

THE CASE
OF
HENRY WARD BEECHER.

OPENING ADDRESS

BY

BENJAMIN F. TRACY,

Of Counsel for the Defendant.

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OPENING FOR THE DEFENSE.

WEDNESDAY, FEBRUARY 24, 1875.

37TH DAY.

Mr. TRACY—MAY IT PLEASE THE COURT, GENTLEMEN OF THE JURY: The time having arrived when the defendant is permitted to be heard in his own behalf, my associates have assigned to me the duty of stating his case to this Honorable Court and to you. I am sure, gentlemen, when you consider for whom and in whose presence I speak, you will believe that it is for me an occasion of great personal embarrassment. When I think of the interests involved in this trial and the effects which may follow it, when I contemplate the deep and painful anxiety which it everywhere excites, I am oppressed by the burden of responsibility which the over-kindness of my associates has laid upon me, and would gladly surrender it to other and abler hands. Nothing, indeed, prevents me from sinking beneath the task I have undertaken, but a clear conviction of the absolute innocence of my client, and the assurance of my eminent associates that his case is too strong to be injured by my unskillful advocacy. And moreover, I am assured by the knowledge that comes to me from every quarter, that, in my effort to make his innocence as plain to you and to the world as it has long been to his counsel and his people, I have the universal sympathy of mankind.

The magnitude and importance of the questions here involved, cannot be over-estimated, for they go down to the very foundations of our social, moral, and religious life. If the effect of your decision in this case could be limited to determining whether the plaintiff has suffered a wrong at the hands of the defendant, for which he is entitled to be compensated in money, this trial would not excite the wide-spread interest which has attached to it from the beginning, and which must follow it to the end. But, gentlemen, I need not remind you how utterly impossible it is to circumscribe the effect of this trial within such narrow limits. Either this defendant is to go forth from this court-room vindicated by your verdict, or you and I and all who take part in this day's work are actors in one of the greatest moral tragedies which has ever occupied the stage of human life. Look at it as we may, it is impossible to separate

the defendant from his representative character.

Not that I would endorse the remarkable statement of the plaintiff's counsel in his opening, that "upon the result of your verdict, to a very large extent, will depend the integrity of the Christian religion." God forbid that the integrity of the Christian religion should depend upon the character or the fortunes of any man, however learned, eloquent or devout. The Christian religion is founded upon the eternal rock of God's nature and God's decree. It is from everlasting to everlasting; and will abide when the remotest records of future history shall have faded from the annals of time, and the heavens "shall have been rolled together as a scroll." My client expects no other support from the Christian religion than such as may be found in its promises. He takes his stand here alone upon his own integrity, sustained only by God and the justice of his cause. And yet, gentlemen, I repeat, you cannot consider him altogether without reference to that sacred faith of which he has been for a long time one of the most honored ministers, which would acquire lustre in his vindication, and which could not but be deeply wounded in his fall.

HENRY WARD BEECHER.

The son of one of the most eminent clergymen of the last generation, a member of a large family of which all the men are clergymen and all the women authors of repute—a family, let me say, gentlemen, on whose fair fame the shadow of reproach has never rested hitherto—the defendant early devoted himself to the self-denying pursuit of a minister of the Gospel. For it was no bed of roses in a luxurious abode that he spread for himself; he made no use of a dominant family influence to secure the refinements and privileges of a wealthy city parish. He struck boldly out into the wilds and hardships of the far West. He rode the rough circuit of a home-missionary life. With his own hands he made the fires, swept the floors and rang the bell in his forest church; with his own hands, assisted only by the faithful wife who stood by him then, and who—to the honor of womanhood—stands by him to-day, he ministered to the necessities of his forest home.

When the thunders of his manly eloquence had reached even this distant coast, and the imperative demand of the church had summoned him to a wider sphere of action, he left neither his simplicity nor his independence behind. He has been the same genuine, true-hearted, unaffected man here that he was in the West. In the midst of all the refinements and luxuries of city life, his motto has been that of the great apostle he so much resembles, "I know how to be abased, and I know how to abound." To some who, in the early days, when he was less known than now, undertook to control his utterances by threatening loss of place, he made this memorable reply: "You may unseat me, but you cannot control me. I came from the woods, and I can go back to the woods again."

This man, so introduced to us, has wrought and taught for near thirty years in our midst. He is no longer a stranger, and no longer a new acquaintance. Genial and unassuming in his manners; inspiring in his speech as new wine; accessible to all, from the gravest citizen to the humblest child,—the life he has lived before us has been as warm and fruitful as God's summer, as open and beneficent as His day.

No truth struggling with error has ever failed to find in him a champion; no phase of human sorrow has sought him in vain for sympathy and relief. Nay, as we have too much reason to know, the very excess of his sensibility has at times become to him an element of weakness, and left him for the moment at the mercy of colder and harder men.

And, if this is a fair picture of his private and domestic life, what shall be said of his life and influence as a preacher of the Gospel? Let the immense assemblies that for nearly thirty years—without abatement, without fluctuation—have thronged his chapel, more numerous and enthusiastic to-day than ever before, bear testimony. To this great congregation, presenting an unusual proportion of able and thoughtful men, he has ministered all these years untiringly. That his ministrations have been marked by a rare spirituality, and a wonderful mastery over the various motives of human character and moods of human experience, is universally acknowledged. He has been empathically a preacher of the people. Living himself in constant communion with the unseen, he has interpreted the mysteries of the soul and given voice to those dim intuitions—those immortal yearnings—which spring up in every human breast, but which so few can ever utter. A clergyman of the Congregational Church, he has labored for the aggrandizement of no sect, for the building up of no denomination. His creed is as broad as humanity itself; and his deep, warm heart, instinctively responding to the feeling of all, has en-

abled him to summon the race to a higher, nobler, and purer life. Though a Protestant, he has ever been able to discern the common Christian faith in all churches bearing the Christian name. Moral integrity, sincere devotion, and an earnest consecration to the common Lord, have always been recognized by him, without reference to the question of his own recognition by those to whom his charity has extended. Every honest soul that labored for the salvation and elevation of mankind, whether minister, priest or monk, or only self-sacrificing layman, has been to him a Christian brother, a minister of God. It is then no wonder that, besides the power of his personal teaching, the demand for his printed sermons should be beyond all precedent. Their weekly issue is read in every town and hamlet throughout this broad land; they are met with in the cabin of the backwoodsman, in the hut of the miner, in the fore-castle at sea. Not only this, but they have been translated into every European language. In England alone, as I am informed, their circulation is thrice as large as that in all this country.

Thus has he—alone—almost fulfilled the divine command, "Go ye into all the world and preach the Gospel to every creature." I estimate the full force of my words when I affirm that no man ever exerted *in his own lifetime* so wide-spread and beneficent an influence. The far-reaching and abiding power of this Christian minister, has long been a marvel to the people of two continents, and theories both friendly and hostile have been advanced to explain it. Gentlemen, shall I solve the problem for you? The reason of the power of this man's preaching is, that behind his sermons there is a *life*—and behind the life, a *MAN*. It is because they have come from the heart, that they have gone to the heart. It is because his preaching is known by those who know him best to be illustrated by his daily living, that he is, in this supreme emergency of his life, girded by millions of faithful hearts and walled to heaven by the unfaltering love and confidence of his people.

But if there are those who are not interested in the minister of the Gospel, I invite them to contemplate the patriot and philanthropist. Espousing the cause of the oppressed, he labored for the emancipation of a race. When the agitation resulted in a conflict of arms, imperiling the Union of the States, his clarion voice was heard everywhere arousing the nation to the holy strife. When danger threatened from abroad, he was prompt to plead the cause of "American union on the basis of American liberty" in the face of infuriated thousands set on by a foreign aristocracy to revile him and to strike him down. Mr. Beecher's hand-to-hand fight with the English masses on English soil, is a thrilling page in history,

known and read of all men. His courage, his devotion, his eloquence, in that memorable contest, won the admiration of all Europe and can never be forgotten by the American people. In that struggle, Henry Ward Beecher won the nation's gratitude and the nation's love. When the fury of the storm had spent its force, when the war was over, and the nation was saved—then the voice which had rung like a trumpet in the strife was the first to plead for forbearance to the vanquished, for a generous condonation of the past, and a permanent peace resting upon universal amnesty. This, gentlemen, is a true and unflattered portrait of the defendant in this case—as a husband, a father, a citizen, a patriot, a philanthropist, a minister, and a man. If it were a statement to be established by testimony, thousands upon thousands of witnesses might crowd this Court to confirm its truth; for the name of Henry Ward Beecher has long been the treasure of the nation, as it has been the special pride and glory of this city, famous throughout the world as the scene of his life and labors.

One of the most striking characteristics of the man I have been describing was a profound and ever-active interest in young men. The first work he ever published, a work which won him an enviable reputation while he was himself yet a young man, and which is still disseminated by thousands in this and other lands, was his "Lectures to Young Men." When, therefore, in his earlier Brooklyn ministry, he encountered a young man of unusual promise, it was like him to receive the youth into his "heart of heart" and to lavish upon him that affection, that expenditure of time, and that wealth of intimate intercourse, which not a few men of the highest culture had desired in vain. For that privileged intimacy, and for that affectionate devotion, this prosecution is the grateful reward. The heart in which that generous sowing brought forth only the deadly nightshade of envy and hate was the heart of the plaintiff in this suit.

THEODORE TILTON.

It now becomes my unpleasant duty to invite you, gentlemen, to consider for a moment who and what is Theodore Tilton. The plaintiff in this case presents the most impressive instance that has ever come within my observation, of the remorseless power and the destructive effect of a single absorbing master passion. An all-dominating, selfish egotism is the basis of his character. As a boy, he was bright and ambitious, and his quickness of apprehension and felicity of statement brought him early recognition and praise. Everybody flattered and encouraged him, regarding his self-conceit as something which mature years and the hard experience of life would modify into a reasonable self-reliance

and an honorable pride. Beginning life as a reporter on the public press, he was brought into contact with great orators and public men, and he early resolved to devote himself to a public career. All his studies turned upon this point—to make himself a graceful and powerful speaker and writer. The art of appearing well and sounding well was the art he sought—a dangerous pursuit for one already strongly predisposed by constitutional vanity to consider life a drama and himself its hero. He began, with unbounded confidence and cool, calculating pertinacity, to work his way upward. Possessed of a fine address, a lively imagination, fertile fancy and flowing speech, he lacked the powers of deep and original thought; and, more than these, sound sense, discriminating judgment and the unselfish aims which are the prime elements of a noble manhood. Anxious above all things to shine, he seized every opportunity and advocated every cause which would give him prominence. He adopted the ideas of leading men of the country, Sumner, Phillips, Garrison, and, more than any other, of Mr. Beecher, who, as we have seen, was lavish of friendship and aid—and reproduced them in sensational editorials and lectures. The extremists in politics and religion to whom he joined himself, were ready to reward the facility with which he yielded himself to their uses by fostering his conceit; representing him as the successful antagonist of Mr. Beecher—the young David who had overthrown the great Goliath in debate, and the brilliant occupant of the editorial chair of *The Independent*, who had eclipsed the light of his predecessor.

He fell in with gay, fascinating people, who considered themselves free from the conventional restraints of society; and, little by little, he slid into their ways of thinking. His unbalanced vanity was not proof against the wine of dangerous theories, when presented by the hand of the flatterer. Surrounded only by those who burned incense to his vanity, he became inflated with success, and fancied himself a monumental genius, a prolific source of wit and wisdom—in a word, the foremost man of his time. Conspicuously destitute alike of logical power and the poise of a nice moral sense, he embraced the wildest views and rushed forward, believing that the world would follow where he led. Some persons of cool heads can speculate on social, political, or religious questions without losing their balance; but, with Theodore Tilton, to calculate the depths of an abyss was to plunge headlong into it. A believer in the Christian faith and a member of an orthodox church, he speculated on the origin of matter and the attributes of God until he became a deist, denying the divinity of Christ, and rejecting the Scriptures as a Divine revelation of God's will to man. The husband of a gifted, pure,

and loving wife—the father of an interesting family, having, as he describes it, an “ideal home,” he speculated on social problems, and was led by the malign influence under which he fell, to denounce the marriage relation as a remnant of effete civilization—a clog and hindrance to the development of the race. His remedy for the evils of marriage was easy divorce, leaving parties as free to dissolve the relation as they were to enter into it. He denies that he is a free lover, but Victoria Woodhull, the apostle of free love, asks for no greater social freedom than this. A leader of men must know how to construct and to preserve, but Theodore Tilton knew only how to unsettle and destroy. The moment he assumed a position of such prominence that he could be studied and criticised, the glaring defects of his character discovered themselves to those who had hitherto been his dupes. Opposition sprang up in every quarter, and at last he was forced to realize that the foundation which had been reared for him, and on which he had been placed by others more than by himself, was crumbling beneath his feet. The end was near. Theodore Tilton fell—fell from an eminence seldom attained by men of his age—to the very bottom of the abyss, the depths of which he had attempted to sound.

From that abyss, he beheld afar off the man who had been his early friend and patron, but whom he had long regarded as his rival and inferior, standing firm and erect, his influence widening and deepening, and his hold on public favor becoming more and more permanent and secure. A man fed by inordinate vanity can never awake to a sane, reasonable estimate of himself. Failure and disappointment never lead such a man to self-examination, but excite within him only bitterness, rage and malice. With him, it is never his own folly and impotence that have impeded his advance, but some malevolent power has interfered. In the blindness of his rage, Theodore Tilton persuaded himself that the sole and efficient cause of his overthrow was Beecher; that the one man who had prevented him from reaching the topmost summit of fame was Beecher. But one resource was left to him. If he had not power to rebuild, he still had power to destroy, and Beecher should feel that power. To be eclipsed and neglected was gall and wormwood to his soul. If he could not be famous, he could at least be infamous; and he preferred infamy to oblivion. Mr. Beecher had long been his friend, and the intimate friend of his wife. That friendship he could pervert, and make himself the author, and at the same time the central figure, of the most famous scandal of modern times. [If he could not supplant Beecher in the affection of the people, he could scandalize him. If he had made it impossible for any

honorable pen to write his own biography, then was it worth any cost to have a line devoted to him in the biography of Henry Ward Beecher. His natural bent towards plots and conspiracies now fully revealed itself, and Beecher was the object of his schemes. His grand genius for attitudinizing—for Tilton is nothing if not dramatic—began to be displayed. As in a play, everything was arranged with a view to effect. Facts were nothing to him, except as they could be adroitly used to serve the purpose of his pageant. Friends, wife, children, and all that other men hold sacred and dear, must be trampled down and walked over to reach the notice and applause for which he has shown himself willing to barter his immortal soul. Pure women might abhor and shun him, but one pure woman at least should go to her grave, bearing witness to his power in a blasted life and a broken heart. Here, gentlemen, here speaks the “master passion” of this perverted man. At this very moment, if he could realize the sad truth that he is morally dead, he would still rejoice in this *post mortem* investigation of his character. The decaying corpse would rather be dissected than buried; but we propose, gentlemen, to dissect him first in the interest of truth, and to bury him afterwards in the interest of decency.

Such, gentlemen, is the plaintiff in this cause. A staunch new vessel, launched upon an honorable voyage, sailing with prosperous winds over unruffled seas, has been transformed into a pirate by the wickedness of her commander, and wrecked by his folly, and now lies a stranded and battered hulk, the object at once of the curiosity and abhorrence of mankind.

And now, gentlemen, with this imperfect preliminary sketch of the two leading characters in what we shall show you is the most remarkable conspiracy of modern times, perhaps you will be better prepared to comprehend the “strange, eventful” history which I proceed to lay before you. In 1847, Mr. Beecher removed from Indianapolis and settled in Brooklyn. His success as a preacher was already established, and he immediately took rank among the foremost orators of America. His church was at once crowded, and soon came to be the largest and one of the wealthiest in the two cities. Removing to Brooklyn in 1851 or 1852, the plaintiff—then a boy just from school—took his place among the young men of Plymouth Church. He was speedily taken into favor by some of the leading members and by the pastor. He was employed to report some of Mr. Beecher’s sermons, and the two men came into frequent contact and formed a warm friendship. The favor in this friendship was all on one side. Mr. Beecher was a man of mature years, and, even then, almost at the height of his fame. He had multitudes of friends—men of

wealth, of learning, of high reputation—and could derive nothing from the mermaid whom he thus took into the circle of his friends, except the pleasure which a great and generous nature feels in imparting knowledge to an opening mind, and in helping forward a struggling aspirant. The pastor was led to take an additional interest in this young man by the fact of his marriage to a young girl whom Mr. Beecher had known and loved from her childhood. In the following year, Tilton, through Mr. Beecher's friendly interest, was taken upon the editorial staff of *The Independent*, a paper mainly owned by one of Mr. Beecher's congregation, and to which Mr. Beecher was himself a regular and valued contributor. From this time the relations of the two grew more and more intimate. Tilton visited frequently at Mr. Beecher's house and took an active part in the work of the church; and when, in 1861, Mr. Beecher was invited to the editorial chair of *The Independent*, his affection for Mr. Tilton was so well known that one of the chief inducements held out to him to accept that position was, that Mr. Tilton should be associated with him as assistant editor. It is true that there had been some indications of envy and conscious rivalry on the part of young Tilton, even at this early day, and some of Mr. Beecher's oldest friends suspected and criticised the motives of the young man; but Mr. Beecher himself was entirely free from suspicion, and put the most innocent interpretation upon every act of his new friend.

At this time, gentlemen, Mr. Beecher had a summer residence in the country, to which it was the habit of his family to repair, about the last of May or the first of June, and to return again in October, or sometimes as late as November. But a portion of the time, while his family were thus residing in the country, and prior to the beginning of his summer vacation, in the city—he spent in working at his own house, taking his meals with some of the families of his church during the time that he was in the city. This habit was well known to Mr. Tilton, and early in 1861 or 1862 he urged Mr. Beecher to make his house also a place of frequent resort. He spoke often to his pastor of his wife's great affection for him, and requested him to call and make himself at home in the family. Mr. Beecher had known Mrs. Tilton prior to his acquaintance with Mr. Tilton, but only as a young girl, a member of the church; and the acquaintance had practically ceased after her marriage, until it was renewed, as I have stated, at the request of Mr. Tilton—ceased, I mean, so far as his visits to their house were concerned; for in the early years of their marriage they were boarding, and when they began to keep house they commenced in Oxford street, so far from the place of Mr.

Beecher's residence that it was quite impracticable for him to visit the house often. Still, at the earnest solicitation of Mr. Tilton, as we have said, he began his visits to the house in Oxford street; and it was during these visits—quite infrequent, as the plaintiff tells you, and made at his earnest request—that Mr. Beecher first became acquainted with Mrs. Tilton in the relations of wife and mother.

MRS. ELIZABETH R. TILTON.

And now, gentlemen, I ask you to consider for a moment that Mrs. Tilton is the true defendant in this cause—she whose lips are sealed and whose hands are tied, while the battle is waging over her body. She can make no outcry, and strike no blow in her own defense. She can only weep and pray, as she has done so often already, looking for her deliverance to Almighty God and to the spirit of justice which He inspires in the hearts of men.

Small in stature, and of a childlike disposition, this lady is of a nature deeply reverent and filled with an exalted religious enthusiasm. The plaintiff himself declares that, had she lived in former days and belonged to the Roman Catholic Church, she would have been recognized as one of those illustrious women whose names shine with the halo of saintliness. She was devoted to her home, entertained views of the sacredness of motherhood almost romantic (if that were possible), and gave her own life, under God, absolutely to her husband and children, without a murmur as to her own self-sacrifice. Gifted, sensitive, pure, self-depreciating, idolizing her home, and worshipping with all the intensity of her nature the husband of her early love, her very existence was so blended with his, that their union fulfilled Lord Coke's definition of marriage, "two souls united in one person." From the time when Theodore Tilton placed the wedding ring upon the finger of Elizabeth, until that hour when, driven by his persecution, she was compelled to tear herself from her home and from him forever, there had been but one person who in all things dominated that household, and that one was Theodore Tilton. His wish was to her a command; whatever he willed, she did. Relieving him from every household care incident to the rearing of a young and numerous family, she was content to toil and suffer that he might win the distinction he coveted so much.

In a married life which would have made most women wretched, for ten long years of absolute self-sacrifice, Elizabeth Tilton fancied herself happy. Month by month, she watched the gradual unfolding of her husband, under the guidance and companionship of his friend and pastor. She saw him rising step by step to that proud eminence which had been the ruling ambition of his life, and

she was happy. But she at last came to realize that every new success brought to him new dangers. She saw with pain the character of the associates with whom, in the recklessness of vanity and the intoxication of first success, he surrounded himself. And with unspeakable anguish she witnessed the change that, day by day, was going on in his religious convictions. Slowly but certainly he was sliding away from the views of marriage and of social duty which he once adopted, and becoming the advocate of theories which seemed to her to have been propounded only by those who were unwilling that the principles they professed should be better than the lives they lived. The spell of the flatterer was upon him. To rescue him from all that she deemed false in religion and pernicious in morals was, as it seemed to her, the one great duty of life. To accomplish this, no sacrifice was too great. She would patiently if not willingly accept humiliation, reproach, accusation; nay, the most sacred feelings of wife and mother might be outraged and trampled upon; and still she would hide her sufferings and conceal her wounds, if only the object of her solicitude and prayers might be saved.

There was but one person on earth to whom she could make known her sorrow, and that one was their friend and pastor. Boundless was her faith in God and the efficacy of prayer, but she was not a mere enthusiast; she believed in a wise and faithful application of appropriate means. How natural, then, that she should appeal in this emergency to him who had been the friend of her husband's youth, the counsellor and guide of his maturer manhood. This pastor sympathized with her suffering and promised help. How faithfully and how tenderly he counseled the plaintiff we have seen by the beautiful letter, as wise as it is beautiful, which the defendant wrote to the plaintiff in 1867. If Tilton could have but heeded that advice how different would have been the scene from what we this day witness! There would have been no bleeding heart, no deserted hearth-stone, no wife with broken heart and blasted life, no children with a blight resting upon their young and innocent lives; but a home happy and harmonious, a family bound together by the ties of love and respect, a household altar undesecrated, as in those early days of simple piety of which he is now so much ashamed.

But, blinded by his egotism and drunk with the intoxication of flattery, he refused to break away from his evil associates. Neither the voice of friendship nor the appeals of affection had power to save him. And now, gentlemen, they ask us to believe that, at this time, when all of a wife's faith, a woman's devotion and a mother's love, was being exerted to save Theodore Tilton from

the companionship and corrupting influence of those "whose feet take hold on hell"—this pure-minded and saintly woman, in her very effort to save her husband, fell herself! Fell into the very sins against which, for so many anxious years, she had been warning her husband "with strong crying and with tears!" Nay, more, that the very religion—the religion which she had cherished all her life, and which was confessedly so conspicuous in that life, furnished the motives for her fall! Still more, that so infatuated and unintelligent was her hold upon that faith that, having sinned, she solemnly denied this conscientious crime and invented a tissue of lies to support that denial; that, still further moved by an inspiration she believed Divine, she abandoned all the responsibilities and loves of life, and gave to a spiritual guide, himself all leprous and loathsome with adultery and perjury—and that (anti-climax of abominations!) she is "a pure and white-souled woman" still! Gentlemen, you are men full grown; you have the wisdom that comes from the experience of life, the observation of human nature, the knowledge of affairs. Is there one among you that can so discredit all that experience and observation as to entertain for a moment a suggestion so utterly absurd, so absolutely monstrous?

MR. TILTON'S TRIUMPHANT CAREER.

In June, 1863, Mr. Beecher, feeling exhausted by his labors, visited Europe for a few months, leaving Mr. Tilton in charge of *The Independent* during his absence; and, on his return, finding from experience that the burden was too great for him, he privately relinquished the entire charge of the paper to Mr. Tilton. He consented, however, that his own name should remain as ostensible editor for a year longer, and, at the end of that time, Mr. Tilton openly assumed the charge of the paper. The prize Tilton had so earnestly struggled for was now won; and, at the age of thirty years, he found himself the successor of Henry Ward Beecher, the occupant of one of the proudest editorial chairs in America. For this position he was indebted to the friendship of Henry Ward Beecher.

The nature of the friendship which I have thus briefly described, and its value to Mr. Tilton, can be portrayed in no language of mine more effective than that in which he has done it himself, in a letter which he wrote under a stress of conscience, the very year that he became editor, and a few days after he had, over his wine, made direct and wicked insinuations against his loving pastor and best friend. In this letter he tells, under an impulse of gratitude which was all too brief, something of the obligations which he was under to the man whom he had just

begun covertly to slander, and whom he now seeks to destroy :

MIDNIGHT,
BROOKLYN, Nov. 30, 1865. }

REV. HENRY WARD BEECHER :

MY DEAR FRIEND—Returning home late to-night, I cannot go to bed without writing you a letter.

Twice I have been forced to appear as your antagonist before the public—the occasions five years apart. After the first, I am sure our friendship, instead of being maimed, was strengthened. After this last, if I may guess *your* heart by knowing *mine*, I am sure the old love waxes instead of wanes. * * * My friend, from my boyhood up, you have been to me what no other man has been—what no other man can be. While I was a student, the influence of your mind on mine was greater than all books and all teachers. The intimacy with which you honored me for twelve years has been (next to my wife and family) the chief affection of my life. By you I was baptized—by you married. You are my minister, teacher, father, brother, friend, companion. The debt I owe you I can never pay. My religious life; my intellectual development; my open door of opportunity for labor; my public reputation; all these, my dear friend, I owe in so great a degree to your own kindness that my gratitude cannot be written in words, but must be expressed only in love.

Then, what hours we have had together! What arm in arm wanderings about the streets! What hunts for pictures and books! What mutual revelations and communings! What interchangings of mirth, of tears, of prayers!

The more I think back upon this friendship, the more am I convinced that, not your public position, not your fame, not your genius, but just your affection, has been the secret of the bond between us; for whether you had been high or low, great or common, I believe that my heart, knowing its mate, would have loved you exactly the same!

Now, therefore, I want to say that if, either long ago or lately, any word of mine, whether spoken or printed, whether public or private, has given you pain, I beg you to blot it from your memory, and to write your forgiveness in its place.

Moreover, if I should die, leaving you alive, I ask you to love my children for their father's sake, who has taught them to reverence you, and to regard you as the man of men.

One thing more. My religious experiences have never been more refreshing than during the last year. Never before have I had such fair and winning thoughts of the other life. With these thoughts you stand connected in a strange and beautiful way. I believe human friendship outlasts human life. Our friendship is yet of the earth, earthy, but it shall one day stand uplifted above mortality, safe, without scar or flaw, without a breath to blot or a suspicion to endanger it. Meanwhile, O my friend! may our Father in Heaven bless you on the earth, guide you, strengthen you, illumine you, and at last crown you with the everlasting crown!

And now, good night, and sweet be your dreams of

Your unworthy but eternal friend,
THEODORE TILTON.

We have seen, gentlemen, that, in this year 1865, Mr. Tilton assumed the absolute and open control of *The Independent*. He could be no longer supposed to be under the influence of Mr. Beecher. Mr. Beecher had retired from the paper, and although he was a correspondent of it, and it published his sermons weekly, still Mr. Tilton was its sole responsible editor. The first thing his ego-tism prompted him to do, on assuming control of the paper, was to satisfy the world

that he had emancipated himself from Mr. Beecher's influence, and was no longer guided by him. He had, in his estimation, become the equal of Henry Ward Beecher, if not his superior, and he must take the first opportunity to satisfy the world of that fact. Early in 1865, he makes a political difference the occasion for denouncing Mr. Beecher in *The Independent*. The year following, the opposition of the paper to Mr. Beecher became so pronounced, and its attacks upon him so virulent, that he was compelled in self-respect to sever all connection with it, and to refuse it permission longer to print his sermons. The pretended occasion of this attack in 1866 was Mr. Beecher's Cleveland letter which has been introduced in evidence before you, and which you have heard read. You will remember, gentlemen, that that was a period just succeeding the close of the war. The question before the country was what should be the policy of the North towards the conquered States of the South, and that question depended upon what should be the policy of the Administration; because whatever policy the Administration—having a majority in Congress and the control of the executive power—should adopt, must become, of course, the policy of the nation. There was a long and angry controversy, as you may remember, within the ranks of the Republican party, which was at that time the party responsible for the control of the Government—as to what should be the policy of the country; many Republicans adhering to what they regarded as the policy which Mr. Lincoln had adopted prior to his death, and others seeking to depart from that policy and adopt a new and more aggressive course toward the South. While the policy of the Republican party was being formed and settled, and debate and argument were going on within the ranks of that party, Mr. Beecher was among those who adhered to what he deemed the policy which Mr. Lincoln would have inaugurated and carried out had he lived. That policy was expressed in what is known as the "Cleveland letter," a letter, gentlemen, which, permit me to say, read at this time, nine years after it was written, shows that Mr. Beecher was no less eminent as a statesman than as a minister of the Gospel. But that letter, which was only an argument intended to influence the policy of the Administration and of the Republican party, was made by Theodore Tilton the pretext for a bitter and outrageous attack upon Henry Ward Beecher; and in that contest, as we know, the policy which was advocated by the extreme men of the party came to prevail, and Mr. Tilton, as he tells you upon the witness stand, found himself with the majority of the party. The controversy which sprang from this letter severed the public connection between Mr. Beecher

and Mr. Tilton. The latter could no longer be suspected of being swayed or controlled in his public relations by the influence of Mr. Beecher. Other influences came in to replace the great influence which had departed. The character of that influence, gentlemen, you may judge by the subsequent career of Mr. Tilton. The extreme men of every faction, of every view, flocked around Mr. Tilton. They found how easily they could use him. To use him successfully, it was only necessary to flatter him. They found him naturally prone to accept the most radical view of every question; and they simply took possession of him and controlled him, so long as he remained editor of that paper. But at this time, in 1866, the second year after he had assumed control of *The Independent*, it was observed that his religious views began to undergo a marked change. For the people who had surrounded him were not extremists in politics or in social theories exclusively, but in religion also, and Mr. Tilton began to show that he was accepting their views on this subject. As early as March, 1866, he writes to his wife: "I don't care greatly for sermons, but I am a believer in hymns." On February 1, 1867, he writes; "I am conscious of departing more and more from the peculiar religious and theological views which you regard as sacred. Perhaps this statement may give you trouble, but certainly this fact has given me peace." Twelve days afterward, he again writes: "The old religious teachings, the orthodox views, the dread of punishment, the atonement, have less and less power over my mind. Of course you will mourn over this. But I must be an honest man. I don't believe in orthodoxy, and therefore I will not pretend to do so."

This change in his religious sentiments was a source of great unhappiness to his wife. This is testified to, not only by Mr. Tilton, but by the witness whom the plaintiff has introduced into your presence, Mrs. Bradshaw. She tells you that Mrs. Tilton mourned greatly over the change of religious sentiments that came over her husband in these early years. On his cross-examination before the Committee, Tilton declared that he thoroughly hates and despises religious creeds. Says he: "I do not believe in one of the thirty-nine articles, nor in either of the catechisms, nor in the divine inspiration of the Scriptures, nor in the divinity of Christ." He further says: "I despise the church and generally despise ministers." He further says: "I thank God I do not belong to the priesthood or the church." Tilton further testifies to the sorrow and anguish which this change in his religious sentiments caused his wife. He says: "She was always in sorrow that I was not a minister, which was the only virtue that I possess." On that examination, there was put to him the following question: "Well,

it was that lack of reverence for the church and its ordinances, and your lack of belief in the divinity of Christ, as she held it, that she missed in you?" To that he answered: "Yes;" and the following question was put to him: "And she grieved over it?" He answered: "Oh! yes, indeed; grieved over it with tears." And to a further question: "Do you know whether the change in your religious convictions was a source of great grief and sorrow to your wife?" He answered: "It was a great source of tears and anguish to her; she said to me once that denying the divinity of Christ, in her view, nullified our marriage almost; and I think, next to the sorrow of this scandal, it has caused that woman to sorrow more than anything else she has ever suffered, because I cannot look upon the Lord Jesus Christ as the Lord God. I think her breast has been wrenched with it; she is almost an enthusiast on the subject of the divinity of her Saviour. Q. You think her a Christian, do you? A. Yes; she is the best Christian I know of, barring her faults; better than any minister. Q. The change of your religious views has been the subject of a great deal of conversation and anguish, and labor on her part, has it not? A. Oh, yes—of letters, and prayers, and tears, and entreaties, many a time and oft."

In this hour of her great sorrow, Mrs. Tilton applied to her pastor for advice and sympathy. Mr. Beecher saw Tilton frequently, and talked with him upon matters of religious belief. On June 3, 1867, he wrote Tilton the judicious and eloquent letter which has been given in evidence, and from which I now desire to quote.

Mr. Beecher writes to Mr. Tilton:

June 3, 1867.

MY DEAR THEODORE: In thinking over our conversation respecting your position on religious matters, it occurs to me that you are liable to do yourself an unnecessary injustice by supposing or affirming that you have wandered from received opinions, whereas it seems to me that you have simply entered that stage of development in which every active mind explores the grounds and reasons of belief for himself. Now, it is impossible for one, unless cautious even to coldness, to pursue such investigations without great oscillations of belief, without seeming at one time averse to one view, and then again seeking it with greater avidity than ever. It is a question so wide, so grave, that one ought not to commit himself upon the hasty result of a year's or several years' reading. You seem to me to follow your *sympathies* largely in investigation. This has its advantages, and is one way of study; but it requires *far more time* and caution, inasmuch as it will surely lead you to accept things from poetic or emotive reasons, which are but *half true*, which need and will get by longer experience much modification. The formation of opinions upon religious questions in such a nature as yours is a matter of *growth* more than of logic. Under such a state of facts, therefore, I would submit whether you can wisely or even truly say you stand on this or on that ground, and whether you do not, in justice to your own final self, require all the privileges accorded to those

who are *investigating*. In part I write from experience. I look back upon periods when, if I had expressed the then results of thought and reading, I should have committed myself to views which I have outgrown or left behind. I find myself, slowly but surely, going toward those views of human nature and of divine government which have underlain for a thousand years the Evangelical churches. It seems to me that I discern, arising from studies in natural science, a surer foothold of these views than they have ever had, in so far as theology is concerned. If I have one purpose or aim, it is to secure for the truths now developing in the spheres of natural science a religious spirit and a harmonization with all the great cardinal truths of religion which have thus far characterized the Christian system. I turn with more and more chill and dread from that bleak and fruitless desert of naturalism which so many are hailing as a second paradise."

Further on he says :

"Believe me, Theodore, that I have great sympathy in your developments, and affection for you, and should be glad to help and sorry to hinder."

Now comes a paragraph, the significance of which will be more apparent as we get further on in our opening, gentlemen, but which I wish to call your attention to now, lest it may not recur to me at that time. Mr. Beecher, in order to disarm all ground of hostility, and to prevent the advice which he had given to Mr. Tilton on religious subjects being repelled by hostile personal feelings, says to him :

"I have given up the idea of starting a newspaper. I am sure that I could not bear the strain and yet carry on my church.

I am truly yours,

H. W. BEECHER."

This, gentlemen, was in 1867. The significance of that reference to a new paper in the relations of these two men, as I have said, will become more apparent as we get further on in this matter.

But the change in his religious convictions was not the only departure made by Mr. Tilton from opinions theretofore accepted by him. There followed soon after a very marked change in his social views respecting the relation of the sexes, and particularly in the subjects of marriage and divorce. Mr. Tilton espoused with zeal the cause of woman's suffrage. He reports himself in *The Golden Age* as having said during the war that, after the abolition of slavery, the next great question which would agitate the public mind would be that of woman's suffrage; and, undoubtedly believing that a great social revolution was impending, he aspired to make himself the leader of the movement. But its adherents differed widely among themselves in their views of the marriage relation. Many, perhaps a majority, coincided with all Christian people upon this subject; while others held that marriage was a mere matter of civil contract, and that the parties thereto should be as free to dissolve the relation as they were to enter into it. Tilton accepted

the most radical views upon this, as he was accustomed to do upon all subjects. He soon began to talk with friends visiting at his house upon this matter. He did not hesitate to declare before his wife that he had now come to regard the marriage relation very differently from what he once did. To him it was no longer a sacred institution, to be regulated by the Church or State. His most intimate friends of both sexes came to be those who agreed with him upon the subject of marriage. They used to converse much upon the relation of the sexes; the great value of mutual friendships between married men and unmarried women, or between married men and other men's wives; the extent to which such intimacies could be carried and still be innocent; and finally the impossibility of criminality in any relation which love had sanctified. This, I say, gentlemen, we shall show you, was a frequent subject of conversation between Mr. Tilton and his associates visiting at his house. It was these sentiments, so offensive to this pure and devoted wife and mother, that she was compelled to listen to, day after day, and week after week. This change was, if possible, more repugnant to her than his change in religion. The one she strove against with anguish, with entreaty and with tears; the other she resisted and fought against. She despised the doctrine and its adherents; she forbade her house to the women who advocated it; she remonstrated with her husband against the principles he held and the people with whom he associated, and, particularly, she suspected his numerous friendships with women, which he characterized as "sacred weddings which knew no sex."

TILTON'S ALIEN LOVES.

She rejected his sophistry, that they were helps to him in his labors, or pillars against which he could lean for support. She perceived with a woman's instinct the end to which such relations would bring him. Still Tilton persisted in the necessity of such friendships and humiliated his wife by the publicity he gave to them. The freedom with which he used to write to his wife on the subject of his relations with other women—his friendships, as he called them, for women—is illustrated in the correspondence which has been introduced. It is a remarkable correspondence, gentlemen, to pass between husband and wife. It develops a trait in Mr. Tilton's character that is most unusual and almost unaccountable—that he could presume to humiliate his wife and destroy her peace of mind by disclosing to her in correspondence the friendships which he had for other ladies, and describe them as going to the extreme lengths which he did. On February 12, 1867, he wrote :

MY DARLING: I wrote you a hurried sheet this morning from the Sherman House, while waiting for — to breakfast with me. He did not come; I ate my breakfast alone. Once again on the cars, and once again confronting a lecture appointment, I feel that I am once again at work, after my two days of pleasant rest.

And I confess that rest is sweet. I do not mean rest for wearied limbs, though that, too, is sweet; but rest for one's spirit; rest in the midst of a circle of kind and loving friends; rest to one's own vagrant, untamed and unconquerable homesickness; rest in the tranquillity of spiritual peace.

I have been enjoying two days of such rest. The spell is still on me this morning. I rode five hours to — yesterday afternoon, and five hours back, after midnight, on purpose to spend a long and delicious evening with the — family. This family and its influences have helped to make me a better man. The very roof seems to spread over me a benediction. I am grateful for the Providence that ordered my steps, last December, to the threshold of this cottage. Tarrying with these dear people has been a new experience in friendship—a new delight of life.

The whole subject of friendships has been much in my mind this Winter.

I am satisfied that whoso makes no intimate or confidential friends, both among men and among women—friends with whom he girdles himself round about as with a halo—friends who are props to keep him lifted perpetually toward his highest life—friends whose friendship is a kind of *sacred wedding that knows no sex*—such a man neglects one of the greatest of human opportunities for intellectual, moral and spiritual growth.

Again, he says:

The number of people who mate each other—who fit one another exactly—who are (to use your word) "counterparts," is very small.

Again, he says:

"And this fact reveals the one prolonged mistake of my past life—my association with your mother. I can now plainly see what I might have been, if, for instance, I could have lived under such a roof as sheltered me in — instead of breathing during all these years the atmosphere of Livingston street."

"If my mother-in-law had been such a woman as — and the influences of Brooklyn had been like the influences of —, I believe that I might have grown by this time as unselfish as a good woman. How much more I would then have been to yourself and the children! How many pangs you might have been saved! How many unknown joys you might have experienced! I have not been a wise man or I would not have consented, eleven years ago, to pitch my tent in a bank of fog." Again he says: "I have never seen so plainly as I have seen this winter what Livingston street milder I have been carrying on my garments for eleven years. Six months ago I was accustomed to say to myself in my secret hours, 'Theodore Tilton, it is time for you to die; your soul grows not whiter but darker; die soon and save yourself from total destruction.' But I believe that if I shall return to Brooklyn at all, I shall return a different man. God grant it! I know that I have tried to wash myself clean at the fountain of a better life."

It was this family in the West presided over by a mother with several daughters, one of which was the young lady I have referred to, who paid a visit at this house about this time in Brooklyn. If you can imagine a cruelty which a husband can inflict upon a wife greater than the writing of such

a letter as I have just read to you, gentlemen, followed by such an association as existed between Theodore Tilton and this Western family, then I confess my inability to appreciate cruelty or the intense sorrow which a man may be capable of inflicting upon a woman.

MRS. TILTON'S MAGNANIMITY.

But in January, 1868, Mr. Tilton's social relations had reached a point where concealment could no longer be endured, where there must be an explanation with promise of reformation, or else a break. That explanation was had on Sunday, Jan. 26, 1868. The whole subject of his relations with other women, his temptations, his sins, the manner of treatment by his wife on account of them, his concealments, and deceit, were brought up in this interview. Elizabeth Tilton was in one of her most exalted moods. She spoke with frankness, earnestness, and sorrow to her husband, who, conscious-stricken, fell groveling at her feet. He confessed that his "sacred weddings" were stained with sin, and that he could no longer look his wife and children in the face and listen to their words of confidence and affection without feeling himself "a hypocrite, a deceiver, a whitened sepulchre full of dead men's bones."

I will not stop to consider too closely whether he confessed adultery of the body, or what he calls adultery of the soul. Certain it is, from the remarkable correspondence which followed, continuing through the year 1868, that this evening was made memorable by confessions of some degree of sin on his part concerning his sexual relations, and by an angelic forgiveness, pity and victorious faith in the future on the part of his wife. Not one word of reproach was uttered by this pure and injured woman. She hastened to lift him from the moral prostration into which he had fallen, to comfort him by the assurance of her unshaken hope and confidence in his future life, and broke him down afresh by her beautiful tenderness. She forgave him even before he pledged himself to a new career; but he gave these pledges with the utmost earnestness and solemnity. They bowed their knees together, renewing before God their early vows, forsaking all the world beside to cleave to each other alone. Nor did this content the noble wife. Her wonderful magnanimity and divinely-inspired sympathy could not let her rest till she had taken upon herself the blame of her husband's fall, and found in some supposed harshness and indifference on her own part an excuse for his many sins. For this imaginary fault she lashed herself both then and afterward with fanatical severity. She applied to herself the epithets which his conscience had suggested concerning his own

real transgressions. Her language, seen in the correspondence immediately following, is more extravagant than at any previous or subsequent period, in its expression of devotion to and admiration for her husband. In it she strives in every way to restore his self-respect, to replace him on his pedestal of pride, to convince him that she worshiped him more, and not less than she had done before his humiliating confessions. The effect of this magnificent exhibition of a woman's devotion, of her utterly unselfish, purifying love upon the mind of her husband, cannot be better described than in the language of that husband himself, from which I shall now read to you a few passages. This interview, gentlemen, took place, as I have said, on Sunday night, January 26, 1868. Mr. Tilton was to leave home that night for a lecture tour in the West. He left his house that evening to go to the railroad station in New York, and once in the car he wrote his wife this memorable letter :

HUDSON RIVER R. R., 31st st. Depot, }
Jan. 26, 1868. }

MY DARLING :

* * * * *
You have never seemed so noble to me as during last evening and this day. You are not only all, but more than all, that any man can need or ever can desire. Life never seemed to me to be more full of objects and ends worth living for, than since our recent long interview and mutual confession. I am by nature so frank that the attempt to hide my feelings, to cloak my shortcomings, to deny utterance to my inward sorrows, had lately driven me almost to despair.

The secret of all my long continued moodiness has been—dissatisfaction, not with you, but with myself. I was once well enough content to be esteemed at something better than my merit, but of late all such estimates of me have been horribly repulsive to my mind. They have revealed me to myself in the character of a *hypocrite, a deceiver, a whitened sepulchre filled with dead men's bones*. Above all things it has been dreadful for me to hear praises of myself from you and Florence. I could not rest content under the idea that either of you felt that my gloom was occasioned by anything lacking in yourselves, but only in my own self.

She answers this letter on the 31st of January, and in it you will see, gentlemen, how, notwithstanding his admissions and confessions of his numerous temptations, she attributed to her own harshness, her uncharitableness, her rebukes of him, thus compelling him to keep secret his affairs somewhat from her—how she attributed his fall or his shortcomings to herself, and took all the sin upon herself.

FRIDAY, Jan. 31, 1868—11 o'clock P. M.

Oh, Theodore, darling, I am haunted night and day by the remorse of knowing that, because of my harshness and indifference to you, you were driven to despair, perhaps sin, and these last years of unhappiness. I sometimes feel it to be the unpardonable sin. God cannot forgive me. But if you only may be restored to your former loveliness, I shall be content to live my life in penance, yea, in disgrace.

I am the chief of sinners! I understand perfectly how you have felt. I carry in my soul this burden, black of sin, yet appear to my children and friends calm and happy. "Woe unto you, whitened sepulchre," I hear perpetually. I will carry these agonies gladly, for I know a life of happiness awaits you.

This, you remember, gentlemen of the jury, was on the 31st of January, 1868. The language which I am about to read will show you what was the subject of their conversation, what the danger is which, at the time, threatened him, and from which she was striving with all the devotion and the faith of a woman to save him :

Darling, we must both cultivate our self-respect by being what we seem—then will be fulfilled my ideal marriage—to you and you only a wife—but contact of the body with no other—while then, a pure friendship with *many* may be enjoyed, ennobling us. Let us have not even a shadow of doubt of each other—tho' all the world are weak yet will we be strong.

God accept and bless us both.

Now are we one.

By bye,
Faithfully yours.

Now, gentlemen, this letter was written long before the breath of suspicion had been breathed against this lady, even by the malice of her husband. It was written when his own relations with women had destroyed his self-respect and broken him down, and he sought to palliate it by the harshness, and the indifference, and the jealousy which his conduct had inspired in his wife. To save him and restore him she made her forgiveness as bountiful as woman can make forgiveness to man. She took everything upon herself, and, as you see, refers to her harshness here, and her indifference, as perhaps the cause of his temptations. But to leave no doubt as to the subject of that interview, and what was discussed there, I read you now the letter of February 3, 1868, a letter which has become somewhat famous in this remarkable controversy :

MONDAY, February 3, 1868, }
9 o'clock A. M. }

What may I bring to my beloved this morning! * * * Most truly do I love, and am resolved nevertheless to repress the expression of it. I have lived under the fatal mistake that I would make you selfish, but oh! what it has cost me to learn that a large, generous love cannot, in its very nature, minister but to our best and holy states! The picture of your dear face, most constant with me, is one glowing with love, but always bearing the look of one that has suffered. Can I, who am the cause thereof, ever again be indifferent? Nay, the little life which remaineth is consecrated to restore, if possible, the beautiful image I have marred. There is no sacrifice too great that I would not enthusiastically make to this end, if God will only consider me worthy to work with him. I have been thinking, my darling, that knowing as you do your immense power over an audience to move them at your will, that same power you have with all public men over any woman whom you may love. To love is praiseworthy, but to abuse your gift of influence is a sin.

This is the letter, gentlemen, which was so marvelously garbled by this plaintiff in the early part of this controversy before the church, which he so garbled as to put upon the wife an imputation that she herself was tempted, and was likely to fall, and was resisting her own temptation. He made it read, as you remember, speaking of herself: "To love is praiseworthy, but to abuse the gift is sin. Here I am strong. No temptation could induce me," etc. But when you get at this letter and read the whole of it, you see that she is speaking of *him*, and the abuse of *his* influence over women, and she is remonstrating with him against that abuse: "To love is praiseworthy, but to abuse *your gift of influence* is a sin. Therefore I would fain help restore to you that which I broke down—**SELF-RESPECT**. Your manhood, and its purity and dignity, if you feel it, is stronger than even love itself. I know this because here I am strong. No demonstrations or fascinations could cause me to yield my womanhood." He had made her believe that her chiding, her jealousy, her harshness had compelled him to be a hypocrite to her, and to conceal from her his relations and his affections with other women. Then, bursting out into confessions of his sins, his humiliation before her had broken down his self-respect; and that is what she alludes to in this passage. She will aid him now to restore that self-respect which she had helped him to break down.

