

must take the plaintiff's statement to be true. The defendant's objection admits it to be true, precisely as a demurrer to a complaint admits such complaint to be true. And the Court can no more go outside of the statement, and presume other or different facts, than it could go outside of a complaint and presume facts not stated therein. It follows that Mary Doe would have to be regarded as the wife, the lawful wife of the plaintiff, and therefore it would be the duty of the Court to reject her as a witness.

When, in the case at bar, the plaintiff's counsel called the woman Harbel, as a witness, he said—"She is the plural wife or second wife of the plaintiff—the first wife being now living and residing with the plaintiff as his wife." The defendant's counsel objected to her being sworn.

The statement of the plaintiff's counsel must be taken as true. Nothing can be added to it, or taken from it, either by conjecture or presumption. What does that statement mean? Take the words—"The first wife being now living and residing with the plaintiff as his wife." Those words mean, if they mean anything, that the woman of whom they were spoken, was the lawful wife of the plaintiff. The word "plural" means, "consisting of two or more;" "designating two or more;" "any number except one." (See Webster's Dic.) Courts are bound to take notice of many facts which are neither sworn to by witnesses, nor recorded in books. This Court knows, and is bound to take notice, that the practice of polygamy is taught in Utah, and that in public and in private a polygamous woman is called a "plural wife," and that a "plural wife" is never the first wife. The statement made by the plaintiff's counsel was in substance and legal effect, that the plaintiff's first and lawful wife was then alive, and cohabiting with the plaintiff, and that the woman, Harbel, sustained polygamous relations to the plaintiff, and therefore was not in law his wife. His theory was, that therefore she was a competent witness. No time will be spent in proving that a polygamous marriage is absolutely void.

"On an indictment for a second marriage during the continuance of a former marriage, though the woman first married by him cannot be a witness, yet, after proof of the first marriage, the second woman he married may be a witness, not being legally the wife of the prisoner. After such proof, she would be competent to give evidence for, as well as against, the prisoner." (Phillips on Ev., Vol. II., p. 96., marg.)

"In a prosecution for polygamy, the first husband or wife cannot be admitted to prove the former marriage against the prisoner." (Ibid., p. 81., marg.)

"The husband cannot be a witness against the wife nor the wife against the husband, to prove the first marriage on an indictment for a second marriage; \* \* \* but in such case the second wife or husband may be a witness, the second marriage being void." (Blackstone's Com., Chitty's 19 Ed., p. 444., note 46.)

"This rule of protection is extended only to lawful marriages, or to such as are innocent in the eye of the law. If the cohabitation is clearly of an immoral character, as for example in the case of a kept mistress, the parties are competent witnesses for and against each other. On the other hand, upon a trial for polygamy, the first marriage being proved and not controverted, the woman, with whom the second marriage was had, is a competent witness; for the second marriage is void." (I. Greenleaf's Ev., Sec. 339.) "The rule that the husband and wife shall not be compelled to testify against each other, relates only to lawful marriages, or at least to such as are innocent in the eye of the law. A kept mistress is certainly not privileged, and she is a competent witness against the man by whom she is kept." (3 Bouvier's Institutes, p. 434.)

The Utah statute is substantially an enactment of the rule of the common law: "On the ground of an indissoluble union of interests, and in order to prevent conubial harmony and confidence from being disturbed, it is a general rule of law, that neither the husband or wife can, in any case, civil or criminal, be a witness for or against the other; an exclusion which belongs to no other of the domestic relations. This rule sometimes produces hardship, but on the whole is supposed to be salutary. (Walker's American Law, 249.)

Now, it is not perceived how a polygamous woman, or plural wife, can be rejected as a witness for or against her so-called husband, save on the assumption that she is, in law, his wife. Let us see to what consequences such a doctrine might lead.

While, to permit a plural wife to testify for her polygamous husband, might frequently give him an advantage in litigation, yet it is believed that the opposite doctrine would result in much greater public inconvenience and injury. It is conceivable, nay, experience and observation show, that in many actions, whether civil or criminal, plural wives are the only witnesses by whom a case can be made out against polygamous defendants. Were the rule to be established that such witnesses are to be rejected, it is believed that it would soon be found to work great injustice, especially in this Territory, where so many men and women sustain polygamous relations to each other. Indeed, it would often entirely bar the avenue to truth.

