

a man who had one wife and a man who had more than one wife, and a man who had no wife at all.

Q. The fact is you don't recollect what he said at all? A. No, sir.

Q. What did Chase say? A. I don't know what he said.

Q. Who else preached? A. Woolley.

Q. What did he say? A. I don't know.

Q. What was the substance? A. I don't know that I could tell that.

Q. You cannot tell a single thing or the substance of his talk? A. It was a Mormon sermon, that is all the substance I remember about it.

Q. Did you attend meeting at all? A. Yes, sir.

Q. You are certain about that? A. Yes, sir.

Q. You could tell just as well what happened if you had not attended any at all as if you had attended one? A. No, sir.

Q. You are familiar with Mormon sermons and know what they contain? A. No, sir; but I remember what they are when I hear one; I don't know that I could get one off myself.

Q. Repeat again what Porter said to us again what it was? A. He was urging the people to do their duties and was picturing out to them the difference between a man who had obeyed the celestial law and the one who did not, the man who had more than one wife and the man who did not.

Q. Is that what he said? A. Yes, sir; something to that effect.

Q. Is that your best recollection now as to what he said? A. Yes, sir.

Q. Then you did not tell Smith that he said they must not weaken in the faith and not give up polygamy; which is correct, what you said just now or what you said before? A. I don't see any particular difference in it.

Q. That was in Davis County, Utah? A. Yes, sir.

D. D. WRIGHT
being duly sworn for the intervener, testifies as follows:

Q. Where were you raised? A. I was raised in Utah till I was about 15 years old.

Q. Have you ever lived in Utah since that time? A. Not to make it my home.

Q. Have you been there frequently since that time? A. Yes, sir.

Q. What were your father's family relations? A. My father had six wives.

Q. Have you frequently attended Mormon meetings and heard the doctrines of the Church promulgated? A. Yes, sir, I did up to that time.

Q. Have you since you were a man grown at various times? A. Yes, sir.

Q. What are regarded as the general expositions of the doctrines of the Mormon Church, what publications? A. The Book of Mormon and Doctrine and Covenants, they also accept the Bible as being a fine work.

Q. Have you ever heard the teachers and public speakers discuss the polygamy business? A. Yes, sir, many times in their churches.

Q. How recently have you attended any such meetings? A. It has been a great many years; it has been ten years.

Q. At the time you did attend what was the teaching of the Mormon Church upon that subject? A. It was in favor of polygamy.

Q. And in what way was it enjoined upon the people of the Church? A. It was enjoined upon them as a great privilege.

Q. Was there any particular reward held out to them as an inducement for it? A. Yes, sir, there were spiritual rewards.

Q. What were they? A. The reward was that persons who adopted that doctrine and went into polygamy would attain a higher glory than persons who did not, if they lived faithful to their covenants, if they did not do so they would be punished, and some severer than others.

Q. And how about the temporal blessings that were to come through it? A. I don't know of temporal blessings.

Q. Do you know of any favors given to polygamists that way? A. I don't know of any reward that was open to them that way, but those who went into it seemed to have the inside track on all the business.

Q. They were seemingly preferred for such things? A. Yes, sir, I think nearly all the offices were held by polygamists, and Bishops were generally polygamists.

Q. How about the civil offices of the government? A. At that time the officers, civil officers, were all ecclesiastical officers as well, as far as I recollect.

Q. Have you in recent years discussed this matter with members or teachers of the Mormon Church? A. Not very recently, the last three years I don't think I can call to my mind any particular discussion, I have spoken of it once in a while with someone I met, but I don't know that I can call to mind any particular talk with any particular person.

Q. You reside in Blackfoot? A. Yes, sir.

WILLIAM BUDGE
being recalled for the intervener testifies as follows:

Q. I understood you to say yesterday that in order to enter this polygamous relation as taught by the Mormon Church, or the relation known as celestial marriage, it was necessary to get a permit from some local authority for that purpose? A. Yes, sir.

