CHAPTER XXXVII.

THE DIVORCE SUIT.—PROCEEDINGS IN COURT.—BRIGHAM'S AFFIDAVIT.

I bring an Action against the Prophet.—My "Complaint" against Him.—What the "Complaint" Stated.—My Birth and Early Life.—My Marriage with the Prophet.—Exile to Brigham's Farm.—Cause of Action for Divorce.—The Question of Alimony.—My Own Affidavit.—Corroborative Testimony.—Opinion of Judge McKean.—Brigham Young's Reply and Affidavit.—The Prophet states the Value of his Property.—Wonderful Difference of Opinion.—Proceedings in Court.—Judge McKean Sums Up.—Order for Allowance and Alimony.—Judge McKean Removed.—His Order Quashed by the New Judge.—The Latest Proceedings.

ON the 28th of July, 1873, I commenced an action for divorce against Brigham Young in the District Court of the Third Judicial District of Utah, and the "Complaint" was served upon him by the United States marshal.

BRIGHAM FIXED AND IMPRISONED FOR CONTEMPT OF COURT.

This "Complaint" set forth, with the usual prolixity of all legal instruments, the grievances which I had appealed to the law to remedy; but, as it would be utterly impossible, in the circumscribed limits of these pages, to give that document entire, I shall present the reader with as succinct a *resumé* of its contents as I possibly can.

554 STATING MY CASE.

It was addressed "To the Hon. James B. McKean, Judge of the Third Judicial District Court, in and for the Territory of Utah, and the County of Salt Lake, in Chancery sitting," and the following are the several items which it contained—

It began by stating who and what I was; that I was born at Nauvoo, Illinois, but had, since the year 1848, been resident in Utah; and that I was the wife of Brigham Young; and that I was married to him of the 6th of April, 1868, when I was in my twenty-fifth year, and was the mother of two children by a former marriage, one four and the other three years of age; that neither I nor my children had anything to depend upon— a fact of which Brigham was well aware,— and also that my children were boys, still living.

That Brigham had lived with me for about a year after our marriage, treating me with some degree of kindness, and providing, though inadequately, for my support; and that I had always fulfilled my duties as a wife toward him.

That about a year after our marriage he began to neglect and ill-treat me; that during the year 1869 he sent me, against my wishes, to a farm, four miles distant from Salt Lake City, where, for three years and a half I was compelled to labor until I was completely broken down in health; that my only companion was my mother; that, except the limited fare which the defendant allowed me, he appropriated all he proceeds of the farm; and that on the few occasions when he visited the farm he treated me with studied contempt, objecting even to my aged mother remaining with me, after her health was destroyed by overwork on his farm.

That toward the end of 1872 Brigham removed me to a house in Salt Lake City, where, however, he seldom visited me; that when I called upon him to ask a supply of the necessaries of life, he used the most opprobrious language toward me, and gave me so little that I had to work constantly to support myself and my children.

555 SEEKING A SEPARATION.

That for five years past my health had been so bad that I was now unfitted to labor, and was in constant need of medical advice; that Brigham knew it, but repeatedly refused to furnish me with assistance, medicine, or food, so that I was obliged to rely on the charity of friends; that Brigham had declared he would never do anything more for me, and said that henceforth I must support myself, notwithstanding that he was the owner of several millions of dollars; that, as President of the Mormon Church, he occupied a very important position, and I believed that his monthly income could not be less than forty thousand dollars.

That I had been compelled to sell my furniture, and all my household goods, in order to obtain the necessaries of life; and that, for a year previous to that date [1873], Brigham had entirely deserted me.

Further, I stated that it was impossible for our union

to continue; that I prayed for a separation, and also an allowance, as all I possessed consisted of about three hundred dollars, and my children were dependent upon me for support; I asserted that I had secured the aid of Messrs. F. M. Smith, A. Hagan, and F. Tilford as my counsel; that I had been informed that twenty thousand dollars would be a reasonable compensation; and I therefore prayed he court to direct a subpoena, commanding the defendant, Brigham Young, to appear to answer to my suit; that, pending it, he might be ordered to pay me a thousand dollars a month from the date of filing this bill, a preliminary fee of six thousand dollars to my counsel, and that after the final decree he should pay them the remaining fourteen thousand, and all the expenses of the court.

Furthermore, I prayed, that after our legal separation, he might be ordered to support myself and children suitable; and that for the purpose the sum of two hundred thousand dollars might be set aside from his estate.

556 THE PROPHET'S INCOME.

This bill, the substance of which I have given above, was signed by my solicitors, Smith, Hagan, and Jilford, and to it the following was appended—

"TERRITORY OF UTAH, County of Salt Lake, ss.