THE AFTERNOON SESSION.

GENTLEMEN OF THE JURY: At the recess, I was reading to you the remarkable correspondence that followed the interview between the husband and the wife on Sunday evening, January 26th, at the time Mr. Tilton was to take his departure for a lecturing tour out West. I had read to you one letter from Mr. Tilton written on the cars that night, and I had read you two from his wife, and I now read the second letter from Mr. Tilton, dated February 9th, 1868, and you will see by this letter, gentlemen, the high estimate in which he held his wife at this time:

CRAWFORDSVILLE, IND., }
SUNDAY MORNING, Feb. 9, 1868. }

MY DEAR ANGEL: I dreamed of you last night, and awoke thinking of you this morning. How much I want to see you! How I yearn after you! How my soul blesses you day by day! I can never describe how precious your love of your husband has appeared to him during these few weeks past. Your singleness, your fervor, your purity, your devotion—they fill my mind and heart with reverence, adoration, and humility.

I regard my last evening spent with you at home at the most memorable point in my whole life. You opened for me, that night, the gate of Heaven, which had so long seemed shut.

Ever since I have had nothing but glory, thanksgiving and praise. If ever a man was made a new

creature, that man was I; no more despondency—no more repining—no more vain regrets—no more loss of self-respect—no more groveling in the dust. On the contrary, I am once again a man among men, and a Christian among Christians. Now, this transformation I owe to yourself, to your irrepressible love and devotion, to your ceaseless prayers, and to your victorious faith.

Your letters, since I have been from home this last time, have been the dearest you have ever penned. They are royal in their tone. Each one fills me with renewed pride and joy in my wife. O, my darling, in comparison with such love as you express, how poor is the friendship of all other friends! I have never seen any one who loves as you do."

Well might he say that!

"You have the richest of all human hearts. I am pledged to you for ever. *My vows I shall keep and not break.* With God's help and with yours I shall be the faithfullest man in the world. Blessings on your soul this Sabbath day.

Ever yours,

THEODORE.

During this Western trip he had, previous to February 18, written his wife in regard to a visit he had paid this same Western family to which I have referred. He had stated to her that, in order to make that visit, he had given up one or two of his engagements at lecturing; and yet, this wife having promised him no more chidings, no more harshness, no more jealousy, when she received this letter from him informing her of this fact, answers him in the manner I shall now read. On Tuesday afternoon, February 18, '68, Mrs. Tilton wrote her husband then in the West, as follows:

TUESDAY AFTERNOON, Feb. 18, 1868.

MY DARLING HUSBAND: You have made me rich to-day; your letter from Lincoln came this morning, and this night Eliza brought me the full epistle from Chicago. I read every word eagerly; drop instantly whatever I am doing when the postman comes, and give myself up utterly, body and soul, locking the doors to prevent intruders, just as we are wont to do after an absence. I am heartily glad you are with the dear good friends in Chicago. How I wish I could have been with you! I hope you have impressed upon — my profound respect and love for her. How grateful it was to your poor tired head to rest there in the bosom of those dear ones. I am so glad, so thankful, the opportunity was given you, even though it cost the Des Moines appointment and two letters of mine awaiting you. I never realized, as now I do, your arduous labors, and the great hindrance and drag I have been to your young beautiful life.

I yearn to caress and tenderly care for you, read, sing, and gladden those dear eyes once again. I feel, as never before, how dreadful a thing it is to wound or stab any human heart by sharp, stinging words. Perhaps the dear Father has given me another lease of life, that I may learn this lesson. I praise him for his goodness. Then, again, darling, I have felt so heart-sick, that there are so few great men and women. The idea of a faithful, true marriage will be lost out of the world—certainly out of the literary and refined world—unless we revive it.

Believe in me,

Yours always,

ELIZABETH, WIFE.

At that same journey West, on the 20th of February, he writes her again, referring to this same Western influence, and he, having made vows of faithfulness, assures her that the spell with him is broken. He says: "The picture Madonna had arrived in good condition, and was hanging on the wall"—the wall of the residence of this lady.

"It is very neatly framed, and looks pure and royal. — was pleased, but the old fragrance has gone out of the 'prairie rose.' The flower is still comely, interesting, and agreeable, but I marvel at myself for once thinking it so fragrant above all the rest of the garden. It is gone for ever! It can never be to me henceforth anything but a common plant. This figure of speech is a mystery which I think you will understand. I intimate no names."

Thus much, gentlemen, for the letters while he was West, and for the assurances of fidelity to his marriage vow which he gave her after that conversation of January 26th. In the Summer, however, he has returned to his home in the City of New York. Old associates have come around him and new temptations have overtaken him, and he finds that the resolutions of January cannot hold out through the frosts of November. He is stricken again with humility, with a feeling of worthlessness, with inability to resist these temptations, and, moved by a letter which he received from his wife, written in the studio in New York, at his office, on the 8d day of November, he replies to her in the following manner. I shall not dwell upon this letter, gentlemen—I shall not stop to comment upon it at present. The duty of that will be reserved until the final summing up of this case. I only allude to it now as the closing letter of this remarkable correspondence in the year 1868 :

"AT THE OFFICE, Nov. 3, 1868.

MY DEARY: Your kind and loving note falls so pleasantly on my spirits that I would immediately go home this afternoon were it not that I have engaged to go out this evening.

There is so much sunshine pouring into my little office at this moment that I think I never knew a brighter day in my life; "[The sunshine he here refers to, I suppose, is the sunshine that came from the note of his wife in the morning.]

"And I hope that some of the light and warmth will steal into and remain within my cold and cruel heart.

It is the greatest regret of my life that I do not seem constituted so as to make you as happy as you deserve to be; but I have the best of intentions—and the worst of success.

The cause of so much trouble at home is my general anxiety about everything. Latterly I worry more or less concerning every matter which I touch. I have hardly ten minutes a day of uninterrupted free from care. This may seem an exaggerated statement; but it is the painful truth. I feel as if I were growing old before my time. Lights that used to burn within me have been quenched. Hopes are faded; ambition is killed; life seems a failure.

As I cannot bear to see any expression of pain, or sorrow, or regret, on your face, I cannot bring myself to speak to you familiarly on any subject connected with any of our sorrows—not even Paul,

our chief. I am literally *tormented* at having no grave for his crumbling clay. Every allusion to the subject has been a pang through my heart.

Then, too, all my religious doubts and difficulties have been, and are, and I fear must be, shut within myself, because I cannot open my mouth to you concerning them without giving you a wound. You are the finest fibred soul that ever was put into a body; you jar at my touch, and I am apt to touch you too rudely.

As for my own character, I saw, at the time of Paul's death, what it was to be a man, and how far short of it I am myself; and I have ever since been utterly overwhelmed with my own worthlessness, selfishness, degradation, and wickedness. At some time I expect to recover from this slough of despond, but not now; I must remain longer in suffering before I can emerge into peace. I have been overthrown, and, before I rise, I must be made to feel, like Antæus, that strength comes from touching the ground.

But the chief of all my miseries is this: that I impart them to others. Let me say, with the utmost fervor of protestation, that neither you, nor the children, nor the house, nor the servant, nor anything that is within our gates—not one alone—nor all combined—no, none of these persons or things has the *slightest originating share in my troubles*. Those troubles (such as they are) are of my own making. Would to God they were also of my own enduring! But they have to be inflicted upon others—upon yourself and the children. It is this fact that doubles my affliction.

But your kind and tender words, penciled in the studio this morning, were very precious to me—sweeter than honey in the honeycomb. I write this letter on purpose to thank you for them. God bless you evermore.

Lovingly yours,

THEODORE.

I now read, gentlemen, another letter in this correspondence written by the wife, February 20, 1868, in which she betrays her fears of renewed difficulty and dissatisfaction, on his return home.

"THURSDAY EVENING, Feb. 20, 1868.

MY BELOVED: I am so lonesome and heart sick for your companionship to-night that I hesitate to write lest my mood may depress you. Yet I cannot wish you home, for I am persuaded you are happier where you are. While I long to be with you, I am haunted continually with fears that your cheery face will soon be shadowed and the dear head droop. This thought is agony to me, and I have spent many hours since your absence weeping because of it.

I would fain make the path smooth for your feet, or, in other words, direct the children and the household that they minister harmony only, but I *know* I cannot, and *I am afraid!*"

Again she says to him, on March 8th, 1868 :

"NURSERY, Sunday eve, March 8, 1868.

MY BELOVED: All alone, save Eliza in the kitchen, and the children all asleep about me, while I have been trying to imagine my state when I shall again live with you and behold your precious form. *This*, I think, I have decided—no more chidings, scoldings! An inexpressible tenderness has grown up in my soul towards you. I never saw my path as clear as now—that whatever you may do, say, or be, it becometh me to be the Christian wife and mother! The full meaning of those words, when developed from a nature impotent as mine, I most thoroughly understand. If I may lead my children *now* to an intimate love and trust in God,

He manifesting Himself to babes, as He has promised, then to that great source of happiness strong bodies be added, I will risk intellectual training and knowledge."

Notwithstanding the promises made January 26, 1868, and the promises of complete reformation which were often repeated in the correspondence following that interview, it is clear from that correspondence, and particularly from the letter of November 3, 1868, that upon his return to New York, and falling again under the influence of old associates and subjected anew to temptations, he felt himself unable to keep the vows he had made in January previous. This is made evident from the correspondence of the parties during the years 1869 and 1870. Difficulties were thickening around him, rumors of his dissolute life filled the air—it was impossible for Tilton to conceal any longer from the world the life he lived. In December, 1870, the storm which had been so long gathering, burst upon him. It struck him in every quarter. He found his business relations imperiled and his home shattered.

As early as 1866 Tilton began to shadow forth in *The Independent* his religious and social views. They bred discontent everywhere, particularly in the Northwest.

In 1867 there was an open revolt among the Congregational ministers of the Northwest, which resulted in starting, at Chicago, a new paper, called *The Advance*, intended to supersede *The Independent* in that quarter. The correspondence and negotiations which led to the starting of that paper began soon after Mr. Tilton commenced developing his views in *The Independent* on religion and social matters. Several meetings were had between Mr. Bowen and the proprietors of that paper, and representative clergymen of the Northwest. Mr. Bowen promised reform, promised repeatedly to muzzle Tilton, and to prevent the obnoxious utterances in his paper; but after one or two promises and failures in that direction, the Congregational clergymen of the Northwest started a new and independent paper in Chicago. Mr. Edward Beecher, the brother of the defendant, then residing in Illinois, was active in this opposition to his paper and to him. At this point, gentlemen, I desire again to refer you to the remark of the defendant in his letter in 1867, addressed to Mr. Tilton on the subject of religion, where he says: "I have given up the idea of starting a new paper." You will perceive, therefore, gentlemen, that from the time of this political difference between Mr. Tilton and Mr. Beecher, resulting out of the Cleveland letter, the subject of a new paper in place of *The Independent*, and in opposition to Tilton and his views, had been the subject of conversation. It is evident from the remark of Mr. Beecher to Tilton, that Mr. Tilton under these facts

suspected Mr. Beecher of encouraging an opposition to him here, and of becoming the editor of an independent paper. He therefore had for some time regarded Mr. Beecher as a rival and was jealous of his fame. He feared his power, as did also Mr. Bowen, the owner of the paper; and this opposition and this jealousy increased on the part of Mr. Tilton against Mr. Beecher. While they were personal friends outwardly, the public reputation of Mr. Beecher was continually being disparaged by Mr. Tilton, and he represented him as having reached the zenith of his power. Henceforward Mr. Beecher was to decline in mind and public position, and there was only one man who could take his place, and that man, in the estimation of Theodore Tilton, was himself.

In 1868 another opposition paper, *The Church Union*, was started in New York. In 1869 it was taken possession of by Ford & Co., Mr. Beecher's publishers; its name changed to *The Christian Union*, and in January, 1870, Mr. Beecher became its editor. Tilton now regarded Beecher as his rival and was jealous of his fame. You see, therefore, gentlemen, that by this time the rivalry between those two men had become sharp and well defined, at least so far as Tilton was concerned. The rapid increase of *The Christian Union* (for the name of the paper had changed when Mr. Beecher took hold of it) in circulation and its growing popularity alarmed both Tilton and Bowen. Nevertheless Tilton grew bolder and more outspoken in the advocacy of his peculiar views than ever.

In 1869 and 1870 rumors affecting Tilton's moral purity began to reach Bowen; also rumors of Tilton's domestic difficulties reached Bowen's ears. You have heard some of those rumors referred to, gentlemen. It is in evidence that Mr. Bowen heard of the Winsted affair. I do not stop to comment upon that transaction at this time, gentlemen. I do not stop to say whether Mr. Tilton was guilty or not of what was imputed to him by the people of Winsted on that occasion. I only say that no mere child (as he represents her to be in his letter from Tiddou to a Mr. Hastings in Winsted)—no mere child, but a young lady, fully developed, twice the size of his wife, was the person there referred to. And I only say, without imputing the slightest blame to the young lady, that Mr. Tilton's conduct on that occasion was characterized by that degree of indiscretion that it provoked a horrible scandal concerning himself at Winsted, Connecticut, in 1869; and the rumor of that difficulty had reached Mr. Bowen. Also Mr. Tilton tells you himself from the witness stand that in 1870, about the time this storm-cloud burst upon him, an evening paper in New York published the fact that he was about to elope

with a woman, whom it named. Now, gentlemen, evening papers in New York, or morning papers in New York, are not apt to allude to scandals by name, particularly when the names of such prominent persons as Theodore Tilton are connected with them, unless those scandals have been of long standing, and have become a matter of news to the editorial profession. These scandals filled the air in regard to Mr. Tilton, and they had reached Mr. Bowen. Mr. Bowen saw that Mr. Tilton must be gotten rid of, How to do it was the problem, which he was not prepared at this time to solve. But fortunately for him, Tilton with his genius for blundering, gave adequate cause for dismissal, in an editorial which he published in *The Independent* on the 1st of December, 1870, committing the paper to the doctrine of Free Love. That editorial has been produced in your presence, gentlemen, and has been read to you. It will be the subject of further comment during the course of this trial. I shall refer to it here, and to other publications of Mr. Tilton about this time, for the purpose of showing that, when he was editor of what was understood to be a religious newspaper, he was still at heart the advocate of social freedom, or what might be more correctly characterized as Free Love.

But, before reading this article from *The Independent*, which led to Mr. Tilton's immediate retirement from it as its editor, I beg, gentlemen, to read to you a letter from Theodore Tilton to his wife, written Jan. 9, 1865, upon this same subject. It was written just about the time he assumed control of that paper. It was written at a time when he was still under the influence and guiding force of this great mind, which had led him from boyhood up to his present position. I want to show you, just on the eve of his emancipating himself from that influence, how he regarded the sanctity of the marriage relation, and what views he held upon that subject. January 9, 1865, in a letter written to his wife, he says :

"I have lately been much more than ever impressed with the wonderful simplicity of God's plan for binding together human society, namely, by creating in each breast some strong and dominating love for one human being. Were it not for the love of mother to child, or husband to wife, our society, civilization, the peace and order of the world—all would fall asunder in a day. Whatever rends apart two lives which have been bound into one is a cruelty to all mankind, a blow at the unity of civil society. I begin to see as never before that the center of the world to an honorable man is his own family, his wife's sitting room, children's play-places, his home. I hope hereafter, if God should spare my life, to be more careful how my face is made to cast a shadow upon my home. I have been too often negligent of your requests that I should give more time to your dear self and the children, as my heart now feels. I am ready to promise never to seek my old selfish seclusions again, but to spend my home life in your sweetest of all company."

Such were Tilton's views at the time that he emancipated himself from the friendly influence which had so long guided and directed him.

THE CHANGE OF FIVE YEARS WROUGHT IN MR. TILTON.

But I now, gentlemen, invite your attention to the change which five years had wrought in the principles and character of Theodore Tilton. For five years he had been editor of *The Independent*, one of the leading and most influential of the religious journals of the country. He had denounced Mr. Beecher politically in 1866 and had parted from him on all public and social questions. Personally friendly, he had by this attack cut himself off from that friendly, guiding mind which had hitherto been his stay and support. His position rendered him serviceable to the advocates of new doctrines. To use him it was only necessary to fawn upon and court him. For five years he had been the victim of the flatterer. For five years he had been the associate and boon companion of people of easy virtue, who gild their lives with plausible but corrupting theories. How continuously those who surrounded him burned incense to him and how remorselessly they used him, the history of those five years and his disastrous fall at the end, bears sad and painful evidence. On the 1st of December, 1870, the same man who in 1865 saw with such clearness that the marriage relation was ordained of God, the cement of society, had so fallen that he could publish in the paper of which he was the editor, as the leading editorial, the following. After asking what is love and quoting from the poets, he says:

"To answer what breaks we must inquire what makes the marriage bond." "Marriage without love is a sin against God—a sin which, like other sins, is to be repented of, ceased from, and put away. No matter with what solemn ceremony the twain may have been made one, yet when love departs, then marriage ceases and divorce begins. This is the essence of Christ's idea. To say that he granted divorce only for a gross and fleshly crime, is to forget that he called the eye a paramour and the heart a wanton's bed. This idea (and this idea cannot but be true) carries with it, as its logical sequence (and this, too, cannot but be true), the irresistible conclusion that marriage, if broken, and whether broken by the body or the soul, is divorce. Infidelity of the body is not so great a sin against marriage as infidelity of the soul."

This was his utterance in December, 1870, as the responsible editor of that great newspaper, *The Independent*. Of course it roused a flame of indignation throughout this land from one end of it to the other. No Christian community would support a paper that advocated such doctrines, and Mr. Bowen, who can appreciate the standard of value, if (as Mr. Tilton says) he cannot the standard of

morals, soon discovered that it was important for him to be rid of this editor. This was the cautious utterance of one who at the time accepted the doctrine of social freedom as broadly as Victoria Woodhull herself.

You have heard the evidence, gentlemen, of Mr. Tilton from the witness stand as to the subject of his views upon this question. After the article which I am about to read to you had been put in evidence, you saw how the learned counsel opposed, sought to break the force of that evidence by introducing Theodore Tilton to swear, on his re-direct examination, that he held the marriage relation in great sacredness; that with him it was only the question of divorce, and he opposed the strict rule adopted and adhered to in this State upon that subject, and desired to liberalize our legislation, and make it compare with that of New England or the Western States. And you heard him testify on the witness stand, gentlemen, in answer to the counsel, and they felt it important to make him say, I have no doubt, that he did not hold, and never held, that the marriage relation was above the law, but it was a matter which should be regulated by the law, and the only fault he found with the divorce laws of this State was, that they were not sufficiently liberal and they ought to be liberalized, but still it was a matter to be regulated by law. That was a material matter, gentlemen, of evidence, and I propose to convict Theodore Tilton right here, from his own writings, of having falsified before you when he gave that evidence. And I propose to show from his own published writings—writings that he has never repudiated, writings that he adheres to to this day—that when he said from the witness stand that he held as other men held, that the laws of this State touching divorce should be more liberal, but still that divorce should be a matter to be regulated by law, and not by the parties themselves, he testified to what is untrue. And I ask, gentlemen, your careful attention now to this correspondence, which is among the most celebrated correspondence that Mr. Theodore Tilton ever had in his life; I ask your careful attention to his utterances upon that subject. He is answering Horace Greeley's objections to free love, and that you may clearly understand the meaning of his language, I shall read to you Mr. Greeley's position, so that you may have before your mind a clear conception of what Mr. Tilton was uttering. Mr. Greeley says;

"I. You ask me what I mean by 'Free Love.' Let me illustrate:

"Here are a husband and wife, each fifty years old, who have lived in wedlock a quarter of a century, and had six or eight children, of whom half survive. The pains and cares of maternity have nearly worn out the wife, while the husband is still in the prime of manly vigor and strength. He has filled a wider sphere and enjoyed better opportunities for mental culture than she has, and

feels himself her intellectual superior. Among his acquaintances is a younger, fairer, fresher woman, not so richly dowered with worldly wealth, who admires and is admired by him—who, in fact, is willing, if invited, to be his 'affinity,' and he is more than willing that she shall. If they 'take up' with each other," ['take up' is quoted; seems to be an understood phrase with the free lovers;] "their arrangement, or whatever you please to call it, is just what I execrate as 'Free Love.' You know that such alliances exist. I feel that they are abhorred of God and a chief cause of human degradation, family disruption and general wretchedness. In short, I hold the man who has sworn to love and cherish his one woman till death *not free* to love another while that woman lives and strives to fulfil toward him the duties of a loving wife. Hence, I intensely hate 'Free Love,' and I hate all inculcation that a marriage may rightfully be dissolved, except for flagrant, deliberate adultery, while husband and wife both live."

That was Mr. Greeley's denunciation of free love, and that was the free love that he execrated. Now, let us see what Mr. Tilton's reply to that is. I now read the third paragraph of Mr. Tilton's reply, which is as follows:

"III. A just inference from your letter is that I advocate Free Love. On the contrary I stiffly oppose it. The latest bulletin of Mr. Stephen Pearl Andrews castigates me because I hold that the heart's ideal is monogamic marriage—the supreme love of one man for one woman through life, and, I hope, beyond death. But this is only my own view; I do not judge for others. Furthermore, I hold that love, and love only, constitutes marriage, that marriage makes the bond, not the bond marriage; and that as the contract is to "love and honor," so when the love and honor end, the contract dissolves, and the marriage ceases. * * * I would no more permit the law of the land to enchain me to a woman whom I did not love or who did not love me, than I would permit the same law to handcuff me as a slave to a master on a plantation. There are higher laws than civil statutes, and I am a rebel against the State's too impertinent interference between man and wife. Love should be like religion—free from mandate by the civil law."

Does that correspond with Mr. Tilton's oath that he has given you on the witness stand, that he thinks divorce should be regulated by law? Does he think religion, in a free country, should be regulated by law?

Mr. Tilton—Yes.

Mr. Beach—Never mind; don't interrupt.

Mr. Tracy—Does he think that whether you are a member of this church or that church should be a subject regulated by law? Does he think if you desire to withdraw your relations with one church and join another, that the law should prohibit you from doing that; does he think the law should undertake to regulate in a free country a man's relations to the church and to regulate his religion? No, but he places divorce on the same footing as religion, and he says that "love should be like religion, free from the mandate of the civil law." And it is important, gentlemen, that you heed the discrepancy between this publication of Mr. Tilton,

made in his correspondence with Mr. Greeley, and his statement of his own views upon the witness stand; because, as I shall show you further on in this opening, if you are satisfied that Mr. Tilton or any other witness who may be introduced in this case has deliberately falsified upon any material matter here, his whole evidence is to be rejected; in other words, you cannot rely upon any part of the evidence of a witness who has deliberately given false evidence upon any material point. And therefore, if you are convinced that the plaintiff in this case, feeling the pressure from his own counsel of the necessity of placing a different view upon his convictions touching marriage and divorce than he had placed in his own publications, came in here to state them as he does not believe them, that of itself would justify you in rejecting everything that he has testified to from the witness stand; indeed it would be your duty to do so.

We have now, gentlemen, traced the rise and progress of Theodore Tilton from the time when, a boy, he was a reporter upon the newspaper press, to one of the proudest editorial chairs in the country, a station for which he was educated and fitted by this defendant and by him elevated to that lofty position of power and influence. But his star was culminated; and henceforward it will be our painful duty to trace the disastrous fall of this man, whose early life was so full of promise. Previous to the publication of the editorial in *The Independent*, so far as Mr. Beecher knew, and so far as the world knew, no trouble had occurred between Tilton and his wife. They were apparently living in perfect peace. Moulton, the intimate friend of the family, had seen nothing and suspected nothing. Mrs. Bradshaw, the intimate friend of both husband and wife, who passed much of her time at their house, had discovered no unhappiness between them, and, I may add, did not discover any until after the publication, known as the Woodhull Scandal. But in the early days of December, and before Mr. Tilton had published his valedictory as editor of *The Independent*, there came to this defendant a message from Mr. Tilton, borne to him by the young girl, Bessie Turner, which greatly surprised him. He was informed that Mrs. Tilton had left her home and her husband, and desired to consult him on the subject of separation. The nature of the wrongs of which she complained was made known to him by the bearer of the message, who, with downcast eyes, informed Mr. Beecher also that Mr. Tilton had twice attempted her virtue.

Although Mr. Tilton and Mr. Beecher had long been separated on public and social questions, yet personally they had always been friends, and Tilton encouraged Beecher's visits to his family. In 1867, by a letter which has been given in evidence, Mr. Tilton,

then West, answering a letter of his wife which informed him of Mr. Beecher's visits to her during that absence, says:

MY DARLING: * * * I am sorry to hear that Mr. Beecher had a poor house in Brooklyn. In view of his kind attentions to you this Winter, all my old love for him has revived, and my heart would once more greet him as of old. I sometimes quarrel with my friends on the surface, but never at the bottom. With yourself, O friend of all friends! I am in perpetual love.

Yours,
THEODORE.

And on Mr. Tilton's examination before the Investigating Committee of the Church he testified at length on the subject of Mr. Beecher's relations to his family, how they originated, and how they were continued from time to time. On that investigation there were put to him the following questions:

"Q. At the beginning of the acquaintance of Mr. Beecher with your family—not with you or your wife, but with your family—did not you invite him frequently to your house? A. Yes, sir; and I was always very proud when he came.

"Q. Did you not say to him that you desired him to visit your house frequently? A. I did, and always scolded him because he did not come oftener. During the first part of our life we were in Oxford street, so far away that he very rarely came; the frequency of his visits took place after I purchased the house in Livingston street" [which, gentlemen, you will remember was in October, 1866; so the frequency of Mr. Beecher's visits to Mr. Tilton's family, according to Mr. Tilton, did not begin until 1866. He visited occasionally at the earnest solicitation of Mr. Tilton, but not as often as Mr. Tilton desired; but when the latter came to reside nearer to him, he acceded to Mr. Tilton's request and visited him at his house more frequently.]

"Q. Did you not say that there was a little woman at your house that loved him dearly? A. I did, many a time; I always wanted him to come oftener.

"Q. You frequently spoke to him of the high esteem and affection that your wife bore to him, did you not? A. I did; he knew it and I knew it.

"Q. You always knew it? A. I cannot say that I always did; because at first, during the early years of my married life, I felt that Mr. Beecher rather slighted my family; he was intimate with me, and I think loved me; but he did not use to come very often to my house, and it did not please me; I wanted him to come oftener.

"Q. And it wounded you, did it not? A. I cannot say that I was wounded; I was a mere boy; it was a matter of pride to have him there. Elizabeth at first was modest and frightened. She did not know how to talk with him, or how to entertain him, and it was a slow process by which he obtained her confidence so that she could talk with him. It was the same with Mr. Greeley. He had great reverence for her, and had an exalted opinion of her. I do not think there was a woman that he had a higher regard for than for Mrs. Tilton.

"Q. And did she not have a high regard for him also? A. Yes.

"Q. And that was known to you, too? A. That was known to me, and I was very glad of it.

"Q. Did you urge him to come when you were off lecturing? A. I did.

"Q. Did not you impress upon Mr. Beecher the necessity and desire that you had that he would call upon your family and see your wife frequently during your absence? A. I did."

So, gentlemen, if there is any person responsible for the visits which Mr. Beecher has paid to the family of Theodore Tilton, that person is Theodore Tilton himself. From the beginning to the end of their acquaintance, it was always a matter of solicitation and urgency on his part that Mr. Beecher should make more frequent visits at his house and to his family, not only when Mr. Tilton was present but when he was absent also. The breath of suspicion never crossed the mind of Theodore Tilton, either in regard to the purity of his wife or to the integrity of Henry Ward Beecher. He knew the motive that led to those visits on the part of Mr. Beecher, and why the visits were desired on the part of his wife. He knew that it was her reverence for him as a religious teacher, as her pastor, as her comfort and consolation in the hour of her deep affliction and sorrow on account of the change in his own religious sentiments and social views; he knew it, understood it all; and the fact that Mr. Beecher visited at his house was never a subject of hostile comment or thought upon his part, and never excited in his breast anything but pleasure, as he himself tells you from the witness stand, and told the Committee in the examination from which I am now reading. As proof of that, gentlemen, I only need refer to one fact given in evidence by Theodore Tilton as late as 1869, when he tells you that he expended \$500 for the portrait of Henry Ward Beecher, that he might hang it in his parlor, as evidence to all who came within his walls of the esteem, love and affection that he bore towards the one who had been to him more than friend or elder brother.

Mr. Beecher, therefore, retaining always this relation of personal friendship with Mr. Tilton and his family, received in the early days of December, 1870, this message from Mrs. Tilton. It shocked him, but he obeyed the summons. He went to the house of her mother and saw her. From her own lips he learned the sorrows of her life, of which she had told him something, although she had concealed the most of her troubles and difficulties from him. He found that she had quit her home, and, concurring with her mother, she did not intend to return to that home. Mr. Beecher, as is his custom in such cases, preferred that his wife should see and confer with Mrs. Tilton, because she could learn from her many things which modesty, perhaps, would restrain her from disclosing to a man. He asked permission to bring Mrs. Beecher to visit Mrs. Tilton; and, Mrs. Tilton consenting, Mr. Beecher turned the case of Elizabeth Tilton, separated from her home and threatening to leave her husband, over to his wife. She went there and heard the story of sorrow and affliction, and she came back and reported it to her husband. Mrs. Beecher had no hesitation in advising a sepa-

ration at once. She declared that she never would live with a man an hour who had heaped upon her one quarter the indignities that Theodore Tilton had heaped upon his wife for years. But Mr. Beecher hesitated, as became the cautious pastor and the sincere friend, to advise so radical a measure as the separation of husband and wife. It was a matter of consultation between him and his wife; and before he would determine it, gentlemen, he called into his counsel, George A. Bell, one of the most prominent men of his church, whom the plaintiff has put upon the witness stand, for advice upon that subject. A consultation was had, and after much reluctance Mr. Beecher concurred in the opinion of his wife and advised a separation.

And, right here, gentlemen of the jury, I ask you to consider for one moment whether this conduct which we shall lay before you, which has already been proved, and on which we shall give further evidence, furnishes you evidence of the guilt or innocence of these parties? Remember, now, that the theory of the plaintiff's case is, that he had had a knowledge of the wrongs which Mr. Beecher had inflicted upon him since the July previous. Now, here is the wife leaving her husband in the following December, and going to her alleged paramour for advice as to whether she should separate from him or not. More, that alleged paramour advises separation. Do you believe for a moment, gentlemen, that if either of these parties had been conscious of guilt, they would have been betrayed into such indiscreet action as this? Is it possible that a woman guilty herself, and yet determined to separate from her husband, would go to her paramour for advice upon that subject? Is he the friend she would seek for counsel? and do you believe that that paramour would have advised a separation, with the thought of guilt fresh in his mind? Would he not have seen in it at once his own destruction? More than that, gentlemen, it is confessed in this case, testified to by the plaintiff, stands undisputed, that, notwithstanding these repeated interviews that occurred between Mrs. Tilton and Mr. Beecher at this time, she never communicated to him the fact that she had made any confession to her husband, or revealed to him anything touching their relations? Is it possible, if they had been guilty, that she would not have told Mr. Beecher that she had disclosed their relations to her husband? Do you think that a woman maintaining this life of sin, and confessing it to her husband, would not make haste to lay before her paramour the fact of that confession? Would she not warn him of the danger he was in? Would she not tell him, "I have confessed to my husband; and if he cuts you, or is hostile to you, you will understand the cause of it. Beware, for you are

in danger"? And yet, I say, it stands conceded here that Mr. Beecher was entirely ignorant of the fact of any pretended disclosure by the wife to the husband until it was communicated to him by the plaintiff himself in that interview on the thirtieth of December, at Mr. Moulton's house. But now, gentlemen, don't you think that, if Mr. Beecher had been conscious of guilt when he was sent for by this lady, and was informed by her that she had separated from her husband, don't you think the first word he would have said to her would have been, "My dear woman, do you know what you are doing? Are you conscious of the danger to which you are exposing me and exposing yourself? If you separate from your husband, covered all over as you know you are with guilt, do you not suppose that, in the litigation that will arise out of the separation, your guilt will be discovered?" Can it be possible that a man of the ability and mature years of Henry Ward Beecher would have gone into this house and given this advice, and never made such a suggestion to this woman? And yet he gives the advice that she should separate. I read you, gentlemen, a note that he handed his wife on the last visit that she was to make to Mrs. Tilton on this occasion. It had been, as I have said, a subject of consultation. She was about leaving. There were visitors in the back parlor, so that they could not talk, and Mr. Beecher wrote to his wife and gave her this note: "I incline to think that your view is right, that a separation and settlement of support will be wisest, and that in his present desperate state her presence near him is far more likely to produce hatred than her absence." That was the note which he gave to his wife when she left his house to pay the last visit to Mrs. Tilton.

But events thicken. That was along about the 15th or 16th of December. Tilton had published this offensive article in *The Independent* on the first, and he had been deposed. But, to patch up a peace with Bowen, he had entered into two contracts with him by which he was to serve as editor of *The Brooklyn Union* for five years, and as chief editor of *The Independent* for two years, at \$5,000 a year for each. Those contracts were signed on the 20th. His valedictory was published on the 22d of December, the contracts to take effect on the first of January following. On the 22d of December, gentlemen, the very day that his valedictory was published in *The Independent*, Theodore Tilton seized his child, in the absence of his wife, and by force took it home, sick and suffering,—and thus compelled the return of his wife to his house. On the night of the 24th, she suffers a miscarriage, and goes upon her sick bed, from which she does not rise until after January 1st, when the most important of these eventful scenes have transpired.

THE RUPTURE AND THE COMPACT BETWEEN MR. BOWEN AND MR. TILTON.

While these scenes were transpiring in the domestic affairs of Tilton, Bowen was not idle. The article of December 1st had satisfied him that he must be rid of Tilton as editor of *The Independent*: yet he was afraid of Beecher and the *Christian Union*. I have said to you, gentlemen, that Mr. Beecher became editor of the *Christian Union* in April, 1870, and the circulation of that paper sprang up as if by magic, and was a menace both to Mr. Tilton and Mr. Bowen. To remove Tilton absolutely, who had so long been the ruling spirit of the paper, was a dangerous experiment. If discharged, Tilton, for aught Bowen knew, might be employed by the *Christian Union*; and Tilton knew too much about Bowen to be permitted to become an ally of Beecher. At this time, Bowen saw no alternative but to depose him from power and yet retain him in his employment. Hence the two contracts executed about December 20, by which he was to be editor of *The Union* for five years, at \$5,000 per year, and chief contributor of *The Independent*. His valedictory as editor was published December 22. So soon as people saw that Bowen had broken with Tilton so far as to depose him as editor, the stories affecting Tilton's character came down upon Bowen, as Tilton himself testifies, like an avalanche. Bowen was alarmed; he doubted whether it was possible to retain Tilton in any capacity upon either paper. He talked with Oliver Johnson, their mutual friend, who solicited for Tilton an opportunity for an explanation. This was granted, and it led to the now celebrated meeting at Bowen's house on December 26, 1870—Oliver Johnson, Tilton and Bowen present. That interview, gentlemen, has been described to you. Its object and purpose was to enable Tilton to explain the stories which had been planted in Bowen's ears against him. The interview began in rather high spirits. Tilton mounted his high horse and demanded an investigation, and to be confronted with his accusers; but Bowen met him boldly. He told him that he knew his life; and in a very short time he satisfied Tilton that the last thing that he desired was an investigation. Tilton saw that the game of bluff could not be played with Bowen, and he tried a new line of tactics. Knowing Bowen's fear and hatred of Beecher, he suggested the danger *The Independent* was in from *The Christian Union*, and the importance of dethroning Beecher; and nothing could have been suggested to Bowen so agreeable as that. Stories affecting the moral characters of his editors were a matter of light consequence compared with the suggestion of the displacing of Beecher from *The Christian Union*, and the crippling

of that paper as a business rival. Of course, he listened with eager ear to any suggestion that Tilton could make on that subject. Tilton was familiar with Bowen's scandals against Beecher, because they had often been the subject of conversation between them. He referred to them, to the injury that Bowen had suffered at the hands of Beecher in business relations in times gone by, and all that; and finally he suggested that he, too, had a personal grievance against Beecher. That was news to Bowen; he never had heard of it before, and he eagerly besought Tilton to tell him what it was; and Tilton finally told him that Mr. Beecher had been guilty of unhandsome proposals to his wife. Bowen was quick to discover the situation.

He had no scandals against Beecher that he dared undertake the responsibility of establishing. I do not know, gentlemen, how far the stories or the reports which attribute the authorship of scandals against Mr. Beecher to Mr. Bowen are true. I have my own opinion that they are very much exaggerated. I have my opinion and belief that, when this thing is carefully investigated, it will be found that Theodore Tilton is the true source of most of the scandals that have been put in circulation against Henry Ward Beecher. He is the man whose ability at scheming, whose facility at insinuation, whose skill to produce results in a roundabout way, by which he covers his tracks, lead me to suspect that he is largely the author of these scandals, and the scandals which Henry C. Bowen has repeated to others. Thus, scandals which perhaps Henry C. Bowen would come to believe after having heard them repeated year after year, have their true origin in the fertile brain of the plaintiff. How that may be, I do not know; it is not necessary for us to inquire, in this proceeding. Suffice it to say, gentlemen, that Henry C. Bowen had no scandal against Mr. Beecher which he would ever dare to bring to the test of an investigation; but when Tilton told him that Henry Ward Beecher had been guilty of unhandsome proposals to his wife, that furnished him with the first tangible bit of evidence which had ever come to him warranting the belief that Mr. Beecher could be attacked, and attacked with evidence against him; and he suggested the letter which Mr. Tilton wrote on that occasion to Mr. Beecher, in which he says: "For reasons which you explicitly understand, I demand that you quit Plymouth Church and leave Brooklyn as a residence." That letter, Tilton says, was an open letter when he wrote it and left it with Mr. Bowen. He says Henry C. Bowen not only agreed to bear that open letter to Beecher, but to support it with evidence, and to assume the fight and carry it on. Tilton was perfectly willing to send a fire-brand

into the camp, if Bowen would take care of the conflict afterwards. To save his contracts with Bowen, to save his salary of from ten to twelve thousand dollars a year, he was willing to make a union between himself and Bowen to attack Beecher; so he consented to write that letter, and Bowen was to bear it to Beecher. This he did, as has been disclosed by the evidence; and further evidence will be given you on that subject.

Gentlemen, I now, propose to make clear to you what has hitherto been one of the great mysteries involved in this controversy. I refer to what Moulton calls the treachery of Henry C. Bowen in not only refusing to sustain the demand made in the letter which he bore to Beecher, but also in promising Beecher his friendship in the threatened contest with Tilton. I have already indicated Bowen's desire to be rid of Tilton; but the prosperity of *The Independent* was menaced by *The Christian Union* and by Beecher, and he hesitated to dismiss Tilton absolutely from his service, lest he might join Beecher against Bowen and *The Independent*. Tilton, anxious to save his contracts, was willing to join in a war upon Beecher, and thereby cement himself to Bowen. Such a suggestion kindled the embers long smouldering in Bowen's bosom into a flame. Tilton, in his zeal to fan the flame, which he himself had started into life, declared that he too had a personal grievance against Beecher; for Beecher, he said, had made unhandsome proposals to his wife.

The Court then adjourned until Thursday morning at 11 o'clock.

THURSDAY, FEBRUARY 25, 1875.

38th DAY.

GENTLEMEN OF THE JURY: We now approach a stage of this case where it is important for us to consider the nature of the action, the rules which judicial experience has found it necessary to establish in the trial of this class of cases, in order that the truth may prevail, and collusion, deceit and falsehood be defeated. First, the charge of adultery is to be tried by the rules applicable to crimes. The charge involved here is in the nature of a crime; the burden of proof is upon the prosecution, and they are bound to make out their case beyond a reasonable doubt. It is not for this defendant to prove that he is not guilty of this offense; it is for the prosecution to prove that he is. As you perceive, gentlemen, from the very nature of the case, it is one where affirmative evidence of innocence is impossible, except from the testimony of the party implicated. No man, whoever he may be, charged with such an offense as this, can introduce affirmative evidence upon the witness stand that he is not guilty of the

offense, for it is impossible for any witness save himself to testify that he did not commit it. Whenever such an accusation is made against any man and woman residing in the same city, running over a long period of time, you see how utterly impossible it is that any witness could come upon the witness stand and say: "Of my own knowledge I know that this accusation is untrue." Select the most estimable man within your knowledge, gentlemen, and bring a charge against him; let any person however worthless, charge him with having visited houses of ill-fame, for instance, in the city of New York, during a period of sixteen months. If he has resided in the city of New York during that time, what can he do in answer to such a charge as that but say it was untrue, and rely upon the insufficiency of the evidence to establish his guilt? It is utterly impossible for him to call witnesses who can say that this man did not visit these houses; he cannot do that from the very nature of the case. It is an attempt to prove a negative, which it is very difficult under any circumstances to establish. From the very nature of this case, therefore, when this defendant is accused of this crime committed with a lady who was his acquaintance, whom it is admitted he frequently visited at her house, at the solicitation of her husband—all he can do is to interpose his word of denial and rest upon his established character, which he has made during the last thirty years in your midst. The evidence of guilt must be removed from all suspicion; it must be evidence free from doubt; it must be evidence that carries home to your consciences conviction of the truth of the offense charged, or you are bound by the oaths you have taken to render a verdict here for this defendant.

The charge of adultery is not a new one in our courts of justice. It is a matter of frequent occurrence, and the rules of law which judicial experience has established in order to ascertain the truth in this class of cases are well defined and well understood. This charge may be established, first, by direct evidence of witnesses who saw the act. I need not say to you, gentlemen, that there is no such evidence pretended in this case. Second, it may be established by circumstantial evidence leading irresistibly to the conclusion that the act has been committed. There is no evidence worthy of the name which falls under that head in the case now on trial. These parties have been acquainted for twenty years. During all that time this lady has been a member of the Church of which this defendant is the pastor. During all that time they have been acquaintances and friends. During all that time, up to within the last four years at least, the pastor and the husband were in-

timiate personal friends; he visited that house at the solicitation of the husband; and, beyond that fact, the fact that he came to the house of the plaintiff at his request, there is not a fact or circumstance worthy of credit here which tends to show in the slightest degree improper familiarity between these parties, much less a criminal act.

THE PLAINTIFF'S EVIDENCE WEIGHED AND DECLARED WANTING.

The plaintiff accuses his wife now, and seeks to blast her character; but during all these years he is unable to lay his hand upon a single well authenticated fact which convicts this white-souled woman of the slightest impropriety of conduct in connection with her pastor. Will it be said that I forget the evidence? Will it be said that I do not remember Kate Carey, the woman brought from the lazar house of New York city, reeking with prostitution and disease, twice its inmate within three months, discharged everywhere she has been employed for intoxication or some improper conduct, who testifies to the fact that on some occasion she saw this plaintiff's wife sitting upon the knee of the defendant? Gentlemen, I shall not insult your good sense by supposing that twelve honest-minded men would blast a reputation such as Henry Ward Beecher's and that of a woman of the character that this plaintiff gives his wife for twenty years, upon the word of such a woman as Kate Carey; Carey is the name, I believe, or Smith; which is it?

Mr. Shearman—Smith; Carey alias Smith.

Mr. Beach—She gave her name as Kate Carey Smith on the stand.

Mr. Tracy—Then, gentlemen, what does that circumstance amount to if it is true? What were the facts connected with her testimony which shows the improbability of the story that she tells herself? Why, she says to you, that she came down into the dining-room one day for a drink of water, when the doors between the dining-room and the parlor were wide open, and as she walked in she saw the plaintiff's wife sitting upon the knee of the defendant, and she heard him say to her: "Elizabeth, how do you feel?" and she said: "Dear father, so so." [Laughter.] Well, gentlemen, you only needed that last expression to show that this was a matter that was coined from the brain of this simple-minded woman. It was natural for her to address her priest by the name of "Father," and therefore when she comes to make this plaintiff's wife address her minister she uses the same word that she would have used if she had been addressing her own. It is that slight circumstance that is enough to show the improbability of the story which this woman tells, upon her own showing. But I shall not dwell upon that, gentlemen. It is

unworthy, I repeat, of the serious consideration of twelve honest men.

There is another circumstance which I am not permitted to forget, not on account of its importance as evidence, gentlemen, in this case, for, as such, it amounts to nothing, but on account of the exhibition which was made by the witness who came to testify to it. I refer to the brother of this plaintiff's wife, who said she was his only sister, and how highly he regarded her, who came into Court in company with this plaintiff, knowing and realizing and telling you from the stand that he knew nothing of his own knowledge that could affect the reputation of these parties, unless he should be permitted to make a speech to you from the witness stand and connect with what he saw what he had heard from such women as Kate Carey and other people—prostitutes, male and female alike. If he could repeat these rumors and these stories that he had heard, then perhaps his evidence would have some significance; but he knew perfectly well, and realized it, that if he was permitted to testify only to what he had seen, it amounted to nothing against his sister. And yet why did he come here? Why? He was under no obligation to come here. If he had told the plaintiff, or rather, permit me to say, if he had told the senior counsel of the plaintiff that what he had seen would amount to nothing, he would have been excused; but if he could come here and be permitted to make a speech against his sister, then he might possibly prejudice your minds against her. Now, what is the story he told? He says that on one occasion—when, he don't know and cannot tell—he went into the parlor of his sister one morning, and on opening the door saw Mr. Beecher sitting in a chair, and saw his sister moving away from his direction—moving rapidly, he says, with her face apparently flushed, and that is all he saw! They were in the parlors, gentlemen, where a virtuous woman receives an honorable guest. They were in no bedroom, and Mr. Beecher was sitting quietly; no movement on his part, gentlemen, no surprise could this man testify to at all, and he practically testified to none against his sister. How long had his sister been in that room? He does not know. Where did she come from, and what had she been doing before he went in? He does not know. He saw her moving away. How far she was from him he does not know. And is there any evidence of guilt in that, gentlemen? Is that not a thing that is likely to happen to anybody a thousand times.

Why, let me refer you to the evidence of a virtuous woman, given from this witness stand by herself, her own confession of an interview that she had with this defendant without provoking a suspicion on the part of her husband of impropriety, and without a

thought of impropriety on her part. I refer to Mrs. Moulton. She says that she spent four hours with this defendant in a bed-room, left there by her husband. Aye! more. She testifies to a fact that they have not yet fastened on Elizabeth Tilton. She tells you that while alone in that bed-room with this defendant she kissed him. Now, gentlemen, supposing that they had got a servant who could have testified to such facts as that against Mrs. Tilton and Mr. Beecher. Supposing they had found him tucked up on a sofa with an Afghan, having an interview in a bedroom with this plaintiff's wife and she kissing him, all testified to by a servant. That, the counsel of the plaintiff would argue, was evidence of guilt. Yet you see that when that fact is testified to by Mrs. Moulton herself, against herself, it excites in the mind of no honorable man even a suspicion against that woman's virtue. And you see, therefore, what familiarities and what liberties virtuous women can take, and properly take; with virtuous men, without exciting suspicion. But there is no such fact as this against Elizabeth Tilton. I say, and I repeat to you, that this case stands entirely destitute of either class of evidence usually relied upon in cases of this description to convict this defendant. It is confined entirely to the confessions of the defendant, written and oral, mainly oral, for they have despaired of convicting him upon his letters, and, therefore, they have endeavored to supplement them by oral confessions. The effect of that class of evidence I shall have occasion to consider in a moment. But that class of evidence, gentlemen, you will bear in mind comes from a single family, if I may count Tilton as a member of the family of Moulton, as I think I can safely from the evidence of both himself and Mr. Moulton and Mrs. Moulton. It comes from two conspirators against this defendant; the plaintiff, his mutual friend, and the mutual friend's wife. No other witness appears to testify to oral confessions except these three.

