Utah Territory, in accordance with and pursuant to the said doctrines, customs, and belief of the said Church, a ceremony was performed to unite the plaintiff and defendant in what is known as such plural or celestial marriage." * * * * * "But the defendant denies that on the said sixth day of April, or at any other time, he and the said plaintiff intermarried in any other or different sense or manner than that above admitted and set forth."

It is an anomaly in pleading to deny that a certain marriage took place in 1868, "*for*," or because, a certain other marriage took place in 1863. An argumentative denial like this is not good in law. The plaintiff's allegation, not being specifically denied, is admitted. (*Utah Practice Act, sec.* 65.) What does the subsequent express admission amount to?

"Where the admissions in an answer negative its general denials, the latter may be disregarded and judgment asked upon the former, when the complaint is verified, and the answer consists of such admissions and denials." (*Fremont et al. v. Seals et al.*, 18 *Cal.* 433; *Blood v. Light*, 31 *Cal.* 115; *Fish v. Redington, Id.* 185.) "A sworn answer must be consistent in itself, and must not deny in one sentence what it admits to be true in the next." "The object of sworn pleadings is to elicit the truth and this object must be entirely defeated if the same fact may be denied and admitted in the same pleading." (*Hensley v. Tartar*, 14 *Cal.* 508.)

The defendant's qualified and defective denial of the marriage of April 6th, 1868, is inconsistent with his subsequent admission that the parties were intermarried on that day. Did the defendant mean to hint what he did not like openly to say to the court, that a marriage celebrated by authority of the "church" of which he is the acknowledged head, is illegal, null and void? Let us inquire whether a marriage solemnized by such authority is necessarily void.

An ordinance first enacted by the so-called State of Deseret, and afterwards re-enacted by the Territorial legislative assembly, entitled, "An ordinance incorporating the Church of Jesus Christ of Latter-day Saints" provides:

"Sec. 3.—And be it further ordained that as said church holds the constitutional and original right, in common with all civil and religious communities, to worship God according to the dictates of conscience; to reverence communion agreeably to the principles of truth, *and to solemnize marriage*, compatible with the revelations of Jesus Christ, for the security and full enjoyment of all blessings and privileges embodied in the religion of Jesus Christ free to all, it is also declared that said church does and shall possess and enjoy continually the power and authority, in and of itself, to originate, make, pass and establish rules, regulations, ordinances, laws, customs and criterions for the good order, safety, government, convenience, comfort and control of said church," &c.

It may be laid down as a sound legal proposition, that a marriage solemnized in Utah, either according to the forms of the "church" of which Brigham Young is the head, or according to the forms of the common law, is a lawful and valid marriage, provided the parties to the contract are, at the time of entering into it, legally competent to intermarry.

But the defendant seeks to avoid the binding force of his admitted marriage to the plaintiff on the 6th day of April, 1868, by alleging, in effect, that neither of them was at that time competent to intermarry with any person. Not only does he allege that the plaintiff was then the wife of Jame L. Dee, but he further answers as follows:

"And the defendant further answering alleges, that at the town of Kirtland in the State of Ohio, on the tenth day of January, 1834, this defendant, being then an unmarried man, was duly and lawfully married to Mary Ann Angell by a minister of the gospel, who was then and there, by the laws of said state, authorized to solemnize marriages; and that the said marriage was then and there fully consummated; and that the said Mary Ann Angell, who is still living, then and there became, and ever since has been, and still is, the lawful wife of the defendant."

Thus does the defendant not only charge the plaintiff with, but confesses himself guilty of, a felony. His admissions, so far as they prejudice himself only, will be taken as true; but his charges, so far as they tend to injure the plaintiff, must be proved or they will go for naught. The defendant must prove that the plaintiff was the wife of another man, and that he was himself the husband of another woman on the 6th day of April, 1868, or his allegations to that effect can have no weight as against the plaintiff. There is no replication to an answer under the Practice act of Utah, and these allegations of the defendant are denied for the plaintiff by operation of law.