"Ann Eliza Young, being first duly sworn, deposes and says: That she is the complainant in the above entitled action; that she had heard read the foregoing bill of complaint, and knows the contents thereof, and that the same is true of her own knowledge, except the matters and things therein stated on information and belief, and as to those she believes them to be true.

"ANN ELIZA YOUNG.

"Subscribed and sworn to before me, this 19th day of July, A.D., 1873.

JOSEPH F. NOUNNAN, *Clerk."*

A motion for an allowance and counsel fees was notice for hearing at the same time, and the service was by the same officer. This document was headed with all due form and ceremony. It stated, I, Ann Eliza Young, the plaintiff, being duly sworn, alleged:

That I was the wife of Brigham Young, the defendant; that while I was living with him, and performing the work mentioned in the bill already filed, he acquired enormous property, of the value of several millions of dollars, and was now the owner of at least eight million.

That I had no means of knowing his exact income, but was sufficiently informed to allege that it was at least forty thousand dollars a month.

That the f acts stated in the bill were true; that I and my children were penniless; that knowing the power and influence of Brigham, that he had the disposition to harm me, and that my life would be unsafe in any private house, I had taken refuge in the chief hotel in Salt Lake City,—the Walker House,—about the 15th of July, where I had

557 FURTHER AFFIDAVITS.

since resided; that my expenses were very large, but that I had no income, and that me health was too feeble to allow me to work. I therefore prayed the court to grant me the items included in the bill already filed.

This affidavit was signed by me, and countersigned by Joseph F. Nounnan, the clerk of the court.

Attached to it was an affidavit, signed C. M. Turck, making, upon oath, a statement of the destitute condition in which I was previous to the time when I left my private residence and went to the Walker House.

On this affidavit it is needless for me to speak in detail, further than to say that it more than fully establishes to the utmost all that the previous bill and affidavit affirmed. Other affidavits were made by gentlemen who knew me well,—one by Mr. Malcolm Graham, and another by me medical advisor, J. M. Williamson, both of which full confirmed my own statements.

James B. McKean, judge of the court, was absent temporarily an account of sickness at that time, and Judge Emerson, of the First District Court, presided for him. Judge McKean had held that, in equity cases, the Untied States marshal was the proper officer to serve process, but the defendant came into court at the time appointed for the hearing, and moved to quash the service of the process, on the ground that the "territorial marshal," and not the United States marshal was the proper officer to serve the process in the case. Reversing the rule administered by Judge McKean, the judge temporarily presiding held the motion good, and quashed the service.

Therefore new process was issued, and placed in the hands of the territorial marshal, accompanied by an order to the defendant to appear and answer to the motion for and allowance and alimony. This was regularly served, and at the day appointed the defendant appeared by counsel, and, for cause against the motion, filed his demurrer to the bill, on the ground that the District Court had not jurisdic-

558 BRIGHAM DENIES OUR MARRIAGE.

tion of the subject of divorce in Utah Territory. Two days were occupied in the argument of this question, and it was

taken under advisement for ten days longer. At the end of that time the presiding judge came into court, and held that this court had no jurisdiction in matters of divorce, and denied the motion.

The case then stood over, by an agreement between the counsel, until the following May, 1874. The Supreme Court of the Territory, at its term held in that month, in the case of Cast *vs.* Cast, decided that the district courts of the territory had jurisdiction in actions for divorce and alimony, thus reversing the opinion of Emerson, justice in this case. The case being afterwards—in July, 1874—called on for hearing on the demurrer to the complaint in the District Court, McKean, presiding, overruled the demurrer, and gave the defendant leave to answer.

Thereupon my counsel asked and obtained leave to renew the motion for an allowance and alimony pending the suit which had been denied. It is proper also here to state, that on the 24th of June, 1874, Congress enacted a law expressly conferring authority in divorce cases on the District Court of the Territory; but his law only affirmed by legislation what the Supreme Court had already decided to be the law.

On the 24th of August, 1874, Brigham Young filed an answer, of which the following is a correct summary—

He denies that at any time he had been married to me.

That at the time when my affidavit alleged that this marriage to me took place, I was really the wife of James L. Dee, never having been legally divorced from him, but that he [Brigham] believed at the time of the alleged marriage in April, 1868, that I had been properly divorced from Dee.

He alleged his previous marriage with Mrs. Mary Ann Angell Young, at Kirtland, Ohio, on the 10th of January, 1834, and that the said legal wife was still living, of which fact I, complainant, was aware.

He admitted his marriage with me, after the custom of the Latter-Day Saints, but denied that the marriage was legal, in any sense acknowledged by the laws of the land.

He then proceeded to deny every one of the counts in my complaint, seriatim, winding up whit the following statement—

"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, 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 his property, and every source, does not exceed six thousand dollars per month.

"Defendant further says, that at the time of the said alleged marriage, this defendant had, and still has, a very large family; that his said family now consists of sixty-three persons, all of whom are dependant upon this defendant for maintenance and support.