MR. CARPENTER'S ABSENCE.

And right here, gentlemen, I desire to call your attention to a remarkable omission in this case, quite as remarkable as anything that has been produced in it. You were notified upon the opening of this case by the plaintiff's counsel, that the confessions of this defendant would not be confined to a single family, nor to a single instance; that they would call a witness who would claim to be outside of this case, a disinterested witness, as they said, who would testify to the confessions of Mr. Beecher, and they named their witness—Frank Carpenter. But, is he here? Has he been placed upon the witness stand? Before I close, gentlemen, and be-

fore this case closes, we will show you why Frank Carpenter was not produced upon the witness stand in this case. In the first place, he could not testify to any confessions of Henry Ward Beecher, and in the second place, we will show that, if they had produced him, we would have blasted their case with this man's evidence, and the evidence that we should have brought against him. The reasons why they have omitted him are cogent and powerful, as you will see. He is a link in the conspiracy that they have been drawing around this defendant for five years, and with him we would have established it. Without him they hope that they have broken the chain of circumstantial evidence, but we will show them that they are disappointed in their expectations.

THE LAW ON ORAL CONFESSIONS.

The plaintiff in this case, relying, therefore, mainly on the oral confessions of this defendant, it becomes important, gentlemen, for you to consider, and for the Court to consider, the legal effect of this class of evidence, and it is to that question that I desire to invite your attention before I proceed with a further history of this case—before I begin to unravel the network that this plaintiff with his fertile brain, stimulated and aided by his mutual friend, has for four years been weaving around the feet of my unfortunate client. We concede, gentlemen, that, in connection with direct or circumstantial evidence, the oral admissions of the accused are pertinent. Wherever circumstantial evidence is relied upon the circumstances, taken together, must establish the following three facts: First, the criminal disposition of the parties charged; second, a like disposition on the part of the paramour; third, an opportunity to commit the act. These three facts must be reasonably approximate in point of time, and the opportunity must be one characterized by circumstance pointing to guilt. In other words, guilt cannot be inferred from the opportunity to commit adultery, unless there is also evidence that at about the same time there were acts of each party specifically indicating a disposition to commit it. It is this class of evidence, gentlemen, which is usually relied upon in courts of justice to establish the fact of adultery. In fact, this class of circumstantial evidence, that is, the relations of the parties, the frequency with which they have been seen together, the improper places at which they have been seen, the stealthy meetings of the parties—all of this class of acts tending to show a disposition to commit adultery—is the class of evidence usually relied upon, and is seldom or never wanting in any case of adultery charged in good faith. This is almost the only important case on record where there is no proof of

facts and circumstances calculated to excite suspicion and produce a conviction of guilt. This case is made to rest entirely upon the supposed confessions of the defendant. So far as the case depends upon alleged confessions it is to be observed that there are two classes, the letters of the defendant and the reports given by witnesses of his oral confessions. The letters are in evidence and will speak for themselves. The alleged oral confessions are an entirely different kind of evidence, as such evidence is always tested by the law with the most careful scrutiny. My associate, Judge Porter, will relieve me by reading the rules of law applicable to this class of evidence—oral confessions.

Mr. Porter—Our first citation in this connection, your Honor, is from *Morris v. Miller* (4 Burrows, 2,049). The action was *crim. con.* Lord Mansfield, in delivering the opinion of the Court, says :

"This is a sort of criminal action. There is no way of punishing the crime at common law. It should not depend upon the mere reputation of a marriage which arises from the conduct or declarations of the plaintiff himself. In prosecutions for bigamy a marriage in fact must be proved. No inconvenience can happen by this determination; but inconvenience might arise by a contrary determination, which might render persons liable to actions founded upon evidence made by the persons themselves who should bring the action."

The next citation of Mr. Tracy is from *Dillon v. Dillon* (1 Note Ecc. Cas., 442). This was a suit for divorce. Dr. Lushington, in delivering the opinion, says :

"This, as concerns the wife, is not a civil, but in effect a criminal proceeding. If there is any doubt, she is entitled to the benefit of it. The evidence as to the fact, on the part of the husband, may, perhaps, preponderate; but I cannot say that the proof is free from reasonable doubt."

The next citation is from *Berckmans v. Berckmans* (17 New Jersey Equity Reports, 454). This was a proceeding for divorce on the ground of adultery. Under the laws of New Jersey the parties charged were admissible as witnesses to deny the charge. The alleged paramour of the wife was sworn and denied the adultery. The adultery was supported by the direct evidence of a lady who professed to have detected the parties in the act; and this, supported by corroborating evidence of opportunity, circumstance and suspicion of adulterous disposition. The Court, in delivering the opinion, say :

"The testimony of Mrs. Berckman, the witness for the plaintiff, is seriously affected by two considerations. First, her testimony is in favor of the complainant; and it stands, so far as these scenes are concerned, alone and uncorroborated, while she is seriously and positively contradicted with regard to them by two witnesses, Sarah Berckman and Dr. Titworth. These two witnesses may be untruthful as to what they say, but they cannot be mistaken about it. They certainly do know whether the scenes described were true or not. Mrs. Berck-

man, the elder, may be untruthful, and she may also be mistaken. If the evidence of the three be entitled to an equal amount of credit and confidence, then the evidence of the defense has entirely overthrown, by its positiveness and preponderance, that of the complainant. It is true that these witnesses on the part of the defense have a strong inducement to swear as they do; but is not this also true with regard to Mrs. Berckman? We have no rule by which to determine what notice or consideration will most certainly induce a person to perjure himself or herself. One might be tempted to do it for a mere money consideration; another, who could not be purchased by money, might do it to save his name and reputation from the charge of dishonor and disgrace. Another, who might care but little for either of these, might do it to gratify a most malignant and insatiable feeling of revenge or of implacable and unrelenting hate; and I do not see but what either of these motives might be as effectual in inducing a witness to depart from the truth as any of the others. And, judging from the developments and manifestations to be found in the evidence in the case, I hardly feel at liberty to say that the defendant and Dr. Titaworth had stronger inducements to depart from the truth than Mrs. Berckman herself. And, entirely aside from this controversy, and everything connected with it, I do not know but what their characters for truth and veracity are as good as her's. Nor can I admit that the mere charge of crime is so far to destroy the credit and character of a person as that he is not entitled to credit when speaking under oath. Such a principle might ruin the most exemplary people. Surely, if the charge is not true, it ought not to discredit the party; and, to permit to do so, is to assume that the charge is true; which we cannot do, for that is the very thing to be proved."

The next of the authorities cited by Gen. Tracy will be found in 3 Sand., S. C. R., and has relation to the force of evidence that is required on the part of a plaintiff before such an accusation can receive the sanction either of a court or of a jury. It is the case of *Ferguson v. Ferguson* (3 Sand., S. C., 809). In delivering the opinion of the Court, Judge Mason cites and gives the sanction of the Court to the proposition laid down by Judge Stowell in the case of *Loveden vs. Loveden* (2 Hagg. Consist. R., p. 1). It is in the following words:

"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 rare, indeed, that the parties are surprised in the direct fact of adultery. In every case almost the fact is inferred from the circumstances that lead to it, by fair inference, as a necessary conclusion; and unless this were the case, and unless this was so held, no protection whatever could be given to marital rights. What are the circumstances which lead to such a conclusion cannot be laid down universally, though many of them, of an obvious nature and of more frequent occurrence, are to be found in the ancient books. The only general rule that can be laid down on the subject is that the circumstances must be such as would lead the guarded discretion of a reasonable and just man to the conclusion; for it is not to lead a harsh and intemperate judgment, moving upon appearances that are equally capable of two interpretations; neither is it to be a matter of artificial reasoning, judging upon such things differently from what would strike the careful and sagacious consideration of a discreet mind."

The Court proceeds:

"This rule, so simple and loosely stated, commends itself to the approbation of every mind, and its application to the present case will lead us to a correct decision."

The Judge then examined the evidence, and came to the conclusion that it was equally capable of two interpretations, and therefore did not prove the fact which was there in issue.

The next citation is from 17 Abbott, Pr. R., 58. In that case Judge Hoffman, who delivered the opinion, states the doctrine thus:

"The general rule that applies to the degree and nature of the evidence demanded are too well known to justify a statement in detail. While direct proof of the actual commission of the crime is not required, yet the approximate facts must lead by a fair inference to a necessary conclusion. This is not a necessary conclusion in a strict mathematical or logical sense; the subject and conditions of the evidence do not admit of this; but it must be a conclusion so far inevitable as that the supposition of innocence cannot by any just course of reasoning be reconciled."

On the subject of oral confessions the authorities cited are, first, the case of — *v. Merrill* (6 Wend., 277); a leading case on the subject in the Court of Errors, where Chancellor Walworth, in delivering the opinion of the Court, has occasion to say:

"Again, evidence to establish a fact by the confessions of the party should always be scrutinized and received with caution, as it is the most dangerous evidence that can be admitted in a Court of Justice, and the most liable of abuse. Although the witness is perfectly honest, it is impossible in most cases for him to give the exact words in which an admission was made, and sometimes even the transposition of the words of a party may give a meaning entirely different from that which was intended to be conveyed to the witness."

The next citation is from *Earle v. Picken* (24 Com. Law Reports, 698).

"In the course of this circuit, Mr. Justice Parke several times observes that too great weight ought not to be attached to evidence of what a party has been supposed to have said, as it very frequently happens not only that the witness has misunderstood what the party has said, but that, by unintentionally altering a few of the expressions really used, he gives an effect to the statement completely at variance with what the party really did say."

The next citation is from *Meyers v. Baker*, where the Court states the rule thus:

"Proof of confessions of a party, in the presence of the witnesses only, are of him and the adverse party, although certainly competent testimony, ought to be weighed with great caution, because it is impossible for the party to counteract it by other testimony, because the expressions used are easily misunderstood or perverted, either through mistake or design, and because not the whole conversation, but only parts of it, are generally detailed by the witness. It is the most dangerous species of testimony held competent by the law, and unless the story told is probable in its nature, or is corroborated by circumstances, very little weight is due to it."

In Joy on Confessions (page 106) the learned writer has embodied what perhaps is the best statement to be found in the English law upon this subject, and, singularly enough, it first appeared in *The Edinburgh Review*, being from the hand of that most accomplished master of jurisprudence who redeemed to fame the name of Jeffreys.

"A modern writer remarks on this subject, that 'the imagination need not be taxed for extreme cases, in which silence, equivocation, or even falsehood, the ordinary badges of guilt, would naturally be found in company with innocence. There are many instances in which the truth, properly brought to light, would set free the accused, but his very situation disqualifies him from doing justice to his own statement. Conscious of his rectitude, and proud of his character, he is abashed, humiliated, and confounded by the charge. The untoward chances that have loaded him with suspicion, may go on to his utter ruin; the false witnesses, who have now established a "prima facie" case, may ultimately convince his judges. That he should ever become an object of accusation, would have struck him yesterday as more impossible than that accusation should now lead to conviction. The last step seems far less violent than the first, and the commencement of his progress is a fatal augury, which teaches him to despair of its issue.'"

Mr. Porter—The last citation that Gen. Tracy has marked for evidence is 1 Greenleaf on Evidence, section 200. The language of Chief-Justice Redfield in this portion of the text is as follows: "In a somewhat extended experience of jury trials we have been compelled to the conclusion that the most unreliable of all evidence is that of the oral admissions of the party. And especially where they purport to have been made during the pendency of the action, or after the parties were in a state of controversy. It is not uncommon for different witnesses of the same conversations to give precisely opposite accounts of them; and in some instances it will appear that the witness deposes to the statement of one party as coming from the other. It is not very encouraging to find a witness of the best intentions repeating the declarations of the party in his own favor as the fullest admissions of the utter falsity of his claims."

Judge Neilson—Judge Porter, when you and I were boys, we found that general principle cited in all the text-books, very much after the form that you have put it.

Mr. Porter—In the form in which the judges have put it. I have not been using my own language.

Judge Neilson—I mean, have read it; and perhaps the best statement of that has been found in Starkie on Evidence. My general recollection of what he says is to the effect that this kind of evidence is dangerous; first, because it may be misapprehended by the person who hears it; in the second place, it may not be well remembered; and third, it may not be correctly stated. And I have

a general recollection of a very early case mentioned in a note, where he said that on the trial of a party for forgery, a witness, a doctor, was examined, and the judge had it down on his notes that the witness said: "I am the drawer, the acceptor and endorser of the bill;" under three different names the witness himself stating himself to be guilty of forgery; and while the judge was so stating to the jury from his notes, the counsel interrupted him; but, like the judge in the Pickwick case, he persisted in adhering to his notes, and the witness was recalled, when on inquiry of the Judge himself the witness said that his testimony was, "I know the drawer, the acceptor and endorser of the bill."

Mr. Porter—Your Honor's reference is very striking, and reminds me of a passage which has been previously read, and which will be borne in your Honor's recollection, and as very pertinent to another proposition of Gen. Tracy, that, "so far as the evidence is to depend upon the circumstances whenever there is an imputation of a criminal nature, the circumstances must all be such as to exclude the possibility of innocence, for otherwise the law will presume against guilt," and I think that comes in connection with the very observation to which your Honor has referred.

Mr. Beach—Will my friend permit me to read an additional sentence from Joy on Confessions, from which he has quoted? After considering the subject to which my friend, Judge Porter, has drawn the attention of the Court and Jury, this author says:

"Whilst such anomalous cases ought to render courts and juries at all times extremely watchful of every fact attendant on confessions of guilt, these cases should never be invoked, or so urged as to invalidate indiscriminately all confessions put to the jury, thus repudiating those salutary distinctions which the Court, in the judicial exercise of its duty, shall be enabled to make. Such an use of these anomalies, which should be regarded as mere exceptions, and which should speak only in the voice of warning, is unprofessional and impolitic, and should be regarded as offensive to the intelligence both of the Court and jury."

Judge Neilson—The rule being that admissions are to be taken with caution and scrutiny.

Mr. Tracy—Yes, if your Honor please; and we do not argue, gentlemen, that all confessions are to be invalidated. We only ask you to scrutinize the testimony by which the pretended confessions of this defendant are proved or pretended to be proved, the probability that he had made them under the circumstances, and the motives of the witnesses who testified to them to misrepresent or to forget. We shall introduce some confessions, proved by witnesses whose character you will not doubt, and whose interests are not involved in this litigation; and we shall ask you, gentlemen, to believe the confessions which we shall prove, provided you are satisfied with

the witnesses, their character, their means of knowing what they testify to, and their ability to repeat accurately what they have heard; and that they are influenced in giving their evidence, by no motives except to state the truth, the whole truth, and nothing but the truth. As you have just heard from the authorities which my associate has read in your hearing, gentlemen, the testimony of witnesses as to oral confessions is always notoriously unreliable; but in this case it is particularly so. The testimony of this kind comes exclusively from three witnesses—the plaintiff, the “mutual friend,” and the “mutual friend’s” wife. Admissions of this character always require corroboration; and the corroboration must be of facts pointing to guilt, which have been adduced by other witnesses. Before a jury can give effect to oral confessions, they must be satisfied, first, that the party who is alleged to have confessed was correctly understood by the witness, a rule which his Honor has just given you, one of the most forcible illustrations of showing how easy it is for a man listening attentively and desiring to recall accurately what is said, to be mistaken. You have yourselves been witnesses to the numerous contests which have arisen during this trial between counsel experienced in remembering what witnesses say and repeating it accurately, as to what a particular witness has said, or has not said on this trial. So, with a witness who assumes to repeat what another party has said: his liability to have misunderstood the party is very great, and you must be careful and cautious in scrutinizing the evidence, and be satisfied that the party has correctly understood. But the jury must be satisfied, secondly, that the party alleged to have confessed is correctly reported. Now, there is such infirmity in human language that an intelligent man, desiring to report accurately, is very liable to misreport. We seldom remember the precise language of a party who is conversing with us; we catch the idea and reproduce it in our own language; and in doing that we are always liable to convey an impression which the party whom we are reporting did not intend to convey. The third rule is, that the language in which the confession was made must have been unambiguous; because if the language used by the party may as well apply to one set of facts as to another, you cannot tell by the pretended confession what fact the party intended to admit. If there are two views of a case, or two situations, the party speaking having reference to one, and the witness listening having reference to another, the witness is quite liable to impute to the speaker a reference to a transaction, or give to his language a meaning, entirely different from what the speaker intended. All of these rules are to be carefully observed.

Again, if the witnesses relied upon to prove oral admissions, are justly tainted with suspicion in the case; if it is established that they have been guilty of misconduct or falsehood in the case in which they testify; for instance, if they have been guilty of the destruction of important documents in the case, a fact to which I shall call your attention further on, gentlemen, as bearing on the witnesses who testify to oral confessions against this defendant; or if the witnesses testifying to oral admissions are members of the same family, or are moved by a common interest in the result of the action, and particularly if they admit that they have been guilty of repeated falsification of the facts to which they now testify, these considerations added to the inherent infirmity of the evidence itself, would compel a jury to disregard evidence of this nature.

I shall not stop here, gentlemen—I only desire to recall your attention to it in passing—I shall not stop here to remind you that every witness in this case is tainted by the infirmities which are otherwise pointed out, and which you have heard read. They come from the same family; I shall show you that they have been guilty of the destruction of the most important documents in this case; I shall show you that they are under the strongest motives possible to fasten guilt upon this defendant; and I shall show you—no, they have themselves confessed to you—that they have been guilty of repeated falsification of the facts to which they now testify.

MR. BOWEN'S MANAGEMENT.

Having considered thus briefly the rules of law which must govern you in your disposition of this case, I now invite your attention to the charge made by the plaintiff against this defendant, and to the circumstances under which this charge was made. I resume my narrative at the point where Tilton had said to Bowen that Beecher had made an unhandsome proposal to his wife. This was news to Bowen; the announcement of it caused his very soul to thrill with delight. He at once discovered his opportunity; if he could lead Tilton to make a personal attack upon Beecher, this would give him the choice of two alternatives. If Tilton succeeded in his attack, this would so damage *The Christian Union* that the accruing benefit to *The Independent* would be many times Tilton's salary, and the danger from retaining Tilton would be compensated for by the injury inflicted upon a dangerous rival. Besides, such a contest would make it impossible for Beecher and Tilton ever to unite against Bowen and *The Independent*. On the other hand, if Tilton failed in his attack on Beecher, this would furnish an excellent reason for

getting rid of him. In either event, therefore, Bowen was to win. After a few moments reflection upon the situation as now presented by Tilton, Bowen turned to him and said, with a seriousness of countenance that would have done honor to Aminadab Slek: "You and I, Mr. Tilton, owe a duty to society. This man is the editor of *The Christian Union*. Its circulation has run up in a single year from 2,000 to 45,000. Such a man is a dangerous visitor in the families of his congregation. He is a wolf in the fold. We should unite to extirpate him." "Agreed," says Tilton, "save my two contracts, and we will smite him before the world."

"Then," said Bowen, "since my hands are tied by the result of a settlement that I have recently made with Beecher, do you write him a letter, demanding that, 'for reasons which he explicitly understands,' he should immediately cease from the ministry of Plymouth Church, that he quit Brooklyn as a residence, and that he cease to write for *The Christian Union*. I will bear the letter to him and support the demand." Tilton, thinking only of saving his contracts with Bowen, and without seeing the trap, caught at the bait, and forthwith did the act, for the doing of which his friend Moulton an hour afterwards called him a fool. This was a master stroke of strategy on the part of Bowen. At one move he had made a union between Tilton and *The Christian Union* impossible, and left himself free to discharge Tilton without any danger thereby of strengthening a business rival. For Bowen had no objection to joining in an attack upon Beecher, provided he could do so safely to himself and disastrously to Beecher; but, distrustful of Tilton, and feeling that he was a broken reed on which it was unsafe to lean too heavily, he proceeded to move cautiously, to feel his way carefully, always keeping open a safe road by which he could retreat.

If Tilton's charges were true, the mere reading of the letter would disclose the consciousness of guilt to the keen and argus-eyed Bowen. This letter, Tilton says, was an open one, and if this should be presented open by Bowen, Beecher would at once perceive that he had been a party to it. To prevent this, the cautious owner of *The Independent* said, as he went along, bearing the letter to Beecher's house, "I think it would be well for me to seal this letter; then I can deny to Beecher all knowledge of its contents. I will hurl this secret missile at him, and, carefully watching the effect, I will await events before determining whether I will make myself a party to the controversy or not."

Nowhere has Bowen's consummate cunning been more conspicuous than in this suggestion which led to the introduction of the clause in the letter "for reasons which you

explicitly understand." In the light of Tilton's present accusation, few could understand how this clause came to be inserted in the letter at the instance of Bowen. With this clause in it, the letter would point so directly to some cause of offense against the writer which would be understood by the reader, that Bowen could bear the letter without provoking the slightest suspicion of having been its instigator. He would have the advantage of watching, of seeing the effect produced upon Mr. Beecher by the reading of the letter, and a personal interview immediately following thereupon, and thus be able to judge of the probability of Mr. Beecher's guilt. He could thus gain time and await developments. But he was not long in doubt. Mr. Beecher's reply to that letter was quick, bold and impassioned: "Bowen, what does this mean? This is insanity; the man is mad!" And he attacked Tilton to Bowen with a violence that struck him dead in five minutes. He told Bowen Tilton's true life, as he had learned it from his wife and his intimate associates within the last two or three years, and then he did what was worse—he turned Bowen over to Mrs. Beecher, who finished Tilton very summarily in Bowen's estimation.

Having discovered the courage of innocence where he had fondly hoped to see disclosed the cowardice of guilt, Bowen, always quick to discern his interests, at once began a masterly retreat. "I don't know," he said: "I am surprised at the contents of the letter! If Mr. Tilton is your enemy, I will be your friend, Mr. Beecher." "Codlin is your friend, not Short." And he who had just before entered Mr. Beecher's house, having pledged his friendship to Tilton, now left it, pledging that friendship to Beecher. But he was the friend of neither; he was the implacable enemy of both. Having made certain that Tilton and Beecher could not and would not unite against him, he at once determined to discharge Tilton from his employ. This is proved by Tilton himself, who says: "The next morning, after Bowen had instituted this demand for the retirement of Mr. Beecher, and after saying that he would fortify it with facts, he came to *The Union* office and said to me: 'Sir, if you ever reveal to Mr. Beecher the things I told you and Mr. Johnson, I will cashier you!' and," adds Tilton, "hardly had his violent words ceased ringing in my ears, when I received his summary notice breaking my contracts with *The Independent* and *The Brooklyn Union*." And thus Tilton's first attack upon Mr. Beecher had miscarried.

Let us now, gentlemen, consider for a moment the position in which the interview of Dec. 26 had placed Tilton and Bowen in the eye of the law. We charge here, gentlemen, that Theodore Tilton is a conspirator

against the reputation of Henry Ward Beecher, and has been since the 26th day of December, 1870. We say he formed that conspiracy with Henry C. Bowen; but Henry C. Bowen backed out, and then the place had to be supplied, and it was supplied by Francis D. Moulton: but that Theodore Tilton has held the position of a conspirator against the reputation of Henry Ward Beecher since the 26th day of December, 1870, I shall leave no doubt in the mind of any honest man, after I recount the evidence of that conspiracy and of the schemes which Bowen and Tilton then formed against Beecher, Tilton himself being the witness. Beyond all question, therefore, I say they had become conspirators against Beecher, and had entered into a plot to bring a charge of crime against him, not for the purpose of securing his legal punishment, but solely with the view to get him out of their own way. It was business, gentlemen. So much fraud, so much conspiracy, so much lying, for so much return in dollars and cents through *The Independent* by dwarfing *The Christian Union*. Bowen had slipped out of this conspiracy, and immediately on learning this, Tilton, who was too deeply committed to withdraw, sought another man to join him, who, taking Bowen's place, necessarily became a conspirator in his stead.

The nature of that conspiracy between Tilton and Bowen, gentlemen, Mr. Tilton has proved from his evidence. He has shown you that in that conversation between Mr. Bowen and himself, charges against Mr. Beecher were made, charges of crime, charges that would disgrace him before the community, if they were true, and that this missile was hurled at him on that day for the purpose of compelling him to resign his position as pastor of Plymouth Church, and to cease writing for *The Christian Union*. That was a crime that made them, in the eyes of the law, conspirators.

THE LAW ON CONSPIRACY.

I will ask my associate now to furnish us at this point the authorities on the subject of conspiracy.

Mr. Porter—The first citation, if your Honor please, is from 3d Greenleaf on Evidence, section 89:

"A conspiracy may be described in general terms as a combination of two or more persons by some concerted action to accomplish some criminal or unlawful purpose, or to accomplish some purpose not in itself criminal or unlawful by criminal or unlawful means. It is not essential that the act intended to be done should be punishable by indictment, for if it be designed to destroy a man's reputation by verbal slander, or to seduce a female to elope from her parents' house for the purpose of prostitution, it is a criminal offense, though the act itself be not indictable."

12th Conn., 112. *The State v. Rowley*:

"Now, that many acts which, if done by an individual, are not indictable, are punished criminally when done in pursuance of the conspiracy among numbers, is too well settled to admit of controversy. Thus, a conspiracy to slander a man by charging him with a crime, or with being the father of a bastard child, is an indictable offense."

2 Mass., 523. *The Commonwealth v. Tibbetts*:

"A conspiracy to charge any person with a crime, and in pursuance of a conspiracy falsely to affirm that he is guilty, is an indictable offense, without procuring any legal process."

8 Penn. State Rep., 230. The case is that of Hood v. Polin, your Honor, in which the action was substantially on the civil side of the Court, for damages occasioned by the conspiracy. In imputing to a party whose property had been burned a design to defraud the insurance company, Chief-Justice Gibson, in delivering the opinion of the Court, uses this language:

"To put another in jeopardy or terror, is of itself a damage to him; and it is on this ground that it's actionable to charge maliciously an innocent person with crime. It is said that the plaintiff in this case was not in jeopardy. Of prosecution by indictment, he certainly was not; but of being ruined in his reputation and business, he certainly was. The libel which jeopardized him would give him an action against a single publisher of it, and why not against a number who publish it in concert. It is not to be maintained that a libel charging what would not be actionable independent of the publication of it, is not actionable without proof of special damages from it; or that it is not an injury from which constructive damage results by implication of law. From every tort the law implies damage; and when substantial damage is not shown, it implies the smallest amount of it; but still an amount sufficient to sustain an action for it. An action of slander could seldom be maintained on any other basis; and, if the libel be actionable when published by a plurality. But I do not rest the case entirely on the fact that the defendants conspired to publish a libel. A conspiracy to defame by spoken words, not actionable, would be equally a subject of prosecution by indictment; and, if so, then equally a subject of prosecution by action, by reason of the presumption that injury and damage would be produced by the combination of numbers. The overt acts laid in this declaration, were scandalous words written, and scandalous words spoken; and backed, as they were, by a confederacy to give them circulation and credit, they raised a legal presumption of damage to a greater or less extent. Defamation by the outcry of numbers is as rateless as defamation by the written act of the individual. The mode of publication is different, but the effect of it is the same; and it is for this reason that an action lies at the suit of one who has been the subject of a conspiracy, whenever an indictment would lie for it. But an indictment lies for any conspiracy to vex or annoy another—for instance, to hiss a play or an actor, right or wrong."

The next case cited is from *The People v. Mather* (4 Wendell, 261), where the Court, in delivering the opinion, says:

"If parties concur in doing the act, although they were not previously acquainted with each

other, it is a conspiracy. Lord Kenyon says, in *King v. Hammond & Webb*: If a general conspiracy exists, you may go into general evidence of its nature, and the conduct of its members, so as to implicate men who stand charged with acting upon the terms of it, years after those terms have been established, and who reside at a great distance from the place where the general plan is carried on. These cases show that all who adhere to a conspiracy after its formation and while it is being executed, become conspirators.

Mr. Tracy—That by the rules of the common law, gentlemen, this plaintiff in this case, if he is to be believed in his testimony, was a conspirator with Henry C. Bowen against the character of this defendant, under the rules of law which you have just heard read there can be no doubt whatever. I want to put in here, gentlemen, again, the qualification which I stated yesterday. I desire to do it always, for I do not desire to impute even against Mr. Bowen the charge of conspiracy resting entirely upon the evidence of Theodore Tilton. I make the charge on the theory that he states the truth, and that what transpired between him and Mr. Bowen on the 28th of December is what he states in his evidence. If Mr. Bowen should come here and say that that is false; if Mr. Bowen should appear upon the witness stand or elsewhere and say: "Theodore Tilton falsifies when he charges me with conspiring with him on the 26th day of December to drive Henry Ward Beecher out of Brooklyn by the charge of scandal against him, and under fear of provoking a scandal in the community to induce him or to frighten him to abandon the pulpit," I say that if Henry C. Bowen should deny that, and should assert his ignorance of the contents of that letter, I should not be prepared to ask you to believe Theodore Tilton even against himself. But that upon his statement of the case, that he was a deliberate conspirator on the 26th day of December, 1870, against Henry Ward Beecher, the object of that conspiracy being to drive him out of Brooklyn by means of a threat of an outrageous scandal, there can be no doubt, if you are to believe Theodore Tilton. But as we have shown, Mr. Bowen backed out early. He did not want to travel long in that direction; he found it unsafe to go on.

But the plaintiff had committed himself, so that he was compelled to go on, and he was therefore compelled to seek another friend to aid him.

The letter which Mr. Tilton had sent to Mr. Beecher by Bowen was delivered on the evening of the 27th day of December. I have repeated to you, gentlemen, the indignant manner in which this defendant received it. I have shown you that his conduct there, in the presence of Henry C. Bowen, satisfied Mr. Bowen of his innocence, and he retraced his steps at once. But there is another fact to

which now I desire to call your attention in this connection. You will observe that that letter says: "For reasons which you explicitly understand, you are required," etc. Now, gentlemen of the jury, if Mr. Beecher had been conscious of guilt—if he had committed adultery with Mrs. Tilton, and had received, on the 27th day of December, such a letter from Mr. Tilton—don't you think he would have divined the object of it? Would not he have understood what he meant? At least would not it have suggested to him "Mr. Tilton has discovered my crime"? And wouldn't he have been desirous of understanding how far that crime had been discovered and precisely what Mr. Tilton knew about it? And yet, gentlemen of the jury, this alleged guilty man, who had been carrying on adulterous intercourse for sixteen months, thus having his guilt suddenly disclosed to him, and finding the knowledge of it possessed by the husband, never moves a step to ascertain what the husband knew or to communicate with this woman to ascertain the situation. There he rested on the 27th, 28th, 29th and 30th days of December, without making the first move to ascertain what Mr. Tilton knew about it, and how far he had discovered the truth as it existed between himself and Mrs. Tilton. Would a guilty man have done that, gentlemen? Do you think that if an injured and outraged husband had gone to a man who was really guilty and written him such a letter as that, he would not have put himself in communication with that wife, to ascertain just what the husband knew and what this letter meant? And yet he made no effort to communicate with Mrs. Tilton; did not communicate with her, and, as the plaintiff himself tells you, was in profound ignorance that the plaintiff had any accusation to make against him in connection with his wife, until they met on that stormy night at Moulton's house, about eight o'clock in the evening. I submit to you, gentlemen, that that is proof conclusive that this defendant knew nothing about the object of that letter; at least he did not understand that it referred at all to his relations with Mrs. Tilton. And the fact that he did not so understand proves conclusively that guilt did not exist.

The sending of this letter by Mr. Tilton to Mr. Beecher provoked a contest from which Mr. Tilton could not retire easily, and when he was deserted by Mr. Bowen, he found himself in a very awkward situation. He had sent this challenge to the most prominent clergyman in Brooklyn, and had nothing on which to support it; Bowen had failed him; he had nothing from his wife in writing—nothing whatever on which to support this charge. But he had crossed the Rubicon. To advance might be dangerous, to retreat was impossible. If before this his ruin was

imminent, with Beecher and Bowen united against him it was not only "sure," but to avail ourselves of the fine criticism of the plaintiff upon the witness stand, we may say it was "certain." To sever that union and pacify Beecher was with him the necessity of the hour. Unless he could do this, he was not only the fool that Moulton had called him, but he was a ruined man. How this could be done was the subject that occupied his thoughts during the 28th, 29th and 30th days of December.

MR. MOULTON'S ENTRANCE ON THE SCENE.

And now, gentlemen, we come to the period of time when we say the conspiracy, which had been begun on the 28th of December at Mr. Bowen's house by Mr. Tilton, in concert with Mr. Bowen, was changed into one between himself and Mr. Moulton. We have seen that Mr. Moulton was somehow (by accident as they say, but by pre-arrangement as we think) at Mr. Tilton's house awaiting Mr. Tilton's return from the interview at Mr. Bowen's house, December 26th. He was then informed of the result of that interview and of the writing of that letter to Mr. Beecher. He regarded that as so important an event, that he made a memorandum noting the precise hour and minute at which this communication had been handed to him!

And here, gentlemen, at the very beginning of the association of these two men in relation to this case, you are called upon to discredit the first fact they testify to, or to accept a statement which is not only extremely improbable, but which is contradicted by the written evidence of one of them. They both testify that Moulton was not consulted again until the evening of the 30th. I ask, you, gentlemen, to consider the improbability of that statement.

On the 26th, as they tell you, Francis D. Moulton found that his most intimate friend had committed what he called the foolish act of sending this letter to Henry Ward Beecher. He was informed that that letter was to be borne to Mr. Beecher by Mr. Bowen, and he predicted the result. Says he: "You have signed the letter alone; supposing Mr. Bowen leaves you to support it alone, where are you?" The result of the interview between Mr. Bowen and Mr. Beecher was known by Mr. Tilton the next morning, for I have just read in your hearing that he says, "The next morning Mr. Bowen came into my presence and told me if I dared repeat what he had told me he would cashier me at once." Do you believe, gentlemen of the jury, that the result of that interview between Mr. Bowen and Mr.

Beecher was never communicated to Francis D. Moulton until the evening of the 30th of December? Do you believe that, all these days, he was in ignorance of the response that letter had met at the hands of Henry Ward Beecher? This fact, so important to his friend that he marked not only the hour but the precise minute at which he had received it, denouncing his friend as a fool for what he had done? And yet they tell you—although they admit that they had seen each other in the meantime—they tell you that no word had ever passed between them as to the manner in which Mr. Beecher had received the letter. You would not believe it, gentlemen, you would not believe it if it stood uncontradicted, and rested upon the oath of both these witnesses, with no other infirmity except the improbability of the statement itself.

But we are not left to that. Fortunately for us in this respect, and in many others, Theodore Tilton reduced the history of these scenes transpiring at that time to writing, in 1872; and while he thought he had destroyed it, and gotten rid of it, providentially for us, he showed it to too many men; and some of them were shrewd enough and cautious enough to preserve a copy of it; and a paper which he supposed was destroyed and would not confront him during this litigation was resurrected, to his great surprise, and confronted him upon the witness stand. Now, I appeal to that "True Story," as written by Theodore Tilton himself, to contradict the evidence of Mr. Tilton and Francis D. Moulton right at the inception of this conspiracy between them. The "True Story," as Mr. Tilton entitled it, says distinctly that Mr. Moulton was consulted at least twice after the 26th and before the 30th of December, thus giving the lie in the plainest terms to the testimony of these two witnesses. After referring to the interview of December 26th, the "True Story" says:

"A day or two afterwards" [which would be the 27th or 28th,] "prompted by my wife's wish and Mr. Moulton's advice, I resolved that I would send for Mr. Beecher to meet me at a personal interview, either in their presence or with me alone."

Then giving the account of the scene in which Bowen threatened to discharge Tilton from *The Independent* and *The Union*, and to call the police to cast him into the streets, the "True Story" proceeds:

"I informed my wife and Mr. Moulton, and afterwards Mr. Johnson, of this incident, concerning which Mr. Moulton remarked that it did not surprise him in the least, and then with the joint advice of all"—

I take it, gentlemen, that that word "all" is never applied to any act concerning this conspiracy that does not include Francis D. Moulton from this time forward—

"I determined to summon Mr. Beecher to the contemplated interview. To this end Mrs. Tilton wrote a brief note, addressed to Mr. Beecher through me."

AFTERNOON SESSION.

Thus it is clear that upon the statement in Tilton's own handwriting, prepared in December, 1872, and shown by him to numerous friends as the very truth of the matter, that Mr. Moulton was consulted on two separate days after the 26th and before the 30th, and that it was by Moulton's advice that Tilton determined to send for Beecher, this advice being given before Mrs. Tilton wrote her brief note, which Tilton has sworn was written on December 29th. Yet they tell you, gentlemen, that the first that Mr. Moulton knew of that was when Mr. Tilton came to him on the 30th of December with this letter from Mrs. Tilton. What motive did Mr. Tilton have for falsifying in this respect when he drew up the "True Story?" He has a motive for falsifying now, because he has been advised by his counsel that these facts made out a clear case of conspiracy against Moulton and himself, and it is the result of their shrewd suggestion (but I do not intimate that it is by their advice) that both he and the mutual friend now disclaim any consultation prior to the signing by Mrs. Tilton of the abominable charge drawn up by her husband. But Tilton consulted no lawyer when he prepared the "True Story," and only inserted such falsehoods as seemed to him then to be useful. This statement was not one which could have done him any good, and it may therefore be safely assumed to be true.

MR. TILTON FORCED TO MAKE PEACE.

But whether Moulton was consulted or not, the situation was plain. Tilton could get nothing from Bowen upon which to support his threatening letter, and he had nothing from his wife which would confirm the charge he had made to Bowen against Beecher. He had, therefore, given a rash challenge to one of the foremost men in Brooklyn, without the slightest support, save his own word, backed by his own tainted reputation. There was but one thing to be done. He must make peace with Mr. Beecher. But how should he accomplish that? He had written a most insulting letter. Should he say, frankly, "Mr. Beecher, I have been mistaken. I sent you that letter under a misapprehension of facts?" Not to mention that the idea of an apology would be utterly repugnant to Tilton's self-conceit and vanity, Mr. Beecher's natural answer would have been, "How did you dare to send so insulting a letter without making inquiry as to the facts?" Moreover, what misapprehension of facts could he have alleged? If he had said, "Mr. Bowen told me

such and such tales," Bowen would have denied it, and Tilton's position would have been worse than ever. If he should say, "My wife has told an evil tale about you," he well knew that his wife would deny it, unless some writing were extracted from her. It was essential that he should have an interview with Mr. Beecher, in which he should instantly satisfy the latter that he had had some reasonable pretext for writing his insolent demand, and yet should at the same moment withdraw that demand in such manner as to convince Mr. Beecher that if he should further resent this withdrawn insult there would be danger of an explosion, in which Mr. Beecher's reputation must inevitably suffer, no matter how innocent he might be. Furthermore, Tilton must so shape his case as to satisfy Mr. Beecher that the stories which the latter had circulated to some extent against Tilton were false and slanderous, and thus at one blow convince Mr. Beecher that Tilton was pure in his own morals and under an honest apprehension as to Mr. Beecher's conduct.

The infernal sagacity which devised a scheme meeting all these requirements did not emanate from the excited brain of Tilton, but from the cool and calculating villainy of his friend. Mrs. Tilton was sick, having had a narrow escape from death, and greatly weakened by a severe and protracted hemorrhage. The Mephistopheles at her husband's elbow suggested to him that now was the time to get her signature to any paper which would answer the purpose. Tilton disclosed to his wife so much of his own difficulties as sufficed to convince her of his imminent ruin. He turned out the nurse and companion; he locked the door, and kept himself for hours alone with the poor prostrate woman, and by a mixture of threats and coaxing procured her consent to sign a letter which he proposed to write, soliciting Mr. Beecher to an interview with her husband, and pleading for peace and reconciliation. For him to substitute for such a letter a few words, charging her pastor with having made improper solicitations to her, without describing their precise purport, was easy enough; and his poor wife, having once raised herself from the bed to sign the letter which he originally proposed, had no power to refuse to put her name below such a charge, the purport of which she but dimly comprehended, if indeed she understood it at all. All that she really knew was that she was doing something which her husband, to whom she had always rendered a slavish obedience, commanded her to do. Probably she had some indistinct idea that the natural effect of her signature was to do Mr. Beecher a wrong; but she was assured by her husband, as he tells you himself, that its real effect would be to do Mr. Beecher good, and to put an end to the conflict which

had begun between her husband and her pastor. Such a letter was obtained on the 29th of December, and carried by Tilton to Moulton, who now certainly becomes one of the most important actors in this unhappy controversy.

THE MUTUAL FRIEND.

It is hardly necessary, gentlemen, that I should occupy much time in describing the character of Francis D. Moulton, or in explaining the motives which have actuated him throughout this controversy. He has been in your presence for ten days; you have seen and heard him. No man in this courtroom could fail to be satisfied that Moulton was a person well chosen by the plaintiff to play the desperate part required of the mutual friend. Cool, fearless, plausible, of cultured tastes, not destitute of literary ability, gifted with a quick perception of human character, of tremendous energy, and totally destitute of any belief in conscience, in immortality, or in God, this man was well qualified, like his great archetype, to deceive the very elect. He has told you, under the solemnity of an oath, that he was a heathen; and by that you know what he means. Not a heathen like Socrates or Plato, not a heathen like those men of old who walked in darkness, seeking after the light, and to whom the great poet of the Catholic Church has assigned a place in the other world, free from pain, though far from Heaven—but such a heathen as can only be found in the midst of Christian civilization; a man who despises the idea of personal responsibility, who scoffs at the idea of future accountability, who laughs in his sleeve at the credulity of those who read the solemn words of Scripture, or who listen to the instructions of the Church, and whose only idea of God is as a convenient name for rounding an oath or enforcing an execration. Yet it was not in this guise that he presented himself to the defendant, and he took great care not to impress you with this conception of himself in Court. Even here, when facing hundreds of men in whose eyes he read that they knew him to be an unscrupulous and hardened villain, he wore a veil of decent respectability. How much more, when he approached the most distinguished clergyman of the age, to whom he was almost a stranger, did he clothe himself as an angel of light, and, while humbly acknowledging his unconverted state, yet strive to show that he was aiming to practice the highest Christian virtues!

What was this man? What was his position in society? Upon what endorsement was he received? He was the junior member of one of the largest and most respected commercial houses in this city. They were not only the largest warehousing firm at this

port, but also the principal importers of certain staple articles of commerce. The high favor in which they stood with the officers of the quarantine and of the port was a matter of public notoriety; and the maintenance of friendly relations with all these officers, and with the officers of the Custom House, was a matter of the utmost concern to the firm. A slight change in the tariff would, at any time, gain or lose hundreds of thousands of dollars for them. It was, therefore, a matter of vital importance that they should be represented, as occasion arose, at Washington, at Albany, and among the local officers of both the national and State governments, by some confidential agent, who could undertake the management of such affairs involving the most delicate and weighty considerations. You must be aware, gentlemen, that in every large concern of this kind there is invariably a junior partner, or a highly-paid confidential clerk, who undertakes the management of these interests, and concerning whose transactions no questions are ever asked. To no partnership in either of the two cities was such an agent more valuable than to the firm of which Mr. Moulton is a member. These considerations will explain some things at a glance, which otherwise would seem to you mysterious. But the confidential partner in such cases cannot do all his work with his own hands. He must be able to put his hand on some lever of public opinion. He cannot afford to go down to Washington and urge or oppose legislation without any support from the public press. To him it is a matter of life and death to be able to guide some current of public sentiment. Failing to do this, his power ceases, his usefulness is at an end, and his share in the partnership would quickly come to an end also, as Mr. Moulton's partnership in this concern did quickly come to an end when his usefulness had been destroyed.

Francis D. Moulton and Theodore Tilton had been intimate friends from boyhood; but they had been separated by circumstances for some years. The period at which Mr. Moulton was placed in charge of all these great interests of his firm appears to have been also the period when he renewed, with all or more of its original warmth, his devoted friendship for Theodore Tilton. From this time there was no interruption and no breach. Mr. Tilton had, meanwhile, become the editor of *The Independent*, a paper which before his accession, was religious, but which, he has taken pains to assure you, he made secular. It was a powerful political engine. He has told you that it was one of the principal organs of the Republican party, which, during the whole period of this renewed friendship, has had exclusive control of the National Government, and for most of this time has controlled the legislation of this

State. When this controversy began, Mr. Tilton was the editor, not only of *The Independent*, but of another newspaper of large influence in this city, and the acknowledged local organ of the Republican party. He was also the intimate and trusted friend of Horace Greeley, the chief editorial writer of that party. No man could obtain more readily access to Mr. Greeley's ear, or introduce a friend with greater assurance of welcome than Theodore Tilton. Through the whole term of this close union between Mr. Tilton and Mr. Moulton, which reminds us of Damon and Pythias in the olden time, Mr. Moulton had, therefore, easy and confidential access to the principal organs of the Republican party.

This was the situation of the two friends at the beginning of December, 1870. We may well believe that when Mr. Moulton found his friend suddenly dethroned, and no longer a power in the land, he felt that his own fortunes were seriously imperiled. Whether Mr. Moulton was generous enough to be sincerely grateful for past favors from his friend, or whether he was among those who define gratitude as "a lively sense of favors to come," could make but little difference in the earnestness with which he naturally sought to reinstate so powerful an ally. It is easy to see that he made the case of Mr. Tilton his own. He attacked Mr. Bowen as bitterly and even ferociously as he could have attacked his own worst personal enemy. This he states himself, and describes the scene with dramatic force.

But we are asked to believe that when he was informed by Mr. Tilton that not Mr. Bowen, but Mr. Beecher, had been his worst enemy—his enemy in business, his enemy in the church, his enemy in the household—Mr. Moulton approached Mr. Beecher in a genuine spirit of friendship, and with a sincere desire to act the fair and honorable part of a strictly mutual friend. He tells us that he learned that Mr. Beecher had been guilty of one of the basest and foulest acts which any man can commit; he tells you, under the solemn oath of a man who believes in neither God nor the devil, that his friendship for Mr. Beecher commenced on that stormy night when he learned for the first time, that this new friend had debauched his old friend's wife. This horrible crime, the deliberate and long planned seduction of a trusting and reverential woman, by the pastor who had given her hand to her husband in marriage, and invoked the blessing of God on their union, was the one fact which awoke in the generous breast of Mr. Moulton a new fountain of sympathy for the alleged treacherous seducer. He hastened to pledge to this man, whom he now describes as an abandoned hypocrite and libertine, "the strictest and firmest friendship." He assured him that no one among the thousand of friends who stood

around this pastor with devoted affection would ever equal him in fidelity.

HOW THE FRIENDS WORKED TOGETHER.

He did all this with the knowledge and full approval of the man who claims to have been the injured husband, whose happiness had been destroyed by the new friend whom Mr. Moulton thus enthusiastically took to his bosom. And notwithstanding this pretended friendship of Mr. Beecher, which seemed gradually to ripen into an ardent affection; notwithstanding his repeated pledges and offers of support; notwithstanding his earnest assurances that Mr. Beecher should in all events be protected by him; notwithstanding the absolute confidence and high esteem, which, by his plausibility, he gained from his new-found friend, all of which was well known to Tilton as the case progressed. Mr. Tilton himself tells you, from the witness stand, that this conduct never once excited a doubt or suspicion in his mind of Mr. Moulton's unqualified fidelity to his cause, or made him for a moment think otherwise of Mr. Moulton than as his own most chivalrous and devoted ally. There never was an act of Mr. Moulton's to which Mr. Tilton did not give his assent. There never was a paper of the least importance (save one) written by Mr. Moulton which was not either dictated or approved by Tilton; and there never was a secret confided by Beecher to Moulton which he did not instantly betray to Tilton. On this point the testimony is clear and most significant. While Moulton affected to deny that Tilton had seen Mr. Beecher's letters or that he was aware of Tilton's copying them, the evidence of Tilton shows that in every case he took down shorthand notes in Moulton's presence of just so much as he thought desirable, and that in some cases these confidential communications were left in his hands by Moulton for a period long enough to have made printed copies, if Tilton had wished to do so.

