORNING, July 10, '74.

"MY DEAR FRANK: Can you be seen this morning, and if so, when and where? Any time after 10 would suit me best—but *any other* hour I will make do. I came into town last night. Yours ever,

H. W. BEECHER."

[Letter marked "Exhibit No. 45."]

Q. In whose handwriting is that letter [handing another]? A. Mr. Beecher's.

Mr. Fullerton.—[Reading.]

"SUNDAY, A. M.

"MY DEAR FRIEND: *Halliday* called last night. T.'s interview with him *did not* satisfy, but disturbed. It was the same with *Bell*, who was present. It tended directly to *unsettling*. *Your* interview last night was *very beneficial* and gave confidence. This must be looked after. It is vain to build if the foundation sinks under every effort. I shall see you at 10:30 to-morrow—if you return by way of 49 Remsen."

[Letter marked "Exhibit No. 46."]

Q. Now, who was Mr. Halliday, there spoken of? A. The assistant pastor of Plymouth Church.

Q. Do you know anything about this interview with Mr. Tilton, spoken of there? A. I knew that Mr. Tilton had had an interview with Mr. Halliday.

Q. And who is the Bell that is spoken of in this letter? A. He was either then or formerly superintendent of the Bethel School, a member of Plymouth Church.

Q. The letter states, "Your interview last night was very beneficial, and gave confidence." With whom did you have an interview? A. With Mr. Halliday.

Q. Mr. Halliday called upon you? A. Yes, sir.

Q. What was the subject of the interview? A. The subject of the interview was——

Mr. Evarts.—Did you report it to Mr. Beecher? A. Oh! yes, sir; I talked with Mr. Beecher about it afterwards.

Mr. Fullerton.—Answer my question now. What was the subject of the interview between you and Mr. Halliday? A. I had a conversation, sir, previous to that—previous to my conversation with Halliday—with Mr. Beecher, in which he said that he would like to have me see Mr. Halliday, and that he would probably send Mr. Halliday to me with reference to some trouble in the church amongst the deacons—with reference to the stories that were going around about him, and which were being considered there; and I told him that he had better send Halliday; and Halliday did come, and I saw him.

Q. And that was the subject of your interview? A. Yes, sir. Do you want to know what I said to Mr. Halliday and repeated to Mr. Beecher?

Q. Well, tell what that interview was. A. Tell it in the exact words, sir?

Q. As near as you can recollect, give us the substance of it. A. Yes. I said to Mr. Halliday that I thought the deacons were in pretty poor business, digging up differences that had been settled as between Mr. Beecher and Mr. Tilton; that I thought they ought to be in better business than digging out scandals. I told Mr. Halliday, in substance, and repeated it afterwards to Mr. Beecher, that the stories had originated with Bowen, and that when he had been asked for the truth—when he had been asked for the evidence to support the stories he had—hadn't been forthcoming with the truth; and, I believe, I told him that Mr. Beecher was guiltless; and I told Mr. Beecher, before I saw Halliday, that I would satisfy Halliday if he would send him to me; and it was distinctly understood between Mr. Beecher and me——

Mr. Evarts.—Well, what passed?

Mr. Fullerton.—Yes; what passed? A. What passed between Mr. Beecher——

Q. Yes, sir; so that it was distinctly understood? A. I said I certainly should not tell the facts to Mr. Halliday, and the conversation that I had with Mr. Halliday I repeated to Mr. Beecher, and Mr. Beecher thanked me for it.

Q. [Paper handed to witness.] In whose handwriting is that paper? A. Mr. Beecher's.

Mr. Fullerton.—I will read it.

"SUNDAY NIGHT.

"MY DEAR FRIEND: 1. *The Eagle* ought to have nothing *to-night*. It is *that* meddling which stirs up our folks. Neither *you* or Theodore ought to be troubled by the side which you served so faithfully in politics.

"2. The *deacon* meeting, I think, is adjourned—I saw Bell. It was a friendly movement.

"3. The only next danger is the women—Morrill, Bradshaw, and the poor, dear child.

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

"I go on the 12 train after sleepless night. I am anxious about Theodore's interview with Halliday. Will you send me a *line* Monday night or Tuesday morn, care of M. P. Kennard, Boston, Mass.?

"I shall get mails there till Friday."

[Letter marked "Exhibit No. 47."]

Q. [Handing letter to witness.] In whose handwriting is that letter? A. Mr. Beecher's.

Mr. Fullerton.—I will read it.

"July 13, 1874.

"MY DEAR FRANK: I will be with you at 7, or a little before. I am ashamed to put a straw more upon you, and have but a single consolation that the matter can not distress you *long*, as [it]* must soon end; that is, there will be no more anxiety about the *future*, whatever regrets there may be for the past. Truly yours and ever, H. W. BEECHER."

[Letter marked "Exhibit No. 48."]

Q. Was there any new trouble threatened at any time? A. Any what?

* The paper is torn away and the word "it" is supplied.

Q. Any new trouble threatened at that time? A. What is the date?

Q. July 13, 1874. He says: "I am ashamed to put a straw more on you." Do you know what that straw was? A. We were consulting in regard to the reply he should make to the Bacon letter before the Investigating Committee.

Q. When was that Investigating Committee appointed, or rather, when did you first hear of it? A. July 5 was the first day I heard of it, sir.

Q. Did you hear of it from Mr. Beecher? A. Yes, sir; he told me it was to be appointed, that there was an investigating committee to be appointed, and he would have the naming of the members of it.

Q. Go on and state what was said on that subject?

Mr. Evarts.—Give us the date again?

The Witness.—July 5, 1874.

Mr. Fullerton.—Give us the whole of that interview, as well as you can? A. On July 5, after he had told me at my house that he intended to follow the policy of silence, or that he did follow the policy of silence I indicated; I walked out with him and he told me that the matter had to come before an investigating committee, and I asked him if he could tell me the names, and he said he could, and he mentioned over some of the names. I told him I thought it was a mistake to have an investigating committee, but that we would try and get along with even that, and I told him that I thought I should take, or probably I should have further counsel in the matter, and he said, "Who do you mean?" I said: "Gen. Butler; I have received a letter from him asking that there be silence." He said: "Yes, I have heard something about that. A friend of him, or a Mr. Bowen in Washington, saw Gen. Butler, and he advised silence, and this Mr. Bowen told his father, and his father told me." He said he did not believe much in the moral sense of Gen. Butler, but he thought he might be a good counselor, because he considered him a wise man, and that at all events his advice was good for silence, and that is all that transpired at that interview.

Q. You omitted to state what he said upon the subject of naming the committee? A. I did state that he said he would have the naming of the committee; did I not so state?

Mr. Pryor.—Yes, sir.

Mr. Fullerton.—Do you recollect anything further at that interview? A. No, sir; he didn't tell me at that interview—I was going to say he told me at that interview that he sent Gen. Tracy to see Gen. Butler, or that he had been to see Gen. Butler, but it was not at that interview.

Q. Did he state anything at that time, or at any time previous, in regard to the origin of the committee, how it came about that the committee was appointed, who suggested it, and for what purpose? A. He said that some of his people in the church wanted a committee. That is all that was said about it, I believe, and that he thought it could be got along with very well. He said that, I remember.

Q. How soon after the receipt of this letter, expressing regret that another straw was to be added to your load, was it that you saw Mr. Beecher? A. On July 13.

Q. On the same day? A. Yes, sir.

Q. What occurred at that interview? A. On July 13 I had replied to his letter that I was going down to his committee on July 13 to make a statement in accordance with their invitation, and that I should be at home until a certain hour; my letter that I wrote to him will state what that hour was; I think it was 7 o'clock; and he came around, and I read to him the statement which I intended to make to the committee.

Q. Who were present when that was read to him? A. I read my statement to him alone in my study.

Q. Was that statement afterward read to the committee? A. That statement was afterward read to the committee; before I went down to the committee I read the statement to Theodore Tilton who was at the house also.

Q. What did Mr. Beecher say in regard to the statement when you read it to him? A. I am about to connect Theodore Tilton with Mr. Beecher in that matter; Mr. Beecher went into the room over the parlor, where my wife was, and I said to him, "Mr. Beecher, you consider this statement honorable for me to make?" and he said, "Yes, I do;" and I told him that I had read the statement to Theodore Tilton, and he also concurred in it, and the reason that Mr. Beecher and Mr. Tilton did not meet on that day was because Mr. Beecher said to me that he did not want to see Mr. Tilton.

Q. Now, if you will point out that statement? A. That his presence was always a rebuke to him, and unnerved him, and it was useless for him to attempt to reply to him when he spoke to him as against the facts—he could not do it—he didn't want to see him.

Q. [Handing book to witness]. See if that is the statement you refer to? A. This says August 5.

Q. That is not it, then? A. No, sir.

Q. It was July 13? A. It was July the 18th. [Addressing Mr. Tilton.] Can you find it in there, Theodore—July 13?

Mr. Fullerton.—If your Honor please, I can not find in this unpaged book the statement which I desire to put in next, and the hour of adjournment having arrived, I propose to adjourn now.

Mr. Evarts.—If your Honor please, we had a substituted paper yesterday which we might as well have now.

JUDGE NEILSON.—Has he the original of the paper?

Mr. Fullerton.—I have it.

Mr. Evarts.—It is the proposed card Mr. Tilton was going to publish, embodying what is now called the letter of contrition.

JUDGE NEILSON.—And also *The Union* newspaper?

Mr. Evarts.—Yes, sir.

JUDGE NEILSON.—They can bring them in on Monday morning.

Mr. Fullerton.—I have found this statement, if your Honor please.

JUDGE NEILSON.—Well, we will perfect that the first thing on Monday morning.

Mr. Evarts.—We will go on with that on Monday, if your Honor please. We have got through, and put up our papers.

JUDGE NEILSON.—[To the Jury.] Gentlemen, you recollect the admoni-

tion made to you, and repeated with the concurrence of the counsel on both sides, requesting you not to read about the case, or converse with any person about it, or about the details of it; also my request that if any person should approach you to attempt to speak upon the subject in your hearing with a view to influence you it would be your duty to name that person to me. We will now adjourn to Monday morning, inasmuch as the engagements of the learned counsel prevent their attending to-morrow, and it will need great circumspection and prudence upon your part to avoid being communicated with. That prudence will, perhaps, be stimulated by a becoming sense of the responsibility which rests on you. I trust you will not be wanting in attention to it. There seems to be an incongruity, however, in asking the jury not to read about the case, if the newspapers which happily find their way everywhere, like leaves in autumn. and go into every household, and are read by the members of the household, comment on the case and discuss it in editorials and expressed opinions, and in view of that I have thought proper to suggest to the gentlemen present connected with the press to convey the expression of my hope to the editors that they will not, during the progress of the trial, discuss the merits of it or of any particular phase of it. There seems to be a propriety in it, and a necessity for it. I want to say to the audience, which is so large to-day, that it has been very agreeable to me indeed to observe the order and the patience with which the proceedings have been allowed to proceed. The jury will now pass out with the officer. Return, gentlemen, and be in your places on Monday morning at 11 o'clock.

TENTH DAY, JANUARY 18, 1875.

FRANCIS D. MOULTON recalled, and the direct examination resumed.

Mr. Fullerton.—Look at the paper now shown you, and say whether that is your first statement to the Committee of Investigation [handing witness a paper] ? A. It is, sir.

Q. When was it prepared ? A. Prepared for reading to the Investigating Committee of Plymouth Church, July the 13th.

Mr. Evarts.—If your Honor please, how is this material ? This is no part of any *res gestæ* that I know of. The paper was introduced to the attention of the witness as we were about adjourning. Now his attention is called to it. It is what is called the first statement ?

Mr. Fullerton.—Yes, sir.

Mr. Evarts.—It is called the first statement, not the long one.

Mr. Fullerton.—The first statement.

Mr. Evarts.—The first statement which Mr. Moulton prepared, as he has just now stated, in reference to some pending investigation that was in progress. Of course that is not evidence on its face. It has nothing to do with this issue.

JUDGE NEILSON.—The only possible suggestion that occurs to me in favor of its being evidence is that Mr. Beecher approved its use, if he did so.

Mr. Evarts.—That will appear afterwards, I suppose. If it is intended to show that it is Mr. Beecher's statement, then we can understand it that it is evidence against Mr. Beecher.

Mr. Fullerton.—The gentleman's objection is premature. I have not offered the statement yet in evidence, nor have I given all the preliminary proof which I design to give before I offer it in evidence. If that preliminary proof is insufficient when the offer is made, then, of course, the gentleman can properly object.

JUDGE NEILSON.—It appeared that you were about to offer it; I thought you were, and so did the counsel, I suppose.

Mr. Fullerton.—I am about to offer it, sir; but I have not yet offered it.

JUDGE NEILSON.—If I see an opportunity to narrow the circle of proof, I should be very glad to do it, if I can do it properly.

Mr. Fullerton.—Yes, sir; but I don't want to close the circle until the proof is in, so as to shut it out.

Q. What did you do with the statement before you went before the committee with it? A. Read it to Mr. Beecher.

Q. Where? A. At my house in Remsen-street.

Q. Any one else present besides yourself and Mr. Beecher? A. Not when I read it to him; no, sir.

Q. When was it read to him? A. Read to him on the afternoon of the 13th, toward evening.

Q. State the conversation between you and Mr. Beecher at the time of reading it? A. I said to him, "Mr. Beecher, I have an invitation to appear before your committee to-night, and I will read to you the statement which I intend to make there, and if it meets with your approval I should like to have you say so." I read it to him, and he said he thought it an honorable statement, and it met with his approval, he concurred in it—in the propriety of it, so far as I was concerned. After reading it to him, I went downstairs with him into the room where my wife was, and my wife said to Mr. Beecher, "What do you think of Frank's statement?" And I said, "Mr. Beecher has said it is an honorable one;" and my wife said, "You consider it honorable?" And he said, "Yes." I said then to him that I had also read it to Mr. Tilton, and he also concurred in it.

Mr. Fullerton.—I now offer it in evidence.

Mr. Evarts.—How is it evidence on any issue here? Here is a statement in the nature of an argument or proposition of Mr. Moulton's relation or attitude towards an investigation going on; and Mr. Beecher, who is a party interested in that inquiry—and Mr. Tilton, if you please, also interested in that inquiry as the accuser—say in respect to a statement that Mr. Moulton proposes to make, that it is an honorable statement for him to make. I don't know whether the statement contains any facts or not. It is a short statement, and rather in the nature of a reason for not going on any further, isn't it?

Mr. Fullerton.—That is one view to be taken of it.

Mr. Evarts.—It is not any evidence on any issue in this cause, and if it is admitted it must be admitted against our objection and exception.

Mr. Fullerton.—I am somewhat surprised that the learned counsel should object to the reading of the statement and at the same breath confess that he does not know what is stated in it, because what is stated in it makes it proper to be read in evidence. If the learned counsel had perused it, he would see at once that it becomes an important piece of evidence in this controversy, and I can state very briefly how it becomes important. In the first place, it does state facts which have a bearing upon this issue. In the next place, it discloses a disposition upon the part of Mr. Beecher to throw obstacles in the way of this investigation which he himself had set on foot; and we suppose that it is a material fact in this case to show that while he was pretending that he wanted an investigation, in point of fact he wanted no such thing, and tried to smother it. Those two facts become very apparent by the reading of this paper.

JUDGE NEILSON.—Very well; the last fact, if it be such—the suggestion that Mr. Beecher wished to smother the investigation—is not at all material here, and I think on the whole it is my duty to rule out that paper.

Mr. Fullerton.—Will your Honor hear us upon that subject?

Mr. Evarts.—You have just been heard.

Mr. Fullerton.—I propose to be heard again. That is for the court and not the counsel to determine.

JUDGE NEILSON.—I can not conceive how anything that the witness could have written—any statement of facts (we have the facts otherwise), any argument—could be material in any point of view in this case.

Mr. Fullerton.—Why, sir, one strong argument to be made upon the other side in this case is this, that Mr. Beecher courted this investigation; he appointed a committee for the purpose of going to the bottom of this scandal, and developing every fact that could possibly throw any light upon the subject, and hence they say he was innocent of this charge; that the scandal had no foundation in fact. Doesn't it become important for us to show while, upon the one hand, he was pretending that he wanted an examination, that he was secretly trying to suppress it? Why, certainly, sir, it turns away the edge of that instrument which they use against us in this case. It becomes very important that we should show that fact. Then, upon the other hand, I think, even if your Honor should conclude to shut it out for that reason, it must be admitted for another reason, and that is that he stated facts, and that Mr. Beecher acquiesced in those facts—said that it was a proper statement to be made; that it was an honorable statement upon the part of Mr. Moulton, and truthful.

Mr. Evarts.—He has not said that.

Mr. Beach.—Yes, sir; he has said it was a true statement. Let us see from the stenographer's notes whether he said it.

Mr. Fullerton.—I want to show that up to that hour Mr. Moulton was in the confidence of Mr. Beecher, and acted as he wanted him to act.

JUDGE NEILSON.—That appears. The real question is whether it does state facts, and whether Mr. Beecher assented to the correctness of the statement of facts. Has counsel looked at the paper?

Mr. Evarts.—I have looked at it heretofore, generally. I haven't it before me at this moment.

Mr. Fullerton.—Why, sir, the paper acknowledges the offense.

Mr. Evarts.—Your honor can look at the paper if it is desired.

Mr. Beach.—There is, first, sir, a dispute to be settled in regard to what is the evidence of the witness in regard to the recognition by Mr. Beecher of the accuracy of this statement, and I therefore ask the stenographer to read the evidence of Mr. Moulton as to what Mr. Beecher said upon that subject.

[Evidence read.]

Mr. Beach.—The evidence then is that when the statement was read to Mr. Beecher he concurred in it. If, therefore, the statement contains any fact material to this issue it certainly is competent to be given; and, although it is true, as your Honor says, that Mr. Moulton can make no statement that shall be conclusive upon Mr. Beecher, your Honor will recognize the truth of the proposition that when a statement of a fact is made to a party and he concurs in that statement of fact, it is an adoption of the statement and it becomes evidence against him. And, if your Honor please, that question was before you upon an earlier interlocutory question, and the case in the 55th New York * was referred to, and was at that time acquiesced in by your Honor's decision, and it is too familiar a principle to be disputed. But, if your Honor please, will you regard the suggestion which is made by my associate upon the other aspect in which this evidence is important. Is it not a material fact for us to show that whenever this subject was presented or discussed, whenever upon any occasion it was advanced for investigation, whatever was the public attitude of Mr. Beecher with reference to that inquiry, yet he in secret repressed and discountenanced all investigation into the subject? Is it not a substantial fact to be given in evidence against any person, accused either of crime or of offense, that he labors at concealment, avoids investigation, endeavers to escape from all agitation of the subject? Is not concealment everywhere an evidence of guilt, and may we not in that aspect alone present this evidence, with other evidence which your Honor has received tending to the same issue and leading to the same result?

JUDGE NEILSON.—The various papers that have been put in have been read without objection. I do not recall a single one, not even Mrs. Morse's letter, that was objected to. The effect of the paper in view of defendant's action was spoken to by counsel, and that held in reserve, but the reading of the paper itself was not objected to. This is the first one, I think, that has been thus objected to. The simple question is, Mr. Evarts, whether it is admissible as having been approved by Mr. Beecher.

Mr. Evarts.—Exactly.

JUDGE NEILSON.—There is this to be said about it at the same time. An approval by the defendant—an unqualified approval would be one thing. An approval of it as proper to be put in by the witness would be perhaps another thing.

Mr. Evarts.—Whenever this paper shall be read, if your Honor shall think that it is admissible, its entire harmlessness as affecting the case of this defendant will be apparent; but, nevertheless, the question arises for counsel whether matters not pertinent to an issue which includes the

* *Ante, p.* 369.

range and scope of what is pertinent, and enough, and an adequate variety of evidence—whether evidence not pertinent should be admitted because it is not injurious. If not relevant, the question whether it is not injurious is one with which counsel have properly nothing to do. Here is a statement of Mr. Moulton, who occupied the position of a witness notified to attend before a church examination which had no compulsory power over him. He did not go there as a witness. but he prepared a statement which was to be for the present at least an answer for his not testifying, and he read it to Mr. Beecher and asked him if he thought it was an honorable statement for him (Mr. Moulton) to make in that behalf, and for that purpose; and then he asked Mr. Tilton the same thing, and then Mrs. Moulton, it seems, had an interest in asking the question, and the result of it is, no doubt, as it stands, that Mr. Beecher had this little short statement of half a page, which I hold in my hand, read to him, and said that it was an honorable statement for him to make, and, if you please, concurred in the propriety of his making it; that is all.

JUDGE NEILSON. — That had reference, of course, to the attitude of Mr. Moulton.

Mr. Evarts.—No doubt—the propriety of his making it.

Mr. Fullerton.—He states some facts which bear upon this issue.

Mr. Evarts.—Who?

Mr. Fullerton.—Mr. Moulton; in that statement.

Mr. Evarts.—Whatever is in that conversation that bears on the issue is not what we are now discussing. The question is whether this statement bears on the issue?

Mr. Fullerton.—My reply is——

Mr. Evarts.—I believe I have the floor. My learned friend undertakes to say, and he is supported by his learned associate, that whatever indicates an aversion on Mr. Beecher's part to a promulgation of scandal, and an examination into scandal, is to be produced as evidence that he is guilty of a crime. There is no principle of human nature, and no rule of law, that imputes and such consequences to any such efforts. There is one simple issue to be tried in this cause, the burden of which has been assumed by this plaintiff, any that is to prove the adultery of his wife; and I would like to know how these conversations as to the latitude and mode of meeting an inquiry into that matter, and the aversion of one party to the alleged fault—the alleged guilt, being indisposed to have the inquiry made, bears upon the question, which is the real question that your Honor or the jury are occupied with—the existence of the fact.

Mr. Fullerton.—I agree entirely with the learned counsel as to the issue between these parties, and as to who has taken the affirmative of that issue, and I assert again that there are facts stated in this statement which bear upon that issue. It was a statement read to Mr. Beecher, Mr. Beecher understanding perfectly well that that was to be promulgated before the Committee. Doesn't it become important, therefore, to look into this statement and see what was there said with reference to this crime charged upon Mr. Beecher? Suppose that Mr. Moulton in that proposed statement had

acknowledged Mr. Beecher's guilt, but did not think that it was a subject for investigation, that it ought to be suppressed; would not that become evidence? Why, it seems to me, if the court please, that the proposition is too plain for argument, and if your Honor will take the statement and examine it, you will see that Mr. Moulton came directly to the point in that statement and gave his reasons why he should not testify, and those reasons bear upon this question now before this jury. There can be nothing plainer, sir. I beg your Honor to look at this statement.

Mr. Evarts.—Your Honor can look at the paper.

Mr. Beach.—I have sent for an authority, sir, that I wish your Honor to see.

JUDGE NEILSON.—I do not think it will help me any to look at the paper [taking the paper].

Mr. Evarts.—It is a very short paper.

Mr. Fullerton.—And a very significant one. Then in another point of view, already presented to your Honor, this paper becomes exceedingly important. I repeat what I said before, that when Mr. Beecher makes efforts to suppress investigation, he certainly is doing something from which his guilt may be inferred. I can not see any other inference to be drawn from it. He says to the public: "I want investigation." He says to his church, "Appoint a committee for the purpose of investigating," but in private and in secret he is attempting in every possible way to prevent it. As a matter of course, the testimony of Mr. Moulton before that Investigating Committee was of the first importance. He had been connected with this unhappy matter from the beginning up to the time of the meeting of the Investigating Committee. He had within his knowledge facts which would enable him to determine whether the slander was groundless or well-founded. Now, if Mr. Beecher prevented or attempted to prevent him from going before that committee, organized by himself so as to shut out all these facts within that gentleman's knowledge, doesn't it become important? Doesn't it bear upon this question, and in connection with the flood of evidence in this case is not the jury warranted in drawing an inference from it? Does it not add to the force and to the effect of the other testimony in this cause? It can not be said to be irrelevant. It is always competent to prove against an individual on trial for an offense that he endeavored to suppress testimony, that he got a witness to go out of the jurisdiction of the court and beyond its process, that he undertook for a compensation to withhold the truth; anything of that kind is competent in the trial of an individual for an offense. The suppression of the truth is always evidence of guilt on the part of the individual who is on trial.

Mr. Beach.—I read to your Honor from the case of *Kelley* v. *The People*, in the 55th of New York, page 565. I read from page 571. It was a criminal case:

"Where an individual is charged with an offense, or declarations are made, in his presence and hearing, touching or affecting his guilt or innocence of an alleged crime, and he remains silent when it would be proper for him to speak, it is the province of the jury to interpret such silence, and determine whether his silence was, under the circumstances, excused or explained. At

most, silence under such circumstances, is but an implied acquiescence in the truth of the statements made by others, and thus presumptive evidence of guilt, and in some cases it may be slight, except as confirmed and corroborated by other circumstances."

In this case, your Honor perceives, it was not simple silence: it was an explicit concurrence.

"But it is some evidence, and therefore, except in those cases where the statements are made upon an occasion and under circumstances in which the individual sought to be affected could not without propriety speak, as in the progress of a judicial investigation, or in a discussion between third persons not addressed to or intended to affect the accused, or induce any action in respect to him, so that for him to speak would be a manifest intrusion into a discourse to which he was not a party, the evidence is competent and should be admitted."

Your Honor will also observe that this was not a conversation between third parties. It was an appeal addressed directly to this defendant himself. It was in relation to an investigation of an offense charged against him in which the truth of that accusation was to be investigated by a committee selected by himself. Therefore it was proper for him to speak; the occasion demanded utterance upon his part. He knew that this statement was to be presented to that committee, and he knew in what degree and to what extent that statement would affect that investigation. The court proceed to say:

"Any declaration of the individual in response to a statement so made would be admissible in evidence, and an omission to make any answer to it, or to notice it, like other acts of the party, is to be interpreted, and such effect given to it as evidence, in connection with the other circumstances of the case, as the jury in their discretion shall think it entitled to. The implication of assent to a statement affecting the guilt or innocence of an individual, from an omission to controvert, qualify or explain it, arises from the fact that a person knowing the truth or falsity of a statement affecting his rights, made by another in his presence, will naturally, under circumstances calling for a reply, deny it, if he be at liberty to do so, if he do not intend to admit it. It is no objection to the admission of the declarations of the accused, as evidence, that they are made while he is under arrest, and his admission, either expressed or implied, of the truth of a statement made by others under the same circumstances, is equally admissible. His conduct and acts, as well in custody as when at large, may be given in evidence against him, and their cogency as evidence will be determined by the jury."

Now, sir, I do not think that argument can illustrate the application of that principle to this case.

JUDGE NEILSON.—I still think that in this instance it was understood that the witness was to make a statement to the committee. It appears his statement had been prepared, had been submitted to Mr. Tilton. It was in a friendly spirit, no doubt, submitted to Mr. Beecher, and he had in view the fact that Mr. Moulton was to make a statement—and, of course, a statement from his standpoint of view. I think the case is very much as an instance would be where a witness testifies adversely to you; and yet you admit that,

differing from your view, it was honorable in him to testify as he did. The paper did not call, it seems to me, for a contradiction on the part of this defendant; and I still think I must rule it out, sir.

Mr. Beach.—We except. [To Mr. Fullerton.] We want it to appear upon the record; that is all. That does not put it upon the record.

Mr. Fullerton.—I want to offer parts of this, sir, if the whole is not admitted.

JUDGE NEILSON.—Well, you can frame the offer in such form hereafter as need be.

Mr. Beach.—No, sir; we want it on the record.

JUDGE NEILSON.—Frame it in your own way to give point to your exception.

Mr. Fullerton.—Then I offer this part in evidence.

Mr. Evarts.—If they are to offer any part in evidence, they should be marked and handed to the court for the court to pass upon. Your Honor has held that the paper itself shall not be offered to the jury. I ask that they be handed up to your Honor.

JUDGE NEILSON.—He has a right to say he offers to prove one clause after another.

Mr. Evarts.—Yes, but the point is this, if your Honor please: he proposes to your Honor that certain parts of a written paper, notwithstanding the paper itself is not admissible (which your Honor has ruled), are admissible. Now, how he expects to make that lodgment and distinction, I don't know.

JUDGE NEILSON.—Well, the counsel can mark the parts.

Mr. Evarts.—Yes, sir; and hand it to your Honor.

Mr. Beach.—That does not bring it upon the record. I do not see much difficulty in supposing that while an instrument may not be admissible, as a whole,—there may be some immaterial matter in it which would be sufficient to exclude it when offered as a whole,—and yet there may be parts of it, statements of fact which we say were admitted by Mr. Beecher on that occasion, which may be admissible.

JUDGE NEILSON.—Your rights ought to be saved in respect to it, of course; any form that will do that.

Mr. Fullerton.—Then I offer in evidence——

Mr. Evarts.—We object.

JUDGE NEILSON.—[To Mr. Fullerton.] The counsel objects to your reading it in the hearing of the jury.

Mr. Fullerton.—Well, your Honor, I can't get it on the record without reading it. Your Honor don't put it on the record by reading it.

Mr. Evarts.—Why, certainly; he marks it.

Mr. Fullerton.—Not at all. If it is shut out it will do no harm to the defendant. If it is let in, why then it has its natural effect.

Mr. Evarts.—Of course it is always more interesting to counsel to have the evidence both in, and have an exception for ruling it out; that we all understand. Now, he has got an exception to its being ruled out, and now he would like to have it in.

Mr. Beach.—How does it get in when it is not admitted?

Mr. Evarts.—By reading it.

Mr. Beach.—Does reading a proposition make it evidence?

Mr. Evarts.—It answers the purpose.

Mr. Beach.—Answers the purpose? How? Does the gentleman distrust the gentlemen of the jury that they will not obey your Honor in ruling out evidence? And does your Honor mean to deny us the privilege of making a proposal of proof?

JUDGE NEILSON.—No, sir.

Mr. Evarts.—In the ordinary mode.

Mr. Fullerton.—I offer in evidence this part of the statement, to wit [reading]:

"I regret for your sakes the responsibility imposed on me of appearing here to-night. If I say anything, I must speak the truth. I do not believe that the simple curiosity of the world at large, or even of this committee, ought to be gratified through any recitation by me of the facts which are in my possession, necessarily in confidence, through my relation to the parties. The personal differences of which I am aware, as the chosen arbitrator, have once been settled honorably between the parties, and would never have been revived except on account of recent attacks, both in and out of Plymouth Church, made upon the character of Theodore Tilton, to which he thought a reply necessary. If the present issue is to be settled, it must be, in my opinion, by the parties themselves, either together or separately, before your committee, each taking the responsibility of his own utterance. As I am fully conversant with the facts and evidences, I shall, as between these parties, if necessary, deem it my duty to state the truth, in order to final settlement, and that the world may be well informed before pronouncing its judgment with reference to either. I therefore suggest to you that the parties first be heard, that if then you deem it necessary that I should appear before you, I will do so, to speak the truth, the whole truth, and nothing but the truth."

JUDGE NEILSON.—That is ruled out. You take an exception specially to that. Now, the next.

Mr. Fullerton.—I also offer this, to wit:

"I hold to-night, as I have held hitherto, the opinion that Mr. Beecher should frankly state that he had committed an offense against Mr. Tilton, for which it was necessary to apologize, and for which he did apologize in the language of the letter, part of which has been quoted."

JUDGE NEILSON.—Same ruling as to that, and same exception.

Mr. Fullerton.—I also offer this:

"That he [referring to Mr. Beecher] should have stated frankly that he deemed it necessary for Mr. Tilton to have made the defense against Dr. Leonard Bacon, which he did make, and that he (Mr Beecher) should refuse to be a party to the reopening of this painful subject."

JUDGE NEILSON.—Same ruling.

Mr. Fullerton.—[Reading]:

"If he had made this statement he would have stated no more than the truth, and it would have saved him and you the responsibility of a further inquiry. It is better now that the committee should not report; and, in place of a report, Mr. Beecher himself should make the statement which I have suggested, or that if the committee does report, the report should be a recommendation to Mr. Beecher to make such a statement"

JUDGE NEILSON.—Same ruling as to that.

Mr. Evarts.—Now, if your Honor please, my learned friend has read every particle of this paper except mere surplusage.

JUDGE NEILSON.—He gets it on the record in that way; I think it is proper to his exceptions.

Mr. Evarts.—He has done it, as I told you.

Mr. Fullerton.—And I have read it because I want to offer it in evidence, except the surplusage.

JUDGE NEILSON.—I think you have done properly.

Mr. Fullerton.—Is the complaint that I have not offered the surplusage?

Mr Evarts.—The situation is a very plain one. You offered a paper which was ruled out. There should have been an end of it. You then offered parts of it, as you said, on some particular discrimination, and in that respect. You read the whole paper except a mere formality.

Mr. Fullerton.—And the whole paper is ruled out and all its parts?

Mr. Evarts.—That was the first ruling.

Mr. Fullerton.—Undoubtedly it was.

Mr. Evarts.—You said you would make the discrimination.

Mr. Fullerton.—I have discriminated.

Mr. Evarts.—Well, I don't see it.

Mr. Fullerton.—The gentleman says I have not offered the surplusage. I have discriminated between the wheat and the chaff. He wants the chaff also, if I understand him right. I left out just what I chose to leave out. The gentleman can not preclude me from making my offer of testimony.

Mr. Beach.—We take exception to each of those rulings.

JUDGE NEILSON.—Yes, sir.

Mr. Fullerton.—Now, had the Bacon letter then been published? A. Yes, sir; the Bacon letter was published, had been published—the Bacon letter had been published.

Q. Do you know how long it had been published? A. June previous.

Q. State whether that Bacon letter had been the subject of conversation between yourself and Mr. Beecher? A. It had been; yes, sir.

Q. Prior to the reading of the statement of which you have spoken? A. Yes, sir; and was the subject of conversation at the time I spoke to him with reference to this statement.

Q. And what did Mr. Beecher say at the time you read that statement to him, if anything, with reference to the apology, so called; I refer to the letter of January 1st, 1871, in that conversation? A. I said to him, I said to Mr. Beecher——

Q. Go on? A. I said to Mr. Beecher, "I have recommended from the first—have said from the first, rather, that this Bacon letter, in my opinion, offered a basis for reconciliation, on account of the introduction of the word 'offense,' and the reason that I have followed the line I have in this statement is, that I want to carry that view into the committee, and don't want to go any further than that"; and then he said, "I concur in the propriety of that statement." After hearing my reasons, he said, "I concur in the propriety of that statement"; and I said to Mr. Beecher, "You consider it honorable, do you not?" and he said, "Yes, I do." That was the conversation between Mr. Beecher and myself. There was a further conversation with

regard to the publication of the correspondence between Mr. Beecher and the committee subsequently to that time.

Q. That I am coming to in a moment; when did you first learn that the committee had been appointed? A. From Mr. Beecher, on July the 5th.

Q. Was there any talk between you and Mr. Beecher in regard to the composition of that committee before it was ordered or appointed? A. He said he should have the naming of the——

Q. How? A. He said he should have the naming of the people upon it.

Q. When was that conversation? A. On July 5th.

Q. What occurred, now immediately subsequent to July 5th in reference to the proceedings before that proposed committee between yourself and Mr. Beecher? A. What occurred when—on July 5th?

Q. Yes, after you learned the committee was appointed, what occurred between you and Mr. Beecher with reference to any proceedings before it?

Mr. Evarts.—That has already been gone into.

Mr. Fullerton.—No, sir; it has not.

Mr. Evarts.—What he has lately stated was mere repetition of what he said before.

Mr. Fullerton.—I will show the gentleman that there is something that has not been developed.

JUDGE NEILSON.—Go on.

The Witness.—He consulted—I saw Mr. Beecher at his house, sir, with regard to the report which he was to make to the committee.

Q. Now, state when that was? A. It was during the week of the 12th of July, commencing the 12th of July, between the 12th and the 20th. I saw him several times, sir, at his house.

Q. At his house? A. Yes, sir.

Q. With regard to what? A. With regard to the report which he should make to the investigating committee of his church.

Q. State whether he had it prepared? A. He read to me, sir, from a paper what he proposed to say with regard to Theodore Tilton.

Q. And what was it? A. The substance of it was that he took upon himself great blame for his conduct toward Theodore Tilton and his family, and exonerated Theodore Tilton from all blame so far as concerned Tilton's action toward himself; and I said to him: "Mr. Beecher, I think that I may be able to induce Theodore Tilton not to write the statement which he is writing, if I express to him fully the ground that you take with regard to him; because I can not see that you can do anything more, unless you confess absolutely to the committee the crime which you have committed against him and his family. And I will try to influence Mr. Tilton upon the basis of what you have told me." And he said: "I hope you will succeed in doing that; if Theodore publishes the fact, as he has threatened to, of my relations with Mrs. Tilton, it will ruin me; but it will kill him;" and he wept in expression—in expressing to me at that time his sorrow for the crime that he had committed; and I, sir, was deeply affected myself with his presentation of his contrition; and I went to Theodore Tilton and I told him that I thought he should not write the document which he was preparing, if he in-

tended in that document to state, as he said he had in *The Argus* newspaper, the facts; that he ought not to do it.

Q. Well, was anything said in that conversation in reference to a proposed report or statement? A. Not in that conversation, sir; I am going to give you the conversation.

Q. Just come to that, please? A. Yes, sir; certainly. I saw Mr. Beecher again, and I told him that Theodore——

Mr. Evarts.—Give us the date of this? A. I'm giving the date as near as I can.

Mr. Beach.—He has said there were several interviews.

The Witness.—In the week—within the week, Mr. Evarts, of the 12th and 20th.

Mr. Evarts.—When was this? A. Within that week; between the 12th and 20th I saw Mr. Beecher, and I told him that Theodore seemed to be obdurate, that I thought I would have to treat him about as I treated him before—let him work himself out, and try to prevent publication if I could, or change the form, if I could, of the presentation; and I said to him, "Mr. Beecher, isn't there any member——." I said to him, "Mr. Beecher can't we get an adjournment; can't we get an adjournment of the Committee of Investigation?" Said I, "Time is worth more than anything else in this business with Tilton;" and he said he would try to get a postponement of the meeting which was called for the succeeding Monday; said he would write to Mr. Sage to procure a postponement, and then I asked him if anything new had occurred to him since my last interview with him; and he said, "No;" and I said to him: "Mr. Beecher, I do not—I can not recommend you to make any report to that Investigating Committee until I can get Theodore Tilton to commit himself to what you shall say;" and he was lying on his bed at the time, and he rose from it and went to a bureau and took a piece of paper and wrote a form of proceeding something like this: "Mr. Beecher having made a statement, and that being satisfactory, the paper——"

Mr. Evarts asked that the paper be produced.

Mr. Fullerton.—Well, sir, I will gratify you.

Mr. Evarts.—And you will satisfy the law.

Mr. Fullerton.—Well, it is easier to do that than to satisfy you.

[Paper handed to witness.]

The Witness [reading].—"The statement of Mr. B. being read, and, if striking favorably, then a word sent substantially thus to committee."

Q. Is that the paper that he prepared? A. Precisely, sir; I beg pardon.

Q. I understand you that this interview, when this paper was prepared that I have now produced, was at Mr. Beecher's house? A. Yes, sir.

Q. And he got up from his bed to write it? A. Yes, sir.

Mr. Fullerton.—I offer it in evidence.

Q. It is in Mr. Beecher's handwriting, isn't it? A. It is.

Mr. Fullerton [reading]:

The statement of Mr. B. being read and, if striking favorably—then a word sent, substantially thus, to committee:—

"I have been thro. years acting under conviction that I had been wronged,

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

[Paper marked "Exhibit No. 49."]

Q. What, if anything, did Mr. Beecher propose when he handed you that paper? A. The substance of the paper itself—to make a statement to the committee exonerating Mr. Tilton from all blame—from any injustice toward him from Mr. Beecher, and taking great blame upon himself on account of his conduct toward Mr. Tilton's family, and I said to Mr. Beecher, "Mr. Beecher, isn't there any member of your committee beside Mr. Tracy, or isn't there any one in that committee beside Mr. Tracy, to whom you can tell the truth; to whom I could tell it, or to whom Mr. Tracy could tell it, in order that they might guide the action of that committe properly with reference to the fact itself? Couldn't you tell Mr. Sage?" and he said no, it would kill him. He said it almost killed him when he told him that he had been guilty of an offense; when he made the explanation that he did to him of that.

Mr. Evarts.—That is Mr. Sage's? A. Yes, sir. "Well," I said, "that is too bad; if you have not got one friend in that committee to whom you can tell the truth, what is the use of your friends?" and that is the substance of what occurred.

Mr. Fullerton.—Well, what did he wish you to do with this paper that I have just read? A. Wanted me to take it to Theodore Tilton.

Mr. Evarts.—What did he say?

Mr. Fullerton.—Yes, what did he say? That is the way he manifested what he wanted you to do, I suppose. Tell us what he said? A. Yes, sir; he asked me to show that to Theodore Tilton, and I did show it to Theodore.

Q. And did you report to Mr. Beecher what Theodore said? A. I did; yes.

Q. And what did you report to him? A. I said to him that Theodore refused to consent to make himself out the victim of an hallucination; I think that was all.

Q. When was the next interview between yourself and Mr. Beecher? A. When was the next?

Q. Yes? A. I don't remember.

Mr. Beach.—If he don't remember dates, refer him to the subject.

Q. Well, did Mr. Tilton publish his card? A. Yes, sir; he published it on the 20th.

Q. On the 20th? A. I believe—no; he did not publish it on the 20th; he presented it to the committee on the 20th.

Mr. Beach.—You mean he presented his statement to the committee on the 20th? A. He presented his report.

Q. His statement? A. Yes, sir; he presented his statement.

Mr. Fullerton.—Before the publication or the presentation of Mr. Tilton's statement to the committee, did he prepare a proposed report to the committee? A. Did who?

Q. Did Mr. Tilton present a proposed report for the committee to make?

A. Yes, sir; Mr. Tilton did, and I submitted it on the first interview of the week of the 12th to Mr. Beecher, when I told him I thought I could induce or I would try and induce Theodore to withhold the statement he was preparing from the committee.

Q. And you showed him, then, as I understand you, Mr. Tilton's proposed report for the committee to make? A. Yes, sir; I submitted to him a paper which Mr. Tilton had prepared, and had expressed his willingness to abide by it before the committee.

Q. Was this report to be made without statement by either party, or after this statement?

Mr. Evarts.—What was said about it between you and Mr. Beecher?

The Witness.—Mr. Beecher said to me, "Will Theodore stand by that?" I said, "That is what he would have done; I hope he will still be willing to do it."

Mr. Fullerton.—What was the subject of conversation then when he used that language? A. The very report which I showed to him of Mr. Tilton; I read it to him and handed it to him.

Q. A report for the committee to make? A. Yes, sir.

Q. [Handing paper to witness.] Look at that paper. Is that the paper you refer to? A. Yes, sir; that is it.

Q. Now, then, in that conversation, what was said in reference to the proposed statements of the respective parties? A. That they were to go before the committee and make their statements.

Q. What statements? A. Statements of offense.

Q. Have you reference now to the proposed statement by Mr. Beecher just read in evidence, and the reply which he prepared to it? A. I have not any reference to that. That which I have just handed you was a report prepared by Theodore Tilton. I saw Mr. Beecher on that day, and I said to Mr. Beecher: "This will show you the mind Theodore has had upon this subject, and if it had not been for the publication of your correspondence, and the desertion of Theodore by his wife, he would not have been in the angry mood he is to-day, insisting upon the publication of the facts."

JUDGE NEILSON.—Was that before or after Mr. Tilton's statement had been given to the committee? A. It was before, sir.

Mr. Fullerton.—I want you to state whether at the time of this conversation the statements which the respective parties were to make before the committee, were the subject of conversation; and if their character was then fixed, to state what they were to be? A. State that over again, if you please.

Q. You have now identified a proposed report that Mr. Tilton prepared for the committee to make? A. Yes, sir.

Q. And you showed it to Mr. Beecher? A. I did.

Q. And he asked you if Mr. Tilton would be satisfied with that? A. Yes, sir.

Q. Upon what, or of what was that proposed report to be predicated—in the shape of statements of the parties?

Mr. Evarts.—[To the witness.] What passed between Mr. Beecher and you?

Mr. Fullerton.—I asked that; in that conversation what was said on that subject between you? A. I said to Mr. Beecher that after Mrs. Tilton had

made her statement to the committee, Mr. Tilton was very much incensed, and that Mr. Tracy in a subsequent interview with him—in an interview subsequent to Mrs. Tilton's report to the committee, or statement to the committee, had so presented to him the influence which her statement had had upon the committee that it melted the anger all out of Theodore Tilton, and he was perfectly willing to make a statement to the committee which should not contain the fact of adultery between Mr. Beecher and Mrs. Tilton; that he was perfectly willing, if Mr. Beecher would take great blame upon himself, and exonerate Theodore Tilton from dishonorable conduct towards him—from any injustice towards him—that he, Theodore Tilton, was perfectly willing to settle the matter without making any accusation before that committee, and that he had prepared such a report for the committee to make, and that he had shown it to General Tracy, and General Tracy had said to him, on the night of the conversation to which I refer, that the committee seemed now to be of opinion that there was an offense, and that he thought it would not be hard to get from that committee a report (unfavorable, it is true, to Mr. Beecher) on the ground of the offense, but which would really settle the whole business and save all the parties concerned from dishonor in consequence of crime; that is all.

Q. And this report that you have identified is the one that you now speak of? A. That was one of them, sir. There were two. One was a long one, and that was a short one.

Mr. Evarts.—Made at the same time? A. Yes, sir; two. The short one was not submitted to Mr. Tracy.

[Paper marked for identification "No. 50."]

Mr. Fullerton.—[Handing paper to witness.] Look at the paper now shown you and say whether it is the other report prepared by Mr. Tilton at that time? A. This is the paper, if it is all here.

Mr. Fullerton.—I offer the first report in evidence:

"Report. The Committee appointed to inquire into the offense and apology by Mr. Beecher, alluded to in Mr. Tilton's letter to Dr. Bacon, respectfully report, that after examination, they find that an offense of grave character was committed by Mr. Beecher against Mr. and Mrs. Theodore Tilton for which he made a suitable apology to both parties receiving in return their forgiveness and good will. The committee further report that this seems to them a most eminently Christian way for the settlement of difficulties, and reflects honor on all the parties concerned."

[The paper heretofore marked for identification No. 50 was here marked "Exhibit No. 50."]

Q. For fear we may not distinguish between those two reports, I want you to repeat what Mr. Beecher said when you showed to him, or read to him, the report I have just put in evidence? A. I said to him that Theodore had been in that frame of mind, and I hoped——

Mr. Beach.—What frame of mind? A. The frame of mind in which he wrote that.

Q. Well, state it? A. I said to him that that was what Theodore had been willing to do, as expressed in the statement, and I hoped that he would still consent to act in that way, and Mr. Beecher said: "Well, do you think he will? I hope he will," he said. That is all.

Mr. Fullerton.—Now, this frame of mind of which you have spoken on the part of Mr. Tilton I understand was superinduced by a report made to him of the effect of Mrs. Tilton's statement to the committee? A. Yes, sir.

Q. What statement was that? A. All that I know of that statement was what Mr. Tracy read—the statement made to the committee by Mrs. Tilton, a statement in which she had spoken highly, General Tracy said, of her husband.

Q. Not the long statement that was published? A. I don't know that it was.

Q. What was the result of all that? A. The result of it was nothing.

Q. That report was not made, as I understand you?

Mr. Evarts.—The witness has said there was another statement also there.

The Witness.—Another statement also where?

Mr. Evarts.—Before you at this time.

The Witness.—No, sir; I don't say there was another statement also before me at this time. I spoke to Mr. Beecher of a report which Theodore Tilton had been willing to make, and I didn't show that report to Mr. Beecher; I did not have it with me. I happened to have this in my pocket, which I submitted to him.

Mr. Evarts.—I misunderstood you.

JUDGE NEILSON.—You didn't have it with you? A. No, sir; I didn't have it with me.

Mr. Evarts.—I think the stenographer's notes will show that there were two reports. [To the witness.] You spoke to Mr. Beecher about the long statement? A. I did speak to Mr. Beecher about it at that time.

Q. The paper you had with you was the one that has been read? A. Yes, sir.

Mr. Evarts.—This short one was not shown to Mr. Tracy? A. I don't remember that it was; I could not swear that it was.

Q. You said something about some paper having been shown to Mr. Tracy? A. Yes, sir; it was the long statement.

Q. And not the short one? A. I don't think the short one was shown. The short one was the substance of the long one, but I don't think it was shown.

[The long statement referred to by the witness was marked for identification "Exhibit No. 51."]

Mr. Fullerton.—You have spoken of a card in *The Argus* published by Mr. Tilton. [Handing witness a paper.] Look at the paper now shown you and say whether that is the card referred to? A. Yes, that is the one.

Mr. Fullerton.—I offer it in evidence.

Mr. Evarts.—We object to this, if your Honor please. We have had no evidence from this witness connecting Mr. Beecher with this article.

JUDGE NEILSON.—This is the long statement.

Mr. Evarts.—No, sir; it is a newspaper article from Mr. Tilton, published in a newspaper; whether it had any other authenticity than that, I don't know, but nothing has been said by the witness which connects Mr. Beecher with it.

JUDGE NEILSON.—[To Mr. Fullerton.] How have you connected Mr. Beecher with it?

Mr. Fullerton.—Something has been said by the witness with reference to it, and to make it clear, I will ask the witness a question in regard to it. [To the witness]:

Q. Between the 13th and the 20th of July, 1874, when these proposed statements were suggested to you, was anything said, and if so, what, about Theodore Tilton's card in *The Argus*? A. Yes, sir; I told Mr. Beecher that Mr. Tilton never would have written that card if it had not been for the publication of his correspondence with the committee, and the desertion of his wife, and I said to Mr. Beecher at that interview, "Don't you know that you are doing yourself, or are liable to do yourself, a great hurt by keeping Elizabeth away from Theodore? Don't you know perfectly well the influence that that woman has had over him? If you keep her away from him, it will only incense him, and you ought to send her back to him," and he said, "That can be arranged if this other matter is fixed up properly."

Mr. Evarts.—I still don't see any connection between it and Mr. Beecher.

Mr. Fullerton.—What other matter? A. The statements.

Mr. Evarts.—I don't see any relevancy to that.

Mr. Fullerton.—Why, sir, this paper which was published on the 13th of July, 1874, caused this action on the part of Mr. Beecher in reference to those statements, the one he proposed to make, and the one he prepared for Theodore Tilton to make. It was to avert this blow, threatened in this card, and hence it becomes material in this case.

JUDGE NEILSON.—I don't see it so; I don't think it is.

Mr. Fullerton.—Well, I must offer it in another point of view, so that it will appear as a part of the record, because it makes the first statement of Mr. Moulton which your Honor has ruled out, all the more important and significant. The reporter will please enter an exception to that last ruling.

[Paper marked for identification "Exhibit No. 52."]

Q. [Handing paper to witness.] Tell me whether the paper now shown you was received by you? A. Yes, sir; it was.

Q. About the time of its date? A. Yes, sir.

Q. Did you show it to Mr. Beecher? A. I did; yes, sir.

Q. Did you read it to him, or did he read it—which? A. I don't know whether he read it, or whether I read it to him. It was either read to him, or he read it himself.

Q. When did you read it to him—how soon after its receipt? A. I don't remember, sir, how soon after its receipt; some time after.

Q. Within what time? A. I should think within a month. I remember the conversation—something of the conversation on that subject.

Q. I want you to tell the conversation you had with Mr. Beecher with reference to that letter? A. It was with regard to the difficulties of *The Golden Age*. [To Mr. Fullerton.] Will you let me look at the letter again?

Mr. Fullerton.—Certainly.

The Witness [after examining the letter].—I am not sufficiently clear about that to swear in regard to it.

Mr. Evarts.—What is this? A. I am not sufficiently clear that is the letter I showed to Mr. Beecher. I have several letters from Mr. Clarke.

Q. You are not clear this was shown to Mr. Beecher? A. No, sir; I am not clear in regard to that. I want to correct my statement in regard to that. That the letter was a subject of conversation I am sure, but that I showed it to him I am not sure.

Mr. Fullerton.—You are not sure you showed it to him? A. No, sir.

Mr. Evarts.—[To Mr. Fullerton.] Well, read it.

Mr. Beach.—Well, I don't know.

Mr. Fullerton.—I will not read it.

Mr. Evarts.—Very well, say so.

Mr. Fullerton.—I have said so; if I read it, it would be because it was proper evidence, and not because you commanded it. [To the witness.] Did you receive several letters from Mr. Clarke? A. I received several letters from him.

Q. And you are not able to state whether this is the one you showed Mr. Beecher? A. No, sir; I am not able to say this is the one I showed Mr. Beecher.

Mr. Evarts.—I desire that this statement should be marked for identification.

Mr. Fullerton.—I don't desire that it shall be marked for identification.

Mr. Evarts.—It has been shown the witness.

JUDGE NEILSON.—If he can not identify it, counsel has a right to withdraw it.

Mr. Evarts.—He has identified it originally as a letter shown to Mr. Beecher, and he now says he is in doubt whether it was shown to Mr. Beecher, but it was made the subject of conversation with Mr. Beecher. I want it marked for identification.

JUDGE NEILSON.—That leaves it to the counsel to withdraw the paper.

Mr. Evarts.—He withdraws the evidence. It should be in evidence that this letter was the subject of conversation between Mr. Beecher and this witness.

JUDGE NEILSON.—And the conversation not being given, as yet, I think he may withdraw the letter.

Mr. Evarts.—If your Honor will note my exception.

JUDGE NEILSON.—Yes, sir.

Mr. Evarts.—I ask that it be marked for identification, as a letter placed in the witness' hands, and concerning which he has testified. Your Honor rules it out, and we except, of course, to your ruling.

Mr. Fullerton.—Who was this Mr. Clarke, of whom you have spoken? A. Mr. Clarke was associated with Mr. Tilton in *The Golden Age.*

Q. State, if you please, what you mean by the *The Golden Age?* A. *The Golden Age* newspaper.

Q. Published where? A. Published in New York.

Q. By whom? A. By Theodore Tilton.

Q. And when was it started? A. It was started in 1871.

Q. About what time in that year? A. In March.

Q. How long did it continue to be published? A. It is being published

now, I think, but not with Theodore Tilton as publisher and proprietor. It changed hands some time ago.

Q. Did you ever have any conversation with Mr. Beecher about *The Golden Age?* A. Yes, sir.

Q. When was the first conversation? A. The first conversation about *The Golden Age* was in the beginning of 1871, I think, before the establishment of it.

Q. What was that conversation?

Mr. Evarts.—How is that material, if your Honor please? It may be material, of course, by what was said.

JUDGE NEILSON.—[To Mr. Fullerton.] Did you ask what was said?

Mr. Fullerton.—Yes, sir. [To Mr. Evarts.] That is the way to learn how it becomes material, to listen.

JUDGE NEILSON.—Go on.

The Witness.—He said he hoped Theodore would be successful in the enterprise, and he said he would like to aid, if he could, in establishing the paper, and I told Theodore of that, and Theodore said to me he could not receive any aid from Mr. Beecher in establishing the paper, and so I told Mr. Beecher. I said to Mr. Beecher that was what Mr. Tilton said. That is the first conversation I remember about it.

Q. At any subsequent interview did you have a further conversation with Mr. Beecher about *The Golden Age?* A. Yes, sir.

Q. When was that other interview? A. The other interview was in 1873—the beginning of 1873, I think.

Q. State what it was? A. The paper was dragging—I said to Mr. Beecher that the paper was dragging, and that Mr. Clarke was trying to manage something about its purchase, that Theodore felt badly about the paper, about its condition; that it was not prosperous as it should be, and that he wanted to write a book, and then Mr. Beecher said that he would like to help the paper, and I said to him: "Mr. Beecher; I don't see how you can help the paper; I don't see how you can subscribe any money to *The Golden Age*," and I told him that Mr. Tilton would not take any money from him—would not allow me to take any money from him, directly or indirectly, and I didn't see how it was possible for him to do anything; that that matter had better be dismissed; and then I saw him subsequently, and the talk was renewed from time to time, and as far down as to May the 3d.

Q. What year? A. 1873, I think was the year, and Mr. Beecher said to me, between January 4th and May, 1873, that he thought I could take some money and give it to Theodore Tilton as my own, and that he would not know where it came from, and he would like to have me do it. I told him I didn't want to do it; I could not do it honorably, in my opinion. Well, he said, that certainly bread ought to be kept in Theodore's mouth, that I ought to take some money from him (Beecher), and feed it out to him; that he (Beecher) could get a mortgage very readily, and give me $5,000, and I said: "Well, I don't want to take it;" but afterwards I did take it, and I did feed it out to *The Golden Age* and to Theodore. I told Mr. Beecher that Mr. Tilton was at work upon his book, and very much interested in that, that I was

very glad of it. He said he was very glad too, and he would be glad to assist him in keeping him to work at it. Finally I took the money.

Q. When did you receive it? A. May 2d, 1873, I think it was.

Q. What was the amount? A. $5,000.

Q. And how was it given to you? A. In bills.

Q. Did you give it to him all at once? A. No, sir.

Q. Where did you deposit it? A. With Woodruff & Robinson, the firm of which I am a member.

Q. State whether Theodore Tilton knew that you had received that money from Mr. Beecher? A. No, sir; he never knew it.

Q. When did he learn it first? A. He learned it after the publication of my first statement, in which the fact was stated.

Q. You never communicated it to him before? A No, sir; never. I told Mr. Beecher that Mr. Tracy wanted me to communicate it to him in order to prevent the publication of his statement.

Q. I am coming to that. Go on and state what that was? A. Before the publication of Mr. Tilton's statement of July 20th, Mr. Tracy was at my house——

Mr. Evarts.—Well, we object to that—a conversation between him and Mr. Tracy.

Mr. Fullerton.—Was Mr. Beecher there? A. No, sir; I communicated the fact to Mr. Beecher.

Mr. Evarts.—[To the witness.] What passed between you and Mr. Beecher?

JUDGE NEILSON.—Yes, sir but preliminary to that is it proper to say he saw Mr. Tracy at his house, and that he made the communication afterwards?

Mr. Fullerton.—Did something take place between you and Mr. Tracy? A. Yes, sir.

Q. Did you communicate that, whatever it was, to Mr. Beecher? A. Yes, sir.

Q. What did you communicate to Mr. Beecher? A. I told Mr. Beecher that Mr. Tracy wanted me to communicate the fact that I had received five thousand dollars from Mr. Beecher to give Mr. Tilton, in order to stop him from the publication of his statement. I said, when Mr. Tracy wanted me to tell Mr. Tilton that, that that would be a serious embarrassment to me, personally, in consequence of my having received that money, and I said to Mr. Beecher that I told Mr. Tracy that I was perfectly willing to be guided by him with sound advice—with any moral, good reason—with any good reason, and I would co-operate with him to induce Theodore Tilton not to publish his statement, but I would not, on any such ground as that, undertake to stop its publication. Mr. Tracy told me that would cause me trouble if it was published, and I told him if it caused me trouble, it must cause me trouble; that I had done no wrong and I didn't fear any trouble that would come from that.

Mr. Evarts.—You told that to Mr. Beecher? A. Yes, sir.

Mr. Fullerton.—What reply did Mr. Beecher make to that when you told

it to him? A. I don't remember any reply that he made particularly; I don't remember any reply that he made.

Mr. Fullerton.—[Addressing JUDGE NEILSON.] In the course of the communication we had to omit some papers because we hadn't them present. I now show those papers thus submitted to the witness for the purpose of having them identified.

Q. [Handing paper to witness.] What is that paper you hold in your hand? A. This is Mr. West's letter to Mr. Beecher, of June 25th.

Q. From whom did you receive it? A. I received it from Mr. Beecher.

Q. [Handing another paper to witness.] Now, pray tell me what that paper is? I need not ask that question, however. The copy has been put in evidence, and I agreed to supply the original.

JUDGE NEILSON.—He may say if that is the original.

The Witness.—That is in Henry Ward Beecher's handwriting.

Mr. Evarts.—The card to *The Eagle*?

The Witness.—Mr. Beecher sent the card to *The Eagle* without my knowledge of it afterwards, after it had been agreed upon. That is his handwriting.

Mr. Fullerton.—I now offer the first paper in evidence. [Reading.]

"NEW YORK, June 25th, 1873.

"*Rev.* H. W. BEECHER:

"DEAR SIR: Moved by a sense of duty as a member of Plymouth Church, I have decided to prefer charges against Henry C. Bowen and Theodore Tilton, and have requested Brother Halliday to call a meeting of the Examining Committee in order that I may make the charges before them.

"Thinking that you would, perhaps, like to be made acquainted with these facts, I called last evening at Mr. Beach's house, where I was informed that you had returned to Peekskill: I, therefore, write you by early mail to-day.

Yours, very truly, WM. F. WEST."

[Copy letter marked "Exhibit No. 53."]

Mr. Fullerton.—If the court please, I now offer the original of Mr. Beecher's card to *The Brooklyn Eagle.*

JUDGE NEILSON.—Which we had reference to the other day?

Mr. Fullerton.—Which was read the other day, and which I now produce.*

Mr. Evarts.—As we understand that card which was undertaken to be read from *The Eagle*, it appeared in the evidence that it was altered by the editor, if your Honor will remember; therefore it was not really Mr. Beecher's card, and they had not the original of that, but my recollection is that that had relation to the Woodhull matter, and this has nothing to do with that.

Mr. Fullerton.—No, sir, this is the one.

Mr. Evarts.—It has not anything to do with the other. It is not the matter that was referred to there.

Mr. Fullerton.—It is the original, as far as there is any original.

Mr. Evarts.—It has not anything to do with it. It is an original paper, and may be proper evidence, and may be now offered for aught I know, but this is not the paper as I understand it.

JUDGE NEILSON.—You have in mind that it was a paper that related to something else—the Woodhull paper.

* The reference is to the evidence on p. 406, *ante.*

Mr. Evarts.—Yes, sir.

Mr. Fullerton.—Having got the paper from *The Brooklyn Eagle* in evidence, and having produced the original, so far as there is one, I have discharged my duty and fulfilled my obligation, and if you [Mr. Evarts] don't want it read, leave it out.

Mr. Evarts.—This is another card, and has been in evidence.

Mr. Fullerton.—Yes; but I promised to produce the original of Mr. Beecher's. If you complain that I have fulfilled my promise, then I am sorry I made it. I now produce the original of the article as printed in *The Eagle*, which the gentlemen from the other side desired. You [Mr. Evarts] called for the paper itself in which it was published.

JUDGE NEILSON.—The card which you read in reference to *The Eagle* commenced with the fact that *The Eagle* had not been in accord with Mr. Beecher?

Mr. Evarts.—We waived that when you [Mr. Fullerton] showed us in the paper what was a copy. We didn't care for the original *Eagle* article. Then they began to read what was supposed generally was prepared by Mr. Beecher, but it appeared it was not.

JUDGE NEILSON.—There were some alterations made in it.

Mr. Fullerton.—And hence I now produce that one prepared by Mr. Beecher.

Mr. Evarts.—Not a bit of it. That is what was in *The Eagle*, just as what you read was from *The Eagle*.

Mr. Fullerton.—And you called for the original of the Beecher article, and I have produced that.

Mr. Evarts.—No, you are mistaken in thinking this original paper you have brought here has anything to do with that.

Mr. Fullerton.—I will forgive my friend on the other side, and we won't go any further with that. I offer now in evidence the article as published in *The Brooklyn Eagle*.

Mr. Evarts.—That we object to. It has been ruled out once.

JUDGE NEILSON.—Mr. Fullerton, how do you connect Mr. Beecher with it?

Mr. Fullerton.—I think it is in evidence already.

JUDGE NEILSON.—Does not that card commence with reference to the fact that *The Eagle* had not been in accord with Mr. Beecher?

Mr. Fullerton.—Yes, sir.

JUDGE NEILSON.—That is the one you read.

Mr. Beach.—It was partly read, I recollect, and then objected to on the ground that it had been altered after preparation by Mr. Beecher. It was then withdrawn and the original, as prepared by Mr. Beecher, was read.

JUDGE NEILSON.—[To Mr. Beach.] You think, then, it was not all read.

Mr. Beach.—It was not all read, as I recollect the course of the evidence, and now we propose this as it was published and afterwards submitted to Mr. Beecher on his return from a temporary absence, and adopted by him.

Mr. Evarts.—That may be, and that is new evidence.

JUDGE NEILSON.—Very well, we will take it in that view.

Mr. Evarts.—He has not said that yet.

Mr. Fullerton.—[Beginning to read.] "To the editor of the *Brooklyn Eagle*

Mr. Evarts.—We don't understand that this is material.

JUDGE NEILSON.—Counsel suggests he will connect Mr. Beecher with it.

Mr. Fullerton.—He has already connected him with it, but I will do it over again.

Q. What did Mr. Beecher say to you in reference to the article published in *The Brooklyn Eagle?* A. He thanked me for it.

Mr. Beach.—He said that before.

Mr. Fullerton.—He said that emphatically and distinctly.

JUDGE NEILSON.—This article? A. Yes, sir.

Mr. Fullerton.—[Reading.]

"*To the Editor of the Brooklyn Eagle:*

"In a long and active life in Brooklyn it has rarely happened that *The Eagle* and myself have been in accord on questions of common concern to our fellow-citizens. I am for this reason impelled to acknowledge the unsolicited confidence and regard of which the columns of *The Eagle* of late bear testimony. I have just returned to the city to learn that application has been made to Mrs. Victoria Woodhull for letters of mine supposed to contain information respecting certain infamous stories against me. I have no objection to have *The Eagle* state in any way its deems fit, that Mrs. Woodhull, or any other person or persons who may have letters of mine in their possession, have my cordial consent to publish them. In this connection, and at this time, I will only add that the stories and rumors which have for some time past been circulated about me, are grossly untrue, and I stamp them in general and in particular as utterly false.

"Respectfully,

"HENRY WARD BEECHER."

[Paper marked "Exhibit No. 55."]

Q. In one part of your testimony you speak of a statement read to Mr. Beecher, and used this observation: "I will read one clause from it, and if you can stand that you can stand the whole of it, or any part of it," or words to that effect. You stated it referred to a letter of Mrs. Tilton, or a statement of Mrs. Tilton to Dr. Storrs. [Handing paper to witness.] Look at the paper which I now show you, and say whether that is the paper to which you referred? [To Judge Neilson.] The presentation of this paper was deferred, because it was not present at the time. As I stated to your Honor, we have been a little embarrassed by the unfortunate and serious illness of Judge Morris.

The Witness.—Yes, sir, that is the letter.

Mr. Evarts.—If your Honor please, we can look at this paper during the recess.

JUDGE NEILSON.—Yes, sir.

AFTERNOON SESSION.

Mr. Fullerton.—If your Honor please, I now offer in evidence the paper which was shown the witness before the recess.

Mr. Evarts.—What has he testified to about that?

Mr. Fullerton.—He referred to it, and I called his attention to that reference and asked if this was the paper to which he made that reference.

Mr. Evarts.—This is a paper concerning which all that appears from its face is that under the date of December 16, 1872—or the 15th; I don't know which it is—it is signed by Mrs. Tilton and is, I suppose, in her handwriting, isn't it?

Mr. Fullerton.—Yes.

Mr. Evarts.—It is not addressed to any person, and I do not understand any present state of the testimony that connects it with Mr. Beecher. I may perhaps be inadvertent to something that has been said by this witness, but nothing has been presently said on the subject.

JUDGE NEILSON.—What is your view about it, Mr. Fullerton?

Mr. Fullerton.—In one stage of Mr. Moulton's testimony, he related an interview between himself and Mr. Beecher and Mr. Tilton, when Mr. Tilton read to him a statement, or a part of a statement, that he proposed to make, saying, "I will read you one extract from it, and if you can stand that you can stand the whole." And I think the language was made use of as having been quoted from the statement of Mrs. Tilton, made to Dr. Storrs, and my friend upon the other side called for that statement because a quotation was made from it. I now produce the original statement from which the language was borrowed, namely, the statement of Mrs. Tilton to Dr. Storrs, or which was used in that conversation with Dr. Storrs.

JUDGE NEILSON.—I do not think that is sufficient.

Mr. Evarts.—Your Honor, we will consider a moment. [To Mr. Fullerton.] Can you turn to that part of the evidence?

Mr. Fullerton.—I could not now. I will ask the witness, then, a further question.

Mr. Evarts.—Your Honor will remember, as my learned friend has stated, that there was a long statement—what has sometimes been called the "true story"—which it was said was read to Mr. Beecher.

JUDGE NEILSON.—And it was finally allowed to be given as a conversation.

Mr. Evarts.—Yes, sir; your Honor finally allowed a certain passage out of it. The paper we did not have here, you remember.

JUDGE NEILSON.—No.

Mr. Evarts.—A certain passage out of it was permitted to be given in evidence.

JUDGE NEILSON.—As a conversation merely.

Mr. Evarts.—As a conversation.

JUDGE NEILSON.—I said to Mr. Fullerton, I do not think that draws his letter in. If you adhere to your objection, I will rule it out.

Mr. Evarts.—Yes, I am going to see how we stand.

Mr. Fullerton.—It is ruled out.

Mr. Evarts.—No, it is not ruled out.

JUDGE NEILSON.—I say, if he stands upon the objection, I will rule it out.

Mr. Evarts.—And I have asked, for the sake of information, what he stated in the evidence. [Referring to the stenographer's minutes.] Mr. Fullerton says, after the discussion between us, "Go on and state the communication. What did Mr. Tilton say to Mr. Beecher upon that occasion? A. Mr. Tilton said to Mr. Beecher, 'Mr. Beecher, there is one thing in this

statement, which, if you can stand, you can stand any part of it. 'Elizabeth has stated that you solicited her to become a wife to you, together with all that that implies, and I will read to you that part of the statement.'

And he did read to Mr. Beecher that part of the statement." Now, where does this letter come in, to that?

Mr. Morris.—That is from this statement.

Mr. Evarts.—Where is the witness' statement that it is from this?

Mr. Fullerton.—I don't know where it is. I know it is there somewhere.

Mr. Evarts.—I don't see it.

Mr. Fullerton.—I will withdraw it, then; it takes so much time.

Mr. Evarts.—No, if your Honor please; you will hear what I have to say about it.

Mr. Fullerton.—I withdraw it.

Mr. Evarts.—Well, you don't withdraw it on my objection, unless you hear what I have to say.

Mr. Fullerton.—I withdraw it on your objection, and on the delay which follows it.

Mr. Evarts.—My delay is my own affair.

Mr. Fullerton.—And partly mine.

Mr. Evarts.—Now, if your Honor please——

Mr. Beach.—What is the gentleman speaking to? We have withdrawn the offer.

Mr. Evarts.—Perhaps I shall speak to that.

Mr. Beach.—To our withdrawal of the offer?

Mr. Evarts.—Yes, sir. Now, if your Honor please, the counsel has informed us that there was some connection of this paper with what was legitimately in evidence, and that that connection was found in the examination of this witness concerning the "true story" that was read, and that it was stated that the passage in the "true story" which was called to Mr. Beecher's notice, and concerning which he was told if he could stand that, he could stand anything that there was in the proposed publication—that that passage was an extract from this letter. That is the statement as you make it.

Mr. Beach.—Oh! no.

Mr. Fullerton.—And which you deny.

Mr. Evarts.—Now, if that be so in the evidence, then the paper may be admissible. I have turned to this passage of the examination of the witness, and I do not find anything of the kind.

JUDGE NEILSON.—I do not recollect any statement referring to this letter in that conversation.

Mr. Evarts.—Now, of course the counsel has a right to withdraw the paper entirely.

Mr. Beach.—There is a slight mistake in the statement of the counsel which I think should be corrected. Your Honor did not permit any part of that statement to be read—merely ruling that the witness could state the conversation that occurred between him and Mr. Beecher, without reference to the statement. You ruled it all out.

JUDGE NEILSON.—I do not recollect that this letter was referred to in that connection. You will withdraw it, then, for the present.

Mr. Fullerton.—We withdraw it, yes, sir, on the objection being made upon the other side.

Mr. Evarts.—No.

Mr. Fullerton.—I know my reason for withdrawing it better than you do, and that is because you object and spend a good deal of time upon it. Now, do you withdraw your objection to this paper?

Mr. Evarts.—I do.

Mr. Fullerton.—Then we will consider whether we put it in; and having another paper in the hands of the witness, I will go on with the testimony upon that point.

Q. What paper have you in your hand now? A. A letter from Mr. Beecher, sir.

Q. Addressed to whom? A. To me.

Q. Was it received by you? A. It was; yes, sir.

Q. About the time of its date? A. Yes, sir.

Mr. Fullerton.—I offer it in evidence. It is one of those letters, sir, which was mislaid, and was not put in in its proper order. Shall I read it, Mr. Evarts?

Mr. Evarts.—I think so.

Mr. Fullerton.—[Reading.]

"MY DEAR FRIEND: I sent on Friday or Saturday the portrait of Titian, to the store, for you. I hope it may suit you.

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

"When Esau sold his birthright he found 'no place for repentance, tho' he sought it carefully, with tears.' But, I have one abiding comfort. I have known you, and found in you one who has given a new meaning to friendship. As soon as warm days come, I want you to go to Peekskill with me.

"I am off in an hour for Mass.—to be gone all the week.

"I am urging forward my second vol. of 'Life of Xt.'—for—'the night cometh when no man can work.'

"With much affection and admiration, yours truly,

"Mch. 25, '72, Monday morning. H. W. B."

[Letter marked "Exhibit No. 56."]

Mr. Fullerton.—The objection being withdrawn to this paper, which I offered a moment since, I now read the paper in evidence. [Reading.]

"DEC. 16, 1872.

"In July 1870, prompted by my duty, I informed my husband that Mr. H. W. Beecher, my friend and pastor, had solicited me to be a wife to him, together with all that this implied.

"Six months afterward my husband felt impelled by the circumstances of a conspiracy against him in which Mrs. Beecher had taken part to have an interview with Mr. Beecher.

"In order that Mr. B. might know exactly what I had said to my husband, I wrote a brief statement (I have forgotten in what form) which my husband showed to Mr. Beecher. Late the same evening Mr. B. came to me (lying very sick at the time) and filled me with distress saying I had ruined him—and wanting to know if I meant to appear against him. This I certainly did not mean to do, and the thought was agonizing to me. I then signed a paper which he wrote, to clear him in case of a trial. In this instance, as in most others, when

absorbed by one great interest or feeling, the harmony of my mind is entirely disturbed, and I found on reflection that this paper was so drawn as to place me most unjustly against my husband, and on the side of Mr. Beecher. So in order to repair so cruel a blow to my long-suffering husband I wrote an explanation of the first paper and my signature. Mr. Moulton procured from Mr. B. the statement which I gave to him in my agitation and excitement, and now holds it.

"This ends my connection with the case.

ELIZABETH R. TILTON.

"P.S —This statement is made at the request of Mr. Carpenter that it may be shown confidentially to Dr. Storrs, and other friends, with whom my husband and I are consulting."

[Letter marked "Exhibit No. 57."]

Mr. Beach.—Is there any date to it?

Mr. Fullerton.—Yes; I gave the date.

Mr. Beach.—What was it?

Mr. Fullerton.—Dec. 16, 1872.

Mr. Shearman.—You give it as Dec. 16?

Mr. Fullerton.—Yes, sir; it is so printed.

Mr. Evarts.—I ask your Honor's and the jury's attention to the change of date there.

Mr. Shearman.—It was originally written "15th," but is altered to '16th."

Mr. Evarts.—It is a question of the inspection of the paper.

Mr. Fullerton.—I may say, with as much propriety, that it was written the 15th, and remains the 15th still.

Mr. Evarts.—Which way do you put it?

Mr. Fullerton.—I don't put it any way.

Mr. Evarts.—Then the paper will speak for itself, if you don't speak for it.

Mr. Fullerton.—I don't speak for it.

Mr. Evarts.—I suppose the paper will speak for itself.

Mr. Fullerton.—Then you should not say anything more about it.

Mr. Evarts.—Well, we want to understand it.

Mr. Fullerton.—Well, if you think there is a point there, you are entitled to all the advantage of it. I don't see, myself, that it makes any difference whether it is the 15th or 16th. It looks like either.

Mr. Evarts.—Well, we will see.

Mr. Fullerton.—Commencing on Dec. 26, 1870, and ending with the investigation before the committee of Plymouth Church, how frequently did Mr. Beecher, as near as you can now state, visit you at your house? A. Very many times, sir; he was the most frequent visitor with the exception of my partner, who came every morning to the house.

Q. Well, give the jury some idea of the frequency of his visits when he was in the city? A. In the first part of 1871 he was at my house about every day, sir, and sometimes twice a day; and after I returned from the South, March 2, he came there frequently when he was in town; it is pretty hard for me to express how frequently; sometimes once a day and sometimes twice a day, and in 1872 the same.

Q. And at what hours during the day? A. No particular hours; he would come in the morning and come in the evening, and come on Sundays.

Q. How early in the morning? A. He would come sometimes before I was out of bed, sir.

Q. And how late at night? A. After his Sunday service, and very late during the evenings of the week.

Q. At how late an hour in the evening have you known him to call? A. I have known him to come after church service, between 9 and 10 o'clock.

Q. If he visited you at your place of business in New York, state the fact? A. Yes, sir.

Q. How frequently did he visit you there? A. Not very frequently, sir; he was not a regular visitor at the office; he would come when an emergency demanded it; as, for instance, during the sessions of the council, he came to see me after the Storrs speech.

Q. When did his visits cease, either at the house or store? A. I think, sir, that he did not come to my house after the 13th of July, 1874; I think that was the last date.

Q. You called my attention during the recess to a correction that you wanted to make in your testimony; you are at liberty to do that now. A. Yes, sir; it is with regard to the West charges; I seem to have confused the letter of Mr. West, of June 25, with the charges that Theodore Tilton brought to my house in the Fall; I don't know that it amounts to very much, yet I thought it best to correct it; I say that I talked with Mr. Beecher about the charges of West; it was about the letter of West of June 25.

Q. The one that has been put in evidence to-day? A. Yes, sir.

Q. And what was it that he wanted to go over until after vacation? A. The investigation that West had notified him of.

Q. And when did you see the charges? A. In the fall, I believe.

Q. The Fall subsequent to this letter of the 25th of June? A. Yes, sir.

Q. And it was, then, in the Fall that you called Mr. Beecher's attention to the charges? A. Yes, sir; I had a conversation with him about the charges. I did not show him that paper.

Mr. Fullerton.—If your Honor please, that closes the direct examination of Mr. Moulton, but at the same time, I desire to say to your Honor that in the great number of exhibits that we have been compelled to handle, and the great number of subjects to which we have been compelled to call the attention of the witness, we may have omitted something, and I wish it understood now that there is nothing reserved on our part at all intentionally, and if anything is omitted, it is entirely unintentional.

JUDGE NEILSON.—If an omission appear to be inadvertent, you will be able to correct it.

Mr. Evarts.—Now, I ask your Honor's attention to this correction that the witness has made. Certain papers were produced, to wit, a summons and a copy of the proposed charges or actual charges made by Mr. West, and the witness testified to a conversation which he had with Mr. Beecher concerning those charges as there set down, and that one part of the conversation—no matter for any of the rest of it for the purpose, at present—was that Mr. Beecher wanted the consideration of them postponed until after the vacation. Well, now, upon his correction, it appears that there was no such paper in

existence before the vacation, and there was therefore no conversation between him and Mr. Beecher about that paper as of the date which he has given for it; and if the correction that he makes is allowed, and takes place—of course, it is allowable for the witness to correct himself—why, all the evidence on the subject of a conversation concerning those papers, with Mr. Beecher, on which alone the making them evidence was permissible, falls through. Now, whether my learned friend is able, or expects to recall the matter as evidence by conversations concerning them at a later date, I do not know; it is for him and his witness between them to determine; but at present the correction, as it seems to me, strikes out all the evidence concerning a supposed conversation with Mr. Beecher regarding those papers.

JUDGE NEILSON.—And applies it to the letter.

Mr. Evarts.—That is for him to say, whether he applies it.

Mr. Beach.—He has said it.

Mr. Evarts.—Well, but the letter does not contain the charges. How can he talk about them? They were not in existence.

Mr. Fullerton.—It certainly must relieve the embarrassment of the witness, having fallen into such an error, when he finds that the learned counsel have fallen into a still greater one about a very recent transaction, because he mis apprehends the testimony as originally given as well as the correction now made. The correction is this, that in speaking of the West charges, he spoke of them as having been sent to him at about the same time, whereas he says now the letter of Mr. West addressed to Mr. Beecher, saying that he was going to make charges, was the first one that was sent to him, and that it was with reference to it, and to it alone, that he had the conversation with Mr. Beecher in the first instance, when Mr. Beecher wished the examination which was there threatened to go over until after the vacation—until the autumn. Now, so far as the conversation which he related as having taken place in the summer, it relates to that paper, the witness says, and not to the charges.

JUDGE NEILSON.—So I understand now.

Mr. Fullerton.—And that the charges came the following autumn, and that he then showed them to Mr. Beecher, and that the conversation which refers to the charges did not take place then, but took place in the autumn.

Mr. Evarts.—That is what he has not said.

Mr. Fullerton.—Yes, he has said just that.

Mr. Evarts.—That is, I think, what he may say some time or other, but he has not said it yet. Your Honor will see what the examination was. [Reading from the testimony of Jan. 15.]*

Mr. Evarts.—Now, I am not objecting to the witness correcting a statement that is made, the correction being that there never was any such conversation concerning Mr. West's charges as brought to him by Mr. Tilton——

Mr. Beach.—That is not his correction.

Mr. Evarts.—At that time. Therefore I say what you have got here goes out.

Mr. Fullerton.—No, no.

* *Ante*, p. 407, the passage between figures (1) and (2).

Mr. Evarts.—Well, that is my statement—it goes out. If you admit that a conversation concerning the charges,—concerning a paper which is presently before them, brought by Mr. Tilton, now that there, as it appears, was no such paper before them, that no such paper was brought by Mr. Tilton, and that instead of that there was a letter, not containing the charges, but a letter written by Mr. West to Mr. Beecher, which Mr. Beecher brought to Mr. Moulton. Now how are you going to put those two conversations together? You may take the witness up and examine him as to what occurred when Mr. Beecher brought that letter, and you may take him up and examine as to what occurred in the fall when the charges were brought—if Mr. Beecher was present, for it does not appear—but we can not have a substitution of this testimony as it stands, as being evidence that has been given by this witness either in regard to the letter of West to Beecher in the early summer—because it does not profess to be—nor in regard to the charges of West in the fall, because he has testified that he had no such conversation in the fall.

JUDGE NEILSON.—I think this misapprehension had better be cleared up, Mr. Fullerton.

Mr. Fullerton.—I will, to gratify the counsel upon the other side, and solely for that purpose.

Q. Now, state what occurred between you before the summer vacation, in regard to anything with which Mr. West was connected. A. I received the letter of June the 25th, from Mr. West to Mr. Beecher, from Mr. Beecher, and we talked about those charges, and he wanted it to go over the summer vacation—he wanted that matter to go over the summer vacation.

Mr. Evarts.—What was said we are entitled to.

Mr. Fullerton.—Yes; what was said? A. Mr. Beecher said that he hoped the matter could go over the summer vacation, and that then we could find a way to deal with it; I saw him in the fall.

JUDGE NEILSON.—That was with reference to the letter? A. Yes, sir, with reference to the letter of June 25.

Mr. Fullerton.—The letter threatening the charges? A. Yes, sir.

Mr. Evarts.—Well, the letter.

Q. And did you approve of this—having it go over till Fall? A. Yes, sir.

Q. What occurred then in the fall with reference to the charges, when they came? A. In the fall, the charges of Mr. West were made, and the paper that I have seen here in court was brought to me by Mr. Tilton, and I saw Mr. Beecher and Mr. Tilton together, and it was decided what should be the reply; and Mr. Tilton said to Mr. Beecher, "I will claim my non-membership, and thus will prevent my being cited before the church." And he did write a letter, and send it to Mr. Tallmadge, I think—if I am correct about that—and then Mr. Beecher said to him, in my presence, afterwards, "Theodore, God inspired you to write that letter."

Q. Now, in this conversation that you have last spoken of between your self, Mr. Beecher, and Mr. Tilton, state whether the West charges were then and there present? A. I don't remember that they were.

Q. They were the subject, however, of the conversation? A. They were

the subject of the conversation. I think that Mr. Tilton had them in his possession there; I think so; I did not have them in my possession.

Q. Were they taken out and exhibited, do you remember? A. Mr. Tilton had them in his possession. I don't remember whether he exhibited them or not. My impression is that he did—I could not swear that he did. They were the subject of conversation, however.

Mr. Evarts.—Those West charges, as they now stand on the evidence, are not entitled to be read. We ask that they be struck out. The foundation upon which he rested them as evidence has disappeared.

JUDGE NEILSON.—He said before that he could not say that Mr. Beecher saw them.

Mr. Evarts.—Well, but he said that he had them there, and that he stated them to him. I submit to your Honor that that exhibit must be struck out as not supported by any evidence.

JUDGE NEILSON.—I will look at the evidence as it stands. If it is not supported, it will be struck out.

Mr. Evarts.—Your Honor understands our point.

JUDGE NEILSON.—Yes, sir; I can not recall it all now.

Mr. Evarts.—No, we will not interrupt your Honor at present. We make the point, and if your Honor rules against us, we shall except.

JUDGE NEILSON.—Yes, sir.

Mr. Beach.—My friend has read from the previous testimony of Mr. Moulton, that at some time Mr. Moulton stated those West charges to Mr. Beecher.

Mr. Evarts.—Yes, sir; in the summer, which happened to be some months before they were in existence.

JUDGE NEILSON.—But that same evidence now applies to a later interview.

Mr. Morris.—He corrects it.

Mr. Evarts.—He corrects it. When he is asked whether the charges were there, or exhibited, or produced, he does not know.

Mr. Fullerton.—I will ask him about it.

Mr. Evarts.—He can not know any better now—better than he knew three months ago.

Mr. Fullerton.—What was said in regard to the West charges at this interview between yourself, Mr. Beecher, and Mr. Tilton? Let us have it again. A. Mr. Tilton said he was going to plead his non-membership of the church, and therefore could not be cited down—to prevent his being cited before the church for trial.

JUDGE NEILSON.—He asked you what was said about the charges.

Mr. Beach.—The question put to you is whether anything was said there, and if so, what, in regard to the nature or character of the West charges.

Mr. Evarts.—Yes, that is the question put now; it has not been before.

Mr. Fullerton.—Yes, it was before—the previous question.

Mr. Evarts.—Well!

Mr. Beach.—We propose to put it again.

Mr. Evarts.—That could never happen—that conversation.

Mr. Fullerton.—It did happen. It did not happen in the summer.

JUDGE NEILSON.—One at a time.

The Witness.—What is the question?

Mr. Fullerton.—What was said in the conversation between yourself, Mr Beecher, and Mr. Tilton in regard to the West charges against Mr. Beecher?

Mr. Beach.—The nature of them.

Mr. Evarts.—That is a leading question. This witness has made three answers that he don't remember. He has been asked three times what was said, and the answer was that Tilton would write a card declining.

Mr. Beach.—Now, the witness should not be put in a false position. I think the witness has been misled by the form of the question that was put to him concerning what was said on the subject of the West charges. Now, I propose to have the question put to him, what if anything was there said in regard to the nature or character of the West charges.

JUDGE NEILSON.—In the fall?

Mr. Beach.—Yes, sir.

Mr. Fullerton.—State, Mr. Moulton, if you please? A. In regard to the nature or character of the West charges?

Q. Yes.

JUDGE NEILSON.—After they had been put in.

Mr. Evarts.—They were not put in. After they had been sent in to the church, your Honor.

JUDGE NEILSON.—That is what I mean, of course.

Mr. Fullerton.—And after they had been served upon Mr. Beecher.

The Witness.—There was nothing that I remember at this conversation except the fact that Mr. West had made his charges at the church, and Mr. Beecher was at the house and consulted with Mr. Tilton and myself in regard to what the answer should be to those charges.

JUDGE NEILSON.—Was anything said as to what those charges of Mr. West were? A. We all seemed to know. There wasn't any discussion.

JUDGE NEILSON.—Well, that answers the question then.

Mr. Evarts.—I think this ends the matter.

Mr. Beach.—We will see.

Mr. Fullerton.—You are very anxious to have it ended, but it will not be ended until it is done.

Mr. Evarts.—Well, we will see.

Mr. Fullerton.—Well, just wait and we will see. [To the witness.] On your former testimony—the former examination—I understood you to say that in that interview at your house between Mr. Beecher, Mr. Tilton and yourself you stated the nature and character of the West charges?

Mr. Evarts.—That I object to. There is no such thing in the evidence.

Mr. Fullerton.—There is such a thing in the evidence.

Mr. Evarts.—That is in the summer, and the West charges had not been made then.

Mr. Fullerton.—I don't care when it was that the conversation took place, and if the witness has made a mistake in saying that it took place in the summer rather than in the fall, I do not mean to be deprived of the benefit of that testimony.

Mr. Evarts.—That I agree to. Now prove what took place in the fall.

Don't undertake to call him to an exploded conversation in the summer as evidence that he has given about what took place in the fall.

Mr. Fullerton.—Well, he didn't explode as frequently as you do, to no effect.

JUDGE NEILSON.—Put your question.

Mr. Fullerton.—I say, if the conversation took place, it is immaterial when it took place. It was with reference to the charges, and of course——

Mr. Evarts.—We will discuss all this at some other time.

Mr. Fullerton.—You are discussing it now.

Mr. Evarts.—I am not.

Mr. Fullerton.—You are trying to.

Mr. Fullerton.—Now I will read this over again, [reading from testimony of Jan. 15, a part of the passage Mr. Evarts had read.]

Mr. Evarts.—Now——

Mr. Fullerton.—One moment! I have a question to put, and then you may object if you please. [To the witness.] I call your attention to that part of the evidence in this case, and ask you now whether in the fall after the charges were made you had this conversation which I have just read?

Mr. Evarts.—That I object to. That is entirely a leading question. He asks this witness whether he had in the fall a conversation that he testified that he had in the spring, and which he never did have in the spring. Now we will get what the fall conversation was, but not in that method.

JUDGE NEILSON.—The counsel should ask him what the fall conversation was. Ask him what was said to Mr. Beecher in regard to the West charges, or, if anything, in regard to their contents and terms.

Mr. Fullerton.—Now, will you state what conversation you had with Mr. Beecher in the presence of Mr. Tilton in the fall, with reference to the West charges? A. Yes, sir; Mr. Beecher was at the house with Mr. Tilton, and Mr. Tilton said to Mr. Beecher, "I shall plead non-membership with reference to these charges of Mr. West, so that I shall not be cited—so that I can not be cited before the church"—or words to that effect; that is the substance of it; and Mr. Beecher thought that that was the proper course for him to pursue, and said that he would like to have him pursue that course; that was the substance of what Mr. Beecher said. And Mr. Tilton did write a letter to the church; and Mr. Beecher subsequently met Mr. Tilton and myself, and said, "Theodore, God inspired you to write that letter."

Q. Now, is that all that you remember? A. That is all that I remember.

Q. At any time when Mr. Beecher was present, was the nature of these charges—the character of these charges discussed and mentioned? A. Mr. Beecher said to me, on one occasion—let me see; I think it was in the fall—I told Mr. Beecher that Mr. Tilton had come to me and said to me that Mr. West seemed to him more friendly disposed toward him (Mr. Tilton) in the fall than he had been; and that he had been to see Mr. Tilton with reference to coming down to the church and testifying—testifying on that subject; and I said to Mr. Beecher, "I do not like it; it seems to me that with reference to his charges against you, his undertaking, nominally, to defend you, but really

to ruin you." Mr. Beecher said he thought so, too. That is the only conversation that I remember in reference to the charge.

Q. Did you ever hear of but one set of charges made by Mr. West? A. No; I never heard of but one set of charges. I remember the conversation that I have detailed to you specifically.

Mr. Evarts.—Your Honor reserves your decision upon my motion to strike out?

JUDGE NEILSON.—Yes, sir; I will look at the evidence.

CROSS-EXAMINATION BY MR. PORTER.

Q. What is your age? A. Thirty-eight; I was thirty-eight years of age last July—the 11th.

Q. You mentioned that you were a member of the firm of Woodruff & Robinson? A. Yes, sir.

Q. What is the business of that firm? A. The business of that firm, sir, is —was, when I was a member of the concern, in both of its branches, a merchandise and storage business. I am a member of the concern of Woodruff & Robinson, now, in the merchandise business.

Q. You were a general partner? A. I was a partner in the concern in the storage and merchandise business.

Q. When did you cease to be a general partner? A. I ceased to be a general partner, sir, on the 1st day of January, if by general partner you mean in the merchandise and storage business; yes, sir.

Q. What is your present partnership—one of definite or indefinite duration? A. Well, sir, so far as I know, it is of indefinite duration; it is not a limited partnership.

Q. The time of its termination is not fixed? A. The time of its termination is not fixed; it has been talked about, sir.

Q. And is still undetermined? A. And it is still undetermined.

Q. Mr. Tilton, I observe, takes frequent occasion to speak of you as the mutual friend of himself and Mr. Beecher. That was the relation you occupied, wasn't it? A. I was a friend of Mr. Tilton's and a friend of Mr. Beecher's.

Q. At what era did your friendship to Mr. Beecher have its inception? A. Well, sir, about December 30, an intimate personal friendship, 18—not an intimate personal friendship before Dec. 30, 1870, sir.

Q. It had its termination at the time you refused to furnish him with copies of his own papers in your hands? A. No, sir; I think not.

Q. How long after that did it continue? A. Can you give me the date, sir, of the communication that he addressed to me? He addressed to me a communication, if I remember—perhaps I can state it to you from memory.

Mr. Beach.—I think that question improperly assumes, sir, that Mr. Moulton declined to furnish him with copies of papers. There is no such evidence, as yet.

Mr. Porter.—You did decline to furnish him with copies of papers? A. I did not decline to furnish him with copies of papers.

Q. Did you decline to furnish him access to papers? A. By advice of counsel, sir, I wrote a note to Mr. Beecher relative—in answer to a letter brought to me by Mr. Benjamin F. Tracy, at my office, sir.

Q. You do not understand that you ever did deny to Mr. Beecher access to his papers in your hands? A. To his papers in my hands? No, sir; I do not understand that I ever denied him access to his papers in my hands.

Q. You are not aware that he desired to obtain access to them? A. I am aware that he desired to have me furnish, if I remember correctly, sir, the phraseology of his note; I am aware that he desired to have me furnish him —the letter will state, if you will allow me to look at it, sir. Perhaps you know it yourself.

Mr. Porter.—Well, you have the letter.

Mr. Beach.—It is printed.

Mr. Evarts.—Well, it is the letter to Mr. Moulton that we want.

The Witness.—There was a letter brought by Mr. Tracy to me.

Mr. Evarts.—You have got it, haven't you? A. I have not—I do not—it may be among the papers here, sir; I think it was dated July 24, if I remember correctly.

Mr. Evarts.—If we want that letter you will have to find it, I suppose. We want the original.

Mr. Beach.—He can refresh his recollection by looking at the copy, if he wants. [Book handed to witness.]

Mr. Porter.—Have you the original letter addressed to you by Mr. Beecher on the 24th of July, '74? A. I really do not know, sir, whether I have or not; if I have I will produce it; I do not know whether I have or not.

Q. You were subpœnaed to produce that among other papers, were you not? A. Yes, sir; I have a subpœna to produce papers; I shall produce them —all, sir, that I have; I judge that I must have it; it is marked here "D."

Q. Paper marked "L," isn't it? A. "L;" you are correct, sir, marked "L." Now, the reply to that letter, sir, was made by my counsel, as I stated to you; and if you will allow me to look at that I will see whether— [Book handed back to witness.]

Q. Just identify this letter first; do you identify that letter? A. Yes, sir, I think this is the letter.

Mr. Porter.—I will read it as printed now, and will subsequently introduce the other when it is produced.

JUDGE NEILSON.—Yes, sir.

Mr. Porter.—[Reading.]

"July 24, 1874.

"MY DEAR MR. MOULTON: I am making out a statement, and I need the letters and papers in your hands. Will you send me by Tracy all the originals of my papers? Let them be numbered and an inventory taken, and I will return them to you as soon as I can see and compare, get dates, make extracts or copies, as the case may be.

"Will you also send me Bowen's 'heads of difficulty,' and all letters of my sister, if any are with you?

"I heard you were sick—are you about again? God grant you to see peaceful times. Yours gratefully,

F. D. Moulton. H. W. BEECHER."

[Letter marked "Exhibit D, 1."]

Q. When that letter was presented what reply did you make to Mr. Tracy? A. I think I told him I was going out of town that evening.

Q. Was that all? A. Well, it is about all that I distinctly remember.

Q. Perhaps by reading what immediately follows that letter you may be able to refresh your recollection. A. I said to Mr. Tracy that he had better take——

Q. No, no, not aloud; you can refresh your recollection? A. I think I said something of that sort to him.

Q. Something of what sort? A. That I could not honorably give Mr. Beecher documents for conflict when I had not given them to Mr. Tilton.

Q. Did Mr. Tracy request you to give copies? A. He wrote a letter to me, sir, asking me to give copies, and put the letter in his pocket—would not give that to me; he put it in his pocket and took it away with him, sir; I recollect that.

Q. Be kind enough to refresh your recollection by looking again at the paper you have in your hand? A. "I suggested that perhaps——"

Q. No, you need not read, except for your own information. A. He said something about copies, sir.

Q. He did? A. Yes, sir; and he wrote a letter.

Q. One moment. A. Pardon me, sir.

Q. Did he ask for copies? A. He said to me that Mr. Cunningham, a friend of both parties, might be trusted to make copies, and I said I didn't think that I could furnish copies any more than I could furnish the originals; that I was going away, and I did go away, sir.

Q. Before going away, suppose we finish the conversation—will you look once more? A. Yes, sir.

Q. Did you state to Mr. Tracy that it would seem to you the same breach of honorable obligation as to send the originals? A. I think I said something of that sort to him, sir; I may not have used that phraseology exactly.

Q. You say General Tracy wrote a letter at that time and on that subject? A. Yes.

Q. Did you refuse to receive it? A. I did not refuse to receive it.

Q. He did not offer it? A. I don't remember that he offered it to me, sir; he put it in his pocket, and I asked him to take the other letter back with it.

Q. Did he read it to you? A. I don't remember that he read it to me.

Q. Did he write it in your presence? A. He wrote it sitting at the desk, sir.

Q. In your presence? A. I was present in the office when he wrote it; I didn't look over his shoulder to see what he was writing.

Q. He wrote it to you? A. I don't know whether he did or not; I could not swear to that; he wrote a letter and put it in his pocket.

Q. You did not at the time understand that it was a letter to you? A. I had no reason for understanding anything about it.

Q. Why, a few moments since, did you say he did write you a letter, but didn't deliver it? A. He wrote a letter, sir; if I said he wrote me a letter

I could not know that he wrote me the letter, because I didn't receive a letter from him.

Q. You didn't understand it to be a letter to you? A. Mr. Tracy said, "I will write a letter asking for copies"; and he put that letter in his pocket, and I never saw that letter, nor do I remember that that letter was read to me.

Q. Was the letter from Mr. Beecher a sealed letter? A. I don't remember, sir, whether it was or not.

Q. When you read the letter of Mr. Beecher, didn't General Tracy say to you that if you would not let him have the originals, copies would serve as well? A. I think Mr. Tracy said copies might serve as well.

Q. You didn't consent to show the originals, nor to furnish copies, nor to permit them to be made? A. I didn't deny the original, nor did I deny copies.

Q. And gave neither? A. I gave neither, because I was going out of town, sir.

Q. And consented to give neither? A. And consented at that time to give neither.

Q. And affirmed that you could not honorably give either? A. That I didn't think I could.

Q. When did you next hear from Mr. Beecher on that subject? A. On what subject, sir? On the subject of producing the documents?

Q. Of access to those letters? A. I don't remember the date, sir, I don't remember.

Q. If you will just look, you will see that there was a letter dated 28th of July. When did you receive that? A. I think, sir, that I didn't receive that letter until the 4th of August, until my return. I went away.

Q. Were your letters forwarded during your absence? A. My letters were forwarded, sir, to Narragansett; a messenger, I believe, went with the letter to Narragansett. Some letters came to me at Boston, but this letter, sir, I didn't receive.

Q. Until your return? A. I think not, sir, to the best of my recollection.

Q. You use the phrase "You think not." Do you mean to affirm, as matter of knowledge, that you did not? A. I did not.

Q. You left on what day? A. I think on the 24th; it was the date of this letter, I believe, that I left.

Q. You returned on what day? A. I think Aug. 4, sir.

Q. On that day did you receive this letter? A. Yes, sir.

Mr. Porter.—I read now the letter of July 28:

"BROOKLYN, July 28, 1874.

"MY DEAR FRENID: The Committee of Investigation are waiting mainly for you before closing their labors. I, too, earnestly wish that you would come and clear your mind and memory of everything that can bear on my case. I pray you also to bring all letters and papers relating to it which will throw any light upon it, and bring to a result this protracted case. I trust that Mrs. M. has been reinvigorated, and that her need of your care will not be so great as to detain you. Truly yours,

F. D. Moulton. H. W. BEECHER.

[Letter marked "Exhibit D, 2."] H. W. SAGE, *Chairman.*"

Mr. Porter.—Did you take offense at that letter? A. Did I take offense at it? No, I think not, sir; I don't remember that I did.

Q. Did you regard that as an indication of unfriendliness to you? A. I don't think I did, sir.

Q. Will you look at your statement for one moment, and refresh your recollection on that subject? A. Yes, sir; what part of it, sir?

Q. Immediately below the last letter? A. The letter of Mr. Beecher of August the 4th, heretofore published?

Q. Just refer to it and then answer me? A. August 4; yes, sir.

Q. How is it? A. I didn't consider the other a letter of unfriendliness; no, sir.

Q. Nor an indication from Henry Ward Beecher of unfriendliness? A. No, sir; the letter of June 28 you are referring to now; July 28, you are asking?

Q. July 28? A. Yes, sir.

Q. The letter of August 4 you did, didn't you? A. Where is the letter of August the 4th?

Mr. Beach.—I have not heard of any of August the 4th.

Mr. Evarts.—He received this letter of the 28th of July on the 4th of August.

Mr. Beach.—Well, that don't make the letter of the 4th of August.

The Witness.—I think I can find it right away.

Mr. Pearsall.—You will find it, Mr. Moulton, at page 141.

Mr. Porter.—The letter of August 4 was one in reply to yours, I think. On the 4th of August, upon receiving the letter of July 28, you wrote to Mr. Beecher? No, of July 24.

Q. July 24; 28th I think it is? A. You said 28th; 24th you mean?

Q. On the 4th of August you wrote a letter to him? A. On the 4th of August, yes, sir.

Mr. Porter.—I will read that letter, your Honor, and then will follow it up with the letter of Mr. Beecher.

"49 REMSEN-ST., BROOKLYN, Aug. 4, 1874.

"MY DEAR MR. BEECHER: I received your note of July 24, informing me that you are making a statement and need the letters and papers in my hands, and asking me to send them to you for the purpose of having extracts or copies made from them, as the case may be, that you may use them in your controversy with Mr. Tilton.

"I should be very glad to do anything that I may do, consistent with my sense of what is due to justice and right, to aid you; but if you will reflect that I hold all the important papers intrusted to me at the desire and request and in the confidence of both parties to this unhappy affair, you will see that I can not in honor give them, or any of them, to either party to aid him as against the other. I have not given or shown to Mr. Tilton any documents or papers relating to your affairs since the renewal of your controversy, which had been once adjusted.

"I need not tell you how deeply I regret your position as foes, each to the other, after my long and, as you, I have no doubt, fully believe, honest and faithful effort to have you otherwise.

"I will sacredly hold all the papers and information I have until both parties shall request me to make them public or to deliver them into hands of either or both, or to lay them before the committee, or I am compelled in a court of justice to produce them, if I can be so compelled.

"My regret that I am compelled to this course is softened by my belief that you will not be substantially injured by it in this regard, for all the facts are, of

course, known to you, and I am bound to believe and assume that in the statement you are preparing you will only set forth the exact facts; and, if so, the documents, when produced, will only confirm and can not contradict, what you may state, so that you will suffer no loss.

"If, on the contrary—which I can not presume—you desire the possession of the documents, in order that you may prove your statement in a manner not to be contravened by the facts set forth in them to the disadvantage of Mr. Tilton, I should be then aiding you in doing that which I can not believe the strictest and firmest friendship for you calls upon me to do. With grateful recollections of your kind confidence and trust in me,

"I am very truly yours,

"F. D. MOULTON.

"REV. HENRY WARD BEECHER, Brooklyn, N. Y."

[Letter marked "Exhibit D, 3."]

Mr. Porter.—At that time you were a mutual friend of these parties, were you? A. Up to August 4.

Q. At that time were you the mutual friend of these parties? A. I had been as friendly to one as the other, sir.

Q. Had what? A. Had been as friendly to one as the other.

Q. My question was not as to the past, but as to that present—— A. As to what?

Q. My question was, whether, when you wrote that letter, you were the mutual friend of these parties? A. I was a friend of Mr. Beecher's and a friend of Mr. Tilton's at that time that I wrote the letter, sir.

Q. At that time you cherished for him the strictest and firmest friendship, did you? A. I did.

Q. Down to that time had he ever wronged you? A. I don't think that he had, except in asking me to lie for him.

Q. Do you think that was a wrong? A. Now I do; yes, sir.

Q. Did you then? A. I did not; I thought I was saving a man who was repentant.

Q. Did you lie for him? A. I did.

Mr. Porter.—We have your word.

JUDGE NEILSON.—One moment; the counsel ought not to comment upon what the witness says.

Mr. Porter—Not now, perhaps. [To the witness.] Did you mean to intimate to Mr. Beecher that Theodore Tilton had not copies of these papers of which you denied copies to him? A. I meant to say, sir, that I had never given him a copy for the controversy.

Q. Will you now oblige me by answering my question? A. Pardon me; I thought I had answered it.

Q. Did you mean to intimate to him that Theodore Tilton had not copies of the papers of which you refused copies to him? A. Did I mean to intimate; let me understand; I wish to answer the question; if you will ask the question again I will try to.

Q. When you wrote these words did you mean to be understood by him that, as you had furnished no copies to Mr. Tilton, you would furnish none to to him? A. I had furnished none to Mr. Tilton, and would furnish none to him; that is what I meant to say.

Q. And you meant so to be understood? A. I meant so to be understood.

Q. Did you furnish—well, you answered my question? A. I did; yes, sir.

Q. Did you hand to Theodore Tilton the retraction which you procured from Mr. Beecher the evening you visited him with a pistol? A. Did I hand it to him?

Q. Yes. A. I read it to him, and may have handed it to him; I do not remember whether I handed it to him or not; I think I did, perhaps.

Q. You don't know, then, but what you did hand it? A. I don't know but what I did.

Q. You think you did? A. I may have handed it to him to read.

Q. To copy? A. No, sir.

Q. Did he copy it? A. I don't remember that he did.

Q. And did you dictate to him while he copied? A. No, sir.

Q. Did Mr. Tilton afterwards send you that paper? A. Did he afterwards send me the letter of recantation?

Q. Yes. A. My impression was that I kept it, sir.

Q. Do you mean to deny his statement that he afterwards sent it to you?

Mr. Fullerton.—One moment; I object to that.

JUDGE NEILSON.—It is objectionable, as assuming—— *

Mr. Fullerton.—There is no statement of that kind.

JUDGE NEILSON.—Yes.

Mr. Porter.—Have you read Mr. Tilton's successive statements? A. Not all of them, sir; no; I don't remember having read the statement you speak of.

Q. How? A. I don't remember having read the statement that you speak of, and I would not be guided by it if I had.

Q. Do you mean, then, to swear that Theodore Tilton never had that in his possession? A. No, sir, I do not mean to swear to that.

Q. Do you mean to swear that he never had it before this controversy began? A. I don't mean to swear to that; no, sir.

Q. You don't know but he did? A. I don't know but what I handed it to him that night; it would have been quite natural, sir, if I had.

Q. Do you know whether he had copies of other papers, copies of which you denied to Mr. Beecher? A. Do I know whether he had copies of other papers—.

Q. Yes; of which you denied copies to Mr. Beecher? A. He told me that he had made a memorandum of the letter of contrition, part of which he quoted in the Bacon letter.

Q. I was not inquiring what he told you? A. Ah! I beg pardon.

Q. I was inquiring of your knowledge of the fact that he had copies. A. I don't know that he had copies, sir.

Q. You never knew? A. No, sir; I had not seen any copies in his possession.

Q. Do you remember his sending that with other papers, saying that they would be more secure in your safe than in his? A. Remember sending what, sir?

* The court may exclude, even on cross-examination, a question, which assumes a fact to be proved, which is not proven *People* v. *Mather* (4 Wend., 229, 249.)

Q. A retraction by Mrs. Tilton? A. I do not remember that, sir.

Q. You do not? A. I do not remember that.

Q. Did you ever read Mr. Tilton's examination? A. Not all through; no, sir.

Q. Did you ever dictate to him while he made copies of papers connected with this controversy? A. I do not remember that I ever did.

Q. Do you remember that you did not? A. I should swear that I did not, sir, if I swore at all.

Q. Well, that is what I ask you, whether you do so swear? A. I should swear that I did not.

Q. You do? A. Yes, sir; for I do not remember that I ever did.

Q. Did you read Tilton's first statement? A. Not all of it.

Q. Did you hear it read? A. No, sir; he would not read it to me.

Q. Did you hear his second statement? A. Did I hear his second statement?—no, sir.

Q. Nor did you read it? A. No, sir; he would not—he would not let me read it.

Q. Well, the better way is to confine yourself to questions. A. Pardon me, I forget the——

Q. You do not know what it contained? A. I do not now know what it contained; I could not repeat it, sir; I read it after it was published—a portion of it.

Q. Why did you stop with a portion of it? A. I don't know, sir; I was not very much interested in it.

Q. But you remember distinctly the fact that you did not read it through? A. I remember that I did not read it through.

Q. And that you never have read it through? A. No, sir; not all of it.

Q. You remember distinctly the fact that you have never read his examination through? A. I remember that, sir.

Q. You remember distinctly that you have never read his last statement through? A. I remember that.

Q. Nor heard it read? A. Nor heard it read.

Q. We will return to Mr. Beecher's letter; will you turn to page 142?* A. Yes, sir.

Q. In reply to your letter of the 4th of August you received this, did you? A. In reply to what, sir?

Q. To your letter of the 4th of August. A. Received which one, sir; where is it?

Q. The one which you find on page 142. A. Oh! I see; yes, sir; yes, sir.

Mr. Beach.—I do not see upon what principle these letters from Mr. Beecher are receivable.

Mr. Evarts.—To show the relations of the witness with the party against whom he is testifying.

Mr. Beach.—Yes, sir; but I object to these communications from Mr.

* The reference here is to Paxon's pamphlet before cited.

Beecher to Mr. Moulton. It is intimated by counsel that they are offered in evidence for the purpose of showing the relations or the feelings between Mr. Beecher and the witness. I understand it to be abundantly settled by the authorities that for that object it is not competent to show the particulars of any difficulty or of any transaction as between the witness and the party; but only to ask as to the state of feeling; and if your Honor has any doubt in regard to that proposition, I shall ask you to look at the authorities upon the subject. Now, here is a series of letters proposed to be introduced, written by Mr. Beecher to Mr. Moulton. I can not see, sir, upon what principle they are admissible. They contain declarations upon the part of Mr. Beecher which may, perhaps, affect the merits of this controversy. They may contain allegations of fact which Mr. Moulton, for aught I know, may have admitted, or failed to deny. But how those assertions upon the part of Mr. Beecher, whether written or oral, can be introduced upon this issue, I am at a loss to perceive. It is not pretended that Mr. Tilton was present. It is not pretended that they were shown or stated to Mr. Tilton. No possible connection upon the part of Mr. Tilton with them is proposed to be shown; certainly none has been shown, and until that connection is proven, I submit to your Honor that they are not admissible, and I object to them.

Mr. Evarts.—Certainly, these letters have nothing to do with Mr. Tilton. Mr. Moulton has shown himself, by his direct examination, as the depositary, in the confidence of friendship, of certain papers, as well as a good many oral communications, if we are to trust to his remembrance of such conversations that were confidential. Now, a controversy arises in which these papers confided to him are pertinent and important, in behalf of Mr. Beecher, who had confided them to him; and it was necessary and proper that Mr. Beecher, in reference to the inquiry, should have the papers that concerned the subject in respect to which those papers came into existence; and that go to show the attitude and conduct of this witness. From the moment when the confidence in which the papers had been reposed, required that for the purpose of the man who had reposed that confidence in him, he should have access to them, the witness took the attitude of denying and of excluding. And, as we could have shown the conversation between them on the subject to mark the attitude, and mark the sentiments, and mark the conduct, from that moment forth, of this witness in this controversy, so we can show the correspondence between them; and the letters from Mr. Beecher to Mr. Moulton, and from Mr. Moulton to Mr. Beecher, on the subject-matter of the attitude, are statements of the attitude, as a conversation would be. And it is our purpose to show by this correspondence that, from that time forward, this witness has been hostile, active in opposition to Mr. Beecher; and this great act of refusal and exclusion, the applications made by Mr. Beecher, and the manner in which they were met by Mr. Moulton, is the initial step of that exploration and exposure of this witness' attitude.

JUDGE NEILSON.—Well, we have received the correspondence down to the point of refusal—that appears—on application for the papers, or for copies, obtaining neither—that appears. Now, unless the remaining correspondence is for some other purpose than to show hostile feeling, I think it is

not admissible. That fact can be shown by a general question, or proved by anybody else.*

* In *Daggett* v. *Tallman*, 8 Conn. 168 (Supreme Ct. of Errors, 1830, opinion by DAGGETT, J.), a witness for the plaintiff "testified that he went to Hanover, in New Jersey, to get *Joshua L. Church's* deposition, to be used in this suit; that *Church* promised to meet him at a time and place specified, for that purpose, and disappointed him; that the deponent found *Church* again, when, after making various objections (which were detailed), he agreed to meet him in New York, and give the deposition requested; that deponent returned to New York, and on his way, met the defendant going to find *Church;* and that *Church* did not appear in New York to fulfil his agreement.

"It was an admitted fact, that *Church*, on the same day on which he refused to give his deposition to the plaintiff, and agreed to give it in New York, gave, in New Jersey, to the defendant, on his request, and *ex parte*, the deposition which the defendant produced on the trial. *Held*, that these facts were admissible to show a reluctance on the part of *Church* to testify for the plaintiff, and a bias and prejudice in favor of the defendant. 'Surely,' says the court, 'the deponent *Church*, had he been present as a witness, might have been cross-examined on all those points; and had he denied the facts, proof of them might have been received to weaken his testimony.'"

The following cases further illustrate the subject of bias:

1. *Cases showing the relations of the witness to the party.*

Ott v. *Houghton*, 6 Casey [Pa.], 451 (1858, opinion by THOMPSON, C. J.). A party against whom a witness is called, may always, on cross-examination, propound questions to elicit evidence of the witness' favor or bias. Judgment reversed. [In this case the questions excluded were, "do you not own an interest?" &c.]

Combs v. *Winchester*, 39 N. H., 13 (1859, Supreme Ct., opinion by BELL, J.). Dictum, that the state of a witness' feeling toward a party is always material, and the witness' statements as to this may be contradicted, though made on cross-examination. The decision in *Martin* v. *Farnham* (25 N. H., 195), rendered by the court in the opinion of the same justice, in 1852, was to the same effect.

Bersch v. *The State*, 14 Md., 434 (1859, opinion by PERKINS, J.). It is always proper to ask a witness as to his relationship to the parties, and the state of his feelings toward them, that the jury may judge of the impartiality or partiality of his testimony. Judgment affirmed.

Drew v. *Wood*, 6 Foster [N. H.], 363, (1853, opinion by WOODS, J.) The relation in which a witness stands to a party, whether of peculiar friendship or hostility is material, and may always be shown, either by the testimony of the witness to be affected or by that of others. [The evidence was to the effect that the witness had said that "if the Drew family" (of which plaintiff was a member) "went over that hill they should not go home alive," exhibiting a pistol.]

Martin v. *Farnham*, 5 Foster [N. H.], 195 (1852, Opinion by BELL, J.). It is always a material question what is the state of feeling of a witness toward one or both of the parties. It is always proper to inquire on cross-examination whether the relations of a witness are those of a dependent or friend of one of the parties or whether he has any bias, prejudice, or hostility which might affect his testimony or induce a jury to distrust his statements or weigh them with care. The statements made in answer to such inquires may be contradicted directly; or it may be shown that the witness has made representations which are different therefrom. [In this case the statement of the witness impeached, made before the trial, to the effect that the loss on the note sued on, if any, would fall on him, and not on the plaintiff, his son, was allowed to be proved.]

Campbell v. *State*, 23 Ala., 44. On an indictment of a man for murder the State may cross-examine defendant's witness to show details of their intimacy, as proposals of marriage by either to the other, particular visits, &c. What witnesses have said about the case, may be proved on cross-examination.

2. *Cases showing hostility of witness to party.*

State v. *Adams*, 14 La. An., 620 (1859, Supreme Ct., opinion by VOORHIES, J.).

Mr. Porter.—But the correspondence on that day is itself conclusive evidence of hostility on the part of Mr. Moulton. Besides, in this letter from Mr. Beecher, he replies to the allegations made by Mr. Moulton in the letter

Judgment reversed because the court below had shut out the reply to the question, put to a witness for the State on cross-examination, Are you not anxious that defendant shall be convicted?

Atwood v. *Welton*, 7 Conn. 66 (1828, Opinion by DAGGETT, J.). A witness, on cross-examination, may be questioned as to his being in a controversy with the party against whom he testifies, and whether he has not threatened to be revenged on him. If he should answer affirmatively, it would show a bias. If he should answer in the negative he may be contradicted.

Newcomb v. *State*, 37 Mississippi [8 George], 383 (1859, High Ct. of Err. and App., Opinion by HANDY, J.). A witness for defendant was asked on cross-examination, if she did not say that if accused did not kill deceased, she would not own him for her son. She denied that she had said so. Evidence to prove that she had made such a statement was then admitted. Objection was taken by the defense to the question, to the admission of the contradictory evidence on behalf of the State. Objection overruled. *Held*, no error. Judgment affirmed.

Breen v. *People*, 4 Park. Cr. 380 (1858, no opinion reported. N. Y. Gen. T., DAVIS, CLERKE, and SUTHERLAND, JJ.). Larceny. The court below erred in charging the jury "that the assault and battery inflicted on the defendant by the complainant," "as testified to by the latter, had nothing to do with the case of the defendant, having occurred subsequent to the larceny (if one had been committed), and that the jury should dismiss it from their consideration altogether." [The evidence seems to have been invoked to show the motive of the complainant.]

Titus v. *Ash*, 4 Foster [N. H.] 319 (1851, Opinion by PERLEY, J.). A quarrel between the witness and the party against whom he testifies, may be proved to discredit the witness. The merits of such quarrel are not material, but the degree of its violence is. If the witness wholly denies the quarrel, he may be contradicted; and if he denies all that makes the quarrel material, he may also be contradicted in this.