Nor are these the only weighty considerations. If a plural wife, when called as a witness for or against her polygamous husband, is to be rejected, it must be done upon the assumption that she is a wife within the meaning of the Utah statute. If, therefore, that statute required such a construction, one of two consequences must follow: Either, 1st, that the statute is in that particular void; or, 2d, that polygamy is lawful in Utah. If the latter, then the act of Congress making polygamy a penal offense, has fallen to the ground.

But the Utah statute is not void, neither does it legalize polygamy. It must be construed to exclude only lawful husbands and wives from being witnesses for or against each other, save in the cases expressly excepted by the statute.

In the case at bar, the plaintiff's first wife being alive, and residing with him as his wife, he called as a witness his plural wife, his second wife. She was rejected, and judgment went against the plaintiff. The marriage of the plaintiff with this plural wife was absolutely void. She was not a wife within the meaning of the statute. She ought to have been sworn as a witness. The judgment ought therefore, to be reversed, and a new trial ordered.

#### Salt Lake City and the Mormons.

The situation of Salt Lake City is one of surpassing beauty. It lies on the eastern side of the valley, just leaning itself a little way upon the sloping bench of the Wasatch mountains, whose snowy sides and summits loom grandly in the background of the scene. Across the valley, a dozen miles away, stretches the parallel range of the Oquirrh Mountains, more green and less rugged than the nearer heights. Looking north and south, with the long reach of vision which the eye enjoys in this dry, transparent air, the two borders of mountain seem to nearly meet and frame the magnificent valley-picture in. Standing on one of the overlooking hills, with the beautiful city at your feet, the mountains behind and before, the green, smooth plain between them, the River Jordan winding through it like a silver thread, from Utah Lake to Great Salt Lake—both lakes within the sweep of landscape which the eye takes in—if this earth affords a fairer, more glorious panorama, to be scanned in a single view, I hope I may be permitted to see it before I die, but I do not expect that surprising delight.

Whether consciously or not, the City of the Saints was laid out to be beautiful. In its earlier days the wide, infrequent streets, enclosing large squares or blocks, must have given a straggling appearance to the town; but now that it is becoming compactly built, with abundant trees to line the streets and shade the house grounds and the gardens, its look to the visitor is most inviting. The little brook-like streams of water which flow, and most times with a gurgling current, down either side of every street, contributing a rivulet for irrigation to every door-yard, add very much to the comfortable, attractive aspect of the city.

Within the last three years, especially, the city has been much improved as well as enlarged. The business structures on its principal streets have assumed more style, gas lighting has been introduced, street railways established, and the town has been vivified and modernized in a rapid way. The Mormons accomplished wonders, in their creation of a city here, and in their whole settlement of this remote wilderness, when the circumstances of their migration to it are considered.

Although considerably in the minority yet the Gentiles feel secure in their strength of numbers, independent, and more aggressive, I think, in their general disposition towards the Mormons than is at all just or reasonable. There is no sufficient excuse for the sort

of hectoring insolence which seems to characterize the attitude of a majority of them toward the Mormons—or, rather, toward the Mormon leaders. Universally, I think, the testimony of the Gentiles who are at all just or reasonable, is to the effect that the Mormons at large—the commonality, that is, of Brigham Young's Zion—are a sincere, simple-minded, honest, amiable people. They seem to be hospitable as a rule, kindly disposed toward all men, pious in their way, and not at all aggressively intolerant. It is toward the heads of the church—the hierarchy—the presidents, the elders, the apostles, the bishops and the priests—that the bitterness of Gentile animosity is aimed. Against these, all and singular, from "President Young" down, the feeling is very strong. I do not relish the hectoring and insulting way in which the Gentiles of the Territory, or many of them, with

their organ, and most of the Federal judges and officials for their backers, keep up a brewing of bad blood between themselves and their Mormon neighbors. I should respect them more if they held the safe ground which they now occupy with more dignity and less aggressiveness.—*Buffalo Express*, June 28.

#### THE MORMONS.

Few subjects have created so wide an interest as that presented by the followers of Brigham, now settled in Utah. Their strange origin, cruel persecution, struggles and wanderings have been referred to for years as presenting a phase of human nature, under religious influences, almost without a parallel since the days of Moses.

Driven from camp to camp in the States, the devoted believers at last took up their march through the wilderness and made a trail for subsequent emigrants that could be traced by the bones of domestic animals and the graves of men. Settling in a barren desert, then a part of Mexico, through their toil, that was that of the mule, and their ingenuity or inspiration, they have turned that desert into a garden. But for the success of these fanatics in creating a half-way resting place for the gold-seekers of California, our vast possessions on the Pacific slope would not have been possible, or if possible, a century behind their present wealth and prosperity.