And another piece of evidence to which I desire to invite your attention here, gentlemen, which Mr. Moulton had evidently forgotten in this connection, was the letter signed by him, but written by Tilton on August 5th, you will remember, where he refuses to Mr. Beecher access to these papers, and says that he shall consult Mr. Tilton and obtain his consent to lay these papers before the Committee at his first opportunity, though Mr. Tilton was present and wrote the letter himself! That letter you will remember, gentlemen. A statement in it Mr. Moulton had evidently forgotten, for in that very letter he states that Mr. Tilton took shorthand notes from these letters as he read them to him—and yet he comes upon the stand here and

swears deliberately that he never permitted Mr. Tilton to have a copy of this confidential correspondence, and never with his assent allowed him to have a copy; never saw him take a copy; tells you under oath that he could not have taken a copy in shorthand without his knowledge, as we all know he could not; though, in that very letter of August 5th, sent by Moulton to Beecher, Mr. Moulton himself says that Mr. Tilton took shorthand notes from these letters, as he read them to him. I shall have occasion to call your attention specifically to that letter. Moulton affected to give advice to both parties in the interest of both. He tells you himself that Tilton almost uniformly disregarded any advice in Beecher's interest, while Beecher uniformly, even against his own judgment, followed the advice of the mutual friend. Tilton never yielded, except when it was plain to both these conspirators that his refusal would precipitate the crisis and kill the goose that laid the golden egg; and even when he did nominally yield, it was always upon condition that he should dictate the precise terms of compromise, and, if anything was to be written, that he should write it, word by word, in his own language. Then the papers thus written or dictated were carried to Beecher, without an intimation of their real authorship, and submitted to him as the production of a sincere and devoted friend. It is impossible to conceive that a professed friendship thus carried on with the approval and under the direct guidance of Mr. Beecher's most bitter and relentless enemy could have been otherwise, from beging to end, than utterly hollow and false. It is not necessary to suppose that when this plot was originally hatched the two conspirators laid out their plans upon the gigantic scale which they afterwards assumed. They doubtless supposed, at the beginning, that the restoration of Theodore Tilton would be speedily accomplished; and it was not until his repeated failures, owing to his own amazing follies and wickedness—that extended over a period of nearly four years—that the original scheme gradually developed into the most gigantic and hideous conspiracy of modern times.

It can need no argument to satisfy you that a man who has been for years carrying on so diabolical a conspiracy as this, his movements being known at every step to the man whose cause he was really serving, could not fail himself to be involved in such a network of crime as would make it impossible for him ever to retrace his steps or to abandon his partner in guilt—no matter what might be the cost to himself of pursuing the original scheme. The descent into crime is easy, but the return from such tortuous paths of darkness is well nigh impossible. Neither of these men could for one moment afford to

betray the other, even if they had no secrets apart from this case; for either to drive the other to desperation would be an act of suicidal madness.

But this is not the only tie, nor even the chief tie, which binds together these two men. They have had a most significant alliance in the prosecution of new social theories. They have had most significant relations with women whose very names stain the lips that utter it. They have both held their wives in humiliating bondage, and compelled the women whom they vowed to love and to cherish to become the mere ministers to their lust. It was not Theodore Tilton who sent his wife to bring home in a carriage the most notorious preacher and practitioner of free love that the world has ever seen. This humiliation was reserved for the wife of Francis D. Moulton. And it was her lips, and not the lips of Elizabeth Tilton, so far as we have yet learned, that were kissed by Victoria Woodhull. It was this woman, whose published utterances are so foul, that the learned Judge now presiding was unwilling to allow them to be read in your hearing, even as a part of the evidence in this case, who was selected by Francis D. Moulton as the honored guest of his wife, and as a fit person to be brought home in a carriage by his wife and only child. And this alliance was maintained for a year. It was maintained, if you believe Mr. Moulton, for the sake of Mr. Beecher, whom Mr. Tilton hated with all his soul; or else it was maintained, if you believe Mr. Tilton, for the sake of Mrs. Tilton, whom Moulton despised with all his heart!

But no mere words can do justice to this man; none but an artist who should paint the man as he is, can bring out his real character before mankind; and, thank heaven, gentlemen, that portrait has been painted, and by one of the greatest artists the world has ever known. If any of you ever visit the beautiful city of Milan, you will find that, next to its magnificent cathedral, on which thousands of saints and angels, carved in heavenly white, stand in the attitude of silent prayer, the pride and glory of that city is in the humble refectory of an ancient monastery, upon the wall of which, four hundred years ago, the illustrious Leonardo da Vinci painted his almost inspired picture of the "Last Supper"—a picture the colors of which are too rapidly fading, but the fame of which will never die. And, gentlemen, in the most striking portrait of that group of disciples, you will recognize the startling likeness between the red matted hair, the low forehead, the sharp, angular face, the cold and remorseless eye of Judas Iscariot, and the same features in his legitimate successor, the "mutual friend" There, on that consecrated wall, the portrait of Francis D.

Moulton has stood waiting for his birth 400 years, and will stand for twice four hundred years after this resurrected Judas shall have sunk into eternal infamy. [Great applause, which was checked by the Chief-Justice.]

It was such a man that Tilton requested to become his friend in this emergency, and it was this man into whose hands he placed the letter of his wife and bade him go and invite Mr. Beecher to an interview on the night of the 30th of December.

Before he returns, gentlemen, let us inquire into the motives which impelled Tilton to seek this interview, and the object which he sought to accomplish by it. This is made clear from Tilton's own statement. On his cross-examination before the Church Committee he declares that the object of this interview was to make peace between himself and Mr. Beecher. He says; "Elizabeth saw that Mr. Bowen and I were in collision; she was afraid that the collision would extend to Mr. Beecher, and she wished me, if possible, to make peace with him; therefore, she wrote a womanly, kindly letter to him. I do not" says Tilton "remember the phraseology. I remember only one phrase which was peculiarly hers. She said she loved her husband with her 'maiden flame.' She begged, as the best mode of avoiding trouble, that a reconciliation might be had between Mr. Beecher and himself—that Mr. Beecher and her husband might instantly unite to prevent Mr. Bowen from doing the damage which he had threatened in demanding Mr. Beecher's retirement from the church. Mr. Tilton further said that he "resolved to accede to his wife's request, and for her sake would prevent the threatened exposure by Bowen, and for this purpose he sought the interview with Beecher."

His object was peace, and peace was to be secured by his withdrawing the letter he had written to Mr. Beecher and inducing the latter to withdraw the charges which he had made against Tilton to Bowen, and through Beecher to silence not only Mrs. Beecher and Mrs. Morse, but his own wife from circulating the scandalous stories against himself. You will remember, gentlemen, that this wife had separated from her husband and was under the influence of her mother, where Mrs. Beecher visited her. You will remember that her child was taken from her and she thus forced to return to Mr. Tilton's house. You will remember that the next night after that return she was suddenly taken ill by a miscarriage, and was on her sick-bed at this time. The question which agitated Tilton's mind was, "What will this woman do when she recovers?" He had no strong hold upon her, and her future course was uncertain when she was again restored to health. He was bound to work while opportunity was given him; and you will see the position in which he had

his wife, and how skillfully, under the advice of this Mutual Friend, he used it.

A NEW PURPOSE.

Tilton knew Beecher well, and we shall show you, gentlemen, that he has often declared that the surest way of securing Mr. Beecher's aid was to accuse him of having wronged you. Once convince him that he has done you an injury, and there is nothing you can ask that he will not do to repair the wrong.

They determined to approach him in this manner, and to convince him that the stories he had heard, as well as those he had circulated against Tilton were false and slanderous. They knew that if they could convict him in his own conscience of having slandered Tilton, he would make haste to atone for the injustice. To do this they must destroy his confidence in Mr. Tilton's accuser. That accuser was Tilton's own wife. They knew Mr. Beecher's confidence in her truthfulness; and to impair that confidence was a difficult task. There was only one way in which this could be done beyond a possibility of a doubt. To obtain from her a mere retraction of her charges against her husband would not suffice, for Mr. Beecher would easily suspect that she had done this either from affection or from fear. But if she could be by any means brought to make an accusation against Beecher himself, then he and Tilton would stand on the same ground, both accused by the same woman; and Beecher, knowing the accusation against himself to be false, could no longer place the slightest confidence in the charges which she had made against her husband. They knew, moreover, how reluctant he would be to attack, even in his own defense, a woman who had long been in relations of friendship and sympathy with him, and who was now lying upon her sick bed. They knew that he would rather be sacrificed himself than save his own reputation by war upon her. This suggestion was the suggestion of the devil; and it was now carried out with a skill, an audacity and a heartlessness worthy of its author.

We have seen how Mrs. Tilton had been controlled and entrapped into signing an accusation ingeniously framed so as to be especially disastrous to the reputation of her pastor. Thus far the scheme had been successful; and it only remained to carry it through in such a manner as to convince Beecher that Mrs. Tilton had voluntarily made this accusation and the success of the plan would be complete. Thus, with these ideas seething in his mind, Tilton sat awaiting Beecher's arrival, conscious that unless this desperate plan of himself and his friend succeeded he was a ruined man. Meanwhile Moulton had gone down to Beecher's house,

and with an air of politeness but of great earnestness, had requested Mr. Beecher to come to his house to hold an interview with Theodore Tilton. Mr. Beecher naturally guessed that this proposed interview had some bearing upon the letter which he had recently received from Tilton, and the motive of which was an utter mystery to him. Sending for Mr. Bell to take charge of his meeting, he went with Moulton, and on the way inquired what was the object of the interview, to which Moulton replied that he had better let Tilton tell it himself.

MR. MOULTON'S CONDUCT TOWARDS MR. BEECHER.

While they were on the road an incident occurred, according to Moulton's account of the affair, which will justify a short digression from the main subject. He tells you that having learned that very evening for the first time that Beecher, the pastor of his own wife, had most infamously debauched the wife of Moulton's most intimate friend, that circumstance impelled him, for the first time in his life, to proffer to Beecher a life-long friendship of his own accord. Without a hint from Beecher of his own desire for such services, Moulton said to him, "I am not a Christian, I am a heathen; but, if you wish, I will show you how well a heathen can serve you." And from that moment there sprung up the strictest and firmest friendship (so he says) between himself and the man whom he now describes, and whom, if he speaks truly, he must then have known as a libertine. He assures you that for four years after that time he strove day and night to serve and save the man whom he now denounces with such intense bitterness, and who, according to his own account, has added not one whit to his sins since that time, except that there came a time when he refused any longer to follow Moulton's lead in this matter. That is the only crime which has changed the friend, whom Moulton would sacrifice so much to save, into the enemy he now hates and would do so much to destroy. Mr. Moulton has been at some pains to explain to the public his motives in offering and maintaining this friendship. It seems that it was the peace of families, the interests of Plymouth Church, the cause of Christianity, which moved this heathen to undertake the task of maintaining in the first pulpit of America the man who, if what Moulton now says of him be true, deserves to have his name a by-word and a hissing among men. To preserve the peace of families Mr. Moulton was willing to introduce a man who he now says was a practiced seducer, into his own household, to recommend him to the confidence of his own wife, to place his own child under his teachings, to invite

him to his own table, to leave him in a bedroom with his own wife for four hours, and listened with complacency to her narrative of the manner in which she had affectionately tucked him up on the sofa, and kissed him on the forehead, the tears of sympathy streaming down her cheeks! To protect the interests of Plymouth Church, an institution which he now hates with a bitter hatred, because it still believes what he originally said of its pastor, he was anxious to deceive that church into accepting the ministrations of a man whom he now characterizes as a wolf in the fold, and rejoiced in seeing this man continue to preach the doctrines of Christianity from that pulpit! To promote the interests of that Christianity in which he did not believe, and to honor that God whose name he never used except as a by-word, he tells you now that he told hundreds of lies, that he invented all manner of schemes, that he bullied some men, that he coaxed others, that he made his own wife the associate and companion of loose women, and divided her lips between his own kiss and the kiss of Victoria Woodhull. All this, and more, he was willing to do in behalf of these great interests, which, if his story be true, could only have been truly served from the first moment by casting out the alleged criminal from his place of trust and protecting innocent families from the wiles and intrigues of a seducer.

But when the time came that *Mr. Moulton's* interests were touched, when he thought that *his* good name, such as it was, was to be injured, a name which he had not hesitated to defile by contact with sinks of infamy, his regard for the peace of families, for the interests of Plymouth Church and for the cause of Christianity suddenly vanished, and he devoted himself with blind fury and with a single aim to the gratification of revenge.

But, gentlemen, you must not allow yourselves, for a moment, to imagine that Mr. Moulton, who told hundreds of lies for the sake of Christianity, in which he did not believe, will now tell a single falsehood for the sake of himself! You must not imagine that the man who would gladly associate with prostitutes, and take pleasure in seeing them kiss his wife, all for the sake of the honor of the Church and the good of society, would dream of associating with prostitutes for his own pleasure. Oh, no! When Francis D. Moulton steps upon this witness stand, and seeing the man for whom he acknowledges a deadly hate sitting before him, takes an oath upon the Gospel which he never reads, and in the name of a God whose existence to him is a jest, he suddenly becomes absolutely truthful, and demands of you with unhesitating confidence that you shall not doubt a single word he utters.

THE INTERVIEW OF DECEMBER 30.

But to return now to the interview to which Mr. Moulton introduces Mr. Beecher on this stormy winter's night. I desire to call your attention in this connection, gentlemen, to a fact which Mr. Moulton states in his evidence; and I desire to refer you to the unconscious testimony which the action of both of these parties, according to the evidence of Mr. Tilton, furnishes of the innocence of Mr. Beecher. Mr. Moulton tells you that, on his way to his own house, he told Mr. Beecher of the stories and slanders which Bowen had reported against him in the interview of the 26th of December. You will remember the language that he makes Mr. Beecher use on that occasion. He says: "Did he? I am surprised at that; for Bowen said nothing to me of that kind." It was evidently, according to Mr. Moulton's testimony, the first that Mr. Beecher had heard that Mr. Bowen had been guilty of slandering him at that interview. When he is introduced into the presence of Mr. Tilton, I desire to call your attention to Mr. Tilton's evidence of what occurred. Mr. Tilton says the first thing he said to Mr. Beecher was: "You received a letter from me, I suppose." Mr. Beecher says: "I did." "I wish you to consider the letter withdrawn, as if it was never written." "Then," says Mr. Tilton, "I introduced the name of Elizabeth, and began to state to him what I had learned from Elizabeth. At that instant," says Mr. Tilton, "Mr. Beecher interrupted me and said: 'But what about the stories that Mr. Bowen told you concerning me on the 26th?'" And Mr. Tilton says: "Since you ask it, I will tell you," and stopped his narrative and went on to repeat to Mr. Beecher the accusations which Mr. Bowen had made against him. Now, gentlemen, I desire you to consider, if Mr. Beecher was conscious up to that moment that he was confronting an injured husband who was about to accuse him of having seduced his wife, do you think he would have interrupted the husband in that accusation by a reference to the mere slanders of Bowen, saying: "Tell me first about what Bowen said about me?" Do you think, if this great clergyman was conscious that he was to be assailed on that evening with such a charge as that, it would not have been the one thing that would have absorbed all his attention, and that the questions of the mere slanders that Bowen had uttered against him a week before would have made any impression on his mind? The very fact that he interrupted Mr. Tilton as soon as he had introduced the name of Elizabeth, shows you, gentlemen, that Mr. Beecher was thinking of nothing at that time except the information which he had just, for the first time, received, to wit, that Bowen had been uttering slanders

against him in this interview on the 26th. It is an unconscious piece of testimony, that in my judgment outweighs the mere assertions of any number of men who are interested in producing upon your minds a particular impression. It is the *act* of the parties. It shows how they felt and how they acted on this occasion.

And right here, gentlemen, in approaching the discussion of the question, permit me to say that this case is peculiar in this respect: all the acts of all these parties, from the time that this charge was first intimated down to the time that Theodore Tilton made his charge of adultery before the Church Committee, have been inconsistent with the crime of adultery. From the beginning to the end of it, strike it where you will, where you find one of these parties performing an *act*, that act is utterly inconsistent with the existence of adultery. Their whole evidence against Mr. Beecher here consists of *words*; of language which they say he has uttered from time to time. But the acts of Mr. Tilton on the night of the 30th of December; his whole conduct from July up to that time, the conduct of Mr. Beecher, the conduct of Mr. Moulton, the conduct of all of them combined, the acts of all of them, wherever you strike an act, are inconsistent with the charge of adultery. This accusation, I repeat, rests entirely upon words and upon nothing else.

WHAT WAS THE CHARGE?

Now, what was the charge which Tilton made against Mr. Beecher on that night? This is the most important question in this inquiry, gentlemen, and to it I now invite your serious attention; because, if we satisfy you that on that night Mr. Tilton did not charge Mr. Beecher with the crime of adultery, you will consider this case disposed of. You will not listen to any charge subsequently invented of a graver offense than that which was brought to Mr. Beecher's attention on that night. They are bound by that act; they cannot charge that interview as one of the exigencies by which they have been induced to lie to conceal this crime. They brought Mr. Beecher into their presence to make the accusation, and by the accusation there made they must stand or fall. You will not permit them to change it. I intend to hold them there, and I intend to demonstrate to your understandings as clear as the noon-day sun in Heaven, that that charge was not adultery.

In the first place, gentlemen, Tilton's conduct from July to December has been utterly inconsistent with the existence of this pretended knowledge. He says, and asks you to believe now, that all he knew on that night he had known for six months, and yet it had not even ruffled the temper of Theo.

dore Tilton. There was not even a domestic jar in the family arising on account of this information. Theodore Tilton was then editor of *The Independent* and of *The Brooklyn Union*. He was a prosperous man, doing well, and you never hear lipped a word from Theodore Tilton in regard to the existence of this charge until December, when, as he himself says, he fell into business troubles with Henry C. Bowen, which, to use the language of his sworn statement, were augmented by the Rev. Henry Ward Beecher and his wife; wherefore, says Mr. Tilton in his sworn statement: "At the instance of my wife, Elizabeth, who wrote a letter to Mr. Beecher, I sought an interview with him." Until business troubles came upon Mr. Tilton there was no suggestion of offense against him by Henry Ward Beecher. It was only when he found that his wife had left him; that Mrs. Morse, as he says, was insisting she should not return to him; that Mrs. Beecher was engaged in consultation with Mrs. Morse; that Henry Ward Beecher was also engaged in consultation with that wife and giving her advice; when he found also that Mr. Beecher was crediting the stories that were in circulation against him, and when he found himself liable to be dismissed from the employ of Henry C. Bowen, his position of influence and his means of support taken away from him, then it was that he conceived the idea, on the 26th day of December, of entering into this conspiracy with Henry C. Bowen to make a scandalous charge against Henry Ward Beecher, and thus drive him from Brooklyn. I start there with Mr. Tilton. I say that, from his own showing, if he is to be believed in what he says transpired at the interview between himself and Henry C. Bowen, if they did there concoct these scandalous matters and sent that letter to Henry Ward Beecher for the purpose of intimidating him and driving him out of Brooklyn at the peril of undergoing a grave investigation for scandal, then he is tainted as a conspirator against Beecher, and stands as a conspirator from that day to this. That conspiracy is formed, and the only question there is about it is, when did Mr. Moulton enter that conspiracy. Now, we say that the charge was not the charge of adultery. We say it is not possible that if Theodore Tilton is made of the flesh and blood that other men are made of—it is not possible that he carried that terrible secret in his breast for six months. If he had known what he professes to have known, there would have been nothing left of Theodore Tilton but his skeleton to confront Henry Ward Beecher on that terrible night in December. I do not believe that any man can carry locked within his bosom any such terrible secret as that and remain undisturbed. But it had not disturbed Tilton. On that night he stood six feet two in his stockings,

fat, sleek, and happy, meeting Mr. Beecher and negotiating with him on a business matter, bringing before him accusations which Beecher had made affecting the business of Tilton, and winding up with an accusation that his wife had confessed an undue affection for him, and had charged him with having attempted her virtue. That the charge was not adultery, gentlemen, is proven from the fact that on the 26th he had stated his accusation against Beecher to Bowen, and it was not a charge of adultery, but it was a charge of unhandsome advances. He tells you that he had made that same accusation against Beecher to Moulton on the same day.

Now, these are the two first occasions in the history of this case where we find that Tilton is giving public utterances to these accusations, and those utterances consist of a charge of improper proposals and not of adultery. Would he dared, after having said to Henry C. Bowen on the 26th, and to Moulton on the same day, that Mr. Beecher was guilty of improper advances, to turn round and charge Henry Ward Beecher with the crime of adultery on the 30th? Here he had got three witnesses to confront him and prove the falsehood of that charge if he made it—Bowen, Oliver Johnson, who was present, and Francis D. Moulton. In the presence of three men he had said four days before that that charge was a charge of improper advances. Would he have dared in the face of that evidence to turn suddenly about, and but four days afterwards, I repeat, charge adultery upon Henry Ward Beecher? But we shall not stop there, gentlemen, with this case. We shall show you that Mr. Tilton has stated to not less than five different people of the highest respectability in this city, men whose reputation stands unquestioned, in narrating that interview which took place between himself and Henry Ward Beecher that night—we shall show you that he said that he charged Henry Ward Beecher with improper proposals, and nothing else. We shall show you that to one of these persons he made that declaration within a week after the interview occurred. He is a man of the highest character, whom most of you will know, when he is presented on the witness stand. It was a man who had been one of the intimate friends of Theodore Tilton; and Theodore Tilton in relating to him the difficulties between himself and Mr. Beecher, charged Mr. Beecher in that interview with being the cause of his overthrow with Bowen. He said that he had got him turned out: that Beecher and his wife and Mrs. Morse were responsible for the loss of place and position, which he had suffered; and then he told him that Beecher had been guilty of improper proposals to his wife, and that he had sent for him on this evening of the 30th, at Moulton's house, and charged him with it face to face. And we shall show you

further, gentlemen, that he told this person that Henry Ward Beecher denied it, and when he denied it he told him: "If you don't believe that Elizabeth has made this charge, go and see her for yourself," and Beecher went.]

We shall show you that, I say, by not less than five different persons, to whom Mr. Tilton has given that narration. But we shall show you more, gentlemen; we have shown you more. We have shown you that that is the truth from the written testimony of Theodore Tilton himself.

I refer now again to the "True Story;" and here let me say again that the resurrection of this part of that "True Story" is almost a providential occurrence in favor of this defendant. Last August, when he was compelled by this attack to make a public statement before the Committee, when every paper connected with this transaction had been deposited in the hands of this mutual friend, who had refused to allow him access to one of them, and he was compelled to draw simply upon his own memory for this occurrence, without being able to corroborate it by a single written paper, he gave the interview that occurred between himself and Theodore Tilton on that occasion, and he stated it substantially as Theodore Tilton had written it down in this "True Story" in 1872. Mr. Beecher says: "In that interview, as Tilton went on with his accusation, I grew indignant, and was about to interrupt him, and he seeing that I was about to interrupt him, stopped me and said: 'Wait until I get through;' and when he finished he said to me: 'If you have any doubt that Elizabeth has said this, go and see for yourself.'" This is the precise story that Tilton told these individuals. Now, Mr. Tilton tells you that Mr. Beecher humbly asked his permission to go and see Mrs. Tilton at the conclusion of this accusation, and that he granted him permission under certain injunctions. We shall show you that Mr. Beecher rejected his allegation that Mrs. Tilton ever made such an accusation. Tilton had not the paper with him, and, gentlemen, he durst not show it if he had. He never showed this paper to Henry Ward Beecher, and he was obliged therefore to send him to Mrs. Tilton.

Another fact that will strike you as remarkable. The basis of this interview was a letter obtained from Mrs. Tilton, mark you. That was the pretext under which it was obtained from Mrs. Tilton, but it was never used for that purpose. Never forget that fact, gentlemen, in your consideration of this case, that when such a letter was needed to bring about an interview with Henry Ward Beecher, the pretense was made to this sick and almost dying woman that it was to rescue her husband from difficulty, from business troubles and business embarrassments; but that letter was never shown to Henry Ward Beecher.

Never to this day has he seen it. It was only a pretext by which they imposed upon this feeble woman. But beyond that, gentlemen, what was in that letter?

Was that letter a confession of adultery, as they now say it was, or was it what she says it was in that letter that they induced her to sign to Dr. Storrs—a charge of improper proposals? That is the vital question in this case. It is the most important question that you have to consider. Upon it very much of this case hinges. Certainly, so far as the plaintiff's case is concerned, it turns entirely upon this question. If I can satisfy you, gentlemen, that that letter did not contain a charge of adultery, then, of course, the plaintiff's case ends. Why don't they produce that letter? If they would produce it, it would end the question of fact involved in this issue on this point, wouldn't it? There would be no room for discussion, no room for argument. It would settle this question one way or the other, and it would tell you who is falsifying here and who is telling the truth. They only need to produce that letter to determine this whole question. Where is it? Why don't they produce it? They had it. They promised to keep it, sacredly, on the evening when Francis D. Moulton obtained that retraction from Henry Ward Beecher. Their failure to produce it now is the most outrageous breach of faith I ever knew to characterize a litigant in a court of justice.

Henry Ward Beecher had gone from this interview at Moulton's house to this sick wife, and he there confronted her with the accusation which he had received from her husband. She hardly knew what she had made. She knew that she had given a letter to her husband, but whether she had a faint, glimmering conception of the charge, or whether she took it for granted that she had charged Mr. Beecher as her husband had told Mr. Beecher she had charged him, we do not know. We only know that now she has no knowledge or conception of what was in that letter. But when confronted with the friend that she had injured, when she found the use that was being made of it, when she found it was being perverted, she gave a retraction of that charge to her friend and pastor that night in the following language:

"DECEMBER 30, 1870.

Wearied by importunity and weakened by sickness, I gave a letter incriminating 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 solicitations, but has always treated me in a manner becoming a Christian and a gentleman.

(Signed)

ELIZABETH R. TILTON.

Now, gentlemen, that retraction itself furnishes conclusive evidence of the nature of the charge which Mr. Tilton made to Mr. Beecher. You see that it does not retract a charge of adultery. There is no allusion to the offense of adultery in this retraction at all. It is a retraction of improper solicitations. Do you believe, gentlemen, that if the charge had been one of adultery against Henry Ward Beecher that night, he would have gone down to the sick woman and contented himself with a charge simply of improper solicitations? Don't you think that the retraction would have been as broad as the charge? Would he have been satisfied with anything less? But how happens it, gentlemen, if the charge was adultery, and nothing had been said about improper solicitations—how happens it that you find those words, "improper solicitations," in the language of one of these parties on that very evening? But there is more than that in this retraction which indicates the nature of the charge. You will see that the first letter, written and signed by Mrs. Tilton, makes no reference at all to the nature of the charge. When that is discovered she immediately adds a postscript to it, covering the charge which she understood to be made by her husband. Can you have more conclusive evidence furnished you of the nature of the charge which Theodore Tilton then made than this furnishes? I apprehend not.

Mr. Beecher takes this retraction, returns to Moulton's house, and does not see him again that night; and here, gentlemen, is a slight contradiction of Mr. Tilton, to which I desire to call your attention, to show you that even he, with all his effort to be accurate, is unable to state this transaction twice alike. It is now conceded that he did not see Mr. Beecher on that night after Beecher left him at Moulton's house. That is agreed by both Tilton and Moulton; and yet, gentlemen, in the statement before the Committee he says: "Beecher returned, expressed remorse and shame, and declared that his life and works seemed brought to a sudden end." And he swore to that statement before the Committee. Now he concedes that that is false, and that he did not see Beecher at all that night after he left him at Moulton's house to go to his own house to see his wife. How are you to trust Mr. Tilton's evidence in the midst of so many contradictions? And that was not a hasty statement, gentlemen. It is in evidence here before you, that Theodore Tilton took ten days to prepare that statement. He had all that time, therefore, to make himself entirely accurate. He had access to all the papers. He had no difficulty in fortifying his memory and speaking correctly upon these subjects. Yet in that statement he deliberately says that Mr. Beecher returned to his house and used lan-

guage which implied a confession of guilt; and he put it in that statement for that purpose, so that when it was read by the great public as it was published in the newspapers, they would see that Beecher returned to Tilton that night and used language which virtually amounted to a confession of the offense. Yet Tilton is now obliged to tell you, and Moulton tells you, that Beecher did not see Tilton at all; and therefore this statement is entirely untrue. Nor did he say anything of the kind to Moulton; that is not pretended. Now, on this trial, as the evidence stands, it is not claimed that any such expression was made by Beecher to either Moulton or Tilton on that night.

Well, gentlemen, Mr. Tilton goes home that night, thinking probably there was something strange that Mr. Beecher had not called on him again, and wants to know what had transpired between himself and wife. And I come now to another contradiction of Mr. Tilton in his sworn statement. He says in that statement that he found his wife weeping and almost distracted at the situation in which she had involved herself by the charge and by its retraction. We shall show you, gentlemen, that he found his wife sound asleep that night, on his return, enjoying the only period of happiness that she had been accustomed to know for several long years, namely, when she was wrapped in sleep. She was in bed with her nurse. Theodore Tilton entered that room, awoke his wife, and entered into a conversation with her which awoke the nurse, who found Mrs. Tilton sitting up in bed, and terribly agitated. And then Mr. Tilton drove the nurse out of the room, and locked the door; and the nurse went into an adjoining room with a blanket wrapped around her shoulders, and sat there for a long time, while she listened to Tilton's loud and angry conversation with his wife. Finally he came out into the room and got pen and ink and paper, and went back, and produced the next day this explanation of his wife of the retraction which she had given to Mr. Beecher.

But you see, gentlemen, the situation in which this retraction had involved Mr. Tilton. He had made the charge, in the first instance, supposing that Mr. Bowen was to back it; so he says. Falling in that, he had obtained from his wife in some manner a letter which he said inculpated Mr. Beecher; and, backed by that, he confronted Mr. Beecher and made the accusation; but he sends Mr. Beecher to his wife for the verification, and she retracts. Not only that, gentlemen, she does more: she makes a statement which, in effect, charges her husband with having extorted that paper from her. Mr. Tilton, therefore, found himself, on his return that night, robbed of his evidence against Mr. Beecher; but he found that Mr.

Beecher had in his possession the written statement of his wife, which virtually accused him of having extorted that charge from her. What was his situation then? He was in the absolute power of Henry Ward Beecher. All Mr. Beecher had to do to crush him from existence was to publish the fact, first, of the letter of the 26th, and then, how Tilton extorted from his wife this charge against him on the 29th, and then publish the wife's own handwriting, saying that that charge was false and was extorted from her when upon a sick bed, by her husband. Mr. Beecher, I repeat, had him absolutely in his power. He had nothing to do but to establish the facts to absolutely crush him. Theodore Tilton and his wise friend saw this situation. We shall show you that Mr. Tilton fully appreciated it on his return to that house that night. They must get that retraction; they must get it out of the hands of Henry Ward Beecher. And how were they to do it? They got the explanation that night, which is a mere explanation, as I shall have occasion to show you in a moment. But that was not sufficient. When he came to consult his adviser the next morning, Moulton told him that Mr. Beecher probably would not surrender that retraction at his request; that they must have the request of Elizabeth Tilton, the one who gave it to Mr. Beecher, to induce him to surrender it. And so they go to this sick woman again and get from her another paper, which is addressed to Moulton, the "mutual friend," and which I will read in this connection:

"MY DEAR FRANK:—"

[This is "Saturday morning," without other date.]

"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 to Theodore and Mr. Beecher. They will see the propriety of this request.

E. R. TILTON."

That was the paper which they saw that they must get from Mrs. Tilton to procure this retraction. They obtained it, and on the next night Moulton goes to Beecher armed with this paper and asks for this retraction. He shows him that letter, and Mr. Beecher objects to surrendering the paper. He says: "If I should die, what would my family have to protect their name and mine after I am gone? Supposing this charge is renewed, if I surrender this paper what is to protect my fame hereafter?" Moulton says: "You give it to me, and I pledge to you my word of honor I will do one of two things; I will either destroy both the accusation and this retraction, here, in your presence, or I will keep both together, so that one never shall appear without the other." He gave Mr. Beecher his choice, and Mr. Beecher says:

"I don't want the retraction destroyed; keep them both." That was the promise on which he obtained from Mr. Beecher this retraction.

I repeat now, gentlemen, with more significance, I trust, than I did when I first alluded to the subject, where is that letter? Why has it been destroyed? Why have these parties broken the solemn pledge under which they obtained from the hands of Henry Ward Beecher this evidence of his innocence? If that letter could be produced to-day, we say it would satisfy you that the charge there made was not a charge of adultery, but a charge of improper proposals, just as the retraction says it was. We say, put the letter and the retraction together, and they both fit each other and cover the case.

SIGNIFICANCE OF THE DESTRUCTION OF THE PAPER.

Why have they destroyed it? Why is this, the most important paper in the case, missing, when every other paper that sheds a particle of light upon the case has been carefully preserved by this painstaking and laborious "mutual friend"? There is not a scrap of paper or writing from Mr. Beecher, which could throw the slightest light upon this case, but that they have preserved and garnered up with a care that indicates that they consider it worth many times its weight in gold, more precious to them than diamonds. Every one of these letters can be construed by their oral statement into an accusation or confession of guilt. Why is the one paper—the one thing that would have settled this case, missing here? Do they pretend that they destroyed it with the knowledge and consent of Henry Ward Beecher? No! Was he consulted about it? No. Did he assent to it? No. They say they destroyed it. They tell you they destroyed it after the "tripartite agreement." Where is the logic, gentlemen, of taking out this one single paper and destroying that, and preserving all the others? If the "tripartite agreement" had been intended to be executed by them in the good faith in which it professed to have been made, and to be a final settlement of all this difficulty, then I concede to you that there would have been logic and reason and propriety in the destruction of all the papers that bore upon this case. But why the destruction of this one single paper? Why the picking out of this scrap from Moulton's archives and consigning this to the flames, when they husbanded all the others? I will tell you why, gentlemen. We will show you that this paper could not have been destroyed, if it has been destroyed at all, until the conspiracy was hatched between Theodore Tilton and Victoria Woodhull to charge Henry Ward Beecher with adultery, and then the suppress-

sion of this paper became absolutely necessary to the scheme. They could not live a moment with that paper in Mr. Beecher's reach. It would blast every man and woman that would have connected himself or herself with the scheme. He would only have to produce it to convince every man in the community of the conspiracy. Suppression, therefore, became imperative, an absolute necessity; but the paper was never destroyed, if it has been destroyed to this day (which we do not believe, and which you have no evidence to prove but Theodore Tilton's), until after they had perfected that conspiracy.

Now, gentlemen, we shall show you by a witness who has no superior for integrity in the city, a man whose word will stand unquestioned by you, a man who was one of Theodore Tilton's most intimate friends when his course entitled him to the friendship of honorable men—that after the publication of the Woodhull scandal Mr. Tilton showed to this man a copy of the identical paper that he said he had presented to Henry Ward Beecher on the night of the 30th of December. They say it was destroyed immediately after the "tripartite agreement." We will show you, I repeat, that he produced it to a man, and read it, and said: "This is the paper that I presented to Henry Ward Beecher on that night;" and when that man, looking at the paper, says: "Is that in Mrs. Tilton's handwriting?" he says: "No, it is a copy, but the original is with Frank Moulton." And that was after the Woodhull publication. Now, gentlemen, if we show you that fact, I think that will end this case, and reveal this conspiracy in a light so plain that even "he who runs may read."

But, to show you, gentlemen, how unworthy of credit are the witnesses on the part of the plaintiff, I need call to your attention but a single instance in the testimony of Francis D. Moulton. It is concerning the letter which they obtained from Mrs. Tilton on Saturday morning the 31st of December, and on which they sought the return of this retraction from Mr. Beecher. Now, gentlemen, if there is any one fact in this case which must have made its impression upon the minds of these two witnesses, it is that night of the 30th of December and the ensuing day. No event in the life of Theodore Tilton ever compared with it in importance. The bringing of an accusation against a man so eminent as Henry Ward Beecher, possessing the confidence of the public as he did—the bringing of any accusation which involved moral turpitude against him, was a most important act. Mr. Tilton must have appreciated the consequences of it, as did his friend Francis D. Moulton from the start, because you see he began to make memoranda at once. Now, they found themselves completely flanked by Mr. Beecher obtaining

this letter of retraction from the wife on the night of the 30th of December. Never was disorganization and dismay sent into the camp of an army more perfect and absolute than the dismay and disorganization which struck Francis D. Moulton and Theodore Tilton when Mr. Beecher had obtained this retraction from Mrs. Tilton. They went to get a letter from Mrs. Tilton; they obtained it; and yet, when we ask Mr. Moulton how this letter was obtained, he is utterly unable to tell you. It is the most remarkable instance of want of memory that I have ever seen in my experience in the trial of causes. He says in the first place, as you remember, gentlemen, that he thinks he went to the house and asked Mrs. Tilton for it, and he thinks he went into the sick-room and saw her; but he don't know. He thinks she wrote it there, but he don't know. He don't know whether her husband accompanied him to the house or not. He don't know whether the husband accompanied him into the sick-room or not. Finally, he don't know whether he was in the house at all, or in the sick-room at all. He has no recollection of seeing her writing the letter at all; and finally, he don't know but he got the letter from the hands of Theodore Tilton himself. Now, I will read you the evidence on this subject. Upon his direct examination he says to Mr. Fullerton:

"Q. How did you receive that note—from whom? A. I think from Elizabeth Tilton direct.

Mr. Porter—From her? A. From her directly.

Mr. Evarts—Not personally—at her house? A. Yes, sir."

He had not any difficulty on the direct examination in answering where he got the letter, but on the cross-examination you will see how his memory fails him. I read from the cross-examination.

"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 a sick-room or not. I saw her.

Q. Was she in bed or not? A. I do not remember."

Now, gentlemen, perhaps you will believe that a man who went to a house to see a lady to obtain so important a paper as that, and went into her room and got the letter from her in that room, would not remember whether she was in bed or not when he went in. You may believe that, but I do not think you will.

"Q. Was her husband with you? A. I do not 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 went 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 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 recollect whether it was or not."

Now, gentlemen, we have shown you that Mrs. Tilton was sick that night and that day. This explanation, which I will read to you in a moment, shows that she was sick in bed, and we shall show you she was sick in bed on that occasion. She had been attended by her physician every day, from the 24th until the 30th. And yet this man, who went there to obtain this letter, don't know whether she was in bed or not when he went into her room; and he don't remember as a fact whether that letter was written in his presence. Now, it is not so important, gentlemen, where Mr. Moulton obtained this letter; it is not very important, except as it characterizes his conduct, whether he got it at the house by Theodore Tilton going up into the room and getting the wife to write it and bringing it to him, or whether he went into the room and waited for her to write the letter. But it is important for you to know whether this witness is telling the truth, the whole truth, and nothing but the truth; or whether he is equivocating, whether he is saying he don't remember when you know he does remember; and, if you believe that he says he does not remember a fact when he does remember it, that discredits his testimony utterly and thoroughly, and you are not permitted to give any credit to it.

"From whose hand did you receive the letter? A. I think I received it from the hand of Elizabeth Tilton."

"Q. Can you say you did not receive it from the hand of Theodore Tilton? A. I cannot say but I did receive it from the hand of Theodore Tilton."

MR. MOULTON EQUALLY A CONSPIRATOR WITH MR. TILTON.

There is another fact in this connection to which I desire to call your attention, which bears upon the good faith or the honest pur-

pose of Francis D. Moulton. You remember that he told you he had been the intimate friend of Theodore Tilton from boyhood. He says he learned on this night that his friend's wife had been debauched by Mr. Beecher, and Tilton had consulted him in regard to that matter as a friend. The question we are now considering is whether Moulton is a conspirator with Tilton against Henry Ward Beecher. Having been consulted by his most intimate friend, and having pledged him his friendship in this transaction, he goes down to Henry Ward Beecher and invites Mr. Beecher up to this interview; and he tells you, gentlemen, that before Mr. Beecher reached his house he pledged his friendship and fidelity to Henry Ward Beecher in this same matter. Now, that he was the sincere friend of Mr. Tilton you know; nobody will doubt that. Was he the friend of Henry Ward Beecher, and was he actuated by good faith when he made that promise? That is the only question for you to consider here in order to determine the character in which Mr. Moulton stands in this case. If you believe that this assurance to Mr. Beecher was made in bad faith for the purpose of getting his confidence, that makes Moulton a conspirator with Theodore Tilton in this transaction. But, further, gentlemen, he goes back to Henry Ward Beecher on the 31st, and requests the return of the retraction, presenting a letter of Mrs. Tilton; and he obtains the retraction and goes away. Now, he knew at that time that he obtained this retraction by presenting this letter of Mrs. Tilton. Yet, when the matter is first published by the Woodhulls, it is published by them in this way; Mr. Tilton is represented as saying: "My friend took a pistol, went to Mr. Beecher, and demanded the letter of Mrs. T. under the pain of instant death." That was one of the most severe charges against Mr. Beecher in the article. In Mr. Tilton's statement, and in all of Mr. Moulton's statements, they had conveyed the idea, in one form of language and another, that Mr. Beecher was compelled in some way to surrender that retraction to them; that is, that they demanded it of him, and he surrendered it; and the question which has influenced the public against Mr. Beecher more than any other fact is the question, how he came to surrender this retraction upon the demand of Moulton that night. They have always concealed the fact that they had Mrs. Tilton's letter, who had a right to demand its return; and that they presented that letter to Mr. Beecher, and upon that induced him to surrender the retraction. That is a fact always concealed by these men, never made public until forced out of them in this judicial investigation.

Has that concealment been made in good faith? or has it been one of the tricks of

these parties, like the garbling of Mrs. Tilton's letters, for the purpose of creating public opinion against Henry Ward Beecher? Why did they not publish, when they published anything, the simple fact that they took this letter of Mrs. Tilton to Mr. Beecher, requesting the return of this retraction, and upon that he surrendered it? That would have been the simple truth, but it would not have accomplished the object they had in view.

The reason of that was asked of Mr. Moulton upon the witness stand. He was asked to explain that, and what does he say? He says he had absolutely forgotten the existence of this paper. Forgotten the existence of such an important paper as this! In the face of the Woodhull scandal, even, the existence of this paper had not occurred to him! "But you learned it somewhere, Mr. Moulton?" "Yes, sir." "You published it in one of your statements, Mr. Moulton?" "Yes, sir." "Did you there publish it in connection with the surrender of the retraction of the accusation, or the surrender of the retraction?" No; he did not, and he is compelled to say he did not. Every publication which he makes in which he puts this letter, carries the idea that this retraction was surrendered to him upon a demand, and he publishes this letter in an entirely different connection. Twenty pages away from the story of that interview he publishes this identical letter, and he publishes it for the purpose of telling a lie. He publishes the letter and says, "I could not comply with Mrs. Tilton's request to return these letters to her that she might destroy them, because I had *previously* given my word to Henry Ward Beecher that I would carefully preserve them both." Yet, gentlemen, he had this letter in the morning, and he obtained that retraction in the evening, and he obtained it upon the credit of this letter itself and nothing else. He says he had previously pledged his word to Henry Ward Beecher that he would preserve both papers together and not destroy them. *Previously?* Why, he had not seen Mr. Beecher concerning this retraction until he had the letter of Mrs. Tilton in his pocket. The retraction was obtained on the night of the 30th, and he did not see Mr. Beecher again until the night of the 31st. He had this letter in his pocket on the morning of the 31st, and took it with him to Mr. Beecher, and read it to him; and yet he conceals this fact; but when he is compelled to publish every paper he has in his possession on the subject, he publishes the paper, and then tells a lie about it, by saying, "I could not comply with Mrs. Tilton's request, because *before* I had received this letter from her, I had given to Henry Ward Beecher my word of honor that I would preserve both papers."

FRIDAY, FEBRUARY 26, 1875.

39TH DAY.

May it please the Court, Gentlemen of the Jury:—When I closed last night I had finished all I had proposed to say to you on the subject of the interviews of the 30th and 31st of December, except that, in another connection, I shall have occasion to refer to what Mr. Moulton says were the confessions of the defendant on the evening of the 31st. That interview, as you remember, gentlemen, closed by Mr. Moulton having obtained from Mr. Beecher the surrender of Mrs. Tilton's retraction of the charge which she had made against him in her letter dated December 29. It had been surrendered on the express promise of Mr. Moulton that that retraction and the accusation should be preserved and kept together. He had taken that retraction to Mr. Tilton, and the difficulty in which they seemed to be involved the day before by Mr. Beecher's holding in his possession such a piece of terrible evidence against Mr. Tilton was removed. They had discovered also that the shock which Mr. Beecher had received in consequence of the accusation of Mrs. Tilton, of beholding her on her sick bed, not only shattered in body, but, as he feared, in mind, had produced a profound impression upon Mr. Beecher. The quick and accurate eye of Moulton had not failed to discover that his heart had been disturbed and moved to the very foundations.

THE LETTER OF APOLOGY.

Having obtained from his hands the evidence which he held against them, on a promise that the accusation and the retraction should never again be used, the next thing that seems to have occurred to these parties was to pursue this enterprise, and to see if they could not obtain from Mr. Beecher something authenticated by him which would give a pretext to the accusation which Mr. Tilton had made against him. For, although the retraction had been surrendered, Mr. Tilton did not care to rest, if he could help it, under the imputation that retraction cast upon him; nor to leave in Mr. Beecher any possible disposition to denounce him and his atrocious course; and he sought, if possible, to get something from the defendant which should justify or palliate the charge which he had made. Therefore, Mr. Moulton returns to the interview on January 1st. I shall not stop to dwell here, gentlemen, upon the want of memory of Mr. Moulton as to the time when that interview began and when it ended, as to whether the gas was lighted or whether it was not; all that will be distinct in your mind. I come now to the interview, as he relates it, and to what did in fact occur at

that interview, and to discover, if we can, how much credit his testimony is entitled to, when he says that the paper which he took away from that interview was a paper dictated by Mr. Beecher, sentence by sentence, and written down by him as thus dictated.

On the evening of January 1st Moulton again visited the house of Mr. Beecher. But he came to make peace, not war. He drew a picture of Tilton's sorrows, of the utter wreck of his fortunes, of the destruction of his family peace; and all in terms so vivid and touching as to excite the feelings of his hearer to the highest pitch. He vindicated his friend from the calumnious stories which had been brought to Mr. Beecher and had been believed by him. He convinced Mr. Beecher that the charges which the latter, believing them to be true, had repeated to Mr. Bowen, were utterly without foundation. Then he dwelt on the alienation which had arisen between this husband and wife, and on the utter misery which had fallen upon the whole family in consequence. All this in terms calculated to wring tears of blood from a compassionate heart, but without a word of direct accusation against Mr. Beecher. And yet, under everything ran the implication that in some way Mr. Beecher was responsible for all his sufferings. Responsible for Tilton's business misfortunes, because he and Bowen had united to turn him out of *The Independent* and *The Brooklyn Union*. Responsible for the domestic misery, because the alienation of the wife, which Mr. Beecher had previously supposed to have arisen from the misconduct of the husband, was now assumed to have been caused by an undue affection for her pastor and a violent and protracted struggle between her passion and her sense of duty, which had destroyed her health and unsettled her reason.

Now, gentlemen, neither of these statements fairly describes anything which Mr. Beecher had actually done. They are only what he was made by Moulton to believe he had done. It is very easy to imagine the effect of such a process upon a nature proverbially kind and ingenuous. The measure of undeserved misery then predicated of this plaintiff having been piled very high with careful ingenuity, it needed but a slight push of suggestion to roll the whole over upon the defendant. It needed no special argument or persuasion to fix the responsibility; the man for whose shoulders it had been prepared hastened himself to assume it. Henry Ward Beecher stood convicted in his own morbid imagination, as a slanderer of the meanest type, and as a pastor and friend whose heedless folly had introduced discord into the holiest of relations, and had plunged into sorrow one of the happiest families of his flock.

