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MR. TILTON AS A WITNESS.

A DAY OF THRILLING INTEREST IN THE GREAT TRIAL.

All the Parties to the Scandal Present—Judge Neilson's Decision—Theodore Tilton's Dramatic Testimony—Exceptions by Counsel—Scenes in the Brooklyn City Court Room.

The fifth week of the trial of the Rev. Henry Ward Beecher, in the City Court of Brooklyn, began yesterday morning with Judge Neilson's decision upon the disputed question of Mr. Tilton's admissibility as a witness. The argument had occupied half of last Thursday and all of Friday. The delivery of the opinion occupied about two minutes, and was as follows:

"Gentlemen, in determining the question raised by the objection to Theodore Tilton, the Court holds—

"1st, that the plaintiff is competent to be sworn, and to testify in his own behalf;

"Secondly, that touching the principal question in issue, he is not competent to testify to any confidential communications. It is considered that this qualified direction respects the present state of our law of evidence as the same had received legislative and judicial expression, and also respects what may remain of the rule which imposed silence or restraint by reason of the marital relation, and on grounds of public interest or policy."

At this time Mr. Beecher, his wife, sons, and leading churchmen were in their seats. Close by was Mr. Tilton, attended by Deacon Ovington, Mrs. Field, Mrs. Shearman, Mrs. Tubbs, and Mrs. Phelps. The last named will be a witness for the defence. Mrs. Tilton looked brighter and much less jaded than when last in court. Mr. Beecher, too, was clearer in complexion, and as the light fell upon his face from an uncurtained window he seemed uncommonly cool and placid. Gen. Kilpatrick was a spectator, and several of the oft-mentioned clerical attendants were in the Plymouth party. The counsel were all there except Gen. Tracy, and he was in his office at work on his opening speech for the defence. Mr. Moulton was absent.

Mr. Beecher's lawyers consulted after hearing Judge Neilson's ruling, and the upshot, as announced by Mr. Evarts was, "Your Honor will note our exception to Mr. Tilton being sworn in the cause."

THE ACCUSER ON THE STAND.

Mr. Tilton began to get up, and continued to do so until he stood over six feet tall. Every body was too busily watching him to make any noise, and so there was entire silence while he walked the few feet to the corner of the Judge's bench where the witness chair stands on a platform. An officer held out the Bible, and while the Clerk was reciting the oath Mr. Tilton stood with his back toward the audience, touching the volume with his right hand. He wore a black coat buttoned up, and his long hair—the color of which is not yellow, but a light drab—hung lower than his collar. The view from behind was therefore all broadcloth and hair—a fine picturesque, yet monotonous. He kissed the Bible, bent his head over it, and kissed it as politely as though it had been a woman's hand. Then he got into the chair without any awkwardness, and sat in an easy, dignified posture, despite the tendency of his long legs to hang over the edge of the little platform. His face, polished smooth, was inclined as he first faced the people from his conscious perch, but the extra color soon faded out, leaving him without any show of emotion.

Between him and Mr. Beecher was less than twenty feet of distance, and their faces were lower, so that the Plymouth eyes did not rest upon the witness, and the witness looked only at Mr. Fullerton, who stood winding his eyeglass and glancing at his notes preparatory to the questioning. Mrs. Beecher and Mrs. Tilton both looked at him with undisguised directness. The former gives at their feelings, guided by their faces, to be a blending of pity for her husband's intense hatred and contempt, and to Mrs. Tilton angry resentment; the one's emotion intensified by a sort of distraction, and the other's subdued by a weak nature. The twelve jurymen stretched their necks and twisted their bodies to catch the testimony, to have a long look. The spectators, recovering from the first hush of arrested attention, buzzed like bees with their whispered comments.

AN ARGUMENTATIVE DIVERSION.

If Mr. Tilton really was embarrassed, and he certainly did not appear so, he had time to regain self possession while the lawyers were conferring in undertones upon the exact meaning of Judge Neilson's decision.

"We understand," said Mr. Beach, "that second proposition of the Court to rule the general principle that we have not disputed, that husband or wife, as a witness, is incompetent to speak of what was confidentially called in confidential relation between them. We take no exception to that ruling; but I suppose it is understood that under that decision the question, what shall constitute such a communication as arising from the confidence and faith of the conjugal relation, is a question to be decided upon the particular circumstances of each communication, when it shall be presented to your Honor. If the decision is intended to be enlarged beyond that scope and meaning, we certainly should take an exception to it; but I don't think it is so."

