

**Joseph Smith and the 1826 Trial: New
Evidence and New Difficulties**

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In the late winter of 1826, according to an early account, Peter Bridgeman, a nephew of the wife of Josiah Stowell, presented a written complaint against Joseph Smith at South Bainbridge, New York, which led to his arrest and trial as a “disorderly person.” Since the time that Fawn Brodie in her biography of Joseph Smith¹ accepted as authentic the account of the trial published in the *Schaaf-Herzog Encyclopedia of Religious Knowledge* (1883),² it has been a source of sharp conflict among the students of early Mormonism.³ Perhaps the primary reason for Mormon opposition to the record is the alleged admission it contains made by Joseph Smith that he had been searching for lost treasure by means of a stone.

After Brodie’s book was published, other versions of the trial were discovered—one by “A. W. B.” [A. W. Benton], published in 1831 in the *Evangelical Magazine and Gospel Advocate*,⁴ and another by a prominent physician, W. D. Purple of Chenango County, who wrote in the *Chenango Union* in 1877.⁵ A version very similar but not identical to the *Schaaf-Herzog* was found to have been published earlier in *Fraser’s Magazine* in 1873.⁶

These versions of the trial were submitted to some scrutiny by Hugh Nibley in *The Myth Makers* in 1961.⁷ Nibley challenged the validity of the *Schaaf-Herzog* report primarily because the original document has never appeared, although it was said to have been taken to Utah by Emily Pearsall, the niece of Justice Albert Neely who supposedly tried the case. Nibley said we have only the testimony of Miss Pearsall that the record ever existed, and that came through Bishop Daniel S. Turtle of the Episcopal church in Salt Lake City, who published the *Schaaf-Herzog* report.

By examining the Pearsall, Purple, and Benton accounts, which he noted are contradictory,⁸ Nibley raised the question whether the charge of vagrancy indicated by Purple was plausible when the testimony itself shows that Joseph worked for Josiah Stowell at his request.⁹ Nibley also suggested the possibility that there might have been some confusion between a trial which did occur at Bainbridge in 1830 with one in 1826 that perhaps did not. Nibley argued that Benton probably made up the story of the 1826 trial, applying some of the details from the 1830 affair and getting his ideas of Joseph’s stone peeping from articles by Obediah Dogberry published in the *Palmyra Reflector* in that year.¹⁰

Just recently, however, Reverend Wesley P. Walters of the United Presbyterian church in Marissa, Illinois, discovered some records in the basement of the sheriff's office in Norwich, New York, which he maintains demonstrate the actuality of the 1826 trial and go far to substantiate that Joseph Smith spent part of his early career in southern New York as a money digger and seer of hidden treasures. A periodical in Salt Lake City which heralded Walters's findings said they "undermine Mormonism" and repeated a statement by Hugh Nibley in *The Myth Makers*, "if this court record is authentic it is the most damning evidence in existence against Joseph Smith."¹¹

Walters's discovery consisted mainly of two documents. The first was a bill of costs presented to local authorities by Justice Albert Neely in 1826 which identified Joseph Smith as "The Glass Looker" and indicated that he was charged at the trial with a "misdemeanor." Neely's bill reported that his total charges for the case were \$2.68, the precise amount shown in *Fraser's Magazine*.

Walters's second find was a bill by the local constable, Philip DeZeng, dated 1826,¹² which indicates that not only was a warrant issued for Joseph Smith's arrest but also a mittimus, which Walters believes must have been issued after the trial ordering the sheriff to escort Joseph out of the county. Walters contends that the mittimus thus proves that Joseph Smith was found guilty.¹³

A preliminary investigation by the writer at the sheriff's office in Norwich, New York, confirmed that Walters had searched thoroughly the bills of local officials dated in the 1820s, many of which were similar to the two bills in question. The originals, however, were not at the sheriff's office but in Walters's possession. Presumably they will be available for study at a later date. Until then, the final question of their authenticity must remain open. If a study of the handwriting and paper of the originals demonstrates their authenticity, it will confirm that there was a trial in 1826 and that glass looking was an issue at the trial. Despite Nibley's argument to the contrary, this has remained a distinct possibility since Oliver Cowdery acknowledged in the *LDS Messenger and Advocate* in 1835 that, while Joseph Smith was in southern New York,

some very officious person complained of him as a disorderly person and brought him before the authorities of the county; but there being no cause of action he was honorably acquitted.

Cowdery made it clear that this occurred prior to Joseph's receiving the Book of Mormon plates. He said that following the trial Joseph

continued to receive instructions concerning the coming forth of the fulness of the gospel, from the mouth of the heavenly messenger, until he was directed to visit again the place where the records were deposited.¹⁴

But, despite any new evidence, many of the contradictions demonstrated by Nibley cannot be dismissed, and some additional difficulties now appear. Doubt still remains as to the authenticity of the testimonies published in *Fraser's* and by Purple, because the details of these vary. The bills found by Walters clarify some points but add to the confusion on others.