"Every material allegation of the complaint, when it is verified, not specifically controverted by the answer, shall for the purpose of the action be taken as true. The allegation of new matter in the answer, shall, on the trial, be deemed controverted by the adverse party." (*Utah Practice Act, sec.* 65.) "The intention of the code is to adopt the true and just rule that the defendant must either deny the facts as alleged, or confess and avoid them. When new matter exists it must be stated in the answer. New matter is that which, under the rules of evidence, the defendant must affirmatively establish. If the *onus* of proof is thrown upon the defendant, the matter to be proved by him is new matter." (*Piercy v. Sabin*, 10 *Cal.* 22.)

The allegations that the plaintiff had another husband, and the defendant another wife at the time of the marriage on the 6th day of *April, 1868*, are allegations of new matter, and this new matter the law denies for the plaintiff and requires the defendant to prove.

It being admitted that the parties hereto intermarried at the time and place stated in the complaint, evidence is necessary to determine the following questions:

1. Was the plaintiff, on April 6th, 1868, the wife of James L. Dee?

2. Was the defendant, at Kirtland, in the state of Ohio, on the 10th day of January, 1834, lawfully married to Mary Ann Angell, and was the said Mary Ann his wife on April 6th, 1868?

3. If these questions shall be determined against the defendant, it will then become an important *question* whether the defendant has treated the plaintiff unkindly, cruelly, inhumanly, or has deserted or failed to support her; which, in his answer the defendant denies. *If, however*, the first two questions, or either of them, shall be determined against *the plaintiff; or, in other words, if* it shall appear that the parties have knowingly entered into a polygamous or bigamous marriage, this court will not grant the divorce prayed for. But the court is not permitted to presume what the evidence will be. The witnesses necessary to maintain or to defeat this action are liable to be widely scattered in Utah, in Ohio, or elsewhere; and the litigation is liable to be protracted and expensive. Can the court lawfully require the defendant to pay an allowance for *ad interim* alimony and for the expenses of prosecuting the action?

The Utah Statute is silent upon this question, but that silence does not answer it in the negative.

"The allowance for *ad interim* alimony does not depend wholly upon the statute, but upon the practice of the court as it existed before the statute." (*North v. North*, 1 *Barb. Ch. R*, 241.) In *Cast v. Cast, ad interim* alimony was allowed by the unanimous decision of the Supreme Court of Utah.

"This question seems plain on principle. First, the authority to make the order belongs to the Court under the law imported by our forefathers to this country; secondly, if this were not so, still it springs up necessarily out of the legal relation of the parties, and the condition of facts appearing of record before the court to which the application is made. And if any one principle of our jurisprudence is more worthy of commendation than another, it is, that the tribunals may always be pressed to action whenever the case comes within an established legal rule, though not within any precedent." (2 *Bishop on Marriage and Divorce, sec.* 396.) Chancellor Kent says: "I am entirely convinced from my own judicial experience, that such a discretion is properly confided to the courts." (2 *Kent Com.* 99 *note*,) "The power to decree alimony falls within the general powers of a court of equity, and exists independently of statutory authority." (*Galland v. Galland*, 38 *Cal.*, 265.)

Is the case at bar," as it now stands in court, a proper case for the exercise of this authority.

Bishop supposes the case of a woman marrying a man and afterwards finding that he "has already another wife living and so the marriage is void. She may indeed treat it as void, without a judicial sentence; yet suppose that, instead of this, she brings her suit against the man to have it decreed null. Her property is practically in his hands, though in point of law she retains the title. But since she has elected to let the court settle the question of nullity in a direct proceeding for this purpose, she has the same claim upon the court to have appropriated to her so much of this property as her necessities demand while the suit is going on, as though she alleged the marriage to be valid, and sought its dissolution for a cause occurring subsequently to the nuptials. In like manner, where the man seeks to establish the nullity of his marriage on the allegation that the woman has a former husband living, she may have alimony pending the suit, and money to defend." (2 *Bishop on Mar. and Div. sec.* 402,) "And this is so, even though it is alleged that the marriage was brought about by the fraudulent practices of the supposed wife, and though the costs of the suit may ultimately be awarded against her." (*Id. note* 2.")

In a case in New York, in which the supposed wife alleged marriage and cohabitation, the supposed husband denied the marriage but did not deny the cohabitation; and thereupon Vice-Chancellor McCoun made the allowance of temporary alimony, and money to carry on the suit. (*Id. sec.* 404.) In the case at bar the defendant both admits the marriage and fails to deny the cohabitation.

