

THE IDAHO TEST CASE.

Full Report of the Proceedings.

THE TESTIMONY AND THE DECISION.

In the District Court of the Third Judicial District, Territory of Idaho, County of Bingham, (held at Blackfoot) before the Hon. O. H. Berry, Judge.

H. S. WOOLLEY, Plaintiff,

vs.

C. N. WATKINS, defendant.

H. M. Bennett, Intervener.

When this case came up to be heard at 2 o'clock p.m. on the 8th inst., before Judge Berry, in the above court, it was suggested that H. M. Bennett, Esq., District Attorney for Bingham County, take part in the proceedings in so far as they related to the interests of Bingham County, whereupon Mr. Bennett, accepting the suggestion, moved the continuance of the case until Wednesday the 10th inst., that he might be better prepared to take part in the argument.

On Wednesday at 10 o'clock a.m. the case was called, when Mr. Bennett filed a petition of intervention, and asked that H. W. Smith be entered as Attorney of Record for the Intervener. B. S. Spence, Esq., of Paris, Bear Lake County, represented the defendant, C. N. Watkins and J. L. Rawlins, Esq., of Salt Lake City, appeared for the plaintiff, thus making a tri-partite proceeding.

The question at issue may be stated as follows: The plaintiff on the 31st day of September last, applied to Judge Berry that a writ of mandamus should issue against C. N. Watkins, registrar of voters, in and for Bear Lake County, Paris precinct, Idaho, setting forth that the plaintiff was 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 the said defendant, as registrar, to allow plaintiff to register as a voter in Paris precinct. The court issued an alternative writ, requiring the Registrar to show cause before the court, on the 10th day of October why the writ should not be made absolute, and he be required to allow the plaintiff to register.

The defendant made answer that plaintiff 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, etc., and he was permitted to come in and defend the claim made by the plaintiff, and to show cause, if any there were, why such pre-emptory order should not be made.

After a good deal of legal flibustering as to whether the burden of proof should be upon the plaintiff or defendant, the court decided that the plaintiff should take the affirmative, as it was plainly his duty to prove that the crime of polygamy had been abandoned by the Mormon Church; whereupon the court proceeded to hear the evidence. In behalf of the plaintiff.

C. W. NIBLEY,

being duly sworn, testified as follows:

Q. Where do you reside? A. I reside in Paris, in Bear Lake County, Idaho.

Q. How long have you resided there? A. I have been there for about three years.

Q. Are you acquainted with H. S. Woolley, the plaintiff in this case? A. I am.

Q. Where does he reside? A. He resides at Paris.

Q. How long have you been acquainted with him? A. I have been acquainted with him for about ten years or more.

Q. You may state whether the members of the Mormon Church in Bear Lake County have an organization there, and if so state what it is? A. It is called the Bear Lake Stake organization of the Mormon Church.

Q. You may state, as far as you know, how long that organization has existed? A. It has existed something over ten years.

Q. Who is the head of that organization? Objected to as immaterial. Overruled. A. William Budge is the head of that stake.

Q. He is the President of the Bear Lake Stake of the Mormon Church? A. Yes sir.

Q. State whether the plaintiff in this case is a member of that organization? A. He is.

Q. Objected to as immaterial. Overruled and exceptions taken.

Q. He is a member of that Church? A. Yes sir.

Q. How long has he been a member? A. Ever since that Stake was organized.

Q. Are there other organizations of like nature in the Territory of Idaho? A. Yes sir there are.

Q. How many are there? A. There is the Oneida Stake, the Cassia Stake, the Bingham or Bannock Stake, I believe, and the Malad Stake.

Q. Each of these is organized with a President as the presiding officer of that Stake of the Mormon Church? A. Yes, sir.

Q. Who presides over all these Stakes, or is there any general supervision over all of them? A. The present body that supervises all these Stakes is the Twelve Apostles.

Q. They have general supervision over all these Stakes in all the territories where they have a membership? A. Yes, sir.

Q. Are you or have you been familiar with the teachings of the Mormon Church as to whether the organization of which Woolley is a member, is that organization; or has it not advised or counseled or encouraged, or does it now advise, counsel or encourage any person or members in the commitment of the crime of polygamy or bigamy as it is defined by law? A. Yes, sir, I am familiar with the teachings of the Church.