Gentlemen, can you picture to yourself the

agony of his self-reproach under this new and astounding revelation? Can you imagine with what fanatical remorse he would pierce himself again and again with the thorn thus furnished to his hand? "What species of slander," he would say, "is so base as to charge a friend falsely with marital unfaithfulness, seeing that the charges must involve not him alone, but also some innocent woman in inevitable obloquy?" It is true he might palliate to himself the fault by pleading the honesty of his intentions and his belief in the truth of those reports. But neither in law nor in morals is the mere belief in a slander any justification for its utterance in the absence of a preliminary inquiry, with care proportioned to the magnitude of the case. Why had he not made more careful inquiry into the sources of his information? Why had he not instituted a more searching investigation into the facts before assuming the responsibility of action so injurious? Why so prompt to receive with credit calumnious reports against a friend? Such were the questions which the aroused conscience of the defendant, under the skillful manipulation of the plaintiff's serviceable friend, pushed home with stinging force and agonizing effect.

But if on this first charge Mr. Beecher, following the delicate instincts of an honorable man, felt himself to be absolutely without excuse, how must his self-reproach have been intensified by the additional thought now presented to him, that he had been the means of beguiling Mrs. Tilton into an undue affection for himself, and thus alienating her from her husband and destroying the home where that husband might otherwise have found refuge with his ruined fortunes? If this were so (and the evidence of what he had himself seen led him in his then excited state to accept Moulton's statement as true), there was absolutely but one excuse or palliation which he could offer to his own accusing conscience for the offense, namely: That he had not intentionally done wrong; that though he might have been culpably careless he had not been consciously guilty of any conduct tending to encourage the alleged affection. But such a defense involved the implication that the lady had conceived this passion entirely without suggestion from him, or any encouragement on his part, and he was debarred from any such plea by all the instincts of a gentleman, as well as by his genuine respect and affection for the lady herself. Nor would this plea, even if he could have induced himself to make it, have been a full defense. It is the solemn duty of a clergyman to prevent such a disaster from arising out of his associations with his flock. He is gravely in fault if he fails to see and to repress the first symptoms of a dangerous affection for him on the part of a married woman. This, gentlemen, is the simple and obvious

meaning of that language in Mr. Beecher's statement which has been so maliciously and so dishonestly perverted for the ends of this great conspiracy. "The case, as it then appeared in my eyes," says Mr. Beecher, speaks of this interview, "was strongly against me. My old fellow-worker had been dispossessed of his eminent place and influence, and I had counseled it. His family had been well-nigh broken up, and I had advised it; his wife had become sick and broken in body and mind, and I, as I fully believed, had been the cause of all this wreck by continuing, with blind heedlessness, that friendship which had beguiled her heart, and roused her husband into a fury of jealousy, although not caused by any intentional act of mine. And should I coldly defend myself? Should I hold her up to contempt as having thrust her affections upon me unsought? Should I tread upon this man and his household in their great adversity?" All this, for purposes sufficiently obvious, has been industriously misrepresented as a contemptible resort on the part of Mr. Beecher, to the very line of defense which in this language he expressly repudiates. Though this was his only possible defense, yet he forebore to use it. It was either this or silence, or, what was but one degree better than silence, an acceptance of all the blame, together with an earnest disclaimer of any intentional wrong. He says: "I disclaimed with the greatest earnestness all intent to harm Theodore in his home or business." Think for a moment of his situation, gentlemen. A charge, the most terrible that could possibly confront a man in his position (for it would be easy to show that, under the circumstances, a charge of impure proposals would seem to be more difficult to meet than one of actual adultery), and such a charge has been suddenly sprung upon him like a thunder-clap from a clear sky, not by the gasconading harlequin who orders him out of Brooklyn at the muzzle of a sheet of "commercial note," but in a paper signed by a lady, his friend, his child almost, one whom he knows to be, when in her normal condition, pure and good and truthful. How stunning the surprise! how horrible the complication! Is it possible that she can have consented to such an accusation? If so, what diabolical machination has led to it? And what must be the final result? He has received from her, indeed, a frank retraction, with tearful expressions of regret, and a touching story of the means by which she was driven to such an act; but hardly are these consoling accounts cold before he is informed of a re-retraction! Then is she indeed broken in health and distracted in mind; and all these troubles have been brought upon a family for many years, and still, so dear to him; and he a minister of the gospel, who has been to these people as a father, he the man

by whose agency all this ruin had been brought about! When we consider the swift succession of images presented to the man who, in addition to his remorse for the past, had reason to apprehend a plunge into public conflict with a jealous husband, and with no other defense than his own simple word of honor, can we wonder that Mr. Beecher was a deeply agitated and excited man!

But this is not all. The pastor of Plymouth Church, surrounded by troops of friends, might have risked even this terrible conflict, if he were absolutely free from blameworthiness. And it has been freely asked, how could he apologize to a husband who brought a false charge against him? But this contingency had been foreseen. The emissary of Tilton entirely dropped the charge of improper advances, and neither then nor ever afterwards alluded to it. But, using the language and manner of a gentleman, and pledging his word of honor to the truth of what he said, he found no difficulty in convincing Mr. Beecher that the unhappy little woman, who, as he well knew, and as her husband knew, had always loved Mr. Beecher with a reverential affection, had been misled by his flattering attentions and sympathetic interest into an actual passion for him, which had destroyed her domestic peace, and the struggle between which and her sense of duty had shattered her mind. That this was the fact, we have already shown that Mr. Beecher was made fully to believe. And did not this afford a more satisfactory explanation of her mysterious charge than his previous supposition that it was extorted from her by her cruel husband? Nothing was more natural than that a woman, whose mind was shaken by this cause, should imagine that the object of her love had solicited her affection. Nothing more natural than that in an hour of remorse and of mental prostration, she should confess her own passion and assert that she not only loved, but had been loved. For where is the woman living who will freely confess that she has loved without encouragement and without solicitation? This supposed state of facts cleared up the whole mystery, explained the whole disaster to the family, and relieved the husband from all suspicion of a conspiracy against his pastor.

But where did it leave the pastor himself? It made his defense impossible, so long as the accusation brought against him was not coarse and vulgar in its terms. He was not free from fault. His own conscience condemned him. Although he well knew that he had never said an impure word, nor offered an impure caress, yet he could not deny the charge of having beguiled the woman's affections, without imputing to her the indelicacy of "thrusting her affection upon him unsought." This is what he said he would die before he would do. This is what he said in his state-

ment last August, that he had always found it impossible to do. Nay, more, with such instinctive horror did he shrink from such a defense, that he would not use it to justify himself before his own conscience, but assumed at once that in some way he must have been to blame, he must have enticed the affections of this wife from her husband. And to this charge, which was the only one intimated by Moulton at the interview of January 1st, he pleaded guilty before his own conscience and before his God.

Here, gentlemen, I must break the thread of my narrative to prevent a fresh injustice to my client. It must be distinctly understood that he does not now believe, and that he did not, when making his statement last August, believe one word of this story concerning Mrs. Tilton's passion for him, to which he was induced to give credence in January, 1871. He believes that Mrs. Tilton has never been unfaithful to her husband in word, look, or thought. He believes that she has lavished upon her unworthy husband all the treasures of her royal nature, and that all the fountains of her love—a love to whose depth and tenderness no justice can be done by language of mine—have been wasted exclusively upon that barren sand which the plaintiff has himself described as the "cold and cruel heart of Theodore Tilton."

But, Mr. Beecher had no such relief on the night of January 1, 1871. Full of the conviction that he was responsible for the shattered mental condition and the domestic misery of the woman whom he loved with as pure an affection as any of you, gentlemen, have for your own daughters, for upwards of an hour Henry Ward Beecher walked that floor, giving utterance to emotions so intense, in language so extravagant, that the self-possessed, keen-eyed gentleman watching him there, almost forgot the delight of triumph in the pleasure of surprise. He had come to this interview, commissioned to obtain at all hazards something from Beecher, something to supply the place of deserting auxiliaries and lost ammunition. Bowen had slipped from under and could no longer be relied on for the promised reinforcements. The charge of improper proposals has failed or had been neutralized by the retraction; the locker is absolutely empty, and the whole campaign must be begun anew. To get in Mr. Beecher's hand or with his signature something in the nature of a confession of improper advances to fit the vague accusation which had already been propounded with such imperfect success—this was the problem. A tolerably difficult game to play, one would be apt to think, with the wily and accomplished villain whom you have already heard so vigorously described by the senior counsel for the plaintiff. But lo, this man, represented to

you as a shrewd and gifted scoundrel, a consummate villain, an unparalleled dissembler, who had practiced wholesale lewdness for more than thirty years under the concentrated gaze of the whole world, and up to this time succeeded in covering his tracks—now advances voluntarily to this friend of a day, opens at once every joint in his harness, and invites him to insert his javelin at his own sweet will. Why, gentlemen, never did a three-year old baby, quivering with contrition for its first conscious fault, more swiftly run to bury its bowed and tearful face in its tender mother's lap, than did this suffering man advance to cast himself on the breast of that guileless and gushing creature, Francis D. Moulton.

With the volubility of one half crazed, he pours out the most poignant self-reproaches without limit. For, gentlemen, you know that men express themselves about their sins generally in inverse ratio to their desert of blame. Their estimate of sin is according to their standard of holiness. There was once before, in good old Scripture days, a man who was given over for a time to the manipulations of the devil. I refer to Job, the patriarch of Uz, who is spoken of as a man "perfect and upright, one that feared God and eschewed evil." And yet in the days of his affliction this good man could say: "I abhor myself and repent in dust and ashes." It was because he had been permitted to see in a vision the divine standard of holiness. The greatest of prophets cried: "Woe is me, for I am unclean, for mine eyes have seen the Lord." And from those times down pure and spiritual-minded men—men conspicuous in the world for personal holiness—have been wont to puzzle and astonish worldly natures by the unmeasured terms in which they have denounced their own faults and imperfections. So this defendant on this occasion, excited almost to frenzy by pity and remorse, gave way to his mighty sorrow in a vocabulary whose sombre richness and fullness we may well imagine. How embarrassed by the very copiousness of the resources thus gushing forth before him, must have been this "cool hand" who there with hard, cold eyes, set watching this curious development. "Something to commit Beecher" had been his quest, and here was Mr. Beecher himself furnishing terms in torrents, intense enough, comprehensive enough to cover all sins forbidden in the decalogue! Oh, to get a thousandth part of this rich material on paper, for here it is running all to waste, and every sentence is gold. "There's millions in it." But the copious talker is in no mood for writing, and our shrewd operator in vivisection, watching then his opportunity, sees the supreme moment arrived for dropping the scalpel and taking up the pen.

HOW THE LETTER OF APOLOGY WAS WRITTEN

And now, gentlemen, having brought you up to the situation as it exists in our conception, let us leave it thus for a moment. Mr. Beecher, pouring forth an unceasing torrent of morbid self-accusation and sorrow, and Moulton, with unpracticed pen, in the gathering darkness, at his wit's end, to make rapid selection and arrangement from the multitude of significant expressions, such as should best answer the end in view, namely, to get Mr. Beecher on paper in the attitude of a penitent criminal. Let us, I say, turn from this interesting situation, and institute a somewhat careful inquiry into the genesis and nature of the remarkable paper which was the product of that rapid incubation. There is no doubt, gentlemen, that the paper originally called the "Letter of Apology," but more recently the "Letter of Contrition," was written by the mutual friend at this interview of January 1, 1871; but in regard to every other fact concerning its preparation the defendant and Mr. Moulton will be in conflict.

The interview of January 1st is described by Moulton as follows: On his direct examination he says;

"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 that I told Mr. Beecher that Mr. Tilton seemed to me to be"—

[Then he was interrupted. Then he proceeds again:]

"I told him that I thought that—I told him that Tilton 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?'" [Observe, gentlemen, that the suggestion of writing comes from Moulton in this interview.] "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 1, 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."

So remarkable a fact, you observe, gentlemen, had attracted the attention of the counsel, and he wanted to make sure if the witness meant to be understood that after he had read this letter aloud carefully to Mr. Beecher, Mr. Beecher then took it and read it over himself. "A very remarkable fact, if it be true," as the newspapers say.

On cross-examination he was asked:

"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. Bulard'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."

You will remember, gentlemen, that he described that interview as lasting from one to two hours, and yet he names but three subjects that were conversed about at that interview, and all he relates of the interview would not have occupied more than ten minutes. Indeed, he states but little of importance occurring on that day, except the fact of the writing of this letter. He admits that the preparation of the paper was suggested by a remark that Mr. Beecher made during that conversation. But in another part of his testimony he says that the paper was prepared at the beginning of the conversation. He says it was dictated by Mr. Beecher deliberately, sentence by sentence, and that he wrote it down as dictated, and that the paper is not only in Mr. Beecher's words, but the very sentences are of his construction, while Mr. Beecher will tell you, gentlemen, that this paper was prepared towards the close of a long and excited conversation, embracing many more topics than those referred to by Moulton; that it was suggested by Moulton, who remarked that Tilton was under the impression that Beecher was inimical to him and desirous of his overthrow, and that if Tilton could but know how kindly Mr. Beecher had expressed himself towards him in this conversation, it would remove all harshness from his mind. Mr. Beecher declined to write, but said: "You can tell him what I say." To which Moulton replied: "It would have more effect if it came from you in some authentic

form." "Well," said Beecher, "you can make a memorandum of what I say." And thereupon Moulton took a pen and began to write what Beecher had said during the conversation. Substantially, gentlemen, the only dictation which Mr. Beecher did in the matter, was on two or three occasions, when Moulton asked him: "What word or phrase did you use at this point?" And Mr. Beecher supplied the word or phrase as the case might be. The preparation of the paper was the last thing done at the interview. It was completed after Mr. Beecher's tea-bell had rung, which on Sundays always rings at five o'clock. The sun had set. The room was growing dark, and the gas was not lit. It was written in great haste, it was not read over by Moulton, nor was it read by Beecher. It would hardly have been possible for either to read it. When asked by Moulton to sign it, Mr. Beecher refused, on the ground that it was not his paper; but, being pressed, he finally took a pen and wrote on the extreme lower edge of the last page: "I have trusted this to Moulton in confidence."

H. W. BEECHER."

The question at issue between Moulton and this defendant is this—Was the paper prepared at the beginning of the conversation, deliberately dictated sentence by sentence, written down exactly as delivered and present with the parties during the remainder of the interview, or, on the other hand, was it hastily prepared, at the end of the conversation, by one who endeavored to gather up and record the more salient points of what had been previously uttered? To settle this question of veracity, gentlemen, I appeal to the paper itself. Is it credible that Henry Ward Beecher ever dictated and deliberately signed such sentences as are here recorded? We say that the paper bears on its face conclusive evidence of desperate haste, leading to inaccuracies of composition, which neither Mr. Beecher nor Moulton could ever have committed, had they written deliberately and at their leisure. In the first place, it lacks all the indications which would distinguish a letter either written or dictated by a man of culture, habituated to the production of thoughtful, methodical papers. The slightest glance must convince any intelligent man that no man of letters could ever have literally dictated this incoherent production, no matter what his mental condition if it were short of absolute insanity. Even if he had been insane, it is doubtful whether the habits of a literary man would not have led him to prepare a letter having at least the external symbols of logic, sense, and order. But the paper now under consideration, as the most uneducated man may see, is absolutely without logical sequence, and violates the most familiar rules of composition. If

Mr. Beecher had really dictated a letter to Mr. Moulton, sentence by sentence, his literary instincts would inevitably have prompted a production having such a natural beginning, middle, and end as is common to all letters written by educated men.

This paper has none of these things. It opens with an abrupt extravagant phrase which, if literally construed, is profane, and which shows upon its face that it is a distortion of a proper, though excited expression. But note, also, the entire disconnection of the latter part of the sentence from the first. [The letter was here handed to the jury, who examined it while Mr. Tracy continued.] The first sentence of this letter, gentlemen, is as follows:

"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."

Now, I ask you to note that the last clause of that sentence has no sort of relation to the first; and, yet, Mr. Moulton coolly swore in your presence, that Mr. Beecher deliberately dictated as one single connected sentence, without any intervening stop, these extraordinary words: "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." No one but a maniac could have deliberately uttered such a sentence; and neither Mr. Moulton nor Mr. Tilton has ever ventured to print that sentence in type as it was originally written. But all the sentences are disjointed; they do not follow each other in any natural order. Their confusion is perfectly comprehensible if we believe that they are hasty reports of hasty expressions, spread over a long conversation, at intervals, and eagerly grasped at by one who was anxious to record the worst language which he could possibly select from the excited utterances of a man under deep feeling; but utterly incomprehensible, if we accept Mr. Moulton's oath that the paper was deliberately dictated and deliberately written.

But it is necessary that I should show you the desperate haste with which this paper was prepared by other internal evidence of a still more unmistakable nature. In the first place, if you observe the paper, you will see that the first four or five lines are more distinctly written than the subsequent portion. Down to the word "God" every letter is complete in itself, but after this word a comma is inserted where there should be a period, and the next word begins with a small, instead of a capital "H" in the first sentence, after the word "God." You can hardly read that sentence, gentlemen, without making a

period at the word "God," and commencing the new sentence, of course, with a capital; and yet you will observe that it is commenced with a small "H" and separated only by a comma. Now, Henry Ward Beecher would never have dictated such a sentence as that; it is not possible. Nor is it possible that Francis D. Moulton would have ever written such a sentence as that, except in the greatest haste; and I am now referring you to the internal evidence from the paper itself, that Mr. Beecher's version of the conversation must be true, and Mr. Moulton's must be untrue. It will be further observed that the writer inserts a comma after the word "man," where there should be none, and a dash after the word "been," where there should be a period. He next writes, "I can't ask nothing"—clearly showing that he did not write this from dictation. For he would not have written "can't," if Mr. Beecher had just dictated "can." But starting to frame the sentence "I can't ask," he discovered as the remainder was formed in his mind, that he must change "can't" to "can," and so canceled the "t," as you see in the manuscript—a clear evidence, as we submit to you, gentlemen, that that word was not written from dictation, but written by a man who was starting to frame a sentence in his own mind, writes three words of the sentence, and then sees, as the balance of it is formed in his mind, that he must change the word; and so changes "can't" to "can." And so the word "other" is imperfectly written, the necessary letters being undiscoverable, as is seen by an inspection of the paper, showing further evidence of the haste with which the writer went on with the composition. You see, as he began, he began leisurely, writing the first few lines—every word perfect; but as he goes on in his composition, his haste increasing, darkness perhaps coming on in the room, there are letters left out of the words and characters inserted that cannot be said to represent any letters. The word "would" is very imperfect; no one could say that the last character was intended for a "d." After the word "ache" he makes a dash, instead of a period, as there should be. The first period occurring in the paper is found after the word "myself," away down in the composition. The words "for myself" are interlined, which would not have been the case had he written them down from Mr. Beecher's dictation.

The second period occurs after the word "suffer." The next period occurs after the word "inculcated." The sentence succeeding begins with a small "a" after the period he has marked.

You observe he has marked a period there; and then, in haste, has begun the sentence with a small letter instead of a capi-

tal; and I want to impress upon you the fact, gentlemen, here, that although this letter was published by Mr. Moulton, it has never been published as written; that is, he changes the whole form and style of the letter by the form of its punctuation—the manner in which he punctuates it and publishes it. The punctuation I now give is in accordance with the manner the letter was punctuated when written by Moulton himself; I am reading you his own punctuation of it. The word "towards" is imperfectly written, there being nothing to indicate the letters "d s" except a single dash of the pen resembling "d s" in no wise either singly or together. There is no comma after the word "friends" as there should be. The next "toward" is printed "towards" in the statement. You will see, gentlemen, that in the sentence "lying there and praying, with her hands folded," after the word "hands" there is a semi colon instead of a period, but the next word begins with a capital, "She is guiltless"—the word "she" beginning with a capital. The "s" in "sinned against" has been altered evidently from an "I." He started to write "I," then he changed it to "s" and wrote the word "sinned." There is no period mark after the word "another," although the next word begins with a capital, as it should do—the sentence beginning "Her forgiveness I have." You see the "I" looks as if originally written an "s" and changed to an "I." And thus all the way through, gentlemen, this letter bears internal evidence on its face, that it was prepared in great haste; confirming precisely in itself the statement which Mr. Beecher will give you of this interview, and of the manner in which this paper was prepared. Now, Moulton asks you to believe, gentlemen, that he not only read this letter himself, but that Henry Ward Beecher took the letter afterwards and deliberately read it also, without discovering or correcting these errors of punctuation. Is it possible to believe that Henry Ward Beecher would ever sign and send out over his own signature such a composition as that?

But now, gentlemen, we come to the conclusive evidence that the writing of this letter was suddenly terminated by an abrupt interruption. You will observe that the paper begins in the form of a letter, addressed to "My Dear Friend Moulton." Had the writer recognized the fact that he had concluded his letter with the sentence, "I humbly pray to God that he may put it into the heart of her husband to forgive me," it is impossible to understand why he did not prepare it for Mr. Beecher's signature by adding some usual concluding clause, as "Yours Truly," or the like. You observe, gentlemen, that letter begins, "My Dear Friend Moulton." Now, I say, that if Mr.

Moulton had supposed that letter was to stop when he wrote the last word of the letter, that that word was the conclusion, he would have prepared it for Mr. Beecher's signature by adding, "Yours truly," or "Yours faithfully," for Mr. Beecher to sign. But there is no such clause in the letter. On the contrary, you observe that after the last word of that letter there is a dash instead of a period, showing that the writer intended to continue writing at the time he wrote the last word of the letter—that he had not finished the letter; he expected to keep on gathering up these gems that were falling in such abundance from the lips of this excited man. But at the time he had written his last word and made his dash, expecting to continue, Mr. Beecher's tea-bell rang and interrupted the writing and stopped it. Then came the question of signing. Mr. Beecher said: "I cannot sign that, because it is not my composition." Then he asked him to authenticate it in some form, so that he could show Mr. Tilton that he had something from Mr. Beecher. It was a trick, gentlemen; a plan deliberately devised to commit this man, in his excited condition, to some note or memorandum that could afterwards be used against him as a power to convince him that he was under their control—that they had him committed. That was the purpose and the object of that letter, and that is the way it was that Moulton pressed so hard for Mr. Beecher's signature in some form to the letter itself.

Gentlemen, Mr. Moulton tells you another fact—that he put at the head of that letter the clause, "In trust with Francis D. Moulton." He says Mr. Beecher did not dictate that. He says it, I think, for the purpose of explaining the absurdity of Mr. Beecher's dictating that clause at the head of the letter, and then adding it at the foot of the letter, leaving it twice upon the letter. Mr. Beecher would not have been likely to do that. If he had dictated at the head of the letter "In trust with Francis D. Moulton," he would not have added the same thing at the foot. Nor would he have added that, if it had been written as a letter to Francis D. Moulton. But Moulton said: "Trust this to me; I will preserve it; I will see that no harm comes to you by your giving me this document, that I may show Tilton in writing how kindly you feel towards him. Leave that to me; trust it to me;" and by these forms of expression, repeated by Moulton when inducing Beecher to authenticate this paper in some form, he got from Mr. Beecher the phrase: "I have trusted this to Moulton in confidence. H. W. Beecher."

Again, gentlemen, if Mr. Beecher had commenced this letter dictating "My Dear Friend Moulton," and that letter had been written by Mr. Moulton in the course of five or ten minutes, what must he have thought of Mr.

Beecher, or Mr. Beecher have thought of himself when he refused to sign the letter which he had commenced by dictating? Is not that a remarkable statement—that Mr. Beecher should begin the dictation of a letter "My Dear Friend Moulton,"—a letter that only contains about one hundred and thirty or one hundred and forty words, and at the close of it should say, "I won't sign it"? You see it begins in the form of a letter. Now, if Mr. Beecher had deliberately commenced that in the form of a letter, why would he not have finished it? What operated in his mind in these five or ten or perhaps twenty minutes during which this letter was preparing?—what operated upon his mind to make him change and refuse to sign the letter which he had begun by addressing it "My Dear Friend Moulton"? Why, the proposition, it seems to me, gentlemen, carries the evidence of absurdity upon its face; and it shows that Mr. Beecher did not dictate that phrase, "My Dear Friend Moulton." It is evidenced by another fact: in all these four years' correspondence, among the number of letters which Mr. Beecher has written to Mr. Moulton since then, no letter of his has ever been addressed in that form, "My Dear Friend Moulton." There is no such letter from the beginning to the end of this correspondence.

For all these reasons, we submit to you, gentlemen, that this paper itself so corroborates the statement that Mr. Beecher will make to you upon the stand, and so contradicts the evidence that Mr. Moulton gives you, that when you come to hear Mr. Beecher's statement you will believe that he speaks the truth, and that Mr. Moulton does not.

MR. BEECHER'S ALLEGED ORAL CONFESSIONS.

Now, gentlemen of the jury, I come to another branch of this case; and that is the branch which is now mainly relied upon, to wit, the pretended oral confessions which this defendant is alleged to have made to Francis D. Moulton and to his wife, and to the plaintiff, Theodore Tilton. In the beginning, gentlemen, we shall show you that these parties relied expressly upon the writing that they had, and upon nothing else. As late as July 10, 1874, after the appointment of the Church Committee, and on Mr. Tilton's first appearing before the Committee, we shall show you, I apprehend, by evidence which you will not doubt, that Mr. Tilton there said that his case against Henry Ward Beecher was in writing. He said that he knew that his reputation was impaired in this community, and that the guilt or innocence of Henry Ward Beecher did not at all depend upon his word—he had it in writing. I think that the evidence will show you that

after Mr. Tilton had repeated that once or twice over, he was interrupted by one who thought, at least at that time, that he had seen the written case against Henry Ward Beecher, who said to him: "Mr. Tilton, if your case against Henry Ward Beecher is in writing, then it is wholly a question of what these writings prove; that is a fact that other people can judge of as well as you can; it is the construction of the papers;" and he was told then and there, I think, by one who supposed he had seen these papers and studied them carefully, that they did not warrant the insinuations which Theodore Tilton was then making, and they would not prove the case that he was then insinuating. I think it will transpire before you, gentlemen, that up to that time neither Tilton nor Moulton had ever talked about oral confessions of Henry Ward Beecher. I think it will transpire that this part of their case has arisen since that date. At least I have no doubt that it will appear to you that on that occasion Mr. Tilton did not pretend that he had any oral confessions from Mr. Beecher tending to establish his case, but that he said distinctly that his case against Mr. Beecher was in writing, and was locked in his safe, or in Moulton's safe.

In Moulton's statement, published August 21st, some time after this, and after this controversy had begun, Mr. Moulton alleged in general language, that Mr. Beecher had confessed orally to him; but his language was entirely general; he gave no specific words; he made no statement which was legal evidence of that fact. His paper was challenged on that account, and it was said: "If Henry Ward Beecher ever confessed to you, why haven't you stated the confession, so that other people can see whether his language amounted to a confession of guilt or not?" It was not until after he had been thus challenged and made his second statement that he undertook to give the words in which Mr. Beecher confessed. And finally, on the trial here, gentlemen, he clothes Mr. Beecher's confessions in entirely different language from what he did in his second statement. But you will not forget the remarkable language which he so continuously puts in the mouth of Henry Ward Beecher; "sexual relations," "sexual intercourse," "sexual expression," "adultery," not once—not once, gentlemen, I beg you to observe, but continuously, at every interview, and he never has Mr. Beecher refer to "their relations," without preceding it with the word "sexual." Do you believe that, gentlemen of the jury? Even assuming that Henry Ward Beecher did intend to convey to Francis D. Moulton the idea that he had had criminal relations with the wife of the plaintiff, do you believe that at every interview that occurred between them afterwards Mr. Beech-

er expressly referred to the confession, and used the precise language that he did on the first occasion? Having used it once, would not a mere reference to it afterwards have been sufficient? Was it necessary for him to repeat always the words "sexual relations" to have Mr. Moulton understand what he meant? Why, it is most improbable, I submit. If Mr. Beecher had been confessing, he never could have been guilty of such weakness, and displayed such love of nasty expressions as to be continually rolling these from his lips, as Moulton says he did. It is impossible to believe it; it is incredible. They are words that are manufactured and put into the mouth of Henry Ward Beecher on occasion after occasion. He never used any such expression; he never made any such confession. And you will remember, gentlemen, if you recall his (Moulton's) expression upon the witness stand, when he has attempted to repeat this phraseology, the remarkable slip he made, not once, but twice, when he undertook to say, "Mr. Beecher said his relations—his sexual relations." Not once, but twice, he did that in repeating it, and that is the precise manner he repeats it in his statement. In his published statement he says: "Mr. Beecher said his relations with this woman," without adding the word "sexual; but when he comes to repeat it from the witness stand he says: "Mr. Beecher said his relations—his sexual relations;" and when he told it again on his cross-examination he made the same slip, and, recalling himself, added the word "sexual."

I shall not dwell upon those interviews. They are remarkable, if they ever occurred, most remarkable. It is a most remarkable fact that Henry Ward Beecher, if he had been guilty, could have committed the indiscretion of throwing open his heart to a friend of a day; for you will bear in mind that Francis D. Moulton was a stranger to Henry Ward Beecher on the night of the 30th of December. He tells you that he was a stranger to him; that is, he knew him as everybody knew Mr. Beecher; he had a speaking acquaintance with him; he had been introduced to him before, but there were no relations between them as friends or acquaintances; and yet he goes to him on the 30th of December in a hostile attitude, as a friend of the man who was accusing him, and he comes to him again on the 31st of December, the next night, and he says, without word of caution or preliminary suggestion, Mr. Beecher opened to him and confessed his adultery with this woman. The absurdity of the statement itself is sufficient to challenge the closest scrutiny on the part of the jury, and to excite the gravest doubts, even if it fell from the lips of an unquestioned witness, whether it could be possible that any man in

his senses could be guilty of such an indiscretion as that.

AN INVENTED INTERVIEW.

But further, gentlemen, you will remember the great struggle we had when Mr. Moulton was on the witness stand, to get him to testify that the subject of these stories which Bowen had circulated against Tilton to Beecher, and Beecher had circulated against Tilton to Bowen, were the subjects of conversation between Mr. Beecher and Moulton on the night of the 31st of December, or on the night of the 1st of January. But we could not get him to do it; we could not get him to say that Mr. Beecher agreed to apologize to Bowen, and to write a letter to Bowen taking back what he said in regard to Tilton and Mrs. Bullard. He would not acknowledge that it was done on either the 31st of December or the 1st of January. This was very important for him, and he understood the importance of it, because that would give a clue, you see, to the contrition and the sorrow and the regret which Mr. Beecher was expressing on the night of the 1st of January. If his discreditable report concerning Laura Curtis Bullard had been the subject of conversation, and he had agreed to take it back, and had agreed to write a letter for that purpose—if these stories that he had circulated in regard to Tilton, to Bowen, had been the subject of conversation, and he had been expressing his regrets concerning them, why, that would have furnished some explanation of what his excitement was, what caused it. But they keep that all out of view. They ask you to believe, gentlemen, that there was nothing talked of on either of these nights except his relation to Mrs. Tilton, substantially, and that that was what he was expressing his sorrow and regret for; and so they say that this letter to Bowen was not the subject of conversation. But it was written so soon after, you see, gentlemen, that they could not postpone it very long. It must be the subject of conversation right away. If it was not on the night of the 31st of December, or the 1st of January, it must be immediately following. They saw that necessity, and they must meet it. Now, how did they do it? Moulton does it by inventing an interview between himself and Mr. Beecher on the 2d of January, where he makes these stories the subject of conversation, and this letter to Bowen their matter of talk and agreement. I say he invents it, and I shall leave you no doubt upon that subject, gentlemen. The 1st of January that year came on Sunday. This letter called the "Apology" was written Sunday afternoon, in Beecher's house. Moulton tells you that he called the next day in the afternoon, towards evening, somewhere from 3 to 5

o'clock, I think, that evening, and had another long interview with Mr. Beecher, on the 2d of January, and he tells you in great detail what occurred. He tells you expressly, in answer to a question put to him on cross-examination, that he had four separate interviews with Mr. Beecher on four successive days. That is the question put to him and that is the question he answered. Now, gentlemen, we shall show you that Francis D. Moulton had no interview with Henry Ward Beecher on the 2d of January. The 2d of January was the day celebrated as New Year's, and Mr. Beecher, as was his custom, received New Year's calls that day, and was engaged all day long in receiving New Year's calls. He had nearly 800 callers, I am informed, at his house on the 2d of January, 1871. Busy all day, from 9 o'clock in the morning until late in the evening, he had no opportunity for such an interview, and no such interview ever occurred. I say it has been invented, and invented for a purpose, in order to enable this witness to carry an interview, on very important and vital questions, one day beyond the writing of this letter of apology. He tells you further that Mr. Beecher consulted him on that day as to whether the pew-renting should go off that year. Why, gentlemen, if that interview was on the 2d day of January, the pew-renting was to take place the next day, and had been advertised everywhere, and everybody knew it was to go on. The talk of stopping it from going on would have been worse than a printed confession. There was no such talk, no such thought. The renting of the pews, I say, had been advertised, and it took place the next day, and there was never a suggestion as to whether it should go off or not, or be postponed.

THE FIRST OBJECT OF THE PLOT.

The object of the efforts of Moulton and Tilton in the early days of January, 1871, was to restore Mr. Tilton, if possible, to *The Independent* and *The Union*. You see, gentlemen, that this dismissal was disastrous to Mr. Tilton. He has stated to you from the witness stand why it was disastrous. It was peculiarly disastrous for this reason. He had just made a new arrangement with *The Independent* by which he ceased to be editor and became chief contributor, and was to be editor of *The Union*, and that arrangement had been announced in *The Independent* on the 22d, and yet, eight days afterwards, he is displaced from both papers; and everybody said, "Why this remarkable change?" It was disastrous to Mr. Tilton; it was something more than a mere business change that could be explained on its face without discredit to other parties. Hence their great desire to restore Mr. Tilton in some way to *The Union* and *Independent*,

or to get some explanation of that dismissal which would not be ruinous to him. Now, their plan was to get everybody who had told stories concerning Mr. Tilton to retract. Mr. Beecher was to retract, Mrs. Tilton was to retract, and you see they did get a letter from Mrs. Tilton which denied that she had ever desired a separation from her husband, and attributed it to the action of her poor mother; they even force this weak and sick woman in her weakened state to attribute her action, in the letter which she gave them, to her mother. They got Bessie Turner to retract the stories which she had told to Mr. Beecher concerning Mr. Tilton.

And, gentlemen, there is more significance to the retraction of Bessie Turner than to most of the retractions in this case, because there is another fact connected with it. Bessie Turner had circulated the story, had told to Mr. Beecher and had told to other people that Mr. Tilton had twice attempted her virtue, once by taking her from her own bed and carrying her to his, and on another occasion, I believe, in coming to her bed-room and attempting to lie in bed with her. These stories were told, and the evidence of Moulton and Tilton shows you that they knew that she had circulated these stories, and, taken with the flood-tide that was coming in against Mr. Tilton, they were extremely damaging. And they say that she was a girl that was given to talk, and she was somewhat under the influence of the mother-in-law, and, if we are to believe Mr. Tilton, the mother-in-law was sometimes given to talk, and it was important not only, therefore, to get Bessie Turner to retract these statements, but to get her out of the way—get her out of Brooklyn where she would not talk—get her into a distant country, where no Brooklyn people could hear her, where she would not be tempted to retail these scandals concerning Tilton.

They tell you that Bessie Turner was sent West because she had overheard a quarrel between Mr. Tilton and his wife, in which Mr. Beecher's name had been mentioned, and that was the reason she was sent away, and not because of these stories. And the question is, which is true? They attempt now to put the responsibility of her absence upon Mr. Beecher and upon the rumors concerning Beecher and Mrs. Tilton. But they were careful to get from Bessie Turner her written retractions of these stories against Mr. Tilton, and they treasured them up. What for? For the very use that they are putting them to now; for the very use that they are making of them now. They bring them into Court to confront this young girl, and to say, Here are statements that your stories concerning Mr. Tilton are false. They got them for that purpose, and they went into these general archives of Moulton, of all papers relating to this scandal, and have been care-

fully preserved ever since. Was that to protect Mr. Beecher? Did they get these retractions from Bessie Turner that Theodore Tilton had never attempted her virtue, or never had carried her, screaming, from her bed to his own, in order to protect Henry Ward Beecher? I think, gentlemen, you will agree with me, that the same reason that induced parties to get the retraction, influenced them in sending her away. They are connected; there is a vital connection between the obtaining of this retraction, and the sending Bessie Turner out of Brooklyn. Now, here are her letters; January 12th is the last.

"The story that Mr. Tilton once lifted me from my bed, and carried me, screaming, into his own, and attempted to violate my person, is a wicked lie.

Yours truly,

BESSIE."

The other letter was dated January 10th, 1871. [Reading:]

"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 by any one else, to bring trouble on my two best friends, you and your husband. Bye-bye.

BESSIE."

Now, that is a remarkable letter, gentlemen, to be obtained by Mr. Tilton and placed in the hands of his most intimate friend to be kept and preserved. It is a very remarkable letter. I say it was obtained by Mr. Tilton. It was obtained at his suggestion and influence by his wife, and placed in the hands of his most intimate friend, Francis D. Moulton, and by him preserved until this hour, ready to be produced against this girl if she should ever appear in Court and give a different version of this transaction. "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." "Caresses!"—a very remarkable phrase, gentlemen, if there never was anything between Tilton and Bessie Turner. Then, that was not sufficient, so two days afterwards they got another letter from her. "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." Well, now, gentlemen, Bessie Turner never said he did. If there was any such story, it was a lie. I am not aware that Bessie Turner ever charged any such thing against Mr. Tilton. I understand that her story simply was that she was taken from her bed in his arms and carried to his bed, and he attempted to persuade her to remain

there. I have never understood that the charge was one of attempted violence. So that letter of Bessie Turner is no retraction of what she had really told against Theodore Tilton, as I understand it. So it does not convict her of falsehood; if any such stories had got in circulation, she could properly deny them. And now, gentlemen, isn't it remarkable that the man who, they say, sent her away, had no inducement to get any retraction from her? She had never circulated any stories about Mr. Beecher and Mrs. Tilton; she never had anything to retract concerning them, and nobody ever suspected her of a disposition to talk concerning them. That is a pretense. But we have the fact that she talked about Theodore Tilton. We have the fact that it was well known to Moulton and Tilton that she was talking about him at this very time. Moulton tells you so. We have the fact that those two retractions were obtained and she was sent away; and we shall show you, gentlemen, that she was sent away as an inducement to her giving these retractions.

But more, we have it from the unconscious language of Francis D. Moulton himself, when he says that "he told Mr. Beecher." Mind you, Francis D. Moulton is the man that suggested the sending away of Miss Turner, not Henry Ward Beecher. Francis D. Moulton is the man who makes the suggestion, and he tells Mr. Beecher that Mr. Tilton cannot afford to pay the expenses, Ah, indeed! If it was Mr. Beecher's business to send her away, why would Tilton have ever thought of saying whether he was able or not able to pay Mr. Beecher's bills? Do you say that you are not able to pay your neighbor's hack bill? Does that question ever occur to you? Do you ever use any such language about paying your neighbor's hack bill? If this was Mr. Beecher's affair—if she was to go away for his protection, and not for Mr. Tilton's—why did Mr. Moulton use the remarkable language that "she ought to be got out of town, but Mr. Tilton cannot afford to pay the expenses"?

You cannot have a more explicit acknowledgment, gentlemen, that it was understood by all the parties that it was an affair which Mr. Tilton was to pay, but an expense which he could not afford to incur, because of his reduced condition in consequence of his dismissal. And therefore, in the interest of peace, when they are getting everybody to retract and are seeking to repair Mr. Tilton's character—everybody is to retract that has ever said anything against him—they say it is indispensable to his salvation from this girl that she be got out of Brooklyn, but he could not afford to pay the expenses. Then Mr. Beecher says: "If it will be doing a favor to Mr. Tilton, I will pay the expenses of sending her to school; I will meet these

expenses; Mr. Tilton is in reduced circumstances; Mr. Tilton's income has been cut off; if it is really necessary to his restoration that this girl should be got away where she cannot talk, why send her to school and I will pay the expenses." And now these men come in, gentlemen, and attempt by their oath to turn upon Mr. Beecher a transaction that was instituted and carried forward, as the written documents which we have already introduced, as the evidence which we shall further introduce will show you, for Tilton's benefit. Yet, that has been made a charge of crime against Mr. Beecher. But, gentlemen, they soon found that reinstatement was impossible; Bowen could not or would not take Mr. Tilton back. Therefore, the scheme of *The Golden Age* was started. That history, gentlemen, you know; I shall not dwell upon it. Sufficient to say that it was started under auspices that were favorable, and that Mr. Tilton believed he was going to have a great success in that paper, and he probably would have had a success in it but for the folly which he was led to commit in the summer following, in writing Mrs. Woodhull's life.

UTTERANCES INCONSISTENT WITH ADULTERY.

There is another fact, gentlemen, that transpired at the interview on January 3d or 4th, to which I desire to call your attention. It is the interview when Mr. Beecher meets Mr. Tilton at Mr. Moulton's house, early in January, when Mr. Tilton cut him, you will remember: did not receive him cordially. I call your attention to it briefly in support of the theory that we are now attempting to bring before you, that the action of all of these parties has been inconsistent with adultery. Mr. Moulton says that Mr. Tilton did not recognize Mr. Beecher cordially at their first meeting, after January, and he upbraided him for it. He says: "Why, Mr. Beecher has done all he could; he has apologized. You ought to accept it; you ought to recognize him, and I don't like to have you treat a guest in my house in this way." Well, now, gentlemen, are you prepared to believe that Francis D. Moulton used such language as that to an injured husband who was meeting the seducer of his wife? And he talked to Mr. Tilton so severely that Mr. Tilton did recognize Mr. Beecher. I do not dwell on it; I only call it to your mind for the purpose of showing simply that their actions are entirely inconsistent with the theory which they now seek to advance. It is impossible that a man can upbraid another for not shaking hands with one who has done him such a great wrong as that, the first time meeting him after such a disclosure. It would be an insult and an outrage which I do not think even Moul-

ton could be guilty of perpetrating upon his most admired friend.

Then comes the correspondence of February 7th, where three letters, gentlemen, were written on the same day, written, as Mr. Tilton tells you, at Mr. Moulton's suggestion. All these writings are done at their suggestion. Mr. Beecher is told, "You had better write; there is some object that you can accomplish by a letter; now write." And the three letters are written, two by Mr. Beecher—one to Mrs. Tilton and the other to Mr. Moulton—and a letter by Tilton to Moulton. Now, the object of these letters, gentlemen, is very obvious; it is to make more complete the reconciliation which these parties had attempted to inaugurate. The men were reconciled after this interview at Mr. Moulton's house to which I have just alluded, but the woman was sulky; the woman was resentful at her treatment; she was not entirely reconciled. She was recovering in health; they were not entirely sure that when she got out from under that roof again she would not go talking. She did not admire the manner in which she had been treated by her husband, and they wanted to make doubly sure of her submission; so they got Mr. Beecher to write this woman a letter, using all the influence that he had upon her, urging her to live with her husband, to submit to the wrongs that she was called upon to endure, and to build up and restore the peace and unity of her family. That was on the 7th of February. But there is a remark in the letter which Mr. Beecher writes Moulton to which I desire to call your attention, gentlemen.

It is in the line of the thought which I am now advancing, that the conduct of these parties shows conclusively that they were not dealing in regard to an admitted adultery, for in that letter of Mr. Beecher to Mr. Moulton, speaking of Mrs. Tilton, he says: "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." Is that not a remarkable sentence for a man to write to the most intimate friend of a husband who has been outraged by his wife being debauched by her pastor, for that pastor to say to his friend: "I hope to see that husband loving his wife with more even than the old love"—love her better than he ever did because of this act and after it? Is it possible that if this was an admitted adultery, and this man had forgiven his wife, that Henry Ward Beecher could be urging upon this mutual friend, this dearest friend of the husband, that the husband should love the wife better than he ever did before? Wouldn't a man be quite contented if he could see the husband love her as well as he ever did before? Gentlemen, Henry Ward Beecher was writing of the supposed affection which this

woman had for him, and had assured Mr. Tilton that he had never intended any wrong to him, that if his wife's affections had become alienated it had been by his unconscious act, and he was suggesting undoubtedly that if Mr. Tilton would be more attentive at home, show his wife more attention, he could win back her affections, and he trusted to see that family, which had thus been alienated and shattered, restored and built up, and the affection existing between husband and wife greater than it had ever been before. That is consistent; that is honorable; that is reasonable. But the suggestion that the husband should love a wife who had been debauched better than he ever loved her before, is a suggestion, I am sure, that never could have emanated from the pen of Henry Ward Beecher.

Then there are other letters during the winter or spring after that 7th of February, to which I shall not call your attention, except one, gentlemen. They have introduced a letter here from Mr. Beecher, which they say was an invitation to Mrs. Tilton to visit him at his house during the absence of his wife, and while his sister kept house for him. Now, we shall end all that, gentlemen, by showing that if that was such an invitation, or was understood to be such an invitation, that Mrs. Tilton never, as matter of fact, did visit Henry Ward Beecher at his house. I shall not stop to discuss, and it is not my purpose to discuss, the effect of the construction to be put upon that letter; but I simply announce to you the fact that no such visit ever did take place. She did not call upon Henry Ward Beecher at his house during that winter. The sister was keeping house, and the sister will be introduced on the stand and will so tell you. So will all the other letters, upon which I cannot dwell at present—I mean the later letters that passed in that winter.

Nor will I stop to consider the monstrous story which this plaintiff has told you concerning a remarkable interview which he says occurred between him and Mr. Beecher when they held an inquest over the paternity of the last child of Mr. Tilton. The monstrosity of such a story is sufficient to shock the moral sense of any man who is compelled to listen to it. You will not believe, gentlemen, that any such interview ever occurred. We shall show you what did occur there by the witness who was present and who took part in it. That was a friendly interview, and it was one in which Mr. Tilton expressed a wish that the past be buried, and that the old relations of Mr. Beecher to that family be restored, and he resume his visits—a fact which is quite inconsistent with adultery. But, for reasons which are obvious to you, while Mr. Beecher had the deepest sympathy for this woman, and while he had the highest regard for her, he, of course, under the circumstances, would

not renew his visits to that family, and never did.

AFTERNOON SESSION.

TILTON'S RELATIONS WITH MRS.
WOODHULL.

Gentlemen, we have now approached the period of time in this case when the plaintiff says he first made the acquaintance of Victoria Woodhull. Something of the history of that acquaintance, gentlemen, has already been detailed to you from the witness stand. You know something of the character and public position of Mrs. Woodhull, of her principles and the manner in which she advocated them; and the fact of this acquaintance of Theodore Tilton with her has also been brought to your attention. It is conceded that in September, 1871, he wrote and published a biography of Mrs. Woodhull. That has not been introduced in evidence to you, the whole of it, at least, but enough has been introduced to show you something of the character of the work; and the fact that he published it is admitted. He tells you, gentlemen, that that acquaintance of his with Mrs. Woodhull was a misfortune to him, and he has stated in various ways that it was a great misfortune, a great calamity to him. That that was the secret of Mr. Tilton's failure in his newspaper enterprise, *The Golden Age*, I have no doubt. At least that was sufficient to prevent success, if success had otherwise been possible. But the most remarkable feature of his evidence in this connection, is that he attempts to charge the existence of that acquaintance, and his association with Mrs. Woodhull, to the defendant in this suit. Even the writing of that *Life*, even his falling in love and becoming infatuated with this woman, is all on account of the defendant and for his sake, and on account of his wife's sake. The period which he assigns for the beginning of this acquaintance is a very remarkable one. He fixes it about May 23, 1871, and he tells you that before that time he had not known Mrs. Woodhull. He represents to you, gentlemen, as he is bound to do on his theory of his case, that his acquaintance with her being for the purpose of preventing her from publishing this scandal, was entirely pure on his part, that he never saw Victoria Woodhull guilty of any impropriety, and that his relations with her have been always entirely proper. Because, you perceive, as he perceives, that if he was compelled to admit that improper relations existed between himself and Mrs. Woodhull, even he could hardly have the presumption to say that that was for the sake of Henry Ward Beecher, or for the sake of his wife. Therefore he makes his acquaintance with her merely casual, having been

brought into relations with her on account of her knowledge of this scandal, and never pursuing that acquaintance was beyond what necessary, or what he deemed to be necessary to induce her to suppress it and not to publish it. Now, if it should transpire, gentlemen, that this is a misrepresentation on the part of Mr. Tilton, you will at once perceive how fatal it is to his case. If he has presumed, under the solemnity of an oath, to account to you and to this community for the remarkable relation which existed between himself and Victoria Woodhull, by invoking this scandal and its existence, and his apprehension that she might give publicity to it, when that statement is untrue—why, of course I need not say to you that no man would give credence to anything he has said here from the witness stand.