As already indicated, in *Fraser's* Peter Bridgeman is reported to have made the charges against Joseph. No reason is given. Dr. Purple, who claimed Justice Neely asked him to take notes at the trial, recalled in 1877 that it was the sons of Josiah Stowell who brought the allegations because they were afraid that Joseph's encouragement of their father's money digging was "depriving them of their anticipated patrimony." A. W. Benton said that it was "the public" who had Joseph arrested after becoming "wearied with the base imposition he was palming upon the credulity of the ignorant." Oliver Cowdery attributed the charges to an "officious person."

Contradictions on the nature of the charge are also evident. *Fraser's* indicated Joseph was accused of being a "disorderly person and imposter." Purple said Joseph was arrested "as a vagrant, without visible means of support." Benton said Joseph was tried as a "disorderly person," a charge which Oliver Cowdery also repeats.

Walters's discoveries do not help us on this matter. The bill of Justice Neely does not reveal what the charge was, only that Joseph was tried for a "misdemeanor." It is curious that in the other cases included on the bill specific charges such as "assault and battery" and "petit larceny" [*sic*] are given. It is interesting, and perhaps significant, that in another document found by Walters, the 1830 bill of Justice of the Peace Joseph Chamberlain, who tried Joseph Smith in the 1830 trial, the charge is specifically stated—"a disorderly person."¹⁵ This fact, along with the vagueness of the charges in Neely's bill, necessitates the question being raised, did *Fraser's*, Benton, and Cowdery confuse the charges in 1826 with those in 1830? We have evidence that Benton and Cowdery were both involved in the 1830 affair,¹⁶ and they possibly could have confused the charges in the two trials. If so, of what was Joseph Smith accused in 1826? A "misdemeanor" might be many things, as the term simply designates a minor offense. Was the charge vagrancy, disorderliness, being an "impostor," or was it deliberately left vague because treasure hunting, as Joseph practiced it with Stowell, did not violate any specific New York law? It is generally known among historians that digging was common in western New York in this period. How many such persons were held accountable, and to what law? These are questions that need answering before any fair assessment of the trial can be made.

There are also discrepancies regarding who testified at the trial. Neither Benton nor Oliver Cowdery provide any trial testimony; so they are not relevant here. *Fraser's*, *Schaaf-Herzog*, and Purple do, with some interesting

variations. While *Fraser's* says nothing with regard to Horace Stowell, the *Schaaf-Herzog* account indicates he was the third witness. According to Constable DeZeng's bill, subpoenas were served on twelve witnesses. *Fraser's* gives the testimony of five, Purple four, *Schaaf-Herzog* six. Were there other witnesses? If so, who were they and what did they say? There is no evidence that the testimonies of only unfriendly witnesses were printed, since Josiah Stowell was a friend of Joseph Smith and Thompson also professed to be. Still, we could make a fairer evaluation if we had the full record.

According to both *Fraser's* and Purple, Joseph Smith was the first witness, testifying against himself. There is no mention of any counsel for the defense, although we know such was permissible, since Joseph was allowed counsel in the 1830 trial.¹⁷ *Fraser's* and Purple gave different accounts of Joseph's testimony. *Fraser's* reports that Joseph said he spent most of his time with Stowell farming and going to school, with only a small part of the time devoted to money digging. He admitted that he had a stone which he used to look for treasure and looked for Stowell "several times." He said that formerly he had looked for lost articles with the stone but had lately given this up. He insisted that he did not solicit this kind of work.

In the Purple account, Joseph purportedly went into more detail on how he found the stone, learning of it from a girl in the neighborhood, who, through means of her own stone, showed him its location buried beneath a tree many miles away. Purple said Joseph claimed the stone enabled him to annihilate time and distance, that it was "an all seeing eye" and gave him "attributes of deity." Purple also said Joseph exhibited the stone in court and that it was the size of a hen's egg.

Although these two accounts are not mutually exclusive, in some ways the Purple testimony is more incriminating. Since Purple may have taken the only notes at the trial,¹⁸ it is peculiar that he should record one set of facts at that time and remember something quite different in 1877. Of course, he admitted in 1877 that he had since told and retold the story many times. He did not say that he used notes to write the 1877 article, and some evidence suggests he was relying on memory. Purple calls Josiah Stowell "Isaiah Stowell," which is the kind of error that might result from a reliance upon memory. Purple admitted his sources for his article were some vivid recollections, his writing of the events when the trial occurred, and frequent rehearsals since. He does not say he referred to his notes when he wrote his article.¹⁹

Fraser's lists Josiah Stowell as the second witness, but Purple indicates Joseph, Sr., was next to testify against his son. Stowell is listed by Purple as the third witness. Purple gives an interesting account of Father Smith's testimony, saying that "he and his son were mortified that this wonderful power which God had so miraculously given . . . should be used only in search of

filthy lucre.” Joseph, Sr., added that he wished “his Heavenly Father was to manifest his will concerning this marvelous power. He trusted that the Son of Righteousness would some day illumine the heart of the boy, and enable him to see His will concerning him.” While such testimony would contradict some things in Joseph’s personal history, nonetheless it does suggest that Joseph, Sr., had a religious concern which transcended money digging.