Q. Does that Church give the advice indicated by the foregoing question? A. No, sir, it gives advice to the contrary.

Cross-examination by Smith.

Q. Are you a member of the Mormon Church? A. I am.

Q. How long have you been a member? A. Ever since I was ten years of age.

Q. Do you belong to the same local subdivision of the Church as the plaintiff does? A. I do.

Q. Are you a bigamist or polygamist? Objected to as immaterial, incompetent and irrelevant. Overruled and exceptions taken. A. I am a polygamist.

Q. When did you become a polygamist? A. Some 10 years ago.

Q. How many wives have you? A. I have three wives.

Q. When did you marry the last one? A. Between four and five years ago.

Q. Where were you living at that time? A. I was living at Logan, Cache County, Utah.

Q. What induced you to marry these extra wives? (Objected to as immaterial and irrelevant; overruled) A. The Church taught that doctrine at that time.

Q. What Church taught that? A. The organization to which I belong taught that at the time.

Q. Is that the Utah branch of the Mormon Church? A. It was the Cache County Stake of the Mormon Church.

Q. That is known as the regular Church—the Mormon Church of Utah, as distinguished from the reconstructed church or Josephite church? A. Yes, sir.

Q. You say you married your last wife five years ago? A. Yes, sir.

Q. Did the Church at that time teach the doctrine of plural marriage as a belief or tenet of the Mormon Church? A. Well that is a wide question.

Q. Was it taught as a revelation from God direct? A. Yes, sir, it was.

Q. Examine this part of this book denominated "The Doctrine and Covenants," at Section 132, page 463, it is called "The Doctrine and Covenants of the Church of Jesus Christ of Latter-day Saints" and was compiled by Orson Pratt; will you please examine it? A. Yes, sir.

Q. And especially the part I have referred you to, beginning at Section 132? A. It states that it is a revelation including the plurality of wives.

Q. Is that the revelation taught to you? A. Yes sir, partly so.

Q. This is accepted by the Church as the immediate and direct revelation upon that subject in these latter days, is it not? A. Yes sir, it has been so accepted.

The part of the book referred to offered in evidence; objected to; overruled.

Attorney reads Section 132 down to and including the close of that chapter on page 474.

Q. I understand you to say that four or five years ago the Church taught this as a divine revelation? A. I don't think I said that. I said that four or five years ago or perhaps three or four years ago that doctrine was sometimes taught.

Q. Sometimes it was taught and accepted as a revelation from God? A. Yes, sir.

Q. What did you say as to the Church teaching this doctrine that "all those who have this law revealed to them must obey it?" A. Yes, sir, with some qualifications. There are other things in that book that qualify that part.

Q. Will you point out those things which qualify that? A. Yes, sir; in Section 58, on page 219, is one qualification, "Let no man break the laws, for he who keepeth the laws of God hath no need to break the laws of the land."

Q. When was that revelation given? A. It was given August 1, 1831.

Q. That was some twelve years before this revelation on plural marriage? A. Yes, sir.

Q. When, according to the teachings of the Mormon Church, was this revelation promulgated as a doctrine? A. In 1852.

Q. That would be about 9 years after it was said to have been received? A. Yes, sir.

Q. Was it after the Church came to Utah? A. Yes, sir.

Q. It was accepted by the Utah Church in 1852? A. Yes, sir.

Q. Under the doctrines of the Church what person or persons are entitled to receive revelations for the government of the Church? A. The President.

Q. Who is the President at the present time? A. There is no First President now.

Q. Who is the Prophet, Seer or Revelator at the present time? A. When the First Presidency is organized, the Church has then what we call a President; now the Apostles, who are equal one with the other, have a president of that body and he is the President of the Church at the present time.