Rixey v. *Bayse*, 4 Leigh, 330 (1833, Ct. of App., Va., Opinion by BROOKE, J.). While particular instances of falsehood are not admissible in evidence to show want of veracity of a witness supported by testimony to his general reputation, particular acts of *hostility* toward a party may be proved. [Both questions were involved, and for error in refusing evidence on the last mentioned, judgment was reversed.]

Crippen v. *People*, 8 Mich. 117 (1860, Supreme Ct., Opinion by MANNING, J.). Indictment for nuisance.—*Held*, competent to show on cross-examination that the witness had begun civil suits for the same cause, which suits they suspended by agreement, and proceeded to get defendant indicted. The evidence should have been admitted to show bias. Judgment reversed.

Long v. *Lambkin*, 9 Cush. [Mass.] 361 (1852, Supreme Ct., Opinion by FLETCHER, J.). A witness called to discredit another witness, may be asked whether he has had a quarrel with him.

Starks v. *People*, 5 Den. 106 (1847, Opinion by BEARDSLEY, Ch. J.). A party may prove the declarations of a witness called against him which go to show hostility to him. [In this case the declarations were made before the alleged arson for which defendant (the party impeaching) was indicted.] It is always competent to show the relations existing between the witness and the one against as well as the one for whom he is called. A party is not entitled to give evidence of the character of his witness unless it is first attacked. It is error to allow proof of good character for truth, merely because the witness to be sustained had had part of his testimony contradicted by other witnesses, and because evidence that he had made hostile declarations against the party against whom he was called was adduced after he had denied such declarations. The general character for truth of a witness, himself called only to testify as to the general charcter of another, may be impeached.

Cook v. *Carr*, 20 Md. 403 (1863, Ct. of App.). On appeal from Orphan's

addressed to him, renews his application, limits it, makes it more specific, and that reply by Mr. Moulton I propose to read as a part of the *res gestæ* in reference to the very papers in controversy.

Court. The question was whether money received by plaintiff from Mrs. W. was a gift or loan. She was aged and infirm. There was some evidence not only of artifice but of threats by plaintiff in obtaining the money from her. *Held*, that any evidence was admissible to disclose the real motives and intentions of each toward the other. The rules as to admission of evidence are less strict when the circumstances excite suspicion of bad faith or the taking of improper and unjust advantage. The evidence held admissible was that Mrs. W. subsequently to paying the money, had an interview with Cook, when Cook said it was a gift, and she declared it was a loan, and said, "If I did say I gave it to him, I only said it to keep the peace." That she charged him in his presence with swindling her and forging her name. That he threatened her.

Collins v. *Stephenson*, 8 Gray [Mass.] 438 (1857, Opinion by THOMAS, J.). A witness having been asked on cross-examination, if he had ever threatened revenge on plaintiff, and having replied that he had not.—*Held*, that evidence that he had so threatened was competent and rightly admitted.

Chapman v. *Coffin*, 14 Gray [Mass.] 454 (1860, Opinion by MERRICK, J.). A witness for defendant testified on cross-examination that he had no recollection of having stated [after a previous trial?] "that he had testified at court on the defendant's side, but" that if called again "he thought he should testify on the plaintiff's side." *Held*, that the plaintiff was properly allowed to prove that the witness had made such a statement.

Merrills v. *Law*, 9 Cow. 65, 67. The fact of bad terms between witness and party should be weighed by the jury.

Brewer v. *Crosby*, 11 Gray [Mass.] 29 (1858, Supreme Ct.). Defendant was asked on his cross-examination by the plaintiff, if he had ever told the latter that if he (plaintiff) prosecuted him, he (defendant) would prove as bad a fellow as report said he was. Defendant denied that he had said so. Plaintiff then testified that defendant did make the remark to him. *Held*, proper, to show defendant's temper and disposition as a witness.

Cook v. *Spaulding*, 52 N. Y. 661 (1873, No opinion reported). Action to restrain defendant from flowing land by means of a dam, plaintiff claiming that defendant raised the water higher than his deed entitled him to do. This was denied. Plaintiff's testimony tended to show that the original grantee, who had a right to keep the dam, and flow the grounds, as then used, and whose right only defendant had acquired, had while he owned the premises, raised the dam. No proof was given that any other grantee had done so. H., a grantee intermediate between the original grantee and defendant, was called for the latter, and testified that while he owned, he did not raise the dam. On cross-examination, he was asked whether he had had trouble with plaintiff about raising the water, which was on objection excluded. *Held*, no error; that the witness had given no material evidence, and the proposed evidence if designed to impeach him was irrelevant; that the court might have supposed that the proposed evidence was intended as corroboration of plaintiff's case, by showing that plaintiff insisted, when H. owned, that his (plaintiff's) rights were infringed, and in this view the evidence was incompetent. If the object was to show hostile feelings on the part of the witness merely that should have been clearly stated, or the form of the question should have disclosed that object.

McHugh v. *State*, 31 Ala. 317 (1858, Supreme Ct., Opinion by RICE, Ch. J.). A witness for the prosecution was asked on cross-examination, if he entertained any hostility to the accused. He answered in the negative. He was then asked if he had made statements (specifying them) which, if made, indicated hostility. He replied that he had not. Evidence was subsequently offered by the defense to the effect that he had made such statements, but it was rejected. *Held*, error. Judgment reversed.

State v. *Harston*, 63 No. Car. 294 (1869, Supreme Ct., Opinion by READE, J.). To show the bias of a state witness, the prisoner asked the witness if he had

JUDGE NEILSON.—Those two remaining letters going to the question of application and refusal?

Mr. Porter.—Yes, sir.

not himself been in jail for the same offense. He said he had. He was then asked if the prisoner had not been sworn against him before the coroner's inquest. He replied "he did not hear the prisoner examined, but had *heard* that the prisoner was a witness and swore against him." Objected to as hearsay and excluded, *Held*, error.

Newton v. *Harris*, 6 N. Y. 345 (1852, Opinion by WATSON, J.). On cross-examination, one of the plaintiff's witnesses was asked the following question: "Have you said that the defendant in this suit should be beat if swearing could do it?" He answered, "No, I have not said so." The defendant afterwards called a witness to contradict him, but, upon objection by the plaintiff, the testimony was not allowed. On appeal, *Held*, error. Not only the mere fact of unfriendly feelings, but evidence tending to show it is admissible.

State v. *Fitzhugh*, 2 Oregon, 227 (1867. Supm. Ct., Opinion by BOISE, J.). Defendant's counsel on cross-examination asked, "Were you present at a public meeting called for the purpose of hanging these prisoners without a trial?" The question was excluded and exception taken.—*Held*, that while the question might properly have been admitted with the answer thereto, still it would not have shown that witness was unfriendly if answered in the affirmative, and its rejection as irrelevant was not error. It is one of those questions which are in the discretion of the court, &c.

Rex v. *Yewin*, cited 2 Campb. 638. On cross-examination witness may be asked if he had not been charged with crime against the prisoner, and if he had not threatened revenge. On the first point his answer must be taken, but as to such words they are material to the cause, and may be contradicted.

Commonwealth v. *Byron*, 14 Gray [Mass.] 31. On trial of indictment for perjury defendant may show, that before complaint, he sued witness for tort, and the witness was subsequently instrumental in procuring this indictment.

State v. *Montgomery*, 7 Jones [Mo.] 594 (1859, Supreme Ct., Opinion by RICHARDSON, J.). A witness called by the State testified on cross-examination as to his sentiments towards the accused, but the court sustained an objection to a question asking the state of witness's feelings towards the husband of the accused. *Held*, that the admission of the one part of the evidence and the exclusion of the other were both correct. Judgment affirmed.

State v. *Sam*, 8 Jones [Law No Car.] 150 (1860, Supreme Ct., Opinion by PEARSON, Ch. J.). Murder by a negro slave. A witness for the prosecution was asked on cross examination whether he had not taken up and whipped other negroes. *Held*, that the exclusion of the evidence called for was error. It is competent to show bias as to the cause as well as to the party. [*State* v. *Patterson*, 2 Iredell, 346, approved.]

3. *Cases showing interest of witness.*

Moore v. *Viele*, 4 Wend. 420 (1830, Opinion by MARCY, J.). Suit on a promissory note transferred to plaintiff after the statute of limitations had attached and after the maker (the defendant) had been discharged in insolvency. The payee of the note who transferred it to plaintiff was the only witness to prove a new promise. Evidence was adduced to show that the consideration of the transfer was to be plaintiff's own note not yet given at the time of this suit brought. There was an agreement, at the time of transfer, that the payee should be the witness for the plaintiff to prove the new promise. *Held*, that while these facts did not render the witness incompetent or entirely overthrow his credit, it was error to instruct the jury that it did not affect or impair his credit.

Cameron v. *Montgomery*, 13 Serg. & R. 128, 132. A witness may be asked if a party has not bought his property of him at his instance. Everything which may in the slightest degree affect the credit of witness may be shown. The exclusion of such evidence is fatal.

Batdorff v. *Farmers' Bank*, 61 Pa. 179 (1869, Supreme Ct., Opinion by THOMPSON, Ch. J.). Evidence was admitted to show that a witness for the plain-

Mr. Beach.—We do not deny the proposition that it is entirely competent to show hostility, if it can be shown, on the part of Mr. Moulton against Mr. Beecher—ill-feeling, malice—nor do we deny the right, in the language of the

tiff was a creditor of the firm sued jointly with a person who claimed himself not a partuer. This was to show an interest in the witness to have the firm obligations saddled upon the other defendant.

People v. *Cunningham*, 1 Den. 524 (1845, Supreme Ct., Opinion by JEWETT, J.) Indictment for a nuisance,—*Held*, that the fact that witnesses for the prosecution had, as appeared from their testimony, contributed funds to employ counsel to associate with the public prosecutor on the trial, was not ground for excluding or striking out their testimony, for interest. The witnesses were not interested in the event of that trial except in feeling, and that could only affect their credibility.

Reeves v. *Symonds*, 10 Mod. 291 (1714, Coram Lord C. J. PARKER, afterward Lord MACCLESFIELD). Defendant called his son to prove that the latter and not the former bought the goods. By the C. J.: "He can not be an evidence." DARNELL, *Sergt.*: "He can not get nor lose by the event of this cause for what is now given in evidence can not be given in evidence in another action." By the C. J.: "This you have often said and I as often answered, If an action be brought by a commoner for his right of common, shall another person that claims a right of common upon the same title be allowed to give evidence? No; and yet it is certain that he can neither get nor lose in that cause; for the event of that cause will no way determine his right. But though he is not interested in that cause, he is interested in that question upon which the cause depends; and that will be a bias upon his mind. It is not his swearing the thing to be true that gives him any advantage, but it is the things being true; and the law does judge that it is not proper to admit a man to swear that to be true which it is plainly his interest should be true."

Floyd v. *Wallace*, 31 Georgia, 688 (1861, Opinion by LYON, J.). Great latitude is to be allowed on cross-examination, as to questions tending to show bias or interest. [The question was, whether the witness did not say he had hired a man to cut timber, the suit being to recover for the price of timber, in the year this timber was cut, and the defendant trying to make out that plaintiff and witness were partners.]

4. *Cases showing attempts to influence witness.*

Martin v. *Barnes*, 7 Wis. 239 (1859, Supreme Ct., Opinion by SMITH, J.). Defendant had offered to prove a bargain between plaintiff and a witness, that plaintiff should pretend to be sick from the effects of the assault and battery and that they should share the damages. Excluded apparently on the ground that witness's attention had not been called to the proposed evidence before it was offered. *Held*, error. New trial.

Attorney-General v. *Hitchcock*, 1 Exch. 91; S. C., 11 *Jur.* 478; 16 L. J. Exch. 259 (1847, POLLOCK, C. B., PARKE, ALDERSON and ROLFE, B.B.). In an information under the revenue laws a witness against the defendant was asked on cross-examination, whether he had not stated that the officers had *offered* him a bribe to testify. The witness having denied this,—*Held*, that evidence was not receivable to show that he had made such a statement; because it was a collateral matter. [Otherwise, perhaps if the question was whether he had said he *was* bribed; and certainly evidence that he actually was bribed could be adduced.]

Morgan v. *Frees*, 15 Barb. 352 (1852, Opinion by MASON, J.). *Held*, that it is the settled rule that a witness can not be examined as to a distinct collateral fact for the purpose of impeaching his testimony by contradicting him. But the questions collateral to the issue are mainly those in respect to the particulars of the witness's general character or credit. A distinction, however, is made in respect to the right to contradict the witness on any fact relating to his conduct in a particular cause; *e. g.*, his promise that a witness shall be well paid for testifying falsely; and the witness's answer is not conclusive, but if a foundation be laid it may be contradicted by other proof.

first counsel who addressed your Honor, to show that there was an active and persevering hostility on the part of Mr. Moulton toward Mr. Beecher. The question is how is that to be shown? The counsel says, and he assumes that

Trial of Lord Stafford, 7 How. St. Tr. 1400 (1680, FINCH, Lord High Steward). Dugdale having given his testimony against Lord Stafford, his lordship was allowed to prove that Dugdale had endeavored to persuade people to swear falsely against Lord Stafford, and had offered them money to induce them so to do. This was done by calling the persons alleged to have been so attempted to be persuaded.

Folsom v. *Brawn*, 5 Foster [N. H.] 114 (1852, Opinion by EASTMAN, J.). The testimony of the witness (W.) was properly admitted, to contradict the former witness, who denied that he had attempted to tamper with the witness (W.). The temper and feelings of a witness toward a party are proper subjects of inquiry, and, if he denies hostility, he may be contradicted.

Cooley v. *Norton*, 4 Cush., 93. Proof of attempt to bribe in another and distinct controversy, not competent to impeach witness who has denied that he has bias.

Harris v. *Tippet*, 2 Campb. 637 (K. B., N. P., 1811, LAWRENCE, J.). A witness for defendant was asked, on cross examination, if he had not attempted to dissuade one of plaintiff's witnesses from attending. He said, positively, no.—*Held*, that the other witness could not be called to contradict him. Defendant must take his answer.

Young v. *Slaughterford*, 11 Mod. 228 (Q. B., 1710, trial at bar, HOLT, C. J.). In this case a witness was objected to on the ground that he had taken money. HOLT, C. J. says: "Suppose he had taken money? That is no reason why his testimony shall not be taken. But if it be proved the jury may give the less credit to his evidence."

State v. *Gage*, 17 N. H. 373 (1845). On trial of indictment, it is not competent for defendant to prove by other witnesses that a witness for the prosecution had made offers to defendant to settle with him and not prosecute, if defendant would pay him a certain sum of money. [Citing 11 Wend. 19; 2 Camp. 687.] It is conceded that hostility of a witness may be proved by any competent evidence; but particular facts of such nature as to create the supposed hostility or induce suspicion of its existence, can not be proved except as they may be drawn from the witness by cross-examination. In the offer in this case, the evidence tended to show that the alleged sordid motives were removed at the time of testifying.

The People v. *Genung*, 11 Wend. 18 (Supreme Ct., 1833, Opinion by SUTHERLAND, J.). Indictment for false pretenses in obtaining signature of one Conly. Defendant, on cross-examination of Conly, the prosecutor, who was the principal witness for the prosecution, offered to prove by him that he had frequently, during the present session of court, offered to prisoner, that if he would settle the subject matter of the indictment, witness would leave court, and would not appear. It did not appear that Conly had been damnified by the signature obtained.—*Held*, properly excluded. It could legitimately have had no influence with the jury. It did not tend in the slightest degree to impeach witness' testimony, or show his narration untrue. Improper endeavors to compromise the prosecution did not impeach the prosecutor's positive testimony to the fraud.

Elwood v. *Western Union Tel. Co.*, 45 N. Y. 549 (1871, Opinion by RAPALLO, J.). Plaintiff sued for damages sustained in paying $10,000 on the faith of a false message negligently sent by defendants. Plaintiff having shown that he had received the message from the telegraph office at the place of destination, the operators at the station where it, in the course of business, must have come from testified that no such message was sent. [It was suggested that the wire intermediate was cut.] It was argued that the receipt of the message merely raised a presumption that it had been sent, and that this presumption must be regarded as overcome by the positive testimony to the contrary. The telegraph operators having a motive to induce them to testify as they did,—*Held*, that it was for the jury to pass upon the weight due their statements. [It seems, too, that the

is an unestablished proposition, which I deny, that he can show it by proving conversations, the details of quarrels, the details of litigations, if you please, or any other declarations upon any subject as between the two parties. I assert, sir, that the settled doctrine of the law is that, for the purpose of proving that condition of feeling between assumed parties, you can not give the details of transactions between them from which that hostility may be inferred; that you can only ask in regard to the actual state of feeling, or to acts upon the part of the witness which go to indicate a hostile sentiment. Now, this letter which is proposed to be introduced—Aug. 4, of Mr. Beecher's —if your Honor will look at it, you will see that there is an expression in the last part of it of reproach, of indignation, if you please, against Mr. Moulton, for refusing these originals or these copies, as the case may be. Upon what principle is that received? The fact of refusal is already established, and, so far as that is proper or improper, so far as it is indicative of any ill-sentiment on the part of Mr. Moulton towards Mr. Beecher, why your Honor will see it, and the jury may consider it, but expressions of resentment or anger, condemnation on the part of Mr. Beecher, are not to be received as evidence of that condition of feeling as between the parties. It is enough that the parties admit or deny that the feeling exists. I wish your Honor would look at this proposed letter.

JUDGE NEILSON.—It is not necessary. I think the correspondence already in clearly amounts to an application for papers or copies, and a refusal; that covers that part of it.

Mr. Evarts.—Now, if you leave it there it will stand upon this letter; but that was not the end of the application. Mr. Beecher renews and enforces his applications, and is met with persistent resistance.

JUDGE NEILSON.—That is not necessary. It is sufficient that an application was made.

Mr. Evarts.—Have we not a right, if your Honor please, to show what applications we made, and how they were refused?

JUDGE NEILSON.—Here is the application made.

Mr. Evarts.—We can show one application made in a certain matter. If that were the end of the matter, very well; but we persist in our application, and then we are met in the manner that we are met. It is not a repetition of the responses as before. Our application is, in the shape presented to him, an earnest of our necessity and of justice, and replied to by him in the manner that he is replied to, and we offer that evidence as in itself the most direct and most trustworthy evidence of the hostility of this witness at that stage of the matter—not by any general state of feeling, but by an espoused side, and by the maintenance of the opposing litigation from that time forward, and those letters are the evidence of it.

JUDGE NEILSON.—I think we have sufficient of the correspondence. I rule out this letter.

operators' testimony was not unequivocal.] "It is undoubtedly the general rule that where unimpeached witnesses testify distinctly and positively to a fact, and are uncontradicted, their testimony should be credited, and have the effect of overcoming a mere presumption. But the rule is subject to many qualifications.

Mr. Evarts.—Your Honor will note our exception.

JUDGE NEILSON.—Yes, sir.

Mr. Porter.—I offer first this letter from Mr. Moulton to Mr. Beecher on the 4th of August, 1874, renewing and limiting his application for the papers, and stating the specific grounds on which he claims them. Your Honor excludes it, and we except.

JUDGE NEILSON.—Yes, sir.

Mr. Porter.—I offer, then, the letter from Mr. Moulton in reply, on the following day, in which he declines the proposition, and states the specific grounds on which he declines. We except to your Honor's exclusion of the letters. [To witness.] It was not until you received the answer on the 4th of August to your letter of that day that your friendly relations with Mr. Beecher terminated? A. Not until that time.

Q. And that letter was the commencement of their termination? A. One of the false statements in the letter was.

JUDGE NEILSON.—I strike out the expression "false statements."

Mr. Porter.—I do not object to it. I renew the offer now, that I have proved that this letter was the occasion of the termination of their relations. I now offer to read it, that your Honor may see, and that the jury may know.

JUDGE NEILSON.—It is sufficient that they did terminate friendly relations. We have sufficient evidence.

Mr. Evarts.—How is that proved, if your Honor excludes the letter?

Mr. Fullerton.—By the answer of the witness.

Mr. Evarts.—How is the form and manner and degree of the hostility proved except by the expressions?

JUDGE NEILSON.—He has stated the fact that those relations terminated at that time.

Mr. Evarts.—We are not obliged to take his answer, if your Honor please.

Q. After that did you ever enter the house of Henry Ward Beecher? A. After August 4?

Q. Yes, sir. A. No, sir.

Q. Did he ever enter yours? A. I don't think he has, sir.

Q. Before the 30th of December, 1870, did you ever enter his house? A. I may have gone there with my partner on a New Year's day to make a call.

Q. Do you remember that you ever did before that date? A. I don't distinctly remember that I did.

Q. Did he ever enter your house to your knowledge before that date? A. I don't think he did.

Q. As I understand you, the inception of your friendship for Mr. Beecher was on that stormy night when, as you claim, you learned that he had debauched the wife of your most intimate friend? A. It was not previous to that.

Q. And its termination was at the time you refused to allow him access to the papers upon which he relied for the vindication of that charge? A. Yes, sir.

Q. What was the inception of your friendship for Theodore Tilton? A. My early acquaintance with him, sir.

Q. In what year did you become acquainted with him? A. in 1850, I think—1849 or 1850.

Q. Where? A. At the New York Free Academy.

Q. What academy? A. The New York Free Academy.

Q. Were you with him at any other institution? A. No, sir.

Q. How long were you together there? A. Till 1854, I think.

Q. Were you class-mates? A. Part of the time.

Q. Were you then on terms of the closest intimacy? A. I was intimate with him, friendly with him; he was my friend.

Q. Did he do you favors there? A. I don't remember that he did me favors.

Q. Nor any favor? A. I don't know that he did, any more than one student—

Q. You received a prize at that institution on one occasion, did you not? A. I think so; yes, sir, I believe I did.

Q. Was he a competitor? A. I don't remember that he was.

Q. Do you remember that he withdrew from competition in order to enable you to get that prize? A. No, sir; I don't.

Q. Nor that he did it at your request? No, sir.

Q. Who left the Academy first, you or he? A. I think he did.

Q. Where did he go? A. I believe he went into business as a reporter, or went into some newspaper office.

Q. When did he leave the Academy? A. In 1854.

Q. What did you do after that? A. On August 17, 1854, I went with Woodruff & Robinson, as a boy in their office.

Q. You remained with them in that capacity how long? A. I think six or seven years.

Q. During that time did you from time to time see Theodore Tilton? A. From 1854 to 1861 do you mean?

Q. Yes, sir. A. Yes, sir.

Q. Your kindly relations continued? A. Yes, sir; they were kindly.

Q. Were you then living in New York or in Brooklyn? A. I lived in New York, sir.

Q. When did you remove to Brooklyn? A. I think it was in 1862 or 1863, somewhere along there—1863.

Q. At that time had you become a clerk in the office with the firm? A. Yes, sir.

Q. When did you first acquire an interest in the firm? A. I think it was in 1861.

Q. When did you and Mr. Tilton come to meet more frequently? A. We came to meet more frequently after I came to Brooklyn.

Q. When was it? A. In 1863, I think.

Q. Was he residing here at that time? A. He was residing in Brooklyn, I believe.

Q. From that time were you quite intimate with him? A. Well, sir, I didn't have time to be very intimate with anybody; I was friendly. I didn't visit his house very frequently at that time; I didn't visit anywhere.

Q. When did you begin to visit at his house? A. I think in 1868 or 1867, somewhere along there.

Q. When did he begin to visit yours? A. About that time when I moved into Clinton-street; when we became near r neighbors.

Q. Were your families intimate? A. They were never very intimate; no, sir.

Q. Your intimacy with Mr. Tilton was much greater than with Mrs. Tilton, of course? A. Yes, sir.

Q. When did you first become his banker? A. He deposited money with Woodruff & Robinson in the beginning of 1871, if I recollect correctly.

Q. Were they engaged in business as bankers? A. No, sir; he deposited money with Woodruff & Robinson—he wanted me to take it for him.

Q. In 1871? A. Yes, sir.

Q. Was that the first occasion on which your firm had been his banker? A. I think he never had any money with us before that, sir.

Q. Had you ever lent him money before? A. No, sir.

Q. Never? A. Never that I know of.

Q. Had you ever engaged in any enterprise with him before that? A. Not that I now remember, sir.

Q. Can you say that you had not? A. I think I could say so truthfully, sir.

Q. You had before that been in the habit of visiting him frequently? A. I had been at his house quite frequently; yes, sir.

Q. And he at yours quite frequently? A. He had been there; yes, sir.

Q. Did he often sleep at your house? A. I don't think he did ever sleep there.

Q. Never? A. I don't remember that he ever stayed all night.

Q. Did he often take meals at your house? A. He did take meals there quite often.

Q. Breakfast? A. Sometimes.

Q. Frequently? A. I think not.

Q. Dinner? A. Dinner.

Q. Freqently? A. Yes, sir.

Q. Did he ever take his meals at your house day after day? A. I don't remember that he was in the habit of taking them there, day after day; no, sir.

Q. I did not inquire if it was his habit; I asked you if he ever did? A. He used to come for several days in succession; yes, sir.

Q. Was it the subject of complaint by Mrs. Tilton? A. I never heard of it, sir.

Q. Were you ever at his house over night? A. Never that I remember, sir.

Q. Had you any pecuniary transaction with him prior to 1871? A. No, sir.

Q. Did you afterward? A. Yes, sir; after the date of this $4,000 you mean?

Q. When first did you have any pecuniary transactions with him? A. The first was the $4,000—the deposit of the $4,000 with the concern.

Q. What time was that in 1871? A. It was in the beginning of 1871; in January, I think.

Q. That was at his instance? A. Yes, sir.

Q. Not at your suggestion? A. I don't think it was.

Q. Was it for any special purpose? A. Not that I know of.

Q. Did it have any connection with any newspaper transaction? A. Not at the time it was made—not at the time it was deposited.

Q. Did he draw checks against it? A. He drew it out from time to time, by drafts, I think; I don't remember now how he drew it out, whether he went to get the currency for it or drafts; I don't know now; I don't remember, now. [The witness was then requested to procure and bring a copy of the account.]

ELEVENTH DAY, JANUARY 19, 1875.

FRANCIS D. MOULTON recalled. Cross-examination continued.

Mr. Porter.—You have mentioned that Mr. Beecher was in the habit of being at your house sometimes as often as twice a day? A. Yes, sir.

Q. Which did you see most frequently, Mr. Tilton or Mr. Beecher, during the years of your intimacy? A. I should say I saw one about as much as the other. When Mr. Beecher was in town, I saw him almost as frequently as I did Mr. Tilton—perhaps more frequently Mr. Tilton than Mr. Beecher, sir.

Q. Which was most at your house? A. Mr. Tilton was more frequently at my house, sir.

Q. Were you in the habit of traveling together at times? A. We had made excursions into the country, sir, during vacation time, together. I don't remember any other traveling we did together.

Q. Excursions of what duration? A. Well, we went fishing together sometimes, perhaps for a week.

Q. Frequently? A. Not very frequently; no, sir.

Q. Every summer? A. No, sir; not every summer.

Q. Did you ever visit watering-places together? A. Yes; I have been at Narragansett with Mr. Tilton.

Q. Through how many years was this habit of intercourse in vacations extended? A. I think the first time that I went to Narragansett with Mr. Tilton was in 1868, and we may have gone together in 1869. I do not think to exceed three times—three seasons in all, sir—fishing.

Q. Did you travel elsewhere with him at any time? A. I don't remember now, sir, that I did.

Q. Were you West together at any time? A. Out West?

Q. Were you at the West together at any time? A. No, sir; I don't remember that I ever went West with him.

Q. Did you meet him at the West? A. No, sir; I think not.

Q. Were you at Washington together at any time? A. No, sir; I think not.

Q. Did Mr. Tilton ever go to Washington for you? A. No, sir; I think not.

Q. Where else were you in the habit of meeting Mr. Tilton besides your own house? A. Well, sir, he generally came to my house, and at *The Golden Age* office. I used to go to *The Golden Age* office to see him, sir.

Q. Were you frequently there? A. Yes, I used to go there pretty frequently during the first year of *The Golden Age*.

Q. And afterwards? A. While he was editor, sir, I was frequently at *The Golden Age* office: yes, sir.

Q. Were you associated in any matters connected with woman's rights? A. I was in sympathy, sir, with the woman's right's movement, as was Mr. Tilton.

Q. Did you meet at conventions or assemblages in that regard? A. I do not remember, sir, that I was ever in a woman's rights convention with Mr. Tilton. Yes, I was once—in Newport, sir.

Q. Did you go together? A. I think we did; yes, sir.

Q. Did you ever meet him in Richmond? A. In Richmond? I think not, sir; no.

Q. Passing over those matters which relate to the account, I desire to ask you two or three questions as to the general result. You acted as his attorney in the matter with Mr. Bowen? A. I went down to see Mr. Bowen, taking a letter of authorization from Mr. Tilton to Mr. Bowen, to settle his accounts with him.

Q. Then you did act as his attorney? A. If that be an attorneyship, sir. I think the letter of authorization is quoted in my statement.

Q. Yes, I think it is. Have you the original here? I think, sir, I have, if it is in my statement. It has been among my papers, and unquestionably is now.

Mr. Evarts.—Have you that, Mr. Fullerton?

Mr. Fullerton.—No.

The Witness.—It is among my papers, Mr. Evarts.

Mr. Evarts.—Who has charge of your papers?

The Witness.—I gave them to Mr. Morris—Morris and Pearsall.

[Here occurred some conversation while in search of a paper.]

Mr. Fullerton.—Those that we introduced are arranged in envelopes; if this paper is deemed of importance, I suggest to the other side that they use the printed copy, and we will subsitute the original whenever it is found.

Mr. Porter.—You say you remember the terms of this instrument; well, I can read it just as it is. [Reading.]

"BROOKLYN, Jan. 2d, 1871.

"Mr. H. C. BOWEN,

"SIR:—I hereby authorize Mr. Francis D. Moulton to act in my behalf in full settlement with you of all my accounts growing out of my contracts for services to *The Independent* and *The Brooklyn Daily Union*. THEO. TILTON."

[Letter marked "Exhibit D, 4."]

Q. That was the day after he received the formal notice of dismissal? A. It was two days after he received it.

Q. Acting under that you secured how much for Mr. Tilton from Mr. Bowen?

Mr. Beach.—We object to that, sir.

Mr. Porter.—On what ground?

Mr. Beach.—That it is totally immaterial.

JUDGE NEILSON.—It is immaterial, except as it shows friendly service on the part of the witness.

Mr. Morris.—The amount does not.

JUDGE NEILSON.—Well, if it is a large amount it is a large service. I think it well enough to take it.

Mr. Beach.—If your Honor will be kind enough to note our exception?

Q. About what amount? A. The account under the contract was finally settled by arbitration, and $7,000——

Mr. Beach.—The question was what you secured, not what was settled by arbitration.

JUDGE NEILSON.—He means to say secured in that way.

Q. What amount in all did you receive from Mr. Beecher? A. What amount in all did I receive from who?

Q. From Mr. Beecher?

Mr. Beach.—For what purpose?

Mr. Porter.—For any purpose.

Mr. Beach.—Well, I object to that—what amount he received from Mr. Beecher for any purpose.

JUDGE NEILSON.—Well, for the purposes he mentioned.

Mr. Porter.—Did you ever receive anything from Mr. Beecher except for the purposes you mentioned? A. For the tuition of Bessie Turner and for the purpose of assisting Mr. Tilton; for no other purpose—and his family.

Q. What amount in all did you receive from Mr. Beecher? A. I have not the figures with me to state the exact amount that I received. There was $5,000 in one amount that I received from Mr. Beecher. That was received, I believe, May 2d, 1873; and the other amounts were received from about June, 1873, down to May, 1873—various sums.

Q. Have you no idea of about the aggregate? A. I don't remember, sir.

Mr. Beach.—June, 1873, to May, 1873? A. No, sir; not June, 1873; June, 1871, I meant. Somewhere between $6,000 and $7,000.

Q. In all? A. Yes, sir.

Mr. Porter.—Have you ever been on friendly terms with Mrs. Beecher? A. I think I have met her three or four times; that is all, sir.

Q. Did you ever visit her? A. I never did visit her.

Q. Your intercourse with her has been very slight, I think? A. Very slight; yes, sir.

Q. Were you ever on friendly terms with Mrs. Morse, the mother of Mrs. Tilton? A. I have met Mrs. Morse several times; very pleasantly when I have met her, sir.

Q. Were your relations those of friends? A. We were not unfriendly. There was no particular friendship, I think—what could be called friendship.

Q. Mere acquaintance? A. Acquaintance.

Q. Where did you meet her? A. I think I have met her at Mr. Tilton's house, and, I believe, once in Schermerhorn-street.

Q. You mean you met her in the street? A. No, sir; in the house, while she was living at Schermerhorn-street.

Mr. Evarts.—In her own house? A. She was living in a house in Schermerhorn-street; yes, sir.

Mr. Porter.—Did you go there to see her? A. I went there to see her; yes, sir.

Q. When was that? A. I don't remember what year that was.

Q. I would like the time, as near as you can fix it? A. I will try and fix it before I get through with my testimony.

Q. Very well. You know Mrs. Hooker? A. I have met Mrs. Hooker two or three times, sir.

Q. Where? A. I met her once in Richmond, and then I have——

Q. On what occasion? A. She was there and addressed a Woman's Rights meeting—a Woman's Suffrage meeting in Richmond, in 1871.

Q. Did you take any part in the meeting? A. Yes, sir.

Q. What time in 1871? A. I think it was in March, 1871.

Q. Do you remember the particular day of March? A. I really do not, sir.

Q. What was your part in the meeting? A. I either introduced Mrs. Hooker or Mrs. Paulina Wright Davis to the audience, upon the solicitation, I think, of Mrs. Hooker or of Mrs. Paulina Wright Davis; I don't remember.

Q. You were not the presiding officer? A. I was not the presiding officer, no.

Q. And did not at any time preside? A. No, I did not preside. They were there alone, unattended, and they desired me to introduce them.

Q. You did not go with them? A. I did not, sir.

Q. Nor with either of them? A. No, sir.

Q. Nor with any other lady? A. With my wife and a friend, Mrs. Sarah Sutherland Eddy and her daughter.

Q. I did not hear. A. Mrs. Sarah Sutherland Eddy and her daughter, and my wife and son.

Q. Were they delegates to the convention? A. They were not, sir.

Q. This is the extent of your intercourse—acquaintance with Mrs. Hooker? A. Yes; I think that is about the extent of it.

Q. Had you any interview with her in the year 1874? A. No, sir.

Q. You mentioned something in relation to Mrs. Beecher in connection with an inquiry as to whether the family difficulties were alluded to in one of your interviews at the house. Will you at this point state what was said in regard to her? A. I mentioned what, sir?

Q. On Judge Fullerton's examination you mentioned that something was said of Mrs. Beecher in connection with the family difficulties at one of your interviews at Mr. Beecher's house. Will you state what was said on that subject? A. I think on the evening of December 31st, when I went to Mr. Beecher's house, I said to him, "I understand that Mrs. Beecher is saying—is repeating stories against Mr. Tilton. Now, such stories ought to be stopped; they only tend to incense." And he said to me that Mrs. Beecher knew Mrs. Morse was a dangerous woman—or that is the substance of what he said—and yet her enmity to Theodore Tilton induced her to listen, or might induce her

to listen, to Mrs Morse; but he would try to control that. That is as near as I can remember.

Q. Was the name of any person connected with those stories mentioned, except the name of Mr. Tilton? A. Not, I think, at that interview, sir. There may have been at that interview.

Q. Did you state what was the nature of the stories? A. I don't think I did, sir; I don't remember now that I did.

Q. Do you remember whether you did or did not? A. Whether I stated the nature of the stories that Mr. Beecher was repeating—is that the question?

Q. My question is, whether you remember either that you did or that you did not? A. Well, will you state, then, the question exactly, so that I can understand it; let me say what I mean.

Q. Do you remember whether you did or did not refer to the nature of those stories? A. My impression is that I did.

Q. You don't remember in what terms? A. I do not remember the terms; no, sir, just at the present moment.

Q. While you were acting as the mutual friend of these parties, Mr. Beecher very generally acted upon your advice, didn't he? A. He sometimes did, sir.

Q. My question was whether he did very generally? A. I should say that he did very generally.

Q. Did Mr. Tilton quite frequently act contrary to your advice? A. Yes, sir; he did sometimes act contrary to my advice.

Q. You disapproved of his sending to Mr. Beecher by the hand of Mr. Bowen the letter requiring him to resign and leave town, and so told him, did you not? A. Without the signature of Mr. Bowen I disapproved of it.

Q. It was only of that omission that you disapproved? A. That is all that I remember having disapproved.

Q. When was the letter to Mr. Bowen written—on what day? A. On December 26th, I believe, sir, 1870.

Q. It purports to bear date on the first of January, '71; when was it in fact——

Mr. Morris.—No, no; you are mistaken; 26th December.

Mr. Porter.—You and I are referring to two different letters. [To the witness.] When was the letter purporting to bear date January 1st, 1871, written? A. The preparation of that letter was commenced either the night of the 31st—commenced either the night of the 31st December, '70, or the night of January 1st, or the day of January 1st, 1871.

Q. When was the letter completed in the form which it finally assumed? A. Well, sir, very shortly; it was either completed January 1st or 2d, I think.

Q. Was it sent to Mr. Bowen? A. No, sir; it was not sent to Mr. Bowen.

Q. When did you first see it before—when did you first see what he was writing, before or after its completion? A. During the writing of the letter, sir, I consulted with him as to the writing.

Mr. Fullerton.—Judge Porter, there are two letters of that date.

Mr. Porter.—He knows the one of which I am inquiring.

Mr. Evarts.—The letter from Tilton to Bowen.

Mr. Porter.—Did you disapprove of that letter? A. Did I disapprove of his writing it?

Q. Yes? A. No, sir; I don't think I did at the time that he was writing it.

Q. Did you condemn it afterwards? A. I told him I thought he ought not to publish it, sir, afterwards.

Q. Did you advise against its publication? A. I did.

Q. He published it, notwithstanding your advice? A. When did he publish it, sir; what publication do you refer to?

Q. I think it was on the first.

Mr. Morris.—No; you are mistaken, Judge Porter; he never published it.

Mr. Porter.—When did you first see it in print, as nearly as you now remember?

Mr. Beach.—There were two letters, sir, bearing the date inquired of by counsel; it seems to me there ought to be some discrimination between them.

Q. Do you remember if there is the least doubt—you understand me as alluding to the letter, of course, in which he repeated the charges he imputed to Mr. Bowen against Mr. Beecher? A. That's the letter that I am addressing myself to.

Mr. Evarts.—Were there two letters to Mr. Bowen on that date?

Mr. Beach.—No, sir; there are two letters of Jan. 1, '71.

Q. Well; but I think I stated the letter to Mr. Bowen. When did you first see that letter to Mr. Bowen published? A. I think, sir, it was published April 20th, 1873, in *The Brooklyn Sunday Sun*, and then quoted into *The Brooklyn Eagle*, if I am correct as to date.

Q. Had you advised him against its publication? A. I did not know anything about that publication, sir, nor did Mr. Tilton, as he told me afterwards.

Q. Had you advised against its publication before that time? A. In January, '70; certainly, sir.

Q. How is that? A. In January, '71; certainly, sir.

Q. You had advised him? A. Yes, sir.

Mr. Evarts.—If your Honor please, the observation of the witness that it was published without Mr. Tilton's knowledge, as he told him afterwards——

JUDGE NEILSON.—It will be stricken out.

Mr. Evarts.—It will be stricken out; and although it may be natural enough to the witness, yet he will be so good as to refrain——

The Witness.—I saw my mistake immediately after I made it, Mr. Evarts. I thank you for emphasizing it.

Q. When was it printed by Mr. Tilton? A. When was it printed by Mr. Tilton? I do not remember, sir, that it was ever printed by Mr. Tilton. If you will call my attention to the dates of publication——

Q. Was it printed in his paper, *The Golden Age?* A. I do not remember, sir, that it was printed in his paper, *The Golden Age.*

Q. Were proofs set up for the purpose of publication in *The Golden Age*, and did you see those proofs?

Mr. Fullerton.—Well, one moment; that's a double question. I object to it, unless he testifies of h. own knowledge.

Mr. Porter.—[To the witness.] You hear Judge Fullerton's suggestion?

The Witness.—Now, sir, if you will repeat the question, I will try to answer it. Mr. Fullerton's objection put the question out of my mind.

Q. Were proofs prepared for publication in *The Golden Age*, and did you see those proofs? A. I saw proofs of an article which was prepared by Mr. Tilton, into which was incorporated this letter of Mr. Bowen's.

Q. Did you then advise against its publication? A. I did then advise against its publication.

Q. Who showed you those proofs? A. I think Mr. Tilton brought them to me, sir.

Q. Did you see the poem entitled "Sir Marmaduke's Musings," indited by Mr. Tilton? A. Did I see that poem?—after it was printed, I believe, sir.

Q. You hadn't seen it before? A. No, sir.

Q. Heard nothing of it before? A. I don't think I ever heard anything of it before.

Q. You disapproved of its publication? A. I thought it ought not to have been published, sir.

Q. And so told him? A. I did tell him so.

Q. Did you see the biography—did you know of his preparation of the biography of Woodhull before it appeared? A. I never heard it read, sir, before it appeared.

Q. Did you hear of it, is my question? A. I don't remember, sir, that I heard of the biography of Victoria Woodhull before it appeared; I don't remember that I did.

Q. You did afterward? A. I did afterwards; yes, sir.

Q. Did you approve of it?

Mr. Beach.—I object to that question.

JUDGE NEILSON.—I will admit it; it has a bearing upon the mind of the witness, perhaps.

Mr. Beach.—I except, sir.

Mr. Porter.—Did you approve or condemn it? A. I didn't approve of the publication of it, sir.

Q. Do you remember the letter to his friend in the West? A. I remember a letter; yes, sir.

Q. I will ask you to produce the letter.

Mr. Fullerton.—What is the letter?

Mr. Porter.—From Tilton to a friend in the West.

Mr. Fullerton.—Well, we are not the custodian of that letter.

Mr. Evarts.—It is one of the letters we have given notice to produce.

Mr. Fullerton.—Produce a letter written to somebody out West?

Mr. Evarts.—We don't know that—whether there was anybody out West; there is a letter called "a letter to a friend in the West." There is a variety of friends; there is a "complaining friend," that is one of them; then there is a letter to a "friend in the West," which is another, and it is dated December 31st, 1872. Now, if you have got that letter, we should like to have it.

[A paper handed to witness.]

A. I ask if that is a letter written by Mr. Tilton? A. This is in Mr. Tilton's handwriting; yes, sir.

Mr. Evarts.—Is this produced by the plaintiff or by the witness?

Mr. Beach.—I don't know where it came from.

Mr. Evarts.—Nor I; I only ask for information. It came from some one

Mr. Morris.—Well, produced by me from my office. Where it came from, I don't know.

Mr. Beach.—It is produced by Mr. Morris.

Mr. Evarts.—Then you don't say whether you produce it from the plaintiff or from the witness?

Mr. Morris.—I don't know; I have got papers here from both parties.

Mr. Evarts.—We can't find it out from one who don't know.

Mr. Morris.—No, sir.

Mr. Porter.—I read that letter in evidence.

"174 LIVINGSTON STREET,
BROOKLYN, December 31, 1872.

"MY DEAR FRIEND, I owe you a long letter.

"I am unwell and a prisoner in the house, leaning back in leather-cushioned idleness, and writing on my chair-board before the fire. Perhaps you wonder that I have a fire, or anything but a hearthstone broken and crumbled, since the world has been told that my household is in ruins. And yet it is more like your last letter—brimful of love and wit, and sparkling like a fountain in mid-winter.

"Nevertheless you are right. I *am* in trouble; and I hardly see a path out of it.

"It is just two years ago to-day—this very day—the last of the year—that Mr. Bowen lifted his hammer, and with an unjust blow smote asunder my two contracts, one with *The Independent* and the other with *The Brooklyn Union*. The public little suspects that this act of his turned on his fear to meet the consequences of horrible charges which he made against Henry Ward Beecher. I have kept quiet on the subject for two years through an unwillingness to harm others even for the sake of righting myself before the public. But having trusted to time for my vindication, I find that time has only thickened my difficulties, until these now buffet me like a storm.

"You know that Bowen long ago paid to me the assessed pecuniary damages which grew out of his breaking of the contracts, and gave me a written vindication of *my* course, and something like an apology for *his*. This settlement, so far as I am concerned, is final.

"But Bowen's assassinating dagger drawn against Beecher has proved as unable as Macbeth's to 'trammel up the consequence.' And the consequence is that the air of Brooklyn is rife with stories against its chief clergyman, not growing out of the Woodhull scandal merely, but exhaled with ever-fresh foulness, like mephitic vapors, from Bowen's own charge against Beecher.

"Verily, the tongue is a wild beast that no man can tame, and like a wolf it is now seeking to devour the chief shepherd of the flock, together also with my own pretty lambs.

"For the last four or five weeks, or ever since I saw the Woodhull libel, I have hardly had a restful day; and I frequently dream the whole thing over at night, waking the next morning unfit for work.

"Have you any conception what it is to suffer the keenest possible injustice? If not, come and learn of me.

"To say nothing of the wrong and insult to my wife, in whose sorrow I have greater sorrow, I have to bear the additional indignity of being misconstrued by half the public and by many friends. For instance,

"It is supposed that I had a conspirator's hand in this unholy business; whereas I am as innocent of it as of the Nathan murder.

"It is hinted that the libelous article was actually written by me; whereas (being in the north of New Hampshire) I did not know of its existence till a week after it had convulsed my own city and family. My wife never named it in her letters to me lest it should spoil my mood for public speaking. (You know I was then toiling day and night for Mr. Greeley's sake.)

"Then, too, it is the sneer of the clubs that I have degenerated into an apostle of free love; whereas the whole body of my writings stands like a monument against this execrable theory.

"Moreover, it is charged that I am in financial and other relations with Mrs. Woodhull; whereas I have not spoken to, nor met, nor seen her for nearly a year.

"The history of my acquaintance with her is this: In the Spring of 1871, a few months after Bowen charged Beecher with the most hideous crime known to human nature, and had slammed the door of *The Independent* in my face, and when I was toiling like Hercules to keep the scandal from the public, then it was that Mrs. Woodhull, hitherto a total stranger to me, suddenly sent for me and poured into my ears, not the Bowen scandal, but a new one of her own, namely, almost the same identical tale which she printed a few weeks ago. Think of it! When I was doing my best to suppress *one* earthquake, Mrs. Woodhull suddenly stood before me portentous with another. What was I to do? I resolved at all hazards to keep back the new avalanche until I could securely tie up the original storm. My fear was that she would *publish* what she told to me, and, to prevent this catastrophe, I resolved (and, as the result proves, like a fool, and yet with a fool's innocent and pure motive) to make her such a friend of mine that she would never think of doing me such a harm. So I rendered her some important services (including especially some labors of pen and ink), all with a view to put and hold her under an obligation to me and mine.

"In so acting towards her, I found to my glad surprise and astonishment that she rose almost as high in my estimation as she had done with Lucretia Mott, Elizabeth Cady Stanton, Isabella Beecher Hooker, and other excellent women. Nobody who has not met Mrs. Woodhull can have an adequate idea of the admirable impression which she is capable of producing on serious persons. Moreover I felt that the current denunciations against her were outrageously unjust, and that, like myself, she had been put in a false position before the public, and I sympathized keenly with the aggravation of spirit which this produces. This fact lent a zeal to all I said in her defense.

"Nor was it till after I had known her for a number of months, and when I discovered her purpose to libel a dozen representative women of the suffrage movement that I suddenly opened my eyes to her real tendencies to mischief: and then it was that I indignantly repudiated her acquaintance, and have never seen her since.

"Hence her late tirade.

"Well, it is over, and *I* am left to be the chief sufferer in the public estimation.

"What to do in the emergency (which is not clearing but clouding itself daily) I have not yet decided. What I *could* do would be to take from my writing-desk, and publish to-morrow morning, the prepared narrative and vindication, which with facts and documents, my legal advisers pronounce complete.

"This would explain and clarify everything, both great and small (including the Woodhull episode, which is but a minor part of the whole case), but if I publish it, I must not only violate a kind of honorable objection to be silent, which I had voluntarily imposed upon myself, but I must put my old friend Bowen to a serious risk of being smitten dead by Beecher's hand.

"How far Bowen would deserve his fate I can not say; but I know that all Plymouth Church would hunt him as a rat.

"Well, perhaps the future will unravel my skein for me without my own hand; but whatever happens to my weather-beaten self, I wish to you, O prosperous comrade, a happy New Year. Fraternally yours,

THEODORE TILTON.

"P. S.—Before sending this long letter (which pays my debt to you) I have

read it to my wife, who desires to supplement it by sending her love and good will to the little white cottage and its little red cheeks."

[Copy of letter marked "Exhibit D, 5."]

Q. From whom did you receive that letter? A. From Mr. Tilton.

Q. At its date? A. I don't remember whether at its date or not.

Q. Do you remember whether it was at or about its date? A. I don't remember that.

Q. To whom was it addressed? A. I don't remember.

Q. Do you remember that it was addressed to any one?

Mr. Fullerton.—One moment. The letter itself is here, and speaks for itself.

Mr. Porter.—I have not seen the original.

Mr. Fullerton.—I think you can tell yourself whether it is addressed to any one.

Mr. Evarts.—We can not see it is addressed to any one.

Q. Do you know to whom that letter was written? A. No, sir; I do not.

Q. You did not hear from Mr. Tilton? A. I don't know but what I might have heard that it was his intention to send it to a party; I don't know that it was ever sent to a party.

Q. You have no knowledge of its being sent? A. No, sir.

Q. It was deposited with you among the papers in this case? A. It was given to me.

Q. You have held it ever since? A. I suppose I have; yes, sir.

Q. You know Mrs. Woodhull? A. I have known her; yes, sir.

Q. When did you first see her? A. I think in the spring of 1871.

Q. At what time in the spring? A. I think it was somewhere in April, 1871.

Q. Do you remember what time in April? A. I do not remember distinctly the time in April, sir.

Q. Where did you first see her? A. I think I met her first at her house.

Q. In New York? A. Yes, sir.

Q. Where did you next meet her? A. I think the next meeting was at Mr. Theodore Tilton's house.

Q. When was that? A. Shortly afterwards. I can fix the date by the card in *The World*.* It was somewhere about the time of that card.

The Witness.—The date of the card in *The World*? Does it bear date, sir?

Mr. Shearman—May 22nd, 1871.

Mr. Porter.—You had not met her nor seen her in the meantime? A. No, sir; the time I met her was in consequence of that card in *The World*—it was after the card in *The World* that I saw her.

Q. Shortly after? A. Yes, sir; shortly after.

Q. You have no means of fixing the precise date? A. It was after that, I can not fix the exact date; it was within a few days, I think.

Q. Before that interview, you had never seen her but once? A. I don't think I had ever seen her at all; I had never seen her before the interview at all.

* Exhibit 22, on p. 385 *ante*.

Q. That was the occasion of the first interview? A. Yes, sir; the letter was the occasion of the first interview, and then I saw her at Theodore Tilton's house.

Mr. Beach.—Afterwards? A. Yes, sir; afterwards.

Mr. Porter.—How long after the first interview, should you say? A. I should say within a day or two.

Q. Who was present at that interview? A. Mr. Tilton.

Q. No one else? A. I don't remember at present whether there was anybody else or not present at that interview.

Q. You had a conversation with her at that time? A. Yes, sir.

Q. After that time did you meet her frequently? A. I met her—well I saw her whenever there was occasion for it; I should not say frequently.

Q. But from time to time? A. From time to time.

Q. When did you last see her? A. The last time I saw her I think was in the spring before the publication of the Woodhull story. It was in April, 1872, I think—in the spring of 1872, I should think.

Q. Where did you see her then? A. I don't remember. It was at a house where she was living—16th street, I think; I don't remember the street.

Q. In her own house? A. It was in her own house; yes, sir.

Q. You visited her with others? A. I was with Theodore Tilton that evening, sir, the last time I saw her.

Q. Had you visited her with him before? A. Yes, sir.

Q. Several times before? A. Several times before. At that house do you mean?

Q. At her residence? A. Yes, sir.

Q. Where was it at that time—in 16th street? A. I won't be sure. I don't remember the street definitely enough to say.

Q. Do you remember where it was? A. It was in 16th or 23d street, or somewhere around there. She lived in 38th street.

Q. Were you ever there in the evening? A. Yes, sir.

Q. Usually? A. Usually in the evening.

Q. Did you ever meet her elsewhere than at her residence and at your residence and at Mr. Tilton's?

Mr. Beach.—He didn't say he met her at his house.

Mr. Porter.—Did you ever meet her elsewhere than at her own residence and at Mr. Tilton's? A. Yes, sir.

Q. Where? A. At my own house in Remsen-st.

Q. Did you ever meet her at any other place? A. I don't remember at present.

Q. Were you ever in the same house in which she was staying over night? A. I don't remember that I ever was.

Q. You have a good memory? A. Tolerably good memory; yes, sir.

Q. Did you ever travel with her? A. No, sir.

Q. Did you ever meet her at any place outside of New York and Brooklyn? A. I don't remember at present that I ever did.

Q. Do you remember that you did not? A. If you could jog my memory by asking me if I met her at a certain place. I don't remember now that I ever met her at any other place than Brooklyn.

Q. Do you now remember that you did not? A. I should say I now remember that I did not.

Q. How long were your interviews usually when you went to her house? A. Some of them were an hour long, and some two hours.

Q. Was your intercourse with her confined to the subject-matter of Mr. Tilton and Mr. Beecher? A. Not always; no, sir.

Q. Did you make statements to her in regard to that matter? A. I did; I have made statements to her with regard to it—with regard to the stories against Mr. Beecher.

Q. Did you in regard to Mr. Tilton? A. Did I make statements to her with regard to Mr. Tilton?

Q. Yes, sir? A. I have made statements to her with regard to Mr. Tilton; yes, sir.

Q. And with regard to particular ladies in connection with Mr. Tilton? A. I don't know that I ever mentioned the name of any ladies in connection with Mr. Tilton's name.

Q. Nor she? A. I don't remember that she did.

Q. Do you remember a conversation with her in relation to the interview of the 31st of December, 1870? A. Will you please put that question again?

Q. A conversation with her in reference to what transpired with Mr. Beecher on the 31st of December, 1870? A. No, sir.

Q. Were you present at a conversation between her and Mr. Tilton in regard to what took place in that interview? A. No, sir; I don't remember that I ever was.

(1) Q. Did you read her published statement? A. I don't know that I read all of it.

Q. Do you know that you did not? A. I think I did not read all of it; I think I never have read all of it.

Q. What part was it you omitted? A. Well, I don't really remember what part I did omit; I knew the general drift of it.

Q. Did you state to her that you took a pistol, and went to Mr. Beecher and demanded the letter of Mrs. Tilton under penalty of instant death? A. No, sir; I did not.

Q. Did you state anything to that effect? A. No, sir.

Q. Did you, in that or in any other conversation, describe to her the piteous and abject beseeching of Mr. Beecher not to be exposed to the public? A. No, sir.

Q. Nothing of that kind occurred? A. No, sir. You asked me a moment ago, Judge Porter, if you allow me, whether I had read any part of that statement, or whether I had read the whole of it. I can tell you I did read the part of the pistol scene, and I can tell you something that would be of interest to you in regard to that. Shall I say so?

Q. If you please. A. Mr. Beecher asked me about that part of it that referred to the pistol scene, and asked me if I remembered anything about the pistol part. He said he didn't; it didn't make enough impression on him.

Q. Is that all? A. Yes, that is all—that is about all of it.* (2)

* (1) Passage from (1) to (2) afterward read; see p. 589, *post.*

Q. You told him you did not? A. I said to Mr. Beecher, "I remember about the pistol scene; I remember precisely what there was about it; of course there was no threat, and I don't wonder that you don't remember it.

Q. Did you ever ride with Mrs. Woodhull? A. I don't remember at present that I ever rode with Mrs. Woodhull; I don't recall it.

Q. Do you remember bringing her to your house in a carriage? A. I don't remember bringing her to my house in a carriage; I may have done so, but I don't think so.

Q. Do you remember a conversation with her in reference to procuring Mr. Beecher to preside at her meeting? A. Do I remember a conversation with her of my own?

Q. Yes, sir. A. Or a conversation of Mr. Beecher with her?

Q. A conversation with her? A. Yes, sir.

Q. Between yourself and her? A. Yes, sir; we had a conversation at my house concerning it. She came there to see Mr. Beecher.

Q. Had you no conversation with her concerning it before? A. I don't remember that I had any conversation with her before. That letter was the cause of that interview.

Q. Had you heard of that letter before you heard of it from him? A. Before I heard of it from Mr. Beecher? I don't remember whether the letter was brought to me by Mr. Beecher or not; I think it was brought to me by Mr. Beecher. My statement will tell that, if you will refer to it. I don't remember now how the letter was addressed.

Q. Had you heard of the project of her procuring him to preside before that letter was sent to you? A. No, sir; I don't think I had.

Q. Do you know that you had not? A. I shall say now that I had not.

Q. Had you had any conversation with Mr. Tilton in regard to his presiding there? A. In regard to Mr. Tilton presiding there?

Q. In regard to Mr. Beecher presiding there? A. I had a conversation with Mr. Tilton the same day that Mrs. Woodhull and Mr. Beecher were at my house.

Q. Had you had any conversation with him before that? A. I don't remember that I had.

Q. Do you remember that you had not? A. I do now remember that I had not. If I should make any statement about it, I should make that statement.

Q. Do you mean that you remember now that you had no such conversation? A. I put it in the other way. I don't remember that I had any such conversation, and I don't think I did have. That is the best of my recollection.

Q. You do not remember that you did not have. Am I right? A. I can not state it in that way, sir, and state the truth; I say that I don't remember, and if I were undertaking to make a truthful statement to any one, I should say I had not, and deem it a truthful statement.

Q. Did you tell Mrs. Woodhull that you and Mrs. Tilton did not want Mr. Beecher to know that that letter had come at your instance? A. Did I tell Mrs. Woodhull that—ask that question again, please.

Q. Did you tell Mrs. Woodhull that you did not want Mr. Beecher to know that that letter to him came at your instance? A. No, sir; I didn't tell Mrs. Woodhull that.

Q. Nor anything to that effect? A. No, sir; I did not.

Q. Or at Mr. Tilton's instance? A. No, sir.

Q. With whom did Mrs. Woodhull leave your house on that occasion? A. I don't remember.

Q. She did not remain that night? A. No, sir; I don't think she remained that night.

Q. She never remained a night at your house? A. I don't remember that she ever did.

Q. Do you remember that she did not? A. I think I am stating the truth—I know I am stating what I believe to be the truth when I state that she did not.

Q. Did you on different occasions meet her at Theodore Tilton's? A. I think I met her at Theodore Tilton's—was at Theodore Tilton's with her twice.

Q. Only twice? A. Twice.

Q. You never met her except on those two occasions at his house? A. At his house, those are the only two I remember.

Q. When you visited her house did you ever find Mr. Tilton there when you did not go there in company with him? A. When I visited her house—please put that question again?

Q. When you visited her residence did you ever find Mr. Tilton there when you had not gone there together? A. I think not.

Q. Did he always leave when you left? A. I think he did; yes, sir; we left together.

Q. Do you remember that you did? A. I should state, when I state what I believe to be the truth, that we left together.

Q. You were not aware of his being there on any other occasions except when you were there? A. No, sir.

Q. No allusion was made in their conversation to interviews they had had when you were not present? A. I don't remember of any.

Q. You disapproved also of the Bacon letter? A. Yes, sir; I did.

Q Advised against its publication? A. Yes, sir.

Q. Did you advise against Mr. Tilton's first statement to the Committee? A. Well, which do you consider his first statement? He made three. There is a first statement, a second statement, and a third statement. One was verbal, if I remember right.

Q. They were not to the Committee? A. Yes, sir.

Q. All three? A. Yes, sir.

Q. The sworn statement. You remember the one which he called the sworn statement? A. Yes, sir; that is the second statement.

Q. Did you advise him against presenting that statement to the Committee? A. I did; yes, sir.

Q. Do you know how Mrs. Woodhull found out about that pistol affair? A. I do not.

Q. You only know it was not from you? A. I know that.

Q. And that it was never the subject of conversation between you and her? A. Never to my recollection.

Q. Do you remember that it was not? A. Never, sir; never.

Q. Prior to your breach with Mr. Beecher had you told the pistol affair to any one else? A. No, sir; not that I know of, except to my ——; no, sir; I don't think I did.

Q. To no one but Mr. Tilton? A. I don't think I ever did.

Q. I assume you did not? A. Not to Mr. Tilton.

Q. You reported the fact of the interview and the result of it to Mr. Tilton? A. I reported the interview, exactly what occurred there.

Q. I have reference now to several points in which you disapproved of the course of Mr. Tilton. Did he propose to publish the true statement, as it was called? A. He talked about publishing the true statement; yes, sir.

Q. Did you advise against it? A. Yes, sir.

Q. He finally abandoned it? A. Yes, sir; it never was published.

Q. It never was published? A. No, sir.

Q. Now, in regard to your advice to Mr. Beecher, did you condemn Mr. Beecher for obtaining the retraction from Mrs. Tilton? A. I did, sir.

Q. Did you condemn him for wishing to have it preserved for the protection of his family and his memory, in case of his death? A. I condemned? I don't remember having condemned him for that.

Q. Did you advise him never to see Mr Tilton? A. Did I advise him never to see Mr. Tilton?

Q. Yes, sir. A. On that occasion?

Q. Personally? A. Yes, sir.

Q. At the interview on the 31st of December? A. Did I advise Mr. Beecher not to see Mr. Tilton?

Q. Not to see him in Mr. Tilton's present exasperated mood? A. I don't think I did.

Q. Did you on the 1st of January? A. Advise him not to see Mr. Tilton?

Q. Not to see him? A. I don't think I did.

Q. Did you at any time? A. I don't remember that I have.

Q. Did you advise him to communicate with him through you, rather than personally? A. I don't think I ever did.

Q. Did you advise him not to publish a card denying the Woodhull calumny? A. Did I advise Mr. Beecher not to?

Q. Not to? A. I advised silence, if that is what you mean.

Q. The policy of silence? A. Yes, sir.

Q. He spoke of publishing a denial of the libel shortly after its publication; did he not? A. We discussed whether that could be done or not, I think.

Q. You advised against it? A. I did not see how it could be done.

Q. And when you gave that advice you had not read the Woodhull libel? A. Not all of it; I understood it very well, what it charged.

Q. Have you read it down to this hour? A. I don't think I have read all of it to this hour.

Q. How do you understand its contents without reading it? A. Well, I had had conversation with people who had read it, sir.

Q. And you inferred that you had a full report of its contents? A. I knew the charge against Mr. Beecher that that article contained.

Q. You knew it was to come before it appeared, did you not? A. Oh, no, sir. No, sir; I did not.

Q. You didn't need to read it in order to find out what they did charge? A. I needed to read a portion of it to find out what they did charge.

Q. How by reading a portion relating to yourself could you find out what they charged against Mr. Beecher? A. I read more than that, sir.

Q. Did you read all that portion of the article which was prejudical to Mr. Beecher? A. I think I did; yes, sir.

Q. All that related to yourself? A. I think I did; yes, sir.

Q. What else did the article contain? A. I don't know.

Q. When finally, Mr. Beecher insisted upon publishing a card in *The Eagle*, you exercised the power he gave you to correct it? A. When what, sir?

[Some questions as to apparent changes in the card, which were explained by a misprint in the pamphlet read from, are here omitted.]

Q. You disapproved and condemned Mr. Beecher calling a Committee of Investigation, did you not? A. I told him I thought it might prove a mistake.

Q. And you refused his application to give him access to the documents? A. By advice of counsel, I wrote him the letter which I did on August 4th.

Q. By advice of counsel? A. Yes, sir; I submitted his letter of July 24th, which Mr. Tracy brought to me, to my counsel.

Q. Were you in litigation at that time? A. No, sir.

Q. Did you expect to be? A. No, sir.

Q. Perhaps you mean, then, your adviser? A. Adviser, if you choose; that's what I mean by my adviser. I had not retained anybody as counsel; I had not paid anybody a counsel fee as a lawyer.

Q. Who was it that advised you in that way? A. General Butler.

Q. When did you first confer with him? A. He wrote me a letter on July 29th or 30th, advising——

JUDGE NEILSON.—Don't state what he said.

Mr. Porter.—Was that the first of your seeing him? A. That was the first I had heard from him.

Q. Had you written to him before? A. No, sir; I had not written to him or communicated with him in any way before about it.

Q. Had he been your counsel in other matters? A. He had been a friend and adviser in the same sense as he was in this matter.

Q. He had never been your counsel? A. I never paid him a fee as a lawyer—never employed him as a lawyer.

Q. Neither you nor your firm? A. No, sir.

Q. Had he been actively engaged with your affairs at Washington? A. No, sir; I don't think he was actively engaged with our affairs at Washington.

Q. With your affairs at the Custom-House? A. He had been counsel for Mr. Jayne against us in that business.

Q. That was the previous relation between you and him? A. That was not the relation between him and me. I did not understand the question in that way. That was not the relation between Mr. Butler and myself.

Q. He had been counsel against you? A. He was counsel for Mr. Jayne; yes, sir. Mr. Jayne was the special agent of the Treasury Department.

Q. He never was counsel for you? A. No, sir; except in the sense of adviser.

Q. And his friendly advice was while he was counsel against you? A. No, sir; there was no friendly advice when he was counsel against us.

Q. When did the friendly advice begin? A. The friendly advice was on this business between Mr. Beecher and Mr. Tilton in this controversy—personal advice to me.

Q. General Butler is a personal friend of yours, is he not? A. Yes, sir.

Q. Was he so at the time he acted as counsel against you for Mr. Jayne? A. No, sir; Mr. Tilton introduced me to Mr. Butler; I never knew him before that, personally, closely.

Q. He became your friend? A. He became friendly to me, certainly.

Q. Had you a controversy with the Government at that time? A. Yes, sir; we did have.

Q. Was he instrumental in effecting an arrangement of that matter? A. Not that I ever knew of, sir.

Q. Nor Mr. Jayne? A. Nor Mr. Jayne instrumental in effecting—— ?

Q. Was he instrumental in effecting it? A. We settled with the Government; we could not have settled except through Mr. Jayne.

Q. Then he was? A. Not for us; he was not instrumental.

Q. Have you known Mr. Jayne ever since that time? A. Yes, sir.

Q. Are you and he friends also?

Mr. Beach.—Wait a moment. We object to that.

Mr. Evarts.—That depends on the future.

JUDGE NEILSON.—I will rule it out for the present. I don't see that it is material at all.

Mr. Porter.—Have you conferred with Mr. Jayne on the subject of Mr. Beecher's affairs? A. I have not conferred with Mr. Jayne on the subject of Mr. Beecher's affairs.

Q. You and he have had no conversation about it? A. Yes, sir; we have had conversation about it.

Q. Here? A. In New York.

Q. Did you send for him with regard to it? A. No, sir; I don't think I sent for him.

Q. Do you know whether you did or not? A. I don't think I ever sent for Mr. Jayne. I saw him at the Fifth Avenue Hotel one day.

Q. Was that the only occasion on which you conversed with him about it? A. I think I saw him at the Fifth Avenue Hotel since, and conversed with him about it, within a week, or two weeks, or three weeks, recently.

Q. Will you be good enough to repeat the date when General Butler

volunteered in the matter? A. I have got the exact date. I think it was June 29th or 30th, the letter I received from him.

Q. Has he since acted as your counsel throughout the matter? A. Yes, sir; as my adviser in the matter; there's a distinction between "counsel" and "adviser," I believe.

Q. You said that your letter of August 4th was written by his advice? A. Yes, sir; written by him.

Q. And by him? A. Yes, sir.

Q. Was the subsequent letter of August 5th written by him? A. What was the subsequent letter of August 5th?

Q. In reply to Mr. Beecher's of August 4th, which was excluded? A. No, sir; that was written by myself, in conjunction with Theodore Tilton.

Q. Was Mr. Tilton present when General Butler wrote the letter of August 4th? A. No, sir.

Q. Had he been conferred with on that subject? A. No, sir.

Q. You have at no time paid any fee to General Butler? A. I have not.

Q. Nor to any counsel in connection with this litigation? A. Yes, I have. Between Mr. Tilton and Mr. Beecher?

Q. Yes, sir? A. No, sir; I have not paid any fee to any counsel in any litigation between Mr. Tilton and Mr. Beecher.

Q. You have paid fees to counsel who are acting for Mr. Tilton, have you not? A. I have, on business of my own.

Q. Have you engaged to pay any fees in this case? A. I have not.

Q. Have you contributed to the expense of this litigation in any form, directly or indirectly? A. I don't think I have.

Q. Have you contributed to the expense of the publications which have been made from time to time in regard to it, or any of them? A. No, sir.

Q. Or any of them? A. No, sir; I don't think I have; I do not recall any such contribution now.

Q. Nor any payment for that purpose? A. No, sir.

Q. You have contributed nothing? A. I have contributed nothing.

Q. Paid nothing and promised nothing? A. Paid nothing and promised nothing.

Q. All was in your branch of the litigation? A. All was what?

Q. All that you paid was in your branch of the litigation? A. Yes, sir.

Q. In connection, I suppose, with the indictments and the civil suits?

Mr. Beach.—Wait a moment.

JUDGE NEILSON.—You ought not to ask that question.

Mr. Porter.—I wish to show his relation to the controversy.

JUDGE NEILSON.—I will rule it out. It is immaterial.

Mr. Evarts.—Does your Honor understand it is immaterial, in regard to the witness' relation to this case, that he is under indictment, and that he is pursued in a civil suit?

JUDGE NEILSON.—It is immaterial.*

Mr. Evarts.—And that he has been forced to judgment in the libel suit?

JUDGE NEILSON.—All that I shall rule out.

* See *Peck* v. *Yorks* (47 Barb. 131).

Mr. Evarts.—And that that does not bear upon the attitude of this witness in the weighing of his testimony by the court and the jury, your Honor understands?

JUDGE NEILSON.—No, sir.

Mr. Beach—These proceedings are not had on the part of Mr. Beecher.

JUDGE NEILSON.—Not at all.

Mr. Evarts.—We know what part they are on. I understand that your Honor says, when we offer to show the attitude of this witness under the public indictment, and in the civil suits for libels in his statements concerning this case, that that does not constitute evidence to go to his credit with the jury for his statements in this case.

JUDGE NEILSON.—I so rule, and it has been held that the existence of an indictment don't tend to impair a witness.

Mr. Evarts.—I have not said that.

JUDGE NEILSON.—I am saying it.

Mr. Evarts.—I don't offer in that connection, or in the least relation to it.

JUDGE NEILSON.—I think it is immaterial.

Mr. Evarts.—But it is material, that he is made a party defendant to the case in the same side of the controversy in which he now appears as a witness for the plaintiff here.

JUDGE NEILSON.—So made by some other person, or party.

Mr. Evarts.—Well, no matter; he is in that condition.

JUDGE NEILSON.—Yes, sir.

Mr. Evarts.—Of prosecution, if you please. I don't know whether it is prosecution, or how; but he holds that position in regard to those suits forced against him, justly or unjustly.

JUDGE NEILSON.—In regard to other parties.

Mr. Evarts.—Justly or unjustly. He is indicted for a libel against Mr. Beecher in this very statement.

JUDGE NEILSON.—That would not be admissible here.

Mr. Evarts.—Your Honor will so rule, of course.

JUDGE NEILSON.—Yes, sir.

Mr. Evarts.—But I wish to bring to your Honor's notice the aspect of the matter in which it is presented. Now, anything that goes to show the animosity or the repugnance or opposition between a witness and the party against whom he is testifying, is primary evidence to show that he is not a disinterested and impartial witness, but is himself an active party in a controversy; and now we offer this witness' position in all these suits as evidence that he is not an impartial witness, but is a party to the controversy.

JUDGE NEILSON.—I am ruling on the assumption that some third person not named has had, or has, some litigation with the witness, a case in which that third person is the mover and this witness here may assume the position of a defendant, and resisting also, and more immediately connected with this, there is an indictment, upon the complaint of this defendant, against the witness, in respect to this same matter,—in all of which the witness stands, it would seem, upon the defensive, is not an actor, and does not appear to be aggressive, even on your own statement.

Mr. Evarts.—But is it not indicative of feeling against him that he had been pursued by Mr. Beecher?

JUDGE NEILSON.—That would not be sufficient to let in the testimony.

Mr. Evarts.—Does your Honor say that to show that the party against whom he is testifying here has pursued him, is not evidence that he does not stand impartial?

JUDGE NEILSON.—We have it already on record that this witness is hostile to the defendant.

Mr. Evarts.—How have we that?

JUDGE NEILSON.—Avowed by himself yesterday. That fact sufficiently appears. There can be no suggestion of friendliness.

Mr. Evarts.—Have we it down in the evidence——?

JUDGE NEILSON.—Certainly.

Mr. Evarts.—That he has said he is a hostile witness?

JUDGE NEILSON.—Not in that way—that their friendly relations ceased.

Mr. Evarts.—That friendly relations ceased. That is not an avowal that he is hostile—bitterly hostile to the defendant.

JUDGE NEILSON.—Would your indictment, if put in evidence, make him appear hostile?

Mr. Evarts.—That the jury will be the judge of.

JUDGE NEILSON.—I think you must be content with an exception.

Mr. Evarts.—But you say you exclude it one ground, that it is the subject of transactions with third persons.

JUDGE NEILSON.—In part.

Mr. Evarts.—On the part that has no interest with persons. How is it third persons?

JUDGE NEILSON.—I understood from your statement that some third person had brought suit against this witness, and that he has been indicted on complaint of the defendant.

Mr. Evarts.—Yes, sir.

JUDGE NEILSON.—An indictment not yet tried.

Mr. Evarts.—I don't offer the indictment as proving its truth. I offer it as a prosecution against him upon the complaint of Mr. Beecher, and your Honor excludes that as not bearing on the question whether the witness stands impartial here.

JUDGE NEILSON.—It is very clear that if A. claims an immense estate against B., and B. can pursue the principal witness and indict him in many indictments, that he don't ruin the witness whose testimony may be brought in support of the case against him.

Mr. Evarts.—I have not offered it in that light.

JUDGE NEILSON.—I rule it out in each light.

Mr. Evarts.—I offer it as affecting the animus of the witness, and certainly those things are quite distinguishable, if your Honor please.

JUDGE NEILSON.—I am very clear about this; I have not any doubt about it. I don't wish any general argument on it.

Mr. Evarts.—I don't wish to argue it any further, but I wish to take your Honor's ruling.

JUDGE NEILSON.—Certainly.

Mr. Evarts.—We offer to prove by this witness the position in which he stands in regard both to the public prosecutions and the civil suits that have grown out since this controversy between Mr. Tilton and Mr. Beecher arose.

JUDGE NEILSON.—Other than this suit?

Mr. Evarts.—Other than this suit. It is not necessary to particularize. Your Honor rules out the whole?

JUDGE NEILSON.—Yes, sir.

Mr. Evarts.—We except.

Mr. Morris.—We have found the letter of authorization.

Mr. Evarts.—Now, your Honor has ruled upon the whole. I now offer each of the matters separately.

JUDGE NEILSON.—Let it be so framed, and I will make the same ruling.

Mr. Evarts.—It is so understood. I except.

AFTERNOON SESSION.

FRANCIS D. MOULTON recalled, and cross-examination resumed by Mr. Porter.

Q. You mentioned that your letter of August 5th was the one in which Gen. Butler did not assist you, and in which Mr. Tilton did. Where was that letter written? A. In my study at home, sir.

Q. When? A. August the 5th, I think; the date of it. Is that the date? I don't remember.

Q. The date is August 5th, but you remember it was in reply to Mr. Beecher's of August the 4th? A. That is the letter. The letter in reply to Mr. Beecher's letter was prepared at my house, whether it bears date August 5th or not—in my study.

Q. At the time it was prepared was any one present except you and Mr. Tilton? A. I do not remember that there was anybody present.

Q. Who did the writing? A. Theodore Tilton.

Q. And did you engross it? A. I don't remember whether I did or not, sir.

Q. You do not remember whether it was in his handwriting or yours? A. I do not remember whether it was or not; I think it was in Mr. Eddy's handwriting.

Q. How is that? A. I think it was in my accountant's handwriting.

Q. Ah, yes, a copy? A. I don't remember whether it was in my handwriting or in his.

Q. That was in reply to Mr. Beecher's letter of the previous day? A. Yes, sir.

Mr. Evarts.—Is that the letter [handing witness a letter]? A. Yes, sir; this is the letter.

Mr. Evarts.—We offer this letter now in evidence, if your Honor please, with the letter to which it was an answer, which I have asked them to hand me.

Mr. Morris.—The one which was ruled out yesterday?

Mr. Evarts.—Yes, sir. Your Honor then thought that those letters were not admissible, or were unnecessary—that clearly was the point of your Honor's ruling—because the testimony already given showed that the friendly relations between Mr. Moulton and Mr. Beecher had then been terminated by the letters of the 28th of July; but, really if you look at those letters, it will be found that those letters do not show the termination, but it is these letters that show the termination. But it is not in that view that——

JUDGE NEILSON.—The witness stated it.

Mr. Evarts.—Well, he said that they were terminated, but the form and manner and precise way in which they were terminated could not be gathered from those letters, as there was nothing hostile in them; but the evidence now shows that a letter of Mr. Beecher to Mr. Moulton became the subject of consultation and conference between Mr. Moulton and Mr. Tilton, and that they then prepared this answer, which Mr. Tilton drafted and Mr. Moulton signed, and they sent it forth. It is, therefore, an act in which this plaintiff participated, and is a part of the transaction and relations between the two parties in reference to the investigation, or the suppression of investigation, as the case may be, concerning this controversy between them, which have formed, as your Honor knows, the staple of so much of the evidence that has been introduced. The letters formerly stood, in your Honor's appreciation of them, as merely letters between the witness and Mr. Beecher bearing upon the question of whether or not they broke off their relations, and your Honor did not consider them important or useful to further prove that fact, as I understood it. Now, your Honor will see by these letters that when this comes to be the act of Mr. Tilton in withholding from Mr. Beecher access to these papers, it is an immediate and direct significance of the dealing by Mr. Tilton and Mr. Beecher in regard to this conference.

JUDGE NEILSON.—Mr. Beach, what do you think of this?

Mr. Beach.—Your Honor will recollect that there was a letter introduced, addressed by Mr. Beecher to Mr. Moulton, bearing date July 24, 1874, making a request for the letters and papers in the hands of Mr. Moulton, relating to this controversy, and that the letter of Mr. Moulton, without our objection, in answer to that, bearing date August 4th, was read in evidence. I believe also that the letter of July 28, 1874, from Mr. Beecher to Mr. Moulton, was also given in evidence. Mr. Porter then proposed to read the reply of Mr. Beecher, bearing date August 4th, 1874, to which I objected, and that that was ruled out upon the ground that the statements made by Mr. Beecher to Mr. Moulton upon this subject, detailing the particulars of what was supposed to be the origin of a breach of their friendship, was not admissible; that under the pretense of a controversy between the witness and Mr. Beecher, Mr. Beecher could not fabricate declarations or introduce conversations between himself and the witness, which would bear upon the main issue in this controversy. I am not aware that the letter to which reference is now made, of August 5, 1874, was then presented for discussion or consideration. I am not aware that any offer was made of that letter, or any objection taken to it on our behalf. The only objection which we made, and the only objection which I care now to make, is to the letter of August 4th, written by Mr.

Beecher to Mr. Moulton, and if the object of the introduction of the letter of August 5th is to introduce in evidence, or to lay the foundation for a presentation in evidence, of the letter of Mr. Beecher of August 4th, why, then we object. So far as it is now offered for the purpose of proving declarations made or assented to upon the part of Mr. Tilton, in so far as those declarations are material to the issue, I perceive no objection to its introduction. It seems to me competent upon that ground; but I desire to preserve the objection which was made yesterday, and upon which your Honor ruled, to the introduction in evidence of the letter of Mr. Beecher, of August 4th. I stated yesterday, sir, what I supposed to be the rule of law, without any specific examination of the question, in regard to the admissibility of the details of controversies between a witness and the party against whom he is introduced, for the purpose of proving the presence of malice or ill-will. I have just sent, sir—I have not looked at the authority furnished by the case of *Boynton* v. *Boynton*, which appears in the 43d of Howard's Practice Reports, at page 380.*

"In an action of slander, the plaintiff, as a witness on his own behalf, stated, on cross-examination, that he had had litigation with the defendant. He was then asked how many suits he had with him, and for what causes of action. Held, that the court below properly excluded so much of the inquiry as related to the causes of action. It was in no way material or pertinent to the issue. Its materiality consisted solely in its bearing upon the credit due to the plaintiff as a witness, and was therefore collateral in its nature. The end of such an inquiry would result in an unlimited examination of the previous litigation, and in attempts to indicate the different positions occupied by the parties engaged in it."

The authority seems to me, sir, peculiarly applicable to the present question. Here the difficulties which are supposed to exist, causing estrangement and ill-feeling between the witness and Mr. Beecher, were connected with the very subject of litigation in this action; and if, in a controversy between the witness and Mr. Beecher, Mr. Beecher is permitted to make declarations which are material to the main issue, which directly affect the interests of Mr. Tilton in this litigation, why, your Honor will perceive that by that mode of inquiry upon a collateral question Mr. Beecher is permitted to introduce his own declarations to a third party against us, when we were not present. If necessary, sir, if you will permit me, I will look a moment to the opinion, which may be fuller than the marginal notes. The opinion says, sir:

"The evidence proposed to be given by the answer to so much of the question as was excluded was in no way material or pertinent to the issue found between the parties and which formed the subject of the trial. Its materiality consisted solely in its bearing upon the credit due to the plaintiff as a witness, and was, therefore, collateral in its nature. Inquiries of this character must necessarily be limited and restricted in their nature, otherwise the trial of issues upon pleadings would be often so far extended by

* This case has never been officially reported. Compare on the point in question *Dubois* v. *Baker* (30 N. Y. 355), where the details of a collateral litigation were held competent to show the bias of the witness.

them as to obscure the real points involved in the controversy, and obscure the mind of the jurors called upon to decide them. The object of such inquiries is to show, that the witness may be giving his testimony under some feeling or impulse inconsistent with an impartial disclosure of the truth. It is not material to inquire after the particular process or the detail of circumstances by means of which that feeling may have been produced. For the fact itself, is all that the case can require to be proved, and all that the law will permit to be shown. The discovery of the motive under which the witness may, at the time, be giving his evidence, is the end and object to be attained. And that can always be accomplished by the direct inquiry concerning its existence or concerning the facts themselves, ordinarily indicating the existence of improper motives. It is sufficient to show that the difficulty, affecting his feelings and likely to influence his evidence, exists between the witness and the party it may be given against, and that can always be done without pursuing a detailed inquiry into the circumstances attending its development."

That authority, sir, very abundantly sustains the proposition which I submitted to your Honor yesterday, and which will be at once recognized as law. Now, it may be said, sir, that this letter of Mr. Beecher, of August 4th, necessarily came under the observation of Mr. Tilton, at the time he was engaged mutually with Mr. Moulton in preparing the reply to that instrument. It will be for your Honor's consideration how far the presentation of that letter to Mr. Tilton—if it was submitted to him, which does not yet appear—and how far his acceptance or repudiation of the statements of that letter may be admissible. Certainly, sufficient yet has not been given to allow the production of that letter under that aspect of the question.

Mr. Evarts.—This letter, as I understand it, is not objected to.

JUDGE NEILSON.—The letter written jointly?

Mr. Evarts.—Yes, sir.

Mr. Beach.—I object to that letter, sir, or to any part of that letter which in your Honor's opinion—if you will be kind enough to scrutinize it—will lay any foundation for the introduction of Mr. Beecher's letter.

JUDGE NEILSON.—So I understand, sir.

Mr. Evarts.—May I read the letter?

JUDGE NEILSON.—You are at liberty to read the letter which was written jointly.

Mr. Evarts.—[Reading]:

"49 REMSEN STREET, BROOKLYN, August 5, 1874.

"*Rev.* HENRY WARD BEECHER:

"MY DEAR SIR.—In all our acquaintance and friendship I have never received from you a letter of the tone of yours of August 4th. It seems unlike yourself, and to have been inspired by the same ill-advisers who have so lamentably carried your private affairs before a committee of your church and thence before the public.

"In reply let me remind you that during the whole of the past four years all the documents notes and memoranda which you and Mr. Tilton have entrusted to me have been so entrusted because they had a reference to your mutual differences. I hold no papers either of yours or his except such as bear on this case.

"You speak of 'memoranda of affairs not immediately connected with Mr. Tilton's matters.' You probably allude here to the memoranda of your difficulties with Mr. Bowen, but these have a direct reference to your present case with

Mr. Tilton and were deposited with me by you because of such reference. You speak also of a letter or two from your brother and sister, and I am sure you have not forgotten the apprehension which we entertained lest Mrs. Hooker should fulfill a design which she foreshadowed to invade your pulpit and read to your congregation a confession of your intimacy with Mrs. Tilton.

"You speak of other papers, which I hold 'subject to your wishes.' I hold none such nor do I hold any subject to Mr. Tilton's wishes. The papers which I hold, both yours and his, were not given to me to be subject to the wishes of either of the parties. But the very object of my holding them has been and still is to prevent the wish of one party from being injuriously exercised against the other.

"You are incorrect in saying that Mr. Tilton has had access to my 'depository of materials.' On the contrary I have refused Mr. Tilton such access. During the preparation of his sworn statement he came to me and said his case would be incomplete unless I permitted him use of all the documents but I refused; and all he could rely upon were such notes as he had made from time to time from writings of yours which you had written to me to be read to him and passages of which he caught from my lips in short hand. Mr. Tilton has seen only a part of the papers in my possession and would be more surprised to learn the entire facts of the case than you can possibly be.

"What idle rumors may have existed in newspaper offices I know not; but they have not come from me.

"In closing your letter you say 'I do not ask you to place before the Committee any papers which Mr. Tilton may have given you but I do demand that you forthwith place before the Committee every paper which I have written or deposited with you.' In reply I can only say that I can not justly place before the Committee the papers of one of the parties without doing the same with the papers of the other and I can not do this honorably except either by legal process compelling me or else by consent in writing not only of yourself but of Mr. Tilton with whom I shall confer on the subject as speedily as possible.

"You will I trust see a greater spirit of justice in this reply than you have infused into your unusual letter of Aug. 4th.

"Very respectfully,
"FRANCIS D. MOULTON."

[Letter marked "Exhibit D, 6."]

Mr. Evarts.—Now, we offer the letter to which that is an answer, it having been communicated to Mr. Tilton, read by him, and quoted from by him as parts of his (Mr. Tilton's) written reply, to be signed by Moulton.

Mr. Beach.—That statement may probably be assumed to be true, sir, from what has already appeared; but still it is not in evidence, and I think it should appear by the direct examination of the witness before we withdraw our objection to its introduction. Whether the contents were brought to his observation—submitted to him—I don't know. It will be easy to prove it if it is a fact.

JUDGE NEILSON.—Suppose you interrogate him on that subject.

Mr. Evarts.—I dare say, your Honor, that it is proper that it should be done, but I make this suggestion, as there is no pretense that there was any other letter of the 4th of August from Mr. Beecher; and as this letter which I have read, every word of which was written by Mr. Tilton, is an answer in terms referring to the date of Mr. Beecher's letter—his unusual letter—and making three separate quotations from it, on every principle of evidence that has ever been practiced upon in a civil or criminal suit, the writer of an answer to a letter is affected with a knowledge of the letter which he is answering. Now, I submit to your Honor that it is but an idle form to proceed any further.

Mr. Beach.—That would be true, sir, if the letter to which the reply is made was addressed to the party making the reply, or if the whole of the letter had been quoted in the reply. Here are two parties engaged in preparing this answer. It does not appear that Mr. Tilton wrote the whole of the answer, or that he did not write portions of it at the dictation of Mr. Moulton. It does not appear, but the quotations in the answer were given by Mr. Moulton to Mr. Tilton to be incorporated in it; and it is those, perhaps, somewhat technical matters, which, I insist, ought to appear before the whole of Mr. Beecher's letter is permitted to be read.

JUDGE NEILSON.—I think it is proper to interrogate the witness on that subject.

Mr. Evarts.—Does your Honor rule that this letter is not admissible without an interrogation?

JUDGE NEILSON.—I expressed a wish, sir, that he should be asked that question.

Mr. Porter.—Did Mr. Tilton see the letter from which he quoted these passages in the reply? A. I think he did, sir.

Mr. Beach.—Wait one moment, sir. I object to that question as assuming that Mr. Tilton quoted these passages in the reply.

Q. Did Mr. Tilton quote these passages in the reply? A. They were quoted in the reply which was made by Mr. Tilton and myself. The reply was jointly Mr. Tilton's and my own.

Q. And the letter was before you from which the extracts were taken? A. Yes, sir.

Q. And the reply to the letter was made with reference to the letter to which it was a reply? A. Yes, sir.

Q. By you and by Mr. Tilton? A. By Mr. Tilton and myself.

JUDGE NEILSON.—And the contents of the letter known to both of you? A. Known to both of us; yes, sir.

JUDGE NEILSON.—Now, I think the letter may come in.*

Mr. Beach.—Yes, sir; I think it is competent.

Mr. Evarts.—Have you the original?

Mr. Morris.—I can not find it. You may read from the copy.

Mr. Evarts.—We will read it, but still we want to see all these original papers.

Mr. Morris.—I will find it at my leisure.

Mr. Evarts—We have not seen these papers. The other side have seen them all. I would like to see them.

Mr. Morris.—All the papers that we have we will furnish.

Mr. Beach.—You saw this one—your own letter, I suppose.

Mr. Morris.—They have served a subpœna upon us, and I have requested them to make a list of the papers that they want, and I give them notice again, or they will have to wait until we can find it.

* In *Stone* v. *Sanborn* (104 Mass. 319 [1870] Opinion by GRAY, J.) it was *held* that a party may put in evidence a letter containing admissions material to the case without putting in the whole correspondence. Though if letters thus introduced showed that they were written in reply to other letters, the party may doubtless give in evidence those letters too, as tending to explain the replies.

Barrymore v. Taylor (1 Esp. 326) is to the same effect on the first point.

JUDGE NEILSON.—I think it will be well, Mr. Shearman, to make a list.

Mr. Porter.—[Reading]:

"BROOKLYN, August 4, 1874.

"F. D. MOULTON, Esq :—

"*Sir*—Your letter, bearing date August 4, 1874, is this moment received. Allow me to express my regret and astonishment that you refuse me permission even to see certain letters and papers in your possession, relating to the charges made against me by Theodore Tilton, and at the reasons given for the refusal.

"On your solemn and repeated assurances of personal friendship, and in the unquestioning confidence with which you inspired me of your honor and fidelity, I placed in your hands for safe-keeping various letters addressed to me from my brother, my sister, and various other parties; also memoranda of affairs not immediately connected with Mr. Tilton's matters. I also from time to time addressed you confidential notes relating to my own self as one friend would write to another. These papers were never placed in your hands to be held for two parties, nor to be used in any way. They were to be held for me. I did not wish them to be subject to risk of loss or scattering, from my careless habits in the manner of preserving documents. They were to be held for me. In so far as these papers were concerned, you were only a friendly trustee, holding papers subject to my wishes.

"Mr. Tilton has made a deadly assault upon me, and has used letters and fragments of letters purporting to be copies of these papers. Are these extracts genuine? Are they garbled? What are their dates? What, if anything, has been left out, and what put in?

"You refuse my demand for these papers on the various pleas that if I speak the truth in my statement, I do not need them; that if I make a successful use of them, it will be an injury to Mr. Tilton, and that you, as a friend of both parties, are bound not to aid either in any act that shall injure the other.

"But I do not desire to injure any one, but to repel an injury attempted upon me by the use of papers committed sacredly to your care. These documents have been seen and copied; they have been hawked for sale in New York newspaper offices; what purport to be my confidential notes to you are on the market. But when I demand a sight of the originals of papers of which you are only a trustee, that I may defend myself, you refuse, because you are the friend of both parties!

"Mr. Tilton has access to your depository for materials with which to strike me, but I am not permitted to use them in defending myself!

"I do not ask to place before the Committee any papers which Mr. Tilton may have given you. But I do demand that you forthwith place before the Committee every paper which I have written or deposited with you,

"Yours truly,

"H. W. BEECHER."

[Letter marked "Exhibit D, 7"]

Mr. Porter.—Have you the account, Mr. Moulton? A. Yes, sir. Which one, sir.

Q. Both, if you please. A. There is the first one—Mr. Tilton's—and there is the other [producing papers].

Q. This is a transcript of the account of your firm with Theodore Tilton? A. Yes, sir.

Q. It is a correct transcript of that account, and of the whole of it? A. I believe it to be so, sir; our accountant made it.

Mr. Porter.—I will introduce in evidence first the account of Theodore Tilton with Woodruff and Robinsons. I will ask Mr. Hill to read it.

Mr. Hill.—[Reading.]

THEO. TILTON *in acct. with* WOODRUFF & ROBINSON.

1871.	[DEBIT.]	
Feb. 3—	To Cash	$500 00
13—	do	500 00
24—	do	500 00
Mar. 4—	do	500 00
8—	do	1,500 00
May 1—	do	500 00
Nov. 15—	do	1,113 62
" 25—	do	250 00
1872.		
Jan. 29—	do	1,000 00
Apl. 26—	do	15 00
May 27—	do	100 00
" 27—	do	100 00
" 27—	do	500 00
June 8—	do	500 00
" 11—	F. Woodruff guard. int. on B. & M.	240 63
July 8—	Cash	250 00
Aug. 12--	do	1,200 00
" 22—	do	300 00
Sept. 1—	do	1,843 91
Nov. 8—	F. Woodruff guard. int. on B. & M.	297 50
" 8—	Cash	500 00
Dec. 27—	do	600 00
1873.		
Apl. 21—	do	170 48
		$12,981 15

1871.	[CREDIT.]	
Jan. 7—	By Cash	$4,004 03
May 1—	By Bal. Interest on acc't	45 21
Nov. 13—	By Cash	500 00
" 29—	do	250 00
1872.		
Jan. 24—	do	1,000 00
Apl. 5—	do	7,000 00
May 28—	do	100 00
Nov. 8—	By Bal. Interest on acc't	71 26
Apl. 21—	do do	10 65
		$12,981 15

[Paper marked " Exhibit D. 8."]

Mr. Fullerton.—Balancing the account?

Mr. Hill.—They balance.

Q. The other paper which you produce purports to be a statement of receipts and disbursements of money received from H. W. Beecher by F. D Moulton; is this a correct statement of those? A. It is a correct statement, sir, as far as our books are concerned; I think that there are one or two checks left out; I can not say that there are, but my impression—not checks, but currency; currency; I think there were two payments to me in currency besides that account.

Mr. Porter.—This I offer in evidence.

Mr. Hill.—[Reading.] This is a statement of moneys received and disbursed from H. W. Beecher by F. D. Moulton:

On the Debit Side.

1871.		
July 19	Paid Rev. C. C. Beatty, check	$155 27
Aug. 19	" Mrs. Theo. Tilton "	150 00
1872.		
Jan. 19	" " " "	50 00
May 28	" Rev. A. M. Read, check	219 76
" 28	" Mrs. T. Tilton	25 00
July 8	" Rev. A. M. Read	118 12
Oct. 24	Paid Mrs. T. Tilton	50 00
1873.		
Mar. 7	" Rev. C. C. Beatty, check	245 00
April 5	" Mrs. T. Tilton, bal'ce of $500	255 00
May 3	" Theo. Tilton, check	1,000 00
July 11	" Tilton, indorsed by O. W. Ruland, attorney, check	650 00
Aug. 15	" to Theo. Tilton, check	250 00
Sep. 12	" " " "	500 00
" 30	" " " "	500 00
Dec. 9	" " " "	260 00
" 16	" A. M. Read, check	200 00
1874.		
Feb. 24	" Theodore Tilton, Mrs. T. T., cashed for check	500 00
M'ch. 30	Paid Theodore Tilton, O. W. Ruland, check	400 00
May 2	Paid Theodore Tilton, indorsed *Golden Age*, by O. W. Ruland, attorney	250 00
" 26	" Theodore Tilton, check	300 00
	Footing, in pencil	$6,078 15

The Credit Side.

1871.		
June 26	Received check, H. W. Beecher	$155 85
Nov. 14	" " of "	150 00
1872.		
May 31	" " "	294 76
1873.		
Feb. 18	" " "	500 00
May 2	" cash	5,000 00
	In pencil, footing	$6,100 61

[Paper marked "Exhibit D, 9."]

Mr. Beach (smiling).—So it seems Mr. Beecher has a balance there yet?

Mr. Porter.—From what is this statement taken—I refer to the one last introduced in evidence? A. From the ledger of Woodruff & Robinson.

Q. The entries were made at the time of the respective dates in the books of your firm? A. Yes, sir.

Q. Is the title of the account in the book that which appears in the paper? A. What is the title there, sir; I don't——

Q. "Statement of accounts," &c.? A. No, sir; it is taken from my account on the ledger, "Francis D. Moulton," I judge—from my account; from my own individual account, sir.

Q. Could you bring the book and explain, or will it be necessary? A. The accountant will come, sir, or the books.

Q. If you will do that, be kind enough to do so to-morrow; it will take

less time to explain. A. Have the accountant or the books, sir? You need the cash book and the ledger, then—you will need several cash books—cash books and the ledger.

Mr. Porter.—Oh! I guess we won't want anything but the ledger; just the ledger, in order to show how it appeared.

Mr. Beach.—I understand the witness to say that this is extracted from his account with the firm. I understand that; but we would like to see how it entered into his account. It is only a matter of explanation; it is much more simply done by having the book here than it is by taking the pen and——

The Witness.—I can't tell you exactly how it——

Mr. Porter.—How does it happen that all the sums which were received from Mr. Beecher don't appear? A. My impression is, sir, that I received some currency from him that I immediately paid out, and which I did not deposit there and draw from.

Mr. Beach.—That you did not deposit? A. That I did not deposit.

Mr. Porter.—There were several instances of that kind? A. I don't know that there were several; I think there were one or two; I won't be certain about it.

Q. Have you any means of ascertaining the amounts? A. No, sir; nothing but an impression that I have.

Q. Have you kept no memorandum? A. No, sir; that is the memorandum as far as I have any, sir; I have no other.

Q. This, then, is not in your books a continuous account in respect to the five thousand dollars, as well as the other matters which you say were an account of these? A. It is not in what?

Q. It is not a continuous; an intermingled account? A. It is an intermingled account; yes, sir. As I received the checks, I had the money deposited to my credit. The dates there will show. The dates and the checks will show when the amounts are placed to my credit.

JUDGE NEILSON.—Were there intermediate deposits in other matters? A. Yes, sir; there might have been.

Judge Porter.—If the books were kept as an account between you and the firm, how was it indicated that the transactions related to Mr. Beecher? A. A memorandum was put down there, sir.

Q. And is that memorandum transcribed here in full? A. I presume it is, sir.

Mr. Beach.—Oh! no; I guess not.

The Witness.—I received the account with a letter from Mr. Eddy, our accountant, stating that he had taken off the account; I have not examined it.

Q. If you would be kind enough to look at it between now and to-morrow—you have one copy of this, I suppose? A. No, sir; I have not.

Q. I thought Mr. Tilton had one in pencil? A. Mr. Tilton has one in pencil, of his own; this is another matter; Mr. Tilton has a memorandum of the account with me.

Mr. Beach.—This can not be an account from the book. For instance, the first charge, "Paid Rev. C. C. Beatty, check——"

Mr. Evarts.—We shall have to have the books; we need not detain them.

Mr. Beach.—There is nothing here to show that the checks which you paid to Beatty, or to the Rev. Mr. Read, were on behalf of Mr. Beecher? A. Yes, sir; you will find corresponding amounts to the credit of the account there—to my credit; the checks that I paid were paid to C. C——.

Q. What is there on the books to show that the checks paid to the Rev. Mr. Beatty or Mr. Read were paid on behalf of Mr. Beecher, or out of the Beecher account? A. What is there on the book to show that?

Mr. Porter.—Yes.

The Witness.—There's no other money for it to come from but Mr. Beecher's money. That account was paid from no other money but the money that Mr. Beecher gave me.

Mr. Evarts.—The books do not show that.

The Witness.—The books show, I think, that the entry on the book is, "Paid, C. C. Beatty." Now, then, what is——

Mr. Evarts.—But, what is there on the books to show that that is for Mr. Beecher? A. The credit on the book to me is a check from Mr. Beecher, sir; you will find it on the credit account.

Q. Corresponding in amount? A. Yes, sir; corresponding in amount.

Q. In that way? A. Yes, sir; if you will allow me, Mr. Porter, I will try and indicate what I mean from the paper itself. For instance, to my credit there is placed a check, June 26th, $155.85; paid Rev. C. C. Beatty, $155.27. Then there is received a check from H. W. Beecher, $150; paid Mrs. Theodore Tilton, $150. Then there is paid Mrs. Theodore Tilton, $50; paid Rev. A. M. Read, $219.76; paid Mrs. Theodore Tilton, $25, and received from Mr. Beecher, $294.76 to offset that. Then there is received different sums credited to me, $500, and that is paid to C. C. Beatty, $245, and to Mrs. Theodore Tilton, $255, which offsets that $500, and the account balances. Then you come to the $5,000; paid Theodore Tilton, May 3rd, $1,000 on that; July 11th, $650, paid Theodore Tilton, endorsed "O. W. Ruland, attorney," $650—and August 15th paid $250—all that comes out of the $5,000. Then $500, $260; A. M. Read, $200; Theodore Tilton, cash for Mrs. T., $500; Theodore Tilton, endorsed by Ruland, $400, and so on down, so that it leaves a balance in Mr. Beecher's favor here of—I don't know how much it was, sir, to balance.

Mr. Beach.—$22? A. $22.

Mr. Porter.—Is there in the accounts of your firm, in any part, anything to show the transactions between you and Mr. Tilton not embraced in these two papers? A. Between myself personally and Mr. Tilton? No, sir.

Q. If I understand you, there was no account between your firm and Mr. Beecher? A. No, sir.

Q. At any time? A. No, sir.

Q. Nor between you and Mr. Beecher on the books of the firm? A. No, sir.

Mr. Beach.—Yes, sir; but not in Mr. Beecher's name? A. Not in Mr. Beecher's name.

Mr. Porter.—Well, there is this which is in his own name. The occasion for its appearing upon the books of the firm arose only when the moneys you received were deposited by you with the firm? A. Yes, sir.

Q. And when the moneys paid out were paid by checks of the firm? A. Yes, sir; or by currency of the firm.

Q. Or by currency? A. Or by currency.

Q. Of the firm? A. Yes, sir.

Q. Where they were paid out of the currency from Mr. Beecher, they did not appear in the books of the firm—where you made a payment from funds received from Mr. Beecher which had not gone to the firm, there is no entry anywhere with regard to them? A. No, sir; when I received currency—let me see if I understand your question by my answer, sir—if I received currency from Mr. Beecher, and paid it out immediately and did not deposit it with the firm, then there would be no account of it.

Q. So that there is no complete account in existence, so far as you are aware? A. Unless that be a complete account.

Q. And this, you think, is incomplete? A. I stated, sir, that there is an impression in my mind that I received from Mr. Beecher twice money that is not there.

Q. Are you able to say that you did not do so three times? A. Oh! If I should undertake to state the truth I should state it in that way that I did not three times.

Q. Well, are you able to? You put it hypothetically? A. Yes, sir; I should say that I had not three times.

Q. Can you state the amounts on those two occasions? A. I can not, sir. I think on one of the occasions there was $300—no, sir.

Q. And the other a larger or less sum, should you think? A. I should think it was about the same; perhaps $500; I think there was one of $500.

Q. Making the total amount received from Mrs. Beecher $6,878.15. A. Whatever makes the total amount, sir.

Q. $6,900. I will now ask you a few questions in regard to the other account, returning to this at a later stage of the examination. You received from Mr. Tilton, I perceive, by this account, on the 7th of January, 1871, $4,000?

Mr. Fullerton.—That is the other account.

Mr. Porter.—Yes, sir, $4,004.03. [To the witness]: The first draft made upon that was on the 3d of February, $500; did the $5,000 received from Mr. Beecher enter into this account in any form? A. I don't think it did, sir; if you will allow me, I will see whether it did or not on that paper.

Q. I presume it did not. A. I don't think it is in there, sir; it is not there.

Q. Do you know how Mr. Tilton had before transacted his financial matters, whether with banks or bankers? A. I think he had money in bank and money with individuals.

Q. But never with your firm until then? A. No, sir.

Q. How was this $4,000 deposited? A. It was money which Mr. Tilton gave to me to be deposited.

Q. Was it in currency or in checks? A. I think very likely it was in checks, sir; I don't remember.

Q. On the 5th of April, I observe, there was a deposit with your firm of

$7,000; do you remember whether that was by check or in currency? A. Mr. Henry C. Bowen's check; it was either Henry C. Bowen's check or currency drawn on Henry C. Bowen's check and deposited.

Q. When was *The Golden Age* established? A. In March, I think, sir, of 1871.

Q. Who was the proprietor and editor of that paper? A. Mr. Tilton was the editor of the paper.

Q. Was he publisher? A. He was the publisher.

Q. The proprietor? A. Well, the proprietor—I hardly know how to answer that question; Mr. Tilton's notes were given, payable, if the paper was made a success, to the parties who contributed to the paper; I suppose he might be called the proprietor of the paper.

Q. Were you one of those who gave notes for that purpose? A. Yes, sir.

Q. Or received his note, I should say, for that purpose? A. Yes, sir; I received his note.

Q. To what extent were you a contributor? A. I think I contributed $1,500 at that time; subscribed $3,000.

Q. How is that, sir? A. I subscribed $3,000.

Q. You paid $1,500? A. Yes, sir; $1,500 was paid at that time.

Q. When did you subscribe? A. I don't remember the date—in the beginning, when subscriptions were made.

Q. Probably shortly before the paper began, before the publication of the paper? A I should think it was; yes, sir.

Q. When did you pay that $1,500? A. I don't remember, sir, when I paid it; I haven't any means of stating just now; I will find out for you, sir.

Q. The books show? A. Yes, sir; the books——

Q. You have no idea about the time? A. No; I haven't.

Q. Nor whether it was that year? A. Oh! it was that year.

Q. Have you an idea whether it was that spring? A. I think it was.

Q. Paid it in cash? A. Yes, sir.

Q. You received from Mr. Tilton a note for the amount? A. Subsequently; yes, sir; which I returned to him.

Q. When did you receive it? A. When did I receive the note?

Q. When did you receive it? A. I can not tell the date of it, sir; I have no means of telling just now.

Q. The note came immediately after you had sent the amount, I suppose? A. The notes were arranged by my partner, Mr. Woodruff, sir; I don't know when they came; they were arranged for me as for all the rest, as for himself.

Q. Was the other $1,500 ever paid? A. I think not, sir; we gave back the notes to Mr. Tilton, and made the whole thing a gift, so that he became the sole proprietor of *The Golden Age*.

Q. That was after he had published the Life of Victoria Woodhull? A. I think it was; I would not be certain about that, though.

Q. You will not? A. No, sir.

Mr. Fullerton.—Well, it does not appear that he published the Life of Victoria Woodhull at all yet. If you want to prove that you must prove it in some other way.

Q. What interval do you think occurred between the receipt of those notes and their surrender? A. I think that the notes were surrendered the latter part of the year. I think I can ascertain positively, though, for you.

Q. Of the year 1871? A. Yes, sir.

Q. Were they surrendered at the same time with the notes of other contributors? A. I believe they were.

Q. What was the aggregate of the contribution? A. I do not remember what the aggregate was.

Q. About how much?

Mr. Beach.—I don't perceive the materiality of this inquiry, if your Honor pleases.

Mr. Porter.—Its materiality will appear hereafter.

Mr. Beach.—Well, wait one moment. The gentlemen say they will make it material. It should be shown to be material now. How much Mr. Tilton was aided in the business enterprise of publishing *The Golden Age*, by his friends, does not seem to me to be material.

Mr. Evarts.—Not by itself, it is not, but it is a necessary part of material evidence.

JUDGE NEILSON.—I think the counsel has that subject about exhausted; perhaps he had better finish it.

Mr. Porter.—Just that point; it is all I desire. A. About $6,000 I should think.

Q. Of the whole? A. About $6,000; yes, sir.

Q. If I understand you, these were payable only in case it should prove a success? A. I think that——

Mr. Beach.—One moment.

Mr. Porter.—Did it prove a success?

JUDGE NEILSON.—He said that.

Mr. Porter.—I wanted to see if it was a success.

Mr. Beach.—You wanted to see whether you understood his answer by putting another question.

Mr. Porter.—Well, I put that now. [To the Witness.] Did it prove a success?

JUDGE NEILSON.—I think he may answer that.

Mr. Porter.—Did the paper prove a success? A. The paper was carried on. I don't know whether you call it a success or not; it didn't—the payment back—the giving back of these notes was not in accordance with the provision; it was in accordance with the idea of my partner, Mr. Woodruff, that Mr. Tilton had better be the sole proprietor, and instead of running upon obligation any larger than the amount he had already incurred, that he had better undertake to run the paper on what he had, and own it himself, so that the property was given; so that the money was given outright to him; that is the——

Q. The further obligation of the subscription was given up? A. Yes, sir.

Q. Did any other members of your firm separately contribute? A. Yes, sir.

Mr. Fullerton.—Well, we object to that, if the court please.

Mr. Porter.—Well, we waive that, sir. [To the witness.] Did you lend anything to him individually? A. I have from time to time let him have money; yes, I think.

Q. Is there an account of it in the books? A. No, sir.

Q. Is there an account of it in writing, anywhere? A. No, sir; I don't think there is; when I found he wanted money, I let him have money if I had it.

Q. In currency? A. Sometimes, and sometimes in checks; generally in currency.

Q. Sometimes in checks? A. I don't remember that I——I don't remember whether——I suppose very likely there is some in checks; that is, may be.

Q. Have you those checks? A. I should suppose I ought to have them. Yes, sir, they will be in the concern; if I paid him any money in checks, that would appear.

Q. I ask you to look for that. A. I will.

Mr. Fullerton.—That we shall object to. We shall object to that.

Mr. Morris.—The checks for 30 or 40 millions of money? It will take about four months.

Mr. Beach.—If he chooses to look for you, of course we shall not object to it.

Mr. Fullerton.—But we shall object to the evidence if the checks are produced.

JUDGE NEILSON.—Well, as a matter of courtesy, the witness may look.

Mr. Fullerton.—Well, to go into the details of all their transactions here, seems to me to be out of place entirely.

Mr. Porter.—Have all those loans been repaid? A. No, sir.

Q. Have any of them? A. No, sir.

Q. During what periods were they made? A. From 1871 down.

Q. To what period; down to the present time? A. Yes, sir; down to the present time; not very much lately.

Q. How much in the aggregate? A. I really could not tell you, sir.

Q. Have you no idea? A. No, sir; I have not.

Q. Not within a few thousand dollars? A. No, sir; they don't amount to a few thousand dollars; they don't amount to over a few thousand dollars; I should not think, in all, over $2,000; I don't think.

Q. You can say that they didn't amount to over $10,000? A. I know they didn't amount to over $10,000.

Q. Nor over five? A. Nor over five.

Q. Have you indorsed for him? A. No, sir.

Q. Nor become responsible for him? A. No, sir.

Q. At the time this $5,000 was paid by Mr. Beecher, can you tell what was the amount that Mr. Tilton owed to your firm? A. What was the amount that Mr. Tilton owed to our firm?

Q. Yes, sir. A. I don't think he owed anything to our firm.

Q. Can you tell what was the amount he owed to you? A. I can not.

Q. Nor approximately? A. No.

Q. I now refer to the subject of your relations with those parties briefly—did Mr. Tilton draw checks on your firm? A. Draw checks? No.

Q. Did Mr. Tilton draw checks on your firm? A. No; I think he came down for the money when he wanted it, or else drew a draft. I don't know precisely how he did draw it out.

Q. Drew a draft? A. I think very likely; or came himself for our check.

Q. Will you be kind enough to see how that was, if there are the drafts?

Mr. Beach.—I think you had better give him a memorandum of what you want, or let him take it, for he certainly won't remember all those requests.

Mr. Porter.—I come now to the incidents of the evening of December the 30th; had you seen Mr. Tilton that day, previous to your interview with him in the evening? A. My impression is that I had not, sir.

Q. He came to your house? A. Yes, sir.

Q. At his request you went to the house of Mr. Beecher? A. I did, sir.

Q. On your arrival there, did you meet Mr. Beecher at the door? A. I don't remember that I met him at the door.

Q. Did you when you met him, meet him in a kindly spirit? A. I saluted him, sir, as one gentleman should another.

Q. How is that? A. I saluted him as one gentleman should another, at the time, in his own house.

Q. Were you peremptory in your manner? A. I told him Mr. Tilton wanted him to come to my house.

Q. I ask if you were peremptory in your manner? A. I was polite, sir, in my manner. I don't——

Q. Will you repeat the first words you used after greeting him? A. I said, "Mr. Beecher, Mr. Tilton wants you to come down to my house."

Q. What else? A. And he said then, that it was prayer-meeting night and he didn't think he could come, and then I said: "Mr. Tilton wants to see you with regard to your relations with his family, and with regard to the letter which he sent to you through Mr. Bowen, and you had better make arrangements to let the prayer-meeting go and come down with me."

Q. You had heard of that letter before? A. What letter; the letter of——

Q. Bowen? A. Yes, sir.

Q. From whom? A. From Mr. Tilton.

Q. When? A. December 26th.

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

Q. Did Mr. Tilton come to see you about it, or did you go to see him about it? A. About that letter?

Q. Yes, sir? A. No, sir.

Q. Did he send for you? A. No, sir.

Q. You were there casually? A. I think I was there casually; yes, sir.

Q. He showed you the draft of that letter? A. He told me that he had sent a letter; he didn't show me a draft of a letter; told me what it was; what the substance of it was.

Q. What was said about it by Mr. Tilton? A. He said that he had written —that Bowen had told—him of Mr. Beecher's adulteries, and he had told

Mr. Bowen that Mr. Beecher had been guilty of unhandsome advances toward his wife, and that, at Mr. Bowen's challenge, he had written such a letter, and he told me what the letter was.

Q. Did he tell you no more particularly what adulteries Mr. Bowen had charged upon Mr. Beecher? A. I think he told me that Mr. Bowen had charged various adulteries upon Mr. Beecher, and that Mr. Beecher had made confession to him of adulteries.

Mr. Evarts.—That is, Mr. Bowen said so? A. Yes; Mr. Bowen said so.

Mr. Porter.—Did he specify those adulteries? A. No; he did not specify them.

Q. Did he specify any of the parties who were connected with those charges? A. No, sir.

Q. Well, what did you say to that? A. I asked him if Mr. Bowen had signed the letter with him. I asked him what unhandsome advances Mr. Beecher had made. He told me not to ask him; he didn't want to tell me. Well, I said, "Why did you send the letter through Bowen, if he was a party to that demand, why didn't you get his signature?" I told him he was a fool for sending such a letter without the signature of Mr. Bowen.

Q. Was that your phrase; that he was a fool for sending it? A. Yes, sir; without Mr. Bowen's signature.

Q. Go on. A. And he said that Mr. Bowen had promised to furnish him the evidences.

Q. On that occasion? A. No, sir; whenever it was necessary to enforce the demand of the letter.

Q. He did then; he told you that Mr. Bowen in that interview had promised to furnish him with the evidences? A. Yes, sir; he gave that to me as an excuse for not having had Mr. Bowen's signature when I—that is it.

Q. All that occurred at the interview? A. And I took a memorandum of what he told me. I believe the memorandum was published in my statement concerning——

Mr. Fullerton.—Never mind that statement.

The Witness.—Pardon me.

Q. Was that the day on which you noted the precise hour of your entering upon—of your becoming connected with this controversy? A. I noted the precise hour at which Mr. Tilton gave me the information that he gave me at that interview.

Q. What did you note it in? A. Put it on a piece of paper.

Q. Have you that paper? A. It is here.

Q. Was it a detached slip of paper? A. I don't remember; the paper will show for itself; I wrote it down.

Q. Have you it here? A. Yes, sir; it is amongst my papers, I think.

Mr. Porter.—I ask for that paper.

Mr. Beach.—Well, you are not entitled to see it unless you want it for evidence.

Mr. Evarts.—We have a right to see it to determine whether we want it for evidence.

Mr. Beach.—I submit not.

Mr. Evarts.—Well, go on.

Mr. Beach.—Yes; it is here.

Mr. Porter.—Is it at hand?

Mr. Morris.—It may take me half an hour to look through here. Unless it is for some purpose I don't propose to do it; I don't wish to.

Mr. Beach.—No, this presents another question. If they call for this paper as evidence, why, that is one thing, and if they merely want it from curiosity to look at it, that is quite another, and we shall not furnish it.

Mr. Evarts.—We shall not raise the question until the paper is here.

Mr. Beach.—Well, the paper is here, and when you call for it as evidence we will look for it; and if not, we shall not.

JUDGE NEILSON.—Well, I think if you would give a memorandum of the dates of the papers to be produced, it would save time.

Mr. Beach.—It won't save any time, it is likely.

Mr. Fullerton.—Well, all suggestions upon that subject have been wasted so far.

JUDGE NEILSON.—What could be done if the paper were brought here is quite another thing.*

* It has been much disputed whether mere notice to the opposite party to produce papers at the trial, though followed by inspection by the counsel calling for them, makes them evidence. The following authorities favor the rule that the right remains to the party calling for the papers, to decide, after examining them, whether to put them in or not. *Kenny* v. *Clarkson* (1 Johns. 385); *Rumsey* v. *Lovell* (Anth. N. P. 26); *Stalker* v. *Gaunt* (12 N. Y. Leg. Obs. 124); *Day's note to Gordon* v. *Secretan* (8 East, 548).

The case of *Lawrence* v. *Van Horne* (1 Cai. 276), decided earlier than the foregoing, did not settle the rule, but of the two opinions which noticed the question, that of Mr. Justice THOMPSON, adopted the rule stated above, and is relied upon in some of the subsequent cases.

The same rule is laid down after an elaborate review of the English and American authorities, in *Austin* v. *Thomson* (45 N. H. 113), which case is approved by Judge REDFIELD in his note to 1 Greenl. on Ev. § 563, as being more reasonable in its view than the English authorities which, notwithstanding the case of *Sayer* v. *Kitchen* (1 Esp. 209, coram Lord KENYON), hold to the contrary.

In *Kenny* v. *Clarkson* (above) it will be noticed that there was no previous notice to produce the paper called for; nor had notice been given before the trial in *Austin* v. *Thomson* (above).

The cases are as follows:

Kenny v. *Clarkson*, 1 Johns. 385 (Supreme Ct., 1806, Opinion by SPENCER, J.). Action on an insurance policy. Defendants' counsel having moved for a nonsuit unsuccessfully, called on plaintiff for papers, which on inspection, they declined to read in evidence. Plaintiff's counsel however, was allowed to read them against objection without proof. "It appears to me that the notice to produce a paper, and calling for its inspection, ought to be considered as analogous to a bill for discovery when the answer is not evidence, but for the adverse party." [The case went off on another ground.]

Rumsey v. *Lovell*, Anth. N. P. 26 (1808, coram VAN NESS, J.). Plaintiff's counsel having called for books of defendant, the latter produced them; when plaintiff having read them, refused to put them in evidence. The court held that he had a right to inspect them, and did not by doing so make them evidence. "But that if a person calling for books, asked any questions of a witness in explanation of any item in the books, they are then in evidence, and the opposite party may read them to the jury."