"The exception had better be entered," said Judge Neilson.

"We understand," added Mr. Evarts, "your Honor stands firm on his head. Covering what we regard as the rule of law under that consideration, we take it that law permits married persons to be sworn, and that it covers everything that grows out either in the way of oral communication or of personal observation between husband and wife that arises during the confidence of their marriage. On another point discussed by counsel, that is, whether a husband or a wife can be heard to speak against the other upon a charge of adultery, your Honor has not determined the rule, and probably some question may come up that counsel will present to your attention for ruling as the inquiry proceeds."

The matter was thus left with the certainty of later dispute, and twenty minutes of the session had gone when Mr. Fullerton began the questioning.

MR. TILTON UNDER EXAMINATION.

The first few replies by Mr. Tilton were in a low but distinct tone. Further on he spoke louder. His enunciation was deliberate, with a noticeably careful selection of words rather than attention to utterance, like an author dictating to a reporter. Announcements for publication. His manner may have appeared stilted to strangers, but those who had talked much with him knew that it was unaffected. He needed little questioning. A cue was all that was required to bring out a recital of a whole chapter of scandal history, and his aim seemed to be to cover every detail of the sad story he went along. The testimony was elicited as follows:

Q.—You are the plaintiff in this action, I believe? A.—Yes, sir.

Q.—What is your age? A.—About 39; I was born in the city of New York. I have resided in the city of Brooklyn between twenty and twenty-five years. I was educated in the city of New York.

Q.—When were you married? A.—On the 2d of October, 1855, to Mr. Beecher.

Q.—What is the age of your wife? A.—She is about forty-six. Before she and two years older than myself. I have four children living; the oldest is our daughter Florence, now about 18 years of age; the next, our daughter Alice, now about 16; the next, our son Carroll, about 12, and the youngest, our son Ralph, who is about 8. We have lost two children, both of which died in infancy.

Q.—What has been your occupation since your majority? A.—My profession. My earliest literary employment was in connection with the New York *Guardian*, then in connection with the New York *Observer*, then in connection with the New York *Independent*, then in connection with the New York *Independent* and Brooklyn *Union-Leader*, and finally in connection with the *Golden Age*. I became connected with the *Independent*, I think, in the year 1861, at which time the editors were three clergymen, the Rev. Dr. Joseph P. Thompson, D. D., the Rev. Dr. Leonard Bacon, D. D., and the Rev. Dr. Henry M. Dexter. They were succeeded by the Rev. Henry Ward Beecher. I was on the *Independent* under those three original editors in a subordinate capacity. I resigned on the *Independent* in a manner that advanced my relations with Mr. Beecher, and afterward, on the occasion of Mr. Beecher's retirement from the editorial chair, became his successor as editor of the *Independent*. Mr. Beecher became editor, I think, somewhere about 1863 or 1861, and he terminated his editorship in 1868 or 1869.

TILTON'S INTIMACY WITH BEECHER.

Q.—What was the character of the relations existing between you and him during his editorship of that paper, social and social? A.—My official relation to Mr. Beecher was that of a subordinate. This association, of what has since been designated managing editorship, was entirely Mr. Beecher and I were very intimate. That intimacy continued until the spring of 1870, when it was interrupted, and I have not been on the old way of whether ever since my boyhood. I at first became connected with the Sunday school. I was a member of the church. I think I was a teacher; I was an officer, an associate superintendent, and I finally became the acting superintendent of the school. In time I became a member of the church. At the celebration of my jubilee in connection with Mr. Beecher my wife became a member of Plymouth Church; I joined two years before I joined, and I think her name is still on the roll of membership, but I will not be sure.

Q.—During Mr. Beecher's absence in Europe, state whether there was a correspondence kept up between you and him? A.—Ever since my school days, I should think as far back as 1848 or 9, or 1850, and it has continued up to the present time; we were in school together at the institution which was then called the Free Academy, and which is now known as the College of the city of New York; we were very intimate during our college days. When those days were over Mr. Moulton continued to reside in New York. I came to Brooklyn, and I did not then see him very often. At length he came to reside in Brooklyn in my neighborhood, and then our early intimacy was renewed and has continued to this hour.

THEODORE'S PROPERTY.