If we satisfy you, gentlemen, that his acquaintance with that woman, whether it originated at the time he says it did or before, whether it was as chaste and unexceptionable as he pretends it was, or not—if we succeed in satisfying you that that acquaintance did not originate and was not continued by him for the purpose of inducing her to suppress this scandal, then we contradict him on a vital point of this case. I shall not detain you, gentlemen, by a detailed statement of what we shall show in this particular; but if it should happen to transpire that Mr. Tilton's acquaintance with this woman did not begin when he says it did; if it went to a degree that he says it did not; if it was carried on for the purpose of inducing this publication instead of suppressing it, then his attempted explanation of his acquaintance with Mrs. Woodhull will prove to him the most fatal part of this case.

That he went down to Coney Island with her in a carriage is admitted by him. He denies that he went bathing with her. We shall satisfy you, gentlemen, that he is mistaken in that particular; at least we shall prove to you that when they arrived at Coney Island on that occasion, they deposited their watches in the custody of the coachman, and went to the sea-shore, as if to bathe—all, of course, for the sake of Mr. Beecher, and to preserve him from this scandalous publication! And we shall show you that when they returned the golden locks of Mr. Tilton were damp with the mists of the ocean, unless, indeed, they were dampened by the perspiration that he suffered on account of the agony he was enduring for the sake of Henry Ward Beecher, in his associations with Mrs. Woodhull on the sea-coast at that time. We shall show you that they returned to the carriage with all the evidences that they had been bathing together. We shall show you, gentlemen, what is not in fact disputed here, that when driven back to this city, they stopped at the house, I think, of Moulton, and

late in the evening they ordered a covered carriage, and he went home with Mrs. Woodhull. We shall show you that he discharged the carriage at that house, and the coachman left him there, where, we suppose, he remained all night, all for the sake of Mrs. Tilton, and to save her from the apprehended scandal that Mrs. Woodhull was threatening to publish! We probably shall leave little doubt on your minds, gentlemen, before the evidence closes, that Mr. Tilton used that acquaintance with Victoria Woodhull to stimulate this woman to the publication of this scandal rather than to its suppression. Unless I am very much mistaken, we shall show these two parties colluding together upon this subject. Unless I am misinformed or misapprehend the force of our evidence, we shall show these parties in consultation together. We probably shall show you that the slip, substantially as published afterwards, was in circulation in the newspaper offices long before that publication, and I think we shall leave no doubt in your minds that Theodore Tilton knew it and understood it. If we do this, and we bring you to the conclusion that Theodore Tilton was using the acquaintance of this woman to induce her to make this publication instead of suppressing it, what becomes of his oath upon this point and his credibility as a witness upon any other point in the case?

I need not dwell, gentlemen, to you on the fact that Mr. Moulton and Mr. Tilton induced Mrs. Moulton to go over for this woman and bring her to the house of Moulton in this city, not once, but twice, thrice, or more. I need not dwell upon the fact that this biography of her was published September 14th, in *The New York Sun*, as we shall show you. It has already transpired about what time it was published. It was published about the same time that he published the free-love article in *The Golden Age*. The two publications were almost simultaneous, and his publication of his principles of free-love in *The Golden Age* was made, as we shall show you, almost in the precise language in which Mrs. Woodhull announced her views upon the same question about the same time. This publication, gentlemen, was fatal, as I have said; to Mr. Tilton's prospects as a journalist. The indignation which that publication brought upon him from one end of the country to the other was evidence to him that his fate was sealed as the editor of a great newspaper in this country, unless he could devise some plan for relieving himself from that burden. But not only did he publish that *Life*, but we have shown you that he presided at the Steinway Hall meeting, and introduced her there. We have had the evidence of Mr. Moulton as to his speech. We shall present probably a more authentic report of it than has yet been

presented, and show you that he introduced her as the advocate of social freedom, and what that meant in his mind and in hers there will be no room for doubt.

But Theodore Tilton was not content with cultivating Mrs. Woodhull himself. He attempted to involve Mr. Beecher in that association; and what was the motive, gentlemen? Having involved himself in difficulty by this indiscreet publication, his effort was to compel Mr. Beecher to relieve him or to come to his relief; in other words, having found that he had taken upon his shoulders a load greater than he could bear, he undertook to "unload," in the language of "the street," on Mr. Beecher; and he wanted Mr. Beecher to come forward before the public to indorse this woman in some way, so that to everybody who assailed him for publishing her life he could point to the pastor of Plymouth Church and say: "True, I published her biography, but Henry Ward Beecher indorsed the woman and her sentiments at Steinway Hall. If you have got any quarrel with me, you have the same quarrel with Henry Ward Beecher. This woman is a good woman. This woman is a pure woman. An enthusiast she may be; but the fact that Henry Ward Beecher has indorsed her is evidence of her purity, and does not enable any man to condemn me for having published her biography." That was his effort. It was the scheme of himself and Moulton, and it is the explanation of their efforts to induce Mr. Beecher to preside at that Steinway Hall meeting. I have no doubt if we could penetrate the inner recesses of the thoughts of these three persons, it would transpire that the Steinway Hall meeting was devised for no other purpose than to induce Mr. Beecher to preside at it, and thus indorse this woman, and thus to that extent relieve Theodore Tilton from the scandal and the obloquy that he had brought upon himself by publishing her life. That life, as I say, was published in September.

On the 1st of November Tilton published the poem that has been given in evidence here, known as "Sir Marmaduke's Musings," and the object of that, although it is denied by Mr. Tilton, is perfectly obvious. There had been comparative peace from the 7th of February, in this matter, until November 1st. There had been no outbreak; there had been no scandal; there had been nothing but such a circulation as was given to it by the whisperings of Tilton and one or two others who were quietly circulating stories injurious to Mr. Beecher. What their nature or what their character was we do not know, but there had been to a certain extent circulations injurious to his character in this connection; but there had been no outbreak, and no outbreak had been threatened. None would have been made, gentlemen, if Theo-

dore Tilton had remained prosperous. If he had not made this blunder of writing the life of this woman, if he had not become so infatuated with her as to have lost his head and made a fool of himself, if he had gone on prosperously in *The Golden Age*, having a fair future before him, I have no idea that any publication would ever have been made, or any allusion made to his troubles. The history of this case shows to you, gentlemen, that whenever Theodore Tilton was prosperous, or whenever he had a future before him, he was as silent as the grave concerning this scandal. It was only when in adversity, only when he was down and was requiring help to be lifted, only when he was involved in difficulty and was demanding that Mr. Beecher should put his hand beneath him and raise him up, that he ever bruited this scandal at all. Then in September, I say, at the time of this publication, all was peaceful, but he had involved himself in difficulty. Mr. Beecher did not come forward to indorse Mrs. Woodhull, or to relieve him from that difficulty. It is well known, and will be shown to you, that Mr. Beecher always repudiated that relation of Tilton with Mrs. Woodhull. From the beginning to the end he told him it was disastrous. From the beginning to the end he always told him: "There is no power on earth can lift you into the respect of the people of this country unless you repudiate absolutely your relations with this woman." That was the position that Henry Ward Beecher always held to Mr. Tilton. It is the language he always used from beginning to end. "You must repudiate your relation there; you must cast her off; you must say to the people that in some way or other you have made a mistake, and you repent of it: and that henceforward your conduct will be entirely free from just cause of complaint in this particular."

MENACES TO MR. BEECHER.

But Mr. Beecher not moving, Mr. Tilton must give him a menace; he must do something to alarm him, something to stir him up, to make him go forward to aid him out of the difficulty into which he had fallen with the Woodhulls. So on the 1st of November he published what is known as "Sir Marmaduke's Musings." The first verse of it is;

"I won a noble fame,
But, with a sudden frown,
The people snatched my crown,
And in the mire trod down
My lofty name."

What had happened to have the people with a sudden frown snatch the crown of Theodore Tilton on the 1st of November, 1871? What but his relations with Victoria Woodhull and his doctrine of Free Love,

which he had before published in *The Independent* and *Golden Age*? There was nothing known to the public that could have justified that first verse in this poem except his known relations with that woman. It was that and that only to which he alluded. But the poem was an excuse merely to publish the following verse:

"I clasped a woman's breast,
As if her heart I knew,
Or fancied would be true,
But proved—alas, she too,
False like the rest."

And yet he tells you, gentlemen, that although the story of the scandal had been circulated among a large number of people; although it was known to the Woodhulls, as he says, the May previous, who had threatened to make it public, and who had published a card which called attention to the fact that some prominent minister in Brooklyn was living a life of adultery with the wife of another prominent teacher in Brooklyn; although it had circulated among his handful of friends, and how far it had gone he did not know, yet he tells you that when he published that verse he had no idea that anybody would think that he referred to his own wife. Do you believe it?

According to his own showing the story had been in circulation for nearly a year. How extensively circulated he could not know, but he did know that rumor of a domestic infelicity in his own family had received a considerable circulation in this community. Could he be so dull as not to understand that the publication of that poem over his own signature would be a confession to every person who had heard it, of that rumor, that the rumor was true, in whatever form they may have heard it? Whether it was of adultery, or of improper proposals, or of undue affection; no matter, I repeat, in what form they had heard the rumor, every person who heard the rumor of a domestic difficulty in the family of Theodore Tilton would have taken that poem as a confirmation of its truth. Didn't he know it would be so received? Can it be possible he did not know it? And yet, he tells you from the witness stand that if he supposed any person could have imagined that that had reference to his own domestic troubles he would have suffered his right hand to be cut off before he would have published it. I say that that was a menace; it was to send alarm to Mr. Beecher; it was to say to him: "Sir, you must come up to my rescue and my relief, or you will be scandalized by this report." And immediately following that publication, on the 1st of November, was started the Steinway Hall meeting, where they attempted to induce—not only induce, but by threats, to compel Mr. Beecher to preside.

And it is a remarkable fact in this scandal, gentlemen—it has been once stated and proved, and probably will be again, that in his relations with the Woodhull women, he was much more solicitous on account of his wife and Mr. Beecher than they were for themselves. For it is true that Mrs. Tilton, notwithstanding the threats and arguments by which he attempted to persuade her to acquiesce in his relations with this woman, always scouted her and always defied her. She never feared the slanders of Mrs. Woodhull, and she never accepted the arguments of her husband that it was necessary to placate this woman and prevent her circulating stories derogatory to her character. She would not have the Woodhull women in her house; and you see when Mr. Beecher was urged to preside at this meeting and to indorse this woman, he faced everything rather than consent to it. He said: "Let her do her worst; you, Theodore Tilton, do your worst; no power on God's earth shall induce me to indorse the principles that this woman advocates."

In confirmation of the fact which I have just stated, that Mr. Tilton's pecuniary wants were always the standard by which you could determine what his course was to be about these slanders, I am just reminded by my learned associate that at the very time of the publication of this "Sir Marmaduke's Musings," and this effort to compel Mr. Beecher to preside at the Steinway Hall meeting, Mr. Tilton had just overdrawn his account at Woodruff & Robinson's, and was consequently out of money. The importance of that will be made apparent as we go along to another point of this case. But I refer to another fact, gentlemen, in evidence, in support of my view that the Steinway Hall meeting was designed for the purpose of compelling Mr. Beecher to relieve Mr. Tilton from the load of obloquy which rested upon him; and that his refusing to do so was regarded as an act of hostility by Mr. Tilton, and was so treated by Mr. Moulton. From that time forward, whatever they may have pretended to Mr. Beecher, their course has been one of secret hostility, which has never ceased for a single moment. And, in support of that, I refer you to a letter of February 5th, 1872. That is the long letter written to Moulton on the 5th of February, 1872, which is known on this trial as the "Ragged Edge Letter." It is one in which Mr. Beecher, you remember, refers to his having upon his hands his church, his book, and his newspaper, and his being so absorbed in these labors and his course of lecturing abroad; he was necessarily taken away from the society of Moulton; saw but little of him, while Moulton had Tilton constantly under his presence; and, therefore, was continuously impressed with Tilton's needs and necessities,

as he necessarily could not be with the situation of Mr. Beecher. You will remember the letter. I only desire to call your attention to a single phrase of this letter in this connection for the purpose of illustrating the point that I am now making. Mr. Beecher says:

"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 Tilton as contenting myself with a cautious or sluggish policy, willing to save myself, but not to risk anything for Tilton."

"All this fall and winter;" that is going back to his refusal to preside at the Steinway Hall meeting, which was the preceding November. That is the beginning of the coldness of Moulton towards Beecher; or, in other words, it is the commencement of a feeling on his part that he could not induce Beecher to come forward and indorse this woman for the purpose of saving Theodore Tilton. This letter was written on the 5th of February, 1872. About that time, you remember, gentlemen, Tilton went West on a lecturing tour. His controversy with Bowen for his compensation had been pending under the charge of Moulton from January 1, 1871. It was now February, 1872, and he had not been paid. No money had been received on account of it. He goes West in 1872, and returns discouraged. He finds the public hostility against him so great that he cannot withstand it. They did not understand how it was that his relation with *The Independent* and *The Union* were so suddenly and mysteriously severed. Bowen still held out and refused to pay. *The Golden Age* was failing and was not paying expenses, and Tilton's money was again exhausted. Something must be done to replenish his treasury. That claim against Bowen must be pushed to a successful issue, and that amount received, or *The Golden Age* and all its prospects must collapse.

You remember, gentlemen, the letter which he wrote to Bowen on the 2d of January, 1871, immediately after his dismissal by that gentleman, in which he recounts, item by item, the different slanders which he said Bowen repeated against Henry Ward Beecher at the interview on the 26th of December. He wrote that letter. What was his motive? We say it was twofold: First, to show Beecher that if he did not sever the union between himself and Bowen, and make peace with Tilton, he would have to subject himself to the publication of this letter, and to this open scandal which would arise from its publication, because Tilton would publish to the world the accusations which Bowen had made against Beecher—the fact that he had instigated Tilton to write that letter, and that that had led to his dismissal. He pretends to say that he deemed the publication of that letter necessary to a proper explana-

tion of his dismissal. At all events, its preparation and its threatened use showed Beecher that if he persisted in hostility to Tilton, and continued his relations with Bowen, and so took Bowen's side of the fight, that letter would be published and he would have to confront the public scandal which would arise from it. It was used as a menace to Bowen by saying, "Sir, I publish this letter to the world; I inform the world over my own signature that in that interview you repeated those horrible scandals against Henry Ward Beecher. You instigated me to write that letter. You promised to support it. You promised to bear it to Mr. Beecher yourself. You have borne it to him as my friend, and you basely deserted me and joined him, and that is the explanation of my dismissal."

BOWEN THE VICTIM OF A BLACKMAILING SCHEME.

It was a missile, therefore, that was prepared to be hurled against both of these men; but it had another object. He knew that Henry C. Bowen would never dare to face those accusations against Henry Ward Beecher. He knew that Bowen would compromise or adjust those difficulties in some manner, because he would never take the responsibility of fathering such a scandal as that. He hoped, probably, in its first preparation, to induce Bowen to compromise and patch up a peace by which he would be taken back; but, when that failed, he knew it could be used for extorting the money. Moulton himself tells you, gentlemen—and it is a most significant sentence, one which I hope was so impressed upon your minds when it fell from the lips of that witness that it has not left your minds, and will not leave them until the case is finally decided—he told you that that letter was prepared to be used to negotiate with Bowen. Ah! it was a business letter. Tilton had an eye to business in everything that he did in this transaction. It was business from beginning to end. Whether his wife's virtue or his own character was involved, it was all brought to the standard of business—business; and this letter reciting those horrible stories and accusations was prepared that it might be used to negotiate with Bowen, says Moulton, and it was used, as I will show you, gentlemen, as few documents have ever been used in a Christian community, for the purpose of extorting money from a man who denied his liability. A suit had been instituted, but that didn't bring Bowen to terms. Bowen is not frightened at law-suits. But accusations against prominent clergymen are quite a different matter with him. The law-suits had not compelled him to pay. An intimation that that paper might possibly be used had

not induced him to pay. But when Tilton returned from the West, what does he do? He makes what he calls, or heads, "a personal statement," and he goes and sets it up in type in *The Golden Age*, as if he was to publish it—an explanation of the reasons why he was dismissed from *The Union* and *Independent* by Bowen, in which article you remember he incorporates that letter of January 1, 1871. He takes proof-slips of that article—press copies, as they are technically known—and what does he do with them.

Now, gentlemen of the jury, Tilton tells you that he felt impelled to make a publication of the reasons which had led to his dismissal in order to satisfy the public. He took press copies, and he took pains to have it shown to Bowen, as if he was going to publish it, and he takes one of these press copies himself to Samuel Wilkeson, as we shall show you, an owner in *The Christian Union*, largely interested in the publishing house of Ford & Co., who were Mr. Beecher's publishers, and he told him that he should publish that article unless Henry Ward Beecher did him justice. Not unless Henry C. Bowen did him justice. That would have produced no effect at all upon Samuel Wilkeson; but he took it to Wilkeson, a friend of Beecher, a man deeply interested in the reputation and prosperity of Mr. Beecher as a writer and a newspaper editor; a man who was to suffer a large pecuniary loss if anything happened to Mr. Beecher which should injure his usefulness in this respect. His house had invested a large sum of money in the book which Mr. Beecher was then preparing—"The Life of Christ." It was then uncompleted. Wilkeson saw at a glance that if that article was published it would produce a public scandal, which he told Tilton, then and there, would shake Christendom, and he says: "Tilton, you must not think of making this publication. What has Mr. Beecher done to you?" Says Tilton: "He did nothing to save me when Bowen dismissed me. He could by the lifting of his little finger have saved me; but when I lay upon the sidewalks in Brooklyn, deprived of my position, deprived of my opportunity for pecuniary profit and fame; when he saw me lying helpless upon the sidewalk, he passed by on the other side; he did nothing; he refused to aid me, and now he must do me justice." Bear in mind, gentlemen, that Henry Ward Beecher owed Theodore Tilton nothing. Theodore Tilton apparently was not seeking to extort money from Henry Ward Beecher, but he was seeking to obtain what he claimed was due him from Bowen. If he was prosecuting an honest claim, why did he go to the friend of Henry Ward Beecher about it at all? Why didn't he go to Mr. Bowen? We shall show you he did cause the letter to be communicated to Bowen

by another hand—a threatened publication. Did he ever intend to publish, gentlemen? Was that letter prepared by Theodore Tilton with an honest intention to publish it, for the purpose of making this explanation to the public, which he pretends to have thought necessary; or, was it prepared for the sole and single purpose of being exhibited to the friends of Mr. Beecher and the friends of Bowen, to compel Bowen to settle this account, and to compel Beecher's friends to insist to Bowen that he should settle that account? On this important point I will cite no other witness against Theodore Tilton but Theodore Tilton himself. If I satisfy you, gentlemen, that his pretense that he prepared that article with a view to publication was untrue; that his whole object was to extort the payment of his claim, which he said Bowen owed him, and to induce Mr. Beecher and his friends to insist to Bowen that he should pay him—I say, if I satisfy you that was his only object, then I show Theodore Tilton engaged in a transaction that can be truly called by no other name than that of blackmail, for no man is at liberty to resort to threatening a publication, or creating a scandal against another in order to compel the settlement of a disputed claim.

You see, gentlemen, that if the allegation upon which Henry C. Bowen discharged Tilton, to wit, his immoralities, which rendered it unsafe and improper for him to continue his relations upon the paper, had been true, he could have successfully defended any action that Theodore Tilton might bring against him. He had brought his action, and Bowen had not paid. That this article was prepared for the purpose of extorting this money, as I have said, I cite no other witness against Tilton than Tilton himself. What does he tell you? He says that this article was prepared and set up, and two or three copies of it struck off; that the type was then "locked up," the proof corrected, in which Oliver Johnson assisted him, and one or two copies struck off—not over two, he says—and he accounts for every copy, you remember, or attempts to, and then, says he, *the type was immediately distributed.*

I want to know how he could publish it in *The Golden Age*. If he set up this article, and struck off only three or four copies to be used for private circulation, to be exhibited to Bowen and to Beecher and their friends, and then immediately distributed the type, how could he have made the publication? The fact that that type was distributed immediately upon the striking off of these one or two extra copies, gentlemen, is conclusive evidence that he never intended to make the publication, never expected to make the publication. He got his copies so that he could show the people that he was about to make the publication; so that he could say to them

he would make the publication, but he never intended to make it. He intended to use it simply for the purpose of compelling the payment of this money, and when he got his press copies, he says, he immediately caused the type to be distributed.

But, having got his press copies, then he proceeds to use them, and, as I say, he called upon Mr. Wilkeson, Mr. Beecher's friend, and Mr. Wilkeson was horrified at the suggestion of such a publication as that. He saw at once the fire that it would kindle. He knew the scandal that it would create. He knew the shock it would produce to this entire community, and he said: "It will never do to make this publication, Mr. Tilton. If Mr. Bowen owes you money he must pay it. I will see Mr. Beecher, and Mr. Beecher has friends in Brooklyn that can induce Henry C. Bowen to pay that money if he owes it to you. I will undertake to see that you get your money from Mr. Bowen; at least I will aid you." And Mr. Tilton said: "What a fortunate thing it was that I called on you this afternoon! I was walking along Fifth avenue, thinking how disastrous had been all my undertakings, how failure after failure had met me, and as I came along past this building, it occurred to me that my old friend Samuel Wilkeson was here, and I thought I would step in and see him. What a fortunate thing it was that I did. Some kind angel must have directed my steps hither!" That was on the 29th day of March, 1872, and on the 3d day of April Theodore Tilton had a check in his pocket from Henry C. Bowen for \$7,000.

I don't say that Henry C. Bowen was black-mailed, gentlemen. Oh, no! I don't say but what he owed Theodore Tilton honestly that money under his contracts. It is very clear that Tilton satisfied Wilkeson that he did; I don't say how that is; I don't know how it is; I don't care how it is; I only know that the claim had been in existence for 15 months, and a suit had been brought and Mr. Bowen had not paid, and I know that when Theodore Tilton came home from the west and made his personal statement, and took three or four press copies of it, and had distributed the type, and then went to circulating the copies around among the friends of Beecher and Henry C. Bowen—I know the money came.

THE TRIPARTITE AGREEMENT.

It came as the result of an arbitration, which produced what is known to you as the "Tripartite Agreement," where all these difficulties were settled and adjusted. And here, as I shall show you, gentlemen, comes in another one of those marvelous breaches of faith that have characterized this plaintiff and his "mutual friend" from the beginning

of this unhappy controversy to the present time. I shall show you now a fact which will leave no doubt, I take it, in your minds, if it be true—and we shall make it clear by evidence that even the plaintiff, I think, will hardly dare dispute—that it was distinctly understood and agreed, not only that all the difficulties between Henry C. Bowen and Henry Ward Beecher, but all the difficulties between Theodore Tilton and Henry C. Bowen and all the difficulties between Theodore Tilton and Henry Ward Beecher were to be compromised and adjusted in that arbitration and settlement.

And further, gentlemen, when that arbitration was concluded and the tripartite agreement settled upon, it was distinctly understood and agreed that every one of the papers connected with this scandal should be destroyed. That was a part of the arbitration; it was a part of the agreement; that peace was to be final and no party to that contract was to be at liberty, or to have the means hereafter of reviving any of the scandals settled or adjusted there. This was in 1872, you will remember, and the paper then known as the apology, which had been obtained from Mr. Beecher on the first of January, the retraction, and the explanation then existed, and were in the hands of Francis D. Moulton. Mr. Tilton had from Mr. Bowen what Mr. Bowen very much desired to recover, a letter known as the Woodstock letter. That was to be surrendered, and all the other papers were to be destroyed.

Now, we shall prove that, gentlemen. But how did this gentleman and his "Mutual Friend" carry out the agreement? I say the same breach of good faith which has characterized every act of theirs was found in this. They agreed to destroy, but they never did destroy. The only paper connected with this scandal that has disappeared from the archives of Mr. Moulton is that most important paper of all, that I alluded to before, the paper on which Theodore Tilton accused Henry Ward Beecher on the night of the 30th of December. That paper has disappeared. That paper, they say, was destroyed after the tripartite agreement, and in consequence of the tripartite agreement. Don't forget that, gentlemen. They tell you their excuse, and their only excuse for destroying that paper, for picking it out from among the mass of papers held by Moulton, and destroying it, was that the destruction of that followed in consequence of the "tripartite agreement." They do not admit, of course, that it was a part of the "tripartite agreement" that it should be destroyed; but they destroyed it afterwards, and in consequence of that. Why didn't they destroy all the papers then? They had agreed to. Why did they select this one paper? If it existed to-day, this case could not stir one single

step. Why did they pick that out from among the mass and get rid of that paper, and yet hold Mr. Beecher's papers in their possession, which afterwards, by means of oral confessions and oral testimony, they could make to mean whatever they chose to make them to mean? And the question I am putting to you, gentlemen, all through this case is, whether these parties have been acting in good faith—have been fulfilling their agreements and their arrangements which they have entered into from time to time. I say they have not. I say they have been conspirators all this time against Henry Ward Beecher; and if I show you that, in any important point of this case, they have been guilty of breach of faith, that they have violated their contracts, and have obtained advantages by fraud which they have afterwards retained and used against him, that is evidence sufficient to show that they are conspirators, and have been manipulating this defendant from the beginning to the end, with the view of holding him in their power so long as they could use him, and when they could do that no longer to destroy him if they could.

One word more upon the "tripartite agreement." Tilton tells you on his cross-examination, gentlemen, that the signing of the "tripartite agreement" had nothing whatever to do with the award of the money; that the money had been paid, and it had been actually received by him some time before there was anything at all said about this "tripartite agreement;" that it was a subsequent suggestion, brought up and signed by mutual consent, in no manner resting upon this arbitration. There, gentlemen, we shall show you he is not truthful. On the contrary, we shall show that the very first step in this arbitration was the "tripartite agreement," and the award followed the agreement to sign, and not the agreement to sign followed the award. We shall show you that, two days before this check was prepared and before this award was made, the "tripartite agreement" was drafted and was presented to this plaintiff, and he objected to a clause of it, and all his objections were met and arranged, and that the paper as agreed to by him finally to be signed, and as it was finally signed by him, was presented on the night of the arbitration, and was assented to in the presence of the arbitrators before they made any award at all, or considered the question of award; and that after this "tripartite agreement" had been fixed upon, and all its terms settled satisfactorily to Tilton, then the arbitrators withdrew into another room, heard his statement and Moulton's statement and Bowen's statement, and then made the award. Then the "tripartite agreement" was taken by Mr. Wilkeson and engrossed—it having been in detached pieces

and erased and interlined—engrossed by Mr. Wilkeson, just as it was agreed upon by the parties that night, and then it was signed; but the agreement to sign it and the terms of the agreement were all fixed before the arbitration commenced at all, and as a matter that preceded the arbitration.

Well, gentlemen, Mr. Tilton got his \$7,000 from Bowen, and was then in a prosperous condition. It is a remarkable fact, however, that just as he got the \$7,000, his dear friend, Mr. Woodruff, took advantage of that \$7,000 to get relieved from his subscription to *The Golden Age*, and all the parties got relieved from their subscriptions. If it should be necessary to go into that question farther (it is not very important and we may not do so), but if it is necessary, we shall have no difficulty in showing you that Mr. Woodruff urged the other parties to accept these terms, on the distinct ground that the paper was to fail; that he had no confidence in it himself, and said it never could succeed, owing to Mr. Tilton's fatal connection with the Woodhull woman—that he himself was entirely disgusted with the whole crowd, and wanted to get out of it, and that he urged the other subscribers to get out of it in the same way, and it was upon his argument and his suggestion that they did it. This was on the 4th or 5th of April.

THE GREELEY CAMPAIGN AND THE WOODHULL SCANDAL.

You will remember that the Cincinnati Convention followed soon after, in the beginning of May. Mr. Tilton went to the Cincinnati Convention. He claims, in an article subsequently published in *The Golden Age*, that he suggested the nomination of Horace Greeley to that Convention. Whether he got it patented or not I do not know. But at all events he took a very prominent part in that campaign. He looked to the success of Horace Greeley as the opening of a new avenue to his own success; and it is fair to say that in the beginning of that campaign the prospect did not look unreasonable. He went into the campaign heartily, and all through the summer of 1872 you observe there is no outbreak in regard to the scandal. The money had been got from Bowen; he had a future hope of success to be won in the election of Greeley; and he had every ambition to have no scandal that would injure him or his family, or injure any one; no inducement to promulgate the scandal; and he says he separated from the Woodhulls about that time. If he did, it is clear he separated from them on account of political reasons, and in the hope of having political promotion. You have seen, gentlemen, by

the correspondence we have introduced between himself and Horace Greeley, early in the previous year, how little sympathy Mr. Greeley had with the Woodhull woman or her doctrines; and it was very clear to the apprehension of Mr. Tilton, I think, that he could have no hope of success with Mr. Greeley if he continued his relations with Victoria C. Woodhull. He once in his life, therefore, sacrificed his love to his political ambition. He entered into the campaign, as I say, with high hopes of success, and nothing occurred until the North Carolina election, which was calculated to quench those hopes. But soon after, the Maine and Pennsylvania elections settled the fate of the Presidential campaign.

He still, however, adhered to the fortunes of his leader, and was engaged in New Hampshire, just before the election, at the time of this Woodhull publication. We may or we may not show, gentlemen, whether he was absent by accident or design at that time; but that he knew that this publication was to be made, and had known it for some time, I have no reasonable doubt. But the publication was made; and Mr. Greeley was defeated, and died soon after. Mr. Tilton's hopes of political success were gone in that direction. That avenue to prosperity had been closed. He must now seek other and different avenues.

You all remember, gentlemen, the sensation which that publication created, and the general expectation that some of the parties, at least, mentioned in that publication—not as principals, but as persons who had the sources of information—would deny that they had thus given the information to Mrs. Woodhull. There were various parties named as the sources of information. Mrs. H. B. Stanton was one, who denied promptly, as you will remember. Mrs. Paulina Wright Davis was another, who at the time of its publication was in Europe, but who denied instantly on its reaching her, that she had been the source of information to the extent imputed to her, or to any extent whatever. Francis D. Moulton was another person named in the publication as one of the sources of information; Theodore Tilton was another, and the publication rested entirely upon what was represented to be the information of these parties to the woman Woodhull. As I have said, Mrs. Stanton and Paulina Wright Davis denied it. It only remained for Moulton and Tilton to deny, and the Woodhull scandal would have been dead—dead absolutely, beyond the hope of a resurrection, without either of the principals, Henry Ward Beecher or Mrs. Tilton, touching it at all. But we have shown you that Tilton refused to deny, and there was a long delay. Nothing was heard from either Moulton or Tilton on the subject.

A PERSONAL EXPLANATION.

Now, gentlemen, we have reached a stage of this case, where, for reasons obvious, I suppose to you, and entirely so to me, my name has been dragged into this investigation, and it has been introduced in a way, by the plaintiff and his counsel, and his main witness, that leads me to make you a personal statement of my relations to this investigation and to this scandal, from the beginning to the end of it, so far as they have connected me with it. I shall not follow necessarily the order of time, but I shall begin at the most recent date and go back.

I shall endeavor, gentlemen, to state no fact in what I am about to say which will not be made plain to you by evidence which we shall introduce, or which, with the comments that I make upon the facts already proved, will not be sufficiently plain to you without further evidence. If some of the facts to which I am about to refer are material to this case, then, of course, we shall prove them by witnesses; but if the plaintiff in this case has dragged in matters that are not material, for the purpose of connecting my name with this investigation, I take it that I have a right to make a personal explanation of those facts, although when we offer the evidence in the case, he might probably object to it on the ground that it is not material. We may differ on that question.

I certainly confess myself surprised to learn that what transpired, or is said to have transpired, between myself and the plaintiff's wife at a time prior to her appearance before the Investigating Committee, is a matter at all material to the issue in this case, and yet that has been introduced by the plaintiff for the purpose of casting an imputation upon me and connecting my name with this investigation as controlling the plaintiff's wife in her action before the Investigating Committee. If I heard correctly the evidence of the plaintiff touching that matter, he says that I told him that I prepared every question and answer before she appeared before that Committee. Now, gentlemen, we shall show you, in answer to that allegation, that I saw the plaintiff's wife for the first time in my life to speak with her or to hear her speak—possibly I had seen her in the street before—but I saw her probably for the first time in my life about thirty or forty minutes before she was in the presence of that Committee, making her statement. I was introduced to her by her stepfather, Judge Morse, one of the most reputable men in this city, about thirty or forty minutes before she was before the Committee. I had no conversation with that woman, except in his presence and the presence of two or three witnesses. There never was a word passed between us as to what she should say before that Committee or what

she should not say. There was no question suggested and no answer suggested at all, and I never so told the plaintiff, the fact being, gentlemen, that on the sixth, I think it was, of July, knowledge came to me, quite late in the evening, that Mrs. Tilton was at the house of a mutual friend of herself and her husband, in Hicks street, desiring to communicate with some of the Church authorities of Plymouth Church, and I was requested to see her and have an interview with her to see whether she desired to go before the Committee. I called at that house, and I was informed that she had gone to consult her stepfather as to her duty. I did not see her then, but it was thought she would be back in an hour, or half an hour, or something like that, and I called again at the time that I supposed she was to come; and she came in with her stepfather, Judge Morse, and he introduced Mrs. Tilton to myself in the presence of two other parties.

It was then, I think, so dark that I could not see her face in the room where we were. We talked a few moments as to whether she wanted to go before the Committee or not, and before determining the question she went and had a private consultation with her stepfather, and returned and said to me she desired to see the Committee. Her stepfather left immediately, and I left to see the Committee, to see if they would come to where she was to hear her statement. I went to the Committee, and was gone perhaps ten or fifteen minutes, and the Committee returned. Mrs. Tilton had stepped down to the dining-room for a cup of tea, and I stepped down there to inform her that the Committee were ready in the parlor above to hear her. The lady of the house was present.

The only words that passed between Mrs. Tilton and myself on that occasion were substantially as follows. In the presence of this lady, I said: "Mrs. Tilton, if any questions are asked you this evening which under other circumstances you might consider indelicate or improper, I beg you to believe that they are not so intended. The Committee will undoubtedly question you, and they may inquire into something that under ordinary circumstances you might consider indelicate." She made answer that she should not be offended by any questions they saw fit to ask her, and went immediately into the presence of the Committee, and proceeded to make her statement. I was not gone two minutes from the parlor until Mrs. Tilton was seated in the presence of that Committee making her statement before them, and she proceeded at once without questions, and there were but very few questions asked Mrs. Tilton by the Committee or myself that evening. Her statement generally was a narrative of her relations with her husband and family affairs. Now, I never told the

plaintiff that I prepared every question and answer for this lady. I was not so disposed, and I never had any opportunity to do it, if I had been so disposed. It was an unnecessary reflection, it seems to me, for him to cast upon his wife. No such thing ever occurred.

Another effort has been made, gentlemen, to show you that I have been guilty of unprofessional conduct in some way in connection with this case in my relations to this plaintiff; and it is necessary for me to refer to the evidence already given upon the subject and then to state to you the facts as I understand them.

It is true that some time after the Woodhull publication—how long I don't know, but I should fix the time in either the last of November or the first of December—Mr. Woodruff inquired of me if I would consent to hear a statement of the facts concerning that publication, to see what answer could be made to it. He said many people were saying that Mr. Moulton, his partner, ought to make some statement. I say here that at this time it was well known to Mr. Woodruff, and to everybody who knew my sentiments on that subject, that I was the friend of Mr. Beecher in this affair, not his counsel, for he had employed none, and I had no relations to Mr. Beecher at that time which would have led him to select me as such. Although a member of his congregation, attending church there for a few years previous, I had never taken any prominent part at all in the affairs of the society and was not a member of the Church, nor was any member of my family, and I knew but very few people in the Church. I knew Mr. Beecher only as hundreds and thousands of others of his congregation know him, never having spoken with him, I think, over three or four times in my life prior to the publication of the Woodhull scandal. But I had been very outspoken to Mr. Woodruff in regard to this publication after it was made, and particularly in regard to Mr. Moulton's position towards it. Mr. Moulton was a stranger to me; Mr. Woodruff was well known to me. The understanding was distinctly stated that the employment was not professional, but a friendly consultation of me as a friend of Mr. Beecher, and as a friend of their firm, if I would consent to be consulted and look into the facts to see what answer, if any, could be made to that publication. It was distinctly understood that there was to be no compensation for that service. I said, certainly I would; if I could be of service to Mr. Beecher, or to them, in the matter, I should willingly give my time to do so. The next morning, or a few mornings after that, possibly the next morning, he came around with Mr. Moulton and introduced Mr. Moulton to me; it was the first time I had ever

seen him. Of course, gentlemen, it was in the hurry of business, in the morning hours of the day, and the conversation that occurred there was entirely general. The Woodhull publication was not there. I had learned from Mr. Woodruff before, or I had heard in the street—it was well understood, any way—that Mr. Moulton had certain papers in his possession that it would be necessary to see and consult before any one could determine what answer could be made to the Woodhull publication. The conversation, I say, was entirely general at that interview. There was no descending into particulars, for the obvious reason that the Woodhull publication itself was not present, and none of these papers were present, and therefore it would be idle to spend the time to consider the question of what could or could not be done. Well, my recollection is not specific as to that conversation in the morning, as it would not be as to any conversation occurring in the ordinary way in the morning hours at my office. I know generally that the object and purpose of that interview was to introduce Mr. Moulton to myself, and to appoint an interview where the papers should be present, and the whole question could be considered.

Such an interview was appointed, and it took place at Mr. Moulton's study. There were present, as I recollect it, Mr. Moulton, Mr. Tilton, Mr. Woodruff, and myself. Two conversations have been alluded to by the plaintiff in his evidence. I remember but one. As I recollect the conversation, I went down to the house of Mr. Moulton on Sunday, right after my Sunday dinner, which brought me there not far from three o'clock. I do not remember Mr. Tilton's being present when we entered the house, or went into the study; I know he didn't go into the study with us on that occasion. We went into Mr. Moulton's study, and the papers were produced. The first paper presented to me was the important paper in the case, and that is what was then known as the apology, which is now called the letter of contrition. I mean the paper of January 1st, 1871. The Woodhull's publication was present, and of course I had a general knowledge of the main features of that publication. That letter was examined by myself. I remember reading it and I remember what I said about it. Then the retraction was produced, and the explanation of the retraction was produced. Those were the only three papers which Moulton exhibited to me on that occasion that have been introduced in evidence here. Another paper, which was of very little importance, but connected with the case, was shown me at a later period of the conversation. Well now, gentlemen, there occurred at that interview just what men familiar with business would expect to have occurred in this respect. The object of the

interview being to see what answer could be made to the Woodhull scandal, the Woodhull scandal was taken up with reference to these papers, and gone over paragraph by paragraph.

The first thing that I asked Moulton about, of course, was the pistol scene as described in the Woodhull publication. That has been read to you once or twice. It represents Mr. Moulton as going with a pistol and obtaining this retraction from Henry Ward Beecher under the threat of death. I asked him if that was true and he told me no, as he has told you here, it was not true. Then the only other place in which his name was connected with it was where he is represented as going into the presence of Henry Ward Beecher and with Mrs. Woodhull and Mrs. Tilton urging Mr. Beecher to preside at the Steinway Hall meeting, and where Mr. Tilton is represented as having made a particular speech to Mr. Beecher on that occasion, setting forth reasons why he should preside at that meeting. I asked Mr. Moulton if that was true, and he said it was not; no such thing ever occurred—as he has sworn to you that no such thing ever occurred. He said that he had not given Mrs. Woodhull the information or any part of the information there published; he denied having communicated to her the facts; he denied having been an actor in the scenes where he was represented as being an actor. Now, my recollection is that after the paper had been looked over, a question was asked as to what Mr. Tilton had to say about this, and what the foundation of the story was, if there was any, and my recollection of it is that Moulton said he preferred that I should hear that from Mr. Tilton. At all events, I remember that Mr. Tilton was not in the room at the time. I know he came into the room soon after. Whether he was in the house when I went there and was waiting to be summoned to the study, I do not remember. He may have been sent for after I went there, or he may have been notified that there was to be a meeting and have come around late, and Mr. Moulton expecting him, may have gone down, and found him in the lower rooms and brought him up. I remember he came into the room after the papers had been shown to me, and after Moulton and I had had considerable talk on the subject of the Woodhull scandal. I didn't know when the interview was appointed that Mr. Tilton was to be present. His presence there was a surprise to me. Of course, when I was asked if I had any objection to seeing him or hearing a statement from him, I had none at all, and I said I hadn't. He was brought up into the room, and he brought with him considerable manuscript, rolled, as I remember, in black leather.

He sat down, and before he began to read

that manuscript, turned to me and said in substance, "Mr. Tracy, I don't know what the etiquette of your profession permits; if I give you a statement of my case against Henry Ward Beecher, and he and I should afterwards come into collision, in that case would the etiquette of your profession permit you to be counsel for Henry Ward Beecher?" I did say to Mr. Tilton, as I remember it, without discussing what the etiquette of my profession would or would not permit, that if I consented to receive a statement from a man who had a controversy with another, and they should come into collision on *that case* afterward, I should not feel at liberty to become counsel for the other party.

And thereupon he proceeded to read to me a statement or manuscript which, as I remember it, was substantially the "True Story," so far as it has been produced here. It was not a clean copy, as he says, of the "True Story," for I well remember, as he read it to me, it was interlined and erased and supplemented in various ways. It looked like a draft upon which he had been bestowing much labor. The only fact, the only paper which was communicated to me, as I remember it, which I had not before heard, and received from Mr. Moulton, was a letter or paper purporting to be from his wife, similar in language and statement to that now introduced here as her letter to Dr. Storrs, although that paper did not purport to be a letter to Dr. Storrs. It contained the charge against Henry Ward Beecher of improper proposals. That is the only fact that was communicated to me, touching his relations with Henry Ward Beecher, that I had not known before, and learned from Moulton, as I remember it. That document then proceeded after this statement to quote what is now called "the letter of contrition," but until recently called the "apology," the paper of January 1st, as proof of the truth of the allegation which Mrs. Tilton made against Mr. Beecher. Now, it is quite true, gentlemen, undoubtedly, as Mr. Tilton says, that after he had made his statement to me, or talked with me, I did take this "apology," or "letter of contrition," and examine it. I undoubtedly did that, because I had looked at it in the first instance with reference to the Woodhull scandal, which charged a life of adultery between these parties as of ten years' duration; that was the charge of the Woodhull scandal, and I had examined it with reference to that charge. But when Mr. Tilton presented the case of improper proposals and not of adultery, I did, I have no doubt, take up that paper, and look at it again very carefully to see how it compared with and supported or contradicted the charge which he made of improper proposals. Therefore it is quite likely, as Mr. Tilton states,

that I did have in my hands and did go over this letter of apology after he came into the room, and that may account for Mr. Woodruff's remembering that we had that letter there after Mr. Tilton came into the room. We undoubtedly did.

The statement of improper proposals or the statement to me having been read, the discussion between us commenced. Now, Mr. Tilton states to you that he read me that "True Story" as finally completed, as I understand him to say, late in December or the 1st of January. But, gentlemen, I am very confident that that paper, as presented here as a final paper, was never shown to me in the world; that is to say, I never saw or heard of the letters of Mrs. Tilton and of Mr. Beecher, dated December 29th, 1872, denying this charge. I saw neither of these papers in the winter of 1872 and 1873; I never saw Mr. Beecher's until, when the investigation was going on, he turned over to me some of his papers, and among them was this one. As I remember it that is the first I ever saw of that letter. I never saw Mrs. Tilton's letter until I read it in the publication of Mr. Moulton or Mr. Tilton himself. I think it was Mr. Moulton. So I know that the "True Story," as a completed paper, was never shown to me at all.

I have ransacked the chambers of my memory since this thing has been up, and I can recall no two conversations at Moulton's house where the subject of this scandal was conversed about between Tilton, Moulton and myself, three of us together, and another where Woodruff was present as a fourth. Of course, I cannot affirm positively that no conversation took place, but I do affirm—do say that, to the best of my recollection, there was but one conversation. I am certain that the first time I ever saw Mr. Tilton on this subject, what I have repeated in regard to his questioning me and my answer, and his proceeding to state the charge against Mr. Beecher as I have detailed it now, took place.

Well, then the question came up as to what denial could be made of the Woodhull charge. We went over it item by item, and Mr. Tilton denied substantially the truth of the Woodhull publication in every important particular; that is to say, taking up one view, one scene after another—"Mr. Tilton, did you give this information to Mrs. Woodhull?" "No." In substance he denied having been the author of that information or any of that information to Mrs. Woodhull as he denies it here. So he denied scene after scene. "Did such a scene occur, or such a scene occur?" "No." "Then," I said, "I don't see why you cannot deny this, and I don't see why you and Mr. Moulton cannot deny it." Mr. Moulton admitted that he could deny it so far as the Woodhull publication represented him as an actor in the scene. There was no doubt but

what he could deny it. He has sworn to you on the stand that he could deny it. Why could not Tilton deny it? He could not; as he argued then, as he subsequently said in his letter to a "complaining friend," which has been introduced here—he could not deny the Woodhull scandal, because while that story itself was false, there was a true story that it did not tell; and he insisted that he could not deny the Woodhull scandal as such without at the same time telling the true story. In other words, if he denied the false story he could only do it by telling the true one, and he went into that sort of reasoning which he sets out in the letter to the "complaining friend;" and referred to *The Police Gazette* as an illustration, just as he does in that letter to show that where there is any truth lying at the bottom of the story, a man could not deny the story without telling the other story that was true. I argued against that. I said: "The story, as you now tell it, of improper proposals, is not alluded to at all in this Woodhull publication. The story that they tell, you say, is false, and inasmuch as they don't allude to the story that you now tell, you are at liberty, it seems to me, to deny the Woodhull publication without saying anything about the "true story." Now, if there was anything said about lying at that interview, it was the discussion of the question whether it would be a lie for a man to say that a story which is told as a single story, which is substantially untrue—whether for him to say that that story was a lie would be asserting the truth, provided there was another transaction not alluded to in it, but connected with it, as between the same parties, that was true. He said, "No. I cannot contradict the false story, unless I at the same time tell the true one;" and the discussion was a long one, and even became warm at times; and it continued until ten or eleven o'clock in the evening—but that was the result.

They tell you that I said silence was the one course to take. Nevertheless, gentlemen, it must be manifest to you from their own statements, that I did not say that silence was the only course in this matter, except upon the theory that Tilton put forward, that he could not deny the Woodhull scandal without publishing what he called the "True Story," or the truth, in which he proceeded, while exonerating his wife, to put Mr. Beecher in the position of having assailed her virtue. After arguing and failing to convince Tilton that he could deny truthfully the Woodhull story without telling the other, and he making it a condition that he would make no answer to the Woodhull story except the one that exonerated his wife and charged Mr. Beecher with soliciting her to crime, I undoubtedly did say, as a choice between that and silence, that silence was the only thing;

because I regarded, as every man must regard, the charge against a minister of soliciting a woman, as serious a charge as that of the actual accomplishment of the act. And I did not suppose that it would mitigate the alleged offense at all to deny the fact of adultery, and to publish at the same time the assertion of an attempt to consummate it. Now, so far as that was concerned, I undoubtedly did say that, as between the two things, silence was the only thing to do; but in no other event than that; because both of these parties conceded the statement of facts which, I argued, enabled them both truthfully to deny the Woodhull publication as such. They could deny it without lying in fact. I argued, as far as Moulton was concerned, I remember, that to omit to deny it was to lie, because a man who sits silent under a falsehood, and did not deny it when it was his duty to deny it, was morally guilty of a falsehood.

