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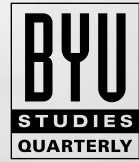
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From the Editor



Dear Readers,

Ten years ago, people around the world marked the bicentennial of Joseph Smith's birth. In June 2005, a two-day conference was convened at the Library of Congress, which I attended with my wife, pictured above; two major biographies were published; and a handy resource of crucial primary sources about the key events of the Restoration (*Opening the Heavens*) was published. Since then, eleven volumes of the Joseph Smith Papers have appeared. Dozens of groundbreaking studies have been published, many in *BYU Studies*, about Joseph Smith's first vision and his many legal encounters. Monumental works on the translation of the Book of Mormon have been produced. Thus it is with great pleasure that we bring out at this time another strong issue featuring new information and important insights about the Prophet Joseph Smith. Much is known about Joseph Smith that was not known ten years ago, and there is still more to come.

More than ever before, people are agreeing that the innovative and spiritual achievements of Joseph Smith are difficult to discount. As Josiah Quincy, a prominent nineteenth-century American, mused in 1883, the Mormon prophet's "powerful influence upon the destinies of his countrymen" would long be remembered (*BYU Studies* 39, no. 4, p. 71). Recently, Christian theologian Stephen H. Webb stated, "He was unmatched in the nineteenth century in his capacity for spiritual wonder and his talent in synthesizing so many aspects of Christianity that

had fallen into fragmentation and disuse” (*America: The National Catholic Review*, online).

One role of BYU Studies for over half a century has been to meticulously analyze documents, to publish new insights, and to appreciate with awe all that Joseph Smith accomplished under extreme adverse conditions, basically in only fifteen years (1829–44). Is there anything really like what he did, except perhaps in the rare cases of a few incontrovertible geniuses? And even there, the comparisons with Joseph Smith do not generate complete comparables.

In previous volumes of *BYU Studies*, Joseph Smith has been profitably compared with Herman Melville, Søren Kierkegaard, John Calvin, and others. Here in this issue, he is compared with John Milton in a pair of enlightening essays, each drawing attention to similarities and differences from intriguingly different perspectives. These comparisons sharpen awareness of important features in the life of Joseph Smith and his place in the world that would otherwise likely go unnoticed.

This issue presents an array of rigorous book reviews and a substantial study about horses in pre-Columbian America, but a majority of its pages are dedicated to the most definitive analysis to date of the demise of the Kirtland Safety Society in 1837. This story is more complicated than even extensive historical studies have previously grasped. This article, presented in four parts, is necessarily long, but its exhaustive documentation rewards diligent readers. This complicated scenario shows Joseph Smith and his faithful brethren using competent lawyers, accomplishing the construction and financing of the Kirtland Temple, repaying virtually all of their debts, and facing pernicious opposition. The opposition, especially of one Grandison Newell, is now documented beyond doubt, showing how he unscrupulously became the eventual owner of the Kirtland Temple. Evidence surrounding crucial junctures such as these allows people to focus with confidence on the inward values of Joseph’s theological, humanitarian, spiritual, and prophetic contributions.

While much of this data remains to be diligently processed, understood, and integrated, millions shall know Brother Joseph again, better than ever before, aided by the great outpouring of scholarship about the Prophet in the past decade.



Engraved portrait of John Milton (1608–1674), by William Faithorne (c. 1620–1691). Courtesy Special Collections, University of Leicester.

John Milton, Joseph Smith, and the Book of Mormon

Robert A. Rees

In my Introduction to Mormonism class at Graduate Theological Union in 2013, among other topics we discussed the Book of Mormon and its possible provenances. The assignments for the class included my article “Joseph Smith, the Book of Mormon, and the American Renaissance,” in which I compare Joseph Smith with his illustrious contemporaries Ralph Waldo Emerson, Henry David Thoreau, Nathaniel Hawthorne, Herman Melville, and Walt Whitman in terms of their respective literary imagination, talent, authorial maturity, education, cultural milieu, knowledge base, and intellectual sophistication.¹ In that article, I attempted to demonstrate that each of these authors enjoyed a much greater advantage in all of these categories in comparison with Joseph Smith at the time he published the Book of Mormon. Further, I argued that even if Joseph had been blessed with all of the advantages of his contemporary authors, the time, conditions, and circumstances under which the Book of Mormon was produced were insufficient for the composition of such a lengthy, complex, and elaborate narrative as the history of the Nephites and Jaredites. In a follow-up article, I took the comparison one step further by examining each of these writers’ magnum opus and all of the study, preliminary drafts, critical responses, and written works that preceded them.² That is, the

1. Robert A. Rees, “Joseph Smith, the Book of Mormon, and the American Renaissance,” *Dialogue: A Journal of Mormon Thought* 35, no. 3 (2002): 83–112.

2. “Joseph Smith, the Book of Mormon, and the American Renaissance: An Addendum,” publication pending.

major work of each of these writers has a history, one that allows us to trace its evolution from inception to completion.

In my original article, I spoke of what Melville scholars refer to as his “try works.” The image, found in chapter 96 of *Moby-Dick*, refers to the two large kettles or “try pots” situated on the decks of nineteenth-century whaling ships that were used to “try out” or reduce whale oil by boiling the blubber. One of the ways in which *try works* functions is as a metaphor for the process of writing, the refining fire of paring, condensing, and rewriting required to reduce a work to its essential plot, structure, and style and to boil away the rhetorical blubber that plagues most authors, especially in their early years. In this sense, it stands for the process a successful writer must go through in order to refine and perfect his or her writing. Thus, for Melville, the five novels he wrote prior to *Moby-Dick* (*Typee*, *Omoo*, *Mardi*, *Redburn*, and *White-Jacket*) constitute the try works that prepared him for the more complex rhetorical style, universal themes, and timeless scope of *Moby-Dick* as well as the subtleties and other stylistic refinements that constitute the novel’s amazing power and ontological density. The process was essentially the same and can be demonstrated from the historical record for the other writers of the American Renaissance.

In my Graduate Theological Union class, one of my students, Ryan Eikenbary, who had significant experience studying and analyzing John Milton’s *Paradise Lost*, argued that a more plausible comparison with Joseph Smith in terms of authorial composition was not writers of the American Renaissance but rather John Milton, who dictated his great epic poem in some ways similar to Joseph Smith’s dictation of the Book of Mormon. Eikenbary’s thesis was that just as Milton had absorbed an enormous amount of material through his education and his informational and cultural environment that allowed him to dictate his masterful epic, so Joseph Smith did the same in mentally and imaginatively preparing for and then composing and dictating the Nephite-Jaredite narrative. This paper examines the validity of that comparison.

It would be difficult to find two authors whose educations, backgrounds, and cultural milieus differ more dramatically than those of Joseph Smith and John Milton. Milton had a classical education that was vastly superior to Smith’s in all particulars. He had the family stability and support as well as the wealth and leisure to sustain long periods of study and reflection; he held prominent positions in government and was involved in affairs of state for two decades; he traveled widely and was exposed to the best of European culture; he published

many works of literature, politics, and theology before undertaking his major work; he had a large and essentially appreciative audience; and he had an assembly of readers, amanuenses, and reviewers during the long period he was writing *Paradise Lost*.

Milton “from a very early age . . . [was] cherished by his family as something of an educational phenomenon, given to reading, translating, and writing.”³ According to Harris Fletcher, Milton’s education, like that of other English boys of the time, was in three stages: “the Institution, or grounding in the fundamentals”; the grammar school; and the university.⁴ Milton’s father, a scrivener (clerk or scribe), “carefully planned and directed the education of his son,” so that from an early age, even before he attended school, Milton had tutors in “the elements of classical learning.” As Milton later wrote, “My father destined me from a child to the pursuits of literature.”⁵

After this period of “home schooling,” Milton went to the prestigious St. Paul’s School, where he studied the scriptures, Latin grammar and literature, writing in imitation of Latin models, and Greek and Hebrew. In addition, he learned the mathematical arts of the quadrivium (arithmetic, geometry, music, and astronomy) as well as the trivium (grammar, rhetoric, and logic). As was the custom, the students at St. Paul’s memorized classical and scriptural texts and were required to translate Latin texts to English and vice versa. In addition to the classical languages Milton learned at school, his father had him tutored in Spanish, French, Italian, and possibly Aramaic and Syriac. Even as a boy, Milton was a serious student, often staying up until midnight to pore over texts and write.

In 1625, at the age of sixteen, Milton continued his formal education by attending Christ’s College, Cambridge, where he was “able to deepen and enrich his already considerable knowledge of both classical literature and languages,” earning his bachelor’s degree in 1629 and his master’s, cum laude, in 1632. Following his master’s degree, Milton devoted the next six years to full-time private study. In 1638, he traveled

3. Roy Flannagan, *John Milton: A Short Introduction* (Oxford: Blackwell, 2002), 5.

4. Harris Francis Fletcher, “Preface” to *The Intellectual Development of John Milton*, 2 vols. (Urbana: University of Illinois Press, 1956), 1:preface.

5. John Milton, *The Reason of Church Government*, as quoted in Marjorie Hope Nicolson, *John Milton: A Reader’s Guide to His Poetry* (New York: Noonday Press, 1966), 6.

on the continent, where he met a number of notable figures, including Grotius and Galileo.

Milton was what Roy Flannagan calls an “omnivorous reader.” As Flannagan states, “There is no one that I know of, living or dead, who has read all the books that we know Milton read in his lifetime. . . . No modern scholar, indeed no scholar . . . from any time after Milton, would have the combined linguistic skills and historical scope to be able to read and comprehend all of what Milton seems to have studied with pleasure and understanding.”⁶

Milton established himself early as a poet of considerable talent, writing his first major poem, “On the Morning of Christ’s Nativity,” at age twenty in 1629, followed by “L’Allegro” and “Il Penseroso” in 1631, “Comus” in 1634 (at about the same age Joseph Smith was when he published the Book of Mormon), and “Lycidus” in 1637. Milton published his first collection of poetry in 1645, which ran “the gamut of various genres: psalm paraphrase, sonnet, canzone, masque, pastoral elegy, verse letter, English ode, epigram, obituary poem, companion poem, and occasional verse.”⁷ In other words, Milton, began writing mature verse in a variety of genres in his twenties and continued doing so (with an interruption at midcentury when he was occupied primarily with governmental affairs) until he produced his masterpiece, *Paradise Lost*, in his fifties and early sixties.

A gifted and prolific writer of prose, which he referred to as the work of his left hand, Milton composed tracts and other polemical writings in this genre primarily during the middle decades of the seventeenth century when he was heavily engaged in supporting and defending Cromwell’s government, including serving as secretary of foreign tongues, which included being responsible for diplomatic correspondence. *Areopagitica* (1644), considered his most famous prose work, is an impassioned defense of freedom of the press. Other major prose works include *The Reason of Church Government* (1641), *The Doctrine of Discipline and Divorce* (1643), and *The Tenure of Kings and Magistrates* (1649).

This is not the place to discuss Milton’s personal life, which included three marriages, the deaths of two wives and a son and daughter, and imprisonment, among other challenges, but perhaps none was as significant as his blindness in 1652 at the age of forty-four. For so intense an

6. Flannagan, *Milton: A Short Introduction*, 10–11.

7. Poetry Foundation, “John Milton,” <http://www.poetryfoundation.org/bio/john-milton>.

intellectual and ambitious a writer as Milton, his blindness affected his life profoundly. His most famous sonnet addresses it:

When I consider how my light is spent,
 Ere half my days in this dark world and wide,
 And that one talent which is death to hide
 Lodged with me useless, though my soul more bent
 To serve therewith my Maker, and present
 My true account, lest He returning chide;

.....
 ... who best
 Bear His mild yoke, they serve Him best.

A true Puritan, in this sonnet Milton stoically accepts his fate and remains faithful to his calling as a Christian poet. From this point on, he was dependent on the eyes and voices of readers and the pens of those who took dictation from his tongue for his compositions, including the culminating work of his great epic poem.

There is ample evidence that Milton had been preparing to write an epic tragedy of one kind or another since his days at Cambridge. Marjorie Nicolson speculates that from his youth “Milton aspired to write an epic” and that his “Latin exercise [at Cambridge] vaguely foreshadows *Paradise Lost*, in that its main character is Satan.”⁸ Roy Flannagan argues, “Milton undoubtedly began outlining the tragedy that would become the epic *Paradise Lost* long before he became completely blind.”⁹ In the absence of evidence from the historical record, Nicolson speculates that Milton’s plan to write a drama on the subject of the Fall, “Adam Unparadised,” took form as early as the 1640s. One could argue that in a way Milton had been preparing his entire life for his masterwork. Many of the elements of his early poetry and even some of his prose writings were his “try works” for his epic poem.

Milton began dictating *Paradise Lost* in 1656 with his two daughters alternating as scribes. His dictation was then transcribed and read back to him for any changes, revisions, or corrections. It was an arduous, time-consuming process, and it took more than a decade to complete the first ten books, which were published in 1667. The expanded version to twelve books was published in 1671, when Milton was sixty-three. Later the same year, he completed *Paradise Regained* and *Samson Agonisties*, also by dictation. He died three years later.

8. Nicolson, *Milton: A Reader's Guide*, 177.

9. Flannagan, *Milton: A Short Introduction*, 75

By any measure, *Paradise Lost* is one of the great accomplishments in the history of world literature, taking its rightful place alongside Homer's *Iliad* and *Odyssey* and Virgil's *Aeneid*. That it was dictated by a blind poet makes it an even more astonishing accomplishment. Fortunately, we can trace its development over the course of Milton's entire life, showing how his family circumstances, religious training, education, public service, foreign travels, personal history, and especially his voluminous reading and extensive writing prepared him to dictate his epic poem.

In comparison with Milton and the writers of the American Renaissance, each of whom has a clear record of evolving through a long apprenticeship to become a mature major writer, we actually have very little understanding of Joseph's intellectual or compositional development before the publication of the Book of Mormon. In other words, there is no evidence of Joseph spending hours in libraries or even reading on his own. (In fact, his mother said, "he seemed much less inclined to the perusal of books than any of the rest of our children."¹⁰) There is also no evidence that he was keeping a journal or developing his writing style, no record of his writing sketches or short stories, no indication that he was creating the major characters of the Nephite history, planning its plots, or working out the major themes and ideas found in its pages; nor is there any evidence that he was consciously developing an authorial voice or cultivating a personal writing style (or that he even understood what this would have entailed). Neither did he exhibit any proclivity for composing large narrative forms or differential styles or anything at all like the complex, interwoven, episodic components of the Book of Mormon.

An article titled "Could Joseph Smith Have Written the Book of Mormon?" on MormonThink offers what I consider a lot of silliness on the subject, including the assertion that the imaginative stories about the ancient inhabitants of America his mother recalls Joseph telling his family reveal a "vivid, constructive imagination . . . [that] was as strong and varied as Shakespeare's and no more to be accounted for than the English Bard's."¹¹ That's about as uninformed an opinion as one could imagine.

10. Lavina Fielding Anderson, ed., *Lucy's Book: A Critical Edition of Lucy Mack Smith's Family Memoir* (Salt Lake City: Signature Books, 2001), 344.

11. See MormonThink, "Could Joseph Smith Have Written the Book of Mormon?" <http://mormonthink.com/josephweb.htm#full>.

The same article argues that Smith's "lack of education does not mean lack of intelligence or imagination," but neither does it substantiate Smith's ability to produce anything like the Book of Mormon. The article so frequently resorts to the hypothetical as to be a parody of responsible scholarship.

Some argue that the only substantive preparation Joseph Smith needed to write the Book of Mormon was a knowledge of the Bible. The MormonThink article also makes this argument: "Young Joseph was able to read and ponder scriptures. [He] also attended many protestant church services and studied the Bible in depth."¹² As evidence, it cites Joseph's assertion, "I can take my Bible, and go into the woods, and learn more in two hours than you can learn at meetings in two years, if you should go all the time."¹³ Instead of seeing this as typical frontier exaggeration, the writers take it as fact, ignoring Lucy Smith's assertion that her son "had never read the Bible through" before age eighteen.¹⁴ This was likely true of the sixteen-year-old Joseph, but likely untrue of his acquaintance with the Bible by the time he began translating the Book of Mormon. Thus, although there is ample evidence, according to Philip Barlow, that Joseph's "mind was demonstrably saturated in biblical language, images, and themes,"¹⁵ the same could be said for many of his contemporaries, including many more scholarly than Joseph Smith, who failed to produce anything comparable to the Book of Mormon.

The contours of Smith's life as a creator of narratives is rather simple and essentially undisputed, at least by those whose scholarship is based on fact rather than speculation. That he was bright and had a far-reaching mind and imagination is agreed upon by his defenders and critics alike. Nevertheless, Smith was a rustic who, like many who came of age on the American frontier, had only the rudiments of a formal education. According to his own brief history, he attended elementary school for several years, which consisted of being "instructed in reading, writing, and the ground rules of arithmetic which constituted my

12. See MormonThink, "Could Joseph Smith Have Written the *Book of Mormon*?"

13. Andersen, *Lucy's Book*, 357.

14. Anderson, *Lucy's Book*, 344.

15. Philip L. Barlow, *Mormons and the Bible: The Place of the Latter-day Saints in American Religion* (New York: Oxford University Press, 1991), 220.

whole literary acquirements.”¹⁶ Beyond this, according to school teacher William McLellin, Joseph attended “high school during the winter of 1834” (when he was twenty) where, although entering “without scientific knowledge or attainments,” he “learned science.”¹⁷ Martin Harris recalled, “I was Joseph Smith’s scribe, and wrote for him a great deal; for he was such a poor writer, and could not even draw up a note of hand [a promissory note] as his education was so limited.”¹⁸

As in many families in America’s nineteenth-century small towns and rural areas, Joseph’s parents attempted to provide their children as much education as limited time and resources allowed. Although his educational and reading materials were limited, Joseph was, according to his mother, often “given to meditation and deep study.”¹⁹ What this actually amounted to is difficult to tell, but those who take historical tidbits as evidence that Joseph was capable of composing the Book of Mormon simply do not understand either the preparation or the process required to write so lengthy and complex a work, even if it were fiction.

According to his wife, Emma, by the time he was translating and dictating the Book of Mormon, Joseph “could neither write nor dictate a coherent and well-worded letter, let alone dictating a book like the Book of Mormon.”²⁰ As Brant Gardner says, “The Book of Mormon is a translation that shouldn’t have happened. Joseph Smith Jr. should not have been able to translate anything.”²¹ Or, as Richard Bushman asks,

16. Fred C. Collier, comp., *Unpublished Revelations of the Prophets and Presidents of The Church of Jesus Christ of Latter-day Saints*, 2 vols. (Salt Lake City: Collier’s Publishing, 1993), 2:2.

17. Michael De Groote, “Inside the Lost McLellin Notebook,” *Deseret News*, January 28, 2009, <http://www.deseretnews.com/article/705280695/Inside-the-lost-McLellin-notebook.html?pg=all>.

18. Simon Smith to the editor, April 30, 1884, *Saints’ Herald* 31 (May 24, 1884): 324, cited in John W. Welch, “The Miraculous Translation of the Book of Mormon,” in *Opening the Heavens: Accounts of Divine Manifestations, 1820–1844*, ed. John W. Welch with Erick B. Carlson (Provo, Utah: Brigham Young University Press; Salt Lake City: Deseret Book, 2005), 136. Simon Smith visited Martin Harris in Clarkston, Utah, in July 1875.

19. Smith, *Lucy’s Book*, 344.

20. “Last Testimony of Sister Emma,” in *Saints’ Herald*, 26, no. 19 (October 1, 1879), 289–90.

21. Brant Gardner, *The Gift and Power: Translating the Book of Mormon* (Salt Lake City: Kofford Books, 2011), 3.

“Why would Joseph Smith think that he could translate when he lacked all the necessary qualifications?”²²

Joseph commenced keeping a journal in 1832, following the completion of the Book of Mormon, but he was anything but a regular or systematic record keeper, and he was more likely to dictate his words to scribes. This, according to Dean Jessee, was due to Joseph’s insecurity in expressing himself in writing. As Jessee explains, “A complicated life and feelings of literary inadequacy explain this dependence. He lamented his ‘lack of fluency in address,’ his ‘writing imperfections,’ and his ‘inability’ to convey his ideas in writing. Communication [in general] seemed to him to present an insurmountable barrier. He wrote of the almost ‘total darkness of paper pen and ink,’ and the ‘crooked broken scattered and imperfect language.’”²³ Although Joseph eventually gained confidence as a writer, he continued to rely on the words and rhetorical styles of others more than on his own. Jessee provides an example of the significant contrast in rhetorical styles between Joseph’s own writing and that of his clerk Willard Richards, the one (in 1835) ungrammatical and unpolished and the other (in 1843) quite the opposite.²⁴

When Walt Whitman sent Emerson his first edition of *Leaves of Grass*, Emerson immediately recognized it as a great work of imagination. He wrote to his fellow American poet, “I greet you at the beginning of a great career, which yet must have had *a long foreground somewhere* for such a start.”²⁵ Emerson was right, of course. There was a long foreground, including Whitman’s education, journalistic career, early fiction, and extensive reading, which included Emerson’s own poetry and essays. Milton’s daughters, whose father schooled them in literature and languages, did not consider his dictation of *Paradise Lost* as somehow supernatural or even miraculous. They knew that the words that flowed from their

22. Richard Lyman Bushman, “Joseph Smith as Translator,” in *Believing History: Latter-day Saint Essays*, ed. Reid L. Neilson and Jed Woodworth (New York: Columbia University Press, 2004), 224.

23. Dean C. Jessee, *The Personal Writings of Joseph Smith* (Salt Lake City: Deseret Book, 1984), xv.

24. Jessee, *Personal Writings*, xv, quoting Joseph Smith to William W. Phelps, November 27, 1832, p. 4, available at <http://josephsmithpapers.org/the-papers/#/D2L/1832>.

25. R. W. Emerson to Walter Whitman, July 21, 1855, Library of Congress, Washington, D.C., emphasis added; images of letter available at <http://www.lettersofnote.com/2010/12/i-greet-you-at-beginning-of-great.html>.

father's lips had their foreground in both his lengthy study and his extensive writing. On the other hand, Emma Smith, who knew her husband better than anyone, including during the years preceding the translation and dictation of the Book of Mormon, considered the process by which her husband produced the record of the Nephites truly miraculous. As she recounted in an 1879 interview with her son, Joseph Smith III,

Though I was an active participant in the scenes that transpired, and was present during the translation of the plates, and had cognizance of things as they transpired, it is marvelous to me, "a marvel and a wonder," as much so as to any one else. . . . My belief is that the Book of Mormon is of divine authenticity—I have not the slightest doubt of it. I am satisfied that no man could have dictated the writing of the manuscripts unless he was inspired; for, when acting as his scribe, your father would dictate to me hour after hour; and when returning after meals, or after interruptions, he could at once begin where he had left off, without either seeing the manuscript or having any portion of it read to him. This was a usual thing for him to do. It would have been improbable that a learned man could do this; and, for one so ignorant and unlearned as he was, it was simply impossible.²⁶

And so the Book of Mormon continues to strike many millions nearly two hundred years since its publication.

By way of summary, one can trace almost everything in *Paradise Lost* to the "long foreground" of its composition. As stated above, Milton had been planning and preparing to write his epic poem for decades before its actual composition. One can trace specific elements of the epic to Milton's actual sources, experiences, and previous writings. Everything could be considered Milton's "try works" for dictating his masterpiece. In addition, he had many people to assist him in checking his sources, correcting and rewriting his own dictation that was read back to him, and helping him through all the stages of composition and publication.

By way of contrast, from all we can tell, Joseph had none of these advantages. There was certainly no "long foreground" of study, planning, or "working out" of what we find within the pages of the Book of Mormon. Further, there is no evidence in any of Joseph's writing before 1830 (and scarcely any thereafter) of the sophisticated use of such things as irony, multiple styles, differential authorial voices, use of imagery and symbolism, and an array of rhetorical devices that we find in the Book of Mormon. Also, when one looks at the years immediately preceding

26. "Last Testimony of Sister Emma," 289–90.

the production and publication of the book, Joseph was anything but a person with abundant time and freedom to devote to the work of translation. After fleeing Palmyra, Joseph accepted his father-in-law's "generous offer" and "began to live the life of a poor farmer," occupying with Emma a "fourteen-acre farm [that] included a frame home, a barn, and other improvements, which Joseph formally purchased from Isaac Hale."²⁷ While he got financial support from some sources, it was not enough to free him from the burden of caring for his family. Richard Bushman reports, during this time Emma "gave birth to a son after an exhausting labor." The child died immediately and Emma was gravely ill. "Emma came close to death herself, and Joseph attended her night and day." In the fall of 1828, Joseph had to interrupt the translation in order to prepare for winter. The next year (1829) during the process of translation, Joseph and Oliver Cowdery both had to stop to look for work, "a frustrating dissipation of time," according to Bushman.²⁸ And, whereas Milton's dictation took place over more than a decade, Joseph's took place primarily over a period of less than three months.

While it has been popular since 1830 for critics to debunk or diminish the Book of Mormon, it has stood the test of time in more ways than one. Occasionally, someone takes it as seriously as it deserves to be taken. Recently, two non-Mormon critics have praised the Book of Mormon. In his *The Lost Book of Mormon*, "Avi Steinberg, a self-described 'fascinated nonbeliever' . . . nominates the Mormon scripture as a Great American Novel, or, failing that, as a priceless artifact from the Old, Weird America—a uniquely American product, like jazz music and superhero comics, that deserves our attention."²⁹ In a review of Steinberg's book in the *San Francisco Chronicle*, Peter Manseau says the Book of Mormon is "without a doubt one of the most remarkable books ever written."³⁰ And in a recent interview in the *New York Times*, the author

27. Michael Hubbard MacKay and Gerrit J. Dirkmaat, *From Darkness unto Light: Joseph Smith's Translation and Publication of the Book of Mormon* (Provo, Utah: BYU Religious Studies Center, 2015), 33.