Stalker v. *Gaunt*, 12 N. Y. Leg. Obs. 124 (N. Y. Superior Ct., 1854, Gen. T.,

Mr. Fullerton.—Well, the rule of evidence is very clear. If they call for it, it comes.

Mr. Evarts.—It would seem to be very clear, when the witness says that he made a memorandum at the time, that we have a right to look at it for the purpose of testing his evidence, if nothing else.

JUDGE NEILSON.—I don't need to pass upon that now.

Mr. Evarts.—The paper is not here, so that we can not raise these questions.

Mr. Porter—What was the day and the hour of the day when this communication was made? A. It was December the 26th, sir, I think, in the afternoon.

Q. What was the hour? A. Some way around three o'clock, I think.

Q. Why did you note the hour? A. Well, it was a pretty important communication, and I made a memorandum of it on that account.

Q. Important to you? A. No; important to Mr. Tilton.

Opinion by HOFFMAN, J.). The court recognize the doctrine as established in this state, that notice to the opposite party to produce a document, and inspection of it do not make it evidence at all events. It is conceded, nevertheless, that a contrary rule obtains in England.

Day's Note to Gordon v. *Secretan* (8 East, 548), says, that the decision of Lord KENYON in *Sayer* v. *Kitchen* (1 Esp. 209), has been adopted in New York. [This was to the effect that notice and inspection did not make the document called for evidence, unless the party calling for it elected to put it in.]

Lawrence v. *Van Horne*, 1 Cai. 276. (Supreme Ct., 1803). Action on an insurance policy. Defendants gave notice to plaintiffs to produce a letter at the trial, which, when it came on, they refused to do unless defendants would engage to read the letter in evidence, defendants would not accede to this without being first permitted to inspect the letter. Inspection being refused, the judge ruled that it could not be demanded except on the terms which plaintiffs had imposed. RADCLIFF, J. (who had sat at the trial), "The notice to produce a paper, requires it to be produced in *evidence*, and when once called for and produced, it is, of course, in evidence, and I think it can not be called for on any other terms." THOMPSON, J., "I think the judge ought to have said to the plaintiffs, if you have a letter, and intend to produce it, the defendants have a right to inspect it, and make their election whether to read it in evidence."

Austin v. *Thomson*, 45 N. H. 113 (1863, Opinion by BARTLETT, J.). Plaintiff in his testimony alluded to a book. Defendant's counsel asked him to produce it, and, he having complied, the counsel inspected the book. *Held*, that this inspection did not make the book evidence. [It had been admitted as evidence at the trial. It seems that the fact that it was not introduced under notice to produce, made no difference, though this is not directly passed upon. This is a carefully considered case, reviews all the authorities, and is commended in REDFIELD'S note to 1 Greenl. on Ev. § 563, as enunciating a more reasonable rule than the prevailing English cases.]

Sayer v. *Kitchen*, 1 Esp. 209 (1794, Lord KENYON, at N. P.). If counsel calls for the books of the opposite party and makes no use of them as evidence, it is only matter for observation by the opposing counsel that the entries were favorable to the party producing them, but does not make the books evidence. [Defendants had before trial given notice to produce the books.]

Wharam v. *Routledge*, 5 Esp. 235 (1805, Lord ELLENBOROUGH, at N. P.). Defendant's counsel called for a book referred to in plaintiff's testimony. It was answered that they should have the book if it was then to be received in evidence. Defendant's counsel required to see it first. By the court, "You can not ask for a book of the opposite party, and be determined upon the inspection of it, whether you will use it or not. If you call for it, you make it evidence for the other side, if they think fit to use it."

Q. The memorandum was made for his convenience? A. I made a memorandum of it because I thought it was worth while to make a memorandum of so important an occurrence, and as his friend I made it.

Q. Did he ask you to make one? A. No, he did not; it was my own thought.

Q. You have given all the conversation that occurred between you on that occasion? A. As I at present remember the conversation; yes, sir.

Q. Did you see him afterwards before the 30th? A. Yes, sir; I did.

Q. Several times? A. Yes; I think I saw him two or three times.

Q. At your house and at his? A. Yes, sir; I think at my house and at his.

Q. Did you see him on the 27th? A. I think I saw him on the 27th; yes, sir.

Q. What occurred between you on that occasion? Where was that, first? A. I don't know whether it was on the 27th or not, but the next interview that I remember with him I can give you.

Q. Where was it? A. I think it was at my house—I think so—I think it was at my house.

Q. Did he come voluntarily? A. Yes, sir.

Q. Not in pursuance of any agreement between you? A. No, sir.

Q. Nor at your request? A. No, sir.

Q. What took place; state fully? A. At the interview I am speaking of now, he told me he had sent word to Mr. Bowen that he was going to see Mr. Beecher within a short time, and wanted him (Bowen) to furnish him with the evidences he promised him to furnish him with, and that Mr. Bowen had come into his presence and told Mr. Tilton that he told Mr. Beecher that he (Bowen) said he would dismiss him from the papers.

Q. What papers? A. Dismiss him from his employ, rather.

GREENLEAF says (1 *Greenl. on Ev.* § 563, p. 603), "The production of papers, upon notice, does not make them evidence in the cause, unless the party calling for them inspects them, so as to become acquainted with the contents," in which case in England they become evidence for both parties. In America the rule varies.

Dwyer v. *Collins*, 7 Exch. 639; S. C., 16 Jur. 569 (Leading case, 1852. Opinion by PARKE, B., affirming decision of POLLOCK, C. B., in the courts below). Defendant's counsel, without previous notice, called at the trial for the bill of exchange, which plaintiff sued on, and which he then had in court. [This was to establish his defense, that the bill was given for a gaming debt]. The bill was withheld, and thereupon defendant was allowed to give secondary evidence of it. *Held*, overruling in effect previous decisions which were noticed [*Starkie on Ev.; Taylor on Ev.; Cook* v. *Hearn* (1 Moo. & R. 201); *Exall* v. *Partridge*, mentioned in the report of *Doe* v. *Grey* (1 Stark. 283)], that this ruling was correct and that no previous notice to produce was necessary. Such notice is merely to enable the party to have the document in court to produce, if he likes, or if not, to enable his opponent to give secondary evidence of it. It is not to enable the party producing it to prepare evidence, to explain, nullify or confirm it.

In a New York case, however, the rule has been put upon the latter ground. *Grimm* v. *Hamel* (2 Hilt. 434).

See also as to the effect of subpœna *duces tecum*, and notice to produce, *Vailant* v. *Dodemead* (2 Atk. 524); *Waldron* v. *Ward* (Sty. 449); *Bate* v. *Kinsey* (1 C. M. & R. 38); *Coburn* v. *Odell* (10 Foster, 540).

Q. What did he say to that? A. He said he would not be influenced by any threat; he would do whatever in his judgment he thought was best.

Q. Did he represent that at an interview? A. Between himself and Mr. Bowen?

Q. Yes, sir. A. Yes, sir.

Q. Was anything said in connection with the presentation of the letter by Mr. Bowen to Mr. Beecher? A. No, sir.

Q. Did you understand that the interview was after that had been done? A. I did not understand whether it was before or after. It was in reference to the subject I have here spoken of.

Q. You did not then know whether it had or had not been there? A. No, sir.

Q. Had he said anything to you about it on the 26th?

Mr. Fullerton.—About what?

Mr. Porter.—About the sending of that letter to Mr. Bowen. [To the witness.] My associate and I don't understand you right. Was this angry interview before or after you understand the note had been sent to Mr. Beecher? A. I didn't understand anything about the note having been delivered to Mr. Beecher at that interview.

Q. Was anything further said upon that subject then, or upon any subject? A. No, sir; not that I remember of.

Q. What was said on that occasion at that interview? A. That is the substance of it.

Q. Do you mean to say that you have already told all that was said? A. Yes, sir; all that was said with Mr. Tilton.

Q. Did he consult you as to his relations with Mr. Bowen? A. Did he consult me then as to his relations with Mr. Bowen? No; there was no consultation as to his relations with Mr. Bowen.

Q. Was there any conversation about the probability of the termination of their relations? A. No, sir.

A. And about the probable dismissal of Mr. Tilton? A. Nothing further than I have narrated.

Q. Was this a short interview with Mr. Tilton? A. It was not a very long one; I don't know how long it lasted.

Q. Only long enough for that to transpire? A. I would not say it was only long enough for that.

Q. Was anything at that time proposed to be done either by him or by you? A. No, sir; I think not.

Q. Was anything said at that time about Mrs. Tilton? A. I don't think there was at that interview.

Q. When was the next interview that you remember? A. The next interview was on the evening of December 30th, or the afternoon or evening of December 30th, that I remember.

Q. I understood you to say there were several interviews between the 26th—— A. The next interview that I remembered, I said.

Q. Had there been any conversation between you and him in regard to procuring a statement from Mrs. Tilton? A. No, sir.

Q. None before the 29th, nor on the 30th? A. None before the 29th—if you will put the question so that I can clearly understand it.

Q. Nor on the 30th? A. Will you put the question in full, please?

Q. None before the evening of the 30th? A. I don't exactly understand you.

Q. Any conversation between you and him about Mrs. Tilton before the evening of the 30th? A. No, sir; I think not.

Q. When Mr. Tilton came to your house that evening, were you aware that Mr. Bowen failed to sustain that demand for Mr. Beecher's retirement? A. I had no conversation with Mr. Tilton about that.

Q. And hadn't heard of it? A. Hadn't heard whether he had failed or not, sir, that I remember now.

Q. You say that Mr. Tilton's letter of the 1st of January, 1871, to Mr. Bowen, gives, in substance, and more in detail, what Mr. Tilton had said to you in the conversations of December 26th, and that of a day or two after? The conversation of a day or two after is the one referring to the excited interview? A. He gives in the letter to Mr. Bowen, bearing date January 1st, 1871, the substance of the interviews which he had with Mr. Bowen.

Q. Did Mr. Tilton, in these preceding interviews, or either of them, avow his belief in the truth of Mr. Bowen's statement in regard to Mr. Beecher? A. He said he had no doubt of the truth of Mr. Bowen's statement. On December 26th I think he said that.

Q. Did he add any statement of his own? A. Yes, sir; he said he had no doubt, on account of the unhandsome advances which he knew Mr. Beecher had made to his wife; that, I think, he said on December 26th.

Q. Did he mention any rumors that had come to himself in regard to Mr. Beecher's moral character? A. I don't remember that he did.

Q. Had Mr. Tilton ever said anything to you before, in regard to the moral character of Mr. Beecher, except on the occasion to which you adverted? A. With regard to the moral character of Mr. Beecher?

Q. Against the moral character of Mr. Beecher? A. I think Mr. Tilton, anterior to December 26th, had said that Mr. Beecher preached to his mistresses in Plymouth Church.

Q. When was that? A. I don't remember the date, but it was previous to December 26th.

Q. Years previous? A. No, sir; not years.

Q. Who was present on any occasion when he used that precise language? A. I don't remember that anybody was.

Q. Are you able to say whether it was in, or before, 1870? A. It was in 1870.

Q. Are you able to say whether it was in the beginning or the latter part of that year. A. I should think it was the latter part—the last half of the year.

Q. Did he name those mistresses? A. No, sir, he didn't.

Q. Did you make any inquiry about it? A. I did not.

Q. Prior to that, had he ever said anything to you to the detriment of Mr. Beecher's moral character? A. I think that he never said anything to

the detriment of his moral character previous to 1870. He talked with me about his courage—his lack of political courage.

Q. When first, in 1870, had he spoken against his moral character otherwise? A. When what?

Q. When first, in 1870, had he spoken against his moral character otherwise? A. I thought I had answered the question.

Q. No; you answered that he did in the latter part of the year. I inquired had he before, in 1870, spoken against his moral character? A. I don't remember distinctly, sir, that he had.

Q. You are unable to say either way upon that subject? A. Yes, sir; I am unable to answer.

Q. When was it he had spoken in respect to his want of political courage? A. I think about the time of the Cleveland letter, whenever that was.

Q. Do you remember about what year that was? A. No, sir; I don't. Whether it was about the time of the Cleveland letter that he spoke to me—it was certainly concerning the Cleveland letter.

Q. When he told you that Mr. Beecher preached to several of his mistresses, did you believe it?

Mr. Beach.—Wait one moment.

Mr. Porter.—I submit it to your Honor.

JUDGE NEILSON.—Please repeat the question.

Mr. Porter—My question was when Mr. Tilton, in 1870, told you that Mr. Beecher preached to a dozen of his mistresses, did you believe it?

Mr. Morris.—He didn't say that; he didn't use that language.

Mr. Porter.—To several of his mistresses.

Mr. Morris.—I am not sure that he used the word "several."

Mr. Fullerton.—The question is, did he believe it?

Mr. Porter.—I ask if the witness believed it when Mr. Tilton told him?

JUDGE NEILSON.—How is it material?

Mr. Porter.—I think it is material to show the state of mind in which he went to the interview with Mr. Beecher, of which Mr. Tilton was aware, and which he had produced.

JUDGE NEILSON.—Well, the witness may answer.

Mr. Porter.—Did you believe it? A. I couldn't believe it, sir.

Q. And didn't? A. And didn't.

Q. Was your wife at that time a member of Mr. Beecher's church? A. She was.

Q. Does she continue to be so? A. Her name is still on the roll of Plymouth Church. She has not taken communion there since 1870. She has not partaken of communion in that church since 1870.

Q. Or attended church? A. I won't say since 1870; since she came into possession of the facts in the case.

Mr. Evarts.—The date is all we ask—the time.

A. I can not state the exact date.

Mr. Porter.—My inquiry was not about communion. My inquiry was when she ceased to attend Plymouth Church? A. I can not answer that question, sir, when she ceased to attend Plymouth Church.

Q. You do not know? A. I do not know.

Q. Did she continue to attend that church after January, 1871? A. I think she did for some little time after January, 1871.

Q. Did you attend any church? A. I did not regularly attend any church at that time.

Q. Did you pay for her pew-sitting up to 1874? A. I think we had a pew in the church, and I paid for it. I don't remember whether it was up to 1873 or not. Up to 1873?

Q. Did your wife become an attendant of any other church? A. No, sir; not that I know of.

Q. Down to the present time? A. Down to the present time.

Q. Had you, prior to 1871, been a regular attendant of Plymouth Church? A. No, sir.

Q. Nor since? A. Nor since.

Q. When did you last attend Plymouth Church? When were you last there—I mean on the occasion of a religious service? A. On the evening of the report of the Committee, I believe, was the last time that I was there.

Q. You understood that to be a religious service, did you? A. No, sir; not very. I understood it to be a meeting in Plymouth Church. I beg pardon for answering your question, Mr. Porter, without understanding it.

Q. My inquiry was when you last attended a religious service at Plymouth Church? A. I didn't understand the question in that way, when I last attended a religious service in Plymouth Church. I don't remember.

Q. Can you remember within a year? A. I think I have been at Plymouth Church within two years, certainly, two or three times.

Q. Do you remember the occasion of your going? A. Within the last two years? No, sir; I don't remember the occasion particularly.

Q. Was it with your wife? A. I don't remember that.

Q. Have you a distinct recollection of being at all at Plymouth Church since the occasion when you went and sat in Mr. Tilton's pew, and Mr. Beecher came and spoke to you? A. Oh! yes, sir.

Q. What year was that? A. That was in the year 1868, I think.

Q. Was your wife's uncle, George C. Robinson—— were his wife and family attendants and communicants at that church? A. They were.

Q. He was a member of the late firm of Woodruff & Robinson? A. He is a member of the firm of Woodruff & Robinson to-day.

Q. And of the late firm also? A. Yes, sir.

Q. Were you in the habit of contributing to the funds of Plymouth Church? A. If I was ever there when there was a subscription taken up, very likely I subscribed; I don't remember.

Q. But not otherwise, except in the payment of pew rent? A. I think not.

TWELFTH DAY, JANUARY 20, 1875.

FRANCIS D. MOULTON recalled, and cross-examination resumed:

Mr. Evarts.—If your Honor please, I am sorry to announce to the court

that our associate, Judge Porter, is not well enough to be in court. He has been laboring under a very severe influenza for four or five days, and nothing but his sense of professional obligation to continue as far as he could an examination which he had commenced day before yesterday--your Honor is aware the rule is that the same counsel should proceed--brought him to court yesterday. He was then suffering so much that he could not speak at the tone that would have been more desirable without great pain, or even as he did speak, and this morning, as I was coming over, I received a note from him saying that he is unable to be out. He hopes, with medical aid, to be able to be with us to-morrow or the next day.

JUDGE NEILSON.—I am very sorry, indeed, to learn that he is ill. I knew that he was not very well yesterday. Will you take his place, sir, in the cross-examination?

Mr. Evarts.—Well, we shall be obliged, if your Honor please, if that is the direction of the court, to divide the matter of the cross-examination, probably, between Gen. Tracy and myself. It is wholly unexpected to both of us that we should be called upon to act at all.

Mr. Beach.—I hope an order of that kind, sir, in regard to the course of the cross-examination will not be made. I was aware yesterday that my friend Judge Porter was suffering under a severe indisposition, which in a great degree incapacitated him for the performance of his duty in conducting the cross-examination, and I mentioned to him in a private remark that I thought he was in that condition, and should surrender the duty to some other person; and I very much regret to see, sir, that that incapacity has been the subject of several ungracious remarks in regard to my friend, which I do not think would have been indulged in if the cause of dissatisfaction had been known to the gentlemen who made those remarks. We quite readily consent, sir, that any other of the counsel on the part of the defense should continue the cross-examination, but to divide that duty among several counsel I think would be such an infraction of the practice and such an injustice to us that we can not consent to that. We would far rather that the trial should be suspended, or that the cross-examination of Mr. Moulton should be suspended until Judge Porter is able to continue it; but to give to three or four counsel upon the other side that part of the cross-examination of the witness, it seems to me will be apparent to your Honor as an impropriety in practice and as an injustice to us.

JUDGE NEILSON.—Perhaps it would, and very likely will, be unnecessary. I think the gentlemen can conform to your suggestion.

Mr. Evarts.—The difficulty, as your Honor understands, and as my learned opponents well understand, of the sudden removal from the discharge of a responsible part of a duty in a trial of this kind, that has been assigned to one counsel, and for which preparation has been made by him, is not a trivial difficulty; nor does the fact that I am informed at 10 o'clock at my house that Judge Porter will not be here to-day on account of illness, enable me, in passing from my house to the court-room, to be prepared to conduct the cross-examination of the witness, in regard to whom I had expected to take no part whatever; and so with my learned associate, Mr. Tracy, though his

greater familiarity with the cause may enable him, no doubt, more readily to prepare himself for the conduct of the cross-examination; and it may be necessary, therefore, that, as my learned friends have suggested, they should withdraw this witness and proceed with the examination of some other witness.

JUDGE NEILSON.—I think it would be better, sir, to proceed with him now; I think you are master of the subject.

Mr. Evarts.—We thought we should be allowed to conduct the cross-examination as we find it necessary in this emergency.

JUDGE NEILSON.—You can overcome the difficulty by consultation with Gen. Tracy.

Mr. Evarts.—That will create delay.

Mr. Beach.—Delay is better than injustice.

Mr. Evarts.—It is not a question of injustice, if your Honor please. It is a mere question of the regularity of the conduct of cross-examination. The old practice used to be for two or three counsel to conduct a cross-examination.

JUDGE NEILSON.—We will endeavor to conform to the necessities of the case, as they may appear, sir.

Mr. Evarts.—We suggest to your Honor that that may be necessary, and if we understand that if we think it necessary we shall have that privilege, why, then——

JUDGE NEILSON.—I don't deny it, sir. We will see if there is any occasion for it, and I will endeavor to consult your interests in regard to it.

Mr. Fullerton.—If your Honor please, we do not wish to deprive our learned adversaries of any advantage to which they are properly and legally entitled. We of course, appreciate the disadvantage under which any one of their number will now take up the cross-examination, and so far as we are concerned, in order that they may have every possible opportunity for preparation, and keep themselves within the limit of the rule confining the cross-examination to a single counsel, we are quite willing to take any course that your Honor may think fit and proper, under the circumstances, to relieve them from their embarrassment. We should not object to the postponement of the trial of the cause until Judge Porter should be able to return and resume his duty, nor should we object to taking up some other witness and leaving Mr. Moulton's further cross-examination until they were in a state of preparation, as they are not now. We do not want it understood that we urge any course that should deprive them of any legal advantage to which they are justly entitled; but we do think that when the further cross-examination of Mr. Moulton is resumed, it should be confined to a single counsel. That is due to us, and that is nothing more than justice to the witness. Although the rule was once that a witness might be attacked by a number of counsel upon cross-examination, yet that rule has given way to a more enlightened consideration of the subject. It is no longer the rule; it has not been the rule for many years in this state, and I trust it will never be the rule again. It is due, I say, to the witness, and it is due to our side of the case, that a single counsel should cross-examine the witness.

JUDGE NEILSON.—I appreciate what you say. I have no doubt that Mr. Evarts, who has been constantly in attendance, will find himself quite able to proceed with the cross-examination, and we will give him all the facilities we can. I think it is better to proceed that way now than to defer it, or let the proceedings stand over.

Mr. Evarts.—Then the further cross-examination will be conducted by my associate, Gen. Tracy.

JUDGE NEILSON.—Very well.

Mr. Beach.—I think, sir, a single remark should be made in regard to that proposition on the part of the plaintiff. Your Honor is aware that in the testimony of this witness, circumstances have been disclosed which, if they are entirely accurate, would incapacitate Mr. Tracy from appearing at all in this case on the part of the defendant. I do not care, sir, to relate testimony upon that particular subject; it is undoubtedly within the recollection of your Honor. It has been to us a subject of very embarrassing and painful consideration, sir, whether any steps should be taken upon the part of the plaintiff in a formal application to this court, presenting that subject for its deliberation and determination. If it be true, sir, that in an interview between this plaintiff and Mr. Tracy a revelation of his case, to a considerable extent, was made, and an assurance given by Gen. Tracy, upon the faith of that revelation, that in case of any difficulty between Mr. Tilton and Mr. Beecher, Mr. Tracy would not appear as an adversary counsel to him, the impropriety, the indelicacy, the unprofessional act of Mr. Tracy's appearing in this trial in opposition to the plaintiff would not be countenanced by this court. I am quite willing, sir, to a very considerable extent, to leave that question to the consideration of the counsel himself; and it is only in consequence of this extraordinary and accidental condition of things that I am led to suggest to your Honor, and to the counsel upon the other side, that perhaps the action of Gen. Tracy in continuing the cross-examination of this witness would be unprofessional and inadmissible.

JUDGE NEILSON.—I think I must leave it to the defendant's counsel to arrange which shall cross-examine.

Mr. Evarts.—Since these observations have been made, if your Honor please, perhaps I may be permitted to make a few. It is not in any vindication of Gen. Tracy, for I do not think he needs any, but it is in reference to the observations of my learned friend on a matter extraneous to the conduct of the trial in respect to the issue between these parties, to wit, in respect to a fragment of evidence that has been given by this witness, and that my learned friend thinks should disable the defendant's counsel. We have not had any verdict of this jury on this gentleman's testimony. We have not heard what is to be said on that subject; and on his testimony it is very difficult for me to see anything in his manner of stating it even, that does not disclose, what is apparent, as I think, otherwise, that Mr. Moulton regards himself as a party to this transaction; and whatever passed between himself, though acting only as a friend of Mr. Beecher, and with a wise head called in to confer in the same interest—it is difficult to see how that should be converted into a disability to continued fidelity to Mr. Beecher on Mr. Tracy's

part, when a change of attitude has arisen on the part of the witness. Now, that is the way I look at that matter.

Mr. Beach.—If your Honor will permit me to say, sir, that so far as the counsel has made reference to the relation which Mr. Moulton bears to this case, to use his own phrase, it is extremely extraneous to this discussion, and is a consideration which would have been more professionally and properly addressed to the jury than intimated in this interlocutory debate. The counsel also forget, sir, that by the statement of the witness, the matter upon which we rely in the remarks which we have made, arose out of an interview, not between the witness and Mr. Tracy alone, but between the plaintiff in this case and Mr. Tracy, in which the plaintiff was reluctant to have the communication of his papers and matters made to Mr. Tracy, and consented to it only upon the express assurance upon the part of Mr. Tracy that in any antagonistic difficulty between Mr. Tilton and Mr. Beecher, he would not appear as the adversary counsel against Mr. Tilton.

JUDGE NEILSON.—I understand the spirit in which you make the suggestion. It is, perhaps, not one calling for argument really; and as I said before, I must leave the counsel for the defense to proceed and supply Judge Porter's place as they think best this morning.

Mr. Beach.—Your Honor will please note our objection to the action of Mr. Tracy, and exception to your Honor's ruling.

JUDGE NEILSON.—Yes, sir.

Mr. Evarts.—Well!——

JUDGE NEILSON.—Regulate it as you please, gentlemen; that is all I want to say about it; you are quite at liberty.

Mr. Evarts.—I thought that our learned friends agreed that some one might take Judge Porter's place.

JUDGE NEILSON.—Yes, sir; I leave it to you.

Mr. Evarts.—But it is not for them to pick out the person to do it; and now, when the apparent greater fitness, from acquaintance with the part of the case now suddenly to be taken up, suggests Gen. Tracy's intervention, that intervention is made the subject of these remarks, and of an exception to your Honor's permission. Now, we say to our learned friends that Judge Porter's absence is a matter of great injury to us, as well as a great regret in respect of him personally, and we are either to go on or not to go on.

JUDGE NEILSON.—You will go on, sir, and regulate it in your own way.

Mr. Evarts.—And if it is to be made the subject of an exception, why, then, it becomes a matter of deliberation with us, if your Honor please, as to how the arrangements shall be made.

JUDGE NEILSON.—I have left you at liberty to arrange it as you think best.

Mr. Evarts.—Oh! yes; but your Honor sees that we can not arrange in five minutes the preparations. We are ready to proceed in that way, but our learned friends make an objection to that; they make an objection to that, even to the point of an exception, and under that aspect of the case we desire to be able to determine freely which course shall be taken, and if it is necessary that I now suddenly should undertake to complete this cross-examination why, then, it is necessary that I should be prepared for it, and not prepare

myself in the presence of the court, and the public, and the newspapers. And, under that view, our learned friends are entitled to their choice, whether they would rather this matter should stand until Judge Porter comes out, and the rest of the testimony go on, or stand until to-morrow morning, with the alternative of Judge Porter then being able to be out, or of some other counsel, to whom they have no objection of any kind, proceeding.

JUDGE NEILSON.—I think it would be more orderly to proceed with this witness now, and close his examination, and I have intended to say that the defendant's counsel may, either of them, as they may elect, proceed with the cross-examination; and if it requires consultation, of course you will have it.

Mr. Evarts.—May we reserve the right to apply to your Honor to divide the labor?

JUDGE NEILSON.—Well.

Mr. Tracy.—Before proceeding to discharge the duty devolved upon me, the remarkable statement that has been made by counsel, and the evidence that has been given by the witness, call upon me, I think, for a brief statement of my connection with this case.

JUDGE NEILSON.—I don't think it does, Mr. Tracy; it will only lead to further debate. The mere act of your proceeding is a sufficient indication to me of your view of your duty, and that is enough for me.

Mr. Tracy.—I am happy that your Honor takes that view of my position. I would say, however, that I have taken no step in this case without conferring freely not only with my associates as to my duty here, but with the most eminent members of the bar not connected with this case; and every step in it I have taken, has been taken on their judgment as to what I might professionally do, with honor. I understand very well the position in which this prosecution has sought to place me in this case. But I came into this case as the *friend* of this defendant. However others may have changed, I have never; no act of mine has ever been inconsistent with that friendship, and I have performed every duty by the witness and the plaintiff that honor and justice called upon me to do. As for the responsibility which I now take, I am not only prepared to answer that to my conscience, but to my God.

JUDGE NEILSON.—That is sufficient. Please proceed.

Mr. Tracy.—[To the witness.] I find in your statement which you prepared for Mr. Beecher to make after the publication of the Bacon letter, which is "Exhibit 34" [p. 431, *ante*], you refer to an apology which he had made to Theodore Tilton in that statement; do you refer to any written paper or any writing as that apology? A. The apology part which was quoted, sir; I think I called that an apology.

Q. In Mr. Tilton's letter to Dr. Bacon? A. Yes, sir.

Q. That was the apology to which you referred? A. Yes, sir.

Q. And that is the same paper writing to which you understood Mr. Tilton to refer so often in the Bacon letter as Mr. Beecher's apology? A. That which is quoted in the Bacon letter—the writing?

Q. Yes, the writing? A. Yes, sir.

Q. Will you tell us, Mr. Moulton, in what publication the name of that

writing was changed from an "apology" to a "letter of contrition," first? A. In what published document—in what publication?

Q. In what publication was that first changed from an apology to a letter of contrition? Where did you first see it?

Mr. Fullerton.—One moment. That question is predicated on the assumption of a fact which is not in the case.

JUDGE NEILSON.—It assumes a change was made.

Mr. Tracy.—Did you ever see the letter of contrition? A. I think, after the publication of the Bacon letter was the first time I called it an apology.

Q. I do not ask you that; I think we will get on better if you answer my question. A. I will endeavor to do so, sir, with the utmost courtesy.

Q. Did you ever see it in any publication as a letter of contrition until after you had had the benefit of the professional services of Gen. Butler?

Mr. Beach.—I object. That is assuming that he did see it, which does not appear.

Mr. Evarts.—We can inquire if he ever did see it.

The Witness.—Put the question again.

Q. Did you ever see it called a letter of contrition prior to the time when you availed yourself of the professional services of Gen. Butler?

Mr. Beach.—In what form? In a publication or instrument?

JUDGE NEILSON.—He means that.

Mr. Beach.—We do not know what he means—he must express it. Now if he is asking for the name applied to the instrument in some newspaper, it is immaterial and improper, and I object.

JUDGE NEILSON.—It is utterly immaterial what it was called, or whether it was changed, unless the witness changed it.

Mr. Tracy.—I mean any newspaper or any printed publication. When I use the word publication, I mean a printed publication. Did you see it anywhere printed as a letter of contrition before you availed yourself of the professional services of Gen. Butler?

Mr. Beach.—We object.

The Witness.—I don't think I ever——

Mr. Beach.—Wait a moment when you hear an objection.

JUDGE NEILSON.—He answers that he does not think he did.

The Witness.—I did not answer in that way.

Mr. Tracy.—When had you last seen Mr. Tilton prior to your meeting him at his house on the 26th of December, '70? A. When had I last seen him?

JUDGE NEILSON.—Allow me to suggest that you should not repeat the questions.

The Witness.—I shall not. Please to repeat that question again.

Q. When had you last seen Mr. Tilton prior to the interview with him at his house on the 26th December? A. I don't know when.

Q. Do you remember what day of the week the 26th was? A. I do not remember the day of the week now, precisely.

Q. Was it on Monday? A. I don't remember.

Q. Had you seen him the day before? A. I don't remember that I had.

Q. Do you know that he was at your house on Sunday before that? A. I don't know, sir.

Q. Did you know that he had published his valedictory as editor of *The Independent*, prior to that? A. I read his valedictory.

Q. I did not ask you that. I ask if you knew he had published it previous?

Mr. Beach.—I think the witness is entitled to say that he knew it by reading it.

Mr. Tracy.—That he says. I ask him as to his knowledge; I don't ask him what he read. I ask if he knew he had published his valedictory in *The Independent* prior to that meeting?

JUDGE NEILSON.—The only way, of course, that he can answer that is that he saw it in the paper; unless he was present and saw him write it.

Mr. Tracy—I do not object to his answering in that way; but he was proceeding to say he read it.

Mr. Evarts.—It is very immaterial, perhaps; he says he did know of it and read it; and I have no objection to this form of answer. But, your Honor will see that it is quite precipitate to allege that he can not answer any other way than that he had read it.

Mr. Tracy.—I repeat. Did you know that his valedictory had been published in *The Independent* prior to Dec. 26th?

JUDGE NEILSON.—Answer, yes or no.

The Witness.—I can not answer the question, without explaining yes or no; I do not remember now the date when it was published; but when it was published I read it.

Q. Then you knew of it at the time of publication?

Mr. Fullerton.—That does not appear.

Mr. Evarts.—Let us understand; I understand the witness to say that it came to his knowledge at the time it was published.

JUDGE NEILSON.—The time he saw it in the paper.

Mr. Beach.—That would be the date that he saw the paper; it may have been a week after.

Mr. Evarts.—I understand his answer to be (and we are now talking of what it is, and not what it ought to be), that when it was published, he then saw it.

Mr. Fullerton.—I don't so understand his answer at all.

Mr. Tracy.—Now, had you read it prior to December 26th? A. If you give me the date of the editorial, I can tell you.

Q. The 22nd? A. That was the date *The Independent* was issued?

Q. Yes. A. I think I read it on the first day it was issued.

Q. Had you been, on the 26th of December, informed that Mr. Tilton had made two contracts with Mr. Bowen at $5,000 a year—one as editor of *The Union* and the other as contributor to *The Independent*? A. I have been informed that he had made contracts. I do not know whether I was informed by December 26th or not.

Q. Had you been informed of that on the 26th December, prior to this interview with him? A. I don't know whether it was prior to this inter-

view with him on the 26th or not, at the present moment; I think it was, however.

Q. Did you know that Mr. Tilton was to have an interview on the 26th of December with Mr. Bowen and Mr. Oliver Johnson, before the interview occurred? A. I can not swear now that I did know that, positively.

Q. Was it a week day or a Sunday, the 26th December, when you were at his house? A. I don't remember whether a week day or Sunday.

Q. Do you remember what time of the day you went to his house on that day? A. I remember, from a memorandum that I made at the time.

Q. I don't ask that; I ask if you remember the time? A. It was in the afternoon of December 26th.

Q. Do you remember the time that you went there? A. Somewhere in the neighborhood of three o'clock.

Q. Was he at home when you went there? A. That I can't say, positively.

Q. Did you see Mr. Tilton on that day? A. I don't remember I did.

Q. Did you wait for Mr. Tilton's return on that day? A. I don't remember.

Q. Did you know where he was? A. I don't know that I did.

Q. Did you know what time he was to return? A. I did not.

Q. How long did you wait for him before he came? A. I do not know that I waited for him at all.

Mr. Beach.—This question is on the assumption that he did wait.

Mr. Tracy.—I understood him to say that he did wait, on his direct examination. But I will ask him. [To the witness.] Was Mr. Tilton at home when you went there that day? A. I do not remember now.

Q. Do you know what took you to Mr. Tilton's house that day? A. I went there as I usually went to his house.

Q. Do you usually go to his house on week days at 3 o'clock in the afternoon? A. I go there almost any hour of the day when it is convenient.

Q. Do you go every day at 3 o'clock in the afternoon? A. No, sir.

Q. Do you usually go every day at 3 o'clock in the afternoon? A. No, sir; there was no usual hour for going.

Q. Are you there usually every day at 3 o'clock at his house? A. There have been times when I have been there every day.

Q. At this time were you? A. I don't think I was at that time.

Q. How often do you think at this time that you were in the habit of visiting the house on week days, during business-hours? A. Well, I certainly do not remember.

JUDGE NEILSON.—State as near as you can tell?

The Witness.—Not very frequently.

Mr. Tracy.—At the interview in which you read the letter he had sent to Mr. Beecher by the hands of Mr. Bowen, did he tell you when he supposed that letter was to be delivered to Mr. Beecher? A. I don't think he told me when he supposed it was to be delivered.

Q. Did you make any other remark to him about his sending the letter without Bowen's signing it, except that he was a fool? Did you say to him that he was a ruined man? A. I don't think I did.

Q. Do you recollect that you did not? A. I am trying to state the truth as near as I can remember.

Mr. Evarts.—We might as well say, once for all, that is covered by the oath he has taken—that he is to tell the truth. It is not necessary to repeat that.

JUDGE NEILSON.—Yes; answer yes or no?

Mr. Fullerton.—We might as well say that the last question was covered by the former answer.

Mr. Tracy.—That would be a ground of objection.

Mr. Fullerton.—Well, perhaps so; but we will make our own form of objection.

The Witness.—Now if you will ask me the question again I will try and answer it.

Mr. Tracy.—My question is, did you not so state, or do you recollect that you did not say to him that he was a ruined man? A. To the best of my recollection I should say no.

Q. How long was that interview between you and Mr. Tilton on that occasion? A. It may have lasted half an hour or an hour.

Q. Did you learn from him at that time the object of the interview that he had with Mr. Bowen?

Mr. Fullerton.—We object to that. How can his opinion be asked of the object that Mr. Tilton had?

Mr. Evarts.—Your Honor has ruled that the witness may answer the preliminary question, yes or no.

JUDGE NEILSON.—The objection is, that this question asks for a deduction, and not what was said.

Mr. Tracy.—I will change the form of my question. [To the witness]: Was anything said by Mr. Tilton on that day as to the object of the interview he had with Mr. Bowen? A. I think there was, sir.

Q. Did he tell you on that occasion that rumors affecting his moral character had come to Mr. Bowen, which led Mr. Bowen to think of breaking the contract with him which he had just made, and that the object of the interview was to enable him to explain these rumors which had reached Mr. Bowen? A. I can not answer the question without explaining it.

JUDGE NEILSON.—Go on, sir, and answer.

The Witness.—Mr. Tilton, as I remember, said to me what he had done at the interview.

Q. I do not ask what Mr. Tilton said to you.

The Witness.—May I explain, your Honor? I can not answer the question without explaining.

JUDGE NEILSON.—The common practice is to answer, and then explain afterwards.

Mr. Morris.—It would be difficult to answer a speech the counsel makes to the witness.

Mr. Evarts.—If there is any objection to the question that is one thing, but if the question is proper, then we are entitled to an answer.

Mr Fullerton.—Our objection is not that you are not entitled to an answer.

JUDGE NEILSON.—But then you must take the answer as it is given.

Mr. Fullerton.—The question is so framed that a categorical answer may not convey the whole truth.

Mr. Beach.—The question does not ask the witness to state whether Tilton did, in substance, or not say so; But it calls for him to state if Tilton said to him the precise language of the question. If the very words were not used, I ask your Honor to instruct the witness that he can answer one way or the other.

Mr. Evarts.—It is not the province of the court to instruct a witness how he can evade answering a question; and yet my learned friend asks your Honor to instruct the witness that if one word is left out he can refuse to answer such a question as that. We have asked the question, and if it is objectionable it must be objected to. If it is not objectionable then the witness should answer, and his answer will be just what his sense of the oath and his conscience dictates; but it is his answer that we are entitled to.

JUDGE NEILSON.—I want to say to Mr. Evarts that he was in error in using the word "evade," as applied to the witness on the stand.

Mr. Evarts.—I submit to your Honor's correction; but this was an extraordinary proposition.

JUDGE NEILSON.—It is a proposition raised by counsel.

Q. [Repeated.] Did he tell you on that occasion that rumors affecting his moral character had come to Mr. Bowen, which led Mr. Bowen to think of breaking the contract with him which he had just made, and that the object of that interview was to enable him to explain these rumors which had reached Mr. Bowen? A. I answer that question, no.

Q. Did he tell you that that interview had been brought about by Oliver Johnson, to whom Mr. Bowen had conveyed certain rumors which he had heard about Mr. Tilton? A. No.

Q. Did he tell you at that interview that Mr. Bowen had repeated the rumors and stories which he had heard about Mr. Tilton? A. No, sir.

Q. Did he tell you at that interview that he had attacked Mr. Beecher to Mr. Bowen, by saying that Mr. Beecher had made unhandsome proposals to his wife? A. He did say that.

Q. Did he say in that interview that he offered to join Mr. Bowen in a war upon Mr. Beecher? A. No; he did not say that.

Q. Did he say that he offered Mr. Bowen to draft the letter which he read? A. Put that question again.

Q. Did he say that he offered to Mr. Bowen to draft the letter which he had read, and which Mr. Bowen agreed to prepare to Mr. Beecher? A. No, sir.

Q. Did he say that he did draft the letter? A. No.

Q. Did he say he wrote it? A. Yes; he wrote it.

Q. He said he wrote it? A. Yes.

Q. Now, when did you see Mr. Tilton after that interview? A. I saw him between that time and December 30th some time; I can not remember the date now.

Q. Did you know at the time of the second interview with Tilton, that his letter to Beecher had been delivered by Bowen? A. I did not.

Mr. Beach.—What do you call the second interview?

Mr. Tracy.—The first interview that occurred after the 26th of December.

Q. You did not know it had been delivered to Bowen? A. To Mr. Beecher, you mean?

Q. Yes; did you inquire whether it had? A. I did not.

Q. And you did not know then that Mr. Beecher had that letter? A. I did not.

Q. At the time of the second interview did you know that this angry interview between Bowen and Tilton had occurred? A. I did, I knew that *an* angry interview had occurred.

Q. An angry interview had occurred? A. Yes, sir.

Q. Subsequently to the 26th? A. Yes, sir.

Q. Did you know whether that interview occurred after or before Bowen had delivered the letter to Beecher? A. I did not know anything about it.

Q. You did not know anything about it? A. No, sir.

Q. And did not ask anything about it? A. I did not.

Q. Did you at any time between the 27th or 26th and the 30th ever ask Tilton whether his letter to Beecher had been presented? A. I did not.

Q. And you did not know? A. I did not know.

Q. And you did not know prior to the 30th that the letter had been received by Beecher, or what answer Beecher had made to it? A. No, sir.

Q. And the conversation which you thought so important, on the 26th, as to make a memorandum of, you never had asked about since? A. No, sir.

Q. What time on the 30th did you see Mr. Tilton — what time of day? A. Towards—in the evening, I think, sir.

Q. Where? A. At my house.

Q. Do you know about what time? A. I think before—about 6 o'clock, I should think.

Q. About 6 o'clock? A. I think so.

Q. Did he take tea at your house that night? A. I don't remember whether he did or not.

Q. Where did the interview between you and him take place? A. I think in my front chamber, upstairs.

Q. How long was that interview? A. Not very long.

Q. Well, about how long? A. Oh, I should not think it was half an hour long.

Q. Was it half an hour long? A. I should not think it was.

Q. Was it 20 minutes? A. I should say it was.

Q. Then you went from his presence to the house of Mr. Beecher? A. Yes, sir.

Q. And you said to Mr. Beecher what you have repeated on your direct examination? A. Yes, sir.

Mr. Morris.—He repeated that in his cross-examination.

Mr. Evarts.—That is not a necessary interruption. Who made that interruption?

Mr. Morris.—I made that interruption.

Mr. Evarts.—It was not a necessary interruption. We had a right to ask the witness if he did in his direct examination say so.

Mr. Morris.—I object to the question, on the ground that it has been all gone over on the cross-examination minutely, and they have no right to examine the witness to-day upon the same point upon which he was minutely examined yesterday.

JUDGE NEILSON.—That is so, if your recollection is right as to what took place.

Mr. Morris.—I am right in my recollection.

Mr. Tracy.—Your Honor will observe that the cross-examination yesterday was general—referring generally to the various aspects of the case, as introduced by Judge Porter's plan of cross-examination, which was to take up each interview separately and distinctly by itself, in the order in which it had been testified to.

JUDGE NEILSON.—I think, as a general rule, you should take up the examination where he left off.

Mr. Tracy.—That is what I am doing.

Mr. Morris.—No, sir; and I appeal to the stenographer's minutes; he has been minutely cross-examined as to this.

Mr. Tracy.—The cross-examination of Judge Porter at the close of the day, yesterday, had reached in order the point that I have now stated; and I am now going on with the witness in the order in which he stated the facts on his direct examination.

Mr. Beach.—Well, that maintains our proposition that hitherto it has been a mere repetition of Judge Porter's cross-examination.

Mr. Tracy.—No, sir; I have gone through one interview and exhausted it, and now I propose to go to another, and I propose to go step after step.

JUDGE NEILSON.—Do you propose to go over the same ground Judge Porter went over?

Mr. Tracy.—Oh! no; Judge Porter did not go over it.

Mr. Morris.—Well, we say he did.

Mr. Tracy.—I can't help your saying he did.

Mr. Morris.—But the stenographer's minutes will settle it.

JUDGE NEILSON.—Well, it would be burdensome to look at the minutes as we pass from one subject to another. I think the counsel should act from recollection.

Mr. Beach.—Your Honor will remember that Mr. Porter cross-examined this witness specially as to the interviews of the 26th and 30th of December, and with great minuteness inquiring into interviews as between those two dates, and carried the witness through the details of this very occurrence. Now, sir, under the embarrassment in which my friends are situated, I do not care to be very particular upon that subject, and I think they are entitled to some degree of indulgence and license in that respect, but that this is but a repetition of the examination of Judge Porter, I think, must occur very readily to my learned friends.

Mr. Tracy.—Judge Porter had just reached and entered upon this branch of the case in the order in which he had arranged it, and was talking about the first interviews of December 26th, 27th, and 30th.

JUDGE NEILSON.—Well, proceed, and keep within the rule; don't go over the same ground——

Mr. Tracy.—I shall endeavor to do so. I am pursuing precisely the plan of examination marked out by Judge Porter, precisely.

Mr. Tracy.—You said on your direct examination, as I understood you, that on coming down the stoop Mr. Beecher said, "What shall I do?" A. "What can I do?" I think.

Q. "What can I do?"—and your reply to that was what? please repeat it? A. "I am not a Christian, but I will try and show you how well a heathen can serve you."

Q. Did you intend that as a proffer of friendship and service to Mr. Beecher? A. I did; yes.

Q. Then at that time you intended to proffer to Mr. Beecher your friendship and your friendly aid in this matter? A. Yes, sir.

Q. On your way up you talked, you say, about the charges—you told him the charges which Bowen had made against him to Mr. Tilton? A. Yes, sir; something of them.

Q. And you repeated those charges to him? A. Something of them; yes, sir.

Q. And he expressed surprise at that? A. Yes, sir.

Q. Saying that Bowen had said nothing of that kind to him? A. Yes, sir.

Q. Did he also add, at that interview, that Bowen had not only not said anything of that kind to him, but that he had repeated stories to him about Tilton? A. I think not at that interview, sir.

Q. Not at that interview? A. I think not at that—not on the evening of December 30th.

Q. Well, you say you think not. Are you willing to swear that he did not? A. He did; yes, sir.

Q. He did? A. He did; yes, on the evening of December the 30th.

Q. Then repeat what he said on that subject, please—the subject of the stories which Mr. Bowen had told him about Mr. Tilton? A. He said that Mr. Bowen had said to him that he had heard certain stories against Mr. Tilton, and Mr. Beecher said that upon the basis of rumors that he had heard, he had sympathized with Mr. Bowen.

Q. And did he say that he had expressed that sympathy to Mr. Bowen that night? A. Yes, sir.

Q. Now, what were the stories that he said Mr. Bowen had heard about Mr. Tilton? A. He did not mention them.

Q. He didn't mention them? A. No.

Q. At all? A. No, sir.

Q. Can you state more fully Mr. Beecher's language when he repeated that part of your interview with him? A. No, sir; not more fully—not now.

Q. What reply did you make to that? A. To the stories?

Q. Yes, to his reference to the Bowen stories about Mr. Tilton in which Mr. Beecher had sympathized? A. I expressed surprise—I don't remember exactly what I said.

Q. Can't you recollect the substance of your language? A. I think I said to Mr. Beecher that Bowen was treacherous to both of them.

Q. And was the friend of neither? A. I don't think I said that.

Q. Don't think you said that, but said he was treacherous to both? A. Yes, sir.

Q. Did you at that time express any opinion to Mr. Beecher concerning the truth of the stories which Bowen had told about Tilton? A. No; I don't think I did.

Q. What? A. I don't think I did at that interview.

Q. Are you certain of that? A. Yes, sir; quite certain.

Q. Quite certain? A. Yes, sir.

Q. Did you say anything to Mr. Beecher to remove from him the impression that you believed the stories true about Mr. Tilton?

Mr. Beach.—That is objected to.

Q. Did you say anything to him on the subject of whether you believed them true or false? A. I don't think I did, sir; I don't remember that I did.

Q. Well, did you intend, by your reply, that Bowen was treacherous to both of them, to leave the impression upon Mr. Beecher's mind that you thought the stories about Tilton true?

Mr. Morris.—The question is objected to. What he intended, I submit, is not material; state what he said.

JUDGE NEILSON.—I think his intent must be gathered from what he said.

Mr. Evarts.—Well, if your Honor please, the witness has made a reply which, on one view of it, and perhaps the correct view, carries the impression in comparing that statement with the rest of his testimony, that he meant to say that Bowen had been treacherous in telling these true stories about Tilton, or that he had been treacherous to Tilton in the matter of friendship by telling false stories; we want to know which of those views he did present to Mr. Beecher.

JUDGE NEILSON.—Doesn't that appear by his conversation on the occasion?

Mr. Evarts.—He did not answer that. We are cross-examining him to get at the actual drift and purport of his conversation, as it was suited to produce an impression on Mr. Beecher's mind.

JUDGE NEILSON.—You have a right to that.

Mr. Tracy.—That is what we ask the question for—what he intended by his answer that he made to Mr. Beecher.

JUDGE NEILSON.—That is a different question altogether. I agree with Mr. Evarts that you are entitled to the conversation—all of it.

The Witness.—I will give the conversation—shall I?

Mr. Tracy.—We are cross-examining this witness. He says that he made a certain answer to Mr. Beecher which is ambiguous. Now, we ask him what he intended by that answer; what he intended to convey, because the manner of speech, the accent, the intonation of voice, all carry with them their impression, which it is impossible for the witness to repeat to the jury, and we ask him "What was your intention?"

JUDGE NEILSON.—The weakness of that point is this, that Mr. Beecher might understand that intention one way, and the witness, as he now recollects it, might have understood it in another way, and it don't help you.

Mr. Evarts.—Well, we will ask him what Mr. Beecher said?

JUDGE NEILSON.—You will get the conversation, of course.

Mr. Evarts.—This is a part of it.

Mr. Tracy.—Does your Honor exclude the question?

JUDGE NEILSON.—With that view,—the mere intent, the mental reservation.

Mr. Tracy.—Does your Honor exclude the question?

JUDGE NEILSON.—Yes, sir.

Mr. Tracy.—I will take an exception, and we will pass on.

Mr. Tracy.—Did Mr. Beecher make any reply to that answer of yours about the treachery of Mr. Bowen? A. I said—— Yes, sir; he made a reply.

Q. What was it? A. He thought he was treacherous.

Q. And did you then renew to him your friendship—proffer of your friendship—that you would be his friend, and serve him? A. I don't remember that that followed, sir.

Q. Don't remember that that followed again? A. No.

Q. That you again repeated it? A. No; I don't think I did.

Q. Where was your house in Clinton-street? A. 143 Clinton.

Q. Between what streets is that? A. That is between Livingston and the street below it—what is that?—Schermerhorn.

Q. Well, on entering your house that night, Mr. Beecher passed upstairs, by your direction, to the second story, front room? A. I passed him into the second story and the front room; yes, sir.

Q. And you remained in the parlor below? A. Yes, sir.

Q. Did you lock the front door after he went in that night? A. I don't remember that I locked the front door.

Q. You don't remember that you did? A. No; very likely I did.

Q. Don't you remember that you did? A. No; I don't remember that I did.

Q. Why, then, do you say it is very likely you did? A. Why, I usually locked the front door when I went into the house.

Q. You did? A. It is my habit; yes, sir.

Q. When you have friends in, it is your habit to lock the front door? A. Yes, sir; or latch.

Q. To latch or lock, which? A. Yes, sir; latch it or lock it, just as you choose.

Q. You don't know whether you did it that night or not? A. No; I rather think I did, though.

Q. After Mr. Beecher came down did you take the key out and put it in your pocket? A. No, sir; I did not.

Q. You did not do that? A. No, sir.

Q. After Mr. Beecher came down and you went with him to Mr. Tilton's house, on the way there did you again talk about Mr. Bowen? A. Yes, sir.

Q. What was the substance of your conversation in regard to Mr. Bowen on your way to Tilton's house? A. Told him again that I thought Mr. Bowen was a treacherous man. I said to Mr. Beecher, "Bowen promised to sustain Mr. Tilton in those charges, and he goes to you according to what you have said to me, and promises to be your friend. Now, I think he is treacherous toward both of you, in having repeated the stories that he did to Tilton, and in having said what he did to you after he had made those—he is treacherous to Tilton."

Q. Were the stories further talked of then about Mr. Tilton? A. No; reference was made to them, that is all.

Q. Did Mr. Beecher go into detail at all about the stories that Mr. Bowen had talked about Mr. Tilton? A. No, sir; not on that occasion.

Q. Then when you were going from your house back to his house again did you then again talk about the stories of Bowen? A. Yes, sir; the talk was substantially the same, sir.

Q. And no advance made whatever; did you simply repeat, for the third time, Mr. Moulton, the stories about Bowen without adding anything, any new feature to the conversation?

Mr. Beach.—No stories about Bowen that I know of.

Q. I mean about Mr. Beecher? A. He may have altered the phraseology, but I don't think anything was added to the substance; there was nothing to add that I know of.

Q. Was there anything said in that interview about the stories in regard to Mr. Tilton? A. No.

Q. What? A. No, sir. You are talking now about on the way from Clinton-street to Mr. Beecher's house?

Mr. Tracy.—Yes, the last time you saw him? A. Yes, sir.

Q. Now, did you leave Mr. Beecher after having had three interviews with him on that night——? A. Yes, sir.

Q. Did you leave him without expressing any opinion as to the truth or falsity of the stories which Mr. Bowen had told Mr. Beecher about Mr. Tilton? A. I don't think I expressed any opinion as to the truth or falsity that night, sir.

Q. Do you remember that you did not? A. I should say that I remembered that I did not.

Q. No? A. That is the best of my recollection, sir.

Q. Did you know what the stories were? A. No, I did not know what stories Mr. Bowen had told Mr. Beecher.

Q. Did you know what stories had been told Bowen about Tilton? A. No; I did not know.

Q. You did not know? A. No.

Q. Didn't know any of the stories that had reached Mr. Bowen's ear about Mr. Tilton? A. No.

Q. From any source? A. No; except in a general way; no names.

Q. Well, did you know; in a general way, did you know? A. Yes, sir.

Q. What did you know in a general way?

Mr. Beach.—That is objected to.

Mr. Evarts.—The witness said that he didn't know names.

Mr. Beach.—What if he did know the stories; are they by this witness to prove stories against Mr. Tilton that he has heard from other parties?

JUDGE NEILSON.—No; the only ground of this being admissible would be that it is part of a conversation into which you may have inquired.

Mr. Evarts.—It is the subject of future evidence concerning it which we can not give at the same breath.

JUDGE NEILSON.—I don't know about that. I think he may answer this question as further illustrating what had been said.

Mr. Beach.—Does you Honor permit him, under that question, to repeat stories?

JUDGE NEILSON.—I don't think they ask him to repeat stories.

Mr. Beach.—Why, they ask what they were; I suppose that is asking to repeat them; and they are stories that he may have heard from John, Dick, or Tom in the street.

JUDGE NEILSON.—Well, the question should be so amended as not to include that.

Mr. Evarts.—If your Honor please, it is the state of knowledge in the witness's mind as to what the stories were concerning which he talked to Mr. Beecher.

JUDGE NEILSON.—Now, this is the point concerning which the objection is made; that the question may call for stories, not those, perhaps, referred to in the conversation with Mr. Beecher, but stories repeated or mentioned by other people outside. The question is: Did he know what the stories were, to which reference was made in his conversation with Mr. Beecher?

Mr. Evarts.—One moment; because we do not wish to transcend any of the rules of evidence; nor do we wish to bring in unnecessarily the talk of other people. This witness has testified that, during the conversation with Mr. Beecher on that night of the 30th, Mr. Beecher referred to stories that Bowen had told him to the prejudice of Tilton, in which he, Beecher, had sympathized; and this witness had expressed his views that Mr. Bowen was treacherous to both of them, &c., we won't repeat that. Now, we have endeavored to learn from this witness, whether or no the character of those stories, or the details of those stories, were made the subject of conversation with Mr. Beecher, which he has satisfied us about, or recollects only what he has stated. Now, we ask him whether he knew at the time that he was talking what those stories were.

JUDGE NEILSON.—That is admissible, if he learned it in that conversation; otherwise, not.

Mr. Evarts.—Why, he did not learn it from Mr. Beecher.

JUDGE NEILSON.—Well, then, it is not admissible.

Mr. Evarts.—But they talked about the stories that had passed through Mr. Bowen to the prejudice of Mr. Tilton. Now, we ask him whether he knew what these stories were at the time that he was talking with Mr. Beecher. They were talking about those stories; we ask him whether he knew what the stories were.

JUDGE NEILSON.—As disclosed in that conversation,

Mr. Evarts.—Well, we don't ask him that.

Mr. Tracy.—I will ask the question and take your Honor's ruling upon it. [To the witness.] Did you know from any source, at the time you were talking with Mr. Beecher about the stories that Bowen had told him, what those stories—told him about Tilton—what those stories were?

JUDGE NEILSON.—That is ruled out if it is derived from other sources; admitted if it is derived from his conversation with Mr. Beecher.

Mr. Evarts.—We except to your Honor's ruling.

Mr. Tracy.—Didn't you know from Mr. Tilton what the nature of the stories were that had reached Bowen? A. I had heard from Mr. Tilton something about it; yes, sir, I think I had.

Q. Now, answer my question. Didn't you know from Mr. Tilton what the nature of the stories were that had reached Mr. Bowen concerning him?

Mr. Fullerton.—Now, if the court please, your Honor will see that it is quite impossible for him to answer that question. He might guess it out, or surmise it, but he has no positive knowledge upon that subject, because Mr. Tilton did not know what communication Bowen had made to Mr. Beecher.

Mr. Tracy.—I will ask him that.

Mr. Fullerton.—You are interrupting me improperly, however; that is what you are doing; and your Honor will perceive that this witness could not learn a fact from Mr. Tilton which Mr. Tilton himself did not know; and, therefore, he can not answer the question, except by mere guesswork.

JUDGE NEILSON.—He is not to answer by guesswork; if he answers at all he must answer in reference to what Mr. Tilton told him.

Mr. Fullerton.—Your Honor will perceive, from the attitude of the case at present, that it is impossible for him to know; he had not learned it. Your Honor will perceive that Mr. Beecher did not convey the information to him. Mr. Tilton did not know what Bowen had said to Beecher. He therefore could not learn it from Tilton. Therefore, the witness can not answer the question, your Honor will see.

Mr. Beach.—Will you allow me to add, sir, the question is, "What stories did Mr. Tilton tell you had been communicated to Mr. Bowen, or were known to Mr. Bowen, concerning him, Mr. Tilton"? Now, the witness has already sworn that he did not know what stories Mr. Beecher referred to as having been told by Mr. Bowen to Mr. Beecher. Where is the evidence that the stories to which Mr. Tilton referred in his communication to Mr. Moulton were the stories which Mr. Bowen communicated to Mr. Beecher, and which Mr. Beecher referred to in the conversation with Mr. Moulton? There is an entire disconnection between them; the stories are not the same—do not appear to be the same. Now, it may be possible, sir, it may be possible that this, as a declaration of Mr. Tilton, a party to the action, may be admissible in another connection and for another purpose, but not as throwing any light at all upon the stories which were referred to in the conversation between the witness and Mr. Beecher.

Mr. Evarts.—Now, if your Honor please, Mr. Tilton is the party plaintiff in this suit; and we propose to show, if we are permitted to do so, and we have no doubt your Honor will permit us—under the rules of evidence—the

relations of Mr. Tilton and of Mr. Moulton in this matter to the affairs of Mr. Tilton, so far as they are pertinent to this issue. We are now asking him whether Mr. Tilton informed him what the stories were that had been told to Mr. Bowen about him, Tilton. Now my learned friend says that that don't prove that they were the same stories that were told to Mr. Beecher. It does not, of course; but it proves what the stories were; and then, when we prove by another witness what the stories were that were told to Mr. Beecher, then we shall have seen whether they are the same stories or not.

JUDGE NEILSON.—Repeat that question to the witness. [Question read.] Now he can answer that—that he did know, or did not. [To the witness.] How is that?

The Witness.—I was not paying attention to the question.

[Question again read.] A. I think Mr. Tilton told me, sir, something about it himself.

Q. What did he tell you? A. He told me as near as I can remember, sir, that Mr. Bowen had mentioned a story concerning a transaction at Winsted, Connecticut.

Q. What did he say about it—what did Bowen tell him about it? A. I don't remember the details of it.

Q. What did Tilton tell you that Bowen said about that Winsted transaction? A. That he was at Winsted with a lady, and had acted improperly with her, and that—I can't clearly separate between two stories; one that Bowen told me—whether Bowen told me, or whether Tilton; that is all that I distinctly remember that Mr. Tilton told me—which Mr. Bowen told me afterwards, sir, himself, I think.

Q. Is this all that Mr. Tilton told you about the Winsted matter? A. Yes, that is all; all I remember.

Q. You say that Mr. Tilton told you that the story was, he acted improperly towards a lady; how improperly? A. I don't know. Stopped at the——

Q. What was said? A. I don't remember anything more, sir, than what I have said.

Q. You don't think Mr. Tilton specified? A. No.

Q. How his conduct was improper—supposed to be improper—towards the lady at Winsted? A. No.

Q. Did he name the lady? A. No, sir.

Q. Did he name the occasion? A. I think he said that Bowen told him when he went up there to lecture.

Q. Now, didn't Mr. Tilton tell you that the story was circulated about him that he took a lady there not his wife; took a room at the hotel and took bedrooms that were adjoining and communicating? A. No.

Q. He didn't tell you that? A. No.

Q. He didn't tell you that that was the story? A. No.

Q. Well, what other story did Mr. Tilton tell you had reached Bowen? A. I don't remember any other distinctly.

Q. Don't remember any other? A. No; the language which he used to me, as nearly as I can recollect, was this——

Q. Well, we have not asked you—well, let us have it. A. That Bowen had said that stories had come to him concerning Mr. Tilton's conduct with women, and that he cited this Winsted story. That is the story, as I remember it, that Tilton told me.

Q. And didn't he cite others? A. No, sir.

Q. About his conduct with women—now, when was it that Tilton told you that? A. I think, sir, that it was anterior to December 30th.

Q. Was it anterior to December 26th? A. No, sir; I don't think it was.

Q. Was it on the 26th? A. No, sir.

Q. Was it on the 27th or 28th? A. Don't remember; it was between December 26th and 30th, somewhere.

Q. Do you know where he told you that? A. No, sir; I don't remember.

Q. Nor when? A. No.

Q. Did he tell you that the interview at Bowen's house on the 26th was concerning those stories which Mr. Bowen had heard? A. He told me those stories as having been told to him by Bowen at that interview.

Q. And did he also tell you that the object of that interview was to enable him to explain those stories to Mr. Bowen, if he could? A. I think he told me that that was the purpose of that interview, sir.

Q. And didn't he also tell you that his contracts with Bowen were threatened unless he could explain those stories? A. No.

Q. He did not—what did you understand, then, that he was to explain them for, if it was not to save his contracts with Bowen?

Mr. Beach.—Well, what he understood is not important.

Mr. Tracy.—I think we are entitled to that on cross-examination, what this witness understood.

JUDGE NEILSON.—No.

Mr. Tracy.—Your Honor will note an exception.

Mr. Tracy.—Now, when Mr. Beecher told you, on the 30th, that Mr. Bowen had repeated to him certain stories concerning Mr. Tilton, in which he, Mr. Beecher, sympathized, didn't you understand that those were the same stories that Mr. Tilton had, previously to that night, told you had come to the ear of Mr. Bowen?

Mr. Beach.—Objected to.

JUDGE NEILSON.—We will take that answer. Say yes or no, sir.

[Exception by plaintiff.]

A. Yes; I supposed they referred to the same.

Q. You suppose they referred to the same? A. Didn't know any other.

Mr. Tracy.—And yet you made no explanation to Mr. Beecher concerning those stories on that night? A. No.

Q. So far as you know, did you leave Mr. Beecher with the impression that you believed those stories to be true?

Mr. Beach.—Objected to, sir.

JUDGE NEILSON.—He may answer that.

Mr. Beach.—Why, sir—well, I won't argue against your Honor's decision.

A. No, I don't think I left him with that impression.

Q. Did you say anything to remove that impression? A. Yes, sir.

Q. What? A. That Bowen was a treacherous man, and on account of his treachery he ought not to be believed.

Q. Ought not to be believed? A. Yes. I didn't say that he ought not to be believed on account of his treachery—it was through the use of that language that I left the impression.

Q. That you meant to leave that impression? A. Yes, sir.

Q. Then, when you told Mr. Beecher that you thought Bowen a treacherous man, you did intend that he should understand that you thought he should not believe against Tilton the stories which Bowen had told him? A. Yes; I did not think that they were——

Q. And you said it for that purpose? A. Not wholly for that.

Q. Well, that is one of the purposes for which you said it? A. Part of it.

Q. Now, how did you understand Mr. Beecher's reply, that he thought so, too, as assenting to that view?

Mr. Beach.—Are we to have the witness' construction of language?

JUDGE NEILSON.—No.

Mr. Evarts.—On the cross-examination, if your Honor please, as I suppose by well-settled rules of examination, we are not obliged to take a witness' words as ending an inquiry. We have now got, at the end of half an hour, at the very truth that we tried to get at by a simple question half an hour ago.

Mr. Beach.—Well, that proposition I dispute.

Mr. Evarts.—Well, if your Honor will recur to the question your Honor ruled out, it was exactly to that point, whether what he said to Mr. Beecher was intended to convey to his mind the idea that the stories that had come to Bowen about Tilton were true or untrue.

Mr. Beach.—The gentleman has got at it, then, by a change in your Honor's ruling, because you certainly ruled out that question, and if you have admitted it now you have admitted it contrary to that decision.

JUDGE NEILSON.—I think the matter came in a different aspect.

Mr. Evarts.—That shows what a cross-examination is for and what its license is.

JUDGE NEILSON.—I will rule out this question.

Mr. Tracy.—Your Honor will note our exception.

Mr. Tracy.—Mr. Moulton, when you left your own house on the night of the 30th to go to the house of Mr. Beecher, you left it as the friend of Mr. Tilton, did you not? A. Yes, sir.

Q. Called into this controversy by him? A. Yes, sir.

Q. To aid him? A. Yes, sir.

Q. You were not at that time the friend of Mr. Beecher? A. I was not his enemy; I was not his personal——

Q. I didn't ask you that? A. What do you mean by "friend," then?

Q. Don't you understand? A. I don't exactly in the way that you put the question.

Q. Well, I put the question again, sir, and I shall leave you to answer it as you understand it. Were you, at the time that you left your own house, on the night of the 30th, the friend of Mr. Beecher?

Mr. Beach.—Now, I submit that the answer is perfectly proper.

Mr. Evarts.—We haven't heard it yet.

Mr. Beach.—Yes, you have had it.

JUDGE NEILSON.—State how the fact was in your own way?

A. I had known—I had met Mr. Beecher, sir; I was not his enemy; I was not his close, personal, intimate friend.

JUDGE NEILSON.—That answers it sufficiently.

Q. You went from your own house as the friend of Tilton, and as soon as Mr. Beecher got into the street, as I understand you, you proffered your friendship to him in this matter? A. I did.

Q. And services? A. Yes, sir.

Q. Did you do that with Mr. Tilton's consent and knowledge? A. I had not conferred with him about it.

Q. I didn't ask you that; I asked you whether you did it with his consent or knowledge? A. No; neither.

Q. You did it without his knowledge; the letter that you carried to Mr. Beecher on that night, was it in an envelope? A. I didn't carry a letter to Mr. Beecher, sir.

Q. On the night of the 30th? A. I had a letter in my pocket.

Q. Well, you had a letter in your pocket? A. Yes, sir.

Q. Was that letter in an envelope? A. I don't remember whether it was or not.

Q. Do you know whether it was addressed—there was an address on it directed to the Rev. Henry Ward Beecher? A. I know there was not.

Q. There was not? A. No.

Q. Did you deliver that letter to Mr. Beecher that night? A. No, sir.

Q. Did he ever see it, to your knowledge? A. No, sir.

Q. Now we will come to the night of the 31st. What time of night did Mr. Tilton leave your house on the night of the 30th? A. I think he left quite late, sir.

Q. When did you see him again? A. I saw him on the morning of the 31st.

Q. On the morning of the 31st? A. Yes, sir.

Q. What time in the morning? A. Before I left for my business sir; somewhere between seven and nine o'clock, I should think.

Q. Where; at your own house? A. Yes, sir.

Q. Did you go to your business that morning? A. I did; yes.

Q. What time? A. Between seven and nine.

Q. From your own house? A. I don't remember, sir, whether I went to Mr. Tilton's house before I went to my business, or afterward.

Q. Don't remember that? A. No; sometimes I went to the docks and returned.

Q. I didn't ask you what your habit was; I was inquiring what you did that morning. Now, you did go there some time during that day? A. Did go where?

Q. To Mr. Tilton's house? A. My impression is that I did; yes, sir; and my recollection, to the best of my recollection, is that I went there that morning.

Q. Either before or after you went to the docks? A. My recollection is that I did.

Q. Who went with you? A. I don't remember.

Q. Did you see Mrs. Tilton? A. I think I did; yes, sir. My recollection is that I went to the house and saw Mrs. Tilton.

Q. Where did you see her? A. In her room, I think, sir.

Q. In her room? A. Yes, sir.

Q. Sick-room? A. Yes, sir; I don't know whether it was her sick-room or not. I saw her.

Q. Was she in bed or not? A. I don't remember.

Q. Don't remember whether she was in bed or not? A. No.

Q. Do you know whether she was sick or not? A. I think she was ill.

Q. Well, was she in bed ill? A. I don't remember.

Q. Do you mean to say that you don't know whether she was sick or well? A. She was ill, I think, sir.

Q. You say she was ill? A. She was ill——

Mr. Fullerton.—"She was ill, I think."

Q. Do you mean to say whether she was ill or not? A. She was ill, I think, sir.

JUDGE NEILSON.—That is the third or fourth time he has answered it.

Mr. Beach.—Well, he is not a physician.

Mr. Evarts.—If your Honor please, can not you tell whether a man or woman is sick, without being a physician?

JUDGE NEILSON.—Not always.

Mr. Evarts.—Not always, but sometimes you can.

JUDGE NEILSON.—He says: "She was ill, I think."

Mr. Evarts.—We know how sick she was, and how she was disposed at the time; and if this witness can not tell us whether he knows or remembers whether this woman was sick or well at that time, then he may not remember other things.

JUDGE NEILSON.—Well, sir, my own judgment is, that when a layman says of the lady he had visited, that "she was ill, I think," it is a fair and a full answer. You may ask the witness, undoubtedly, why he thinks she was ill, what was the appearance——

Q. Who was with you in her room? A. I don't remember.

Q. Do you mean to say that you don't remember whether anybody at all was with you, or whether you were alone? A. I don't remember, sir.

Q. Was her husband with you? A. I don't remember that he was.

Q. Do you remember that he was not? A. I don't remember that he was not.

Q. Did he go to the house with you? A. I don't remember that.

Q. Do you know how you went to that house? A. If I went to the house I rode.

Q. Did Mr. Tilton ride with you? A, I don't think he did.

Q. Do you remember that he did not? A. To the best—the best of my recollection is that he did not.

Q. Was he in the house when you were there? A. I don't recollect.

Q. Whether he was or not? A. No.

Q. From the time you went in, until the time you came away, you don't recollect of seeing Mr. Tilton there? A. I do not.

Q. And don't know that he was there? A. Don't recollect that he was.

Q. Or that he was not? A. Don't recollect that he was there.

Q. Well, do you recollect that he was not? A. I don't recollect that he was there.

Q. Was that letter written in your presence? A. Don't remember whether it was or not.

Q. Don't remember whether it was or not? A. No, sir.

Mr. Tracy.—From whose hand did you receive that letter? A. I think I received it from the hand of Elizabeth directly.

Q. Do you know whether you did or not? A. It was either given to me directly by Elizabeth Tilton, or it was sent to me by a messenger to my house. My recollection is that I went to the house that morning—I am undertaking to give my recollection.

Q. Now, I understand you to say that you don't know whether you went to the house and got this letter from Mrs. Tilton, or whether it was sent to you by a messenger to your house? A. I am giving my recollection, sir; I think I went to the house; to the best of my recollection I went to the house, General Tracy.

Q. Will you say that that letter was not delivered to you by the hand of Theodore Tilton? A. I don't recollect that it was.

Q. Will you say that it was not? A. I won't say that it was not.

Q. What time of evening was it when you left your house to go to Mr. Beecher's on the 31st? A. It was after seven o'clock in the evening.

Q. After seven o'clock? A. Yes, sir, I should think it was. The best of my recollection is, it was after seven o'clock.

Q. You found Mr. Beecher on the evening of the 31st? A. Yes, sir.

Q. Where? A. He was not at home, sir, when I called at the house?

Q. Well? A. And a messenger from his house, somebody from his house, came after me and said that his mother, I think, knew where he was; I think it was one of Mr. Beecher's sons, and I went back and waited for him. He came.

Q. Where did you have your interview with him? A. Upstairs, in the back room, sir, I think.

Q. Second or third story? A. I should think it was the second story, sir. I won't be certain about that.

Q. In the study? A. Don't remember that it was the study.

Q. In the bedroom? A. My impression is, sir, that it was; my recollection is that it was.

Q. Now, how did you commence that interview with Mr. Beecher that night? A. Well, I said to him that I thought that he would consider the subject of it a strange one; that his judgment would say that it was rather a strange interview; and I recalled something of the conversation, I think, of the previous evening to him, and I said to him, "You got Theodore's permission last night to go down and see his wife, and you procured from her a

retraction of her confession, and you procured what I must term a lie, and I think you are guilty of great meanness in doing that; I think you are." I told him that I had received a note from Theodore in the morning, asking back the confession of his wife, and that I had seen Theodore, and that he was very angry about Mr. Beecher's conduct—about his conduct—and I said, "Mr. Beecher, I didn't see much of the guidance of God in what you did, but at the same time, there may be a Providence in it after all. I have come for that retraction. I think you had better give it up to me. I will burn both the confession and the retraction in your presence, if you choose, or I will hold both;" and I read to him the letter which Elizabeth Tilton had either sent or given to me, and I read also a letter which Theodore Tilton had given to me, dated "Midnight," in which his wife informed him of the—whatever you call it—recantation.

Mr. Evarts.—Those letters are in evidence.

The Witness.—I believe so, yes; and he said to me that this recantation would be his only—would be the only defense of his family—I am giving his language as nearly as I recollect it, sir—would be the only defense of his family, in case he was attacked; and I said to him: "Mr. Beecher, I don't see how you have erred as you have; I don't understand it; you have had criminal connection with Mrs. Tilton, and you go down and you get this paper; I don't see how you could have performed two such acts. Mr. Tilton's disposition, last night, when I went home, or when I saw him after going home, was peaceful. He said that no matter what might come to himself, he would protect his wife and family, intended to do that," and Mr. Beecher then said to me with great sorrow, weeping, that he had loved Elizabeth Tilton very much; that through his love for her, if he had fallen at all, he had fallen; that the expression, the sexual expression of that love was just as natural in his opinion—he had thought so—as the language that he used to her; that if he had fallen at all, he had fallen in that way, through love and not through lust, or words to that effect, and he said——

Mr. Tracy.—Now, witness, excuse me.

The Witness.—And he said, "This will be my defense; my only defense, in case I was attacked but with you I throw myself upon your friendship and upon what I really believe to be your desire to do the best for all parties;" and as I was leaving him, he said, as nearly as I can recollect—afterward the language made great impression upon me—that he felt that he was upon the brink of a moral Niagara, with no power to save himself, and he wanted me to save him, and that is the substance of the interview as nearly as——

Mr. Morris.—Wanted you to save him? A. Yes, sir; and he gave me back the retraction.

Q. Now, will you explain to the Court and jury how it happened that in repeating Mr. Beecher's remarks, you first said that he said his expression toward Mrs. Tilton—correcting yourself, you said his sexual expression toward Mrs. Tilton—will you tell us how it happened—intercourse, I mean; intercourse—expression. Will you explain to the Court and jury how it was that you made the slip? A. I don't understand the slip. If you will explain it, sir?

Q. In repeating Mr. Beecher's language on this occasion, you first said that——

Mr. Shearman.—He considered his expression—then he stopped and said, his "sexual expression of his love for Elizabeth." Those were the exact words.

Mr. Tracy.—Can you tell how that happened—why you repeated it in that way? A. Here, in this—— ?

Mr. Tracy.—Yes, sir. A. Well, I dropped a word; that's all, sir.

Q. That is your answer; you dropped the word? A. I meant to say precisely what I did say—his sexual expression—that his sexual intercourse——

Q. Are you aware that you made exactly the same mistake on your direct examination? A. No.

Q. You are not are aware of that fact? A. No, sir. [Book produced and referred to by Mr. Tracy.]

Mr. Morris.—Now, if that is to be read, I ask that it be read from the original stenographic notes, because they are incorrectly printed; and that is not the only instance.

JUDGE NEILSON.—Errors will creep into the press.

Mr. Morris.—There is one in this case.

AFTERNOON SESSION.

Mr. Tracy.—At what stage of that conversation did you read Mrs. Tilton's letter requesting a return of the retraction?

Mr. Morris.—They will be here in a few minutes.

Mr. Tracy.—Do you remember whether that letter was in an envelope? A. I think it was in an envelope, addressed to me, sir.

Q. Have you got the envelope? A. I don't know, sir, whether it is among the papers or not. All the papers that I have got I have handed to Judge Morris.

Q. Do you know whether the direction of that envelope was in Mrs. Tilton's handwriting? A. I do not know.

Q. Have you got the envelope? A. No.

Q. Can you get it? We would like it if you have it.

Mr. Morris.—We haven't the envelope; I have never seen it.

Q. Do you know what became of it? A. I suppose it was torn off and destroyed, sir.

Q. Do you say it was; have you any recollection on that subject? A. No distinct recollection; if the envelope is not there it was destroyed—if it is not among the papers.

Q. You don't know whether it is among the papers or not? A. I don't know, sir; I don't recollect whether it is or not; I have handed Judge Morris all the papers that I have got.

[After some further conversation, Mr. Morris replied that he had searched for the envelope, but had not got it, and had never seen it.]

Q. At what stage of the interview with Mr. Beecher on that night did you read to him that letter? A. I think I read it to him after I read to him the letter of Mrs. Tilton to her husband informing him of the fact.

Q. You read, then, what we call the explanaaion of the retraction, first? A. Yes, sir.

Q. And then read her letter requesting its return? A. Yes, sir; after that, I think; that is the best of my recollection.

Mr. Tracy.—I want that letter.

Mr. Morris.—I can give you the printed one; there it is [handing Mr. Tracy a book].

Mr. Evarts.—Well, you will have the original here?

Mr. Morris.—Yes, sir.

Q. I understand you to say that you told Mr. Beecher that if he would surrender that retraction you would destroy the accusation—what I call an accusation, and you call Mrs. Tilton's confession—you would destroy that paper and the retraction in his presence?

Mr. Beach.—No, that was not the statement.

JUDGE NEILSON.—He said he would destroy both, if Mr. Beecher desired it.

Mr. Fullerton.—No. I beg your Honor's pardon!

Mr. Evarts.—We understand him to have said so.

The Witness.—I said to Mr. Beecher that if Mr. Beecher desired——

Q. You would destroy it? A. Yes, sir.

Q. What did Mr. Beecher say to that? A. He said that if any accusation was made against him that this retraction would be the only defense which his family would have—words to that effect.

Q. And then did you tell him that if you did not destroy it you would keep them both together? A. I told him I would keep the retraction and keep the confession; yes, sir.

Q. So that one should never be seen without the other? A. So that one should never be seen without the other?

Q. You said you would keep them together? A. I told him I would keep both; I did not use the word "together."

Q. Preserve both? A. Preserve both.

Q. Didn't you mean by that to be understood that they should not be separated? A. I meant that I should keep them both in my possession.

Q. Didn't you mean by that to be understood by Mr. Beecher that those two papers should never be separated?

Mr. Beach.—Why, sir, that does not convey any intimation to the witness of what the counsel desires to be answered. They were separate papers. Does he mean that they should be annexed together and never detached, the one from the other, or that the one should never be shown without the other? It is impossible to answer a question of that character without more discrimination.

Mr. Evarts.—We understand all that. This witness has said, "I said to Mr. Beecher, I will destroy them both or keep them both," and Mr. Beecher said, "this retraction will be the only evidence against the charge." Now, the question is, "Did you mean by saying that you would keep them both, that you would keep them so that one did not appear without the other?"

Mr. Beach.—Well, that is well enough.

JUDGE NEILSON.—How is that, Mr. Moulton? Say yes or no to that

A. I can not answer yes or no without an explanation to that. That I would keep them both—I said that I would destroy them both in his presence if he desired, or I would keep both; I would keep both papers; not necessarily together, but keep them both safe, not to be made public, either of them. That is my understanding, sir.

Mr. Tracy.—Did you intend to be understood that you would keep those papers so that one should not be shown without the other, or should not appear without the other?

Mr. Beach.—The question is, sir, what the witness meant at that time?

Mr. Tracy.—Yes, sir.

JUDGE NEILSON.—Answer that.

A. I meant to keep both of those papers sacredly, the recantation for Mr. Beecher's sake, and the confession for Mr. Tilton's sake, who had given them to me. That is what I meant. My idea was, when I said that—my idea was that this confession never should be made against Mr. Beecher without his having the recantation to meet it with. That is what I meant.

Q. And that they should not be shown and separated, so that one should appear without the other?

Mr. Beach—That is not a question.

Mr. Tracy.—Yes, sir.

Mr. Beach.—No, that is not a question; that is a declaration of the counsel.

Q. Did you so mean to be understood that one of these papers should not be shown or appear before the public without the other? A. I meant that Mr. Beecher's recantation which he handed me should be used by him in his defense in case an attack was made upon him upon the basis of the other paper. That is it, sir; if the other paper was used he should have his to use against it. I try to explain it, sir.

Q. Didn't you also mean that that paper should be preserved so that if any attack ever was made upon him, the recantation should appear to be a retraction of the accusation.

Mr. Beach.—That is arguing, sir, in regard to the effect of the paper; I object to that question.

JUDGE NEILSON—Let him answer that.*

* A promise is to be interpreted in that sense in which the promisor knew that the promisee understood it. *Barlow* v. *Scott* (24 N. Y. 40). See also *Welles* v. *Yates* (44 N. Y. 525). In the case of threats, the testimony of the person threatened is admissible to show the meaning of the threat according to his understanding of it.

In *Regina* v. *Hendy* (4 Cox, Cr. Cases 243, Circuit, 1850. ERLE, J.), on an indictment for sending a threatening letter, it was *held* that the prosecutor when testifying may be asked, if the letter be ambiguous, what he cons dered was the meaning of the letter. "Unless the law went so far as to make it punishable to create that fear by any language the author knew would create that fear, the law would be powerless. The very fact of saying ironically, 'I don't say you are a thief,' could be expressed in such a way as to make anybody understand that the party meant to make that charge; and although there might be no single word in the letter which by itself would appear to mean so to a stranger, yet the party receiving it would perfectly well understand it. The jury must be satisfied that when he wrote those words 'You will suffer as before,' the writer intended to

The Witness.—I can answer it with an explanation. I meant that they should both be presented together or both be destroyed together.

JUDGE NEILSON.—I understood you virtually to have saik that before. [To Mr. Tracy.] Go on, now.

Q. When you offered to destroy those papers in Mr. Beecher's presence, had you the authority of Theodore Tilton to make that offer? A. I don't remember that I had.

Q. Do you mean to say that you had not? A. According to the best of my recollection, sir, I had not.

Q. Then do you mean to be understood as saying that you received from the hands of Theodore Tilton that accusation of his wife against Mr. Beecher, and, having pledged your friendship to Mr. Beecher the night before, you took it to him and offered to destroy it without the authority or permission of Theodore Tilton? A. On my own responsibility I think I did that, sir.

Q. And you would have destroyed it that night? A. Yes, sir; I would.

Q. Would that have bound Mr. Tilton to any course on that subject?

Mr. Beach.—I object to that.

Q. Did you so understand?

Mr. Fullerton.—I object to that.

JUDGE NEILSON.—I rule that out.

Mr. Evarts.—We except, if your Honor please.

JUDGE NEILSON.—The witness gives a certain answer, the words of which convey a certain meaning, and it is our business to interpret the meaning of the words used; and you do not need his interpretation.

Mr. Evarts.—He has said, if your Honor please, that he did it on his own responsibility.

JUDGE NEILSON.—Yes; and in the same connection, that he had no authority from Mr. Tilton.

Mr. Evarts.—Now, I want to get that distinctly.

JUDGE NEILSON.—He has given it. There is nothing gained by repeating it.

Mr. Evarts.—If your Honor will allow me, I want to have no escape from the act that had been done. There was nothing in that act that would have bound Mr. Tilton to any suppression whatever.

JUDGE NEILSON.—The paper would have been destroyed; that is all.

Mr. Evarts.—I am not discussing what the effect of the thing is. There

create in the mind of the party receiving the letter the fear that his house would be burned down. Evidence might be offered that under the particular circumstances the words had not their ordinary meaning, but the meaning imputed to them on the record, and, therefore, the witness might be asked whether he understood the meaning to be that which the record imputed."

In *People* v. *McDaniels* (1 Park Cr. R. 198), on a prosecution for robbery, the prosecutor was allowed to testify that he believed the prisoner in his threats to take the prosecutor in his custody, had reference to a charge of the crime against nature previously made against him, and that he parted with his money out of fear of being taken on that charge. *Held*, that it was enough if the language the prisoner used was intended to communicate such a charge, and was so understood at the time by the prosecutor.

was nothing in that act, of which he assumed the responsibility, that, by reason of anything that had passed between Mr. Tilton and himself, would have bound Mr. Tilton not to renew it immediately.

Mr. Beach.—That is it. It was for somebody else besides the witness to determine that.

Mr. Evarts.—Oh! no.

JUDGE NEILSON.—Well, we have got this down distinctly and in such a way that it can not be evaded.

Mr. Tracy.—I will put another question, your Honor.

Mr. Evarts.—The question is asked and ruled out, and an exception is taken.

JUDGE NEILSON.—Yes, sir.

Mr. Tracy.—Did Mr. Tilton know that you bore the letter to Mr. Beecher from Mrs. Tilton? A. My best recollection is that I showed the letter to Theodore, in accordance——

Q. Before going? A. Yes, sir.

Q. And that letter called for the return of the papers, that they might be burned, did it not?

Mr. Beach.—The paper will show for itself.

Mr. Tracy.—Well, I am waiting for it.

Mr. Beach.—You have got it in print before you.

Mr. Evarts.—We want the original.

Q. Now, sir, didn't you say to Mr. Beecher that Mr. Tilton knew of this letter from Mrs. Tilton, and knew that you came with it to request the return of that paper? A. I do not remember saying any such thing; to the best of my recollection I did not.

Q. Did you tell Mr. Beecher that the object that Mrs. Tilton had in procuring the return of those papers was that they might be burned? A. I read the letter to Mr. Beecher; I do not remember saying anything further than the letter itself.

Q. And you did not tell him whether Mr. Tilton knew of that letter or not? A. I do not remember that I did, to my recollection.

Q. Didn't he ask you? A. I don't recollect that he did.

Q. And yet you say that, on the authority of this letter, you would have taken the responsibility of not only burning the retraction, but burning a paper which you had received from the hands of Mr. Tilton that night in the presence of Mr. Beecher?

Mr. Fullerton.—I object to that.

JUDGE NEILSON.—He does not say upon the authority of that letter.

Mr. Beach.—No, sir.

JUDGE NEILSON.—He said he would have done it.

Q. Would you have done it upon the authority of that letter?

Mr. Fullerton.—I object to that.

Mr. Tracy.—There was no authority in the letter in respect to the burning of it—nothing upon that subject.

JUDGE NEILSON.—I think he may answer. Answer, Mr. Moulton; would you have done it under the authority of that letter?

Mr. Beach.—What letter do you refer to?

Mr. Tracy.—I refer to the letter of Mrs. Tilton asking for the return of these papers, that they might be destroyed, which letter the witness says was shown to Theodore Tilton before he went to Mr. Beecher's house that night.

JUDGE NEILSON.—Now, if Mr. Beecher had consented to the destruction of both papers, the question is, whether you would have destroyed them upon the authority of that letter which you had taken there with you, or upon your own individual responsibility? A. That letter would have influenced me somewhat with regard to it.

Mr. Tracy.—And the fact that Tilton had seen it, would not that have influenced you also? A. I think my own thought in regard to the transaction would have influenced me more than either.

Q. Now, do you say that you made this assurance to Mr. Beecher, that if he would surrender that retraction to you, and permit it to be destroyed, you would destroy it with the accusation, without having any authority from Theodore Tilton, or knowing from Theodore Tilton in any manner, whether, if that was done, it was to end both the accusation and the retraction? A. I would have destroyed the papers on the spot, sir.

Q. I didn't ask you that, sir. [Question repeated.]

A. Yes; I should have done it on the spot without any authority from Theodore Tilton.

JUDGE NEILSON.—Your answer "Yes," then, answers the question?

Mr. Tracy.—No, sir.

Mr. Fullerton.—No; that would be wrong.

Mr. Beach.—The question is not very perspicuous.

JUDGE NEILSON.—[After directing the answer to it to be read.] Do you wish to add anything to that answer? A. No, sir; that covers it.

Mr. Tracy.—I put the question, whether you made that representation to Mr. Beecher without having any authority from Theodore Tilton? A. I don't recollect that I had any authority from Theodore Tilton.

Q. Then you mean to say that you did make that representation to him without having any authority? A. Without having any authority.

Q. Then, did you know of anything, in case that retraction had been destroyed, that night, which would have prevented Mr. Tilton from renewing the charge the next day? A. Yes.

Q. You did? A. Yes.

Q. What? A. Mr. Tilton's own expression to me that he was going to save his family—that he did not want any harm to come to his family. That was my thought.

Q. And that you understood as a declaration from Theodore Tilton that he did not intend to make public this accusation against Mr. Beecher? A. Precisely.

Q. And that you understood from Tilton for the first, when? A. On the night of the 30th.

Q. Before you went to Beecher? A. No, sir.

Mr. Tracy.—This is the letter referred to. [Reading "Exhibit 1," which will be found on p. 344, *ante.*]

Q. Now, did Mr. Beecher on that same evening have any talk with you in regard to the stories which Bowen had told against Mr. Tilton? A. On the evening of December 31st?

Q. Yes. A. Not on the evening of December 31st, as I recollect now sir.

Q. Is that the way you have always recollected it? A. I think it is.

Q. Please look at this book where I have marked it, and see if that will refresh your memory. [Handing witness the book.]

Q. Turn over the page also, please, and look at that. [Witness refers to the page indicated.] I will ask you, did not Mr. Beecher tell you on that occasion that he had sympathized with Bowen and had taken sides with him against Tilton? A. He told me—not on this occasion; it was on the evening of December the 30th; that is my recollection now. I think this is a misstatement.

Q. He told you that? A. Yes, sir; I think this is in error in that respect.

Q. As to the date only? A. Yes.

Q. That it occurred on the evening of the 30th? A. Well, perhaps, I don't understand all of your question. With regard to Bowen he spoke.

Q. Yes; let me have no misunderstanding about it. You now say that you think on the evening of the 30th, Mr. Beecher said that he had sympathized with Bowen, and had taken sides with him as against Tilton? A. He had taken sides with him as against Tilton?

Q. Yes? A. Yes; that he had taken sides with him as against Tilton, and sympathized with Mr. Bowen's story,

Q. In consequence of the stories which were in circulation in regard to him, and especially the one specific case where he had been informed that Mr. Tilton had had improper relations with a woman whom he named? A. Yes, sir; that did not occur on the evening of December the 30th, that occurred on the evening of January 1st, if my memory serves me right now.

Q. That part occurred on the evening of Jan. 1st? A. Yes, sir.

Mr. Evarts.—The whole of it? A. No, sir; [reading] "And especially of one specific case." My recollection tells me——

Mr. Evarts.—It is only a question to get it right.

Mr. Tracy.—Your recollection now is that, recurring to what he had told you on the evening of the 30th about having sympathized with Bowen and taken sides as against Tilton, he added that he did it on account of these stories in regard to a certain woman? A. No; that on Jan. 1st he spoke of this "one specific case;" he spoke of "one specific case" on Jan. 1st.

Q. Now, didn't he, on the evening of the 31st, in speaking of that same thing, offer to write a letter to Mr. Bowen taking back what he had said in regard to him? A. On the evening of December 31st?

Q. Yes. A. No, sir.

Q. That occurred, you say, on the 1st? A. Yes, sir.

Q. When was it that he showed you the draft of letter for that purpose—that he proposed to write Bowen to correct what he had said about that? A. It was either at his house on January the 2d, or at my house after January the 2d.

Q. Now, do you mean to say that this letter, a rough draft of it, was not shown you either on the evening of the 31st or on the evening of the 1st of January? A. Yes, sir; I don't mean to say it was not on the evening—yes, it was not on the evening of the 1st; it was either at his house on the 2d of January or at my house after the 2d of January.

Q. Then that is a part of another conversation that has got mixed here, is it? A. What is a part?

Mr. Beach.—Got mixed where?

Mr. Evarts.—No matter——

Mr. Beach.—Yes, it is matter.

Mr. Evarts.—Let him refresh himself before you ask him. We want the facts as they are.

Q. Did he tell you on that evening at any time?

Mr. Beach.—What evening?

Mr. Tracy.—Either on the 31st or the 1st, and if so, which—or the 30th, that Mrs. Beecher and himself had been expressing great sympathy towards Mrs. Tilton, and taking an active interest with her against her husband? A. Where is that, sir?

Q. That is on the next page right over, after the signature to the letter? A. I spoke to him on the evening of December 31st, about certain stories that Theodore Tilton had told me that Mrs. Beecher was circulating against him, and to the best of my recollection, Mr. Beecher said to me that Mrs. Beecher received her information from Mrs. Morse, who she believed to be a dangerous woman, and yet her enmity to Theodore Tilton was such that she entered into sympathy, and he sympathized himself with those stories.

Q. When do you say that was—the 31st? A. Yes.

Q. Now, what were those stories which Mrs. Beecher had received, and with which she and Mr. Beecher sympathized? A. I don't remember, sir, what they were.

Q. Don't remember anything about them? A. I don't remember, sir, now; no, sir, I don't recollect what they were.

Q. They were mentioned, were they not? A. I think they were mentioned subsequently; I do not think they were mentioned on that night fully.

Q. Was the nature of them spoken of? A. I do not remember that the nature of them was spoken of on the night of December 31st, sir.

Q. How were they referred to? A. As stories injurious. I told Mr. Beecher the stories that Tilton had told me that Mrs. Beecher was circulating against him.

Q. How did you describe them? A. I think as infidelities. I think I may have used the word "infidelity."

Q. What else did you say? A. That is all that I recollect now.

Q. The infidelities of whom? A. Of Mr. Tilton.

Q. Were the names of the persons mentioned? A. No; no names were mentioned that night.

Q. No names were mentioned that night at all? A. No, sir.

Q. What did you say to Mr. Beecher about those stories? A. I told him those stories ought to be stopped.

Q. What else did you say about them? A. I don't remember saying anything else.

Q. Did you tell him that they ought to be stopped because they were false? A. I don't think I said that they were false.

Q. Did you say anything about their truth or falsity? A. I don't think I did.

Q. Did you mean that Mr. Beecher should understand you as saying that these stories should be stopped even if they were true and you believed them to be true? A. No.

Q. Well, then, didn't you say that these stories were untrue and should be stopped? A. No, I did not on that occasion; I don't remember saying that they were untrue.

Q. Did you say anything on the subject, whether they were true or not? A. I told him that those stories ought to be stopped. That is all I remember having said. I am giving all that I remember.

Q. And gave no reason whatever why they should be stopped? A. I don't remember that I did, sir.

Q. Did you intend to leave an impression on Mr. Beecher's mind that those stories were true? A. No, sir.

Mr. Fullerton.—I object to that.

Q. You did not? A. No, sir.

Mr. Fullerton.—That is a form of question very frequently put, and it is improper.

Q. Did you intend to leave upon his mind an impression that you believed them to be untrue?

Mr. Fullerton.—I object to that.

JUDGE NEILSON.—If he said anything on the subject he can speak; otherwise not.

Mr. Tracy.—Then I understand your Honor as excluding the question.

JUDGE NEILSON.—Yes, in that way. If he said anything on the subject he can speak about it.

Mr. Evarts.—We have had, I think, if your Honor please, this question answered before. You will observe that a witness speaking of a conversation that took place four years ago, begins by saying that he doesn't profess to give every word—of course we understand that—but to give the entire purport of it. Very well. Now, as it is the purport that he undertakes to give, we can not exhaust the testimony by saying: "Did you use these words," or "those words," but, "Was the purport of what you said to him such as to leave an impression on his mind that the stories concerning which you were talking to him were true or false?"

JUDGE NEILSON.—That would be proper as calling for something more than mere intent and construction, because it would cover words that were used or might have been used.

Mr. Evarts.—Was the purport of what you said to him such as to leave on his mind the impression that you thought those stories were true, or that you thought they were not?

Mr. Fullerton.—He has already given the purport.

JUDGE NEILSON.—I think he has.

Mr. Fullerton.—Is not the jury to be the judge of the intent from the purport?

JUDGE NEILSON.—I think so.

Mr. Fullerton.—It seems extraordinary if they have a right to go through with a long cross-examination of this witness as to what the purport of his language was, and after that go through with it and ask what intent he had in using it, and whether it was to produce such a result upon the mind of the listener. Why, if your Honor please, the jury are to judge of the intent from the language itself, or the purport of it, as given by the witness. It is a great waste of time, in my judgment, as well as a violation of the legal rule.

Mr. Beach.—It is more than a waste of time, your Honor.

Mr. Fullerton.—Yes, it is an evil example.

Mr. Beach.—Your Honor will permit me to add this observation: Where this witness is unable to give the language of a conversation to which his attention is directed, it is proper to ask him what was the substance of what was said upon the occasion. This question goes further. It asks not only what was the substance or the purport of the conversation, but it asks the witness also to give his judgment or opinion whether that purport had the effect of leaving upon the mind of Mr. Beecher a certain impression. Now, that is usurping the office of the court and the jury, sir. It is not for this witness to say what would be the impression or the effect of the language, or the substance of the language as given, upon the hearer. That is for the jury to say, and it is to that part, that feature of the question, that we respectfully submit the objection lies.

JUDGE NEILSON.—Now, repeat this question. I think many of these interrogatories are very extreme, especially when they require the witness to state what impression he intended to convey, or what his intent was.

[The question put by Mr. Evarts was then read, allowed, and exception by plaintiff was taken.]

The Witness.—No, sir; the purport was not to leave upon his mind that impression. The purport was to leave upon his mind the impression that they were untrue, rather than that they were true.

Q. Now, the two papers that you received that night, and had with you at Mr. Beecher's, the accusation and the retraction—will you give the history of those two papers from that time forward? A. I will give that, sir, as nearly as I can. I took the recantation back to Theodore Tilton—back to my house and found Theodore Tilton there, and read it to him, and may have handed it to him to read, for aught I know, and then I put the papers, the confession and the recantation, into my bureau drawer, and then had it locked up in the safe after that, over in New York. After the tripartite covenant was signed, Mr. Tilton wanted the confession, as he said, as an act of good faith towards his wife, and I gave it to him and it was destroyed; at least he told me that his wife destroyed it.

Q. That he gave it to her and he saw her destroy it? A. Yes, sir; so I understood it.

Q. When was that? A. I think the "tripartite covenant" was in April,

1872; I think so; and it was a day or two after that, perhaps two days after that, that I gave to him the confession.

Q. From that time to the present where has the retraction been?

Mr. Fullerton.—One moment. That other question is not answered.

Mr. Evarts.—He didn't ask it.

JUDGE NEILSON.—He asked for the history of both papers; the witness has given the history of one.

Mr. Tracy.—Yes, he says they were both together in his safe up to that time. Now, my question is, what became of the retraction afterwards? A. I locked it up in my tin box, sir, and kept it.

Q. Where? A. In my house.

Q. Until when? A. I think until I published this statement, sir; I used it in this statement—in the first statement.

Q. After that what was done with it? A. I think before that I showed it to you at my house one night after the publication of the Woodhull story.

Q. Yes. A. And then I put it back into the box and kept it.

Q. Kept it? A. Yes, sir.

Q. You say you kept it in a box until about the time that you published this statement on the 4th of August, and now where has it been since? A. Been in my possession—been in the box.

Q. Well, is it in your possession now? A. It was handed to Judge Morris amongst the other papers.

Q. When was it handed to Judge Morris? A. It was handed to Judge Morris since this suit was commenced.

Q. Is it in your possession now, or Mr. Tilton's, which? A. In Judge Morris'.

Q. Well, Judge Morris is Mr. Tilton's counsel, isn't he, in this suit? A. Yes, sir; he is Mr. Tilton's counsel.

Q. Then you mean to say that you kept this retraction until Theodore Tilton brought a suit against Mr. Beecher, and then you surrendered it to his counsel, do you?

JUDGE NEILSON.—That question is quite unnecessary. The fact appears distinctly without that question.

Mr. Evarts.—If your Honor please, there are a variety of papers in the hands of these gentlemen, and very properly. We do not know whether they are in their hands as counsel of Mr. Tilton——

JUDGE NEILSON.—Well, the witness has answered as to this paper all he can say, I suppose.

Mr. Evarts.—We do not know, if your Honor please, until we learn from people who can speak on the subject, whether these papers that are now here and produced and handed to this witness are in the possession of this plaintiff, or only in the possession of these gentlemen for this witness.

JUDGE NEILSON.—The inquiry is as to this one paper which he states he took at a certain time and gave to Judge Morris; and the fact appears that Mr. Morris is one of the attorneys—engaged as one of the counsel for the plaintiff.

Mr. Evarts.—Yes, sir; that is so.

JUDGE NEILSON.—This witness gave him that paper. That covers all that the question called for.

Mr. Evarts.—Are we to understand, then, that all these papers that belong to this witness and were placed in his hands by either party, and are being produced here by the counsel, are in Mr. Tilton's hands?

Mr. Fullerton.—The gentleman can understand what he likes.

Mr. Evarts.—We want to ask the question about it.

Mr. Fullerton.—You have asked it and he has answered it. The question is whether you will learn a thing by its being said once or twice, or whether he will repeat a thing until you understand it.

Mr. Evarts.—If your Honor please, that is not the question. If he answered once that he put it in Mr. Morris' hands as Mr. Tilton's counsel, that is enough, but if he merely answered "I put it in Mr. Morris' hands," why, then, we have no other evidence about this paper than we have about all these papers, that they come, and very properly—from Mr. Morris' hands. The question is whether Mr. Morris holds them for him or for Mr. Tilton, by his authority.

Mr. Beach.—Why don't you ask him that?

Mr. Evarts.—Well, that is our question.

Mr. Beach.—No, that is not the question.

JUDGE NEILSON.—I thought, when I interrupted you, that you were putting a question that has been distinctly answered.

Mr. Tracy.—I was not intending to put a question that had been answered. I did intend to put a question to the witness which would call for an answer, that is, "Did you place these papers in the hands of Mr. Morris as Mr. Tilton's counsel in this case?"

Mr. Fullerton.—That is not the question that was asked.

JUDGE NEILSON.—The question asked would emphasize what has been said before as to his intention.

Mr. Fullerton.—And it is a re-hash of the whole testimony on that subject.

Mr. Tracy.—I ask whether you placed this paper in the hands of Mr. Morris, as the attorney of Mr. Tilton in this case? A. No, sir; I did not place it in Mr. Morris' hands as the attorney of Mr. Tilton in this case; I received a subpœna from your office, and have consulted with Judge Morris about the terms of the subpœna, and have handed him my papers, and amongst others this paper.

Q. And you never put it in his hands before? A. I do not recollect that I ever did, sir.

Q. Do you remember that you did not? A. To the best of my recollection I did not.

Q. Then you mean to say that the paper is still in your hands, under this subpœna? A. I understand it to be so. I understand that that paper is for production in this court.

Q. What was the exact date when you delivered this to Mr. Morris? A. I don't remember, sir.

Mr. Evarts.—Since the trial commenced? A. Yes, sir; I have under-

taken to give Judge Morris all the papers called for by your subpœna. I have undertaken to do that.

Mr. Tracy.—Mr. Tilton asked for this accusation, that it might be destroyed, and you surrendered it to him for that purpose? A. Yes, sir; Mr. Tilton asked for it that it might be destroyed.

Q. And you surrendered it to him for that purpose? A. Yes, sir, after the tripartite covenant, in April, 1872.

Q. Now, Mr. Moulton, you have made and published two public statements, have you not, touching this matter? A. Yes, sir.

Q. Both made after the publication of Mr. Beecher's statement? A. Both made after the publication of Mr. Beecher's statement.

Q. Where were those statements prepared? A. Those statements were prepared by General Butler——

Q. I didn't ask by whom they were prepared; I asked where they were prepared? A. They were prepared, sir, at Bay View, and at Lowell; the first was prepared at Bay View, and the other at Lowell.

Q. Were you present during the preparation of the first statement? A. I was.

Q. And directed its preparation? A. I gave to Gen. Butler, as my friend, the papers, and he made out the statement himself, sir.

Q. How about the other? A. The second statement was made in about the same way, sir.

Q. Do you know the manner in which these statements were made out? I will put a more direct question. Did you dictate to a stenographer, who took down your dictation? A. Did I dictate to a stenographer?

Q. Yes. A. No, I think not; I dictated a portion of the second statement, I think, to a stenographer—a portion of it only.

Q. Were you present when Gen. Butler dictated to a stenographer? A. Not all of the time; no, sir.

Q. Most of the time? A. Which one are you talking about now, sir?

Q. The first statement, we will say. A. Yes; most of the time, I think.

Q. How did Gen. Butler get possession of the facts except from your dictation or statement, aside from what were contained in the writings? Wasn't it from your statement that Gen. Butler got possession of the facts that were incorporated into these statements? A. I gave to him the facts, sir, as I recollected them at the time.

Q. Verbally? A. Verbally.

Q. How many days was that first statement in preparation? A. I don't remember how many days.

Q. Was it several? A. It was part of several days, sir.

Q. Did you bring it back with you here on your return to the city on the 4th of August? A. I think I did; yes, sir. I will correct an answer that I made a few moments ago with regard to Judge Morris; I had that recantation with me there with Gen. Butler.

Q. Did you have also with you there the letter of Mrs. Tilton requesting the return of these papers that they might be burned? A. Yes, sir; I think I did; if that is in my statement I had it there.

Q. Well, supposing it is not; I don't care about that; did you have it there? A. I recollect that I had it there, I think, sir, to the best of my recollection.

Q. We will not say anything about what is in your statement, or what is not. A. Yes; you offered me the statement, sir, to guide my memory.

Q. Certainly. We don't object to your refreshing your mind by the statement. How many days was the second statement in preparation? A. I forget, sir, how many days it was; several days.

Q. And what length of time intervened between the preparation of the first and second statements? A. I don't remember, sir.

Q. About how long? Can't you refresh your mind by the book there? A. The second statement was prepared after Mr. Beecher's statement was made to your committee, sir, whatever date that was. I don't remember the date.

Q. I have understood you to say—perhaps I have misunderstood you—that they were both prepared after Mr. Beecher's statement? A. The first one was prepared before Mr. Beecher's statement—was prepared before Mr. Beecher's statement was made, I think; yes, sir; before. It was prepared before; the second one was prepared after. I understood your question to be whether they were not both published after. Did I misunderstand you, sir?

Q. I am not certain, sir. A. I don't think I did.

Q. I am not certain, sir. It is all right now, any way. A. Yes, sir.

Q. What time intervened between the publication of the first statement and the preparation of the second? A. What time intervened between the publication of the first statement and the preparation of the second?

Q. Yes, sir. You may just look at the date. A. I don't think this book furnishes the date.

Mr. Shearman.—The first was published August 21st, and the second was published September 11th.

The Witness.—I commenced to prepare—to make preparations for the second statement immediately after the first one—a short time after the first one.

Mr. Tracy.—And you published it as soon as it was completed?

JUDGE NEILSON.—What do you mean by publishing? A. Gave it to the newspapers, sir, to publish.

Q. They were both published in *The Graphic*, were they not? A. Yes, sir.

Q. And your first statement was widely circulated before your second statement was completed?

Mr. Fullerton.—I don't think that is important, sir, in this case.

JUDGE NEILSON.—Whether it was published, that covers it, perhaps.

Mr. Fullerton.—The publisher can tell better about that.

Mr. Tracy.—I suppose the witness knows that it was widely circulated.

Mr. Fullerton.—What difference does it make in this case whether it was widely circulated or not?

Mr. Evarts.—That we will sum up on.

Mr. Fullerton.—We will sum it up now. I object to it. Now sum it up.

JUDGE NEILSON.--It was published, and if he knows it was widely cir culated, he can say so.

Mr. Fullerton.—It seems to me that it is quite immaterial.

Mr. Tracy.—It may be.

JUDGE NEILSON.—Do you know whether it was widely circulated, sir? A. I don't know how widely it was circulated.

Mr. Tracy.—Don't you know that it was widely circulated? A. I know that it was published in *The Graphic.* That is all I know about it.

Q. Don't you know it was published in other papers? A. I read it in *The Graphic*, sir; I don't remember having read it in the other papers.

Q. You don't know that it was published, for instance, in *The New York Herald*, *Tribune*, or *New York Times?* A. In full, I do not.

Q. Was the larger proportion of it published? A. I don't know that.

Q. Was any of it published in *The Tribune*, or *The Herald*, or *The Sun*, or *The World*, or *The Times*, to your knowledge? A. I don't recollect.

Q. Do you know the fact whether your statement was published in any other paper except *The Graphic?*

Mr. Fullerton.—Now, does the court permit this long investigation about the different papers in which that statement was published? I do not see how it adds to its force at all, that it was widely circulated.

Mr. Tracy.—I will show you.

Mr. Fullerton.—I am not asking you to show me; I am objecting to your question.

JUDGE NEILSON.—Let him answer.

Mr. Fullerton.—Well, sir, if your Honor sees fit to let it in I have nothing to say.

[Question repeated.] A. I don't know the fact, sir, that it was.

Mr. Beach.—I am perfectly willing he should give his supposition or his presumption if they want it.

Mr. Evarts.—We don't want his supposition; we want the state of his knowledge.

Mr. Tracy.—Now, do you know this fact, whether the statements and omissions of statements—what your first statement stated, and what it omitted to state, were subjects of criticism by the public press before your second statement was completed? Do you know that? A. Whether the statements of what it omitted——

Q. Yes, sir.

Mr. Evarts.—What was in, or what was out?

Q. Whether it was a subject of criticism by the public press before your second statement was completed? A. I was told, I think, by Gen. Butler, that it was.

Q. I didn't ask what you were told. I ask you, sir, whether you know the fact? I don't propose to go into declarations or conversations. A. I don't recollect that fact now, sir. What I do recollect is that Gen. Butler told me that I was criticised for something that the first statement omitted.

Q. I don't ask you what he told you. A. Well, I don't know that you do.

Q. Did you show either of these statements before their publication to Theodore Tilton? A. I think I read a portion of the first one.

Q. I did not ask you whether you read it; I asked you whether you showed it to him, and whether it was the subject of conversation? A. It was the subject of conversation before publication; yes, sir.

Q. And did you make Mr. Tilton acquainted with the contents of that statement before its publication?

Mr. Evarts.—Which one are you speaking of?

Mr. Tracy.—The first one now?

A. I think I did; yes, sir.

Q. Did he have it in his possession? A. It was either read by him or read to him, sir.

Q. You don't know which? How long before it was published? A. Just before it was published.

Q. Did he also see your second statement before it was published? A. Yes, sir.

Q. Did he have that in his possession? A. I don't know that he had it in his possession. I had it in mine.

Q. Did you read it to him, or did he read it? A. He read it.

Q. Before its publication? A. Yes, sir.

Q. Previous to that Mr. Tilton had also published a statement in regard to this matter, had he not? A. He published his sworn statement, I believe.

Q. And the cross-examination to his sworn statement had also been published, had it not, previous to your statement? A. I don't recollect whether his cross-examination had been published or not; I think his sworn statement was published.

Q. Did you read the first statement to any one else besides Tilton before publishing it? A. I did not read the first statement to any one besides before publishing it.

Q. Besides Mr. Tilton? A. No, sir.

Q. Did you the second? A. No; I did not read the second statement to any one else.

Q. Then Theodore Tilton was the only party save your legal friend and adviser, who knew or was permitted to know the contents of this statement before publication? A. No; I did not answer in that way.

Q. I asked whether you had read or permitted to be read either of these statements by any one else besides Theodore Tilton. I understood you to say you had not? A. I understood you to say, "had read."

Q. Read or permitted to be read?

Mr. Beach.—No; that was not the question.

Mr. Tracy.—Now I put the question: Had you permitted any other person to read either of these statements before publication? A. I think Mr. Morris read the second statement, or a portion of it.

Q. Any one else? A. Not that I remember.

JUDGE NEILSON.—Bear in mind, General Tracy, that you are inquiring as to collateral matter, and that the answers of the witness will be conclusive upon you.

Mr. Tracy.—So I understaud.

Mr. Evarts.—Not only conclusive, but quite satisfactory.

Mr. Fullerton.—Then they are content with trifles.

Mr. Evarts.—We are asking for the very thing that we are getting, and we are content with that.

Mr. Beach.—We would have given you a stipulation to this same thing.

Mr. Tracy.—We would rather have it before the jury as evidence. We have too many papers already.

Mr. Beach.—I think you have had too many papers for your satisfaction.

Mr. Tracy.—Well, we are content. [To the witness.] Now, Mr. Tilton and Mr. Morris were the only two persons who had been permitted to become acquainted with the contents of these statements before publication? A. Yes; according to my best recollection that is so.

Q. Was this suit pending at the time you showed the second statement to Mr. Morris? A. I don't remember.

Q. Do you remember whether it was or not? A. No; I do not remember the time when the suit was commenced.

Q. Did you show the paper to Mr. Morris, as the attorney and counsel of Theodore Tilton? A. No, sir.

Q. And you made these publications, did you not, because you deemed yourself a party to this controversy? A. No, sir.

Mr. Beach.—What controversy?

Mr. Tracy.—This controversy. [To the witness.] You did not? A. No, sir.

Q. Let me refresh your memory by referring to the book. Please to refresh your memory. A. Yes, sir; where is it?

Q. Look at the fourth paragraph from the end of your statement? A. That is the sentence commencing, "I do not now entertain."

Q. We do not call for the contents; that is the sentence, and I want you to look at it and refresh your memory? A. "Not to aid either party to the controversy."

Q. I only want you to refresh your memory? A. I think that is a correct statement.

Q. Does it refresh your memory on this subject? A. I do not think it does.

Q. As to the point of view in which you published this statement? A. I don't think it refreshes my memory.

Q. You think, after reading that, you did not publish these statements as a party to this controversy, or to protect yourself?

Mr. Morris.—That is quite a different question.

Mr. Tracy.—Ah!

Mr. Beach.—It is, ah!

Mr. Tracy—When I say to this controversy, I do not mean this suit, but to the controversy between Mr. Beecher and Mr. Tilton. If you understand me as referring to this suit by the word "controversy" you misunderstand me.

The Witness.—What is the question now?

Q. I repeat the question whether you published either of these statements in the point of view of your own relation to the controversy then before the public?

Mr. Morris.—That is the first time you have asked that question, instead of repeating it.

The Witness.—I would like to have the question read.

(The stenographer read the question.) A. I would like to explain the reason why: I can not answer the question, yes or no.

Q. I want you to answer the question, if you please? A. I can not answer it fully without saying more than yes or no.

JUDGE NEILSON.—Then proceed.

The Witness.—I published the statement because of the attack of Mr. Beecher upon me.

Q. And you considered that as raising a controversy before the public in which you were a party, did you not? A. I considered it as raising a controversy between Mr. Beecher and myself.

Q. Before the public, and as a party to that controversy, you published these statements? A. Yes, sir.

Mr. Tracy.—Now we have got it.

Mr. Fullerton.—Yes, you have got it, and you had it before.

Mr. Evarts.—We have got his sworn statement.

Mr. Fullerton.—You have, and that is not a thing for you to boast of.

Mr. Evarts.—It is what we wanted anyhow.

Mr. Fullerton.—A great many men get what they want, and don't think it satisfactory.

JUDGE NEILSON.—Now, gentlemen, proceed with the examination.

Mr. Tracy.—Now, Mr. Moulton, coming back—at the time that you were giving Gen. Butler the facts, for either of these statements, did you communicate to him the fact that you have sworn to on this trial in answer to this question: "Let me ask you, was anything said as to the substance of the interview between Mr. Beecher and Mr. Tilton, when you were not present" (that is the interview of the 30th; I read from your direct examination); and you in your answer say: "Why, he told me that Mr. Tilton had told him of the confession of his wife to him."* Now, sir, did you state that fact to Gen. Butler when he prepared your statements? A. Let me see the question on the direct examination. [Book handed to the witness.] What interview is that, Gen. Tracy?

Mr. Tracy.—The evening of the 30th—the night that you went to Mr. Beecher's.

The Witness.—I don't think I told that. You refer now to my answer where he told me that Mr. Tilton had told him of the confession of his wife to him. That is what you ask.

Mr. Tracy.—Yes.

The Witness.—I don't recollect that I told Mr. Butler that.

Q. Then you were asked: "Just repeat now, what he said upon that subject?" "A. Mr. Beecher told me that Mr. Tilton had told him that Elizabeth had confessed, and had read to him what either was a confession or a copy of a confession of Elizabeth of sexual intercourse between them; and he told me that Theodore had told him of the reasons of sending to him the

* See testimony p. 341, *ante*.

letter through Mr. Bowen. That is all that I remember just now."* Now, you told Gen. Butler that? A. I don't remember that I did.

Q. Don't you remember that you did not? A. To the best of my recollection, I did not.

Q. In either of these statements? A. No, sir.

Q. Did you state to Gen. Butler this: "Do you know whether Mr. Tilton kept a copy of that paper of which you now speak, which he gave to you?" "A. He made a copy of it, I think; he made a copy of it."* Did you tell that to Gen. Butler? A. That is with reference to the confession itself?

Q. Yes. A. I think I told him that.

Q. I will ask you hereafter to point it out to me in which statement. A All I told Gen. Butler is not in the statement.

Q. No matter. I ask now what you told Gen. Butler?

Mr. Fullerton.—And the counsel will ask you to point out in the statement what was not there.

Mr. Tracy.—I will ask him to point out whether it was there. I didn't understand the witness to say that it was not there. [To the witness.] Q. Then, did you tell him this: "Did he tell you of his object in going there?' "He told me that Theodore had given him permission to go to Elizabeth for confirmation of the story; nothing further than that?" A. I think I told Gen. Butler that.

Q. On your direct examination, you say, speaking of the interview of December 31st: "He [that is Mr. Beecher], said, of course if this charge is made against me, if Theodore should make any charge against me, my defense would be the technical one of general denial; but with you, since you know the truth, I would throw myself upon your friendship and what I believe to be your desire to save me." A. Where is that?

Q. That is on page 109 of my book, down toward the bottom of the column. A. I think I told him the substance of that, sir. I tried to give him all, as near as I could.