Q. Who in the first instance issues that permit? A. The Bishop of the ward.

Q. He is the presiding officer of the ward? A. Yes, sir.

Q. Where does that permit go? A. To the president of the Stake.

Q. And what is done with it by him? A. He endorses it.

Q. He countersigns it? A. Yes, sir.

Q. And what becomes of it then? A. It is given to the person who applied for it.

Q. What does that person do with it? A. He takes it with him as a recommendation.

Q. What is the form of that document? A. As I stated yesterday.

Q. Do you think you could write one off? A. I don't know.

Q. Do you think you could? A. I would not like to say that I could do so, exactly.

Q. Do you think you could repeat the substance of it? A. Yes, sir.

Q. Do so, slowly, to whom it is addressed? A. It is not addressed to anybody.

Q. Does it commence with "To all whom it may concern"? A. Yes, sir, something like that; it is simply this: "John Thompson is recommended as a faithful member of the Church of Jesus Christ of Latter-day Saints, from Paris Ward and Bear Lake Stake."

Q. Is there anything else? A. Yes, sir, and this, "and as such we recommend him."

Q. Would the words be used twice? A. No, sir, they would not be used twice, I think.

Q. Is there anything further than that? A. Yes, sir, "As such we recommend him to the house of the Lord," I think those are the words.

Q. Is there anything further? A. That is all.

Q. That would be signed as William West, Bishop, and William Budge, President? A. Yes, sir.

Q. Is that the form that is used in recommending a member to enter the relation of celestial marriage? A. That is the substance.

Q. As near as you can give it? A. Yes, sir.

Q. Is that the same form used when a member moves from one ward to another? A. Yes, sir, with a very slight alteration.

Q. What is that alteration? A. He is recommended to the Saints of the organization with which he wishes to unite.

Q. This "House of the Lord," or as it is named in this recommendation means the Temple or the Endowment House? A. Yes, sir.

Q. You never see these recommendations again after they pass out of your hands after countersigning them? A. No, sir.

Q. Have you ever received one of these yourself? A. Yes, sir.

Q. What did you do with it? A. I gave it to the door keeper of the house.

Q. At the Endowment House? A. Yes, sir.

Q. And so far as your knowledge goes that is what becomes of it? A. Yes, sir.

Q. Do not many persons go through the Endowment House who do not get married at all? A. They may not be married at the Endowment House; they are married under the law we spoke of.

Q. Do not single persons go through the Endowment House and take these degrees? A. Single persons receive certain blessings in the Endowment House; it will be understood that the marrying in any part, at any time, has been but a small part of the work.

Q. I mean the other work as to what single persons may do? A. I don't understand what you mean by degrees.

Q. Are there not certain words, grips and matters of that kind administered in the Endowment House? A. A person may go into the Endowment House and be baptized for the dead according to the Bible doctrine.

Q. Are there not certain grips and so on administered in the Endowment House? A. Objected to—sustained.

Q. Do not single persons go through the Endowment House for these other blessings, not to get married? A. Yes, sir, they may go there for other purposes and be baptized.

Q. They would get exactly the same certificate as if they went there to get married? A. Yes, sir.

Q. So that if a man came to you for a recommendation you would not know whether he wanted it to marry a second wife or a dead one or what he really did want? A. Yes, sir, I would.

Q. How would you? A. Because the practice is forbidden.

Q. Before the practice was forbidden would you know anything what you gave them for? A. I presume I did generally, I don't recollect any particular instance.

Q. Was there any system of form upon which you depend for that knowledge? A. I would have greater facilities for getting information than you would for instance.

Q. Was there a certain or definite method by which you obtained that knowledge, or was it just as you happened to learn it? A. It invariably used to be, when such practices were had, that I knew what the person wanted it for.

Q. When did you last issue a permit for a man to enter the celestial marriage relation? A. I don't know that I have given a permit with the positive understanding that he was going into that relation or not.

Q. Do you know what he does get the permit for when he does get it? A. He gets it to get him a privilege of the blessings to be bestowed in the Temple.

Q. You understand he is going to the Temple, but what for you don't know? A. He may not know how many blessings he may take or how many ordinances he is going to take.

