reads as follows: "An exception is an objection taken *at the trial* to a decision upon a matter of law, whether such trial be by the jury, court or referees, and whether the decision be made during the formation of the jury, or in the admission of evidence, or in the charge to a jury, or at any other time *from the calling of the action* for trial to the rendering of the verdict or decision." If it was intended that *at the time* meant the final trial, then no ruling of court upon any motion or demurrer *prior* to the calling of the case for *final* trial can be excepted to. Such could not have been the intention of the Legislature, as the daily practice of every attorney attests.

The meaning of "trial" here and generally throughout the Practice Act, unless the immediate context shows a more restricted sense, is the "trial of the *action*"—the trial of every issue both *of law* and fact, and that the new matter *in* the answer shall be deemed controverted for every purpose of the trial of the action. In other words, it was intended by these words to supply the place of a reply, which is not allowed under our statute. Such is the interpretation given to it in California, New York and elsewhere generally.

And how unreasonable any other construction. Is it just to say that a party admits the allegations of a pleading when the law does not allow him to deny them? And if the allegations are deemed controverted only on the final trial of the facts, the defendant is at any time entitled to judgment on the pleadings, for in that case there is no final trial of the facts. (Anderson vs. Pennie, 32 Cal. 265.)

Suppose the defendant should ask for judgment on the pleadings, could it be contended for a moment that he was entitled to it? Yet, if we accept the construction contended for by the defense, we necessarily come to the conclusion that the defendant is entitled to judgment. Such a position is not reasonable, and cannot be upheld by any Court.

But if the trial referred to is the final trial of the issues of facts, then where do we get any authority for saying that the defendant can rely upon those facts except on the trial? The object of pleadings is to form an issue—but the truth of those facts, before they are proven on the trial of the issue, cannot be said to be admitted. There is no statute or rule of pleading to that effect. The new matter serves the defendant no purpose whatever, except upon the trial of the issues, unless it be to notify the adverse party of what the defendant *intends* to rely upon *on the trial*. It is necessary for the defendant to state these affirmative matters in order to be allowed to prove them. (1 Van Santvoord Pl. 477.)

And it is evidently intended by the Practice Act, to consider this new matter denied for all purposes of the action. An issue cannot be formed except a matter be affirmed on the one side and denied on the other. Sec. 154 of the Practice Act says:

"An issue of fact arises. First, Upon a material allegation in the complaint, controverted by the answer. And *second*, upon new matter in the answer, except an issue of law is joined therein." No issue of law, either by demurrer or motion is joined on the allegation of new matter in the case before us. Then the new matter in the answer has an issue of fact joined on it, and then, of course, to produce the issue there is a denial, as no issue can arise except there be a denial either in fact or in law. No issue is raised here on the new matter by any words or pleading on the part of the plaintiff. It must therefore arise by law, for the statute says that it exists.

If again an issue of law be raised on the new matter in the answer, by a demurrer thereto, and the demurrer be overruled, then says Section 67, "If a demurrer to the answer be overruled, the facts alleged in the answer shall still be considered as denial." That denial is before the trial of the facts, and by the word "still" it presupposes the *continuance of a former* denial—the denial raised by the law. The reply is made by law. And Van Santvoord says that "any answer setting up new matter not constituting a counter claim, is deemed to be controverted, precisely the same as though the plaintiff had put in a reply traversing the allegations." (1 Van Sant. 618.) In New York a counterclaim required a reply, but to no other new matter was it allowed, yet that learned author says that the other new matter is deemed controverted—the same as if a reply had been allowed and filed.