Q.—What property were you the owner of at the commencement of 1871? A.—I owned the house in which I live, No. 174 Livingston street, which, with its library, and furniture, and fixtures, I suppose was valued at about $25,000; I owned a piece of property in Llewellyn Park, New Jersey, valued at about $10,000; I owned a share of the New York *Tribune*, valued, I think, at that time a little more than $10,000; I owned a small farm in Iowa, valued at about $1,500; I owned a piece of land, a little fragment of it, near Prospect Park, in this city, valued at about $1,000. I had also some money at interest at that time, $4,000 or $5,000. These are all the items that occur to me at this moment. There were no liens upon the property except in two instances a mortgage on my house—I think the amount was $7,500; another piece of property I had assigned by power of attorney to my father, valued at about $10,000. With that exception everything else was free and clear. I suppose on the occasion of my retirement from the *Independent* and the Brooklyn *Union* my property, free and clear of encumbrance, would have amounted to about $80,000; perhaps $85,000.

Q.—After the 1st of January, 1871, were you in the receipt of any income, and if so, what? A.—In the first place I had my salary, and interest, about $4,000, which yielded me some income. That was deposited with the firm of Woodruff & Robinson; about $1,000 in one or two of my checks in this city; $7,000 which I received under my contract with Mr. Bowen; $5,000 in round numbers as the result of my lecturing season in the winter of 1871-72; between $1,000 and $2,000 on my book account; a gift share of $5,000 subscribed to Mr. Woodruff has explained as the capital for the *Golden Age*. In addition to that about $6,000 in all from Mr. Moulton. That is all. There was a very slight net income from the *Golden Age*.

Q.—What debts did you owe at that time, if any, after January, 1871, over and above the liens? A.—I had no debts other than the current household expenses; I don't think I was ever in debt over $1,000 at any time. The *Golden Age* at the time of its commencement owed $6,000 to the gentlemen who contributed it; they afterwards returned me their notes making that money a free gift.

Q.—Did you know the source of the $6,000 received from Mr. Moulton? A.—I did not. I did not know that any part of it came directly or indirectly from Mr. Beecher. I first learned it when Mr. Moulton wrote the fact in his second statement in 1874; I did not know it until then.

Q.—I want to call your attention to December 30, 1870, and ask you whether on that day you had an interview with Henry Ward Beecher? A.—I had an interview with Henry Ward Beecher on the evening of that day in the second story front room of Mr. Moulton's house, 174 Clinton street, Brooklyn. Mr. Beecher and I were present, and Mr. Moulton at the first moment was present, but he instantly retired.

Q.—Will you now state what occurred at that interview?

THE FIRST INTERRUPTION.

Here the first controversy under the ruling that had made Mr. Tilton a witness sprang up. Mr. Evarts asked Judge Neilson to instruct the witness that in his account of his interview with Mr. Beecher he must tell nothing that had been revealed to him by his wife in confidence.

Mr. Fullerton replied that it was competent to show all that had been said in the interview.

"I am strongly impressed," said Judge Neilson, "with the belief that any conversation between the parties can be given, but if that conversation reveals in any degree any communication received from the wife, although his part of the conversation, he would not be at liberty to go further."

This ruling deferred the real point at issue, and the examination was continued. Mr. Tilton, with the manner of trying to recollect every detail, went on with his account of the interview. He retained his even, deliberate enunciation, and was not at all ruffled.

Mr. Beecher, for the first time since the commencement of the session, let his eyes rest steadily upon his accuser, and for a while placidly watched him from between half-closed eyelids. His arms were folded, his head thrown back, and his face rather expressive of puzzled interest than anything else. Mrs. Beecher's less controlled features had their old expression of scornful unbelief intensified.

The Witness—When Mr. Moulton brought Mr. Beecher to the door, opened the door, bowed to me, and said: "I have brought Mr. Beecher at your request." Mr. Moulton then retired, closing the door behind him. I did not see Mr. Moulton after that. Mr. Beecher came into the room, took an easy chair by the window. I crossed the room in the other direction, went to the door, locked it, took out the key, and put it in my pocket. I then recrossed the room and sat in a chair opposite Mr. Beecher. The conversation that took place I cannot undertake to repeat accurately, that is to say, I will not attempt to repeat the exact words of the conversation, because what was said was mostly said by me, and I have no special gift at recalling words. I better recall what he said than what I said. I began, as I remember, something at this way—I think I can give the substance of the first words spoken and they were these: "I presume, sir, that you received from me a few days ago, a letter which I had written you, demanding your retirement from your pulpit and from the city of Brooklyn." He said, "I did." I then said, "I have called you here tonight in order to say to you that you may consider that letter withdrawn, that I will not make it public, because it would be a great calamity to my wife