But we failed to agree; and it was very evident, I think, to all of the parties there, that Tilton and Moulton and I could not get on together with this scandal business; we differed so widely, that my recollection is that we never met again. Certainly we never met except incidentally, or possibly to talk over some question connected with it; but if we ever did I do not remember it. My recollection is that that is the first and last meeting that had ever occurred between us. I know our differences were very radical; and I had no expectation when I left that house that I should ever be consulted again by those parties on that subject, and I never was, to my recollection. I stepped down and out of the case after December, 1872.

I saw Mr. Beecher at Mr. Moulton's request once after that meeting, and but once I think. The only way I can fix the date definitely is that I know I saw him at his house once on the subject, and had an incidental conversation with him on the letting of the pews at his church in January, 1873. We talked five minutes, perhaps, in which we alluded to this subject incidentally, and it is the last time that I ever alluded to this matter with Mr. Beecher, until a long time after.

I considered myself out of the case, and was out of it from that time, December, 1872, until after the publication of the Bacon letter. On the night of that publication I was sent for by Mr. Moulton to come to his house, and I went to his house and found Mr. Tilton and Frank Carpenter in the dining-room. Mr. Moulton took me to an upper room, and then introduced to me the subject of this Bacon letter, and said to me—after reading it to me—that he wanted me again to come into the case. I was very much excited and outraged at that publication. It took me altogether by surprise, for I had been so entirely out of it that I had not even known or

read of Dr. Bacon's letters in *The Independent*, or his address at New Haven, and I did not know, and had not heard, that any such publication was contemplated. I remember that the conversation between Mr. Moulton and myself regarding Mr. Tilton's conduct was pretty excited that night; but he insisted that that letter did not foreclose the possibility of a settlement and adjustment, and he had a written abstract of a letter already prepared, which he proceeded to read to me. But I was in no condition to be convinced that night, and went away, he requesting to see me again. Mr. Moulton said to me that if anything was to be done about it he was determined that Mr. Shearman should be kept out of the case; that he thought that Mr. Beecher would do anything in a settlement that he and I concurred in advising, and he had sent for me for that purpose. I had been since 1872—although not in connection with this case, gentlemen—much with Mr. Moulton, because I had been the counsel of that firm in their difficulty with the Government, and it had brought me in connection with Mr. Moulton very much; I had seen much of him. I assume that he inferred that he could talk with me more confidentially than he cared to talk to Mr. Shearman, because their relations were unpleasant. He said he must have some one with whom he could converse confidentially, and, therefore, he wanted me to come into the case. My introduction into the case, therefore, was as the friend of Henry Ward Beecher, in June, 1874, at the instance of Mr. Moulton, on the theory that I could aid him as the friend of Mr. Beecher, and one whom Mr. Beecher would trust in bringing about an adjustment of this difficulty, which he said he desired very much to accomplish.

I saw him afterwards, when he talked to me about this card which it was proposed that Mr. Beecher should sign, the one stating that he had committed an offense against Mr. Tilton, but no crime; and I suppose I am the counsel alluded to in the opening as the one who said it would not do for Mr. Beecher to sign that card, for I would not approve of it. I certainly did tell Mr. Moulton when we got into consultation that I could not recommend Mr. Beecher to sign that card, and should not. He thought I was mistaken, and attempted to convince me that I was; but he and I always differed on that subject, and we parted company on that card.

Now, that is the history of my connection, in short, gentlemen, with this scandal and with these parties. After the publication of the Bacon letter, and after my interview with Mr. Moulton, I published an interview in *The Brooklyn Union*, giving my understanding of this case, in which I stated the case as I had received it from Mr. Tilton in '72, as a

charge of improper proposals. Mr. Tilton called to see me the next day after that publication, and we had a long conversation on the subject of my publication in *The Union*, and the way I stated the case, the details of which, perhaps, it is not necessary to go into here.

The controversy went on until this committee was appointed. When the time was approaching that I saw, or thought I saw, a tendency in Mr. Tilton to change his ground against Mr. Beecher, and instead of charging an improper proposal, to make a charge of adultery—as soon as I saw that, I sought Mr. Tilton and said to him: “Mr. Tilton, when you presented to me your case with Mr. Beecher at Mr. Moulton’s house in 1872, you asked me a certain question, and I made the answer that I should not be Mr. Beecher’s counsel if you came in collision with him on the case that you stated to me. Now,” I said, “as long as you adhere to the case, Mr. Tilton, as there presented, I shall adhere to my promise; but if you ever change your cause of action against Mr. Beecher, and say to me that the story you told me on that occasion is not true, and that your cause of action against Mr. Beecher is an entirely different one from what you then presented, I give you notice that I shall consider myself at liberty—I shall not consider myself bound by the promise I then made you.” Now, on that question, gentlemen, which involves my professional standing, there is no dispute of facts between Mr. Tilton and myself, the only difference is one of judgment and discretion on that question, whether he, having stated to me one case against Henry Ward Beecher, and obtained from me a promise not to be his counsel, binds me not to be the counsel of Henry Ward Beecher when he brings an entirely different case against him. Now, on that question, I say, there is no dispute of facts.

I do not undertake to state what Theodore Tilton will say about it *now*; but I undertake to state what he did say about it in the summer of 1874, when the question was up between us, because in the presence of a half-dozen men he brought this allegation against me, as he does now, and said, “You agreed at a certain time that if I ever came into collision with Henry Ward Beecher you would not be his counsel.” My reply to him was precisely what I have made to you to-day, and his reply to me was, “That does not release you from your promise.” I said, “Mr. Tilton, that is a question of judgment. I hold that it does. You are at liberty to think that it does not, but I gave you notice beforehand that I should consider myself absolved, and I do consider myself absolved from all obligation under that promise.” Now, gentlemen, on that question, as I say, I have taken careful pains to be right. I have sub-

mitted this question to some half-dozen of the most eminent lawyers in this city and New York, before I consented to appear in the case at all, and they agreed with me on the state of the facts that there was not any doubt about it. As I infer, the counsel would agree, on my statement of the facts, that there is not any doubt about it. And before I appeared in this case I caused the same question to be submitted to my eminent associates, Mr. Evarts and Judge Porter, and they agreed that there was no doubt of my right to appear here without any question as to professional propriety.

I say that Mr. Tilton stated that and admitted the fact last summer. There is no doubt about it; but the position he took was, that “conceding that, it don’t absolve you from your promise.” I said it did. That is the issue, as I understand it, between Mr. Tilton and myself.

Now, gentlemen, I undertake to say that I never understood Theodore Tilton, anywhere, to cast any imputation against his wife as having been guilty of adultery at any time prior to the institution of the Investigating Committee in 1874. The interview published in the *Union* during the summer of 1874, immediately after the publication of the Bacon letter, gave my understanding of this case precisely as I had derived it from Mr. Tilton. I had a conversation with Mr. Tilton the day after its publication, and he did not question the accuracy of that interview, or the statement of it. The only criticism he made on it was this: “You make me merely a martinet of jealousy. You say that the charge was improper proposals, and then you say that Mr. Beecher and my wife both concur in denying that there is any truth in that. That don’t leave me any case at all against Mr. Beecher,” and he said: “You array my wife against me there, by saying that she denies the truth of that allegation.” And he criticised my taste and judgment in permitting the publication of that interview without seeing and conferring with him, and in arraying his wife against him by saying that she denied the truth of the charge of improper proposals. Now, gentlemen, that is the history, in brief, of my connection with this scandal, as I understood it. I think that professionally I shall be entirely justified by every lawyer, certainly, who agrees with me on the facts: and as to these, I have Mr. Tilton’s admission, distinctly made.

MONDAY, MARCH 1, 1875.

FORTIETH DAY.

May it please the Court, Gentlemen of the Jury: When we closed on Friday night last, gentlemen, we had reached what is now known in this case as the period of the publi-

cation of the Woodhull scandal. We have shown you that after that publication, Mr. Beecher, following the advice and judgment—the honest judgment, as he then supposed—of the "Mutual Friend," Francis D. Moulton, accepted the policy of silence, and that policy was accepted by all, in the supposition and belief, on the part of my client, that it was to be executed by all in good faith.

THE POLICY OF SILENCE.

The defendant has been widely criticized for the policy of silence which was adopted and long pursued in reference to this scandal. The fact that the defendant assented to this policy and adhered to it for several years, has been and now is the very corner-stone of this prosecution. The most of your time has been occupied with evidence tending to prove this fact—a fact never denied, but always admitted. But this policy did not originate with Mr. Beecher. If we are to believe the plaintiff, the policy of silence and suppression had been adopted by himself long before Moulton bore to Mr. Beecher the message which brought about the memorable interview on the night of December 30. Tilton now asserts that he then knew, and had known since the preceding July, everything he now knows. Yet he had maintained a silence and effected a suppression so complete that the knowledge which he professes to have had of the facts had never come to the ears of Mr. Beecher. For it is conceded by all the parties that, down to the evening of that interview, Mr. Beecher did not know that he was in any wise involved in Tilton's domestic difficulties, except that he had concurred with his wife in advising Mrs. Tilton to separate from her husband, and had repeated to Mr. Bowen stories affecting Mr. Tilton's character in respect to marital fidelity. The object of that interview was to inform Mr. Beecher of a fact which Tilton says had hitherto been kept from him. Not only from Mr. Beecher had the knowledge of that fact been kept, but also from the friends of the family. Moulton, who visited the house frequently, had never observed the slightest alienation; Mrs. Bradshaw, the most intimate friend of both husband and wife, had seen nothing. So, if this fact, which Tilton now pretends, ever existed, he had suppressed it most absolutely. Surely thus far the policy had been a success.

But in December, 1870, as we have seen, business difficulties arose between Tilton and Bowen, which, to again repeat Mr. Tilton's own words, "were argued by Mr. and Mrs. Beecher." At the interview in Bowen's house on Dec. 26th, Tilton for the first time departed from his policy of silence, and charged Beecher with having made a dishonorable proposal to his wife, but did it under "a special pledge mutually given, that noth-

ing should ever be said concerning Mr Beecher's demonstration towards Mrs. Tilton." Here the charge was made, but on the express condition that it should be suppressed, and should not enter into the conflict which he and Bowen were about to inaugurate. Gentlemen, that fact is susceptible of the clearest proof by the plaintiff's own testimony.

Set on by Bowen, Tilton wrote and sent that insolent demand that Mr. Beecher should quit the pulpit and leave Brooklyn. Tilton says Bowen assigned as a reason why he could not sign the letter with him, that he had just settled all his difficulties with Mr. Beecher—but promised, if Tilton would make the attack, he would assume and carry on the fight. He bore the letter to Mr. Beecher; and then, in the twinkling of an eye, Bowen slipped through Tilton's fingers like an eel. Two days after signing the letter Tilton found him an enemy instead of a friend. I repeat again, gentlemen, that what I say concerning the intercourse between these two men I base exclusively on the statement of the plaintiff in this court as a witness. I repeat again that I unwillingly condemn any man on the statement of this plaintiff concerning any fact; but this is a fact that has been published for years, and I believe has never yet been denied by Mr. Bowen. Thus deserted by Bowen, liable himself to be assailed by Mr. Beecher, and threatened with dismissal from both his papers, Tilton's ruin seemed inevitable unless he could suppress the publication of his letters and repress the indignation of Beecher which that letter had aroused.

For this purpose we have seen how like a coward he attempted to interpose the body of a sick and suffering wife between himself and the man he had so grossly outraged, and how this attempt only plunged him into new disasters, rendering further efforts at suppression imperative, since it ended in Mr. Beecher's obtaining from Mrs. Tilton her written declaration that the charges made against him by her husband not only were false, but had been coerced from her while on a bed of sickness. How anxious Mr. Tilton and his friend Mr. Moulton were to suppress the wife's retraction, we have already seen. If Mr. Beecher would only consent to its suppression they would destroy both the retraction and the accusation, or they would keep both together, so that one should never appear without the other.

Thus far the policy of silence and suppression had been the policy of the plaintiff. The retraction was surrendered upon the distinct assurance of both Mr. and Mrs. Tilton, that the whole matter from which it had arisen should be suppressed, and suppressed forever.

Mr. Beecher did not make, but he accepted,

the proposition. When the accuser offered to suppress the charges, the accused had no alternative but either to consent, or else to publish, himself, the fact that he had been falsely accused by a woman and her husband.

Such an act is expected of no man; such an act Mr. Beecher could not commit without destroying her who had been his friend, and who, on a bed of sickness, with uplifted hands had called on God to witness that she was not morally responsible for the contents of that paper. Here the policy of silence and suppression was united in by all the parties; but it was assented to on the part of the defendant, and not suggested by him.

The next day Moulton comes again as a messenger of peace and reconciliation, and carries away with him the paper which they now call the letter of contrition. This he took from the defendant to the plaintiff, not as a weapon of war, but as an emblem of peace and fraternal feeling. And on February 7th, Moulton finding that Mrs. Tilton was not so completely reconciled as he desired she should be, he, and not the defendant, suggested the correspondence bearing date on that day, in order to establish a more perfect peace, and to make the suppression of this difficulty doubly sure. The only criticism to which the defendant is liable in this respect is, that having assented to the policy of silence at the instance of the plaintiff, he accepted it in good faith and honestly endeavored to carry it out.

This policy was thus inaugurated on the night of December 31st, to save the plaintiff from a ruin which the defendant could have certainly effected had he been disposed to press the advantage he then possessed.

But the difficulty between him and Mr. Beecher was not the only one Tilton and his friend Moulton desired to bury at this time. Tilton was covered all over with foul scandals, which demanded suppression. There were the stories which had reached Bowen's ears, which Tilton needed to have stifled, and to stifle which had been the object of the meeting at Bowen's house on the 26th of December. That meeting, at first apparently successful, had afterwards resulted in signal failure. Then there were the ugly scandals, which had come to Mr. Beecher, which he, giving credit to them, had repeated to Bowen on December 27th, when the latter bore to him Tilton's audacious demand. There was the hideous story which Bessie Turner had communicated to Mr. Beecher, Mrs. Morse and others, of the manner in which Tilton had lifted her from her bed at night and carried her to his own, and how, upon another occasion, he had again attempted the virtue of this poor child, who had been adopted and cared for by his large-hearted and benevolent wife. And more

than all, there was need to keep from public knowledge the fact that his wife had separated from him and had threatened to leave him forever because of his infidelities and the many cruelties that she had suffered at his hands. If Theodore Tilton was to be resurrected from the sepulchre of infamy and again set upon his feet, all the scandals must be suppressed and kept from the knowledge of the world.

You will see, gentlemen, that this was a task requiring for its performance a man possessing every characteristic which Tilton tells us guided him in the selection of his friend. To accomplish the part, it was necessary to possess "loyalty to his employer, a genius of administration, and great courage of thought and action." I quote Tilton's description of Moulton, given from the witness stand. All these, Tilton says, Moulton possessed in an eminent degree. Undismayed by the extent and variety of the evil stories that had gathered over Tilton, the administrative genius commenced at once with wonderful subtlety and patience the work of suppressing them. First, Mrs. Tilton was persuaded not only to deny the story that she had desired to separate from her husband, but to pronounce it a falsehood, coined by the brain of her poor mother. So this story was for the time being suppressed, and so thoroughly congenial to the new master-operator was the business of suppression, that even this denial was withheld from the knowledge of Mr. Beecher. Then Mr. Beecher was assured by the "Mutual Friend" that a story he had repeated to Bowen concerning Tilton's relations with a lady not his wife was unfounded; and he was induced to retract it. So that story was silenced. Then Bessie Turner was made to sign a retraction of her story, and this was delivered into Moulton's hands as a means of suppression, after which the girl was sent away to prevent her prattling—and so she was for the time being suppressed.

The last and hardest task remained: to get a retraction from Bowen. From him they sought to obtain not only an indorsement of Tilton's character, but also the payment of money—a hard thing to get from Bowen. Success was achieved only by fifteen months of persistent and laborious endeavor. A lawsuit was begun; but a lawsuit could not frighten Bowen. It induced him neither to pay nor to retract. When every legitimate effort had failed, another method was resorted to. Tilton prepared a personal statement, giving what purported to be the history of his dismissal by Bowen, and containing the letter written by himself to Bowen, and dated January 1, 1871, in which he repeated the slanders which he said Bowen uttered against Mr. Beecher. This statement was put in type at *The Golden Age* office, as if intended for publication, and printed slips of it were

shown to Bowen and to Wilkeson, Mr. Beecher's friend.

They say, gentlemen, that Bowen was not blackmailed. I make no comment. You have seen that a law-suit did not bring the money, but the threat to publish this article brought both the money and a certificate of character to Tilton published in *The Independent*. The skill of Moulton was strikingly shown in his choice of means to obtain indorsements of character for his friend from the two men whom he had the most reason to fear. Mr. Beecher he controlled by gaining his confidence, and by convincing him that the stories against Tilton were false. Mr. Bowen he controlled by arguments of a different character.

But Mrs. Tilton's complaints of the treatment to which she was subjected must also be suppressed. To this end she was made to feel that she was the only obstacle in the way of that reconstruction of her household life for which she longed. In the letters of February 7th, every argument that could move her was brought to bear upon her, and at last Mr. Moulton succeeded in obtaining from her a pledge that she would never remember herself to Theodore's harm—a pledge she too faithfully kept, gentlemen, until by his open and shameless attack upon Mr. Beecher, the plaintiff drove her forth, a despairing, frightened fugitive, flying as for her life from the jaws of hell. Once before her brethren of the church she has had liberty to speak, but prior to that time she was forbidden; and now, in the crisis of this horrible struggle, while the conflict wages over her good name, she is again silenced. Yes, gentlemen, when the plaintiff found that the lips of his innocent wife were unsealed before the tribunal which he had accepted, and that she was resolved, throwing off the incubus of her life, to speak freely the whole truth, he made haste to choose a tribunal where the law would keep her dumb. And so she is suppressed.

* Thus the administrative genius of the "Mutual Friend," inventing and executing a policy of suppression, had accomplished what Tilton would never have been able to do. Tilton's way would have been to talk and make "statements," each of which would have added to his difficulties. Moulton's way was to suppress talk, and get other people to make statements which he could stow away in his repository of material. If he had only been able to maintain over Tilton's malice and folly the same command which he acquired over Beecher's generosity and Bowen's self-interest, the first and primary object of this conspiracy, namely, the reinstatement of Theodore Tilton in business and society, might perhaps have been accomplished, and Moulton might have had two

powerful and ready allies in the men he had reconciled.

But Tilton whispered to as many as he chose his malignant slanders against Mr. Beecher—the creations of his own obscene imagination. So long as Mr. Beecher kept the secret, Tilton had an excellent chance to retail his own versions as to what the secret was. These versions varied according to his moods; they agreed in one thing only, hatred to Mr. Beecher. While he was in immediate danger, Moulton was able to keep him comparatively quiet; but when he had procured his money from Bowen, and suppressed, as he thought, the stories assailing his own character, he did not see why the policy of suppression should be rigidly adhered to merely on his wife's account.

Particularly after the Woodhull publication, and the substantial failure of *The Golden Age*, Tilton took a new course towards Mr. Beecher. What he had hitherto circulated in the dark he now began to use as a direct menace. With Mr. Beecher silence had been a sacred duty under the circumstances, as he understood them. To Tilton and his "Mutual Friend" it was not a duty, but a policy, and they pursued it just as long and just as far as their objects required. Tilton's passion and folly, left to themselves, would soon have overthrown the whole of their plan; but, under Moulton's skillful management the scandal was merely kept alive, so as to torment Mr. Beecher without provoking an open rupture, or arousing his suspicions that the conspirators were playing him false. Mrs. Morse, a lady whose energetic tongue they were powerless to suppress, was perpetually and falsely put forward as the malicious source of the wild rumors which thickened around their unconscious victim.

This, gentlemen, is the history of the policy of suppression in this case, a policy devised and inaugurated by the plaintiff and his devoted friend, and pursued by them with treachery for wicked ends, while it was accepted by the defendant in pursuance of a chivalric impulse, and maintained by him with loyalty and fidelity through every trial and danger to the last.

HOW THE POLICY OF SILENCE WAS VIOLATED.

Having shown you, gentlemen, how the defendant was induced to enter into this policy of silence, and how he has pursued it for years, in good faith, I now come to show you how this plaintiff and this "Mutual Friend" treacherously and continuously violated it. We have seen how the failure of the political campaign of 1872, and the immediate death of Mr. Greeley following upon the substantial failure of *The Golden Age*,

blasted the hopes of Theodore Tilton in that direction, and compelled him to look for new avenues of success. Up to this time, gentlemen, the policy which I have no doubt moved Moulton and Tilton was mainly the restoration of Tilton by this new newspaper enterprise which he had entered into in the attempted establishment of *The Golden Age*. But this had failed. The money which he had received from Bowen in 1872 was nearly expended; indeed, on December 27, I am informed by the accounts, the last money of Tilton had been drawn from Woodruff & Robinson. The \$7,000 was exhausted, and he had no means of future supply. It was necessary, therefore, that they should look around to find some new avenue for the benefit of Tilton; and, gentlemen, the counsel for the plaintiff in opening this case called your attention to a newspaper scheme that was started and talked of in December, 1872. He represents it to you as the suggestion of some one to Mr. Beecher, that now was the great time for a newspaper enterprise in New York, and he was the man to head it. Three out of five editors controlling the great daily morning press of New York had recently died. Raymond, the youngest of them, and the man perhaps having the best conception of the true sphere of journalism of all men who have ever been on the American press, was the first to depart; Bennett, the ablest newspaper publisher and editor that we have ever seen in this country, had also gone; and now came Greeley, by far the strongest writer that ever wrote upon the American morning press. He had died in the early days of December. There remained, then, only, Dana, of the *Sun*, and Marble, of the *World*, left among the men of established reputations upon the morning press of New York city. This scheming gentleman, looking out to provide an avenue for Tilton, suggested that this was an occasion for the starting of a new newspaper in the city of New York; that now there was no great and overshadowing name upon the morning press in the city of New York; there was a vacancy, and Mr. Beecher was the man to fill that vacancy, and it would be wise and judicious, under the circumstances, for him and Tilton to unite in that enterprise.

I thank the counsel for the plaintiff for calling your attention to this scheme, gentlemen, since I shall not be charged with having forced it to your attention here. We shall show you that the friends of Theodore Tilton approached the friends of Henry Ward Beecher in December, 1872, with this proposition: "Let us buy *The New York Express*," which was for sale; "let us turn it into a morning journal; let Henry Ward Beecher assume the editorship of it, and retire from Plymouth Church, and let Theodore Tilton go abroad for three or four years and be the

head of the foreign bureau of that paper, and by that time the Woodhull scandal will have died away and will have been forgotten, and he can come back and take a position upon the editorial staff of that newspaper." We shall show you, gentlemen, that meetings were held between the friends of Theodore Tilton and the friends of Henry Ward Beecher to consummate that scheme. We shall show you that the men who represented Theodore Tilton said to the friends of Henry Ward Beecher, "Unless something is done for Theodore Tilton, there will be an explosion here which will shake Christendom." There were several meetings. Not only were Mr. Beecher's friends approached in the city of Brooklyn by the friends of Theodore Tilton, but they were also approached in the city of New York. There were two meetings at the Union League Club, where this scheme was fully canvassed.

But Mr. Beecher's friends, gentlemen, did not bite at the bait. Although every inducement was brought to bear, and although they were threatened with exposure and menaced by a scandal, they refused to enter into the scheme. More than that, gentlemen, they denounced the scheme in 1872 as blackmailing; they so denounced it to Theodore Tilton to his face, in the City of New York, at the Union League Club. They told him, then and there, that this newspaper scheme which he was proposing was no more nor less than an effort to blackmail Henry Ward Beecher and his friends by threatening the world and Christendom with a scandal, unless it was accepted. We shall show you, gentlemen, by witnesses whom you will not doubt; we shall show it by a man almost as well known in this country as the defendant himself, standing a prince among New York merchants, whose word has never yet been questioned, who told Theodore Tilton to his face: "You ask me to subscribe to a fund to buy that paper as the condition of Henry Ward Beecher retiring from the pulpit and the suppression of this scandal—you to be interested in the paper; I tell you it is blackmail." And it did not succeed.

THE COMPLAINING FRIEND LETTER.

Another thing, gentlemen, I desire to call your attention to in this connection. These interviews were held in the last days of December. Remember that Mr. Tilton and all these parties had just resolved to maintain, with regard to the Woodhull scandal, a policy of silence, that this scandal was to remain a secret, and to be kept a secret. But the friends of Henry Ward Beecher held back; they did not move to the establishment of this newspaper. And now, I want to call your attention to this "Letter to a

Complaining Friend," and ask you why it was that this pledge of silence was broken within a very few days after it was made. Here is a letter to a "Complaining Friend," which is confessedly a fiction. Theodore Tilton tells you from the witness stand that he never received a letter from a "Complaining Friend;" he tells you that he never wrote a letter to a "Complaining Friend;" he tells you it was a fiction invented by him, to be published by him, concerning this scandal. Now, why was it? I will read the letter, gentlemen :

"MY COMPLAINING FRIEND: Thanks for your good letter of bad advice. You say, 'How easy it is to give the lie to the wicked story, and thus end it forever!'"

I have read enough to call your attention to the letter, gentlemen. Now I go to the foot of the letter and show you the threat that is in it :

"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."

He has told you in the letter before, you remember, that this Woodhull scandal cannot be answered except by publishing the "True Story," thereby intimating that he has got a true story to publish—to tell the world; he has got a true story to publish—referring to the scandal, in December, and not denying it, and closing the letter with a threat that if he should speak it would send a thunderbolt through other hearts. I ask you why was this lie, this confessed lie, this lie of a letter to a "Complaining Friend," when he had never received any such letter, and never answered any such letter? Why was it invented and published at this moment, except as a menace to the friends of Mr. Beecher? For, I want to tell you in this connection, gentlemen, that we shall show you at the Union League Club, when this friend of Mr. Tilton approached the friends of Mr. Beecher on this newspaper enterprise, and said that that was the only means of suppressing the scandal, a friend of Mr. Beecher said to him: "If Mr. Beecher cannot stay in his pulpit in the face of this scandal, it will be still worse for him as a journalist. He will expose himself to attack from every quarter; and how is it going to benefit Mr. Beecher by getting out of the pulpit and getting into a newspaper?" Says the friend: "We can take care of that. We have got possession of the documents." And, of course, if Henry Ward Beecher headed a great business enterprise, in which the friends of Theodore Tilton and Theodore Tilton himself were interested, they would not kill it by publishing the docu-

ments against Mr. Beecher, and thus creating a scandal. And the very suggestion that they had the documents which they would not publish, was a suggestion that if the scheme did not go on they might publish. And I desire to impress upon you, gentlemen, right here, that those documents which this friend of Mr. Tilton was talking about in the City of New York in December, 1872, are the identical ones which Moulton and Tilton had solemnly agreed as the condition of the tripartite agreement, in April, 1872, to burn and destroy. They had not burned them; they had preserved them, in violation of their covenant, treacherously, and now they were using them, and boasting of their possession, as a means of menace and of intimidation to Henry Ward Beecher.

I am desired by my associate to call your attention, gentlemen, to the fact that the very day on which this letter to the "Complaining Friend" is dated, is the very day that Mr. Tilton had drawn out his last dollar at Woodruff & Robinson's; a strange coincidence. This case, as I progress in it, you will see is as full of remarkable coincidences as any case that has ever been brought before a court of justice. But that game did not succeed. Mr. Beecher did not go into a newspaper enterprise, but he stayed in the pulpit.

TRICKERY WITH THE GOLDEN AGE ARTICLE.

The winter went on; Theodore Tilton had no employment. I now come, gentlemen, to another fact which, unless I mistake, will throw a greater flood of light into the hidden secrets of this case, and the character of this defendant, and the manner in which this scandal has been worked up from month to month and from year to year, than any other fact that has yet been commented upon during this opening. You remember the history of what is known here as "*The Golden Age* article" that Tilton put in type after his return from his discouraging efforts to lecture in the west, in the winter of 1871 and 1872, the paper with which he menaced Bowen and Beecher, and which brought the \$7,000. Now, gentlemen, that paper was preserved by Theodore Tilton until the following fall, and until the publication of the Woodhull scandal. And right at this time, during the excitement of the Woodhull scandal, and when Mr. Moulton was recommending silence to Beecher—when these parties were agreeing upon silence and suppression, I will show you that Theodore Tilton artfully, cunningly, as in every step of his course in this transaction, made an effort to get that article secretly published without assuming the responsibility of it himself—wanted to have it mysteriously published. And so he

had a conversation with a man that he designates from the witness stand, "That man over there," whom we have since seen, Mr. McKelway of *The Brooklyn Eagle*.

And it transpires, gentlemen, that on the 18th day of November, 1872, Mr. McKelway of *The Brooklyn Eagle*, in pursuance of his profession as a journalist, of course, having read this Woodhull scandal, was sent by his principal, Mr. Kinsella, to have an interview with Mr. Tilton, an appointment having been brought about and made by their mutual friend—I will not use that term in regard to John W. Harman. Their friend, Mr. Harman, had appointed an interview between Mr. Tilton and Mr. McKelway at Tilton's house, and that interview occurred on the 18th of November, I think—18th or 19th. We shall show you under this head, gentlemen, not only that Tilton gave the history of this scandal, and of his difficulty, to McKelway on that occasion; we shall show you not only that he stated to McKelway that the charge he made against Mr. Beecher on that night of the 30th of December was not adultery, but improper proposals; we shall show you that he told Mr. McKelway that his wife resisted the proposals of Mr. Beecher; and we shall show you that when McKelway applied to him for that article—"The Golden Age article"—for publication, he said that he had bound himself not to publish; therefore he could not make any publication for which he could be held responsible to the public; that would be in violation of his word. But he had no objection to the publication, if it could be arranged, you know! Well, how could it be arranged? So they canvassed various schemes by which this article could be got before the public without Theodore Tilton's being held personally responsible for the publication; and McKelway suggested that he might give it to somebody else, and that somebody else should show it to him, or that he might have a hypothetical interview with a man; suppose a case and thus get the facts. And they canvassed various schemes, and finally Tilton says, "I will tell you: we will go up to my and our dear friend John W. Harman; I will take this article along, and I will give it over to him, and then, if he has a mind to give it to you, why, that is all right. I do not care what Mr. Harman does."

And so they went up to John W. Harman's, and walked into the parlor. There a new difficulty met them. John W. Harman was not at home. But Mr. Tilton is equal to any emergency with his suggestions. And so he said to Mr. McKelway, "See here; I will write a note to Mr. Harman, and I will leave this paper in a big envelope right here, on Harman's table, and then you and I will go away, and, of course, if you get this paper, why it is none of my business." And so he put the article in the envelope and he wrote

the note to Harman, and they went away, and, of course, Mr. McKelway turned right around and went back into the house and got the paper and had it in his possession, as Mr. Tilton knew he would. But so strong a desire had Tilton manifested to have this letter got before the public that when Mr. McKelway came to communicate the facts to his principal they dared not publish it. They suspected a trick and dared not publish it, and so they dictated it to a shorthand writer, and then returned the copy to Mr. Harman and kept the shorthand notes in their possession, and it was not until the following April that another enterprising newspaper man got hold of those notes and published them in *The Sunday Press*.

Now, gentlemen, that is the history of the publication of that *Golden Age* article. It would have been published on the 19th day of November, 1872, following the publication of this Woodhull scandal, by the act of Theodore Tilton, as I have stated it to you, but for the fact that his zeal and anxiety to have it published, and yet to avoid the personal responsibility of its publication, were so marked as to frighten the newspaper men, and they durst not do it. But in April, 1873, this newspaper article came before the public in a surreptitious way, proceeding from the identical copy that Mr. Tilton got into the hands of Mr. McKelway in the manner which I have stated. Of course, it created a great commotion. It was one of the emergencies of the case. It was published, I think, on Sunday, the 20th day of April.

BLACKMAIL.

Now I come to another remarkable coincidence. (Samuel Weller is nothing to Tilton in producing remarkable coincidences.) I come to another remarkable coincidence. I said that, in the preceding December, Tilton had drawn his last dollar from Woodruff & Robinson—he had drawn his account, but there was an interest account which had not been cast up, and between December, 1872, and April, 1873, he had deposited about \$100 more, I believe. But on the 21st of April, which was Monday, this account, which had been previously ordered to be written up, was paid over to Tilton.

It must have been on Saturday, the 19th, that Tilton ordered his account to be made out, and learned how little he had; on Sunday the 20th this scandalous paper was published—of course without his knowledge, and on the 21st of April Mr. Tilton drew his last dollar from the firm of Woodruff & Robinson—his last cent; down to a cent; the books were closed.

You will note, gentlemen, the treachery towards Henry C. Bowen of Tilton's attempt to publish that *Golden Age* article.

You will remember that Mr. Tilton had got the money from Mr. Bowen on the promise never to repeat these scandals, and never, therefore, to publish that letter, and he had obtained it on the distinct understanding that all the papers, which included the one addressed to Bowen by Tilton on January 1st, should be destroyed; and yet, you see, in violation of that agreement, in violation of the agreement by which he had obtained from Mr. Bowen \$7,000, in 1872, six months after he had so obtained that money, he was colluding with a journalist to get that letter published, without being compelled to take the personal responsibility of publishing it. It was this tripartite agreement to which he had reference when he said to Mr. McKelway: "Why, I have agreed not to publish this paper, therefore I cannot publish it on my own responsibility, but if it can get before the public without my being responsible for it, all right."

This brings us within a few days of a very important event in the history of this matter.

I have shown you that in the beginning they sought the restoration of Mr. Tilton; I have shown you that in the middle of this controversy they wanted what afforded bread and butter to him, a position as proprietor of the *Golden Age*, and also in the newspaper enterprise of 1872. But as he had gone on, one disappointment after another had come upon him, no success had attended his efforts, and it degenerated, as such things always do degenerate, into a mere question of money. You have heard from Mr. Moulton how, on an occasion, he took pains to display to this defendant the liberal offer of another person to contribute to the support of *The Golden Age*, with the remarkable statement, gentlemen, which I want to impress upon you, accompanying that exhibition, that they did not intend to use that money. Now, if they did not, pray why did Moulton exhibit it to Mr. Beecher at all? If this was money which had been rejected and was to be returned, why was Mr. Beecher's attention called to it? Do not suspect, gentlemen, that Francis D. Moulton or Theodore Tilton are bungling operators here. No more skillful men ever undertook the conducting of such a transaction as this. Mr. Moulton did not go to Henry Ward Beecher and say, "Your money or your life." He did not go to him and say: "Mr. Tilton is bankrupt; he is on the verge of starvation; give me \$5,000, or I cannot keep him quiet." That is the way the bungler would have done. That is the way the unskillful operator would have performed it. But do not suspect Francis D. Moulton of such indiscretion as that. He exhibits these papers and says: "My God! isn't that friendship? isn't that friendship?" Well, Mr. Beecher was dull; he did not actually take until he

got away from Moulton, and, as he went away reflecting upon what he had seen, he said to himself, "What does this mean?" And, all at once, it occurred to him what it meant, and in a day or two afterwards he saw Moulton, and when he suggested his theory about it, why, he found that he was exactly right; that money was what Moulton wanted. Mr. Beecher had taken the hint, and Mr. Beecher says: "Why, I am willing to contribute; I will contribute;" and Mr. Moulton says: "It will be the best investment you ever made." But, says Mr. Beecher, "I shall have to raise the money on a mortgage."

Now, gentlemen, I think I do not mistake Mr. Moulton's evidence. Although he intended, attempted to cast an aspersion on Mr. Beecher's character in this respect in his public statement, when he comes upon the witness stand, if I did not mistake his evidence, he says that Mr. Beecher told him he would have to raise it on a mortgage, and as soon as he could get the money on a mortgage he would contribute. So Moulton knew that he was not taking the loose money of Henry Ward Beecher. He knew that he was requiring him to mortgage his property to raise it. And yet he would have you believe that this was a mere incident, a matter that attracted no attention, no thought. And Mr. Beecher went home and mortgaged the roof that sheltered him and his aged wife and children, to satisfy the demand of these two conspirators, and he went to the bank and drew the money and took it and placed it in the hands of Moulton. And then there came a message from Tilton—"Grace, mercy and peace!" That money was put into the hands of Francis D. Moulton, gentlemen, and the day he received it he knew that Tilton was wanting money. That is evident from the fact that a friend had offered to contribute money which had been returned. He knew that Mr. Tilton was wanting money, and he lost no time in sending him money. But he sent it with a note saying: "I send you a thousand dollars and a memorandum note. Please sign and return." And what was Tilton's answer? "I cannot borrow money, for I see no way to returning it,"—and he sent back the note and the check. And then Moulton sent him the check without the note, and Tilton kept the money. And then he went on from time to time, drawing from Moulton every time he said he was short, for one whole year, gentlemen; for one entire year we have shown you that Theodore Tilton had no other income except the \$5,000 that Mr. Beecher had deposited for him with Moulton, and he lived on it and consumed it, and but for the unfortunate publication of the Tripartite Agreement in May—in the last of the same month—there would have been peace all that year in re-

gard to that scandal. Remember, gentlemen, that Moulton had never been in the habit of loaning Tilton money. He tells you that he never loaned him at any time exceeding \$500, and that Tilton only owed him at this time about \$1,000. And yet he went on advancing him for a year until he had advanced him the \$5,000. But in the spring of 1874 the fund was running low. This man, who knew nothing about it, this man who was in blissful ignorance of the source of the revenue that was feeding and supporting him, somehow or other had an intuitive knowledge of the fact that the pile was becoming exhausted. Because, we shall show you, gentlemen, that in May, 1874, when this money was running out, this same serviceable friend of Tilton's, who had attempted to organize for his benefit this newspaper scheme of 1872—this same friend goes again to the friend of Mr. Beecher and demands \$5,000 more for Theodore Tilton. I am reminded of what I should have remembered, that the first demand was for \$10,000. Failing in that, they offered to compromise for \$5,000. Of course, gentlemen, it was not demanded for Theodore Tilton in the express language of blackmail. Oh, no! This is a case of indirection from the beginning to the end of it; indirection has marked every step of it, and so you meet it here again; but the veil is so thin that the mind of no intelligent man will fail to penetrate it. *The Golden Age* was still on Tilton's hands. It was worthless; it was bankrupt. Tilton was seeking to give it away, absolutely begging for some one to take it; and in 1874 there came to the friends of Mr. Beecher a suggestion from this same friend of Mr. Tilton who had attempted to negotiate this newspaper enterprise of 1872, suggesting a scheme by which Tilton should go to Europe, and be gone some time. But the difficulty was to raise the money; he had no means to go to Europe, and it was finally said, "Why, Mr. Beecher's friends can put into Mr. Tilton's hands \$5,000 of money, under the pretense of a transfer of *The Golden Age*. We can buy *The Golden Age* of Tilton, and pay him \$5,000, and then give it to somebody (whoever will take it), and make the transfer of *The Golden Age* the cover of putting into Mr. Tilton's hands \$5,000 in money. Now, as I say to you, gentlemen, this *Golden Age*, as has already appeared in the evidence satisfactorily, and will be made further to appear in evidence, this *Golden Age* was perfectly bankrupt. Mr. Tilton had long been seeking to get rid of it, to give it away; and it was stated distinctly between this friend of Tilton and this friend of Beecher, that it was only used as a cover to transfer this money from the hands of Mr. Beecher's friends to the hands of Theodore Tilton. Now, in all these talks about newspapers, gentlemen, I want

you to bear in mind, that Theodore Tilton was informed of the enterprise, and knew what had transpired between his friend and the friends of Mr. Beecher. For instance, he was informed in 1872 who this friend was, what he had said, and what he had done fully; and two years afterwards we find this same friend—not another, but the same man—coming again to the friends of Beecher with a new suggestion for \$5,000 more—made \$10,000 in the start, and finally reduced to \$5,000.

We will show you, gentlemen, that Mr. Tilton was seen and talked with on the subject, and knew of the negotiation that was going on. We shall show you that this was about the time of the preparation of the Bacon letter, which caused this explosion. We shall show you, unless I am mistaken, that the Bacon letter was in preparation at the very time this negotiation for \$5,000 was going on. It was well understood by the friends of Mr. Beecher and the friend of Mr. Tilton that it was in preparation. If it is permitted, gentlemen, we shall show you that this scheme, when mentioned to one or two others of Mr. Beecher's friends—this second scheme—was denounced as a blackmailing operation, and they refused to submit to it, or to have anything to do with it. Their answer was, "If we begin now, we don't know where we shall stop. Pay not one cent." And this friend of Mr. Tilton was informed that this money could not be raised, and the negotiation need not longer be continued, or rather the proposition need not longer be presented. And we shall show you, gentlemen, that that friend then said: "Well, the letter to Bacon, or the Bacon letter, will be published, and Mr. Beecher will be ruined." The \$5,000 was not paid. True to the prediction of that friend, the Bacon letter was published, and I think nobody will dispute that it has been followed by a persistent and malignant effort to ruin Henry Ward Beecher, and thus cause the prophecy of that friend to come true. The money was not raised; Theodore Tilton did not get his \$5,000; *The Golden Age* passed into other hands about this time; and this controversy began.

MR. BEECHER'S DEFIANCE.

Now, gentlemen, I go back to the publication of the tripartite agreement and to the scenes that followed about the first of June, 1873. That tripartite agreement, as you have heard, was published, without the knowledge or consent of Mr. Beecher, by one of his friends, who had preserved a copy of it—the only copy, I believe, gentlemen, so far as I am informed, that Mr. Beecher or any of his friends ever had of any paper connected with the controversy; for I recall at

this time no paper of the multitude that was ever left in their hands or kept by Mr. Beecher or any of his friends. But this friend publishes a copy of the tripartite agreement, and that caused an explosion. That was published on Friday, May 30th. Mr. Tilton then threatened that he would make a publication, unless Mr. Beecher in some way vindicated him from the imputation which he said the tripartite agreement, thus published, cast upon him. Well now, gentlemen, you have heard from the witness stand how much pains Theodore Tilton took in changing his clause of that tripartite agreement before signing it. He has told you, Moulton has told you, and other witnesses will tell you all about it. He took it home with him, and he re-wrote it himself—every word of it, as I believe—and he made that clause of the tripartite agreement just to suit him; it was just what he wanted it, and he refused to sign anything else than just such a statement of his case as he desired. Then one would have thought having drawn his own paper, that the publication of that paper would not have been a very great offense to Theodore Tilton. We could understand how Mr. Bowen might have complained of the publication, and justly; but it is difficult to understand how Theodore could complain of it. But he did, and he insisted that that publication put him in the position of one having been forgiven by Mr. Beecher, and therefore Mr. Beecher should do something to right that wrong.

Mr. Beecher was not responsible for that publication, but that was no matter. It is a peculiarity of this case, gentlemen, which has marked it from the beginning to the end, that Mr. Beecher has been held responsible by Mr. Tilton for everything that everybody did in connection with this scandal. If a member of Plymouth Church uttered a word concerning Theodore Tilton, Beecher was responsible. If my friend Shearman said anything that was offensive to Tilton or Moulton, the man who was to be held responsible was Beecher, not Shearman. If the Clerk, or Assistant Pastor, or anybody else down at Plymouth Church, did what Tilton did not want him to do, or refused to do what he did want him to do, the man who was to blame for it was Beecher, and Beecher should be held responsible. So this publication of the tripartite agreement, which was an accident that none of the parties to it directly were responsible for, was to be charged home upon Mr. Beecher, and he must redress the wrong; nay, more, he must do something which would be equivalent to relieving Mr. Tilton from the imputation that he said his own article put upon him. Well, now, what was that imputation? It is difficult for us to say, gentlemen.

Mr. Beecher sought to convince this man that the publication of the tripartite agree-

ment did him no wrong; but he insisted that it did, and so he threatened to publish; and, on Saturday morning, May 31, Mr. Beecher was sent for to come to that celebrated study in Remsen street, where he had an interview with Moulton and Tilton, and Mr. Tilton threatened to make a publication; and Mr. Beecher went home that morning to consider and determine his course. He had thought of it through the day, and he had fixed upon the policy that he should pursue. He had entered into the policy of silence which they had instituted for their own protection, which they had instituted for the purpose of suppressing the scandals that were floating in the community against Tilton, and he had followed that policy with the same good faith that characterizes every act of Henry Ward Beecher's life. He had endured their persecutions, their annoyance, their torments, their threats, their indignities, for four long years; but now at last, by the indiscreet act of a friend, Mr. Tilton claimed to be so offended that this policy of silence should no longer be adhered to. "Well," said Mr. Beecher, "let it come. I am prepared to meet it. I face your publication, and I defy you! But there is Plymouth Church, dearer to me than the apple of my eye; there are these thousand trusting souls, young men and women who have been reared up by me and under my instruction; there is its Sunday School organization, which has within it three thousand children; there is a power that is doing good in the land, foremost in every good work, carrying on every enterprise of charity and benevolence, with an effective force that characterizes no other church in this city or this State. That church is mine. Under God, I have been permitted to raise it, to build it up and to hold it together. Now, shall I shatter it? Shall any personal controversy of mine be made the thunderbolt that shall shiver Plymouth Church to atoms? Shall I divide it? No; that society shall be united; I will fight my own fight against Theodore Tilton, but I will not drag it into the church. I will step outside of it; then I will welcome the conflict, if the conflict must come." And so, on Sunday night, he went down again,—this brave-hearted, true man,—to meet the men who had been persecuting him for years; and there he said: "You publish; I resign; I welcome the conflict—come on. But I take not Plymouth Church into this conflict; at least, I will give these noble men and women, who have stood by me, the opportunity to say whether they accept my resignation, before this contest is inaugurated." Thus he met them; and how did they receive it? Why, when he showed to Moulton this resignation, Moulton said: "Good God!" It took his breath away. He read it, and he ran down quicker than lightning to convey to Tilton the news

of this man's design. The time has come when persecution will be no longer submitted to: the hour has come when it is liberty or conflict, and conflict is liberty: "You publish; I fight." They were amazed at the temerity of this man; they were astounded to find that the man they thought they had sure hold on and whom they would lead forever under their yoke, at last had come to the point of saying: "Gentlemen, thus far, but no farther." Mr. Beecher went home, and on the next morning he indited the letter of June 1st, expecting that that was to be the last Sabbath he would spend as minister of Plymouth Church. He supposed, in the language of that letter, that he was "preaching his last sermon;" he supposed that he should go from the pulpit, on that Sunday night, to controversy and to battle with these two men, who had been hounding him for the last four years. But he writes to Moulton: "I too shall make a statement; you publish; I publish too; I will make a statement that will stand the test of the Judgment Day"—and he sends the letter down to Moulton. He receives back this answer:

"MY DEAR FRIEND: Your letter makes this first Sabbath of summer dark and cold, like a vault."

Ah, gentlemen, you will remember the history of that letter. Mr. Moulton first starts to write, and he writes the following:

"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. 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 there he stops; erases what he has written; and commences his letter anew; but he says to Mr. Beecher there:

"I know that you can stand if the whole case was published to-morrow."

And so did Mr. Beecher know it; it conveyed no information to him; but it is a confession passing between these two men, at this time, showing that they both knew that, when the truth of this case came out, Mr. Beecher could stand, and stand successfully. Having written that, he goes back and writes again:

"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 now look it square in the eyes, it will cower and slink away again."

And so it did cower and slink away!

"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 Tilton charges you with making him appear as one graciously pardoned by you. He said the fern in which it was published in some of the papers made it so appear; and it was from this that he asked relief. I don't think it impossible to frame a letter which will cover the case. May God bless you; I know He will protect you."

A prophet was Francis D. Moulton, as well as a "Mutual Friend."