28. Richard Lyman Bushman, with Jed Woodworth, *Joseph Smith: Rough Stone Rolling* (New York: Alfred A. Knopf, 2005), 63, 67, 69, 74.

29. Rollo Romig, "In Search of the Great American Bible," *The New Yorker*, February 9, 2015, <http://www.newyorker.com/books/page-turner/search-great-american-bible>.

30. Peter Manseau, "'The Lost Book of Mormon,' by Avi Steinberg: Review," October 22, 2014, *SFGate*, <http://www.sfgate.com/books/article/The-Lost-Book-of-Mormon-by-Avi-Steinberg-5841248.php>.

Freeman Dyson, when asked, “What books might we be surprised to find on your bookshelf?” replied, “‘The Book of Mormon: Another Testament of Jesus Christ.’ I treasure it because . . . [it] tells a dramatic story in a fine biblical style. The reader has to wait with growing tension almost until the end of the story to reach the final climax, when Jesus arrives in America and founds his second kingdom here.”³¹

Of course, the Book of Mormon is no *Paradise Lost*, but one hundred fifty million copies of it have been published since 1830, it has been named by the Library of Congress as one of the one hundred “Books That Shaped America,”³² and it is read today by many more people than read Milton’s great epic about our lost paradise.

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31. “Freeman Dyson: By the Book,” *New York Times*, April 19, 2015, Sunday Book Review, 8.

32. “Library of Congress ‘Books That Shaped America’ Available on Amazon,” January 22, 2013, <http://www.loc.gov/today/pr/2013/13-005.html>.

Affinities and Infinities

Joseph Smith and John Milton

Rosalynde Welch

This article is a lightly revised version of a talk prepared for a 2011 symposium organized in honor of Richard Bushman. Titled “Mormonism in Cultural Context: A Symposium in Honor of Richard Lyman Bushman on the Occasion of His Eightieth Birthday,” the conference was jointly sponsored by the Church History Department, Mormon Historic Sites Foundation, Neal A. Maxwell Institute for Religious Scholarship, and the Religious Studies Center. Presenters were invited to examine Joseph Smith and the Restoration in relation to large cultural currents and to significant intellectual movements, with the aim of exploring Mormonism in its most expansive religious context.

John Milton, son of John Milton, was born in Bread Street, London, in December 1608, the son of a middling scrivener; Joseph Smith, son of Joseph Smith, was born in December 1805, the son of a landless farmer. The senior John Milton's fortune depended on the unsavory practice of money lending, but over time he made a handsome life for the family; the senior Joseph Smith's fortunes depended upon the undesirable necessity of money borrowing, and in time a morass of debt defined the family life. The Smith and Milton families resided on opposite sides of the lender-borrower dynamic, but the mystique of money lending shadowed the reputations of young John and young Joseph both.

This coincidental spark between the lives of the two men—one an august, Anglo bard and the other an American folk prophet—is one of a number of curious likenesses and neat differences. Both men were

tireless autodidacts, for instance, with special interest in languages and translation. But Milton received the best education of any man of his generation in England; Joseph received scant formal schooling, though he never hesitated on that account to bring his writings to light. Both men, responding to an explicitly apocalyptic urgency, developed millenarian theo-political ambitions, Milton's pinned to the English Revolution and Joseph's to a project of American Zion-building. Milton lived to see his hopes brutally dashed in the failure of the Commonwealth and the restoration of the English monarchy; Joseph lived to see his Nauvoo with its tens of thousands rise from the wide Mississippi. Above all, both men claimed the mantle of prophecy: this conviction ran like a vein of gold through their writings, each conceived as a kind of third testament thoroughly steeped in a biblical imagination. Both men claimed that their words came from God, that they were visited nightly by a divine being of light, and Joseph might have echoed Milton's sentiment if not his grand style in invoking that muse:

More safe I sing with mortal voice unchanged
 To hoarse or mute though fall'n on evil days,
 On evil days though fall'n and evil tongues,
 In darkness and with dangers compassed round
 And solitude. Yet not alone while thou
 Visit'st my slumbers nightly or when morn
 Purples the east. Still govern thou my song,
 Urania, and fit audience find, though few!¹

If Milton called his nightly visitor Urania, and Joseph called his Moroni, we can hardly quibble.

These psychological affinities point to deeper conversations between the textual legacies of John Milton and Joseph Smith. In a pair of articles, John Tanner has identified a number of convergences between Miltonic thought and Mormon teaching, including the denial of *ex nihilo* creation, an ultimate monism of spirit and matter, defense of polygamy, Christian primitivism and millenarianism, and espousal of lay ministry.² Tanner

1. John Milton, *Paradise Lost*, ed. Gordon Teskey (New York: W. W. Norton, 2005), 7:24–31 (hereafter cited as *PL*).

2. John Tanner, "Making a Mormon of Milton," *BYU Studies* 24, no. 2 (1984): 191–206. John Tanner, "Milton among the Mormons," in *Ring the Bell Backward, Proceedings of the First International Milton Symposium*, ed. Ronald G. Shafer (Indiana, Pa.: Indiana University of Pennsylvania Imprint Series, 1982), 123–32.

also cautions, wisely, against overinterpreting these resemblances or underreading important differences, and indeed it is not my aim to make an unbaptized Mormon of Milton nor an unlettered Miltonist of Joseph Smith. Still, the affinities are there, and the question remains what to make of them.

Influence, Transmission, and Comparison

First a word about transmission. Was Joseph influenced directly by Milton's works? Almost certainly not. Yet Miltonism abounded in the discursive culture of early America. The flowering of radical Protestant sects in Revolutionary England, sects with which Milton was associated, created a vernacular energy for archaic ideas of hermetic divinization and dispensational restorationism. This vernacular persisted beyond the restoration of the English monarchy in a popular religious idiom that crossed the north Atlantic and took root in the New England folk culture into which Joseph Smith was born. This is the intellectual history traced by John Brooke in *The Refiner's Fire*.³ The spirit of Milton ranged over the moral and intellectual life of the young nation, figuring both the old neoclassical learning and a new romantic hunger. The literate elite of the young nation saw Milton as "a combined scholar and genius, as a witness for Christianity and as a spokesman for God, [and] as a consummate artist"; ordinary Americans, for their part, "spoke of him so often and made him such an intimate part of their lives that before the eighteenth century closed he had become a household and a community word."⁴ New England's enthusiasm for Milton was more than the naive enthusiasm of a young nation: Milton was important to Americans "because he spoke to—and so seemed to provide answers for—the crisis of authority that continued to confront them."⁵ This crisis of political and cultural authority directly shaped the religious environment into which Joseph Smith was born and in which the Restoration offered its message of spiritual renewal. Ultimately, though, the literary-historical question of influence is peripheral to the aims of this paper.

3. See John Brooke, *The Refiner's Fire: The Making of Mormon Cosmology, 1644–1844* (Cambridge: Cambridge University Press, 1996).

4. George Sensabaugh, *Milton in Early America* (Princeton: Princeton University Press, 1964), 17, 5.

5. K. P. Van Anglen, *The New England Milton: Literary Reception and Cultural Authority in the Early Republic* (University Park, Pa.: Pennsylvania State University Press, 1993), 42.

Given the strong likelihood that Joseph Smith was not influenced directly by Miltonic thought, however, the question arises: why launch a comparative study between Joseph Smith and Milton—or any historical figure lacking a direct connection to the Restoration project—in the first place? After all, comparative studies of this type are fraught with complication: the temptation to distort one or both figures in order to emphasize superficial parallels between the two; the impulse to make an “unbaptized Mormon” of one’s historical pet; or simply the fruitlessness of setting up an arbitrary rhetorical relationship between two unrelated objects of study.

This question has prompted vigorous debate among scholars of religion. Postmodern critics have rightly pointed out that some comparative religious studies have been confused, subjective, and covertly imperialist in their methods.⁶ But a defense of the comparative method can be constructed from the same postmodern premises. Kimberly Patton and Benjamin May argue that “comparison is an indeterminate scholarly procedure that is best undertaken as an intellectually creative exercise, not as a science but as an art—an imaginative and critical act of mediation and redescription in the service of knowledge.”⁷ If the comparative method is undertaken with appropriate intellectual modesty in the spirit of creative exploration rather than scientific classification, fruitful insights may emerge. Moreover, scholars of Joseph Smith have recently called for precisely this kind of transnational and transhistorical comparative study: “Pursuing broader questions, future historians may compare Smith to the great mythmakers of history like Dante, Milton, Blake, and Nietzsche,” Richard Bushman said in 2005. “How does Smith look alongside religious figures such as Augustine, Luther, Gandhi, or Muhammad?”⁸ For Bushman and other Latter-day Saints, the strength of a wide comparative view is clear: “To a large extent, Joseph Smith assumes the character of the history selected for him. The broader the

6. See Jonathan Z. Smith, “In Comparison a Magic Dwells,” in his book *Imagining Religion: From Babylon to Jonestown* (Chicago: University of Chicago Press, 1982), 19–35.

7. Kimberly Patton and Benjamin C. Ray, eds., *A Magic Still Dwells: Comparative Religion in the Postmodern Age* (Berkeley: University of California Press, 2000), 4. Comparative theory is useful in many fields, such as law, literature, and international trade.

8. Richard L. Bushman, “Joseph Smith’s Many Histories,” in *The Worlds of Joseph Smith: A Bicentennial Conference at the Library of Congress*, ed. John W. Welch (Provo, Utah: Brigham Young University Press, 2006), 11.

historical context, the greater the appreciation of the man.”⁹ Scholars have responded to Bushman’s call, and the past ten years have seen a new crop of these comparative studies.¹⁰ The aim of these studies has not been to homogenize or harmonize the real differences between the historical objects of study, but rather to plumb similarities *and* differences so as to more fully illuminate Joseph Smith and his movement in a world context.

It is in this spirit of mutual respect and intellectual play, then, that I offer the present study. I believe that the parallels I’ve sketched above—the theo-political preoccupations and grand ambitions of both men, the revelatory quality and deep biblicism of their respective textual legacies, and the convergences in their doctrines—justify the comparison between Smith and Milton. Yet it is not to these parallels that I address my argument: John Tanner has already ably covered this ground in the pieces cited above. Rather, I look to a neatly symmetrical *difference* between Joseph Smith and John Milton centering on the problem of social institutions, and I identify a series of three textual convergences that illustrate this contrast. I do not suggest that this represents a novel contribution to Milton studies; rather, the sparks that fly from rubbing together these two richly imagined narrative theologies may throw into relief certain aspects of the Restoration that otherwise might remain in shadow.

Iconoclasm and Iconofacture

One way to conceptualize the relationship between John Milton and Joseph Smith is through the categories of iconoclasm and its opposite, what I’m calling “iconofacture.” Milton was an iconoclast, and not only in the narrow Reformation sense, though certainly his sympathies were with the vestment-burning and altarpiece-smashing sectarians of the Revolution. Milton’s iconoclasm extended further, to the foundational

9. Bushman, “Joseph Smith’s Many Histories,” 4.

10. See, among others, Stephen C. Taysom, *Shakers, Mormons, and Religious Worlds: Conflicting Visions, Contested Boundaries* (Bloomington: Indiana University Press, 2010); Richard Dilworth Rust, “‘I Love All Men Who Dive’: Herman Melville and Joseph Smith,” *BYU Studies* 38, no. 1 (1999): 151–69, reprinted in *Joseph Smith, Jr.: Reappraisals after Two Centuries*, ed. Reid L. Neilson and Terryl L. Givens (New York: Oxford University Press, 2008); David L. Paulsen, “What Does It Mean to Be a Christian? The Views of Joseph Smith and Søren Kierkegaard,” *BYU Studies* 47, no. 4 (2008): 55–91.

institutions of human society. He titled his 1649 pamphlet defending the regicide of Charles I *Eikonoklastes*, and for good reason: the destruction of corrupt institutions that restrain human liberty is, for Milton, the purest form of iconoclasm. The reasoning that informs his anti-monarchical position runs with a keen coherence through his anticlerical pamphlets, his divorce pamphlets, his defense of the free press in *Aereopagitica*, and through the narrative philosophy of *Paradise Lost*: Neither the state, the church, the family, nor even poetry itself escaped the executioner's blade.

Milton's iconoclasm begins with a deep sense of the slavish condition of human nature since the fall of Adam.

Since [Adam's] original lapse true liberty
Is lost which always with right reason dwells . . .
Reason in man obscured or not obeyed
Immediately inordinate desires
And upstart passions catch the government
From reason and to servitude reduce
Man till then free. Therefore since he permits
Within himself unworthy pow'rs to reign
Over free reason God in judgment just
Subjects him from without to violent lords
Who oft as undeservedly enthrall
His outward freedom.¹¹

These lines contain the principal lesson of *Paradise Lost*: internal moral reason and external political liberty are twinned, in constant contest with "double tyrann[ies], of Custom from without, and blind affections within."¹² Thus Milton's life became a battle against these twin tyrannies, the mental tyranny of passion and the political tyranny of customary human institutions. At first, Milton believed in the capacity of human reason to rebuild godly—that is to say, liberty-preserving—institutions: this belief motivated his tireless civil service in the new Commonwealth. Thus the curious irony that John Milton, revolutionary and iconoclast, spent so much intellectual energy in defense of authority, excusing English regicide to continental elites, for example, or excusing God's ways in the extended theodicy of *Paradise Lost*. With the failure of the English political experiment, however, his faith in human institutions

11. *PL* 12:83–95.

12. *Complete Prose Works of John Milton* (New Haven: Yale University Press, 1953–82), 3:190.

waned and his vision turned inward to what he called a “church of one,” a single reading believer who seeks truth in the private liberty of the mind. We hear the mature Milton as his Adam leaves the failed external Paradise of Eden for a Paradise within:

Then wilt thou not be loath
To leave this Paradise, but shalt possess
A paradise within thee, happier far.¹³

Joseph Smith’s relationship to the iconoclastic impulse, on the other hand, is inconsistent and difficult to define, but it emerges more clearly when compared to Milton’s. Certainly the church Joseph Smith founded absorbed from its New England context some trappings of the austere Puritan iconoclasm that Milton himself helped to disseminate. And certainly some of Joseph’s religious discourse was informed by a fiery anticlerical and anticreedal vocabulary, as when he is instructed by the Lord in his first vision “that all their creeds were an abomination in his sight; that those professors were all corrupt” (JS–H 1:19). But Milton’s iconoclasm originates in the tragedy of “original lapse,” while Joseph’s springs from an optimistic vision of human nature freed from the taint of Adam’s transgression, presiding in a fortunately fallen world, even sharing in the divine substance. Milton’s project was the dismantling of unjust human institutions in favor, finally, of a personal “church of one.” Joseph, however, deploring clerical and political tyranny and corruption as Milton did, can be seen to make a sort of equal and opposite departure in the other direction. Joseph’s work was not the smashing of iconic forms of tyranny, not the work of iconoclasm, but the work of iconofacure: the ceaseless making (in myth) and the building (in ritual) of social institutions, above all familial. These “icons” were not (or not primarily) sacred vestments and images, but multiplied and formalized—indeed sacramentalized—roles and relationships ratified by priesthood, what Sam Brown has recently called “the great chain of belonging.”¹⁴ “Covenants, contracts, bonds, obligations, oaths, vows, performances, connections, associations and expectations”: here at the theological center of Joseph’s restoration, the “new and everlasting covenant,” we find a catalog of social forms, instituted in law and in custom, not incidental to salvation but its very stuff. Latter-day Saints rightly focus on the eternal

13. *PL* 12:585–87.

14. Samuel Brown, “The Early Mormon Chain of Belonging,” *Dialogue: A Journal of Mormon Thought* 44, no. 1 (2011): 1–52.

nature of the family form and the priesthood authority by which it must be ratified. To set Joseph's vision of social institutions multiplied into eternity against Milton's vision of a "church of one" is to step back and first grapple with the basic presence and purpose of mediating social institutions themselves. Joseph might have envisioned a utopia like Milton's, free of the customary contracts, bonds, and obligations that are prone to corruption and tyranny, a heaven in which the soul enjoys absolute freedom to mingle or retreat without mediation of social forms and obligations. This was not the heaven Joseph saw or the freedom he sought. He did not come to destroy corrupt social institutions but to redeem them.

If Milton's great struggle was against tyranny, Joseph's was against social incoherence, and this struggle informed his ceaseless effort to secure the eternal "welding link," "a whole and complete and perfect union, and welding together of dispensations, and keys, and powers, and glories . . . from the days of Adam even to the present time" (D&C 128:18). Milton's iconoclasm ultimately left him in the austere purity of his church of one; Joseph's work of iconofecture brought him his church of ten thousands.

Council, City, Spouse

With these categories in mind, I will turn now to three specific intersections between Milton's thought and Joseph's teaching, briefly exploring the ways in which each unpacks the notions of iconoclasm and iconofecture. First to the Council in Heaven. Milton's account in *Paradise Lost* adapts scripture, patristic literature, and medieval hexaemeral poems and paradise plays in the stately cadence of blank verse, while Joseph's is clothed in a plain biblical idiom.¹⁵ Yet the two accounts are broadly similar, beginning with the fact that neither is a straightforward narrative: Milton imagines four grand councils, two in heaven and two in hell, while Joseph's account of the Grand Council emerged piecemeal in translations, sermons, and revelations.¹⁶ Both recount the

15. See Stella Purce Revard, *The War in Heaven: Paradise Lost and the Tradition of Satan's Rebellion* (Ithaca, N.Y.: Cornell University Press, 1980).

16. See Doctrine and Covenants 29:36–38, 76:25–29, Moses 4:1–4, Abraham 3:23–28; Andrew F. Ehat and Lyndon W. Cook, comps. and eds., *The Words of Joseph Smith: The Contemporary Accounts of the Nauvoo Discourses of the Prophet Joseph* (Orem, Utah: Grandin Book, 1991), 341, 345, 351, 358–59, 367. See also "Accounts of the 'King Follett Sermon,'" on Church Historian's Press, *The*

story of a charismatic Satan's envy of the Only Begotten, the dramatic moment of Satan's self-assertion, his eventual expulsion from heaven with his angels, and Christ's investiture as Messiah. And both freight the narrative with a theology—and theodicy—of free will that verges on Arminianism, though to very different effect: Milton's God, more a collection of treatises on free will than a personality, famously laughs in derision at the "vain designs" of the rebels, while Joseph's weeps with all of heaven.¹⁷

The Council narratives offer a convenient occasion to compare the natures of the two Gods. Both Milton and Joseph rejected *ex nihilo* creation and denied any essential distinction between spirit and matter; they were both material monists, suggesting that the universe shares a common substance with God. Milton demonstrates this monism by making the "War in Heaven" a mock epic in which warrior angels operate heavy artillery and by imagining the details of angelic combat.¹⁸ In contrast, Joseph does it by placing God among a community of co-eternal intelligences who together organize existing elements and prepare the cosmos for the advent of the human family's second estate. Their shared monism thus diverges at the nature of God: Joseph arrives at a founding parent moving among his cosmic family; Milton arrives at the invisible cynosure of a theocentric universe. After the second Council in Heaven, Milton's angels sing:

Thee, Father, . . . omnipotent,
Immutable, immortal, infinite,
Eternal King, . . . Thyself invisible
Amidst the glorious brightness where Thou sitt'st
Throned inaccessible.¹⁹

It's hard to imagine a God more remote from Joseph's, who begins his cosmogony with "I came down in the beginning in the midst of all the intelligences" (Abr. 3:21).

Both Gods are heretical by the standards of historical Christianity, though at first blush Joseph's would seem to be the more iconoclastic; certainly it is more shocking to suggest that God is of the same species as humans than to propose he is merely of the same substance. But

Joseph Smith Papers, <http://josephsmithpapers.org/site/accounts-of-the-king-follett-sermon>.

17. *PL* 5:735; Doctrine and Covenants 76:25–29; Moses 7:28.

18. *PL* 6:589–90.

19. *PL* 3:372–78.

in the broad sense of iconoclasm that I outlined above—the impulse to destroy the customary roles and institutions that mediate human relationships—I would suggest that Joseph’s vision is on the contrary profoundly iconogenic. His Council places God in a primal condition of community, a hierarchical community, to be sure, but a hierarchy of adjacency, not of Miltonic disjunction. Divinity is constituted of, not merely figured in, God’s roles in the universal institutions of family and council: he is God because he is Father, he is God because he is Head of the council, not the other way round.

We find a second relevant occasion for comparison in the Enoch narratives. From among the generations of Adam, both Milton and Joseph single out Enoch as a mythic leader, greatly expanding on the few lines in Genesis 5.²⁰ Milton’s Enoch appears in the context of a grand panoramic vision unfolded to pre-exilic Adam by the archangel Michael, a vision not unlike the one unfolded to Joseph’s Enoch. Both men seem to have identified personally with their Enoch: Milton makes his a lone voice for political liberty in a world of tyranny; Joseph’s is a young prophet called from a wicked world to build a holy city. The narratives are thematically similar in the beginning, with Enoch rising up to preach to an angry mob:

The only righteous in a world perverse
And therefore hated, therefore so beset
With foes for daring single to be just
And utter odious truth.²¹

Here the accounts part ways: Milton’s Enoch so incenses his audience that they would have seized him violently had not “a cloud descending snatched him thence / unseen among the throng.” Milton’s apotheosis thus emphasizes the isolation of the godly in a wicked world: Enoch was the “only righteous” who “dared single” to utter truth, prefiguring Milton’s own retirement to a “church of one.” Joseph’s Enoch, by contrast,

20. The extent to which Milton may have been influenced by pseudepigraphic Enoch literature is a matter of some debate. See Grant McColley, “The Book of Enoch and Paradise Lost,” *Harvard Theological Review* 31, no. 1 (1938): 24; and Arnold Williams, “Milton and the Book of Enoch: An Alternate Hypothesis,” *Harvard Theological Review* 33, no. 4 (1940): 292. A similar debate, of course, has examined the possibility of Joseph Smith’s exposure to pseudepigraphic Enoch tradition, originating with Hugh Nibley, *Enoch the Prophet*, ed. Stephen D. Ricks, vol. 2 of *The Collected Works of Hugh Nibley* (Salt Lake City: Deseret Book, 1986).

21. *PL* 11:665–68.

goes on to found the holy city of Zion that is taken up whole to the heavens. This apotheosis insists that salvation works through communal forms such as the city, forms that unite individuals not only in space but also in time: Enoch sees in vision his city of Zion meeting a latter-day city of Zion, and the images describing this reunion are some of the most moving in Mormon scripture: “And the Lord said unto Enoch; Then shalt thou and all thy city meet them there, and we will receive them into our bosom, and they shall see us; and we will fall upon their necks, and they shall fall upon our necks, and we will kiss each other” (Moses 7:63). The holy intimacy in these verses is striking in its intensity, and it invites comparison with Milton’s notorious description of angel intimacy. For Milton, heavenly intimacy is a complete and unmediated union of soul with soul, “easier than air with air”: no “membrane, joint or limb” constrains a total mingling.²² Joseph imagines holy intimacy not as an immediate mixing of souls but as a sacramental encounter of cities, the central social form of early Restoration theology. Union occurs not in spite of the mediating social institutions that shape human relationships—society’s membranes, joints, and limbs—but precisely by means of them.

This suggests a third point of comparison: divorce and marriage. In a series of passionately argued pamphlets, Milton advocated liberalizing divorce law to permit divorce on the grounds of irreconcilable psychological differences. For Milton, neither sexual union nor procreation is the primary end of marriage as originally ordained by God. The aim of marriage is, in fact, something like the angelic intimacy described above: a total psychological and emotional union, a powerful psychic merging of two minds into a single self. This view of marriage is dramatized in the creation scenes of *Paradise Lost*. Shortly after Adam wakes from his primal sleep, God is pleased to find that his only rational creature among the beasts desires what he calls “fit conversation.” God knew it was not good for man to be alone, and now that Adam knows it, too, he promises:

What next I bring shall please thee, be assured,
Thy likeness, thy fit help, thy other self
Thy wish exactly to thy heart’s desire.²³

22. *PL* 8:620–25.

23. *PL* 8:449–51.

This is indeed what Adam finds in Eve: a second self, total identification exactly matching his heart's desire. For Milton the iconoclast, true spiritual marriage springs spontaneously from Adam's desire, unmediated by the social institution of the same name. The contrast with Joseph's understanding of marriage is, I hope, already suggesting itself. Adam and Eve are central to Joseph's notion of celestial marriage, as well, but not because they demonstrate a love that exceeds roles and institutions: on the contrary, "Adam" and "Eve" *are*, precisely, the offices that husband and wife assume as they enter the institution of marriage, offices that constitute the saving condition of marriage. Milton's Adam and Eve inaugurate an ideal of marriage as an unmediated, intensely personal melding of souls; Joseph's Adam and Eve become the structuring categories of a formalized, institutionalized vision of marriage that organizes divine law and society.