Q. Is he the Prophet and Seer of the Church? Yes, sir.

Q. Who is it? A. Wilford Woodruff.

Q. How long has he acted as such? A. Since President Taylor's death.

Q. How long ago was that? A. It was a year ago last July.

Q. Since July, 1887, Wilford Woodruff has acted as revelator for the Mormon Church? A. Yes, sir.

Q. Who preceded him? A. President Taylor.

Q. How long has he acted in that capacity? A. From 1830 to 1887.

Q. He was President about seven years prior to that time? A. Yes, sir.

Q. How are these revelations for the government of the Church promulgated to the Church, and when? A. They are generally accepted by the Elders of the Church and by a conference of the people. Before they become binding upon anybody they must be accepted so.

Q. When are these conferences held? A. They are held quarterly throughout all the Stakes.

Q. Are they promulgated at the quarterly or semi-annual conferences? A. They are promulgated at both, probably.

Q. The Church holds a semi-annual conference of the whole body? A. Yes, sir.

Q. And they hold a quarterly conference in each Stake? A. Yes, sir.

Q. These revelations are promulgated at either one or the other of these conferences? A. There have been no revelations promulgated for a number of years. There have been instructions by the presiding authorities given as the laws of the Church, not necessarily as the law of God, but accepted by the people as the law of the Church.

Q. You say there have been no revelations for several years? A. No, sir.

Q. When was the last given? A. I don't remember.

Q. About how long ago? A. It has been about 7 years or more.

Q. Seven years ago this Church was teaching this revelation and actively propagating it among the people? A. Yes, sir, the doctrine was taught at the time.

Q. And marriages were regularly celebrated under it? A. I don't know about that.

Q. What is the history of the Church in regard to that? Were the marriages regularly celebrated or not? A. Some were celebrated in Utah at the time, and I think there is perhaps 1 per cent of the population, maybe 1 1/2 per cent of the population of the Mormon Church who are in the practice of polygamy. A man may be a polygamist and not criminally liable.

Q. Are these marriages celebrated in Idaho? A. No, sir.

Q. Why? A. I don't know that I could say about that.

Q. Is not the reason because the Endowment Houses and Temples are in Utah where these ceremonies take place? A. No, sir, not that exactly; they could be celebrated anywhere.

Q. How long since that instruction has been given? A. They could be celebrated anywhere under the direction of the proper officers of the Church.

Q. There is only one man who holds the power to authorize these marriages? A. Yes, sir.

Q. And he generally resides in Utah? Yes, sir.

Q. You say this ceremony can be celebrated anywhere? A. I have heard of it being celebrated outside of the Endowment House.

Q. Have you heard of their being celebrated in Idaho? No, sir.

Q. This one person who holds the power to authorize these marriages resides in Utah? A. I believe so.

Q. Does he not reside there now? A. It would be difficult to say.

Q. Who is that member at present? A. Wilford Woodruff.

Q. His home is in Utah? A. I could not say. He may be in Mexico for all I know.

Q. You don't know where President Taylor was during the last two years of his life? The Court states that this is an improper question.

Q. Does not this book of Doctrine and Covenants contain the tenets of the Church? A. Yes, sir, some of them.

Q. What other works are published that contain them? A. The Bible and the Book of Mormon.

Q. These doctrines in this book are the accepted authority of the Mormon Church? A. Yes, sir, they are accepted as authority by the people.

Q. When was this revelation on polygamy repealed, if ever? A. Well, I could not answer as to the question when it was repealed, I don't know that the revelation has been repealed. I think most of the Mormons believe in that book.

Q. Well, it is still accepted, then, as a Divine revelation? A. Yes, sir; by the great majority of the Church.

Q. You mean that the greater part of the Utah Church still accepts it as such revelation? A. Yes, sir; I think the great majority do. Some don't accept it.

Q. It is, however, recognized by the majority of the people and the authorities as a doctrine of the Church? A. The people as a rule believe in the divinity of the doctrine.

Q. When did they cease to preach this openly and publicly? A. In Idaho, since the decision of Judge Hays, two years ago. There have been positive instructions ever since he declared that test oath valid, by Apostles and others who have visited this section, and by the Presidents of Stakes, instructing the people that this doctrine must not be taught.

Q. And since that time I understand the public teachers refrain from mentioning the matter? A. They have

given instructions in their meetings and in Stake Conferences that this doctrine must not be taught.