"Where, upon an application for temporary alimony and an allowance for expenses, the facts undisputed are such as that from them a presumption arises that the parties were married so that the affirmative rests upon the defendant to repel that presumption, the court has jurisdiction and power to grant the application, although marriage, in fact, is denied. (*Brinkley vs. Brinkley*, 50 *New York*, 184.)

"The *ad interim* alimony and money to sustain the expenses are given, not as of strict right in the wife, but of sound discretion in the court. Yet the discretion is a judicial, not an arbitrary one. And when a case is brought within the principles recognized as entitling the wife to the allowance, the allowance follows pretty much as of course, without inquiry into the merits of the case. If, for example, she is plaintiff, it is no objection that the husband denies her charges under oath." (2 *Bishop on Marriage and Divorce, sec.* 406.)

Owing to the peculiar notoriety of the parties, and to the importance of this case in the jurisprudence of Utah, it has been deemed desirable to show, even at the risk of being elementary, that this case comes clearly within the principles universally recognized as giving a woman who is a party to a suit for divorce, a just claim for alimony and sustenance; "the one being for the defraying of the ordinary expenses of the wife in the matter of living; the other being for the same purpose in respect to the matter of the suit." (*Id. sec.* 387.)

It now becomes important to inquire what principles must guide the court in fixing the amount of the allowance in this case.

"As a general proposition, the fund out of which the wife is entitled to her alimony is the *income* of the husband, from whatever source derived or derivable." (*Id. sec.* 447.)

"The ordinary rule of temporary alimony is to allow the wife about one-fifth of the joint income. * * This is regarded as a fair medium, though the proportion will vary * * * * according to circumstances. When the necessities and claims of the wife have been large, one-fourth has been allotted; and Sir John Nickoll, in one case * * * granted the wife £50 per year out of an income of £140 * * On the other hand, in different and peculiar circumstances, the wife has been obliged to accept as small a proportion as one-eighth." (*Id. sec.* 460.) "Alimony *pendente lite* is usually made, by the terms of the order itself, to commence from the return of the citation. This is the true rule. * * But it may be made to commence earlier or later." (*Id. sec.* 424; *Burr v. Burr*, 7 *Hill* 207.)

The plaintiff alleges in her complaint "that the defendant was, at the time of her said marriage, ever since then has been, and is yet, the owner in his own right, of vast wealth, amounting to several millions of dollars, and is in the monthly receipt of an income therefrom of not less than forty thousand dollars;" and she prays for an *ad interim* allowance of one thousand dollars per month.

On the other hand, the defendant "denies that he is or has been the owner of wealth amounting to several millions of dollars or that he is or has been in the monthly receipt from his property of forty thousand dollars or more. On the contrary the defendant alleges, that according to his best knowledge, information and belief, all his property taken together, does not exceed in value the sum of six hundred thousand dollars, and that his gross income from all of his property, and every source, does not exceed six thousand dollars per month."

"And the defendant denies that one thousand dollars, or any other sum exceeding one hundred dollars per month, would be a reasonable allowance to the plaintiff, even if defendant was under any legal obligation to provide for the maintenance, education and proper medical attendance of said plaintiff and her children during this litigation."

Under all the circumstances of this case, it seems just that the defendant should pay to the plaintiff, to defray the expenses of prosecuting this action, the sum of three thousand dollars; and that he should pay to her, for her maintenance, and for the maintenance and education of her children, the further sum of five hundred dollars per month, to commence from the day of the filing of the complaint herein.

It is ordered accordingly.

BY TELEGRAPH.

CONGRESSIONAL.

SENATE.

WASHINGTON, 24. — Harrison, from the committee on elections, made a report in the Pinchback case, with a resolution that Pinchback was not elected and that Sheridan was, and is entitled to his seat. Smith, of N. Y., made a minority report, with a resolution that Sheridan and the other contestant were not entitled to a seat; ordered printed, to be called up hereafter.

Pike, from the same committee, reported in the Arkansas contested election case, that Gause, the contestant, was not elected, and that Asa Hodges, the sitting member, was.