Joseph, like Milton, was portrayed by his enemies as a libertine advocating sexual lawlessness. Milton was no libertine, but his vision of marriage exists over and against law and society; it does imply a kind of antinomianism. Though Joseph's doctrine of plural marriage was a more egregious breach of cultural sensibilities than Milton's emphasis on divorce, Joseph's vision of marriage is in some ways the more "conventional" of the two, in the sense that it aims for a *sacralized establishment* of human convention in law and society, not the dissolving of institution into unmediated personal union. Celestial marriage as Joseph revealed it is entirely bound up with law and society; indeed, it multiplies them a hundredfold. Celestial marriage is not the collapsing of two selves into an ecstasy of total identification; it is the multiplication of selves and linking affiliations in an infinity of "eternal lives" (D&C 132:24).

Conclusion

Matched in the scope of their cosmic visions, united in their fearless independence of mind and fiery opposition to the false creeds of the fathers, John Milton and Joseph Smith stand in mutual regard with a kind of equal and opposite force. Milton, profoundly iconoclastic in his political and historical sensibilities, imagined a world of infinite social forms in which political, religious, and familial institutions were exploded in favor of a flexible social field free from traditional obligations and allegiances. Yet this infinity of social forms was balanced by Milton's deep sense of the frailty of finite human understanding, of the limiting effects of the Fall on human possibility. Joseph, in contrast, proclaimed a glorious infinity of human understanding, of eternal progression, of an inherent human dignity and

an exalted human destiny. But Joseph shared very little of Milton's iconoclastic impulse. His cosmic vision of the independence of the human soul was tempered by his ceaseless mission to define social forms that create coherence and connection—that is, to limit and train the forms of human desire and relatedness. Joseph stands in colloquy with Milton across the centuries, two visionaries training their sights in opposite trajectories on the affinities and infinities of the human spirit.

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The Kirtland Temple (2006). The finances and ownership of the temple became entangled with the Kirtland Safety Society. Photo courtesy John W. Welch.

The Kirtland Safety Society and the Fraud of Grandison Newell

A Legal Examination

Jeffrey N. Walker

The Kirtland Safety Society has long been the source of research and debate within the historical community.¹ Most commentators agree that the Safety Society was an imprudent venture. Some have even argued that its failure marked an almost fatal blow to Joseph Smith's leadership.² Charges of personal gain and illegality are sometimes

1. See, for example, Karl R. Anderson, *Joseph Smith's Kirtland: Eyewitness Accounts* (Salt Lake City: Deseret Book, 1989), 193–223; Ronald K. Esplin, “Joseph Smith and the Kirtland Crisis,” in *Joseph Smith, the Prophet and Seer*, ed. Richard Neitzel Holzapfel and Kent P. Jackson (Provo, Utah: Religious Studies Center, Brigham Young University; Salt Lake City: Deseret Book, 2010), 54–58, 261–90; Marvin S. Hill, C. Keith Rooker, and Larry T. Wimmer, “The Kirtland Economy Revisited: A Market Critique of Sectarian Economics,” *BYU Studies* 17, no. 4 (1977): 391–475; Scott H. Partridge, “The Failure of the Kirtland Safety Society,” *BYU Studies* 12, no. 4 (1972): 437–54; D. Paul Sampson and Larry T. Wimmer, “The Kirtland Safety Society: The Stock Ledger Book and the Bank Failure,” *BYU Studies* 12, no. 4 (1972): 427–36; Mark L. Staker, *Hearken, O Ye People* (Salt Lake City: Greg Kofford Books, 2009), 463–543; Mark L. Staker, “Raising Money in Righteousness: Oliver Cowdery as Banker,” in *Days Never to Be Forgotten: Oliver Cowdery*, ed. Alexander L. Baugh (Provo, Utah: Religious Studies Center, Brigham Young University, 2009), 143–253.

2. Dale W. Adams, “Chartering the Kirtland Bank,” *BYU Studies* 23, no. 4 (1983): 467; Edwin Brown Firmage and Richard Collin Mangrum, *Zion in the Courts: A Legal History of the Church of Jesus Christ of Latter-day Saints, 1830–1900* (Urbana: University of Illinois Press, 2001), 58; J. H. Kennedy, *Early Days of Mormonism* (Charles Scribner's Sons, 1888), 164–66; Dean A. Dudley, “Bank Born of Revelation: The Kirtland Safety Society Anti-Banking Company,” *Journal of Economic History* 30, no. 4 (1970): 848–53.

included in their critique.³ In addition to the good work done by many scholars, there is more to be said about the legal history of the Kirtland Safety Society. This article seeks to provide a more thorough analysis of the legal establishment of the Society and the challenges to it in court than has been provided before.⁴ To do so, this article will be separated into four parts.⁵

Part I will provide a necessary background of information about the economy in nineteenth-century America and particularly in Kirtland, Ohio, that gave rise to the organization of the Society, shedding new light on how it fit into the broader national financial landscape. After the closure of the Second Bank of the United States, more local banks arose to take its place. The Kirtland Safety Society was originally proposed as a chartered bank, and Orson Hyde tried but failed to have the Ohio legislature charter it, due principally to political dynamics. The Society was then reorganized as a joint stock company. Church leaders also acquired a controlling interest in the Bank of Monroe in Michigan and apparently hoped to have the Society operate under that bank. Knowing how it was legally established informs our understanding of the legal challenges it later encountered.

Part II examines the events—nationally, locally, and internally—that led to the failure of the Kirtland Safety Society. This part explains how the Panic of 1837 impacted the entire Ohio valley financial community, including Kirtland, as well as the Bank of Monroe. This national financial crisis is placed in context with the leadership crisis that emerged

3. Fawn M. Brodie, *No Man Knows My History: The Life of Joseph Smith, the Mormon Prophet* (New York City: Vintage Books, 1995), 196–98; D. Michael Quinn, “Echoes and Foreshadowings: The Distinctiveness of the Mormon Community,” *Sunstone* 3 (March–April 1978): 16; Jim Whitefield, *The Mormon Delusion*, vol. 3 (Raleigh, N.C.: Lulu Press, 2009), 42–44; John Hammond, *Crisis in Mormon Kirtland: A Temple and an Illegal Bank*, vol. 5 (CreateSpace, 2013), 310–14.

4. The author appreciates the insights, research, and resources on this topic from his colleagues at the Joseph Smith Papers Project and the Church History Department, including Gordon Madsen, John Welch, Ronald Esplin, Mark Staker, Elizabeth Kuehn, Brent Rogers, Joseph Darowski, Christian Heimburger, and Mark Ashurst-McGee.

5. Parts I–III, which provide the necessary backdrop for part IV, track the author’s article “Looking Legally at the Kirtland Safety Society,” in Gordon A. Madsen, Jeffrey N. Walker, and John W. Welch, *Sustaining the Law: Joseph Smith’s Legal Encounters* (Provo, Utah: BYU Studies, 2014), 179–226, with certain updates and editorial improvements being made here.

during this same time within the LDS Church, aimed principally at Joseph Smith. Disaffection led some participants in the bank to withdraw funds from the Society, whether innocently or maliciously, that contributed to the bank's final collapse. But other key directors of the bank and partisans in Kirtland committed what can only be viewed as malfeasance, resulting in Joseph Smith affirmatively disassociating himself from the Society in August 1837.

Part III then provides a detailed analysis of the only lawsuit brought against Joseph Smith and other leaders over the operations of the Safety Society. Grandison Newell, by his admitted straw man, Samuel Rounds, brought this suit in early February 1837. The suit was premised on the claim that operating the bank without a charter violated an Ohio banking act enacted in 1816. Under that act each such operator was subject to a \$1,000 fine. This part provides an assessment of the legal merits of this claim and of the defense raised by Smith's legal counsel that the 1816 act was not in force at any time relevant to the Kirtland Safety Society. Finally, this part details the legal outcome of the case in the entry of judgments against Smith and Sidney Rigdon, in Newell's collection efforts, and in the final settlement of the case.

Part IV goes on to show how Grandison Newell continued his campaign against Joseph Smith and revived the judgment in 1860, even though it had been previously settled. Newell then used the revived judgment to open probate proceedings against Joseph Smith's estate using Newell's own grandson-in-law as the executor of Smith's estate. Newell partnered with William Perkins, who was Joseph Smith's legal counsel during the underlying lawsuit, and manipulated the probate proceedings to acquire title to the Kirtland Temple more than twenty years after Smith had left Kirtland and fifteen years after his death. Finally, this part will examine whether it was legally proper to include the Kirtland Temple as part of Joseph Smith's estate subject to the collection efforts pursued by Newell and Perkins. These legal proceedings played a central part in the Reorganized Church of Jesus Christ of Latter Day Saints' first legal claim of ownership to the Kirtland Temple.

PART I: THE RISE OF THE KIRTLAND SAFETY SOCIETY

Everything about the Safety Society, known formally at its inception as the Kirtland Safety Society Bank, must be viewed within the broader context of banking practices, legal definitions, and the national economy in the 1830s. Although the organizers of this company used available legal counsel and followed accepted business practices, the venture

was met with overwhelming difficulties and challenges on several fronts—politically, legally, and economically—that were beyond their control.

With the election of Andrew Jackson in 1828 came the inevitable demise of America's second effort to establish a central banking system.⁶ True to his reelection campaign promise in 1832, Jackson successfully caused the second bank to prematurely become ineffective by withdrawing government funds in 1833. It would finally close in 1836. With this closure and the corresponding termination of a national currency, the only money remaining was specie. Specie, often referred to as "hard currency," included gold, silver, and copper minted into coins by the government. Specie, by its very nature, was inherently and chronically in short supply,⁷ particularly in the Western Reserve and the rest of Ohio.⁸ Such shortages restricted economic growth, especially in frontier

6. Alexander Hamilton, under George Washington, established the first national or central bank in 1791. It had a twenty-year charter. The second central bank of the United States was established in 1816, six years after the charter of the first national bank had expired. It also had a charter for twenty years to expire in 1836. Andrew Jackson not only fought to prevent a renewal but also to close it early by executive order, by ending the deposits of government funds into it. Bray Hammond, "Jackson, Biddle, and the Bank of the United States," *Journal of Economic History* 7, no. 1 (1947): 1–23; Hugh T. Rockoff, "Money, Prices, and Banks in the Jacksonian Era," in *The Reinterpretation of American Economic History*, ed. R. W. Fogel and Stanley Engerman (New York: Harper and Row, 1971), ch. 33; Harry N. Scheiber, "The Pet Banks in Jacksonian Politics and Finance, 1833–1841," *Journal of Economic History* 23, no. 2 (1963): 196–214; George R. Taylor, *Jackson versus Biddle: The Struggle over the Second Bank of the United States* (Boston: D. C. Heath, 1949); Peter Temin, *The Jacksonian Economy* (New York: W. W. Norton, 1969), 196; Donald B. Cole, *The Presidency of Andrew Jackson* (Lawrence: University Press of Kansas, 1993), 95–120, 188–200; Harry L. Watson, *Liberty and Power: The Politics of Jacksonian America* (New York: Hill and Wang, 1990), 132–72.

7. Herman E. Krooss, *American Economic Development* (Englewood Cliffs, N.J.: Prentice-Hall, 1955), 206 ("As a general proposition, the American economy was characterized by a chronic shortage of capital and capital funds"); Partridge, "Failure of the Kirtland Safety Society," 442. Indeed, the scarcity of gold, silver, and other precious metals is the reason for their value. William M. Gouge, *A Short History of Paper Money and Banking in the United States* (Philadelphia: T. W. Ustick, 1833), part 1, pp. 8–10.

8. George W. Knepper, *Ohio and Its People: Bicentennial* (Kent, Ohio: Kent State University Press, 2003), 133.

America.⁹ To fill this growing vacuum came a rapid increase in the use of banknotes. Banknotes are essentially a form of promissory notes.¹⁰ Promissory notes are negotiable debt instruments. However, between individuals the ability to use them as transferrable currency is very limited.¹¹ “Banks were able and willing to meet the demand for money by the simple process of exchanging the notes of a bank for the promissory note or bill of exchange of a firm or individual, i.e., by exchanging one kind of debt for another. The evidence of a bank’s debt had general acceptability as a medium of exchange; the evidence of a firm’s or individual’s debt did not. Thus, by monetizing private debt, the growing demand for money was met.”¹²

Not only did banknotes increase the supply of money, but they created greater economic liquidity. While money is the most liquid of assets, land, crops, and equipment are some of the least. Since America in the early nineteenth century was predominately agrarian, specifically in

9. “The attitude was, essentially, that ‘the East won’t finance us and if they do, they will kill us with interest.’ The conclusion that frontier communities should finance themselves, whatever their hard equity, was not unique to Kirtland.” Firmage and Mangrum, *Zion in the Courts*, 54. “Two things that were holding back the development of the [Western] Reserve were transportation and a medium of exchange—money and credit. It would have been out of character for these pioneering Americans to fail to overcome these obstacles.” Harlan Hatcher, *The Western Reserve: The Story of New Connecticut in Ohio* (Cleveland: World Publishing Co., 1966), 118.

10. “Although a promissory note, in its original shape, bears no resemblance to a bill of exchange [a banknote]; yet, when indorsed, it is exactly similar to one; for then it is an order by the indorser of the note upon the maker to pay to the indorsee. The indorser is as it were the drawer; the maker, the acceptor; and the indorsee, the payee. Most of the rules applicable to bills of exchange, equally affect promissory notes.” John Bouvier, *A Law Dictionary* (Philadelphia: T. & J. W. Johnson, 1839), s.v. “promissory note.”

11. The ability to exchange banknotes for specie was considered “one of the greatest practical improvements which can be made in the political and domestic economy of any State, and . . . such convertibility was a complete check against over issue.” Gouge, *Short History of Paper Money*, ix. For a detailed examination of banking practices at the time, see George Tucker, *The Theory of Money and Banks Investigated* (Boston: Charles C. Little and James Brown, 1839).

12. Partridge, “Failure of the Kirtland Safety Society,” 444; see Joseph Chitty, *A Treatise on the Law of Bills of Exchange, Checks on Bankers, Promissory Notes, Banker’s Cash and Bank Notes* (Philadelphia: P. Byrne, 1803), 165–710.

the Ohio valleys,¹³ farmers, while not being poor per se, were in a very illiquid position. The use of banknotes backed by farms allowed them to participate to a far greater extent in the local economies. In this manner, local banks issuing banknotes became a principal vehicle to allow more people to participate in the growth of the economy.¹⁴ However, without the protections, regulations, or governance of a central banking system, these local banks were fragile financial institutions.¹⁵

It is within this environment that the boom years of Kirtland in the early to mid-1830s occurred.¹⁶ With the significant influx of Mormons arriving in Kirtland throughout this time,¹⁷ Kirtland experienced unprecedented economic growth.¹⁸ The economy generated a full array of agricultural products, including sheep, cattle, dairy, grains, and maple

13. Charles C. Huntington, "A History of Bank and Currency in Ohio before the Civil War," *Ohio Archaeological and Historical Quarterly* 24 (1915): 235–539.

14. "A bank's function was to provide working capital to 'bridge the gap between seedtime and harvest, between purchase of raw materials and the sale of the finished product,' between purchase on one place and sale in another." Howard Bodenhorn, *State Banking in Early America: A New Economic History* (New York: Oxford University Press, 2003), 46, quoting John A. James, *Money and Capital Markets in Postbellum America* (Princeton, N.J.: Princeton University Press, 1978), 59–60.

15. As Paul B. Trescott summarized, "During the 1830s boom-and-bust banking was particularly prevalent in two regions, one bounded by upstate New York, Ohio and Michigan, and the other on the southern frontier." *Financing American Enterprise* (New York: Harper and Row, 1963), 24; Gouge, *Short History of Paper Money*, part 1, p. 133.

16. In providing their analysis of the rise and fall of the Kirtland Safety Society, Hill, Rooker, and Wimmer opined: "Previous historical accounts of the Kirtland Economy have overlooked the fact that Smith provided his creditors with assets, that he was buying and selling land at market prices, and that the economic reversals in the Kirtland economy involved a change in economic conditions that 'reasonably prudent' economic men probably would not have anticipated." Hill, Rooker, and Wimmer, "Kirtland Economy Revisited," 394.

17. Hill, Rooker, and Wimmer, "Kirtland Economy Revisited," 408–9, conclude that the population growth in Kirtland rose from "approximately 1,000 inhabitants in 1830 to a peak of 2,500 in 1837 (an increase of 150 percent)."

18. Oliver Cowdery reported in "Our Village," *Messenger and Advocate* 3 (January 1837): 444: "Our streets are continually thronged with teams loaded with wood, materials for building the ensuing season, provisions for the market, people to trade, or parties of pleasure to view our stately and magnificent temple. Although our population is by no means as dense as in many villages, yet the number of new buildings erected the last season, those now in contemplation and under contract to be built next season, together with our every day occurrences, are evincive of more united exertion, more industry and more

sugar. Manufacturing products in Kirtland included tanned goods, lumber, ash, bricks, and even cast-iron products. The connection to Cleveland in 1833 by the Ohio Canal only further enhanced the economic opportunities in Kirtland.¹⁹ Yet, accompanying such growth was significant inflation. Land prices increased in Kirtland 500 percent between 1830 and 1837;²⁰ in one year alone (1836–1837) food prices increased by 100 percent.²¹ Such inflation was further aggravated by a shortage of money.²² Access to banking services in Kirtland was severely limited to the Bank of Geauga headquartered in Painesville, Kirtland's economic competitor. Mormons found that such financial services were generally inaccessible, since anti-Mormons were controlling them.²³ Further, the Mormons were struggling to carry the debt associated with the building of the Kirtland Temple,²⁴ coupled with the closure of the United Firm in 1834 and the various businesses being returned or given to its members.²⁵

The LDS Church had few avenues to generate income to fund its growing financial needs and obligations. These dynamics led Church leaders to look at creating their own local bank in Kirtland to alleviate these problems. Opening a local bank appeared to be a viable solution. And such a solution made good economic sense, as a local newspaper

enterprise than we ever witnessed in so sparse a population, so far from any navigable water and in this season of the year.”

19. Hill, Rooker, and Wimmer, “Kirtland Economy Revisited,” 397, note that with the opening of the Ohio Canal in 1833, by 1840 the population of then existing towns had nearly tripled and the increase in volume of trade in wheat and flour increased tenfold.

20. Hill, Rooker, and Wimmer, “Kirtland Economy Revisited,” 411.

21. Anderson, *Joseph Smith's Kirtland*, 210.

22. Firmage and Mangrum, *Zion in the Courts*, 54.

23. Rich McClellin, “The Kirtland Economy, a Broader Perspective,” presented at the Mormon History Association Annual Meeting, Killington, Vermont, May 2005, 10–11, copy in possession of the author.

24. Estimates on the debt incurred for the Kirtland Temple range from \$20,000 to 30,000 (Truman Cole, “Mormonism,” *Cincinnati Journal and Western Luminary*, August 25, 1835, 4) to more than \$100,000 (George A. Smith, “Gathering and Sanctification of the People of God,” *Journal of Discourses*, 26 vols. [Liverpool: F. D. Richards, 1855–86], 2:213, March 18, 1855); Staker estimates the cost of the Kirtland Temple to be around \$40,000 (Staker, “Raising Money in Righteousness,” 143, 193).

25. For a general discussion about the United Firm, see Max H Parkin, “Joseph Smith and the United Firm: The Growth and Decline of the Church's First Master Plan of Business and Finance, Ohio and Missouri, 1832–1834,” *BYU Studies* 46, no. 3 (2007): 5–66.

noted about the announcement of the opening of the Society: "It is said they have a large amount of specie on hand and have the means of obtaining much more, if necessary. If these facts be so, its circulation in some shape would be beneficial to community, and sensibly relieve the pressure in the market so much complained of."²⁶

As Joseph Smith, Hyrum Smith, Sidney Rigdon, and Oliver Cowdery returned from Salem, Massachusetts, in September 1836, it appears that they had finalized their decision to open a bank in Kirtland.²⁷ By mid-October the venture was organized to accept money from initial shareholders in exchange for stock. To facilitate greater participation, stock shares were given the unusually low face value of \$50 per share,²⁸ in contrast to other local banks offering shares for between \$100 and \$400 per share.²⁹ Small quarterly installment payments (\$0.13 per share) further allowed more to participate.³⁰ Shares were sold at a deeply discounted price, selling, on average, for \$0.2625 per share, or .525 percent of the face value.³¹ Sidney Rigdon made ten separate donations totaling \$751.64, for which he received 3,000 shares of stock with a face value of \$150,000. Joseph Smith and his family contributed fifty-one times for a net total of \$1,310.18.³² By the end of October 1836, the venture had attracted thirty-six subscribers or investors contributing more than \$4,000.³³ Joseph Smith and his family would become the largest investors in the Society,

26. *Painesville Republican*, January 19, 1837.

27. Staker, "Raising Money in Righteousness," 201 n. 26; Joseph Young to Lewis Harvey, November 6, 1880, Church History Library, The Church of Jesus Christ of Latter-day Saints, Salt Lake City (hereafter cited as CHL) ("The prophet had conceived a plan of instituting a Bank, with a view of relieving their financial embarrassment"). This decision may be hinted at by Oliver Cowdery's mention of the firm of Draper, Underwood, which Cowdery noted was "ready to help incorporated bodies to plates and dyes" to print banknotes. "Dear Brother," *Messenger and Advocate* 2 (September 1836): 375.

28. Sampson and Wimmer, "Stock Ledger Book," 427–29.

29. Bodenhorn, *State Banking in Early America*, 19 ("Early bank shares typically had a par value of \$400 or \$500 . . . It was not until the end of the antebellum era that the early nineteenth-century vision of widespread bank share ownership was approached, even approximately").

30. Staker, "Raising Money in Righteousness," 153–55, 204–5 nn. 43–45.

31. Sampson and Wimmer, "Stock Ledger Book," 429.

32. Frederick G. Williams, *The Life of Dr. Frederick G. Williams: Counselor to the Prophet Joseph Smith* (Provo, Utah: BYU Studies, 2012), 466–67.

33. Sampson and Wimmer, "Stock Ledger Book," 427–28.

owning collectively 12,800 shares.³⁴ In this manner the venture was funded through private investors who in return received stock in the company. A contemporaneous account notes that the Safety Society was further financially backed by real property.³⁵ The venture then would make loans documented by banknotes. Most often the borrower collateralized these loans with farmland.

An organizational meeting was held on November 2, 1836. The original organization of the Kirtland Safety Society Banking Company included thirty-two directors³⁶ with a Committee of the Directors of six members, namely Sidney Rigdon, President; Joseph Smith, Cashier; Frederick G. Williams, Chief Clerk; with David Whitmer, Reynolds Cahoon, and Oliver Cowdery as members. An organizational document captioned as the “Constitution” was also adopted at this initial meeting. This constitution was published as a *Messenger* extra in early December 1836. The constitution, found in full below as appendix A, included fourteen articles that can be summarized as follows:

- Article I: Authorized capital stock of \$4,000,000, with shares at \$50 par value³⁷
- Article II: The Society was to be managed by thirty-two directors
- Article III: Three officers: President, Cashier, and Chief Clerk
- Article IV: Six of the directors to examine any notes presented for discounting, and to assist in all matters
- Article V: \$1 per day paid to the officers and six directors for meetings twice a year; officers compensated as the directors shall agree
- Article VI: Adoption of constitution and election of officers

34. Stock Ledger of the Mormon Bank at Kirtland, Ohio, 1836–37, pp. 173–74, CHL.

35. Warren Cowdery editorialized that “the private property of stockholders [in the Society] was holden in proportion to the amount of their subscription, for the redemption of the paper issued by the bank.” *Messenger and Advocate* 3 (July 1837): 535.

36. Who exactly comprised these thirty-two directors is not known. Based on the records available, most of the members of the Quorum of the Twelve Apostles were included. For a discussion on this matter, see Staker, “Raising Money in Righteousness,” 205–6 n. 47.

37. Par value determines the amount of capital that can be retained per share in the corporation. It has nothing to do with the actual or anticipated market value of the shares.

- Article VII: Books of the bank always open for inspection by stockholders
- Article VIII: Dividends declared every six months
- Article IX: Timing of installment payments to be made by persons subscribing stock
- Article X: Notice for required payments of installment subscriptions
- Article XI: President empowered to call special meetings of the board
- Article XII: Quorum is $\frac{2}{3}$ of directors for regular board meetings; officers may transact weekly business.
- Article XIII: Procedures for adopting bylaws
- Article XIV: Procedures for amending this constitution by $\frac{2}{3}$ vote of the stockholders.