Then we conclude, that neither the decisions nor the statues support the view that the new matter in the answer is admitted; and we find further that such a position is unreasonable, and hence untenable. But it is lastly contended that the order for alimony should not have been made because the marriage was neither proven nor admitted. If this be true, that the fact of marriage is neither proven nor admitted, then the order should never have been made. For the law is settled that one of these things must appear before the Court can grant alimony. The complaint charges marriage of the plaintiff and defendant at a specified time and place, and alleges that for a year after the marriage he lived and cohabited with her, but afterwards treated her in a cruel and inhuman manner and deserted her, did not support her and her children, and that by reason of this course of the defendant her life was miserable; that she and defendant cannot live in peace and union together; that their mutual welfare requires a separation, and that she is wholly without means of support. Had defendant not said anything about the marriage under California rulings and our statute, the marriage was admitted. (Fox vs. Fox, 25 Cal. 587.) (Bennett vs. Bennett, 28 Cal. 599.) But he goes further; and in express words admits the fact of marriage, that the ceremony did take place at the time and place alleged. But he seeks to avoid it by alleging that the plaintiff had a husband then living from whom she was not divorced, and that he had a wife then living from whom he was not divorced. He pleads confession and avoidance, and as part of the avoidance, he pleads his own crime. He cannot do this. He cannot set up his own crime as a defense to the action. That doctrine is too well setled. (4 Pick. 221). (Miles vs. Chilton, 1 Robertson 484.)

But if it did, that allegation and the allegation of her former marriage, and all the new matter stands denied under the statute, as I have shown, and cannot be taken as true until proven. This Court cannot on the pleadings say that either plaintiff or defendant had another subsisting marriage relation existing at the date of their intermarriage.

But the defendant not only expressly admits the fact of marriage, but goes further and does not deny the living with and cohabitation with the plaintiff. Therefore, under the 65 section referred to before, these allegations of the complaint which are not denied in the answer, are by express words admitted. Further, he proceeds to show that there is no reason why the plaintiff and defendant cannot live together in peace. Here then is an express admission of a ceremony of marriage, and an admission of living together and cohabiting together. What more is necessary to prove a marriage? Under the strictest rule then the marriage is fully admitted, and the very fact that a man asks to nullify and have declared void a marriage, is in itself an admission of the fact of marriage. What does he say and ask this Court to say is void? Certainly a marriage. It could be nothing else.

In such cases the whole current of authorities are in favor of granting alimony *pendente lite*.

Bird vs. Bird, in 1753, (1 Lee ec. cases by Phill. 209,) is perhaps one of the earliest cases of the kind.

In that case the husband brought suit against the wife to annul the marriage on the ground that she had another husband living at the time of her marriage with the plaintiff. This fact was denied by the wife, and she applied for an allowance to enable her to defend the suit. The allowance was granted, notwithstanding the plaintiff insisted that she was not his lawful wife.

Smyth vs. Smyth, 2 Adams, 254; Portsmouth vs. Portsmouth, 3 Adams, 63; Hereforth vs. Hereforth, 2 Abbot Pr. R. (N. S.,) 484. In Smith vs. Smith, (1 Ed. C. R. 254.) the Court says: "A novel question is presented here. Although the defendant denies marriage *de facto*, he has not denied cohabitation or living together, nor the great cruelty set forth in the bill. At this stage of the suit, I do not think the plea sufficient to prevent the granting of the application," So alimony *pendent lite* was allowed. The case before us is a stronger case than this one, for the defendant herein admits the fact of marriage, and admits the cohabitation and living together.

The case of North vs. North was one where the husband brought suit against his reputed wife, to nullify a marriage which he alleged to be void. The wife denied the allegation that the marriage was void, and alimony *pendent lite* was awarded her.

The fact of marriage being admitted, the "presumption is that it was legal, until the contrary shall have been established by the proofs in the cause." (North vs. North, 1 Barb, C. R. 243.)

In all suits of divorce or for annulling a marriage, if the nullity be promoted by the husband, as soon as the Court is judicially informed that a fact of marriage has taken place, it is competent for the wife to apply for alimony pending the suit. (Poynter's Mar. and Div. 247.) Such is also the doctrine of Bishop in his work on Marriage and Divorce.

The case of Brinkley vs. Brinkley (50 N. Y. 184) is a leading case on this question, and in that case the Court says: "Where an actual marital relation has been admitted, or shown, and its existence in law is sought to be avoided by some act set up by the husband, and it devolves on him to show that fact, there alimony will be granted until that fact is shown, for the relation actually exists upon which the right to alimony depends, and the objects of the litigation is to annul that actual relation by showing some other fact, the existence of which is denied." "And further, it may be said that any facts and circumstances being shown which are sufficient for a court to presume therefrom an actual marriage, they are also sufficient for a court thereon to found an order granting temporary alimony, though other allegations which are at issue, once being established, would repel such a presumption." Alimony *pendente lite* was granted.