Logan, from the committee on military affairs, reported favorably on the House bill authorizing the promulgation of regulations for the government of the army; passed.

In considering the bill for the admission of Colorado, Hitchcock said the committee on territories had carefully considered the bill, and from information gathered felt satisfied that Colorado had a population of nearly 140,000. This was the only objection that could be made against admission, and as other States had been admitted with no more population he hoped this would not be urged.

Sargent objected to the large land grant made by the bill, also to the twelfth section, which provides that five per cent. of the proceeds of the sales of public lands in Colorado, which have been or shall be sold by the U. S. prior or subsequent to the admission of said State, shall be paid to the State for the purpose of making such internal improvements as the legislature shall decide; he moved to strike out the words have been or" and "prior," or so that the five per cent. should be paid upon the sales of land subsequent to the admission of the State; agreed to. Sargent moved to amend the 12th section by adding a proviso that the section shall not apply to any lands disposed of under the homestead laws, or to any now or hereafter reserved for public uses; agreed to. He moved to further amend by inserting the word "agricultural," so as to read "five per cent. from the sales of agricultural public lands, &c;" agreed to.

Hager offered an amendment excepting all mineral lands from the operations of the act; agreed to.

Edmunds moved to amend so as to provide for a proclamation ordering an election for members of a constitutional convention, to be issued within ninety days next after the first of Sept., '75, instead of ninety days from the passage of the act; agreed to. He also offered an amendment fixing the election to adopt or reject the constitution for the month of July, '76; agreed to, 27 to 26.

Hager moved to amend the section, providing that the fifty sections of land to be selected for the purpose of erecting public buildings in the State shall be selected with the approval of the President; agreed to.

Ingalls moved to amend the thirteenth section so as to make section 2,378 of the revised statutes applicable to the State, when admitted, instead of the act of Sept. 4, '41, entitled an act to appropriate the proceeds of sales of public lands and to grant pre-emption rights; agreed to.

Hamilton, of Md., called attention to the 4th section of the bill, which he said compelled the people of Colorado to enact a civil rights bill before they could be admitted; he moved to strike out in that section the words "provided *that the constitution shall* be republican in form, and shall make no distinction in civil or political rights on account of race or color, except Indians not taxed."

Sargent demanded the yeas and nays, and it was rejected, yeas 17, nays 39, Sprague and Tipton voting with the democrats in the affirmative. The bill was then reported to the Senate and the amendments made in committee of the whole concurred in, and the bill was read a third time and passed, 43 to 13, Bogy and Kelley voting with the republicans in the affirmative, Sprague with the democrats in the negative.

The House bill for the admission of New Mexico was taken up. Sargent moved, seriatim, all the amendments made to the Colorado bill, which was agreed to.

Merriam offered the amendment moved by Hamilton to the Colorado bill in reference to civil rights, *and it was rejected.* The bill was then reported to the Senate, and the amendments of the committee of the whole were concurred in, and the bill passed, 31 to 11, Bogy, Dennis, Gordon and Kelley voting with the republicans in the affirmative, Frelinghuysen, Edmunds, Morton, Pease and Pratt with the democrats in the negative.

On motion of Morton the Senate bill to provide for and regulate the counting of the votes for president and vice-president was taken up.

Cameron moved to postpone the bill and take up the bill to place headstones to the graves of the soldiers in certain cemeteries; the vote disclosed no quorum present and, after ineffectual efforts to secure one, the Senate adjourned.

WASHINGTON, 25.—Ramsey presented the credentials of Saml. J. R. McMillan, U. S. Senator from Minnesota, from March 4th; read and placed on file.

WEAPONS OF CHRISTIAN WARFARE.—Speaking of the brutal jests and slanders levelled at the "Mormon" people, by certain coarse and unscrupulous parties, W. Hepworth Dixon, in one of his recent letters to an English paper, says—

"Are such the weapons of Christian warfare? Is this the way to show deluded Mormons that we Gentiles have a nobler rule of life than that of Brigham Young? On reading such attacks, are any of the converts likely to feel that they have wandered from the fold of charity and the path of peace?"

The woman who said she would not marry the best man living, compromised by taking the worst one.