But what sort of a God is Moulton's, if he believes what he asserts, "I know that God will protect you, Mr. Beecher," if Mr. Beecher was then the man that he now pretends to say he is? "God will protect you." Will God protect the guilty? Does Moulton think that his God protects the guilty? Does he think that He will cover with His protection one who has been for years a cold-blooded and heartless seducer of innocence? I affirm, gentlemen, that both of those expressions in that letter show that Francis D. Moulton knew that, when this whole scandal was out, there was nothing to affect the honor of Henry Ward Beecher as a Christian minister. Indiscretion it might prove; complications arising out of family difficulties that are hard of solution and difficult to be explained to outsiders, it might establish; but he tells him and he tells you, "There is no guilt there, on account of which, the world knowing it, you could not still stand as the pastor of Plymouth Church."

I had hoped, gentlemen, to have in court an authority on the subject bearing upon this letter. I will refer to it, and state the law. It is this, as established by the Supreme Court of this State, that when a jury is called upon to consider the credibility of a witness, and his writing, which he made at the time of a transaction, is in conflict with the testimony that he gives on the trial, and that testimony is also in conflict with the other party to the case, the jury are bound to take the writing, and not the oath of the witness as delivered from the stand. I read, if your Honor please, from the 20th of Howard's Supreme Court Reports, Boyd vs. Colt, page 384.

"Where, on a question of fact, the plaintiff swears one way, and the defendant directly adverse, and the defendant introduces a letter of the plaintiff in evidence, written before the commencement of the action, flatly contradicting his oath, the jury are bound to disregard his oath."

This is a decision at the New York General Term, Sutherland, Judge, delivering the opinion;

"The question in this case was whether the services performed by the plaintiff for the defendant

in London were performed under a special agreement to be paid for at the rate of \$1,000 per year, or whether they were performed without any special agreement as to the rate of compensation, and with a view of the plaintiff receiving therefor what they were really worth. On this question of fact the plaintiff swore one way, and Sargeant, the agent of the defendant, another. The jury had a right to credit the plaintiff and not Sargeant. We ought not to grant a new trial because they did so.

But I do not see how the jury could disregard the plaintiff's letter produced and read in evidence by the defendant on the trial. In that letter, the defendant expressly admits that he had been in the defendant's employ for two years at \$1,000, meaning evidently at the rate of, or salary of \$1,000 per year, and these two years must include the period of his services in London up to the date of his letter on or about the 1st of January, 1854.

It appears to me that this letter, unexplained, was conclusive against the plaintiff, and that the jury were bound to disregard his oath when flatly contradicted by his own letter, written long before the action was commenced.

I think the judgment should be reversed and a new trial ordered, with costs to abide the event."

Now, gentlemen, we have shown you the letter of Francis D. Moulton, written in June, 1873, to Henry Ward Beecher, who knew certainly quite as well as Mr. Moulton knew, what were the real facts of this case, and in that letter we see Francis D. Moulton saying to Mr. Beecher: "You can stand if the whole case was published to-morrow." But now he comes into court, and, under the solemnity of an oath, proceeds to tell you that this man, for two years before—for three years nearly, had been confessing his adultery with the plaintiff's wife. He tells you a story which in fact makes the defendant one of the worst seducers and libertines the country has ever seen; and yet he pretends to us that such a man could stand in the foremost pulpit of America and be received and sustained by its people, although he should confess his crime and the falsehoods and lies that he had told to cover it up! Gentlemen of the jury, you will not believe, in the face of this letter, in the face of the numerous contradictions of Mr. Moulton, in the face of the fact that the witness has been himself lying about this case, as he would now have you believe, for four years—when you have heard the evidence of Henry Ward Beecher on this subject, I say, you will not believe the testimony of Francis D. Moulton, but will accept his letter written on that Sunday morning of June 1st, 1873, as stating the truth and the whole truth in this unfortunate controversy.

While I am on this subject, gentlemen, I desire to call your attention briefly to one or two of the marked features that characterize Mr. Moulton's testimony as a witness. I have had occasion, once or twice, as I passed along, to call your attention to special facts where he forgets or don't remember. His cross-examination, in that respect, was one of the most remarkable that I have ever seen in a court of justice. I doubt whether it is not

the most remarkable that has ever been exhibited before any judicial tribunal. I have taken pains, gentlemen, to have counted the number of times in which Mr. Moulton, in answer to questions on cross-examination touching material points in this case, has said, "I don't remember," or "I don't recollect;" the number of matters which have been called to his attention, important and material in this case, where he has refused to give an answer, and cloaked himself under the pretense that he don't remember, or cannot recollect; and that number, gentlemen, is 305 times. Here is a specimen. Speaking of Mrs. Woodhull, after her Free Love speech at Steinway Hall, where he heard her, and was present with Mr. Tilton when he presided. I asked him if he had Mrs. Woodhull at his house after that. [Reading:]

"Q. Did you have her at your house after that speech? A. I don't recollect.

Q. You don't recollect? A. No.

Q. When Mrs. Woodhull was at your house talking about her Steinway Hall speech, did Mr. Tilton come with her? A. I don't remember whether he was with her or not, Sir.

Q. Do you recollect whether he went away with her? A. I don't recollect, Sir."

Speaking of this gift that was proposed to be given to *The Golden Age*, at the time he exhibited the papers to Mr. Beecher, saying that "that was evidence of friendship," I ask him:

"Q. Do you remember whether the amount offered 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."

Then, speaking of the Woodhull speech again:

"Q. What was the subject of that speech? A. I don't recollect, Sir, what the subject was.

Q. Well, you heard it? A. Yes, Sir.

Q. Was it on the marriage relation? A. I really don't recollect, Sir, whether that was the title or not.

Q. I did not 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 was not the marriage relation? A. That, I say, I can not tell you.

Q. You cannot tell that? A. No, Sir."

Present at the speech—a speech that had created great excitement—had a serious interruption—and he could not tell the subject of the speech! And yet you will remember, gentlemen, that, after he got out of our hands, on cross-examination, and was taken by the plaintiff, he was able to repeat, almost word for word, Theodore Tilton's speech introducing Victoria Woodhull on that occasion, made in 1871, though he swore he had never read it since that time. He repeated it, I say, almost word for word; a fact in human mem-

ory that I have never before seen equaled—if it was true. He repeated it, only leaving out of it that remarkable feature in which Theodore Tilton introduced Victoria Woodhull to the audience as the advocate of social freedom. With that single exception, gentlemen, which occurs at the last end of the speech, his repetition of that speech was word for word with the short-hand report published in the newspaper the next morning, though he tells you he had never read it since; and yet when I had him on cross-examination, he could not tell us what the subject of Victoria Woodhull's lecture was!

Gentlemen of the jury, will you give credit to the testimony of such a witness? Will you hang the most important issues that have been submitted to the judgment of twelve men for eighteen centuries, on the testimony of such a witness as that? I repeat that, by actual count, we have had no less than 305 such answers as those from Francis D. Moulton on cross-examination.

AFTERNOON SESSION.

We were speaking, gentlemen of the jury, of the letters of June 1st, 1873, which you will remember occurred on Sunday. The difficulty which the publication of the tripartite agreement had created was, after Mr. Beecher's threat of resignation, and his proposal to face these men, and to meet statement to statement settled, as you will see, by a very slight concession. Moulton proved a prophet, and this new danger did slink away and hide itself when Mr. Beecher met it firmly and bade them do their worst, and Mr. Tilton was contented with this little card, which he says he wrote himself, and which was published in *The Brooklyn Eagle*.

"To the Editor of *The Brooklyn Eagle* :

JUNE 2d, 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, and 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 would do him great injustice. I am unwilling that he should even seem to be responsible for the injurious statements, whose force was derived wholly from others.

H. W. BEECHER."

Now, you will see, gentlemen, that that card satisfied Mr. Tilton; but the document which was published, the tripartite agreement, had not asserted or professed to assert that Theodore Tilton was the author of the scandals which it recited, and the publication of it created no such imputation; and yet you see that this great emergency was settled

when Mr. Beecher proposed to meet their threats by the publication of that mild and harmless card. But there is another fact, gentlemen of the jury, connected with this 2d day of June, 1873, to which it now becomes my duty to call your attention.

MRS. MOULTON'S TESTIMONY.

We now, gentlemen, approach one of the most delicate subjects which my duty calls upon me to discuss. I refer to the connection of Mrs. Emma Moulton with this case. Apart from her relations to this matter, I shall not speak of this lady otherwise than in terms of respect. I feel most deeply her extraordinary position—the terrible emergency which she had to meet, and the overwhelming power of the temptation before which she has fallen. The truth of this case makes it impossible for me to abstain from speaking with apparent severity of this lady's testimony; but I do so with sorrow for her, reserving all my indignation for those who have forced her upon the witness-stand to confirm the accusations which they have invented. The experience of ages has shown, gentlemen, that among the best, the purest and the loveliest of women, the instinct of devotion to their husbands and their children is so strong, and rises to such a sublime height of unselfishness, that not only will they, in the majority of cases, sacrifice all their own temporal interests, but that in many instances they will consciously imperil their immortal souls for the sake of saving the unworthy men to whom they are bound by sacred ties. This truth has always been recognized by our law, which until eight years ago would not permit wives to be called upon to testify for or against their husbands, and by that other principle of the law, still in force, which absolves a woman from responsibility for any crime, less than murder, committed by her in the immediate presence of her husband. This truth is perfectly familiar to every one frequenting our courts; for not a week passes in which some poor, broken-hearted, cruelly-abused woman, in the lower walks of life, does not appear in some court and swear that the injuries which she had received from her brutal husband were not really inflicted by him, but proceeded from some other cause. It is recognized by society at large, which expects, as a matter of course, that women, otherwise excellent and truthful, are just, in proportion to the loveliness and magnanimity of their natures, likely to deceive their friends in their accounts of their husbands' conduct. And this feminine weakness, which it is impossible not to admire, even while we must strongly condemn, it has been immortalized by more than one poet as a fit subject for pathetic verse. One of the most touching of Adelaide Proctor's poems is illustrative of this

very point. It is called "Milly's Expiation," and is the story of a poor, high-minded girl, who, in order to save her lover from a conviction for murder, committed deliberate perjury, and having saved him, devoted the rest of her life to one long expiation for her sin.

What is the relation of Mrs. Moulton to this case? This lady is the wife of the only man who has anything to lose by a verdict for the defendant. Animated by his thirst for revenge, Francis D. Moulton has periled all on the issue of this suit. The plaintiff himself might find some persons to excuse him, on the supposition of an insane jealousy; but no such excuse can be made for his friend. He will be held to a strict and stern responsibility, and the plaintiff's failure in this suit, as every man can see, involves Mr. Moulton in utter and hopeless ruin. Yet his guilt and his ruin will not release his unhappy wife from her allegiance, nor make him any the less the father of her only child. What a terrible alternative for her! If she so testifies as to save Mr. Beecher, she necessarily ruins her own husband, destroys her home, and leaves her only child to a blight. If, on the other hand, she can give such testimony as will convict Mr. Beecher, she saves her husband's fame, at least so far as to prevent the exposure of his perjury. And a woman's confidence may lead her to hope that she can thus reinstate him in social position, and maintain him in the business world.

There is much to be said in palliation of Mrs. Moulton's course. Her husband has doubtless assured her with the utmost solemnity that he knows Mr. Beecher to be guilty; and this she may well have been made to believe, since it is hard indeed for a wife to disbelieve the earnest assurances of her husband. The struggle then presents itself to her mind as one between her husband, asserting the substantial truth, and her husband's enemies asserting substantial falsehood. "What matter is it," she may say to herself, "which side presents the truth as to details? The side which has the substantial truth ought to gain the victory; and if that victory can only be gained by misrepresenting some of the minor circumstances, is it not better that the truth should be sacrificed in respect to these details, than that it should be sacrificed upon the main issue? Mr. Beecher," she may say, "has certainly been guilty of adultery. Is it not less wicked that I should say that he has confessed it to me, than that he should sacrifice my husband, by falsely asserting that he has not confessed to *him*? Since he has confessed to somebody, of course, when talking on the same subject, he must have meant to confess to me. He expressed himself sorrowfully, and for what else could he have felt sorrow? He acknowledged that he

had been in fault, and to what fault could he have referred, except the crime of adultery? If, then, I put that very word into his mouth, I shall only be expressing his real meaning, and be serving the cause of substantial truth." Such, gentlemen, it is easy to imagine, was the process by which Mrs. Moulton convinced herself that she ought to testify to these explicit confessions; and having quieted her conscience to this extent, it was not hard to go farther, and attribute language to herself which no lady could possibly use under such circumstances, and language to Mr. Beecher which none but a fool could utter.

The first interview which Mrs. Moulton relates obviously does not suffice to convict Mr. Beecher, while it plainly shows that her husband had previously given her his version of the case. Mr. Beecher, she says, asked her if Frank had told her the facts about his great sorrow, and she said he had. Nothing else that is pretended to be a confession follows, until June 2d, 1873, when Mrs. Moulton says she advised Mr. Beecher to confess his crime before the church. This is extraordinary language for a lady to use, when conversing with her pastor in his great sorrow. The word "crime" is offensive and coarse. No lady of the refinement of Mrs. Moulton could possibly have used it on such an occasion. This, it will be remembered, was the time when Mrs. Moulton says she kissed Mr. Beecher on the forehead insympathy for his distress. You will remember Mrs. Moulton's singular manner in giving her testimony. Her face was flushed, her eyes were steadily fixed upon the floor, and she could not look even her husband's own counsel in the face. During the whole of the cross-examination in the morning session, she never once looked Mr. Everts in the eye. Twice she made the effort to do so, but her eyes instantly wandered and made the circuit of the court-room and the ceiling, without resting upon her questioner. In the afternoon, by a desperate effort, she succeeded in doing better. But these are minor matters. Her manner strongly indicated that she was repeating a lesson. By another of those extraordinary coincidences which mark her husband's testimony, she, too, was obliged to stop and correct her account of Mr. Beecher's language, by changing it from a natural to an unnatural form of expression. In her direct examination she made Mr. Beecher say, "Tilton in striking at me, sacrifices his wife," and immediately changed the words into this strange form, "Tilton, in stating the truth concerning me, sacrifices his wife;" an awkward and utterly unnatural mode of speech, reminding us of her husband's saying that Mr. Beecher spoke of his "relations"—and then stopping, and changing it into "sexual relations"—with Mrs. Tilton. It is perfectly clear that these

changes were made for the purpose of inserting something unnatural, with a view to the conviction of Mr. Beecher.

I will not dwell on other points of the story which show its inherent improbability; the language about the tortures of the damned, which is plainly copied from his letter of February, 1872; the continued advice to go to the church immediately and tell all the truth, given the day after Moulton had so strongly dissuaded him from publishing anything, and two days after Tilton had threatened to shoot Beecher if he did tell the truth; the allusion to the card in *The Eagle*, as a thing which he was considering, but thought useless, when in fact the card was already in type in *The Eagle* office, as Moulton himself has shown; the unutterable absurdity of Mr. Beecher's announcement that he should never see her again, and should poison himself forthwith, followed by his conclusion to postpone his death for one day, for the sake of collecting some mementoes to send through her to his friends. These inherent absurdities are enough to condemn this story. But I shall have something even more decisive to say upon the subject of this interview presently.

Before coming to that, however, I desire you to observe that Mrs. Moulton's account of the interview of July 18th, 1874, bears similar internal evidence of its untruth. I will only call attention to one point. Mrs. Moulton accuses herself of having used this unladylike expression: "If you had confessed it then, you would have been better off. Now, you have the original crime and four years of perjury and lying to answer for." Gentlemen, you have seen for yourselves that Mrs. Moulton is naturally a lady; you know and I know that she has the manners of a lady. She could no more have made that coarse and vulgar speech to her pastor, at that time, than she could have cut off her hand. Nor could she have had even the idea of "perjury" in her mind, for Mr. Beecher had never taken an oath, nor said a word in public, except in his brief card of June 30, 1873. But the climax is reached when she represents Mr. Beecher as responding to that insult, "You are dearer to me than any sister I have." That is the reply he makes to her charge of perjury!

Again, the account which Mr. Moulton gives of her interview with Mrs. Tilton in October, 1873, is preposterous upon its face. In her direct examination she told you that she then called on Mrs. Tilton, to ask if she would allow her husband to go down with the truth. On her cross-examination, she admitted that on this occasion she implored Mrs. Tilton to stand by Mr. Beecher, and urged her with agony and tears not to allow Mr. Tilton to destroy him. That is the interview which she states occurred between

herself and Mrs. Tilton, you will remember, gentlemen, in October, 1873, at the time Mr. Tilton had gone down to the church, at the church meeting. But feeling the difficulty of her position before you, Mrs. Moulton sought to qualify this statement, by claiming that she only begged Mrs. Tilton to stand by Mr. Beecher so long as she could without sacrificing the truth. Yet if Mrs. Moulton is to be believed, it was impossible for Mrs. Tilton to stand by Mr. Beecher at all, without sacrificing the truth.

But, gentlemen, there remains a graver fact than any to which I have yet referred. You will observe that Mrs. Moulton fixes the principal interview with Mr. Beecher upon Monday, the 2d of June, 1873. She has identified that day with great particularity, and left no room for misapprehension as to date. She has also fixed the length of that interview at four hours, by reference to circumstances which cannot now be explained away. The motive for naming this day is obvious. There were but two days on which, even according to the plaintiff's theory, the idea of suicide could possibly have been talked about, namely: May 31 and June 2, 1873. And Mrs. Moulton was required to confirm her husband's story of Mr. Beecher's contemplated suicide on May 31st, which was Saturday. The testimony of Mr. Moulton has left no room for a four hours' interview between his wife and Mr. Beecher. The next Monday was therefore chosen as the only available day, and it has been specified, I repeat, with the utmost particularity. The subject of this pretended conversation, and the circumstances under which it was had, are such as to make it certain that it either took place on June 2, 1873 or never took place at all.

Gentlemen, in all this the interposition of Divine Providence is most singularly manifest. For, upon that very morning of June 2d, 1873, Mr. Beecher was detained at his own house in consultation with a gentleman well known to you all; and at the very time at which, according to Mrs. Moulton, she was tucking him up on her sofa, and encouraging him to confess, he was seated by the side of his own wife, and speeding on his way to Peekskill! This we shall prove to you so conclusively, gentlemen, that I venture with confidence to predict that you will see Mrs. Moulton again on the witness stand, testifying that by June 2d, she meant May 31st, that by Monday she meant Saturday, that by four hours she meant half an hour, that there was no sofa and no afghan, that nine o'clock in the morning was seven o'clock in the evening, and that Mr. Beecher's card in *The Eagle* was not spoken of or thought of! Perhaps you will believe this story, gentlemen, when thus amended, as amended it *will surely be*; but if you do, your capacity for

belief will exceed that of any other twelve gentlemen in my acquaintance. For Mr. Beecher will give you the most explicit assurance that no such conversation as that which Mrs. Moulton has related ever occurred, either on June 2d or at any other time, that *he* never spoke of suicide, and *she* never spoke of crime, and that the only interview between himself and this lady at or about this period took place on the evening of Saturday, May 31st, lasting only from fifteen minutes to half an hour, while Mr. Moulton stepped down stairs to repeat Mr. Beecher's proposed resignation to Mr. Tilton.

Gentlemen, this portion of my task has been a peculiarly unwelcome one to me. I have personally known and esteemed Mrs. Moulton. I had hoped that at the last she might be saved from the terrible calamity which has befallen her. I beseech you to judge charitably of this hapless lady, dragged down to ruin by two men who have slaughtered their own wives and children, in their desperate attempt at an impossible revenge. She will yet repent of her grievous error. She will realize that by truth, and truth only, can she serve to any purpose those whom she loves; and she will live to ask and to receive the forgiveness of the man whom she has vainly tried to derstroy.

MR. BEECHER'S REFUSAL TO ACKNOWLEDGE AN OFFENSE AGAINST MR. TILTON.

I go now briefly, for a moment, to the publication of the Bacon letter, and to the effort that was made to induce Mr. Beecher to sign a card acknowledging that he had committed an offense against Theodore Tilton, but no crime, which offense he had apologized for, and that apology had been accepted and the difficulty settled, and he should not be a party to the opening of that controversy. That card was proposed, as you remember, gentlemen, by Moulton, who thought, or pretended to think, that the Bacon letter still left open a way of compromise and settlement by which this public scandal, this great public calamity, which has been inflicted upon the world, could be avoided. His plan was that, Mr. Tilton having charged Mr. Beecher with an offense in the Bacon letter, and not having characterized that offense, Mr. Beecher should acknowledge that he had committed an offense, but add that he had apologized for it, that that apology had been accepted and the case settled.

It was in regard to this card, gentlemen, as I stated to you on Friday evening, that I was called into this case as the adviser of Mr. Moulton and Mr. Beecher on that subject. I differed with Mr. Moulton, as I there stated. I could not see how any friend of Mr. Beecher could advise him to sign this card. I sought

to convince Moulton that he could not sign it; but Moulton persisted, and, after I had declined, still urged it upon Mr. Beecher. You will remember, in the evidence given, it has been stated to you by Mr. Moulton himself, that he told Beecher that if he would sign this card, acknowledging an offense without stating what the offense was, Theodore Tilton would accept it as satisfactory, and if Mr. Beecher would sign it, he, Moulton, would burn every paper connected with this case, and would stand by Beecher if Tilton sought to wage a conflict with him after that. Now, gentlemen of the jury, if Mr. Beecher had known what they say he knew; if he had been conscious of guilt with this woman for sixteen months; if he had confessed it over and over again to all these parties; if it be true that his writing referred to adultery, and not to a complicated domestic family difficulty—if that be true, I say, how can you explain the fact that Mr. Beecher refused the offer of Mr. Moulton? He had not distrusted Mr. Moulton at this time. Moulton still had his confidence. He still believed Moulton his friend, and he relied upon Moulton fulfilling the promise if he made it.

Now, gentlemen of the jury, do you believe that if Henry Ward Beecher had been conscious of his guilt, if he had known that his guilt could be proved by a cloud of witness, that he would have refused the offer to sign a card which simply acknowledged an offense, without naming the offense, and thus have the paper destroyed and make an ally of Moulton whom Tilton could not have detached. They would have disarmed themselves with the destruction of that paper. They would have had nothing to go into court with a case against Mr. Beecher.

How is it possible, I say, to account for this refusal upon any known motive which actuates or controls human nature? Why, if Mr. Beecher had not been conscious of his own innocence—if he had not felt confident of the power, however thick the storm might beat upon him, ultimately to vindicate himself from this charge, he would have made haste to sign that card, attach Moulton to him, and let him destroy the papers and the evidence against him. But he refused, steadfastly, to do any such thing. He said, "I will sign no card;" and for this reason. Mr. Tilton had charged, it is true, in the Bacon letter, simply an offense; but he had charged it in such a way that most people, reading the Bacon letter, thought that it intended to charge a marital offense; and if Mr. Beecher had signed this card acknowledging an offense, persons who wanted to believe him guilty would say that that meant adultery, and he would not sign unless the card should specify what the offense was. That was the point, and the point of dispute in that adjustment.

And that brings me to consider for a single moment the card which has been given in evidence, which Tilton tells you he prepared after consultation with his wife, after his wife had been before the Committee. It is possible that if the card had specified what Mr. Beecher said the offense was, he would have signed a card admitting an offense, and specifying what it was so clearly that nobody could mistake it; but if there was to be left that ambiguity about it which would leave it open to misconstruction, he refused absolutely to sign it. Now, gentlemen, this card has been introduced, and Mr. Tilton tells you that he prepared it in consultation with his wife. It is a proposed report for the Committee to make. I will read but a single clause of it :

“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.”

Now, gentlemen, that is precisely what Henry Ward Beecher has always said this controversy between himself and Theodore Tilton was. He has always said that that is what his correspondence pointed to, and to nothing else. He has always said that that is what the letter of apology and the other letters referred to, and nothing else. It was an apology, in the language of this report, “designed to cover a complicated transaction, including details difficult of exact and just statement.” Now, you have Mr. Tilton going home, and in consultation with his wife, after she has been before the Committee, agreeing with her that a certain report shall be made by this Committee, and they will go before the Committee and make a statement which shall justify that report; and he there writes in his own handwriting the exact statement that Mr. Beecher has always given of this affair.

MR. BEECHER'S LETTERS.

I have now, gentlemen, I believe, gone over all the facts of this case so far as I design to call them to your attention in this address. You will observe, gentlemen, that I have spent no time in commenting upon or explaining the letters of the defendant. I have confined myself to stating a case, which we shall prove, which explains the letters; and I prefer that the case should explain the letters, rather than to explain them by mere word of mouth. When we have presented

to you our case, when we have proven the facts which I have laid before you, you will see that the case explains the letters. The letters explain themselves. They are entirely consistent with the case as we shall make it. Everything here turns upon a single question. When these people were talking upon generalities, when Mr. Beecher was using general language which might cover one thing or cover another thing, the question is, To what were the parties referring, what did they have in their minds? Did they have this complicated transaction, the details of which were difficult of exact statement, involving this business trouble, involving the stories which Mr. Beecher had told and circulated against Mr. Tilton, involving the angry remarks which he had made to Bowen when that letter had been presented to him, involving the domestic difficulty between Tilton and his wife, in which Mr. and Mrs. Beecher had both taken part, involving the supposed state of Mrs. Tilton's affections, for which Mr. Beecher was induced to blame himself:—was it this complicated affair which had ended in Tilton's dismissal and injury, and for which Mr. Beecher had been convinced that he had been in the wrong, and had done Tilton injustice—was it this, or was it a case of adultery? That is the only question here for you. And, as I say, the case that we have made, the facts that already stand proved in this case, when they are put alongside of other facts which we shall prove, will show you beyond all question what it was these parties were talking about, and what it is that this general language in the correspondence refers to. You will see, gentlemen, how utterly unsafe it is to infer any particular offense as covered by general language that designates nothing. In all this correspondence you will observe that but very few facts are stated at all. This correspondence consists entirely in general expressions of sorrow, and regret and anguish; but wherever there is a fact stated in one of these letters, when you come to consider it, as you will when the case comes to be summed up—wherever there is a fact stated in one of these letters, you will see that that fact is against adultery; it tends to establish innocence and not guilt.

But to show you how utterly unsafe it is to say that general language points to any particular sin or crime, I desire to read to you briefly now a letter from Mrs. Tilton dated the 31st of January, 1868. It is conceded on all hands that at this time this lady was perfectly pure. This language had no relation to adultery, as the plaintiff and we both concede. It is nine months before the pretended allegation, and two years and a half before even a suspicion had been excited. All agree that at this time this lady had no suspicion or thought that she had been accused of

crime, and certainly that she had never committed it. She is referring to the ordinary sins, the ordinary difficulties between husband and wife, and now I want you to see how she described it :

"MY DEAR HUSBAND: I have just returned from Mattie's. Have the bust. Love it, &c. Oh, Theodore, darling! I am haunted night and day by the remorse of knowing that because of my harshness and indifference to you, you were driven to despair, and perhaps sin, and these last years of unhappiness."

There is the word "remorse," used in connection with harshness, merely, harsh words, harsh language; and yet they say that the word "remorse," in Mr. Beecher's letter, means adultery, cannot mean anything else than adultery, for what could a man have remorse for except for the crime of adultery?

"I sometimes feel it to be the unpardonable sin."

Suppose this letter had been written by Mrs. Tilton after the alleged act of crime, how the changes would be rung on that phrase! How my eloquent friend would expatiate on that sentence, and he would ask you what is the unpardonable sin of the wife. What is it but adultery; what can it be but adultery. And yet the sin of which she is here speaking is the sin of harshness to her husband, uncharitableness, and ill-temper.

"—and God cannot forgive me; but if you only may be restored to your former loveliness, I shall be content to live my life in penance, yea, in disgrace. I am the chief of sinners. I understand perfectly how you have felt. I carry in my soul this burden black of sin."

Is there any such language in Mr. Beecher's letters, notwithstanding his sorrow, notwithstanding the woe and wretchedness that these men inflicted on him for four years, notwithstanding the fact that he did walk on the rough and ragged edge of life for four long years—is there any such general language in his letters as this woman has used to describe the mere, most venial offenses in household life? And I could turn you, gentlemen, and my associates will, to letters of Theodore Tilton himself, written during this very period, that fall but very little below the exaggerated language which I have read from his wife. He, too, uses the word "remorse." With him life has been a failure and blight. I am quoting the language of his letters, long before any charge of this description is mooted, in 1867 and '8. His language, I repeat, is as strong as Mr. Beecher's, as strong as the plaintiff's wife's, nearly.

You see, gentlemen, the necessity that they felt, the pressure that they were under of attempting to explain their own letters. Theo-

dore Tilton was put upon the witness stand to explain away his own letters, and attributed them all to his early belief in Calvinism, and to the agony which the occasional return of that belief causes in his soul! [Laughter.] John Calvin was responsible for his letters, his sins and omissions prior to 1870, and Henry Ward Beecher has been responsible for all that have been committed since that time! [Laughter.] So between Calvin and Beecher, Tilton walks out as white-souled in his own estimation as he describes his wife to be.

In weighing, therefore, the testimony in the case, we say you are to consider, gentlemen, the relative probabilities and improbabilities involved, of innocence and guilt respectively. It is impossible, if the letters of the defendant are confessions of guilt, that the guilty man should write such letters, most of them voluntarily, and covering a long period of time. We say, gentlemen of the jury, that if Henry Ward Beecher had been conscious of guilt, if he had supposed at the time of writing these letters that they could be construed into confessions of adultery, it is not possible that he, or any man so situated, should have ever written them. Instead of these letters being evidence of guilt, the fact that he has used this general language is evidence that at the time of writing the thought that it could be perverted to cover such a charge never occurred to him.

It is improbable that a guilty man should volunteer to surrender to the plaintiff or his friend the alleged clandestine letters of the existence of which they had no knowledge, and no means of knowledge. Yet, gentlemen, they have introduced before you some evidence of the secret correspondence, as they choose to call it, between Mrs. Tilton and Mr. Beecher. It was very secret indeed. Where are the letters produced from; where are they brought from into the Court to testify against Henry Ward Beecher? Why, from the archives of Francis D. Moulton. And how did they come there? Why, Henry Ward Beecher delivered them to him. Do you think, gentlemen, that if he had thought this a guilty correspondence, and they did not know of it, would not he have kept those letters to himself, or silently destroyed them and placed them beyond existence? Would he have gone and deposited them where they could be produced against him? The very fact that he did it, I submit, is evidence conclusive that the thought of guilt was not in his mind.

IMPROBABILITIES OF THE PLAINTIFF'S STORY.

Again, it is impossible that a guilty man should communicate his guilt to a woman, to ask her how to conceal it, and that he

should express his gratification at her having communicated his guilt to other persons. That is another remarkable feature of this case. Here was Mr. Beecher, they say, possessed of a secret which was crushing him, a secret which he knew if it was ever exposed would be his ruin, a secret which they say he was continually moving Heaven and earth to conceal, and yet, it is a remarkable fact, gentlemen, that whenever one of these parties has told another of that secret and that fact has been communicated to Mr. Beecher he has always expressed the highest pleasure and gratification because it has been thus communicated. He had told Moulton the secret, they say, and in 1871 Moulton told his wife, and when she spoke to him and said, "Frank has told me about it," why, Beecher was glad Frank had told her about it. He had been struggling for a year and over to keep his secret and to keep it safe, and when he found that a woman had got it how glad he was! [Laughter.] It would certainly be kept now. If men could not keep it, she could; and so he was gratified to learn that at least one woman knew his secret. They say he was glad of it, because he wanted so much to have some woman to whom he could converse on the subject; and yet, learning it in 1871, the first conversation she refers to between him and her on the subject was in 1873, two years afterward. But, to help Beecher keep his secret, she went and told the Robinson family of it, a pretty numerous family in this city, and when she communicated the fact to Beecher that she had told the Robinson family of it, why, Beecher was so glad that Robinson knew it! [Laughter.] It would enable him to meet Robinson so much better. He had been going down to Robinson's office day after day, and having long interviews with Moulton, and Robinson didn't know what it meant, and Beecher knew he didn't know what it meant, and therefore, he felt sort of guilty going and having an interview with a man's partner, when all the firm didn't know what he was talking about, and he was so glad when he learned that the next time that he went down to Robinson's office the whole firm would know that he had come there to talk about his adultery with Mrs. Tilton!

You may believe all these improbabilities, gentlemen, but I don't think you will.

My associate suggests to me another remarkable fact of this case. After Mr. Beecher knew that Mrs. Moulton knew his secret and knew that he had been guilty of adultery, he was anxious for Mrs. Moulton to come to church. It would be such a gratification for him to see in his congregation at least one woman who knew when he was preaching that he was a libertine and seducer. You may believe, gentlemen, that Henry Ward Beecher, knowing that a woman knew him

guilty of adultery, invited her to come to his church that she might hear him preach; but I think you will rather believe that if any such thing were true, Henry Ward Beecher would go a thousand miles to avoid preaching and looking such a woman as that in the face. Then they introduce letters also, showing that Beecher was anxious to see Mrs. Tilton at church too; it would be such a satisfaction for him to see his poor victim, whom he had ruined, and whose family he had shattered, in his presence on Sunday, when he was invoking the blessings of God upon himself and his congregation!

There is another fact in regard to Mrs. Moulton to which I desire also to call your attention, one of the improbabilities in this case, and that is, she says she urged upon him to go down to his church and confess, and said his church would forgive him and stand by him, and Frank would stand by him; and she would be his friend also; and yet, in the same breath she tells you that she used to say to Henry Ward Beecher: "How can I receive communion at your hands, knowing of your guilt? I can't; but you go down and tell those 3,000 men and women at Plymouth Church that you are covered all over with the leprosy of adultery and falsehood, and they will forgive you, and they will stand by you, and they will receive communion at your hands, and I and Frank will be your friends."

Again, gentlemen, I have shown you that in the correspondence of the 7th of February, 1871, Mr. Beecher commended to Mr. Tilton his wife, and expressed the hope that Tilton would love her with even more than the old love. Is it probable that a man who had seduced another man's wife would write a letter to the dearest friend of that man and express such a monstrous idea as that the fact that he had debauched the woman should be a reason why the husband should love her better than ever before?

All this shows you, gentlemen, that these parties were not talking about adultery, but were talking about these complicated family transactions—this supposed alienation of Mrs. Tilton's affections, this leaving her husband, and threatening to separate from him, and this business difficulty, which had become so complicated that it could hardly be unraveled.

Again, we say that it is improbable that a guilty man should demand investigation, when it was resisted by his accusers. And yet we have the word of Mrs. Moulton, given in evidence here, that her husband was outraged and offended at Mr. Beecher because he had demanded an investigation; and you see how boldly even this woman makes this man meet this charge. He tells her: "They cannot convict me." He tells her: "They may do their worst; I am going to be free." Is it probable, if he had been guilty, he would

have been the man insisting upon an investigation while his accusers were struggling to prevent it?

It is improbable that the husband, having reason, in good faith, to believe his wife guilty, should continue, without interruption, to cohabit with her. Yet it is conceded he did—not for six months, gentlemen, but for four years. It is improbable that the wife should put in writing, or that the husband should consent to her doing so, a confession and charge against the paramour, and that the husband should use it for the purpose of aiding in his extrication from another difficulty. And yet it is conceded that this statement of what they claim was her confession, or her statement, or her accusation, whatever it is called, was obtained from her by the husband to be used, and was used, touching a business difficulty.

It is improbable that the husband should communicate his wife's guilt to third persons, for the purpose of securing its concealment. It is improbable that the husband should forgive the paramour and meet with him socially at dinner-tables and receptions, and receive affectionate salutations from him. It is said somewhere, gentlemen, that I, in some conversation, told Mr. Tilton that the world would never forgive him for having taken back his wife. All that I have to say about that is, Mr. Tilton is mistaken. What I said to Mr. Tilton was in the summer of 1874, and not in '72 or '73. In the summer of '74, when he was about to bring a charge of adultery against Mr. Beecher, I said, "Mr. Tilton, the world will never forgive you for having been the friend of the man you claim to be the seducer of your wife." It was for taking back to friendship the man, and not the woman.

It is improbable that the husband should destroy the original charge. And yet they come here saying, gentlemen, confessing that they have destroyed the original charge on which they accused Henry Ward Beecher on the night of the 30th of December. They do not produce it; they pretend it is destroyed. We say that it is improbable that the most important document of all these should have been destroyed, if it ever existed, and if it would do anything but damn their present case, if presented.

It is improbable that the husband should make successive threats of disclosure, and constantly advise the paramour to remain silent.

It is improbable that the husband, if he believed his wife's guilt, should declare her to be pure.

It is improbable that he should delay to sue for over four years, upon what he now alleges as the true and original charge, while he has been confessedly in the interim manipulating a false or garbled charge against the defendant.

INFIRMITIES OF THE PLAINTIFF'S EVIDENCE.

Now, as to the *infirmities* of the plaintiff's evidence. The defendant's own writings adduced against him, none of them expressly indicate guilt, and, as read in the light of the circumstances which will be proved by the defendant, they point to innocence. All the other evidence adduced by the plaintiff is infected by every infirmity known to the law. The testimony is of oral admissions, which are of themselves notoriously unreliable. Such alleged admissions require corroboration, and the corroboration must be of facts pointing to guilt. No such facts have been thus far adduced. The willful destruction of documents impairs the credibility of the story. The witnesses have given contradictory accounts. They admit that, gentlemen, Moulton and Tilton both tell you upon the witness stand that they have been lying about this case for four years, and you will remember the reply of my associate to Moulton, "We have your word for that when you say you have been lying." Certain it is that they have been asserting the innocence of Mr. Beecher for four years. Now they assert his guilt. The reason they give for it—that Moulton gives for it—is, that at the time he was asserting Mr. Beecher's innocence he regarded himself as a friend of Beecher. Now that he is the enemy of Beecher, and the party more involved in this case, and having more to lose in it than any other but Mr. Beecher, he asserts Beecher's guilt; and the only question you have got to determine is whether a man who has lied four years for a friend, by his own confession, will lie one year for himself. The witnesses Tilton and Moulton have both repeated their own falsifications. The witnesses Tilton and Moulton have shown themselves to have been in constant confederacy throughout their dealings with the defendant. I call your attention to this fact, gentlemen, that it is proved from the witness stand that while Moulton had secured, and gained, and held the confidence of Beecher as no other man ever held the confidence of another, while he was professing to be a friend, acting for him, protecting him in this matter, you have it from his own mouth that, with but a single exception, all the papers and documents that he ever presented to Beecher in this connection for four years, were written by Tilton himself, or prepared in Tilton's presence—all save one, and that was the letter I read to you this morning—the letter of June 1st, 1873, gentlemen.

That letter Moulton says he wrote in Tilton's absence; Tilton was not present; and you see what sort of a letter he does write when away from Tilton. Do you believe that if Tilton had been present when that

letter was prepared, any such careless phrase as "I know you can stand if the whole case were published to-morrow"—do you believe that if Tilton had been present dictating the letter, such a clause as that would have crept into it? Oh! no. Mr. Tilton knew the force of words too well to commit such an indiscretion as that. The letter was written in Tilton's absence by Moulton, the shrewd actor but poor writer; and it is the only important one in this case for four years that Moulton presented to Beecher that Tilton had not himself composed, or in the composition of which he had not been present, taking part.

The witness Mrs. Moulton has shown that she was a party to their design to bring an action at the time when they were still pretending to be the friends of the defendant, and when Moulton was still claiming to hold the defendant's letters in trust for the protection of each party against the other. Do you remember the important evidence, gentlemen, that fell from the lips of Mr. Moulton's wife upon the stand, that on the 13th day of July, while Mr. Moulton says he was professing to be the friend of Henry Ward Beecher, while he was claiming to hold these letters in trust for him, for the benefit of both parties, there having been between him and Beecher no break, no breach at that time, she tells you she told Beecher they were going to sue him in a court of law? How came this woman to be possessed of that fact, gentlemen? She tells you that she knew as early as that time that she was to be a witness against Henry Ward Beecher, and she was not to be a witness before the Investigating Committee. *How came she in the possession of that information?*

This "Mutual Friend," protecting Beecher from Tilton and yet refusing to give Mr. Beecher his documents, this man who had for four years betrayed every one of Beecher's secrets to his most deadly enemy, the moment they came to his possession—this man's wife knew days and weeks before there was any pretended breach between Moulton and Beecher, when Moulton was still soliciting and still receiving the confidence of this defendant—his wife knew that he was to be sued at law and she was to be a witness. No conspiracy here, gentlemen! No confederacy between these men! Nothing but sincere and honest friendship from Moulton to Beecher! There has no little piece of evidence accidentally dropped from the witness stand during this long trial that has the significance that that accidental and unthought of remark which that woman let fall in your presence has. It stamps the conduct of these parties, and discloses the malice and organized plotting which had been going on between them for

months, for the final overthrow and ruin of this defendant.

HISTORIC PARALLELS TO THIS CASE.

Gentlemen, the charge of incontinence which is brought against this defendant is not a new or unfamiliar charge against clergymen. It is the common method of warfare. There is no accusation to which a clergyman is so much exposed; an enemy that desires to do him a deadly injury has no point from which to strike with such deadly effect as the charge of infidelity in marital relations. That charge, whether there is guilt or not, is almost sufficient to blast the usefulness of any clergyman, however respected and however beloved. But Mr. Beecher is not the first eminent clergyman that has been called upon to face such a persecution as this. It was by means of such an accusation that the enemies of St. Athanasius sought to destroy the great champion of the orthodox faith. It was by such means that the name of St. Francis de Sales was kept under a cloud for four years, during which he maintained the same silence for which my client is so sharply criticised. It was upon such a charge that the ruin of the illustrious Fenelon, Archbishop of Cambray, was attempted. It was under such an imputation that the "judicious Hooker," one of the brightest lights in the English Church, remained "dumb as the dead," though innocent as a babe, for six years of bitter anguish. It was such a charge, spread broadcast over England, that John Wesley, the man who of all Protestants most nearly approached to the spirit and labors of the Apostle Paul, suffered to pass without any public reply for twenty years. And, by a yet more remarkable coincidence, it was by means of an insinuation that he had made improper advances that a persecution was kindled against him in Georgia, which resulted in driving him out of this country under the ban of an indictment. Who envies the memory of the jury which found that indictment? Where is John Causton, the magistrate who inspired the prosecution? He is pilloried forever in a few lines of Wesley's biography, and escapes oblivion only because the unsullied and venerated name of the man whom he thought he had crushed makes it impossible for him to escape infamy.

THE VALUE OF ESTABLISHED CHARACTER.

In the discharge of my duty, I have laid before you, gentlemen, so much of this case as, to the best of my ability, I could put into words. But the deepest truth that underlies it is beyond adequate expression by feeble words of mine; nor, I think, could any single

tongue set forth the nature and the power of that influence, which radiates throughout the world and time, and beyond the grave, from the glowing centre of a good man's life. There are facts which are not spoken from lip to ear, but from heart to heart. There is a treasure at stake, in comparison with which even the good name of one innocent man and one innocent woman, however sacred and precious this may be, is of trivial worth; I mean the principle of the value of established character. What is the use of an honorable life if it is no barrier against false accusation; if, in the face of foul conspiracy, its prayers and labors, generousities and heroisms are to be counted as worse than nothing—merely the disguises of a rotten hypocrisy?

Against this most dangerous infidelity of our time, one grand protest has been made. Three thousand men and women of Plymouth Church have presented to this community a spectacle unparalleled of faith in goodness and in God. These people are your fellow-citizens, gentlemen; virtuous, industrious, practical, sensible as yourselves. They love their wives and daughters; they cherish the purity of their households. Foremost among you in every work of charity; earnest, sincere, good friends, good neighbors, good citizens, they stand and have stood through many months unshaken in their confidence around the pastor whom they love. And this they do because they know him—because for thirty years they have looked through his clear eyes into his transparent soul—because his influence upon them and their children has been pure and wholesome—because he has taught them from lips that repeated the words of the Master and by a life that reflected the example of the Master to fear God and to abhor evil. This multitude of witnesses bear testimony to the value of a good man's character, as read in a good man's life. And it is the lesson of the value of character which you, gentlemen, are called to impress upon the world. It will be seen, that although this city contained men vile enough to assail with perjured lips the spotless reputation of our noblest citizen, there were also found in it those whose firm faith in him could not be shaken by ingenious lies, and a jury of honest, just and fearless men to stand like a rock against the tide of slander.

You will save Brooklyn, already too much disgraced by the existence of such a scandal, from the far greater disgrace of permitting such a man to be destroyed by such instrumentality—an eagle towering in his pride of place, hawked at and killed by mousing owls! You will tell the American people that when innocence is assailed by unscrupulous and cunning malice, however successful for a time the assault may seem, it must find its barrier when it reaches an American jury. And you will say to this heartless and ungodly

persecution, "Thus far shalt thou come, but no farther—here all the midnight plottings of cruel craft must cease forever."

I ask of you for this defendant nothing but that justice which you would mete out to the humblest citizen; yet you cannot but feel, as I do, an overwhelming sense of the solemn importance of this trial. It will loom larger in history than any which has taken place for eighteen centuries. No man of this defendant's fame has ever been called upon to answer such a charge in a court of justice. What a spectacle has been presented in this city of churches! Every day for eight weeks this aged man, who has been a large and various contributor to the literature of the English tongue, and who never wrote a word that was not inspired by the love of God, of nature, and of his fellow-men; who has swayed with sublimest eloquence greater multitudes than any living orator, and who never spoke save for justice, truth and virtue; who has convinced, rescued, instructed and comforted unnumbered thousands of erring, struggling, suffering souls, counting his own life, fortune and reputation as nothing, if by their risk or sacrifice he could serve the humble and the weak; this man, whose fame encircles the earth, and whose name is honored and beloved wherever Christianity bears sway, has been dragged by malignant conspirators into this Court to answer the vile and odious charge, which all the evidence of a lifetime outside of these walls, no less than the evidence produced within them, brands indelibly as a lie. Day by day he has passed along our streets with his brave and true wife, to meet the unmerited indignity of this arraignment. Strong men have been touched with mingled pity and wrath at the sight, and women have turned aside to weep. It is an outrage which posterity will avenge. This fair city will yet boast among her proudest monuments the statue of him who conferred upon her such glory, and received within her gates such torture. All who had part in this crowning drama of his life will be remembered with execration or with praise. Those who falsely accused, those who weakly doubted, those cowards who forsook him, those who were swift to believe evil, on the one side; and, on the other, those who steadfastly trusted, and those, gentlemen of the jury, who justly judged.

Yes, gentlemen, by the judgment which you here pronounce, you will yourselves be judged at the tribunal of after ages. What you do here will never die. When these scenes shall have passed away; when he who presides over this trial shall rest in the silent chambers of the dead; when the seats you occupy shall be filled by your children, or your children's children, strangers from distant climes will come to view the place from

which was given back to the world, freed from cloud or passing shadow, the name of Henry Ward Beecher. Even when centuries shall have rolled away, when these marble walls shall have crumbled and decayed, this trial will be remembered with undiminished interest. More eloquent than the words of this defendant, more inspiring than his deeds of magnanimity, more powerful among men than the story of all his life of usefulness and virtue, will be the recital of his serene faith and patience under dire affliction and deadly assault. Heroes are admired; it is the martyrs who are beloved. Not the triumphal procession and the loud hosanna, but the cup, the thorn-crown, the cross, the sepulchre, conquered the world; and since the hour

of the Divine Sufferer no follower of Christ has borne the cross in vain.

Gentlemen, do you believe in God? Then you will recognize to-day what the generations to come will so clearly see; what the Day of Revelation will blaze forth in letters of immortal light—the mark of God's approval upon this, His faithful, upright, suffering servant, whom He hath hitherto guided, sustained and blessed; whom in the hour of tribulation He hath not forsaken; and whom, by all the truth of His eternal promise and all the resources of His Almighty power, He will surely rescue and reward; for "Though hand join in hand, the wicked shall not be unpunished, but the seed of the righteous shall be delivered." [Applause.]