the report of Examiner Harkness covered the whole ground, was in strict harmony with the evidence, and should be adopted by the court as a complete vindication of the accused.

Judge Marshall closed the arguments. He claimed that the receiver had been derelict in not gathering in more of the personal property of the Church than he had done. There was also some real estate to which the same assertion was applicable.

Judge Henderson—Do you think the final decree estops the government from pursuing property hereafter discovered.

Judge Marshall—Yes, sir; as to all property not specifically mentioned in the decree.

There was some further colloquy on this point and Judge Henderson asked, "Suppose the government is estopped as to all other property and it is lost, who do you charge that loss to?"

Judge Marshall—I charge the receiver with being negligent in not informing the court of this outside property, so that it could be warned not to become a party to the final decree without full knowledge on the subject. We say we have evidence to show bad faith on the part of the receiver, in not detailing accurately his services as receiver, when the question of his compensation was under consideration.

The court took the matter under advisement.

SUPREME COURT.

At the session of the Territorial Supreme Court February 19 Judge Henderson read the following opinion in the case of the United States vs. Byron W. Brown:

The defendant was convicted in the First District Court at Provo of perjury committed in violation of Section 5329 of the Revised Statutes of the United States. The perjury is alleged to have been committed while the defendant was being examined on his *voir dire* to determine his competency to serve as a grand juror in the First District Court at Provo. He was examined as to such competency under Sec. 5 of the Act of Congress of March 22, 1882, (Ch. 47, 22, Statute 31,) being Sec. 5 of what is known as the Edmunds law, and that while being so examined, he testified that he did not believe it right for a man to have more than one living and undivorced wife at the same time, and that he did not believe it right for a man to live in the practice of cohabiting with more than one woman, and that he did not believe in polygamy or a plurality of wives. This testimony is alleged to be false, and the giving of it perjury. After the verdict the defendant moved for a new trial on the ground that the evidence is insufficient to support the verdict. The order was denied and the defendant appeals from the order denying the motion.

The only question presented is does the evidence warrant the verdict? In the case of the United States vs. Harris (19 Pac. Rep. 197), where the same question was presented, this court stated the principle which should govern as follows:

The jury are the judges of the facts, and in order to justify the court in reversing an order refusing a new trial, it must appear that there was an entire absence of evidence, or that the evidence so clearly preponderates in favor of the prisoner as to suggest the possibility that the verdict was the result of misapprehension or partiality. It is not enough that the court might have arrived at a different result.

We are satisfied with the rule just stated, and it only remains to test the case at the bar by it. It is not contended but that the evidence was sufficient to establish the fact that the defendant testified as charged in the indictment, but the claim is made that the evidence failed to show that it was false. The evidence that the defendant testified as charged in the indictment, consisted among other things, of the testimony of the stenographic reporter who attended and took the evidence when the defendant was examined and his transcribed minutes are in full in the record, from which it appears that the defendant was called as a grand juror and was challenged by the government counsel upon the ground that he believed it right for a man to have living and undivorced, more than one woman at the same time, and to live in the practice of cohabiting with more than one woman; whereupon he was sworn and examined, and in an examination which covers several pages and in which the court and counsel for the government both participated, he repeatedly testified that he did not believe it to be right; that he believed it to be wrong, both legally and morally, and that he did not believe in polygamy. The questions were repeated to him many times over and in various forms, and the same answer repeated.

To show the falsity of the testimony, evidence was given that the defendant a short time before his examination had advocated the doctrine of polygamy and averred his belief that it was right; also that he was and for many years had been a member of the Mormon Church, being "a Seventy;" that the duty of "a Seventy" was to teach and preach the doctrines of the Church; that he had lately returned from a mission; that polygamy and its practice is one of the acknowledged "doctrines" of the Church, and a number of witnesses testified that after he had given the testimony, complained of and it had become known and he was questioned as to why he so testified, he explained that he "knew it was right;" it was not a matter of mere *belief*, but it was absolute *knowledge* with him that it was right.

[Then followed the testimony of witnesses who testified as to statements made to them by the defendant to that effect.]

It will be seen by this statement of the testimony that evidence was given showing that defendant asserted a belief contrary to his testimony, and in accord with the doctrines of the organization of which he was an active member a short time before his testimony was given, and that when he was approached reprovingly by members of his Church and others for giving the testimony as he did, he asserted a belief contrary to his testimony, and undertook to explain that it was past *belief* and was actual *knowledge*. It is unnecessary for us to consider this claim, for he testified that he "believed it was wrong," and the jury was justified in finding that this claim was made in bad faith.

It is claimed by counsel that the testimony only shows that two inconsistent statements were made by the defendant, one under the sanction of an oath and the other without it, and that the presumption is that the statement under oath is true, and must prevail. We think there were strong circumstances shown to corroborate the statements made out of court and before he was examined, and that the statements made by him afterwards were in the nature of confessions. If this claim of the defendant is correct then it would be impossible to show that the testimony is untrue unless he had actually been guilty of polygamy or unlawful cohabitation, and such persons are disqualified from acting as jurors by other provisions of the statute than those above quoted, but the statute goes beyond this and disqualifies persons having a certain belief, and authorizes the court to make inquiries, under oath, of persons presented or proposed as jurors as to their belief.

If the testimony given in this case does not fairly tend to show that the testimony given is false, it is hard to conceive how it could be shown, and the statute would have no force whatever.

The case was fairly and carefully given to the jury by the learned judge who presided at the trial; indeed, no complaint is made of any misconstruction or ruling, and the order appealed from should be affirmed, and the cause remanded.

We concur:

SANDFORD, Ch. J.,
BOREMAN, Justice.

In the case of John Watson, appellant, vs. George L. Corey, respondent, on petition for rehearing, Judge Boreman delivered the opinion of the court, which is as follows:

This case was decided at the present term of this court, and the appellant has applied for a rehearing. The plaintiff states in his petition for a rehearing that this court, in the decision rendered, failed to pass upon the main question submitted, but based the decision upon a question which was not involved in the controversy except incidentally. If this be true, the counsel were derelict in their duty, and are to blame for any supposed oversight on the part of the court. The oversight, if any existed, was on the part of counsel and not of the court. The case presented was decided. The whole argument of counsel was devoted to an effort to show that certain sec-