Thus we find that the order for alimony was not improperly made—and stands unrevoked, and not obeyed—and no good reason given for not complying with it. And I am asked to enforce it. A court can not allow its orders to be repudiated, and (Lee 13) disregarded, and continue to maintain its dignity, its self respect and its authority. *Were a court in a condition not to be able to enforce its authority, its failures* to make efforts to do so might be proper, but when a court can enforce its orders and flatly refuses so to do, it can not long be held in respect or its authority recognized. A court, therefore, is in duty bound to enforce its orders.

There is but one course left open to the court—and that is to enforce the order. It is therefore the judgment of this court that the defendant be imprisoned until the $9,500 alimony and costs of this motion be paid, or until released by the court.

PRICE OF GOLD

Corrected daily by DESERET NATIONAL BANK.

SALT LAKE CITY, Nov. 1, 1875.

Buying at $1.12½; *Selling at* $1.14½.

MARRIED.

In this City, Nov. 1st, by Prest. D. H Wells, Mr. SAMUEL BRAMALL and Miss ALMINA COFFNER, both of Springville, Utah Co

DIED.

In the 11th Ward, Salt Lake City, Oct. 31st, of disease of the lungs, CHARLES DENNEY.

Deceased was born in London, England, December 17th, 1822, and emigrated to this valley in 1873.

Millennial Star, please copy.

In the 7th Ward, Salt Lake City, October 31st, 1875, at 5:30 p.m., of cholera infantum, aged 1 year, 11 months, 6 days, EPHRAIM GEORGE, son of Ephraim George and Mary Jane Holding.

Ogden Junction and *Millennial Star* please copy.

In the 19th Ward, S. L. City, October 29th; SUSAN PARKER, wife of William Wood, aged 24 years and 4 weeks.

Deceased was a tender and affectionate wife and a true friend.—COM.

Millennial Star, please copy.

At Logan, of diptheria, NORAH, daughter of Fred. W. and Aurelia Hurst, aged 8 years, 6 months and 19 days.

Logan, Oct. 29, 1875.

By Telegraph.

AMERICAN.

PORTLAND, Me., 26.—H. Wiggin & Co., of Ellsworth, lumbermen and traders, are reported to have failed, with heavy liabilities; their failure throws four hundred men out of employment.

MEMPHIS, Tenn., 26.—A private telegram from Helena states that the greater portion of the business part of Austin, Miss., was burned to-day; no particulars.

A Helena special says the fire at Austin, Miss., last night, destroyed the entire business portion of town. Heavy winds prevailed at the time of the fire and little could be done to check the flames. Ten large business houses were consumed. Total loss $50,000, insurance small.

RICHMOND, Va., 26.—The formal inauguration of the statue of Stonewall Jackson, presented to Virginia by a number of English gentlemen, *occurred to-day; the ceremonies were very imposing, and said* to be the grandest demonstration ever witnessed in this city. Fully fifty thousand strangers were in the city. Governor Kemper made the introductory address in which he spoke in the most feeling terms of this occasion, and in eulogy of Stonewall Jackson. The Rev. Dr. Hage was the orator of the day. At the close of the oration the statue was unveiled amid cheers, firing of musketry and the booming of cannon.

BOSTON, 26.—Sufficient evidence has been found against La Page, the suspected murderer of Lizzie Langmaid, to warrant the Attorney General to summon a grand jury, to assemble at Concord on Thursday, to act upon his case; detectives say the evidence is ample to secure his indictment at once.

HELENA, Mt., 26.—Harpin Davis shot a man named Middleton, a few days ago, near Copperopolis, Montana; Middleton died shortly after being shot. The cause of the difficulty is unknown. Davis is reported under arrest.

MONTREAL, 26.—The latest official news in connection with the Guibord matter is that the remains will be buried on the 18th of Nov. next; having died on that day six years ago, the members of the Institute Canadienne have chosen the anniversary of his death for the day of his burial.

DENVER, Col., 27.—Additional returns from the late election show heavy gains by the republicans, who will have at least two-thirds of the constitutional convention.