Q. You know he is going to take

some, but not how many? A. He may go there with some person.

Q. Do you know what he is going there for? A. I know when he gets that permit he is not going to get a plural wife.

Q. Do you know when you issue that permit what he is going there for? A. I generally do.

Q. When did you issue the last one for a man to enter the celestial marriage relation? A. I believe it was about three weeks ago.

Q. Who got it? A. It was William Pender; I am not sure whether he was the last one, I think he was.

Q. How long has he been married? A. He was not married at all.

Q. At that time he was not married? A. No, sir.

Q. You issued him a permit to enter the celestial marriage relation at that time? A. Yes, sir.

Q. You understood it so? A. Yes, sir.

Q. Up to that time you issued regular permits at regular intervals whenever called for? A. Not always when applied for.

Q. Whenever it was a proper case you issued one? A. Yes, sir.

Cross examination by Rawlins.

Q. You understood when you issued this one to Pender that he was going to marry his first wife according to the ceremony of the Church? A. Yes, sir.

Q. And not a plural one? A. No, sir.

Q. You knew that? A. Yes, sir; I would not issue one if I had a suspicion he was going to marry another one.

Q. That is generally understood throughout Idaho? A. It is in the Bear Lake Stake, I suppose all through Idaho; I have no doubt of it.

Intervener rests.

Immediately upon the conclusion of the evidence in behalf of the intervener, Mr. Rawlins made an argument for the respondent, followed by Messrs. Bennett, Smith & Spence for the defendant, after which Mr. Rawlins closed the case.

The court thereupon intimated that, having in view the importance of the case, he would render his decision at as early a day as possible. Accordingly on Tuesday, the 16th inst., he rendered the following

DECISION:

H. S. Woolley, plaintiff, vs. C. M. Watkins, defendant.

H. M. Bennett, Intervener.

On the 31st day of September, 1888, one H. S. Woolley made an application addressed to this court praying that a writ of mandamus should issue out of this court directed to one C. M. Watkins, registrar of voters in and for Bear Lake County, Paris Precinct, Idaho, setting forth, among other things, that the applicant is not a member of any order, organization or association which teaches, advises or encourages its members, or devotees, or other persons to commit the crime of polygamy, bigamy or any other crime defined by law, either as a rite or ceremony of such order, organization, or association, or otherwise, and commanding him, the said Watkins, as registrar, to enter the name of the said applicant in the manner prescribed by law and as a voter in Paris Precinct, of Bear Lake County. The application further showing the requisite qualifications in the said Woolley as an elector of said precinct.

The court issued an alternative writ, requiring the said registrar to show cause before this court on the 10th day of October, 1888, why the writ should not be made absolute and be required to allow the plaintiff to register.

At the time mentioned in the order the applicant appeared in person, and by his attorney, J. L. Rawlins; the respondent also appeared by his attorney, R. S. Spence, District Attorney of Bear Lake County, and made answer that the said petitioner is a member of an organization known as the Mormon Church, in Idaho Territory, which organization teaches, advises or encourages and counsels its members to commit the crime of polygamy and bigamy and other crimes defined by law as a duty arising or resulting from membership in such organization which practices polygamy and bigamy (as a doctrinal rite of such organization) suggesting that by reason of such facts the applicant is not entitled to vote under the statutes and laws of Idaho. After such appearance, and on the same day, the affidavit of H. M. Bennett was read and filed, praying the court that said Bennett might be allowed to intervene on behalf of the public or people of the Territory. The applicant consenting to such appearance, by order of the court he was permitted to come in and defend the claim made by the applicant and to show cause, if any there were, why such peremptory order should not be made.

Previous to entering upon the investigation of the question so presented, a stipulation was entered into and filed by the attorneys of the respective parties stipulating "that the plaintiff is a native-born citizen of the United States; over 21 years of age and has resided in Bear Lake County and Paris Precinct for ten years; that he is not under guardianship, non compos mentis, nor insane, and has never been convicted of treason or felony or bribery; that he is not a polygamist or bigamist; that he does not teach, advise, counsel or encourage persons to commit the crimes of polygamy or bigamy or any other crime defined by law, or to enter into

the relation known as plural or celestial marriage unless he does so by the bare fact that he is a member of the church known as the Mormon Church; that he is a member of what is known as the regular Utah branch of the Mormon Church as distinguished from the reorganized or Josephite branch of said church."