"Whereof the defendant prays judgement of the court that he be hence dismisses with his costs herein.

"WILLIAMS, YOUNG, & SHEEKES,
and HEMPSTEAD & KIRKPATRICK,

Defendant's Attorneys."

To the replication of defendant, which was very lengthy, denying or explaining away every point in the bill which I had filed, the following was appended—

"TERRITORY OF UTAH, County of Salt Lake. ss.

"Brigham Young, being duly sworn, on his oath says: That he has heard read the foregoing answer, and know and understands the contents thereof, and that the same is

true of his own knowledge, except those matters therein stated on his information and belief, and as to those matters he believes it to be true. Affiant further says that he is the defendant in the above entitled suit.

"BRIGHAM YOUNG.

"Subscribed and sworn to before me this 25th day of August, 1874.

"Jos. F. NOUNNAN, *Clerk."*

The court then gave me, or my counsel for me, leave to renew the motion for alimony as asked; and notice having been given, the motion was by agreement fixed for hearing on the 3rd day of October following. My counsel also filed a motion to strike out portions of the defendant's answer, and on hearing the motion for alimony, insisted upon submitting it to the court. When the motion was called for hearing, I offered to submit a number of affidavits bearing on the question of alimony, which were filed and severed with the original complaint. The defendant objected to the

reading of them, on the ground that they had not had sufficient notice of them by the notice renewing the motion, and they were withdrawn.

The defendant then offered to read affidavits in support of his answer, but as they had not been served, and their contents not made known prior to the hearing, they were objected to and excluded. It also appeared that the affidavits were addressed to other matter of defense than those set up in the answer.

The hearing was then had upon my complaint and the defendant's answer, my counsel at the same time submitting their motion to strike out certain objectionable portions of the answer, and insisting that such portions should be disregarded be the court, and treated—if the motion were well founded—as out of the answer.

The questions involved were argued, and on the 23rd day

561 PLURAL MARRIAGES ILLEGAL.

of February, 1875, the judge decided the motion for alimony, pending the suit, in an elaborate written opinion, of which the following is an accurate summary—

The Judge, Jas. B. McKean, laid down nine general axioms tending to demonstrate that the defendant's pleas were invalid; that a marriage solemnized in Utah, after Mormon fashion, would be legally valid, provided the parties were married were competent to enter into that engagement; that the court could not grant a divorce if the marriage were proved to be bigamous or polygamous; that the court had power to grant alimony, and intended to do so to the extent of one twelfth of what the defendant admitted his income to be, or one eightieth according to my assertion.

He then summed up the statements of both parties to the suit. He gave the substance of my "Complaint," and then took into consideration Brigham Young's reply.

Then he considered the defendant's denial that any marriage had ever taken place between us; his statement that, at the time when I alleged that our marriage took place, I was actually the wife of Jas. L. Dee, never having been properly divorced from him; and also his admission that we had been married polygamously in April, 1868.

The judge gave quotations from various sources to prove that this marriage was legal and binding according to the laws of the Territory and of the United States, notwithstanding that the forms of the Mormon Church were used; providing, always, that we were both competent to enter into the contract.

He discussed the assertion of defendant that he was also incompetent to marry while his lawful wife, Mary Ann Angell, was still living. This, the judge explained, was the admission of felony; as, if admitted, it would prove that the defendant had entered into a bigamous marriage. Such statements he, the judge, said should be admitted as evidence, so far as they were to defendant's prejudice, but must be proved true before they could be admitted as evi-

562 BRIGHAM ARRESTED FOR CONTEMPT OF COURT.

dence against the plaintiff. The defendant must prove that the plaintiff was the wife of another man, and that he himself was the husband of another woman, on the 6th of April, 1868.

The judge stated, that in order to prove the allegations made on both sides, it would be necessary to summon witnesses, procure documentary evidence, etc, which would involve very great expense. He should, therefore, allow alimony, and a certain amount for costs of prosecution.

He quoted legal precedents to show what amount should be considered reasonable; and then he summed up, and decreed that, after considering all circumstances, the court had concluded to order defendant to pay three thousand dollars for the prosecution of the suit, and also five hundred dollars a month for the maintenance of plaintiff and her children, from the day of the filing of the "Complaint." The order was accordingly made.

In deciding the question, it will be seen hat virtually the court disregarded portions of the answer, and, to that extent, sustained the motion to strike out those portions, though it did not formally pass on that motion.

The defendant expected to the decision, and shortly afterward filed a notice of appeal, and bond to stay proceedings under the order.

The copy of the order directing payment of the alimony was duly served personally of Brigham Young; and demand having been made upon him for the allowance made for my attorney's fees, and payment refused, he was arrested in proceedings in contempt, and brought before the court.