With the corporate organization of the Society in place, the next step was to have the organization recognized or chartered by the Ohio legislature. The political climate seemed to dictate the Church's decision to send Orson Hyde, one of the original directors, to Columbus, Ohio, to seek a state charter for the Kirtland Safety Society. While the country was heavily Democratic with the elections of Presidents Jackson and then Van Buren, Geauga County, Ohio, where Kirtland was located, was a Whig stronghold in an otherwise Democratic state. And Hyde was a Whig.³⁸ Hyde briefly met with Joseph Smith and others returning from Salem, where he

38. In retrospect, most would argue that sending Oliver Cowdery might have proven more successful in securing the charter because he had been significantly involved in Democratic politics in Ohio. Hyde's selection appears to have been made principally on party affiliation and not capacity or connections or even interest. Adams, "Chartering the Kirtland Bank," 471-72; Marvin S. Hill, "An Historical Study of the Life of Orson Hyde, Early Mormon Missionary and Apostle from 1805-1852" (master's thesis, Brigham Young University, 1955), 106. Cowdery's political activities as a Democrat included publishing a weekly political newspaper, the *Northern Times*, whose prospectus had it originally called the *Democrat*. He was active in both local and state Ohio politics. Cowdery had previously been the point person for Mormon politics in Ohio, having attended the state convention and served on several committees. However, instead of being sent to Columbus, Cowdery was tasked to finalize getting the printing plates for the Kirtland Safety Society. Leonard J. Arrington, "Oliver Cowdery's Kirtland, Ohio, 'Sketch Book,'" *BYU Studies* 12, no. 4 (1972): 414.

was most likely advised about the anticipated banking venture. However, upon his return to Kirtland he did not become actively involved in the Society. He never became a shareholder in the venture.³⁹ Hyde's efforts in Columbus with the legislature were less than successful. Bad weather resulted in his late arrival, and the backroom negotiations, giving political favors, and lack of any political alliances proved fatal.⁴⁰ While one might expect that, at a minimum, he could look to his state representatives and senator from Geauga County for assistance,⁴¹ these representatives did not sponsor the bill, and Senator Ralph Granger voted against the proposal.⁴² All three were friends of Newell. Representative Timothy Rockwell and Granger were involved in Newell's efforts to build a railroad from Fairport to Wellsville, Ohio.⁴³ In the end, the proposal for a state charter for the Society was never even read on the floor of the legislature before the Christmas break as hoped.⁴⁴

39. Hyde was occupied during most of this time assisting Jacob Bump in opening a merchant store in Kirtland from merchandise Bump had acquired from Joseph Smith. Jacob Bump to Joseph Smith Jr., Geauga County Property Deeds, December 5, 1836, book 22, p. 568, Geauga County Archives and Records Center, Chardon, Ohio; Jacob Bump Merchant Capital, Geauga County Tax Duplicates, Kirtland Chattel Tax 1837, Geauga County Archives.

40. Bodenhorn, *State Banking in Early America*, 12–18 (“Throughout the antebellum era, skill at navigating political waters remained key in obtaining a charter. . . . If political savvy or personal clout could not elicit a charter, there were more pedestrian methods of acquiring it. One was surreptitious bribery of one or more influential legislators; another was to exploit chronic budgetary concerns and, in effect, overtly bribe the entire legislature. . . . Bribery on this scale offends modern sensibilities, tainting early bank charters and making these banks’ promoters appear nefarious and their motives sinister”).

41. The state representatives were Seabury Ford (later governor of Ohio) and Timothy Rockwell. The state senator was Ralph Granger. All three were Whigs.

42. *Journal of the Senate of the State of Ohio*, 35th General Assembly (Columbus, Ohio, 1836); Staker, *Hearken, O Ye People*, 473.

43. *History of Geauga and Lake Counties, Ohio* (Philadelphia: William Brothers, 1878), 39, 41, 219–20, 250. Indeed, Senator Granger was the first mayor of Fairport in 1836.

44. Staker, “Raising Money in Righteousness,” 158. In contrast, at least two other ventures designed to issue notes in Geauga County were both read and introduced during this first legislative session, including the Ohio Rail Road Company that was approved by both the House and Senate to circulate notes, and the Fairport and Wellsville Railroad Company, Grandison Newell’s project. This company also received a charter and was approved to circulate notes. This railroad venture was an apparent result of having the Ohio Canal bypass Painesville. In an effort to overcome this perceived slight, Newell and

By January 2, 1837, the leadership of the Society, recognizing that the chances to obtain a state charter looked doubtful and apparently following legal advice,⁴⁵ decided to legally reorganize the Kirtland Safety Society from a corporate entity (which would require a state charter) to a private joint stock company—a sophisticated kind of partnership. This change is often overlooked but is legally significant, especially in regard to legal powers to issue notes and with respect to unlimited liability of its owners.⁴⁶

Joint stock companies had existed for centuries,⁴⁷ including specifically their use as a vehicle for banking. For example, the Bank of England, established in 1694, was founded as a joint stock company. In the United States, joint stock companies took root early on and became an integral part of American business practically from the time the

his colleagues determined that having a railroad connection would eclipse the canal. Newell's plan was to build a railroad from Fairport Harbor through Painesville to Wellsville on the Ohio River. McClellin, "Kirtland Economy," 6–7. Newell was already one of the founders and a director of the Bank of Geauga headquartered in Painesville. County prosecutor Reuben Hitchcock and his father, Peter Hitchcock, a judge on the Ohio Supreme Court, also served as directors to the Bank of Geauga. Reuben Hitchcock would prosecute the case against Joseph Smith and others for operating the Kirtland Safety Society without a state charter.

45. The *Ohio Observer* noted in its March 2, 1837, issue in this regard: "An infidel lawyer was therefore called in to help them out of the difficulty, and by his advice the Revelation was mended so as to read: 'The Kirtland safety society anti-Banking Co., promises to pay, &c.,' and instead of signing the bills as President and Cashier, they signed them as Secretary and Treasurer." The *Ohio Observer* was printed in Hudson, Ohio, just outside of Akron, Ohio, approximately thirty-seven miles from Kirtland. The author thanks Elizabeth Kuehn for this source.

46. "What was the special attraction of joint-stock banking? The note issue privilege was part of it, at least until deposit banking became a viable alternative. But Jack Carr and G. Frank Mathewson argue that the unlimited liability inherent in private banking created entry barriers. They argue that anything other than strictly limited liability creates barriers to entry. In effect, unlimited liability has a detrimental effect on the price of shares (partnership or joint-stock) of unlimited liability relative to limited liability firms." Bodenhorn, *State Banking in Early America*, 198.

47. "Companies, not trading upon a joint stock, or, in other words, regulated companies, have existed from very early times. . . . The East India Company, which was established in 1599, was one of the first which traded upon a joint stock." John Collyer, *A Practical Treatise on the Law of Partnership* (London: S. Sweet, 1840), 721.

United States won its independence.⁴⁸ Under the direction of Alexander Hamilton, the First Bank of the United States was founded in 1791 as a joint stock company.⁴⁹ And the Second Bank of the United States was formed under the direction of President James Madison in 1816 under the same structure as Hamilton's first bank—a joint stock company.⁵⁰ These national banks bypassed reliance on state charters, which Hamilton viewed as ceremonial; instead, these banks were based on contract. The legal efficacy of the Second Bank of the United States was tested in 1819 before the United States Supreme Court in *McCulloch v. Maryland*,⁵¹ where the Court found, in part, that the bank as a joint stock company was not required to comply with state (Maryland) chartering laws.

Like a partnership, a joint stock company is an unincorporated business entity that trades upon joint stock or partnership interests. They are business entities “assuming a common name, for the purpose of designating the society, the using of a common seal, and making regulations by means of commodities, boards of directors, or general meetings.”⁵²

48. Abdullah Yavas, “A Recount of the Early Joint Stock Companies and Securities Trading in the United States (1620s–1850s)” (March 28, 2012), available at <http://ssrn.com/abstract=2030273> (accessed July 30, 2015).

49. Robert E. Wright and David J. Cowen, *Financial Founding Fathers: The Men Who Made America Rich* (Chicago: University of Chicago Press, 2006), 10–27. See generally note 6.

50. Ralph C. H. Catterall, *The Second Bank of the United States* (Chicago: University of Chicago Press, 1903), 1–22; Edward S. Kaplan, *The Bank of the United States and the American Economy* (Westport, Conn.: Greenwood Press, 1999), 49–66.

51. 17 U.S. 316, 4 Wheat. 316 (1819).

52. Collyer, *Practical Treatise on the Law of Partnership*, 730. “Those companies or societies, which are not confirmed by public authority, are, in fact, nothing more than ordinary partnerships, and the laws respecting them are the same; but the articles of agreement between the parties are usually very different. The capital is generally divided into a certain number of shares, whereof each partner may hold one or more; but he is restricted to a certain number. Any partner can also transfer his share, under certain limitations; but no partner acts personally in the affairs of the company; the execution of their business being entrusted to officers, for whom the whole company are responsible, though the superintendency of such officers is frequently committed to directors chosen from the body at large.”

As *McCulloch* further explains, “By an institution of this sort is meant a company having a certain amount of capital, divided into a greater or smaller number of transferable shares, managed for the common advantage of the shareholders by a body of directors chosen by and responsible to them. After

Two distinctions typically differentiate a joint stock company from a corporation (in addition to a lack of legislative approval) in the early nineteenth century. First is the reliance by the members of a joint stock company on contractual terms rather than statutory provisions to articulate their rights and duties.⁵³ In the case of the Kirtland Safety Society, the amended Articles of Agreement for this new entity were prepared and published in the *Messenger and Advocate*,⁵⁴ delineating the contractual rights and duties of its members. (A full copy of the minutes and the Articles of Agreement can be found in appendix B.) Second is the lack of limited liability as found in corporate entities, thereby making its members personally, jointly and severally, liable for the obligations of the venture.⁵⁵ In this manner, a joint stock company operates like a partnership for liability purposes. Article 14 of the Society's amended

the stock of a company of this sort has been subscribed, no one can enter it without previously purchasing one or more shares belonging to some of the existing members. The partners do nothing individually; all their resolutions are taken in common, and are carried into effect by the directors and those whom they employ." J. R. McCulloch, *A Dictionary, Practical, Theoretical and Historical of Commerce*, 2 vols. (Philadelphia: Thomas Wardle, 1840), 1:455.

"[T]he company was intended to be a joint stock company. . . . Among these, provision was made for the annual election of three directors, on the first Monday of November, who were to have power to make all contracts and arrangements necessary to effect the objects of the company, to appoint officers and agents, and to make such rules and regulations as they should see fit. The stock of the company was to be transferable by assignment, by permission of the directors at one of their regular meetings, and dividends to be declared when the funds of the company should justify." *Rianhard v. Hovey*, 13 Ohio 300, 301 (1844). See also Edward D. Ingraham, *A Practical Treatise on the Law of Partnership* (Philadelphia: Robert H. Small, 1837).

53. Collyer, *Practical Treatise on the Law of Partnership*, 731. "[C]orporate bodies have the power of binding their members by the acts resolved upon in the manner prescribed by their charters, which power they derive from their corporate character, and not from contract and agreement between themselves; on the other hand, voluntary associations are governed entirely by the rules which the parties have themselves agreed to."

54. "Articles of Agreement," *Messenger and Advocate* 3 (January 1837): 441–43.

55. "Several liability" means that any one partner can be sued for the complete amount owed by the partnership. Joint liability means that all partners can be required to pay or indemnify at least their share of the amount owed. "According to the common law of England, all the partners in a joint stock company are jointly and individually liable, to the whole extent of their fortunes, for the debts of the company. They may make arrangements amongst themselves, limiting their obligations with respect to each other; but unless established by

Table 1. Differences between a Joint Stock Company and a Chartered Bank Corporation

<i>Joint Stock Company</i>	<i>Chartered Bank Corporation</i>
Did not require a state charter	Required a state charter
Self-regulated by contract	State regulated by statute
Members (stock holders) are fully liable	Limited liability

Agreement articulates this nuanced, albeit fundamental, change, providing, “All notes given by said society, shall be signed by the Treasurer and Secretary thereof, and we the individual members of said firm, hereby hold ourselves bound for the redemption of all such notes.” By the terms of the Agreement, only this provision could not be amended or changed.⁵⁶ The official name of the venture was also changed to the Kirtland Safety Society *Anti-Banking Company* in an apparent effort to further evidence and to give full public notice of this important change in the structure and legal form of the Society from a state-chartered corporation to a joint stock company.⁵⁷ In recognition of this evolution, Warren Cowdery, the then editor of the Church’s *Messenger and*

an authority competent to set aside the general rule, they are all indefinitely responsible to the public.” McCulloch, *Dictionary*, 1:455.

56. Article 16 provided that “any article in this agreement may be altered at any time, annulled, added unto or expunged, by the vote of two-thirds of the members of said society; except the fourteenth article, that shall remain unaltered during the existence of said company.” In 1816, the legislature in Ohio passed an act to provide penalties for issuing banknotes without a charter. As part of that act, all such unauthorized bank shareholders or partners were made “jointly and severally answerable” (or liable) thereby effectively reforming the entity to a general partnership. An act to prohibit the issuing and circulating of unauthorized bank paper, *Acts Passed at the First Session of the Fourteenth General Assembly of the State of Ohio* (Chillicothe, Ohio: Nashee and Denny, 1816), p. 12–13, sec. 11, 12.

57. The preamble to the Articles of Agreement states this distinct purpose from banking: “We, the undersigned subscribers, for the promotion of our temporal interests, and for the better management of our different occupations, which consist in agriculture, mechanical arts, and merchandising; do hereby form ourselves into a firm or company for the before mentioned objects, by the name of the ‘Kirtland Safety Society Anti-Banking Company,’ and for the proper management of said firm, we individually and jointly enter into, and adopt, the following Articles of Agreement.” “Articles of Agreement,” *Messenger and Advocate* 3 (January 1837): 441.

Advocate, published an editorial in July 1837 about the Safety Society, noting: “It was considered a kind of joint stock association, and that the private property of the stockholders was holden in proportion to the amount of their subscription, for the redemption of the paper issued by the bank.”⁵⁸

With these changes in place, the leaders worked to open the Society in early January 1837.⁵⁹ Within a week of opening, the venture had loaned its first installment of notes, totaling approximately \$10,000 in \$1s, \$2s, and \$3s.⁶⁰ The loans evidenced by the notes were for 90 days, a typical length for notes during this time. These initial efforts generated the exact result hoped for—increased economic activity in Kirtland. This included the funding for the construction of Joseph Street, which fronted the Kirtland Temple; increased sales at the Newel K. Whitney store; and the acquisitions of additional farmland.

Shortly after the Safety Society commenced business, it entered into various agreements with individuals to serve as agents to the Society to expand the exposure and use of the Society in different communities. For example, on January 14, 1837, the Society entered into an agreement with David K. Cartter,⁶¹ a young lawyer in Akron, Ohio,⁶² whereby Cartter was provided up to \$30,000 in Society notes to use to secure

58. *Messenger and Advocate* 3 (July 1837): 535.

59. These efforts included modifying the notes by crossing out “Cashier” and “President” replacing them with “Treasurer” and “Secretary,” respectively. Joseph Smith and Sidney Rigdon continued to execute notes with Newel K. Whitney and Fredrick Williams also signing notes as “pro tempore,” Latin for “for the time.” Also, stamps “Anti” and “ing” were made and the “Anti” and “ing” added to the name on the notes, thereby denoting “Anti-Banking.” This practice appears to have been short lived.

60. At this point the Kirtland Safety Society had collected approximately \$4,000 cash. Banking practices at the time permitted leveraging the specie to cover 5–10 percent of the notes. Bodenhorn, *State Banking in Early America*, 291–92. The Kirtland Safety Society, therefore, could have extended notes totaling between \$40,000 and \$80,000 and remained in compliance with such practices.

61. David Kellogg Cartter (1812–1887) was born in New York and studied law in Rochester, New York, where he practiced for four years prior to moving to Akron, Ohio, in 1836. There he opened a law practice and continued to practice law after moving to Massillon, Ohio, just south of Akron. He moved to Cleveland in 1856. Samuel Lane, *Fifty Years and Over of Akron and Summit County* (Akron, Ohio: Beacon Job Department, 1892), 552–53.

62. Akron, Ohio, is approximately forty-five miles southwest of Kirtland, Ohio.

loans and exchange for other banknotes in Akron and the surrounding communities.⁶³ At the same time, Cartter executed a bond for the Society notes with Eliakim Crosby and James W. Phillips as sureties.⁶⁴ Similar agreements were executed between the Safety Society and Ovid Pinney and Stephen Phillips on March 14, 1837.⁶⁵

These initial positive results soon met with failure. An attack on the Society came when Grandison Newell bought Kirtland Safety Society notes and then took them to the Society office to be redeemed for specie in an effort to deplete its capital reserves.⁶⁶ Rural banks had capital tied

63. Agent Agreement, January 14, 1837, Joseph Smith Collection, CHL. This agreement was executed by Joseph Smith, Sidney Rigdon, Frederick G. Williams, Reynolds Cahoon, David Whitmer, and Oliver Cowdery for the Society. It is in Rigdon's handwriting.

64. Bond dated January 14, 1837, Joseph Smith Office Papers, CHL. Dr. Eliakim Crosby was one of the founders of Akron (previously named Cascade). James Phillips lived in Akron and was involved in banking activities in the area, including petitioning the Ohio legislature for a bank in Akron in 1835. Lane, *Fifty Years and Over of Akron and Summit County*, 41–43, 45, 538; William B. Doyle, *Centennial History of Summit County, Ohio and Representative Citizens* (Chicago: Biographical Publishing Co., 1908), 253–54.

65. Articles of Agreement, March 14, 1837, Joseph Smith Office Papers. This agreement was executed by Sampson Avard as agent for Joseph Smith and Sidney Rigdon, officers of the Society. Ovid Pinney and Stephen Phillips were early settlers and businessmen from Beaver County, Pennsylvania, and were tasked to market Society notes in Pennsylvania. They were given up to \$40,000 in Society notes. Joseph H. Bausman and John S. Duss, *History of Beaver County Pennsylvania and Its Centennial Celebration*, vol. 2 (New York: Knickerbocker Press, 1904), 703–4, 738–40, 781–84, 797. On March 8, 1837, Warren Parrish executed a similar agreement with J. W. Briggs, a merchant in Painesville, Ohio, to act as an agent for the Safety Society in Painesville. Briggs was given only \$1,000 in Society notes to market. Bond dated March 8, 1837, Joseph Smith Office Papers.

66. "I worked for Grandison Newell considerable. He used to drive about the country and buy up all the Mormon money possible, and the next morning go to the bank and obtain the specie. When they stopped payment he prosecuted them and closed the bank." James Thompson, Statement, in *Naked Truths about Mormonism* (Oakland, Calif.: Deming, 1888), 3.

Newell would later boast how he had "run the Mormons out of the country." Kennedy, *Early Days of Mormonism*, 168 n. Newell was a farmer, businessman, and banker from Painesville. Whether based on religious, financial, or political motives, Newell was one of the most well-known and active antagonists against the Church, especially Joseph Smith and his leadership. This included providing financing for Doctor Philastus Hurlbut's 1833 trip to Palmyra to collect affidavits that were published in Eber D. Howe's anti-Mormon book *Mormonsim*

up in land and generally could not turn assets into cash fast enough to meet notes presented for redemption.⁶⁷ The nation was beset with land speculation, and the Saints were not immune from it.⁶⁸ Threats of mob violence increased. As Wilford Woodruff recorded on January 24, 1837, “We had been threatened by a mob from Painesville to visit us that night & demolish our Bank & take our property.”⁶⁹ The *Painesville Telegraph*, which had strong anti-Mormon sentiments, also started publishing aggressive articles about the dangers and alleged illegalities of the newly launched Society.⁷⁰

Both the success of and challenges to the Kirtland Safety Society resulted in the Society leaders deciding to undertake two additional efforts to secure a state corporate charter for the Society. The first was to instruct Hyde to make additional efforts to get the proposed charter sponsored before the end of the legislative session. Hyde made contact with Samuel Medary, a Democratic senator who was proposing banking reform.⁷¹ Such efforts did result in getting the proposed charter read on the floor of the Senate, but the proposal failed on a 24 to 11 vote.⁷² That vote, closing this first door, came on the same day that Joseph Smith and others arrived in Monroe, Michigan,⁷³ seemingly opening a second door.

The second effort was to acquire a controlling interest in an out-of-state chartered bank with the objective of making the Society a branch or subsidiary of that already chartered bank. This business and legal approach had been done numerous times by large banking institutions

Unvaild [sic]: or, a Faithful Account of That Singular Imposition and Delusion, from Its Rise to the Present Time (Painesville, Ohio: By the author, 1834).

67. Herman E. Krooss, *American Economic Development* (Englewood Cliffs, N.J.: Prentice-Hall, 1955), 229.

68. Joseph Smith, *History*, 1838–1856, vol. B-1 [1 September 1834–2 November 1838], p. 761, CHL.

69. Dean C. Jessee, “The Kirtland Diary of Wilford Woodruff,” *BYU Studies* 12, no. 4 (1972): 383–84.

70. “A New Revolution—Mormon Money,” *Painesville Telegraph*, January 20, 1837; “How the Mighty Have Fallen,” *Painesville Telegraph*, February 7, 1837; “Bank of Monroe,” *Painesville Telegraph*, February 10, 1837; “Monroe Bank,” *Painesville Telegraph*, February 24, 1837; “For the Telegraph,” *Painesville Telegraph*, March 31, 1837.

71. Hyde’s contact with Samuel Medary likely came through Oliver Cowdery and his prior political efforts.

72. Ohio General Assembly, *Journal of the Senate of the State of Ohio*, 35th General Assembly, 1836–37, 360–66.

73. Adams, “Chartering the Kirtland Bank,” 477–79.

in the East as they acquired banks as branches or affiliates in various states throughout the country. Ohio law permitted this practice.⁷⁴ The leaders of the Society selected the Bank of Monroe, located in Monroe, Michigan, as its target for such a merger or acquisition. The Bank of Monroe was one of the oldest banks in Michigan, having been chartered in 1827.⁷⁵ Monroe, Michigan, was only 150 miles from Kirtland.

74. When the Kirtland Safety Society opened for business in January 1837, Ohio law allowed a bank properly chartered in another state to open a branch in Ohio. The Ohio General Assembly had restricted this practice in 1836 by an act entitled An act to prohibit the establishment, within this State, of any branch, office, or agency of the Bank of the United States, as recently chartered by the Legislature of the Commonwealth of Pennsylvania, *Acts of a General Nature, passed at the First Session of the Thirty-Fourth General Assembly of the State of Ohio* (Columbus: James B. Gardiner, 1836), 37–39. This act was enacted to prohibit anyone from opening a branch in Ohio of the Bank of the United States, whose twenty-year charter expired on April 10, 1836. M. St. Clair Clarke and D. A. Hall, *Legislative and Documentary History of the Bank of the United States: Including the Original Bank of North America* (Washington, D.C.: Gales and Seaton, 1832), 713. Three years later, in 1839, the Ohio General Assembly enacted a law that expanded the scope of the 1836 act to include “any bank, or other association or company incorporated by the laws of any other State, or by the laws of the United States.” An act to prohibit the establishment within this State of any branch, office, or agency of the United States Bank of Pennsylvania, or any other bank or corporation incorporated by the laws of any other State, or by the laws of the United States, and for other purposes (passed February 9, 1839), *Acts of a General Nature, Passed by the Thirty-Seventh General Assembly of Ohio, at Its First Session Held in the City of Columbus* (Columbus: Samuel Medary, 1839), sec. 2, 10. As anticipated by the directors of the Kirtland Safety Society, through the Bank of Monroe’s charter the Kirtland Safety Society could become a branch office.

75. It is uncertain why the Mormons looked to the Bank of Monroe. While it was the oldest chartered bank in Michigan, it was experiencing its own troubles during this time, with what were ultimately determined as false claims that the bank was on the brink of failure. See *Painesville Telegraph* citing a letter from Henry Smith, the president of the Bank of Monroe, dated December 23, 1836, printed in the *Detroit Journal*: “Dear Sir: - Since my arrival in this city, I have learned, for the first time, the existence of the rumors tending to injure the credit and character of the Bank of Monroe. These rumors are perfectly false and groundless. That institution has always redeemed all its notes with specie—it still continues to do so; and there is no reasonable probability that it will do otherwise. The bank is in full business, and its capital stock will speedily be increased \$50,000.—Reports calculated to injure the cashier, (Mr. Harleston,) have also been put in circulation. These are absolutely false. That gentleman is on his way from Buffalo to Monroe. It is hoped that the author of the reports

By February 10, 1837, Joseph Smith, Hyrum Smith, Sidney Rigdon, and Oliver Cowdery arrived in Monroe and closed the deal.⁷⁶ Previously, to avoid a possible conflict of interest, Oliver Cowdery had resigned from the Society⁷⁷ and disposed of his other business interests in Kirtland. The owners of the Bank of Monroe sold their controlling interest in that

alluded to, may be discovered.” *Painesville Telegraph*, December 30, 1836. Negative reports about the Bank of Monroe continued into 1837. The *Cleveland Weekly Gazette* reported in its February 1, 1837, issue, “Reports injurious to this institution are again in circulation. We are informed that Mr. J.V. AYER, of Buffalo, and other gentlemen, have made arrangements for the purchase of its entire stock and charter.” It further reported on February 8, 1837, “It is a matter of deep regret that the base and wholly unfounded reports against the character and condition of this institution are still kept afloat. They are sheer slanders, propagated by unworthy competition, or ignoble malice; and are daily and uniformly exposed and contradicted by the practical fact, that the bank ever has, and still does, punctually and readily redeem its bills: and its business operations all prove its positive soundness and responsibility.” These problems may have in fact attracted the Mormon leaders, as the Bank of Monroe was indeed ripe for change in ownership at an attractive price and terms.

76. The *Painesville Telegraph* in its February 29, 1837, issue reported this closing as follows:

BANK OF MONROE

With much satisfaction we announce to the public, that the stock of this institution, having changed hands is about to be increased to \$500,000,

Mr. HARLESTON having sold his entire interest in the Bank, is succeeded, in his capacity as Cashier, by B.J. HATHAWAY, Esq., a gentleman possessing character and accomplishments which render him peculiarly qualified for the station so ably and acceptably filled by so worthy a predecessor.

At a meeting of the Stockholders and Board of Directors of the Bank of Monroe, held at their Banking House, this day, GEORGE B. HARLESTON, Esq., resigned his situation of Cashier and Director in the Institution, and O. COWDERY, Esq., was appointed a Director and Vice President by the Board for the remainder of the year. BAILEY J. HATHAWAY, Esq., was appointed Cashier.