The *Fraser’s* and Purple accounts of Josiah Stowell’s testimony do not entirely agree. While both have Stowell testifying that he believed in Joseph’s divining powers, Purple has Stowell saying Joseph could see treasures fifty feet underground, a statement which brought a direct challenge from Justice Neely. Stowell stuck to his story, however, and said he not only believed it but knew it. Both accounts give Jonathan Thompson as the last witness but with widely differing and contradictory versions of his testimony. *Fraser’s* has Thompson relating how he, a man named Yeomans, and Joseph Smith went out at night and began digging, after Joseph told them the exact position of a treasure chest. They dug several feet and struck something with their shovel, after which Joseph looked into his glass and became frightened, seeing there an Indian who had buried the treasure and then killed his friend and buried him to guard it. Thompson said he believed that Joseph could divine such things with his stone and recounted how the chest, which was enchanted, kept settling away from them as they dug.

In the Purple version of Thompson, Joseph Smith told Stowell that a band of robbers had buried a treasure and placed a charm over it, which could only be removed by fasting and prayer. They dug for the treasure to a depth of five feet but decided they lacked sufficient faith to secure it. They offered the blood of a lamb as propitiation, but the treasure continued to recede from their reach.

The matter of whether or not Joseph Smith was found guilty remains an open question. *Fraser’s* recorded his guilt, but A. W. Benton indicated that, although he was “condemned,” because of his youth “he was designedly allowed to escape.” Purple contradicted them both, recalling that “the testimony of Deacon Stowell could not be impeached, the prisoner was discharged.”²⁰

Constable DeZeng’s bill may not settle this question as readily as Walters has supposed. The relevant item in the bill reads as follows:

Serving warrant on Joseph Smith of [Chenango Co.?
 Subpoening 12 witnesses & travel
 attendance with Prisoner two days & 1 night
 Notifying two justices
 10 miles travel with mittimus to take him

The bill does not indicate where Joseph was to be taken. Walters argues that the warrant was sufficient to take Joseph into custody for the trial and

that the mittimus was issued afterward so that the sheriff could take Joseph, who had been found guilty, into custody and remove him from the county. On the surface this hypothesis does not seem likely. If one concedes that the *Fraser's* report of the trial is at least partially accurate, that source suggests that since a warrant and mittimus were included in the trial costs that both were issued *prior* to the trial. It was customary in the nineteenth century to issue a warrant for the arrest and a mittimus to the jailer to hold the defendant for trial.

These many contradictions cast some doubt upon the trustworthiness of the testimony that was purportedly given at the trial and the accuracy of the reported conviction. Perhaps some additional intensive research similar to what Reverend Walters has done will lead to a discovery of Neely's docket book or Purple's original notes. If so, we could obtain the additional information which is needed with respect to these difficulties.

In the meantime, if the bills should prove authentic and demonstrate that Joseph Smith was tried as a "Glass Looker," what shall we make of him? Nearly everybody seems to have conceded that if Joseph Smith was indeed a gold digger that he was also a religious fraud. This is a view, however, of our own generation, not Joseph Smith's. Joseph himself never denied that he searched for buried treasure, only attributing the stories which circulated about him to his work with Stowell.²¹ In one place he admitted that he did such work but never made much money from it.²² Martin Harris, who for most of his life was a believer in Joseph Smith, only confessing that he "lost confidence in Joseph Smith" while he was a Shaker in the 1840s,²³ was quoted as saying that Joseph and his father were part of a company which searched for treasure.²⁴ Hosea Stout, who believed in the Prophet, said that the gold plates were found by means of a seer stone.²⁵

If there was an element of mysticism in Joseph Smith and the other early Mormons which led them to search for treasures in the earth, it does not disprove the genuineness of their religious convictions. William Purple admitted that Josiah Stowell was "educated in the spirit of orthodox Puritanism" and was "officially connected with the first Presbyterian church of the town." In a letter to Joseph Smith, only part of which has been published, Stowell made it clear that his deepest interests in Joseph Smith and his movement were religious. Although too ill to write his own letter, he dictated to Martha L. Campbell that he hoped to come to Nauvoo in the spring of 1844. "He says he has never staggered at the foundation of the work for he knew too much concerning it," Mrs. Campbell wrote.