Three of the participants in the murder of four Italians in this city recently have been arrested; one of them, an Italian, confesses to having played his harp whilst five others cut the throats of their victims. Three of the murderers, Galotti and Frank Volindere, Italians, and a Mexican, are still at large, but it is thought they will be overtaken in a few hours. Indignation is intense, but it is believed that the culprits will be dealt with according to law.

NEW YORK, 27.—The London *Times* announces the safe arrival at the Brighton aquarium of two sea lions, from California, and says they take food with avidity, and though apparently quiet they are evidently ferocious and treacherous.

John and Thomas Dowden, father and son, quarreled early this a. m., while drunk, and the father fatally shot his son.

LOWELL, Mass., 27.—A party of New England farmers, mostly from this city, emigrated to California this morning, starting in a special car; they have a car to themselves through to San Francisco.

CHICAGO, 27.—A Washington special says that a well known Mississippian, who occupies a prominent judicial position in Washington, says the next election in Mississippi will see a hell in that State which has never been equalled. Former election outrages in the south will fall into insignificance by the side of the bloody events of the coming election; both sides are arming and both parties are strong in the determination that each shall not be cheated out of the election. The democrats are thus far acting on the defensive, but the impudence on the part of the colored men will bring on an explosion litt e dreamed of by the people, who fondly believe that all is quiet in Mississippi. The judge says that 500 Spencer rifles have been sent to a small town where he used to reside, and upwards of 10,000 Spencer rifles have been brought into the State. The Democrats say they do not propose to intimidate colored voters, but if the Ames people attempt to run in voters from Arkansas, trouble will begin; they do not propose to become aggravated into doing anything that might be considered as an outbreak, so that troops might be sent into the State; they are bound to keep away the troops at all hazards; so that at one election they can have a clean sweep at the Ames gang. The Ames ticket is made up of colored men, with one exception, and some of the candidates are jail birds, so that the campaign against them is one in which every decent man should sympathize. The colored people are now being vigorously stirred up and are advised by their orators to wade up to their necks in blood if need be, rather than have their rights trampled upon. This talk has stirred them up to the utmost, the diligent arming of both sides with the unscrupulous tactics of the Ames men is certain to cause a collision. The democrats are determined to carry the State, as they feel that they have the majority, but they claim that they will use violence only in putting down unfair means. The desperation of the Ames party may be understood when it is known that the democrats openly state that when they once get control of the legislature, their first work will be to impeach Ames, and secure the prosecution of the former indictment found against U. S. Senator Bruce. In the judge's opinion no language is too strong to portray the threatened dangers of the coming election in Mississippi.

COLUMBUS, O., 27.—The official rate at the October election, as returned to the Secretary of the State, shows that Hays' majority for governor was 5,549.

RALSTON, Pa., 27.—Cars on the Big Plane ran away to-day, caused by a break in the gear rope, which controls the break. John Burke had head cut off, George Stickle was fatally, and John Sides, boot and shoe agent, seriously, injured.

ANSABLE, Mich., 27.—William Stewart, wholesale liquor dealer, a prominent citizen, was found dead on the street opposite the American Hous yesterday a.m., with four deep wounds in his head, his skull being mashed in. Stewart left the store the night previous, having a thousand dollars on his person, which was missing. He leaves a wife and four children. Intense excitement prevails.

DETROIT, MICHIGAN, 27.—The coroner's investigation of the murder of Wm. Stewart, at Ansabel, Michigan, resulted in the arrest of Henry Farrington as principal, and Mrs. Rivers as accomplice. It is supposed that Farrington had two men to assist in the murder, and that they have fled to the woods. Stewart had nearly a thousand dollars in his possession on the night of the murder, which was taken by the murderers. Farrington has served a term in the States Prison, and has been wanted some time by the United States authorities for passing counterfeit money.

The gale from the west continued unabated until noon, since which time it has considerably abated. The barge, *E. T. Judd*, with a cargo of wheat, from Chicago to Buffalo, is ashore at Port Austin Reef; the schooner *Sylvester Neelon*, with a cargo of barley, is ashore at Point au Pelee; the schooner *Emen* is ashore and full of water, at Starve Island, Lake Erie; a schooner with a cargo of wheat went ashore at the Straits of Mackinaw on Monday night, but has since been released and is being towed to Detroit, leaking. The schooner *P. J. Cleveland* is lying in the Strait of of Mackinaw, leaking, her canvas all gone.