Q. I understand that; and what they mean is this, that this doctrine must not be preached in public? A. Yes, sir.

Q. That is about two years ago you say? A. Yes, two years ago these instructions were given.

Q. Since that time there has been no revelation given on that subject? A. I don't know of any revelation on this subject for more than seven years or on any other subject.

Q. And you have heard of none? A. No, sir; only those instructions which I consider as valid as a revelation.

Q. Who promulgated that instruction in Bear Lake? A. I have heard John Henry Smith and Mr. Budge and others of the Elders, and we have taught it in our paper.

Q. What paper is that? A. It is the Bear Lake Independent, an organ of the Mormon Church in Idaho.

Q. When you answered Mr. Rawlins, that they did not teach this doctrine, that is what you meant? A. Yes, sir.

Q. You did not mean to say that in the authorized works of the Church it is not still taught and promulgated, by the Church? A. I say it is not taught and promulgated. I say the majority of the members believe it, and believe in the divinity of the doctrine as much as they ever did. For one, I do, but it is simply not taught and never has been practiced in Idaho.

Q. On whose authority are these books published? Are they not published by the Church? The question is—who authorizes the publication of these books? A. They are published by the "Deseret News Company."

Q. Is there anybody else? A. No, sir; it is just the same as any other publishing house.

Q. Is this revelation embodied in this book of Doctrine and Covenants which I have read to the court, the last revelation on this subject to your knowledge? A. I think it is.

Q. Do you remember the occasion of your arrest by Mr. Bassett some time ago? A. Yes, sir, I do.

Q. Do you remember a conversation with him on this matter in relation to the abandonment of this practice of polygamy? A. No, sir, I do not.

Q. Do you remember while under arrest saying that they never had abandoned the practice of polygamy and never would? A. No, sir, I never made that statement, as far as I remember.

Q. Did you not say at that time that they would never abandon it? A. I may have said that I never would change my belief. The fact is, it has been abandoned by many.

Q. I am asking you what you said to Mr. Bassett? Do you know of making such a statement to him? A. No, sir.

Q. The conferences held semi-annually in April and October are conferences of the whole Church, are they not? A. They are what we call semi-annual conferences, and all the members of the Church are invited.

Q. Are they not general conferences of the Church? A. Well, they are called semi-annual conferences of the Church.

Q. Do not the Mormons residing in Idaho attend these conferences as members of the Church, holding these conferences and recognizing themselves as members of that organization? A. I could not answer that fully; they are members and hold membership in the wards in which they reside and pay their tithing, if they are good members.

Q. Are not these tithing accounts and everything connected with it kept in the general office at Salt Lake City? A. No, sir, they are kept in the stake offices.

Q. What accounts are kept in the general office? A. There may be a summary of all the stake offices kept there.

Q. Have you attended these conferences as a member of the Church? A. Yes, sir, I do as a member of that Church.

Q. Don't you know that hundreds of members of that Church in Idaho have done so? A. I don't know.

Q. Don't you know that plaintiff in this case has done so? A. I don't know that he did.

Re-direct Examination.

By Mr. Rawlins:

Q. You say this revelation given on page 219 of the Book of Doctrine and Covenants, "Let no man break the laws of the land, for he that keepeth the laws of God hath no need to break the laws of the land"—you say that this is to be construed along with the other revelation on polygamy? A. Yes, sir, that is as much a doctrine of the Church as the other; it is recognized as such and that book is recognized as the standard authority and work of the Church.

Q. As I understand the matter, under some circumstances if a man marries a plurality of wives he is justified under the laws of the Church? A. Yes, sir.

Q. Has there ever been any command given to any man to commit the crime of polygamy? A. Do you mean in times past?

Q. Yes sir? A. No I have never known of a command of that kind having been given to any man. The revelation on the eternality of the marriage covenant, or celestial marriage, or what we believe to be that, is not necessarily a plurality of wives, a man who marries his first wife may be married by what we term a celestial rite or ceremony, therefore that law pertains to the eternality of the marriage covenant. We believe it reaches into eternity, or the world to come, and it may be the first wife just the same as the

second. He may marry the first one according to that rite and ceremony and that revelation pertains chiefly to that.

