

Sheriff of Bingham County, Idaho. Woodin was elected on the face of the returns and has held the office for about seven months. Chamberlain claimed the office on the ground that the proceedings and vote at Rexburgh on the 6th of November, 1888, were illegal; first because of the action of U. S. Marshal Baird in appointing deputy marshals to interfere with the election and who arrested citizens for using their right to challenge, and second because a number of "Mormons" who had nominally withdrawn from the Church were permitted to cast their ballots and they voted for Woodin.

Judge Berry decided for the plaintiff, condemned the action of the United States Marshal, and pronounced the Rexburg poll invalid because of the illegal proceedings thereat, and also declared that members of the Church of Jesus Christ of Latter-day Saints could not vote in Idaho and that these persons were still members of that Church notwithstanding their formal withdrawal. The office of Sheriff therefore goes to Chamberlain, unless Woodin concludes to carry the case to a higher court, when there may be some chance of justice being done.

As to the action of the United States Marshal, Judge Berry is probably right in law. The United States statutes confer powers on United States Marshals in relation to elections for Members of Congress, in cities of twenty thousand inhabitants or more. Rexburgh is not such a city, and although the Marshal had some color of law for his proceedings under section 2022 United States Revised Statutes, yet all the powers therein enumerated refer to election in cities of the population named, and he therefore exceeded his authority. But on the second proposition Judge Berry seems to have been swayed by prejudice and anti-"Mormon" missionary zeal rather than by that sound discretion and strict impartiality which should guide the judicial mind.

It appears from the evidence before the Court, that the citizens whose votes he has rejected on the ground that they are members of the "Mormon" Church, had formally withdrawn from membership and, in accordance with their written requests, the Bishops of the wards where they resided had stricken their names from the Church records and no longer regarded them as members. As to the propriety of this step we have

nothing now to say. That is not the question. It is the fact with which we have to deal, not the morality or wisdom or right or wrong of it. These men did actually withdraw from the Church for the purpose, as they stated under oath, of exercising the rights of citizens which had been denied them because of their Church membership. No other objections to their voting were advanced. If they were not members of the "Mormon" Church there was no ground for their exclusion, nor for the vitiation of their ballots. Judge Berry, on theoretical grounds entirely outside of facts, decides that these men are still members of the Church. He goes further, and judicially decides that the "Mormon" Church is a "pure theocracy," also that it is "not a religion;" moreover, that "counsel of the Priesthood is equivalent to a command," that "the word of a priest to an inferior is to him as a 'thus saith the Lord,'" that each of the presiding authorities "had an absolute negative on all that the members and inferior bishops claimed to have done," and he infers that these men were "counseled" to withdraw, that they acted under this alleged "command," and therefore "they are still members within the meaning of the test oath."

Let us look at this as calmly as possible under the circumstances. How could Judge Berry, if in his senses, decide that the "Mormon" church is not "a religion," if it is as he maintains "a pure theocracy"? He says: "Its laws and teachings purport to be direct from the Almighty." Well, is that not a religion? What is a religion if not "a system of faith and worship," or "an acknowledgment of our obligation to God as our Creator, with a feeling of reverence and love, and consequent duty or obedience to him"? See Worcester's or Webster's Dictionary.

Judge Berry went completely outside of the case to aim an impotent blow at a religion from which he dissents, and occupied the place of a bigoted sectarian instead of a United States Judge. We could demonstrate to him at a proper time that "Mormonism" has all the features essential to a religion that Methodism possesses, and many more of which the latter is utterly deficient. Still we recognize Methodism as a religion and also Mohamedanism and other erroneous systems of faith and worship,

whether they are theocratic in form or not. But to aver that a Church is "a pure theocracy" and yet is "not a religion," is an inconsistency and contradiction rather remarkable as a judicial utterance.

In stating that in the "Mormon" Church "counsel" is equivalent to a "command," Judge Berry plainly exhibits his ignorance of the matter in question. It is evident he knows nothing of "Mormon" theology or discipline. The very reverse is the truth, and there is scarcely a "Mormon" child of average intelligence who does not understand the essential difference between the two terms and their application in the Church. The statement, too, that any counsel of a priest to an inferior is to him as a "thus saith the Lord," is still further proof that Judge Berry knew nothing of what he was talking about, for, we would not insinuate for a moment that he was willfully misrepresenting and distorting the faith of the "Mormon" people.

But the Judge says further: "It does not appear that either the presiding bishop in Idaho, or his superiors, the 'Twelve Apostles,' or their superior, the 'Presidency of Three,' or further still, 'The President,' the supposed representative of the Almighty, was, or were, in any way consulted." And yet he concludes that all this withdrawing movement was done by their counsel and that because of that, and in view of the fact that they did not "negative" the acts of the members in withdrawing and of the Bishops in acting on the withdrawal, the people who withdrew are still Church members! This is judicial logic, with a vengeance. These "superiors" were not consulted, therefore they are responsible for the movement. They did not "negative" the withdrawal of men from the Church, therefore those men are still members! Is it possible that such amazing contradictions emanated from the bench of the Third Judicial District of Idaho?

Judge Berry claims or intimates that he found out what he asserts concerning the "Mormon" system of faith and worship, which is not religion and yet is a pure theocracy, from its sacred books, which he explains are "the Book of Mormon, the Book of Covenants and Doctrines, the Pearl of Great Price and the Bible." At least, he says, to determine this, "we must look at the Church's sacred books." We are of the opinion that instead of consult-