By order of the Board:

B.J. HATHAWAY, Cashier
Monroe, Feb. 10, 1837.

77. This resignation was apparently made due to the legal questions as to whether Ohio law permitted someone to be a director of an out-of-state bank while being a director of the Kirtland Safety Society.



Notes issued by the Kirtland Safety Society, February 10 and March 1, 1837, signed by Joseph Smith and Sidney Rigdon. Courtesy J. Reuben Clark Law School.



Note issued by the Bank of Monroe, signed by B. J. Hathaway and Oliver Cowdery. Courtesy Jeffrey N. Walker.

bank to the Kirtland Safety Society, with the Society paying upfront \$3,000 in Cleveland drafts and receiving notes totaling more than \$20,000 from principals of the Bank of Monroe.⁷⁸ As a part of the deal, Cowdery was appointed a director and vice president of the Monroe Bank. Cowdery stayed in Monroe when the others returned to Kirtland.

PART II: THE FALL OF THE KIRTLAND SAFETY SOCIETY

While these efforts should have resolved the Society's charter issue, the national Panic of 1837 ultimately thwarted all efforts to create a viable banking venture. The panic started in New York City in mid-February 1837. Banks across the nation began to close in March 1837. Rioting and looting was widespread throughout the country—starting in the East.⁷⁹ Many have pointed to President Jackson's policies, including the demise of the Second National Bank of the United States as well as requiring all federal land acquisition to be made in specie rather than notes, as the catalyst to the panic.⁸⁰ The federal government sought to stem the panic by releasing more specie into the economy, totaling more than \$9,000,000. Such efforts did little to improve the situation.

The panic was devastating to the Bank of Monroe, resulting in its temporary closure.⁸¹ In fact, all the banks in Michigan would close, some temporarily and some permanently.⁸² This financial crisis resulted in

78. The acquisition was announced in *Monroe Times*, February 16, 1837; reprinted in "Bank of Monroe," *Painesville Republican*, February 23, 1837.

79. Jessica Lepler, *The Many Panics of 1837: People, Politics, and the Creation of a Transatlantic Financial Crisis* (Cambridge: Cambridge University Press, 2013), 1–43.

80. Peter Rousseau, "Jacksonian Monetary Policy, Specie Flows, and the Panic of 1837," *Journal of Economic History* (June 2002): 457–88; Edward S. Kaplan, *The Bank of the United States and the American Economy* (Westport, Conn.: Greenwood Press, 1999), 121–50.

81. The *Ohio Star*, published in Ravenna, Ohio, reported in its March 30, 1837, issue about this closure: "The ceaseless opposition to this institution has compelled it to suspend specie payments for sixty days. This has been occasioned by the almost impassable state of the roads, which have prevented the bank from receiving supplies of specie from the east. An expose of the situation of the bank, has been published, to give the public an opportunity of judging of it understandingly. The money continues to pass in this place, with many of our citizens—others refuse to receive it in payment for any article. The bank, we still think, will be able to do business, in a very short time, and so soon as navigation opens, on a basis more permanent than at any period since receiving its charter."

82. Carter H. Golembre, *State Banks and the Economic Development of the West, 1830–44* (New York: Arno Press, 1978), 440–56.

Michigan enacting what would be the nation's first "free banking" laws.⁸³ Enacted on March 15, 1837, this act removed altogether the requirement that a bank needed a state-approved charter.⁸⁴ This innovation undermined those banks already having charters in Michigan, as well as reliance on Michigan charters by organizations, such as the Kirtland Safety Society, in the other states. With the closure, albeit temporary, of the Bank of Monroe, Cowdery resigned as a director and returned to Kirtland.⁸⁵

Banks throughout Ohio were similarly decimated. On June 29, 1837, the Bank of Geauga closed.⁸⁶ The Society was similarly affected. With

83. Kevin Dowd, *The Experience of Free Banking* (New York: Routledge, 1992), 211–12; Howard Bodenhorn, "Banking Chartering and Political Corruption in Antebellum New York: Free Banking as Reform," in *Corruption and Reform: Lessons from America's Economic History*, ed. Edward Glaeser and Claudia Goldin (Chicago: University of Chicago Press, 2006), 231–55; Gerald P. Dwyer, "Wildcat Banking, Banking Panics, and Free Banking in the United States," *Economic Review* 81 (December 1996): 6–9; Larry J. Sechrest, *Free Banking: Theory, History and a Laissez-Faire Model* (London: Quorum Books, 1993), 3.

84. An Act to organize and regulate banking associations (passed March 15, 1837), *Acts of the Legislature of the State of Michigan; Passed at the Annual Session of 1837* (Detroit: John S. Bagg, 1837), sec. 1, 76. The fatal blow resulting in abandoning the Bank of Monroe came with the Michigan legislature enactment on March 15, 1837, providing that "any persons could form an association for banking business," thereby removing the need for a charter to operate a bank in Michigan, making the approved status of chartered banks in Michigan like the Bank of Monroe meaningless, especially for an out-of-state branch relying on the charter. Harvey J. Hollister, "Banks and Banking," in *History of the City of Grand Rapids, Michigan* (Grand Rapids, Mich.: Munsell, 1891), 671–72.

85. Cowdery's return to Kirtland marked the abandonment of having the Bank of Monroe act as the "parent" bank for the Kirtland Safety Society. Cowdery was elected a justice of the peace in Kirtland on May 25, 1837. "Oliver Cowdery," *Painesville Republican*, May 25, 1837 ("Oliver Cowdery, late printer at Kirtland, has been elected a Justice of the Peace in that place, without opposition").

86. The *Painesville Republican* reported in its June 29, 1837, issue: "AS IT SHOULD BE.—It is said that a number of suits have been lately commenced against the Bank of Geauga, upon their bills, in consequence of a refusal, on the part of the Bank, to redeem them with specie. The plaintiffs, it is understood, belong in Cleveland. Whatever may be the motives of those who have taken this step, it is clear, that the Bank has no right to complain. The Bills declare that, 'the President, Directors, and Co. of the Bank of Geauga, will pay to the bearer on demand,' etc., and when the holder of their bills call upon them to do so—they refuse, and at the same time declare their ability to pay, but obstinately, and insultingly tell the holder of their notes, that they have resolved not to make good their promises. Now suppose, reader, that the bank held a

the hope of its survival diminishing, Joseph Smith and Sidney Rigdon stopped issuing any notes and instead looked to collect on the loans that were starting to come due in April 1837. The discount and loan book for the Safety Society evidences that some notes were indeed redeemed during this time.⁸⁷

A second blow to the Society came in May 1837 with disagreement (including disaffection) with various Mormon leaders,⁸⁸ including Orson and Parley Pratt, Luke and Lyman Johnson, Frederick G. Williams, John Boynton, Warren Parrish, and, most importantly for the Society, John Johnson. John Johnson had acquired 3,000 shares in the Safety Society, the maximum number of shares allowed for an individual. He had pledged much of his real property as collateral for this purchase. This collateral was essential in keeping the Society solvent. However, with his departure from the Church, Johnson took with him his property, transferring much of it to family members.⁸⁹ While Johnson's actions appear

note against you, payable on demand—they call upon you and demand payment—you tell them you have abundant means to pay all your notes, but you have concluded that you will not pay your debts as you agreed to do—what think you the Bank would say and do? Would they not say—nay would they not have good right to say that you were dishonest—and that they would take immediate measures to compel you to pay? Most certainly, and no honorable man would complain of their so doing. *On this principle, every person who holds a bill on any of the Banks which have refused to redeem their paper, would be fully justified in resorting to the legal method of collecting*" (emphasis added).

87. Kirtland Safety Society, Discount and Loan Book, CHL.

88. As Ronald Esplin explained, "The 1837 Kirtland crisis, or Kirtland apostasy as it is sometimes known, cost us perhaps a third of the leadership—not a third of the members, but some of the elite, some of the well educated, some of the more prosperous." Esplin, "Joseph Smith and the Kirtland Crisis," 262. This apostasy reached its full strength by late May and June 1837. Charges were brought against some of these leaders before the Kirtland high council on May 29. At the same time, Lyman and Luke Johnson, Orson Pratt, and Warren Parrish countered with charges of their own delivered to Bishop N. K. Whitney against Joseph Smith and Sidney Rigdon. John Boynton joined in the charges against Smith and Rigdon. Most of the charges involved the operations of the Kirtland Safety Society. Wilford Woodruff, *Wilford Woodruff's Journal, 1833–1898, Typescript*, ed. Scott G. Kenney, 9 vols. (Midvale, Utah: Signature Books, 1983–84), 1:148 (May 28, 1837); Kirtland Council Minute Book (Minute Book 1), May 29, 1837, CHL; Charges submitted by Lyman Johnson, Orson Pratt, Warren Parrish, and Luke Johnson, May 29, 1837, Newel K. Whitney Collection, L. Tom Perry Special Collections, Harold B. Lee Library, Brigham Young University, Provo, Utah.

89. John Johnson, primarily through his son-in-law John Boynton, was heavily involved in land speculation that was rampant in Kirtland during this time.

to have been in violation of the terms and conditions of the Safety Society, no legal action was ever taken against him.⁹⁰ With such defections and financial reversals, both Joseph Smith and Sidney Rigdon resigned from the institution before early July 1837, apparently trying to prevent further losses by those inclined to continue supporting the venture.⁹¹ Yet, even with Smith's and Rigdon's resignations, Warren Parrish and Frederick G. Williams, now disaffected from the Church, assumed control of the Kirtland Safety Society and continued to make loans by issuing more banknotes.⁹² Parrish in particular appears to have abused his position as the president of the Society, replacing Sidney Rigdon.⁹³

90. While the other members of the Kirtland Safety Society undoubtedly would have had a claim against John Johnson for unilaterally taking his real property out of the venture (under joint stock company law), Johnson may have had a defense. As explained in *Rianhard v. Hovey*, 13 Ohio 300, 302 (1844), "How far are the stockholders liable for debts contracted by the directors? It may be admitted that, as to many persons parties to this suit, the acts of the directors in departing from the original objects of the association, and engaging in hazardous undertakings foreign to and adverse to it, was such a violation of their rights as gives them, in a court of equity, no just claim to contribution; and yet, as to creditors, the case may be quite different. Had such stockholders seen proper to step forward and assert their own rights at the time, and given notice to the public, they could not have been made responsible for any debts subsequently contracted. They neglected, however, to take any measures to inform the public, and left the directors in the sole management of their property, in the exercise of their name as a firm, and of the credit of the firm."

91. Joseph Smith's history records, "Some time previous to this [7 July] I resigned my office in the 'Kirtland Safety Society' disposed of my interest therein, and withdrew from the institution." Smith, *History*, vol. B-1, p. 764. The Stock Ledger for the Kirtland Safety Society contained entries to July 2, 1837, which effectively matched the withdrawal by Smith and Rigdon. While some have argued that the bank stopped issuing notes in February, these references clarify the matter. Sampson and Wimmer, "Stock Ledger Book," 429.

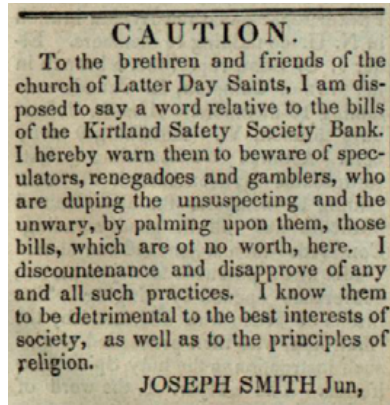
92. The *Daily Herald and Gazette* published in Cleveland reported in its July 8, 1837, issue about this: "Look Out.- We learn by the *Painesville Telegraph* of yesterday, that the 'Mormon Banking Company' is about making a new emission of their worthless trash, 'using *old paper* and signed by D. Williams and one Parish, by the redemption of a few dollars of which they expect to get the *old emission* as well as the new, again into circulation.'" Reprinted in *Elder's Journal* 1 (August 1838): 58.

93. This change may have taken place as early as May 1, 1837, at the semiannual meeting of the Kirtland Safety Society.

Parrish was accused of massive malfeasance during his tenure as president, including forgery⁹⁴ and embezzlement.⁹⁵

With such improprieties mounting, in August 1837 Smith published a public notice in the *Messenger and Advocate* captioned as “Caution,” noting:

To the brethren and friends of the church of Latter Day Saints, I am disposed to say a word relative to the bills of the Kirtland Safety Society Bank. I hereby warn them to beware of speculators, renegadoes and gamblers, who are duping the unsuspecting and the unwary, by palming upon them, those bills, which are of no worth, here. I discountenance and disapprove of any and all such practices. I know them to be detrimental to the best interests of society, as well as to the principles of religion.



Joseph Smith's statement regarding the Kirtland Safety Society in the *Messenger and Advocate*.

JOSEPH SMITH Jun.,⁹⁶

94. Claims of forgery were based on the issuance of new banknotes with the signatures of Joseph Smith and Sidney Rigdon. Brigham Young recalled: “Warren Parrish was the principal operator in the business [Kirtland Safety Society]. He had his partners, and they did not stop until they had taken out all the money there was in the bank, and also signed and issued all the notes they could.” Andrew Jenson, *The Historical Record*, 6 vols. (Salt Lake City, 1887), 5:433–34.

95. Some claimed that Parrish stole more than \$20,000 from the Kirtland Safety Society. Orson F. Whitney, *Life of Heber C. Kimball* (Salt Lake City: Tevens and Wallis, 1945), 100; Staker, *Hearken, O Ye People*, 547 n. 98; Brigham H. Roberts, comp., *A Comprehensive History of The Church of Jesus Christ of Latter-day Saints: Century I*, 6 vols. (Salt Lake City: Deseret News, 1930), 1:405. Wilford Woodruff recounted, “Warren Parrish, who was a clerk in the Bank, afterwards acknowledged he took 20,000 dollars, and there was strong evidence that he took more.” Jesse, “Kirtland Diary of Wilford Woodruff,” 398 n. 77. Parrish was never charged with these claims.

Frederick G. Williams was appointed president after Joseph withdrew. “Argument to argument where I find it; Ridicule to ridicule, and scorn to scorn,” *Elders’ Journal* (August 1838): 58, available online at <http://josephsmithpapers.org/paperSummary/elders-journal-august-1838&p=10>; Frederick G. Williams, *The Life of Dr. Frederick G. Williams, Counselor to the Prophet Joseph Smith* (Provo, Utah: BYU Studies, 2012), 454–73.

96. Joseph Smith Jun., “Caution,” *Messenger and Advocate* 3 (August 1837): 560.

Such “Caution” effectively ended Joseph Smith’s direct involvement with the Safety Society. But the fallout was yet to be fully felt. One could expect a plethora of litigation to result from the failure of the Society, for it is estimated that more than two hundred individuals who had bought stock in the venture suffered losses⁹⁷ in addition to the numerous parties who held Kirtland Safety Society notes.⁹⁸ Yet only one action was filed against Joseph Smith,⁹⁹ and that was by his nemesis, Grandison Newell,¹⁰⁰ as we will see below.

97. Anderson, *Joseph Smith’s Kirtland*, 193; Hill, Rooker, and Wimmer, “Kirtland Economy Revisited,” specifically appendix C for a list of the stockholders on the Kirtland Safety Society’s ledger book. For a discussion about the ledger book, see Sampson and Wimmer, “Stock Ledger Book.” The Smith family (including Joseph Sr. and Lucy, Hyrum and Jerusha, Joseph Jr. and Emma, Samuel, Sophronia Stoddard, Katherine Salisbury, and Lucy Jr., not to mention uncles, aunts, and other relatives) suffered the greatest losses. Their losses were followed, in size, by the Rigdon family (including Sidney, Phebe, and Sidney’s mother, Nancy). The John Johnson family’s losses would have been between the Smiths’ and the Rigdons’ had John Johnson Sr. not withdrawn his collateral in an obvious effort to mitigate his potential losses. Staker, *Hearken, O Ye People*, 524–25.

98. As Hill, Rooker, and Wimmer observed, estimating the number of notes in circulation has proven difficult, with some arguing that there were no notes and others claiming that as much as \$150,000 in notes had been placed in circulation. Using a mathematical methodology that used the serial number of extant notes, these authors estimated that \$85,000 of notes is the most reasonable estimate. Hill, Rooker, and Wimmer, “Kirtland Economy Revisited,” 444–48. Indeed there were a significant number of notes in circulation.

99. Some other cases were filed for passing the Kirtland Safety Society notes. For example, the *Daily Herald and Gazette*, published from Cleveland, reported in its July 17, 1837, issue, “Kirtland Money.—We learn by the St. Catharines Journal, that Mrs. Sarah Cleveland, late of that place, was committed to Niagara jail, for passing \$390 of the ‘Kirtland Safety Society Bank’ with intention to defraud. She was subsequently admitted to bail.”

100. Newell’s animosity can be seen when he filed in April 1837 a complaint with Painesville Justice of the Peace Edward Flint claiming that he had “just cause to fear and did fear, that Joseph Smith, Jr. would kill him or procure other persons to do it.” Based on Newell’s complaint, Justice Flint issued a warrant for the arrest of Smith. Joseph Smith was arrested and brought before Justice Flint on May 30, 1837, to respond to these allegations. Because of the limited jurisdiction of justices of the peace, Justice Flint could only hold a hearing to determine whether there was sufficient evidence to establish probable cause that a crime had been committed. If Justice Flint so found, he would require the accused to enter into a recognizance, thereby agreeing to appear at the next term of the Court of Common Pleas, where the charges would be tried and to keep the peace during the interim. Justice Flint postponed this preliminary hearing until June 3, 1837, at the request of the defendant for additional time to prepare. On June 3, 1837,

PART III: THE LEGAL AFTERMATH OF THE KIRTLAND SAFETY SOCIETY

Political and Legal Backgrounds

Banking problems had been part of the political and legal landscape for thirty-four years before issues arose regarding the Safety Society. Banking had begun in Ohio in 1803 during its first legislative session¹⁰¹ with the granting of a corporate charter to the Miami Exporting Company¹⁰² on April 15, 1803, for the purpose of exporting agricultural products and banking, including the right to issue notes.¹⁰³ Other chartered banks soon dotted Ohio, including the Bank of Marietta and Bank of Chillicothe in

Joseph Smith appeared with his attorneys Benjamin Bissell and William Perkins. James Paine appeared with Newell. During this hearing, Justice Flint heard the testimony of nearly a dozen witnesses, after which he determined that probable cause existed to place Smith under a \$500 recognizance bond to appear on the charge on the first day of the next term of the Geauga Court of Common Pleas and to keep the peace. Justice Flint also put three of the witnesses, Sidney Rigdon, Orson Hyde, and Solomon Denton, under recognizance of \$50 each to appear and testify in this matter at the next term of the Geauga Court of Common Pleas. He then prepared a transcript of his actions and forwarded it to the Geauga Court. The June term of the Geauga Court commenced the following Monday, June 5, 1837. The Geauga Court of Common Pleas heard the case on Friday, June 9, 1837, where the evidence was again presented. At the conclusion of this trial the court discharged Joseph Smith and ordered the state to pay all court costs. See generally Order in State on the complaint of Grandison Newell v. Joseph Smith, Junior, Geauga County, Ohio, Court of Common Pleas, June 9, 1837 (Gauga County Common Pleas Record book T, 52–53, Geauga County Archives); Justice Trial Account, *Painesville Telegraph*, June 9, 1837; Justice and Common Pleas Trial Account, *Painesville Republican*, June 15, 1837; Newell's letter to the editor, *Painesville Telegraph*, June 30, 1837; Editorial, *Painesville Republican*, July 6, 1837.

101. Ohio enacted its constitution on November 29, 1802, and was admitted as a state on February 19, 1803.

102. Miami is in reference to the Miami Valley located in the southwest portion of Ohio, a fertile area in the early nineteenth century containing more than a quarter of the total population of Ohio. Daniel Drake, *Natural and Statistical View; Or Picture of Cincinnati and the Miami Country* (Cincinnati: Looker and Wallace, 1815), 169–70.

103. *Acts of the State of Ohio: First Session of the General Assembly, Held under the Constitution of the State* (Chillicothe, Ohio, 1803), 126–36, specifically sec. 6; Report of Judiciary Committee (January 7, 1837) on the resolution on allowing Miami Exporting Company to have the powers of a bank, *Ohio House of Representative Journal* (Columbus, Ohio, 1837), 188–95.

1808, Bank of Steubenville in 1809, Western Reserve Bank and Bank of Muskingum in 1812, Farmers' & Mechanics' Bank in 1813, and the Dayton Manufacturing Company in 1814.¹⁰⁴ During this same time, various other businesses in Ohio began carrying on banking operations without charters. For example, in 1807 the Alexandrian Society of Grantsville, which was chartered for literary purposes, began issuing banknotes. The Bank of Marietta and Farmers' & Mechanics' Bank began operations as a bank before they had received their charters from the legislature. "Many other unauthorized banks were established in the state [Ohio] during the years 1811 to 1814, and by the close of the latter year the large amount of notes issued by these institutions had become a matter of concern to the legislature."¹⁰⁵

The Act of 1816. On February 8, 1815, the Ohio General Assembly formally addressed this public problem by passing its first act prohibiting the unauthorized issuing of banknotes.¹⁰⁶ As one commentator in 1896 noted, "In 1815, Ohio commenced a war which she carried on longer and more vigorously, because apparently with less success, than any other State, against unauthorized bank notes."¹⁰⁷ In the next session, the Ohio legislature strengthened its attack on unauthorized banking activities by enacting on January 27, 1816, "An act to prohibit the issuing and circulating of unauthorized bank paper" (hereafter cited as Act of 1816). The Act of 1816 provided for a \$1,000 penalty against any "officer, servant, agent or trustee" of an unincorporated "bank or money association."¹⁰⁸ The Act of 1816 also provided that an "informer" could bring an action of debt (a civil action) against violators of the Act and receive 50 percent of the recovery, with the other 50 percent "going to aid to the public revenue of the state."¹⁰⁹ The Act of 1816 further made all shareholders or partners in any such banking venture jointly and severally liable "in their individual capacity, for the whole amount of the bonds, bills, notes and

104. Huntington, "History of Bank and Currency," 260–64.

105. Huntington, "History of Bank and Currency," 266.

106. *Acts Passed at the First Session of the Thirteenth General Assembly of the State of Ohio* (Chillicothe, Ohio: Nashee and Denny, 1815), 152–56.

107. William Graham Sumner, *A History of Banking in the United States* (New York: Journal of Commerce and Commercial Bulletin, 1896), 91.

108. *Acts Passed at the First Session of the Fourteenth General Assembly of the State of Ohio*, sec. 1, 10.

109. *Acts Passed at the First Session of the Fourteenth General Assembly of the State of Ohio*, sec. 5, 11.

contracts of such bank.”¹¹⁰ As these provisions indicate, the Act of 1816 was focused on punishing the bank, its officers, and owners—the direct and indirect *suppliers* of unauthorized banknotes in circulation.¹¹¹

In 1823, during the Twenty-First General Assembly of the State of Ohio, a three-person committee was formed to revise the laws of Ohio.¹¹² The rationale was explained by resolution that the frequent revisions of the laws of the state have resulted in “an unavoidable consequence, [of] our statutes becom[ing] in short order, so voluminous and complicated, that it is difficult for officers of our government, and still more so for those less conversant with our statute books, to determine what is the law, by which they are [to] regulate their conduct.”¹¹³ During previous sessions when laws were enacted, revised, amended, or repealed, the legislature had concurrently worked to reconcile such changes with the then existing laws. This process resulted in the General Assembly having “revise[d] the laws of a general nature, three times in a period of thirteen years.”¹¹⁴ Yet such efforts proved problematic, taking up much of the time and energy of the legislature, and even then the “revised laws have not therefore, presented to the public, that definite and concise, that simple and uniform code, which is so desirable.”¹¹⁵ The remedy was to appoint a three-person committee tasked with the responsibility

to digest and compile a code of laws, containing the principles of the laws now in force, expunging therefrom such acts and parts of acts, as have been repealed, have expired by limitation, or have been superseded and rendered nugatory by subsequent acts; . . . to draft separate bills containing such new principles as they may be directed by the

110. *Acts Passed at the First Session of the Fourteenth General Assembly of the State of Ohio*, sec. 11, 12–13.

111. The following cases were brought under the Act of 1816: *Bonsal v. State*, 11 Ohio 72 (1841); *Brown v. State*, 11 Ohio 276 (1842); *Bartholomew v. Bentley*, 15 Ohio 659 (1846); *Johnson v. Bentley*, 16 Ohio 97 (1847); *Lawler v. Walker*, 18 Ohio 151 (1857); *Kearny v. Buttles*, 1 Ohio St. 362 (1853); *Lawler v. Burt*, 7 Ohio St. 340 (1857).

112. *Acts of a General Nature Passed at the First Session of the Twenty-First General Assembly of the State of Ohio* (Columbus, Ohio: P. H. Olmsted, 1823), 37–40.

113. *Acts of a General Nature Passed at the First Session of the Twenty-First General Assembly of the State of Ohio*, 38.

114. *Acts of a General Nature Passed at the First Session of the Twenty-First General Assembly of the State of Ohio*, 38.

115. *Acts of a General Nature Passed at the First Session of the Twenty-First General Assembly of the State of Ohio*, 38.

