

month this conversation was had. He would judge it to be about the 20th of October.

It was moved that this evidence be struck out, and a lengthy argument ensued on both sides for and against the admission of the same. The evidence was finally allowed to stand, the court refusing to strike it out.

FRED E. JONES,

clerk of the church—I know Bishop Stuart. I was present at the church when there was talk of cutting off members. The bishop said they would vote. Heard him say they would not lose any of their privileges.

Cross-examined—He thought the meeting was after Judge Berry's decision had been rendered.

A large number of resignation papers was here presented, the prosecution endeavoring to prove that they were all written by the defendant D. L. Evans.

Henry R. Evans, ex-auditor and recorder, testified that the writing very much resembled that of the defendant.

E. W. Colton was called and said they were all written by himself.

The prosecution desired to put the papers in evidence. They were all dated the same day—October 27—the last day of registration. The papers were admitted in evidence, but with the understanding that they were not written by the defendant.

R. T. OWENS

was sworn. He was acquainted with what is commonly known in this country as the Mormon Church; he had been an evangelist or missionary of such church; was acquainted with the doctrines and principles of said Church; the Bible, Book of Mormon and Doctrine and Covenants were works of such Church.

DANIEL TOVEY,

county treasurer, testified that he lived in Malad; had lived in this community about twenty years; he had known the defendant for ten or twelve years; he knew the reputation for truth and veracity of Mr. Evans, the defendant, to be good.

PETER FREDERICKSON

Have resided in Malad nineteen years. Have known the defendant ever since. I know the reputation of defendant for truth and veracity to be good.

Cross-examined—Have never heard his reputation spoken of.

WM. P. JONES,

probate judge—Have lived in Malad about twenty years. I know D. L. Evans well. Know his reputation for truth and veracity to be good.

Cross-examined—Yes, have heard his reputation spoken of.

L. M. EARL

lived in Malad nearly two years prior to about four months ago. Knew D. L. Evans during that time. Know his reputation for truth and veracity to be first class. Could trust and place confidence in anything he might say.

DAVID L. EVANS,

the defendant was sworn. He left the Church on the 27th of October, 1888. Had lived here thirteen or fourteen years. Was not recognized as a member of the Church until about four years ago. He had never taken any active part in Church matters. He acted according to his own feelings in leaving. It was his intention, and still is, that he does not desire to be a member of the Church. He believed the action taken by himself, on October 27th, completely severed his connection from the Church. He was not at a meeting in this city with Parkinson and others. He heard there was such a meeting, but he knew nothing that transpired there. He knew George Parkinson, who was here the 27th of October. Went with Parkinson to visit the registrar. Parkinson wanted to know of the registrar what steps he should take in regard to registering. He also visited Lapray, the register of Dayton precinct, in this city. Parkinson was with him. Have known Parkinson ten or twelve years. He took no part in advising Parsons to register or vote. Never wrote out any resignation papers but his own. He did not endeavor to influence any one to register or vote. He deferred registering until so late for the reason that he was so well-known, and he thought probably others would follow his example if he registered early in the morning.

Cross-examined—Am well acquainted with the history of the Territory, and affairs generally in this country. Was first baptized in Brigham City, Utah. I considered myself a member of the Church a few years ago. I may have declared that I was not a member of the Church during 1881 and 1882. I was re-baptized with a view of going through the Temple. When I went through the Temple I never had any idea that the test oath would be held valid. I did not go through the Temple and take an additional obligation with the idea of defying the laws. Parkinson never disclosed to me what his purpose was at the time of his visit here. Did not know that Parkinson came here with the intention of holding a political meeting.

Re-cross examination—My object in withdrawing from the Church was to procure my rights as an American citizen. I am not a religiously inclined man. I severed my connection in good faith. Bishop Stuart or Parkinson did not influence me in the matter.

R. H. DAVIS

was recalled—He had lived in Malad twenty-three years. Had known the defendant about that length of time. Knew his reputation for truth and veracity to be good. Would not consider him to be a real orthodox member of the Church.

Cross examined—Never heard his reputation discussed. Can only say that whenever his name has been mentioned it has been that for truth and veracity. A few years ago he was considered an outsider altogether. Witness was now proprie-

tor of the *Enterprise*, published in this city.

This closed the evidence. A recess was taken for fifteen minutes when the arguments commenced. Messrs J. N. Kimball and W. H. Smith spoke for the prosecution. Mr. J. S. Rawlins followed for the defendant, and the closing speech for the prosecution was delivered by District Attorney Standrod. The charge to the jury was then given as follows by

JUDGE BERRY.

Gentlemen of the jury: After the discussion in this case, the careful, able and full summary of it that has been given by the counsel on either side you may not in fact desire to hear anything from the court, but the law imposes upon me the duty of delivering to you the same thing to some extent in the nature of a charge. I am permitted by the statute to state to you the evidence if I were disposed to recount the evidence, and to declare the law to you also; but I must not charge you in respect to matters of fact. I say it would be proper, if I were so disposed, to recount to you the evidence, but not to pass judgment upon it, or to make any comments upon it, but that is the province of the counsel, and they have performed their duty most ably and carefully; it is their province to recount to you the facts in the case, and to comment upon the facts; the court will omit that. Of the facts in the case you are the exclusive judges. The defendant in a criminal action is presumed to be innocent till the contrary is proven, and in case of a reasonable doubt as to whether he is guilty, or until his guilt is satisfactorily shown, he is entitled to acquittal.

The facts constituting the alleged offense in this case are comparatively few and the evidence bearing upon these facts you will remember. As to many of the facts there is no question made by the evidence, nor by the counsel in their argument. It is not disputed that whatever was in fact done by the defendant was done within the County of Oneida in this Territory. So of the time of such acts; that time was on Saturday, the 27th day of October, 1888; nor is it disputed that the oath was taken by the defendant in the form as stated in the indictment; and before the officer named in the indictment. As to the authority of the officer administering the oath to administer the same, that is the question of law alone, and the court charges you that as a question of law the registrar had such authority. As to whether the defendant upto the 27th day of October, 1888, was a member of the Mormon Church, there is no question in the evidence nor in the argument. As to whether he was a member, I say, of the organization known as the Church of Jesus Christ of Latter-day Saints there is no question. Does then that organization fall within the provision of the law making membership in it a disqualification of a voter? That also is a question of law; and although that point is controverted in the argu-