The issue being thus made up came on for hearing, and presents the question whether membership by applicant of the main body of the Utah branch of the Mormon Church, the "Church of Jesus Christ of Latter-day Saints," as it is usually styled, disqualifies him under the laws prescribing the qualifications of voters of the Territory of Idaho.

That portion of such law applicable to this case is known as the law prescribing the test oath, a portion of which is as follows: "That you are not a polygamist or bigamist; that you are not a member of any order, organization or association which teaches, advises, counsels or encourages its members, devotees, or other persons to commit the crime of bigamy, of polygamy or any other crime defined by law as a duty arising or resulting from membership in said order, organization or association, or which practices bigamy, polygamy or plural marriage or celestial marriage as a doctrinal rite of such organization; that you do not either publicly or privately or in any manner whatever teach, advise, counsel or encourage any person to commit the crime of bigamy or polygamy or any other crime defined by law, either as a religious duty or otherwise."

It is tacitly admitted that the Mormon Church in question is an order, organization or association, and the first question presented is as to whether it falls within the inhibition of the statute as advising, counselling or encouraging its members to commit the crime of polygamy or bigamy as a duty arising or resulting from membership in such organization or which practices or has at any time practiced polygamy, or bigamy, or plural, or celestial marriage as a doctrinal rite of such organization. As to these teachings and characteristics of this association as to whether these characteristics have applied or do now apply to members in this Territory the testimony taken is largely directed. The testimony is voluminous and a full report of it will be filed with this decision.

In this decision it is impracticable by reason of its volume to give all the testimony that was introduced, but the court has thought proper to introduce pretty fully the testimony that was offered by the applicant in both direct and cross examination, though greatly condensed and in the words of the witness as far as practicable.

Some portion of it, however, is here given in a narrative from which was reported as questions and answers. But care is taken that the words of witnesses are given. And I think that the true sense of the witness in what is so condensed is in no instance or way departed from.

[See testimony of C. W. Nibley, William Budge, George C. Parkinson, H. D. Halbert, James Thomas. William Budge recalled for the intervener.]

But to proceed: The point is made and strongly urged by the counsel for Mr. Woolley that the law prescribing the test oath is unconstitutional. Without that law there is no occasion for the oath on the subject of polygamy. But on the point of its unconstitutionality the court is not at liberty to indulge in reasoning. In the case of *Innis vs. Bolton*, 17 Pacific reports, page 284; and also in *Haywood vs. Bolton*, 1. D. page 434 the question of the constitutionality of this law came squarely before the Supreme Court of this Territory, was ably and fully argued and considered and in each case unanimously affirmed. These cases, I understand, have been appealed and are now before the Supreme Court of the United States.

As this law stands it has passed the forms of legislation, been approved by the Governor, has been sustained by the highest court in the Territory and has all the sanctions which a territorial statute can have short of an approval by the Supreme Court of the United States. It is now waiting the decision of that court. This court must be bound by the decision of its own superior until released from its obligation by the court of last resort. That question therefore must be considered as settled and for the purposes of this case at least at rest. But there are other questions which claim our attention. From an examination of the evidence and particularly of the Book of Doctrine and Covenants, a copy of which is introduced as a whole, it is clear that the Mormon Church is an organization intended for all times and all places and in its scope comprehensive as a system of religion, inviting all mankind. Its membership extends at least over the Territory of Utah, and into some four counties of Idaho. The branch of the church to which Mr. Woolley belongs, is known as the Utah branch. It appears to have its central office and government at Salt Lake City. It appeals to God as its author; and its doctrines and principles, its commandments, teachings, promises of rewards and punishments, its polity, and mode of government, its order of priesthood, the right and mode of government, and, in fact, all things of a general nature pertaining to it, are prescribed and fixed, and appeal for their support to a direct