General Assembly to adopt; or such as they may think proper to recommend; and also separate bills containing the necessary amendments of such other acts as will be affected by such new principles, so that those principles may be adopted or rejected by the General Assembly without destroying the harmony of the code.¹¹⁶

The Act of 1824. As part of its efforts, this committee proposed a new act entitled “Act to regulate judicial proceedings where banks and bankers are parties, and to prohibit bank bills of certain descriptions” (the “Act of 1824”).¹¹⁷ Section 23 of this Act specifically addressed unauthorized entities issuing banknotes: “That no action shall be brought upon any notes or bills hereafter issued by any bank, banker or bankers, and intend for circulation, or upon any note, bill, bond or other security given, and made payable to any such bank, banker or bankers, unless such bank, banker, or bankers shall be incorporated and authorized by the laws of this state to issue such bills and notes, but that all such notes, and bills, bonds, and other securities shall be held and taken in all courts as absolutely void.”¹¹⁸

Section 23 of the Act of 1824 superseded the Act of 1816. Its aim was not to stop the *supply* of unauthorized banknotes, as the Act of 1816 had tried to do, but rather aim at stopping the *demand* for such unauthorized banknotes by declaring such notes to be void and unenforceable in court.¹¹⁹ This shift in focus remained the law in Ohio until 1840, when

116. *Acts of a General Nature Passed at the First Session of the Twenty-First General Assembly of the State of Ohio*, 39.

117. *Acts of a General Nature, Enacted, Revised and Ordered to be Re-Printed at the First Session of the Twenty-Second General Assembly of the State of Ohio* (Columbus, Ohio: P. H. Olmsted, 1824), 358–66.

118. *Acts of a General Nature, Enacted, . . . at the First Session of the Twenty-Second General Assembly of the State of Ohio*, 365–66.

119. The suspension of the Act of 1816 by section 23 of the Act of 1824 did not prevent actions to be brought by the state under its criminal code. In *Cahoon v. State*, 8 Ohio 537 (1838), brought during the time that the Act of 1816 was suspended, Cahoon was indicted for circulating banknotes from a non-existent corporation. Cahoon’s counsel objected to the jury instruction arguing that the jury should have been charged that “if they found the note offered in evidence was issued by an *existing* bank or company, they should acquit, whether the bank was incorporated or not” (emphasis in original). In remanding the case, the Ohio Supreme Court held that the “offence is the uttering of such note, knowing it to be of a non-existing bank or company, and not the uttering a note knowing it to have been issued by an existing unincorporated bank.” Criminal charges were never brought against any of the directors of the

the General Assembly of Ohio repealed section 23 of the Act of 1824.¹²⁰ Thus, significantly, the Act of 1824, and not the Act of 1816, was the operative law at the time when the notes of the Safety Society were being circulated. Not only did the General Assembly in 1840 repeal section 23, but it also reaffirmed that with its repeal the Act of 1816 was no longer suspended.¹²¹

The legal effects of the suspension of the Act of 1816 with the enactment of section 23 of the Act of 1824 and then the repeal of section 23 and the reinstatement of the Act of 1816 in 1840 were explained by the Ohio Supreme Court in *Johnson v. Bentley*.¹²² The defendants in that case had interposed a general demurrer (a demurrer being an attack on the legal sufficiency of an action) over a judgment entered against them under the Act of 1816 for being officers of an unauthorized bank issuing banknotes. The defendants argued that the enactment of section 23 of the Act of 1824 effectively repealed the Act of 1816. Consequently, when section 23 itself was repealed in 1840 and the General Assembly did not reenact the Act of 1816, any claims brought under the Act of 1816 were rendered invalid. Justice Nathaniel C. Reed¹²³ affirmed the judgment against the alleged bankers:

Kirtland Safety Society. Under the analysis the court used in *Cahoon v. State*, any such charge would have proven ineffective, as the Kirtland Safety Society was indeed in existence when it opened for business.

120. *Acts of a General Nature by the Thirty-Eighth General Assembly of the State of Ohio* (Columbus, Ohio: Samuel Medary, 1840), sec. 8, 117.

121. *Acts of a General Nature by the Thirty-Eighth General Assembly of the State of Ohio*, 113–17. A new act “to prohibit unauthorized Banking, and the circulation of unauthorized Bank paper” was enacted in 1845 (hereafter cited as Act of 1845). The Act of 1845 was similar to the Act of 1816 in that it provided for a \$1,000 penalty to officers, directors, or owners of an unauthorized bank, but broadened those subject to the penalty to include “every person who . . . become[s] in any way interested” in an authorized bank. The Act of 1845 eliminated the provision whereby a citizen could bring a suit and share in 50 percent of the recovery. Act of 1816, sec. 5.

122. 16 Ohio 97 (1847).

123. Justice Reed was one of four sitting Ohio Supreme Court Justices in 1847. The other three justices were Reuben Wood, Matthew Birchard and Peter Hitchcock. An act to organize the judicial courts (passed February 7, 1831), *Statutes of the State of Ohio* (Columbus: Samuel Medary, 1841) sec. 1, 222 (hereafter cited as *Statutes of the State of Ohio* (1841)) (“That the supreme court shall consist of four judges”).

The act of 1824 did not repeal the act of 1816, it only suspended its action. If it had repealed it, the repeal of the repealing act would not have revived it . . . Under the act of 1816, suits could be maintained upon the notes and bills of unauthorized bankers. The 23d section of the act of 1824 declared that the courts should no longer entertain such suits. The 11th section of the act of 1816, which fixed the liability of illegal bankers upon their bills and notes, remained unaffected. But the 23d section of the act of 1824, forbid the courts to entertain any suit or action upon such liability. Then, after the passage of the act of 1824, there was a liability without a right of action to enforce it. The remedy was denied,—it has been restored by a repeal of the act denying it. This is, then, a mere case of suspending remedy, and the legislature has the full power to restore it.¹²⁴

Justice Reed further explained that the policy behind the enactment of section 23 of the Act of 1824, which precluded the remedies under the Act of 1816, was aimed at “alarming the people, and refusing a remedy upon such paper . . . [with the] evident intention to create distrust in the public mind.”¹²⁵ However, “after a trial of the policy of the 23d section of the act of 1824 for sixteen years, it was found that it did not check illegal banking. . . . To have protected such men in their ill-gotten wealth, by the 23d section of the act of 1824, would have been a species of legalized robbery. The legislature [in 1840], therefore, repealed that clause of the [1824] act, which forbid suits to be brought by the holders of such paper.”¹²⁶

Thus, during the one-year period when the Safety Society operated (November 1836–November 1837), the Act of 1816 was in suspension, having been replaced by the Act of 1824. Section 23 of the Act of 1824 provided that no claims could be brought under the Act of 1816 and,

124. *Johnson v. Bentley*, 16 Ohio 97, 99–100 (1847); *Lewis v. McElvain*, 16 Ohio 347, 356 (1847) (By the act of March 23, 1840, this provision of the act of 1824 was repealed. And the court held in the before-cited case of *Johnson v. Bentley et al.*, “that inasmuch as this provision was repealed, the bills and notes were left as under the law of 1816, and that although void by the law of 1824, still that the plaintiffs could recover—in other words, that the repeal of the law of 1824 set up or gave validity to notes and bills which were uncollectible when issued. Such, at least, is the effect of the decision”).

125. *Johnson v. Bentley*, 16 Ohio 97, 102 (1847).

126. *Johnson v. Bentley*, 16 Ohio 97, 102–3 (1847); *Porter v. Kepler*, 14 Ohio 127, 138 (1846) (recognizes that the Act of 1824 superseded the Act of 1816); *Lawler v. Walker*, 18 Ohio 151, 158 (1849) (notes that the Act of 1816 was back in force by 1841, when the claims in the case were brought).

furthermore, that no holder of a banknote from an unauthorized bank could bring an action against any of the officers, directors, or owners of such bank. Notwithstanding all of this, the case of *Rounds v. Smith*, which was the only piece of litigation actually pursued against Joseph Smith in connection with the collapse of the Safety Society, was aimed at doing just that.¹²⁷

Grandison Newell's Year in Court

Already on February 9, 1837, only slightly over a month after the bank had opened on January 3, 1837, Samuel D. Rounds¹²⁸ initiated six suits against each of the then Committee of Directors of the Kirtland Safety Society Anti-Banking Co., including Joseph Smith, Sidney Rigdon, Warren Parrish, Frederick G. Williams, Newel K. Whitney, and Horace Kingsbury.¹²⁹ Samuel Rounds sued as a straw man for Grandison Newell.¹³⁰ Newell later

127. See appendix C for a summary chronology of the events of this lawsuit, as well as the two subsequent related actions.

128. Samuel D. Rounds “played only a small role in Kirtland’s history. He was born in Boston about 1807, lived for a time in Lewis County, New York, then moved to Painesville, Ohio about 1834. . . . Samuel and his two sons . . . laid brick for a living.” Dale W. Adams, “Grandison Newell’s Obsession,” *Journal of Mormon History* 30 (Spring 2004): 173–74. There are no known documents that explain the connection between Rounds and Newell. Perhaps Rounds’s work as a mason and Newell’s interests in various building ventures, including railroad-ing, connected them.

129. Horace Kingsbury (c. 1798–1853) was a jeweler and silversmith. He was born in New Hampshire and moved to Painesville, Ohio, in 1827. He joined the LDS Church and was ordained an elder in 1832. He was elected a Painesville trustee in 1847 and mayor in 1848. Joseph Addison Kingsbury, comp., *A Pendulous Edition of Kingsbury Genealogy, Gathered by Rev. Addison Kingsbury, D.D., Marietta, Ohio* (Pittsburgh, Penn.: Murdoch-Kerr Press, 1901), 230; *History of Geauga and Lake Counties*, 214.

130. Grandison Newell (1785–1874) was born in Barkhamstead, Connecticut. He moved to Winsted, Connecticut, where he made bells for clocks. In 1819, he moved to Kirtland, where he initially was a farmer. He opened a “pocket furnace” manufacturing company in Kirtland with Chester Hart shortly after his arrival in Ohio. In 1829, he opened a chair and cabinet factory and saw mill also in Kirtland, likely with James Fairchild as his partner. This factory remained open until 1841. He was a principal in the construction of the Wells-ville and Fairport Railroad. Newell personally invested \$60,000 in that venture, which went bankrupt in 1841. In 1849, Newell sold his home, farm, chair, and furnace companies and moved to Painesville. Elizabeth G. Hitchcock, “Grandison Newell, a Born Trader,” *Historical Society Quarterly, Lake County, Ohio*

reportedly said that he paid Rounds \$100 to bring the cases.¹³¹ Newell's involvement is beyond dispute, as he even starts to appear in the court pleadings themselves shortly after judgment was entered in October 1837.¹³² These suits were specifically brought under the Act of 1816, alleging damages as provided under section 1 of \$1,000¹³³ in each case. These suits were also brought as *qui tam*¹³⁴ suits as provided for in section 5 of the Act of 1816¹³⁵ that allowed the informer—who here was Rounds—to

10, no. 2 (May 1968): 79–82; Mary A. (Newell) Hall, comp., *Thomas Newell, and His Descendants* (Southington, Conn.: Cochrane Bros., 1878), 132–39; *History of Geauga and Lake Counties*, 250.

131. Mary A. Newell Hall, a Newell family historian, quoted Grandison Newell as saying, “Samuel D. Rounds, the complainant, I bought off, and gave him \$100. I have been to all the vexation and troubles and paid all costs from the first commencement.” Hall, *Thomas Newell, and His Descendants*, 132–38, as cited in Adams, “Grandison Newell’s Obsession,” 173.

132. See, for example, collection efforts on the judgment entered against Rigdon noted on the Bill of Goods that the sale of property owned by Rigdon that was appraised for sale on January 29, 1838, “remained unsold by direction of Grandison Newell,” and that Newell was paid the \$604.50 that was recovered by the sheriff over the same personal property of Rigdon. Bill of Costs, October 24, 1837, Geauga County Court of Common Pleas, Execution Docket G, 106, Geauga County Archives.

133. Section 1 of the Act of 1816 provided: “That if any person shall, within this state, act as an officer, servant, agent or trust to any bank or monied association . . . except a bank incorporated by a law of this state, he shall, for every such offence, forfeit and pay the sum of one thousand dollars.”

134. Sometimes abbreviated as Q.T., *qui tam* comes from the Latin phrase *qui tam pro domino rege quam pro se ipso in hac parte sequitur*, meaning “who as well for the king as for himself sues in this matter.” Giles Jacob, *The Law-Dictionary: Explaining the Rise, Progress and Present State, of the English Law*, corrected and enlarged by T. E. Tomlins, 6 vols. (Philadelphia: I. Riley, 1811), s.v. “qui tam.” John Bouvier explains a *qui tam* action occurs “when a statute imposes a penalty, for the doing or not doing an act, and gives that penalty in part to whosoever will sue for the same, and the other part to the commonwealth.” Bouvier, *Law Dictionary*, s.v. “qui tam.” The various pleadings in this case are captioned for example as “Samuel D. Rounds, *qui tam* v. Joseph Smith” (or other defendants) or sometimes simply “Samuel D. Rounds, q.t. v. Joseph Smith.”

135. Section 5 of the Act of 1816 provided: “That all fines and forfeitures imposed by this act, may be recovered by action of debt or by indictment, or presentment of the grand jury, and shall go one half to the informer where the action is brought, and the other half in aid of the public revenue of this state; but where the same is recovered by indictment or presentment, the whole shall be to the use of the state.” This language parallels similar acts enacted by Congress shortly after the enactment of the Constitution. For example, a 1791

recover 50 percent of the fine imposed. Rounds retained Reuben Hitchcock¹³⁶ to represent him in this action.¹³⁷ Hitchcock was also the state prosecutor for Geauga County.¹³⁸ Consequently, Hitchcock was the attorney for Rounds, as well as the State of Ohio. Each suit was captioned *Samuel D. Rounds v. [Defendant]*.¹³⁹

act of Congress provided that “one half of all penalties and forfeitures incurred by virtue of this act shall be for the benefit of the person or persons who shall make a seizure, or shall first discover the matter. . . . And any such penalty and forfeiture shall be recoverable with costs of suit, by action of debt, in the name of the person or persons entitled thereto.” Harold J. Krent, “Executive Control over Criminal Law Enforcement: Some Lessons from History,” *American University Law Review* 38 (1989): 296–97. This relationship between the state and the informer creates a quasi-criminal situation, criminal in that if the state itself pursued the matter it squarely is a criminal matter. However, when a private citizen brings the suit it is civil in nature. Krent notes, in this regard, “Through the qui tam actions, private citizens helped enforce the criminal laws. Such actions were long considered quasi-criminal. Indeed, during the nineteenth and early twentieth centuries, civil qui tam actions represented the functional equivalent of criminal prosecution.” Krent, “Executive Control,” 297. This relationship clearly existed in the Act of 1816 with the distinction that if the state itself brought the action it would have been criminal via indictment from a grand jury with the entire amount going to the state. This being the case, the law in such quasi-criminal actions requires a higher standard for proof. As noted by the 1835 United States Supreme Court in *United States v. The Brig Burnett*, 34 U.S. 682, 691, “no individual should be punished for violation of a law which inflicts forfeiture of property, unless the offense shall be established beyond a reasonable doubt.”

136. Reuben Hitchcock (1806–1883) was an attorney, judge, banker and railroad executive. He was born in Burton, Geauga Co., Ohio, a son of Peter Hitchcock, also an attorney and justice on the Illinois Supreme Court. Reuben attended Yale College, 1823–26. He was admitted to Ohio bar about 1831. He moved to Painesville, Geauga (now Lake) Co., Ohio, about 1831. *History of Geauga and Lake Counties*, 23, 30, 37, 43, 61–62; “Death of Judge Reuben Hitchcock of Painesville,” *Painesville Telegraph*, December 13, 1883.

137. Reuben Hitchcock wrote his father, Peter Hitchcock, on June 26, 1837, from Painesville, noting, “Last winter I was employed by Saml D. Rounds.” Reuben Hitchcock to Peter Hitchcock, June 26, 1837, Western Reserve Historical Society, Cleveland, Ohio.

138. Reuben Hitchcock was the prosecuting attorney for Geauga County from 1837 to 1839. *History of Geauga and Lake Counties*, 23.

139. Reuben Hitchcock, in a letter to his father dated February 6, 1837, asks, “I wish to ascertain the practice in this State, when it is provided that the penalty may be recurred by action of debt or indict— one half to the informed + the other half to the State, but if recovered by indictment the whole goes to

Rounds had writs of summons¹⁴⁰ ordered by Presiding Judge Van R. Humphrey¹⁴¹ and issued on February 9, 1837, by the court clerk, David D. Aiken,¹⁴² against each defendant. These summons commanded that the various defendants appear before the Geauga County Court of Common

the State— In case an action of debt is brought at the instance of an informer should the suit be in the name of the State of Ohio for of the informer qui tam—I have examined considerably I can find nothing in our decisions on the subject, and know not what the old fashioned qui tam actions are in this State— If consistent with your duty will you inform me on this point.” Reuben Hitchcock to Peter Hitchcock, February 6, 1837, Western Reserve Historical Society. While we do not have Peter Hitchcock’s reply, Reuben determined to bring the case in the name of the informer, Rounds, and not the State of Ohio. “Where a statute creates a penalty, and authorizes a recovery before a justice by an action in debt, but is silent as to the person or corporation in whose name the penalty shall be prosecuted, the action should, in general, be brought in the name of ‘The State of Ohio.’ . . . But if part be given to him, or to any other informer who shall sue, and part to some other person, or corporation, then the suit should be brought by the party aggrieved, or by the informer; who, with the person or corporation entitled to a portion of the penalty should be named in the process.” Joseph R. Swan, *A Treatise on the Law Relating to the Powers and Duties of Justices of the Peace and Constables in the State of Ohio* (Columbus: Isaac N. Whiting, 1839), 487 (hereafter cited as Swan, *Duties of Justice of the Peace*).

140. Writs of summons are writs prepared by the court and given to a constable or sheriff to serve on a party commanding them to come to court to answer a complaint on a specific date. After serving the defendant(s), the officer would then return the original copy of the summons to the court with an endorsement on the back indicating when and how they performed the service, or that they could not find the defendant within their bailiwick after searching for them. Jacob, *Law-Dictionary*, 6:137, s.v. “writ of summons”; Bouvier, *Law Dictionary*, s.v. “summons”; *Statutes of the State of Ohio* (1841), ch. 66, sec. 14, 15, 16 114(8); ch. 86, sec. 1, 3, 5, 6; ch. 97, sec. 3.

141. Van Rensselaer Humphrey (1800–1864) was a teacher, lawyer, and judge born in Goshen, Connecticut. He moved to Hudson, Ohio, in June 1821 and in 1824 was elected Hudson Township justice of the peace. He was a member of the Ohio House of Representatives in 1828 and 1829 and elected by the Ohio Legislature as president judge of the Court of Common Pleas for the Third Judicial District in 1837, a position he would hold until 1844. William Henry Perrin, *History of Summit County: With an Outline Sketch of Ohio* (Chicago: Baskin and Bettey, 1881), 304, 712, 841.

142. David Dickey Aiken (1794–1861) was the Geauga County clerk from 1828 to 1841. He was made an associate justice of the Geauga County Court of Common Pleas in 1846. *History of Geauga and Lake Counties*, 221; “Death of Judge Aiken,” *Painesville Telegraph*, December 28, 1861.

Pleas on March 21, 1838, to answer the action of a plea of debt¹⁴³ for \$1,000 each. Describing the claim, the summons was endorsed, noting, "Suit brot to recover of deft [defendant] a penalty of \$1000 incurred by acting on the 4th day of Jan.^y 1837, as an officer of a Bank not incorporated by law of this State and denominated 'The Kirtland Safety Society Anti Banking Co.' contrary to the Statute in such case made and provided. Amt. claimed to be 'due \$1000.'"¹⁴⁴

Sheriff Abel Kimball¹⁴⁵ served the summons on the defendants.¹⁴⁶ The returns of the summons were reviewed by the Geauga County

143. A plea of debt is the name of an action used for the recovery of a debt. The nonpayment is an injury, for which the proper remedy is by action of debt to compel the performance of the contract and recover the specific sum due. Action of debt is a more extensive remedy than assumpsit, as it is applicable for recovery of money due upon a legal liability, as for money lent, paid, had and received, due on an account, for work and labor, and so forth. Jacob, *Law-Dictionary*, s.v. "debt"; Bouvier, *Law Dictionary*, 1:290–91, s.v. "plea of debt"; *Bank of Chillicothe v. Town of Chillicothe*, 7 Ohio 31 (1836); *Carey's Adm'r v. Robinson's Adm'r*, 13 Ohio 181 (1844).

144. Each writ of summons was identical in this regard. See Transcripts of Proceedings for each defendant, each dated October 24, 1837, Geauga County Court of Common Pleas, Final Record book U, Geauga County Archives: 353–54 for Warren Parrish (hereafter cited as Parrish Transcript), 354–56 for Frederick G. Williams (hereafter cited as Williams Transcript), 356–57 for Newel K. Whitney (hereafter cited as Whitney Transcript), 358–59 for Horace Kingsbury (hereafter cited as Kingsbury Transcript), 359–62 for Sidney Rigdon (hereafter cited as Rigdon Transcript), 362–64 for Joseph Smith (hereafter cited as Smith Transcript). Hereafter collectively cited as Trial Transcripts.

145. Sheriff Abel Kimball (1800–1880) was a farmer born in Rindge, New Hampshire. He moved to Madison, Geauga County, Ohio, in August 1813. He served as Geauga County second sheriff beginning in 1835 and as sheriff from 1838 to 1841. Township Clerk, "Kirtland Township Trustee's Minutes and Poll Book, 1838–1846" (Kirtland, Lake County, Ohio); Lake County Historical Society, transcriber, "Kirtland Township Records, 1838–1846," CD-ROM database, *Mormon Related Archives from the Lake County Historical Society* (Kirtland Hills, Ohio: Lake County Historical Society, 2004), 9, 90; Ohio Historical Records Survey Project Service Division, Work Projects Administration, *Inventory of the County Archives of Ohio, No. 28, Geauga County (Chardon)* (Columbus, Ohio: Ohio Historical Records Survey Projects, 1942), 299.

146. Sheriff Abel Kimball's service of process was as follows: Joseph Smith: left a copy with his wife at his home on February 10, 1837 (Smith Transcript); Sidney Rigdon: left a copy with his wife at his home on February 10, 1837 (Rigdon Transcript); Frederick G. Williams: left a copy with his wife at his home on

Court of Common Pleas on March 21, 1837, during its March term and the court continued the case until the June term.¹⁴⁷

On April 24, 1837,¹⁴⁸ Rounds, by his counsel, Reuben Hitchcock, filed his declaration (hereafter cited as Declaration) with the court. A declaration is roughly the equivalent of the filing of a complaint today.¹⁴⁹ The Declaration, using the pleadings from the case brought against Joseph Smith as illustrative, in pertinent part, stated (paragraph numbers and emphasis added):

1. Samuel D. Rounds who sues as well for the State of Ohio as for himself complains of Joseph Smith Junior in a plea of debt.
2. For that the said Joseph Smith Junior on the fourth day of January in the year of our Lord one thousand eight hundred and thirty seven at Kirtland township in said County of Geauga **did act as an officer, servant, agent and trustee of a Bank** called “The Kirtland Safety Society Anti Banking Co.” which said Bank was not then and there **incorporated by law**; contrary to the Statute in such case made and provided whereby and by the force of the said statute the defendant has forfeited for said offence the sum of one thousand dollars and thereby and by force of said statute an action hath

February 10, 1837 (Williams Transcript); Horace Kingsbury: personally served on February 10, 1837 (Kingsbury Transcript); Newel K. Whitney: personally served undated (Whitney Transcript); Warren Parrish: personally served on March 17, 1837 (Parrish Transcript).

147. The Ohio General Assembly enacted An act to regulate the times of holding the Judicial Courts on February 4, 1837. This act delineated the schedule for the Court of Common Pleas for Geauga County, which was then part of the Third Circuit, noting that it would hold court during the following three terms: “A March term commencing on March 21; June term, commencing on June 5; and an October term, commencing on October 24.” *Act of a General Nature Passed at the First Session of the Thirty-Fifth General Assembly of the State of Ohio* (Columbus: S. R. Dolbee, 1837), sec. 4, 13.

148. In only the Kingsbury Transcript is the date of the filing of the Declaration noted. In the rest of the transcripts the date is left blank.

149. The declaration is a document filed by the plaintiff in a Court of Law (as opposed to Chancery) that sets forth the names of the parties, facts from the view of the plaintiff, the legal basis under which the cause of action arises (described as a writ), and the relief sought. Jacob, *Law-Dictionary*, s.v. “declaration”; Bouvier, *Law Dictionary*, s.v. “declaration”; *Nichols v. Poulson*, 6 Ohio 305 (1834); *Belmont Bank of St. Clairsville v. Walter B. Beebe*, 6 Ohio 497 (1834); *Headington v. Neff*, for the use of Neff, 7 Ohio 229 (1835).

accrued to the plaintiff who sues as aforesaid to have and demand of and from the defendant for the said State of Ohio and for himself, the said sum of one thousand dollars one half for the said State of Ohio and the other half for the plaintiff.