Their very success has been the cause of further persecution and abuse. Almost surrounded by communities made up of criminals escaping conviction and convicts escaping punishment, the possessions of the Mormons are regarded with a greed known only to the border, where the knife and the revolver make each individual his own policeman, and where the ordinary end of man is a disease that leaves on his boots. To these, since the discovery of certain valuable silver mines, are added a horde of the thieves sent out to plunder the honest men of the United States by a corrupt administration, under the name of carpet-bagger. The chief justice, for example, is a man openly recognized as one of the same sort are (some of) his official associates and subordinates. We can well imagine, then, the abuse, under color of law, the most unbearable of all tyranny, to which these poor, inoffensive fanatics are subjected.

To justify these outrages the land has been filled with falsehoods of the grossest sort. A quiet, law-abiding, religious people have been represented as liars, thieves, murderers and, what is the most distressing to these good men who assail them, polygamists. In vain tourists inform us that they can tell when they pass from a Christian settlement to that of the Mormons by the violent contrast presented between the two. The traveler passes from a lawless crowd, where the only known court is that held by Judge Lynch under the limb of a tree, where one has to sleep with his hand on a revolver, to a settlement where kindness takes the place of violence, where arms are uncalled for, where even an unprotected woman may travel a hundred miles without meeting with insult, unless she encounters an Indian or a Christian. The lies go on all the same.

We have before us two widely-differing books upon this strange people. The first is written by our old friend Captain John Codman, whose communications to *The Cap-*

*ital* and books upon Europe have been so widely read and favorably noticed. Captain Codman is a product of the sea. Nearly all his eventful life has been passed upon the briny deep; thirty years of it as captain of ocean steamers. He has now retired from the pursuit and given himself up to touring over the earth, and driving a pen upon the results of his observations. He is a keen, clear, fresh builder of sentences that seem to carry the reader with him in his wanderings. Without being deep, he is observant and so honest and patient that he seems to have weighed all sides before giving an opinion. It is not so much what a man may have to tell that makes him agreeable as his agreeable manner of telling it, and Captain Codman has the way of an old salt spinning a forecastle yarn. Making no pretension to fine writing, he seems to give us in his quaint way precisely what we wished to know.

The captain tells us about Corinne, a larger beer saloon and assignation house of about one thousand inhabitants. We refer to this more pointedly because this Corinne is the headquarters of the Christian savants who seek to redeem Utah.

The next book before us is in marked contrast to that of Captain Codman. It is written by a refined, accomplished lady who, animated more by her feelings than her judgment, has wrung from her heart all that she has to say of the Mormons. The origin of this little work is as follows:

"The writer of these letters is the wife of a gentleman who, in the late war, distinguished himself as a daring officer on the side of the Union, and for gallant services was breveted major general. For years he suffered from the effects of wounds received in the war, and to save his life his physicians recommended a change of climate. This was the object of the journey through Utah described in this work. His wife and two children accompanied him. She is a lady of fine culture and of decided religious convictions of the orthodox type, and noted in the wide circle of her acquaintance for her active benevolence, and her faculty for managing and organizing works of charity.

"These letters were written to her father, William Wood, Esq., of New York, himself a distinguished citizen of that city, and a member of the old firm of Dennistoun, Wood & Co., bankers. Mr. Wood has now withdrawn from business and lives an entirely unostentatious life, doing good in his own quiet way. But his firm for a full century figured prominently in the financial world, branches of the house being established in London, Glasgow, Liverpool, Havre, Australia, Trinidad, New Orleans and New York.

"Mr. Wood was quite conspicuous during his residence in England as a friend of education, and was on the most intimate terms with Cobden. He came to this country from the Liverpool branch of his house to take charge of the branch in New York.

"Mr. Wood is a very consistent and influential member of the Consistory or Dutch Reform church, and has always been conspicuous in the assertion of orthodox doctrinal standards. New York owes to him her Girls' Normal College, and the plans of the docks which are about being constructed along the water front of the city.

"While Mr. Wood was head of the Liverpool branch of the house he was distinguished in the corn law agitation, and his familiarity with free-trade arguments and statistics has made him one of the most influential opponents of protection in the United States."

Although the evidences given by this cultivated woman comes from a widely differing stand-point from that of Captain John Codman, it amounts to the same. The industrious habits, cleanly ways, inoffensive lives, and kind impulses are all testified to by this Christian woman.—*Washington Capital*, July 5.

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Dated at Salt Lake City, April 9th, 1874.  
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