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## TO MY FRIENDS.

Dear friends, when I am dead,  
Think, sometimes say,  
At morn, or noon, or point of dying day,  
"I wish that he were with us—had not fled."

For whether far or near,  
In earth or sky,  
To you I think I must be somehow nigh,  
And such regret it would be sweet to hear

"Think of me at my best,"  
When brain and heart  
Did, of what store was theirs, their wealth impart.

Think of me thus, and not by pain oppress.

Pain passes; that will last,  
Defying death,  
Which in us felt earth's rapture—long'd  
for breath,

To sing life's largeness—present, future,  
past.

—[Temple Bar.]

## IDAHO TEST OATH.

Supreme Court of the United States. No. 1261.—October term, 1889.

Samuel D. Davis, appellant, vs. H. G. Beason, Sheriff of Oneida County, Idaho Territory. Appeal from the Third Judicial District of the Territory of Idaho.

### DELINEATION.

In April, 1889, the appellant, Samuel D. Davis, was indicted in the District Court of the Third Judicial District of the Territory of Idaho, in the county of Oneida, in connection with divers persons named, and divers other persons whose names are unknown to the grand jury, for a conspiracy to unlawfully pervert and obstruct the due administration of the laws of the Territory, in this that they would unlawfully procure themselves to be admitted to registration as electors of said county of Oneida for the general election then next to occur in that county, when they were not entitled to be admitted to such registration, by appearing before the respective registrars of the election precincts in which they resided, and taking

### THE TEST OATH

presented by the statute of the State, in substance, as follows: "I do swear (or affirm) that I am a male citizen of the United States of the age of twenty-one years (or will be on the 6th day of November, 1888); that I have (or will have) ac-

tually resided in this Territory four months and in this county for thirty days next preceding the day of the next ensuing election; that I have never been convicted of treason, felony or bribery; that I am not registered or entitled to vote at any other place in this Territory; and I do further swear that I am not a bigamist or polygamist; that I am 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; that I do not, and will not, 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; that I do regard the constitution of the United States and the laws thereof and the laws of this Territory, as interpreted by the courts, as the supreme laws of the land, the teachings of any order, organization, or association to the contrary notwithstanding, so help me God," when, in truth, each of the defendants was a member of an order, organization and association, namely, the Church of Jesus Christ of Latter-day Saints, commonly known as the Mormon Church, which they knew taught, advised, counseled 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 order, organization and association, as they all knew, practiced bigamy and polygamy and plural and celestial marriage as doctrinal rites of said organization; and that in pursuance of said conspiracy the said defendants went before the registrars of different precincts of the county (which are designated) and took and had administered to them respectively the oath aforesaid.

THE DEFENDANTS DEMURRED to the indictment, and the demur-

rer being overruled, they pleaded separately not guilty. On the trial which followed on the 12th of September, 1889, the jury found the defendant Samuel D. Davis guilty as charged in the indictment. The defendant was thereupon sentenced to pay a fine of \$500, and in default of its payment to be confined in the county jail of Oneida county for a term not exceeding 250 days, and was remanded to the custody of the sheriff until the judgment should be satisfied.

Soon afterwards, on the same day, the defendant applied to the court before which the trial was had, and obtained a writ of *habeas corpus*, alleging that he was imprisoned and restrained of his liberty by the sheriff of the county; that his imprisonment was by virtue of his conviction and the judgment mentioned and the warrant issued thereon; that such imprisonment was illegal, and that such illegality consisted in this: 1, that the facts in the indictment and record did not constitute a public offense, and the acts charged were not criminal or punishable under any statute or law of the Territory; and 2, that so much of the statute of the Territory which provides that no person is entitled to register or vote at any election who is "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" is a "law respecting an establishment of religion," in violation of the first amendment of the Constitution and void.

The court ordered the writ to issue, directed to the sheriff, returnable before it, at 3 o'clock in the afternoon of that day, commanding the sheriff to have the body of the defendant before the court at the hour designated, with the time and cause of his imprisonment, and to do and receive what should then be considered concerning him. On the return of the writ the sheriff produced the body of the