FOREIGN.

LONDON, 25.—A special from Bombay says the Nizam of Hyderabad, after all, excuses himself from meeting the Prince of Wales. He pleads that he is too unwell to undergo the journey himself, but sends a deputation instead.

The Mark Lane *Express* has the following weekly review of the British corn trade. Another week of storms and floods, with a great extent of damage, has further retarded the autumn sowings. Nothing could have been much worse for the condition of samples, and the abundance of foreign old wheat seems to be the chief security from a wholesome dread. The more we know of the crop of 1875 the less satisfaction it gives. France about maintains her rates. Belgium and Holland are rather dearer. Germany generally is very steady, but Danzig is higher. Prices at St. Petersburg, Vienna, and in Hungary, are unchanged.

The criterion stakes at Newmarket to-day were won by Clan Ronald, Springfield second, Latamise third.

CAIRIO, 25.—The Prince of Wales arrived here to-day, having disembarked from the *Serapis* at Ismalia.

BERLIN, 25.—The Emperor William returned to-day from his trip to Milan.

MADRID, 25.—The *Epoca* of this city says that in addition to the 15,000 troops sent to Cuba since the appointment of Valmaseda to the captain-generalship, the government has determined to send a further force of 7,000, which forms a tenth part of the last levy.

The executive authorities of Cuba have received directions to purify the Cuban administration by punishing the authors and participators in frauds without distinction.

LONDON, 26.—The bullion gone into the Bank of England on balance to-day is 30,000 pounds.

The race for the Cambridgeshire stakes to-day at Newmarket was won by Sutton, Lord Gowran second, and Grey Palmer third.

The London correspondent of the Liverpool *Courier* says, after Cardinal McCloskey's sojourn in Paris he will come here. The Catholics of London are preparing an imposing demonstration of welcome. McCloskey will be the guest of Cardinal Manning while here. It is said that a conference of leading Catholics of the south of England will meet here next week to arrange a programme for a public reception to him. It is expected McCloskey will make a tour of the provinces. He will certainly visit Liverpool and possibly Glasgow.

PANAMA, Oct. 16.—The National government overturned the State government on the 12th inst. and imprisoned President Arozmena and several of his subordinates. The change was effected without disorder of any kind. Greytown had been attacked by bands of men and the Governor killed and troops were sent to the relief of the city.

BERLIN, 26.—Prince Frederick William, unser Fritz, unveiled the Baron Stein memorial to-day; there was much ceremony.

ROME, 26.—It is stated that some German bishops recently asked the advice of the Vatican as to what line of conduct they should pursue, so as to terminate their conflict with the German government. Cardinal Antonelli consequently sent a circular to all the German bishops asking for their opinion concerning the means of arriving at an understanding between the Government and the Episcopacy.

LONDON, 27.—A special telegram from Paris announces that the government is prosecuting the *Echo D' Ajaccio*, M. Rouher's official organ, for stating that the constitution is an uncertain regime established by a group of persons without authority.

The screw sloop of war *Albatross* has been ordered to proceed to Panama, to protect British interests there.

The British admiral in the Mediterranean has been instructed to take action relative to the recent attacks upon English merchantmen by Spanish pirates.

It is thought the government will prosecute the consignees of arms shipped hence to China during the recent negotiations; several cargoes are now *en route*.

The *Morning Standard* says the Servian Skuptschina passed, by a vote of 61 to 42, a motion for war with Turkey.

The insurrection in Khokand has been renewed, and the new Khan has fled to Khadjend.

BERLIN, 27.—The German parliament met to-day. The Emperor William was absent on account of indisposition, and his speech was read by Herr Delbruck, minister of state. His majesty says that so far as human judgment can discern peace is more assured now than at any time during twenty years preceding the reconstruction of the Empire.

CITY OF MEXICO, 20.—The Chamber of Deputies was prorogued on the 15th. Extraordinary powers of the executive were voted by 139 against 14.

Advices from Guadalajara to the 16th state that five of the participants in the murder of the American missionary John L. Stephens, which occurred in Ahatuluco, March, 1870, had been executed,