3. And also for that the said defendant afterwards to wit; on the day and year last aforesaid at Kirtland township aforesaid in the County of Geauga aforesaid did act as an officer of a certain other Bank called and denominated "The Kirtland Safety Society Anti Banking Co." which said last mentioned Bank was not then and there incorporated by law by then and there **assisting in the discounting of paper and lending money for said Bank contrary to the Statute** in such case made and provided, whereby and by force of the said statute the said defendant has forfeited for said last mentioned "offence" the further sum of one thousand dollars; and thereby and by force of said statute an action hath accrued to the plaintiff who sues as aforesaid to have and demand of and from the said defendant for the said State of Ohio and for himself the said last mentioned sum of one thousand dollars; one half for the said State of Ohio and the other half for the plaintiff.
4. And also for that the said defendant afterwards to wit; on the day and year last aforesaid at Kirtland township aforesaid in the County of Geauga aforesaid did **act as an officer of a certain other Bank not incorporated by law**; contrary to the Statute in such case made and provided whereby and by the force of the said statute the defendant has forfeited for said last mentioned offence the further sum of one thousand dollars and thereby and by force of said statute an action hath accrued to the said plaintiff who sues as aforesaid to have and demand of and from the defendant for the said State of Ohio and for himself said last mentioned sum of one thousand dollars, one half for the said State of Ohio and the other half for the plaintiff.
5. Yet the said defendant though often requested so to do has not paid the said several sums of one thousand dollars nor any nor either of them to the said State of Ohio and to the plaintiff who sues as aforesaid; but has always neglected and refused so to do; which is to the damage of the plaintiff the sum of one thousand dollars, and therefore he brings this suit &c.¹⁵⁰

150. Trial Transcripts; emphasis added.

This Declaration demarcates that the claims brought were based on the Act of 1816 for unauthorized banking. The allegations were drafted to squarely fit within the language of the Act of 1816. For example, paragraph 2, above, alleged a claim for a \$1,000 penalty for being a principal in an unauthorized bank. This claim and penalty was provided in sections 1 and 2 of the Act of 1816. Likewise, paragraph 3, above, alleged a claim for a \$1,000 penalty as a result of said person identified in paragraph 1, above, “discounting of paper and lending money.” This claim and penalty uses the exact language of “discounting of paper and lending money” found in section 3 of the Act of 1816. Paragraph 4, above, alleged a claim pursuant to “the Statute,” for a \$1,000 penalty for being a principal in “a certain other Bank” that was also unauthorized, being “not incorporated by law.” As previously noted, the Society was originally formed as “The Kirtland Safety Society Bank Company” on November 2, 1837, and this name was changed in January 1837 to “The Kirtland Safety Society Anti-Banking Company.”¹⁵¹ Thus, the allegations in paragraph 4, above, may be making reference to notes that were issued and discounted under the name “The Kirtland Safety Society Bank Company,” instead of “The Kirtland Safety Society Anti-Banking Company,” but either way this paragraph bases its complaints on “the Statute,” namely the Act of 1816. Finally, each of these paragraphs in the Declaration makes reference to a 50–50 split between Rounds, as the plaintiff, and the State of Ohio. These references are in accord with section 5 of the Act of 1816 that provided that the penalty “shall go one half to the informer where the action is brought, and the other half in aid of the public revenue of this state.”

Based on the foregoing, it is clear that the Declaration is squarely, indeed, exclusively based on the Act of 1816. Rounds’s attorney, Reuben Hitchcock, further confirmed this in a letter to his father dated June 26, 1837, in which he describes the lawsuits as “qui tam suits vs the Mormons under the act prohibiting the circulation of unauthorized Bank paper to recover the penalty one half of which goes to the informer & the other half ‘in aid of the public revenue of the State,’” actually quoting the Act

151. As mentioned in note 59 above, this change was further evidenced by replacing “President” with “Secretary” and “Cashier” with “Treasurer” on the notes that had been already executed in anticipation of opening the bank. Also, stamps were made with the words “Anti” and “ing” and were used on some of the executed notes to indicate the name change. However, the majority of notes distributed did not have “Anti” or “ing” stamped on them. Staker, *Hearken O Ye People*, 479.

of 1816.¹⁵² The problem with Hitchcock's action, however, is that section 23 of the Act of 1824, as discussed above, had suspended the Act of 1816. Consequently, regardless of the veracity of factual allegations made in the Declaration, as a matter of law, Rounds had not stated a viable cause of action. And it appears that that is what Joseph Smith and his fellow defendants' attorneys, William Perkins¹⁵³ and Salmon S. Osborn,¹⁵⁴ understood, as they filed demurrers in each case to be heard during the June 1837 term.¹⁵⁵ As explained by Giles Jacob:

152. Reuben Hitchcock to Peter Hitchcock, June 26, 1837, Joseph Smith Collection, CHL. See Act of 1816, sec. 5.

153. William Lee Perkins (1799–1882) moved to Painesville, Ohio, in 1828. He formed the law firm of Perkins & Osborn with Salmon S. Osborn on February 18, 1834, and became the Lake County (divided from Geauga County) prosecuting attorney in 1840. *History of Geauga and Lake Counties*, 30, 62, 63, 87.

154. Salmon Spring Osborn (1804–1904) opened a law office in Chardon, Geauga County, Ohio, in partnership with R. Giddings in 1828. He moved to Painesville, Ohio, in about 1833 and formed the law firm of Perkins & Osborn the following year. *History of Geauga and Lake Counties*, 215, 216.

155. Perkins & Osborn were retained by Joseph Smith and the other defendants in March 1837, who paid to the law firm a \$5.00 retainer each. See Bill for Attorney Fees from Perkins & Osborn to Joseph Smith, CHL (hereafter cited as Perkins & Osborn Billings). Joseph Smith had retained Perkins & Osborn on several matters noted in this bill that accounts for services provided from March through December 1837. From a letter dated October 29, 1838, from William Perkins to Joseph Smith that was a cover letter to a billing statement, we can conclude that Perkins provided most of the legal services in this case. William L. Perkins to Joseph Smith, October 29, 1838, Joseph Smith Collection and Joseph Smith Office Papers, CHL. This letter notes:

Painesville Oct 29. 1838

Joseph Smith Jr Esq

Dear Sir

At suggestion of our friend Mr. Granger we sent your statement of our amt & demands—You know I threw my whole influence, industry & whatever talents I have faithfully into your affairs—do something for me. “The labourer is worthy of his hire”

In the Qui tam suits of Rounds, we have charged the different individuals according as we thought was about right in proportion to our services—I spent a great deal of time & labor in my office in those suits & though unsuccessfully it was no fault of ours you know. Parrish's billed & we have a judgt against him for his proportion & presume it will be collected—

I have heard much of your troubles & take an interest in your welfare & believe you must prevail, notwithstanding all persecutions—

For in every action the point of controversy consists either in *fact* or in *law*; if in *fact*, that is tried by the jury; but if in *law*, that is determined by the court.

A *demurrer*, therefore, is an issue upon matter of law. It confesses the facts to be true, as stated by the opposite party; but denies that by the law arising upon those facts, any injury is done to the plaintiff; or that the defendant has made out a lawful excuse; according to the party which first demurs, . . . rests or abides in the law upon the point in question. As, if the matter of the declaration be insufficient in law . . . then the defendant demurs to the declaration.¹⁵⁶

Perkins's use of demurrers appears both appropriate and fatal to the declarations filed by Hitchcock. Such an argument would be straightforward: For purposes of the demurrers, the facts alleged in the declarations are taken as true. However, even when taken as true, Hitchcock failed to allege a legally viable claim in the declaration as each and every claim is made under the Act of 1816, which had been suspended by the

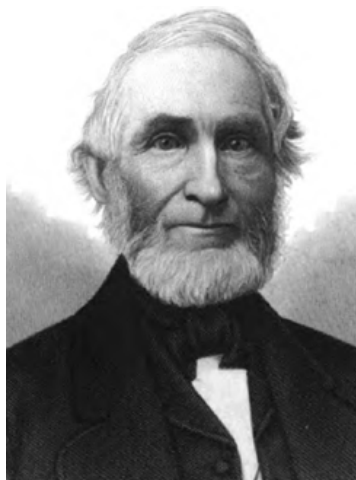
I read Mr. Rigdons elegant & spiritual 4th of July address for mail, please present my compliments to him & wish him well for his prosperity—We have a small amount against Mr. Marks, which he will recognize, He escaped our collection when he left—

Yours truly
W^m Perkins

P.S. We also sent an amount against Mr George W Robinson & a ___
G.W. Robinson

Joseph Smith assumed responsibility for his legal fees, as well as those of Sidney Rigdon, Frederick G. Williams, and Newel K. Whitney over the Rounds case. He did not assume responsibility for either Warren Parrish or Horace Kingsbury. By October 1838 when the bill was sent by Perkins to Smith, Parrish had left the Church, had started his own church, and was under suspicion of embezzling money from the Kirtland Safety Society. It appears that Horace Kingsbury left the LDS Church prior to or just after these events but was a resident in Painesville both before and after the Mormons arrived and were then driven out of Kirtland. It would therefore make sense that Smith would not assume his obligations. Kingsbury was elected mayor of Painesville in 1847.

156. Jacob, *Law-Dictionary*, s.v. "demurrer" (emphasis in original); Bouvier, *Law Dictionary*, s.v. "demurrer"; Green v. Dodge and Cogswell, 6 Ohio 80, 84 (1833) (Facts are taken as true in the demurrer and court only looks at the application of the law); Belmont Bank of St. Clairsville v. Beebe, 6 Ohio 497, 497–98 (1834) ("This case stands before the court on a demurrer to the declaration . . . The omission of this averment makes the count bad"); Pennsylvania and Ohio Canal Co. v. Webb, 9 Ohio 136, 138 (1839) ("The first question arising upon the demurrer is upon the sufficiency of the declaration").



William Perkins. From *History of Geauga and Lake Counties, Ohio* (1878).

Act of 1824. Consequently, the declarations, and each claim asserted therein, should be dismissed.

Unfortunately, the demurrers that would confirm that this was the legal argument actually raised by Perkins have not survived. Rather, the court record merely notes: “This cause came on to be heard upon a demurrer to the declaration of the plff. & was argued by counsel¹⁵⁷ on consideration thereof whereof it is adjudged that the said demurrer be overruled with costs on motion of the def. leave is given him to amend—on payment of the costs—and this cause is continued until the next term [in the fall of 1837].”¹⁵⁸ However, after the trial of

this case, Perkins & Osborn prepared bills of exceptions that included the argument “that the statute upon which the suit was founded was not in force.”¹⁵⁹ The importance of this argument was certainly not lost on them. The *Painesville Republican* even wrote about the problems with the Act of 1816 in the context of the Safety Society in an article dated January 19, 1837, noting, “a law of this state passed February 22, 1816, ‘to prohibit the issuing and circulating of unauthorized Bank Paper,’ published in the Telegraph last week, if now in force, might subject persons who give these bills a circulation, to some trouble. It is doubted however,

157. It appears that Perkins & Osborn charged an additional \$5.00 to each defendant for preparing and arguing these demurrers for a total of \$30.00. Perkins & Osborn Billings.

158. Overruled Demurrer in *Rounds v. Smith*, June 10, 1837, Common Pleas Journal, book N, 223, Geauga County Archives; Overruled Demurrer in *Rounds v. Rigdon*, June 10, 1837, Common Pleas Journal, book N, 223; Overruled Demurrer in *Rounds v. Kingsbury*, June 10, 1837, Common Pleas Journal, book N, 222; Overruled Demurrer in *Rounds v. Williams*, June 10, 1837, Common Pleas Journal, book N, 223; Overruled Demurrer in *Rounds v. Parrish*, June 10, 1837, Common Pleas Journal, book N, 223; Overruled Demurrer in *Rounds v. Whitney*, June 10, 1837, Common Pleas Journal, book N, 222 (hereafter collectively cited as Overruled Demurrers).

159. Perkins & Osborn Billings.

by good judges, whether the law to which we have alluded, is now in force, or if in force, whether it is not unconstitutional, and therefore not binding upon the people.”¹⁶⁰

In a February 16, 1837, article entitled “For the Republican,” the *Painesville Republican* further articulated the problems with the Act of 1816: “The law of 1816, under which these suits are instituted, has long since become obsolete and inoperative. In the year 1824, the legislature appointed by joint resolution, a committee to revise generally the laws of the State. That committee, in their sound discretion, adopted such laws as were suited to the genius and spirit of the age, and rejected such as were not; but which were made upon the spur of the occasion without much reflection or deliberation.”¹⁶¹

160. “Anti-Banking Company,” *Painesville Republican*, January 19, 1837.

161. “For the Republican,” *Painesville Republican*, February 16, 1837. The article further noted: “The law of ’16 against private banking, was of the latter description—it was rejected by the committee and was not republished by the legislature; but instead, a general law regulating banks and bankers was passed, containing amongst other provisions, a section making all notes, bonds, &c. issued by unauthorized banking companies null and void, without, however, annexing any penalty. . . . It is the duty of the legislature (and has hitherto been their practice) to promulgate or publish their laws. It then (and not before) becomes the duty of any citizen to obey the laws. *We must suppose the legislature regarded the law of 1816 as not in force, and hence they did not publish it with their revised code*; unless indeed we suppose the intended purposely to adopt the policy of the Athenian tyrant Draco, who, the more easily to ensnare his people, wrote his laws in small characters and hung them up high in the market places, that they might not read them. If the legislature makes their decrees and lock[s] them up in their own bosoms, or in the archives of the State, and then punish the people for not obeying laws they never saw or heard of, they are greater tyrants than ever disgraced the age of a Nero or Calagula [*sic*]. What man of common information thinks of looking beyond the statute books which is published and distributed by authority of the legislature, for a rule of civil conduct? And who expects to be punished as a criminal for not conforming to laws of which he has never heard. The administration of criminal justice is a matter of the highest importance to a people proud of and boasting of their liberties, and in proportion to its importance, (says a great lawyer) should be the care and attention of the legislature, in properly forming and enforcing it. It should be founded on principles that are permanent, uniform and universal, and always conformable to the dictates of truth and justice, the feelings of humanity and the indelible rights of mankind. *If this law be still in force* there has been on the part of those high in office, a great dereliction of duty, and probably Mr. Servantes would come in for a share of the odium” (emphasis added). However, other newspapers reported that some people thought that

With the denial of the demurrers and the conditional granting of leave to amend, thereby continuing the case, the court assessed costs against the defendants for \$1.05 each that included court costs and the opposing counsel's legal fees.¹⁶² Payment of the costs was a condition to allow the defendants to amend their responses to the declarations—essentially to file answers. This requirement was in accord with the practice and law of the time.¹⁶³ The answers filed by the defendants are also not extant.¹⁶⁴ However, from the trial transcripts one can derive from

one section of the Act of 1816 was still in force. As the *Huron Reflector* reported on January 24, 1837, "We consider this whole affair a deception, and are told by a legal gentleman, that there is still in force a section of the statute affixing a penalty of \$1000 to the issuing or passing unauthorized Bank paper like the present." Reprinted in *Painesville Telegraph*, January 29, 1830.

162. Bill of Costs in *Rounds v. Smith*, June 5, 1837, Geauga County Court of Common Pleas, Execution Docket G, 15, notes that it was paid, but no date of payment; Bill of Costs in *Rounds v. Rigdon*, June 5, 1837, Geauga County Court of Common Pleas, Execution Docket G, 15, notes that it was paid on July 19, 1837; Bill of Costs in *Rounds v. Kingsbury*, June 5, 1837, Geauga County Court of Common Pleas, Execution Docket G, 15, notes that \$1.00 was paid; Bill of Costs in *Rounds v. Williams*, June 5, 1837, Geauga County Court of Common Pleas, Execution Docket G, 15, notes that it was paid on August 5, 1837; Bill of Costs in *Rounds v. Parrish*, June 5, 1837, Geauga County Court of Common Pleas, Execution Docket G, 15, notes that it was paid, but no date of payment; Bill of Costs in *Rounds v. Whitney*, June 5, 1837, Geauga County Court of Common Pleas, Execution Docket G, 15, notes that it was paid, but no date of payment.

163. Leave to amend as requested by the defendants was typically granted on payment of costs, as required by statute. An act to regulate the practice of the judicial courts (passed March 8, 1831), *Statutes of the State of Ohio* (1841), sec. 51, 662 (hereafter cited as Practice of the Courts Act). For example, in *Headley v. Roby*, 6 Ohio 521, 522 (1834), "on overruling the demurrer, the court gave the plaintiff in error leave to amend. The plaintiff in error then filed a plea of payment to the declaration and a notice of set-off." In addition to having to pay the costs associated with the demurrer, an affidavit may also be required to justify the motion to amend. This issue was also discussed in *Manley v. Hunt and Hunt*, 1 Ohio 257, 257 (1824), where the trial court overruled a demurrer. "The defendants then moved for leave to answer, but not having produced an affidavit of merits, and that the demurrer was not filed for delay, as the statute requires, the court were on the point of overruling the application, when, by consent of the complainant, defendants were permitted to file their answers."

164. Perkins & Osborn did not bill for the preparation of these answers. One may assume it was part of the fees they charged for the preparation and arguing the demurrers or was taken out of the initial retainers. Perkins & Osborn Billings.

the bills of exceptions prepared by defendants' counsel that the answers included the following three points:

1. The Kirtland Safety Society Anti-Banking Company was not engaged in operating as a bank, but as a joint stock company.
2. The Act of 1816 upon which the case was brought was not in force after the enactment of section 23 of the Act of 1824, and even if the Act of 1816 was enforceable, the practice in Ohio was not to enforce it.
3. The making of loans by the Kirtland Safety Society Anti-Banking Company was not the circulation of paper money.

Trial in October 1837. The trial of these cases took place during the October term of the Geauga County Court of Common Pleas, commencing on October 24, 1837.¹⁶⁵ The cases were argued before a four-judge bench,¹⁶⁶ including presiding judge Van R. Humphrey,¹⁶⁷ and associate judges John Hubbard,¹⁶⁸ Daniel Kerr¹⁶⁹ and Storm Rosa.¹⁷⁰ The first matter of business when these cases were called was Rounds's

165. Trial Transcripts.

166. An act to organize the judicial courts (passed February 7, 1831), *Statutes of the State of Ohio* (1841), sec. 4, 222 ("That the court of common pleas shall consist of a president and three associate judges").

167. See note 141.

168. John Hubbard (1780–1854) was a farmer and judge born in Sheffield, Massachusetts. He moved to Madison, Geauga County, Ohio, by 1812. He was elected as an associate judge for Geauga County Court of Common Pleas in 1827. Judy J. Stebbins, *Guide to the Painesville (Ohio) Telegraph, 1822–1829: Newspaper Abstracts with Indexes* (Willoughby, Ohio: Genealogical Research, 1982), 40, 77, 157, 188.

169. Daniel Kerr (1791–1871) was a farmer, postmaster, and judge born in Fallowfield, Pennsylvania. He moved to Painesville, Ohio, before 1816. He then moved to Mentor, Ohio, where he became postmaster in 1819. Kerr returned to Painesville, where he was elected as an associate judge for the Geauga County Court of Common Pleas by 1831. *History of Geauga and Lake Counties*, 238, 251.

170. Storm Rosa (1791–1864) was a doctor, judge, teacher, and newspaper editor. Born in Cocksackie, New York, he moved to Painesville, Ohio, in 1818. He was a teacher at the Medical College of Willoughby University in 1834, located in Chagrin, Ohio. He was elected as an associate judge of the Court of Common Pleas for Geauga County in 1836. Rosa was also the editor of the *Painesville Telegraph* from September 1838 to July 1839. Margaret O. Collacott, "Dr. Storm Rosa," *Historical Society Quarterly, Lake County, Ohio* 6 (February 1964): 92–94; *History of Geauga and Lake Counties*, 23, 32, 36–37.

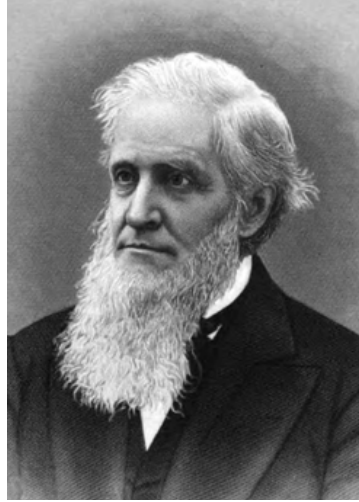
ordered by the Court that this cause be continued until the next term of said Court.
 And now at this term of said Court that is to say at the term thereof first aforesaid came
 the said parties by their counsel and thereupon came a jury to wit: Amos Cunningham,
 John M. Mackin, Charles Spence, Gary H. Hays, George S. Lee, William C. Hol-
 mes, William Graham, Benjamin Adams, Harrison F. Atkins, Jonathan Hough,
 Lemuel Dodge and Thaddeus Cook who being duly empanelled and sworn retu-
 red and truly to try the issue joined between the parties and a true verdict to give, do find
 that the defendant is indebted to the plaintiff in the sum of one thousand dollars.
 Whereupon the defendant files his motion to set as. It is therefore considered by the
 Court that the plaintiff recover against the defendant his debt aforesaid so far as
 aforesaid, and also his costs and charges by him incurred about the prosecuting of this
 suit in that behalf expended taxed at twenty two dollars and seventy seven cents.
 And it is ordered by the Court that the defendant pay the costs and charges by him
 made in and about the defending of this suit taxed at Eighty one cents, and
 in default thereof that execution issue to collect the same. The defendant excepts to the
 opinion of the Court, and files his Bill of Exceptions signed and sealed by the
 Judges thereof, in the words and figures following to wit:
 Adversely Rigdon. This cause came on for trial before the Court and jury upon
 the pleadings, And the Plaintiff in order to maintain his debt intro-
 duced in evidence a Remond quitclaim, dated September and offered to prove by them that the "Society"
 described in the declaration existed at the time therein stated, at First
 Land in said County; but it appearing that said Society was organized by and
 ten articles of association then in their possession the Plaintiff by his counsel objected
 to such proof without first showing notice to said Society, to produce said articles;
 but the Court overruled the objection and admitted the evidence. The Plaintiff
 did not produce any of the bills loaned, in Court. The Plaintiff further offered to prove that
 before and at the time in the declaration mentioned said "Society" consisting of sundry
 individuals carried on the business of issuing paper or bills of the likeness and similitude
 of Bank Bills of various denominations which would pass and circulate, in testimony
 of which among other persons and offered in evidence and subscribed by the Plaintiff
 the following is a copy to wit:



That said Society at the same time loaned said paper or bills to sundry individuals
 that the debt was a debt due in said Society and that he assisted in loaning the money
 to which the debt by his counsel also objected, but the Court overruled said objection
 and admitted the evidence, and the Plaintiff asked, and through the Plaintiff by his
 counsel moved the Court to charge the jury that the Statute upon which the Plaintiff
 founded was not in force, that the business of said paper or bills was not a carrying
 of money if the Statute was in force and that there was no evidence that would

Trial transcript of October 24, 1837, including a Kirtland Safety Society banknote. Geauga Court of Common Pleas, Geauga County Archives. Photo courtesy Jeffrey N. Walker.

failure to pursue the actions against four of the six defendants, namely Warren Parrish, Frederick G. Williams, Newel K. Whitney, and Horace Kingsbury. The trial transcripts of Williams, Whitney, and Kingsbury all note: “And now at this term of said court, comes the defendant, and the plaintiff being three times demanded to come and prosecute his suit, comes not but makes default.”¹⁷¹ Entering default to dismiss these actions conformed to Ohio law.¹⁷²



Reuben Hitchcock. From *History of Geauga and Lake Counties, Ohio* (1878).

In contrast, the trial transcript regarding the action against Warren Parrish stated: “And now at this term of said Court . . . comes the said plaintiff and discontinues his suit.”¹⁷³ No reason is given in the record why the case against Parrish is treated differently. A possible rationale for the difference may be found in a letter sent by Reuben Hitchcock to his father, Peter Hitchcock, dated June 26, 1837, where he asked the following question:

I wish your advice in the following matter. Last winter I was employed by Sam^l D. Rounds & commence w[.]rat <qui tam> suits vs the Mormons under the act prohibiting the circulation of unauthorized Bank paper to recover the penalty one half of which goes to the informer & the other half “in air of the public revenue of the State”—Under the decisions Rounds has no right to discontinue the suits, but Kingsbury who is one of the Defts [defendants] is anxious to get out of the difficulty & perhaps Rounds would let him off if he could—Under these circumstances have I as prsecuting Atty any ~~the~~ control over the suits?

171. Williams Trial Transcript; Whitney Trial Transcript; Kingsbury Trial Transcript. The case against these defendants was dismissed, and the plaintiff was required to pay the court fees.

172. *Spencer v. Brockway*, 1 Hammond 257 (Ohio 1824) (“That such proceedings were had, that the said Elias being three times solemnly called, came not, but made default, and that judgment was thereupon rendered”); *Flight v. State*, 7 Ohio 180, pt. 1, 180 (1835) (“The said Charles Flight was three times called to come into court, but made default, and his recognizance was forfeited”).

173. Parrish Trial Transcript.

Have I any authority, where the County is not directly interested in the collection of money? If Rounds should ~~not~~ direct me not to prosecute the suit any fa[r]ther, should I be under any obligation to carry it on?— Please advise me on these points.¹⁷⁴

Perhaps Hitchcock got Warren Parrish and Horace Kingsbury confused. If that were the case, Parrish may have paid something to Rounds to get out of the case. However, neither defaulting nor dismissing these defendants fully resolved the cases, and the Geauga County Court of Common Pleas surely understood that.¹⁷⁵ The following judgments were entered in each of these four cases: “The pl[ainti]ff being called to come into court and prosecute this suit comes not, Ordered that the plaintiff becomes non suit,¹⁷⁶ and that the def[endan]t recov[e]r against him his costs.”¹⁷⁷ In each case, costs were assessed against Rounds, as follows:

174. Reuben Hitchcock to Peter Hitchcock, June 26, 1837; emphasis in original.

175. By statute, by dismissing this kind of case, Rounds was obligated to pay all costs. “That if any informer on a penal statute, to whom a penalty, or any part thereof, if recovered, is directed to accrue, shall discontinue his suit or prosecution, or shall be nonsuited in the same . . . such informer shall pay all costs accruing on such suit or prosecution.” Practice of the Courts Act, sec. 61, 665.

