

ment of the counsel for the defendant; still this court regards that question as settled in this Territory, and charges you, as a matter of law, that such organization falls within the inhibition of the statute, as an organization in which membership deprives the member of the right to vote. The court does charge you, I say, that such membership does disqualify a person from voting. But admitting the membership of the defendant in such organization up to the 27th day of October, 1888, was that membership terminated on that day, before the defendant took the oath complained? I say, admitting the membership of the defendant up to that date, was that membership terminated by the defendant before he took the oath, which is the subject matter of this indictment? That is the question for you to determine; and in this it becomes your duty to lay bare the acts, intentions and motives of the defendant. To this question the evidence in the case is mainly directed. The court charges you that it is the right of any member of that organization to withdraw at pleasure, but it also charges you that such withdrawal, in order to be effectual, and to restore to the member the right under the election law to vote, must be absolute, in good faith and with intent to terminate absolutely such membership. On that point the defendant requests the court to charge you as follows: "If the jury find from the evidence that the defendant, before taking the oath, had withdrawn as a member of such Mormon church, by giving notice thereof in writing to the bishop or other proper officer of such church, and causing his name to be stricken from its roll of members, or in any other way which the defendant believed, or understood to be sufficient to sever his relations as a member of the said church, and took the said oath, believing and understanding at the time that he was not a member thereof, then you should find the defendant not guilty." I so charge you. Again the defendant requests the court to charge you, that "before the jury can convict the defendant they must find from the evidence beyond reasonable doubt, that defendant took an oath that he would declare or certify truly, and having taken such an oath wilfully and contrary to such oath stated as true matter that which he knew was false, namely, that he was not at the time of so stating a member of any order, organization or association which teaches advices, counsels or encourages its members, devotees or other persons to commit the crimes of bigamy or polygamy, or any other crime defined by law, as a duty arising from membership in such order, organization or association, or which practices bigamy or polygamy or plural or celestial marriage as a doctrinal rite of such organization." In connection with other instructions in this charge I do so charge you. The court also charges you that it is the right of any member to withdraw from that organization at pleasure, but it also charges you that such withdrawal, in order to

be effectual and restore to the member, under the election laws of this Territory, the right to vote, such withdrawal must be absolute, in good faith, and with intent to terminate, absolutely, such membership. A mere attempt to get around the law by merely formally pretending withdrawal is not sufficient. An act of withdrawal must be absolute, and in good faith; it must be with intent on the part of the member to leave the church organization. It must not merely be an act done either on his own motion or by collusion with the Church authorities or organization, or at their request, to evade the law, but it must be done by the member, either with or without the concurrence of the officials and whether according to their counsel, request or command or otherwise, but it must be done by him in good faith, and with intent to leave such organization. There is no such thing as leaving the organization for one purpose and staying with it for all the other purposes. The laws of the land can not be so trifled with.

I am further requested by the defendant to charge you on that point, and in connection with it as follows: "It will be the duty of the jury to acquit the defendant unless you find the defendant at the time he took the oath alleged was a member of the organization known as the Mormon Church." The court so charges you, also, in connection with what is elsewhere said on the same subject of knowledge of the law. It may not be necessary here for the court, or for you, to inquire specially into the object and purpose of the law forbidding the persons indicted to vote. It is sufficient that such is the law which you and I are sworn to administer; but as intelligent men, and as jurors, you know what that law is, and what is your duty under it. You know that the law in question is no sham, or pretence; and if it is to be met, it must be met with acts which are also real and substantial. It is for you to say from the evidence whether the act of the defendant in giving to the Bishop his withdrawal, or any other and all acts of his in that matter, whether by himself alone or by the agency of the Bishop, or by the agency of anybody else, as shown by the evidence, was a real and absolute disconnection of himself from such organization, or whether it was a mere pretence and subterfuge to get around the law in the matter of being allowed to vote. If the former, then you will find the defendant not guilty. If you should find from the evidence that the latter was the only purpose of his act, that his act was only a sham, then you will consider him when he took the oath as still a member of that organization.

I also charge you that it is a rule of law that a person is conclusively presumed to know the law; and that one may not excuse himself for a violation of the law by pleading his ignorance of the law. A person may be ignorant of facts, and by reason of such ignorance may be

excused; but he may not be excused by reason of ignorance, or alleged ignorance, of law. I repeat that the law he is conclusively presumed to know; with reference to facts he may be mistaken; and if mistaken honestly, that mistake he may have the benefit of; and in your consideration of this case you will take care to run the line of distinction between those things which are facts in the case and those things which are purely of law.

The evidence in this case, gentlemen of the jury, on that point, invites the court to make these remarks, and without detailing that evidence or attempting to consider it, the court contents itself with presenting the bare and simple point as directly and clearly as it finds it convenient to do. I say in the consideration of this evidence, you will bear these distinctions in mind as to questions like the constitutionality of this law, and its binding force upon a citizen. No man has any right to be mistaken with reference to any law. A man is conclusively bound to know the law; if he runs counter to it, and commits an act which in itself is a violation of the law, he is responsible for the consequences of such act; and I may say further, if at the time of taking the oath the defendant was, in law, and shall be so found by you, still a member of that organization so prescribed by the statute, he would be guilty of the offense charged, and it would be your duty to so find.

The defendant does not pretend that he did not take the oath purposely, and knowingly; or that in taking the oath itself he did not act intelligently, so far as that act is concerned. And if the guilt or innocence of the act of taking the oath depends upon his knowledge of the law at the time, then he would be guilty of knowingly and wilfully doing such act. The court does not intend to invade your province in the determination of the facts from the evidence in the case. You have that evidence in the case before you, and the court commits the case to you with the consciousness that you will do your duty both to the Territory and to the defendant also. You will do nothing from either prejudice or feeling, but act under the law and according to the law given to you in court, and the evidence alone, according to the oath you have taken.

The case was finally given to the jury at 1 o'clock Saturday afternoon. They were placed under the protecting wing of the deputy sheriff, and nothing more was heard of them until 9 o'clock at night, when Judge Berry was informed that the jury desired to report. The judge took his seat and the twelve men filed into the jury box. Upon being asked by the court for their report, the foreman opened by saying:

"We have not agreed upon a verdict, your honor."

"Is there any reasonable prospect of your agreeing upon a verdict?"

"No, sir."

"You are aware, gentlemen, that these cases are extremely expensive