

## PROFESSIONAL FAITH.

Again, on the 15th of December, 1874, he appeared as counsel before the lords justices in a matter involving the Paraguayan Loan. He insists that the precise question which he then argued was an "interlocutory motion" relating to the cross examination of witnesses; and that his only object was to urge that if his clients had not the opportunity of publicly cross examining as hostile witnesses certain persons, there would be an absolute denial of justice. The lords justices ruled against him, however. It will be seen that Sir Henry James was connected professionally in the Paraguayan Loan suit in such a way that he learned all about the secret affairs of the system; and the statement that the suit was settled, and that in another instance he was before the court on an interlocutory motion, was but a technical subterfuge. Now, by the inquiry which he caused to be instituted through the House of Commons, the very point which Mr. James, as counsel, was aiming at judicially, is being accomplished legislatively; for the witnesses summoned before the committee of the House are the very persons mentioned in the argument before the court.

It seems, further, that by a resolution of the House of Commons, passed in June, 1858, and which is now on the records of the House, it was declared: "That it is contrary to the usage, and derogatory to the dignity, of this House that any of its members should bring forward, promote or advocate, in this House, any proceeding or measure in which he may have acted or been concerned, for or in consideration of any pecuniary fee or reward." It would appear, then, that Mr. James is condemned not only by the rules of his profession, but by the rules of Parliament. And we take it that the principle is as well established in this country as it is in England, that the subject-matter of causes, in which members of the profession are engaged, should be kept secret, and that information obtained as counsel in a case should never be used in any other way or in any other capacity than professionally.

It is another principle of the legal profession that matters which are confided to its members as lawyers are never to be used to the injury of the client. No technicality can justify a lawyer in first obtaining information from a person in his professional capacity, and then using

that information for the benefit of a hostile person, no matter whether the subject-matter is in litigation at the time or not. It is not necessary that there should be a suit pending, in order to protect the confidential communications of a client from betrayal at the hands of his lawyer. It is not necessary that the lawyer should even understand the full and complete nature of the difficulty between one who asks his advice and a third person; if the lawyer gives his professional word that he will not make use of the results of the interview to the advantage of the adversary, he is bound thereby, although he does not understand the precise nature of the controversy before he gives his promise.

In view of these well-established principles of professional fidelity, it is impossible to reconcile the attitude of Mr. Tracy in the Tilton-Beecher case. The circumstances of his connection with that case are too well known to need recounting here. It is stated that Mr. Tracy's brother lawyers in the case are satisfied with his course, and that they think he has committed no breach of professional faith. It will be a difficult matter for them to satisfy the profession at large, however, if they have satisfied themselves. Upon Mr. Tracy's own showing, we cannot see how he can save himself from the just reproach of the profession. Even if he did not understand the precise nature of the charge which Mr. Tilton made against Mr. Beecher, he knew that Mr. Tilton relied upon him in his professional capacity, and gave him information which he promised, in effect, not to use against him in case the parties afterward came into collision. The excuse that Mr. Tracy misunderstood the character of the charge, or that Mr. Tilton did not charge so grave an offence as he afterward charged, if that be true, cannot be availed of by Mr. Tracy. That he listened to Mr. Tilton's story, that he promised not to go against Mr. Tilton in case of a collision with Mr. Beecher, that he acted in all this professionally, bound him absolutely and by all the sacred principles of the profession not to appear subsequently against Mr. Tilton. We can see no escape from this conclusion, and we believe it is concurred in by the great majority of the profession throughout the country.—*Albany Law Journal.*