

THE IDAHO TEST OATH CASE.

The case before the Supreme Court of the United States on which a decision is anxiously expected promises to be one of the most important ever presented to that tribunal. It involves the question of the constitutional scope of religious liberty and the limit of legislative powers as to the free exercise of religion.

The case on behalf of the appellant was ably argued by Hon. F. S. Richards of this city and Judge Jeremiah M. Wilson of Washington, D. C. No stenographic report was taken of the oral arguments, but the brief presented to the Court has been received, as printed, and we give the following synopsis, so that whatever may be the result, the friends of constitutional freedom may know that their cause was fully, clearly and ably advocated before the highest court of our country.

Before the Supreme Court of the United States for the October term, an appeal was made from a final order and judgment of the District Court of the Third Judicial District of Idaho Territory, upon a writ of *habeas corpus* duly issued out of said court for the production of the body of Samuel D. Davis, by which order the petitioner was remanded to the custody of the sheriff of Oneida County, Idaho Territory, and is still held in custody by him. The appellant, by his petition and exhibits thereto annexed, prayed to be discharged from custody on the judgment and sentence rendered and imposed by the District Court for the Third Judicial District of Idaho Territory on the 12th day of September, 1889. He had been convicted of conspiracy in unlawfully procuring himself to be registered as an elector, contrary to the following provisions of the Revised Statutes of Idaho:

"SEC. 501. No person under guardianship, *non compos mentis*, or insane, nor any person convicted of treason, felony, or bribery in the Territory, or in any other State or Territory in the Union, unless restored to civil rights, nor any person who is a bigamist, polygamist, or who teaches, advises, counsels or encourages any person or persons to become bigamists or polygamists or to commit any other crime defined by law, or to enter into what is known as plural or celestial marriage, or who is a member of any order, organization, or association which teaches, advises, counsels or encourages its members or devotees, or any other persons, to commit the crime of bigamy, polygamy, or any other crime defined by law, either as a rite or ceremony of such order, organization, or association, or otherwise, is permitted to vote at any election, or to hold any position or office

of honor, trust, or profit within this Territory."

Section 504 of the Revised Statutes of Idaho requires an elector to swear, among other things, that he is not

"A member of any order, organization, or association which teaches, advises, counsels or encourages its members, devotees, or any other person to commit the crime of bigamy or polygamy, or any other crime defined by law, as a duty arising or resulting 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."

The appellant had taken the oath prescribed by the Idaho Statute and had sworn that he possessed all the qualifications of an elector and was not under any of the disabilities named in these sections. The indictment averred that he was at the time

"A member of an order, organization, and association, namely, the Church of Jesus Christ of Latter-day Saints, then and there otherwise and commonly known as the Mormon Church, which taught, advised, counselled, and encouraged its members and devotees to commit the crimes of bigamy and polygamy as duties arising and resulting from membership in said order, organization, and association, and which said order, organization, and association, as they each and all then and there well knew, practiced bigamy and polygamy and plural and celestial marriage as doctrinal rites of said organization and therefore guilty."

It is not denied, and consequently is admitted, that he had the qualifications of citizenship, age, and residence; he was not under the disability of any conviction for treason, felony or bribery; he was not registered or entitled to vote at any other place; he was not a bigamist or polygamist; he did not and would not, publicly or privately, or in any manner whatever, teach, advise, counsel or encourage any person to commit bigamy or polygamy, nor any other crime, and he regarded the Constitution and laws, as interpreted by the courts, as the supreme law of the land, any teachings of the Church to the contrary notwithstanding.

It is only claimed that he belonged to the Mormon Church, which, the indictment charges, taught, advised, counselled and encouraged its members and devotees to commit bigamy and polygamy, as duties arising and resulting from membership in such Church.

This raises the only question in the case:

Could the appellant be disfranchised and disqualified from holding office because of membership in the Mormon Church?

His Counsel answer, No. Such legislation is forbidden by the Constitution of the United States.

It is claimed in the brief for the appellant:

The Idaho Statute Disfranchising and Disqualifying Citizens from Holding Office Because of Membership in the Mormon Church is Unconstitutional and Void, Be-

cause it Prohibits "The Free Exercise of Religion."

Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.—Constitution, Art. I, Amendments.

The provisions of the statute of Idaho, which provide, as quoted above, are in violation of this article of the Constitution, and therefore void.

The court has held that "religious freedom is guaranteed everywhere throughout the United States so far as Congressional interference is concerned," (98 U. S., 162,) and that "Congress cannot pass a law for the government of Territories which shall prohibit the free exercise of religion." (*Ibid*, 162.) It necessarily follows that a Territorial legislature cannot pass such a law. In the language of this court, "Congress could confer no power on any local government established by its authority to violate the provisions of the Constitution." (19 How, 450.) Section 1891 of the Revised Statutes of the United States provides that:

"The Constitution and all laws of the United States which are not locally inapplicable shall have the same force and effect within all the organized Territories, and in every Territory hereafter organized, as elsewhere within the United States."

This inhibition against prohibiting the free exercise of religion brings the inquiry whether prohibition of membership in a church, or disfranchisement because of such membership, is a prohibition of the "free exercise of religion."

The Constitutional guarantee involves more than mere opinion and belief. It not only protects a man in the enjoyment of his religious opinions, but also in the free exercise of religion. This free exercise of religion must embrace his right to enjoy the benefits of a church, to worship according to its forms and ceremonies, to participate in its ordinances and partake of its sacraments, and this he could not do without being a member of the church organization. It does not necessarily follow from such membership that he must believe all the dogmas or doctrines of the church. He may disbelieve any or even all of them, but its ceremonies, forms, and associations may be of such a character as comport with his ideas of worship and duty to his Creator. No matter what his belief is, if he violates no law, he may freely exercise his religion according to such forms and ceremonies. If he cannot, he is deprived of the free exercise of religion. This must be so, otherwise the words of the Constitution, "or prohibiting the free exercise thereof" are surplusage and without meaning. It requires no such declaration as this to secure only freedom of opinion and belief.

The appellant violated no law. He did not practice bigamy or polygamy, nor did he advise any one else to do so. It does not appear that he even believed in these practices, and certainly he repudiated them by his oath. He simply belonged to the Mormon Church and