Q. I did not ask what you tried to do, but what you recollect that you did. Do you recollect that you told Gen. Butler that? A. My recollection is that I told him the substance of it—yes, sir.

Q. Did you also give to Gen. Butler the letter of Mrs. Tilton, calling for that paper? A. I took all the papers to Gen. Butler.

Q. Did you give him that paper and call his attention to it? A. I think that paper was among them.

Q. You did? A. Yes; I think that paper was among them.

Q. Has the statement, that you read that letter to Mr. Beecher, on the night of obtaining that retraction, ever been publicly stated by you, before you stated it as a witness upon this stand? A. Publicly stated? No, I think not.

Q. You printed that letter in one of your statements, did you not? A. Yes, sir.

Q. In which? A. I think in the first.

Q. But you did not state that. That interview with Mr. Beecher has al-

* See testimony pp. 341, 342, *ante*.

ways been published as if he surrendered that letter of retraction on your demand, and on yours alone, until this trial, has it not?

Mr. Fullerton.—We object, unless the counsel explains what he means by "has always been published."

Mr. Tracy.—I will amend my question. [To the witness.] That interview with Mr. Beecher has always been published as if he surrendered that retraction on your demand, and yours alone, until this trial, so far as you know, has it not? A. Yes, I think it has.

Q. You always knew that representation of that interview between yourself and Mr. Beecher to be false, did you not? A. What representation?

Q. The representation of that interview, that that retraction was surrendered by him to you, and upon your demand alone? A. No, sir.

Q. You did not know it to be false? A. No; I gave my recollection of it.

Q. Did you know it to be untrue? A. It did not correctly state it; it did not fully state it.

Q. Then you knew it did not fully state the truth, did you not?

Mr. Fullerton.—What?

Mr. Tracy.—The manner in which that interview has been published always.

Mr. Fullerton.—Published where?

Mr. Tracy.—Anywhere.

The Witness.—I gave my recollection of it at the time; that is all I could do.

Q. Answer my question. Did you not always know the true account of that interview would have included the letter of Mrs. Tilton? A. No; I did not remember it at the time that I made that statement.

Q. You mean to say, then, that while you had possession of this letter of Mrs. Tilton, during the two years and upwards of this controversy, you never remembered the fact that you obtained that retraction from Mr. Beecher, by presenting Mrs. Tilton's letter, requesting its return that it might be destroyed?

Mr. Morris.—We object to the assumption that there has been two years of this controversy.

Mr. Beach.—Worse than that. The question assumes as true that this retraction was obtained by the presentation of Mrs. Tilton's letter, which is in direct contravention of the evidence.

Mr. Evarts.—The question does not say that it was obtained by means of that.

Mr. Fullerton.—It does so assume.

Mr. Evarts.—It should not. That is not the point. The point of the inquiry is that the surrender of the retraction which Mr. Beecher had, was obtained by the use of this letter at the time that it was obtained. The contrary has always been published, as he states. Now General Tracy asks if the gentleman knew during this time that this letter had been presented to Mr. Beecher.

Mr. Beach.—The contrary has not been the universal statement. The fact simply is that Mr. Moulton now reveals in his evidence that when the application was made to Mr. Beecher for this retraction, he read the letter of re-

quest from Mrs. Tilton, and the additional fact now appears that the circumstance of reading that letter to Mr. Beecher had been omitted in the statement that has been given by Mr. Moulton.

Mr. Evarts.—The existence of the letter—the presentation of the letter.

Mr. Beach.—Not the existence of the letter, for it had been published.

JUDGE NEILSON.—In other words, the letter is not referred to in the statement.

Mr. Beach.—Not only has it been referred to, but it was published.

Mr. Tracy.—Published without connection with this interview?

Mr. Beach.—No; the question is as to the omission of the witness in his statement to reveal that on the application to Mr. Beecher, this letter was presented to him at the time. Now, the question assumes that the retraction on that occasion was obtained on the presentation solely of that letter.

Mr. Evarts.—No, it does not.

Mr. Beach.—It was a mere omission of the letter from the statement.

Mr. Tracy.—A very remarkable omission. I characterize it a willful omission.

JUDGE NEILSON.—I don't think that that expression is called for.

Mr. Tracy.—I don't think that either expression is. The gentleman had no right to say it was a "mere omission."

[Question read again at witness' request.]

Mr. Beach.—Now, that assumes two or three facts.

Mr. Tracy.—I will change the form of the question.

Mr. Beach.—To an intelligible question, that the witness can understand.

Mr. Fullerton.—One that you can understand yourself.

Mr. Tracy.—I will try to understand, and make understood, my question.

Q. Do you mean to say that it never occurred to you that you presented and read that letter of Mrs. Tilton to Mr. Beecher on this night of obtaining this retraction, until after you had made both of your statements? A. Yes, sir; I did mean to say that. Let me explain my answer to that question.

[Question repeated.] A. No, I do not mean to say that. My answer to that question was wrong. I will explain the answer. I mean to say it did not occur to me at the time that I made the statement. That is the way that I want to answer the question. I want to strike out of my answer the part that it never occurred to me; it did occur to me.

Mr. Evarts.—The answer of the witness is no; and now he makes an explanation.

Mr. Fullerton.—The answer "no," simply, was wrong when he understood the question.

JUDGE NEILSON.—Strike out the word "no," and put down the last answer.

Mr. Beach.—Will your Honor permit me to suggest: The witness answered the question first in the affirmative, and then upon the explanation answered it no, and answered it correctly no. He then asked your Honor for permission to explain, which was accorded him, and he has done so.

Mr. Evarts.—That is exactly what we have just stated.

Mr. Tracy.—How long, prior to your making these two statements, did

you recollect the fact of your having presented this letter to Mr. Beecher and read it to him on the night of obtaining this retraction? A. I can not say, sir; that matter had not been in my mind on this subject for a long time; there had not been anything in my mind for a long time.

Q. You can not say how long? A. For a good while; I do not think I charged my mind with the interview particularly after it occurred.

Q. Until when? A. Until I commenced to make the statement—until I was with Gen. Butler; and at that time I undertook to tell Gen. Butler——

Q. No matter about that—the time is what we want, and that we have got. Now, your attention was first called to this interview between yourself and Mr. Beecher by the publication of the statement in what is known as the Woodhull statement? A. Called to what?

Q. To this interview between yourself and Mr. Beecher—by any public statement, first in the Woodhull statement? A. By any public statement? I think that was it.

Q. Did you at the time of that statement remember that you presented to Mr. Beecher this letter on the night that you obtained that retraction, and read it to him? A. I do not recollect that I remembered it then. I do not recollect now that I remembered it then.

Q. Did you recollect it at any time intermediate the publication of the Woodhull statement and the making of this last publication? A. I don't know that I did; I don't know that I tried to recollect the circumstance.

Q. Explain your answer that you have already made, by telling us what you mean when you say that it had occurred to you, and your answer saying that it never had occurred to you was erroneous?

Mr. Beach.—That is not so. He always remembered it. There is quite a difference between having it in the memory and having it occur to a party at different times, or at a series of times. Why did you not ask him whether it occurred to him?

Mr. Evarts.—That is the question—had it never occurred to him?

Mr. Tracy.—Now, I ask you, beginning with the first publication; let me see if I understand you correctly; I understand you to say, now, that when you read the Woodhull publication, with its account of that interview, the fact that you did present to Mr. Beecher that letter on that night did not occur to you?

Mr. Beach.—That question improperly assumes the Woodhull statement refers to that interview, and contains an account of it.

Mr. Tracy.—The witness has already sworn to that; that was the pistol scene.

Mr. Beach.—He has not.

Mr. Tracy.—I take it that when he referred to the pistol scene he has already sworn to it.

JUDGE NEILSON.—What the counsel suggests is that it did not appear that the fact was in the Woodhull statement.

Mr. Tracy.—The fact was not in the Woodhull statement; that is just the point.

Mr. Beach.—For the purpose of this discussion, I deny that.

Mr. Evarts.—Are you arguing it now?

Mr. Beach.—I am arguing against your question.

Mr. Tracy.—The question is: Did you read that part of the Woodhull statement which referred to the interview between yourself and Mr. Beecher on the night this retraction was obtained? Did you read it?

Mr. Beach.—I object to that as assuming that something appeared in the Woodhull statement.

JUDGE NEILSON.—That is a good objection.

Mr. Tracy.—Does your Honor decide that the paper being in evidence collaterally, the witness can not be asked whether he read it?

JUDGE NEILSON.—The Woodhull paper is not in evidence collaterally, or in any other way; and in putting the question, you can not assume a fact that has not been proved.

Mr. Tracy.—I asked him whether he read it.

Mr. Fullerton.—No, you did not ask him that.

[Mr. Fullerton asked the stenographer to read the question, and it was done.]

Mr. Tracy.—I understand the counsel to say that he talked about the Woodhull statement.

[Mr. Tracy then read from the witness' testimony of yesterday the passage between figures (1) and (2) on p. 509, *ante.*]

Mr. Tracy.—Now, the pistol scene is this interview.

Mr. Beach.—The counsel has succeeded in throwing utter darkness upon this matter.

Mr. Tracy.—Now, I ask you whether the Woodhull publication recalled the fact to you that you presented this letter to Mr. Beecher, on the night that you obtained the retraction.

The Witness.—I don't remember whether it did or not.

Q. Then if that did not bring it to your mind, tell us when and where it was that you did remember the fact that you presented that letter to Mr. Beecher on that night? A. Yes, I will.

Q. When did you remember it? A. Well, sir, a few days ago—say a few days ago—perhaps two or three weeks ago—two or three weeks ago; Theodore Tilton told me——

Q. I don't ask what he told you; I asked when you remembered it? A. I think two or three weeks ago.

Q. That answers the question. That is the first that you recollect the fact? A. I did not say so.

Q. Well, is it? A. Since when?

Q. Since it occurred? A. No, I don't think it was.

Q. How long did you remember that fact? A. I don't know how long I remembered it.

Q. That is enough on that subject. Now, after the night of the 31st of December, when did you next see Mr. Tilton? A. After the night of the 31st of December, when did I next see Mr. Tilton?

Q. Yes, sir. A. I saw him January 1st, I think.

Q. What time of day? A. I can not remember the time of day.

Q. Where? A. I think at my house in Clinton-street.

Q. Did he come by appointment? A. I don't remember that he did.

Q. What day of the week was January 1st that year? A. I think it was Sunday.

Q. Did you know on that day that he had been discharged by Mr. Bowen from *The Union*, and as contributor to *The Independent*—on the 1st day of January? A. I think I learned it for the first time on the night of the 31st of December.

Q. What time of night? A. Very late, when I got home.

Q. After you returned from Mr. Beecher? A. Yes, sir. I say "very late;" not very late—somewhere between nine and twelve o'clock.

Q. But it was after you returned from Mr. Beecher and after you had obtained this retraction? A. Yes, sir.

Q. This was the first you knew of it? A. Yes, sir.

Q. That is, the discharge? A. Yes; that is the first I knew of it.

Q. What time of day did you visit Mr. Beecher on the 1st of January? A. I think it was about—it was in the afternoon, some time toward evening.

Q. What time? A. I don't remember the time exactly. It was between four and seven o'clock, I think.

Q. Can you approximate any nearer than that? A. I don't think I can now; somewhere between four and seven.

Q. Do you recollect whether it was before or after dark when you went there? A. It was before dark, I think.

Q. Was it after dark when you left? A. I think the gas was lighted when I left.

Q. And where was that interview? A. In his study, sir; I think it was in his study.

Q. Was the gas lighted when you went in? A. I don't think it was.

Q. Did you find him in the study, or did he go there with you? A. I think we went into the study together.

Q. How long had you been there, do you think, before the gas was lighted? A. Oh! I suppose an hour or more.

Q. How long did you remain at that interview with him? A. I guess I may have remained an hour and a half or two hours.

Q. You remember distinctly his lighting the gas that night, do you?

Mr. Beach.—He has not said so. The counsel assumes that the gas was lighted.

Mr. Tracy.—I understand him to say that the gas was lighted.

JUDGE NEILSON.—He said the gas was not lit when he went there and it was lit when he left.

Mr. Morris.—He said that he thought that the gas was lit when he left.

JUDGE NEILSON.—Now he is asked if he remembers distinctly Mr. Beecher lighting the gas.

Mr. Beach.—The question assumes that the gas was lighted in the study.

Mr. Tracy.—The witness says the gas was not lit when he went in, and that it was lit when he came away. He says that the interview was in the study; and now I ask him if he saw Mr. Beecher light the gas?

Mr. Morris.—The witness did not say that the gas was lighted when he left; he said that he thought it was; that was the testimony.

Mr. Tracy.—Did you see Mr. Beecher light the gas? A. I don't remember that Mr. Beecher lit the gas.

Q. Did you light it? A. I don't know whether I did or not.

Q. Did any third party come in to light the gas? A. I don't remember.

Q. Was it lit when you came away? A. In the study?

Q. Yes? A. I don't remember that it was in the study.

Q. Where was it lit, if not in the study? Q. I don't know that it was lit anywhere; I think the gas was lit when I went away.

Q. Do you mean to say that the gas was lit in the street when you went away? A. I think it was.

Mr. Tracy.—It is now four o'clock, if your Honor please, the hour of adjournment.

JUDGE NEILSON.—I suppose you think it is time the gas were lit.

Mr. Tracy.—No, sir; I think it is time to extinguish it.

THIRTEENTH DAY, JANUARY 21, 1875.

FRANCIS D. MOULTON recalled, and the cross-examination continued.

JUDGE NEILSON.—Will the counsel proceed?

Mr. Evarts.—There is one point, if your Honor please, that was reserved for your Honor's consideration and determination, which, perhaps, it may be proper now to call up, if your Honor has considered it, or, if not, to ask your attention to it.

JUDGE NEILSON.—As to the admission of a paper?

Mr. Evarts.—As to the admission of what is called the West charges, on the evidence, as it stood after the witness' correction.

JUDGE NEILSON.—I think I will let it stand. Is Judge Porter still ill?

Mr. Evarts.—Yes, sir; Judge Porter is still ill, though his physician hopes he may be able to be out to-morrow; though that is not certain. It is necessary for us, of course, to know whether the paper is in or not.

JUDGE NEILSON.—Consider it in.

Mr. Evarts.—Your Honor will note our exception.

JUDGE NEILSON.—Yes, sir.

Mr. Tracy.—Mr. Moulton, how long was the interview which you had with Mr. Beecher on January 1st? A. My impression is, sir, that it may have lasted an hour or two.

Q. Can't you approximate more nearly than that? A. No, sir; not more nearly than that.

Q. At what point of the interview did you begin to write the letter—the paper that was written on that day? A. Shortly after the termination of the first expressions of Mr. Beecher. Call it the beginning, if you please; not the first thing, but the beginning, after he had expressed to me his sorrow for what he had done.

Q. Was Mr. Beecher moved with deep feeling on that day? A. He was, sir.

Q. Was he walking the floor most of the time during that interview? A. I don't think he was, sir; my recollection is that he was not.

Q. Was he sitting or standing? A. I think he was sitting, sir, by the table.

Q. By the table? A. Yes, sir; I think so.

Q. What was your position? A. I was sitting.

Q. Where? A. By a table, I think; I think there was a table there.

Q. At the same table? A. I should think it was the same table; yes, sir.

Q. On different sides of the table? A. My recollection is that Mr. Beecher was at the end and I was in the front of it; as if one should be seated as Mr. Beach is, sir.

Q. Was it some remark that Mr. Beecher had made expressing his feeling towards Theodore Tilton that led you to suggest the writing of that paper? A. Yes, sir.

Q. Then you suggested it, did you? A. I said to him that he better put that——

Q. Answer my question. Are you the one who, at that interview, suggested the preparation of a paper?

JUDGE NEILSON.—[To the witness]. You were proceeding to answer. Go on, sir.

A. Yes; I suppose I might have been considered the person that suggested it.

Mr. Tracy.—Were you the person? A. If your Honor will allow me to explain——

JUDGE NEILSON.—State what you said? A. Yes, sir. I said "Mr. Beecher, if you feel in this way towards Mr. Tilton, it seems to me that if you should so express yourself to him it would make an end of this trouble. It seems to me that it would be the best thing that you could do to so state to him." And then he said to me, "Take pen and paper, and I will."

Q. How long had that interview continued between you before that began? A. Not very long, sir.

Q. Before you took pen and paper? A. Not very long—not half an hour—I should think it was half an hour.

Q. Upon how many different subjects had you conversed before you began to write? A. Only on one or two. As near as my recollection serves me, I told him about taking back—I said to him, "Mr. Beecher, I took back that recantation to Theodore last night," and I said to Mr. Beecher, "He seems to me to be in the spirit of saving his family, no matter what comes to himself;" and then Mr. Beecher proceeded to say that he felt great sorrow.

Q. I did not ask you what either party said; I asked you for the subjects that you conversed on? A. Well, that was it.

Q. That was one subject? A. Yes, sir; the recantation, and then his expression of sorrow followed it.

Q. Was anything said about Mr. Tilton's condition financially, and his

prospects, now that he had been discharged from the employment of Mr. Bowen? A. No, sir.

Q. Nothing at all? A. No, sir.

Q. At no part of that interview? A. No, sir.

Q. Either before or after the writing of the letter—of the paper? A. No, sir.

Q. Did you tell Mr. Beecher that Mr. Tilton had received letters dismissing him from Bowen's service? A. I don't remember that I did, sir, at that stage of the conversation.

Q. At any stage of the conversation? A. Very likely I did, sir; I don't remember that I did.

Q. Well, did you? A. I don't recollect now that I did, sir.

Q. Do you recollect that you did not? A. I haven't any recollection upon that subject.

Q. You had learned it for the first the night before? A. Yes, sir.

Q. This was the first interview you had had with Mr. Beecher after learning that fact? A. Yes, sir.

Q. And you don't recollect of having mentioned it? A. I don't recollect that now, sir; no.

Q. Did you have any further talk about the stories that Bowen had circulated in regard to Tilton, at that interview, before the writing of the paper? A. No, sir; I think not.

Q. You think not? A. No, sir; not before the writing of the paper.

Q. Did you, at any time during that interview? A. Yes, sir.

Q. After the writing of the paper? A. My recollection is that it was after the writing of the paper; yes, sir.

Q. How long after? A. Well, I should say shortly after.

Q. What did Mr. Beecher say at that interview about these stories? A. He said that he had mentioned in his interview with Mr. Bowen when Bowen brought him the letter demanding his retirement—he said that he had told Bowen—I think that Mr. Bowen had mentioned the name of a woman, and Mr. Beecher said that he had heard the same story, and had rather joined Mr. Bowen in that story; and he said he would take it back.

Q. He mentioned the name of a woman? A. He said that he had heard the name of a woman. He said that he had heard the same story.

Q. Was her name mentioned there between you and Mr. Beecher? A. Yes, sir; her name was mentioned.

Q. What was said about the woman? A. He said that Mr. Bowen had told him of Mr. Tilton's intimacy with this woman, or of the stories concerning his intimacy with this woman; that he, Mr. Beecher, had told Mr. Bowen that he had heard the same stories concerning her; and I said to Mr. Beecher —is that right, sir?

Q. Go on. A. And I said to Mr. Beecher that I thought it was very unjust towards the woman and very unjust towards Theodore; that I knew both parties and I did not think that there was anything wrong between them at all, and from my acquaintance with Theodore Tilton I had the highest confidence in him; and from my knowledge of the woman, and from my

acquaintance with her, I had the highest confidence in her, and I didn't think any such story was true. That is the substance.

Q. You pronounced it untrue, didn't you? A. Yes, sir.

Q. Didn't you say you knew all about their relations and you knew they were untrue? A. No, sir; I didn't say that.

Q. Didn't you say you knew enough about their relations to know that they were untrue? A. No, sir; I said from what I knew of their relations—from what I knew I should judge it to be untrue and unjust.

Q. Did you say you should judge it to be? A. Sir?

Q. Did you say that you should judge it to be untrue? A. The substance of what I said, sir, was the word "judge."

Q. Didn't you say that, from what you knew of their relations, you knew that that story was untrue? A. From what I knew of the parties, sir; not of their relations.

Q. Well, of the parties? A. Yes, sir; I believed the stories were untrue.

Q. What did Mr. Beecher say in answer to that? A. He said he was very glad to hear it.

Q. When Mr. Beecher told you that he was glad to hear that it was untrue, did he express any sorrow for having repeated that story to Mr. Bowen? A. Yes, sir; he said he was sorry.

Q. That he had repeated it? A. Yes, sir.

Q. How did he say, and what on that subject? A. He said he was very sorry if he had done an injustice to the woman and to Theodore.

Q. And to Theodore? A. Yes, sir.

Q. Didn't he express himself warmly on that subject of the injustice that he had done them? A. He expressed himself sincerely, sir, I should say, and he said he would write a note to Mr. Bowen taking it back.

Q. Did he draft a note there? A. No, sir.

Q. Well, did he write it there? A. No, sir.

Q. Did Mr. Beecher at that interview state anything about Bessie Turner? A. I don't think he did at that interview, sir.

Q. Had he, at any of the interviews previous to that, said anything about Bessie Turner? A. I don't remember that he had, sir, said anything about Bessie Turner.

Q. Her name had not transpired? A. Not up to that time.

Q. When do you remember its transpiring between Mr. Beecher and yourself first? A. Some time after the first of January.

Q. Well that is quite indefinite. Can't you be more definite than that? A. I should think, sir, it was between January 1st and January 10th.

Q. Didn't Mr. Beecher tell you at that interview that the girl Bessie Turner had come to him along in the last days of December, and reported to him one or two scenes as having transpired between her and Theodore Tilton? A. No, sir.

Q. You knew the girl Bessie Turner at that time, did you not? A. I had seen her at Mr. Tilton's house.

Q. She was a girl living in Mr. Tilton's family—a young girl was she not? A. I saw her at Mr. Tilton's house; I believe she was living there.

Q. Don't you know she was living there? A. I believe she was; I think she was living there, sir.

Mr. Tracy.—[To the court.] Your Honor made a suggestion that I did not hear.

JUDGE NEILSON.—He had answered that she was living there.

Mr. Tracy.—I understood the witness to say that he saw her at the house.

Q. How long a time had she been living there? A. I don't really know.

Q. When Mr. Beecher spoke to you about Bessie Turner, whether it was on this day or some subsequent day, did he tell you the particulars of what Bessie Turner had told him? A. Of what she had told him personally?

Q. Yes, sir; concerning Theodore Tilton? A. I don't know whether he told me what she had told him personally. He certainly mentioned Bessie Turner's name, and said that the information came from her; whether from her directly or not, sir, I don't remember. I think it did.

Q. What was the information that he stated as coming from Bessie Turner concerning her relations with Theodore Tilton? A. That the story was that Theodore Tilton had carried her from her bed to his own; some such story as that.

Q. In the night? A. I don't remember whether it was in the night, sir. I suppose it was in the night.

Q. Well, didn't you understand it to have been in the night? A. I suppose I did; yes sir.

Q. And didn't you understand that he had attempted to detain her in bed for some little time? A. I didn't understand anything, except that he had taken her from her bed, sir; that is all.

Q. And carried her to his own? A. Yes, sir.

Q. In the night time? A. Yes, sir.

Q. Did you understand whether he had got in bed with her? A. I didn't understand that, sir.

Q. Did you understand that there was only one instance of that? A. That is all, sir.

Q. Did you understand that she had represented him as on another occasion coming to her bed in the night? A. No.

Q. You never heard of but one transaction? A. That is all, sir.

Q. In regard to Bessie Turner? A. That is all.

Q. When that was told to you what did you say about it? A. Well, I said I could not believe that story; it seemed to me entirely improbable.

Q. What did Mr. Beecher say? A. He said that was the story; that is all.

Q. Did he speak of that as one of the stories that he had mentioned to Bowen? A. No, sir.

Q. He did not? A. No, sir.

Q. What other stories did he say that he had mentioned to Bowen? A. That is the only one that I call to mind—the Bullard story.

Q. That is the only one of which he gave you details? A. Yes, sir.

Q. But did he say that he had mentioned to Mr. Bowen other stories concerning Theodore Tilton? A. No, sir; I think that is the only one—the Bullard story.

Q. Do you mean to say that Mr. Beecher did not mention any other names? A. That is all that I recollect, sir; that he told me that he had mentioned Mrs. Bullard's name to Mr. Bowen.

Q. Did he say or not that he had told Bowen of other stories concerning Tilton, without mentioning names? A. I don't remember that he did.

Q. You don't remember that he did? A. No, sir.

Q. Now, when he told you about Bessie Turner, didn't you express yourself concerning that story to him more strongly than you do now? A. I don't know whether—I don't remember whether I did or not, sir; the substance of what I have said to you I stated to him

Q. Did he tell you at the time that Bessie Turner had told other people of this story besides himself? A. I think that he may have told me that, sir.

Q. You learned the fact either from Mr. Beecher or some one else, that she had told this story to other people, did you not?

Mr. Beach.—Wait one moment. What he learned from other people, I object to.

Mr. Evarts.—That was not the question, if your Honor please; that he heard it *either* from Mr. Beecher or other people.

JUDGE NEILSON.—If he heard it from other people, it is immaterial.

Mr. Evarts.—That is not our question, if your Honor will allow me. We are trying to find out whether he heard it from Mr. Beecher.

JUDGE NEILSON.—Yes.

Mr. Evarts.—That the story had been told to other people. The witness is not certain about that, as I understand. Now, we ask him whether, either from Mr. Beecher, or from some one else, he had heard that she had told the story to others—as a part of the further examination. "Now, don't you remember that you heard it from Mr. Beecher?"

JUDGE NEILSON.—Whatever Mr. Beecher said is to be received, not beyond that.

Mr. Evarts.—That is our point, of course, to get at what he said, and to probe him to get at it.

Mr. Tracy.—Your Honor rules out the question as it stands?

JUDGE NEILSON.—So far as it relates to other people.

Mr. Tracy.—Your Honor will note our exception.

JUDGE NEILSON.—The current rumors of the town, I do not wish to hear.

Q. At the time you were having this interview with Mr. Beecher about Bessie Turner, had you heard, or did you know that Bessie Turner had told the story to other people besides Mr. Beecher? A. No; I did not know at that time.

Q. Now, at this interview on the 1st of January was the Winsted matter again talked about between yourself and Mr. Beecher? A. No, sir; I think not, sir; no.

Q. Was anything further said about the stories that Bowen had told concerning Tilton at that time? A. I think not.

Q. That Bowen had told concerning Tilton? A. No; I think not.

Q. Was not the subject of Mr. Tilton's relations with another lady a matter of conversation between you and Mr. Beecher? A. No, sir.

Q. Did you never hear from Mr. Beecher at any time that Mr. Bowen had reported to him the name of another woman with whom Mr. Tilton was connected? A. No, no.

Q. Had you heard at the time you were talking with Mr. Beecher that Mr. Bowen had charged Mr. Tilton with having made an improper proposition to another lady, and that—— A. No, sir.

Mr. Beach.—[To the witness.] Wait one moment; please do not answer; his question was not finished; and I do not get an opportunity to object.

The Witness.—Pardon me, sir.

Q. Did you never hear that?

Mr. Beach.—That is objected to.

JUDGE NEILSON.—Ruled out.

Q. Did you never hear it from Mr. Tilton or from Mr. Beecher?

Mr. Beach.—Hear what?

Mr. Tracy.—That Bowen had charged Mr. Tilton, prior to discharging him, with improper relations, or with an improper attempt in respect to another woman? A. Did I ever hear it?

Q. From either Tilton or from Mr. Beecher?

JUDGE NEILSON.—That Bowen had so charged?

Mr. Tracy.—That Bowen so charged? A. I don't recollect that I did; I don't recollect that.

Q. Are you sure that you did not? A. I haven't any recollection about it now, sir.

Q. At that interview of January 1st, did Mr. Beecher mention to you that his wife had taken an active interest in behalf of Mrs. Tilton as against her husband? A. Not at that interview; my recollection is, that it was not at that interview, sir; it was the interview of December 31st; I spoke to him about it myself.

Q. You think that that subject was not referred to again in this conversation of January 1st? A. My recollection is that it was not.

Q. Well, what subjects did you and Mr. Beecher converse about on that day; just name the topics of conversation so far as you can remember? A. The effect of the recantation upon Theodore Tilton; Mr. Beecher's expression of contrition for the crime that he had committed against Elizabeth Tilton and Theodore Tilton, and his expression of regret that he had mentioned Mrs. Bullard's name to Mr. Bowen; those are the three distinct subjects that I now recollect.

Q. And the only three that you recollect? A. Those are the three, sir.

Q. I understand you now to say that it was on Dec. 31st that Mr. Beecher told you that Mrs. Beecher and himself had been taking an active part with Mrs. Tilton against her husband? A. My recollection is that way; yes, sir.

Q. Now, when you began to write this letter, you say Mr. Beecher dictated it? A. Yes, sir.

Q. Did he dictate all of it? A. Yes, sir; he dictated all of it.

Q. Every word that you wrote on that paper was dictated by Mr. Beecher? A. My recollection is, sir, that I put over the top of it, "In trust with F. D. Moulton," myself, either before or after the letter was finished

Q. Can you tell which? A. I think it was put over before, sir.

Q. And that part of it was not dictated by Mr. Beecher? A. That part of it was not dictated by Mr. Beecher; my recollection.

Q. Was everything else on the paper dictated by Mr. Beecher? A. Every word, sir, with the exception of that that he wrote himself.

Q. Did he dictate it, sentence by sentence? A. He did.

Q. And you wrote it down, sentence by sentence, as he dictated it? A. I did.

Q. Will you produce that? [Letter "Exhibit No. 2," produced, see p. 346, *ante.*] Did he dictate the words, "My Dear Friend Moulton?" A. He did.

Q. Have you, from Mr. Beecher, during the four years of correspondence, any other communication from him that commences, "My Dear Friend Moulton?" A. I am sure I don't know, sir, whether I have or not.

Q. Don't you know whether you have or not? A. I do not.

Q. Can you recall a single one which he ever commenced, addressed to you in that way? A. I can not, sir; I can not recollect the way in which any of them commences.

Q. He has written you a great many letters, has he not? A. He has.

Q. You put the words, "In Trust with F. D. Moulton," at the head of the paper, and Mr. Beecher, at the bottom of it? A. Yes, sir.

Q. Did you have any conversation about what that meant—what it was——

Mr. Fullerton.—One moment; that is a mistake. It is a mis-statement of what is there; it is an incorrect quotation from the paper.

Mr. Tracy.—Well, it is, in one sense, that it is not literal—literally repeating both phrases; but with that exception, it is as near literal as one expression can make the two; and it is a declaration of trust at the bottom and foot of the letter.

Q. Now, did you have a conversation with Mr. Beecher as to the nature of this trust? A. I think I did; yes, sir.

Q. What was to be the nature of the trust in which you took that letter—that paper? A. I was to do with that paper, as a friend of Mr. Beecher, what I thought it was judicious to do with it—was to show it to Theodore Tilton—was to show it to Theodore Tilton.

Q. Judicious with reference to what object? A. With reference to the reconciliation of the differences beween Mr. Tilton and Mr. Beecher.

Q. You were to show it to Mr. Tilton? A. Show it to him, or hand it to him, or let him read it through.

Q. Which? A. Anything that I chose to do with it; it was an absolute trust with me, to do with it as I saw fit.

Q. To use for that object? A. Yes, sir.

Q What else were you to do with it? A. What else was I to do with it?

Q. Yes. A. Anything that I chose, in accordance with that purpose.

Q. Were you to part with it? A. Was I to part with it? No, sir; I was to keep it; not to part with it, sir, to anybody but Theodore Tilton.

Q. Were you to part with it to Theodore Tilton? A. To do anything

with it with regard to Theodore Tilton that I chose for the purpose of reconciliation.

Q. Were you to give it to Theodore Tilton? A. Give it to him if I saw fit.

Q. What was said about it? A. That is the purport of what was said about it.

Q. Was it said that you could deliver this paper to Theodore Tilton, and leave it with him if you saw fit? A. There was no restriction whatever put upon my action with regard to it.

JUDGE NEILSON.—Then that was not said, as I understand? A. No, sir.

Q. That was not said? A. No, sir.

Q. Was anything said except what would be implied by the phrase, "in trust"? A. I told Mr. Beecher that I thought it better—that these words better be put over the top of it: "In Trust with F. D. Moulton," in order that that letter might be under my control; that was the point, sir.

Q. And it was put there for that purpose? A. Yes; by me.

Q. Now, was there anything further said than what you have now stated in regard to the nature and object of this trust? A. I don't recollect, sir, at present, that there was.

Q. When I say, "by what you have now stated," I mean what you have last repeated? A. Yes, sir.

Q. You understand the question? A. Well, sir, will you repeat it, so that I may understand fully; perhaps I do not.

Q. Was there anything else said as to the nature and object of this trust, except that it was put there to show that this letter was to remain in your custody and under your control? A. Under my control; I don't think there was anything else.

Q. Nothing else said about that? A. I do not remember that there was.

Q. Now, what did you do with this paper when you got it? A. I took it to Theodore Tilton, after I left the house, and read it to him.

Q. Same night? A. Yes, sir.

Q. Did you give it to him? A. I don't know whether I handed it to him or not to read, or whether I read it to him; my impression was—is, that I read it to him.

Q. Will you say that you did not deliver this paper to Theodore Tilton and leave it with him for a time? A. I did not leave it with him for any time that night, sir; I don't think I did.

Q. That night? A. He did not take it away from the house, if that is what you mean.

Q. No, that is not my question. Didn't you deliver this paper to Theodore Tilton, and leave it with him for a time? A. Well, sir, I don't recollect whether I did or not.

Q. Do you recollect that you did not? A. I haven't any recollection, sir, as to whether I read it to him; as to whether I read it to him, or whether he took it from my hands to read, my recollection is not specific as to either point.

Q. If he took it from your hands to read, have you any recollection as to how long he kept it? A. I have not.

Q. Can you say that Theodore Tilton did not have this paper in his possession for at least one hour on the night you obtained it? A. I could not say that he had not, sir.

Q. No, sir? Can you say that he did not have it for two hours in his possession? A. Well, my recollection, sir, would be that he had not. If I was to state my recollection—that he hadn't it for two hours.

Q. He didn't have it for so long as two hours? A. No, sir.

Q. What did you do on receiving it back from Mr. Tilton?

Mr. Morris.—He has not said he received it back, yet.

Q. Did you come in possession of the paper?

Mr. Morris.—He has not said he parted with it, yet.

Mr. Tracy.—We know what he said. When do you next recollect being in possession of this paper?

Mr. Morris.—Now, I submit that he has not said that he recollects being out of possession of it yet. The question assumes a fact that has not yet been proven.

Mr. Tracy.—I assume the fact that he has been in possession of it. Now, I ask when he next remembers definitely of being in possession of this paper?

Mr. Morris.—The point is that he has not stated yet that he was ever out of the possession of it.

Mr. Evarts.—The point is this; that he don't recollect. Now, we want him to recollect when he knows he had it.

Mr. Morris.—Well, that is another question. The question is not a proper question, and I object to it.

JUDGE NEILSON.—If you handed this to Mr. Tilton at all, did he hand it back to you? A. I think he did, sir.

Mr. Tracy.—Don't you know whether he handed it back to you that same evening or not, if he had it? A. If he had it?

Q. Yes. A. My recollection is that the paper was not out of my possession all night that night; that I had it.

Q. Then you remember definitely of having had it the next morning, do you? A. I don't remember definitely having had it the next morning.

Q. What did you do with it that night or the next day? A. I put in my bureau drawer.

Q. When did you put it in your bureau drawer? A. That night.

Q. Sure? A. I think so, stating to the best of my recollection.

Q. What time of night? A. After I got through with Theodore Tilton.

Q. What time of night was it? A. I don't remember.

Q. You don't remember? A. No.

Q. When did you next see this paper? A. I don't remember when I next saw it, sir.

Q. Well, when do you next remember of having seen it? A. Distinctly, sir, after the Victoria Woodhull publication, I remember, in your presence.

Q. Do you mean to say that you have no recollection of having seen this paper from the time you put it in your bureau drawer in December, 1870,

until after the Woodhull publication? A. I don't remember anything about it, sir, definitely, up to that time.

Q. Now, which publication was that of the Woodhull's that you refer to? A. The publication of the Victoria Woodhull story.

Q. 1872? A. Yes, sir; 1872, I think.

Q. Well, when you wanted this paper after that publication, did you find it in your bureau drawer? A. No, sir; found it in a tin box.

Q. In a tin box? A. I must have taken it from the bureau drawer and put it in the tin box, I suppose.

Q. Where was the tin box? A. The tin box was in my house.

Q. Was that paper never in your safe? A. I don't think that the confession—that that paper was ever in my safe, sir, I don't remember that it was.

Q. In New York? A. I don't think it was.

Q. And where was the tin box kept in your house? A. Kept in the closet in my front chamber, I think.

Q. Locked? A. Yes, sir; locked.

Q. With what sort of a lock? A. Little padlock.

Q. One of those little cheap padlocks? A. Locked with a small lock, sir, about so——

Q. Do you remember of ever having had that tin box out in presence of Theodore Tilton from the time of receiving this letter of December, 1870, until after the Woodhull publication? A. I don't recollect distinctly the occasion; I may have had it out, sir.

Q. Don't you know you had it out frequently in his presence? A. No, I don't remember that I had it out frequently in his presence, sir.

Q. Well, then, at the next time that you remember of having seen this paper, do you also remember that Theodore Tilton had a copy of it? A. No, I don't remember that he had a copy of it.

Q. When did you first know that Theodore Tilton had a copy of it? A. It was either—I think that the Bacon letter, sir, or else the "True Story" letter, if the thing was in that; it was in one or the other, but I don't think it——

Q. Well, those two transactions or stories are some ways apart, are they not? When was the "True Story" prepared? A. I don't know; I believe it was prepared in the latter part of December, 1872.

Q. And when the Bacon letter? A. The Bacon letter was in eighteen hundred and—this year wasn't it—last year, 1874.

Q. And now do you mean to say that you can't tell on which occasion it was that you found Mr. Tilton had—do you mean to say that you can't tell at which date it was you first knew that Theodore Tilton had a copy of this paper? A. I can't, no; not to swear to it now; I don't remember, sir, whether it was in the "True Story" or not; that is the reason that I can't swear here.

Q. You never remember to have seen the paper until after the Woodhull publication, and you never remember to have known that Tilton had a copy of it until one day that you speak of? A. No; that is the best of my recollection now.

Q. How did you find out that he had a copy of it then? A. The Bacon letter?

Q. This—when you did know it?—when you learned that he had a copy, how did you learn it? A. Learned it from him.

Q. From him? A. From the publication of the Bacon letter, when he read it to me.

Q. Do you mean, then, to say that that was the first time that you knew that he had a copy? A. That is the first time, to my recollection.

Q. Now, sir, didn't he make a copy of this letter in your presence, the very night you read it to him, and the first night you received it from Mr. Beecher? A. No, sir; I don't recollect that he did.

Q. Do you recollect whether he did or not? A. My recollection is that he did not, sir.

Q. And will you swear that you did not know that he made a copy of that letter that night before you put it in your bureau drawer? A. Yes, sir; I should swear to that, sir.

Q. Didn't Mr. Tilton write that letter down, this letter down, in short-hand or otherwise, at the time you read it? A. I don't recollect that he did; my recollection is that he did not.

Q. Your recollection is that he did not? A. My recollection is that he did not, sir.

Q. Now, we will come back to the composition of the letter. Well, I will ask this question before I come back to the composition of the letter. If he didn't do it on that night, did you ever give him any other opportunity to make a copy? A. I may have shown him the letter, sir; if he asked me for it, very likely I did.

Q. Will you say whether you did or not? A. I can not say whether I did or not. I say that if he had asked me for it, I very likely should.

Q. That is not an answer, sir. I am not asking what you very likely should, bnt I am trying to ask what you remember that you did? A. I don't remember that I did, sir.

Q. Then, so far as you know, up to the publication of the Bacon letter, Tilton had no other opportunity to make a copy?

Mr. Beach.—The witness has said that he was uncertain whether it was at the time of the Bacon letter or at the time of the true statement.

Mr. Evarts.—We understand it not. In the later answer of the witness, he fixed the Bacon letter as the date when he first knew it.

Mr. Beach.—He did not.

Mr. Evarts.—I will refer to the stenographer.

Mr. Beach.—The witness was carried to that result by a leading question assuming that fact, and in the face of his direct explanation that he was uncertain which of those periods was the time when he obtained that information.

Mr. Evarts.—We have our views of the testimony, sir, and we do not like to be interrupted in the cross-examination. If there is any question of it, the stenographer's notes can be appealed to.

Mr. Beach.—Well, sir, although the counsel may not like to be inter-

rupted, when I object to a question it seems to be a necessity that he should be. My objection to the question was, sir, that it improperly assumes that the first knowledge of the witness that Mr. Tilton had a copy of this letter was at the publication of the Bacon letter.

JUDGE NEILSON.—I understand him that he got to know the fact with certainty when he saw it in the Bacon letter, but he can not say when he got the copy.

Mr. Evarts.—That we understand.

Mr. Beach.—Well, your Honor is under a wrong impression, I submit, in regard to the testimony of the witness upon that subject, for the witness explicitly stated that he could not say when he first received that information, whether at one time or the other.

JUDGE NEILSON.—Well, then, it is qualified in that way.

Mr. Evarts.—Afterwards corrected.

JUDGE NEILSON.—But he got to a certainty of it when he saw the Bacon letter.

Mr. Beach.—I insist that he did not afterwards correct it.

Mr. Evarts.—That is for the stenographer to decide.

Mr. Beach.—That is for us to decide when the question is based upon an improper assumption of fact.

[Question read by the stenographer.]

JUDGE NEILSON.—"So far as you know or recollect;" please to qualify it in that way.

Mr. Evarts.—[To the witness]. There is no objection. A. I don't recollect, sir, that he had.

Mr. Tracy.—Now, do you know how Mr. Tilton got the copy that he made—that he had—when you read the Bacon letter? A. I don't know specifically; no, sir.

Q. You say you don't know specifically? A. No, sir.

Q. Do you know? A. No, sir.

Q. That is an answer? A. Yes, sir.

Q. Did you ever give him a copy? A. No, sir.

Q. Did he ever take a copy with your knowledge? A. Not that I remember, sir.

Q. Don't you remember whether he did or not? A. No.

Q. Do you mean to say now that you don't remember whether you gave him a copy of this letter?

Mr. Fullerton.—That has been answered over and over again.

JUDGE NEILSON.—He said he had not given him a copy; I think he has answered that point clearly; he did not furnish a copy, and he don't remember how he got the copy.

Q. Did you give him an opportunity to make or take a copy of it?

Mr. Beach—Now, I submit to your Honor that the witness has stated upon the previous examination that he might have handed that letter to Mr. Tilton, and that, undoubtedly, if Tilton applied to him for it, he did so.

Mr. Tracy.—Now, that is reasoning; we want to get facts.

Mr. Fullerton.—There we have the advantage of you.

JUDGE NEILSON.—I think the witness has answered fully.

Mr. Evarts.—Well, if your Honor please, we regard this testimony as important, as subsequent testimony will show, and we do not want to be retarded in our cross-examination by the objections of our learned friends if our questions are proper.

JUDGE NEILSON.—Do you think it proper to repeat a question again and again.

Mr. Evarts.—No, sir. We do think it proper, and fair to the witness also, to have his answers explicit, he understanding what the question is. Now, he says he don't know how Mr. Tilton got the copy. That is answered; we do not repeat that question. We ask him now, did you ever give, in fact, Mr. Tilton an opportunity to take or make a copy of that paper?

JUDGE NEILSON.—Hasn't he answered that?

Mr. Evarts.—Let him answer it if he can.

JUDGE NEILSON.—Well, what is the answer to that question? A. I don't recollect, sir, that I ever gave him an opportunity.

JUDGE NEILSON.—Well, so I understood before.

Q. Now, Mr. Moulton, you were educated at the New York Academy, now called the New York College, were you not? A. Yes, sir.

Q. Since you have been in the firm, you have carried on very much of the correspondence of your firm, have you not? A. Not very much of it.

Q. Whose department is that? A. Mr. Woodruff's and Mr. Maclay's.

Q. You write well, or compose well, do you not?

Mr. Fullerton.—Well, I don't suppose that that is——

The Witness.—I don't think I do, sir.

JUDGE NEILSON.—He has made the same answer I would make.

The Witness.—I don't think I do; thank your Honor.

Q. Well, you carry on a large correspondence, do you not? A. No, sir.

Q. You write many letters every week, do you not? A. No, sir.

Q. Do you not carry on a correspondence with literary people? A. No, sir.

Q. Have you never? A. Yes—slightly.

Q. You understand the rules of composition and punctuation; do you not?

Mr. Fullerton.—I object to this—just one moment.

The Witness [Answering].—Not very well.

Mr. Fullerton.—It is trifling with the time of the court.

Mr. Tracy.—It may be.

Mr. Fullerton.—It not only may be, but it is.

Mr. Tracy.—Well, that is for the court.

JUDGE NEILSON.—He has answered that question.

Q. Do you understand, after a period, how you should commence the next sentence—whether with a capital or a small letter? A. Yes, I do.

JUDGE NEILSON [Noticing laughter in the audience].—Will the audience keep quiet, please?

Mr. Fullerton.—Well, if the counsel are asking these questions for their own information, I won't object. It seems to me to be trifling.

JUDGE NEILSON.—Will the audience please be quiet. [To Mr. Evarts, who was rising.] If you say a word, it will be something that will excite commotion among the audience. Proceed, Mr. Tracy.

Q. Now, Mr. Moulton, I understand you to say that Mr. Beecher dictated this letter sentence by sentence? A. Yes, sir.

Q. And you wrote it down, sentence by sentence, as he dictated? A. Yes, sir.

Q. And he dictated it deliberately? A. Yes, sir.

Q. And you wrote it deliberately? A. Wrote it as he dictated it.

Q. Did you write all that Mr. Beecher said? A. Every word.

Q. And you say that this letter was not written hastily and as rapidly as you could write it? A. It was written as rapidly as I could write it.

Q. Was it written hastily? A. Written rapidly; I don't know what you mean by hastily.

Q. Written rapidly; very well. Was it written by you in an effort to catch the sentences as Mr. Beecher was speaking them? A. As he uttered them for me to write down—as fast as it was necessary to write for that purpose I wrote.

Q. And you wrote after a man who was dictating, rather than after a man who was talking, and whose sentences you were seeking to catch as he talked? A. Yes, sir; a man dictating.

Q. [Handing paper to witness.] Is that your usual handwriting? A. It is a little more distinct than usual. I usually write with a steel pen. This looks as though it was written with a quill.

Q. Do you remember whether you wrote with a steel pen, a gold pen, or a quill? A. I can not recollect. This looks as though I wrote with a quill pen.

Q. As matter of recollection, do you recollect what sort of a pen you wrote with? A. I can not recollect whether it was a quill pen or a steel pen.

Q. Was it one or the other? A. My impression is that it was a quill pen.

Mr. Evarts.—You mean steel or gold pen?

Mr. Fullerton.—No, he means quill pen.

Mr. Evarts.—You mean quill, or steel or gold?

Mr. Fullerton.—He says it is his impression he wrote it with a quill pen.

Mr. Tracy.—I desire now to read this letter with the punctuation and the writing. I want it read as it is written.

Mr. Shearman.—I will read this exactly as it is written here.

Mr. Fullerton.—Of course you will.

Mr. Shearman.—It never has been read as it is written.

Mr. Fullerton.—I beg your pardon, sir, it has been.

Mr. Evarts.—No, sir, not read with the punctuation. He didn't read the punctuation.

Mr. Fullerton.—You don't read punctuation, you observe it.

Mr. Shearman here read Exhibit No. 2 [which will be found on p. 846, *ante*].

The Witness.—That is correct.

Mr. Shearman.—I have read this as it was written. The word "I can't" [in the phrase "I can ask nothing"] is corrected by striking out the "t." After

the words "I will not plead," there are subsequently inserted the words "for myself," but the color or the ink is different where the "t" is crossed and where the words "for myself" are inserted.

Mr. Beach.—Now the question rises whether the gentleman has read it according to the punctuation.

Mr. Evarts.—That will be for the jury.

Mr. Fullerton.—The gentleman promised to read it as it was, and when he got through he confessed he read it as it was not.

JUDGE NEILSON.—I thought he read it very well.

Mr. Fullerton.—Oh! he read it very well.

Mr. Evarts.—He read it according to the original edition, but not according to the revised edition.

Mr. Tracy.—You say Mr. Beecher dictated all that first sentence as a single sentence, do you?

Mr. Fullerton.—He didn't say that.

The Witness.—I said he dictated every word of it.

Mr. Tracy.—I ask you whether Mr. Beecher on that occasion dictated everything, down to the first period marked in that letter, as a single sentence?

Mr. Morris.—There is one point, if your Honor please, I desire to say a word in reference to. The counsel attempted to give a false impression with reference to this letter, and spoke about the different colored ink. Now, the whole letter makes it manifest that the pen did not deliver the ink freely, and a part of many of the words, sometimes the middle of a word, will be pale. For instance, the beginning of that word is one color, and the two letters "g" "h" are pale and the "t" is black, showing the pen did not deliver the ink regularly and uniformly.

Mr. Evarts.—If your Honor please, we object to all this. It is quite competent for our learned friends to comment on this manuscript. It does not falsify our comments that they can make others.

Mr. Beach.—It does answer their comments when they are incorrect.

Mr. Evarts.—We call the witness' attention to it, and it is the honest way, before he leaves the stand, and we intend to do it.

JUDGE NEILSON.—Some impressions are created on your part in reference to the letter or the ink of the letter in this writing, which, perhaps justifies the counsel on the other side making a remark on the subject.

Mr. Tracy.—I ask you whether Mr. Beecher on that occasion dictated everything down to the first period marked in that letter as a single sentence.

Mr. Beach.—The witness has said no such thing.

Mr. Tracy.—I know that, and that is the reason I ask him.

[The stenographer was here directed by the court to read the last question to the witness, which he did.]

Mr. Beach.—I was mistaken.

Mr. Tracy.—I am glad you acknowledge for once you are mistaken.

Mr. Beach.—You will find me always ready to acknowledge my mistakes. They are very frequent and common.

Mr. Fullerton.—You are consuming a great deal of time. We want you to go on with the case.

The Witness.—What is the close of the sentence?

Q. Did Mr. Beecher dictate the letter down to the word "been," in the language I have read as a single sentence? A. He dictated every word. If your Honor will allow me to explain——

Mr. Tracy.—Answer my question first.

The Witness.—I can not answer it yes or no without an explanation. I want to explain that answer, if your Honor will allow me.

Mr. Tracy.—No; if you can not answer that question, that is all.

The Witness.—Very well.

Q. Can you remember what the first sentence was that Mr. Beecher dictated in that letter? A. Every word of the letter he dictated.

Q. I didn't ask you that. I ask you what the first sentence was that he dictated? A. I wrote the words just as they came from his lips, and I can not tell you the first sentence that he dictated.

JUDGE NEILSON.—Did he dictate it in the order in which it is there? A. Yes, sir; that is what I wanted to explain.

Mr. Tracy.—You can not tell the first sentence that he dictated; do you say that? A. The words in the first sentence of this letter, he dictated every word of it.

Q. You have said that he dictated it sentence by sentence, and that you wrote it sentence by sentence as he dictated it. Now, I ask you if you can tell us what the first sentence was that he dictated as a sentence, and that you wrote as a sentence? A. I can tell you what I understand about it; my understanding is, the first sentence he dictated was, "I ask through you Theodore Tilton's forgiveness, and I humble myself before him as I do before my God; he would have been a better man in my circumstances than I have been." That is my recollection of the first sentence he dictated.

Mr. Fullerton.—It is proper here that I should call attention to one fact.

Mr. Tracy.—I submit it is not.

Mr. Fullerton.—I ask the permission of the court to do it.

Mr. Evarts.—I object.

Mr. Fullerton.—I understand you object, but notwithstanding that objection I call the attention of the court to one thing in connection with the writing of this paper just at that point.

Mr. Evarts.—I object to it, and don't go on until his Honor rules on my objection.

Mr. Fullerton.—I shall go on.

Mr. Evarts.—I object to his calling any attention to any fact while we are cross-examining this witness on this paper. Let him call attention to it afterwards.

Mr. Fullerton.—I think it ought to be stated now, because it is a misreading of the letter.

JUDGE NEILSON.—That you can correct on the re-direct.

Mr. Evarts.—We have a right to cross-examine this witness.

JUDGE NEILSON.—I don't need to be told that. The learned counsel on both sides are so anxious to argue that, though I quite understand it. [To

Mr. Fullerton.] I think you had better reserve it for your re-direct; it may be a serious matter.

Mr. Fullerton.—I will reserve it, and it will be a serious matter.

Mr. Tracy.—We are as serious as a pickle here.

Mr. Fullerton.—Yes, and you grow more and more so.

Mr. Tracy.—Yes, sir; my nature is very serious.

JUDGE NEILSON.—The only objection now to what Mr. Fullerton thought himself called upon to say is that some suggestion on his part might put the witness on his guard.

Mr. Fullerton.—Nothing of that kind was in my mind.

JUDGE NEILSON.—That might be in your mind.

Mr. Beach.—We can not know that until we hear the suggestion. It may be entirely proper, but you won't hear it. There is no reason it should be given if the other side object.

Mr. Tracy.—I don't think there is any delay on account of my putting questions.

JUDGE NEILSON.—I don't know.

Mr. Tracy.—Will you tell us the next sentence that Mr. Beecher dictated as such—that you wrote as such in that letter? A. I can tell you the next sentence that I wrote as such.

Q. Can you tell us the next sentence that he dictated as such and that you wrote as such? A. I can give you every word he dictated in the sense that I understand it.

Mr. Tracy.—That will be satisfactory.

The Witness.—"I can ask nothing except that he will remember all the other hearts that would ache. I will not plead for myself. I even wish that I were dead, but others must live and suffer."

Q. What was the next sentence? A. "I will die before any one but myself shall be inculpated," is the next sentence.

Q. What next? A. "All my thoughts are turning toward my friends."

Q. Turning? A. Running.

Q. Which is it? A. I think it is running.

Q. Have you any doubt about that? A. No, sir; I don't think I have.

Q. Go on. A. "Running toward my friends, toward the poor child lying there praying with her folded hands; she is guiltless."

Q. Is there a full stop after the word "hands"? A. No, sir; a semi-colon. "She is guiltless, sinned against, bearing the transgression of another;" that is the sentence—the next sentence that Mr. Beecher dictated to me, as I recollect it.

Q. Is there a period after the word "guiltless," or not? A. No, sir; a comma.

Q. What is the next? A. "Her forgiveness I have. I humbly pray to God that he may put it into the heart of her husband to forgive me." That is the next sentence which I recollect that Mr. Beecher dictated.

Q. How long were you writing that paper? A. Not very long.

Q. About how long should you say? A. Long enough to write it; I don't know. It was dictated right straight along.

Q. Do you write rapidly, or otherwise? A. Oh! fairly, sir; not very rapidly, nor very slow.

Q. Now, do you not write with a good deal of difficulty, mechanically, Mr. Moulton? A. I don't think I write with a great deal of difficulty.

Q. When you are with either Mr. Beecher or Mr. Tilton, are you in the habit of having them dictate to you and you write, or is it your habit to have them write and submit to your criticism? A. I can not say that there is a habit either way.

Q. Of the numerous letters and correspondence that have passed between you and Mr. Beecher, that have been written by Mr. Beecher, can you name a single instance where he dictated any other paper than this, and you wrote it? A. I don't recollect any such instance.

Q. Any such instance? A. No, sir.

Q. During the four years? A. I don't recollect any such instance.

Q. Now, Mr. Moulton, is that in your ordinary handwriting, in respect to the size of the letter, and the matter on a page—the smallness of the matter on a page? A. Is that in my ordinary handwriting?

Q. Yes, sir. A. No, sir, I don't ordinarily write with a quill pen

Q. Is it your ordinary style to spread so little matter over so great a space? A. Well, to spread a very little matter over a very great space?

Q. Is it your ordinary style to spread so little matter over so great a space as you have here? A. I don't know that I can answer that without an explanation. I write a very irregular hand, if your Honor will allow me to say so; I write sometimes one way, and sometimes another.

Q. You mean to say you can not answer the question whether you ordinarily spread as little matter over so great a space or not? A. I think I have often done it, sir.

Mr. Beach.—I think the counsel has given us an example of spreading very little matter on a very great space.

Q. When did you next see Mr. Beecher after you left on the 1st of January? A. On the 2d, I think.

Q. Where? A. At his house.

Q. What room in his house? A. I think I met him, sir, in the parlor, or back parlor, and went up stairs with him from the parlor.

Q. Into what room? A. I don't remember what room.

Q. Do you remember whether your interview was in the study or not? A. I don't remember distinctly whether it was in the study or not.

Q. Do you remember who let you into that room on that occasion? A. On January 2d?

Q. Yes, sir? A. No, sir; I don't remember now. January 2d, I mean.

Q. What time of day did you go there? A. I think in the afternoon, somewhere about five or six o'clock.

Q. Five or six o'clock? A. Somewhere about that; between four and six o'clock.

Q. How long did you remain? A. Not very long.

Q. About how long? A. I don't recollect. I think perhaps an hour,

perhaps half an hour or an hour; it may be two hours. I can not remember it, it is so far back.

Q. Was your interview with him on that occasion alone? A. Yes, sir.

Q. Was it on that day that he showed you the draft of this letter that he had prepared to send to Mr. Bowen? A. Either that day, or a day or two after; I think it was on that day.

Q. Did he read it to you on that day? A. Either that day or the day after.

Q. What did you say on his reading that letter to you? A. I don't recollect precisely what I did say; substantially that it was just.

Q. It was just and truthful, as far as you understood it? A. Yes, sir very likely that.

Q. And did you understand yourself to be the party of whom he spoke when he said, "On the assurances of one," so and so, "I am satisfied that my statement did him justice?" A. Yes, sir.

Q You were the party? A. I think so; yes, sir.

Q. And so understood yourself? A. Yes, sir.

Q. On whose assurances he wrote that letter? A. Yes, sir.

Q. Now, I understood you to say, on your direct examination, that on January 2d it was that you told Mr. Beecher that Mr. Tilton was writing a letter to Mr. Bowen? A. I think it was on that day—yes, sir. Mr. Tilton was writing a letter on January 1st, and I think I told Mr. Beecher on that day.

Q. Is it your recollection you told him on that day? A. Yes, sir.

Q. On January 2nd? A. Yes, sir.

Q. I understand you to say, then, that you had four different interviews with Mr. Beecher on four successive days—Dec. 30th, Dec. 31st, Jan. 1st, and Jan. 2nd—at the house of Mr. Beecher? A. Dec. 30th, Dec. 31st, Jan. 1st, and Jan. 2nd—yes, sir.

Q. On four successive days, then, you distinctly recollect the fact of having those interviews with Mr. Beecher? A. Yes, sir.

Mr. Fullerton.—That is repeating it right over for the third time.

Q. Now, it was at that interview of January 2nd that you spoke to him about Mr. Tilton preparing a letter. What did you say to him about it? A. I said Mr. Tilton was preparing a letter for Mr. Bowen, in which he was going to state substantially what Mr. Bowen had said to him (Tilton) concerning Mr. Beecher, and that I should strive to keep out of it all allusion to Mr. Beecher and to Mr. Tilton and his wife—have the letter simply express what Mr. Bowen had said to him (Tilton) concerning Mr. Beecher.

Q. Well? A. And that after Mr. Tilton had written it, I undertook to get possession of it, and hold it.

Q. For what purpose would you hold it? A. For what purpose? For the purpose of negotiating with Mr. Bowen, among others, and for the purpose of saving the families of all interested—saving all exposure of facts. I didn't approve of that letter.

Mr. Tracy.—I didn't ask you that.

The Witness.—Pardon me, sir.

Mr. Evarts.—Strike that out.

Q. Did you repeat that to Mr. Beecher; the substance of the stories that Mr. Bowen had told Mr. Tilton concerning him, and which Mr. Tilton was to write Mr. Bowen about? A. Did I tell him that?

Q. Yes, sir; on that day? A. No, sir; I don't think I told him the substance.

Q. Didn't he ask you what they were? A. No, sir; I don't think he did.

Q. He didn't ask at all? A. I don't recollect either, to my recollection.

Q. You simply told him Mr. Tilton was writing a letter in which he was going to state what slanders or stories Mr. Bowen had told about Mr. Beecher, and Mr. Beecher did not ask you if you knew what they were? A. I don't remember that he did; a general charge——

Q. Well, what was it? A. Nothing but the charge of adultery. I have said that before.

Q. Did you talk about that then? A. Not the specific charge of adultery; it was only charges of adultery.

Q. Did you say to Mr. Beecher on that occasion it was in regard to Mr. Bowen's charges of adultery against him? A. I think I did; yes, sir.

Q. And you were going to get possession of that letter if you could, and use it in negotiating with Mr. Bowen?

Mr. Fullerton.—He did not state that.

Mr. Evarts.—He did.

JUDGE NEILSON.—Ask him if he was. Your question assumes he was.

Mr. Beach.—The question states but part of the purpose which the witness stated.

Mr. Tracy.—The object will be accomplished. [To the witness.] Did you tell Mr. Beecher that you would get possession of that letter, if you could, in order to use it in negotiating with Mr. Bowen? A. I told him I would get possession of that letter if I could.

Q. Did you tell him the purpose for which you would get possession of it? A. Yes, sir; I did.

Q. What was it? A. For the purpose of letting Mr. Bowen know exactly what he had done to Mr. Tilton, and for the purpose of keeping peace between all the parties.

Q. Did you tell him you would use it for the purpose of negotiating with Bowen? A. Substantially that, I suppose.

Q. What did you tell Mr. Beecher was the object of having this letter written? A. Mr. Tilton wanted to publish it.

Q. For what purpose? A. To make clear to the public the reasons for the severance of his relations with Mr. Bowen.

Q. And you told that to Mr. Beecher? A. Yes, sir; I believe I did.

Q. And that you should prevent the publication of that letter? A. I told him I would try to do it.

Q. How did you know that Mr. Tilton was going to publish it? A. How did I know?

Q. Yes, sir. A. He stated to me that he thought he should.

Q. Before it was written, he stated that? A. Sir?

Q. Before it was written, he stated that? A. When he first commenced to write it, the evening of Jan. 1st.

Q Where did he begin to write it? A. At my house, I believe.

Q. At your house? A. I think so.

Q. Did he finish it on that evening? A. On the evening of January 1st?

Q. Yes, sir. A. I don't think he did finish it all.

Q. How far did it proceed? A. I do not recollect.

Q. Do you know that he did not write the whole of it on that night? A. A rough draft of it was finished at my house that night.

Q. The draft of it was finished at your house on that night? A. I think so.

Q. January 1st? A. Yes, sir.

Q. That was after you had brought the paper that you had got from Mr. Beecher on that day, to Mr. Tilton, and showed it to him? A. He was writing when I got there.

Q. And he finished it that same evening? A. I think he did—the rough draft of it.

Q. And was going to publish it? A. Yes, sir; he thought of publishing it.

Q. He so expressed himself? A. I recollect that subject.

Q. How did you come to meet Mr. Beecher on the 2nd of January? A. By his invitation.

Q. Given on the 1st? A. Yes, sir.

Q. Was Mr. Beecher at home on the 2nd, when you called? A. I think he was; yes; sir.

Q. Now, in your statement to General Butler—

The Witness.—Which one?

Mr. Tracy.—Well, either. Did you say to him that Mr. Beecher asked him if he thought it would be safe for the sale of the Plymouth pews to go on? A. I think I did.

Q. And that was asked at the head of the stairs on January 2d? A. I think I did; yes, sir.

Q. And that you told him: "I told him I thought it would be perfectly safe to have the sale of Plymouth pews go on. I felt perfectly sure Mr. Tilton would do nothing against him or his family?" A. Yes, sir.

Q. You told that to General Butler? A. Yes, sir.

Q. Did you also tell this to General Butler: "He said that Elizabeth Tilton had sent for him to come to her house, and told him she believed her relations were wrong. And he told me he said to her: 'If you believe these relations wrong, then they should be terminated.' And he told me that he prayed with her—prayed to God with her for help to discontinue their sexual relations." A. I think I told him that.

Q. You told General Butler that? A. Yes, sir.

Q. As a part of this same interview?

Mr. Beach.—What same interview?

Mr. Tracy.—The interview I have been speaking of. [To the witness.] At what interview did you tell General Butler, that? A. I think that was the interview of January 1st.

Q. At what interview with General Butler did you communicate that fact to him? A. My recollection is, it was at Bay View.

Q. At Bay View? A. I think so.

Q. Did General Butler advise you to expunge that from your statement?

Mr. Beach.—That I object to.

Q. Did I understand you to say you thought this interview between yourself and Mr. Beecher in regard to prayer was on Jan. 1st? A. I had that impression when I spoke.

Q. When do you say, as a matter of fact, it was? A. I should think it was Jan. 1st.

Q. Jan. 1st that he spoke of prayer? A. Yes, sir.

Q. And not Jan. 2d? A. That would be my impression.

Q. Do you mean to say that on Jan. 1st, in that interview, Mr. Beecher told you he had prayed to God for help to discontinue his sexual relations with Mrs. Tilton? A. Yes, sir.

Q. Using the word "sexual" in that connection? A. Yes, sir.

Q. Did he say that he had used that word in his prayer? A. Did he say that he had used that word in his prayer?

Q. Yes, sir. A. He said that he had prayed to God for help to discontinue their sexual relations. That was substantially what he said to me, as I remember it.

Q. Did he use the word "sexual" in that connection? A. He used the word "sexual;" yes, sir.

Q. Did he say that that was a part of his prayer, that he wanted help to discontinue his sexual relations? A. Will you allow me to state what he said?

Q. I ask you if he said that was part of his prayer? A. He said he prayed to God for help to discontinue their sexual relations. That is what he told me.

Q. The words "sexual relation" were the words that Mr. Beecher always used to characterize the relation between himself and Mrs. Tilton, were they? A. I don't recollect that, sir, whether it was always.

Q. Have you repeated any other phrase, or any other word, than the word "sexual?" A. I don't know whether I have or not.

Q. Do you know whether that is a word that Mr. Beecher is in the habit of using to characterize the sexual act out of wedlock?

Mr. Beach.—That I object to.

The Witness.—I have heard him use a worse term.

Mr. Tracy.—I did not ask you that. I ask you this, whether the word "sexual," to characterize that act out of wedlock, is not an unusual word to use?

Mr. Fullerton.—That I object to.

JUDGE NEILSON.—We all know that as well as the witness does.

Mr. Beach.—Perhaps not as familiarly as some others.

JUDGE NEILSON.—We are expected to know the use of that word as well as the witness.

Mr Tracy.—Now, Mr. Moulton, did you at any time come into possession of papers written by Bessie Turner? [To plaintiff's counsel.] Will you, gentlemen, produce the Bessie Turner documents?

Mr. Morris.—I don't know that I have them here; but I say to the counsel again, as I have repeatedly, all along, that if they will give us a list of what they want, we will endeavor to arrange them.

Mr. Evarts.—We may have to ask the witness to bring those papers, and to put them in our hands, that we may find them, or in the hands of the court.

JUDGE NEILSON.—You can call for them from time to time as you wish them. They are safe enough where they are.

Mr. Evarts.—They are safe, but we don't get them.

JUDGE NEILSON.—I suggested, the day before yesterday, that a list should be made of what letters you wanted.

Mr. Evarts.—There is not any such multitude of them. They have been all through the mill, and stamped and numbered, and that is known to the public, and you can count them all. Fifty of them have already been given in evidence, and it is others that we ask for.

JUDGE NEILSON.—You must have them.

Mr. Evarts.—And we are entitled to them.

JUDGE NEILSON.—Yes, sir.

Mr. Morris.—I give them notice now, again, that I am not going to spend time unnecessarily for the accommodation of counsel on the other side, when I have made so reasonable a request as I have made. They may call for papers in this way, and I will take my time to find them.

Mr. Evarts.—We have that distinct notice, now, and therefore I would like to have the papers put in my hands.

JUDGE NEILSON.—It is well enough as it is. I suggested the day before yesterday that a list should be made of those you wanted.

Mr. Evarts.—They are the witness' papers, brought in under my subpœna.

JUDGE NEILSON.—Well, he will produce them when wanted.

Mr. Morris.—And we have a good many papers brought in under subpœna that they have no right to.

Mr. Evarts.—Let the witness keep his own papers.

JUDGE NEILSON.—[To Mr. Evarts.] As you want a paper call for it, and it must be produced.

Mr. Morris.—I will look over my package to find the paper.

Mr. Evarts.—That you can do.

Mr. Morris.—That I propose to do without your permission.

Mr. Fullerton.—If the court please, if the counsel on the other side will indicate what other papers they will probably want during the present day, we will select them out from the papers in our possession.

Mr. Evarts.—If my friends desire to assist us, if they will separate the papers which have not been given in evidence, and that have been brought here under subpœna, from those that have been given in evidence, it will be easy to find the few papers we want.

Mr. Morris.—I understand that better than the counsel. There is a large package here, and we will have to go over them all.

JUDGE NEILSON.—Mr. Morris, do the best you can; we shall have to wait.

Mr. Tracy.—I will have to pass over this matter and refer to it again.

Q. Now, Mr. Moulton, was there anything said at any time in the first days

of January about the future of Mr. Tilton between yourself and Mr. Beecher? A. About the future of Mr. Tilton?

Q. Yes, sir? A. Yes, sir.

Q. Was it talked, and in pursuance of that talk, did you try to have him reinstated upon *The Independent* and *Union*? A. No, sir.

Q. Did you never have any talk with Mr. Bowen on that subject? A. Yes, sir.

Q. When was that talk with Mr. Bowen on the subject of reinstating Mr. Tilton? A. Well, sir, it was previous to the 15th of January; shall I tell you what I said?

Mr. Tracy.—When I ask it.

The Witness.—I beg pardon, sir.

Mr. Evarts.—It is not necessary for you to cross-examine us.

The Witness.—I beg pardon, sir; I did not do it discourteously.

Mr. Tracy.—Previous to that, in conversation with Mr. Bowen, had Mr. Beecher sent his letter retracting the stories that he told you about Mr. Tilton? [Exhibit No. 4½, on p. 350, *ante.*]

Mr. Fullerton.—I object to that. It is not fair to characterize the letter.

JUDGE NEILSON.—Previous to that time, had he sent the letter?

Mr. Tracy.—The letter has been in evidence.

Mr. Fullerton.—There is no reason why you should characterize it in that way.

Mr. Tracy.—The objection to characterizing it is in introducing the evidence. It is referred to as a letter.

JUDGE NEILSON.—Refer to it as a letter, or by a mark or date.

Mr. Tracy.—I don't know which number. [To the witness.] It is a letter which you say you saw the draft of on the second of January?

Mr. Fullerton.—It is the letter of the second of January. It is the only letter of that kind in evidence.

Mr. Tracy.—It is the letter of the second of January. Had Mr. Beecher sent that letter to Mr. Bowen before your conversation with Mr. Bowen? A. Yes, sir; he told me he had; I don't know whether he did or not.

Q. Had you obtained, previous to that time, also a letter from Mrs. Tilton, denying she had ever desired a separation from her husband?

Mr. Fullerton.—I object to that.

Mr. Tracy.—Then I call for that letter also.

Q. I ask if you obtained a letter upon that subject from Mrs. Tilton?

Mr. Fullerton.—I object to that.

Mr. Tracy.—What is the objection?

Mr. Fullerton.—That you can not ask the contents of a letter that is in evidence.

JUDGE NEILSON.—It savors somewhat of that.

Mr. Tracy.—I asked if he had got a letter on that subject. I am merely doing it to determine the letter; I am not asking for the contents of the letter.

Mr. Beach.—Well, we will hand you the letter.

Mr. Fullerton.—You would not tell us five minutes ago that you wanted that letter.

Mr. Tracy.—I didn't want it then; I didn't know then that I would want that letter. It is only to fill up the time, until one o'clock, that I want it. I will try and pass on for a moment to something else.

Mr. Morris.—[Handing Mr. Tracy two letters.] Here are the Bessie Turner letters.

Mr. Tracy.—[Handing letters to witness.] Did you ever see these two letters, which I now hand to you, before? A. Yes, sir.

Q. Did you bring them here under a subpœna? A. I handed them to Judge Morris to be brought here.

Q. When did they first come into your possession? A. About the time of their dates. What are their dates, General, please?

Q. One is January 12th and the other January 10th, 1871. You have had them continuously from that time until the time of delivering them to Judge Morris? A. Were they not in my statement? I think they were in my first statement.

JUDGE NEILSON.—[To the witness.] You think you have had them ever since? A. Yes, sir; I have had them ever since.

Mr. Tracy.—Do you know how you received them? A. I don't remember, sir, exactly how I received them, whether by a messenger or by mail.

Q. What time did you receive them? A. About that time.

Q. About this time. Where was Bessie Turner living at the time? A. I think she was at Mr. Tilton's house; I won't be certain about that.

Q. What did you do with the papers on receiving them? A. Put them away.

Q. Did you ever talk with Mr. Tilton about them? A. About the letters?

Q. About these letters? A. No, sir; not until after I got them.

Q. Until after you got them. Did Mr. Tilton bring those letters to you? A. I don't remember whether he did or not.

Q. You remember talking to him about them? A. Yes, sir; after I got them.

Q. Did you show them to him? A. I guess I read them to him; yes, sir; or he read them himself.

Q. And you have kept them ever since? A. Yes, sir.

Q. And you don't know whether you received them from him, or in some other way? A. No, sir; I don't remember.

Mr. Tracy.—We offer them in evidence.

Mr. Fullerton.—We object to them. They have nothing to do with the case.

Mr. Tracy.—Are those the only letters that you received from Bessie Turner, or papers signed by Bessie Turner? A. They are all that I recollect now; yes, sir.

Q. How long after getting these papers was the arrangement made about Bessie Turner going away? A. I think it was made before I got them.

Q. Before you got them? A. Yes, sir.

Q. Were those obtained before she went away in pursuance of the arrangement? A. In pursuance of the arrangement? I don't remember whether it was in pursuance of that arrangement or not.

Q. Perhaps you misunderstand my question. Had she gone away in pursuance of the arrangement before you received the letters, or did she go away after? A. I don't know whether she went away before or after.

Q. In other words, you don't remember when she went away? A. No, sir; I don't remember when she went away.

Q. Did she not go away along in January, about the 15th? A. I don't recollect, sir, when she went away. My bill will show, General, when she went away. The bill and papers I have got will show.

Q. Have you got anything which will show you when she left? A. I think it will show when she entered the seminary.

Q. Will it show when she left Brooklyn? A. I don't think I have got anything to show when she left Brooklyn.

Q. Do you remember it was about February 7th? A. No, sir; I don't remember that.

Mr. Tracy.—I offer the letters in evidence.

JUDGE NEILSON.—State why you think they are admissible, Mr. Tracy. They are letters by a third person, Bessie Turner.

Mr. Tracy.—We think they are admissible for this reason. This witness has already testified that the girl, Bessie Turner, was sent away because she had got information concerning Mr. Beecher and Mrs. Tilton, and that Mr. Beecher paid her board for that reason, because of that information. Now, we propose to show that at the very time, or before she went away, this witness was in possession of the documents which show the reason why she went away, and that reason was because she reported strange stories concerning Mr. Tilton and herself.

JUDGE NEILSON.—In other words, you offer a statement written by Bessie Turner, going to the question of why she went away, as evidence. I don't think it is.

Mr. Evarts.—If your Honor please, this is the point: It has been made a subject of evidence here, as bearing upon the guilt of Mr. Beecher, that he co-operated with this witness and with Mr. Tilton in having Bessie Turner sent away from here, because she was in possession of, and would be in danger of, stating things prejudicial to Mr. Beecher in respect of his relations with Mrs. Tilton. Now we prove as a matter of fact, that she was sent away, as has already been stated; and that the only preliminary of sealing her mouth or correcting any prattle, as it is called, that she had been or might be induced to indulge in, was her written corrections, not of stories to the prejudice of Mrs. Tilton and Mr. Beecher, or either of them, but of stories to the prejudice of Mr. Tilton in respect to herself.

JUDGE NEILSON.—I must rule them out.

Mr. Evarts.—If your Honor please, we desire to read the letters in order that your Honor's ruling may be applied to the actual facts of this case.

Mr. Beach.—We object to their reading them.

JUDGE NEILSON.—Avowing the fact; to illustrate it, I must apply the same ruling as I did the other day. He may incorporate parts of the letters in an offer for an exception.

Mr. Beach.—We follow the principle of our learned friends in objecting.

Mr. Evarts.—I offer those letters with a view to exceptions.

JUDGE NEILSON.—Yes.

Mr. Evarts.—[Reading]:

"JANUARY 12.

"MY DEAR MRS. TILTON,

"The story that Mr. Tilton once lifted me from my bed and carried me screaming to his own, and attempted to violate my person is a wicked lie.

"Yours truly,

"BESSIE."

That was the document that was taken from her before sending her away. I offer it in evidence.

JUDGE NEILSON.—I rule it out.*

Mr. Beach.—We withdraw our objection.

JUDGE NEILSON.—Mark it.

[Copy of letter marked "Exhibit D, 10."]

Mr. Evarts.—[Reading]:

"January 10, 1871, BROOKLYN.

"MY DEAR MRS. TILTON; I want to tell you something. Your mother, Mrs. Morse, has repeatedly attempted to hire me, by offering me dresses and presents to go to certain persons and tell them *stories* injurious to the character of your husband. I have been persuaded that the kind attentions shown me by Mr. Tilton for years were dishonorable demonstrations. I never at the time thought that Mr. Tilton's caresses were for such a purpose. I do not want to be made use of by Mrs. Morse or any one else, to bring trouble on my two best friends, you and your husband.

"Bye-bye,

"BESSIE TURNER."

[Copy letter marked "Exhibit D, 11."]

Mr. Beach.—We withdraw our objection to that.

AFTERNOON SESSION.

FRANCIS D. MOULTON recalled, and cross-examination resumed.

Mr. Tracy.—I call your attention to the writing on that envelope containing exhibits. [Handing witness an envelope.] Do you know that handwriting? A. Yes, sir.

Q. In whose handwriting is it? A. I think it is Theodore Tilton's.

Mr. Tracy.—I desire to put that envelope in evidence.

JUDGE NEILSON.—Yes, sir.

[Marked "Exhibit D, 12."]

Q. Do you know when it was you received the first money from Mr. Beecher? A. The first money that I received?

A. Yes, sir. A. I think it is in the statement which I have handed to you, sir? I think that was the first money that I received.

Q. Do you desire the account? A. Yes, I would like to see it, please [taking the account]. June 26.

Q. What year? A. 1871.

Q. What amount? A. $155.85.

* Letters written during absence from home are admissible in evidence as explanatory of the nature of the departure and absence, the departure and absence being regarded as one continuous act. *Rawson* v. *Haigh* (2 Bing. 99; 1 *Greenl. on Ev.* 108, cited in 22 Penn. 277).

Q. Do you know how you received that? A. By check.

Q. Is the check presented to you—the check by which that was paid? A. How is that, sir?

Q. Is that the check received from Mr. Beecher for that amount? A. Yes, sir; I think that is the check.

Q. How did you receive it? A. I suppose I received it enclosed in an envelope.

Q. Do you know anything about how Mr. Beecher came to send you that check? A. How he came to send it to me?

Q. Yes, sir. A. Through information from me, I presume, sir.

Q. Have you any recollection on the subject? A. I recollect that I informed him of the bill for Bessie Turner's schooling, sir, and I got that check for it.

[Check marked "Exhibit D, 13."]*

Q. Have you got the bill? A. I think I have; yes, sir.

Q. Let us have it, please.

The Witness.—I think you have those papers, Judge Morris.

Mr. Morris.—I will look for it.

Q. Was that the first bill that you have received or known of, for Bessie Turner's schooling? A. Yes, sir.

Q. From whom was that bill received? A. I think from either Mrs. Tilton directly or the Principal of the school. Mrs. Tilton, I think, sent it to me.

Q. Who is the Principal of the school? A. C. C. Beatty, I think, is the name. The bills will show, sir, that are there.

Q. You don't know whether you wrote Mr. Beecher, informing him of that bill, or whether you saw him and told him of it? A. I communicated the fact to him in some way, sir.

Q. When did you get the next check? A. The next check seems to be November 15, sir.

Q. Of what year? A. 1871.

Q. What amount is that? A. November 14, 1871, $150.

Mr. Beach.—What was the date of the first? A. The date of the first was June 26, 1871, $155.85.

Mr. Tracy.—On that day you received $150 from Mr. Beecher? Yes, sir.

Q. Do you know how you received it? A. By check.

Q. Do you know how you communicated the fact to Mr. Beecher that that amount was required? A. I don't remember, sir, how. Mrs. Tilton, I think, sent me word that she wanted it for Bessie Turner.

Q. Is that the check that you received from Mr. Beecher for that amount? [Handing witness a check.] A. Yes, sir.

* This exhibit, which does not appear to have been read, is as follows:

No.———. BROOKLYN, N. Y. June 23, 1871.

Mechanics' Bank, Brooklyn, N. Y.

"Pay to the order of Frank Moulton

"One hundred and fifty five 85-100 dollars.

$155.85. H. W. BEECHER.

Stamped on the face—"For Deposit."

Endorsed—"Frank Moulton," "F. D. Moulton," and "Woodruff & Robinson."

[Check marked "Exhibit D, 14."]*

Q. When did you receive the next money from Mr. Beecher? A. According to this account, May 31.

Q. What year? A. 1872.

Q. For what amount? A. $294.76.

Q. Have you got the bill of that? A. I have got the bill of $219.76 for that, and $25 I paid to Mrs. Tilton upon her request—I think the note is among my papers—and $50 I paid to Mrs. Tilton at her request, which makes $294.76, which was a reimbursement for that amount.

Q. A reimbursement of money which you had previously paid for Mrs. Tilton? A. Yes, sir; to the order of Rev. A. M. Reid. I got the bills from Mrs. Tilton, I think.

Q. You got those bills from Mrs. Tilton. [To plaintiff's counsel.] Will you give them to us, gentlemen?

Mr. Morris.—We will take a memorandum of them and find them as soon as we can. What is it you want now?

Mr. Tracy.—All the bills; the bills of Mrs. Tilton, and the bill for $219.

Q. Did you have a bill also for the $150? A. I don't think there is any bill for the $150. I don't remember that there is. All the bills I have got, Mr. Tracy, on the subject, are there.

Q. And are you able to say that the $150 in November, 1871, was applied by you to the payment of——, for Bessie Turner? A. I received from Mrs. Tilton a request for $150 in August, and paid it.

Q. In August? A. In August, I paid her $150, and did not get the check to reimburse me for it until November.

Q. Then you mean to say that the $150 in November was to reimburse you for $150 you advanced to Mrs. Tilton in August? A. That I gave Mrs. Tilton, yes, sir; my impression is that there is a bill for $150 there; I won't be certain about it though.

Q. And have you any note or memorandum by which you requested the payment of that $150 of Mr. Beecher? A. No, sir.

Q. You don't know how you communicated that request to him? A. No, I do not; I don't recollect.

Q. Is the check now presented to you the check by which you received payment for the $294 [handing witness a check]? A. I believe it to be; yes, sir.

Q. What is the date of that, please? A. The date of this check is May 29, 1872; the date that it went on deposit with Woodruff & Robinson was May 31.

* This exhibit, which does not appear to have been read, is as follows:

"No. 260 BROOKLYN, N. Y. Nov. 10 1871.

"*Mechanics' Bank*, Brooklyn, N. Y.

"Pay to the order of Frank Moulton,

"One hundred and fifty—— dollars.

$150.00. H. W. BEECHER.

Stamped on the face "For Deposit."

Endorsed "Frank Moulton," "F. D. Moulton" [canceled], "Woodruff & Robinson."

[Check marked "Exhibit D, 15."]*

Q. Do you know when you received the next money from Mr. Beecher? A. According to this account, sir, February 18, 1873.

Q. How much was that? A. $500.

Q. What was it for? A. It appears here, sir, that it was paid March the 7th, $245, to Mr. Beatty, and April 5, Mrs. Tilton the balance of the $500—$255.

Q. Have you got the bills of those? A. I have got the bills of $245, I think.

Q. No bill from Mrs. Tilton? A. For the $255? No.

Q. Or any note requesting payment? A. No, I don't think I have.

Q. How did you make that payment to Mrs. Tilton? A. I think I made it to her directly.

Q. By check or in currency? A. I think in currency.

Q. Do you recollect? A. It does not state here, so that I don't recollect, sir.

Q. Have you any recollection—as a matter of recollection, have you any recollection on the subject? A. My recollection is that I paid it to Mrs. Tilton directly, in currency, sir.

Q. Where? A. At her house, I think.

Q. Did you go to her house for that purpose? A. I think I did; yes, sir.

Q. In pursuance of a note requesting you to call? A. I don't think I received any note, sir.

Q. How was the fact communicated to you that she wanted money? A. I don't remember, sir.

Q. Was it by Mr. Tilton? A. I think not, sir.

Q. Why do you think not? A. Because he did not communicate any such things to me.

Q Do you know that fact? A. I know that fact.

Q. Then will you tell us how you came to go to the house of Mrs. Tilton to pay that $255? A. I should say by request of Mrs. Tilton.

Q. Have you any recollection on the subject? A. That is the only recollection I have, sir. I don't know how I could have done it in any other way.

Q. You have no note? A. No, sir; I don't think I have. If I have, it is in the——

Q. When did you pay the next money? A. The next money was paid—the next money was received, according to this account, $5,000.

Q. The next? A. According to this account.

Q. That is another matter. We will not open that at present. Is the note now presented to you in your handwriting [handing witness a paper]? A. Yes, sir.

* This exhibit, which does not appear to have been read, is as follows:—

No. —— "BROOKLYN, N. Y. May 29 1872.

"*Mechanics' Bank.*

"Pay to the order of F. D. Moulton

"Two Hundred and ninety-four 76-100 Dollars, in current funds.

"$294.76. H. W. BEECHER.

Endorsed, "F. D. Moulton."—"Woodruff & Robinson."

Q. Did you send it to Mr. Beecher? A. I judge I did, sir, from this. [handing the paper back to Mr. Tracy].

Q. Did he send you—— A. Will you let me see the note again. What is the date of it, Mr. Tracy, if you please?

Q. Oct. 21, 1872, I read it. I will hand it back to you, to make sure of that, sir. A. [Taking the note.] Oct. 21, 1872.

Q. Did you receive the amount from Mr. Beecher therein requested? A. It appears so; yes, sir.

Q. Allow me to read it. [Taking the note from the witness.] A. I do not see it down so on the account here, and I see a check, May 31, 1872, $294.76.

Mr. Tracy.—[Reading]:

"NEW YORK, October 21, 1872.

"DEAR SIR: Will you be kind enough to send me your check for $294.76.

"Very truly, yours,

"FRANCIS D. MOULTON.

May 28,	$219.76
	25.00
Oct. 21,	50.00
	$294.76

[Paper marked "Exhibit D, 16."]

The Witness.—I do not see anything here, sir [referring to the account], to correspond with that.

Q. Do you know to what use you applied this money? A. I do not, sir, except as it is here, $219.76 to Mr. Reid, and $25 and $50 to Mrs. Tilton; that is the way it says on that paper.

Q. That was paid when? A. This was paid May 28th and October 26th.

Mr. Tracy.—[To Mr. Morris.] Have you found the bills and accounts?

Mr. Morris.—No, sir, I am looking for them. I have found some of them.

Q. Had you any business transaction yourself with Mr. Beecher which would call for that amount of money? A. I don't recollect that I had, sir, any other.

Q. Can you explain in any way how you came to call on him for that amount of money in October, 1872? I can, sir, from that account. That account is the only guide that I have, sir. It is a mistake of the book-keeper, or my own mistake, sir, if it is a mistake. I don't know anything about it.

Q. Is the paper now handed you the first bill that you received for the expenses of Bessie Turner? [Handing witness a paper.] A. I believe it is; yes, sir.

Q. And you paid it as above stated? A. Yes, sir.

Q. How did you pay it? A. Paid it by check.

Q. Whose check? A. Woodruff & Robinson's—$155.27. There is a note on the inside of this, Mr. Tracy, to Mrs. Tilton. Did you notice it?

Q. I did not. A. There is.

Mr. Fullerton.—I ask that those papers be all put in evidence.

Mr. Tracy.—I ask to put in the bill at present. We will see what the note is.

The Witness.—The note is a part of it.

Mr. Tracy.—That may be, but we offer the bill now, and the check by which it was paid. What is the date of that bill? A. It says June, 1871.

Q. What was the time of payment? A. July 19th.

Q. I will pass to the next that seems to be in the order of date. Can you tell whether that is the next bill you received? [Handing witness a paper.] No; here is another prior to that.

Mr. Fullerton.—Do we understand that the letter accompanying the first bill is——

Mr. Tracy.—I will see, sir, in a moment.

Mr. Evarts.—It is not yet in evidence.

Mr. Fullerton.—You are bound to put it in evidence.

Mr. Evarts.—I think not.

Mr. Tracy.—That is a question for the court.

The Witness.—$219.76, Mr. Tracy, seems to be the next one.

Q. What date is that? A. The date of the bill is January 24th, 1872.

Q. And how is that paid? A. Paid by check, sir, Woodruff & Robinson's—paid by Woodruff & Robinson's check.

Q. Do you know how you got your pay for that? A. I presume from Mr. Beecher, sir.

Q. Well, I mean by check, or how; was the pay for that bill included in—what Exhibit is it? A. It was intended to be included in the bill for $294.76, I think.

Q. Then it is included in Mr. Beecher's check, Exhibit No.——what, Mr. Moulton, please? A. This one?

Q. Yes; what is that number? A. "D, 15, F. M. A."

Q. Yes; that is it? A. Yes, sir.

Q. Now, what is the next bill? A. The one that I hold in my hand here, sir, is June 27th, 1872.

Q. Was that the next bill that you received in order of time? A. I presume it was, sir.

Q. What was the amount of that bill? A. $118.12.

Q. And the next one? A. Where is the next one?

[Mr. Tracy passes a paper to the witness.]

The Witness.—June, 1873; yes, sir.

Q. Was that the next bill in order of time? A. I don't remember, sir, whether it was the next; I think the account will show, won't it, sir?

Q. I have passed you up now, I believe, all the bills that have been handed up?

Mr. Beach.—I guess not.

The Witness.—There was one that was sent, like this, and settled the balance for $200, I think; this is $245.

Q. What date is that bill? A. This bill is January, 1873.

Q. Was that the next bill that you received in order of time? A. That was the next bill, I suppose, sir; all I know is, by the date sir; this is January, 1873, the date of this.

Mr. Beach.—You have got one there, June, 1873.

The Witness.—Yes, sir.

Mr. Tracy.—I will put them in in the order of time. [To the witness]: Do those constitute all the bills that you received for Bessie Turner's schooling? A. They are all that I am in possession of.

Q. Are they all that you know of? A. Yes, sir; they are all that I know of.

Q. Are they all that you have paid, to your knowledge? A. The account shows all the bills that I paid, sir; yes, sir. All the bills that I paid are on that account, if the account is correct.

Q. Are those all the bills you have? A. These are all the bills, I have, sir.

Mr. Shearman.—[Reading]:

Statement of Account.

STEUBENVILLE FEMALE SEMINARY.

Miss BESSIE TURNER, *To* A. M. REID, *Dr.*

Advanced Items.		For Boarding 9–10 S.....	$76 50
Books & Sta.....	4 14	Tuition, Prin. Class.....	10 80
Music.....	5 10	Washing.....	7 23
Phys. & Med.....	6 00	Fire (2 mos).....	4 00
		36 4.50	
Seat in Ch.....	1 00	Music (doub. les.) use Piano....	40 50
		"Adv. Item".....	16 24
	$16 24	Am't.....	$155 27

June, 1871.

STEUBENVILLE, June 8th, 1871.

MRS. TILTON: I send you with this a statement of Miss Turner's bill for the past half-school year.

Bessie is doing very well in her studies, and is quite a favorite with us.

Sometimes she is not very well, but I think, on the whole, her health is improving.

Could you not come and make us a visit and bring Mr. Tilton with you? A little rest would do you both good. Very respectfully yours,

A. M. REID.

Bessie is making very good progress in music and in some of her common branches, as arithmetic, geography and spelling.

No. 20,996. NEW YORK, July 19, 1871.

Metropolitan National Bank.—Pay to the order of Rev. C. C. Beatty, one hundred and fifty-five 27-100 dollars.

$155.27-100. WOODRUFF & ROBINSON.

Endorsed "Charles C. Beatty," "A. M. Reid" and the bank endorsements.

[The above bill, accompanying letters and check each marked "Exhibit D, 17."]

Steubenville Female Seminary.—Rev. C. C. Beatty, D. D., LL. D., Superintendent; Rev. A. M. Reid, Ph. D., Principal.

Miss BESSIE TURNER, *Dr.*

		For boarding 7–10 session.....	$59 50
Music.....	$5 75	Tuition, Middle Class.....	9 80
Stores.....	5 85	Washing.....	5 70
		(35 ded. 5)	
Music.....	4 50	Music and use of piano, doub...	30 00
Stationery.....	77	Heated air.....	2 00
	$16 87	Advanced as per account on margin.....	16 87
		Amount.....	$123 87
Cr. Received in advance.....			....
Balance due.....			$123 87
Cr. Mistake in pieces of music.....			5 75
		Am't due.....	$118 12

June 27, 1872. Rec'd Payment, A. M. REID.

Steubenville Female Seminary, July 9, 1872.

Francis D. Moulton, Esq., 49 Remsen-st., Brooklyn.

DEAR SIR:—Yours containing draft $118.12 for am't of Bessie Turner's bill is received. Please find bill receipted.

Bessie is a good and studious girl and is making good progress in her various studies. Very truly, yours, A. M. REID.

Mechanics' National Bank,
33 Wall Street, New York, July 8, 1872.

Pay to Rev. A. M. Reid or order, One Hundred Eighteen 12-100 Dollars.
$118.12. WOODRUFF & ROBINSON.

Endorsed, "A. M. Reid," and the bank endorsements.

[The above bill, the accompanying letter and check, each marked "Exhibit D, 18."]

STEUBENVILLE FEMALE SEMINARY. Rev. C. C. BEATTY, D.D., LL. D., Superintendent. Rev. A. M. REID, Ph. D., Principal.

Miss BESSIE TURNER,

Dr.		*To* A. M. REID.	
Physicians	$4 00	For boarding two quarters	$85 00
Express	1 08	Tuition Pri. and Mid. classes	12 00
Cash, Store, &c.	16 00	Washing	5 78
Books and Sta.	5 10	Music and use of Piano extra	47 00
Music	1 55	Heated air	2 00
Seat in Church	1 50	Boarding, vaca. 9 weeks @ $4¼.	38 25
Reading R.	50	Advanced as per account on margin	29 73
	$29 73	Amount	$219.76
		Cr.	
		Received in advance	....
		Balance due	$219.76

January 24, 1872. Received payment, A. M. REID.

No. 22,311. NEW YORK, May 28, 1872.

Metropolitan National Bank,

Pay to the order of Rev. A. M. Reid, Two Hundred Nineteen 76-100 Dollars.
WOODRUFF & ROBINSON.

$219.76.

Endorsed—"A. M. Reid," and the Bank endorsements.

[The above bill and check each marked "Exhibit D, 19."]

STEUBENVILLE FEMALE SEMINARY. Rev. C. C. BEATTY, D.D., LL. D., Superintendent. Rev. A. M. REID, Ph. D., Principal.

Miss BESSIE TURNER, *Dr.*

Adv. Items:			
Store account	$27 09	For boarding, two quarters	$87 50
Books and sta'ry	5 50	Tuition, primary class	12 00
Pieces music	3 40	Washing	4 50
Seat in church	1 50	Music and use of piano (5 l. a. w.)	62 50
Reading-room	50	Heated air	3 50
Cash	5 00	German	10 00
		Vacation, five weeks	20 00
		Trip to Frankfort Springs	7 87
	$42 99	Advanced as per account on margin	42 99
		Amount	$250 86
		Deduct for loss	5 86
		Balance due	$245 00

Received payment in full, by check, March 6, 1873,
Jan. '73. CHARLES C. BEATTY,
Session ends Feb. 3d. *Per* A. M. REID.

No. 23,886. NEW YORK, March 6, 1873.

Metropolitan National Bank,

Pay to the order of Rev. C. C. Beatty, Two Hundred and Forty-five Dollars.

$245. WOODRUFF & ROBINSON.

Endorsed—"Charles C. Beatty," and the Bank endorsements.

[The above bill and check each marked "Exhibit D, 20."]

Miss BESSIE TURNER,

To A. M. REID, *Dr.*

Advanced.			
For pew rent	$1 50	For boarding, one session	$87 50
Reading R	0 50	Tuition, mid. cl	14 00
Music	4 75	Washing	4 70
Store	52 08	German, one session	10 00
Sewing	5 40	Heated air	2 50
Physician	0 90	Room alone	5 00
	$65 13	Music M. P. (2½ l.)	62 50
Books and stat'y	4 75	Advanced items	69 88
	$69 88	Amount	$256 08
Cr. by deduction one quarter school bill ($186.20)			46 55
		Balance due	$209 53

June, 1873.

NEW YORK, December 16, 1873.

Mechanics' National Bank.

Pay to the order of A. M. Reid, Two hundred dollars.

($200.) WOODRUFF & ROBINSON.

Endorsed, "A. M. Reid," and the bank indorsements.

[The above bill and check each marked "Exhibit D, 21."]

STEUBENVILLE FEMALE SEMINARY, Dec. 6, 1873.

MRS. E. R. TILTON:

Dear Friend: If you could send me the balance due on Bessie Turner's bill for last year before the first of January, it would confer a great favor. A number of large bills will be due at that time which must be met. The balance of the bill was $209.53. Call the balance $200.

The bill was	$256 08
Deduct ¼ school bill	46 55
Amount	$209 53

If you can send me the amount due, it will be a great favor at the present time.

Bessie is now visiting friends in Pittsburgh.

I have tried to get her a place.

I doubt whether she is willing to do such things as she is fitted to do. I do hope she will get along well, and yet I feel anxious about her. I asked her to come back to school awhile if she could not get any other place. With great consideration,

Yours,

A. M. REID.

[Letter marked "Exhibit D, 22."]

STEUBENVILLE SEMINARY, Dec. 18—'73.

F. D. MOULTON, Esq.:

Dear Sir: Yours, containing check for $200 in full for school bill is rec'd. This pays all her indebtedness to this date. Very truly yours,

A. M. REID.

[Letter marked "Exhibit D, 23."]

Mr. Tracy.—That terminated the transaction of Bessie Turner's school bills, didn't it? A. I believe it did.

Q. After that you had nothing more to do with her? A. Not after she got through with her schooling.

Mr. Shearman.—[Reading.]

TUESDAY, Jan. 18th, 1872.

DEAR FRANCIS, Be kind enough to send me $50 for Bessie. I want to inclose it in to-morrow's mail. Yours gratefully,

ELIZABETH.

[Letter marked "Exhibit D, 24."]

Mr. Evarts.—We ask for any notes that covered these payments that Mr. Moulton mentioned as having been made to Mrs. Tilton. This last note has been read as one of them. It is the only one which has been handed to us as far as I know.

Mr. Morris.—I have handed all that I have found yet.

The Witness.—I handed to Judge Morris all that I had, sir. I don't know whether there are any more or not. If there are, I will try and find them.

Mr. Morris.—There is the letter you called for.

Mr. Tracy.—Now, you have spoken of three letters, all dated 7th of February, 1871, two by Mr. Beecher, one by Mr. Tilton? A. Two by what, sir?

Q. Two by Mr. Beecher and one by Mr. Tilton, 7th February, 1871, the three letters? A. That is the letter from Beecher to me?

Q. Yes, sir? A. And the letter from Mr. Tilton to me?

Q. Yes, sir? A. And the letter from Mr. Beecher to Mrs. Tilton?

Q. Those I infer were all written by prearrangement, were they not? A. I don't know of any prearrangement particularly about it.

Mr. Evarts.—They are all in evidence.

Mr. Tracy.—They are all dated the same day, are they not? A. They are all dated the same day.

Q. Well, they were written in pursuance of a conversation that preceded their writing, were they not? A. I suppose they were written in consequence of conversation that preceded their writing.

Q. And their object was the reconciliation of the parties, the more perfect reconciliation of the parties, was it not? A. Yes, sir.

Q. Now, after those—the date of those letters, the relations of the parties were friendly, were they were not? A. After Feb. 7th?

Q. Yes, sir. A. Yes, sir; they were friendly for some time.

Q. For some time? A. Yes, sir.

Q. Soon after that, *The Golden Age* was founded, was it not? A. I believe, sir, in March. March 2d, 1872—1871. March 2nd, 1871.

Q. And it had been determined on for some time before—before the first number was issued? A. Yes, sir.

Q. Now, how long after the separation of Tilton from Bowen was the starting of *The Golden Age* determined on or discussed? A. Well, sir, I think in the beginning of January—I should think it was January it was talked about.

Q. It began to be talked about in January? A. Either in January or February, sir; I don't remember which.

Q. And arrangements were set on foot and prosecuted, until it was started and the first number issued? A. Yes, sir.

Q. Now, will you explain in detail just how that paper was started, and what was its financial basis? A. Financial basis of *The Golden Age?*

Q. Yes, sir? A. The paper was started from a conversation between Mr. Woodruff and Mr. Tilton.

Q. I don't care to go into the details of that conversation. I want you to go on and show how the money was raised for it, and who owned it? A. Well, Mr. Woodruff arranged for the money for it, sir. Mr. Woodruff and Mr. Tilton co-operated in regard to that.

Q. Well, what was done? I don't care what was said, but what was done? A. Certain subscriptions were made—certain subscriptions were made by different parties for the paper.

Q. Well, who were the subscribers for the paper—I mean subscribers to this fund? A. Theodore Tilton embarked in it all the means that he had—$4,000, I think—at that time.

Q. How much? A. $4,000, I think, he had at that time—$4,000 or $5,000.

Q. Was that money that was deposited with your firm? A. Yes, sir.

Q. Then who else subscribed? A. Mr. Mason, I think, Mr. Woodruff——

Q. How much did Mr. Mason subscribe? A. I really don't remember, sir. I think it was $3,000; $1,500 or $3,000.

Q. What Mason? A. John W. Mason.

Q. What is his business? A. With the firm of Samuel Thompson's Nephew.

Q. Who else subscribed? A. Jackson S. Schultz, and a Mr. Southwick.

Q. How much did they respectively subscribe? A. Well, I forget really how much. I don't know at the time—I think it was $1,500 apiece, or $750 apiece.

Q. One or the other. This Mr. Southwick is Mr. Schultz's partner? A. Yes, sir.

Q. Who else subscribed? A. Mr. Woodruff.

Q. How much did he subscribe? A. Mr. Robinson—Mr. Woodruff subscribed $3,000, if I remember rightly, and I subscribed $3,000, and Mr. Robinson subscribed a thousand.

Q. Well? A. I believe those were all—all that I recollect at present.

Q. Can you state here the aggregate of those subscriptions? A. I have not got it with me——

Q. Now, what were the terms of those subscriptions; it was not a stock enterprise was it? It was not an incorporation as I understand? A. No, it was not an incorporation.

Q. What were the terms of that subscription? A. The terms of the subscription were, that the subscription should be paid and Mr. Tilton should give his notes, I believe, for the amount.

Q. Payable to these subscribers? A. Payable to those subscribers.

Q. Payable when and out of what fund? A. Payable out of—payable by Theodore Tilton.

Q. Well, absolutely? A. I can not give you the facts about that, Mr. Tracy, because I don't know them exactly enough to give them, but Mr. Woodruff can give them for you. If I knew all about it, sir, I would.

Q. Did Mr. Tilton give his notes for the subscriptions? A. Mr. Tilton drew the money out in proportion——

Q. Did he give the subscribers his notes? A. Yes, sir; he gave—I believe he did.

Q. And then took from them their subscriptions as they were paid in? Now, how were those subscriptions to be paid in? A. Paid in when they were wanted—paid in when they were wanted by Theodore Tilton.

Q. By yourself as one—yes, sir. Now, after the 2d of March, Tilton was engaged, I suppose, continuously on *The Golden Age*, wasn't he, for some considerable period of time? A. I think he was; yes, sir.

Q. Giving all his time and thought to that paper? A. Yes, I suppose so.

Q. And did you meet Mr. Beecher frequently after that? A. I met Mr. Beecher during 1871, after the establishment of *The Golden Age*.

Q. Frequently, did you not? A. Yes, sir; frequently.

Q. And did you see Mr. Beecher and Tilton together frequently? A. Not very frequently; no, sir.

Q. Well, did you occasionally? A. Once in awhile.

Q. Where, and under what circumstances? A. I think they generally met at my house, sir.

Q. How often did they meet at your house, should you say? A. Not very often, sir.

Q. What was your habit about going to Mr. Beecher's house?

Mr. Beach.—At that time?

Mr. Tracy.—Yes, sir.

The Witness.—Going to whose house?

Q. Mr. Beecher's? A. I didn't go there very frequently.

Q. In 1871? A. No, sir.

Q. How often was Mr. Beecher at your house? A. Well, he was there quite frequently, sir.

Q. Did he see your family? A. He saw my wife sometimes.

Q. Well, frequently dine with you or take a meal with you? A. No, sir, not very.

Q. Not very? A. No, sir.

Q. But sometimes? A. I don't remember that he ever took any; I don't think that he took meals with us over three or four times.

Q. Well, was Tilton present on those occasions? A. I remember one occasion when Tilton was present.

Q. Not more than one? A. Not at the table; no, sir.

Q. Was it at dinner? A. It was at dinner, yes, sir.

Q. Did you have other company present? A. Yes, sir.

Q. Did you ever see Mr. Beecher at Tilton's house after that?

Mr. Beach.—After what?

Mr. Tracy.—After the starting of *The Golden Age;* that is the period of which I am now inquiring? A. Yes, sir; I was at Tilton's house with Mr. Beecher and Mrs. Woodhull after that.

Q. Yes; when was that? A. It was in 1871, I think.

Q. What time? A. I don't remember what time it was in 1871.

Q. Well, about what time? A. It was before the publication, I think, of the Woodhull biography.

Q. Before that? A. Yes, sir.

Q. What time of day did you see them there? A. My recollection is that it was in the afternoon.

Q. How long did they stay there? A. I guess, perhaps, they were there half an hour or an hour.

Q. Tilton present? A. I believe he was.

Q. Well, that the only occasion you ever saw Mr. Beecher at Tilton's house, after the starting of *The Golden Age*? A. Yes, sir. I think it was the only occasion, I think that was the only occasion, sir.

Q. Where else have you seen them together? A. I have seen them together at my house in——

Q. In 1871, I mean? A. In the year 1871?

Q. Yes, sir; I will confine it prior to the writing and publishing of the life, the biography, of Mrs. Woodhull, in 1871; before that publication did you see them together at your house?

Mr. Morris.—When was that publication?

Mr. Tracy.—The witness will tell us.

Q. When was it? [To the witness.] A. My impression is, sir, it was in the latter part of 1871.

Q. Wasn't it in September, 1870? A. Not 1870—1871 you mean.

Q. 1871? A. I don't remember whether it was in September or not. I think it was though.

Q. September? A. I think it was.

Q. Wasn't it issued on the 14th of September? A. I don't recollect.

Q. Well, it was about that time, anyway? A. It was about that time, I should think.

Q. Now, between the starting of *The Golden Age* and that period, how often should you say you had seen Mr. Beecher and Mr. Tilton at your house together? A. Oh, not often, sir; I don't think over three or four times.

Q. Had you seen them elsewhere together beside at your house or Tilton's house? A. I think on February 27th—somewhere around that—I went over with Mr. Beecher to New York, to Mr. Bonner's office, on some business, and Mr. Beecher then went to *The Golden Age* office, and my impression is that I went from Mr. Bonner's to *The Golden Age* office, and found Mr. Tilton there, Mr. Beecher there.

Q. With Tilton? A. For a moment, just for a moment, yes, sir.

Q. With Tilton? A. Yes, sir; I think he was there for a moment with him.

Q. Did you ever see him at *The Golden Age* office on any other occasion? A. No; not that I remember.

Q. Did you ever see them walking together in the street on any occasion? A. No.

Q. What is the answer? A. No, sir.

Q. Do you remember of being in company with Mr. Tilton and Mr. Beecher at a yacht race—regatta? A. Yes, sir; I don't think that was in

1871. I think there is a letter, sir, amongst the papers that will fix the date.

Q. Well, when was it? A. Now that I am on that transaction I will fix the date of it. When was it? A. Well, I really don't remember, sir; it was not in 1871.

Q. Well, was it after 1871? A. I think so. I can fix the date precisely, sir, by the paper.

Q. If you can, we would rather have it fixed now. A. I can not fix it from my memory.

Q. No; if you have got any paper in your possession that will enable you to fix the date of it, fix it right here. A. I think I remember reading, among those papers, a letter from Mr. Beecher accepting an invitation to go with Horace Greeley; it was during Horace Greeley's life.

Mr. Evarts.—Have you got a letter from Mr. Beecher accepting an invitation to go on this yacht race?

Mr. Morris.—I don't remember ever seeing that letter.

Mr. Evarts.—Mr. Moulton says it is among your papers.

Mr. Morris.—I think not; I will look.

Q. Well, what was the regatta—that was Ashbury's yacht race, wasn't it; the English regatta? A. I think it was; I think it was between the *Sappho* and the *Livonia*.

Mr. Evarts.—The English yacht? A. Yes, I believe so.

Q. Now, can't you fix the year of that?

Mr. Morris.—We have found the letter. [Letter handed to witness.]

Mr. Evarts.—That is to you, Mr. Moulton?

Mr. Beach.—I do not perceive the materiality of that letter.

Mr. Tracy.—Only to fix the date? A. Yes, October 20th, '71, this seems to be dated, sir.

Mr. Evarts.—That is the paper? A. I think this is it.

Q. That is the paper you referred to that fixes the date? A. I think this is the one, sir; that is the one I referred to.

Q. Well, that refreshes your recollection as to the time? A. Yes, sir.

Q. Of the yacht race? A. Yes, sir; I think that was the yacht race referred to.

Q. And that date is October 20th, 1871? A. That was either the—Mr. Tilton was along, I believe, that day; we either went to a yacht race, or went down to look at the warehouses along the shore; I think it was a yacht race.

Mr. Tracy.—Now, who went? Were you three on that yacht race? A. I believe we were; yes, sir.

Q. And companions together on that day! A. Well, I believe that Mr. Tilton talked. I think Oliver Johnson was along that day, if it is the day that I remember, and Mr. Tilton talked with Oliver Johnson chiefly that day, and Mr. Beecher and myself were together a good deal.

Q. Well, were not you all four together? A. I don't recollet whether we were all four together or not; I guess very likely we were.

Q. Do you know how you went to the yacht? A. How we went to the yacht?

Mr. Tracy.—Yes. A. Went on a steam-tug.

Q. How did you go to the steam-tug? Go in a carriage together? A. No; I think not; I think we went separately; I went for some of the guests; I believe I stopped for Horace Greeley and did not find him that day. On the whole I guess Mr. Greeley was not along, after all.

Q. Who invited Mr. Beecher and Mr. Tilton to go on that race? A. I did.

Q. You invited them both? A. Yes, sir.

Q. And did you invite Mr. Greeley also? A. Yes, sir.

Q. Did Mr. Greeley go? A. My impression is, sir, that I missed him by a minute, and he did not go.

Q. And he did not go? A. Yes, sir.

Q. Was not along? A. I believe not.

Q. How long were you on that regatta? A. May be three or four hours.

Q. Did you dine on board the yacht? A. On board the yacht? No, sir.

Q. On board the steamer? A. I don't know; I don't remember whether we had any refreshments on board or not, sir; I think not.

Q. Well, now, I call your attention to another occasion when you went down on some vessel viewing the warehouses; do you remember that? A. I may confound the two, sir; I do not know.

Q. How? A. I may confound the two; I think it was on the same occasion; there may have been two occasions, and there may have been only one.

Q. If there were two occasions, were Beecher and Tilton together on two occasions? A. I do not recollect, really, sir, whether they were or not.

Q. Were they together on the warehouse occasion? A. I really do not recollect; they were together on one occasion that I remember; that is all that I can recollect about.

Q. That is all you remember about? A. Yes, sir.

Q. Well, *The Golden Age* started prosperously, didn't it?

JUDGE NEILSON.—State your impression, as far as you could judge? A. My impression is that it was prosperous. I have a letter from Moses Coit Tyler that I found among my papers——

Q. Well, we are asking you now——

JUDGE NEILSON.—He answered that he thought it started prosperously.

The Witness.—I am giving my authority for the thought.

Mr. Tracy.—Well, we will be contented with your thought.

The Witness.—Thank you, sir.

Q. Well, I will recur to that letter. Now, can you say, on reading that, whether it was the warehouse or the yacht race that it refers to? A. Well, I really can not—— My impression is that it was the yacht race.

Q. It was one or the other, or else both were included at the same time? A. It was one or the other, at all events, there was one occasion, I believe, when Mr. Tilton and Mr. Beecher were together on a ——

Q. Do you remember that on coming from the warehouse excursion Mr. Beecher and Mr. Tilton went to your house and dined together? A. I do not recollect that.

Q. Don't recollect whether they did or not? A. No; haven't any recollection about it.

Q. You have no recollection as to how you returned from that excursion—you don't remember whether they did or not? A. I remember that, after the yacht race—I recollect that, after the yacht race, Mr. Beecher and myself were at our house together.

Q. Beecher and yourself? A. Yes, sir.

Q. Wasn't Tilton along? A. I don't recollect.

Q. Don't recollect whether he was or not? A. I do not; no, sir.

Q. Now, the publication of the life of Victoria Woodhull by Theodore Tilton, you say was in September, '70? A. No; I did not say that.

Q. '71—Was that published in *The Golden Age?* A. In *The Golden Age?* I think not, sir.

Q. Wasn't it published in the supplement to *The Golden Age?* A. No, sir.

Q. And then put into a tract—one of *The Golden Age* tracts? A. I don't think it was ever published in *The Golden Age*, sir.

Q. Have you got a copy of that life? A. I do not think I have.

Mr. Evarts.—[To plaintiff's counsel.] We gave you notice to produce it, if you had any such copy.

Mr. Morris.—It does not appear that the plaintiff has it.

Mr. Evarts.—We would like to have it if you have got it.

Mr. Morris.—We have not got it.

Mr. Evarts.—We gave them notice to produce the composition of that life, and they say that they have not got it, so we may have to have a copy of it.

JUDGE NEILSON.—The manuscript, I suppose, which passes to the printer, is not often reclaimed.

Mr. Evarts.—Very likely; of course.

Mr. Tracy.—How large a pamphlet was that? A. A small pamphlet, as I recollect; but I did not read it all.

Q. You read the most of it? A. No, I don't think I did.

Q. Now, was it after publication of the "Life of Victoria Woodhull" that this change, that you have already spoken of in your evidence, was made in the subscription to *The Golden Age?* A. I think it was after the publication of the "Life of Victoria Woodhull."

Q. How long after? A. I don't exactly recollect, sir.

Q. Well, can't you approximate to it? A. No, I can not; I shall be able to, I think, before I finish my evidence; I had a letter that fixed the date for which I have made a search and have not found.

Q. Now state in detail what that change was that occurred in *The Golden Age* after the publication of that life? A. Mr. Woodruff thought best that Mr.——

Q. Just state what was done; I don't care what you thought, or——

JUDGE NEILSON.—So far as you know what was done. You told us the other day as to your own claim. A. When it came to the payment of the subscription—of the last half of the subscription, Mr. Woodruff thought it better that Mr. Tilton should have *The Golden Age* as his own property—become sole proprietor of it; and so the notes were surrendered to Mr. Tilton. When that was, sir, I don't remember.

Q. And what was received by the subscribers for the half of the subscrip-

tion already paid in? A. Their notes, I believe—— What was received, what?

Q. What did the subscribers receive from Mr. Tilton for the half of the subscription which they had already paid in? A. Nothing that I know of.

Q. They gave that to him? A. Yes, sir.

Q. In other words, they gave him what they had already paid in, in consideration of his releasing them from the other half of their subscriptions; that was it, was it not? A. He did release them from the other half of their subscriptions.

Q. Well, the one was the consideration for the other, wasn't it? A. I suppose it was.

Q. And that was done by all the subscribers, including yourself? A. Yes, sir.

Q. Now, are you not able to approximate to the time when that occurred? A. I really am not, Mr. Tracy; I hope to fix it for you before my testimony is concluded.

Q. About how soon after the publication was it? A. I really don't remember, sir; if I recollected anything about it I would state it freely.

Q. Can you tell whether it was before or after the Steinway Hall meeting? A. I don't recollect that.

Q. You say you got a letter that will enable you to fix that date? A. I have had such a letter; yes, sir.

Mr. Tracy.—We will thank you to refresh your memory.

The Witness.—Or I have been informed of such a letter—I have seen such a letter.

Mr. Shearman.—We have subpœnaed the plaintiff in this case (*duces tecum*), to produce the original manuscript of the life of Mrs. Woodhull, and also a printed copy. We have also given him notice to produce——

JUDGE NEILSON.—I don't think you can compel him to bring a printed copy. You can buy that, perhaps, at the store.

Mr. Tracy.—Unfortunately, we can not, your Honor.

Mr. Evarts.—It is not a question arising as to whether we can or can not, at present. We have taken the proper steps to have him do it, and the question is whether he brings it or not.

Mr. Fullerton.—He can not——

Mr. Evarts.—Not the printed copy.

Mr. Fullerton.—We haven't got any copy.

Mr. Evarts.—Then we shall have to refer to other evidence.

Mr. Tracy.—Well, you remember that such a life was issued as one of *The Golden Age* tracts, do you not?

Mr. Morris.—He has not said so.

JUDGE NEILSON.—He has said he does not remember that it was.

Mr. Tracy.—That it was.

Mr. Pryor.—That it was not.

JUDGE NEILSON.—Well, what did you say? A. He asked me if it was——

Mr. Beach.—Well, I don't see the materiality of that inquiry.

Mr. Tracy.—Was or was not the Life of Victoria Woodhull, written by Theodore Tilton, issued as one of *The Golden Age* tracts?

Mr. Beach.—I object to that question.

JUDGE NEILSON.—Let him answer. Do you know whether it was or not? A. It was issued in a tract, sir. I don't recollect whether it was one of *The Golden Age Tracts* or not.

Q. There was a series called "*Golden Age Tracts*," was there not? A. I don't know that there was a series. There were some *Golden Age* tracts.

Q. Numbered "Tract 1," "2," "3," and so on? A. I don't recollect that.

Q. Don't recollect that? A. No, sir.

Q. Well, that was a *Golden Age* tract, wasn't it; and issued from *The Golden Age* office? A. I don't know that it was.

Q. The Life of Victoria Woodhull?

Mr. Fullerton.—He has said that.

JUDGE NEILSON.—He has said he knows that it was issued in *The Golden Age* office; he does not know that it was one of *The Golden Age* tracts.

Mr. Tracy.—Now, wasn't the fact of the issuing of that Life—the publication of the Life of Victoria Woodhull—very injurious to *The Golden Age*?

[Objected to.]

JUDGE NEILSON.—Ruled out, sir.

Q. Wasn't it the occasion of this transaction by which the subscribers asked or were relieved from their subscription, in consideration of their surrendering the notes.