Q. Is it not true that a man before he can take a polygamous wife must produce some permission from some authority in the Church; is not that the fact? A. That was the practice in the Church always.

Q. I will ask you to state whether or not, to your knowledge, such permits have been refused for some considerable time to anybody? A. I am not a Bishop and am not in a position to state definitely. I have seen the testimony of Angus M. Cannon published that they were refused.

Motion to strike out last part of answer of witness as incompetent and hearsay. Struck out.

Q. They are refused? A. Yes, sir.

Q. Is that belief generally promulgated in the Church and among the members of the Church in Idaho and the Stake in which you reside? A. Yes, sir.

Q. That neither in Idaho nor Utah polygamous marriages are allowed? A. They never have been in Idaho.

Q. So that for a period of two years this doctrine has been prohibited; that is, the teaching of it and the practice has not been permitted? A. That is what I understand.

Q. It is so far as your own knowledge has been concerned? A. Yes, sir, as far as Idaho is concerned.

Q. Counsel asked you if you were a polygamist or a bigamist, did you mean that you ever had married more than one wife? A. My status is that of a polygamist.

Q. You did not mean by that that you were living in polygamy? A. No, sir, it would not have been healthy for me if I was.

Q. You are simply in that status, as I understand it, under the ruling of the supreme court? A. My status is that of a polygamist, one who is not entitled to vote or hold office, but I am not to be held criminally liable.

Q. Are you able to state the extent, if at all, to which polygamy is practiced in Bear Lake Stake?

Objected to as immaterial. Overruled and exceptions taken.

A. Yes, sir, we had a report from these different stakes as to that, in order to correct some wrong information that had gone out, and in Bear Lake Stake there is one per cent of the population of the Mormon Church who are polygamists.

Q. Will you make an explanation to the Court of what you mean? A. I mean merely as to the status, there may be some criminally liable of course, I don't know as to that; in the Bear Lake Stake one per cent of the population, or one in 20 of the adult male members in the Church, occupy the status of polygamists; in Oneida Stake there is one in one hundred and fifty of the population of the Mormon Church, which is equal to one in thirty of the adult male members, who maintain the status of polygamists; and in Cassia Stake one in two hundred of the population of the Mormon Church, which is equal to one in fifty of the adult male members of the Church.

Q. I will read this clause of the statute to you, "A member of any organization or association which teaches, advises, counsels or encourages its members or devotees to commit the crime of polygamy or bigamy, or any other crime defined by law as a duty arising from membership." Has the doctrine of polygamy or the practice of polygamy ever been taught by the Mormon Church as a duty arising from membership of that Church? A. No sir, it never has been a duty arising from membership from the fact, as I have stated, one in twenty and one in thirty and one in fifty of the male members of the Church only have that status.

Q. Have you ever known of an instance when a church censure was had by reason of his not entering into that relation? A. There certainly never has been.

Q. Then you can say it never has been a duty arising from membership? A. Yes sir, I can say positively it never has been taught as a duty arising from membership.

Q. It has been simply permitted as a privilege under certain circumstances? A. Yes sir.

Q. But it was never commanded? A. No sir, not as a duty arising from membership and never was practiced as such.

Q. You stated in answer to counsel that this doctrine was not promulgated for quite a number of years after it was given and in Utah it was promulgated in 1852? A. Yes sir.

Q. It was given in 1843; the revelation was? A. Yes, sir.

Q. What can you say as to the belief of the Mormon Church or the Mormon people as to the rightfulness of the practice of polygamy? A. I guess most of the polygamists believe it, but at present it is not very wise to practice it.

Q. How is it as to the majority of the people? A. They give their views the most effectual force possible by not practicing it; that is the best answer I can give to that.

Offered in evidence in this connection the paragraphs 21, 22 and 23 on page 219 of the book of Doctrine and Covenants, beginning with "Let no man break the laws of the land," and ending with "Behold here is wisdom."

Q. There has been no renunciation of the doctrine I have just read? A. None whatever.

Sections offered in evidence, received as such.