revelation of the will of heaven. Their so-called revelations are printed and published to the world. In this system it is declared that there shall be, at any one time, but one man a "seer, revelator and president," or in some instances, perhaps, called "presidency" of three persons, in whom it seems the supreme authority under God is vested. Below this supreme earthly head of the church appears to be a body of twelve men called "Apostles," in whom certain powers are reposed, superior to the inferior clergy. What their authority as individuals or as a body may be is not clearly stated to the court, except in the evidence of Mr. Nibley. But they appear to be regarded by him as a sort of college or board, whose chief officer is the president. Under these are lower grades or gradations, both temporal and spiritual down to simple membership in the Church.

This membership seems to be divided according to the Territory into small sections or wards, several of which make up a stake. In Idaho there seem to be four stakes—the Bear Lake, Oneida, Cassia, and Bingham or Bannock Stakes, and in the counties bearing these names respectively. Each of these stakes has an officer, called president; out with what precise authority does not anywhere appear. Yet, in some respects at least, it appears that the President of the Bear Lake Stake has some sort of precedence.

Councils and conferences of the members of the Church are spoken of, but with what power is not shown, except that in accepting a revelation, a general council has a voice and a negative. From all this it appears that this Church organization is a somewhat complicated one with uncertain authority in its several parts, except as to its supreme head or first officer, and that the several stakes of the Church in Idaho constitute but a small share of the Territory of the Church, and also only a small portion of its membership.

As to the general doctrines and teachings of the Church on the subject of polygamy and plural marriages as held and practiced by the Church since the promulgation of the revelation of July 12, 1843, which promulgation, we are informed, took place in 1852, and from that time to the present, unless these teachings and doctrines have since been changed, there can be no doubt that the Utah branch of the Mormon Church has counseled and taught as an article of its faith the doctrine of plural marriages, enjoined the practice of polygamy upon its believers by offering spiritual rewards to such as embraced the practice, the Book of Doctrine and Covenants is ample and conclusive proof. The witnesses also affirm this fact. And the witnesses of plaintiff both clerical and lay, still as members of that Church, proclaim their faith in the truth of that part of their belief. Of course such teaching, if it still continue, brings a member of that organization within the scope of the law on that question, whether he himself believes it or not, or teaches it or not, is of no moment it has been in the creed, teachings and practice of the Mormon Church and a member of that Church is disqualified as a voter, unless that element in the Church of which he is a member has in some way been eliminated. Has that been done and who has done it? In the first place, of what is the plaintiff a member? We must answer that he is a member of the Utah branch of the Mormon Church in distinction from the Josephite branch. It is so stipulated. This Utah branch I understand to be the main Mormon Church, and generally meant in the books, publications and common speech respecting that organization. We hear nothing of any local or restricted membership, but must consider him a member of that Church at large, residing at Paris in Bear Lake stake, Idaho. His residence in no way localizes his membership. It follows that as his relations to the church are general his membership is of the general church; a change in the teachings and practices of the church to affect him must also be general.

Local and temporary modifications or changes, to be effective for any purpose, must in some way reach and affect the whole Church of which he is a member. Its effect must be co-extensive with his membership. No one would probably contend that, should the rector, or even the rector, wardens, vestrymen and congregation of St. Paul's Episcopal Church of Blackfoot, if there be an Episcopal Church by that name in Blackfoot, should deny the doctrine of the trinity or the atonement, or any other point of the faith of the Episcopal Church, or should order that such point or points of faith should be omitted while preaching or teaching the catechism, no one would contend, I say, that under such circumstances such action in this parish affected the faith, doctrine or practice of the church. To change the teachings or practice of this or any other organization for Church purposes, the movement must be general in its scope, not necessarily unanimous perhaps, but general. It must be real, and not merely temporary, it must be a change of teaching and practice; not a mere ceasing for a time to actively teach, not a mere holding in abeyance principles really entertained, generally believed in and still affirmed in the general and authoritative enunciation of principles.

Is there such a movement in the Mormon Church? If we are permitted

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