Mr. Fullerton.—That is objected to.

JUDGE NEILSON.—I think he can answer that, so far as he himself is concerned, but not as to the others.

Mr. Morris.—That is not the question.

JUDGE NEILSON.—How was it as to you personally?

Mr. Beach.—Well, that is immaterial. How is it material?

JUDGE NEILSON.—I don't know. I only assume that it is possibly material in some view.

Mr. Beach.—Well, when the question is objected to, your Honor should see the materiality of it.

JUDGE NEILSON.—I don't see the materiality of it.

Mr. Beach.—Or see the mode in which it can be connected with the trial as material. What the publication of the Life of Victoria Woodhull has to do with the inquiry now before your Honor, we are not able to perceive.

Mr. Tracy.—I will ask you one other question.

Mr. Evarts.—The Judge says he may answer this question.

JUDGE NEILSON.—I rule that he may answer as far as he is personally concerned, assuming that he can not answer as to the motives of the other persons.

Mr. Evarts.—Well, let us have your answer? A. It did not have any effect upon me, sir.

Mr. Tracy.—That was not the occasion of it, then, so far as you were concerned? A. No, sir.

JUDGE NEILSON.—You lose time by repeating; that don't help it.

Mr. Tracy.—His answer was that it did not have any effect upon him.

JUDGE NEILSON.—Well, that is conclusive; that ends the inquiry; go on.

Mr. Tracy.—I ask another question. What was the cause of your retiring or surrendering your subscription and giving back the note?

Mr. Fullerton.—I object to it.

Mr. Evarts.—Why?

Mr. Fullerton.—Why, because it is not of importance.

JUDGE NEILSON.—I think he may answer it.

Mr. Fullerton.—It does seem to me there ought to be some appearance——

JUDGE NEILSON.—I think there ought to be some limit, but still he may answer that.

Mr. Fullerton.—Would your Honor ask the counsel to point out some application that can be made of that testimony to this case, if they know: if they don't know, why we will excuse them. It certainly seems to me as irrelevant as anything can possibly be.

JUDGE NEILSON.—Mr. Tracy, in view of the objection, state how you deem it material, please?

Mr. Tracy.—I deem it material to show, first, the relations of this witness to the plaintiff; to show his knowledge of the disaster that came upon the plaintiff at this time, and to show the materiality of this fact in regard to another piece of evidence which the plaintiff has introduced here preliminary to a question which I am about to ask the witness.

JUDGE NEILSON.—Well, pass to that question; perhaps that will enlighten us.

Mr. Evarts.—Does your Honor rule out the question?

JUDGE NEILSON.—At present, as immaterial.

Mr. Evarts.—Then, your Honor, we except to the ruling.

Mr. Tracy.—Do you remember the publication of Mr. Tilton, called "Sir Marmaduke's Musings"? A. Yes, sir.

Q. When was that published—the poem? A. I forget the date, just at the moment.

Q. Can't you fix about the time? A. It is in evidence, the paper, sir; I don't remember the date; there are so many dates.

Mr. Evarts.—Perhaps the date has been given in evidence already.

The Witness.—Yes, the date is there.

JUDGE NEILSON.—The paper—but the most difficult things, of course, for the witness to remember, are dates.

Mr. Tracy.—It is November 1st, I believe.

JUDGE NEILSON.—It is in the book, isn't it?

Mr. Tracy.—November 1st, 1871. Now, was it published about that time, according to your recollection? A. I don't remember the date; I saw it about the time it was published, whatever that date was.

Q. Well, do you recollect now that it was in the fall of 1871, about November? A. I don't recollect that, sir, but I assume that to be the date.

Q. Well, was it after the publication of the Life of Victoria Woodhull? A. I don't recollect that.

Q. Was it after this settlement that was made in regard to the subscriptions for *The Golden Age*? A. I don't recollect that.

Q. Now, Mr. Moulton, don't you know the fact from Mr. Tilton that the publication of the Life of Victoria Woodhull was disastrous to him and his enterprise—his newspaper enterprise? A. Will you repeat the question?

Q. Don't you know from Mr. Tilton that the publication of the Life of Victoria Woodhull, in September, 1871, was disastrous to him and his newspaper enterprise? A. He has never told me that.

Q. He has never told you that? A. No, sir.

Q. Has he ever talked with you on the subject of the effect that the publication of that life had upon the prosperity of *The Golden Age*? A. I talked with him about it; he didn't with me at the time.

Q. You talked with him but he did not with you? A. Yes, sir.

Q. Tell us what you talked to him? A. I told him that I thought he ought not to have published it.

Q. Well, why? A. Well, I told him that it seemed—so many statements in it seemed extravagant to me—many statements in it seemed extravagant; I did not think it was a necessary work to do; and his reply to that—his reply to that—when I say that he didn't talk to me, I mean that he didn't open the subject; I opened the subject of the conversation; his reply to me was, that he did it as a friendly act to Mrs. Woodhull from the manuscripts furnished him by her husband; that it was simply a revision by him, but that——

Mr. Tracy.—Well, now, Mr. Moulton——

Mr. Beach.—[To Mr. Tracy.] Wait! wait! wait!

JUDGE NEILSON.—Let him state the conversation, please.

Mr. Tracy.—I did not ask him for the conversation.

JUDGE NEILSON.—Go on, sir.

Mr. Evarts.—Let us get it.

The Witness.—That it was simply a revision of the manuscript of—of her husband, and that he thought that people would detect his handiwork in it, and therefore he thought he would put his name to it, and I told him that I didn't think that that was a very good reason. He said he would take the responsibility of it, and that was the sum and substance of it, with the exception—and he said it was a friendly act; he said it was a friendly act, and right, in the interest of the repression of the scandal against Mr. Beecher, his wife, and himself; it was in the interest of his family and Mr. Beecher that he had done it, and if he had made a mistake, why that was all there was of it.

Q. Anything more? A. No; I don't remember anything more.

Q. Well now, do you recollect that he ever talked to you about it? A. I have just given——

Q. Do you now? A. I have just given the conversation.

Q. You now do recollect that he talked with you on the subject of that Life? A. Yes, sir.

Q. Now, did he talk to you about the effect that it had on him and the effect that it had on his newspaper? A. No.

Q. He did not? A. No.

Q. Did you talk to him on that subject? A. I told him that I thought the effect of it would be disastrous upon the paper.

Q. What did he say to that? A. I don't recollect his reply to that.

Q. Did he make any at all? A. He may have made it, but I do not recollect it, sir.

Q. Do you know, as a matter of fact, what the effect was upon the paper?

Mr. Beach.—Know as a matter of fact?

Mr. Tracy.—Yes, sir; that is the question. Do you know, as a matter of fact, what the effect of that publication was upon the paper?

Mr. Beach.—I understand this question, if your Honor please, not as calling for a judgment or opinion of the witness, but that he is asked personal knowledge of a fact of that character.

Mr. Evarts.—It is not necessary to explain; we would like to have an answer.

Mr. Beach.—It is; yes, sir. I want the witness to understand what it calls for. I am regular and I am in order; and I am not to be subdued by this objection. I submit that it is the duty of the Court to instruct a witness, when requested by counsel that the interrogatory put calls for his personal knowledge of the fact as to the effect produced by that publication on *The Golden Age*.

JUDGE NEILSON.—I think that is so.

Mr. Evarts.—I submit, if your Honor please, it is time enough to appeal to the Court to take a witness from the hands of the cross-examining counsel to explain to him, when the witness feels the need of explanation, and not when the counsel does.

Mr. Beach.—It is not when the counsel feels or the witness feels. If the question was intended, or is understood, as calling for the opinion or judgment of the witness, then, of course, we shall object to it, and it is only for the purpose of having the question understood by your Honor and the witness that the suggestion is made.

Mr. Evarts.—Now we would like to have an answer.

[Question read by the stenographer.] *The Witness.*—Of what? That was not all the question, was it?

Mr. Tracy.—It seems so. That is what he has read to you.

JUDGE NEILSON.—It is a peculiar question and requires some consideration.

The Witness.—Will you read the question again, Mr. Stenographer?

[Question again read.]

The Witness.—Of what?

Mr. Tracy.—Of the publication? A. Of the publication? I don't know, as a matter of fact.

Q. What it was? A. No.

Q. You were a subscriber at the time? A. I took the paper at the time.

Q. I mean a subscriber to the fund at that time? A. Subscriber to the fund? Yes, sir.

Q. Interested in that enterprise? A. Yes, sir.

Q. By your subscription? A. Yes, sir.

Q. And how long did you remain so interested after that publication? A. I don't recollect, sir.

JUDGE NEILSON.—We have had that; we have been over that.

Mr. Tracy.—I beg your Honor's pardon, we have not had the time.

Mr. Beach.—He told you repeatedly that he could not tell you the time.

Q. Did you remain a week after that? A. I don't recollect sir, how long I remained.

Q. Will you swear that you remained a week after that publication? A. I can not fix the date at all; I can not recollect anything about it.

Q. Did you go out at the same time the other people did? A. I did.

Q. Now, what was the occasion of your going out? A. To give to Mr. Tilton, in accordance with Mr. Woodruff's view of the case, the sole proprietorship of the paper. As far as I am concerned, that was the reason.

Q. And upon what was that resolution taken to give to Mr. Tilton the amount of subscription already paid into that paper? A. Will you ask the question again.

Q. Upon what was that resolution to give to Mr. Tilton the amount of subscriptions already paid in in that paper taken?

Mr. Morris.—He has answered that question two or three times.

Mr. Tracy.—The question has not been put before. He may have answered it.

Mr. Morris.—Yes, he has. He said it was the suggestion——

Mr. Evarts.—Now, we don't want that.

JUDGE NEILSON.—Excuse me, Mr. Evarts, I understand this perfectly. I don't need any instructions about it.

Mr. Evarts.—If your Honor please——

JUDGE NEILSON.—You generally and happily aid in instructing the court. I don't happen just now to need that.

Mr. Evarts.—I don't rise for that purpose, now, and I don't know that I ever did, except to call the court's attention to what I supposed——

JUDGE NEILSON.—I have had the pleasure to so understand it when you did arise before; I think the answer to this question may be given, although it has been answered already.

[Question read by the stenographer.]

The Witness.—Mr. Woodruff said that he thought it would be better for Theodore Tilton to be sole proprietor of the paper; so I——

Q. Upon what occasion did he say that? What was the occasion of his saying that, do you know? A. I suppose it was at a time when the paper needed the further subscriptions that were called for.

Q. Called for the further subscriptions? A. I think it was.

Q. And the subscribers were not going to pay them? A. I don't know anything about that.

Q. How would it have been with yours? A. I should have paid mine.

Q. If the others had not? A. If the others had not.

Q. Why didn't you? A. For the reason that I have stated.

Q. Was it not the suggestion of Mr. Woodruff that the subscribers should not pay any more to that enterprise? A. I didn't so understand it.

Q. You did not so understand it? A. No, sir; not to me.

Q. That was the effect of the suggestion when it was carried out.

JUDGE NEILSON.—That we know. We don't need to illustrate that.

Q. You say the object of this was to make Mr. Tilton sole proprietor of that paper. Was he not the sole proprietor of it already? A. I didn't consider him the sole proprietor of it.

Q. You did not? A. No, sir.

Q. In whose name was that property? A. Theodore Tilton's, I suppose.

Q. Who else had any interest in its profits but Theodore Tilton? A. I don't know that anybody did.

Q. Or its losses? A. I should think that the subscribers did. If *The Golden Age* was a success I had that interest in it, as far as I was concerned.

Q. Had you in the success of Mr. Tilton—in his ability to pay? A. No, sir; in the success of the paper.

Q. Do you say that your subscription—that Theodore Tilton's notes were payable on condition that the paper was a success? A. Yes, sir; I think that was the phraseology, as far as I recollect.

JUDGE NEILSON.—That fact you stated before.

Mr. Tracy.—I had reference to my cross-examination.

JUDGE NEILSON.—The comment was unnecessary. Interrogate the witness, but don't make observations. I take it that you, as a lawyer, would very likely think, in equity, that persons who did contribute to this fund would have an equitable interest in that establishment—could some day close it up—and upon this frame a bill to that effect, but this witness could not tell you how it is.

Mr. Evarts.—It is purely a question of fact, and not of law. The question is whether they had any participation in the profits of this enterprise or its losses. I believe it is very clear that if the affair was not prosperous Mr. Tilton would not be able to pay them. I suppose it is very clear. The court, I think, has got it wrong.

JUDGE NEILSON.—Go on, Mr. Tracy.

Q. Will you tell us on what conditions those notes were payable, or to be payable? A. Notes that Mr. Tilton gave to the subscribers, you mean?

Q. Yes, sir. A. I think payable on the success of *The Golden Age.*

Q. Who was to determine that question?

Mr. Beach.—I object to the form of that question.

JUDGE NEILSON.—[To the witness.] Is the form of the note so expressed?

The Witness.—I don't recollect the precise expression, your Honor.

Mr. Tracy.—That was the substance of it? A. Yes, sir.

Q. These notes were not to be paid except in case *The Golden Age* was a success?

Mr. Beach.—That is a matter of reason.

Q. Was not that the fact?

Mr. Fullerton.—That has been stated over and over again.

JUDGE NEILSON.—[To the witness.] Is that so that the notes were not to be paid except in case *The Golden Age* was a success? A. Unless *The Golden Age* was a success they were not to be payable.

Q. That you so understood? A. Yes, sir.

Mr. Tracy.—Now he has answered the question.

Mr. Morris.—He answered it before four or five times.

Mr. Tracy.—Did you ever talk with Theodore Tilton about the publication of the poem entitled "Sir Marmaduke's Musings," before it was published? Did you know it until you read it in the publication? A. I think not.

Q. How long after the publication of this Life was the Steinway Hall meeting? A. I don't recollect the date of the Steinway Hall meeting.

Q. It is said to be November 20th. Do you recollect it was in November? A. November 20th of what year?

Q. 1871? A. I think it was in November, 1871.

Q. You had made the acquaintance of Victoria Woodhull some time in the spring previous, you say? A. Yes, sir.

Q. How often had you seen her from the spring until the Steinway Hall meeting.

Mr. Beach.—I think Judge Porter went over that question.

JUDGE NEILSON.—I think he did, too.

Mr. Tracy.—If he asked that question, I will not ask it again.

Mr. Beach.—He asked numerous questions on that subject.

Mr. Tracy.—He did ask some questions on that subject—some general questions.

Mr. Beach.—They were very specific questions. I think you are incorrect. If you are going to abandon that line of examination, very well; but if not, I insist it is a mere repetition.

JUDGE NEILSON.—Counsel ought not to repeat, and I trust he will not repeat, if he can avoid it.

Q. How often was Victoria Woodhull at your house during the year 1871? A. Well, perhaps four or five times.

Q. How often did she dine at your house?

Mr. Fullerton.—This has all been gone over.

JUDGE NEILSON.—As to dining?

Mr. Fullerton.—Yes, your Honor; it has been fully gone over.

JUDGE NEILSON.—Do you recollect how often she dined with you, presuming she did dine with you?

Mr. Tracy.—I think he said once to me, that she did dine with him.

JUDGE NEILSON.—How often did she dine with you? A. I don't recollect how many times; I guess two or three times.

Mr. Tracy.—Can you state more definitely than that? A. No, sir.

Q. Did she meet your wife when she came there? A. Yes, she did.

Q. Did you urge your wife to make her acquaintance and become a friend of hers? A. I did to become friendly to her.

Q. How often was she there in 1872 before you parted company with her? A. I don't recollect.

Q. Well, can you approximate to it? A. No, sir.

Q. Can you not tell about how often she was there in 1872? A. No, sir, I don't recollect that she was there in 1872.

Q. Do you mean to say you don't recollect whether she was there at all? A. In 1872?

Q. I am content with that answer if that is your answer. When did you see her last? A. I forget the date exactly. It was in the spring of 1872, I think.

Q. The spring of 1872? A. I think so; yes, sir.

Q. Can you fix about the date? A. I think it was in April; I won't be certain about that. I answered Judge Porter that question.

Q. Did you see her last in company with Theodore Tilton? A. I think Theodore Tilton was with me on that occasion.

Mr. Morris.—Judge Porter went minutely over all this.

The Witness.—Yes, sir; he did.

Mr. Morris.—All these questions were asked over and over again. Is it in order that they may come in to-morrow and go over this again, and so continue it?

Mr. Tracy.—I am not repeating questions I asked.

Mr. Morris.—Yes, but you are repeating questions your associate asked: the same questions and the same subject were gone over minutely by Judge Porter.

JUDGE NEILSON.—[To Mr. Tracy.] You are about through with that?

Mr. Tracy.—I am not, sir.

Mr. Morris.—We object. We say this subject was gone over minutely by Judge Porter, and exhausted by him.

Mr. Beach.—Not only that, but there was an offensive particularity in the questions put by Judge Porter on this subject, conveying the most indecorous implication.

Mr. Evarts.—That does not bear on this question.

Mr. Beach.—Yes, sir; it does.

Mr. Fullerton.—You ought to have a suggestion on this subject, whether you are re-examining him on the subject Judge Porter went over.

Mr. Morris.—We appeal to the stenographer's minutes, and say he is going over the same ground that has been gone over already.

JUDGE NEILSON.—Mr. Shearman, have you the book here?

Mr. Evarts.—Yes, sir; we will look.

Mr. Tracy.—The question is whether he parted with her in company with Theodore Tilton.

JUDGE NEILSON.—That mere circumstance would not prevent you from re-entering on the general subject.

Mr. Tracy.—Judge Porter didn't examine in detail on this subject any more than he did on any other that I am aware of.

JUDGE NEILSON.—You have the report before you. Can you find it?

Mr. Shearman.—It will take some time?

Mr. Beach.—Yes, sir, it will take some time; it is quite protracted.

Mr. Shearman.—We will state the substance of it.

Mr. Fullerton.—I can state it from memory.

Mr. Evarts.—We will look at it to see.

JUDGE NEILSON.—Gen. Tracy, pass that subject, and we will look at that in the meantime.

Mr. Beach.—Well, perhaps the next question will not be objectionable.

Mr. Shearman.—Mr. Tracy suggests to me it was not covered by Judge Porter's examination.

Mr. Tracy.—My last question was preliminary to the question I am now about to put. Did you and Mr. Tilton have any difficulty with her at the time you last saw her? A. I don't recollect that we did.

Q. Was it the occasion of the article known as "Tit for Tat" that you saw her at that time? A. I don't recollect any such article at that time.

Q. You don't recollect any such article at that time? A. No, sir; not at that time.

Q. Do you recollect the article called "Tit for Tat?" A. I never saw such an article.

Q. You never were present at any interview between Mr. Tilton and Mrs. Victoria Woodhull when that was the subject of conversation? A. No, sir; not that I recollect of.

Mr. Tracy.—Then that answers this question on that subject.

Mr. Fullerton.—I suppose so.

Q. Did you ever see the article called "Tit for Tat?"

Mr. Fullerton.—He said twice he never did.

Mr. Tracy.—I don't remember that. Did you ever hear of an article from Mr. Tilton which Mrs. Victoria Woodhull proposed to publish, called "Tit for Tat?" A. I don't recollect of ever having heard of it from Mr. Tilton.

Q. Did you ever hear from Mr. Tilton of an article proposed to be published by Mrs. Woodhull, which she sent around for private circulation, threatening to publish in it the names of certain ladies that were mentioned? A. Did I ever hear of that article?

Q. Yes, sir; from Mr. Tilton? A. I don't recollect that I ever heard of it from Mr. Tilton.

Q. And you never had any interview with Mrs. Woodhull on the subject of such an article? A. I don't recollect that I ever did.

Q. Was the last interview that you had with her friendly? A. It was, as far as I was concerned, a friendly interview.

Q. Was it, as far as she was concerned? A. Yes, sir; I think it was.

Q. Was it also friendly on the part of Mr. Tilton? A. I don't recollect that it was unfriendly.

FOURTEENTH DAY, JANUARY 22, 1875.

FRANCIS D. MOULTON recalled, and the cross-examination resumed.

Mr. Tracy.—Mr. Moulton, did you advise the defendant to preside for Mrs. Woodhull at the Steinway Hall meeting? A. I don't think I did, sir.

Q. Were you furnished with her speech in print before the meeting? A. I was not, sir.

Q. Did you have it in your possession before that time? A. I did not, sir.

Q. Did you ever see it before that? A. I did not, sir.

Q. Was Mr. Tilton furnished with it in your presence? A. Never.

Q. Did you see it in manuscript? A. Never.

Q. Was it furnished to Mr. Tilton in your presence in manuscript? A. Never.

Q. Was any paper furnished him which was said to be her speech that she was to deliver at the Steinway Hall meeting? A. In my presence, sir?

Q. Yes, sir. A. Never.

Q. Did you ever see it in Mr. Tilton's presence? A. I never did.

Q. In Mr. Tilton's possession? A. I never did.

Q. Were you ever present when Mrs. Woodhull and yourself and Tilton were present, when Mr. Tilton urged Mr. Beecher to preside at the Steinway Hall meeting? A. I don't recollect, sir, that I ever heard Mr. Tilton urge Mr. Beecher to preside. I think I have a letter, General Tracy, from Mrs. Woodhull to Mr. Beecher on that subject.

Q. That has been introduced, hasn't it? A. I don't know whether it has or not.

Mr. Tracy.—I think it has, has it not, Mr. Beach?

Mr. Beach.—The letter of Mr. Beecher in answer to it, or proposed letter, has been introduced.

The Witness.—It is a proposed answer to another letter, Mr. Beach.

Q. Did you and Mr. Tilton ever take Mrs. Woodhull into the presence of Mr. Beecher and attempt—undertake to persuade him to preside at that meeting? A. Will you ask the question again, Gen. Tracy? [Question repeated.]

A. No, sir; I don't remember any such occasion as that.

Q. Did you ever go into his presence together, you three, for that purpose? A. I don't recollect whether we three went, Mr. Tracy, but I recollect that Mrs. Woodhull and myself were in Mr. Beecher's presence.

Q. Well, I am talking about you and Mr. Tilton and Mrs. Woodhull. Did you ever hear Mr. Tilton, in the presence of yourself and Mrs. Woodhull, say to Mr. Beecher, "Mr. Beecher, some day you have got to fall. Go and introduce this woman and win the radicals of the country and it will break your fall?" A. I don't remember ever having heard that, sir.

Q. You were never present at any such interview, to your knowledge? A. No, sir.

Q. Were you present at the Steinway Hall meeting? A. I was; yes, sir.

Q. Did you go there in company with Mr. Tilton? A. I did.

Q. Did Mr. Tilton preside? A. He introduced Mrs. Woodhull.

Q. Well, did he preside? A. To that extent.

Q. Who occupied the chair? A. I think he did, sir. Is that what you mean by presiding?

Q. I leave that for you to determine, what you mean by presiding. A. I want to answer your question properly, that is all. I beg pardon, sir.

Q. Did he occupy the chair and introduce Mrs. Woodhull on that occasion? A. He introduced Mrs. Woodhull, and then occupied the chair afterwards.

Q. Well, he did not take the chair before introducing Mrs. Woodhull? A. I remember his walking to the front of the platform with his overcoat in his hand, and introducing her. That is my recollection of it. I am giving it as I remember it.

Q. Did you listen to her speech that night? A. To almost all of it. I don't know that I heard the whole of it.

Q. What was the subject of that speech? A. I don't recollect, sir, what the subject was; I don't recollect what she called the title of her speech.

Q. Well, you heard it? A. Yes, sir.

Q. Don't you remember on what subject it was, what subject she discussed in that speech? A. Well, I can not recollect, sir, definitely enough to state it accurately.

Q. Can't you state the point of the speech? A. It was the relation of man to woman, I guess, and woman to man, as near as I can state it, and woman to society.

Q. Wasn't it on the marriage relation? A. I really don't recollect, sir, whether that was the title or not.

Q. I didn't ask you about the title. A. You asked me what the speech was on, whether it was on the marriage relation.

Q. Yes; I asked you whether the subject of her speech was not the marriage relation? A. That, I say, I can not tell you.

Q. You can't tell that? A. No, sir.

JUDGE NEILSON.—I think you have gone far enough with that, Mr. Tracy.

Q. Was it not what is called the doctrines of free love?

JUDGE NEILSON.—General, do you wish to go into that?

Mr. Tracy.—I do.

JUDGE NEILSON.—If you do, I will spend all day, but I don't think it is pertinent.

Mr. Tracy.—We would not have asked the question unless we had thought it pertinent.

JUDGE NEILSON.—I think it is not, sir.

Mr. Tracy.—We bow to the opinion of the court.

JUDGE NEILSON.—My view is simply this: if Mr. Tilton, before he introduced that speaker, knew what the speech was, had seen it, or had been furnished with it, and then introduced her, he would be responsible for what was said; but if he did not know what the subject was, the mere fact of his introducing the speaker does not make him responsible for what followed; it does not affect it. That is my view of it.

Mr. Tracy.—We can only show one fact at a time, your Honor. We show that he introduced her, and heard the speech. Then we may show by other witnesses that he knew what the speech was to be before it was delivered.

JUDGE NEILSON.—When you can do that, resume this subject.

Mr. Tracy.—And recall this witness?

JUDGE NEILSON.—Any way you please.

Mr. Tracy.—We desire to have this question answered now.

JUDGE NEILSON.—I rule it out.

Mr. Tracy.—You Honor will note our exception.

Mr. Evarts.—Will the stenographer read the question?

[The stenographer read the question as follows]: "Q. Was it not on what is called the doctrines of free love?"

Mr. Evarts.—Is that objected to on the other side?

JUDGE NEILSON.—I do not understand it is. I objected to it.

Mr. Evarts.—Your Honor will note our exception.

JUDGE NEILSON.—I will.

Mr. Evarts.—Your Honor directs it not to be answered?

JUDGE NEILSON.—I do.

Mr. Evarts.—And we except.

Mr. Tracy.—Do you know whether the friendly relations between Mr. Tilton and Mrs. Woodhull continued after that speech? A. I think they did, sir. What was the date of the speech, sir? What was the date of the Woodhull speech, if you please?

Q. Nov. 20th, 1871? A. Yes.

Q. Did your friendly relations with Mrs. Woodhull continue after that speech? A. Yes, sir.

Q. Did you have her at your house after that speech? A. I don't recollect.

Q. You don't recollect? A. No.

Q. Do you recollect that you did not? A. I haven't any recollection about it, sir.

Q. You speak of a day when Mrs. Woodhull was at your house, when the subject of her speech was talked of. Was Mr. Tilton present at your house on that day? A. He was there, I think, sir.

Q. With her? A. I don't remember whether he was with her or not, sir.

Q. Was he in the house and in her presence that day? A. I think he saw her on that day; yes, sir.

Q. And conversed with her? A. I think he did; yes, sir.

Q. Do you know whether he went away with her? A. I don't recollect that, sir.

Mr. Tracy.—Now I renew the question that I put before.

JUDGE NEILSON.—He may answer it now.

[The stenographer read the question.]

A. I don't know precisely the doctrines of free love, and therefore I can not answer that question. I should suppose that the public construed it so, sir, if you will allow that.

Q. You mean by the public, the people who heard it, don't you?

Mr. Beach.—Well, we don't want his supposition as to what others construed it.

Mr. Evarts.—Well, that is enough.

Q. You have stated that you was Mr. Moulton's attorney for the collection of the Bowen claim?

Mr. Beach.—Mr. Tilton's attorney, I suppose you mean?

Mr. Tracy.—Mr. Tilton's attorney for the collection of the Bowen claim.

Mr. Beach.—He didn't state that. He said he had that authority.

Mr. Morris.—The authority has been introduced, and he said that he had the authority.

Mr. Tracy.—And the power of attorney is in evidence, isn't it.

The Witness.—No, sir.

Mr. Morris.—He said he didn't know whether you would consider it an attorney or not.

Mr. Tracy.—I mean the attorney in fact.

JUDGE NEILSON.—The very question was put to him before and he was troubled about the word "attorney."

Mr. Tracy.—Well, agent, then.

The Witness.—Mr. Tilton authorized me—which is the fact—generally to settle his claim with Mr. Bowen.

Q. Did you undertake the charge? A. Yes, sir; I did.

Q. To collect that claim of Mr. Bowen? A. Yes, sir; I did.

Q. When did he authorize you first? A. About January 1st or 2d; January 1st, I think. The letter will show, sir.

Q. And in pursuance of that authority did you see and have an interview with Mr. Bowen? A. Yes, sir.

Q. Did you present Mr. Tilton's claim to him? A. Yes, sir.

Q. What amount did you demand of him? A. I think it was something like $7,000.

Q. What was his answer to the claim when you presented it?

Mr. Fullerton.—I don't think that is material, sir.

JUDGE NEILSON.—As they have a right to ask whether it was presented, I think they may take the answer that Mr. Bowen made as a part of the same thing. It is, I believe, not very material.

Mr. Fullerton.—Of course, and we may follow it up by showing that it was a good claim and all paid for.

Mr. Evarts.—The materiality, your Honor will see, will depend upon what the answer was.

Mr. Tracy.—What was his answer to the claim? A. He said he didn't think he owed Mr. Tilton any money, and that he would arbitrate if I thought he did.

Q. Why?

Mr. Evarts.—Did he say?

Mr. Tracy.—Did he say why he didn't think he owed Mr. Tilton any money?

Mr. Beach.—Are those declarations to be permitted, sir.

JUDGE NEILSON.—We took them the other day, and this same answer.

Mr. Beach.—What if we did, sir? That is another reason why it should not be received to-day. But I submit to your Honor that it is entirely immaterial what Mr. Bowen may have said in regard to the reasons why he resisted that claim.

JUDGE NEILSON.—I think so, too.

Mr. Evarts.—Our view, if your Honor please, is simply this: that Mr. Tilton, having put Mr. Moulton as his representative in the prosecution—presentation, prosecution, negotiation and settlement of that claim, what passed between Mr. Bowen and the other side and this witness is as if it passed

between Mr. Bowen and Mr. Tilton; and that we have the same right to show it as if the conversation was between Mr. Bowen and Mr. Tilton.

JUDGE NEILSON.—So far as it relates——

Mr. Evarts.—So far as it relates to the subject. That is our view, and if your Honor excludes that view as suitable, then it comes under some other rule of law; but that is our proposition.

JUDGE NEILSON.—I think you may answer that.

Mr. Fullerton.—Are we to try the merits of that controversy? The validity of that claim did not depend at all upon what Mr. Bowen said of it. Are we to go into the trial of that claim over again?

JUDGE NEILSON.—Of course, it is going to the extreme. Mr. Bowen might say many things that a gentleman ought not to say on being presented with that claim.

Mr. Fullerton.—Well, your Honor, they will contend upon the other side that this claim was unfounded, because Mr. Bowen probably said at that time it was unfounded.

JUDGE NEILSON.—He has not said that. He said Bowen said, he didn't owe him any money, the other day.

Mr. Fullerton.—Now, if that is proved in this case, why, it is necessary for us to disprove it by showing it was a legitimate claim, and introduce these contracts in evidence for the purpose of determining that question. Your Honor will perceive that Mr. Bowen could not create a defense on that occasion to this claim. Suppose he had alleged that Mr. Tilton had broken his contracts, it would not establish the fact. Suppose he had alleged the contracts were forgeries, it would not have established the fact. We certainly can not go into that side issue here, although we have not any apprehension as to the result, but we have got enough on our hands here without trying that cause over again, which has been settled by arbitration, as we all very well know.

Mr. Evarts.—It will be time to question our right to try that cause over again when we attempt to do so. It is not likely that we shall; we have no occasion to try it over again. Your Honor has ruled on the question.

JUDGE NEILSON.—You will answer, Mr. Moulton, with especial care to the question of the claim and its validity, and not extraneous matters. What answer do you make? A. What is the question?

[The stenographer read the question.]

A. No, he did not say why, sir. He said he did not think he owed Mr. Tilton any money, and if I thought he did, he would be willing to arbitrate.

Q. When was that interview? A. It was in the first part of January, between January 1st and January 10th, sir.

Q. What was the next step you took after that in the collection of this claim? A. I saw Mr. Bowen at my house; he came there; he came to the house and said again that he was willing to arbitrate, and although Mr. Tilton had told me, in the meantime, that he was perfectly willing to arbitrate, I said that I did not want to arbitrate, and I said, "Mr. Bowen, this is my reason. The contract provides—there is a specific provision in the contract with regard to the termination of it in the way that you have terminated it

The contract has a plain provision—has several plain provisions alluding to its termination; that is, it can be terminated at the end of six months by notice, without the payment of any penalty; or it can be terminated by death, or it can be terminated at once by the payment of a certain sum of money." I forget what that was now; I think it is $2,500 or $3,000. Whatever it was, I mentioned it to him; it was mentioned in the contract. He said that he thought the contract required arbitration; that there was a provision in the contract that if there was any difference between the editor of the paper and the publisher, that then the contract provided that the interpretation of the contract with reference to that difference should be submitted to arbitration; and I said to him: "Mr. Bowen, that provision—that section of the contract is with regard to the interpretation of Mr. Tilton's duties towards you as publisher—his duties as editor towards you as publisher, and of your duties as publisher towards him as editor. There is a difference between that clause and the one following it, which is a plain provision for the payment of so much money on the breaking of the contract. Now, on that ground I don't want to arbitrate." And there is another ground that was expressed to him, which, if you want me to tell you, I will.

Q. You may state what you expressed to him, now. A. That is about it.

Q. What did he say to that? A. He objected again; he said he was perfectly willing to arbitrate.

Q. Did he say that he owed Mr. Tilton no money at that time? A. No, sir; I don't think he said he owed Mr. Tilton no money. He was willing to leave the matter to arbitration.

Q. He was not willing to pay, however, without arbitration, was he? A. No.

Q. Did you bring a suit against him for the claim? A. No; Mr. Tilton did, I believe, subsequently.

Q. Well, did you direct the bringing of the suit? A. No; Mr. Tilton, I believe, commenced the suit.

Q. You did not confer with counsel on that subject? A. I don't think I conferred with counsel on that subject.

Q. Or employed them yourself? A. No; I didn't employ them or pay them.

Q. Then Tilton afterwards commenced the suit against Bowen? A. Yes, sir.

Q. Do you know about what time? A. I forget the exact time. I think I have got a letter.

Q. Approximate to the time as nearly as you can. A. It was in the latter part of 1871, or the beginning of 1872, I think.

Q. How many interviews have you had with Mr. Bowen on the subject of this claim, between the time of the last interview mentioned by you and the commencement of this suit? A. I don't know; several, sir; I do not know how many.

Q. A good many had you not? A. Not a very great many; no, sir.

Q. Didn't he ever say to you, in any of those conversations, that he thought he had good cause for breaking his contracts with Tilton? A. He

said that he thought—on the first morning that I saw him, that was the conversation—he said, I think, the first morning that I saw him, that he thought he didn't owe Tilton any money.

Q. The question is not that—the question I put to you? A. Well, I will explain the answer, if you please.

Mr. Evarts.—Go on. A. I have explained it, sir.

Mr. Tracy.—I will put you this question; didn't Mr. Bowen, at any interview that you had with him, say that he thought he had good cause for breaking his contract with Mr. Tilton?

Mr. Evarts.—That is already answered.

Mr. Tracy.—Now, did he ever state to you, in any of those conversations, why he thought he had cause for breaking Mr. Tilton's contract? A. I do not recollect, sir, that he stated to me the cause.

Q. Do you recollect that he did not? A. I haven't any recollection on the subject, sir; whether he told me the causes, now or not; I do not think he did.

Q. Was there a period, when, after the suit was brought, you and Mr. Bowen ceased to have conversations in regard to the settlement of this claim? A. After the suit was brought, sir, I think I did not see Mr. Bowen at all.

Q. Did not see him at all? A. I do not think I did, sir; I do not remember of ever having seen him.

Q. Do you remember of seeing, at any time prior to this settlement of this claim, an article known as the "Golden Age Article," which had been prepared for print, embodying the letter of Mr. Tilton to Mr. Bowen, dated Jan. 1st, 1871? A. It is rather a long question.

[Question repeated by the stenographer.] A. I remember having seen a proof of an article for *The Golden Age*, corrected by Oliver Johnson, sir, I think, with that letter in it; yes, sir.

Q. Incorporating that letter in it? A. Yes, sir.

Q. Was that article ever published in *The Golden Age?* A. No, I think not; don't recollect that it ever was.

Q. [Paper handed to witness.] I call your attention, Mr. Moulton, to the article on that paper, headed: "A Personal Statement." Will you look at it, and see if that is the article you refer to? A. I have the article that I refer to in the papers here; I would like to refer to it and compare them; I can tell then positively.

Q. Look at that. [Another paper handed to witness.]

The Witness.—Do you only want me to look at the first part of it?

Mr. Tracy.—I want you to satisfy yourself whether it is the article you saw.

Mr. Fullerton.—Whether it is the paper you saw—that is the question.

Mr. Tracy.—No.

Mr. Beach.—Well, Mr. Pearsall, you had better read one.

Mr. Morris.—Yes; go on and compare. [Mr. Pearsall here read a paper to the witness in an undertone, while the witness examined the paper in his hand.]

The Witness.—There seems to be a disagreement between these— between the first paragraphs.

Mr. Fullerton.—Well, then, you can answer the question without explaining it.

The Witness.—What is the question?

Mr. Tracy.—Now, will you answer the question, whether you ever saw the article, that is in print—the printed article that is attached to the paper I handed you? A. May I look at the whole paper?

Q. If you want to, yes; if it is necessary in order to tell whether you ever saw that article? A. Well, I think I saw the article that was appended to the tripartite covenant. That is the reason I asked you if I could look at the whole paper, Mr. Tracy. Now, Mr. Pearsall, will you follow the reading?

Mr. Pearsall.—I will read it. [Reading and comparison resumed by Mr. Pearsall and the witness.]

The Witness.—Now, what is the question? Do you want this back, Mr. Tracy?

Mr. Tracy.—Now, are you able to say whether you ever saw this printed article that is attached to this paper before? A. I can't swear, sir, specifically, whether I ever saw that or not; I saw something like it.

Q. The paper that I have presented to you is what is known as the triparite agreement, isn't it? A. Yes, sir.

Q. Were you present at that arbitration? A. I believe I was present at that arbitration; yes, sir.

Q. Were you present when this paper was signed? A. I was not present when it was signed.

Q. Did you ever see it before? A. I think I have seen the paper before—yes, sir; Mr. Beecher was not there, sir, at that interview; so, therefore, I did not see it signed.

Q. I did not ask why you did not see it? A. Well, I was only telling you why.

Q. When did you see it first, do you think? A. When did I see it first?

Q. Yes? A. That paper I think I saw for the first time that night, sir.

Q. Was the printed paper attached to it at that time? A. I don't remember whether it was or not, distinctly.

Q. Didn't you examine it that night as carefully as you have here to-day? A. My impression is that the printed paper was attached to it; I can't swear whether I examined it specifically or not.

Q. Don't you know it was attached to it? A. No; I could not swear that it was.

Q. Didn't you furnish it? A. Didn't I furnish it?

Q. Yes? A. I don't remember that I did.

Q. Do you remember that you did not? A. I haven't any recollection as to whether I did or not.

Q. Do you know where that article came from, that printed paper that is attached to the tripartite agreement? A. I could not swear, sir, as to where it came from.

Q. Do you know whether the plaintiff furnished it? A. Whether Mr. Tilton furnished it?

Q. Yes? A. I don't know whether he did or not.

Q. Did you ever see this printed article in anybody else's hands, besides Mr. Tilton or yourself, unattached to this paper? A. That printed article?

Q. Yes? A. I can't swear that I ever saw that printed article.

Q. Did you ever see what is known as the "*Golden Age Article*"? A. Yes, and I have just had the—I have just produced the one that I saw.

Q. In anybody else's hands besides yours and Theodore Tilton's? A. Yes; in Mr. Beecher's hands.

Q. In Mr. Beecher's hands? A. In Mr. Beecher's hands; yes, sir.

Q. With the exception of the three that you have named, did you ever see it in any one else's hands? A. I can't swear whether it was ever in anybody else's hands or not.

Q. I did not ask you that; I asked you whether you ever saw it? A. In anybody else's hands?

Q. Yes? A. I can't swear that I ever saw it in anybody else's hands.

Q. You have no recollection of ever seeing it in any one else's hands? A. Except in Mr. Beecher's, Mr. Tilton's and myself?

Q. Yes. A. I think in Mr. Claflin's.

Q. In your presence? A. Yes; in my presence.

Q. During the arbitration? A. No; I don't think during the arbitration—before the arbitration.

Q. Before the arbitration? A. Yes, sir; I think Mr. Claflin was given an article by somebody.

Q. How long before the arbitration? A. Oh! some time before the arbitration.

Q. By whom was he given the article? A. I don't recollect by whom it was given to him.

Q. Don't you recollect whether you gave it to him? A. I don't recollect whether Mr. Beecher handed him a copy of it, or whether Mr. Tilton handed him a copy of it, or whether I did.

Q. Were there two different articles printed from the office of *The Golden Age*, embodying this letter of January 1st? A. The article, sir, that I remember to have seen is this proof which I produce here.

Q. Answer my question? A. I will try to; I am endeavoring to; I want to answer you courteously.

Q. Now, I ask you if there were two different articles printed from *The Golden Age* office embodying this letter of January 1st? A. I don't know of any two different articles except this one that you have in your possession and this one here, which seems to be different. I can not answer the question, sir, without answering it in that way, intelligently, I submit to the Court——

Q. Will you pass up that paper? A. Yes, sir; Mr. Morris has it. Is there any other way, your Honor, in which I can answer the question?

JUDGE NEILSON.—I don't think there is, sir.

Mr. Tracy.—Now, Mr. Tilton's signature is to this paper, isn't it? A. I will see, sir. [Paper handed to witness.]

The Witness.—Mr. Tracy, you connect this paper with the arbitration, as I understand, in all your questions to me?

Q. Yes? A. Well, the arbitration was before this paper was submitted—

I would like to make that correction—it was the evening of the arbitration that this paper was submitted, but the arbitration was before this paper was signed, on money matters.

Mr. Evarts.—The paper was present at the arbitration? A. Not at the arbitration; no, sir.

Mr. Tracy.—The arbitration was one evening and —— A. No, sir; it was the evening of the arbitration. It was after the arbitration, on the evening of the arbitration.

Q. But after the arbitration? A. Yes, sir.

Q. That this paper was submitted? A. Yes, sir; by Mr. Claflin.

Q. Yes, and signed? A. Yes, sir.

Q. Now, did you show this *Golden Age* article to Mr. Beecher at any time prior to that arbitration? A. Yes, sir.

Q. Where? A. At my house

Q. At your house? A. Yes, sir.

Q. Do you know whether it was shown to Mr. Bowen by any one prior to that arbitration? A. I think Mr. Claflin told me that he had shown it to Mr. Bowen; I won't be certain about that.

Mr. Evarts.—Well, that is hearsay.

The Witness.—I don't.

Q. Well, was Mr. Claflin Bowen's arbitrator? A. I don't know whether he was or not; he was one of the arbitrators. I think he was, however.

Q. You think he was? A. I think so.

Q. Do you know whether the article was also shown to Mr. Wilkeson before the arbitration by Mr. Tilton? A. I don't know that, sir; could not swear that it was.

Q. What? A. I could not swear that it was; I don't recollect having seen it shown to him.

Q. How long before this arbitration was this shown to Mr. Beecher and given to Mr. Claflin? A. How long before the arbitration?

Q. Yes. A. It was some time before the arbitration.

Q. Well, can't you approximate the time? A. I don't remember, sir, how long.

Q. Wasn't it in March, 1872? A. It was after Mr. Tilton's return from the West, whenever that was.

Q. Well, what time did he return from the West? A. I don't recollect the month, sir; I don't recollect the month.

Q. How soon after you showed that article to Mr. Beecher and gave a copy of it to Mr. Claflin was the arbitration agreed upon? A. It was some time before we consented to the arbitration; we consulted the lawyers first about it.

Q. Did you give the article to Mr. Claflin with a view of having it shown to Mr. Bowen? A. I don't remember whether I gave it to Mr. Claflin or not.

Q. How many talks did you have with Mr. Claflin prior to the arbitration? A. That, really, I don't recollect.

Q. You had some? A. Had one or two I guess.

Mr. Tracy.—Now, we offer the agreement in evidence.

Mr. Fullerton.—No objection.

Mr. Evarts.—No objection to my relieving Mr. Tracy?

Mr. Fullerton.—Oh! I think you all need that.

Mr. Evarts [reading the tripartite agreement]:

"We three men, earnestly desiring to remove all causes of offense existing between us, real or fancied, and to make Christian reparation for injuries done or supposed to be done, and to efface the disturbed past, and to provide concord, good-will and love for the future do declare and covenant each to the others as follows:

"I. I, Henry C. Bowen, having given credit, perhaps without due consideration, to tales and innuendoes affecting Henry Ward Beecher, and being influenced by them as was natural to a man who receives impressions suddenly, to the extent of repeating them (guardedly, however and within limitations, and not for the purpose of injuring him, but strictly in the confidence of consultation), now feel that therein I did him wrong. Therefore I disavow all the charges and imputations that have been attributed to me as having been by me made against Henry Ward Beecher and I declare fully and without reserve, that I know nothing which should prevent me from extending to him my most cordial friendship, confidence and Christian fellowship. And I expressly withdraw all the charges, imputations and innuendoes imputed as having been made and uttered by me, and set forth in a letter written to me by Theodore Tilton on the 1st of January, 1871 (a copy of which letter is hereto annexed), and I sincerely regret having made any imputations, charges or innuendoes unfavorable to the Christian character of Mr. Beecher. And I covenant and promise that for all future time I will never, by word or deed, recur to, repeat, or allude to any or either of said charges, imputations and innuendoes.

"II. And I Theodore Tilton, do of my free will and friendly spirit towards Henry C. Bowen and Henry Ward Beecher hereby covenant and agree that I will never again repeat by word of mouth or otherwise, any of the allegations or imputations or innuendoes contained in my letters hereunto annexed, or any other injurious imputations or allegations suggested by or growing out of these and that I will never again bring up or hint at any cause of difference or ground of complaint heretofore existing between the said Henry C. Bowen and myself, or the said Henry Ward Beecher.

"III. And I, Henry Ward Beecher put the past forever out of sight and out of memory. I deeply regret the causes of suspicion, jealousy and estrangement which have come between us. It is a joy to me to have my old regard for Henry C. Bowen and Theodore Tilton restored, and a happiness to me to resume the old relations of love, respect and reliance to each and both of them. If I have said anything injurious to the reputation of either, or have detracted from their standing and fame as Christian gentlemen and members of my church, I revoke it all and heartily covenant to repair and reinstate them to the extent of my power.

"H. C. BOWEN.
"THEODORE TILTON.
"H. W. BEECHER.

"Brooklyn, April 2, 1872."

Annexed to this is a paper called "A Personal Statement." It is headed thus in writing: "Theodore Tilton's letter to Mr. Bowen, above mentioned," and then begins the printed matter; "A Personal Statement" being the heading of the article. [Again reading]:

"The editor of *The Golden Age* has been many times solicited by friends and encouraged by enemies to explain the sudden sundering of his relations with Mr. Henry C. Bowen. For a long time his only answers to such requests and innuendoes, was the silence which ought to shield one's private matters from public gossip. But, during a recent journey of some thousands of miles through

the Northwest, among people whose familiar acquaintance he had made in former years, and whose good opinion he is unwilling to lose, he became convinced that a proper sense of self-respect required on his return the publication of the appended letter. It was written within a few hours after the severance of his business associations with Mr. Bowen and was confided to the care of a friend, by whom its contents were laid before the person to whom it was addressed. And so many false stories had been told of the occurrence to which it refers, the writer has finally determined to confront these fictions with the facts. After many months of ever-increasing misrepresentation, not to say slander, this course is now imperative."

And the next part of the article is, if your Honor please, the letter from Mr. Tilton to Mr. Bowen, of the date of "Brooklyn, Jan. 1st, 1871," which is already in evidence. [Exhibit No. 3, *ante*, p. 353.] After that letter the article proceeds:

"As a sequel to the above letter, it should be added that Mr. Bowen, after charging Mr. Beecher with extraordinary criminality; after declaring that the accused had made to him a confession of guilt, imploring forgiveness with tears; after instigating a demand that Mr. Beecher should forthwith vacate his ministry; after protesting that he could and would sustain this demand with complete evidence for its enforcement; after acting as the bearer of this demand in person—after all this, he went immediately to Beecher in the guise not of accuser, but of champion, and pledged to him the protection of his friendship and council against the very indictment which he himself had inspired, incited and presented. In other words, while secretly arranging Mr. Beecher's destruction he openly presented himself to his victim as his safeguard and refuge. In the whole history of treason there is no darker instance of shameless duplicity and malicious craft. The writer, wholly unsuspicious of the double part which Mr. Bowen was dexterously playing, was first made aware of this villainy by the excited conversation above described, followed immediately by the termination of his engagement as a special contributor of *The Independent* and as editor of *The Union*, the contracts having been just newly made and the ink with which they were signed being hardly dry. When a copy of the above letter was laid before Mr. Beecher, he indignantly denied Mr. Bowen's charges, each and all, and with peculiar anger pronounced the alleged confession of guilt the most diabolical of lies. With the issue between these two contestants the editor of *The Golden Age* has nothing to do, except to regret the painful necessity which now at last compels the above publication involving their names."

[Paper marked "Exhibit D, 25."]

Mr. Tracy.—This paper, as I understand you to say, was present at the arbitration, or the same evening of the arbitration, but after the arbitration was concluded? A. Yes, sir.

Q. Who were the arbitrators on that occasion?' A. Charles Storrs, Horace B. Claflin, and James Freeland.

Q. Who was Mr. Tilton's arbitrator? A. I really don't know.

Q. Was it not understood that each party chose one? A. I don't know how they were chosen; they were agreed upon between Mr. Claflin, Mr. Tilton and myself in some way; I don't recollect exactly how they were chosen.

Q. Don't you know who named Charles Storrs? A. I don't know.

Q. Don't you know he was named as the friend of Mr. Tilton on that arbitration? A. I don't remember that.

Q. What was the result of the arbitration? A. The result of the arbitration was —— I might mention an instance, Mr. Tracy, before the arbitration, if you desire it.

Mr. Tracy.—Please answer my question. We will get on more rapidly if

you do. A. The result of the arbitration was that Mr. Tilton was awarded $7,000.

Q. To be paid by Mr. Bowen? A. Yes, sir.

Q. Was that payment made? A. Yes, sir; he drew his check for it there.

Q. And that is the $7,000 that was subsequently deposited with your firm? A. Yes, sir.

Q. Mentioned in the accounts here? A. Yes, sir; I believed it is mentioned in the accounts.

Mr. Evarts.—Yes, it is so mentioned.

The Witness.—Yes, sir; Mr. Bowen offered to pay $5,000 before the arbitration, Mr. Tracy.

Mr. Tracy.—Well, we will pass that. [To Judge Neilson.] That, I take it, is stricken out, your Honor.

JUDGE NEILSON.—Well.

Mr. Tracy.—Did you witness any reconciliation between Mr. Tilton and Mr. Beecher after that contract was signed? A. I don't recollect witnessing any reconciliation.

Q. Did you witness any friendly act between them immediately after the signing of that contract? A. No more friendly than before—nothing to distinguish the previous action.

Q. Did you see them together after that frequently? A. No, sir; I have not seen them together after that frequently; I have not seen them frequently together; I have not ever seen them frequently together.

Q. Did you see them after that together occasionally? A. Not very often, sir.

Q. Occasionally? A. I remember one occasion.

Q. Not more than one? A. It was at my house; perhaps two or three; I don't know; I don't recall them now. If you can recall them to me, I can answer.

Mr. Evarts.—[To plaintiff's counsel.] Will you give us "Exhibit No. 42"?

Mr. Morris.—[Handing paper to Mr. Tracy.] There it is.

Q. Do you remember your letter to Mr. Beecher of Jan. 3d, 1872?

Mr. Morris.—Jan. 2d, is it not?

Mr. Evarts.—[Handing paper to witness.] Look at that "Exhibit." That is already in evidence [p. 440, *ante*]—your letter answering that; don't you remember that letter? A. I remember it; I am looking over it to see all that is in it.

Mr. Tracy.—I am not asking you that. [Handing paper to witness.] I call your attention to the printed letter now shown you, and ask if it is your reply to "Exhibit No. 42"?

Mr. Shearman.—Marked in pencil "Jan. 3d, 1872."

The Witness.—I think I wrote such a letter as that; I could tell if I saw the original.

Mr. Tracy.—And sent it to Mr. Beecher? A. I think so.

Q. Do you know whether you have the original letter, or a copy of it in your possession? A. I think I have a copy of it if it was in my statement.

Q. In manuscript? A. Yes, sir. It is quoted in my first statement, Mr. Shearman, is it not?

Mr. Shearman.—Yes, sir; I think so.

Mr. Morris.—What is the date of it?

Mr. Shearman.—It has no date. It is marked in pencil "January 3rd, 1872."

Mr. Tracy.—I understand you to say you wrote Mr. Beecher such a letter. Was it in reply to "Exhibit No. 42"? A. I think it was; yes, sir.

Mr. Shearman.—[Reading.]

"MY DEAR SIR: First with reference to Mrs. Woodhull's letter and your answer: I think that you would have done better to accept the invitation to speak in Washington, but if lecture interferes your letter in reply is good enough, and will bear publication.

"With relation to your notice of *The Golden Age* I tell you frankly, as your friend, that I am ashamed of it, and would rather you would have written nothing. Your early associations with, and your present knowledge of the man who edits that paper, are grounds upon which you might have so written that no reader would have doubted that in your opinion Theodore Tilton's public and private integrity was unquestionable. If the article had been written to compliment *The Independent* it would receive my unqualified approval."

[Copy of letter marked "Exhibit D, 26."]

Mr. Tracy.—[Handing a paper to witness.] Is that *The Golden Age* tract, known as the Life of Victoria Woodhull by Theodore Tilton? A. I do not know whether it is or not.

Q. I understood you to say you read that?

Mr. Fullerton.—No, you did not understand him so, you could not have understood him so.

Q. Did I ask you that question last night? A. I think you asked me something like that.

Q. Did you ever see that tract before? A. I think I have seen such a tract as this.

Q. Did you read what is known as the Life of Victoria Woodhull, when it was published? A. No, sir.

Q. Did you read any part of it? A. I think I read some portion of it.

Mr. Fullerton.—That has been gone over.

Mr. Tracy.—You admit that is the Life as published?

Mr. Beach.—I believe this is the first occasion when you have called for any admission.

Mr. Evarts.—We offer this in evidence as *The Golden Age* tract.

Mr. Beach.—We object to it.

Mr. Evarts.—It is headed: "Golden Age Tract, No. 3; Victoria C. Woodhull, Biographical Sketch by Theodore Tilton. 'He that uttereth a slander is a fool.'—Solomon, Prov. x., 18.

"Published at the office of *The Golden Age*, 9 Spruce street, New York, 1871.

"Entered according to act of Congress, in the year 1871, by Theodore Tilton, in the office of the Librarian of Congress, at Washington."

We offer to read that.

JUDGE NEILSON.—It is offered, and I rule it out.

Mr. Evarts.—On the subject of identification, or as not being admissible evidence?

JUDGE NEILSON.—Not being admissible evidence.

Mr. Evarts.—It is necessary, perhaps, if your Honor please, to recall——

JUDGE NEILSON.—[To Mr. Evarts.] I will be happy to hear you.

Mr. Evarts.—It is necessary to call your Honor's attention to some preceding testimony, which we think connects this with the matter. The time of this transaction, as I will point it out by testimony, was September, 1871, and it was after that that the Steinway Hall meeting was held, concerning which the evidence has now been given here and admitted. This was brought up yesterday, and there was then no copy in court that we could use at the moment. I did not then understand that there was any doubt or difficulty about the testimony. This writing of Theodore Tilton, if it be pertinent to this controversy, is, of course, an act of his, and of the consequences of which he can not complain. It comes within the general rule of evidence that the acts of a party may be given in evidence against him. Now, it was this Life of Victoria Woodhull that produced the impression upon the public mind which was disastrous to Mr. Tilton's position as an editor, and of his newspaper as a public print. It was a most definite, authentic, deliberate form of allying himself in the view of a religious and general public with these doctrines of free love, and with this lady as one of its advocates and champions. It will speak for itself in that regard, and I will not further characterize it. Thereupon, in the disaster that followed from it, in culmination of a process that had been going on, the effort was made by Mr. Tilton, and by Mr. Moulton in co-operation with him, to compel Mr. Beecher to take an attitude in reference to these free love doctrines and in reference to this lady, one of the champions of such doctrines, that should endorse Mr. Tilton's relation to them, and endorse, to some extent at least (and presiding at a public meeting is a very general and definite extent for a public man to commit himself to) the doctrine of that school and of its champions. And the operations that were brought to bear upon Mr. Beecher in reference to these subjects of complaint and discussion, to produce that benefit,—than which none could be more important, no mere pecuniary measure or aid could equal.—were to reconstruct the ruin of the public position Mr. Tilton was thus placed in, by softening or correcting it by the powerful influence of Mr. Beecher. And, as we have shown, this next step following about the Steinway Hall meeting was who shall preside, showing that all these efforts, as they are called, at suppression of facts, whatever they were, whichever side has the correct view of what the facts were, seem to have been easily enough in the control of the only parties who knew anything of them, if they were honest and sincere in their co-operation in keeping what was a private grief, in whatever form it was, from the public notice. But, as this witness has detailed, every now and then there was coming out some publication—some discussion. There was the card of Mrs. Woodhull, in the spring of 1871; there was later on afterwards the full publication of an article in the Fall of 1872; and so on, until, finally, the Bacon letter. There are constant introductions of the subject to the public notice, which we suppose, in the

nature of the facts in evidence, and by direct proof to be introduced—partly introduced already—are connected with the movements of Mr. Tilton and knowledge and co-operation of Mr. Moulton, the witness, and that there was no sincerity—no action of a sincere nature toward suppression, but the constantly keeping alive a condition, more or less obscure, of scandal and reproach in reference to Mr. Beecher, which was made the occasion of the interviews and the transactions which this witness has detailed with Mr. Beecher; and this Life of Victoria Woodhull, is the definite evidence of Mr. Tilton's prostration in fortune and in reputation in respect to his credit and vocation of an editor, and accounts for "Sir Marmaduke's Musings," which have been put in evidence by our learned friends.

Mr. Tracy.—Published six weeks after this was written.

Mr. Evarts.—Published six weeks after this catastrophe; after the extraordinary folly, if you please, of this publication. Now, in the poem of "Sir Marmaduke's Musings"—very eloquent and very beautiful, but very general—the course of ruin in which he finally came to succumb, contains the evidence of that destruction of worldly prosperity and of public repute, as having relation to these matters of his public credit, and of his commercial prosperity in regard to these matters of his editorship and his connection and public influence as a lecturer. With that view, if your Honor please, we offer this evidence.

Mr. Beach.—The argument which has been submitted by the counsel, it seems to me, your Honor, would be more appopriate in another and subsequent stage of these proceedings. It consists of assumptions of facts which I submit do not appear from the evidence, and of a system of reasoning which is simply argument, and, as we maintain, unfounded in the evidence. That the fortunes of Mr. Theodore Tilton, at the period spoken of, were prostrated, we do not propose to deny. That he was suffering pecuniary embarrassments and was enduring to a very considerable extent, for some reason or other, the disapprobation of a portion of the community, is certainly very distinctly apparent. If I understand the argument of the learned counsel, he proposes, by the introduction of this biography of Mrs. Woodhull, to attribute that decline in condition to its publication. It the first place, sir, there is no evidence before your Honor creating any connection between the fortunes of Mr. Tilton and the publication of this article. The proof of that fact would in itself be very difficult, and necessarily indefinite, unless the counsel were permitted to prove, by the opinions or declarations of others, the specific effect which it produced upon the community. But assuming that there are any legitimate means of evidence by which that assumption could be demonstrated, there is nothing yet in the evidence to show any relation between the two things. My friend, Mr. Evarts, gives very proper credit to the poetical effusion of this plaintiff, entitled "Sir Marmaduke's Musings," and he assumes to say that that is but a poetical and pathetic description of his injury to his propects and conditions, produced by his connection with Mrs. Woodhull. Pray, your Honor, where is the evidence of that? It certainly has not yet been revealed, and is purely a matter of argument upon the part of the learned counsel. But, sir, I do not propose

here to answer this argument. As I said before, at the proper time, and I trust, in a proper manner, this whole theory of the defense will be examined upon the evidence and the facts revealed by that evidence. And it may be possible, sir, that upon that occasion it will be easy to show that the misfortunes which fell upon this plaintiff originated from altogether a different and more efficient cause—a cause clearly and abundantly recognized by the defendant. Now, the specific objection to the introduction of this tract is, first, that there is not evidence sufficient to justify your Honor in attributing the authorship of this article to Mr. Tilton. It may be a technical objection to the nature of the proof, but yet, may it please your Honor, in the course of our evidence we have been driven by that sort of objection to a great deal of difficulty so far in the presentation of our evidence; as, for instance, driving us to the production of the archives of Plymouth Church, entirely under the command of the officers of this defense. We do not, therefore, choose to aid an objection of this character. The printing, or professed printing of this paper at the office of *The Golden Age*, attributing upon its title-page its authorship to Theodore Tilton, or the printing of an entry of the copyright in the proper office of the Government, by no means identifies or concludes Mr. Tilton upon the question of authorship, and I therefore submit that until they make more clear and definite proof upon that subject that expression of itself is abundant. Now, I do not understand, sir, that this paper is offered for any other object than to demonstrate the proposition of the counsel that this was the origin of the difficulties which at the time or subsequently embarrassed Mr. Tilton. Well, your Honor must necessarily look at the nature of the article itself for the purpose of determining whether it could have legitimately any such effect, whether it is material to establish that fact, and unless you see in the substance and character of the production a cause efficient to produce the results which are attached to it, of course in that view it is not receivable. Well, sir, it is said that this lady, Mrs. Woodhull, at this time was a professor of what is called the free-love doctrine. It is said that she was an advocate of the movement in favor of Women's Rights. Where is the evidence of that, sir—the legitimate and proper evidence of the fact? True, in the lecture at Steinway Hall, as this witness says, this lady lectured upon the relations existing and proposed as between man and woman, but where is the evidence that in that lecture there was any license, any improper theory advanced, any doctrine of free love which would shock the moral and social sentiment of the community? As yet we have no proof upon that subject, and from the information I have, at the time when these gentlemen were associated with this lady, she by no means had promulgated any such tenets, or avowed any such opinions in regard to these relations, and your Honor will perceive, I think, that in all the elements to render this document essential, or to associate the sentiments of Mrs. Woodhull and the connection of Theodore Tilton with those sentiments here concerned, the case so far is as barren of that sort of evidence which would permit the introduction of that argument, and upon these grounds, without pursuing this discussion, may it please your Honor, both in regard to the materiality of this paper and to its authenticity, we submit it is objectionable.

Mr. Evarts.—I didn't understand your Honor as ruling this out on any question of identification of the paper.

Mr. Beach.—I ask his Honor now to rule upon it.

JUDGE NEILSON.—Simply my opinion that it was not evidence; nevertheless, I wish to hear you on that.

Mr. Evarts.—I didn't make any observation, your Honor will remember, for I didn't understand it was necessary. Now my learned friends complain that, in raising this question of evidence, I have exposed a theory concerning this case, in regard to which evidence has been produced and is to be produced, and that I have assumed facts, and then have connected those facts with reasoning, which he calls argument, as bearing upon that theory; and he says that he shall, at the proper time, comment upon that theory and also enforce his own. That he will do, and that we shall do. But the intermediate questions that arise will furnish appropriate and pertinent evidence that may be invoked by the one side and the other properly in support of their theories, and the burden no doubt is upon us. When asked by your Honor to show how a paper that in many suits might be wholly immaterial becomes material in this, I attempted to do so, and it is no answer to say that the theory may not be supported finally by adequate evidence to sustain it, because that you can not tell until you get to the end of the case. Step by step, each party proposes what is not itself pertinent, but which may, if united, form a part of a material web of testimony when the whole is completed. Now, this publication, as is shown already by this witness, took place before, although he could not say that it was the cause of, the new basis upon which the contributors and supporters of the pecuniary aid to *The Golden Age* withdrew their further payment under that contribution, and preferred that Mr. Tilton should be the sole responsible owner of that concern. And as to the question—as to which this witness has also testified—upon their showing that Mr. Tilton wrote this life, and the reason he wrote it, and the degree of composition that he furnished to it, in the revisal, if you please, of some rough materials that were supplied to him by this lady and her husband, my learned friends have forgotten also that they put in evidence this card of Mrs. Woodhull's in *The World*, dated May 20th, 1871, in which she states, and states with eloquence and with force, and without disguise, the doctrines on this subject of free love between the sexes that she regards as important to the welfare of society, and as destined to overthrow the corrupting influences of marriage.

Mr. Fullerton.—She gives a definition to the term there, however.

Mr. Evarts.—She does, and she put it in, and I say she has done it with eloquence as well; and those are the doctrines which this witness has testified she avowed in the lecture, and which he says are what the public popularly regard as the doctrines of free love. Now, the philosophy, the morality, the utility, and the promise of improvement of society in respect to those doctrines, or their opposite, we don't at present discuss. It is a plain practical matter, whether, in the present state of feeling in this wide community and this country of ours, the connection of an editor of the importance and credit that Mr. Tilton had heretofore had in connection with his publications

and newspaper, did or did not furnish the occasion and was the operative cause of the destruction of his prosperity. My learned friend means to argue from the proof that it is caused by another adequate reason, which he implies, doubtless, from the relation of Mr. Beecher to the very subject of this dispute. Very well. That is legitimate for him. My point is to have the proofs in. He may argue, and I may argue, in support of the various propositions that we rightfully present to your Honor and to the jury, upon evidence justly proved under the rules of evidence for that purpose. Now, in regard to the identification.

JUDGE NEILSON.—I assume it is identified.

Mr. Evarts.—Yes, sir. I suppose it is not necessary for me to say anything with regard to that. That is all that it is necessary for me to say.

JUDGE NEILSON.—Still, regarding it as the life of Mrs. Woodhull, I think it is not evidence before us, and I shall therefore exclude it.

Mr. Evarts.—Does your Honor recall, what I have already alluded to, the testimony of this witness concerning it being written by Theodore Tilton, and the manner in which he wrote it?

JUDGE NEILSON.—He said a draft had been prepared by her husband, and he revised it and re-wrote it and put his name to it.

Mr. Evarts.—We propose to put everything concerning which he testified in evidence.

Mr. Beach.—That they brought out on their cross-examination. They can not get in evidence in that way.

Mr. Evarts.—How much it will turn out, on further explanation, that Mr. Tilton contributed to the authorship—how much he received from others—why that, of course, we can not anticipate now.

JUDGE NEILSON.—I can not conceive how the biography of this lady, assuming that it represents her life truly or untruly, is material to us.

Mr. Evarts.—That we agree to. It is only on Mr. Tilton's presentation of it that we consider it pertinent.

JUDGE NEILSON.—Suppose he had written the life of Mr. Bowen.

Mr. Evarts.—It might or not be evidence according to whether, as an act of his, it was evidence. We all agree that the biographist of this lady is not a matter in itself at issue here; but the connection of this party, Mr. Tilton, as the specific author of that biography, is the point of view in which we offer it.

JUDGE NEILSON.—I shall exclude it.

Mr. Evarts.—Will your Honor be so good as to note our exception?

JUDGE NEILSON.—Yes, sir.

Mr. Tracy.—Do you remember what was known as the Woodhull scandal; I think it has been referred to once or twice during the examination? A. Yes, sir; it has been referred to.

Q. That was published on the 28th of October, 1872, I believe. A. I don't recollect distinctly now the date. It was some time in October or November—the early part of November, 1872.

Q. From the date of the tripartite agreement down to the publication of that scandal, what had been Mr. Tilton's occupation, as a whole? What had

he been employed at during the summer? A. I think on the paper, if I recollect right.

Q. On *The Golden Age?* A. Yes, I think so.

Q. Had he not also been engaged in the political campaign that year? A. The almanacs are running wild in my head. Yes, he had been on the political campaign, I believe, for Mr. Greeley.

Q. He went, soon after the tripartite agreement, to Cincinnati? A. I don't remember when he went to Cincinnati; at the time of the convention, whatever date that was.

Q. Nothing occurred of importance between these parties, that you recollect, during the summer of 1872? A. No, sir; I think not; nothing that I know of.

Q. There was a term of quiet and peace? A. Is that a question?

Q. Yes, sir; was there not? A. Mr. Tilton was away and Mr. Beecher was here.

Q. You recall nothing about it? A. No, sir; I don't recall anything.

Q. After the Woodhull publication, I understand you to say that you had frequent interviews with Mr. Bowen? A. Yes, sir, I did.

Q. On the subject of what answer should be made to him? A. Yes, sir.

Q. I understand you also to say that you advised silence? A. Yes, sir.

Mr. Evarts.—That paper, if your Honor please, was brought into evidence by our learned friends in the way of testimony concerning it; and, as we understand it, they are to produce and put it in evidence.

Mr. Fullerton.—I do not know how the gentleman came to understand that.

Mr. Evarts.—By the testimony, if you want to look at it, that you, when being allowed to talk concerning it, were so allowed upon the ground that you were going to produce it in proof.

Mr. Fullerton.—I don't recall anything of that kind in the evidence—anything from which a promise could be implied.

JUDGE NEILSON.—No promise; we had general evidence on the subject.

Mr. Evarts.—Well, we'll see. [Reading from the testimony of January 14, p. 887, *ante.*]

"Q. Well, I want to ask you whether in this article published by Mrs. Woodhull, illicit intercourse between Mr. Beecher and Mrs. Tilton was charged?

"*Mr. Evarts.*—Oh! the article should be produced.

'*Mr. Fullerton.*—Well, if you want the article——

"*Mr. Evarts.*—We don't want the article.

"*Mr. Fullerton.*—You can have the whole of it in, or have that part in. I propose to leave it out if you will admit an answer to that question and pay no further attention to it.

"*Mr. Evarts.*—I can not agree to any substitute for evidence.

"*Mr. Fullerton.*—I propose to give that in evidence, sir; whether that was charged in that paper. It is not necessary that we should produce it here.

"JUDGE NEILSON.—Does the learned counsel stand upon the objection that the paper would best show it?

"*Mr. Evarts.*—Yes, sir.

"JUDGE NEILSON.—Then you can not do it. You must produce the paper; if you produce the paper and identify it, you can eliminate that one sentence.

"*Mr. Fullerton.*—Well, sir, we will go on then with the evidence, and introduce the paper to-morrow."

JUDGE NEILSON.—Which he didn't do.

Mr. Evarts.—It was overlooked, of course.

Mr. Fullerton.—Now he calls upon me to produce it.

Mr. Evarts.—Now it is in evidence; it is regarded, by arrangement between counsel, as if it were in evidence, or else the further examination would not have been allowed to go on.

JUDGE NEILSON.—In other words, they wished to show a certain clause in it; and it was ruled they could not do that without producing the paper, and counsel might have thought he would have to recur to the subject, and did not do so.

Mr. Evarts.—We called upon them and we say they put it in evidence.

JUDGE NEILSON.—[To plaintiff's counsel.] Have you got the paper?

Mr. Fullerton.—No, sir.

JUDGE NEILSON.—How anything this woman could say, could possibly affect the issue here. I can not conceive.

Mr. Evarts.—It is a subject of concealment with Mr. Beecher. That article is the basis of voluminous testimony on the part of this witness as to what took place between him and Mr. Beecher concerning it. It is one of the charges against Beecher—his action towards the suppression of what this article charged—as evidence of his guilt in concealing it. Now, the best evidence, as I there insisted, as to what the article did charge, was that the article should be produced; and your Honor so ruled, and the counsel said he would produce it "to-morrow." It passed over.

Mr. Fullerton.—If I had produced it as I promised, it would have been evidence only of that fact, that there was such a charge in the paper.

Mr. Evarts.—That is all.

Mr. Beach.—There was no effort to produce it.

Mr. Fullerton.—No, not at all.

Mr. Beach.—It was only an avowal of the purpose, that the plaintiff would feel bound to abide by it, if we chose.

Mr. Evarts.—You went on with the examination of the paper.

Mr. Beach.—Not as to that.

JUDGE NEILSON.—Not as to the contents of it.

Mr. Evarts.—Your Honor sees my learned friend is quoted right, that that article don't prove its truth, but the article proves the charge it makes and don't prove any other charges; and the way to prove the charges it makes is to read the article; and then the existence of these articles, and their communication to Mr. Beecher, affect him with knowledge of them; and then comes the statement of suppression.

JUDGE NEILSON.—Or answering.

Mr. Evarts.—Or answering, and the argument is that Mr. Beecher is guilty, because he wanted to suppress it, or aid in suppressing it. Let us see what it was.

JUDGE NEILSON.—I think you are right. [To the plaintiff's counsel.] Gentlemen, do you produce the paper?

Mr. Fullerton.—I do not now; I have not got it.

JUDGE NEILSON.—Counsel calls for it.

Mr. Beach.—If we have not got the paper, that is an answer to it. They do not trace it to our possession.

Mr. Morris.—We have not got it and never had it.

Mr. Evarts.—Counsel say, in the conduct of their cause, "Well, we will produce it." Now, if they say they have not been able to find it, and didn't have it——

JUDGE NEILSON.—Is that paper in print in any of the documents?

Mr. Evarts.—It is for these gentlemen to say. They said they would produce it to-morrow.

Mr. Fullerton.—Yes, sir, I think I have seen a copy of it in the hands of my learned friends to-day.

JUDGE NEILSON.—Why not admit that and let it pass? Why not accept that as if it were the original? Would it not save time?

Mr. Evarts.—Your Honor will remember there was a long cross-examination of the witness as to whether he had furnished the information.

JUDGE NEILSON.—I think, inasmuch as they referred to the article, and the conversation with Mr. Beecher was given in respect to it, and the advice about answering or suppressing was the subject of discussion and consideration, you have the right to produce the article and see what it was.

Mr. Beach.—We did not refer to the article. We referred to a precise and definite subject—a charge in the article.

JUDGE NEILSON.—Supposed to be embraced in the paper?

Mr. Beach.—Yes, sir; it is embraced in the paper, but I understood your Honor to say, in consequence of that reference to that publication, we were under obligations to produce and give in evidence the whole article, or that it was admissible on the one side, or the other. Now, as I am informed in regard to that article, it contains a good deal of extraneous matter, not bearing upon that question of the particular accusation, which was considered detrimental, and which it was the purpose of the parties to avoid or suppress, and therefore I hope your Honor will look at the article before you shall rule that the whole of it can be introduced.

JUDGE NEILSON.—I think they should be allowed to produce so much of it as will enable us to consider the evidence which has been given.

Mr. Beach.—That we have no objection to.

JUDGE NEILSON.—Counsel will exercise his judgment on that subject.

Mr. Evarts.—My learned friend must produce that article. Your Honor continues as follows [reading testimony on p. 388, *ante*]:

"JUDGE NEILSON.—Then you can not do it. You must produce the paper; if you produce the paper, and identify it, you can eliminate that one sentence.

"*Mr. Fullerton.*—Well, sir, we will go on then with the evidence, and introduce the paper to-morrow.

"Q. I want to ask you what reply Mr. Beecher made, if anything, when

you informed him that you had denied flatly to two or three persons that he was an impure man? A. He thanked me for the pains I had taken.

"Q. Now, during these interviews between you and Mr. Beecher with reference to that publication, where was Mr. Tilton? A. Mr. Tilton, I believe, in the beginning was in New Hampshire.

"Q. And when he returned did he participate in any way? A. Yes; he was present at an interview between Mr. Beecher and myself.

"Q. What took place at that interview? A. Mr. Tilton said to Mr. Beecher that he was not at all responsible for that story. Mr. Beecher said he did not believe he was. Mr. Tilton asked Mr. Beecher how he thought it was best to meet that story. Mr. Beecher told him he did not see exactly how to meet it, at that interview—that is what was said there. I told Mr. Tilton that I thought it was best to be silent, not to attempt any reply to the story."

JUDGE NEILSON.—And you must be allowed to know what story it was.

Mr. Evarts.—[Reading.]

"Mr. Beecher said he did not believe he was. Mr. Tilton asked Mr. Beecher how he thought it was best to meet that story. Mr. Beecher told him he did not see exactly how to meet it, at that interview—that is what was said there. I told Mr. Tilton that I thought it was best to be silent, not to attempt any reply to the story. That is the substance of what occurred there."

Then they went on to talk about a card which was proposed as an answer to this paper, and all this course of examination that I have read would have been excluded upon your Honor's ruling and my objection, but for the statement that they were going to produce the paper as a part of their evidence.

Mr. Morris.—That is a mistake.

Mr. Evarts.—I have read it.

Mr. Morris.—No doubt, but your statement is incorrect.

Mr. Beach.—The gentleman misapprehends, and, I think, misconstrues the evidence.

JUDGE NEILSON.—The only point is whether you can find and produce the paper, under the obligation that it is to be put in evidence, and whether you are not bound to put the paper in evidence in view of the special circumstances—can supply the paper and put it in itself.

Mr. Beach.—The precise question presented by the counsel is, that we assumed an obligation to put in evidence the paper.

Mr. Evarts.—I did, and that the examination went on only upon that condition.

Mr. Beach.—And I assert that every particle of that examination is admissible in evidence in the absence of the paper, and without producing it.

Mr. Morris.—And the specific question was abandoned upon which that understanding was had.

JUDGE NEILSON.—Having given all that evidence in respect to the paper without producing it, assuming you could do so, not having given the contents, they are at liberty to produce the paper and show it contained no charges, but, on the contrary, is a mere advertisement of a house for sale.

Mr. Beach.—Oh! certainly, that I accede to, if that is your Honor's view.

JUDGE NEILSON.—Then it is a mere matter of form whether you read it or they, under the circumstances.

Mr. Evarts.—It is by no means a matter of form, if your Honor please. It is a part of their proofs. Not one word was allowed to proceed by your Honor, in that inquiry which I read to you, except upon the statement of the counsel that they would produce the paper, and it went on, therefore, as if the paper were here.

JUDGE NEILSON.—Assuming any way they can not produce it.

Mr. Evarts.—I have not any such evidence. I must have some affidavit of that.

Mr. Morris.—Well, make your affidavits; we don't want to make any.

Mr. Evarts.—I don't know about this. We were very yielding about it, and said "Very well, if you are going to produce the paper, go on," and they went on, and made all the inquiries after your Honor had closed their mouths, except upon the paper being produced. They talked ——

JUDGE NEILSON.—As to the contents?

Mr. Evarts.—Talked about that story, it being the subject that Mr. Beecher talked about.

JUDGE NEILSON.—That required an answer in some form, that we should know what it was.

Mr. Evarts.—You can not say what it was.

JUDGE NEILSON.—I give you liberty, on your assurance to read it from the printed paper, they declining to read it.

Mr. Evarts.—I shall read it as their evidence.

Mr. Beach.—No, sir.

Mr. Fullerton.—No, you won't.

Mr. Evarts.—You will object, I suppose.

Mr. Fullerton.—We don't require any assistance from the other side at all in producing our evidence; we will try to take care of that matter ourselves. If that is to be read on our side, I want to say something about it.

Mr. Beach.—I don't want any misapprehension in regard to this. I repeat the gentleman's conception of this question, as arising upon the evidence, is under an entire misapprehension—unintentional, of course—an entire misrepresentation of the manner in which this question arose before your Honor. You must allow me to read a little. [Reading testimony on p. 387 *ante.*]:

"Q. Now, what occurred upon that publication? A. I saw Mr. Beecher shortly after the publication.

"Q. State what occurred between you? A. Mr. Beecher said that he had come to consult with me as to what it was best to do with reference to that publication; what reply could be made to it, if any reply could be made. He said he saw no hope for him since that story had been published. I told him that I thought silence would kill that story; and that if he kept silent with regard to it, simply pointing to his past life as an answer to it, and saying that if that was not an answer he did not choose to make any; that it would kill that story, in my opinion, so far as any evil effects of it upon him was concerned. We consulted frequently concerning it, and did not arrive at any

other conclusion than that silence was best. I said to Mr. Beecher, 'if I say anything about it I think this will be the best thing for me to say uniformly; that if the story is true, it was infamous to tell it; and if it was false, it was diabolical to have told it; and that if his life was not an answer to it I could not choose to make any—I should not choose to make any to anybody.' Mr. Beecher said to me that he thought it would be judicious for me to make such a reply as that; and I met him after this conversation, and I told him that I had made such a reply as that to several parties, and it appeared to satisfy them. I told him that I had been pressed close by one or two people, and I had denied that he was an impure man, had denied that outright; I did.

"Q. Well, I want to ask you whether in this article published by Mrs Woodhull, illicit intercourse between Mr. Beecher and Mrs. Tilton was charged?"

Now, that raised Mr. Evarts to an objection, that they wanted the paper, but all that preceded that, in regard to the interview between this witness and Mr. Beecher, was entirely competent and proper in the absence of the article itself. It was the declaration of Mr. Beecher, in that conversation, that characterized it, by asserting the probable effect it would produce. Then, sir, Mr. Evarts says the article should be produced:

"*Mr. Fullerton.*—Well, if you want the article——

"*Mr. Evarts.*—We don't want the article."

Yet the counsel says we undertook to produce it to them, and are bound now to produce it when they disclaimed all desire for the article. [Reading testimony on p. 387, *ante.*]

"*Mr. Fullerton.*—You can have the whole of it in, or have that part in. I propose to leave it out if you will admit an answer to that question, and pay no further attention to it.

"*Mr. Evarts.*—I can not agree to any substitute for evidence.

"*Mr. Fullerton.*—I propose to give that in evidence, sir; whether that was charged in that paper. It is not necessary that we should produce it here.

"JUDGE NEILSON.—Does the learned counsel stand upon the objection that the paper would best show?

"*Mr. Evarts.*—Yes, sir.

"JUDGE NEILSON.—Then you can not do it. You must produce the paper."

Then Mr. Fullerton says "we must go on with the evidence." What was the precise question before your Honor? That which was put by Mr. Fullerton whether the particular matter he drew attention to was published in that article. The objection was to that evidence. Mr. Fullerton then says, "I will go on with the evidence," and he did go on with their evidence, not as to what the article contained, but as to the transactions between this witness and Mr. Beecher in regard to it, which was entirely competent in the absence of the article.

JUDGE NEILSON.—Still it is not to be denied, in view of that evidence, that they would have a right to put it in.

Mr. Beach.—I did not object to that, but when this gentleman [Mr. Evarts] rises and says he reads this as our evidence, and asserts that we

assumed an obligation, legal or honorable, to produce that paper, I deny it, and the whole effort of the gentleman is to throw upon us the theory of producing this article, or this extract from the article.

Mr. Evarts.—That I agree to, to hold you to your promise. That is my purpose.

JUDGE NEILSON.—You can read the article.

Mr. Beach.—Will you permit me to say to the counsel that I think I have the support of an objection to this question, and while it is always a very great delight to me to listen to the gentlemen, it is difficult for me to reply to him, and I do not want to be called upon to reply to another argument except as a matter of courtesy.

Mr. Evarts.—Now, I will make a proposition of my own. I have read to your Honor this evidence which followed what my learned friend has said. When I said, "We don't want the article," I meant to say, We are not putting in proof here; if you continue to put in that proof here, we want the article you are after, put in proof. Now, sir, as I understand, this plaintiff and his counsel refuse to produce that paper according to that promise, I move to strike out every particle of this witness' evidence that relates to the subject of the Woodhull scandal, from beginning to end.

Mr. Beach.—In other words, if your Honor please, when we prove, upon an allusion made to that article, the declaration of Mr. Beecher—"that will ruin me"—and when he enters into devices with this witness for the purpose of avoiding that ruinous effect upon himself, that must be stricken out unless we produce that paper.

Mr. Evarts.—That was my motion.

JUDGE NEILSON.—I could not grant that motion without selecting the particular passages which, perhaps, in the paper ought to be stricken out; but, under all the circumstances, regarding this as a misapprehension, the paper will be regarded as before the court; and you (Mr. Evarts) can read it; and, if they do not produce it, then you can read it from the printed paper.

Mr. Fullerton.—I hope your Honor will draw a distinction between the article in the paper and that part of it to which reference was made by me in this examination.

JUDGE NEILSON.—Yes, sir.

Mr. Fullerton.—It don't follow that a volume shall come in evidence because a paragraph was alluded to.

JUDGE NEILSON.—Well, he will first read that paragraph that points to your evidence; and he shall exercise his judgment in regard to reading the whole of it.

Mr. Evarts.—We shall read all that which relates to your story of Mr. Beecher, in regard to the conversation.

Mr. Fullerton.—You propose to do it! I don't understand the counsel on the other side shall determine what he shall do.

Mr. Evarts.—Of course.

JUDGE NEILSON.—As the paper was referred to, a story was referred to, he may read so much of it as covers those two considerations.

AFTERNOON SESSION.

FRANCIS D. MOULTON recalled, and the cross-examination resumed.

Mr. Tracy.—Do you know when it was that you had your first interview with Mr. Beecher, after the publication of the Woodhull scandal? A. No; precisely the date, sir, no; shortly after.

Q. Can you tell about how long? A. I don't remember.

Q. Whether it was a week or a month, or two weeks or ten days? A. It was not a month, sir, I think.

Q. Was it two weeks? A. I had an interview with him, I think, preceding the interview that I had between Tilton and Mr. Beecher and myself.

Q. Of which you have spoken? A. Yes, sir.

Q. Can you state with any definiteness when you had your first interview? A. I can not state precisely sir; no.

Q. Was it the same day that the scandal was first published? A. I don't remember that. It was after the scandal was published.

Q. I know; now, was it a week or ten days, or what? A. Mr. Tracy, I would tell you if I recollected, but I don't.

Q. Can't you approximate within a time—from one to two weeks? A. I think it was within a week. I don't remember the day that it appeared.

Q. Can you fix the time when the interview to which you have referred on your direct examination as occurring at your house, between yourself and Tilton and Beecher—can you tell when that was? A. It was on election day, I think, sir.

Q. Between yourself and Beecher and Mr. Tilton? A. Yes, sir, I think it was on election day.

Q. Did I understand you to say that at that interview Mr. Tilton had a statement written and which he asked Mr. Beecher if he could stand that he could stand anything? A. Oh! no.

Q. That is another. Now I read an extract from what is known as the Woodhull scandal. "My friend"—meaning you, for they have used your name before—"My friend took a pistol"——

Mr. Beach.—One moment, sir.

Mr. Tracy.—Well, I read the passage. "My friend took a pistol"——

Mr. Beach.—One moment, sir. I do not think that it should be assumed that the gentleman reads from what is called the Woodhull scandal.

Mr. Tracy.—The paper is before the court. The court will take judicial notice whether it is or not.

JUDGE NEILSON.—The gentlemen can say whether they know that is the paper. If they do, I think we can take that to save time.

Mr. Evarts.—Mr. Morris, just look at that newspaper and see.

Mr. Morris.—Well, I can not tell.

Mr. Evarts.—Well, then we will go on. They say they can not tell anything about it.

Mr. Fullerton.—No; we don't say that.

Mr. Evarts.—We read from *Woodhull and Claflin's Weekly* of May 17, 1873, a paper which is a republication of the issue of that date, of the publication of November, 1872

Mr. Shearman.—I have here the original paper of November 2d, 1872, although it is a little more convenient to read from the other one.

Mr. Evarts.—"New York, November 2d. 1872."

Mr. Shearman.—That is the original paper.

JUDGE NEILSON.—There seems to be no doubt about that.

Mr. Evarts.—This is more convenient to take to the witness, I suppose. This purports to be a republication of the whole article. It is not a *resume* of any kind.

Mr. Tracy.—I begin to read the extract again: "I went to him and stated the case fully. We were both members of Plymouth Church. My friend took a pistol and went to Mr. Beecher, and demanded the letter of Mrs. Tilton, under penalty of instant death." [To the witness.] Did you do that? A. Did I do what, sir?

Q What is stated—what I just read? A. Demanding——

Q. Yes: is that statement true?

Mr. Morris.—Is that to be gone over again?

Mr. Fullerton.—That very question was put to him.

JUDGE NEILSON.—He has given all the particulars; but you can ask him the question, although he has sworn that it is not so.

Mr. Morris.—Yes, sir; he has been asked the very question.

Mr. Tracy.—I did not understand your Honor.

JUDGE NEILSON—He has gone over that ground fully and particularly, and given us word for word all about it.

Mr. Evarts.—We will see, if your Honor please.

Mr. Tracy.—He has said that he never had any such transaction. Now, I am reading from the paper itself, and asking him if it is true.

JUDGE NEILSON—What I mean to say is this, that he has stated that interview circumstantially and in detail, the conversation, the circumstance of the pistol and how he recollects it.

Mr. Evarts.—We do not propose to renew that.

Mr. Morris.—And beyond that, he denies that very fact in his testimony. He has been asked in regard to that very fact.

Mr. Evarts.—We do not propose to renew that matter. We have now got the paper before him, and we read that statement from the paper as it is, and ask him if it is true.

JUDGE NEILSON.—Well, you can ask him that.

Mr. Beach.—No, sir. The peculiarity of this proceeding on the part of the counsel is that they do not ask the witness simply whether that fact is true, but they are attempting to draw in this paper, this publication, by assuming to read from the publication—from the paper of Woodhull & Claflin.

Mr. Evarts.—Precisely.

Mr. Beach.—Now, sir, we do not want our silence to be assumed as approving that statement of the counsel.

JUDGE NEILSON.—The form of the question is unnecessarily hostile. This witness should be treated as every other witness, and there may be witnesses about whom I shall have a good deal of solicitude. It is a question that bristles with hostility. Can't you put it in a different form?

Mr. Tracy.—I don't know how I can put it in a different form, except to read the extract and ask him if it is true.

Mr. Beach.—I object to their reading the extract from anything.

JUDGE NEILSON.—You can ask him if he did that.

Mr. Fullerton.—That they have asked him.

Mr. Beach.—Let them ask it again.

Mr. Tracy.—I ask, then, witness, if you did what is there stated?

Mr. Morris.—We object to that. You may ask what he did, but what is there stated I don't care anything about.

Mr. Beach.—The counsel does not follow the instructions of your Honor in putting the question.

JUDGE NEILSON.—He gave us to understand that he could not.

Mr. Morris.—Well, he can.

JUDGE NEILSON.—I do not think on a cross-examination he is bound by the simple form of asking what he did, because he has told that on the direct.

Mr. Morris.—He may ask if he did so and so, not what is there stated.

Mr. Evarts.—That is exactly what we are asking, if he did what was there stated?

Mr. Fullerton.—How does it appear that it is there stated?

Mr. Evarts.—We have just read it.

Mr. Fullerton.—You have no right to read it. It is not in evidence.

Mr. Evarts.—Yes, your Honor has said that it is before the Court.

Mr. Fullerton.—Who brings it before the Court? We have it before the Court, it is true, but it is not in evidence.

JUDGE NEILSON.—One at a time, gentlemen. The paper is brought before the Court under very peculiar circumstances owing to the evidence that has been received and some misapprehension as to the duty of putting it in, and therefore it was that I thought it proper to regard it as before the Court and allow them to read it.

Mr. Fullerton.—Now, if your Honor please, let us have a proper understanding in regard to it.

JUDGE NEILSON.—That is just the point.

Mr. Fullerton.—Can it be pretended by the other side that they can put the whole of that publication in evidence because a specific charge in it was alluded to in the direct examination of the witness a few days since.

JUDGE NEILSON.—No.

Mr. Fullerton.—That being so, let us proceed a step further then. This part that they now pretend to read is not in evidence under that ruling. If anything is in evidence which is contained in that paper it is the charge against Mr. Beecher, and that alone, and now they do not propose to read that charge against Mr. Beecher, but they propose to read something else, which something else is not in evidence, because the whole paper, as a production, is not in evidence. It is very clear, sir, it seems to me.

JUDGE NEILSON.—Then the orderly way, you think, would be for them to read first, under this permission given, what is supposed to be applicable, and then to interrogate the witness.

Mr. Fullerton.—They should read that which is within your Honor's ruling,

whatever that may be, and nothing beyond it, because there is nothing plainer than a single paragraph having been read from a paper it does not follow that the whole production is in evidence.

Mr. Morris.—That question was not answered.

Mr. Fullerton.—I know it was not answered.

JUDGE NEILSON.—What constrained the court to let in that paper was the suggestion that it revealed the scandal and contained a story, which story had been referred to by the witness in his previous examination.

Mr. Fullerton.—The question put to the witness was whether in that production there was a charge of illicit intercourse on the part of Mr. Beecher with a lady therein named. That was the question.

Mr. Evarts.—By us?

Mr. Fullerton.—No, by us.

Mr. Evarts.—We are not putting your question over again.

Mr. Fullerton.—I know it, but I am, for the purpose of illustrating my argument.

JUDGE NEILSON.—I propose that you read such part of the paper as you deem material, and then interrogate him.

Mr. Fullerton.—Such part of the paper as *they* deem material?

JUDGE NEILSON.—Well, within the sense that we are acting, as to the story and the charge.

Mr. Fullerton.—The charge against Mr. Beecher?

Mr. Evarts.—As to the story that this witness has spoken of, as the subject of conversation between him and Mr. Beecher.

JUDGE NEILSON.—Yes, sir; now, read such part of it as you understand covers that.

Mr. Fullerton.—I supposed, sir, that they were to read such parts as the court understands cover it.

JUDGE NEILSON.—I say the story and the charge.

Mr. Fullerton.—Your Honor's understanding and my friends' understanding on the other side would be two things.

Mr. Evarts.—How are we to come together?

Mr. Beach.—I ask that you submit to us what you propose to read.

JUDGE NEILSON.—Yes, that would be proper.

Mr. Tracy.—I propose to read: "I had one friend"—*that* [handing the paper to Mr. Beach].

JUDGE NEILSON.—Well. proceed and read it, gentlemen.

Mr. Beach.—I think it more proper, sir, that your Honor should look at this than that I should. I have marked, sir, the point.

JUDGE NEILSON.—Have you marked the point that they propose to read?

Mr. Beach.—Yes, sir.

Mr. Evarts.—It is Mr. Beach's marking.

Mr. Beach.—What? Mr. Beach's marking? It is marked under the direction of Mr. Tracy.

Mr. Evarts.—Well, I say.

Mr. Beach.—It purports to be an interview between a reporter and Mrs. Woodhull, commencing *there* and ending the third page from there

[indicating the portion referred to], and I object to it as incompetent and immaterial.

JUDGE NEILSON.—Mr. Tracy, you have it before you; what part do you propose to read?

Mr. Tracy.—The part beginning with "Reporter."

JUDGE NEILSON.—On the second page?

Mr. Tracy.—I don't know what page it is on.

JUDGE NEILSON.—Well, the second page in this book. Down to what point?

Mr. Tracy.—Down to the end of that interview.

Mr. Beach.—The third page from that.

JUDGE NEILSON.—Including the letter of a third person here?

Mr. Beach.—Including everything, sir.

Mr. Tracy.—We don't care about the third person's name, your Honor. It will take some little time to go over that and select out, perhaps the names of third parties. We want the story simply as it relates to Mr. Beecher and the witness and Mr. Tilton, as told there.

Mr. Evarts.—We want what formed the basis of the conversation, which this witness has detailed, between him and Mr. Beecher.

Mr. Beach. –The difficulty is to ascertain what that is.

JUDGE NEILSON.—That is the difficulty. Here is a reference in the third column of the fourth page to Mrs. Tilton. I can not conceive that any evidence we have had would justify the reading of that, or that it is material, what this writer says about Mrs. Tilton. That was not the subject of discussion between the witness and the defendant.

Mr. Tracy.—It will take so long, your Honor, to go over that and pick out the different paragraphs, perhaps, that relate strictly to the parties here, that I had better move to another part of the cross-examination and renew this.

JUDGE NEILSON.—I think so, and mark the specific passages, in brief.

Mr. Tracy.—My plan of examination was to read now the paragraphs that related strictly to the parties and to this witness. I did not propose to read anything that did not relate to their witness, and finish my cross-examination of him on that subject, and then at our leisure put in such parts of the paper as we desired to have in. That was the plan that I originally marked out for myself.

JUDGE NEILSON.—Haven't you the examination of the witness before you already on these very points?

Mr. Evarts.—Not with this paper before us. We can proceed with something else.

JUDGE NEILSON.—Well.

Mr. Tracy.—That is the way I originally proposed to do it.

JUDGE NEILSON.—Proceed to some other subject and dissect this at your leisure.

Mr. Tracy.—We can renew this just as well.

JUDGE NEILSON.—And use as little of it as you can help. It is like medicine. Don't take too much of it; it is unpleasant. Go on, Mr. Tracy.

Mr. Fullerton.—We object that the medicine don't suit the disease at all.

Mr. Tracy.—That you can only tell by trying. That is the way the doctors do.

Mr. Fullerton.—That is the way lawyers do sometimes, but I guess doctors don't, who understand themselves.

Mr. Tracy.—Now, Mr. Moulton, will you tell us what source of revenue Mr. Tilton had, to your knowledge, from January 1st, 1871, down to May 1st, 1874? A. What source of revenue?

Q. What source or sources of revenue he had, to your knowledge, from January 1st, 1871 to May 1st, 1874? A. He had on deposit with Woodruff & Robinson some money, sir. He had the subscriptions to *The Golden Age*, and he had—when I speak of subscriptions, I mean the capital stock of *The Golden Age*.

Mr. Evarts.—Contributions? A. Yes, sir; contributions, that is a better word; and then the subscriptions to *The Golden Age*, an income from the paper, sir; and he had also $7,000 from Mr. Bowen; and from May 3d, 1873,—I think that was the date, May 3d, 1873, or May 2d, 1873,—the $5,000, which he didn't know anything about, however.

Mr. Beach.—He is giving the capital instead of sources of revenue.

Mr. Tracy.—He is not giving the sources of income. I move that the last answer of the witness be stricken out.

JUDGE NEILSON.—The words "he did not know anything about it" are stricken out.

Mr. Tracy.—That $5.000—you refer to the $5,000 which came from Mr. Beecher? A. I refer to the $5,000 that Mr. Beecher gave to me for him; yes, sir.

Q. Have you named now all the sources of revenue that he had, to your knowledge? A. I don't know whether the book, sir, was issued—"Tempest Tossed" was issued before May 1st, 1874, or not—whether he had finished it.

Q. Well, do you know whether he had received any income from it before May 1st, 1874? A. I don't know whether he had received any money from that or not.

Q. Do you know whether he received any income from *The Golden Age*, or whether it failed to pay expenses? A. I don't know that of my own knowledge, sir.

Q. Have you now named all the sources of income that Mr. Tilton had, to your knowledge? A. Of income—I think I have; yes, sir.

Q. Does that include borrowed money? A. From me?

Q. From anybody? Does it include your borrowed money that you loaned him? A. I don't know; I have not mentioned that, sir; there was not so much of that, I find.

Q. In addition to what you have mentioned, were your loans to him? A. Yes, sir.

Q. Had he any other source of income to your knowledge? A. Not that I know of.

Q. No other loans? A. From anybody else?

Q. Yes, sir. A. Not that I know of.

Q. No other funds applied to the support of *The Golden Age*? A. None that I know of.

Q. What amount of income did he receive from your loans? A. I have

had it examined, sir, and I can not determine that. I had our accountant—I told Mr. Porter that I would have him look over the books, but there is nothing by which I could be guided, sir.

Q. Have you brought your books here? A. No, I have not brought the books here.

Q. I thought you were to bring the books here of Woodruff and Robinsons. Do you know of his having any income from lectures during that period? A. Yes, he did, I believe, have income from lectures, which I did not recall when I answered your question.

Q. How much? A. I don't know.

Q. What years? A. My impression is that he lectured in the beginning of 1871, sir, and in the winter of 1871 and the spring of 1872; I think so; I won't be certain about that.

Q. Now, do you know whether his lecture seasons did or did not produce any income? A. They did produce some, sir; I don't know how much.

Q. You do not know how much? A. No.

Q. Now, have you named all? A. I think I have, sir, as far as I recollect.

Q. Were your firm his bankers during this time? A. He had money on deposit, sir, with our firm.

Q. Had he any other bank account to your knowledge? A. I don't know that he had.

Q. How did that account stand in April—2d or 5th, is it, when he received and deposited with you $7,000?

Mr. Fullerton.—That appears by the acconnt itself, sir.

JUDGE NEILSON.—There are both accounts there.

The Witness.—I can not state from memory, sir.

Mr. Tracy.—I will show you the account. How often had you loaned him money, should you say, during this time? A. Not very often, sir.

Q. Loaned it on his application? A. Sometimes I asked him if he wanted any money.

Q. And if he said he did you loaned it to him, did you? A. Yes, sir; generally.

Q. What amounts have you loaned him?

Mr. Fullerton.—That is all gone over, sir.

JUDGE NEILSON.—Yes, sir; "When he wanted money I gave it to him,' he said, "and generally in currency."

The Witness.—Mr. Porter asked me if it exceeded $5,000, and I answered him no, Mr. Tracy.

Mr. Tracy.—In the aggregate? A. Yes, sir, he asked me if it exceeded $5,000 in the aggregate.

Q. Now, I ask you what is the largest amount you loaned him at any one time? A. I don't recollect.

Q. Were these loans independent of your contribution? A. Yes, sir.

Q. How large is the largest amount you recollect of loaning him at any one time? A. I don't recollect, sir, anything about it, what was the largest amount.

Q. Do you recollect of loaning him as high as $500 dollars at any one time?

Mr. Morris.—Your Honor, is this to be gone over again? It has all been gone over with particularity.

Mr. Tracy.—It has been gone over just as every other subject has been gone over.

Mr. Fullerton.—That is so.

Mr. Tracy.—Judge Porter asked one or two questions about the fact whether he had loaned him money.

JUDGE NEILSON.—Oh! more than one or two questions; he examined him as much, I think, as in his judgment the point called for.

Mr. Tracy.—Our recollection is that he only asked him as to the aggregate amount and nothing as to the details. That is our recollection on our side.

Mr. Morris.—It is a mistake.

JUDGE NEILSON.—He exercised his judgment. He asked him as to loans.

Mr. Tracy.—So Judge Porter touched on every point generally.

JUDGE NEILSON.—I said you could ask him this question. Perhaps that will satisfy you.

Q. Can you state whether you ever loaned him as high as $500 at any one time? A. I can not, sir; but I can state that I never loaned him to exceed $500, I think, at any one time.

Q. Will you look at the account, and tell us whether his account with Woodruff and Robinsons was overdrawn at the time he received the money from Bowen? A. It would appear from this, sir, that the account was overdrawn $564.39.

Q. At the time he received the $7,000 of Bowen? A. It would appear so from this, sir.

Q. Now, sir, from the account when was that $7,000 exhausted, and the entire amount in your firm's hands belonging to him exhansted?

Mr. Fullerton.—I dislike to trouble your Honor with objections, but it does seem to me that this is a waste of time. There are the figures which prove whatever they do prove, and there is no necessity for any one's swearing to them.

Mr. Morris.—The account has been read in evidence Mr. Tracy.

Mr. Tracy.—Well, but the balances.

Mr. Morris.—Yes, the balances, every item of the account, both sides.

JUDGE NEILSON.—You might substitute the word "withdrawn" for "exhausted."

Mr. Tracy.—Yes, the stenographer may change the question.

The Witness.—Shall I add it up to answer your last question?

Mr. Tracy.—Yes, if it will not take too long. Don't it show readily? A. No, it don't show readily.

JUDGE NEILSON.—When was the whole amount withdrawn? That is the last question. A. The account seems to be closed on April 21st.

Mr. Tracy.—When was the last item withdrawn; when did he draw the last item of that account? A. $170.48 seems to have been drawn here on April 21st, 1873.

Q. When was the next to the last item drawn? A. December 21st—December 27th, according to this account—$600.

Q. Now, will you tell us whether that did not withdraw the entire account? A. The account seems to have been balanced on April 21st, 1873.

Q. I ask you to tell us whether, when he drew on the 27th of December, the draft on you, he had anything remaining, and, if so, how much? A. When he drew the draft on the 27th of December?

Q. Yes, sir? A. I wish Mr. Shearman would add this up; I can not see; my eyesight is not good enough.

Mr. Evarts.—We will verify it.

The Witness.—I can hardly see, sir.

Mr. Tracy.—Very well, sir, pass it back; we will do that. [Taking the account from the witness.]

The Witness.—The account is as it stands. I don't know anything about it further than that.

Q. What source of income had Mr. Tilton from January 1st, 1873, to the receipt of the $5,000 by you from Mr. Beecher in May, 1873? A. I don't know that he had any, sir, except from *The Golden Age*—whether that paid or not—the receipts from that.

Q. That you don't know? A. No; I don't know.

Q. Did you loan him any money during that time? A. I don't recollect that I did, sir.

Q. Did any one else contribute any money to him during that time to your knowledge—during that period? A. Not to my knowledge; no, sir.

Q. You had an interview, you say, with Mr. Beecher on the subject of this $5,000 before you received it from him? A. Yes, sir.

Q. Do you remember where that interview was? A. Well, there were interviews at my house about it.

Q. You say interviews? A. Yes, sir.

Q. More than one? A. I think there was more than one; yes, sir.

Q. Having reference to this $5,000? A. Having reference to help for *The Golden Age.*

Q. Well, I am talking about the $5,000 now. A. Yes; I think there was more than one with reference to the $5,000.

Q. At either of those interviews did you present to Mr. Beecher drafts or checks of any person, saying to him in substance, "This is friendship;" "This is what I call friendship?" A. I don't remember that phraseology, sir.

Q. Well, did you show him drafts from any person which you had received as a contribution to *The Golden Age*, or to Theodore Tilton, either? A. If you will allow me, sir, I will tell you as nearly as I recollect what I did show him.

Q. Yes, sir. A. There was a friend of mine, and of Mr. Tilton, who sent me either a check or two checks, and in addition to it a note, I forget for how much, which the person wanted me to discount and use as I saw fit for *The Golden Age.* I didn't think it was best to do it, and returned it.

Mr. Evarts.—What you told Mr. Beecher, not what you thought? A. I told Mr. Beecher that Mr. Tilton would not take that money.

Mr. Tracy.—What was the aggregate? A. That I don't remember, sir.

Q. Don't you remember anything about it? A. No; I don't recollect about it; I have asked about it since to find out.

JUDGE NEILSON.—You showed him those papers, did you? A. Yes, sir, that is all; I don't remember anything about the amount.

Mr. Tracy.—Do you remember whether it was as high as $5,000? A. I don't recollect, sir.

Q. Do you remember whether it was as high as $3,000? A. I don't recollect.

Q. Was there more than one draft or check to make up the gross amount? A. I think, sir, that there were two pieces of paper; I think there was one check and one note.

Q. Whose was it? A. Shall I answer that question, your Honor?

JUDGE NEILSON.—It don't seem to be material.

Mr. Evarts.—We think it is material, if your Honor please.

Mr. Morris.—We object.

Mr. Evarts.—It is part of the conversation with Mr. Beecher.

JUDGE NEILSON.—No name was mentioned.

Mr. Evarts.—He does not say that.

JUDGE NEILSON.—It does not appear in the evidence that any name was mentioned.

Mr. Evarts.—Well, we ask him if it was, and if the name was mentioned to Mr. Beecher?

Mr. Morris.—We object.

Mr. Evarts.—We infer from the fact that Mr. Tilton said he would not accept it from that source.

JUDGE NEILSON.—I do not think the name is material.

Mr. Tracy.—We desire to have all the conversation.

JUDGE NEILSON.—You can have all the conversation, and I will allow you to get it. Go on with the examination. I think his name ought not to be mentioned. That is all.

Mr. Tracy.—You say you showed Mr. Beecher those drafts? A. Yes, sir.

Q. Did he see the name? A. I think he did.

Q. Was the name mentioned? A. I think it was.

JUDGE NEILSON.—Then you can give it, if it was mentioned in the conversation?

The Witness.—Shall I give it, your Honor?

JUDGE NEILSON.—Yes, if it was mentioned in the conversation, you can give it.

Mr. Beach.—One moment. I was busy and I have not particularly understood this question, but do not think it follows, because immaterial, impertinent, or scandalous or offensive matter may have been mentioned in that conversation which has no connection with the subject-matter of this controversy, it necessarily comes in evidence. If needful I will send for authorities to satisfy your Honor, that where one party calls for a conversation and it is given, the other party may give the remainder of the conversation, so far as

it is material to explain that which has been put in evidence, but it does not make the whole matter which Mr. Beecher may have asserted in that conversation material.

Mr. Evarts.—We have not asked him about Mr. Beecher.

Mr. Beach.—I don't know what the conversation was, that was particularly referred to. I understand, sir, that this was a conversation between Tilton, Moulton and Beecher in regard to a contribution.

JUDGE NEILSON.—No; Tilton was not present.

Mr. Beach.—Moulton and Beecher. Tilton was not then present. Well, even if he had been present it would make no difference. A declaration of Mr. Beecher in regard to a third person——

Mr. Evarts.—We have not asked for Mr. Beecher's declaration; we are not asking for Mr. Beecher's declaration.

Mr. Beach.—What is it your are asking?

Mr. Evarts.—We are asking what this witness said to Mr. Beecher.

Mr. Beach.—That don't make any difference, sir, whether it was said by one party or the other; it is totally immaterial.

JUDGE NEILSON.—It appears that a third person, acting, perhaps, in the interest of *The Golden Age*, sent a check and note suggesting that the note be discounted and the money applied. It was not thought wise to discount the note. Those papers were shown to Mr. Beecher, and some conversation had in respect to it. The question was whether the witness did not say to Mr. Beecher, in reference to those papers, "that is friendship indeed," or something of that kind.

Mr. Evarts.—Yes, sir.

JUDGE NEILSON.—The whole thing is collateral.

Mr. Beach.—That is what I was going to remark.

JUDGE NEILSON.—It don't touch the issue we are trying at all, although it may have some bearing upon the other matter, whether Mr. Tilton had any means or not.

Mr. Evarts.—We do not regard it as collateral. If your Honor will allow us to state how it comes in.

JUDGE NEILSON.—Yes, sir.

Mr. Evarts.—This witness has undertaken to give the interview between him and Mr. Beecher which led to Mr. Beecher's contribution of $5,000, and the instructions concerning it, all which is adduced here as evidence, in the shape in which he has presented it especially, of crimination against Mr. Beecher by that contribution. Now, we propose to show what did pass between this witness and Mr. Beecher antecedent to his payment of the $5,000, and the witness has told us that there was more than one interview. Now we are getting at those interviews. That is the way it comes in, and we propose to show exactly what did pass between this witness and Mr. Beecher, and then we will see whether the construction that has been put upon it in what has already been given is the true one.

Mr. Beach.—The witness has given no construction to it; he has merely related interviews which have been called for by the counsel upon the other side; none which have been introduced by us on that subject.

Mr. Evarts.—In a previous interview. On your own evidence he gave one of the interviews that preceded the $5,000.

JUDGE NEILSON.—Now, you can have all the rest of that interview, if all of the conversation was not given.

Mr. Evarts.—We can have the preceding interview also. The *res* to be proved is what passed between this witness and Mr. Beecher that bears upon Mr. Beecher's contribution. It is just as much a part of the *res* if it happened in a conversation prior to the one that he has detailed. I submit to your Honor that that is very clear.

Mr. Beach.—We have not given an interview, sir, upon that subject. I mean the subject of contributions to *The Golden Age*, or the revenues of *The Golden Age*, and its fortunes in any particular, sir. We gave in evidence the interview at which Mr. Beecher contributed $5,000 for some purpose. Now, all of that interview relating to the subject concerning which we inquired, of course is evidence, we gave the whole of it I suppose, so that the gentlemen are satisfied with it.

JUDGE NEILSON.—Also a prior interview when it was stated that $5,000 on mortgage could easily be got.

Mr. Beach.—Yes, sir. Now the proposition is upon their part to prove another interview between Mr. Moulton and Mr. Beecher in regard to a contribution of a third person toward *The Golden Age*, which was rejected.

Mr. Morris.—And as to who that person was.

Mr. Beach.—That interview is not competent evidence against us. What Moulton and Beecher may have declared in the interview to which we have not directed our attention is competent to be proven against us.

JUDGE NEILSON.—Everybody will agree to that. Counsel will agree to that, of course.

Mr. Beach.—Well, if they concede that, they concede the principle which excludes all the evidence in regard to this interview.

JUDGE NEILSON.—Unless it occurred in one of the interviews as to which you inquired.

Mr. Beach.—Certainly; they don't propose that.

Mr. Evarts.—Does your Honor say we can not show interviews between this witness, in reference to this transaction which he undertook to carry on and conduct with Mr. Beecher, and that they can pick out which they please, and we can not prove the others?

JUDGE NEILSON.—I mean to say that when they have inquired into any conversation, you can inquire as to the rest of it.

Mr. Evarts.—That we understand.

JUDGE NEILSON.—I mean to say, also, that as to this $5,000 or the raising of it, if Mr. Beecher gave any instructions, you can go into that; as to the person who was appointed to distribute or apply the money—that is, as to the act of a third person. That is before us already. This discussion came up in regard to the name of that third person, which I think is not material. I don't see why it is material.

Mr. Evarts.—Yes, your Honor can not see why it is material until it appears and until the conversation is given. Our difficulty is this, if your Honor please: the witness is sworn to tell the truth, the whole truth, and nothing but the truth, and we undertake to examine him concerning what was actually said and done between him and Mr. Beecher. Now, there is no authority that I know of that can absolve him from telling the truth as it occurred.

JUDGE NEILSON.—He don't ask to be absolved, Mr. Evarts, and it is not necessary to reiterate the form of his oath; of course we know that.

Mr. Evarts.—I submit to your Honor's rebuke, but submit that I am not aware of any rule of evidence ——

JUDGE NEILSON.—It does not follow that because the witness swears to tell the truth, the whole truth, that he is therefore to tell everything.

Mr. Evarts.—Everything that is pertinently inquired of.

JUDGE NEILSON.—Exactly.

Mr. Evarts.—And, therefore, as it was. How can it be predicted, if the interview is pertinent, that this or that should be omitted from it?

JUDGE NEILSON.—We really have this interview, excepting the name of a third person.

Mr. Evarts. —We haven't the whole of the interview.

JUDGE NEILSON.—Well, I think we will take the rest of it; yet I appeal to you whether you think it proper that this third person should be named. If you say, as counsel, that he should be, the witness may name him.

Mr. Evarts.—Very well; it establishes the rule of evidence.

JUDGE NEILSON.—Suppose it should be one of your learned associates, would you like to have his name brought in here?

Mr. Evarts.—Your Honor is assuming that there is something discreditable. There is not that I know of.

JUDGE NEILSON.—No, sir; I am assuming that gentlemen may have private transactions or gifts which they don't wish to have made public.

Mr. Fullerton.—Especially if they were rejected.

JUDGE NEILSON.—Do you say it is material?

Mr. Evarts.—I will consult with my associates. Your Honor sees the difficulty that where we are dealing with material and important interests of people in litigation we can not, of course, always exercise that degree of courtesy and consideration that we would be glad to do in reference to third persons; that your Honor understands, as well as any one of us that have any experience in the profession. Of course, your Honor has had experience both at the bench and at the bar, and I think your Honor knows that the bar never do desire to press inquiries that they do not regard as material, I mean as affecting third persons. We are not satisfied with the condition of the matter as passing between this witness and Mr. Beecher, as it stands now.

JUDGE NEILSON.—I purpose to allow you to take the rest of the interview, because so much of it has been given, suggesting to your own consideration the propriety of leaving out the name of that third person.

Mr. Evarts.—Well, perhaps we may do that.

JUDGE NEILSON.—You can come to an end in that way, you know.

Mr. Fullerton.—Well, I don't know about referring the propriety of that course to the counsel upon the other side. If it is improper in your Honor's judgment, then I would respectfully ask that your Honor's judgment should be carried into effect.

JUDGE NEILSON.—I generally try to do that.

Mr. Fullerton.—I am aware that your Honor generally tries to do that, and that your Honor generally succeeds also; and if it be improper to give the name of the third person, then it ought to be shut out, because it would not make it any less improper that it was referred to counsel on the other side for their judgment in regard to it. Your Honor will perceive this conversation, a part of which they have called out, was not referred to by the witness upon his direct examination. It is not, therefore, within the rule which your Honor has suggested, that where a part of a conversation was called for by ourselves, they have a right to the balance of it. It is not that case.

JUDGE NEILSON.—No.

Mr. Fullerton.—But it is a question where they call for another conversation upon their own responsibility, and hence it is collateral, and they can not dispute it hereafter or disprove it hereafter.

JUDGE NEILSON.—It is collateral unless it took the form of instruction in regard to the use of this money.

Mr. Fullerton.—Well, sir, it does not take that form. Let us see just how the thing stands; they say, or they prove by Mr. Moulton, that on a certain occasion he received from some third person, whose name has not been made known, a letter containing a draft and a check, with instructions to use it for the benefit of *The Golden Age*, and that Mr. Tilton said he would not have it used for *The Golden Age*.

Mr. Evarts.—He has not said that.

Mr. Fullerton.—And he has been asked whether or not he showed these papers to Mr. Beecher, and he says that he did. Then he was further asked, was the name of the person attached to this letter used in that conversation? His answer was in the affirmative. They call for that name. Now, that is the question before the court, and can anybody see that that becomes material in this controversy? It is collateral matter, and they can not contradict it. Even if the name should be given, they could not produce the person for the purpose of showing that it was untrue.

Mr. Evarts.—That is not our object.

Mr. Fullerton.—It is purely collateral, and therefore they have no right to it. They may have a right to the other part of the conversation inasmuch as a part of it has been given, as your Honor has suggested; but when giving evidence of collateral matter, your Honor has a right to stop them, especially in a question of this kind, where they seek to give the name of a third person who has no earthly connection with this controversy, and who ought not to be drawn into it at all.

JUDGE NEILSON.—I think the learned counsel was accepting my suggestion not to exact the name.

Mr. Evarts.—There is nothing collateral about this. It is not brought in

to impeach the witness—not in the least; it is a part of the direct subject of the inquiry, just as what you gave in evidence was the subject of inquiry.

Mr. Beach.—That we deny, your Honor.

Mr. Evarts.—I know you deny it. It is not collateral. How a conversation one day is collateral and next day specific, I can not understand.

JUDGE NEILSON.—Well, now, you can exact this name. Do you ask him to give the name or not?

Mr. Tracy.—Not at present.

The Witness.—Shall I give the conversation?

JUDGE NEILSON.—Everything except the name of the person who sent the papers.

Mr. Beach.—Does your Honor rule that the declarations Mr. Beecher may have made in that conversation as to other matters than the $5,000 is admissible?

Mr. Evarts.—When we come to that, it will be time enough to consider it.

JUDGE NEILSON.—The inquiry relates to the $5,000.

Mr. Evarts.—Of course it does.

JUDGE NEILSON.—Meantime you take an exception. Go on, witness.

The Witness.—Shall I give the conversation?

Mr. Tracy.—Yes; omitting the name.

JUDGE NEILSON.—From the point where you dropped it.

Q. You recollect when you left off; you say that you told Mr. Beecher, Mr. Tilton would not accept that money; you said you would not discount that draft; you showed him these papers; now what did you say? Was there a letter accompanying those papers? A. I think there was a letter, sir, accompanying those papers.