If I understood him right he was the first person that took the plates out of your hands the morning you brought them in, and he observed, blessed is he that seeth and believeth, and more blessed is he that believeth without seeing. He says he has seen and believed. He seems anxious to get there (to Nauvoo)

to renew his covenants with the Lord. . . . He gave me strict charge to say to you his faith is good concerning the work of the Lord.²⁶

It has been argued that Joseph's religious pronouncements in his history were written for public consumption and that in reality he was a calculator and schemer who exploited the religious feelings of his people for his own ends.²⁷ But this ignores the deep sense of religious calling in the man which goes far back into the history of his family. For now, it is instructive to take note of a letter which Joseph wrote to his wife, Emma, in 1832 which suggests this dimension of his character. Because it was not written for public consumption, it must bear unusual weight.

I have visited a grove which is Just back of the town almost every day where I can be Secluded from the eyes of any mortal and there give vent to all the feelings of my heart in deacication [*sic*] and praise [*sic*] I have called to mind all the past moments of my life and am left to morn [*sic*] and Shed tears of sorrow for my folly in sufering [*sic*]the adversary of my Soul to have so much power over me as he has had in times past but God is merciful and has forgiven my sins and I rejoice that he Sendeth forth the Conferter [*sic*] unto as many as believe and humbleth themselves before him.²⁸

It is time historians began to study this aspect of Joseph's personality. No one who ignores it can understand him.

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1. *No Man Knows My History* (New York: Alfred A. Knopf, 1945).

2. Vol. II, pp. 1576–77.

3. Francis W. Kirkham challenged the validity of the record in *New Witness for Christ in America* (Independence, Mo.: Zion's Printing and Publishing Co., 1942), pp. 370–94.

4. Vol. II (9 April 1831).

5. 3 May 1877.

6. New Series (London: February 1873), p. 225.

7. (Salt Lake City: Bookcraft), p. 143.

8. Among other things, Nibley observed that Benton and Purple differ as to Joseph's fate after the trial; Benton said he escaped, Purple that he remained in Chenango County a few weeks. See p. 151.

9. *Ibid.*, pp. 54, 55.

10. *Ibid.*, pp. 156–57.

11. *The Salt Lake Messenger*, August 1971. Nibley's statement is found on p. 142 of his work.

12. Rev. Waiters sent this writer a photographic reproduction of DeZeng's bill. It has been published in Jerald and Sandra Tanner's *Joseph Smith's 1826 Trial* (Salt Lake City: Modern Microfilm Co., 1971), p. 6.

13. See Walters's argument in *Tri-Town News* (Sidney, N.Y.) 25 August 1971.
14. (October 1835), pp. 201–202.
15. A photocopy of this bill was also sent to the writer by Rev. Walters.
16. Benton, according to Joseph Smith, brought the charges which led to his arrest in 1830. Cowdery was a witness in the 1830 trial. See Joseph Smith, *History of the Church of Jesus Christ of Latter-day Saints*, Brigham H. Roberts (ed.) (6 vols.; Salt Lake City: Deseret Book Co., 1951), I, 97, and Benton's description of the 1830 trial in the *Evangelical Magazine and Gospel Advocate*.
17. See Joseph Smith, *History*, I, 89.
18. Judging from the justice of the peace records from Manchester and Chenango counties, which I have seen, testimony as extensive as that recorded in *Fraser's* was not customary. If we may believe Purple, however, he was requested to take notes by Justice Neely. Thus it is possible that these were afterward written into Neely's docket book. But we need to know more about how they got into print and who handled them in between time.
19. Possibly the notes had by that time (1877) been taken to Utah. Nibley also believed Purple relied on his memory. See Nibley, p. 145.
20. There is some reason to think Purple may have confused 1830 with 1826 here, since Joseph makes it clear in his history that Stowell's testimony did help to bring a favorable verdict at the later trial. See Smith, I, 89–90.
21. Smith, I, 17.
22. *The Elders' Journal* I (July 1838), 43.
23. See Thomas Colburn's statement to this effect in "Journal History," 2 May 1855.
24. *Tiffany's Monthly*, V (May 1859), 164.
25. Juanita Brooks, (ed.), *On the Mormon Frontier. The Journal of Hosea Stout* (2 vols.; Salt Lake City: The University of Utah Press, 1964), II, 593. See the entry of 25 February 1856.
26. B. H. Roberts published an excerpt from the letter in his *Comprehensive History of the Church of Jesus Christ of Latter-day Saints*, (Salt Lake City, Deseret News Press, 1930), I, 98. The revealing original is in the Church Historian's Office, Salt Lake City, Utah.
27. Brodie, pp. vii, 5, 16.
28. The letter, dated 6 June 1832, is in the Mormon Collection, Folder I, Chicago Historical Society, and has recently been printed in *BYU Studies*, XI:4 (Summer 1971), pp. 517–23.