His answer to the proceedings consisted of a showing that he had taken an appeal, and filed a bond for a stay, etc., and, therefore, he was not in contempt. The court held it not to be an appealable order, and adjudged that he pay a fine of twenty-five dollars, and be committed to custody for one day, which was complied with.

Thereupon he caused the amount then due under the

563 ONE DAY IN CUSTODY.

order to be paid. My allowance he had been given twenty days to pay, and this portion of the order had not been complied with, and had not become due, except five hundred

dollars, which was paid, when Judge McKean was removed by President Grant, and David P. Lowe, and ex-congressman from Kansas, was appointed chief-justice, and succeeded to the position.

Shortly after Judge Lowe entered upon his duties, proceedings were begun by counsel to bring the defendant up again in contempt, for refusing to comply with the order as first stated. On appearing, he again showed cause, by claiming his right of appeal, as in the former hearing; and objected, also, that the district courts had no jurisdiction of matters of divorce at the time of the bringing of the suit; that the order was null and void; that there was no contempt.

The court held, in deciding the matter, that it had jurisdiction; that the order was not appealable. In the course of his summing up, he said, "The complaint and answer are each upon oath, and it appears from the record as well as from the statement of counsel in argument, that the order for alimony and expenses was made upon the complaint and answer alone, *without any other evidence or showing whatever.* It is the general doctrine of the courts in divorce, that before temporary alimony can properly be awarded, that marriage must be admitted by the parties, or established by proofs. In the very recent case of York *vs.* York, 34 Iowa, 530, it is said, 'Alimony is a right that results from the *marital relation*, and *the fact of marriage between the parties must be admitted or proved before there can be a decree for it* even *pendente lite.*'" He then decided that the order was erroneously made, and dismissed the proceedings against the defendant.

The case now stands, therefore, on the motion (not yet formally passed on) to strike out portions of the defendant's answer. The defendant has also filed a motion to

564 LIVING AS HUSBAND AND WIFE.

vacate and set aside the original order granting the alimony, and the two will probably be heard together.

My counsel, for me, insist that I am entitled to the alimony upon the following grounds—

1st. That it is alleged in the complaint that the plaintiff and defendant were married at a time and place designated. The defendant admits that a marriage ceremony did take place, and sets up new facts to show that the marriage which actually occurred was invalid. On this state of facts the plaintiff insists that, pending the question as to the *legality* of the marriage, she is entitled to alimony.

2nd. It is denied by the plaintiff that the new matter in the answer ought to be disregarded; first, because it is badly pleaded; and, second, it is an attempt on the part of the defendant to take advantage of his own wrong, to wit, the assertion that he had a lawful wife living, which a court of equity would not permit. The defendant admits that he was married to the plaintiff; that they lived and cohabited together as husband and wife; that he supported and maintained her as such; and, in fine, clearly shows that a relation of marriage existed in fact between them.

3rd. The plaintiff claims that she will succeed on the merits; first, because the defense on the new matter ought to be disregarded as badly pleaded, and inadmissible under any form of plea; second, because the marriage of the defendant Mary Ann Angell *cannot be proved*, and never was a *lawful marriage.* There was cohabitation, but no marriage according to law. This will appear if the true state of facts if ever reached in trial. And the first alleged marriage must be shown to have been a lawful marriage. In Case *vs.* Case, 17 Cal. Rep., 598, the law is well stated on this point.

As to the allegation in the answer, that the plaintiff had a lawful living husband living at the time of the alleged union between plaintiff and defendant, it is sufficient to say that she

565 THE LAST LEGAL STEP.

was divorced from James L. Dee by the Probate Court of Utah, and that it was done under the statute, and the Supreme Court of Utah had previously decided that such court had *exclusive* jurisdiction in divorce matters. While this decision was probably erroneous, it was made by the highest tribunal of the territory, and was not appealable; *hence it was the law.*

More than this: the act of Congress of June 23, 1874, provided that all judgements of the Probate Courts of Utah which had been executed, or which had not been appealed from, should be held good. So that, upon the facts, there is nothing in the allegation that plaintiff had a husband living at the time of the marriage between plaintiff and defendant.

It is only right to say, that in the opinion of the ablest lawyers of the West, Judge Lowe, in holding that the new matter in an answer is only denied "*at the trial*," has misconceived the California case which he sites, and mistakes the law. In *injunction* cases the pleadings are treated as *affidavits* by express provision of the California statutes; but no case can be found in California or elsewhere, under the code, where a *pleading* is treated as true in one stage of a case, and false in another. Such a doctrine would be absurd under any system of pleading that has ever existed.

The last legal step that has been taken, so far, was taken by me in making an affidavit for the purpose of proving that the defendant perjured himself, and which will furnish the foundation for his prosecution for the crime. With this affidavit, the case is stayed for the present.