Q. Was there currency also enclosed? A. I don't think there was, sir.

Q. Now, go on and state what occurred—what was said? A. I said to Mr. Beecher that I had spoken to Mr. Tilton about this gift, and that Mr. Tilton said he could not accept it; that he had no way of returning the money that he knew about; and I said also to Mr. Beecher that I could not honorably take this money from this person and apply it to Mr. Tilton's use without informing him about it, and I did not see how that money could be used therefore. That is the substance of the conversation, sir, as nearly as I remember it.

JUDGE NEILSON.—Now, he asked you whether in that connection you said to Mr. Beecher, in showing him the papers, "This is friendship, indeed," or something of that kind.

Mr. Tracy.—Did you make any remark characteristic of the mode of tendering such a fund? A. I think I said something about its being an expression of friendship; yes, sir.

Q. Can you repeat the language that you used? A. I can't repeat the language; no sir.

Q. Wasn't it in substance, "This is friendship, indeed"? A. No, it was not in that shape.

Q. Repeat it, or the substance of it, as near as you can. A. I have, sir.

Q. You can't do it? Well, now, was that money received and used, or was it returned? A. No, sir; it was not—it was not.

Q. No part of it received?

Mr. Fullerton.—Just one moment.

JUDGE NEILSON.—I think we have gone far enough with that.

Mr. Fullerton.—The answer was not full—"Was the money received or was it returned"? His answer is, "It was not."

The Witness.—I mean it was not used for *The Golden Age.*

Q. It was not received; was it returned? A. Yes, sir; I returned it myself.

Q. Had you any talk with Mr. Tilton about it? A. Yes, sir; I had.

Q. What was it? A. I told him of the offer of this party, the request of this party to let him have this money, and my recollection is that there was a caution in the note itself not to say anything about it—not to say anything about it to Mr. Tilton, but I could not give it to him, in my opinion, without telling him about it, and I told him frankly who the party was and what the amount was, and he said he certainly could not take it; he had no way of returning the money that was loaned to him, or given to him, and he could not do it in that way.

Q. Was the party known to Mr. Tilton? A. Yes, sir.

Q. Known to Mr. Beecher also? A. Known to Mr. Beecher; yes, sir.

Q. And a friend of Mr. Tilton? A. A friend of Mr Tilton; yes, sir.

Q. Now, do you say that Mr. Tilton said that he had no way of returning it—repaying it—and therefore he could not take it? A. Yes. sir; he said something substantially like that, sir.

Q. Was it tendered to him as a loan, or a gift? A. Well; I think it was intended to be either one or the other; it was to be used for *The Golden Age.*

Q. How did you present it to him—how did you present it to Mr. Tilton; as a loan, or a gift? A. I guess as a gift.

Q. Now, how soon after that was the money received from Mr. Beecher? A. I don't recollect the date of that conversation, sir; I don't recollect the date of this transaction.

Q. How soon after? About how soon? A. Well, I can tell you the date that the money was received from Mr. Beecher; I can not tell you how soon after.

Q. I don't care when that was; I want to know what time.

Mr. Evarts.—He said this was before.

Mr. Tracy.—How near were they together? A. I don't recollect.

Q. Well, can't you approximate? A. No; I can not approximate; I don't recollect.

Q. Was there anything said by Mr. Beecher at this time about raising the five thousand dollars himself? A. I don't recollect that there was, at that interview, sir.

Q. Now, how soon after that did Mr. Beecher come to you and talk about raising five thousand dollars? A. I do not recollect, sir.

Q. Can you tell whether it was three days or two days, or one week or three weeks? A. No, I can not.

Q. Can not tell anything about it? A. No.

Q. Was it a month? A. I do not know.

Q. Was it six months? A. I don't know.

Q. You say you don't know whether it was six months? A. No; I do not know.

Mr. Fullerton.—He has said so; and you heard him say so distinctly.

JUDGE NEILSON.—Can't you give the date? A. I can not; I have tried to ascertain the date, your Honor; I saw the reference, your Honor, in the——

Mr. Evarts.—It is not a question of date; it is a question of proximity of the transaction, no matter what the dates were.

JUDGE NEILSON.—Well, the witness must be allowed to answer.

The Witness.—If your Honor please, I should like to make this explanation; I saw the notice in Mr. Beecher's statement that this examination has reference to, and I have tried in good faith to find out the date and the amounts, and I have not been able to.

Q. Can you tell the season of the year when you had this conversation and exhibited these papers? A. No, sir; I can not swear what it was.

Q. Can you tell what season of the year it was? A. No, I can not.

Q. Whether it was winter or spring? A. No, I can not; whether winter or spring.

Q. Where was this interview between you and Mr. Beecher? A. I think it was at my house.

Q. Mr. Beecher came to you and spoke about the five thousand dollars; now, how soon after that interview, where he spoke of the five thousand dollars, did you receive the money from him?

Mr. Beach.—Spoke of what five thousand dollars?

Mr. Tracy.—Spoke of raising five thousand dollars, I understood him; he has already said that on your examination.

Q. Now, how soon after that was it that you received the money from Mr. Beecher? A. I don't remember that either.

Q. Can't you approximate to the time? A. No, I can not approximate to the time; it wasn't a very great while.

Q. Was it a week? A. I don't know whether it was a week or not, sir; it may have been a month.

Q. Well; do you know the time when you received it? A. I know the time when I received it precisely.

Q. On receiving it, what did you do with it? A. Took it over to New York and deposited it with the firm of Woodruff and Robinson, to my credit.

Q. Did you send any part of it to Tilton? A. I think I sent him a thousand dollars—the account will show—on the next day, sir.

Q. What happened between you and Tilton when you sent him that thousand dollars? A. I sent him the thousand dollars with a demand note, sir; with a note for him to sign.

Q. In whose favor? A. "On demand I promise to pay to the order of Theodore Tilton," I think the way it was drawn; I think it was; and he returned the money to me, saying that he could not—that he could not borrow

any money on demand and give that note for it, because he had no means of answering to that responsibility.

Q. Of repaying? A. Yes, sir.

Q. Well, what did you do then? A. Then I sent him the check for a thousand dollars as a gift.

Q. What did you do? A. What did I do? I sent him a check for a thousand dollars.

Q. Did you accompany it with a note? A. I don't think I did; don't remember whether I did or not.

Q. Or any note to be given for the thousand dollars? A. No.

Q. No communication accompanied the check? A. I don't recollect that there was.

Q. Well, what became of that? A. He used it, I suppose; I don't know what became of it.

Q. What occurred between you and Mr. Tilton after that about that thousand dollars? A. I do not recollect what did occur.

Q. Anything? A. Not that I recollect of particularly; we may have had some conversation about it; I don't remember what it was.

Q. Didn't Mr. Tilton ever introduce the subject? A. He may have done so.

Q. Did he? A. I do not recollect whether he did or not; I don't recollect any specific interview at which it was done.

Q. Did you ever introduce the subject to him? A. I don't remember whether I ever did or not; very likely I did.

Q. Was it ever the subject of conversation, directly or indirectly, between you and Tilton, so far as you know? A. I think it was; yes, sir.

Q. Then what was said? A. I will try to recollect the substance of it.

Q. When was the conversation? A. I don't remember how shortly after the giving of the thousand dollars it was; I don't remember how shortly after that or how long after that it was.

Q. Can not you approximate to the time? A. Well, it was not but a few days; I guess not to exceed a few days.

Q. Well, then, what occurred? A. I don't recollect distinctly enough to state, I think, what did occur. There was an allusion made to the fact, that I had sent him a note, substantially that, for him to sign, and he reiterated what he had said in the note, in reply to the first note that I sent to him, and I said then, "Very well, take this money and you can have the money and return it when you are able to return it;" that is all; that is the substance of what was said; I don't recollect the conversation accurately.

Q. What do you mean by saying, "Take the money"? A. Use it.

Q. Hadn't he used it already? A. I don't know whether he had or not.

Q. You don't know how long this interview was after the sending of the check? A. Oh! it was within a few days, sir; the natural time of such a conversation. I don't recollect when I saw him after it, sir; I am trying to answer your question as well as I can.

Q. But you don't know whether he made use of the check at that time or not? A. I really do not.

Q. When did you send him the next amount of money? A. I don't know; the account will show.

Q. I pass you the account? A. It would appear to be, sir, by this account, July 11th, 1873.

Q. How much? A. $650.

Q. How came you to send him that? A. I heard, either from him or Mr. Ruland, I don't remember which, that the paper wanted that money, or something about his wants; I don't know what——

Q. Was there any note sent with it? A. Don't recollect, sir; don't know whether there is or not. All the papers I have got with reference to it are produced here under your subpœna.

Q. Have you any note or memorandum written to him at the time of paying over that money, or sending that money? A. I think not, sir.

Mr. Fullerton.—What money? A. $650.

Mr. Tracy.—Have you got any application from either Mr. Ruland or Mr. Tilton for that $650? A. I don't know, sir, that I have; all the applications are in the papers here.

Mr. Evarts.—We would like them.

Mr. Tracy.—We would like all of them.

Mr. Fullerton.—All of what?

Mr. Tracy.—All the applications from either Tilton or Ruland for this—for money.

Mr. Beach.—I don't understand the witness to say that he has any.

Mr. Tracy.—Then we want that fact stated, that he has not.

Mr. Evarts.—The witness said that there were applications.

Mr. Beach.—No; I beg your pardon.

JUDGE NEILSON.—He said "all the applications," assuming that there might be some, were among the papers. Better pass to some other subject; you only have about an hour to finish your cross-examination. In the meantime, Judge Morris will look.

The Witness.—I remember one note, I think, from Mr. Ruland, that I put in there; Mr. Tracy, the check is there, sir, for the $1,000 that you just called for, if you will look at it.

Mr. Tracy.—We would like to put it in.

"NEW YORK, May 3d, 1873.

"*Mechanics' National Bank:*

"Pay to the order of F. D. Moulton, $1,000.

"WOODRUFF & ROBINSON."

Endorsed: "Pay to the order of Theodore Tilton.

Endorsed: "Theodore Tilton." "F. D. MOULTON."

[Paper read and marked "D, 27."]

Mr. Morris.—Have you got the date of that?

The Witness.—This is May 3d. Shall I mark it off here as delivered to the stenographer?

Mr. Morris.—Yes, sir.

Mr. Tracy.—Now the second? A. The second is $650, sir. That check is also there.

Q. Now, I pass up the application that has been handed us. Will you

say whether you have any application from either Ruland or Moulton for the payment of $650 in July?

JUDGE NEILSON.—From either Ruland or Tilton?

Mr. Tracy.—Ruland or Tilton, I thank your Honor.

The Witness.—I had either a verbal or written communication from either one or the other, but I haven't it here. If this be all that is in the papers, this is all I have got.

Q. Well, you have no written application? A. It appears not——

Mr. Evarts.—No application that has been found? A. No, sir. I have made a diligent search for the papers, and have undertaken to comply with your subpœna, as far as possible.

Mr. Tracy.—Is that the letter which accompanied the first offer of the thousand dollars of May 3d [handing paper to witness]? A. Yes, sir; Mr. Tilton's answer is: "I can not borrow any money, for I see no way of returning it." That is his answer.

Mr. Tracy.—[Reading]:

"NEW YORK, May 3d, 1873.

"DEAR THEODORE: I enclose to you check for $1,000, for which please sign the enclosed.

"Yours,

"F. D. MOULTON."

Mr. Tracy.—Now, was that letter returned to you with the note of Mr. Tilton on it at the time? A. Yes, sir, precisely; and the check too.

Q. And the check also? A. Yes, sir.

Mr. Tracy.—[Reading]:

"DEAR FRANK I can't borrow any money—for I see no way of returning it.

"Hastily, T. T."

[Paper containing note and reply marked "Exhibit D, 28."]

The Witness.—That is it, sir. The next check is August 15th. Did you have that, sir?

Mr. Tracy.—Yes. When did you send him the next sum of money? A. July the 11th—I made a mistake, sir, July the 11th.

Q. For how much? A. $650.

Q. Well, is that the second or third? A. That is the second, sir, and endorsed by O. W. Ruland, I think, sir; isn't it? [Check handed to witness.] Yes, sir.

Mr. Tracy.—[reading]:

"NEW YORK, July 11th, 1873.

"*Metropolitan National Bank:*

"Pay to the order of F. D. Moulton, $650.

"WOODRUFF & ROBINSON."

Endorsed: "Pay to the order of Theodore Tilton.

"F. D. MOULTON."

Endorsed: "Theodore Tilton, O. W. Ruland, attorney."

[Check marked "Exhibit D, 29."]

Mr. Tracy.—Now, when did you pay the next money? A. August 15th, according to this account.

Q. Did anything pass between you and Mr. Tilton that you recollect of, with regard to the payment of the last amount, $650? A. Nothing that I recollect of, sir, except that there must have passed a request.

Q. State what you recollect. We will take what you recollect, and not

what you reason on the subject. Do you recollect any communication passing between you and Theodore Tilton on the subject?

Mr. Evarts.—Conversation of any kind passing between you? A. I don't recollect any conversation, sir.

Mr. Tracy.—You recollect no conversation? A. No.

Q. How came you to send it? A. Upon some verbal or written application from Theodore; some verbal communication from him in conversation with him. I never sent it without such——

Q. Was it for a loan? A. Was it for a loan?

Q. Yes? A. Well, he has probably told me that he was short of money; that is generally the form of the conversation.

Q. Yes; short of money? A. The next one is August 15th, according to this account, $250.

Q. [Paper handed to witness.] Is the check presented, the check by which that amount was paid? A. August 15th; yes, sir.

The Witness.—This makes the third—this one.

Mr. Tracy.—[Reading:]

"NEW YORK, August 15th, 1873.

"*Metropolitan National Bank:*

"Pay to the order of Theodore Tilton, $250.

"WOODRUFF & ROBINSON."

Endorsed: "Pay to bearer. Theodore Tilton."

[Check marked "Exhibit D, 30."]

Q. Now, what communication passed between you and Mr. Tilton in regard to that $250? A. Substantially the same, sir; I don't suppose——

Q. When did you send him the next amount? A. The next amount, sir, seems to be September 12th, 1873.

Q. How much? A. $500.

Q. I hand you the check; see if that is the check by which he paid that amount? A. September 12th; it is, sir.

Mr. Tracy.—[Reading:]

"NEW YORK, September 12th, 1873.

"*Mechanics' National Bank.*

"Pay to the order of F. D. Moulton, Five Hundred Dollars.

"WOODRUFF & ROBINSON.

Endorsed—"Pay to the order of Theodore Tilton.

"F. D. MOULTON."

Endorsed—"Theodore Tilton."

[Check marked "Exhibit D, 31."]

Q. What communication passed between you and Mr. Tilton at the time you sent him that check? A. Substantially the same, sir.

Q. As before? A. As before; yes, sir.

Q. When did you send him the next money? A. September 30th, 1873, $500. Do you want these papers? [Check handed to witness.] September 30th, $500, appears to be the check, sir.

Mr. Tracy.—[Reading.]

"NEW YORK, September 30th, 1873.

"*Mechanics' National Bank.*

"Pay to the order of Theodore Tilton, Five Hundred Dollars.

Endorsed, "Theodore Tilton." "WOODRUFF & ROBINSON."

[Check marked "Exhibit D, 32."]

Q. Next? A. Next one is December 9th, $260.

Q. What communication passed between you and Mr. Tilton when you sent him the amount last named? A. Substantially the same; I don't remember anything different.

Q. Exhibit 32; what is the answer? A. Substantially the same; I don't remember any——

Q. Is the check presented the check for the last amount? A. Yes, sir.

Mr. Tracy.—[Reading.]

"NEW YORK, December 9th, 1873.

"*Mechanics' National Bank.*

Pay to the order of F. D. Moulton, $260.

"WOODRUFF & ROBINSON."

Endorsed—"Pay to the order of Theodore Tilton.

"F. D. MOULTON."

Endorsed—"Theodore Tilton."

[Check marked "Exhibit D, 33."]

Q. Now, the next amount? A. The next amount seems to be a check to A. W. Reid, for Bessie Turner's school bill, out of that $5,000; I think you did not take that check, yesterday, Mr. Tracy? Or, you did take it yesterday, I think; I think you had it among your checks yesterday; it was a check for $200, December 16th. That is in.

Mr. Tracy.—Pass from that, then.

The Witness.—Yes, sir.

Mr. Tracy.—Did Theodore Tilton make any application for you to pay that bill at that time? A. The A. M. Reid bill? No, sir; he had nothing to do with the payment of those bills.

Q. Pass to the next one? A. The next one appears to be Feb. 24th, 1874, $500.

Q. Was the check presented by which it was paid? A. Yes, sir.

Mr. Tracy.—[Reading.]

"NEW YORK, Feb. 24th, 1874.

"*Metropolitan National Bank.*

Pay to the order of F. D. Moulton, Five Hundred Dollars.

$500. "WOODRUFF & ROBINSON."

Endorsed—"Pay to the order of Theodore Tilton.

"F. D. MOULTON.

"THEODORE TILTON."

"Cashed for Mrs. Theodore Tilton," it reads.

[Check marked "Exhibit D, 34."]

Q. Whose handwriting is that? A. It is the cashier's, I suppose: not our cashier, the cashier of the bank.

Q. "Cashed for Mrs. Theodore Tilton"? A. That is it.

Q. What application was made to you for that amount of money? A. Substantially the same.

Q. As before? A. Yes, sir.

Q. When did you pay the next? A. The next was paid March 30th, $400. That is under the letter you had of Mr. Ruland.

Q. [Handing check to witness.] Have you the check for the last payment? A. $400? Yes, sir.

Mr. Tracy.—[Reading.]

"NEW YORK, March 30th, 1874.

Mechanics' National Bank.

Pay to the order of F. D. Moulton, Four Hundred Dollars.

$400. WOODRUFF & ROBINSON.

Endorsed—"Pay to the order of O. W. Ruland.

"F. D. MOULTON.

"O. W. RULAND.

"JOHN J. MURPHY."

[Check marked "Exhibit D, 35."]

The Witness.—I don't know who John J. Murphy is.

Q. What application did you have for that sum of money? A. A letter.

Q. [Handing letter to witness.] Is the letter presented Mr. Ruland's application for that sum of money? A. Yes, sir; that is it.

Mr. Tracy.—[Reading.]

"*The Golden Age.*

[*Private.*]

NEW YORK, March 30, 1874.

"*Dear Mr. Moulton:*—We are in a tight *spot.* Mr. St. John is away, & we have *no money*, and *no paper.* Can't get the latter without the former.

"We owe about $400 for paper and the firm we have been ordering from refuse to let us have any more without money.—Haven't any paper for this week's issue.

Truly yours,

"O. W. RULAND."

"If you can do anything for us I trust you will, to help tide over this chasm."

[Letter marked "Exhibit D, 36."]

The Witness.—There is a reply to it.

Q. The last check was sent in pursuance of that request? A. Yes, sir, and the acknowledgment of it.

Q. [Handing letter to witness.] Is that the acknowledgment of the receipt of it? A. Yes, sir, that is it.

Mr. Tracy.—[Reading.]

"*The Golden Age.*

NEW YORK, March 30, 1874.

"DEAR MR. MOULTON. I am more grateful than I can tell you for the noble and generous way you came to the rescue of The Golden Age this afternoon.

"Truly your friend,

O. W. RULAND."

[Letter marked "Exhibit D, 37."]

Q. Did that check of $400 exhaust the $5,000 in your hands? A. I will add it up and see, sir; I think not; the next check paid is May 2d, $250.

Q. [Handing check to witness.] Is the check now presented the check by which you paid the last amount? A. Yes, sir.

Mr. Tracy.—[Reading.]

"NEW YORK, May 2d, 1874.

"*The Mechanics' National Bank:*

Pay to the order of F. D. Moulton two hundred and fifty dollars.

$250. "WOODRUFF & ROBINSON.

Endorsed, "F. D. Moulton,

Golden Age,

O. W. RULAND, Att'y."

[Check marked "Exhibit D, 38."]

Q. What application did you receive for that amount of money? A. Substantially the same.

Q. Substantially the same as the verbal applications which you have heretofore stated? A. Verbal or written.

Q. Not the same as the written? A. All the applications were verbal or written from either Mr. Tilton or Mr. Ruland.

Q. When you have named a written application you say the verbal application was substantially the same as you have stated? A. That is not what I mean to say. I have not any further written communications here, but the applications that were made for this money to me were substantially the same.

Mr. Evarts.—They were short, and wanted money? A. Yes, sir; that is about it, Mr. Evarts.

Mr. Tracy.—When did you pay the next amount? A. May 26th.

Q. [Handing check to witness.] Is the check presented the check by which you paid that amount? A. Yes, sir.

Mr. Tracy.—[Reading.]

"NEW YORK, May 26th, 1874.

"*The Mechanics' National Bank:*

"Pay to the order of F. D. Moulton, Esq., three hundred dollars.

$300. "WOODRUFF & ROBINSON."

Endorsed: "Pay to the order of Theodore Tilton.

"F. D. MOULTON,

"THEODORE TILTON."

[Check marked "Exhibit D, 39."]

Q. When did you pay the next? A. That seems to be all, sir.

Mr. Morris.—[To defendant's counsel.] Here is a check of $150 to Mrs. Tilton. I suppose you want that also?

Mr. Tracy.—If it is from the $5,000 we do. This is August, 1869.

Mr. Morris.—We hadn't it yesterday. You called for it then, and we produce it now.

Mr. Beach.—[To the witness.] Those items which you have given don't exhaust the $5,000.

Mr. Tracy.—That is what we want to know.

The Witness.—The whole amount, as it stands, seems to be $4,810, since the receipt of that $5,000, paid out according to the checks you have got; the account, as it stands here, is $6,100.66 received from Mr. Beecher, and paid out $6,078.15.

Mr. Beach.—I think the witness is erroneous; I made those checks amount to $4,916.

The Witness.—It may be that I am mistaken.

Mr. Tracy.—We will not stand for a few dollars.

Mr. Beach.—Stand for a few dollars! I don't know but that you are standing for any number of dollars.

The Witness.—I think you have made a mistake, Mr. Beach, if you will pardon me.

Mr. Tracy.—You have given the last payment you made on account of that $5,000? A. I have given the last payment I made to the concern of Woodruff and Robinson, and this is the total account as it stands.

Q. Do you desire to see this check of $150? A. I don't desire to see it.

Q. Do you know about it? A. Yes, sir; I know about it. It is dated August 19th, $150, on a request from Mrs. Tilton, I believe.

Q. Was that on account of Mrs. Tilton's bills? A. It was used by Mrs.

Tilton on that account, I suppose; I don't know. It was paid to her by her request, I suppose; it is entered in the account.

Q. To Bessie Turner? A. No, sir; to Mrs. Tilton, just as the check is. Are all the checks, Mr. Tracy, in the account?

[Check marked "Exhibit D, 40."]*

Mr. Tracy.—This is endorsed by Mrs. Tilton, endorsed by Elijah Lovejoy. "Pay to G. F. Baker, Esq., or order, J. H. Bouck, I think it is, cashier."

Q. From the time you received this money until you had paid out the whole amount, did nothing pass between you and Mr. Tilton by which he knew whether this was your loan to him, or gift to him, or how he came by that amount of money? A. He never knew it as money, except from me; the money was from me, if I understand your question.

Q. Nothing passed between you on the subject? A. Nothing passed between us on the subject.

Q. Whether it was a gift or a loan? A. Nothing except that first letter. I tried to make it a loan, and he so understands it, as a loan.

Mr. Tracy.—We won't talk about how he understands it. The question is, what passed. I move that that be struck out, how he understood it.

JUDGE NEILSON.—Strike that out.

The Witness.—I will tell you what I said to Mr. Tilton; perhaps that will do.

Mr. Tracy.—I understand you to say nothing passed except the note. Do I understand you correctly? A. Not entirely. I sent the note to Mr. Tilton, as I said before, and he returned it to me, and then a few days afterwards I saw him, and he stated to me substantially what was in his note, and then I said to him, substantially, "Well, then, this need not be returned until you are able to return it"—something of that sort. He didn't want to give me a note on demand.

Mr. Tracy.—Tell what he said.

JUDGE NEILSON.—He is trying to.

Mr. Tracy.—After that did nothing pass about all these other payments?

Mr. Beach.—No payments.

Mr. Tracy.—Loans.

Mr. Beach.—No loans.

Mr. Tracy.—Well loans, payments, or anything you like.

JUDGE NEILSON.—Did anything else pass between you as to those other sums afterwards? A. No, sir; I don't think so.

Mr. Tracy.—Did he ever thank you for them? A. Yes, sir; he thanked me for them.

* "Exhibit D, 40" is as follows:

Mechanics' National Bank:
No. 33 Wall Street
NEW YORK, August 19th, 1871.

2 Cents. U. S. R. Stamp.

Pay to Mrs. Theodore Tilton or order
One hundred & fifty Dollars
$150— WOODRUFF & ROBINSON

Endorsed, "Mrs. Theodore Tilton," "Elijah Lovejoy." "Pay to G. F. Baker Esq., or order, J. H. BOUCK, Cashier," and stamp of "First National Bank, New York."

Q. Tell us what he said? A. I don't remember what he said; I can not recollect now what he said.

Q. Can you not recollect the substance of what he said? A. He didn't thank me for every amount; I don't recollect that he thanked me for every amount, but he frequently expressed his thanks to me.

Q. What did he thank you for? A. For my kindness to him.

Q. When? A. At his house. I remember one night after I made the loan to Mr. Ruland, I showed him Mr. Ruland's grateful expression to me, and he thanked me.

Q. What did he say? A. He said he thanked me for my kindness.

Q. On any other occasion did you call his attention to any specific advance, and have a conversation with him about it? A. I don't recollect that I did.

Q. You remember that same occasion? A. That is all I recollect at this present moment; that is all that occurs to me at this present moment.

Q. Did you leave this matter between you and Mr. Tilton with the impression to Mr. Tilton that this was a gift of yours—all of this amount of money? A. The impression, I think, upon his mind was that it was a gift, if he was never able to return it; but if he was able to return it, he should return it.

Q. How did that impression arise? A. From what I said to him in the first conversation. You are asking me about my impression?

Q. That related to the $1,000? A. Yes, sir.

Q. And to nothing else? A. That is what it related to.

Q. Was the subject ever alluded to again after that? A. I don't recollect at the present moment, except on the occasion I have referred to.

Q. What limit was there understood to be then, and why did it stop at this time? A. Why did it stop? I was out of funds, and I didn't give him any more.

Q. Were further applications made? A. I don't recollect that any further applications were made.

Q. No further applications were made?

Mr. Beach.—[To the witness.] Finish your answer, if there is any qualification to it.

The Witness.—The last conversation that I had with him, that I recollect, was that he wanted to be rid of *The Golden Age*, that he could not—that he wanted to dispose of *The Golden Age*, and he did dispose of it.

Q. When was that? A. I don't recollect the date.

Q. Can you not tell about when it was? A. No, sir; I can not tell about when it was, even. It was told to Mr. Carpenter. The date Mr. Carpenter can fix when he comes on the stand, if he does come on it.

Mr. Evarts.—I don't know anything about Mr. Carpenter.

The Witness.—I am trying to find the date.

Mr. Tracy.—Can you fix the season of the year it was, or the year? A. I don't recollect when it was; it was in the early part of 1874, I think; I won't be certain about it.

Q. Was it not immediately after your last advance from this fund? A.

No, sir. What was the date of my last advance? I will try to fix it, if I can, for you.

Mr. Beach.—May 26th. 1874.

Mr. Tracy.—May 26, it is stated to be, 1874. Now, sir, was not that transfer of *The Golden Age* made on the exhaustion of the last payment from this fund? A. I don't think it was. That is my recollection of it. I don't think it was. I will try to fix it for you.

Q. Can not you tell whether it was two weeks, or three weeks, or three months after that? A. I can not.

Q. You can not tell anything about it? A. No, sir.

Q. Now, from the time you received this money, in May, 1873, until it was exhausted, had Mr. Tilton no source of revenue to your knowledge except this fund? A. I don't know that he had, sir.

Q. Did this account stop of itself, or were applications made to you, and refused by you, because there was no money? A. They were stopped by me when the account was out.

Q. Were there applications renewed? A. I don't recollect.

JUDGE NEILSON.—He answered that before, that there were none.

Mr. Tracy.—Has any of this money been returned to you. A. No, sir; not yet.

FIFTEENTH DAY, JANUARY 25, 1875.

FRANCIS D. MOULTON recalled, and the cross-examination continued.

Mr. Evarts.—If your Honor please, we had hoped that our associate, Judge Porter, would be able to be in court to-day, but the severity of the weather yesterday was such, of course, as to prevent him from for the first time taking the air, and he will not be in court to-day, but I hope that he will be able to-morrow. He has not left his room since he was taken sick.

JUDGE NEILSON.—I very much regret his illness.

Mr. Shearman.—I have now got the original copy of this paper.*

JUDGE NEILSON.—Have you marked the portions that ought to come in under the ruling?

Mr. Shearman.—We have, sir; and we have made them just as few as possible for the purpose of showing what the charge was to be denied by these three parties.

JUDGE NEILSON.—Then you will proceed to read it.

Mr. Shearman.—The following are extracts from the publication of Mrs. Victoria C. Woodhull, November 2, 1872. It was actually issued October, 28, 1872:

"Subsequently I published a letter in both *World* and *Times*, in which was the following sentence: 'I know a clergyman of eminence in Brooklyn who lives in concubinage with the wife of another clergyman of equal eminence.'

"It was generally and well understood, among the people of the press especially, that both of these references were to this case of Mr. Beecher's, and

* The paper mentioned is the Woodhull & Claflin publication referred to by plaintiff January 14th. See p. 388, *ante*.

it came to be generally suspected that I was better informed regarding the facts of the case than others, and was reserving publicity of my knowledge for a more convenient season. This suspicion "——

Mr. Fullerton.—No; that is as far as you can read under the rule.

Mr. Shearman.—Well, we propose to offer the following as part of the evidence which these gentlemen have produced.

JUDGE NEILSON.—Now, read that separately under the ruling.

Mr. Fullerton.—Your Honor will understand that so far as he read we do not object. I do object, however——

JUDGE NEILSON.—Now he reads under the rule what it may be necessary to read in order to fix his exception, provided it is not admissible.

Mr. Fullerton.—Yes, sir.

JUDGE NEILSON.—Read that portion, if you please.

Mr. Shearman.—[Reading:]

"This suspicion was heightened nearly into conviction when it transpired that Theodore Tilton was an earnest and apparently conscientious advocate of many of my radical theories, as appeared in his far-famed biography of me, and in numerous other publication in *The Golden Age* and elsewhere. Mr. Tilton's warmest friends were shocked at his course, and when he added to his remarkable proceedings, his brilliant advocacy of my Fourteenth Amendment theory, in his letters to Horace Greeley, Chas. Sumner and Mat. Carpenter, they considered him irremediably committed to the most radical of all radicals."

Mr. Fullerton.—That part, sir, is objected to.

JUDGE NEILSON.—Mr. Shearman, it seems to me that there is no prior evidence that would call for that particular clause.

Mr. Shearman.—Our theory in regard to that is that this was a charge made against all three of these gentlemen, and they met—so Mr. Moulton has testified—to consult about the charge that was made in effect against all of them.

JUDGE NEILSON.—And with a view——

Mr. Shearman.—With a view to a common answer or a separate answer, or to no answer.

JUDGE NEILSON.—With a view to a common answer.

Mr. Shearman.—With a view to an answer or silence.

Mr. Fullerton.—It was not a charge against three.

JUDGE NEILSON.—That is ruled out and you take an exception.

Mr. Shearman.—Yes, sir.

Mr. Evarts.—Your Honor will not overlook our general proposition that they having introduced the story as being in mass the subject of conversation with Mr. Beecher we have a right to read it as so introduced by them; and upon the further proposition that we regard it as in upon their side. It is proper, of course, that we should state these views that your Honor may see them.

JUDGE NEILSON.—Yes, sir.

Mr. Fullerton.—Well, the more frequently they are stated the better it will appear for us, because the objection grows out of the statement itself without any reply.

JUDGE NEILSON.—I understand that the article was referred to in the evidence upon the part of the plaintiff as injurious to the defendant, and calling for some answer from him, or perhaps to be met with entire silence, that the

course to be pursued was uncertain in regard to that. So much of the article as has a bearing upon that is received. You have an exception to the other.

Mr. Shearman.—Let me call your attention to this fact. In Judge Morris' opening he dwelt very largely upon the fact that no answer was made to this article by Mr. Beecher, and that consultations were held between Mr. Beecher, Mr. Tilton, and Mr. Moulton, in regard to what was to be done; and it was agreed, as Mr. Moulton says, that none of them should answer. Now, it has been argued from that already before the jury, that that is evidence of guilt upon the part of Mr. Beecher, that the fact that he did not answer these charges against him was evidence to go to the jury that they were true, and very strong evidence. Now, if we show your Honor upon their own evidence, upon a paper which they introduce, that here were charges not only against Mr. Beecher, but against Mr. Moulton and against Mr. Tilton—charges which we presume they will not deem to be true—charges of a vile and odious nature against those persons as well as against Mr. Beecher, is it not part of the proper evidence to be brought in at once in this case for the jury to look at collectively, so that they may say, "Why, charges were made against all of these three men; one was accused of as bad an act as another. One was accused of adultery, it is true, but the husband was accused of connivance with the adultery, of a positive re-introduction of the adulterer into his family. The husband was accused of that more odious crime than adultery, the recommendation to his wife to commit adultery again, and the Mutual Friend was accused of the vile crime of going with a pistol and presenting it at the head of the defendant and demanding a paper." Now, the counsel may say of the witness now on the stand that that charge against him was not true. We presume that Mr. Tilton will say when on the stand that the charge against him was not true. We assume that, and have we not a right to show that those charges were made in conjunction with the other charge against Mr. Beecher, that they were all inseparably mixed together, and that there was no more reason why Mr. Beecher should be deemed guilty for not answering, than why Mr. Moulton should be deemed guilty of taking a pistol and threatening murder, and Mr. Tilton be deemed guilty of the worse crime of re-introducing the adulterer to his wife and asking him over again to commit adultery as often as he pleased.

JUDGE NEILSON.—I feel the force of your explanation.

Mr. Morris.—The counsel has misstated a portion of my opening.

JUDGE NEILSON.—So I was going to say. I will read that and will perhaps correct this ruling, or let the exception stand as it is.

Mr. Morris.—But the counsel, sir, has made a misstatement in reference to my opening, which I have a right to correct right here, and I propose to do it. In speaking of the reference that I made to the fact that Mr. Beecher did not deny—made no denial to the publication of this article, I said that it remained without any denial for the space of about six months. In the following spring, after the publication of the tripartite covenant, and after Mr. Bowen and Mr. Claflin had visited Mrs. Woodhull to ascertain what evidence she might have in her possession, it was then in connection with those facts and circumstances that Mr. Beecher did publish a short card in *The Brooklyn*

Eagle, and that was six months after the publication of this article, and that was my statement to the jury.

JUDGE NEILSON.—I will read that part of the opening, Mr. Morris.

Mr. Shearman.—The difference then, sir, which Mr. Morris now makes between the attitude of these three gentlemen that are charged with this atrocious crime is that Mr. Beecher is presumptively guilty, because he did not deny it for six months, but that the others are presumptively innocent because they never denied it at all.

Mr. Morris.—Your Honor understands very well that this is a specious statement. Your Honor knows, and every man in this community knows, that Mr. Beecher was the man, and the sole man, called upon to deny them.

Mr. Shearman.—We will see.

Mr. Morris.—There was no call on the part of the press that Mr. Moulton or Mr. Tilton should deny. Mr. Beecher was the man charged, and he was the man called upon to deny, and he was silent.

JUDGE NEILSON.—All that will, perhaps, be governed by the jury in the end. I will hear what further portion you wish to read.

Mr. Shearman.—I am not aware that the calls of the newspapers are evidence at all. Here are the facts, and what they call for we are to give.

Mr. Morris.—You were making a misstatement of the evidence.

Mr. Shearman.—The next paragraph we propose to read is on the third column. [Reading.]

"Reporter.—Now Mrs. Woodhull, would you state, in the most condensed way, your opinions on this subject as they differ from those avowed and ostensibly believed by the public at large?

"Mrs. Woodhull——"

Mr. Fullerton.—One moment. That I object to.

Mr. Shearman.—Very good. Let us state it first and see what his Honor's ruling is.

Mr. Fullerton.—Does the gentleman offer that as a part of the charge against Mr. Beecher?

Mr. Shearman.—I offer it as a part of the charge made against these three gentlemen collectively. I say, if your Honor please, that it is impossible to separate the charges made by Mrs. Woodhull into three distinct, unconnected charges against these three gentlemen respectively. That can not be done. It was a single charge, a charge that Mr. Beecher had committed adultery with the wife of Mr. Tilton; that Mr. Tilton, first indignant about that, not only became, through the influence of Mrs. Woodhull, reconciled to it, but approved of it and rejoiced in it; and it charged Mr. Moulton, the mutual friend, with going with a pistol to extort, by putting it at the head of Mr. Beecher, a paper, and afterwards standing by, a mutual friend, and approving the whole thing. It is all one transaction.

JUDGE NEILSON.—This paper is brought before us first because in the evidence of the plaintiff—by this witness—reference was made to a specific article—a specific charge, a single clause, which therefore ought to be read. There is in that same evidence a reference to the Woodhull story, and it became desirable to have what the story was. It was, of course, simply referred

to by the witness as a story prejudicial to Mr. Beecher and annoying to him.

Mr. Fullerton.—Referred to only as that, and all the object we had in view in calling attention to the publication by Mrs. Woodhull was to show that there was a charge therein made against Mr. Beecher which he did not deny, and which under the advice of his friends he refused to deny. Now, the counsel upon the other side constantly drags in the allegation that there is a charge here against these three persons: that all were alike charged with infamous offenses. There is no occasion to do that except to illustrate the old adage that misery loves company. There is no reason at all, so far as the trial of this issue is concerned, why any charges against Mr. Tilton or any charges against Mr. Moulton contained in that publication should be alluded to for a single moment. It has no bearing whatever upon the issues between these parties. There may be charges there against these gentlemen, but they were not called upon to deny those charges. Whenever they are put upon trial for any offense and the charge in that publication has any bearing upon the issue, then they will be judged for having kept silent, if they did keep silent. I object, therefore, to the reading of that part of this paper under the ruling of your Honor, and if the counsel on the other side takes the responsibility of offering this part, which he now proposes to read, as referring to the charges made by Mrs. Woodhull against Mr. Beecher, why then let it be so understood; but the object of offering it is very apparent. Here is a promulgation of Mrs. Woodhull's peculiar doctrines upon the subject of marriage. I don't know what that has to do with this case. The gentleman may offer it if he chooses, but I wish to know in what view he offers it; whether he offers it with reference to the charges against Mr. Beecher; and if not, then under what ruling of your Honor does he offer it?

Mr. Shearman.—If your Honor please——

JUDGE NEILSON.—If you will read now—I understand it.

Mr. Shearman.—Allow me to say, however, your Honor, that it was the whole Woodhull story that was made the subject of conversation, and that the witness did not say simply that it was the charge against Mr. Beecher contained in that story that was made the subject of conversation, but the Woodhull story, and they consulted as to what answer they should make to it, and the question was raised as to what Mr. Tilton could say in reply, as well as what Mr. Beecher could say in reply.

Mr. Morris.—Let the counsel call our attention to the evidence.

Mr. Shearman.—I read from the evidence [see p. 387, *ante*]:

"Then, sir [says Mr. Fullerton], what occurred in November, 1872, with reference to Mrs. Woodhull? A. There was a publication in Woodhull & Claflin's paper.

"Q. In regard to this? A. Yes, sir; in regard to Mr. Beecher, Mrs. Tilton, and Mr. Tilton.

"Q. Now, what occurred upon that publication? A. I saw Mr. Beecher shortly after the publication."

Then goes on the conversation all about the story. Mr. Tilton asked Mr. Beecher how he thought it was best to meet that story. There is not a single

case, your Honor, in which it was said that there was a consultation how they had better meet the charge against Mr. Beecher contained in that story; not an instance of it.

JUDGE NEILSON.—But the story—we are very glad to learn it is a story.

Mr. Beach.—Your Honor will remark from the reading of the evidence that it was the story in regard to this—that is, in regard to this matter, this accusation, the subject of this trial.

Mr. Shearman.—I do not see that.

Mr Beach.—You have just read it.

Mr. Shearman. —I have read it just as it is written. They consulted for that purpose.

Mr. Beach.—Now, sir, the question of Mr. Fullerton calling for a portion of the Woodhull story, was in regard to this transaction, that is, the charge against Mr. Beecher. Now, sir, for what was that offered? For the purpose of showing a specific charge of adultery against Mr. Beecher, and the manner in which he met that accusation, the policy which he adopted and the advice of his friends in regard to it. What do they now propose to read? A portion of this publication, not in regard to the charge against Mr. Beecher, but in regard to the charge against Tilton and Moulton, having no connection whatever with the issue before your Honor. And what will be the result, your Honor, if it is read, publishing charges against Mr. Moulton and Mr. Tilton? Why, that we have side issues raised in regard to the truth of those charges, and they must be investigated. If they are permitted to be read, sir, promulgating false charges on this trial against Mr. Tilton and against Mr. Moulton, the whole merits of these accusations must be opened before your Honor and this jury for investigation, and we are led at once into collateral issues which will exhaust the time of this court most unprofitably and needlessly. Now, I submit to your Honor, that the only object of the reading of this portion of this publication of Mrs. Woodhull, is to insinuate an accusation against the plaintiff in this case and the witness upon the stand, drawing in issue their connection with Mrs. Woodhull, which connection may be shown by legitimate evidence, if you please, but not by the declarations of that lady herself. The effect is to introduce, as evidence against these gentlemen, the charges, the insinuations, the inculpations of Mrs. Woodhull as against these parties, unverified by any sanction whatever of a court of justice. I submit to your Honor it would be a gross injustice to permit that sort of evidence to be introduced.

Mr. Evarts.—We are entitled I think, to close the argument.

Mr. Beach.—I think not, sir, when we make an objection.

Mr. Evarts.—Now, my learned friend's last proposition seems to me but a somewhat refined and elegant proposition of the old maxim, that what is sauce for the goose is not sauce for the gander. The argument here is, that when this story came out, which is an entire novel, if you please—narrative—it became the subject of conversation, and the conversation has been detailed (so far as it has been detailed), as applying to the whole story. "That story" is what it is called. It was not in court, and it was to be produced the next day. It is now here. Now, the argument for which it was intro-

duced was this: that there being a proposition of a charge therein against Mr. Beecher in connection with this matter of Mrs. Tilton and himself, that the consultation and the desires to have it answered ending in not answering it, indicate an inability to answer it, or an inclination not to tell the truth.* But when the substantive matters that bear to the prejudice of Mr. Tilton and Mr. Moulton in this argument are offered to be read, my learned friend says that though the facts may be learned by judicial evidence, yet Mrs. Woodhull can not be heard to make the imputation. Hasn't she been heard to make the imputation against Mr. Beecher, the non-answer of which is the argument against Mr. Beecher, and by the same proposition, when her statements against Moulton and Tilton are known to them, and form the subject of consultation for a joint answer against a joint libel, is not the same argument applicable that if they did not answer, then they admit the truth against them? The argument may be worth nothing, or worth much; and it is the same argument, it is the same course of evidence, it is the same legitimate evidence—that a charge was made known to them, made the subject of conversation, the propriety and duty of an answer to it was made the subject of consultation in the same light, and in the same sense, and the concurring judgments were that silence was the best course, now, if that is sound as an imputation against Mr. Beecher, it is sound as an imputation against Mr. Tilton and against Mr. Moulton. And my learned friend understands that when a husband brings an action of this kind involving the question of the adultery of his wife, that all the topics that bear upon that issue as between husband and wife necessarily come into play. They are not collateral questions. We have not introduced the Woodhull story; it has been introduced on the other side, to bear heavily against our client for his omission to answer, or the manner in which he did answer.

Mr. Beach.—The only answer necessary to that argument is, that it is founded entirely upon a false assumption that there was a mutual consultation as to the manner in which the charges of Mrs. Woodhull against Tilton and Moulton should be met.

JUDGE NEILSON.—I understand; the question was how Mr. Beecher should meet it, whether by silence or some kind of an answer.

Mr. Fullerton.—I beg yonr Honor to bear in mind that the paragraph which they now propose to read has no reference to the charge against Mr. Tilton or against Mr. Moulton or Mr. Beecher. They propose to read now the atrocious sentiments of this woman in regard to the marital relation. That is all they propose, and if your Honor will take the paper and read the paragraph which the gentlemen now offer to read you will see that I am strictly right.

JUDGE NEILSON.—Yes, I think you are right; he would have a right to read it, however, in order to form his exception.

Mr. Fullerton.—Well, I only want to know whether the gentlemen reads it as coming within your Honor's ruling that he might read everything that related to the charge.

Mr. Shearman.—I do read it.

* See p. 387, *ante.*

Mr. Fullerton.—I do not see what relation there is between her sentiments in regard to marriage and the charge against Mr. Beecher, Mr. Tilton, and Mr. Moulton. Because we have alluded in our evidence to this story inculpating Mr. Beecher does not give them the right to prove everything else in the story by any means. If we could prove, or have occasion to prove on this trial that the Decalogue contained the words, "Thou shalt not commit adultery," it does not give them the right to read in evidence the story of Annanias and Sapphira in another part of the same volume.

Mr. Shearman.—[Reading.]

"Now, Mrs. Woodhull, would you state in the most condensed way your opinions on this subject, as they differ from those avowed and ostensibly lived by the public at large?

Mrs. Woodhull.—I believe that the marriage institution, like slavery and monarchy, and many other things which have been good and necessary in their day, is now *effete*, and in a general sense injurious, instead of being beneficial to the community, although, of course, it must continue to linger until better institutions can be formed. I mean by marriage, in this connection, any *forced* or *obligatory tie* between the sexes, *any legal intervention* or *constraint* to prevent people from adjusting their love relations precisely as they do their religious affairs in this country, in complete personal freedom; changing and improving them from time to time, and according to circumstances."

JUDGE NEILSON.—Now, as to that clause, it is merely an atrocious sentiment stated by that writer, and stated as her opinion simply. I rule that out, and allow you to take an exception.

Mr. Shearman.—Will your Honor allow me to read the paragraph?

JUDGE NEILSON.—The last paragraph may be proper; but, as to this, take an exception.

Mr. Shearman.—The next paragraph we propose to read is from the second column:

"Reporter.—Is it possible that Mr. Tilton confided this story to you? It seems too monstrous to be believed.

"Mrs. Woodhull.—He certainly did, and what is more, I am persuaded that in his inmost mind he will not be otherwise than glad when the skeleton in his closet is revealed to the world, if thereby the abuses which lurk like vipers under the cloak of social conservatism may be exposed and the causes removed. Mr. Tilton looks deeper into the soul of things than most men, and is braver than most."

Mr. Beach.—That is objected to.

JUDGE NEILSON.—Same ruling as to that, of course.

Mr. Shearman.—What is your ruling?

JUDGE NEILSON.—That it is not germane to the matter before us, and that you can read it simply for the purpose of pointing your exception.

Mr. Shearman.—Then we will take an exception. The next paragraph is as follows:

"His revelations were made subsequently, at sundry times, and during the months of friendly intercourse, as occasion brought the subject up. I will, however, condense his statements to me, and state the facts as he related them, as consecutively as possible. I kept notes of the conversation, as they occurred from time to time; and the matter is so much impressed upon my mind that I have no hesitation in relating them from memory.

"Reporter.—Do not you fear that, by taking the responsibility of this *expose*, you may involve yourself in trouble. Even if all you relate should be true,

may not those involved deny it *in toto*, even the fact of their having made the statement.

"Mrs. Woodhull.—I do not fear anything of the sort. I know this thing must come out; and the statement of the plain ungarnished truth will outweigh all the perjuries that can be invented, if it come to that pass. I have been charged with attempts at blackmailing, but I tell you, sir, there is not money enough in these two cities to purchase my silence in this matter. I believe it is my duty and my mission to carry the torch to light up and destroy the heap of rottenness, which in the name of religion, marital sanctity and social purity, now passes as the social system. I know there are other churches just as false, other pastors just as recreant to their professed ideas of morality—by their immorality you know I mean their hypocrisy. I am glad that just this one case comes to me to be exposed. This is a great congregation. He is a most eminent man. When a beacon is fired on the mountain, the little hills are lighted up. This exposition will send inquisition through all the churches and what is termed conservative society."

JUDGE NEILSON.—Same ruling as to that; you will take an exception.

Mr. Shearman.—The next paragraph which we offer is the following—words put into the mouth of Mr. Tilton; and the gentleman will pardon me if I do not read literally to show that it is what Mr. Tilton said, because I could not do that without putting——

Mr. Fullerton.—Where is that?

Mr. Shearman.—I am endeavoring—we are all endeavoring to put as little of this as is possible in.

JUDGE NEILSON.—Some of those atrocious statements ought to be omitted, I think.

Mr. Shearman.—It is this paragraph that I propose to read now, as put by Mrs. Woodhull in the mouth of Mr. Tilton.

"I had one friend who was like a brother, Mr. Frank Moulton. I went to him and stated the case fully. We were both members of Plymouth Church. My friend took a pistol, went to Mr. Beecher, and demanded the letter of Mrs. Tilton, under the penalty of instant death."

JUDGE NEILSON.—That will remain in, although it already appears that Mr. Moulton was not a member of Plymouth Church.

Mr. Fullerton.—And that he did not take a pistol and demand the paper.

JUDGE NEILSON.—Well, that is the clause referred to in your evidence?

Mr. Fullerton.—No, sir; we did not refer to it at all. They have referred to it upon the cross-examination, and asked if it were true, and they have proved themselves that it was untrue.

Mr. Shearman.—That is precisely what we wanted to prove; the next paragraph—turn over the page.

Mr. Beach.—We except, sir, to that ruling.

Mr. Shearman.—I propose to read a short paragraph, and to state that, although no name is mentioned in this particular paragraph, it refers to Mr. Tilton.

Mr. Beach.—Well, that statement we move to have——

Mr. Shearman.—I am offering this to the gentlemen because they object to having a great deal of this come in; and your Honor, as I think very properly, objects to having too much of this matter in. If I were to read enough of the article to show that it referred to Mr. Tilton, I should have to read the whole paragraph. If they object to my statement, I shall have to read the whole paragraph.

JUDGE NEILSON.—Well, you can read the passage that you have in mind just now.

Mr. Shearman.—[Showing paper to Mr. Fullerton.] If you object to my stating that it refers to Mr. Tilton——

Mr. Fullerton.—One moment.

Mr. Shearman.—Well, your Honor, I offer, if the gentlemen on the other side do not object, to have it understood and assumed that the paragraph which I now read relates to Mr. Tilton. If they object, I shall then read the whole of a long paragraph, to show that it does.

JUDGE NEILSON.—Well, read that paragraph; let us see what it is.

Mr. Shearman.—This paragraph is as follows, Mrs. Woodhull speaking of Mr. Tilton:

"I assumed at once, and got a sufficient admission, as I always do in such cases, that he was not exactly a vestal virgin himself; that his real life was something very different from the awful virtue he was preaching."

JUDGE NEILSON.—The awful virtue he was preaching?

Mr. Shearman.—Yes, sir; "the awful virtue he was preaching."

Mr. Pryor.—So we preach virtue?

Mr. Shearman.—The next paragraph which I——

Mr. Fullerton.—One moment. Does your Honor admit that? That is, the offer to read?

JUDGE NEILSON.—I think we will admit that; we will let that stand.

Mr. Fullerton.—We except.

Mr. Shearman.—The next paragraph is as follows:

"Reporter.—Then Mr. Tilton became, as it were, your pupil, and you instructed him in your theories?

"Mrs. Woodhull.—Yes, I suppose that is a correct statement."

We offer that; and now, if your Honor please, we renew our former offer of the exposition of Mrs. Woodhull's views.

JUDGE NEILSON.—That last clause is not received. You take an exception. She says, "I suppose." It is a remarkable degree of modesty on her part, particularly in speaking of a fact which she assumed to know.

Mr. Fullerton.—It is not so remarkable as the offer in evidence.

Mr. Shearman.—We also offer the paragraph formerly excluded, in which Mrs. Woodhull states her views concerning the marriage institution, and her belief that it is *effete* and ought to be superseded. We offer it in connection with this last paragraph, in which she says that she supposes Mr. Tilton became her pupil and was instructed in her theories.

JUDGE NEILSON.—Yes, it will stand on the former ruling.

Mr. Shearman.—And also with the paragraph last admitted with reference to his not being exactly a vestal virgin. Your Honor rules it out?

JUDGE NEILSON.—Yes, I will hold to the ruling before made.

Mr. Shearman.—We offer it, as you understand, as being one of the charges made against Mr. Tilton, in connection with charges against Mr. Beecher, and we take an exception.

Mr. Fullerton.—In other words, Mr. Tilton was charged with not being virgin, and you believed it.

Mr. Shearman.—I don't see the point. As Judge Fullerton's remarks a

always brilliant, if I do not see the point, I suppose it is my fault, not his. The next paragraph I shall offer is the following:

"Mrs. Woodhull.—I was then contemplating my Steinway Hall speech on social freedom, and prepared it in the hope of being able to persuade Mr. Beecher to preside for me, and thus make a way for himself into a consistent life on the radical platform. I made my speech as soft as I conscientiously could. I toned it down in order that it might not frighten him. When it was in type, I went to his study and gave him a copy, and asked him to read it carefully, and give me his candid opinion concerning it. Meantime, I had told Mr. Tilton and Mr. Moulton that I was going to ask Mr Beecher to preside, and they agreed to press the matter with him."

I also offer the following extract to accompany that:

"A few days before the lecture I sent a note to Mr. Beecher, asking him to preside for me. This alarmed him. He went with it to Messrs. Tilton and Moulton, asking advice. They gave it to him in the affirmative, telling him they considered it eminently fitting that he should pursue the course indicated by me as his only safety; but it was not urged in such a way as to indicate that they had known the request was to have been made."

Mr. Fullerton.—Well, sir, they are objected to upon the same ground.

Mr. Shearman.—This should be connected with what I last read, "They then took me again with them and endeavored to persuade him." We offer that, your Honor.

JUDGE NEILSON.—Those are ruled out. You take an exception as to the whole or part of it.

Mr. Evarts.—Perhaps your Honor might remember that these also bear upon the question of the efforts charged upon Mr. Beecher of trying to conciliate this lady and to temporize concerning this story by showing that these gentlemen, Mr. Tilton and Mr. Moulton, were acting in her interest to accomplish the result, to wit, the benefit to the school of morals and philosophy of which she was an advocate. We have had a great deal about that, and this bears upon that.

Mr. Fullerton.—Yes, sir; and your Honor will not forget, after that observation, that Mr. Moulton's connection with this woman, from first to last, was simply for the purpose of saving Mr. Beecher from exposure; that his acquaintance commenced when he undertook to save him, and ended when he found that he could not accomplish his object.

Mr. Evarts.—That is your view?

Mr. Fullerton.—Yes; that is my view; that is the reason I mention it.

Mr. Evarts.—We offer this as bearing on that view and contradicting it.

JUDGE NEILSON.—I can not receive it, I think, sir; Mr. Shearman, that exhausts the argument.

Mr. Evarts.—Our exceptions have been noted, I think.

JUDGE NEILSON.—Yes, sir; generally they are. I say generally, if there is any omission of an exception where an objection has been made. I wish to say generally that, if there is any casual omission of the exception in connection with any objection, it can be entered hereafter.

Mr. Beach.—I hope not. I trust your Honor will not give the party an exception which he does not take. I am seriously opposed to that rule in the settlement of cases, and I think the party should take his exception on the trial.

Mr. Evarts.—His Honor means where the line of exception is already indicated, I suppose.

Mr. Beach—I don't know what he means, but I object to that rule.

Mr. Evarts.—Now, have we your Honor's ruling upon this general proposition of ours, that the introduction which the plaintiffs had given to this story, this publication, entitles us to read such parts of it, irrespective of the question, whether they, by themselves, are admissible. I understand your Honor necessarily to rule against us on that view.

Mr. Beach.—I understand his Honor to have ruled that you are at liberty to give in evidence any part of this publication which tends to qualify or explain the portion of it to which we referred in our evidence. That is the rule, at any rate, for which we contend, and we ask no other rule.

JUDGE NEILSON.—Well, I ruled at first, that this statement was brought in in a sense, to a certain degree, by the evidence which has been given on the part of the plaintiff with reference to the pistol scene, and with reference to the story, and we have heard so much of the story as we supposed applied to the matter referred to by that evidence. I think that is all the ruling that is called for.

Mr. Morris.—We have heard just the portion that does not apply to that.

Mr. Fullerton.—Your Honor forgets that everything in relation to the pistol scene was called out in the cross-examination, and not upon the direct at all.

JUDGE NEILSON.—It may be so. I think we will proceed now.

Mr. Evarts.—Now, my learned friend has just laid down a rule that, I think, would have admitted all the evidence that your Honor has excluded; that is to say, that we have a right to read any part of this that qualifies or affects the part that they have introduced in evidence.

JUDGE NEILSON.—My intention was to let you read any part of this which would point the evidence given on the part of the plaintiff, and show what it was that was referred to—statements, story, or whatever.

Mr. Evarts.—That we understand, and we submit to your Honor's ruling, that, in your Honor's disposition of the matter, the parts that you have included do, and the parts that you have excluded do not come, within that rule. Now, I wish to preserve the exception on the question of our right to read all parts of this statement, by reason of the plaintiff's introduction of the part already given.

JUDGE NEILSON.—I could not hold that.

Mr. Evarts.—We take an exception.

Mr. Tracy.—Did you ever read or hear read a paper which Tilton prepared, which he called his "True Story"? A. I don't know that I heard the whole of it, sir, read—that I read the whole of it or heard the whole of it read. I don't recollect; read portions of it, at all events.

Q. Well, did you hear the most of it read? A. Perhaps I did—I don't—

Q. Well, did you? Perhaps you did is no answer at all. A. I am trying to give a correct answer.

Mr. Tracy.—I submit that the witness ought to answer the question that I put to him.

JUDGE NEILSON.—What is your best recollection about it? A. Well, will you put the question? I am trying to give——

[Question read by the stenographer.]

A. My recollection is that I either read or heard the most of it.

Q. Now, will you say that you did not either read or hear read the whole of it? A. I should say that my recollection—my best recollection is that I did not read or hear read the whole of it, sir.

Q. When was that story prepared—that statement prepared? A. My impression was, sir, in the latter part of December, '72. If you will allow me to state when I think I heard the most of it read, it was one evening when you were present in my study, when you went to sleep and was not quite interested——

Mr. Evarts.—That is not an answer to any question.

The Witness.—Well, I am only trying——

Mr. Fullerton.—It gives the time, however.

Mr. Beach.—It is a very proper way to fix it by reference to an event.

Mr. Evarts.—The difficulty is that he had not been asked to fix it.

Mr. Fullerton.—Yes, he had been asked to fix the time.

Mr. Tracy.—Was that story prepared and read as Mr. Tilton's answer to the Woodhull publication? A. Was it prepared—may the stenographer read the question?

JUDGE NEILSON.—Was it prepared and read as an answer to the Woodhull publication?

Mr. Fullerton.—That we object to; he is asking for the operation of some mind other than his own.

JUDGE NEILSON.—Was it said whether or not it was prepared as an answer to the Woodhull statement?

Mr. Tracy.—I accept the amendment.

The Witness.—I do not think that that was said.

Mr. Tracy.—What do you say? A. I don't remember that that was said.

Q. Wasn't the statement presented to you by Mr. Tilton as his proposed answer to that publication? A. I don't recollect its being presented as an answer to that publication, sir.

Q. Wasn't it presented to you as a statement which he had prepared, and which he proposed to publish in consequence of the Woodhull publication? A. My recollection is something like that was said, sir, in consequence of it.

Q. Do you remember what were the subjects of which that story treated? A. There is only one part of it, sir, that I distinctly recollect; one incident, which I described here; I don't remember what it distinctly treated of.

Q. Well, answer my question. Do you remember the subjects of which that story treated? A. Not all of them; no sir.

Q. Not all of them? A. No, sir.

Q. What subjects do you remember that it did treat of?

Mr. Fullerton.—That is objected to.

Mr. Tracy.—That is what was called "The true story" by Mr. Tilton.

Mr. Fullerton.—We object to it.

JUDGE NEILSON.—Have you the paper in court?

Mr. Tracy.—We have not: we have given them notice to produce it.

JUDGE NEILSON.—Was the thing published? A. No, sir; it was not published.

JUDGE NEILSON.—Well, unless you produce it, they have a right to inquire into the contents, of course. Do you call for the paper?

Mr. Tracy.—We do, and they fail to produce it.

JUDGE NEILSON.—If they fail to produce it, or account for it, you have a right to give the contents of it.

Mr. Fullerton.—We have already avowed the fact that the paper was destroyed. It is not in existence.

Mr. Evarts.—Avowed it here in the trial.

Mr. Fullerton.—Yes, sir.

Mr. Evarts.—Very well, that gives us a right to go into its contents.

Mr. Tracy.—Now, will you answer my question? I will repeat it. What were the subjects of which that story treated? A. I don't recollect all, sir, of the subjects.

Q. What subjects do you recollect of which it treated? A. The relation between Mrs. Tilton and Mr. Beecher.

Q. Did it also treat of Mr. Tilton's relation with Mr. Bowen and the causes which led to his dismissal? A. I don't recollect, sir, whether it did or not. I have a distinct recollection of the incident which I narrated before from this stand, and that is all.

Q. Did it treat of Mr. Tilton's relations to the Woodhulls and their publication? A. I don't recollect that.

Q. Do you recollect whether or not it referred to the publication of the Woodhulls? A. I don't recollect that, sir. I will tell you exactly what I do recollect——

Q. How long a paper was it? A. Quite long; I forget how long.

Q. Very long, wasn't it? A. What do you mean by very long?

Q. Well, wasn't it more than one hundred foolscap pages? A. I don't recollect whether it was or not.

Q. Didn't it make as thick a manuscript as that? [Showing a manuscript to witness]. A. As thick as that, no.

Q. That? A. No.

Q. That? A. No; I don't think it did.

Q. How thick was it? A. Well, I don't think it was one hundred pages. You heard it read. I don't know how much.

Mr. Evarts.—I ask that that be struck out; the conversations of the witness with the counsel are not admissible.

JUDGE NEILSON.—Yes.

The Witness.—Excuse me.

Q. Did he carry it in a black cover? A. It was wound up—rolled up; yes, sir.

Q. Well, sir, what did it say—did it contain any statement from Mrs. Tilton concerning her relation with Mr. Beecher? A. My impression, sir, is that the letter which she wrote to Dr. Storrs, or the purport of that letter, was in the statement.

Q. Yes, sir; that is, it stated in substance, then, that, "prompted by my duty, I informed my husband that Mr. H. W. Beecher, my friend and pastor,

had solicited me to be a wife to him, together with all that this implied ?"* A. I think that is it, sir.

Q. That was the substance of the statement—did that paper contain any other statement of her relations with Mr. Beecher than contained in that paragraph ? A. I don't recollect that it did, sir.

Q. Did the paper also contain a copy of what you now call the letter of contrition ? A. I don't recollect that; I don't think it did; my impression is that it did not—not all of it.

Q. Did it contain any part of it ? A. I think very likely it contained some part of it.

Q. Did it ? A. I don't recollect; I am trying to answer the question truthfully.

Q. Don't you remember that that true statement contained a copy of all or of a part of what you call the letter of contrition ? A. I don't really recollect.

Q. And that it was introduced into that paper as proof of the charge which Mrs. Tilton made against Mr. Beecher ? A. I don't recollect that, sir; no; I have stated all that I recollect.

Q. Was there any charge of adultery between Mr. Beecher and Mrs. Tilton set forth in that paper ? A. There is nothing, sir, except what I have narrated; that is all that I recollect of.

Q. Do you not remember that, after quoting this charge of Mr. Tilton against Mr. Beecher, that Mr. Tilton, in that statement, proceeded to eulogize his wife for the delicate manner in which she had resisted the advances of her pastor ? A. I don't recollect that, sir.

Q. You don't ? A. No.

Q. Do you remember whether he said anything on that subject ? A. I really don't, sir.

Q. It may have contained them, for aught you remember ? A. If I had any recollection about it, sir, I should state it. I haven't.

Q. You have no recollection on that subject. On Mr. Tilton's meeting Mr. Beecher first after the publication of the Woodhull scandal, were you present at that meeting ? A. I believe I was, sir, on the election day. I recollect that as the first; that is what I mean to say, General.

Q. First you saw them ? A. Yes, sir.

Q. Do you remember that Mr. Tilton grasped Mr. Beecher with both his hands—grasped Mr. Beecher's hand with both his, and shook it heartily, and expressed his sympathy with Mr. Beecher for this publication ? A. I recollect that he shook hands with Mr Beecher, sir.

Q. Didn't he grasp Mr. Beecher's hand with both his and shake it earnestly, and express his profound sympathy with him on account of this scandalous publication ? A. He shook his hand and expressed his profound regret for the publication.

Q. Didn't he shake Mr. Beecher's hand with both of his ? A. Well, I don't remember whether he used both hands or not, Mr. Tracy.

* See "Exhibit No. 57," p. 471, *ante*.

Q. You remember that he shook hands? A. Yes, I remember that.

Q. Haven't you said that he took Mr. Beecher's hand in both of his, and shook it heartily and expressed his profound regret and sympathy? A. I don't know that I ever have.

Q. Didn't you tell the Rev. Mr. Halliday so at your house soon after this Woodhull publication? A. I don't recollect that I did.

Q. Will you say that you did not? A. If I had any recollection about it I would make the statement according to my recollection, but I have not.

Q. You mean by that that you have no recollection on the subject? A. As to whether I told Mr. Halliday or not, as to whether your question:—that is it, sir.

Mr. Fullerton.—That is it? A. Yes, sir; that is the way.

Q. Now, do you not know that Mr. Tilton was unwilling to make any other reply to the Woodhull statement than that which was contained in the "True Story"? A. That he was unwilling to make any other reply?

Q. Yes. A. No; if you will allow me to explain——

Q. No, answer my question; do you not know that fact? A. That he was unwilling? I could not say that I did know that he was unwilling to make any other statement, sir.

Q. Was he not willing to make a statement which should exonerate his wife from the charge of adultery, but which should, at the same time, put Mr. Beecher in the position of having solicited it?

The Witness.—Will the stenographer read that question?

[Question read by the stenographer.]

A. I don't think I could say yes or no to that question, and answer it positively. He was willing to clear his wife, but I don't remember that he was willing to put Mr. Beecher in the position of having solicited. I don't think——

Q. You remember that he was willing to make a statement which should exonerate his wife from the charge of adultery? A. He seemed to be always willing to do that at any time.

Q. Make a public statement which should declare that she was not guilty of adultery? A. I don't know whether a public statement or not; he was willing to make a statement.

Q. Well, do you know that that statement of his called the "True Story," do you not know that it was prepared by him with a view to publication? A. Yes, sir; I think Mr. Tracy, if you will allow me, I think I can answer your——

Mr. Tracy.—You have answered my question; at least, I accept it as a full answer.

Mr. Beach.—No, sir; if he wants to add anything to it to qualify it or explain it——

Mr. Tracy.—That depends on what it is.

Mr. Beach.—Then you had better hear it.

The Witness.—I have a recollection of an interview——

Mr. Tracy.—Now, I have not called on you for an interview; I have asked a simple question, whether that statement was prepared by Mr. Tilton with a

view to publication. He says it was. I submit that is an answer to the question.

Mr. Beach.—If the witness wishes to change that question, or correct an answer which he has made inaccurately to a previous question, he has a right to correct it.

Mr. Tracy.—Oh! if he has made a mistake——

The Witness.—My only purpose was to give a full statement of the truth. My only purpose was to tell the truth fully about it; that is all the thought that was in my mind.

JUDGE NEILSON.—The objection which the counsel made was that you seemed to be proceeding to refer to some other occasion about which he had not inquired.

The Witness.—I will tell your Honor precisely what I wanted to do——

Mr. Evarts.—Well, I submit that our first duty is with this question. The point is this; not that it is permissible for the witness to explain; that we understand; but it does not form a part of our cross-examination. When he has fully answered the question put to him, it is for the other side to take up the examination.

Mr. Beach.—Suppose he wishes to correct a matter——

Mr. Evarts.—That is another matter.

JUDGE NEILSON.—He could correct, but he could not refer to another and independent occasion.

The Witness.—No, sir. Mr. Tracy asks me whether Mr. Tilton was not willing to make a statement which should clear his wife and yet leave Mr. Beecher subject to the imputation of having improperly solicited. Now, I answered that question as well as I could; but I remember an interview between Mr. Beecher and Mr. Tilton in which Mr. Tilton was perfectly willing that Mr. Beecher should take the responsibility of denying, and the cards were prepared for that purpose.

JUDGE NEILSON.—That is an occasion as to which he had inquired.

The Witness.—I understood his question to cover all occasions that I knew of.

Mr. Tracy.—Oh! no.

The Witness.—Yes, sir.

Mr. Tracy.—There is no question about what Mr. Tilton was willing to do. He is answering to what Mr. Tilton was willing Mr. Beecher should do. My question was, what statement Tilton was willing to make.

The Witness.—If you will allow the stenographer to read the question.

[The stenographer read the question.]

The Witness.—Now, your Honor, at the time that the publication of the statement was talked about, there was this interview that I have a recollection of, or an impression concerning, and at which Mr. Tilton was perfectly willing that his wife——

Mr. Tracy.—I object. I have not asked him what he was willing Beecher should do. I have asked the simple question, whether Mr. Tilton was unwilling to make any statement himself except one, which, while it exonerated his wife, put Mr. Beecher in the position of having solicited her.

JUDGE NEILSON.—But your question does not point to any particular occasion; and, therefore, I think we will take the answer, and see what it is.

Mr. Tracy.—Excuse me a moment; the witness is not proceeding to answer my question as to what statement Mr. Tilton was willing to make; but he is proceeding to state what Mr. Tilton said he was willing Mr. Beecher should do.

The Witness.—They were then discussing the publication of the statement, your Honor.

Mr. Tracy.—My question is this: What statement was Mr. Tilton willing to make?

JUDGE NEILSON.—Now, can you answer that more fully than you have—what statement Mr. Tilton was willing to make? A. Mr. Tilton had prepared the statement to which I have referred, called the "True Story," I think that was; and he was perfectly willing to forego the publication of it, and leave Mr. Beecher and Mrs. Tilton to deny. Your Honor, that is what I want——

Mr. Tracy.—I did not ask that.

JUDGE NEILSON.—I think that is embraced in the question.

Mr. Tracy.—Your Honor will note my objection. I object to the last part of the answer, what he was willing Mr. Beecher and Mrs. Tilton should do, as not responsive to my question.

JUDGE NEILSON.—I don't think that bears upon it.

Q. Do you remember the publication of Mr. Tilton's letter to "A Complaining Friend"? A. I remember of such a publication; yes, sir.

Q. Did you know of it before it was published? A. No, sir.

Mr. Morris.—That has all been gone over before.

Mr. Tracy.—I don't remember that it has.

Q. He published that without your knowledge? A. Yes, sir; he published it without my knowledge.

Q. Did not that bring on what was known as another emergency in this case—the publication of that card? A. I don't recollect now whether it did or not; I don't think it did bring on another emergency.

Q. Did you see Mr. Beecher about it? A. Yes, sir; I had an interview with him about it.

Q. A consultation? A. It was an interview; it was talked about.

Q. Did you still advise silence, notwithstanding that publication? A. I thought no reply was necessary.

Q. Didn't Mr. Beecher think that a reply was necessary—that Tilton having spoken in this letter to "A Complaining Friend," didn't Mr. Beecher then think that a reply was necessary? A. I think not.

Q. You think not? A. I think not.

Q. You know you advised against it? A. I adhered to the policy of silence, after a full consideration of all the interests that were involved.

Q. Don't you remember that you and Mr. Beecher had an interview on the subject of that publication, when Mr. Beecher told you that he thought that letter made it necessary for him to deny that statement? A. No, sir.

Q. You don't remember that? A. No, sir.

Q. And that you advised silence? A. No, sir.

Q. Do you remember of having seen in Mr. Beecher's hands, about that time, a note addressed to you containing a denial of the Woodhull charge, for publication? A. No, sir.

Q. You do not remember it? A. No, sir.

Q. Never saw it? A. I don't recollect that I ever saw such a paper.

Q. Did Mr. Beecher tell you he had prepared one? A. I don't recollect that he ever did; I don't think he did.

Q. [Handing paper to witness.] Now, sir, I hand you that, and ask you if, after the publication of the letter to a "Complaining Friend," Mr. Beecher did not present you that and consult with you in regard to the propriety of its publication? A. No, sir; I don't think I ever saw that letter in my life; I don't think I ever did.

Q. Turn over and see the card? A. No, sir; I think this is the card that Mr. Tilton—I never saw it—I think that is the card Mr. Tilton was willing——

Mr. Evarts.—You say never saw it; that is enough.

The Witness.—I beg your pardon.

Mr. Evarts.—Did you see it? A. I never saw it.

[Paper marked for indentification "Exhibit D, 41."]

Mr. Fullerton.—Let me see that paper.

Mr. Evarts.—It is not in evidence.

Mr. Fullerton.—I ask to see that paper.

JUDGE NEILSON.—You will wait until it is put in evidence.

Mr. Fullerton.—I beg your pardon; I am not compelled to wait until that time; we are entitled to see it now; it has been placed in the hands of the witness, and he has been asked a question in regard to it. That entitles us to look at it.

JUDGE NEILSON.—[To Mr. Evarts.] Is there any objection to showing it to them?

Mr. Evarts.—As a matter of private gratification to the counsel we will permit him to look at it; we will be very courteous. But, in regular course of proceedings, it seems to us plain, it is a paper they are not entitled to see until we put it in evidence.

JUDGE NEILSON.—I think you can hold it until you offer it in evidence, the witness not having said as yet that he saw it.

Mr. Evarts.—We therefore have no right to offer it in evidence?

JUDGE NEILSON.—No, sir.

Mr. Fullerton.—But I have a right, on the re-direct examination, to call the attention of the witness to the paper.

Mr. Evarts.—No doubt.

Mr. Fullerton.—Then I have a right to look at it.

Mr. Evarts.—Then you will have.

JUDGE NEILSON.—Then you agree, gentlemen.

Mr. Fullerton.—We do not agree, if your Honor please. We agree that I have a right to see it before I re-examine the witness. I claim that I have a right to see it now. They say I have a right to see it then.

JUDGE NEILSON.—You would have a right to see it, if the witness had made the material answer that he saw it.

Mr. Fullerton.—But they do claim that the answer he made is material, but he never saw it before.

Mr. Evarts.—We do not. We would be very glad to put it in evidence, but our difficulty is, we have no right to do so.

JUDGE NEILSON.—When he (Mr. Fullerton) calls attention to it on the re-direct, he will have a right to see it.

Mr. Evarts.—We don't offer to read it. We would be glad to read it now.

Mr. Fullerton.—I will show your Honor an authority as proof that I have a right to see it now.

JUDGE NEILSON.—It may be that you are right. If it was more material perhaps I should remember the rule better.

Q. I think you have stated that you remembered the publication of the Tilton letter to Mr. Bowen of January 1st, in which he recites Mr. Bowen's charges of adultery against Mr. Beecher. That was published in a Sunday newspaper of April 20, 1873, was it not?* A. I think it was published in *The Eagle*—yes, sir, or *Sunday Press*. I didn't see it in *The Sunday Press*. My recollection is I saw that letter published in *The Eagle*. I will see.

Q. It is *The Golden Age* article, which was publishad, and the "tripartite agreement," which recited the letter of Mr. Tilton to Mr. Bowen, written January 1st, 1871, in which he recites the charges of adultery which he (Bowen) had made against Beecher at the interview on December 26 at Mr. Bowen's house? A. I don't recollect having seen all this. It may be I was told; my impression is I was told of it in *The Eagle*. It strikes me I was out of town when it appeared, but I was told of the publication of the letter of Mr. Tilton to Mr. Bowen in *The Eagle*.

Q. Taken from a Sunday newspaper? A. I don't know whether I was told it was taken from a Sunday newspaper.

Q. But didn't you learn it was first published in a Sunday newspaper in Brooklyn? A. I think I learned that subsequently. The point I learned was that this letter of Mr. Tilton to Mr. Bowen was published, and I saw Mr. Bowen about it.

Q. That was its first publication? A. I suppose it was.

Q. You know it was? A. I don't recollect of any other now.

Q. As far as you know, it was? A. That is all that I recollect about it now; I don't think it was published.

Q. Do you know how the *Press* got hold of that letter? A. I do not.

Q. Did you have anything to do with the *Press* getting possession of that letter to publish it? A. No, sir.

Q. Don't you know that that *Golden Age* article as published, when first published in Brooklyn was published from a copy that came from Mr. Tilton? A. I don't know anything about that.

Q. That was given by him to John W. Harman? A. I don't know that; no, sir.

Q. Did Mr. Tilton ever talk with you about how it came to be published?

* See "Exhibit No. 3," p. 353, *ante*.

A. I think I asked him how it came to be published, and he told me he did not know.

Q. I did not ask you that; he told you he did not know? A. Yes, sir; he told me he did not know.

Q. Did you ask him how it happened that anybody got hold of the proof-sheets of that article that were struck off in *The Golden Age?* A. I asked him about that.

Q. How did he account for it? A. I don't recollect how he accounted for it; he didn't know anything about it; my recollection is he will probably be able to tell you that.

Q. That publication brought on another emergency in this matter, did it not? A. It was talked of.

Q. And created a good deal of excitement, didn't it? A. I believe it did.

Q. You saw Mr. Beecher at once about it, did you not? A. Yes, sir; I think I saw Mr. Beecher about it. I think he came to see me about it.

Q. And it created a good deal of excitement, you say? This publication of the letter from Mr. Tilton to Mr. Bowen, reciting Mr. Bowen's charges of adultery against Mr. Beecher, preceded the publication of the tripartite agreement, did it not? A. Yes, sir, it preceded it.

Q. Will you tell us how long it was after you first learned of the publication of this letter to Mr. Beecher, or before Mr. Beecher had promised to give Mr. Tilton $5,000? A. How long it was before that?

Q. Yes, sir? A. When was the $5,000 given? I think that was May 2d, was it not?

Q. Yes, sir; May 2d, 1873? A. How long it was before that?

Q. Yes, sir; how long the publication of this letter of Mr. Tilton's to Mr. Bowen, reciting Mr. Bowen's charges of adultery against Mr. Beecher—how long it was that that was published before Mr. Beecher had agreed to pay you $5,000 for the use of Mr. Tilton? A. That was published April 20th, and he gave me the $5,000 on May 2d.

Q. When did he agree to give it? A. I really do not recollect the day when he agreed to give it.

Q. How long do you think it was after this publication? A. If I recollected it I should have stated it to you. It did not have anything to do with this publication.

Mr. Tracy.—I did not ask you that. That we will argue to the jury. I move that that be stricken out.

JUDGE NEILSON.—Strike that out. The answer of the witness and your [Mr. Tracy's] observation both go out.

Mr. Tracy.—Do you remember how long it was after this publication that you had your first talk with Mr. Beecher about money for Mr. Tilton? A. I don't think it was after it at all; at the present moment I don't remember.

Q. Do you remember whether it was after it? A. I think it was not after it.

Q. You think it was not after it? A. I think not; I can not fix the date. If you have got anything that will fix the date I will try and tell you, General.

Q. How many talks did you have with Mr. Beecher about the $5,000? A. I had several.

Q. When was the last one before you got the money? A. Immediately before I got it, on the road down to the bank.

Q. Did Mr. Beecher use to say to you at times that he heard that Mr. Tilton was talking privately against him? A. No, sir; I don't recollect that he did.

Q. You never recollect any such interview as that? A. That Mr. Tilton was talking privately against him?—no, sir.

Q. Don't you know that you frequently assured Mr. Beecher that the reports that he heard that Mr. Tilton was talking about him were untrue? A. The only recollection I have about it is in the first part of 1871, just before the Mrs. Morse letter was brought to me, that then Mr. Beecher did say something about it. Since then I don't recollect about it.

Q. Didn't you often say that you would investigate such rumors, and make reports to Mr. Beecher of what the facts were? A. I don't—such rumors in connection with Mr. Tilton's name, you mean?

Q. Yes, sir. A. There were rumors that people were talking of.

Q. That Mr. Tilton was talking against Mr. Beecher privately? A. No, sir; I don't recollect that.

Q. Or that he was talking against him? A. No, sir; that others were talking against him, he wrote me a letter once.

Q. The question was about Mr. Tilton. A. No, sir; I don't recollect that at the present moment.

Q. You don't recollect to have ever undertaken to trace up those reports, and afterwards reported to Mr. Beecher that they were unfounded, and that your investigation had shown you Mr. Tilton had not been talking about him? A. There may have been some such thing, but I don't recollect it at present.

Q. [Handing letter to witness.] Will you look at that letter? A. Yes, sir.

Q. Is that your writing? A. Yes, sir; that is my writing.

Q. Will you fix the date of it? A. I will try to. I will read it and see. [To Mr. Tracy.] Can you read one word *here* in this letter, Mr. Tracy?

Mr. Tracy.—I don't think I could; I would not like to undertake it. It is your handwriting isn't it? A. Yes, sir.

Mr. Fullerton.—But he wrote it for Mr. Beecher to read.

JUDGE NEILSON.—Perhaps the stenographer can read it.

Mr. Tracy.—Yes, sir; it begins "Dear Friend;" perhaps we can read it.

The Witness.—This was some time, I suppose, in the Greeley campaign?

Mr. Tracy.—I suppose so.

The Witness.—I can not read the whole context.

Mr. Shearman.—[Reading]:

"DEAR FRIEND: T.'s statement out of which Cleveland has tried to make mischief, was based upon your remark at our table that you would cease to be editor of *The Christian Union* when it condescended to personal attacks on Mr. Greeley.

"His remark was: 'Mr. B. will cease to be editor when the paper personally attacks G.' C. said, 'What do you mean by that?' I replied your chief knows.

"You may rest assured that any story hereafter brought to you representing T. in any other than a friendly spirit toward you is a misrepresentation or misapprehension, and I want you to treat it accordingly; then no mischief can be done. Cleveland tried to pump Theodore and also yourself.

"I hope you have left no impression unfriendly to T. on C.'s mind.

"Now, again, all is right, and I pray God that it may remain so. Right everywhere. Yours, F. D. M.

"You can readily understand how C. gave to T's statement the coloring of the floating stories.

[Letter marked "Exhibit D, 42."]

The Witness.—I think I can fix the date of it.

Q. Who are C. and T.? A. Cleveland and Tilton. I will try to fix the date for you as near as I can.

Q. When do you think it was? A. I think it was on the evening Mr. Tilton made his speech at the Academy of Music in favor of Greeley, because Mr. Beecher and Mr. Tilton were both with me dining with some friends, and I think it was about that time.

Q. That was the time the conversation of Mr. Beecher occurred? A. Precisely so; it was a short time after that.

Q. That was entirely a friendly dinner, was it not? A. It seemed to be.

Q. The company understood at that dinner that Mr. Beecher was for Mr. Grant, and Mr. Tilton was for Mr. Greeley? A. I think they did; yes, sir.

Q. And it was a friendly dinner and a friendly talk? A. Seemed to be.

Q. But the occasion of writing this letter was sometime after that? A. Not a great while; I don't fix it as the beginning of the reason for the letter.

Q. Was that the only instance where you had followed up reports that had reached Mr. Beecher of Mr. Tilton's unfriendly remarks, and assured him that his information was entirely a mistake, and that Mr. Tilton was entirely friendly?

Mr. Fullerton.—I object to the form of that statement. He asks if that is the only instance of that kind. That is not an instance of that kind.

Mr. Tracy.—Certainly it is, if there is anything in the letter.

JUDGE NEILSON.—I think he may answer that.

Mr. Fullerton.—It is a misconstruction of the letter.

The Witness.—Will the stenographer read the question?

[The stenographer read the question.]

The Witness.—I don't recollect.

JUDGE NEILSON.—You mean you don't remember any other occasion? A. I don't remember any other question, and don't recollect this until it was brought to my attention.

Mr. Tracy.—You have spoken of seeing in Mr. Beecher's hands what you called his resignation on the evening of the 31st of May, in your house?* A. Yes, sir.

Q. That was Saturday evening, was it not? A. I think that was the evening I saw it.

Q. 31st of May, 1873? A. I think that was the evening I saw the resignation.

* See bottom of p. 400, *ante*.

Q. And it was the next day that you received the letter that has been given in evidence, dated June 1st, 1873? A. I received a letter dated June 1st, 1873.*

Q. Did you see Mr. Tilton on that Sunday? A. I think very likely he was at the house; yes, sir; I believe he was at the house.

Q. What time did he come there? A. In the afternoon, I think.

Q. How late in the afternoon? A. I don't know; somewhere about from twelve to three; about dinner time.

Q. What time of day did you receive this letter from Mr. Beecher, do you know? A. In the morning early.

Q. How early? A. Before I was up.

Q. Does it always follow that that is early on Sunday morning? A. Not always; but it was about nine o'clock, I should think, I got the letter; it was before half-past ten; if you want me to fix it, I will be able to fix it accurately.

Q. Did you answer that letter? A. Yes, sir.

Q. What time of day did you answer it? A. Right away, sir; in bed.

Q. You answered it in bed, you think? A. Yes, sir; my wife brought me the paper to answer it with; I think I recollect that.

Mr. Evarts.—The details are unimportant, what your wife did or didn't do.

The Witness.—Your instructions to me, Mr. Evarts, have seemed to be so peculiar to the truth itself, that I beg pardon for trying to tell all the truth.

Mr. Tracy.—[Handing letter to witness.] Is the letter now presented to you your answer to Mr. Beecher's letter of Sunday morning, June 1st, 1873?

Mr. Shearman.—You are satisfied that is your handwriting? A. Yes, sir; I am satisfied it is my letter, with the exception of the words that are underlined; I don't know that that makes much difference; I don't think I underlined it.

Mr. Evarts.—You mean the underscoring? A. Yes sir; the underscoring may not be mine; the letter is mine with that exception. Can you tell, Mr. Shearman, whether that underscoring is mine or not?

Mr. Shearman.—Yes, if you want me to tell you.

Mr. Beach.—He can not tell you that.

Mr. Evarts.—It is presumptively your underscoring, and that erasing is yours, is it not? A. I didn't say that. [The witness refers again to the letter.] Yes, sir, I think that was the beginning of the letter.

Q. And you yourself crossed it out and wrote the rest? A. I think very likely I did. I don't remember scratching it out.

Mr. Evarts.—I will begin the letter, as you did, with the part that is scratched out first.

"MY DEAR FRIEND: You know I have never been in sympathy with the mood out of which you have often spoken as you have written this morning. If the truth must be spoken, let it be. I know you can stand if the whole case was published to-morrow and in my opinion it shows a selfish faith in God to——"

And then the writer stops and erases and begins again.

Mr. Shearman.—I beg your pardon, if your Honor please. As this letter

* See "Exhibit No. 26," p. 402, *ante*.

was originally published, it was published correctly, but in re-publishing it in this book, there seems to be an erasure, and I am afraid Mr. Evarts can not read this writing, and I will therefore read it. [Reading.]

'SUNDAY, June 1, '73.

"MY DEAR FRIEND: You know I have never been in sympathy with the mood out of which you have often spoken as you have written this morning. If the truth must be spoken, let it be. I know you can stand if the whole case was published to-morrow and in my opinion it shows a selfish faith in God to——"

Mr. Evarts.—The rest is right.

Mr. Shearman.—The rest is right.

Mr. Evarts.—Then he begins:

"SUNDAY, June 1, '73.

"MY DEAR FRIEND: Your letter makes this first Sabbath of summer dark and cold like a vault. You have never inspired me with courage or hope, and if I had listened to you alone, my hands would have dropped helpless long ago—You don't begin to be in the danger to day, that has faced you many times before—If you look it square in the eyes, it will cower and slink away again. You know that I have never been in sympathy with, but that I absolutely abhor, the unmanly mood out of which your letter of this morning came—This mood is a reservoir of mildew. *You* can stand, if the *whole case* were published to-morrow—In my opinion it shows only a selfish faith in God to go whining into heaven, if you could, with a truth that you are not courageous enough, with God's help and faith in God, to try to live on earth.

"You know that I love you, and because I do, I shall try and try and try as in the past.

"You are mistaken when you say that "Theodore charges you with making him appear as one graciously pardoned by you." He said the form in which it was published in some of the papers made it so appear—and it was from this that he asked relief—I do not think it impossible to frame a letter which will cover the case.—May God bless you, I know he will protect you.

"Yours, FRANK."

[Letter marked "Exhibit D. 43."]

Mr. Tracy.—Now, just previous to June 1st, the "tripartite agreement" had been published, had it not? A. Exactly; yes, sir.

Q. When was it published? A. Published, I think, on the 30th or 29th of May—the 30th of May. [See p. 396, *ante.*]

Q. On the next day, June 2d, you got Mr. Beecher to publish the card which has been put in evidence, exonerating Mr. Tilton from the suspicion of being the author of Mr. Bowen's charge, did you not? A. I don't think I said that. On Sunday night I submitted to Mr. Beecher a card, the substance of which he published the next day in *The Eagle.* [See "Exhibit No. 27," p. 404, *ante.*]

Q. That was June 2d? A. Yes, sir; that was June 2d; there is the original.

Q. And which has been given in evidence here? A. No, sir; it has not.

Mr. Morris. No; the one that was admitted was not. Here it is. [Handing a paper to Mr. Tracy.]

Mr. Evarts.—We do not allude to anything not in evidence. There was something published.

Q. When was the card that was published agreed upon? A. Sunday night, I believe.

Q. Sunday night? A. Sunday night; yes, sir.

Q. The card that was published? A. Yes, sir.

Q. Where was that agreed upon? A. In my study, I think.

Q. Mr. Beecher's threat to resign led Mr. Tilton, did it not, to forego the

publication of the card which he had threatened to publish on Saturday? A. No, sir; I don't think it had anything to do with it.

Q. He didn't publish it, did he? A. He was going to publish it on Monday. He was not going to publish it on Saturday.

Q. The card he was going to publish on Saturday, he didn't publish it, did he? A. No, sir.

Q. When was the interview between you and Mr. Tilton when you first were informed that he intended to publish that card? A. Saturday morning, I think.

Q. When did you learn that he had given up publishing that card? A. I think it was Sunday afternoon; I didn't understand that he had given up publishing the card, if you please.

Q. I ask you when you did learn it? If it was not Sunday afternoon, when was it? A. Monday.

Q. You learned on Monday he did not intend to publish that card? A. Yes, sir, I think it was Monday.

Q. And was not that after Mr. Beecher's threats to resign? A. That was after Mr. Beecher's threats to resign; yes, sir.

Q. And after you had communicated that threat to Mr. Tilton? A. I think it was; yes, sir. I will tell you about the card if you want me to.

Q. Now, I ask you this question: was the card which was published on January 2nd prepared by Mr. Tilton? A. I think the original draft of it was; yes, sir—not as published; it was published with an alteration from that original draft, but the draft which Mr. Tilton prepared I submitted to Mr. Beecher, and he made one to suit himself, which was substantially that card.

Q. Now, the card that you say you dictated to Mr. Carpenter after the Bacon Letter, did you dictate that from any paper? A. No, sir.

Q. Had it been reduced to writing previous to your dictating it? A. Never.

Q. Where did you dictate it? A. I think it was at Delmonico's; in the front room, on the second or third floor of Delmonico's.

Q. Were you dining there together? Which Delmonico? A. Chambers street. No, I did not get there in time to dine, I recollect that.

Q. What time was it? A. It was in the afternoon.

Mr. Evarts.—Who were together? A. Mr. Tilton, Mr. Carpenter, and myself were together.

Mr. Tracy.—Mr. Tilton, yourself, and Mr. Carpenter were together at the time that card was dictated? A. Yes, sir.

Q. Were you there for the purpose of a meal? A. I came up there to get my dinner. Dinner was over. I promised to go there to dine.

Q. Did the two come with you? A. No, sir, they were there before me.

Q. They had had their dinner? A. Yes sir.

Q. Were you to meet them at dinner? A. I believe I was.

Q. You met there in pursuance of an appointment, you being too late for dinner? A. Yes, sir; I believe so.

Q. And was this card, which you proposed to be published, or this state-

ment which you proposed Mr. Beecher should publish, in reply to the Bacon letter? A. In answer to the Bacon letter? No, I did not propose he should publish it—to speak it from his platform.

Mr. Tracy.—That is what I call publishing.

The Witness—Yes, sir.

Mr. Tracy.—That was prepared at Delmonico's, Mr. Tilton, you and Mr. Carpenter being present? A. Yes, sir; I dictated it. All the dictation is mine; every word of it.

Q. How many interviews had you had with Mr. Tilton after the publication of the Bacon letter, and before you dictated this card? A. Not many.

Q. How many? A. I don't recollect. What is the date of the publication of the Bacon letter?

Q. June 25th, I believe. A. What day of the week was it? This was Friday. I think Mr. Beecher was to have a prayer meeting that night; that is one way I fix this, and I think it was the week of the publication of the Bacon letter; I think so.

Q. Do you know what day *The Golden Age* goes to press? A. No, sir; I don't remember the day; I don't remember that, but my impression is that it was Friday of the week of the publication of the article in *The Golden Age*.

Q. You saw it in the morning papers on Thursday morning? A. I don't recollect what day it was.

Q. Don't you recollect *The Golden Age* went to press on Wednesday night? A. I don't know that.

Q. And was distributed on Wednesday night? A. I saw you immediately after, and you can fix——

Mr. Tracy.—I did not ask you that.

The Witness.—I only suggest how I can fix the date. I want to fix the date accurately. I didn't mean to make any fun then, Mr. Tracy. I will tell you the thought that was in my mind.

Mr. Tracy.—I don't want that. You do very well when you answer my questions.

The Witness.—I would like to state exactly what I had in my mind.

JUDGE NEILSON.—If it was necessary. We assume it was something proper, of course.

The Witness.—He (Mr. Tracy) asked me to fix the date, and I wanted to fix it; and, if your Honor will allow me, I will state how I wanted to fix it.

JUDGE NEILSON.—It was an effort on your part to fix the date in that particular way?

The Witness.—Precisely, sir.

AFTERNOON SESSION.

FRANCIS D. MOULTON recalled, and the cross-examination resumed.

Mr. Tracy.—Have you seen that letter before, Mr. Moulton? [Handing witness a paper.] A. Yes, sir.

Q. When did you see it first? A. I think in the latter part of December, 1872.

Q. About the time of its date? A. I don't think it is dated. Somewhere in the neighborhood of the letter of the "Complaining Friend," sir.

Q. Was it before or after the publication of the letter to the "Complaining Friend?" A. I think it was after, sir.

Q. Where did you get that letter; how did it come to you? A. I think by Mr. Tilton's hand.

Q. And left with you? A. Yes, sir.

Q. By him? A. Yes, sir.

Mr. Tracy.—I propose to offer it in evidence, your Honor. [Handing the letter to plaintiff's counsel.]

Mr. Beach.—We have no objection.

Mr. Shearman.—[Reading.]

"*Mr. Moulton:* "DEC. 29, 1872.

MY DEAR FRIEND: For my husband's sake and my children's, I hereby testify with all my woman's soul, that I am innocent of the crime of impure conduct alleged against me. I have been to my husband a true wife; in his love I wish to live and die. My early affection for him still burns with its maiden flame; *all the more* for what he has borne for my sake, both public and private wrongs. His plan to keep back scandals long ago threatened against me I never approved, and the result shows it unavailing; but few would have risked so much as he has sacrificed for others ever since the conspiracy began against him two years ago.

"Having had power to strike others, he has forborne to use it, and allowed himself to be injured instead. No wound is so great to me as the imputation that he is among my accusers. I bless him every day for his faith in me, which swerves not, and for standing my champion against all my accusers.

[Letter marked "Exhibit D, 44."] ELIZABETH R. TILTON."

Q. You have spoken of what you told Mr. Beecher, Mr. Tracy advised you in regard to the Woodhull scandal. Did you tell Mr. Beecher that Mr. Tracy advised you to deny that part of the Woodhull story that related to yourself, so far as it represented you to be an actor or present at any action? A. I don't recollect, sir, whether I told him that or not.

Q. Mr. Moulton, have you a portrait of Mr. Beecher hanging in your house now? A. No, sir.

Q. When did you take it down? A. Some little time ago; I forget how long ago; after I got William Page's portrait; I forget how long ago that was.

Q. About how long ago? A. Within a year, I should think.

Q. Can't you give it nearer than that? A. I don't recollect, sir; I know distinctly when it was done; that is, I don't remember the date, but I know when it was done and why.

Q. I don't ask you why; I ask you now for the time? A. I can not fix the time, sir.

Q. Do you say you took it down when you got some one else's portrait? A. Yes, sir; I didn't have any room for William Page's portrait, and I put William Page's portrait in Mr. Beecher's place.

Q. William Page, the artist? A. Yes, sir.

Q. And Mr. Beecher's portrait was painted by Mr. Page? A. Yes, sir

Q. Now, can't you recollect the season of the year when you took that down? A. I really can not, Mr. Tracy. I would tell you if I could. It is not very long ago, not very long.

Q. Was it three months ago? A. This is——

Q. January. A. January; yes.

Q. The 25th. A. Yes; December, November, October—I should think it was over three months ago. I should think it was.

Q. It is about three months ago? A. I should think it was more than three months ago.

Q. When was it? A. Within the year sometime; I can't tell you.

Q. Oh! yes; when was it? A. I can't recollect.

Q. Don't you know that it was since August? A. No; I don't know that it is since August.

Q. Don't you know that it is since your statement before the committee of August 5th? A. I don't recollect, sir, that it was since then.

Q. Don't you know that that portrait hung in your house, Mr. Moulton, after you made your statement before the committee of August 5th, in your front parlor? A. Now, I don't recollect, Mr. Tracy; very likely it did; I can not say; if I recollected about it, I would tell you.

Q. You mean to say that you don't recollect? A. I mean to say that I don't; precisely; that is my answer; yes, sir.

Q. How long had it hung there? A. I think Mr. Tilton gave me that portrait, sir——

Q. I didn't ask you anything about that, sir. I asked you how long it had hung there? A. I was trying to fix the date, sir, by the gift.

Q. Just fix the date in your own mind and announce it. It is not necessary that you should think so everybody can hear you? A. I will try not to, sir.

Mr. Morris.—It is not necessary that counsel should assume the tone he does, quite.

The Witness.—I think that portrait was given to me by Theodore Tilton——

Q. I didn't ask you that, sir. I submit now, your Honor, that that is not a proper answer. A. Well, ask me the question again, General.

Q. I have asked you twice.

JUDGE NEILSON.—How long did it hang there in your parlor? He don't ask the precise date; up to about what time? A. Yes, sir. I understand now. It was hung there in the latter part of 1871, I think, sir; I think so.

Q. And it continued to hang there from that time until it was removed, as you have now stated? A. Yes, sir.

Q. And was Mr. Tilton's hanging in your back parlor at the same time? A. Mr. Tilton's picture hung in my back parlor; in the dining-room, sir, over the mantel-piece.

Q. And Mr. Beecher's portrait and Mr. Tilton's portrait, the one in the front parlor and the other in the back parlor—were they the two leading pictures in your house? A. No, sir; they were two leading pictures. I had three portraits of Mr. Page, my own besides.

Q. Was your own portrait there too? A. Yes, sir.

Q. In what room was your own portrait? A. In the parlor.

Q. In the same room with Mr. Beecher's? A. Yes, sir.

Q. You have stated in a previous part of your examination that your wife

had not attended communion at Plymouth Church recently. That communion is held immediately after the morning service, is it not? A. I don't recollect about that.

Q. You don't know? A. I don't recollect.

Q. Didn't you at one time state that you also was a member of the congregation at Plymouth Church? A. I may have done so; I don't know.

Q. Well, didn't you just after August 31, the next day after that meeting—didn't you publish a card stating that you were a member of Plymouth congregation, and as such had a right to be there, and that your wife was a member of the church? A. I think very likely I did. I was not a member of any other congregation.

Q. No. That is good reasoning. A. Yes, fair.

Q. And did you state that your wife was a member of that church? A. Yes, I think I did. If you will allow me, Mr. Tracy, I would like to tell you why I think I did.

Q. Well, we are content that you thought so, at present? A. Well, I have reference to a communication that I made after the meeting in Plymouth Church.

Q. So have I. Now, don't you know, Mr. Moulton, that your habit of lying in bed late on Sunday morning, and having company in mid-day at dinner on Sundays, has prevented your wife from attending the morning service at Plymouth Church? A. No; I don't know that.

Q. You don't know that? A. No.

Q. You know that she had not attended the morning service usually, do you not? A. I do not think she has very frequently, sir, attended it since 1870.

Q. Has she not attended the evening service? A. Not more frequently than the morning, I think, sir.

Q. Not more frequently than the morning? A. No, sir; not more frequently.

Q. You have spoken of the letter that you wrote to Mr. Beecher on August 5, in reply to his letter, in regard to his demand for his papers in your possession. Now, I am calling your attention to August 5, at the time that that letter was written. A. Exactly, I understand.

Q. In which you say you will confer with Mr. Tilton as soon as possible. A. Yes, sir.

Q. Did you write Mr. Tilton on the same subject? A. Right immediately there, sir.

Q. Right there? A. Yes, sir; put it on record at once.

Q. And Mr. Tilton present at the time you wrote him? A. I do not recollect whether he was or not, sir, when I wrote the letter.

Q. You say he wrote the letter to Mr. Beecher? A. Yes, sir.

Q. Now, was your letter to him written at the same time? A. Written right away after; shortly after, I mean, by right after.

Q. Was not he present, and did not he answer your letter right there? A. He answered my letter that same day, whether it was right there or not.

Q. Did he draw his answer right in your study? A. I do not recollect

whether he drew his answer right in my study, or not. My impression is that he did.

Q. Did he draft your letter to him, or did you draft it? A. I think I drafted it.

Q. Have you got the draft? A. I think I have.

Mr. Tracy.—[To plaintiff's counsel.] I would like you to produce that.

Mr. Morris.—We have not got it.

Mr. Evarts.—Will the witness look among his papers?

The Witness.—I will; I will try and find it, Mr. Evarts.

Mr. Tracy.—We would like it now.

The Witness.—I do not know whether it is amongst those papers now. That is the reason I spoke. I thought Mr. Evarts alluded to my trying to find it elsewhere.

Mr. Tracy.—Will you say, as a matter of recollection, that Mr. Tilton did not draft your letter to him, and make his reply to you in the same room and before you separated that evening? A. He did not draft that letter; my recollection is that he did not draft that, sir; I drafted that.

Mr. Fullerton.—This reminds me, if your Honor please, that I ought to make a correction of something I said before the recess, which I did not learn until the recess, that a part of the "true story," so called, was preserved; the whole of it was not destroyed. I stated that the "true story" had been destroyed; I understand that some fragments of it were retained.

Mr. Tracy.—You made three communications, did you not, to the Committee? A. I made the first one, I think, on July 13. That is the first one I made, I believe.

Q. When was the second? A. The second was when I said that if——

Q. I did not ask you what you said; only give the date that you made it? A. I do not remember the date.

Q. I will refer you to it. A. I think it was August the 6th. I think it was; I don't remember exactly.

Mr. Pearsall.—Are you waiting for us?

Mr. Tracy.—Yes, sir.

Mr. Morris.—What do you wish?

Mr. Tracy.—Those papers.

Mr. Morris.—There is Moulton's statement to the Committee. [Producing paper.]

The Witness.—That is not it at all. I do not believe that there is any original draft of it there—of that first statement.

JUDGE NEILSON.—Haven't you it in print?

Mr. Tracy.—I am talking about the first statement.

Mr. Morris.—I haven't got it.

JUDGE NEILSON.—You have it in print, have you not?

Mr. Tracy.—We have it in print; yes, sir.

JUDGE NEILSON.—Can't you use that?

Mr. Tracy.—It is not the object to use it—my calling for it.

Q. Do you know who drafted that statement? A. My original statement?

Q. Yes, sir. A. I did myself; I wrote my first statement.

Q. Who was present when you did it? A. I dictated it in the presence—I dictated it to Theodore Tilton; I don't remember who else was present. Is that what you mean by drafting?

Q. Mr. Tilton was present then when it was drafted? A. Yes, sir; I dictated it to him.

Q. Then Mr. Tilton wrote it, didn't he? A. I don't remember whether he wrote it or not. I copied it from his writing, I guess, myself.

Q. You copied it from his writing? A. I guess so; yes, sir.

Mr. Morris.—He took it in shorthand? A. He took it in shorthand. I think Mr. Carpenter and Mr. Redpath were present, too, at the time. I think so; one or the other of them. I have some recollection of it.

Mr. Tracy.—You have spoken of a conversation which occurred at your house between yourself, Mr. Tilton and myself in which you say that his anger was melted. I refer to that conversation for the mere purpose of fixing a date. Did you at any time soon after that see in Mr. Tilton's hands a proposed report to the Committee—for the Committee? A. Soon after that conversation with you?

Q. Yes. A. Yes, sir; I think I did, a long report.

Mr. Tracy.—[To plaintiff's counsel.] Gentlemen will you produce that? [To the witness.] Referring to that report, I ask you the fact whether you know that Mr. Tilton went to members of the Committee and urged them to accept that report—to one or more members of the Committee? A. I don't know that; no.

Q. You introduced—a short report has been introduced which seems to have been prepared about the same time. Do you know in whose handwriting that report is? A. Which—the short one?

Q. Yes, as it was introduced in evidence? A. Yes, sir; Robert Eddy's.

Q. He is your bookkeeper? A. Yes, sir.

Q. From what did he copy it, do you know? A. I think he copied it from an original draft by Mr. Tilton or by myself.

Q. Do you know which? A. Mr. Tilton, I believe.

Q. Do you know whether as a matter of fact that short report was prepared after the long one of which we are now speaking? A. My impression is it was; yes, I think so.

Q. Do you know at whose suggestion that short report was prepared? A. No; I do not know at whose suggestion, Mr. Tracy.

Q. Was it at yours or Mr. Tilton's suggestion? A. I think it was Mr. Tilton's idea. It was prepared about the time of the long one.

Q. That is the report that you call the long report, is it not? [Handing witness a manuscript.] A. I believe that is it, sir. [Handing back the paper.]

Q. This is the report, is it? A. I think that is it; yes, sir.

JUDGE NEILSON.—The proposed report.

Mr. Tracy.—Yes, the proposed report—Mr. Tilton's proposed report for the committee.

JUDGE NEILSON.—Being the second in order.

Mr. Tracy.—Being the first in order of time, the second one that was introduced in evidence.

Mr. Shearman.—The paper is in the handwriting of Mr. Tilton. [Reading.]

"The undersigned, constituting the Committee of Plymouth Church to whom were referred certain recent publications by Dr. Leonard Bacon and Theodore Tilton, hereby present their unanimous report:—

"The Committee sought and obtained a personal interview with each of the three following-named persons, to wit; Mr. Tilton, Mrs. Tilton, and the pastor, all of whom responded to the searching questions of the Committee with freedom and candor. Documents, letters, and papers pertaining to the case were carefully considered. A multiplicity of details, needing to be duly weighed, occasioned a somewhat protracted investigation. The Committee hope that the apparent tardiness of their report will be compensated to the parties by rectifying an erroneous public sentiment under which they have all suffered misrepsentation.

"The Committee's first interview was with Mrs. Elizabeth R. Tilton, whose testimony was given with a modesty and touching sincerity that deeply moved those who listened to it. Her straightforward narrative was an unconscious vindication of her innocence and purity of character, and confirmed by evidences in the documents. She repelled with warm feeling the idea that her husband was the author of calumnious statements against her, or had ever treated her with other than with chivalrous consideration and protection. She paid a high tribute to his character, and also to the fortitude with which he had borne prolonged injustice.

"II. The Committee further find that Mr. Tilton, in his relations with the pastor, had a just cause of offense, and had received a voluntary apology. Mr. Tilton declined to characterize the offense for the following reasons: First, because the necessary evidence which should accompany any statement would include the names of persons who had happily escaped thus far the tongue of public gossip; next, that the apology was designed to cover a complicated transaction, including details, difficult of exact or just statement; and last that no possible good could arise from satisfying the public curiosity on this point. Mr. Tilton after concluding his testimony respectfully called the attention of the Committee to the fact that the clerk of the church had spoken calumniously of Mrs. Tilton during the late council, and had since unqualifiedly contradicted and retracted his statements as untrue and unjust; and he (Mr. T.) requested the Committee to ratify and confirm that apology—making honorable record of the same in their report, which is hereby cheerfully done.

"III. The Committee further find that the Rev. Henry Ward Beecher's evidence corrobated the statements of Mr. and Mrs. Tilton. He also said the church action of which Mr. Tilton had complained had not been inspired by the pastor, but had been taken independently by the church; that the popular impression that Mr. Tilton had been in the habit of speaking against him was unjust to Mr. T. and was owing mainly to the unwelcome introduction into the church of charges against Mr. T. by a mere handful of persons, who, in so doing, had received no countenance from the great mass of the congregation, or from the pastor. He said the written apology had been invested by the public press with an undue mystery:—that after having been led by his own precipitancy and folly into wrong he saw no singularity of behavior in a Christian man (particularly a clergyman) acknowledging his offense. He had always preached this doctrine to others, and would not shrink from applying it to himself.

"The Committee, after hearing the three witnesses already referred to, felt unanimously that any regrets previously entertained concerning the publication of Mr. Tilton's letter to Dr. Bacon should give way to grateful acknowledgments of the providential opportunity which this publication has unexpectedly afforded to draw forth the testimony which the Committee have thus reported in brief but in sufficient fullness, as they believe, to explain and put at rest forever a vexatious scandal. The Committee are likewise of opinion,

based on the testimony submitted to them, that no unprejudiced court of inquiry could have reviewed this case, as thus presented in person by its principal figures, without being strikingly impressed with the moral integrity and elevation of character of the parties; and accordingly the Committee can not forbear to state that the Rev. Henry Ward Beecher, Mr. Theodore Tilton, and Mrs. Tilton, (and in an especial manner the latter), merit and should receive the increased sympathy and respect of Plymouth Church and congregation.

"(Signed)."

[Paper marked "Exhibit D, 45."]

Mr. Tracy.—There are two or three mistakes in this, and therefore, the copy should be taken from the draft and not from the printed copy. It is not very important, but there are three of them. [To the witness.] Now, Mr. Moulton, at that interview, of which you have spoken, at your house, between yourself, Mr. Tilton and myself, did you accompany Mr. Tilton to the door that night when he went home? A. I think I did, sir.

Q. Down stairs? A. Yes, sir.

Q. Did you tell him, while standing on the step or at the door that night, to go home and be reconciled to his wife, that the time had not come to fight her yet? A. No, sir; I did not use that last expression.

Q. Did you use the first? A. Well, put it in the form of a question and I will answer it, sir.

Q. Did you tell him that night at the door to go home and be reconciled to his wife? A. I told him something like that, sir; I did not use precisely that language.

Q. In substance that, did you? A. I advised him to go back to his wife; yes, sir.

Q. And did you add that the time had not come yet for him to fight his wife? A. No, I don't recollect.

Q. Or words to that effect? A. No, sir; no.

Q. He had separated from his wife at that time, had he not? A. He told me, I think it was on that morning, that he had left her the night before on learning that she had gone to the——

Q. In consequence of her going before the Committee? A. Yes, sir; in consequence of her having gone before the Committee. Whatever day that was, he told me on the morning after that, I think.

Mr. Fullerton.—Told you what? A. On the morning after that, on the morning after his wife had been before the Committee, Mr. Tilton told me that he had left the house.

Mr. Tracy.—That she had come home that night, and told him that she had been before the Committee? A. Yes, sir.

Q. Did he tell you that he was in bed?

Mr. Evarts.—No matter what passed between them; he said that he had left in consequence.

Q. And you understood that he went back that night to his wife, did you not? A. Yes, sir.

Q. And the next morning, or the next morning but one—which was it that he presented to you this report? A. I don't recollect whether it was the next morning or the next morning but one. He submitted it to you and me together whenever he did submit it.

Q. How long did he and his wife remain together after that? A. I don't recollect how long. She left him, I think, on Saturday, if I recollect right—Saturday of that week.

Q. Was it until she left and went to Mr. Ovington's; did they remain together until she left and went to Ovington's? A. Whatever day it was, sir, she went to Mr. Ovington's, I can not recollect.

Q. I did not ask you the date. As a matter of fact they remained together, didn't they, until his wife left home? A. I don't know how long they remained together. I understood they did.

Q. Did Mr. Beecher at any time ask you for the return of the paper that you now call the letter of contrition? A. Ask me for it—no.

Q. Never asked you for it? A. No.

Q. Did you at any time ever tell him that you had burned that paper? A. Never.

Q. You never did? A. Never.

Q. His statement that you had so told him had been published in the newspapers before you made either of your statements, had it not?

Mr. Beach.—Wait one moment. We object to that.

Mr. Tracy.—I will change the question. Had his statement—what is known as Mr. Beecher's statement before the committee, and his cross-examination, been published before you made either of your statements? I think that has transpired already. A. Yes, sir; yes, I think—yes, certainly, before I made either of my statements. No, I made the first——

Q. Before you published either of them? A. No; my statement of July 13th was published before that. The short statement of July 13th was published on July 14th, in which that letter was referred to.

Q. I mean either of your long statements.

JUDGE NEILSON.—Either of the last two statements? A. No, sir.

Mr. Tracy.—Both of those were published after Mr. Beecher's statement? A. Yes, sir.

Q. The first long statement of yours was prepared before Beecher's statement was published, was it not? A. Not altogether, I believe.

Q. The first statement that Gen. Butler prepared for you? A. Well, I don't know whether it was the first that he prepared or not, but the first that was published in *The Graphic*, before Mr. Beecher prepared his?

Q. Before Mr. Beecher published his? A. Before Mr. Beecher published his.

Q. Before it was published? A. Before Mr. Beecher's was published—that is the question you ask me?

Q. Yes, sir. A. Whether that statement was prepared before Mr. Beecher's statement was published?

Q. Yes, sir. A. I think it was; yes, sir. What day was Mr. Beecher's published, Mr. Tracy?

Q. Aug. 14th? A. What day was my statement made to the Committee; do you remember?

Mr. Shearman.—Aug. 5th.

Mr. Tracy.—Have you recently expressed hostility—violent hostility—towards Mr. Beecher? A. I don't recollect that I have. How recently, sir?

Q. Within three months? A. Within three months?

Q. Yes, sir. A. I think very likely——

Mr. Beach.—A general question of that kind is not admissible. It must be pointed to time and place and some circumstance.

Mr. Tracy.—It is—within three months.

JUDGE NEILSON.—Well, he has answered it.

The Witness.—What is it now.

Mr. Tracy.—I say within three months, haven't you since the publication of his statement?

Mr. Beach.—To whom?

Mr. Tracy.—We will get at it.

Mr. Beach.—No, sir——

JUDGE NEILSON.—You must point his attention to time and place, or the persons present.

Mr. Evarts.—It is not a question of contradicting him, it is asking him a question.

JUDGE NEILSON.—I don't know.

Mr. Evarts.—When it becomes a question of contradicting, then we are obliged to give time and place.

JUDGE NEILSON.—I think it would be fair to the witness to specify time and place.*

* In this State this is the general usage. The contest has generally been whether, if the witness, on being interrogated as to declarations showing bias, denies having used them, the interrogating party is not bound by his answers. See *Newton* v. *Harris*, 6 N. Y. 345; *Morgan* v. *Frees*, 15 Barb. 352; *Bemis* v. *Kyle*, 5 Abb. Pr. N. S. 232. The authorities in other jurisdictions do not agree as to whether a foundation must be laid or not.

Some of the cases are as follows:

The Queen's Case, 2 Brod. & Bing. 311 (1820, opinion by ABBOTT, C. J.), *Held*, that when a witness in support of the prosecution has been examined in chief, and has not been asked in cross-examination as to any declarations made by him, or acts done by him, to procure persons corruptly to give evidence in support of the prosecution, it is not competent to the party accused to examine witnesses in his defense to prove such declarations or acts without first calling back such witness to be examined or cross-examined as to the fact whether he ever made such declarations, or did such acts. See also *Trial of Lord Stafford*, 7 How. St. Tr. 1400 (A. D. 1680).

Edwards v. *Sullivan*, 8 Iredell [No. Car. Law], 302 (1848, opinion by BATTLE, J.). Defendant offered evidence to show bias in one of plaintiff's witnesses by proof of a declaration by such witness tending to show that he was to be paid for his testimony if plaintiff recovered. Objected to on the ground that the witness to be impeached had not been asked if he had made such a declaration. Objection overruled and impeaching testimony admitted. *Held*, error and judgment reversed

Baker v. *Joseph*, 16 Cal. 173 (1860, opinion by BALDWIN, J.), *Held*, that the attention of the witness who has testified that he has no animosity, and denies that he has ever indicated any, must be specifically called to the time, place, and precise matter of statements "that he would ruin defendant," &c., before evidence of them can be put in. [In this case the witness had been asked, generally, if he had ever made the statements, and had answered in the negative; but this is held not sufficient to admit evidence of them. The case is put as on all fours with evidence of other contradictory extra judicial statements.]

Ellsworth v. *Potter*, 41 Vt. 685 (Supreme Ct., 1869, opinion by STEELE, J.). A witness for defendants testified that he had had no difficulty with the plain-

Mr. Evarts.—How do we know anything about it? Your Honor is assuming that the question is asked for the purpose of contradicting him, and that we have the means of contradicting him. Your Honor is entirely right, of course, if that were the case. Whenever you wish to proceed thus to impeach, we do not differ as to what the rules are, but we have a right, as matter of direct evidence of the witness' own mouth, to prove that he has expressed hostility towards Mr. Beecher.

JUDGE NEILSON.—Undoubtedly.

Mr. Evarts.—It is not with a view of contradicting him; it is with a view of proving it.

Mr. Beach.—There is no doubt of that, sir, that they may prove that the witness has hostility—that he entertains ill-feeling; but when they ask for the declaration of the witness, at any time or for any purpose, the rule is invariable that they must direct the attention of the witness to the time and the place and the person to whom the expression was made.

Mr. Evarts.—I think my friend will see that it is only as a foundation to contradict him that we must do that.

Mr. Beach.—Well, we do not know whether they are making a foundation to contradict or not.

Mr. Evarts.—The way would be that when we brought some one up to contradict him, some one would say we had not directed his attention to the time and place.*

JUDGE NEILSON.—There are two considerations in regard to it; one is as

tiff. The plaintiff was at liberty not only to contradict this in general terms, but also under the direction of the court to state enough to indicate the extent of the difficulty and consequent ill-feeling—not in order to show which party was at fault, but the degree of estrangement. This, it was held, is limited by no general rule, but must to a considerable extent be left to the *nisi prius* judge. Plaintiff was rightly allowed to testify to a quarrel between her and another witness [than the one above], notwithstanding the witness had not herself been interrogated as to whether such a controversy had existed.

* It was said in *People* v. *Jackson*, 3 Park. Cr. 590, that the objection that the question intended as a foundation for a contradiction was not sufficiently explicit as to time and place, *must* be made when the question is put. But this can not be deemed sound as a general rule. The matter is somewhat in the discretion of the court; but the protection of the witness is not necessarily waived by the failure of counsel to anticipate the intention to contradict. It is usual to exclude the contradiction, if there has been a substantial failure to lay a fair foundation by reasonable certainty of particulars, even though the objection was not taken on the cross-examination.

Pierce v. *Gibson*, 9 Vt. 216 (1837, Supreme Ct., opinion by WILLIAMS, C. J.). Defendant offered to prove that a violent quarrel had existed between him and a witness called against him. The court excluded this evidence because the witness to be impeached had not been first interrogated as to the quarrel. *Held*, error.

Day v. *Stickney*, 14 Allen (Mass.), 285 (1867, opinion by WELLS, J.). A declaration made out of court by the witness showing hostility to a party may be proved without first interrogating the witness, where the bias or hostile feeling had reference to the matter in suit.

O'Neill v. *City of Lowell*, 6 Allen (Mass.), 110, (1863, opinion by METCALF, J.). To discredit a witness for the plaintiff, evidence was adduced that he had said the plaintiff "would get a good pile of money out of the city, and ought to." *Held*, competent evidence. The question to which it was the answer might have been put to the witness himself on cross-examination, if desired.

to the question of fairness to the witness, the other of policy. You should direct his attention, if you can, to the occasion.

Mr. Tracy.—If he says he has, we may ask him when and where.

JUDGE NEILSON.—Let him answer the question. Repeat the question, Mr. Stenographer.

Mr. Fullerton.—He has answered.

[The stenographer read the question.]

A. I don't recollect that I have. How recently, sir?

Q. Within three months? A. Within three months?

Q. Yes, sir. A. I think very likely——

The Witness.—What do you mean by violent hostility?

Mr. Tracy.—I put that question to you.

JUDGE NEILSON.—As you understand the word, have you expressed violent hostility or not? A. Yes, sir; I have expressed hostility to Mr. Beecher.

Mr. Tracy.—Have you expressed violent hostility to him? A. I have expressed hostility violently.

Q. Have you expressed a determination to do him great violence, or a willingness to do him great violence? A. Not that I remember—not great violence.

Q. Do you know Mr. Caldwell? A. Yes, sir; I know him.

Q. H. S. Caldwell? A. Yes, sir; I know him.

Q. Did you say to him, within a month or thereabouts, in your house, "Mr. Beecher is a liar and a libertine, and, damn him, if personal violence would do any good, I would cut him down in a minute? A. No, sir.

Q. Have you said that within two months to Mr. Caldwell? A. No, sir.

Q. Did you ever say it to Mr. Caldwell? A. No, sir.

Q. Or anything like it? A. No, nothing like that. I thought he was a sneak——

Mr. Evarts.—What do you say? A. I thought Caldwell was a sneak when he came to the house.

Mr. Evarts.—We ask to strike that out.

JUDGE NEILSON.—Strike that out.

Mr. Fullerton.—He ought to have been struck out when he came to the house——

Mr. Tracy.—Did you express a similar sentiment to Augustus Storrs within three months at your house?

Mr. Beach.—Oh! a similar sentiment——

Mr. Tracy.—Well, the same sentiment towards Mr. Beecher? A. To Augustus Storrs?

Q. To Augustus Storrs, in presence of his brother Charles? A. No.

Q. Or did you to Charles, in presence of his brother Augustus? A. No.

Q. Didn't you say in their presence, at your house—since the termination of the libel suit of Miss Proctor against you—didn't you say to them in your house, that Mr. Beecher was a sneak and liar; and that if they said so, damn him, you would shoot him? A. That if what?

Q. If they said so? A. If they said so, I would shoot him?

Q. Yes.

JUDGE NEILSON.—Did you say that? A. I don't exactly understand the form of the question. No; I didn't say that.

Mr. Tracy.—Did you say anything in substance like that? A. No.

Q. Did you express any willingness to commit violence against Mr. Beecher in their presence? A. No.

Q. Did you say that he was a sneak and liar in their presence? A. I don't recollect that I said that.

Q. Did you express any willingness or disposition to commit violence against Mr. Beecher? A. No.

Q. Did you express any hostile sentiment toward Mr. Beecher in their presence? A. I think I did, sir; I will tell you all I said, as near as I recollect, if you would like to have it.

Q. That will be proper when they tell you to tell us what you said? A. All right.

Q. Have you not in conversation with Mr. A. W. Tenney, United States District Attorney of this district, recently expressed yourself in violent terms of hatred towards Mr. Beecher? A. In violent terms of hatred?

Q. Yes. A. Not in violent terms of love; I don't know that I said I hated him.

Q. That is not my question; I don't ask you that. I ask you to answer it —on the ferry-boat on the East river?

Mr. Beach.—The expression, or the substance of the expression, should be given, sir. "Violent terms of hatred" does not call for the declaration of the witness as it was made.

JUDGE NEILSON.—Well, the practice is no doubt to ask him if he did not make a certain specific statement, or in substance something like that. The question you do put depends upon the construction—it is somewhat a matter of construction. What one person might understand by "violent," another might not.

Mr. Tracy.—Certainly, that argument will be in order when we offer to contradict him, if we do not amplify this statement.

JUDGE NEILSON.—It is not an argument; it is a suggestion by the court.

Mr. Evarts.—We do not differ as to the basis of contradiction, but we do claim the right to have the witness' first answer which may be sufficient.

JUDGE NEILSON.—Now, the question is as to what he said to Mr. Tenney.

The Witness.—Well, sir, what is the question?

Mr. Tracy.—The question is, have you not in conversation with Mr. A. W. Tenney expressed yourself in violent terms of hatred towards Mr. Beecher within three months?

Mr. Fullerton.—Well, sir, that is objected to. Suppose they should produce Mr. Tenney, and ask him whether Mr. Moulton ——

JUDGE NEILSON.—They could not upon that general statement.

Mr. Fullerton.—Certainly not; but then they would claim the right to prove by Mr. Tenney what Mr. Moulton said; and then, if we objected, of course we would be subjected to criticism.

JUDGE NEILSON.—Before they call the District-Attorney they will have to ask this gentleman what he said.

Mr. Fullerton.—If the statement is given in evidence, then the jury will judge whether it is violent or not.

Mr. Evarts.—If your Honor please, then we do not differ as to the contradiction. The objection is to be made to us, when we attempt to contradict, that we have not laid the basis. That is the ordinary course of this matter. We are endeavoring to prove by this witness, without contradiction and without support, that he has said these things, under the general rule.

JUDGE NEILSON.—Now, the question is whether you said that to Mr. Tenney on the boat.

Mr. Beach.—That is not the question; your Honor gets the question right, but the counsel do not.

JUDGE NEILSON.—I bring the boat in?

[Question read by stenographer.]

A. I expressed myself against Mr. Beecher.

Q. To Mr. Tenney? A. Yes, I think so.

Q. Didn't you express yourself violently? A. Perhaps I did; I don't recollect now the expression that I used distinctly.

Q. Didn't you call him a liar? A. I don't recollect that I did; I might have done so.

Q. Sneak? A. I don't recollect that I did.

Q. And a libertine? A. I don't recollect.

Q. Accompanying each one with an oath? A. I don't recollect that I did, sir.

Q. Will you say that you did not? A. If I had any recollection about it I should state my recollection, sir. I don't remember the language.

Q. Well, that is to say you have no recollection upon the subject? A. I don't recollect the language. I expressed myself, I guess, on two occasions to Mr. Tenney against Mr. Beecher instead of one.

Q. When was the other? A. I don't know. I think in Montague street, somewhere.

Q. How recently? A. Not very long ago. I don't recollect how long ago.

Q. Have you not repeatedly declared your intention to crush Mr. Beecher at any cost? A. No; I don't think I have said that I would crush him at any cost.

Q. Well, have you avowed your determination to crush him? A. No; I think not; I have not put it in that language, I think.

Q, Have you avowed your intention to drive him out of Brooklyn? A. No, I think not.

Q. Didn't you say to Augustus Storrs, in presence of his brother Charles, or when the two were present, didn't you say that you intended to drive Mr. Beecher out of Brooklyn? A. No, I didn't; I may have said I thought he ought to be driven, but I didn't say that I was going to drive him.

Q. You did say that he ought to be driven out of Brooklyn? A. No, I don't recollect that.

Q. Oh! you don't recollect that? While the Investigating committee was in session, didn't you send for the brother of a member of that committee, and have him call upon you—a brother of a member of that committee, and

threaten him that, unless at least one member of the committee dissented from their report in favor of Mr. Beecher, you would publish, or cause to be published, a scandalous statement about a lady? A. No.

Q. You didn't? A. No; I will tell you what I said to him, if you want to know.

Q. Answer my questions first, and then we will see. A. All right.

Q. Pending the investigation? A. I did send for the brother of a member of that committee; that part is true.

Q. Pending the investigation and before the report was made did you send for Charles Storrs, and have an interview with him? A. I did; yes, sir.

Q. Did you tell him that if his brother Augustus hadn't signed the report he must not, or, if he had, he must take his name from it? A. I did not tell him that.

Q. Did you tell him that if he did not do one or the other, that is, if he didn't omit to sign, or take his name from it, if he had signed, you should make a publication concerning a person that would break the heart of Charles Storrs? A. No, I didn't.

Q. You didn't state that? A. No.

Q. And when he asked you if you meant Miss Proctor, didn't you say, "I call no names"? A. I said "I call no names."

Q. But it was "a person that would break your heart"? A. I said I called no names, but I didn't say anything about breaking hearts.

Q. If you did not use that language, didn't you say it was a lady who—a friend of his? A. I don't know whether I said it was a friend of his or not, sir.

Q. Well, did you threaten to make the publication? No.

Q. Concerning some person, if Mr. Augustus Storrs didn't either refuse to sign the report, or if he had signed it, to take his name from it? A. No, I didn't threaten, sir.

Q. Did you threaten Charles Storrs that you would make such a publication in any contingency? A. No.

Q. Did you state to him that you would make such a publication, or that you might make such a publication? A. I stated to him that I might make a publication.

Q. About whom? A. It might be necessary to refer to a person in the publication that it would be necessary for me to make.

Q. How did you describe the person? A. I don't think I described her. I think he asked me if I referred to Miss Proctor——

Q. Then what did you say to that? A. I told him that I should not mention any names.

Q. Did you say in any way that it was a person that would break his heart, or that it was a person in whom he was interested, a friend of his? A. Don't recollect that language; no.

Q. Was Miss Proctor an inmate of Mr. Storrs' family at the time?

JUDGE NEILSON.—One moment, now. The other day I professed a very earnest solicitude that third persons should remain unnamed—was very emphatic, I think, for me, when Miss Proctor was named by some person; I

requested that those names should be omitted, and they might be omitted from your question, I think; I want them omitted.

Mr. Fullerton.—If your Honor please, it has not been omitted; your Honor's wish has not been complied with, in that respect.

JUDGE NEILSON.—I don't know whether that was when Mr. Tracy was here, or before he came in.

Mr. Fullerton.—He was here.

JUDGE NEILSON.—But I certainly did wish, and expressed that wish, that those names of third persons should be left out. I think it is a great pity that you should commit the error of bringing their names in.

Mr. Evarts.—The witness brought her name in.

Mr. Fullerton.—No; he did not.

Mr. Evarts.—He did directly.

Mr. Fullerton.—No, he did not, sir.

Mr. Evarts.—He said at this interview Mr. Storrs asked him if he meant Miss Proctor.

JUDGE NEILSON.—That is the question put by Gen. Tracy.

Mr. Evarts.—It was not a question put by him. There was no question put by us that reached any person. The question was, whether he told him that if he didn't do so and so, he (this witness) would publish a statement, concerning a person, that would break his heart. Now, your Honor certainly does not mean to say that, when we are trying this issue between these parties, we haven't a right to prove such statements as that; then the witness says, "I did not. He asked me if I meant Miss Proctor."

Mr. Morris.—Now, the name of Miss Proctor was mentioned by counsel first.

Mr. Evarts.—Look at the stenographer's notes.

JUDGE NEILSON.—I don't think Mr. Tracy was present when I suggested to Judge Porter not to mention the names of third persons.

Mr. Tracy.—Oh! I was.

Mr. Beach.—Mr. Stenographer, please read the last question.

Mr. Tracy.—I do not hesitate to take the responsibility of introducing Miss Proctor's name here to-day.

JUDGE NEILSON.—Well, there is a responsibility beyond yours.

Mr. Tracy.—Very well, I introdnced the name of Miss Proctor here to-day in a way that is entirely creditable to the lady.

JUDGE NEILSON.—It is not a question of creditability?

Mr. Tracy.—It may be, but it is entirely creditable to her. I am showing that this witness attempted to coerce her friends in their action on this committee as a penalty of his not making a publication concerning her.

Mr. Fullerton.—The gentleman will fail in that attempt.

Mr. Tracy.—Not much.

Mr. Fullerton.—We will see if you don't.

Mr. Evarts.—How does that become proper?

Mr. Beach.—I believe I have endeavored to get the ear of the court for a moment, and Gen. Tracy interrupted me, and now the senior counsel interrupts me.

Mr. Evarts.—I haven't interrupted. I have asked that the question might be read.

Mr. Beach.—So have I. [Last question read by the stenographer.]

Mr. Beach.—Yes, sir, then the name of Miss Proctor was first mentioned in the question put by Gen. Tracy?

Mr. Evarts.—Go back to the witness' answer before that, and you will find Miss Proctor's name in the witness' answer.

Mr. Morris.—I say it was first mentioned by Mr. Tracy.

The stenographer [reading]:

"Q. How did you describe the person? A. I don't think I described her; I think he asked me if I referred to Miss Proctor.

"Q. Well, what did you say to that? A. I told him that I should not mention any names."

Mr. Beach.—Now, your Honor, I submit that this inquiry in regard to what transpired with reference to Mr. Storrs, is not at all material to the inquiry which the counsel are pursuing. The object is to prove ill-will on the part of this witness toward Mr. Beecher; that is the professed object of their inquiry; and this conversation as between Mr. Storrs, so far as it relates to the action of the committee, or to Miss Proctor, or any other lady, I submit, is not material, and I ask that that whole inquiry be struck out.

Mr. Evarts.—We propose to show this witness' hostility; his proceedings indicating hostility; his making himself a party to the proceedings against Mr. Beecher; his threats to those who were engaged concerning the inquiry; and the mode and form in which the witness showed this attitude and expressed this hostility; and the laws of evidence permit us to do so, and make it the only proper way to do so. Now, upon the inquiry of fact, your Honor sees that we were entirely right. We desired to get from this witness what was pertinent and material, that he had threatened a member of the committee that unless he took a position of dissent either by abstaining—withholding or withdrawing his name from the report, as the case might be—he (witness) might be forced, or might be led to make a publication that would affect and afflict Mr. Storrs. And we leave it for the witness to say whether he did or not. Well, his course of answers it is not necessary for us to repeat. Then we press him to get out the principal fact, which he will not give in general terms; and, finally, it comes down to this: "How did you describe that person?" He would not say that it was anybody that would break his heart; he would not say that it was anybody that was connected with Mr. Storrs in any such general relation as would omit a name; and we then say to him, how did you describe the person concerning whom you were talking to Mr. Storrs? Then he says, "I think it was Mr. Storrs who asked me if I referred to Miss Proctor." Now, that shows that the conversation was had; that he did assume this attitude towards Mr. Storrs in dealing with some person that abstinence from public comment about would be desirable, and the contrary afflictive to Mr. Storrs. That is what we set out to prove.

Mr. Beach.—The examination, sir, of the testimony of the witness shows that the first intimation that Miss Proctor's name was connected with this

conversation, as the person in regard to whom any statement was to be made, or any revelation made, comes from the other side.

Mr. Evarts.—Not in the least.

Mr. Beach.—It does, sir. When the witness said that Mr. Storrs asked him if Miss Proctor was referred to, the witness answers, "I mention no names." And, then, they went on with the inquiry, which draws from the witness this fact, that Miss Proctor was the person alluded to; and, so far as the bringing out of her name in connection with this scandal is concerned, the responsibility rests upon the gentleman making this inquiry. Now, sir, we have avoided that; we have resisted it as far as we can. We make no imputations upon third persons, and would relieve everybody except the immediate parties to this controversy from any reflections which might arise out of connection with this difficulty. If the gentlemen persist in introducing the name of that lady, they must do it upon their own responsibility.

Mr. Fullerton.—And it may be necessary for us hereafter, if the other side put us in such an attitude as to make it necessary, to prove what did occur with regard to that lady for the purpose of justifying the witness. They take the responsibility of the whole thing.

Mr. Evarts.—We have no difficulty in assuming responsibilities if they are cast upon us; we do not venture upon them in the conduct of our side in this case. But we have not any responsibility about what you do in consequence of what we do. You will do as you are advised. We will take care of our own side.

Mr. Beach.—It seems to me that you are violating the order of debate, and insisting upon the last word in an argument upon our objection.

Mr. Evarts.—But you say always something new.

Mr. Beach.—No, we do not; no new idea.

Mr. Evarts.—Now, my friends have undertaken to present an attitude, a sort of defiance upon this subject; certainly no one on our side of the case wishes to make any imputations upon Miss Proctor; we never believed a word of either the threatened publication or the actual publication.

JUDGE NEILSON.—Why refer to the actual publication?

Mr. Evarts.—Well, because the actual publication is in the matter.

JUDGE NEILSON.—No, it is not in; it is not in, and with my consent it won't be in, as far as this case is concerned.

Mr. Evarts—I dare say it may not, but we are not the side that are to be made the suoject of imputation of wishing to bring Miss Proctor in.

JUDGE NEILSON.—The examination will be as it now stands with the exception that Miss Proctor's name will be stricken out, and it shall be omitted hereafter. Whatever occurs, I should not allow any evidence to vindicate that lady, as I certainly should if the subject were brought up here properly.*

* In *Coleman* v. *People*, (55 N. Y. 81), it was *held*, that if a prisoner, upon trial for one offense, calls out facts, upon cross-examination without objection, tending to show that he is not guilty of another distinct charge, in respect to which some evidence has been given, this does not justify evidence, on the part of the prosecution to prove that he was guilty of such other offense. The case was a criminal prosecution for receiving "bars of pig-iron," knowing them to be

Mr. Evarts.—Your Honor will note our exception to that direction.

JUDGE NEILSON.—Yes, as to the hostility of this witness, whether you characterize it as violent or not; whatever it may be you have a right to show that, of course.

Mr. Tracy.—What did you say to Mr. Storrs concerning what you would do? A. I said to Mr. Storrs that I had understood that I was not to be cross-examined by the committee.

Mr. Tracy.—I have reference to the publication.

Mr. Beach.—Wait one moment.

JUDGE NEILSON.—I think he has answered; go on.

Mr. Evarts.—That took place at this interview? A. That I understood that I was not to be cross-examined by the committee; that I had come from Lowell for the purpose of that cross-examination, and that I did not want his brother to sign that report until I had an opportunity of being cross-examined by the Committee; for if his brother did sign that report without giving me an opportunity to be cross-examined, he could not possibly know the truth, and that if that report was signed, and it was against me, as I understood it would be, I should make a publication of facts in reply, and that publication, as I understood my counsel advised it, would perhaps cross the threshold of his family, and I came to see him as a personal friend, telling him that I did not want to do any such thing, and I said to him, "I want you, Mr. Charles Storrs, to put it only upon the ground of my being cross-examined. Tell your brother that I don't want him to sign that report until I have had an opportunity for cross-examination, in order that the facts which I have stated in print may be fully known." That is what I said. I went to see Charles Storrs as a friend, sir. I have given it as nearly as I recollect it.

Q. Do you know William B. Barber? A. Yes, sir.

Q. Did you have a conversation with him on the floor of the Produce Exchange within two or three months on the subject of Mr. Beecher? A. I don't recollect whether it was within two or three months or not. I had a conversation with him on the floor of the Exchange about the time of the Victoria Woodhull publication, and I rather think during the time of the investigating committee.

Q. Haven't you since the investigating committee? A. I may have done so; I don't recollect precisely about it now. I see him every day on 'Change when I am there and he is there.

Q. Didn't you tell him that Mr. Beecher was a damned perjurer and libertine? A. I don't know whether I told him he was a damned perjurer and libertine. I may have told him he was a perjurer and libertine, as he is.

Q. Did you tell Mr. Barber so? A. I don't recollect whether I told Mr. Barber so or not, sir.

stolen. Upon the trial the court admitted a conversation as to other iron than that charged in the indictment having been received by defendant, "as tending to show guilty knowledge." On the cross-examination the prisoner drew out facts in connection with the conversation thus admitted; and afterwards introduced testimony which was admitted to be true by the prosecution, tending to show that he was not guilty as to the other iron. The District Attorney was then permitted to give evidence tending to criminate the prisoner as to that other iron *Held*, error.

Mr. Tracy.—Have you ever threatened persons with danger to themselves if they should testify on behalf of the defendant? A. No, I have not threatened persons if they should testify on behalf of the defendant.

Q. Have you threatened any person? A. No, I have not threatened any person.

Q. Did you threaten Mr. Armour that you would crush him if he should testify against you on this trial? A. No, I did not threaten Mr. Armour that I would crush him.

Q. Do you know him? A. Yes; he is not the man to be crushed easily.

Q. Have you had any conversation with him on the subject of his testimony? A. I don't recollect having any conversation with him on the subject of his testimony. I had a conversation with him in regard to an interview that purported to come from him in the paper.

Q. Yes; did you state to him that you would crush him? A. No.

Q. Did you ever threaten to crush him for anything? A. No.

Q. Did you have any talk with him about his being a witness on this trial? A. I don't think I said anything to him about his being a witness; no, I don't think I did; he is not a man I would use such language to, Mr. Tracy.

Q. [Book produced and handed to witness] Now, Mr. Moulton, during your interview with Mr. Beecher on the night of 30th of December, '70, was there anything said by Mr. Beecher as to the truth or falsity of Mrs. Tilton's confession?

Mr. Fullerton.—Does your Honor permit them to go back for the fifth time to that interview of the 30th?

JUDGE NEILSON.—Well, it is on the ground that some question he thinks proper was inadvertently omitted.

Mr. Evarts.—This is a question excluded. We ask him whether at that interview there was anything said by Mr. Beecher concerning the truth or falsity of that confession. There is no rule of law that you can't do it for the fifth time, if you can do it the fourth. But this is the first time the question has been asked.

Mr. Fullerton.—The first time this question has been asked, but it is the fifth time the transactions of the 30th have been gone over, and my objection is that they can not return to it again.

JUDGE NEILSON.—Who were present?

Mr. Evarts.—It is an interview between himself and Mr. Beecher.

JUDGE NEILSON.—He has stated the conversation.

Mr. Evarts.—The conversation has been given; now we ask him whether there was anything said by Mr. Beecher concerning the truth or falsity, either way, of Mrs. Tilton's accusation.

JUDGE NEILSON.—We will allow that.

Mr. Beach.—Do you mean in direct terms, or do you mean by implication?

Mr. Evarts.—We ask the question.

Mr. Beach.—It may be necessary to go over the whole interview for the purpose of telling whether anything was said in regard to its truth or its falsity?

JUDGE NEILSON.—Now read the question, Mr. Stenographer.

[The last question by Mr. Evarts read by the stenographer.]

Mr. Beach.—I submit that that question calls upon the witness to give a judgment or construction in regard to the conversation which he has already detailed.

Mr. Evarts.—This is a cross-examination.

Mr. Beach.—If it is a cross-examination, they can't ask him to give a judgment as to the meaning of the language which was used, and it may impose upon the witness the necessity of seeing or referring to the testimony which he has given relating to the details of that conversation.

Mr. Evarts.—We are cross-examining this witness, and we do not like to have suggestions made to him as to what may be a necessary answer for him to make.

JUDGE NEILSON.—Still, you are sensible of the fact that you are allowed to go back to it after having exhausted the interview.

Mr. Evarts.—We have closed our cross-examination in general now, and we are closing up the points that are to be considered.

Mr. Beach.—My suggestion was that the question should call for the witness to answer whether anything was directly said by Mr. Beecher in regard to the truth or falsity of that confession.

Mr. Evarts.—That is exactly what the question is,—whether at that interview anything was said by Mr. Beecher concerning the truth or falsity of the accusation?

Mr. Beach.—I think no one but the gentleman will perceive the difference between that question and that construction of it.

JUDGE NEILSON.—Take that last down as the question. It may be a modification of the other question.

[Question read by the stenographer.]

Mr. Evarts.—That interview of December 30th, 1870, is included in the question of course.

JUDGE NEILSON.—The accusation in what, in Mrs. Tilton's letter?

Mr. Evarts.—Yes, sir.

The Witness.—The only word that was said to me by Mr. Beecher in regard to Mrs. Tilton's confession, was at the foot of the stairs, when he asked me, "Have you seen the confession?" and I said I had, and he said, "This will kill me."

Q. That is all that was said? A. That is all that was said, sir. Now whether that is a denial or not, I don't know.

Mr. Tracy.—After the interview between Mr. Beecher and Mr. Tilton had closed that night, did Mr. Tilton say to you that all Mr. Beecher said touching the confession of his wife's adulteries was—did Mr. Tilton say to you that all the answer that Mr. Beecher said to him after what he had said to him was: "This is all a dream, Theodore"? A. Mr. Tilton told me that after he had spoken to Mr. Beecher, Mr. Beecher said, "This is all a dream, Theodore;" something like that.

Mr. Evarts.—Do you say that that is all the answer that Mr. Beecher made? A. He said that that was the answer that Mr. Beecher made. I remember that, sir; that is all I remember.

Q. Do you know Senator John C. Jacobs of this city? A. Yes, sir; I know him.

Q. Did you ever have any conversation with him at Albany at any time in regard to the Beecher-Tilton scandal? A. I don't recollect whether I did or not.

Q. Did you at Albany, in the Spring or Winter of 1873, during the session of the Legislature of 1873, in a conversation with Mr. Jacobs, where the Beecher-Tilton scandal was the subject of conversation, say to him that if this matter was ever investigated Mr. Beecher would prove to be all right? A. I don't recollect whether I did or not.

Q. Do you remember that you did not? A. If I had any recollection about it I would tell you.

Q. You mean to say, then, that you have no recollection? A. I have not any recollection about that.

Q. Have you a recollection of conversing with him on that subject? A. I think I did talk with Mr. Jacobs about it; yes, sir.

Q. In that conversation did you say anything in substance like what I have repeated? A. I think I carried the impression that Mr. Beecher was not a guilty man—I think so.

Q. And didn't you say, in substance, that whenever the truth of this matter was known, Mr. Beecher would prove to be an innocent man? A. I don't recollect that, sir. My impression with regard to what I have said, I have just given you.

Q. What was it? A. All I recollect—the impression that I gave him was that Mr. Beecher was not a guilty man.

Q. How did you give him that impression? A. I must have given it in words.

Q. Were the substance of the words by which you conveyed that impression to him that when the truth was known, or that when this matter was investigated, Mr. Beecher would prove to be an innocent man? A. I don't recollect those to be the words, or the substance of the words.

Q. Did you say anything on the subject of what the result would be of an investigation? A. I don't recollect that I did.

Q. Do you know Archibald Baxter? A. Yes, sir.

Q. Of this city? A. Yes, sir.

Q. Did you have any conversation with him touching the Woodhull scandal? A. Yes, sir.

Q. When was it? A. On 'Change; somewhere in the neighborhood of the publication.

Q. Soon after the publication? A. Yes, sir.

Q. What did you say to him about it? A. I don't recollect the precise language. I had two conversations with him.

Q. Did you say to him, in substance, that Mr. Beecher was not guilty of the charge made against him in the Woodhull publication? A. No, sir. I think when I was pressed by Mr. Baxter, I told him Mr. Beecher was a pure man.

Q. You told him Mr. Beecher was a pure man? A. Yes, sir; that I thought he was something of that sort.

Q. You say you were pressed by him. Didn't you volunteer to go to him? A. I volunteered the first time to go to him; the first conversation I had with him when I spoke to him about the Woodhull publication, in that conversation I told him Mr. Bowen was originally the author of the stories, that the stories originated with Mr. Bowen, that when Mr. Bowen had been asked to produce the evidence he had failed to do it, and that the differences between Mr. Bowen and Mr. Tilton had been settled; and about the Woodhull publication I said if it was true it was infamous, and if it was false it was diabolical, and if Mr. Beecher's life was not an answer to it, I did not choose to make any; and the second conversation, I think Mr. Baxter came to me about it, and pressed me concerning it with some questions, and I think I told him in substance—I denied the guilt of Mr. Beecher, and told him he was a pure man—something of that sort.

Q. Did you say this to Mr. Baxter, in substance, "If you will only be patient you will be convinced that Mr. Beecher is as good a man as you (Baxter) ever believed him to be"? A. I really don't recollect the conversation. I didn't give him an opinion adverse to Mr. Beecher.

Q. Do you say you did not use that language to him? A. If I had any means of recalling the language I would do it; but I can not recall the language.

Q. Will you say that you did not use that language to Mr. Baxter? A. No, sir; I have not any recollection about it. I gave him a very high opinion about Mr. Beecher, however.

Q Did Mr. Baxter ask you if you did not mean purity in a special sense? A. I don't recollect that.

Q. Did you make any reply? A. Make any reply to what?

Mr. Fullerton.—To what you don't recollect?

The Witness.—I could not.

Mr. Tracy.—Didn't Mr. Baxter say: "There are different meanings to the word pure. Do you mean that Mr. Beecher is pure in the ordinary sense of that word? Was he chaste? Had he broken the seventh commandment?" A. I don't recollect that; I guess I gave him an idea that he had not broken the seventh commandment.

Q. What did you say to him? A. I don't recollect.

Q. Did Mr. Baxter ask you this question? A. I don't recollect whether he did or not, but I gave him a very high opinion of Mr. Beecher.

Q. Will you say that he did not? A. If I had any recollection about it I would answer you.

Q. Will you say you have no recollection that he did not ask you this question? A. If I had any recollection about it I should, but I have not. I am giving you the impression I gave Mr. Baxter.

Q. I am asking you what Mr. Baxter asked you? A. If I could tell you I would.

Q. You can not tell? A. No, sir; I can not tell.

Q. What reply did you make to these questions? What reply did you make to Mr. Baxter? Did you not say in answer to these questions, "He is pure in that sense"? A. I don't recollect.

Q. "Not only is he now, but he always has been, a pure man, as

I believe." Did you say that to Mr. Baxter? A. I don't recollect the answer.

Q. Will you swear you did not make that reply to him? A. If I had any recollection about it I would give it to you. I don't understand how I can answer it any more positively than I am answering it.

JUDGE NEILSON.—He simply wants you to say whether you recollect or not. A. I have not any recollection of the form of the answer.

Q. Then you can not say he did not? A. I don't recollect those words, your Honor. The impression I gave him was that Mr. Beecher was a pure man.

Mr. Evarts.—We are entitled to have an answer, it seems to us. It is the usual course of examination.

The Witness.—If Mr. Baxter should say I did, I should say I did.

Mr. Evarts.—He can tell us whether he can say he didn't say it.

JUDGE NEILSON.—Can you say you did not use those words? A. I can not say I did not use those words.

Mr. Tracy.—Do you know Edward A. Biden? A. Yes, sir; I know him. I believe he is an elevator man.

Q. Is he a member of the Produce Exchange? A. Yes, sir.

Q. Have you had conversations with him touching the Woodhull story? A. I believe I have had, once or twice; yes, sir.

Q. When did you have those conversations? A. I think I have seen him about it about the time of the Woodhull publication.

Q. Where? A. On the Exchange.

Q. Did you speak to him on the subject of this scandal? A. Not at length; I avoided talking with him very long about it.

Q. You spoke to him on the subject? A. I believe so.

Q. Did you say to him: "It is false; there is not a word of truth in it, as far as Mr. Beecher is concerned"? A. I don't recollect that I used those words to him.

Q. Did you use anything in substance like that? A. I may have told him the story was untrue.

Q. Did you say it was untrue as far as Mr. Beecher was concerned? A. I don't recollect that.

Q. Did you say that there was not a word of truth in that? A. I don't recollect that neither.

Q. Did you use any such language in substance? A. I don't recollect that. I gave that impression to him, I think.

Q. Do you know J. Haynes Drake? A. Yes, sir.

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

Q. On the subject of the Woodhull publication? A. I believe I did, a short conversation with him.

Q. Where? A. On the Exchange.

Q. Did you say to him: (speaking of the Woodhull publication with reference to Mr. Beecher) "It is a damned mess of women's fables"? A. No, sir; I don't recollect using that language.

Q. Did you use anything in substance like that? A. No, sir; I will tell

you what I did say. I said if the story was true it was infamous, and if it was false it was diabolical, and if Mr. Beecher's life was not an answer to it I didn't choose to make any; and that is the substance of what I said to Mr. Drake.

Q. Do you remember that you did not say to him, "It is a damned mess of women's fables"? A. I think I should swear to the best of my recollection that I did not use that language.

Q. Did you use anything in substance like that? A. Not quite as weak as that; no, sir.

Q. Did Mr. Drake say: "It would take a good deal of such testimony as that to convince me that Mr. Beecher is criminally guilty"? A. I don't recollect that he did.

Q. And in reply, did you say: "As to the criminality there is not in it a shadow of truth, and if Mr. Beecher's career is not a sufficient refutation to slanders from such a source, you don't deserve to have your mind satisfied"? A. I said the latter part; I don't remember the other part. The impression I gave to him was this, that if Mr. Beecher's life was not an answer to it I didn't choose to make any to him.

Q. Didn't you say as to the criminality, "There is not a shadow of truth in it"? A. I don't recollect having said that.

Q. Will you swear you did not say that? A. I will swear that I have not any recollection about it.

Q. Will you swear you didn't say it? A. How can I swear I didn't say it if I can not recollect what I said? [To Judge Neilson.] Your Honor, am I answering properly, or not?

JUDGE NEILSON.—I think you have answered the question fairly.

Mr. Tracy.—Did you say, in substance, so? Did you substantially use the words, "As to the criminality there is not a shadow of truth in it? A. I don't recollect it.

Q. Anything like that, in substance? A. I can give you the substance of what I recollect, as near as I can recollect it.

Q. Do you know William B. Barber? A. Yes, sir; I said I did a good while ago.

Q. Is he a member of the Produce Exchange? A. Yes, sir.

Q. Did you have a talk with him on the subject of the Woodhull publication? A. Yes, sir.

Mr. Morris.—You have been all over that, Mr. Tracy.

Mr. Tracy.—Oh, no, sir.

Q. How soon did it occur after the publication? A. I think on the same day it happened.

Q. Did you say to him, speaking of the Woodhull publication, "There is not a particle of truth in the statement as against Mr. Beecher"? A. No, sir; I did not say that to him; I recollect what I did say.

Q. Didn't you add, "Mr. Beecher is as pure a man as ever lived"? A. No, sir, I didn't add that to him. Shall I tell you what I said to him? I can give you that conversation.

Mr. Fullerton.—No, they don't want you to tell that.

The Witness.—[To Judge Neilson.] Can I not tell, your Honor, what I said.

JUDGE NEILSON.—By-and-by you will get a chance.

Q. Do you know A. H. Davis? A. I don't recollect him now.

Q. Of the firm of Barling & Davis? A. Yes, sir; I know him pretty well.

Q. Did you have a talk with him concerning the Woodhull publication? A. I don't recollect whether I did or not.

Q. At the Custom House and at your place of business? A. I don't recollect.

Q. Did he ask you, "What does this Woodhull scandal mean?" Is there any truth in it? A. I don't recollect speaking to him upon the subject at all.

Q. And did you reply, "There is not a word of truth in it. I think it is a shame, after Mr. Beecher has lived so long, that anybody should believe it"? A. I don't recollect having met Mr. Davis.

Q. Did you have any such conversation with him, in substance? A. I don't recollect having met him on the subject.

JUDGE NEILSON.—Or having had such a conversation? A. No, sir; nor having had such a conversation.

Mr. Tracy.—Do you know Reuben W. Ropes? A. Yes, sir.

Q. Did you have any conversation with him about November, 1872, touching the Woodhull publication? A. I don't recollect whether it was in November, 1872. My impression is that I had a conversation with him coming up Wall-street ferry hill.

Q. Yes, sir; that is the place? A. Well?

Q. Did he say to you: "I have never happened to meet you to speak with you since the affair of the Beecher-Woodhull publication. Did you go to Mr. Beecher's house with a pistol and demand a paper, as stated in Woodhull & Claflin's paper"? and did you say in answer to that, "It is a damned infernal lie"? A. I don't recollect whether I swore in his presence or not, but that is substantially what I said to him.

Q. And did he add, "You happen to know more of this case than I do. Now, is there any truth in regard to the scandal in regard to Mr. Beecher"? and did you reply, "They are a pack of infernal lies"? A. I don't know whether I used that language or not, but I guess I gave Mr. Ropes the impression that Mr. Beecher was perfectly pure, and that the stories were lies.

Q. You said so, in substance? A. I gave that impression, whether I said it in substance. I don't remember the words.

Q. Do you know Edwin A. Studwell? A. A man that used to live South—a Florida improvement man?

Q. Yes, sir. A. I don't know him very well. I have met him; I don't recollect having met him on this subject.

Q. Did you see him in Florida when you were there in 1871? A. Yes, sir.

Q. And talked with him? A. Yes, sir; that was before the Woodhull story.

Q. Yes, sir; in 1871? A. Yes, sir; in March, 1871, was it not? Yes, sir; I met him in March, 1871, in Jacksonville.

Q. Did you have a talk with him in Florida in the spring of 1871, in regard to the stories about Mr. Beecher and Mrs. Tilton? A. I don't recollect that I did.

Q. Did you say to him that you had all the papers in the case and letters relating to it, and that it was all a damned slander against Mr. Beecher? A. I don't recollect whether I did or not.

Q. Did you say anything in substance like that? A. I don't recollect having any conversation with Mr. Studwell about it.

Q. Did you say anything to him on that subject, leaving out the oath, with the exceptions I have stated? A. Very likely I had that in if I talked to him. I don't remember having talked to him at all.

Q. Do you know Charles H. Cadwell? A. What is his business; provision man—is that it?

Mr. Shearman.—115 Broad-street?

A. I don't know where his office is. I remember Mr. Cadwell, who used to be with Charles Parker. I don't know whether that is the man you refer to or not.

Mr. Tracy.—That is the man. A. I don't remember having talked with him about it; I may have done so.

Q. You say you don't remember talking with him on the subject of the Woodhull scandal? A. I don't remember.

Q. Within a short time after its publication? A. I don't recollect.

Q. On a train of cars going to Boston? A. I don't recollect that I did. I recollect going on a train of cars to Boston, but I don't recollect talking with him about it.

Q. Shortly after the Woodhull publication? A. I don't recollect whether shortly after the Woodhull publication or not.

Q. On your way to Boston, speaking of this talk about Mr. Beecher in the Woodhull publication, did you say there was no truth in any of the rumors respecting Mr. Beecher? A. I don't recollect it.

Q. Did you say anything to him in reference to that? A. I don't recollect that I did; I recollect that I didn't say anything against Mr. Beecher to him, if that will answer you.

Q. Did you tell him in substance this: that "If Mr. Beecher should the next day tell Plymouth Church all the facts pertaining to his life, there would not be a single person in it, who could impute a single blemish to the purity of their pastor"? A. I don't recollect having used that language.

Q. Did you use anything in substance like that? A. I don't recollect any conversation with Mr. Cadwell at all on the subject.

Q. Are you willing to say you did not say this to him? A. I am not willing to say I did not. I say I have not any recollection of talking with Mr. Cadwell. I would not have any objection to telling exactly what I did say, if I remembered it.

Q. Do you know Mr. Halliday, assistant pastor of Plymouth Church? A. Slightly; yes, sir.

Q. Did you have any talk with him on the subject of the Woodhull publication? A. I don't know whether it was about the Woodhull publication

or not. He came to me after the deacon's meeting, and I talked with him about the stories against Mr. Beecher. Can you give me the date of the conversation?

Q. About November 23d, 1872—December or November. A. Very likely there was some talk about the Victoria Woodhull publication.

Q. At your house? A. Yes, sir.

Q. Did you tell him: "Mr. Halliday, I know all about this affair, if anybody knows"? A. I don't recollect the language. I conveyed to him the impression that Mr. Beecher was guiltless of any charge against him.

Q. I understand that; but I ask you definitely the question? A. I can not tell you definitely.

Q. Did you tell him: "I know all about this affair if anybody knows"? A. I don't recollect that.

Q. Do you recollect that you said that to him in substance? A. No, sir; I don't recollect that I said it in substance.

Q. And did you add, bringing your hand down on the table, "I know he is guiltless"? A. I don't know whether I brought my hand down on the table at that point or not; but I know, when I brought it down, I said "It was a damned shame for the deacons to be digging into a scandal that had been settled between the parties."

Q. Did you say that he was guiltless? A. I think I did; yes, sir.

Q. Did you add in that conversation with Mr. Halliday, "I am not a member of your church, but my wife is. Do you suppose that if Mr. Beecher is a bad man I would allow him to sit there at my table with my wife"? A. My impression is that I didn't say that part.

Q. Your impression is that you didn't say that part? A. Yes, sir, my impression is that I didn't.

Q. Will you swear you didn't? A. Yes, sir; I will swear that my impression is that I didn't.

Q. Did you or not say it? A. I am telling all I know about it—my impression about it.

Q. Will you say you didn't? A. How can I say that when I don't recollect? I am giving you my best recollection.

Q. Can you say you didn't? A. My recollection is not—that I didn't; that is my best recollection, that I didn't.

Q. Are you ready to swear that you didn't say those words? A. I am ready to swear that to the best of my recollection I didn't say those words. Is that a correct answer, Mr. Evarts?

Mr. Evarts.—Answer according to your conscience.

The Witness.—My conscience directs the answer, but is the phraseology correct?

Mr. Tracy.—Did you add further: "Why, Mr. Halliday, Mr. Tilton is friendly to Mr. Beecher." Did you say that? A. I don't recollect whether I did or not.

"Q. When he (Tilton) came back from his campaign in New Hampshire on the morning after election, he sat precisely where you did on the sofa, and when Mr. Beecher came through that door he (Tilton) sprung to his feet and

went to him and, with both hands, shook hands with him in *this* way (showing how), and expressed his sorrow and intense regret at the appearance of that, and disclaimed all knowledge of it, and offered to do anything he could to repair the mischief?" A. Something of that sort I said to him. I don't remember the two hands part of it.

Q. Did you say anything in substance like it? A. How is that?—taking Mr. Beecher's hands in both of his?

Q. Yes, sir. A. I don't recollect saying that, but I think very likely I recited to him the substance of the interview between Mr. Beecher and Mr. Tilton in November.

Q. Substantially you stated that? A. Yes, sir, substantially like that—something like it—and I think I told him that Mr. Tilton was friendly to him; I think so.

Q. Did you also say this [referring to the Woodhull publication]: "I have denied this. Tilton denied it. Mrs. Stanton has denied it," and didn't you name another person who had denied it, and then add, "All have denied it but Pauline Davis, and she is in Europe and can not deny it, because of her absence. Now, what more can be done?" A. I think I said something like that.

Q. Did you, in substance, say that? A. Something like that.

Q. Do you know Mr. Swan, of the firm of R. Moore & Co.? A. I don't recall the name.

Q. You know Mr. Swan? A. I know Mr. Swan of Grinnell, Minturn & Co.

Q. Did you meet him in Armour & Co.'s. A. I don't know the name of Mr. Armour's partner, whether it is Mr. Swan or not.

Q. Do you know Mr. Armour's partner? A. I know him by sight; I don't remember his name.

Q. Did you have a talk with him on the subject of your difficulty in this conversation? A. The difficulty is in recollecting the name of Mr. Swan.

Mr. Tracy.—I will try if I can identify him any more.

The Witness.—I am almost ashamed to say I don't know that gentleman's name, because I know him so well.

Mr. Tracy.—Do you know the man I refer to as Mr. Swan? A. I don't recollect.

Q. Do you know one of that name? A. I don't know that I know of one of that name.

Q. Do you know a Mr. Swan with whom you have talked about your difficulties? A. I really don't know a Mr. Swan with whom I have talked, and if this partner of Mr. Armour's is the Mr. Swan you mean, I don't remember of having talked with him. Perhaps you will get along with that.

Q. Do you know a Mr. Swan with whom you are on terms of intimacy? A. No, sir; only an acquaintance of Grinnell, Minturn & Co.'s. I have known him a great many years.

Q. Did you talk with him about your difficulties with Mr. Beecher? A. No, sir, not that I recollect. There is no Mr. Swan with whom I have talked that I know of.

Mr. Evarts.—We will find out more about Mr. Swan.

The Witness.—Well!

Mr. Evarts.—It is the hour of adjournment. I am very happy to state to your Honor that we have very few matters to go on with in reference to this witness.

Mr. Fullerton.—We think this matter ought to be concluded this afternoon.

Mr. Evarts.—We think not. We want to adjourn at the usual hour.

Mr. Beach.—I agree with your proposition.

The Witness.—I do not.

Mr. Fullerton.—That proposition must be mine then, I think.

Mr. Beach.—Yes, sir.

Mr. Fullerton.—I think we ought to finish the cross-examination of this witness to-day; I think it ought to be concluded to-day. Your Honor was disposed to conclude it on Friday, and they said they would not probably occupy the whole of the day.

JUDGE NEILSON.—Still, I make a good deal of allowance for the circumstance that Mr. Tracy was called into the cross-examination without preparation, and he might not, therefore, be able to proceed readily as he otherwise would.

SIXTEENTH DAY, JANUARY 26, 1875.

FRANCIS D. MOULTON recalled, and the cross-examination continued.

Mr. Tracy.—Mr. Moulton, will you hand to us now any letters that you have from Mr. Beecher which have not already been given in evidence? A. All letters that I have, sir?

Q. Yes, sir; all the letters that you have from Mr. Beecher?

Mr. Morris.—I will select them out, those that I have here.

Mr. Tracy.—With the envelopes, if you have them, in which they were sent.

Mr. Beach.—I think, your Honor, we ought to inquire of the counsel for what purpose they demand the possession of these letters. They are addressed to Mr. Moulton, and some of them we may want to use in the course of the trial.

Mr. Evarts.—We will hand them back; we expect to restore them to the hands from which we receive them.

JUDGE NEILSON.—They expect to restore them for use.

Mr. Evarts.—Yes, sir. They are papers which do not belong to the plaintiff, but belong to the witness, and which he brings here under subpœna.

JUDGE NEILSON.—While you are looking for the papers I would like to say to Judge Porter, whom I am very glad to see with us this morning, that while continuing this cross-examination of Mr. Moulton by Mr. Tracy, on the ostensible ground that to adjourn the cross-examination would break the continuity of the testimony, the real motive was lest the judge should, some of his work being unfinished, be tempted to return sooner than he ought. Do you find the papers, gentlemen?

Mr. Morris.—Yes, sir.

Mr. Evarts.—We have some of them.

Mr. Morris.—We are marking them as fast as we can.

Mr. Tracy —I will go on with some other subject. There is one question, your Honor, which I asked last night, to which I did not receive an answer on account of the inability to identify the proposed witness.

The Witness.—I have identified the witness.

Mr. Tracy.—I should have taken that up this morning, but I have not the book here.

The Witness.—Mr. Swan is the one.

Mr. Tracy.—Yes, Mr. Swan.

The Witness.—I sent over to New York this morning about it. I found out that the partner of Mr. Armour was Mr. Swan.

Mr. Tracy.—We will not talk about that, Mr. Moulton, until I get the book here, so we can close it when we enter upon it.

The Witness.—All right, sir.

Q. I hand you a letter dated February 13th, 1871, which I ask you to examine. [Handing witness a letter.] Did you ever see that letter before, Mr. Moulton? A. Yes, sir; I think I have.

Q. Where did you first see it? A. It was brought to me by Mr. Beecher to my house in Clinton-street, I believe.

Q. Was it the subject of conversation between yourself and Mr. Beecher? A. Yes, sir.

Q. Was Mr. Tilton present at that conversation? A. I don't think he was.

Mr. Tracy.—I will introduce that letter.

Mr. Beach.—What is it? Let us see it. [Taking the letter.]

Mr. Shearman.—It is a note written by Mr. F. B. Perkins to Mr. Beecher

Mr. Tracy.—Mr. Perkins is the nephew of Mr. Beecher, is he not? A. Mr. Beecher told me he was.

Mr. Shearman.—[Reading.]

'BOX 44, STATION D,
"MY DEAR UNCLE: "N. Y., Feb. 13, '71

"After some consideration I decide to inform you of a matter concerning you.

"Tilton has been justifying or excusing his recent intrigues with women by alleging that you have been detected in the like adulteries, the same having been hushed up out of consideration for the parties.

"This I *know*. You may of course do what you like with this letter. I suppose such talk dies quickest unanswered. I have thought it best to let you know what is being said about you, and by whom, however; for whether you act in the matter or not, it has been displeasing me to suppose such things done without your knowledge. I have thought other people base; but Theodore Tilton has in this action dived into the very sub-cellar of the very back-house of infamy.

"In case you should choose to let him know of this, I am responsible, and don't seek any concealment.

"Very truly yours, "F. B. PERKINS.

"To REV. HENRY WARD BEECHER.

"P. S.—I can't say Tilton said 'adulteries.' He was referring to his late intrigues with Mrs. ——— and others, however he may have described them What I am informed of is the excuse by implicating you in 'similar' affairs. "F. B. P."

[Letter marked "Exhibit D. 46."]

Mr. Shearman.—I will say to your Honor that the name is mentioned in full here [referring to the second line of the postscript], but I have complied with your Honor's direction.

Mr. Tracy.—You say that yourself, Mr. Tilton and Mr. Beecher consulted as to the answer that should be made to that letter? A. I didn't say that, sir.

Q. Ah! I misunderstood you. Was that the fact? A. No, sir.

Q. Were you present when the subject of what answer should be made to it was discussed and considered? A. Yes, sir; with Mr. Beecher alone.

Q. Not with Mr. Tilton? A. Not with Mr. Tilton.

Q. Did Mr. Tilton take any part in the discussion of the answer that should be made to it? A. I told Mr. Beecher that I would submit his answer to Mr. Tilton, and he promised to wait until I could consult Tilton about it, but he sent the answer, I found afterwards, before I saw Mr. Tilton.

Q. Did you see Mr. Tilton and consult with him in regard to the answer? A. I believe I did; my recollection is that I did.

Q. Did he dictate an answer for Mr. Beecher to that letter? A. No, sir; he told me substantially what he wanted to be his answer.

Q. And you took it down? A. Yes, sir; I wrote it down.

Q. At the time? A. I don't remember whether it was at the time or not. I wrote down substantially what he said.

Q. [Handing a book to the witness.] Look at that book and see if it refreshes your memory on the subject? A. I remember substantially what was in the book. [The witness refers to the book.] It does not particularly refresh my memory.

Q. [Handing letter to witness.] Is that Mr. Beecher's answer to the note of Mr. Perkins? A. Yes, sir; I believe that is the answer, and there is also a note there that Theodore Tilton——

Mr. Tracy.—Dictated to you? A. What he expressed or dictated, I wrote; I do not remember whether he dictated that or not.

Q. You wrote it down from his dictation? A. From what he told me; I don't think I wrote from his dictation.

Q. And that is what he thought the answer should be? A. Yes, sir; that is substantially what I suppose, he thought the answer should be.

Mr. Shearman.—The following is the answer which Mr. Beecher wrote:

"FEBRUARY 23, '71.

"MY DEAR FRED. Whatever Mr. Tilton formerly said against me, and I know the substance of it, *he has withdrawn*, and frankly confessed that he had been misled by the statements of one who when confronted, backed down from his charges.

"In some sense I am in part to blame for his indignation. For, I lent a credulous ear to reports about *him*, which I have reason to believe were exaggerated or wholly false.—After a full conference and explanation, there remains between us no misunderstanding; but, mutual good will and reconciliation have taken the place of exasperation.

"Of course, I shall not chase after rumors that will soon run themselves out of breath if left alone. If my friends will put their foot silently on any coal or hot embers and crush them out, *without talking*, the miserable lies will be as dead in New York in a little time as they are in Brooklyn.

"But I do not any the less thank you for your affectionate solicitude and your loyalty to my good name. I should have replied earlier but your letter came when I was out of town. I had to go out again immediately.

"If the papers do not meddle this slander will fall still-born—dead as Julius Cæsar, If a *sensation* should be got up of course there are enough bitter enemies to fan the matter and create annoyance, though no final damage.

"I am your affectionate uncle, H. W. B."

Mr. Shearman.—The note which Mr. Tilton prepared as a substitute for this, to be sent to Mr. Perkins, is as follows, endorsed on the back of the same letter in Mr. Moulton's handwriting:

"An enemy of mine as I now learn poisoned the mind of T. T. by telling him stories concerning me. T. T. being angered against me because I had quoted similar stories against him which I had heard from the same party, retaliated. Theodore and I through a mutual friend were brought together and found upon mutual explanations that both were the victims of the same slan derer. Theodore has taken pains to deny to parties that"

[Letter marked "Exhibit D, 47."]

Mr. Fullerton.—Will your Honor permit the witness to step to the door? A messenger wishes to see him.

JUDGE NEILSON.—The suggestion is that the witness step to the door.

Mr. Evarts.—We ask him to wait for a moment, not for any new subject, but only to see whether we have read the whole of this.

The Witness.—Shall I read it?

[Mr. Shearman hands the letter to the witness.]

The Witness.—That is my handwriting.

JUDGE NEILSON.—Can you read it?

Mr. Evarts.—It has been read.

Mr. Tracy.—Do you remember about it now, on looking at it? A. No, sir; I don't remember whether that sentence was concluded or not. That is what you are asking me about—the last sentence?

Mr. Tracy.—Yes, sir.

The Witness.—[To Judge Neilson.] Shall I step to the door now, your Honor?

JUDGE NEILSON.—Yes, sir.

[The witness retired.]

Mr. Fullerton.—May it please your Honor, I suppose the witness will not be able to return to complete his cross-examination, or to subject himself to the re-direct examination. The sudden and unexpected death of his mother makes it necessary that he should, I suppose, give attention to his family, which is now afflicted. It occurred a few minutes since.

JUDGE NEILSON.—His mother died this morning?

Mr. Fullerton.—Yes, sir.

JUDGE NEILSON.—Has he just learned the fact?

Mr. Fullerton.—He has not learned it yet.

JUDGE NEILSON.—Then, gentlemen, the examination will be deferred.

Mr. Evarts.—During the last moment of the witness' examination the intelligence was conveyed to my learned friend, Judge Fullerton, not having yet reached the witness, and he spoke to me on the subject, and the result is this communication to him, which, of course, will require that your Honor and ourselves should accede to whatever his wishes may be in regard to it.

Mr. Fullerton.—I suppose it had better be deferred to some future day in the course of this trial, when he can return.

JUDGE NEILSON.—Of course that will be very proper.

The witness here returned into court, and said: Your Honor, I have just heard of my mother's death, but I will wait to finish this examination if it does not take too long.

JUDGE NEILSON.—It is agreed that it shall be deferred to some future time.

[The witness takes the witness stand.]

Mr. Fullerton.—The witness seems to think he had rather finish it now, so as not to be under the necessity of returning.

JUDGE NEILSON.—It will be necessary that the witness shall return, perhaps, in a day or two. I think this had better be deferred

Mr. Evarts.—If your Honor please, we suppose that the entire exhaustion on one side or the other of this witness can not be finished, and that being so, we would prefer that it should cease now, rather than at another time.

Mr. Beach.—I have made a request to the witness, that he should overcome his private and personal grief, out of regard to a public duty. I think it is desirable that his cross-examination should close, and he has yielded to my request, and we will conclude the examination.

JUDGE NEILSON.—Have you agreed about the re-direct examination, when that shall be concluded?

Mr. Shearman.—Mr. Beach says he will go on with the re-direct examination also.

Mr. Tracy.—The witness may not be aware of the length of time that his examination may continue.

The Witness.—I will wait, sir, until it is finished.

Mr. Tracy.—Now, Mr. Moulton, do you know how Mr. Tilton came by the copy of Mr. Beecher's letter of Feb. 5, 1872? A. Do I know how he came by a copy of it?

Q. Yes, sir. A. I do not. What is the letter of Feb. 5, 1872?

Q. It is the long letter of Feb. 5, 1872? A. I don't know.

Mr. Shearman.—It is the one that refers to the church, the newspapers, and the book. ["Exhibit No. 19," p. 382, *ante.*]

The Witness.—Let me look at it, and perhaps I can tell you. [Mr. Shearman hands witness the book, which he examines.] I don't know how he came by a copy of it.

Q. Did you give him a copy of it? A. No, sir; I never gave him a copy of it.

Q. Did you ever permit him to make a copy of it? A. I don't remember of his having taken a copy in my presence; I think I read the letter to him, or may have handed it to him to read.

Q. Could he have made a copy of it in your presence without your knowing it? A. I don't know; I don't recollect that he ever made a copy of it in my presence.

Q. That is not exactly the question that I ask? A. I don't think he could.

Q. Was he not a stenographer, a short-hand writer? A. Yes, sir; a short-hand writer.

Q. Was it not his habit to take a copy of these papers in short-hand? A. No, sir; I don't recollect that it was.

Q. He could not have taken it in short-hand in your presence, when you were reading it, without your knowing it? A. Not without my knowing; I might not recollect now that he did.

Q. Do you mean to say you never intentionally permitted him to have a copy of that letter of February 5, 1872? A. I never intentionally permitted him to have a copy of it.

Q. Or to take a copy of it? A. Or he to take a copy of it; I may have read it to him, or may have handed him the paper, and if he wanted a copy of it, I probably would have allowed him to take it.

Q. You think you would have allowed him? A. I might have.

Q. Do you recollect of handing it to him? A. I don't recollect of handing it to him; I may have done so, however, for him to read.

Q. Can you tell us how he obtained a copy of the Beecher letter of June 1, 1873? A. I can not tell. I read him that letter.

Q. When did you read it to him? A. I don't know. I may have read it to him on Sunday. I don't recollect when I left it with him precisely.

Q. Did you leave it with him? A. I don't think I did.

Q. Do you recollect whether you did or not? A. I don't recollect whether I did or not.

Q. How did he obtain a copy of Mr. Beecher's letter of February 7, 1871, addressed to you? A. What was that letter?

Q. That is the letter where three letters were written all on the same day —two by Mr. Beecher, and one by Mr. Tilton. A. I know that there were three letters dated on the same day. Which is the one you refer to?

Q. I refer to Mr. Beecher's letter to you. How did he get a copy of that letter? A. I don't know how he got a copy of it.

Q. You never gave him a copy of it? A. I never recollect doing so.

Q. Nor permitted him to make it? A. I don't know that I did. I was in the habit of showing him letters.

Q. Were you in the habit of leaving them with him? A. No, sir; I was not in the habit of leaving them with him.

Q. Do you remember of leaving Mr. Beecher's letter with him? A. I don't recollect having left any letter with him; I may have done so though.

Q. Do you know how he obtained a copy of Mrs. Hooker's letter to Mr. Beecher which Mr. Beecher left with you? A. My impression is, Mr. Beecher gave him the letter itself.

Q. Do you know that fact? A. My recollection is that he did; my impression, rather, is that he did. We were all in consultation about it together; and that is my impression that Mr. Beecher gave him that letter—showed it to him.

Q. And left it with him? A. And left it with him.

Q. Did you get it from Mr. Tilton or from Mr. Beecher? A. I forget whether I got it from Mr. Tilton or Mr. Beecher; but they were both consulting together about the letter of Mrs. Hooker.

Q. Did Mr. Tilton make a copy of it that day? A. I don't recollect.

Q. Was it left with you that day? A. I don't recollect; I think it was given to Theodore Tilton; I won't be certain, but I think it was.

Q. Mrs. Hooker's letter of November 1st, 1872, I am talking about now. A. The whole of the Hooker correspondence, whatever it was, was the subject of discussion between Theodore Tilton, Mr. Beecher, and myself; it was no more between myself and Mr. Tilton than between Mr. Beecher and Mr. Tilton; whether he made a copy of it, I don't know; I certainly was present at part of the interview.

Q. Do you know when that interview was? A. I can not remember the date. It was about the time that——; it was before Mrs. Hooker came to town.

Q. You don't remember the date? A. No, sir; I don't remember the date; the date Theodore Tilton went up-town.

Q. I didn't ask you that. A. I am trying to fix it for you.

Q. Was Thomas K. Beecher's letter present at that time? A. My impression is that it was; I won't be certain about it.

Q. And you don't know whether Mr. Beecher left these letters with you that day, or whether he left them with you, and you gave them to Mr. Tilton? A. We were all together; I don't recollect whether he gave them to him or gave them to me.

Q Who took these papers at the breaking up of the interview, you or Tilton? A. My impression is it was Tilton; I won't be certain about it; Mr. Beecher may have taken some at that interview, and brought them back—something of that sort.

Q. Do you mean to say you have no recollection on the subject? A. I have only an impression. My impression is Mr. Beecher handed the letter himself; that is my impression about it. He was certainly as much a party to the Hooker business as I was.

Mr. Tracy.—I am not asking that.

The Witness.—I am only trying to give you the truth of the matter.

Q. Now, of the numerous letters and papers that you have written for publication by Mr. Beecher, the letters that you have submitted to him for publication, which have not been published by him——

The Witness.—Letters which I have submitted to who for publication?

Mr. Tracy.—Letters or statements to Mr. Beecher. During this controversy of four years, will you name any paper or document that was not either written by Mr. Tilton, or prepared by you in his immediate presence prior to the time of your consultation with Gen. Butler in 1874?

Mr. Fullerton.—We object to that. They have gone over each letter and each statement, and each document, with great particularity in that respect, and asked questions in regard to the individual documents; so that exhausts the subject.

Mr. Evarts.—This question is intended to exhaust that subject undoubtedly. Nothing has been overlooked.

Mr. Fullerton.—I object to the subject being exhausted after it is exhausted.

Mr. Evarts.—I think not. We want to know if there is any letter that was not written in the manner that this question asks; if so, we would like to see it.

Mr. Beach.—That question calls for the witness to give a summary of the testimony already given, and it is not within the recollection or power of any man to do it.

The Witness.—I can not do that.

Mr. Evarts.—We asked him to point out another letter.

JUDGE NEILSON.—It is a very long question, and has reference to a great number of papers, each paper having been already the subject of examination.

Mr. Tracy.—Most of them have been.

JUDGE NEILSON.—I do not conceive the witness could well or safely answer it either way. At any rate, upon the ground that you have been over the individual papers, each speaking for itself, and the testimony in connection with each, I rule out the question.

Mr. Evarts.—Your Honor will note our exception.

Mr. Tracy.—Have you any paper in your possession, Mr. Moulton, draft or copy, which has not been prepared by Tilton, or by you in his immediate presence?

Mr. Fullerton.—We make the same objection.

Mr. Tracy.—I mean papers that were intended for Mr. Beecher either to publish or sign.

JUDGE NEILSON.—Do you mean other than those which have been produced?

Mr. Tracy.—Yes.

JUDGE NEILSON.—He may not understand the question.

The Witness.—I have not any paper that I have not sought to produce.

JUDGE NEILSON.—He means have you any others than those that have been produced?

The Witness.—I have not that I know of.

Q. Now, Mr. Moulton, I call your attention to this book again. I call your attention to the proposed statement. [" Exhibit No. 34," *ante*, p. 431.] A. " Moulton's proposed statement for Mr. Beecher," sir?

M. Tracy.—Yes, sir. A. Yes, sir.

Q. That is the proposed statement that you asked him to make after the Bacon letter, admitting an offense? A. Which I submitted to him for his judgment, sir, after the Bacon letter.

Q. Now, sir, did you offer him on that occasion that if he would make that statement, admitting an offense, you would sustain it, and would burn all the papers that you had in your possession? A. I don't think I stated it in that way, sir. I said that—if you will allow me to tell what I did say to Mr. Beecher, according to the best of my recollection—is that in order?

Mr. Evarts.—No.

The Witness.—I will undertake to state exactly what I said, to the best of my recollection.

Q. Will you give me the book? I think I can frame a question. Have you read what appears on page 305? [Paxon's Pamp.] A. I have not; no.

Q. Just refresh your memory by that. [Handing book to witness.] A. I think very likely; this suggests to me that I may have said something of that sort, sir.

Q. Very well, I will ask you—just give me the book and I will frame my question.

The Witness.—On July the 5th that was; there are two different interviews; I didn't say that at the first interview, sir.

Q. After you had presented to him this proposed statement which you asked him to make, which is "Exhibit 34," [p. 431, *ante*] did you not on July 5th say to Mr. Beecher——

JUDGE NEILSON.—Mr. Tracy, he didn't say he asked him to make it; perhaps you had better amend the question.

Mr. Tracy.—I understood that he had said that before.

JUDGE NEILSON.—No, the witness don't say he asked him to make it.

The Witness.—I said I submitted it to his judgment.

Mr. Tracy.—Very well, after you had submitted this proposed statement to Mr. Beecher for him to make? A. No; I said I thought it was best; I thought it would be a good thing for him to do to make that statement—not for him to make.

Q. Now, I am only calling your attention to the time it was submitted; now, after that I asked you? A. I am only asking that the question be properly framed, Mr. Evarts.

Q. Did you not say to him that Mr. Tilton had committed himself to a settlement if that is said, and "if it is said and he demands anything further, so far as I am concerned, I shall destroy every paper and everything I have bearing on the subject, and if he wants to open the thing he will have to open it without any aid or confirmation from me"? A. I think very likely I said something of that sort to him, sir.

Q. In the course of your direct examination you have referred—there has been introduced a letter from Mr. Beecher to you, referring to Dr. Storrs and to his action during the council;* did you have a conversation with Mr. Beecher just prior to the writing of that letter by him in which you stated to him in substance, that Dr. Storrs had written a letter to Mr. Tilton, advising him in advance of what he was to say in his speech, and saying that he should have to defend Mr. Beecher, and appear to criticize him, Tilton, severely? A. I don't think I mentioned any letter, sir.

Q. Well, did you say that Dr. Storrs had said that to Tilton? A. I said that I had understood so—at least not said it to Mr. Tilton. I beg pardon.

Q. You understood —— A. That some such message had been sent.

Q. That Dr. Storrs had said that of Tilton? A. Yes, sir.

Q. Now, didn't Dr. Storrs say, or didn't you report to Mr. Beecher, that Dr. Storrs had said that he had communicated to Mr. Tilton the fact that he should criticise Mr. Tilton in his speech and defend Mr. Beecher in the council, or appear to defend him? A. I said to Mr. Beecher that some such notice as that had been sent to Tilton; some such message; he had received some such communication from somebody, simply in the nature of hearsay, sir; I had no authority for that particularly, except the person who told me.

Q. And didn't you say to Mr. Beecher that that was an act of insincerity

* The letter referred to is "Exhibit No. 30," p. 411, *ante*.

on the part of Dr. Storrs? A. I think I said if that was true it was insincere; I thought it was.

Q. You said if that was true of Dr. Storrs you thought it insincere? A. Yes, sir; I did, too.

Q. How long did that conversation between you and Mr. Beecher precede the writing of this letter? A. I really don't recollect.

Q. Well, was it a day or two? A. I don't recollect, sir; I don't remember that it preceded it even; I don't remember even that it preceded it.

Q. Didn't you, in talking with Mr. Beecher, quote Dr. Storrs as saying that while he should attack Mr. Tilton, that that would be all flummery? A. No; I did not use any such language as that, that that would be all flummery.

Q. What did you say? A. I don't recollect, sir, precisely what I did say; I don't think I said anything like that. I think I have stated substantially what I said to Mr. Beecher—all that I recollect.

Q. Repeat it again, please, consecutively? A. Well, won't the stenographer read it.

Q. Won't you repeat it? A. I will try to.

JUDGE NEILSON.—The simple question is what you said to Mr. Beecher about Dr. Storrs? A. All that I remember, your Honor, is that I said to Mr. Beecher that I had heard that Dr. Storrs had sent a communication to Mr. Tilton, that it would be necessary to be severe upon him, or something of that sort; and I said that I thought there was insincerity in that; that is substantially all that I recollect.

Q. You said that to Mr. Beecher? A. I think I did, sir, substantially.

Q. By whom did you understand the message had been sent, or the communication had been sent by Dr. Storrs? A. Well, I don't recollect——

Mr. Beach.—He does not say that it had been sent.

Mr. Tracy.—Well, he says Mr. Tilton had received a communication from Dr. Storrs.

JUDGE NEILSON.—He understood he had received it.

Mr. Tracy.—Yes, sir.

Q. By whom did you understand that? A. I don't recollect whether I understood the party or not at that time, sir.

Q. Did you understand that that message was sent through Carpenter? A. I did not understand that it was a message sent through anybody, but I understood that somebody had sent a communication to Mr. Tilton.

Q. Did you understand that it was a communication sent by Mr. Carpenter?

Mr. Beach.—You don't let the witness answer questions; you interrupt him.

The Witness.—Now, Mr. Tracy, I understood that Dr. Storrs had said it to somebody who had communicated it to Mr. Tilton, that in that speech Dr. Storrs would deem it necessary to be severe upon Mr. Tilton. Now, whether it was a message or not intended to be conveyed to Mr. Tilton, I don't know.

Q. We don't ask that. A. Well, all right then.

Q. What did you say to Mr. Beecher about who had communicated that story? A. I don't recollect, sir, who.

Q. Didn't you mention the name of Carpenter? A. I don't recollect that I did, sir, now.

Q. Did you hear the name of Carpenter mentioned in connection with that communication? A. I don't recollect.

Mr. Beach.—Well, that is inadmissible, sir.

Mr. Tracy.—I desire to call your attention, now, to an interview to which you have referred as occurring between yourself and Mr. Beecher prior to or on January 10, 1871, where the Bowen letter was the subject of conversation —Tilton's letter to Bowen of the date of January first; have you omitted from that interview anything except what you have omitted at the request of the court, as referring to a third party? A. I think I have omitted that Tilton was present in my direct examination.

Q. Well, you stated that. A. I did not state it in my direct examination. In reading over my direct examination I made a note; I think I am correct about it, sir; it was some time ago I was glancing over my direct examination, and I think that was left out.

Q. The question I asked you is, whether you have omitted from that conversation anything except what you have omitted at the request of the court, concerning a third party? A. I don't think I have, sir.

Q. With that exception you have stated the whole of that interview? A. I think I have; yes, sir.

Q. I hand you this letter, Mr. Moulton, a letter from Mr. Clark; I understood you to say you had several letters from Mr. Clark, which you showed to Mr. Beecher. A. No; I did not say that I had several which I showed; I don't understand that I said that. I said that I did not recollect distinctly that I had shown this letter to Mr. Beecher.

Q. What did you say on the subject of having shown Mr. Clark's letter to Mr. Beecher? A. I said I was under the impression that I had shown a letter or letters of Mr. Clark to Mr. Beecher.

Q. Then you have other letters of Clark besides that? A. I was under the impression that I had other letters; I have made a search for them and can not find them; if I had any, that seems to be the only one.

Q. Isn't that the letter you showed Mr. Beecher? A. I don't think it is, sir; I don't think it is; I am not clear about it.

Q. You think, now, you never showed any of Mr. Clark's letters to Mr. Beecher? A. My impression is that I did, but I don't recollect distinctly enough about this lettter to state it. I told the counsel when I showed this letter originally to them that I was under the impression that I had showed it to Mr. Beecher, but I didn't know it distinctly enough—didn't recollect it distinctly enough when it was submitted to me in court to say so.

Q. If you showed any letter of Mr. Clark's to Mr. Beecher, that is the one, isn't it? A. I can't say whether it is or not.

Q. I understand you to say that is the only one you find from Mr. Clark? A. It is the only one I find from Mr. Clark; I don't mean to say that it is the only one I had from Mr. Clark.

Q. Do you mean to say that you had any more letters from Mr. Clark? A. Yes, sir; I had more letters from Mr. Clark; I had before and after.

Q. Where are they? A. I don't know, sir; I suppose they must have been destroyed.

Q When and where did you destroy them? A. Well, I suppose at the time, or shortly after.

Q. Do you remember anything about it? A. I do not.

Q. Do you remember of ever receiving a letter from Mr. Clark and destroying it? A. Yes, sir; I should suppose I had received and destroyed letters from Mr. Clark.

Q. Do you recollect distinctly having torn up or destroyed them? A. No; I don't recollect having torn up or destroyed them.

Q. Isn't that the only letter that you remember having received from Mr. Clark? A. No; it is not the only one I remember having received from Mr. Clark.

Q. Do you remember of having shown any other letter than that to Mr. Beecher?

Mr. Beach.—Well, that is assuming that he showed that.

Mr. Tracy.—No.

The Witness.—I have stated the contents of other letters to Mr. Beecher, and may have stated the contents of this letter to Mr. Beecher; I am only undertaking to give you the truth, Mr. Tracy, as I can recollect it; if you want any more, I can not give it to you.

Mr. Tracy.—Now we offer to read that letter. Mr. Clark, what capacity did he hold in *The Golden Age?* What was his position on *The Golden Age?* A. He was an editor.

Mr. Shearman.—He was Mr. Tilton's assistant editor.

Q. Mr. Clark was assistant editor of *The Golden Age*, wasn't he? A. Yes, sir; he was employed by Mr. Tilton, I suppose, as assistant editor.

Mr. Shearman.—[Reading.]

"*Golden Age* Office, Jan. 4."——

Mr. Beach.—Well, wait. The letter is not identified—it is not admissible.

[Letter handed to plaintiff's counsel.]

Mr. Fullerton.—I don't care to read this long letter through. We object to it.

Mr. Evarts.—This is the letter that my learned friend produced and presented to the witness on the direct examination, and he said that he had shown it to Mr. Beecher. My learned friend then commenced to read it in evidence, when the witness recalled it to his hands, looked it over, and said * that he could not be sure, or he could not remember that he had shown this letter to Mr. Beecher; that he had several letters from Mr. Clark, which he showed to Mr. Beecher, and that he talked with Mr. Beecher about them. He could not be sure that he had shown this letter. We have now cross-examined him on the subject of there being any other letters, or of his memory of having shown any other letters, and probed his memory in regard to this letter, and we consider the state of the evidence from him such as entitles us to read this as having been shown to Mr. Beecher, which was the ground on which they were expecting to read it. But the witness recalled the statement and the letter into his hands.

* See bottom of p. 462, *ante.*

JUDGE NEILSON.—The question is now whether it is identified as the letter that was shown.

Mr. Fullerton.—I adopt the gentleman's argument as the best one that could possibly be made upon our side of the case, in objection to this document; but I do not adopt his conclusion. The witness did recall the letter, and he recalled what he said in regard to having shown it to Mr. Beecher. That took away my right to read it in evidence, and consequently I did not read it in evidence. They immediately raised an objection on the other side, which objection was well founded, and was acquiesced in by myself. Now they have not added anything to that testimony at all. Not a jot or tittle. They have simply proved by the witness that he has received other letters from Mr. Clark and that he thinks that he stated the contents of one or more to him, or read one or more of them to Mr. Beecher; but he can not identify this letter as one of them which he read to Mr. Beecher, or the contents of which he stated to him. It leaves it exactly where it was before; therefore the letter is not admissible.

Mr. Evarts.—It is a question of fact for the jury whether this was shown to Mr. Beecher.

JUDGE NEILSON.—I think the question is for the court whether that is identified as the letter. If you do not identify it now, perhaps you can in the progress of the case.

Mr. Evarts.—I, of course, submit to your Honor's correction about the matter as finally disposing of it. But we certainly have changed the situation from what it was before. The witness had distinctly stated—and so it will appear if we recur to his evidence—that he did show some letter of Mr. Clark to Mr. Beecher, but he could not say that he showed this one; but that others he did show, and did have, and did talk about, &c. He said that he talked with Mr. Beecher about this letter, as I understand him. We said, "Why, you are showing a letter from Mr. Clark to Mr. Moulton; it is not a letter which affects Mr. Beecher until you show that it formed the subject of conversation." Then the letter is shown to us, and we now prove by the witness that this is the only letter that he has.

JUDGE NEILSON.—That he now has.

Mr. Evarts.—That he has; that he has no recollection of having destroyed any letter——

JUDGE NEILSON.—The simple question is whether he identified this letter as the one he spoke of to Mr. Beecher.

Mr. Evarts.—Exactly. He has no recollection of having destroyed any other letter. I so understand him. He has just given his evidence; of course, I have no object in misstating it. He has no recollection of having destroyed any other letter, but he may have destroyed them. This letter, it seems, he has, and has preserved, and the contents of the letter will show that it was a matter concerning which conversation was had with Mr. Beecher—that is, the affairs of *The Golden Age*. It has been abundantly proved, and we submit to your Honor that it is sufficiently identified to be permitted to be read in evidence as a part of the dealings between this witness and Mr. Beecher, concerning the affairs of *The Golden Age*, as communi-

cated in letters of Mr. Clark. It is the only letter that is produced; it is the only letter, in respect to the absolute existence of which there is clear evidence; and there is clear evidence that Clark's letters formed the subject of conversation to Mr. Beecher; and, on the witness' direct examination, he said that he showed him some. We say that, as it now stands, however, putting this as presumptive and on the evidence, the only letter concerning whose existence there is clear proof—and the witness' testimony is distinct that some letter of Mr. Clark's, on this subject, he did show to Mr. Beecher.

Mr. Fullerton.—The absurdity of this proposition will be seen at once if you put the gentleman's proposition in the shape of a syllogism. Mr. Clark did write several letters to Mr. Moulton: Mr. Moulton has found only one of those letters, the rest he has destroyed, and therefore the one he has found must be the letter which he showed Mr. Beecher. Now, that is a fair statement of the case. There is not the slightest evidence in the world that this is the letter which he showed to Mr. Beecher. There is not evidence enough from which it can be inferred at all. We regard the letter as quite immaterial in any aspect of the case, for any side of the case; but certainly it has not been identified as the letter which was shown to Mr. Beecher, or the contents of which were stated to Mr. Beecher, to make it evidence in the case.

JUDGE NEILSON.—That is a point of doubt with me. I think you will have to identify it further. It may have been the letter—probably was—but it does not appear that it was.

Mr. Tracy.—Have you searched for any other letters of Mr. Clark? A. Yes, sir; I have myself, and have asked my wife to. Perhaps she may find some to-day.

Q. This is the only letter you find? A. Yes, sir.

Mr. Evarts.—This is the witness' direct examination. [Counsel here read the testimony on p. 462, beginning at "[Handing paper to witness,]" and continuing through the second answer on top of p. 463, *ante.*] Now, it seems he has no other letter now, that he has no recollection of having destroyed any other letter as a specific act or fact, and it stands very distinctly on his original examination that that letter he did show, and that he talked with him about that letter. Now, if we have exhausted all present existence, all definite evidence that any other letter ever did exist, can we not rely upon their direct evidence and our cross-examination to submit the question that that is the letter concerning which he had conversed with Mr. Beecher? He says he had conversations about that letter. He can not say that he showed it to him—as it ultimately ends; but the doubt, the whole doubt that withdrew the fact, once testified to, that he had shown it to him, that he either read it, or that it was read to him, &c.,—that disturbance arose because there were supposed to be other letters which he still had, and the matter was reserved then. Now, there are no other letters, none can be found; and we submit to your Honor that we have sufficiently identified that letter as being shown to Mr. Beecher, if any letter was shown to him, and there is no disturbance of the fact that some letter was shown to him, either read to him or read by him, and the fact that this letter was talked about to Mr. Beecher by Mr. Moulton. We now offer to read it.

Mr. Beach.—This question, sir, when it was presented to your Honor on the original offer of this paper, was decided deliberately, and after argument by counsel. Your Honor then held that the paper was not sufficiently identified to authorize the defendant's counsel to have it marked for identification. Your Honor said to counsel that the paper was not so identified, that it was not within the control of the plaintiff's counsel, who held it, and permitted them, under an exception taken by Mr. Evarts, to withdraw it from marking for identification. Has the evidence now given, sir, changed the attitude of the question? This witness says he knows that he had other letters from Mr. Clark; that he supposed he had them in his possession; that he has made diligent search for them and can not find them, and that he supposes they were destroyed; although he has no distinct present recollection as to the particular act of destruction; but that he had other letters, and that they are lost, is beyond all controversy upon this evidence. He says, sir, that he can not recollect whether this letter, or another of the letters which has been destroyed, was shown to Mr. Beecher, or formed the subject of conversation between them. The general topic of the letter in regard to the difficulties connected with *The Golden Age*, was matter of discourse between this witness and Mr. Beecher, and that, of course, is competent; but how the declarations of Mr. Clark, in a written form to Mr. Moulton, not communicated to either of these parties, can be made evidence by the counsel upon the other side, without a clear identification of the paper, as having been thus submitted, I am unable to perceive; and I submit to your Honor that this question having once been decided, and the counsel taking an exception, that there has been no new evidence given which should re-open the investigation.

Mr. Evarts.—I only wish to read a part of the evidence. My learned friend is not right in saying that this witness is uncertain whether this letter or the other was the subject of conversation. He is perfectly clear on that point:

"Q. You are not clear this was shown to Mr. Beecher? A. No, sir; not clear in regard to that. I want to correct my statement in regard to that. That the letter was a subject of conversation I am sure, but that I showed it to him I am not sure." *

Mr. Beach.—[Reading.]

"Q. I want you to tell the conversation you had with Mr. Beecher with reference to that letter? A. It was with regard to the difficulties of *The Golden Age.*"†

Not with reference especially to that letter.

Mr. Evarts.—The letter is full of it; that is all there is of it.

Mr. Beach.—I don't know about that.

JUDGE NEILSON.—I think you will have to identify the letter further You can do that, doubtless, in the progress of the case.

Mr. Evarts.—I don't know how that is. I have got through with this witness on this letter. I don't know any other mode. I have got through with this witness on this letter, sir.

* See p. 463, *ante*, second Q. and A. from top.
† See p. 462, *ante*, near bottom.

JUDGE NEILSON.—I think it is not sufficiently identified yet.

Mr. Evarts.—Your Honor will note our exception.

JUDGE NEILSON.—Yes, sir.

Mr. Evarts.—We think that we are entitled to read it, whether it was shown to him or not, on the clear statement that the subject of it——

Mr. Beach.—I make, if your Honor please, a suggestion to the discretion of the court, whether, when we make objection to evidence, we shall not have the ordinary privilege of counsel of closing the discussion upon the point, especially after the decision of the court has been rendered.

Mr. Tracy.—Now, Mr. Moulton, was that letter shown to Mr. Tilton? A. I don't recollect whether it was or not.

Q. Was it ever the subject of conversation between you and Tilton? A. I don't recollect whether the letter was or not. The purpose of Mr. Clark to purchase *The Golden Age* was, sir.

Mr. Evarts.—We submit that the whole subject of this letter is exactly what this witness, in his direct examination, was asked about—the conversation concerning it—and stated it to be, to wit, he talked with Mr. Beecher about the difficulties of *The Golden Age.*

JUDGE NEILSON.—There may be another letter on the same subject for aught we know.

Mr. Evarts.—But are we to take the presumption that there might have been another letter?

JUDGE NEILSON.—He has sworn that there were other letters.

Mr. Evarts.—I don't understand, if your Honor please——

Mr. Morris.—Is this an appeal from your Honor's decision that they are arguing?

Mr. Evarts.—I don't understand that there were other letters.

JUDGE NEILSON.—He says he had other letters.

Mr. Evarts.—Your Honor, that is exactly the point; that as it stands on his present examination, there is not any clear memory or statement of his that there ever were any other letters.

JUDGE NEILSON.—I understand him to say there were other letters.

Mr. Evarts.—He has said so at some time in his examination, but we do not so submit the fact to be. Of course we would be very willing, as a matter of evidence, to present such further evidence as there might be, but your Honor sees that this witness, to whom the letter was written, and who was the agent that communicated it, seems to be the only witness to that fact that there is.

Mr. Fullerton.—That is no reason why it should be admitted.

Mr. Evarts.—No; but his Honor thinks it should be further identified. It is not, therefore, a question of whether we should reserve it, but whether your Honor excludes the letter finally.

JUDGE NEILSON.—I exclude it simply because it does not seem to be sufficiently identified as the one that was the subject of conversation.

Mr. Evarts.—Well, your Honor, we suppose that there is no doubt on his own testimony of that. He says he is sure of it.

JUDGE NEILSON.—Proceed, Mr. Tracy.

Mr. Tracy.—Mr. Moulton, what passed between you and Mr. Beecher concerning the difficulties of *The Golden Age* at that conversation where a letter from Clark was talked of? A. I talked with Mr. Beecher, sir, about Mr. Clark's purchasing *The Golden Age*—about his desire to do it.

Q. Did you repeat to Mr. Beecher what Mr. Clark said about it? A I think I did, sir, substantially what Mr. Clark said.

Q. Did you repeat to him substantially what Mr. Clark had said to you in a letter? A. I had no other means but that; what he said to me in a letter and verbally. I met Mr. Clark, I think, about the time at *The Golden Age* as well. Verbally and by letters.

Q. Did you say to Mr. Beecher that Mr. Clark had told you that he thought at one time that he could get some one who could purchase *The Golden Age* of Mr. Tilton? A. I told Mr. Beecher that Mr. Clark was trying to purchase *The Golden Age*—talked of it.

Q. Did you tell him that Mr. Clark had told you that at one time he thought he could get some other person to purchase *The Golden Age*, but had tried and failed? A. To get some other person than himself, sir?

Q. Yes, sir. A. I don't recollect whether I did or not. I talked with him in a general way about it. I can't remember that precisely, sir.

Q. Did you tell Mr. Beecher that Mr. Clark's trial to find some one who would purchase *The Golden Age* had failed? A. I don't recollect that I did, sir.

Q. That Mr. Clark said so? A. I don't recollect that either.

Q. Did you tell Mr. Beecher that Mr. Clark said that the men he had spoken to had such painful impressions, if not seated prejudice, against Mr. Tilton, that they were unwilling to even seriously consider the matter? A. I don't think I told him that, sir.

Q. You don't think you did tell him that? A. No.

Q. Did you tell him that Mr. Clark told you that he, Clark, had been blamed for retaining a connection with such a man and paper? A. I don't recollect that, sir; no, sir.

Q. Do you recollect that you did not so tell him? A. If I had any recollection about it, sir, I would tell you.

Q. Did you tell him that Mr. Clark told you that two or three men who had no prejudice against Mr. Tilton saw no field and no future for the paper and advised its giving up? A. No, I don't recollect having told him that.

Q. Did you tell him anything of that kind? A. I don't remember.

Q. Did you tell him anything of that kind, in substance? A. I don't remember that.

Q. And especially, did Mr. Clark add, the name of the editor was a millstone upon it? A. No, I don't remember that.

Q. Did you tell him anything of that kind? A. I don't recollect that I did, sir.

Q. Did you tell Mr. Beecher that Mr. Clark had said that the name of the editor, Mr. Tilton, was a millstone upon the paper? A. I don't recollect that I did, sir.

Q. Do you remember that you did not? A. I have no recollection about

it, sir. If I recollected that I did I should tell you. My impression is that I did not tell him.

Q. Did you tell him that Mr. Clark said that the newspapermen with whom he had conversed had advised the starting of a new paper and allowing *The Golden Age* to sink? A. I don't remember that I did, sir.

Q. Do you remember that you did not? A. I don't remember that I did not, or that I did, sir.

Q. Did you tell him that Mr. Clark had informed you that he, Clark, had found on inquiry a much deeper and stronger prejudice against Mr. Tilton than he had imagined, and that he, Clark, had been a good deal depressed by it—by that information? A. My impression is that I did not tell him anything of the kind, sir.

Q. Nothing in substance that? A. No.

Q. Did you tell him that Mr. Clark had informed you that he wrote this explanation to you because he could not tell it to Mr. Tilton without wounding his already lacerated heart? A. No.

Q. Did you tell Mr. Beecher that Mr. Clark had informed you that he thought Mr. Tilton ought to go abroad into another atmosphere and new scenes? Did you tell Mr. Beecher that? A. I don't recollect that I did, sir.

Q. Anything of the kind; did you tell him that Mr. Clark had made any suggestion to you about Mr. Tilton going abroad? A. I don't remember that I did, sir; I don't think I did.

Q. Do you remember that you did not? A. I say I don't think I did, sir.

Q. Now, can you state what there was in the letter of Mr. Clark—any letter of Mr. Clark that you did talk to Mr. Beecher about? A. I think it was a letter of Mr. Clark's in which he talked about the purchasing of *The Golden Age*, and I communicated or showed to Mr. Beecher that letter—communicated the substance of it, namely, that Mr. Clark was going to try to buy *The Golden Age*.

Q. Now, look at that letter and say if that is not the letter? [Handing witness a letter.] A. I don't think it is, sir; I don't think it is.

Q. Will you swear that it is not the letter? A. I will swear that my impression is that it is not the letter. My impression is that that letter was a shorter one, which simply communicated to me Mr. Clark's intention of purchasing; I think it was, sir. I have tried to find all the letters that I had, and probably may find it yet; if I do I will present it to you.

Mr. Tracy.—That is all.

JUDGE NEILSON.—Are you through?

Mr. Tracy.—There are some envelopes.

Mr. Morris.—Will you please hand those letters back that you have not used, all of them?

Mr. Tracy.—You have produced certain letters from Mr. Beecher this morning which, we understand, are all that you have in your possession? A. Yes, sir.

Q. Have you destroyed any of Mr. Beecher's letters to you? A. I should think I had, sir.

Q. You think you have? A. Yes, sir.

Q. Intentionally? A. Intentionally? I could not have done it unintentionally.

Q. Did you do it intentionally? A. Why, of course I did.

Q. Now, when? A. I suppose when I received them, or about the time.

Q. Do you know when? A. I know I have not since your subpœna, sir.

Q. When before the subpœna did you destroy them? A. I can not tell precisely when, sir.

Q. Can you tell anything about it? A. No; not precisely; no.

Mr. Evarts.—There was an envelope that was identified and not put in evidence. We will read that.

Mr. Tracy.—It is post-marked—"Brooklyn, May 6, 5 P. M., New York. Mrs. Elizabeth Tilton, care of Theodore Tilton, Esq., Brooklyn, New York."

[Marked "Exhibit D, 48."]

Q. The handwriting of that envelope—is that Mr. Tilton's handwriting? [Handing witness the envelope.] A. Yes, sir.

Mr. Fullerton.—Well, you mean the whole of it is in his handwriting?

The Witness.—No, not the whole. The superscription. The memorandum is not.

Mr. Fullerton.—There is no distinction between the superscription and the memorandum, in your answer.

The Witness.—I beg pardon.

JUDGE NEILSON.—The answer applied to the direction of the letter.

Mr. Fullerton.—And therefore was an error.

Mr. Evarts.—Give us the letter that was in that envelope. [Handing envelope to plaintiff's counsel.]

Mr. Morris.—I don't know what letter you refer to.

Mr. Evarts.—If your Honor please, I ask the counsel to produce the letter that was in that envelope.

Mr. Morris.—I say I don't know what letter was in it.

Mr. Shearman.—We ask you to produce a letter from Mrs. Tilton to Mr. Moulton, written February 10 or 11, 1872.

Mr. Evarts.—It is postmarked Lafayette.

Mr. Shearman.—Lafayette, Indiana.

Mr. Evarts.—Lafayette, Indiana, Feburary 12, and we assume it was 1872. Now, if you will find the letter.

Mr. Morris.—A letter from whom?

Mr. Shearman.—A letter from Mrs. Tilton to Mr. Moulton. The letter is marked "II" in the original statement. [Paxton's pamphlet.]

Mr. Evarts.—The Clark letter we ask the stenographer to mark for identification, as being that concerning which your Honor has ruled.

[Letter marked "Exhibit D, 49, for identification."]

Mr. Evarts.—We wish this paper identified as the letter in that envelope.

Mr. Tracy.—Is that the letter that came under that envelope? [Handing witness a letter.] A. I think it is; yes, sir.

Mr. Evarts.—We ask to have that marked for identification. We do not offer them now.

[Letter marked "Exhibit D, 50. for identification." Envelope marked "Exhibit D, 51, for identification."]

Q. We have called on you for all envelopes in which letters were received by you and you have produced three, two of which have been marked for identification. Have you any others?

Mr. Morris.—Oh! we have produced a number more.

Mr. Tracy.—Envelopes? Where are they?

Mr. Morris.—Over there, with the letters in them.

Mr. Evarts.—You mean these that you gave us this morning?

Mr. Morris.—Yes, sir.

JUDGE NELSON.—He can answer whether he has any more than those produced, without stopping to number them.

Mr. Fullerton.—Yes. But he can not answer that question put.

Mr. Tracy.—Wait a moment; the question was put under a misapprehension. [To the witness.] Have you any other envelopes that belong to any papers that have been put in evidence on either side? A. None that I know of; no.

Q. What has become of them? A. I suppose they have been destroyed; I haven't got any.

Q. Do you remember destroying them? A. I don't remember precisely when I destroyed them. They must be destroyed. I haven't got them.

Q. Do you remember destroying them? A. I do not remember having destroyed them; I know I haven't got them; that is all.

Q. Do you remember whether in Exhibits 49 and 50 marked for identification—whether in that envelope there was also a letter enclosed for Mr. Tilton? A. I don't really remember, sir, whether there was or not; I rather think there was not though.

Q. You don't remember? A. My impression is that there was not.

Mr. Fullerton.—I think there ought to be some way of quickening the other side in their movements.

Mr. Evarts.—What would you suggest.

Mr. Fullerton.—I would suggest that you go on.

Mr. Evarts.—That is exactly what we are suggesting now.

Mr. Fullerton.—It takes you too long to make the suggestion.

Mr. Evarts.—How would you remedy that?

Mr. Fullerton.—By going on.

Mr. Evarts.—That is, provided you were on our side in the case.

Mr. Fullerton.—No; if I was on your side I would not go on.

Q. You say you have identified the gentleman, Mr. Swan, with whom you were supposed to have a conversation? A. I will tell you what I did do: I I sent over a young man this morning to find out whether Mr. Armour's partner's name was Swan, and I believe that to be the man.*

Q. Did you say to him on any occasion since the publication of Mr. Beecher's statement, that you and Mr. Beecher were in controversy, and that you had got to destroy him, or he would destroy you? A. I don't recollect that.

* For previous testimony concerning a conversation with Mr. Swan, see pp 750 and 752, *ante*.

Q. Did you say anything in substance like that? A. I don't recollect that I did; I have not any recollection of saying any such thing as that.

Q. You remember talking with him about it? A. I don't remember having talked with him about it.

Q. This conversation was in the city of New York? A. I don't remember any conversation on the subject. I know Mr. Swan.

JUDGE NEILSON.—It may be another Swan.

Mr. Evarts.—Swans are not so plenty,

Mr. Tracy.—Did you say anything to him on the subject of destroying Mr. Beecher? A. I don't recollect that I did.

Mr. Tracy.—That is all; we are through.

RE-DIRECT EXAMINATION BY MR. FULLERTON.

Mr. Fullerton.—You were asked a moment since in regard to the envelopes which contained Mr. Beecher's letters. How many of them have you produced? A. I produced all I had.

Q. About how many in number? The record seems to show you have produced but two or three, in consequence of the form or structures of the questions put to you by the other side? A. I don't remember how many I produced; I produced all I had.

Q. About how many are there? I only want it to go on the record that there are more than three? A. There are more than three.

Q. Do you recollect destroying any of the envelopes? A. Tearing them?

Q. Yes, sir; or burning them? A. I don't recollect precisely about it. I must have done so.

Q. Do you think you must have done so because you have not got an envelope to match each letter that is produced? A. Yes, sir; precisely.

Q. You reason it out? A. Yes, sir.

Q. But you have no positive recollection of destroying any one of them? A. I didn't undertake to keep the envelopes.

Q. In regard to the letters of Mr. Beecher, have you any distinct recollection of destroying any of his letters? A. I remember tearing up some of his letters after reading them, when they didn't interest me very much.

Q. Did they relate to this controversy that is going on in any way? A. No, sir; I don't think they did.

Q. Did you preserve every letter that related to the controversy? A. Every letter of importance, I think I did; any letter I considered of any importance I preserved.

Q. You have been asked with regard to your conversation on July 5th, in respect to the proposed statement made at that time, commencing, "This church and community are unquestionably interested," &c.* What did you say to Mr. Beecher at the time that publication was proposed, or was the subject of conversation?

Mr. Evarts.—We object to the renewal of the inquiry. The conversation was affirmatively gone into by our learned friends as a part of their direct-examination, and all that we have asked him was what occurred this morning,

* See "Exhibit No. 34," p. 431, *ante*.

which was whether he didn't say so and so.* That does not give them a right to re-examine him as to the conversation. It is their examination and their conversation, and our cross-examination.

JUDGE NEILSON.—Unless there is something that required explanation, that is all.

Mr. Evarts.—He might re-examine him in regard to what he said to us in that conversation, but he has commenced by asking him what that conversation was, which has already been produeed as affirmative evidence on their part

Mr. Fullerton.—It is not to be expected, if the court please, that any witness, after the lapse of such a length of time, would be able to state the whole of the conversation which took place between himself and another person. The witness's attention was called to this statement, which is "Exhibit No. 34," and to what he said to Mr. Beecher at the time, and he went on to give that part of the conversation which was then within his recollection. He has undergone a severe cross-examination in respect to that conversation. and he has been asked if he did not say such and such things, which were incorporated in the question, bringing up to his mind something that he had not heretofore stated; and he stated once or twice during that cross-examination that he was willing to state what he said to Mr. Beecher on that subject—that is to say, the subject incorporated in the question. Now, if there was anything said on that subject which the witness didn't recollect when he was on his direct examination, it is proper for me now to call it out.

JUDGE NEILSON.—Especially as he was not allowed to state it when he was cross-examined.

Mr. Fullerton.—Yes, sir; that is the reason why I put the question. Of course, we can not shut our eyes to the conclusion that these questions were put to him with a view of contradicting him by some other witness, and it is right and proper that he should state what he did say to Mr. Beecher on that subject, at that time, if he did not say the exact things which were incorporated in the question put to him.

Mr. Evarts.—My learned friend is altogether out there. We are not going to contradict him. We wanted to prove that he said it, and he said he did.

JUDGE NEILSON.—I think he may answer the question.

Mr. Evarts.—One moment, if your Honor please. This is re-direct examination. It is a very grave matter, if we are to understand that the reproduction of one of these interviews is authorized, or some part of it.

JUDGE NEILSON.—My recollection is that the witness, when interrogated on the cross-examination, in answering, said he could state what was said, but was not allowed to, as he had then no right to do, except upon the consent of counsel examining him [p. 758, *ante*].

Mr. Evarts.—I agree that what pertains to that very point of the conversation that we brought out, may be; I don't argue against that; I only argue against the generality of the conversation—that the whole conversation may be gone into.

JUDGE NEILSON.—You are at liberty to read what he said in the re-direct, and then the inquiry might be shortened.

* See p. 758, *ante*.

Mr. Tracy.—This is a conversation that occurred between the witness and Mr. Beecher one Sunday, on the 5th of July, when they had a walk on Sunday, when the witness introduced Mr. Robinson as one of the parties to the conversation. That will identify the conversation, as I understand it. That was the conversation of last July, 1874. He was examined fully on that matter, and on cross-examination we asked him, didn't you in that conversation tell Mr. Beecher thus and so?

Mr. Fullerton.—And in reply he said, "I didn't tell him that, but I will tell you what I said if you will let me."

Mr. Tracy.—The counsel is mistaken. The witness said, "I did say so," that is the answer of the witness—"I did say so."

Mr. Fullerton.—That is not the way the evidence stands in that regard.

Mr. Evarts.—We call attention to the direct examination. [Reading from middle of p. 430, *ante*]:

"Q. Was any other course proposed? A. Yes, sir; I submitted to him a paper which I had dictated to Frank Carpenter, and I said: 'Mr. Beecher, if anything is said, I deem it most judicious that this should be said,' and I read to him that which I had dictated to Mr. Carpenter."

Mr. Evarts.—That is the paper concerning which the examination and cross-examination proceeded. [The learned counsel here continued to read the remainder of the direct examination of the witness, on p. 430, to the end of the last question on that page.]

That was the subject of the examination.

The Witness.—That was not July 5th.

Mr. Evarts.—[Reading again.] "Q. What occurred with reference to that card at any time after that?"

Then Mr. Beecher's answer, and then the witness, and then Mr. Beecher, and then Mr. Fullerton said: "I now offer the paper in evidence." Then the witness said: "I had a subsequent conversation with Mr. Beecher about it, and I told him that I had seen General Tracy concerning a reply to the Bacon letter" [p. 431, *ante*]. All that was gone into. I don't see that it is proper. All we have said will appear by the evidence to-day.

Mr. Beach.—Then he was asked, "When that card was presented or shown to Mr. Beecher, did you not say thus and thus?"* Suppose the witness answers that he did say that, on re-examination are we not permitted, his memory having been refreshed by that specific question, he having added to the conversation—may we not ask him, "What else did you say in that connection?"

JUDGE NEILSON.—Yes, sir.

Mr. Evarts.—In that connection.

Mr. Beach.—Yes, sir.

Mr. Evarts.—We have not objected to that.

Mr. Beach.—If he says, he did not answer thus and thus, as inquired of, "but I will tell you what I did say:" are we not permitted to ask him what it was?

JUDGE NEILSON.—You are.

* See p. 758, *ante*.

Mr. Beach.—That is the course we are pursuing.

JUDGE NEILSON.—The apprehension of the counsel was, that the question called upon the witness to repeat the entire conversation, including what was given on the direct.

Mr. Fullerton.—Your attention was called, on the cross-examination, to the conversation which you had with Mr. Beecher on July 5, in regard to a proposed statement, and you were asked whether you did not say in that conversation certain things to Mr. Beecher. I understood you to say you did not, but that you did say something that you would tell if you were permitted; you were not permitted. I now ask you to state what you did say on that occasion.

Mr. Evarts.—That we object to.

Mr. Fullerton.—It would have been well to have raised the objection after the question was completed.

JUDGE NEILSON.—I think I must allow that.

Mr. Evarts.—I beg your Honor's pardon. The point is, that the witness has not so answered; he has said that he did say what we asked him, and not that he didn't.

Mr. Fullerton.—The decision of the Court is usually the end of argument, but it seems to be the commencement of it in this case. I don't know when my friends will be satisfied with the presentation of their objection to this inquiry.

Mr. Evarts.—This is the first time the question has been asked, and the first time I objected to it; and I have given as a reason that it assumes a statement exactly the opposite of the fact.

Mr. Fullerton.—The same question was put in substance ten minutes ago, and the intervening time was exhausted in your argument, after the Court had decided the question admissible half a dozen times.

Mr. Evarts.—I am always ready to take a reprimand from you, of course.

Mr. Fullerton.—But it don't seem to do you any good.

JUDGE NEILSON.—I think counsel, instead of repeating the testimony, ought to put his question specifically as to anything that was omitted.

Mr. Fullerton.—I have directed the attention of the witness specifically to the question put, and to his answer, and asked him to state what else was said on that subject at that time.

JUDGE NEILSON.—He can answer that.

Mr. Evarts.—My objection is that you don't state the answer properly, and I object to it.

Mr. Fullerton.—The gentleman's objection has been stated half a dozen times.

JUDGE NEILSON.—I intimate now, that you can ask him, "What else was said; whether you are correct in your recollection or not?"

Mr. Evarts.—The objection to the question is just as good.

Mr. Fullerton.—But not better.

Mr. Evarts.—If your Honor requires him to modify the question, very well; if not, I wish to object to it, and to have my objection noted.

Mr. Fullerton.—The objection is made; we have got the decision, and the exception is noted. Is there anything else?

Mr. Evarts.—I do not understand the Court to have so decided.

JUDGE NEILSON.—[To Mr. Fullerton.] Does your question call for a repetition of the original evidence?

Mr. Fullerton.—No, sir.

JUDGE NEILSON.—Then proceed.

The Witness.—Will the stenographer repeat the question?

[The stenographer here read the question.]

Mr. Evarts.—Your Honor will note my exception to the allowance of the question as it now reads.

JUDGE NEILSON.—[To the witness.] What further did you say?

The Witness.—My recollection is that I told Mr. Beecher that Mr. Tilton had committed himself in that interview at Delmonico's to peace, if Mr. Beecher kept silent, or made the statements which he did make;* and my impression is also that I told him that if that course was followed, I should destroy the documents.

Mr. Beach.—It is now one o'clock.

The Witness.—I think we had better go now; I want to make some arrangements at one o'clock.

Mr. Beach.—What do you prefer?

The Witness.—I prefer to go on. I will come back here after I make my arrangements at home. I want to finish it to-day.

AFTERNOON SESSION.

MR. MOULTON recalled and the re-direct examination continued.

Mr. Fullerton.—Do you recollect a letter that was put in evidence on your cross-examination, written by Mrs. Tilton to yourself, commencing "for my husband's sake and my children's I hereby testify with all my woman's soul &c."? ["Exhibit D 44," p. 723, *ante.*] A. Yes, sir.

Q. Having now found the letter, I place it in your hands, and ask you the origin of that letter?

Mr. Tracy.—Wait a moment. To that question I trust the witness will not be permitted to give conversations between himself and Mr. Tilton on that subject.

JUDGE NEILSON.—It would not be proper to give conversations with Mr. Tilton, unless it is one that has been called out on their part.

Mr. Beach—Or unless it was communicated to Mr. Beecher.

JUDGE NEILSON.—Yes; and in that case you might begin with Mr. Beecher.

Mr. Fullerton.—What was said in reference to that letter in the presence of Mr. Beecher, or which was communicated to Mr. Beecher?

Mr. Tracy.—That we object to, your Honor. We have not gone into any such conversation, and if they have any such conversation with Mr. Beecher, in regard to that letter or any other letter, it is affirmative proof which they should have gone into. We have simply proposed the letter in evidence, and

* So in the stenographer's notes.

proved that Mr. Tilton presented it to the witness. We have gone into no conversation about it.

JUDGE NEILSON.—That brings up the subject, and allows him to prove what was said to Mr. Beecher, if anything, about the letter. It could not be asked before, because the letter was not produced. I think it is proper.

Mr. Tracy.—Your Honor will note our exception.

The Witness.—I sent for Mr. Beecher to come to my house, sir, one morning in the latter part of December, 1872, and he came, and I told him that Mrs. Tilton had said to Mr. Tilton that she thought there better be a denial of the stories, and that she had written a letter to me which Mr. Tilton had handed to me, and, so far as Mr. Tilton was concerned, he was perfectly willing that they should take the responsibility of such denial—Mrs. Tilton should, and that he might if he choose; and I left Mr. Beecher and Mr. Tilton together—or rather before that Mrs. Tilton was sent for, and Mrs. Tilton came, and I am under the impression, sir, that I remarked before I left that interview, that I didn't see much good at that late hour of a denial, and that is what I remember about the letter, sir.

Q. Was that letter present during that conversation? A. Yes, sir; that letter was present.

Q. Did you show it to Mr. Beecher during that conversation? A. I showed it to Mr. Beecher; yes, sir.

Q. The letter is "Exhibit D," 44 [p. 723, *ante*]. Did he make any observations in regard to it? A. I left him alone, sir, after Mrs. Tilton came with Mr. Tilton; the interview I was not present at after that.

Q. The denials were never published, I believe? A. No, sir; that is the only one I ever saw.

Q. Now, you have been asked in regard to your hostility to Mr. Beecher. I ask you when that hostility, if it may be so termed, commenced? A. When I found, sir, through his—through having read a portion of his published statement—that in return for my kindness towards him he had sought to ruin me by false charges against me, as I deemed them, and do now.

Q. Up to that time you had felt friendly towards him? A. I was not in hostility to him, sir, to that time.

Q. Whatever you may have said in regard to him since that time was in consequence of that publication of his? A. Yes, sir.

Mr. Evarts.—That I object to.

JUDGE NEILSON.—We will take it.

The Witness.—I have answered it, yes, sir.

JUDGE NEILSON.—That goes to the *quo animo* of the witness.

Mr. Evarts.—Whether it was in consequence of it we judge by knowing if it is after that. It is right of course to prove facts and then conclusions are to be drawn by the court and the jury.

JUDGE NEILSON.—I think we will allow the question.

Mr. Evarts.—Your Honor will please note my exception.

Q. Was there any other cause of hostility? A. No.

Q. Now, your attention has been called to the letter of August 4th, in reply to one of Mr. Beecher written the latter part of July; what did Mr. Tilton

say in regard to that letter when you showed it to him? A. What was that letter, sir?

Mr. Fullerton.—Just hand him the letter of August 4th. You will find it in the first part of Judge Porter's cross-examination.

[Book handed to the witness.]

Q. What is it marked? A. Marked "D 7" [p. 524, *ante*].

Q. The letter of August 4th, then, marked "D 7," being shown to you, I ask you what Tilton said in regard to it when it was shown to him?

Mr. Evarts.—That we object to. What Tilton said to Moulton is not evidence against us.

JUDGE NEILSON.—On what ground is it evidence?

Mr. Fullerton.—It is a part of the *res gestæ*. They prove that the letter was exhibited to Mr. Tilton, and they mean to draw an inference from it.

Mr. Beach.—They seek to conclude him by the contents of the letter—his seeing it. Now what answer did he make?

Mr. Fullerton.—They mean to argue that he acquiesced in the sentiments expressed in that letter. Now, they can't foreclose Mr. Tilton in that way.

Mr. Evarts.—We can at any time prove what Tilton did, and the plaintiff can not; that is the principal proposition of evidence. Now, we have proved in regard to this—if I comprehend the subject-matter of the present inquiry rightly to be the letter of Mr. Beecher to Mr. Moulton of the 4th of August, and Mr. Moulton's reply of the 5th—we have proved that this letter of Mr. Beecher's was shown to Mr. Tilton, and that Mr. Tilton made the answer which was sent. Now, those are acts of Mr. Tilton. What Mr. Tilton said, while he was doing those acts, to Mr. Moulton with whom he was acting, is not evidence against us. We got the letter, and we prove that it proceeds from Mr. Tilton in the form that he writes it and Mr. Moulton signs it. Now, in consequence of our proof of that act of the plaintiff—all whose acts which are pertinent we have a right to prove, and none of which they have a right to prove—they seek to bring in the conversation that took place between Mr. Moulton and Mr. Tilton while these acts were being performed. That is, as I understand the evidence, and I know no rule of evidence which permits it.

Mr. Beach.—Will the counsel permit me to call his attention to a rule of evidence fundamental, that when an act is given in evidence, any accompanying declarations qualifying or explaining the act are admissible as a part of the *res gestæ*.

Mr. Evarts.—I agree to that.

Mr. Beach.—Well, if he agrees to that he proves the act of Mr. Tilton upon the presentation of his letter to him. Now, we propose to prove what Mr. Tilton said in connection with the act of reception or the act of drafting the reply to that letter.

Mr. Evarts.—The reason we proved the act is, the *res gestæ* can be proved as between Tilton and Beecher. Now, the reasoning of my learned friends and the proposition of evidence is sound. If, when Tilton delivered that letter to Mr. Beecher, supposing he had delivered it—and so there was an act between them in that form, then what Mr. Tilton said when he delivered it if we omitted it, they could prove, no doubt. But the note is Tilton's writing

—a letter for Moulton in answer to Mr. Beecher, which letter is sent to Mr. Beecher. That is the action of Tilton that we proved. Now, they prove the conversation between the writer and the amanuensis, the dictator and the man who furnishes the handwriting at the time that it was going on; that is the present proposition.

Mr. Beach.—Counsel will please observe that we ask no question as to a declaration of Mr. Tilton in regard to the letter which he drafted and sent to Mr. Beecher; the question is as to the letter from Mr. Beecher which was presented to him.

JUDGE NEILSON.—I understand that. What did he say when he saw the letter? I think he can give that, sir.

Mr. Evarts.—Doesn't it transcend any rule as yet considered whereby everything that passed between this witness and third persons, including Mr. Tilton, in order to affect Mr. Beecher, should have been brought home to him. Now, that has not been done.

JUDGE NEILSON.—This is part of the act of receiving the letter. I admit it with that view.

Mr. Fullerton.—It was a letter which they put in evidence.

Mr. Evarts.—If your Honor please, Mr. Moulton receives a letter from Mr. Beecher, he goes and shows it to Tilton, and the conversation between them is to be given in evidence?

JUDGE NEILSON.—As a part of the act; yes, sir.

Mr. Beach.—That is what they prove—showing the letter to Mr. Tilton—for without that they could not introduce it at all, and upon the theory that he approved it when it was brought to his attention.

Mr. Evarts.—The theory is of proving that he made the answer which we have given in evidence.

JUDGE NEILSON.—We will receive what was said in immediate connection with the act of receiving the letter.

Mr. Evarts.—Between Mr. Tilton and Mr. Moulton?

JUDGE NEILSON.—Yes, sir.

Mr. Evarts.—Your Honor will be so kind as to note our exception.

The Witness.—I said to Mr. Tilton that the statement in the letter, that Mr. Beecher had placed in my hands for merely safe-keeping, letters addressed to him from his brother and sister and various other parties, and also memoranda of affairs not immediately connected with Mr. Tilton's matters, were untrue—that that statement was untrue—and I asked him if he did not remember that that was untrue—asked him to recall the circumstances, and he said he did recall the circumstances, and he did recall them.

Q. Who recalled that? A. Mr. Tilton said he remembered the letters of Mrs. Hooker, and remembered ——

Mr. Evarts.—What he said, I suppose, is ——

Mr. Fullerton.—That is what he has stated.

The Witness.—Yes, I will tell you what he said before.

JUDGE NEILSON.—Please to understand it is what he said in immediate connection with his seeing the letter.

The Witness.—Yes, sir, precisely so.

JUDGE NEILSON.—And nothing beyond that.

The Witness.—Precisely.

JUDGE NEILSON.—Go on.

The Witness.—He said to me, "Don't you remember in that connection that Mr. Beecher wanted me to go and see Mrs. Hooker, and that I did go to see Mrs. Hooker, and that I did it, for the purpose of quieting her as against making the charge of adultery against him, charging her with adultery; and don't you remember upon the same authority, I mean, that she proposed to charge Mr. Beecher and Mrs. Tilton with adultery, and I came back and told Mr. Beecher that, and he seemed to be perfectly satisfied with it, and was delighted with it; don't you remember that?" he said to me, and he recalled it, and I did remember it.

Mr. Evarts.—Said what you said? A. I said yes; I remembered it in substance.

Mr. Evarts.—Asserting that you did remember it is not stating what you said.

The Witness.—I stated that as——

Mr. Fullerton.—Never mind.

The Witness.—Pardon me.

Mr. Fullerton.—I call your attention——

The Witness.—Wait a moment. Mr. Tilton also said—you know that I have not had access to your depository of materials, and that is about all, and then he ——

Mr. Evarts.—Now, if your Honor please, the evidence having been given, I move to strike it out entirely, as no part of the *res gestæ* whatever, and a mere form of bringing in conversation between these parties concerning some facts in this case.

JUDGE NEILSON.—The motion is denied.

Mr. Evarts.—We except to your Honor's decision.

Mr. Fullerton.—I call your attention to the letter of August the 5th ["Exhibit D 6," p. 521, *ante*], to that part of it referring to a proposed consent from both Mr. Beecher and Mr. Tilton to use these papers in your hands, and I ask you whether at that time you procured a consent from either party.

The Witness—Almost immediately, sir, after the writing of the letter from Mr. Tilton——

Mr. Evarts.—One moment.

Mr. Fullerton.—I ask if he procured a consent to use these papers from any one.

[Book shown Mr. Evarts with explanations of counsel.]

Mr. Evarts.—As I understand this present question, this letter has nothing to do with it except as a suggestion to the mind of the witness. Whenever he undertakes to prove the occurrence of telling him, why then I will object to it. The point of this inquiry, as I understand it, is to prove action between Mr. Tilton and himself, and all such action I object to, as the general rule of evidence entitles me to object to it. That something must occur to take it up——

JUDGE NEILSON.—Some arrangement or suggestion about procuring consent.

Mr. Evarts.—It was not a suggestion. A communication was made to Mr. Beecher in this letter which Mr. Tilton wrote, referring to that subject. But it was not a transaction in which Mr. Beecher took any part or was invited to take any part. Then, thereafter, because a man has said in a letter to Mr. Beecher, that he will not do a thing without doing something else first—on that mere statement, which we had nothing to do with except to receive it, they propose to show that he afterwards did the things that he said he would do. The question is whether the things—whether he said he would do them or did not say he would do them—are matters that affect Mr. Beecher——

JUDGE NEILSON.—What is your proposition

Mr. Fullerton.—My proposition is this, sir, to prove that Mr. Moulton obtained consent from Mr. Tilton to use these papers then in Moulton's hands, having in the first place construed Mr. Beecher's letter into a consent on his part. And I do it for this purpose: They intend upon the other side to draw an inference against Mr. Moulton, for the reason that he refused to give either the originals or copies of those papers to Mr. Beecher upon his application. His reply, as your Honor recollects, was that he was the custodian of them for the benefit of both parties, and that he would not give them to either one without the consent of the other.

JUDGE NEILSON.—What is the paper that shows Mr. Beecher's consent?

Mr. Fullerton.—The letter of August 4th.

The Witness.—[Reading]: "I do demand that you forthwith place before the Committee every paper which I have written or deposited with you." My answer reads: "In reply, I can only say that I can not justly place before the Committee the papers of one of the parties without doing the same with the papers of the other, and I can not do this honorably except either by legal process compelling me or else by consent in writing not only of yourself but of Mr. Tilton, with whom I shall confer on the subject as speedily as possible."

Mr. Fullerton.—Now, it is proper for me to show consistency in the conduct of this witness, by showing that he procured that consent of Mr. Tilton, and then went before the committee to give the papers.

JUDGE NEILSON.—Well, you must show the acts though separate; they must have been separate.

Mr. Evarts.—The difficulty is, that the act does not affect us; it is no act of Mr. Beecher's or that affects him; it is not so proposed. It is proposed as an act of Mr. Tilton's with this witness.

JUDGE NEILSON.—The witness proposes to have the consent; and I rule that he may prove the consent obtained from both or either of the parties.

[Exception by defendant.]

Mr. Fullerton.—Now what did you do in that regard? A. Immediately procured the consent of Theodore Tilton, sir.

Q. And then? A. Went to the committee.

Q. Then you went to the committee? A. Yes, sir.

Q. With the papers? A. Yes, sir; or, rather, I went to the committee——

JUDGE NEILSON.—That was after the communication from Mr. Beecher? A. Yes, sir.

Mr. Evarts.—We object to all this.

JUDGE NEILSON.—Well, Mr. Beecher called for the papers; then he procured Mr. Tilton's consent to use the papers.

Mr. Evarts.—He didn't give them to Mr. Beecher after that. The only point with us was that Mr. Beecher applied to him and he made this reply which Mr. Tilton sanctioned and wrote; that is the end of that transaction. Now, they seek to show the consistency of the witness. We have nothing to do with that; we are not trying his consistency, nor the fact of what he did with third persons to make out consistency.

JUDGE NEILSON.—No; but I simply rule that it is competent for him to state whether or not he got Mr. Tilton's consent to use the papers.

Mr. Evarts.—That has been made the subject of an exception, and that disposes of that. Then he goes on to state, after he got the consent, "I then took the papers and went before the committee."

The Witness.—I made a mistake in saying that I then took the papers.

Mr. Evarts.—Well, took the papers afterwards and went before the committee. We have nothing to do with that.

The Witness.—Well, I made a mistake, if you have that impression.

JUDGE NEILSON.—Well, that last line may be stricken out.

The Witness.—I went before the committee with a statement, after he went, and stated to the committee that, having had the consent, I would——

Mr. Evarts.—We object to this.

Mr. Beach.—Will you listen one moment.

Mr. Evarts.—No, for this reason, that I have called his Honor's attention to the additional statement; and his Honor said that that should be stricken out. Now, while that is pending, I object to the witness going on with other matters.

Mr. Beach.—Well, I am going on; it is not the witness; I am just now stating to your Honor a proposition. The demand from Mr. Beecher was that these papers should be furnished either to him or the committee. Mr. Moulton says: "I can not do that, Mr. Beecher, without procuring the consent of Mr. Tilton." Mr. Moulton immediately procures the consent of Mr. Tilton, and then complies with the demand of Mr. Beecher. Now, why have they given these letters and this demand? How was the demand permissible except for the purpose of showing an unfriendliness of sentiment on the part of Mr. Moulton—except for the purpose of arguing that, when Mr. Beecher demanded from Mr. Moulton that he should produce these papers before the committee he refused. And as the evidence now stands, sir, if you strike out the latter part of this witness' testimony, that is the attitude in which this witness is placed.

JUDGE NEILSON.—That should be stricken out and should be the subject of a question; so that it can be objected to. It is consistent enough up to that point.

Mr. Fullerton.—When you got the consent of Mr. Tilton therefor, did you go before the committee, and if so, what did you do?

[Objected to.]

JUDGE NEILSON.—No, that is wrong; did you take the papers before the committee?

Mr. Beach.—Did you go before the committee and tender the papers demanded by Mr. Beecher?

[Objected to.]

A. I did.

Mr. Fullerton.—That would be objected to on the gound that it was leading; and, therefore, I ask him what he did when he got there. After you got that consent what did you do with the papers?

Mr. Evarts.—That we object to.

A. I withheld the papers at the solicitation of Gen. Tracy, Mr. Beecher's representative, from the committee, in consultation with my counsel, Gen. Butler.

Q. What, subsequently, did you do with the papers? A. I published my —I published the—I produced the papers quoted. It needs an explanation, your Honor.

JUDGE NEILSON.—The question is, whether you took these papers to the committee or furnished them. A. No, I didn't take them to the committee.

Mr. Fullerton.—Or, furnished them? A. I did not; and I will tell you why.

Mr. Morris.—You were going on to state——

The Witness.—I went before the committee, if your Honor will allow me to state; I went before the committee next day, and stated to the committee that, having had the consent of both parties, I should on a certain day, produce the papers; I think that day was to be Saturday, and the meeting of the committee was postponed until Monday; and, in the meantime, Gen. Tracy was in consultation with Gen. Butler.

JUDGE NEILSON.—Leave that out.

Mr. Evarts.—That is all the *esse*, anyhow.

The Witness.—No, it is not.

JUDGE NEILSON.—What occurs between the witness and Mr. Tracy and Gen. Butler is not to be received.

The Witness.—Gen. Tracy claimed to be the representative, your Honor, of Mr. Beecher.

Mr. Evarts.—Don't argue about this.

The Witness.—I don't choose to argue; I am only stating to his Honor what I think I have a right to state.

Mr. Evarts.—Now, none of that is in evidence. These statements made to your Honor, they form no part of the record of the evidence.

JUDGE NEILSON.—It is competent for the counsel to prove that those papers, in some form, were furnished pursuant to the demand on one side and consent on the other.

Mr. Evarts.—That your Honor has ruled, and that is of course received under the ruling.

JUDGE NEILSON.—Well, he can interrogate him then with that view.

Mr. Fullerton.—I asked him the reason why he did not——

Mr. Evarts.—That is objected to.

Mr. Fullerton.—One moment, if you please; there is the point that you can not talk all the while.

JUDGE NEILSON.—Well, without asking him his reason, you can ask what he did in that respect.

Mr. Fullerton.—Yes, sir. I wish to know what he did in that respect, and I wish this witness to be fairly understood in regard to this matter; why he did not go before the committee and take all the papers; if he did not, there is a reason for it.

Mr. Evarts.—That I object to.

Mr. Fullerton.—After you got the consent of both parties to produce these papers, did you go before the committee and offer to produce them? A. I went before the committee, yes, sir, and stated that I would produce them. If you will find the communication, sir, (I don't know where it is in this book), that I made to the committee—I think it was on August 5th or 6th that I made it, promising to go before them on Saturday.

Mr. Evarts.—That is the very one that was rejected by your Honor as not being admissible heretofore.

Mr. Beach.—It is made admissible now.

JUDGE NEILSON.—Go on.

Mr. Evarts.—This is under my exception.

JUDGE NEILSON.—I don't intend to have you understand that I rule that any communications made by the witness to the committee are to be received at present. I haven't that view.

Mr. Evarts.—Then I ask that to be struck out.

JUDGE NEILSON.—The contents of the paper are not given. We have the naked fact that he sent a communication on the subject to the committee.

Mr. Fullerton.—That is an application to strike out something before it gets in.

Mr. Evarts.—I did not move to strike that out.

The Witness.—I immediately proceeded, your Honor, to comply with the request of both parties, and went before the committee for that purpose. That is all that I propose to state.

Mr. Evarts.—Now that is not evidence.

Mr. Fullerton.—It is evidence because the court has admitted it. [To the witness]: Did you go before the committee after that; and did you take any part of those papers; and if so, what part? A. Yes, sir; I went before the committee after that, and I took the papers that were quoted by Mr. Tilton in his statement to the committee, and there is a reason why I did not take any more, if you want that.

Mr. Fullerton.—Well, I want to know the reason why he didn't take——

Mr. Evarts.—I object to it. Certainly if the acts of the witness are admitted we are not to take the reasons of his not acting otherwise.

Mr. Fullerton.—But they seek to condemn this witness because he did not give Mr. Beecher an opportunity of seeing these papers, and because he did not take them before the committee as requested.

JUDGE NEILSON.—You have proved he took the papers before the committee.

Mr. Fullerton.—I have proved he took a part. May I not prove the reason he did not take the rest?

JUDGE NEILSON.—No matter about the reason.

Mr. Beach.—Suppose Mr. Beecher had told him not to produce them?

Mr. Evarts.—Well, prove that.

Mr. Fullerton.—How will I prove it, unless you permit me to ask the question?

Mr. Evarts.—Now, all those papers, what became of them we all know. Their subsequent history has been testified to.

The Witness.—No, it has not. The history has not been——

Mr. Evarts.—He does not say that he took them before the committee. The only question is what the reason was he did not take them; that I object to.

Mr. Fullerton.—We will see now if we haven't a right to this testimony. I repeat they seek to put this witness in a false attitude, and they mean to keep him there, if they can do so by preventing him from giving the reason why he did not do a certain thing. He had the choice either to give those papers to Mr. Beecher, or to take them before the committee. He took a part of them before the committee. I propose to show the reason why he did not take the balance; that it was in harmony with the wish of the other side that they were withheld, as supposed by their suggestion and at their request.

JUDGE NEILSON.—Well, you may prove that.

Mr. Fullerton.—Well, I hope I will be able to without a thousand and one interruptions.

Mr. Evarts.—I must interrupt when I consider the evidence illegal, your Honor, and I propose to do it.

JUDGE NEILSON.—That is understood.

Mr. Fullerton.—Well, if the exception is the end of it, I shall be very happy.

Mr. Evarts.—Now, I don't propose to be talked to any more. I don't institute any of these observations between counsel, never, and I don't propose to submit to it.

JUDGE NEILSON.—You have a right to be heard whenever you think the question calls for it.

Mr. Fullerton.—I propose to make just those observations when counsel insist upon arguing a question that has been decided by your Honor, over and over again.

JUDGE NEILSON.—I don't think the counsel meant to do that. Go on.

Mr. Fullerton.—Why did not you take the balance of the papers before the committee?

Mr. Evarts.—That is objected to.

Mr. Fullerton.—That we understand, it is objected to.

Mr. Evarts.—I propose to have it entered every time.

JUDGE NEILSON.—Now, what is the question?

The Witness.—Now, what is the question?

Mr. Fullerton.—I am afraid to repeat the question because there may be another objection and exception.

The Witness.—What is the question? Read it.

JUDGE NEILSON.—Read the question.

[The stenographer read the question.]

A. On Sunday preceding the Monday on which I had agreed to take the papers before the committee, Gen. Tracy—if I remember the day correctly, I think I do—went with me to the Fifth Avenue Hotel to see Gen. Butler with reference to the suppression of the statement, and I saw Gen. Butler with Gen. Tracy.

Mr. Evarts.—Any interview of that kind we object to. Here is a narrative that took place—supposed to have taken place between Gen. Butler and Mr. Tracy. Now, that is not evidence.

JUDGE NEILSON.—Now, if upon that conference he was restrained, we want the result; that is all; not the conversation. If, in view of that interview or conversation, he was restrained or not restrained from taking the additional papers, he may state that fact, as going to show the animus of the witness, acting in good faith or bad faith. Now, get him to do that. [To the witness.] You had a conversation? A. I had a conversation, sir. Shall I give it?

JUDGE NEILSON.—With Gen. Tracy and Gen. Butler? I don't care what the conversation was.

The Witness.—Very well, sir.

JUDGE NEILSON.—[To Mr. Fullerton.] Now, ask the question.

Mr. Fullerton.—Did you refrain from taking those papers before the committee in consequence of anything that occurred there on the occasion to which you refer? A. Yes.

JUDGE NEILSON.—Well, that gives it sufficiently.

Q. Who did Gen. Tracy represent on that occasion?

Mr. Evarts.—Well.

The Witness.—He said he represented Mr. Beecher.

Mr. Evarts.—Well, I objected.

JUDGE NEILSON.—Take it, sir; let it stand. Take an exception.

Mr. Evarts.—Yes, sir.

JUDGE NEILSON.—Go on.

Q. Was it with his approbation that you withheld them? A. With whose approbation, sir?

Q. Mr. Tracy's? A. It was at his request.

Q. And that is the reason why you did not take the balance before the committee, is it—the balance of the papers? A. That is one of the reasons. I will give the balance of the reasons. Shall I?

Mr. Beach.—No; we have got enough.

Q. Did you have another meeting the next day? A. Yes, sir.

Q. Where? A. At my house.

Q. Who was present? A. Mr. William C. Kingsley, Mr. Franklin Woodruff, my father, and Gen. Butler.

Q. Any one else? A. And my wife.

Q. Was Mr. Tracy there? A. No, I believe not; he came that evening though, after I had been to the committee.

Q. Did anything occur that evening after you had been to the committee with regard to these papers that you did not produce?

Mr. Evarts.—With whom?

Mr. Fullerton.—With Gen. Tracy.

JUDGE NEILSON.—I think that is sufficiently accounted for.

Mr. Evarts.—Yes, sir.

The Witness.—Yes, sir; there was something.

JUDGE NEILSON.—Well, we will let that stand, then.

Mr. Fullerton.—Now, Mr. Moulton, what statement was then under consideration when you thus went to the Fifth Avenue Hotel and had this conversation?

Mr. Evarts.—The conversation at the Fifth Avenue Hotel?

Mr. Fullerton.—Yes.

JUDGE NEILSON.—What statement was under consideration?

Mr. Fullerton.—Yes.

The Witness.—The first long statement that I prepared, which was preceded, in the publication that I made of it, by a card to the public.

Mr. Evarts.—You describe it as the first long one? A. Well——

Mr. Fullerton.—Never mind! never mind!

The Witness.—I can't help minding him.

Mr. Fullerton.—I know; this talk back and forth between you and the counsel is out of order, in my judgment.

The Witness.—Well, sir, I beg pardon.

Q. Did you know, or did Mr. Tilton know at any time that he was furnished with money directly or indirectly, from Mr. Beecher? A. No, sir.

Q. Did Mrs. Tilton know that any money that was furnished to her came directly or indirectly from Mr. Beecher? A. I don't think she did.

Q. You didn't tell her, did you? A. I did not.

Q. Your attention has been called to your intimacy with Mrs. Woodhull? A. Yes, sir.

Q. And you have stated when it commenced and when it ended, I believe? A. I believe I have; yes.

Q. I want you to state, sir, now, what caused you to permit or to cultivate that intimacy—acquaintance or intimacy?

Mr. Evarts.—The direct examination has gone into that, sir, and we cross-examined him upon it.

Mr. Fullerton.—I have a right to show now, sir, what object he had in view.

Mr. Evarts.—That he showed on his direct examination.

Mr. Fullerton.—No, he did not show it.

JUDGE NEILSON.—Partially, I think, not wholly.

Mr. Evarts.—Just so far as they saw fit. It is *their* subject, and they have no right to have it unless we have laid a foundation for some inquiry concerning the matters that we brought out, but that is not this inquiry. The question is, what the motives and reasons of his acquaintance with this woman were, which was the very thing which was the subject of direct examination.

Mr. Fullerton.—Your Honor will perceive that, since the direct examination, they have put in a portion of this Woodhull scandal, which makes it necessary, now that we should account for this gentleman's acquaintance with that woman who promulgated those doctrines.

JUDGE NEILSON.—I think you may ask him what led to that acquaintance, and what led to its continuance.

Mr. Evarts.—I will call your Honor's attention to this.

JUDGE NEILSON.—I recollect it generally, sir. He may ask what led to that acquaintance and what led to its continuance. [To Mr. Fullerton.] Now put the question, sir.

Mr. Fullerton.—Now, may I go on, sir?

JUDGE NEILSON.—Go on.

Mr. Fullerton.—What led to your acquaintance with Mrs. Woodhull, and to its continuance?

Mr. Evarts.—Your Honor will note an objection to that as being a recurrence to a subject already affirmatively introduced by them.

JUDGE NEILSON.—Yes, sir.

The Witness.—The desire, sir, entirely, for the suppression of the stories against Mr. Beecher in connection with Mrs. Tilton, and his adultery with Mrs. Tilton.

Q. Were you acquainted with Mrs. Woodhull until these scandals were abroad? A. I never was acquainted with her, sir, before; I never became acquainted with her, sir, until after her card in *The World;* I stated it already.

Mr. Evarts.—That was all stated on the direct.

Q. In which she shadowed forth an intention to publish this scandal? A. Yes.

Q. For what reason was she invited to your house? A. In order that I might use the better my influence upon her for the suppression of the story of Mr. Beecher's adulteries with Mrs. Tilton.

Q. State whether your wife objected to her being brought there? A. My wife did object to her being brought there.

Q. And whom did she consult upon the subject? A. Mr. Beecher.

Q. Were you present when Mr. Beecher gave her some advice on the subject? A. No. Mr. Beecher told me the advice that he gave.

Q. What did he say he advised her do? A. Mr. Beecher said that my wife had said to him that I had asked that Mrs. Woodhull come to the house; and Mr. Beecher said that my wife had objected; and he said that he told her that he did not think association with Mrs. Woodhull could hurt her, and that he thought it to be her duty to co-operate with me for the suppression of these stories concerning him and Mrs. Tilton.

Q. Had you any sympathy with Mrs. Woodhull in her free-love doctrines?

Mr. Evarts.—That I object to.

The Witness.—I had not known her, sir; no, I had not any sympathy with Mrs. Woodhull in her free-love doctrines.

Q. Did you know what her doctrines were before her speech at Steinway Hall upon that subject? A. No; I did not know anything about them.

Q. You were present, I understand you, at that meeting? A. I was; yes, sir.

Q. You have told us that Mr. Tilton introduced the speaker? A. I have; yes, sir.

Q. Will you tell us, as near as you can, what words were used in that introduction? A. Yes, sir.

Q. Please to do so.

Mr. Evarts.—Well, your Honor.

JUDGE NEILSON.—That was proved by you, you know.

Mr. Fullerton.—They proved the fact.

Mr. Evarts.—Now, can we prove her whole lecture?

Mr. Fullerton.—Not by proving what he said, because he did not repeat it.

Mr. Evarts.—Can we prove her whole lecture?

Mr. Fullerton.—That question does not come up.

JUDGE NEILSON.—I think you have it sufficiently; he introduced her.

Mr. Evarts.—That is the point of my objection.

JUDGE NEILSON.—I think that is sufficient. It don't appear that he commended it.

Mr. Fullerton.—They have laid the foundation, as they think, for an argument that Mr. Tilton is to be held responsible for all the doctrines promulgated there that night, because he introduced the speaker.

JUDGE NEILSON.—I have decided that he was not, unless it appeared that he knew before what the lecture was to be.*

Mr. Fullerton.—I may prove what he said when he introduced her, I suppose.

JUDGE NEILSON.—I do not see the value of it; it is not suggested that he commended her.

Mr. Fullerton.—But it will be argued that he commended her.

JUDGE NEILSON.—I hardly think it.

Mr. Evarts.—We certainly shall argue that the introduction of a lady to a public audience to deliver a free-love lecture is an assumption of responsibility towards the public of what she has to say.

Mr. Fullerton.—Your Honor therefore sees you can not anticipate what they will argue on the other side.

Mr. Evarts.—The measure and extent of it, of course, is a subject of argument.

JUDGE NEILSON.—I have already ruled, I think, that unless it appeared that Mr. Tilton knew what the lecture was to be—what the subject was to be—he was not responsible for the lecture following the introduction; and not being a prophet, or the son of a prophet, he could not foresee what she was to say.

Mr. Fullerton.—Your Honor has been admonished by the counsel on the other side, as to the line of argument they design to follow.

* See p. 645 *ante*. and *State* v. *Fitzhugh*, cited in note on p. 491 *ante*. See also *Lewis* v. *Few* (Anth. N. P. 102), where in an action for a libel for publishing an address adopted at a political meeting, a person present and acting at such meeting, was held incompetent to act as juryman.

JUDGE NEILSON.—I think I shall take care that the jury shall not misinterpret it. I think there will be no misconception.

Mr. Fullerton.—There will not be, if we are permitted to give this evidence.

JUDGE NEILSON.—I have decided that point.

Mr. Beach.—It seems to me this question is altogether aside from that. It appears that Mr. Tilton introduced Mrs. Woodhull to the audience. Now is it to be seriously argued, when they prove the result of what Mr. Tilton said and did upon that occasion, that we can not get at the details, and ask what he said by which he did the act which they prove he did.

JUDGE NEILSON.—If you did not introduce her, you could prove it, of course, by way of contradiction, but if all you did do was to introduce her, you can well afford to leave it there.

Mr. Beach.—What is an introduction? We may afford to leave it under your Honor's ruling; but, sir, I submit, when they prove an act done by Mr. Tilton, which must of necessity be accompanied by words, and do not give the words, may we not prove them?

JUDGE NEILSON.—I do not think that it is material. He went forward with his coat on his arm, and introduced her. That is all we have.

Mr. Beach.—He must have said something to introduce her.

JUDGE NEILSON—It can not be material here.

Mr. Beach.—Your Honor will perceive that it may be immensely material to us, sir. Suppose Mr. Tilton had said in that introduction to the audience, "Ladies and gentlemen: I am requested to present Mrs. Woodhull to you this evening, but I caution you that I am not responsible for anything she may say." Is not that admissible, sir?

JUDGE NEILSON.—You may prove that if you can.

Mr. Beach.—It is just what we are going to prove.

JUDGE NEILSON.—I hardly think it is to be expected that a gentleman would take such a precaution as that.

Mr. Beach.—Very possibly, but I give it as an illustration.

JUDGE NEILSON.—We will take it.

Mr. Evarts.—Your Honor will note our exception.

Mr. Fullerton—Repeat, as nearly as you can remember them, the words with which he introduced Mrs. Woodhull to the audience at Steinway Hall on that evening? A. Do I need, in the answer to that question to precede that introduction at all?

Q. No.

JUDGE NEILSON.—When he came forward with his coat on his arm, to introduce her, what did he say? A. As nearly as I can remember, sir,—I have not read it——

Mr. Evarts.—We ought to know whether he remembers anything about it.

The Witness.—I shall give it as nearly as I can recollect it: "Ladies and gentlemen—It is quite unusual for me to be in town during the lecture season, and I unexpectedly find myself here to-night. I find that several representative men have been asked to introduce the lady who will address you, to this audience, and some have refused on the ground that they know nothing of

her character, and others on the ground that they are in doubt as to her views. As to the first, I think I know that, and will therefore take the responsibility of vouching for it. As to the second point, I do not know what her views are. I have never heard her express them. She may be a fanatic and a fool. I would rather be both in one than to lack the courage to ask from an American audience, for a woman, the right of freedom of speech."

Q. Was that the substance of it? A. That was the substance of it, except the applause that followed.

Q. Then followed the lecture? A. Then followed the lecture; yes, sir.

Q. Now, Mr. Moulton, did you and Mr. Tilton have an engagement that evening at a place other than Steinway Hall? A. Yes, sir; we did.

Q. Whose proposition was it to go to Steinway Hall that night? A. Mr. Tilton had an engagement to dine with me at my house, and I went to *The Golden Age* office for him to have him come to my house, and he said——

JUDGE NEILSON.—Do not say what he said.

Mr. Fullerton.—I propose to show that going to Steinway Hall was merely accidental that night.

JUDGE NEILSON.—Prove that; not by conversation.

Mr. Fullerton.—I can hardly prove it in any other way.

Mr. Evarts.—That is the trouble. The conversation between him and Mr. Tilton does not prove as against Mr. Beecher how he happened to go there.

JUDGE NEILSON.—No.

Mr. Evarts.—That is the trouble with all of it, that the proof, so far as we are concerned, does not derive any authority from anything that proceeded from us.

JUDGE NEILSON.—Mr. Fullerton, go on.

Q. At whose suggestion was it that you went there that night? A. Mr. Tilton said that as we had not——

JUDGE NEILSON.—Do not say what was said.

The Witness.—I beg pardon.

Mr. Evarts.—I object to the question at whose suggestion he went, unless Mr. Beecher is connected with it. Your Honor can see that the whole narrative of these two men's lives can be given under this.

JUDGE NEILSON.—We do not propose to take the conversation at all. At whose suggestion?

Mr. Fullerton.—At what time in the afternoon or evening was the suggestion made?

Mr. Evarts.—That I object to.

JUDGE NEILSON.—We will take it.

The Witness.—About six o'clock, between five and six.

Mr. Evarts.—Why is it at all material, your Honor, and how does it become evidence against us, whether it was accidental or whether it was the suggestion of third persons or the suggestion of a newspaper, or what not? It has not the quality of evidence bearing against us in this case.

JUDGE NEILSON.—I think it should be received, sir.

Q. What time in the afternoon was the suggestion made?

Mr. Tracy.—Your Honor will note our exception?

JUDGE NEILSON.—Yes, sir.

A. Between five and six o'clock, sir.

Q. What was your dinner hour? A. Six.

Q. You had no thought then, of going to Steinway Hall until that suggestion was made? A. No.

Mr. Evarts.—That I object to.

The Witness.—No.

JUDGE NEILSON.—They certainly have a right to prove that this introduction, which you have shown, came about casually or accidentally, was not a fixed, set purpose, or whatever the character of it was—not to give conversations. That is the extent of my ruling. Go on, sir.

Mr. Evarts.—Your Honor has my exception?

JUDGE NEILSON.—Yes, sir.

Q. You have spoken of the Produce Exchange. That is an institution in New York, I believe? A. Yes, sir.

Q. Are you a member of it? A. I am.

Q. How long have you been a member of it? A. For a good many years. I don't know how many.

Q. How many members are there in that institution? A. I think there are 2,000 or 2,500.

Q. How many are there in daily attendance generally? A. I should think 1,500 or 2,000, as near as I can estimate it.

Q. How frequently do you attend the Produce Exchange? A. Every day—every business day, when I am in town.

Q. Now, will you state how many different men—give us some kind of an estimate—accosted you in reference to this scandal, after these statements were made? A. A great many, sir. I don't know how many. A great many.

Q. Give us some idea of the number—the daily number that accosted you concerning it after this scandal broke out?

Mr. Evarts.—You mean after the Woodhull publication?

Mr. Fullerton.—Yes, sir.

A. I don't know; 15 or 20 a day, I should think, during the excitement of it, at least.

Q. Sometimes more? A. Yes, sir.

Q. What was your object in answering them?

Mr. Evarts.—That I object to.

The Witness.—To mislead.

Mr. Evarts.—That I object to, if your Honor please.

JUDGE NEILSON.—That is already ruled upon.

Mr. Evarts.—I object to it as evidence in itself. Every man is to be judged by his words.

JUDGE NEILSON.—I can not take that.

Mr. Fullerton.—It was not objected to at the time he did it.

Mr. Evarts.—Certainly.

Mr. Fullerton.—No, sir; it was all right then. I have a right to prove why he did it, and who approbated it.

Mr. Evarts.—Then you get the evidence; but your asking him why he did it does not get any evidence.

Mr. Beach.—Your Honor, we have not proved that, except in very general terms. They put questions to this witness, and proved his declarations made to specific parties at specific times and places. We now propose to prove by him that those declarations which he admits to have made were made with this same purpose which he spoke of generally, and to show that the answers which he gave were dictated by Mr. Beecher.

JUDGE NEILSON.—That is a modification of the question put. I think that view is correct. Your question relates to all the persons that accosted him.

Mr. Fullerton.—Certainly it does.

JUDGE NEILSON.—The question, if limited to those whose names have been given by them ——

Mr. Fullerton.—Well, they are legion, sir.

JUDGE NEILSON.—I think he may answer as to all those.

Mr. Evarts.—He may answer whatever Mr. Beecher said to him concerning all those.

JUDGE NEILSON.—All those, sir.

Mr. Evarts.—But nothing else—of his own movements, of his mind, and reasons.

JUDGE NEILSON.—He may state his reasons, provided he afterwards communicated it to Mr. Beecher.

Mr. Evarts.—Well, but are we to assume that he did? Your Honor has frequently said that the better way is to begin with what he did communicate to Mr. Beecher.

JUDGE NEILSON.—Well, we have some evidence on the subject already?

Mr. Evarts.—It is already in.

JUDGE NEILSON.—Yes; now as applied to these persons.

Mr. Evarts.—We don't want more brought in unless it is brought in legitimately.

JUDGE NEILSON.—In regard to these persons you have named.

Mr. Evarts.—That is, whatever passed between Mr. Beecher and this witness concerning any of these witnesses, separate from what is already introduced, I suppose might be legitimate evidence; but that is not the point of the present inquiry.

Mr. Fullerton.—What object had you in view in replying to those people in the Produce Exchange who accosted you and questioned you in reference to this scandal?

Mr. Evarts.—That we object to.

The Witness.—To give Mr. Beecher a character for purity.

Mr. Evarts.—We object.

Mr. Beach.—[To the witness.] They object. You should not answer.

The Witness.—I beg pardon.

Mr. Evarts.—Your Honor heard the question?

JUDGE NEILSON.—Yes, sir, I admit it, and you take an exception.

Q. What object do you say you had in view?

JUDGE NEILSON.—He has answered.

The Witness.—I have answered.

Q. What idea did you mean to convey to these people?

Mr. Beach.—I would like to have the answer read.

[The stenographer read the answer referred to as follows: "To give Mr. Beecher a character for purity."]

Q. You used appropriate language for that purpose, did you? A. Yes, sir.

Mr. Evarts.—That I object to. The words that he used are the words to be given in evidence.

JUDGE NEILSON.—You have got it.

Mr. Evarts.—What authority is there to ask a witness to state evidence, and then ask for a statement by the witness himself that he used words appropriate?

JUDGE NEILSON.—As he understood it.

Mr. Evarts.—I understand that; but, your Honor, how does it become a subject of evidence, when it is what he *said* that you and the jury must judge of, and not take the witness' construction?

JUDGE NEILSON.—We will take it.

Mr. Evarts.—I move to strike out the answer.

JUDGE NEILSON.—Denied.

Mr. Evarts.—We except.

JUDGE NEILSON.—Proceed.

Q. What passed between you and Mr. Beecher in regard to what you said, or what you were to say to any persons, who catechised you on the subject?

Mr. Evarts.—That we object to, as they have examined him about it.

JUDGE NEILSON.—I think that is proper if applied expressly to any of these gentlemen whom you have named.

Mr. Evarts.—Undoubtedly. If they will take Mr. Buck, or Mr. Swan, or Mr. Baxter——

JUDGE NEILSON.—You need not name them.

Mr. Evarts.—There is the point, if your Honor please.

JUDGE NEILSON.—You have named them all, and the answer of the witness should be applied to some of those persons.

Mr. Evarts.—Now, if your Honor please, it is not permissible for this witness to apply the past evidence argumentatively to these people. That is *his* affair. What Mr. Beecher said to him he has already testified to. Now, if he has anything more that Mr. Beecher said to him concerning these particular cases, he may now be inquired of undoubtedly upon the particular cases having been brought in by us. But that is not the effort. The effort is not to give any new act concerning Mr. Beecher, but to apply by the witness' argument or statement, some previous statements of Mr. Beecher that were general, to these particular circumstances.

JUDGE NEILSON.—I don't know whether they were previous and general or not.

Mr. Evarts.—I ask to be guarded against any such consequences. If each of these cases can be put to the witness, and it is said, "What did Mr. Beecher say to you concerning what you said or what you should say to Mr. Swan?"—that is a question, possibly, admissible.

JUDGE NEILSON.—It is not to be expected that the witness could have gone to Mr. Beecher and said to him, "I had a conversation with A. and told him so and so, and with B. and told him so and so."

Mr. Evarts.—It is not for us to suppose what could and could not be done.

JUDGE NEILSON.—Mr. Fullerton, will you proceed? I think there is a line proper——

Mr. Evarts.—There is a limit, if your Honor please.

JUDGE NEILSON.—No doubt there is a limit. [To Mr. Fullerton.] You must have an idea——

Mr. Fullerton.—I have a distinct idea, and that idea is shadowed forth in my question.

JUDGE NEILSON.—Go on, in respect to any of these persons named on the cross-examination.

[The stenographer read the question.]

Q. What passed between you and Mr. Beecher in regard to what you said, or what you were to say to any person who catechised you on the subject?

Mr. Evarts.—That we object to as recalling what has been already testified to on the subject.

The Witness.—Can I answer it?

JUDGE NEILSON.—Proceed.

The Witness.—I remember, sir, having said to Mr. Beecher that I had been questioned by Mr. Baxter on the subject, and by others whose names I do not now recollect, and that I had undertaken to mislead them, by stating to them, in the first place, that if the story was true it was infamous, and if false it was diabolical; that if his life was not an answer to it, I did not choose to make any, that I did not think it was necessary, and being pressed close I had denied the truth of the criminal intercourse with Mrs. Tilton, and said he was a pure man. And he thanked me; he said he thanked me for doing that; and he said there was only one way, since lying was necessary, and that was to lie sublimely.

Q. Do you recollect the conversation had with Mr. Halliday? A. Yes, I remember that.

Q. What was that conversation? A. The purport of it was Mr. Beecher was a guiltless man. This I told Mr. Beecher: That I had undertaken to tell Mr. Halliday it was a shameful proceeding for deacons to dig into a scandal that had been already settled amicably between the parties, and Mr. Beecher thanked me.

Q. Do you recollect the letter put in evidence from Mr. Beecher to yourself, wherein he says, in substance, "your conversation with Mr. Halliday was quieting?" A. Yes; I saw him after that letter, too.

Q. What took place after that letter? A. He spoke of the letter, and thanked me for my interview with Mr. Halliday.

Q. Mr. Halliday was the Assis ant Minister? A. Yes, sir. Have you got the letter?

Q. Your interview with Mr. Halliday satisfied him? A. It satisfied him. Something of that sort.

Q. What did Mr. Halliday question you about? A. Mr. Halliday asked me about the stories against Mr. Beecher and his alleged intercourse with Mrs. Tilton, &c.

Q. Did he tell you his object in making those inquiries? A. He said something about a deacon's meeting; I don't know exactly what it was.

Mr. Evarts.—This has all been given in evidence before on the direct.

JUDGE NEILSON.—You have called out the conversation with Mr. Halliday since.

Mr. Evarts.—That is this witness' conversation with Mr. Halliday.

Mr. Beach.—You asked for it.

JUDGE NEILSON.—The general rule is that counsel shall not have the witness repeat the evidence given on the direct. No doubt that is the rule.

Mr. Beach.—Undoubtedly, sir. We do not seek to do that. After the interview with Mr. Halliday he talked with Mr. Beecher about it.

Mr. Evarts.—That is the only reason you got it in before. [Reading.] "What was the subject of the interview? A. The subject of the interview was—Mr. Evarts.—Did you report it to Mr. Beecher? Witness.—Oh! yes, sir, I talked with Mr. Beecher about it afterwards." Then Mr. Fullerton went on, "Q. What was the subject of the interview between you and Mr. Halliday?" * And then he goes on and gives the whole interview.

JUDGE NEILSON.—You are correct, if what you refer to is this interview.

Mr. Evarts.—Undoubtedly. No other.

JUDGE NEILSON.—The counsel must accept the admonition.

Mr. Fullerton.—From whom do I understand it comes, your Honor? I am entirely correct. I am only proving something that grows out of the cross-examination, referring to this branch of the examination; not elicited on the direct.

JUDGE NEILSON.—You have a right to do that.

Mr. Evarts.—My objection is, it is not that; it is the direct examination reproduced, out of which the cross-examination grew, that he is now inquiring about.

Mr. Beach.—We proved the conversation with Mr. Halliday, and we are proving it was repeated to Mr. Beecher.

Mr. Evarts.—That you have proved also. The only reason you proved your conversation with Mr. Halliday was, that you proved that it was repeated to Mr. Beecher.

Mr. Beach.—Yes, sir; but we have not proved what Mr. Beecher said. You (Mr. Evarts) did not read that. Mr. Tracy says you have been reading it. You read what passed between Mr. Halliday and the witness.

JUDGE NEILSON.—If my memory is correct, I learn now, for the first time that after this interview with Mr. Halliday, Mr. Beecher approved and thanked him for what he said. I think that is new matter.

Mr. Evarts.—That is all here in the direct. May I say just how it was; I have it here; "I repeated [it] to Mr. Beecher, and Mr. Beecher thanked me for it." †

Mr. Fullerton.—Look at the letter of June 1st. It is the letter marked

* See p. 442, *ante*. † See p. 443, *ante*.

Exhibit D 43, to which I call your attention. Do you recollect writing that? A. Yes, I recollect it; it is my letter.

Q. I call your attention to the phrase: "You can stand if the whole case were published to-morrow." What is it you meant by that expression?

Mr. Evarts.—That I object to. There is the expression in plain English.

JUDGE NEILSON.—I think he can tell what it refers to. I do not think he can tell what it means.

The Witness.—I had a conversation——

Mr. Evarts.—The question here is whether you can ask the witness to give the construction of a passage which is very good English. I think you can not.

Mr. Fullerton.—You can not, if it is in a contract; but if in a letter written by a witness on the stand, who has no interest in the suit, he can always interpret language of his own construction.

Mr. Evarts.—I object to any evidence which goes to interpret this plain language.

JUDGE NEILSON.—I so rule.

Mr. Evarts.—The question is not allowed.

JUDGE NEILSON.—The witness writes with a certain intent, certain words, what the other side understand according to the fair and reasonable interpretation of what is written. I think it must stand in that way.

Mr. Fullerton.—This letter is given in evidence, not for its effect upon the case, but for the purpose of affecting the witness on the stand. They mean to put one interpretation on it, whereas it ought to receive another.

JUDGE NEILSON.—So far as what he has written at the time, that speaks for itself.

Q. Had you any conversation with Mr. Beecher about the time of writing that letter? A. Yes, sir; on Sunday night.

Q. When was that letter written? A. On Sunday morning.

Q. State, if you please, what that conversation was?

Mr. Evarts.—Has not that been gone into before?

Mr. Fullerton.—No, sir.

Mr. Evarts.—Was not every interview gone into with Mr. Beecher?

JUDGE NEILSON.—He is to take that conversation with special reference to this letter.

Mr. Evarts.—If there was any.

Mr. Fullerton.—Yes, sir.

Mr. Beach.—Or with reference to that expression, that he could stand if the whole case were known, &c.

Mr. Evarts.—Primarily, every interview they have gone into; they have no right to inquire into it except in reference to our inquiries concerning it. The introduction of this letter is not an inquiry of ours concerning the interview, and if everything we introduce is to give a right to additional statements and interviews that have already been passed through and exhausted, why, of course, it is idle for us to give any evidence.

JUDGE NEILSON.—Such a thing might happen, as that evidence might be

given on your part that would bring something to the mind of the witness not suggested or inquired about before. Go on.

Mr. Fullerton.—State the conversation.

Mr. Evarts.—I object to this general referring to an interview already given in evidence.

The Witness.—Mr. Beecher came to my house on the evening of the Sunday on which this letter was written, and I said to Mr. Beecher. "You never give me any strength at all. If I was to follow you my hands would drop useless. You give me no courage; you give me no hope. Whenever there is an emergency to face in the matter, whether it is easy or whether it is hard to meet, you drop; you don't suggest any way out. Now, if you were to express to your congregation the contrition which you have expressed to me in consequence of your intercourse with Mrs. Tilton, they, in my opinion, would forgive you and you could stand. I don't see any necessity for the hopelessness of your letter this morning. It is nothing but discouragement. And that is what I meant by the expression 'You can stand if the whole case were known.'"

Q. What reply did he make to that? A. He considered that the card that was published on the morning of June 2d——

JUDGE NEILSON.—Did he make any verbal reply then and there? A. He said he could not feel hope: he was hopeless. He could not help expressing his feeling. That was the substance of what he said, and he said he came to me for strength. That is what he came for, he said.

Mr. Tracy.—Did he say that more than once to you? A. Yes, sir; many times.

Q. Did he ever say that to you of a Sunday evening on his way to church? A. This was Sunday evening; I am talking about this Sunday evening.

Q. What did he say on one occasion, or more than one occasion, of the meeting, when he was on his way to church, when he would stop at your house?

Mr. Evarts.—Is this not something we have gone into.

JUDGE NEILSON.—Counsel ought not to repeat what has been gone into; I hope he won't.

Mr. Evarts.—The question is not whether it is a repetition of what was said. The question is whether it is a recurrence to a subject that he went through with, which is not lawful except in connection with something we have shown on cross-examination.

Mr. Fullerton.—It is not a recurrence to a subject which has been gone through with.

JUDGE NEILSON.—Go on.

The Witness.—He used that expression, or the substance of it, to me very often on Friday evenings, before going to his prayer-meeting, and on Sundays, and on various days of the week; I don't recollect the particular days.

Q. What was the expression? A. On which evening—on this evening?

Q. No, that we have got; on the other evenings? A. He said he wanted to get help and courage enough to face his people.

Q. Did you relate on your cross-examination all that occurred between you and Charles Storrs, when you went to see him in reference to the report which the committee contemplated? A. I did not relate the whole of that —the cause of it, and all about it.*

Q. I want you to relate all the conversation between yourself and Charles Storrs, if you did not relate it on your cross-examination? A. I told Charles Storrs, as near as I can recollect, that when I was at Lowell, Gen. Butler read to me from the Boston papers that the committee were not going to cross-examine me, and that I had telegraphed my partner, Mr. Woodruff, to see Mr. Sage, and tell him that I should be in New York the next morning for cross examination; that I had telegraphed Mr. Woodruff to have him (Charles Storrs) come to see me, and I presumed that he was there in answer to that dispatch, and I said to Mr. Storrs: "Mr. Storrs, Mr. Beecher has confessed to me, in the presence of another, adultery with a woman other than Mrs. Tilton. My counsel deems it necessary that the papers and statement which I made to him concerning that event should go into the statement which I am about to make. I understand your brother is a member of this investigating committee. I want to say to you that I would like to have you see your brother, and not have him sign that report until I have had an opportunity to be cross-examined upon the statement which I have published. I want you to particularly put it upon that ground, namely, that I don't want to have him sign that report until I have had an opportunity to be cross-examined by the committee," and Mr. Storrs said to me, "I suppose you refer to a lady," &c., mentioning her name, and I said, "I do not mention any names. My disposition is not to hurt anybody. I have sent for you as a friend to come here for the purpose which I now explain to you," and that is what I said to Charles Storrs, as near as I can remember.

Q. Did you say anything on this subject, to this effect, that your cross-examination would do away with the necessity of publishing a statement? A. Yes, sir; I said something of that sort to him, substantially that; I said to Charles Storrs that Mr. Beecher had mentioned the woman's name, and he did.

Mr. Evarts.—That last is not good evidence.

The Witness.—I don't know whether it is or not.

Mr. Evarts.—It is not without the inquiry, and the witness is not to volunteer evidence.

JUDGE NEILSON.—I don't know that he intends to volunteer.

Mr. Evarts.—I didn't say he was intending to volunteer.

JUDGE NEILSON.—I think that last statement should be struck out.

Mr. Beach.—Not the whole of it.

JUDGE NEILSON.—The statement that Mr. Beecher mentioned the lady's name.

Mr. Evarts.—That is within your Honor's allowance, but the witness went on to state, "and he did," &c.

JUDGE NEILSON.—Strike that out.

Q. Was what you said to Charles Storrs, true? A. Absolutely true.

* See cross-examination in reference to Charles Storrs, p. 736, *ante*.

Mr. Evarts.—That I object to. They can not give evidence in that way, by asking a man if what he told him on a subject was true.

JUDGE NEILSON.—I rule that out. Your comprehensive statement would get in that what this witness said to this third person was true.*

Mr. Fullerton.—No; was it true that Mr. Beecher made that statement to him, not that Mr. Beecher's statement was true.

JUDGE NEILSON.—No.

Mr. Fullerton.—I would like to show that what the witness said to Mr. Storrs was true.

JUDGE NEILSON.—It is not material to us at all.

Mr. Fullerton.—In your cross-examination you stated that Mr. Tilton told you his wife had been before the Committee, and that he had left the house. What else did he state to you in that conversation? A. That his wife had been before the Committee, and that he had left the house.

Q. That he had left the house in consequence of it, I understood you to say? A. Yes, sir, it was in consequence of his wife having been before the committee, and he said that he should never go back to it.

Q. Give us the whole conversation.

Mr. Evarts.—That depends on whether it relates to this subject.

JUDGE NEILSON.—A subject you introduced.

Mr. Evarts.—We prove the single fact that he left the house, and that he told him so, and that he advised him to go back.

JUDGE NEILSON.—Is not the rest of the conversation material?

Mr. Evarts.—If it related to other matters?

JUDGE NEILSON.—No, if it related to this matter.

Mr. Evarts.—If it related to his leaving and going back.

JUDGE NEILSON.—If it related to the subject-matter of the conversation.

Mr. Evarts.—Your Honor sees that if, under cover of that, a narrative of conversations of what passed between Mr. Tilton and his wife, in general, relating to this matter of controversy, is to be introduced, it is a very different inquiry.

JUDGE NEILSON.—The general proposition is that you, having introduced part of the conversation, he can call for the rest.

Mr. Evarts.—All that relates to that subject, I apprehend, and nothing more. If in the same interview, they go on and talk of other matters we have not introduced, it is not competent.

Mr. Beach.—We do not differ with the counsel in regard to the rule.

Mr. Fullerton.—Not at all. The gentleman is making objections before the questions are asked.

Mr. Evarts.—The questions are general, and the disposition of the witness is to answer freely.

Mr. Fullerton.—I am glad to hear the gentleman's good opinion of him.

Mr. Evarts.—That is so.

* In *Wiggin* v. *Plumer* (11 Foster [N H.] 251) it was held that when there is testimony that a witness has made extra-judicial statements inconsistent with his testimony on a point not material, it is not admissible to corroborate his testimony on that point by proving the fact to have been as testified to. The fact being immaterial, which account is true, is not relevant to his credibility.

Mr. Fullerton.—Answer the question.

The Witness.—He said he had told his wife that he had not known of the appointment of the committee, and she had not told him that she was going, and he didn't want her to go to any committee without consulting him and letting him know she was going, and he didn't like that sort of conduct. That was substantially the point.

Q. Did he state whether or not he was informed of the substance of her statement, or that he was ignorant of it? A. He did not know anything about it.

Q. He did not know anything about it? A. No, sir.

Q. Did he state in that conversation when he first heard of the appointment of the committee? A. I think he stated that that was the first he had heard of it. I do not recollect distinctly about that; I think that is what he said—that he had not heard of it before that.

Q. Do you recollect when this conversation took place? A. It took place during the week of the 5th of July, I think; between the 5th and the 12th of July, I think.

Q. Do you know how soon it was after Mrs. Tilton had been before the committee? A. How soon it was after what?

Q. After Mrs. Tilton had been before the committee? A. I think she had been before the committee that day—the evening on which he saw her, if my recollection serves me right.

Q. [Handing paper to witness.] I now put in your hand Exhibit D 45 [p. 728 *ante*], which is the proposed report of Mr. Tilton, in his handwriting. From whom did you receive that? A. I think from Mr. Tilton.

Q. What did he say in regard to it at the time he gave it to you?

Mr. Evarts.—That we object to, if your Honor please—whatever he said concerning the use of it, or whatever was to be done with it. If that is introduced by us, why, that is all very well. A discussion on the subject between these two gentlemen, because we have proved an act of Mr. Tilton with the paper, does not seem admissible.

Mr. Fullerton.—Of course, we have a right to show what Mr. Tilton said when he passed the document over. Your Honor understands perfectly well that in that period of the history of this scandal, they were doing a great many different things for the purpose of concealing from the world the truth, and this was one of the schemes for that purpose, that was to patch up and gloss over this whole affair. It was for the purpose of saving his wife and children that this was got up.

JUDGE NEILSON.—I think you are confined to any conversation he had with, or in the presence of, or that was brought to the knowledge of Mr. Beecher.

Mr. Fullerton.—I don't want to imitate the counsel on the other side, by arguing a question after it is decided; but I ask your Honor to consider, for a single moment, that I am now trying to prove what Mr. Tilton said at the time of the actual handing of that paper to Mr. Moulton.

The Witness.—Mr. Tracy was a party to it, and he said he represented Mr. Beecher.

Mr. Evarts.—Mr. Beecher was no party to this conversation.

Mr. Beach.—Counsel on the other side conceded we had a right to show what Mr. Tilton said as to the paper, and what was to be done with it.

JUDGE NEILSON.—Instructions, of course.

Mr. Evarts.—That is, instructions as to that paper; but not conversations concerning its contents.

Mr. Beach.—Not concerning its contents. We are not going to ask anything in regard to its contents; but if I hand your Honor a certain paper, with a request to do a certain thing with it, for a certain purpose,—is not that direction evidence?

JUDGE NEILSON.—Yes, sir.

Mr. Evarts.—If I say, "I give you that paper to give it to Mr. Beecher" ——But to say, "I give it to you for the purpose of deceiving him,"——that is not an admissible conversation.

Mr. Beach.—I say it is. I give you a paper, and I say, "I want you to use that paper in a particular way, for a particular purpose."

JUDGE NEILSON.—That you may show.

Mr. Evarts.—That is to be shown against them, and not in favor of them.

JUDGE NEILSON.—That is to be seen how that will be.

Mr. Evarts.—*We* could show that if we saw fit. We proved their action, and then they endeavor to explain, by words that passed between them, their action, which we, by way of cross-examination, can prove, because we affect them with what they say; but they can not affect themselves as towards us, with what passed between them.

Mr. Beach.—Let me put an illustration to your Honor. I consider this rule of some practical importance, and I pledge myself to furnish to your Honor authorities sustaining the proposition which I submitted a while ago, that wherever the act of any party is given in evidence his declaration accompanying that act is admissible to explain or to qualify. It is a general and fundamental proposition of evidence; and, suppose, if the gentleman's doctrine was applied to all the various circumstances which arise in a court of justice—suppose a man was indicted for striking me—Mr. Evarts comes to me and delivers a blow in my face, and at the instant of delivering that blow he accuses me of having injured him in some form. He gives the motive and the purpose with which he delivers that act. Can that act be proved against Mr. Evarts, without permitting him to give the declaration accompanying the act, showing the motive and the purpose? Suppose he said to me, "Mr. Beach, you have assaulted me, or you have circulated infamous slanders against me or my family," may not that be given in evidence to characterize the transaction? And who ever heard that declarations accompanying an act given in evidence against a party or a witness can not be given for the purpose of explaining the circumstance and the motive which is to qualify and characterize the transactions? What is the meaning of the rule of law that what happens upon a particular occasion may be given in evidence as a part of the *res gestæ*, whether they are acts or declarations? Anything which is material to be proved, may be proved by the accompanying and surrounding circumstances.

JUDGE NEILSON.—Material to the act?

Mr. Beach.—Certainly, your Honor, material to the act.

JUDGE NEILSON.—I think you agree about that. Proceed, Mr. Fullerton.

Mr. Evarts.—Let me say this: My learned friend puts to you a case which is within the recognized rules of evidence, although the case otherwise is not a supposable one, either that he should have given me an offense, or that I should have struck him in the face. But I deliver the blow, and at the same time say something as accompanying the act, to the man to whom the blow is given, what is said being affixed to the blow. That is a spoken act. That is not hearsay. That is a part of the blow; but here the point is——

JUDGE NEILSON.—It goes to the question of malice.

Mr. Evarts.—It is a part of the blow. It is a spoken act. Some confusion, no doubt, arises in lawyers' discussions about hearsay evidence that that comes by word of mouth in connection with the act; but your Honor is familiar with the distinction that our learned friend has given. But here we give a paper as used in a certain way, to wit, a paper written by Mr. Tilton, and brought by Mr. Moulton from Mr. Tilton, and proposed in a subsequent conversation to be read before the council. We have a right to show that Mr. Tilton did take the paper. Now, if he gave instructions to take the paper, and lay it before the council, or carry it to Mr. Beecher, that is a part of the act of delivering it to him; it comes within the spoken acts, but this question is large enough to draw out, and so I suppose, is intended to draw out a larger line of mere heresay evidence, to wit, conversations between Mr. Moulton and Mr. Tilton, with which Mr. Beecher can not be affected.

JUDGE NEILSON.—That distinction must be observed.* Go on, Mr. Fullerton.

Mr. Fullerton.—When anything comes out that is an infraction of the rule, counsel can raise his objection.

Mr. Evarts.—We have a right to have questions properly framed.

Mr. Fullerton.—The court says the question is proper. I repeat the question.

* Compare *People* v. *Davis*, 56 N. Y. 95 (1874, opinion by GROVER, J.). This was a criminal prosecution for advising the procuring of an abortion, which produced death. "The counsel for the accused excepted to the ruling of the court admitting evidence of the statement of the deceased, in the absence of the accused, as to what was done at the doctor's office upon the occasion of a ride she took with him. This ruling is sought to be sustained upon the ground, first, that it was part of the *res gestæ*; and second, that it was competent as the act or declaration of a co-conspirator, while engaged in the purpose of the conspiracy. The case shows that the deceased, in company with the prisoner, left her residence, in his buggy, and was absent several hours; that he brought her back, and she came into the house; that the prisoner did not come in; that immediately after she came in, in answer to inquiries from her stepmother, she made the statement in question, telling what had been done by the doctor at his office, and how he did it, and exhibited certain medicine which she said the doctor gave her, and stated what he told her as to taking it when her pains came on. In this case the thing done, or *res gestæ*, was at the doctor's office in another town; and it is clear that its narration by the deceased was no part of that thing. Anything said accompanying the performance of an act, explanatory thereof, or showing its purpose or intention, when material, is competent as a part of the act. (1 *Greenleaf's Evidence*, 122, §§ 108, 108*a*, 109, and notes.) But when the declarations offered are merely narratives of past occurrences they are incompe-

Mr. Evarts.—What is the question?

JUDGE NEILSON.—Let the stenographer read it.

[The stenographer read the question.]

Mr. Evarts.—I understand your Honor's instruction is, what is to be done with the paper?

JUDGE NEILSON.—What he said in regard to it—the paper.

Mr. Evarts.—That will cover its contents. I object to the question, if your Honor please, and you will please note my exception.

The Witness.—Mr. Tilton said to me, in accordance with the consultation that had taken place the night before between Gen. Tracy, himself and myself, that he had gone home and that he had dictated in part to Elizabeth a statement for the committee to sign, which he had copied, and which he handed to me. This was the document, I believe, that he handed to me, and I subsequently——

JUDGE NEILSON.—Did he tell you what to do with it?

The Witness.—He said it was a report for the committee, in accordance with the consultation, and I saw Mr. Tilton and Mr. Tracy subsequently together, and Mr. Tilton read this to Mr. Tracy, or Mr. Tracy——

Mr. Evarts.—We object to this. Mr. Tracy is not Mr. Beecher.

JUDGE NEILSON.—The mere act of reading it, I think, is correct.

Mr. Evarts.—If read between Mr. Tilton and Mr. Moulton it would not be evidence. If read between Mr. Tilton, Mr. Moulton and a third person it would not be evidence. If it was with Mr. Beecher it would be.

JUDGE NEILSON.—He has answered your question. That last part should be struck out.

Q. What did you do with that statement you now hold in your hand? A. I kept it.

Q. It was not used? A. No, sir.

Q. At that time had either Mr. Tilton or Mr. Beecher been before the committee that you know of? A. No, sir, I think not at that time; not to my knowledge at all.

Q. Did you have any conversation with Mr. Beecher in regard to that proposed report? A. I don't recollect whether in regard to this one; I think I alluded to this report in the conversation with him in his house.

Q. In what way did you allude to it? A. I think I told Mr. Beecher, during the week of the 12th of July, that Mr. Tilton had prepared a statement.

tent. (Id. § 110.) That is precisely this case. The declarations given in evidence were a mere statement of what had been done at the doctor's office, and not any part of what was then done, and therefore no part of the *res gestæ*."

In *Wiggin* v. *Plumer* (11 Foster [N. H.] 251), which was an action on a note, defense being that it was forged, plaintiff, to explain the dirty condition of the paper, gave evidence that it was in a trunk which robbers took from his house, and emptied in his barn; where he found it after the lapse of months. *Held*, that an offer to prove what he said about the note, while searching the trunk when found, was properly excluded. What he said about the *search*, was part of the *res gestæ*, and would have been admissible if offered, but what he may have narrated about the notes while searching, was incompetent. See also *Insurance Company* v. *Mosley* (8 Wallace, 397).

Mr. Evarts.—That is a direct examination that has heretofore been gone into.

Mr. Beach.—Not in regard to this witness.

Mr. Fullerton.—This report is introduced by the other side. We now learn of it for the first time on cross-examination.

Mr. Evarts.—Not at all.

Mr. Fullerton.—We learn its contents for the first time.

Mr. Evarts.—I think you had the paper in your hand, and that was the long statement, and you put in the short one, and the witness talked about the long one and the short one.

The Witness.—I didn't have the long one with me when I went to see Mr. Beecher.

Mr. Fullerton.—It was put in evidence on the cross-examination, for the first time.

JUDGE NEILSON.—We will take the statement.

Q. In what way did you allude to that statement in your conversation with Mr. Beecher?

Mr. Evarts.—I object.

Mr. Beach.—Go on.

The Witness.—You told me not to go on, Mr. Beach, when there was an objection.

Mr. Beach.—I now say you may go on.

The Witness.—I told Mr. Beecher, during the week of July 12th, that Mr. Tilton had consultations with Gen. Tracy and myself, in which Gen. Tracy had pictured to Mr. Tilton the interview that his wife had with the committee; that Mr. Tilton had prepared a statement.

Mr. Evarts.—I submit, your Honor, that that precise conversation was given before.*

JUDGE NEILSON.—It may not have appeared before that it related to this very report.

Mr. Evarts.—This very remark——

JUDGE NEILSON.—Go on.

The Witness.—That he had prepared this report, and that if it had not been for Mrs. Tilton's having left the house, and the publication of his correspondence with the committee, that this thing would probably have been accepted, because Mr. Tracy had told Mr. Tilton that he thought he could get substantially this adopted by the committee. That is as near as I can recollect the conversation concerning this statement.

Q. What reply did he make? A. I don't recollect what his reply was. It was at that point that I showed him the short statement which I had in my pocket.

Q. Some importance has been attached to the portrait of Mr. Beecher that was once hung in your house and has been taken down. I will ask you a single question in regard to it. Where did that portrait hang when you first put it upon the wall—Mr. Beecher's portrait? A. It hung in my parlor in Remsen street, on the wall.

* See p. 461, *ante.*

Q. Where did it come from? A. It came from Mr. Tilton's.

Q. When? A. I don't recollect the date when.

Q. About what time? A. I should think some time in 1871.

Q. How long did it hang in that place? A. It hung there until Mr. Page's portrait came there, a few months ago.

Q. Then it was taken down, and Mr. Page's put in its place? A. Yes, sir.

Q. What was done with Mr. Beecher's? A. Put up-stairs, on the mantelpiece.

Q. Preserved? A. Yes, sir.

Q. In good condition? A. Oh! yes, sir. Standing along side of an engraving of Cupid and Psyche.

Mr. Evarts.—I ask that this be stricken out.

JUDGE NEILSON.—Yes, strike that out.

Mr. Evarts.—I ask your Honor to state to the witness, who does not yet seem to have learned that such observations are entirely improper and uncalled for.

The Witness.—I understood Mr. Fullerton asked me where it was, and I told him. I didn't mean to be vulgar or abrupt, only to be specific.

Q. You were asked in regard to the notes that were given by Mr. Tilton to the various subscribers to the stock of *The Golden Age*. [Handing papers to witness.] Look at the four papers which I now show you, and say whether they are the notes which you alluded to? A. Yes, sir; those are the ones.

Q. Whilst counsel are examining those notes, I will show you a letter, and ask you whether that is the letter accompanying the return of the notes? A. Yes, sir.

Q. [Handing paper to witness.] Look at the other paper now shown you, and say whether that accompanied them or preceded them? A. Yes, sir; this is the note that accompanied them.

Mr. Fullerton.—I offer the notes in evidence.

"NEW YORK, Sept. 15th, '71.

"$1,500. For value received, I promise to pay Francis D. Moulton fifteen hundred dollars with interest at rate of seven per cent. per annum the payment of principal and interest to be contingent upon the success of '*The Golden Age*,' of which newspaper I am the sole editor and proprietor.

"THEODORE TILTON."

[Note marked "Exhibit No. 58."]

"NEW YORK, Sept. 15, '71.

"$1,500. For value received I promise to pay Franklin Woodruff fifteen hundred dollars with interest at rate of seven per cent. per annum the payment of principal and interest to be contingent upon the success of '*The Golden Age*' of which newspaper I am the sole editor and proprietor.

"THEODORE TILTON."

[Note marked "Exhibit No. 59."]

"NEW YORK, Sept. 15th, 1871.

"$750. For value received I promise to pay John C. Southwick seven hundred and fifty dollars with interest at rate of seven per cent per annum the payment of principal and interest to be contingent upon the success of '*The Golden Age*' of which newspaper I am the sole editor and proprietor.

"THEODORE TILTON."

[Note marked "Exhibit No. 60."]

"NEW YORK, Sept. 15th 1871.

"$750. For value received I promise to pay Jackson S. Schultz seven hundred and fifty dollars, with interest at the rate of seven per cent. per annum—the payment of principal and interest to be contingent upon the success of *The Golden Age*, of which newspaper I am the sole editor and proprietor.

"THEODORE TILTON."

[Note marked "Exhibit No. 61."]

Mr. Fullerton.—They are all signed "Theodore Tilton," and are all marked "canceled."

Mr. Fullerton.—I now offer in evidence this letter.

"June 10, 1872.

"DEAR THEODORE:—I have it all fixed. You are free, so be *brave*. Your notes will all be given up canceled and returned to you to-morrow. Enclosed find small bill of interest for which I must ask the money to feed the orphans.

"Ever truly yours,

[Letter marked "Exhibit No. 62."] "F. WOODRUFF"

Mr. Fullerton.—Now, I read this paper.

"NEW YORK, June 11, 1872.

"MR. THEO. TILTON—

"*Dear Sir:* We, the undersigned desiring to contribute to the loss sustained by you in establishing *The Golden Age*, do cheerfully return herewith the notes canceled, which you gave for *money* loaned.

Wishing you continued success and prosperity in the years to come, and congratulating you in having so securely founded the paper, and that you are now free from debt—

"We are, dear Sir, yours truly,

"F. WOODRUFF, $1,500.
"FRANCIS D. MOULTON, $1,500.
"JOHN W. MASON, $1,000.
"JOHN C. SOUTHWICK, $750.
"J. S. SCHULTZ, $750.
"J. P ROBINSON, [by F. WOODRUFF,] $500."

[Letter marked "Exhibit No. 63."]

Q. These notes bear date September 15, 1871. I want to know, now, with reference to that date, when the Woodhull biography was written and published? A. It was before that, I believe.

Mr. Evarts.—That has been offered in evidence.

Mr. Fullerton.—I know it has.

Mr. Evarts—I submit, your Honor, they have not any right to repeat items of evidence for the purpose of argumentative juxtaposition.

JUDGE NEILSON.—There ought to be some explanation, or opportunity for explanation.

Mr. Fullerton.—My friend on the other side made that a great point in his case.

Mr. Evarts.—That is argument.

Mr. Fullerton.—I am glad you think so. I am arguing.

Mr. Evarts.—What I object to is your reproducing proof.

JUDGE NEILSON.—The precise date is not given.

Mr. Fullerton.—No, sir.

JUDGE NEILSON.—The fact that it was published appears.

Mr. Fullerton.—I want to know whether the Woodhull biography was published before or after giving these notes.

JUDGE NEILSON.—That he may answer.

The Witness—I think it was before.

Q. How long? A. I don't remember the date; some time before.

Q. The notes were given in 1871, and given up in 1872?

The Witness.—Was your question, when the notes were given?

Q. When the notes were given, with reference to the publication of the Woodhull biography? A. The notes were given after the publication of the Woodhull biography.

Q. Do you remember how long after? A. I don't remember the date; I can not recall it.

JUDGE NEILSON.—It appeared on the cross-examination, the notes were given up after that publication.

Mr. Fullerton.—Yes, sir; and it was argued that it was in consequence of it.

Mr. Morris.—Whereas the fact is, they were not given. The notes had no inception until after the publication of that.

Mr. Evarts.—We will see; we object to arguing the matter as we go along.

Mr. Morris.—You should not object much to arguing, for you are all the time at it.

Mr. Fullerton.—It is suggested that I should ask you whether these notes were given up on the date of the Woodruff letter? A. My recollection is that they were.

Mr. Evarts.—It is now four o'clock.

Mr. Beach.—We had better go on a little longer. How will you be in the morning, Frank.

The Witness.—I don't know, sir.

Mr. Beach.—[After consulting with witness.] Your Honor knows that Mr. Moulton has not been able to go to his residence this day, since he heard of his mother's death, and he tells me he would prefer to have as much of this afternoon as possible. I think he can so arrange his affairs so as to be here in the morning at the usual hour.

JUDGE NEILSON.—Then we will adjourn.

SEVENTEENTH DAY, JANUARY 27, 1875.

FRANCIS D. MOULTON recalled and the re-direct examination continued.

JUDGE NEILSON.—I wish to say to the counsel on each side, before we proceed this morning, that on looking over the report of the proceedings, I have been, as perhaps thay have been, a little surprised to see how much time is spent on some minor and really unimportant points, and I think we might economize time, and it will suit me better, if the counsel would raise specifically, in clean-cut terms, any objection they wish to make, and if it be one that I understand and desire to decide at once, to be content with an exception. If, on the other hand, it is a point that the counsel think is worth discussion, they will indicate that, and then it will be my wish to hear discussion on the subject. I think we might economize time in that way, gentlemen.

Mr. Evarts.—If your Honor please, I observe in one of the morning papers some observations in regard to the painful position in which the witness was placed by the great and sudden affliction which overtook him yesterday, and which is made the occasion of some observations reflecting upon counsel, as if they had not appreciated that situation, and had, notwithstanding it, insisted upon prolonging the examination of the witness. Now, as your Honor understands, the court and the counsel on both sides at once placed the matter wholly at the choice of the witness.

JUDGE NEILSON.—That is certainly so.

Mr. Evarts.—And he, I am sure, agrees with us in that statement; nor was there any basis for any such imputation.

JUDGE NEILSON.—None whatever. I am very sorry it was made.

Mr. Fullerton.—And for reasons which it is not necessary to state here, the witness thought advisable that he should go on and complete his cross-examination and re-direct, if it did not occupy too much time.

JUDGE NEILSON.—It was a question properly addressed to the witness, and if he felt the case burdensome, and wished to shake it off his hands, it was a question addressed to him.

Mr. Fullerton.—Yes, sir; and I cheerfully bear testimony to the alacrity with which the counsel on the other side consented to take just such course as the witness desired. Shall I proceed, sir?

JUDGE NEILSON.—Yes, sir.

Mr. Fullerton.—At the close of the sitting yesterday, Mr. Moulton, I was calling your attention to the article published in *The Golden Age*, embodying the letter of Mr. Tilton to Mr. Bowen of Jan. 1, 1871. You stated upon your cross-examination that the copy which was appended to the tripartite agreement was not exactly like the one which you had seen. I hand you now a paper and ask you whether that is the copy which you saw [handing witness a paper]? A. Yes, sir; this is the copy that I saw.

Q. In what respect does it differ from the one attached to the tripartite agreement? A. I indicated what those differences were, but specially also, sir, in the—there were some differences in the print; and then, I think, the last clause here in writing by Oliver Johnson was not in the copy that was attached to the tripartite covenant. Is that the answer?

Q. That is it. I understand you to say then these words at the bottom of this proof, namely, "that being the case, this publication which is necessary to my own defense, can do him no injury," was not in the printed slip. A. That was my recollection, sir, from it the other day when I was looking at it.

Q. Those words are in the handwriting of Oliver Johnson, I understand you to say? A. Yes, sir.

[The paper shown to the witness is marked "Exhibit No. 64." See vol. 2.]

Q. You have been asked upon the cross-examination in reference to the publication of the letter to Mr. Bowen in connection with the payment of the $5,000 by Mr. Beecher; I wish to ask you whether Mr. Beecher mentioned the publication of that letter in connection with the payment of the $5,000, or in connection with whatever was said prior to the payment of the $5,000? A. Never, sir.

Q. It was not alluded to by him, as I understand you? A. No.

Q. Where did you get the notes which were produced and read in evidence yesterday, and the two letters accompanying them? A. From Theodore Tilton.

Q. They were not in your possession, were they? A. No, sir.

Q. You have been asked with respect to Theodore Tilton's valedictory, and as to the time when you first saw it; what valedictory did you refer to? A. The valedictory of Theodore Tilton in *The Independent*—the valedictory as editor of *The Independent*.

Q. When he ceased to be editor and became the chief correspondent, was it? A. Contributor.

Q. It was not a valedictory after his connection with the two papers ceased, at all, was it? A. No, sir.

Q. I call your attention for a moment to the letter of December 26, 1870, and ask you this question, whether you knew of the existence of that letter until after it had been sent? A. No. sir.

Q. Your answer, then, that you disapproved of that letter, had reference to the knowledge that you derived from Mr. Tilton of its contents after it had been sent? A. Yes, sir.

Q. You disapproved the sending of it? A. After it had been written; yes. sir.

Q. And your disapproval was founded on the fact that Bowen did not father his own charges by signing the paper? A. I thought he ought to have signed the paper, sir; that was my objection to it.

Q. There is but one other question, Mr. Moulton, and it is this: In any of the conversations to which your attention has been called upon your cross-examination by the other side with Mr. Beecher, or to which your attention was directed upon the direct examination, did Mr. Beecher ever deny to you his sexual intercourse with Mrs. Tilton? A. Never.

Mr. Fullerton.—That is all.

RE-CROSS EXAMINATION BY MR. TRACY.

Q. Mr. Moulton, at the time the notes which have been introduced in evidence connected with *The Golden Age* were given, what proportion of the original subscription had been paid in? A. What proportion? I really don't recollect, Mr. Tracy. I think it was paid in the day that the notes were given, or about that time. Mr. Woodruff can tell you about that better than I can. I don't remember.

Q. What proportion of the subscription had been or was paid in on that day? A. On the day that the notes were given?

Q. Yes, sir. A. My recollection does not serve me, sir, on that point. I think, perhaps the account——

Q. Don't you know how much your original subscription was? A. The original subscription was $3,000.

Q. What? A. The original subscription was $3,000.

Q. Now, how much of that had you paid at the time of receiving this note from Theodore Tilton? A. I don't recollect precisely about it, sir, but my

impression is that the one-half of that subscription was called for at the time the notes were given, and the notes were given in consequence of the payment of it. I won't be certain about it. I haven't anything to guide my memory about it.

JUDGE NEILSON.—The subscription that you paid, however, was $1,500? A. $1,500.

Mr. Tracy.—And had all the other subscribers paid one-half of their original subscription? A. My impression is that they had, sir, at the time that the notes were given.

Q. They had made these subscriptions prior to the starting of the paper, had they not? A. Prior to the starting of the paper.

Q. Can you tell us the form of that original subscription; what were its terms? A. I can not.

Q. Can't you tell anything about it? A. No. I don't remember. We subscribed $3,000—I subscribed $3,000 for *The Golden Age*, to start it.

Q. Now, can't you tell us anything about the terms of that subscription? A. Nothing but that I subscribed $3,000 for *The Golden Age*.

Q. What was you to have in consideration of that subscription? A. I don't know that I was to have anything. I was to lose it.

Q. Were you to give Theodore Tilton $3,000 in consideration of his starting *The Golden Age*? A. Well, I thought it was about as good as giving it; I didn't expect to get anything from it.

Q. I didn't ask you that; I only ask you what you agreed to do? A. I agreed to subscribe $3,000 for *The Golden Age*.

Q. Yes, sir, and what was you to have in consideration of that subscription? A. I don't think there was any agreement made as to what I was to have, sir.

Q. Nothing at all? A. I don't think there was.

Q. No understanding about it? A. No, I don't think there was; not that I recollect.

Q. And was there not with the other subscribers so far as you know? A. I don't recollect. Mr. Woodruff conducted it entirely, Mr. Tracy, and so he would be able to inform you; I can not.

Q. Do you mean to say that the paper which started on this subscription in March, had run until the 15th of September without having any part of that subscription paid in? A. I think Theodore Tilton drew his own money up to that time. My impression is that he had money and he paid it out as long as it lasted. I think so.

Q. Now, don't you know, Mr. Moulton, that the agreement between yourself and the other subscribers and Theodore Tilton, at the time these notes were given, was that they were to pay one-half of their original subscription in consideration of being released from the other half and his giving them his notes for the one-half which they had paid in, payable on *The Golden Age* becoming a success? A. No, I don't think that was the agreement at the time the notes were given. That was quite subsequent to it.

Q. That was quite subsequent to it? A. I think it was; that is my recollection.

Q. When was that agreement made, then, if it was not made at the time of giving the notes? A. I think it was made in 1872, some time.

Q. What was the agreement in 1872; repeat it? A. Well, I can't repeat it, sir.

Q. Can't you repeat the substance of it? A. That Theodore Tilton was to have the whole thing—not call for the balance of the subscription, and have the whole subscription as a gift to him, without any obligation to return it.

Q. Do you mean to say, then, that the liability of the original subscribers for the whole subscription continued until 1872, when these notes were surrendered? A. My impression is that it did, sir.

Q. That is your explanation of it? A. Yes, sir; that is my explanation of it.

Mr. Tracy.—Then, how did it happen that in 1871 he gave his notes for one-half of the subscription instead of the whole of it? A. Because he only got one-half.

Q. Ah! he gave his notes then for the half put in? A. That is all he wanted—that is the amount of money that he wanted, if I recollect correctly; but Mr. Woodruff conducted the whole of that negotiation, and he will be able to tell you.

Q. Now, do you know anything about how much money Tilton received on that subscription at the time of giving these notes in 1871? A. At the time of giving?

Q. Yes. A. My impression is that he had received the whole at the time of giving.

Q. You now mean to say that he had received the whole? A. Received the whole $1,500.

Q. Do you mean to say that he received it all prior to that time, or that he received it on that day? A. I said that I did not recollect a few moments ago; I haven't anything to guide my memory with regard to it.

Q. Do you mean to say now that you can't tell anything about that? A. My impression is that the money was paid on or about the day that the notes were given. Won't the account explain it, that you got?

Q. Now, do you know what he did with that money? A. I think he put it on deposit with Woodruff & Robinson, and drew it; I think the account will show what time it was paid.

Q. Now, will you take that account with Woodruff & Robinson and point to his deposit on that day of one-half those moneys, amounting to about $8,000, one-half of them will be that? A. What is the date, September 20th?

Q. September 15th, 1871. A. I don't see it here, sir.

Q. Is there any deposit on or about the 15th of September, 1871, there? A. No; don't appear to be.

Q. Within what time from September 15th, is there a deposit at all on that account? A. On what account, on account of the paper?

Q. On account of Theodore Tilton; a deposit in that account. A. February 3d, $500; February 13th, $500; February 24th, 1871, $500; March 4th, $500; March 8th, $1,500; May 1st, $500, and November 15th, $500.

Q. That is 1872, that last? A. No; November 15th, $500; November 25th, twenty-five——

Q. Then there is no deposit in that account, as I understand you, from March to November, 1871? A. Yes; there is a deposit from March to November, 1871.

Q. What is it? A. $500.

Q. When? A. March 4th, $500.

Q. I say from March to November there is no deposit in the account? A. Oh! yes; March 8th, $1,500.

JUDGE NEILSON.—He means from the end of March; after March? A. Yes, sir; there is.

Q. What is it? A. May 1st, $500.

Q. Is there any other? A. To the first of November?

Q. Yes. A. No, sir; the next one is November 15th.

Q. Now, what do you understand those deposits along in March and May of 1871, to be?

Mr. Fullerton.—One moment, I think we must object, sir.

Mr. Tracy.—I don't press the question, sir.

Mr. Fullerton.—I did not object in the first instance, because I thought it would save time to let them ask the question, but your Honor perceives that is not in reply to anything on the direct.

Mr. Tracy.—I submit it is directly in reply.

JUDGE NEILSON.—If there be any fact in connection with either of the deposits which you deem material, you may ask him.

Mr. Tracy.—Well, I won't ask that question; I don't think it worth while taking up time about it. The account shows for itself. [To the witness.] Now, you gave yesterday what purported to be the speech of Theodore Tilton, introducing Victoria C. Woodhull, at the Steinway Hall meeting? A. Yes, sir.

Q. When had your attention been called to the words that Mr. Tilton used, subsequent to the making of the speech, prior to yesterday? A. They were called, sir, to the words that he used in the speech on the night that he made the speech.

Q. I say after? A. And then after that they were called to it in the paper, and I had occasion within—almost every day, I guess—for a week afterwards to state Theodore Tilton's connection with that Steinway Hall meeting, and had occasion to speak of his speech. I have not seen it from that time to this.

Q. From what time? A. Well, I should say from a fortnight after the speech.

Q. Until when? A. Until I was asked to produce it from memory, yesterday. I produced it from memory.

Q. Had you talked with Tilton on the subject of what he did? A. Have I talked with him?

Q. Had you prior to your testimony yesterday? A. Had I talked with him? Oh, yes, sir; I talked with him prior to that.

Q. How long prior? A. About the time of the meeting.

Q. Well, recently? A. After that.

Q. Recently? A. No, sir, not recently; no.

Q. Within three months? A. I talked with him, I think, day before yesterday; I dictated the speech to P. B. White at my house, and told Mr. Tilton that I had dictated it.

Q. Was Mr. Tilton present when you dictated it? A. No, sir, he was not.

Q. I show you a copy of *The New York World* of Nov. 21st. Will you look at what purports to be Mr. Tilton's speech, as reported in the *The World*, and tell us whether it is correct or not [paper handed to witness]? A. It was either this or the report in *The Herald* next day that I saw it. Have you got the report of *The Herald*?

Q. No, sir; I have not. It is either that or a report in *The Herald* next day from which you read it? A. Yes, sir.

Q. And to which you referred, I suppose, for the next two weeks from time to time. Now, what do you say? Is that report in *The New York World* a correct report of Mr. Tilton's speech? A. It is something like it, as I remember it.

Q. Now, isn't it substantially like it, as you remember it? A. I think that there was something about freedom of speech, in his speech, sir.

Q. You think there was? A. Yes.

Q. Well, I will read this speech to you, and ask you if this is not substantially the speech.

Mr. Fullerton.—One moment, he has read the speech himself and knows whether it is right or not.

Mr. Tracy.—I have a right to ask him whether certain things did not occur there to refresh his memory.

JUDGE NEILSON.—I don't think you can read it. You can ask him if it is substantially correct, and wherein it differs from his recollection.

Q. Now, does it differ, in your recollection, from Mr. Tilton's speech as delivered only in the fact that you see nothing here about freedom of speech? A. I think not; if you will let me have it, I will try to point out what I—— [Paper handed back to witness.] I don't remember first, that he said that—"I was met at the door by a member of the committee."

Q. You don't remember that? A. No.

Q. Will you say he did not say it? A. I don't recollect that he said it.

Q. Well, will you say he did not say that? A. How am I to say that? If you will——

Q. I don't know, sir; I ask you; I am questioning you—not you me. A. My impression is that he did not say it; I can not—— How can I——

Q. Do you mean by that, that that is your recollection? A. That is what I mean.

Q. I am content. A. My impression is, also, that this clause, "Now, as to her character, I know it and believe in it and vouch for it—" my recollection of that is that, "Now, as to her character, I think I know it and believe in it;" not "believe in it;" I don't remember "believe in it." I remember the word "vouch;" and I don't remember the hisses; and my memory

with regard to the other is, "I would rather be——," "it may be that she is a fanatic; it may be I am a fool." My recollection of that is that he said "it may be that she is a fanatic and a fool." "But before high Heaven I would rather be both fanatic and fool in one than be such a coward as would deny to a woman the sacred right of free speech." My recollection of that was that, "to be such a coward as would refuse to ask from an audience for a woman the right of freedom of speech." "I desire to say that, five minutes ago, I did not expect to appear here;" I do not recollect that. "Allow me the privilege of saying that, with as much pride as ever prompted me to the performance of any act within fifteen or twenty years, I have the honor of introducing to you Victoria Woodhull, who will address you on the subject of social freedom." I don't reemember his saying that: "Allow me the privilege of saying that, with as much pride as ever prompted me to the performance of any act within fifteen or twenty years."

Q. You mean to say that you qualify it by putting in fifteen or twenty years? A. No—"allow me the privilege of saying that, with as much pride as ever prompted me to the performance of any act within fifteen or twenty years—" my recollection of the fact is only that, "I have the honor of introducing to you Victoria Woodhull." Then, I don't remember, "who will address you on the subject of social freedom."

Q. You don't remember that clause? A. No, I don't remember that clause; I am giving you my recollection of it.

Q. Now, will you say that he did not say, "now, as to her character, I know it, and believe it, and vouch for it — ?" Will you swear that he did not use that language? A. My impression is, sir, that he did not say, "I believe in it;" I remember his saying "I know it," and I remember the word "vouch"—that I am giving from my recollection of it.

Q. Now, will you say that he did not close his speech by saying, "I have the honor of introducing to you Victoria C. Woodhull, who will address you upon the subject of social freedom?" A. I won't say that he did not say it; I say that I don't recollect that he said that.

Q. Well, that purports to be a stenographic report of his speech, doesn't it?

Mr. Beach.—That I object to.

Q. Now, Mr. Moulton, that speech that you dictated to Mr. White, did he write down? A. Yes, sir.

Q. Did you give it to him? A. Did I give it to him? No, I kept it.

Q. Kept it in your possession? A. I kept it; yes, sir.

Q. Have you ever seen what purported to be a manuscript of Mr. Tilton's speech in his hands within a day or two? A. Never, sir. There was a party present when I dictated it, Mr. Tracy.

Mr. Tracy.—I didn't ask you that.

JUDGE NEILSON.—Well, it was proper, because otherwise he would leave us under the impression that Mr. White was the only person there, and presently it would appear as if it were a contradiction, when proved that somebody else was there. Therefore, I think the suggestion was proper on the part of the witness.

The Witness.—Yes, sir, I thought it was proper.

Mr. Evarts.—If your Honor please, as it was not an answer to any question, and as while cross-examining counsel has possession of the witness, they are entitled that he should say nothing that is not an answer to the question, although it is quite immaterial in this particular instance, yet ——

JUDGE NEILSON.—I don't think that rule would exclude an innocent observation of that kind, which naturally might occur to any witness.

Mr. Evarts.—I don't mean that it would call for reproach but certainly it can not be the interposition of evidence, at the will of the witness, whether it is important or unimportant, while he is under cross-examination.

Mr. Beach.—I think it is proper for the witness, sir, to relieve himself from misapprehension.

JUDGE NEILSON.—I think it was proper: at any rate, it was a very natural thing that any witness might do.

Mr. Evarts.—That might be, we have made no animadversion upon it whatever.

Q. You referred to an interview at the Fifth Avenue Hotel, where you say I was present and Gen. Butler? A. Yes, sir.

Q. And you say that you did not present certain papers to the committee because I requested you not to? A. Yes, sir.

Q. Will you state what papers I requested you not to present? A. What papers you requested me not to present? You requested me not to make my statement.

Q. I will ask you this question. Were not the only papers that I requested you not to present, or spoke to you on the subject of not presenting to the committee, or to the public, that were in your statement, the letter of Mrs. Hooker to her brother, Mr. John Hooker's letter to his wife, and Thomas K. Beecher's letters to his sister? A. No, sir; they were not the only letters.

Q. They were not? A. No, sir; they were not.

Q. Did I not, on that occasion and on other occasions, say to you, when speaking of those letters, that I did not see how any honorable man could make those letters public? A. No, sir; you didn't.

Q. I never said that to you? A. No, sir; you didn't.

Q. Did you not say to me, in answer to that, that those letters had been given to you by Mr. Beecher in connection with his case, and was not my reply that I didn't see how either you or Mr. Beecher could take the responsibility of making the private letters written to him, and the private letter of a husband to his wife, and the private letter of a brother to his sister, public, without the consent of the writers? A. I don't recollect that you ever said anything of the kind, Mr. Tracy. It was not until the Saturday night previous that those letters were to go into the statement, the night before you saw Gen. Butler at the Fifth Avenue Hotel. They were not in the statement, therefore, the night before.

Q. I don't ask you what was in your statement, or what was out of it; I am asking what I said and what reply you made to me? A. Yes, sir.

Q. Now, do you say that it was determined at the Fifth Avenue Hotel, that night, that you should not present your statement to the committee? A. I say that it was determined——

Mr. Tracy.—Please answer my question.

Mr. Beach.—He is not bound to answer it yes or no.

The Witness.—I can not answer it, your Honor, yes, or no, without an explanation.

JUDGE NEILSON.—Go on, I think he may answer it.

Mr. Tracy.—What did your Honor say?

JUDGE NEILSON.—I think he may proceed.

Mr. Tracy.—I ask him a direct question, which I submit admits of a direct answer, yes or no.

The Witness.—I can not answer it yes or no, without an explanation.

JUDGE NEILSON.—[To the witness.] That you may have a right to give on your re-direct. You may explain it afterwards.

Mr. Beach.—This question calls for precise language, precise words, and the witness may answer the substance without giving the language which was then used as near as he remembers.

JUDGE NEILSON.—That is the general rule, no doubt, still [to the witness] let us see what your answer is.

The Witness.—What is the question?

Mr. Tracy.—Read the question, Mr. Stenographer.

[The stenographer read the question.]

The Witness.—It was determined that there should be a consultation with reference to not presenting it at that time.

Q. And that consultation was had the next morning, was it not? A. Yes, sir, the next day, and at my house.

Q. With people whom you brought there? A. Yes, sir; with people whom I brought there.

Q. For the purpose of determining your action as to whether you should present your statement to the committee, or not? A. For the purpose of finally determining it.

Q. Who was present then? A. William C. Kingsley, Franklin Woodruff, my father and my wife.

Q. I was absent? A. You were not there. You didn't come to the house until after the short statement was made.

Q. Was not the subject of what you were to state before the committee that afternoon, there deliberated upon, and determined in that conversation? A. Yes, sir; it was.

Q. So far as you know, do you know that I had any knowledge of what your action was to be that afternoon, whether in presenting or withholding that report, until you made your appearance in the presence of the committee? A. I don't think you knew what the final action was to be. You knew what you wanted it to be, though.

Mr. Tracy.—I submit that is a remark——

JUDGE NEILSON.—Strike out that last clause. It was not called for by the question.

Mr. Tracy.—Ought it not to be accompanied with an admonition to the witness that he should not volunteer anything?

JUDGE NEILSON.—No, sir; because he has been here six or eight or ten days burdened and tortured by both sides, therefore, I shall not admonish him. [To the witness.] Answer the question simply the counsel has put.

Q. Did I ever ask you in the world to withhold from your statement or any statement of yours to the committee any paper that Henry Ward Beecher had ever written to you on the subject? A. Yes, sir.

Q. Was not my request or suggestion to you on the subject confined entirely to private papers of other people which had not been written by him? A. No, sir.

Q. You said, in answer to counsel yesterday, that you were not in sympathy with Mrs. Woodhull's sentiments on the marriage relation. Do you mean by that that you do not agree with her on that subject? A. I don't think I agree with her on that subject; no, sir.

Q. Will you state to us what your views are? A. Yes, sir.

Q. On the subject of the marriage relation? A. I believe in fidelity to your wife and in your wife's fidelity to you, and if you are not faithful to your wife, that you do wrong, that you ought to be punished for it severely; and if your wife is not faithful to you she ought to be punished for it severely; that is as near as I can get at it.

Q. What is your belief on the subject of divorce? A. On the subject of divorce?

Mr. Fullerton.—I don't suppose that properly comes in.

The Witness.—I have not reached a conclusion on that subject, the laws are so various in all the States, and there is so much to be said on that subject I really don't——

Q. Have you read *The Golden Age* on that subject? A. Have I ever read *The Golden Age* on that subject?

Q. Yes, sir. A. I think I have; I don't know.

Q. Have you talked to Mr. Tilton on the subject of divorce? A. Yes, sir.

Q. Do you and he agree in sentiment on the subject? A. I don't know that we do exactly. I don't know exactly what his sentiments are. He has not arrived at a conclusion, I guess, in regard to it yet.

Q. Did you ever read his article to Horace Greeley on the subject of divorce? A. I forget whether I ever did or not; I don't remember. If you will point it out to me perhaps I can tell you.

Q. Will you tell wherein you differ with Mr. Tilton on the subject of marriage and divorce?

Mr. Fullerton.—He says he does not know Mr. Tilton's sentiments on that subject; therefore he can not tell the difference between his own sentiments and those he don't know anything about.

The Witness.—I could not state to you Mr. Tilton's sentiments. He is a rigid monogamist, that I know, too much so, I think.

Q. Have you not read *The Golden Age*, and what has appeared on that subject from Mr. Tilton from time to time? A. I don't think I read all of it. I don't read very much; I can not; my eyes are not good enough.

Q. Did you read his article to Horace Greeley on that subject? A. I can not say. If you let me look at it I can tell you. [To Mr. Beach]—Is it right for me to look at it?

Mr. Beach.—Yes, gain all the information you can.

The Witness.—I read some portion of this, sir, I think.

Mr. Tracy.—You read some portion of that article? A. Yes, sir, I think I did.

Mr. Tracy.—Now, I read and ask you if you agree with this?

Mr. Fullerton.—I object to it.

Mr. Evarts.—Why?

Mr. Fullerton.—Because it is improper.

JUDGE NEILSON.—[To Mr. Tracy.] Let me hear your views about it, Mr. Tracy, how it is proper.

Mr. Tracy.—He has said he did not sympathize with Mrs. Woodhull on the subject of divorce; he says he don't know fully what Mr. Tilton's views are on that subject, and he don't know whether he agrees with him or not. I desire to ask him whether that has not been the subject of conversation between himself and Tilton, and whether they do not agree in that particular.

JUDGE NEILSON.—Is that a re-examination?

Mr. Tracy.—I think it is, your Honor. They introduced the evidence of what his sentiments were on the subject of marriage and divorce.

JUDGE NEILSON.—As to his sympathizing with that woman and her views?

Mr. Tracy.—And he said he did not. We are showing he did.

Mr. Fullerton.—Those are not her views.

Mr. Tracy.—I don't know that.

Mr. Fullerton.—Then if you don't know that, you ought not to ask him.

Mr. Tracy.—We will get at that.

JUDGE NEILSON.—I think I must rule it out, Mr. Tracy.

Mr. Tracy.—I offer to read, for the purpose of taking an exception, and I offer to follow it by showing those are the views of Mr. Tilton and Mrs. Woodhull on the subject of marriage and divorce.

JUDGE NEILSON.—It is ruled out, as not called for or proper as a re-cross-examination.

Mr. Tracy.—We offer to show their views are identical—Mr. Tilton's, Mr. Moulton's and Mrs. Woodhull's—on the subject of marriage and divorce.

Mr. Beach.—That is a broad and general offer which, of course, can not be passed upon on that point.

Mr. Tracy.—This is a part of that plan of proof.

JUDGE NEILSON.—I can not receive it.

Mr. Beach.—The Judge says he can not receive it.

Mr. Tracy.—Your Honor will note our exception.

Q. Have you ever talked with gentlemen on the subject of free love or the marriage relation, or on the subject of social freedom? A. I talked with you once on it, I know.

Q. Did you ever talk with Mr. Armour or Stephen K. Lane on the subject?

Mr. Fullerton.—I object to that.

Q. And in which you expressed your belief in the doctrine of free love as publicly understood?

JUDGE NEILSON.—Ruled out for the same reason, as immaterial.

Mr. Evarts.—This is to contradict the witness. He has stated his views.

JUDGE NEILSON.—He has stated he did not sympathize with Mrs. Woodhull in her views on that subject.

Mr. Evarts.—For all that, he has given his views, which are somewhat rigid.

JUDGE NEILSON.—On your cross-examination.

Mr. Evarts—I agree; and now we ask him if he has not said the opposite, and we name witnesses by whom we expect to contradict him.

JUDGE NEILSON.—It can not be received.

Mr. Evarts.—Your Honor will take our offer.

JUDGE NEILSON.—[To the stenographer.] Note the offer and exception.

Mr. Evarts.—We offer to inquire of him concerning his statement to named witnesses, at interviews with them, in which he has given his sentiments on the subject of free love, to the contrary of what he has now declared them on the stand, with a view of calling those witnesses to contradict him.

JUDGE NEILSON.—It is ruled out, sir.

Q. You stated on your re-direct something about the number of people who conversed with you on the subject of the Woodhull scandal, after its publication, and you said 15 or 20 a day. For how many days do you think that continued? A. I don't know. I should think, perhaps, a fortnight.

Q. 40 days? A. A fortnight.

JUDGE NEILSON.—He said that on his former examination; about two weeks, he said.

Mr. Tracy.—That is all with this witness, your Honor.

RE-RE-DIRECT EXAMINATION BY MR. FULLERTON.

Mr. Fullerton.—Your attention has been called to certain conversations between yourself and Mr. Tracy with regard to this matter, and you have been asked whether you did not say certain things. Now, I ask what you did say to Mr. Tracy on this occasion?

Mr. Tracy.—That I object to. I have inquired of no interview that they did not go into.

JUDGE NEILSON.—Is that the point where it was suggested he should answer and explain afterwards?

Mr. Fullerton.—Yes, sir; that is strictly within your Honor's ruling yesterday on a similar objection. Of course, we are to presume that they are laying the foundation for an attempted contradiction; and whilst the witness denies having said certain things, we have a right to prove that he said certain other things.

JUDGE NEILSON.—Well, you may ask him that question, I think.

Q. What was said upon those occasions?

JUDGE NEILSON.—On the occasion pointed out by Mr. Tracy's question?

Mr. Tracy.—They examined about that interview at the Fifth Avenue Hotel fully, and went into all they desired to go into about it; and he stated that he withheld these papers at my request. Now, I ask him simply if the only papers I asked him to withhold, or requested him to withhold, were not certain definite papers which I named. It is the only inquiry.

JUDGE NEILSON.—To that he says no.

Mr. Fullerton.—Now, I wish to know the balance of the conversation.

Mr. Beach.—That was not the only inquiry. Certainly counsel examined him as to the point whether or not the statement was settled on at that time, but not on any conversation—asked him in regard to the contents of the statement.

Mr. Tracy.—At his own house, at which I was not present?

Mr. Fullerton.—At the Fifth Avenue Hotel.

Mr. Tracy.—No, sir; except so far as I asked him. The only request I made to him was on the subject of certain definite papers.

JUDGE NEILSON.—That is my recollection now; and the question is whether they can not ask him what he really said. I think they may.

Mr. Tracy.—On the subject of this paper?

JUDGE NEILSON.—On the subject of this inquiry.

Mr. Tracy.—Then it will be limited to the subject of this particular paper.

JUDGE NEILSON.—That particular occasion when he says you did not simply ask him to retain certain papers; the inquiry now is what did he say on that occasion.

Mr. Evarts.—Your Honor will notice we do not introduce that conversation. The cross-examination was only in reference to their previous examination of him, and we only cross-examined on this particular point. That certainly does not give any right to resume the whole interview as we can see, nor do I understand your Honor so to rule.

JUDGE NEILSON.—I still think he may answer the question.

The Witness.—What is the question?

[The stenographer read the question.]

JUDGE NEILSON.—Confine yourself to the occasion inquired of. This is the occasion of the Fifth Avenue Hotel.

Mr. Fullerton.—That is one of them.

Mr. Tracy.—Let us take one conversation at a time, and see what reply we will get.

Mr. Fullerton.—You are asking about what I know. We will get it out in our own way.

Mr. Tracy.—I asked no question which called for that retort. This inquiry relates to the conversation at the hotel. Your Honor will note our exception to the admission of that interview.

The Witness.—I said to Gen. Butler at that interview, "I have brought Mr. Tracy to you to determine with regard to this statement. Mr. Tracy has said to me he did not want me to make this statement; I want to do exactly that which is honorable in the premises. I wish you and Mr. Tracy would talk it over. Mr. Tracy sat down and talked it over with Mr. Butler, and said to Gen. Butler, in my presence, that he thought the letters and

documents of Mr. Beecher ought not to be produced in my statement; and that is the substance of that conversation as I remember it at that time; and when Gen. Tracy went away I saw Gen. Butler, and he said Gen. Tracy's idea was——"

Mr. Fullerton.—You need not state what Mr. Butler said in Mr. Tracy's absence. Now, go to the occasion referred to by Mr Tracy's examination of you.

Mr. Tracy.—What was that occasion?

JUDGE NEILSON.—Where was that occasion?

The Witness.—Mr. Tracy did not name it.

Mr. Beach.—The occasion at Mr. Moulton's house, when Mr. Tracy inquired of him whether it was upon that occasion that the form of statement was finally agreed upon.

JUDGE NEILSON.—That was an occasion when he was not present.

Mr. Beach.—That makes no difference. The witness says it was finally agreed upon. We want to know why it was agreed upon, and how it was agreed upon.

JUDGE NEILSON.—I think we must leave it as it is. Mr. Tracy was not present.

Mr. Fullerton.—Do you recollect an interview in the back room, when the committee was sitting in Mr. Storrs' house, when you went to present your statement? A. I remember Mr. Tracy was there when I presented a statement.

Mr. Evarts.—We object to that, on the ground that it is not any part of our re-cross examination.

Mr. Fullerton.—Mr. Tracy asked the witness whether at any time before the statement was presented to the committee he (Tracy) knew what the statement was to be.

Mr. Tracy.—With his knowledge.

Mr. Fullerton.—I know that, and what I now ask him is to try and draw his attention to an interview between him and Mr. Tracy at another place, in the back room where the committee sat, at which time Mr. Moulton stated to Mr. Tracy what his statement was, and Mr. Tracy approved of it. That is a direct answer to the inquiry which was put by Mr. Tracy.

Mr. Evarts.—Then we asked him a general question, and he answered it.

Mr. Beach.—We try to show he is mistaken, by calling his attention to an interview.

Mr. Evarts.—And now they say, having asked him a general question, and getting a general negative, that that gives them a right to go into all interviews and conversations that they may wish to explore to prove he has been incorrect in that statement. We don't go into that.

Mr. Tracy.—The question stands in this way. The witness testified on the direct examination that it was determined at the Fifth Avenue Hotel, at my request, that this statement should be withheld. On his cross-examination he testified that it was determined, at a conversation at his own house, at which I was not present, the ensuing day. Then I asked him the question whether he had any knowledge that I knew, prior to his appearance at Mr. Storrs', before the committee on that day, what his statement was to be, and he said he had no such knowledge.

The Witness.—[To Judge Neilson.] That is just the point on which I wished to make an explanation in my answer, if your Honor please. It was not finally determined; Mr. Tracy did not know what the final determination was to be.

Mr. Beach.—The witness has corrected that misstatement of Gen. Tracy. The point is just this: Mr. Tracy has extracted from this witness the answer that he (Tracy) did not know of the statement of Mr. Moulton until after or at the time he appeared before the committee. We believe that that was a mistaken answer upon the part of the witness; and for the purpose of refreshing his recollection, and enabling him to correct that answer, we, in our re-direct examination, call his attention to an interview between him and Mr. Tracy, in which Mr. Tracy was informed of the very fact which, on cross-examination, the witness has mistakenly answered he did not know. Now, is there any rule——

JUDGE NEILSON.—That is a correction the witness has a right to make, of course.

Mr. Beach.—Certainly.

Mr. Tracy.—According to the question put, it is after his appearance before the committee.

Mr. Beach.—No, it is not.

JUDGE NEILSON.—Well, I think we will hear the correction.

Mr. Tracy.—Your Honor will note my exception.

The Witness.—I saw Mr. Tracy in the committee room before I made the report to the committee, and told him I had in my statement only presented the documents quoted by Theodore Tilton in his statement.

Q. What reply did he make to that?

Mr. Tracy.—I object to that, your Honor.

JUDGE NEILSON.—That covers the point that Mr. Tracy didn't know.

Mr. Fullerton.—His reply might indicate very clearly that he knew, and understood and comprehended it, and approbated it.

JUDGE NEILSON.—This indicates it clearly enough.

RE-RE-CROSS-EXAMINATION BY MR. TRACY.

Mr. Tracy.—That was in the committee room, you say? A. In the committee room, I think; yes, sir.

Q. And in the presence of the committee? A. In the parlor. I forgot they knew it. When I say "the committee room" I mean Mr. Storrs' house.

Q. In the parlor? A. They were in the back parlor, and I think you came out in the front parlor.

Q. When you came into the room? A. I think so.

Q. Then you, for the first time, informed me what your report was to be? A. I think so; yes, sir.

Q. That is your short statement is it not, that you submitted to the committee that day? A. The time at which I presented to the committee the documents quoted by Theodore Tilton in the statement.

Q. What day of the month was that? A. I don't recollect the day of the month.

Q. It was your statement before the committee, not what is known as your long statement? A. No, sir; that was not made until after Mr. Beecher made his.

Q. Not either of your long statements? A. It was not either of my long statements.

JUDGE NEILSON.—It was not either of those papers you said Gen. Butler prepared. A. No, sir; it was a modification of the first statement Gen. Butler prepared? The meeting in my house, I would like to explain, was in consequence of the meeting at the Fifth Avenue Hotel between Mr. Tracy and Gen. Butler and myself, and Gen. Butler told Mr. Tracy that there would be a conference at my house the next day, and promised that he would present the views of Mr. Tracy at the meeting next day at my house. Mr. Woodruff was in favor of making the report, and my wife was in favor of withholding it, and it was determined to withhold it.

Mr. Evarts.—I move to strike that out.

JUDGE NEILSON.—I think not; that is an explanation.

Mr. Evarts.—This is a conversation between him and General Butler outside of the time Gen. Tracy was there.

JUDGE NEILSON.—They don't object to that, of course; it was understood the night before there would be a conference next morning on this subject. The next morning there was a conference held. What General Butler said and what Mr. Woodruff said ought to be stricken out, of course.

Mr. Evarts.—If your Honor will pardon me for being somewhat explicit here, I ask to strike out all that this witness has given, not in response to any question, but which is a volunteer statement, on the ground that it is not admissible evidence, especially from the fact of its not being drawn out by any question of ours. Now, the parties on the part of the plaintiff sought to introduce a conversation, or the witness sought to introduce, before, a conversation between General Butler and himself, when Gen. Tracy was not present, which was promptly rejected by my learned friend. I understand what he has now voluntarily said is exactly what he was going to say then.

Mr. Beach.—I suggest to Mr. Evarts, sir, that he is mistaken in regard to what the witness said concerning the declaration of Mr. Butler that there should be a consultation next morning. That was in the presence of Mr. Tracy

The Witness.—That is the point exactly.

JUDGE NEILSON.—The general statement is received by way of explanation, to show that the purpose of the night before was carried out, except that Mr. Tracy was not present.

The Witness.—That is it exactly, sir.

JUDGE NEILSON.—But the words on that occasion said by Mr. Woodruff and by Mr. Moulton are stricken out. Now, that is all by this witness, I understand.

Mr. Beach.—Yes, sir.

JUDGE NEILSON.—Mr. Moulton, you can retire.

Mr. Evarts.—Your Honor will note our exception to denying the motion to strike it all out.

JUDGE NEILSON.—Yes, sir.

[THE END OF THE TESTIMONY OF F. D. MOULTON.]

NOTE

ON THE RULES OF PLEADING APPLICABLE IN ACTIONS FOR ADULTERY, AND ON THE LIMITS OF THE ISSUE.

The general principles applicable to this subject are as follows:

The defendant is entitled to a specific allegation of time, place, &c.; but if this is not secured before trial, evidence is admissible under a general allegation; but in case of surprise, defendant is entitled to an adjournment. The entire intercourse is regarded as one transaction.

Acts of adultery prior to the period limited by the *statute of limitations* may be proved, to give significance to improper freedom, &c., within the period. In connection with proof of at least improper familiarities within the time alleged in the complaint, evidence of *acts of adultery previous* to that time is admitted to give significance to those familiarities. But evidence of *acts of adultery subsequent to the* period alleged in the complaint is not admissible, except by way of corroborative proof in connection with at least presumptive evidence of acts of adultery within the period. The cases on this point, however, involve some conflict.

Whether the adequate proof relating to the period alleged, must be given before other proof, *or* whether this is in the discretion of the court, is left in doubt by the authorities.

The following cases illustrate the foregoing principles:

I.—*Of particularity in pleading.*

Freeman v. *Freeman*, 31 Wisc., 235 (Supreme Court, 1872, Opinion by DIXON, Ch. J.). Action for divorce. The court say, "The offense charged (adultery) is a most grave and serious one, for which no person can be required to answer except upon the distinct and positive specification, to which the proof must be strictly confined, for otherwise the party can not come prepared to defend, and the greatest injustice and wrong might be committed."

Vance v. *Vance*, 17 Maine (5 Shepley), 203 (Supreme Court, 1840, Opinion by EMERY, J.). The court say, "The strict rules of pleading applicable to common law cases have not been followed in libels for divorce. We apprehend that it may become important to adopt a practice of greater particularity in the allegations in cases of adultery, in order to prevent surprise and to enable a respondent to prepare for trial.

Germond v. *Germond*, 6 Johns. Ch., 347 (1822, Opinion by KENT, Ch.). Where the feigned issue specified a particular individual in the county of R., and had no general charge as to that county, but had a general charge as to persons unknown in another county, *Held*, that, in respect to acts in the county of R., the plaintiff should be confined to that specific charge of adultery with the individual named; and, admitting evidence of adultery there with other persons, must have operated as a surprise.

Wood v. *Wood*, 2 Paige, 108 (1830. WALWORTH, Ch.). The only safe and prudent course, says the Chancellor, "is to require the charge, whether of crimination or recrimination, to be stated in the pleadings and in the issues, in

such a manner that the adverse party may be prepared to meet it on the trial." And the history of *Germond* v. *Germond* (6 Johns. Ch., 347 ; 1 Paige, 83), which the Chancellor recounts, illustrates the necessity of specific allegations, and of confining the proof thereto. And he accordingly held, that if the charges in the bill or answer are not sufficiently explicit, the parties may make that objection when an issue is applied for, and the court will then see that it is so framed that neither party shall take any undue advantage of the other at the trial.

Shoemaker v. *Shoemaker*, 20 Mich. (2 Clarke), 222 (Supreme Court, 1870). Where the ground of divorce, charged as stated in the bill, was adultery, "with divers persons, whose names are at present unknown to your orator, at divers times and places, but at what times and places your orator is not informed," and also specifying the time and place with a certain person. *Held*, that this general and vague method of accusation was insufficient to authorize testimony to be introduced under it, and no decree could be based upon such charges.

In *Porter* v. *Porter*, 3 Swab. & T., 596 (1864, Prob. & Mat., before the LORD ORDINARY), a petition for divorce for adultery, the third allegation was that "since October 8, 1846, said E. P. has, on divers occasions, committed adultery," &c., "held that this must be struck *out* or amended by inserting particulars." The fourth allegation was, "that from the month of April, 1864, and up to the present time (the cause was heard November 8, 1864), said E. P. has been habitually visited at her residence, at, &c., by B. G., and that on divers of such occasions, particularly on the night of August 31st last, she there committed adultery with the said B. G." *Held*, that this was sufficient, without further particulars.

In *Coddington* v. *Coddington*, 4 Swab. & T., 63 (1864, Prob. & Div., before the LORD ORDINARY), it was *held*, that if the particulars were insufficient, application for further particulars should be made : if that was not done, the evidence would be admissible at the trial, but, in case of surprise, the party might have an adjournment. To the same effect is *Barnes* v. *Barnes*, L. R. 1 Pr. & D., 505, 506 (1867, before LD. PENZANCE), and *Breinig* v. *Breinig*, 2 Casey (26 Penn. St.), 161 (Supreme Court, 1856, opinion by BLACK, J.).

Whittington v. *Whittington*, 2 Dev. & B. [N. C.] 64 (Supreme Ct., 1836, Opinion by RUFFIN, C. J.). *Held*, that a petition for divorce ought, as far as possible, to charge specifically the facts to be given in evidence. When open and promiscuous prostitution is the foundation of the libel, it may be sufficient to allege it in more general terms ; but even then, time, place, and circumstances may be material. But when the plaintiff relies on adultery committed with a particular person, or at a particular time, such person, time, and place ought to be specially and plainly charged.

Wright v. *Wright*, 3 Texas, 168 (Supreme Ct., 1848, Opinion by HEMPHILL, C. J.). The statute regulating the law of divorce requires a full and clear statement of the cause of action. This full and clear statement must embrace the material facts constituting the charge, together with the material circumstances of manner, time, and place. General charges of cruelty, adultery, &c., are not sufficient to sustain the action. This explicit statement of facts is necessary, that the defendant may know what he is called upon to answer, and be enabled to make the proper defense.

Adams v. *Adams*, 20 N. H., 299 (Superior Ct., 1850, Opinion by GILCHRIST, C. J.). *Held*, that in a libel for divorce, proof of adultery at a different place from the one alleged, is insufficient ; also that a charge of adultery with a person or persons unknown to libellant, is sufficient to admit evidence of the act with any person identified in the evidence.

Kane v. *Kane*, 3 Edw., 389 (1840, Opinion by W. T. MCCOUN, Vice Ch.). *Held*, that a general charge of adultery with divers other persons, besides the paramour named, to the complainants unknown, is not sufficient to base a decree upon. Time, place, and circumstances must be stated, though the names of persons with whom committed are unknown.

Washburn v. *Washburn*, 5 N. H., 195 (1830). *Held*, that if it be alleged in the complaint that the defendant committed adultery with a particular person, evidence to prove adultery with other persons is not admissible.

Whispell v. *Whispell*, 4 Barb. 217 (N. Y. Supreme Ct., 1848, Gen. Term, Opinion by PARKER, J.). In this case the complaint alleged both a long course of cruel treatment and several acts of violence. *Held*, that these specific allegations present the matter in issue to which the proof is to be directed. Though, it seems, it is also proper, under the general allegation in the bill of complaint, to look at the general conduct of the defendant towards the plaintiff during their cohabitation, for the purpose of understanding more fully the particular circumstances complained of, and the true relations existing between the parties.

Pastoret v. *Pastoret*, 6 Mass., 276 (1810). The court say that they would not permit evidence to be given to prove adultery with any other than with the one charged in the pleading, but the party might have leave to plead anew.

Washburn v. *Washburn*, 8 Mass., 131 (1811). *Held*, that where a complaint charged adultery as committed without the commonwealth, evidence may be received of the act committed within the commonwealth, if the defendant is not taken by surprise.

Tourtelot v. *Tourtelot*, 4 Mass., 506 (1808). *Held*, that where the complaint alleged the fact of adultery with a particular person on a day certain, and proof was offered of another act of adultery with the same person, on another *day*, the defendant was entitled to a continuance, if not prepared to defend against the new allegation.

In *Conant* v. *Conant*, 10 Cal., 249, 255 (1858, Supreme Ct., Opinion by FIELD, J.), it was said that the reason of the rule requiring specific allegation of adultery in divorce, was to prevent collusion, and that defendant, by failing to demur to an indefinite complaint, waived the objection, and could not at the trial exclude evidence on that ground ; but it does not appear from the report whether surprise was alleged.

In *Light* v. *Light*, 17 Serg. & R., 273 (Penn. Supreme Ct., 1828, Opinion by ROGERS, J.), it was held that it is *not* in the power of the plaintiff, where he neglects to give notice of the particulars required by the practice of the court before trial, to relieve himself at the trial by a motion for leave to amend his declaration, for the declaration requires no amendment; the defect is not in the declaration, but in neglecting to comply with the requisition of the defendant of a particular statement of the cause of action.

In *Miller* v. *Miller* (20 N. J. Eq., 216, 1869), ZABRISKIE, Ch., says (of a bill for divorce): "The precise time is not necessary, provided the variance is not so great as to mislead the defendant."

Holston v. *Holston*, 23 Ala. N. S., 777 (1853, Opinion by GOLDTHWAITE, J.). *Held*, that a bill for divorce, on the ground of adultery, must allege the name of the person with whom the adultery was committed, or the fact that it is unknown to the complainant; but if defendant answers the bill, and tries the cause without raising any objection on account of the want of such allegation, it will be too late to do so for the first time on appeal.

State v. *Crowley*, 13 Ala., 172 (1848, Opinion by COLLIER, C. J.). *Held*, that acts occurring eighteen months after the finding of an indictment, tending to show illicit intercourse between the defendant and paramour, can not be given in evidence.

In *Commonwealth* v. *O'Connor*, 107 Mass., 219 (1871, Opinion by AMES, J.), where there was a variance in the date in an indictment for adultery,—*Held*, not material, although the prosecuting attorney had elected as to dates, the act being sufficiently identified by other circumstances.

II.—*Of the limits of the issue.*

1.—*In respect to the statute of limitations.*

Evidence of prior acts of adulterous intercourse, upon which, as a cause of action, the statute has run, is admissible in an action of crim. con. to show an intimate relation of the parties and corroborate the evidence introduced to establish the act, which is within the statute period. *Conway* v. *Nicol*, 34 Iowa, 533 (Supreme Ct., 1872, Opinion by DAY, J.). To the same effect is *Thompson* v. *Glendenning*, 1 Head, Tenn., 274 (Supreme Ct., 1858, Opinion by MCKINNEY, J.), where also it is said that the entire intercourse is one transaction.

In the case of the *Duke of Norfolk* v. *Germaine*, 12 How., St. Tr., 927 (K. B., 1692, on trial before HOLT, Ld. Ch. J., and EYRES, J.) the question arose whether the plaintiff must be confined, in the first instance, to the proof of an act within the statute period. The court held that evidence was admissible in the first instance to prove criminal conversation, even before the six years, for the purpose of explaining evidence subsequently to be given of familiar or suspicious interviews within the six years. The only actual connection, proved upon this trial, was had before the six years, but there was proof that within the six years the defendant and the plaintiff's wife had passed together, under assumed names, at lodgings, taken for the wife, and that the wife had been seen at defendant's house, in deshabille. The jury gave the plaintiff a verdict of one hundred marks, and costs, and were reprimanded for giving so small and scandalous a fine.

In regard to the principle, that the entire intercourse is one act, reference may be made to the case of *Rigaut* v. *Gallisard*, 7 Mod., 78, S. C., less fully 2 Salk., 552 (K. B., 1702, Opinion by HOLT, C. J.), where it was held that a solicitation to adultery, followed by an assault with intent to have carnal knowledge, is but one entire act, and if an indictment be found for the assault, the spiritual court can not proceed on a libel for the solicitation. So in *Gipps* v. *Gipps*, 11 Ho. of L., Cas. 1 (1864), it is said by Lord Chelmsford, that renewed adultery, with the same person, is not deemed a fresh act, but merely further evidence of the adultery.

2.—*Of the limit of the issue. In respect to acts not within the time alleged.*

If a limit of time is alleged in the complaint, proof of at least improper freedom within that period must be given before evidence of trespass at a later or prior time is admissible. *Gardner* v. *Maderia*, 2 Yeates. [Penn.], 466 (Supreme Ct., 1799). So far as this case turns on the *order* of proof, it is not fully sustained by other authorities. The order of the proof is in the discretion of the court, in other actions. Upon the question, whether evidence of *acts of adultery* not within the period alleged is admissible, as well as evidence of *improper familiarities*, to give significance to the intimacy of the parties during the period alleged, the authorities are not harmonious. The sound principles seem to be: (1.) That in connection with proof of at least *improper familiarities* within the time alleged, evidence of acts of adultery *previous* to the time is admissible, to give significance to those familiarities.

[This rule is to be supported upon the ground that adulterous intercourse, shown to have existed previous to the time alleged, and followed by improper familiarities within the time alleged, is presumptive evidence of continued adulterous intercourse within that time. But this rule is not fully recognized on indictment for adultery.]

(2.) That evidence of adulterous *acts subsequent* to the time alleged, is not admissible because it is not sufficient to raise a presumption that the prior familiarities were accompanied with an adulterous act within the very period alleged.

(3.) Where presumptive evidence of an *act* of adulterous intercourse, *within* the period alleged, has been given, evidence of an *act subsequent* to the period may be proved in corroboration.

The cases are of two classes; those arising on indictments, and those arising in suits for divorce.

It has been held in several cases that on an indictment for adultery proof of *indecent familiarity* prior to the time laid is admissible in corroboration of direct evidence of the act of adultery having been committed within the time laid. *McLeod* v. *The State*, 35 Ala. 395 (Supreme Ct., 1860, Opinion by STONE, J.); *Commonwealth* v. *Lahey*, 14 Gray, 91 (Mass. Supreme Ct. 1858, Opinion by HOAR, J.); *State* v. *Wallace*, 9 N. H., 515 (1838, Opinion by PARKER, Ch. J.); *Commonwealth* v. *Thrasher*, 11 Gray, 450 (Mass. Supreme Ct. 1858, Opinion by DEWEY J.); and see *Commonwealth* v. *Pierce*, 11 Gray, 447 (Mass. Supreme Ct., 1858, Opinion by DEWEY, J.). And this principle was applied on an indictment for rape. *State* v. *Knapp*, 45 N. H., 156 (Supreme Ct., 1863, Opinion by BELLOWS, J.).

So also such evidence is admissible (on indictment) to corroborate an im

peached witness who had testified to the direct act within the time laid in the indictment. *Commonwealth* v. *Merriam*, 14 Pick., 518 (Mass. Supreme Ct., 1833. Opinion by PUTNAM, J.)

But (on indictment) evidence tending to show a previous or subsequent *act* of adultery is not admissible. *Commonwealth* v. *Horton*, 2 Gray, 354 (Mass. Supreme Ct., 1854, Opinion by MERRICK, J.); *Commonwealth* v. *Thrasher* (above). Contra, *Lawson* v. *State*, 20 Ala., N. S., 65 (Supreme Ct., 1852, Opinion by GOLDTHWAITE, J.).

In *Commonwealth* v. *Thrasher* (above), it was held that the principle that on indictment for crime, other distinct acts of the same nature may be proved to show guilty intent, does not apply to an indictment for adultery. Compare *Commonwealth* v. *Merriam*, 14 Pick., 518 (above); *State* v. *Knapp*, 45 N. H., 156 (above).

This seems to be clearly the rule where the charge is of one act of adultery, only, in a single count, in which case the prosecutor, having given evidence of one act, can not prove others at different times and places. *State* v. *Bates*, 10 Conn., 372 (Supreme Ct. of Err., 1834. Opinion by BISSELL, J.).

In *Lawson* v. *State*, on an indictment for living in fornication on a day named, and continually thereafter until the time of the finding of the indictment, it was not competent to give evidence of illicit intercourse of the parties subsequent to the limited period [in this case after the finding of the indictment], for the purpose of explaining acts of indecent familiarity proved to have been committed within the limited period. But that after such acts of indecent familiarity within the period had been explained by proof of acts of adultery previous to that period, then proof of acts of adultery subsequent *to* the period would become corroborative, if not too far removed in point of time, and would, therefore, be competent.

And the court say in that case, that without doubt in all cases, whether civil or criminal, involving a charge of illicit intercourse within a limited period, evidence of acts anterior to such period may be adduced in explanation of acts of a similar character within that period, although such former acts, if treated as an offense, would be barred by limitation. [Citing 2 *Greenl. on Ev.*, § 47.] Evidence of this character is not, however, admissible as independent testimony, but *only* when proposed in connection with or subsequent to the introduction of evidence tending to establish improper intercourse during the period to which the charge is confined.

In *Commonwealth* v. *Cobb*, 14 Gray, 57 (Mass. Supreme Ct., 1859, Opinion by HOAR, J.), a joint indictment for adultery committed on a specified day, the evidence was of course of general cohabitation. *Held*, that the day specified was not material, and proof satisfying the jury that a specific act had been committed within a period including the day was enough, though the verdict did not fix the day.

In *Lockyer* v. *Lockyer*, 1 Edm. Sel. Cas., 107 (N. Y. Circ., 1845, before EDMONDS, J.), (an action for divorce) it was held that evidence of adulterous intercourse prior to the time laid is admissible to give significance to improper familiarities indulged within that time; and this accords with the case of the *Duke of Norfolk* v. *Germaine*, 12 How. St. Tr, 927 (K. B., 1692, before HOLT, C. J., and EYRE, J.).

So held, also, of such intercourse elsewhere than at the place alleged, *Thayer* v. *Thayer*, 101 Mass., 111 (Supreme Ct., 1869, Opinion by COLT, J.), and in *Boddy* v. *Boddy*, 30 L. J. Mat., Cas. 23 (1860, before the JUDGE ORDINARY), evidence of acts of adultery subsequent to the date of the latest acts charged in the petition was held admissible, for the purpose of showing the character of previous acts of improper familiarity, and the objection that the party had no notice of it was held insufficient to exclude it.

But in *Freeman* v. *Freeman*, 31 Wisc. 235 (Supreme Ct., 1872, Opinion by DIXON, C. J.), the court recognized the principle above stated in reference to indictments, that *acts* of *adultery*, not within the time alleged, are not admissible.

If the evidence is not admissible under the allegation of the pleading, the fact that it tends to corroborate a witness who has testified to confessions of the

defendant does not render it admissible. So held on indictment for larceny, where evidence of a distinct offense but of the same kind with that charged was excluded. *People* v. *Schweitzer*, 23 Mich., 301 (Supreme Ct., 1871, Opinion by CHRISTIANCY, J.)

In the *Duke of Norfolk* v. *Germaine* (above), the objection was taken that the evidence must be confined in the first instance to acts within the period limited by the statutes of limitation; but the court, HOLT, Ch. J., said the evidence must be admitted in order to ascertain if it was within the period. And the acts having been prior to the period, the court gave them to the jury to explain familiarities proved within the period.

If, on cross-examination, the time of the act proved is brought into doubt, the question is for the jury to consider, for nearness of the time of the act as proved to that alleged, goes to the effect, not to the competency of the evidence. So held on indictment, *Commonwealth* v. *Morris*, 1 Cush. (Mass.), 391 (Supreme Ct. 1848).