176. Nonsuit is the “name of a judgment given against a plaintiff, when he is unable to prove his case, or when he refuses or neglects to proceed to trial of a cause after it has been put at issue, without determining such issue. It is either voluntary or involuntary. A voluntary nonsuit, as in this case, is an abandonment of his cause by a plaintiff, and an agreement that a judgment for costs be entered against him. An involuntary nonsuit takes place when the plaintiff on being called, when his case is before the court for trial, neglects to appear, or when he had given no evidence upon which a jury could find a verdict.” Bouvier, *Law Dictionary*, s.v. “nonsuit”; Jacob, *Law-Dictionary*, s.v. “nonsuit.” There are no appeals from a nonsuit, unless the nonsuit was ordered by or proceeded from the action of the court; for, if the voluntary act of the party, he cannot appeal from it. *Bradley v. Sneath*, 6 Ohio 490, 496 (1834).

177. Record of Judgment in *Rounds v. Parrish*, Geauga County Court of Common Pleas, Journal N, 242; Record of Judgment in *Rounds v. Williams*, Geauga County Court of Common Pleas, Journal N, 242; Record of Judgment in *Rounds v. Whitney*, Geauga County Court of Common Pleas, Journal N, 241–42; Record of Judgment in *Rounds v. Kingsbury*, Geauga County Court of Common Pleas, Journal N, 241.

Case	Court Costs	Attorney's Fees
Rounds v. Parrish	\$2.15	\$5.00 ¹⁷⁸
Rounds v. Williams	\$2.15	\$5.00 ¹⁷⁹
Rounds v. Whitney	\$2.15	\$5.00 ¹⁸⁰
Rounds v. Kingsbury	\$3.53	\$5.00 ¹⁸¹
Total:		\$30.28

The court records do not show that any of these costs were ever paid by Rounds or Newell.

With these four cases dismissed, Rounds moved forward to try the two remaining cases. The record identifies that Joseph Smith's case was tried just following Rigdon's case.¹⁸² A twelve-man jury tried both.¹⁸³

178. Bill of Costs in Rounds v. Parrish, Geauga County Court of Common Pleas, Execution Docket G, 127. This Bill of Costs also notes that Rounds owed \$3.22 in his own court costs; Parrish Trial Transcript.

179. Bill of Costs in Rounds v. Williams, Geauga County Court of Common Pleas, Execution Docket G, 126. Perkins & Osborn billed Joseph Smith \$10 for Williams's portion of the trial. This Bill of Costs also notes that Rounds owed \$3.36 in his own court costs; Williams Trial Transcript.

180. Bill of Costs in Rounds v. Whitney, Geauga County Court of Common Pleas, Execution Docket G, 127 (actually notes \$8.53 owed, but itemization only totals \$7.15 and that amount matches his Trial Transcript). Perkins & Osborn billed Joseph Smith \$10 for Whitney's portion of the trial. This Bill of Costs also notes that Rounds owed \$3.22 in his own court costs; Whitney Trial Transcript.

181. Bill of Costs in Rounds v. Kingsbury, Geauga County Court of Common Pleas, Execution Docket G, 126. This Bill of Costs also notes that Rounds owed \$3.46 of his own court costs; Kingsbury Trial Transcript.

182. Common Pleas Journal, book N, 237.

183. Juries were governed by statute. Only white males over the age of twenty-one living in the county qualified as prospective jurors. An act relating to juries (passed February 1, 1831), *Revised Statutes of Ohio* (Columbus: Olmstead and Bailhache, 1831), sec. 2, 94 (hereafter cited as *Revised Statutes of Ohio* (1831)). Jurors were selected thirty days prior to the start of the court's term. From those qualified to serve, twenty-seven were randomly selected by the sheriff—fifteen to serve on the grand jury and twelve to serve on the petit jury. Act relating to juries, sec. 4, 95. By statute, jurors were paid \$1.00 per day. An act to regulate the fees of officers in civil and criminal cases (passed on March 22, 1837, and became effective on June 1, 1837), *Statutes of the State of Ohio* (1841), sec. 15, 401. The prior act paid the same daily amount. *Revised Statutes of Ohio* (1831), sec. 14, 225. The Smith Trial Bill of Costs notes a \$6.00 charge for the jury while the Rigdon Trial Bill of Costs combined the jury and attorney's fees totaling \$11.00. However, the Smith Trial Bill of Costs clarifies this combined number as it notes \$6.00 for jury fee and \$5.00 for attorney's fees.

None of the jurors appear to be Mormons. Since both Joseph Smith's and Sidney Rigdon's trials occurred on the same day, one could assume that each trial took about a half day as shown by the costs. From the trial bill of costs, \$2.50 was charged for witnesses in Smith's trial,¹⁸⁴ and \$2.25 for witnesses in Rigdon's trial.¹⁸⁵ Witnesses subpoenaed and/or sworn to appear were paid \$0.75 per day, as of June 1837, an increase from \$0.50 per day.¹⁸⁶ The statute noted that this amount is a "daily" rate, not per trial. One might reason that the witnesses testified in both trials during the same day and therefore the fees were split between the two trials. Thus, either 6½ witnesses testified at the \$0.75 rate or 9½ testified at the \$0.50 rate—an odd number either way.

The testimony solicited or the evidence introduced at the trials can only be generally surmised. As noted in the Smith and Rigdon trial transcripts, the bills of exception filed by their counsel offer some insight as to testimony and evidence that was introduced. Some evidence was objected to, but was introduced over the objections, including these four items:

It is reasonable to suppose that \$6.00 was charged in both cases for the jury fee. Thus, it appears that trial only lasted half a day. The jury in Joseph Smith's trial included Guy Wyman, Caleb E. Cummings, John A. Ford, William Crafts, David Smith, George Patchin, Ira Webster, Stephen Hulbert, William B. Crothers, Jason Manley, Joseph Emerson, and Thomas King. Smith Trial Transcript. Sidney Rigdon's jury included Amos Cunningham, John McMackin, Erastus Spencer, Gerry Bates, George D. Lee, William C. Mathews, William Graham, Benjamin Adams, Harrison P. Stebbins, Jonathan Hoyt, Heman Dodge, and Thaddeus Cook. Rigdon Trial Transcript.

184. Trial Bill of Costs in *Rounds v. Smith*, Geauga County Court of Common Pleas, Execution Docket G, 105 (hereafter cited as Smith Trial Bill of Costs).

185. Trial Bill of Costs in *Rounds v. Rigdon*, Geauga County Court of Common Pleas, Execution Docket G, 106 (hereafter cited as Rigdon Trial Bill of Costs).

186. An act fixing the fees of witnesses in civil and criminal cases (passed on March 22, 1837, and became effective on June 1, 1837), *Statutes of the State of Ohio* (1841), sec. 1, 390. The fee was the same whether the witness was testifying in a civil or criminal case. Act fixing the fees of witnesses in civil and criminal cases, sec. 2, 390. This is an increase from the \$0.50 per day fee previous to this act. *Revised Statutes of Ohio* (1831), sec. 9, 224 ("That witnesses shall be allowed the following fees: For going to attending at, and returning from court, under a subpoena, per day, to be paid by the party at whose instance he is summoned (on demand), and taxed in the bill of costs, fifty cents"); Swan, *Duties of Justice of the Peace*, 103 ("Witnesses are, in general, allowed fifty cents per day, in each case in which they are subpoenaed, or sworn and examined, whether subpoenaed or not").

1. Witnesses testified about the existence of the Kirtland Safety Society Anti-Banking Company on January 4, 1837, the third day that the venture was open.
2. Introduced as evidence were the “articles of association,” alleging the creation of the Kirtland Safety Society Anti-Banking Company.
3. Introduced also were various “bank bills of various denominations” that were allegedly issued by the Kirtland Safety Society Anti-Banking Company.¹⁸⁷
4. Testimony was given that Smith and Rigdon were each “a director in said ‘Society’ and that he assisted in issuing and loaning the same.”

From these bills of exception, it does not appear that counsel for Smith and Rigdon put any witnesses on the stand or introduced any evidence after the plaintiff rested. Instead, once the plaintiff had rested, Smith and Rigdon’s counsel “moved the Court” as follows:

1. “To charge the Jury that the statute upon which the suit was founded was not in force”;
2. “That the loaning of said paper or bills was not a loaning of money if the statute was in force”; and
3. “That there was no evidence which would authorize them [the jury] to return a verdict for the Plff [Plaintiff].”

The court refused to grant these requests, and instead instructed the jury as follows:

1. “Charged the Jury that said Statute [the Act of 1816] was in force”;
2. “That a lending of the paper or bills was a lending of money within the statute”; and
3. “That if they found that the def[endan]t was a director in said society and assisted in issuing and lending said paper or bills it would constitute him an ‘officer’ within the meaning of the statute”; and

187. Both the Smith and Rigdon trial transcripts had Kirtland Safety Society notes. The note attached to the Smith trial transcript has since been stolen. A photocopy of the Smith trial transcript in the Family History Library, The Church of Jesus Christ of Latter-day Saints, Salt Lake City (hereafter cited as FHL), includes the note.

105 Samuel D. Rounds) Hetchback Judge for Plff. Oct. 24. 1837
 vs. Joseph Smith Jr.) Debt. \$1000.00
 125
 Clerk H. S. Smith Jr.)
 Plff. No. 4550.)
 Return April 3. 1838 and by the Plff. return it appears
 that by virtue thereof another writ in favor of the said Plff. against
 said Rigdon he had levied the same upon divers articles of personal prop-
 erty which were advertised & sold for the sum of \$604.50, that he levied
 on another parcel of personal property which was claimed by another person and awarded to
 the claimant that he levied on another parcel of personal property which was advertised
 & sold for the sum of \$111.76 and that afterwards on the twentieth day of January A.D. 1838 on the
 following lots or premises to each part of lots first six on Block 114 in Portland City Plat
 in Portland township Seago County Ohio supposed to contain one acre of land more
 or less which was duly appraised at \$664.00 and that said land remained unsold by au-
 ction of Brandon A. Howell. Plff. paid Brandon A. Howell \$604.50 - Plff. put on both ex-
 ceptions \$91.37 Cth. 2.50
 October 22nd 1838 Judgment rendered in favor of Brandon A. Howell on Henry
 Hetchback as Administrator of Joseph Smith Jr. & is awarded for the amount
 appearing due on judgment See Journal R page 218 Date of 2.51
 Clerk Henry 2.51 Return Oct 31 page 339
 Plff. Writ 2.51
 Rec^d of Brandon A. Howell June 17th 1838 two \$1.00 dollars the costs on the record
 of the above judgment
 Rec^d of H. H. Henry sixteen cents my fees in this case E. B. White Sec^y

Judgment against Joseph Smith, October 24, 1837, Geauga Court of Common Pleas, Geauga County Archives and Records Center. Photo courtesy Jeffrey N. Walker.

4. "That for the purpose of coming to a conclusion they might take the whole testimony as well the appearing of the def[endan]ts names on the same [the notes]."

The jury returned a "true verdict"¹⁸⁸ finding that the defendant "is indebted to the plaintiff in the sum of one thousand dollars. It is therefore considered by the Court that the plaintiff recover against the defendant his debt aforesaid so found as aforesaid, and also his costs and charges by him in and about the prosecuting of this suit in that behalf expended."¹⁸⁹ Smith and Rigdon were not present for the verdict, but the outcome was

188. A "true verdict" references the jurors' oath to only make their decision based on the evidence. "The fact only is in evidence, and, consequently, the law not being in evidence is not before them. Thus in the clearest terms does the oath limit and define their duty." Jacob, *Law-Dictionary*, s.v. "jury."

189. Smith Transcript, 362; Rigdon Transcript, 360.

likely not a surprise to them. Their counsel immediately prepared and submitted a bill of exceptions¹⁹⁰ that was signed by them and “sealed,” or entered onto the record of the court. Joseph Smith and Sidney Rigdon’s remedy would have to be sought from the Ohio Supreme Court.¹⁹¹

190. Ohio law provided: “And when a party to a suit, in any court of common pleas within this state, alleges an exception to any order or judgment of such court, it shall be the duty of the judges of such court, concurring in such order or judgment, if required by such party during the term, to sign and seal a bill containing such exception or exceptions as heretofore, in order that such bill or exceptions may, if such party desire it, be made a part of the record in such suit.” Practice of the Courts Act, sec. 96, 676. This bill of exceptions was the first step in having a judgment examined by the Ohio Supreme Court. “The bill of exceptions is in practice, and by law, to be signed and sealed only, not to be prepared by judges; the only obligation upon the judges is to sign and seal a true bill of exceptions.” State ex rel. Atkins v. Todd, 4 Ohio 351, 351 (1831); Baldwin v. State, 6 Ohio 15, 16 (1833) (“In civil cases, the bill of exceptions is made part of the record only on the application of the party. . . . If the clerk omit to perform this duty, the party is not without remedy, in the court where the omission takes place. But this court, upon a writ of error, can only notice matter inserted in the record. It cannot look at that which ought to have been, but which is not so inserted”); Osburn v. State, 7 Ohio 212, pt. I, 215 (1835) (“We find nothing in the record to sustain the second assignment of error as a matter of fact. No notice is taken of any refusal to sign a bill of exceptions, or of any judge erasing his name after having signed it. The record only is before us, on this writ of error, and we can examine no allegation, in respect to facts, not embodied in it”); Acheson v. Western Reserve Bank, 8 Ohio 117, 119 (1837) (“Our *practice act*, section 96, provides that in civil cases the bill of exceptions may be made part of the record, if the excepting party request it. The court have repeatedly ruled that if a party would avail himself, upon error, of exceptions taken, at the trial in the common pleas, he must cause such exceptions to be made part of the record”). Perkins & Osborn charged Joseph Smith \$25.00 for the trial, noting “Oct. T[erm]—trial Rounds Qui Tam against you.” They charged another \$10.00 for “drawing bill of Exceptions for writ of Error.” They also billed Smith for their representation of Sidney Rigdon, charging him \$25.00 for the trial and \$10.00 for the bill of exceptions. Billings of Perkins & Osborn.

191. Act to organize the judicial court (passed on February 7, 1831), sec. 2, provided that the Ohio Supreme Court had “appellate jurisdiction from the court of common pleas, in all civil cases in which the court of common pleas has original jurisdiction.” *Statutes of the State of Ohio* (1841), 222. Section 103 further explained: “That final judgments in the courts of common pleas, may be examined and reversed or affirmed, in the supreme court holden in the same county, upon a writ of error, whereto shall be annexed and returned therewith, at a day and place therein mentioned, an authenticated transcript of the record and assignment of error, and prayer for a reversal, with a citation to the adverse party,

While a bill of exceptions is required to create an appealable record, it was only the first of several steps to appeal a final judgment.¹⁹² Within thirty days following the trial of the case, the party appealing (the appellant) “shall enter into a bond to the adverse party,”¹⁹³ with one or more good and sufficient sureties, to be approved of by the clerk of such court,¹⁹⁴ in double the amount of the judgment . . . and costs, in case a judgment or decree should be entered in favor of the appellee.”¹⁹⁵ During this thirty-day period, on motion of the party appealing, the court may stay execution on the judgment. Once the appeal bond is entered, thereby perfecting the appeal,¹⁹⁶ the appellant would prepare a writ of error¹⁹⁷ based on the

or his attorney.” Act to organize the judicial court, 222, 678–79. Practice of the Courts Act, sec. 108, 681 (“That in civil cases an appeal shall be allowed, of course, to the supreme court, from any judgment or decree rendered in the court of common pleas, in which such court had original jurisdiction”).

192. Act to organize the judicial court, sec. 109, 682, provided that “the party desirous of appealing his cause to the supreme court, shall, at the term of the court of common pleas in which judgment or decree was rendered, enter on the records of the court, notice of such intention.”

193. If the adverse party collects on the judgment, hence no stay of execution was granted by the trial court, the appeal bond becomes unnecessary. *Cass v. Adams*, 3 Ohio 223, 223–224 (1827) (Court held that an execution on goods by a *fiери facias* writ thereby put property in the hands of the sheriff pending the appeal made the requirement for an appeal bond as an unnecessary “cumulative remedy”).

194. In *Stanbery v. Mitten*, 6 Ohio 546, 547 (1828) the court held that section 109 of the Act to regulate the practice of the judicial courts “provides that the bond required to perfect an appeal from that court shall be approved by its clerk. It is his duty to judge of the sufficiency of the bond and of the security. This is a ministerial act of his, and this court has in the way no control over it. When the appeal bond is approved by the clerk and filed, the rights of the appellant and the obligations of the appellee are fixed, and a majority of this court are of opinion such rights are beyond the power of this court, upon a mere question of expediency or convenience. A party should reflect upon the effect of his steps before he takes them, and not the court to permit him to retrace them. This court is careful not to interfere with the exercise of such duties, so clearly vested in the clerk and the party, in order to substitute its own discretion.”

195. *Stanbery v. Mitten*, 6 Ohio 546, 547 (1828).

196. *Work v. Massie*, 6 Ohio 503, 503 (1834) (“Section 109 of the practice act directs the mode of perfecting an appeal”).

197. A writ of error “is a writ issued out of a court of competent jurisdiction, directed to the judges of a court of record in which final judgment has been given, and commending them . . . to send it to another court of appellate

bill of exceptions¹⁹⁸ to be issued by the Supreme Court.¹⁹⁹ The clerk of the court of common pleas then would make “an authenticated transcript of the docket or journal entries, and of the final judgment or decree made and rendered in the case; which transcript, together with the original papers and pleadings filed in the cause,” would be delivered to the office of the clerk of the state Supreme Court, on or before the first day of the next term.²⁰⁰

However, in these two cases (*Rounds v. Smith* and *Rounds v. Rigdon*) nothing in the record evidences that appeal bonds were ever secured, motions were ever made to stay execution on the judgments, or writs of

jurisdiction, therein named, to be examined in order that some alleged error in the proceedings may be corrected. . . . Its object is to review and correct an error of law committed in the proceeding.” Bouvier, *Law Dictionary*, s.v. “writ of error”; Jacob, *Law-Dictionary*, s.v. “error.”

198. *Duckwall v. Weaver*, 2 Ohio 13, 13 (1825) (“The defendants objected to the whole of the evidence offered; the objection was overruled, and a bill of exceptions taken. A verdict was found for the plaintiff. Judgment entered, and a writ of error taken”); *Moore v. Beasley*, 3 Ohio 294, 294 (1827) (“He then moved the court to instruct the jury that the case was within that statute, which was also refused, and bills of exception were taken. A verdict and judgment were rendered for the plaintiff, and a writ of error taken to reverse it, on the matters stated in the bills”); *King v. Kenny*, 4 Ohio 79, 80 (1829) (“Upon this bill of exceptions the writ of error was founded”); *Trustees of Cincinnati Tp. v. Ogden*, 5 Ohio 23, 23 (1831) (“This cause came before the court on a writ of error to the court of common pleas of Hamilton county. The case was this, as presented in a bill of exceptions”); *Eldred v. Sexton*, 5 Ohio 216, 216 (1831) (“The defendant took his bill of exceptions. There was a verdict and judgment for the plaintiff for fifty-one dollars and five cents and costs, to reverse which this writ of error was brought”); *James v. Richmond*, 5 Ohio 337, 338 (1832) (“To this decision of the court, the defendant, by his counsel, excepted, and his bill of exceptions was sealed. A judgment having been rendered against the defendant, this writ of error is prosecuted to reverse that judgment”).

199. Practice of the Courts Act, sec. 3, 651.

200. Practice of the Courts Act, sec. 112, 683. “That when any cause is removed by appeal into the supreme court, the appeal shall be tried on the pleadings made up in the court of common pleas, unless for good cause shown, and on the payment of costs, the said court should permit either or both parties to alter their pleadings; in which case, such court shall lay the party under such equitable rules and restrictions as they may conceive necessary, to prevent delay.” Practice of the Courts Act, sec. 114, 684. Either party to the appeal can request a copy of this transcript that the clerk of the court of common pleas can provide at the parties’ “own proper costs and charges.” Practice of the Courts Act, sec. 112, 683.

Joseph Smith Jr			To Perkins & Osborn Cr
1835	March 2	To Retainer & Term for Rounds Qui Tam vs. you	\$5 00
June 5	"	knowing on demerits & Term for	5 00
	"	going to Kirtland in May for gas & Consulting in Sunday Cases	10 00
		Expenses same time. 1st horse & wagon	2 19
June 5	"	fees on New Bill Complaint before Flint	15 00
	"	fees on same in Court of Comm. Pleas	35 00
28	"	Consultation at Kirtland	3 00
July 27	"	defunding you successfully in show suits before Flint, Kingsbury & Miller	10 00
	"	Retainer Barker use of Bump as you	5 00
28	"	time & trouble with Holbrook about watch	1 00
Aug 1	"	Consultation & advice with Knights respecting Whitney's deed	3 00
16	"	3 pair of shoes returned by Perkins	3 31
Sept 15	"	fees State as Riteh on your Complaint before Cowdery	6 00
	"	Horse & Wagon & Expenses	2 00
Oct. 7	"	trial Rounds Qui Tam against you	25 00
	"	drawing bill of Exceptions for writ of Error	10 00
			139 50
Dec.	"	fees several suits against you at Columbus	5 00
	"	fees in Underwood Bald & Spencer against you and others now pending	3 15 00
			\$159 50
1837		Coastin Cr	
May		To Cash to Perkins at Kirtland	\$5 00
June 28	"	bill of shoes of Knights	8 14
	"	Spade	1 50
July 27	"	Cash to Perkins \$1 00 do to Osborn \$1	2 00
Aug 16	"	2 pr of shoes to Perkins \$1 81 2 for shoes 2 Blk books for \$10 1 50 3 returned	3 31
26	"	a saw to Perkins 10¢	1 25
	"	by iron Chest at N.Y. Bill & Thompson the Bill never handed us, now have we the keys to the little drawers	
		To Perkins & Osborn our year	

Billing record of Perkins & Osborn. This document shows the amount that Perkins billed Joseph Smith and others relating to the Rounds qui tam suit. William Perkins and Salmon Osborn, Statement of Account, Painesville, Ohio, c. October 29, 1838, Joseph Smith Office Papers, Church History Library. Copyright Intellectual Reserve, Inc.

error ever requested. The court entered the judgments in both cases on October 25, 1837, while Smith and Rigdon were en route to Missouri.²⁰¹ Consequentially, while the bills of exceptions delineate the legal basis for an appeal of the judgments, the appeals were never perfected or further pursued. Their lawyers, Perkins & Osborn, stopped billing after the trial and after the bills of exceptions had been prepared.

One can only speculate as to why these appeals were not further pursued by Joseph Smith or Sidney Rigdon. Neither the litigants nor their attorneys left an explanation. Legally the appeal should have been considered very strong. Yet, while the law appears clear now, at the time the courts had yet to affirm that the 1824 Act superseded the 1816 Act, and public opinion was indeed split.²⁰² Smith and Rigdon would have to consider that the four-judge court had expressly refused to apply the law as argued by their counsel that the Act of 1816 was suspended. It would not be until 1840 that the Ohio Supreme Court would expressly rule on this matter affirming the position taken by Perkins and Osborn, even though the legislative history appears clear on this point.²⁰³ Consequently, the appeal must have looked more problematic in 1837 than it does today.

Collection efforts against Smith and Rigdon were commenced on November 6, 1837—exactly two weeks after the trials and judgments.

201. The judgment in *Rounds v. Smith*, Geauga Court of Common Pleas, Journal N, 237, noted: "Debt—This day came the parties and thereupon came a Jury to wit: Guy Wyman, Caleb E. Cummings, John A. Ford, William Coafits, David Smith, George Patchin, Ira Webster, Stephen Hulbert, William B. Crothers, Jason Manley, Joseph Emerson and Thomas King, who being duly empanelled & sworn, will & truly to try the issue joined between the parties, do find that the deft [defendant] is indebted to the plff [plaintiff] in the sum of one thousand dollars. It is therefore considered by the Court that the plff recover against the deft. the said sum of one thousand dollars his deft aforesaid and also his costs." The judgment in *Rounds v. Rigdon*, Geauga Court of Common Pleas, Journal N, 237, noted: "Debt—This day come the parties & thereupon came a Jury to wit: Amos Cunningham, John McMackin, Erastus Spencer, Gerry Bates, George D. Lee, Wm C. Matthews, William Graham, Benjamin Adams, Harrison P. Stebbins Jonathan Hoyt, Heman Dodge and Thaddeus Cook, who being duly empanelled and sworn well and truly to try the issue joined between the parties, do find that the deft is indebted to the plff in the sum of one thousand dollars. It is therefore considered by the Court that the plff recover against the deft. his debt aforesaid, and also his costs."

202. See pages 63–64.

203. See notes 120, 121.

Judgment against Smith totaled \$1,024.10, comprising the \$1,000 penalty under the Act of 1816, \$23.35 in plaintiff's costs²⁰⁴ and \$0.75 in defendant's costs.²⁰⁵ Judgment against Rigdon totaled \$1,023.58, comprising the \$1,000 penalty under the Act of 1816, \$22.77 in plaintiff's costs²⁰⁶ and \$0.81 in defendant's costs.²⁰⁷

Amid the ensuing collection efforts, Joseph Smith received the following revelation on January 12, 1838: "Thus Saith the Lord, let the Presidency of my Church, take their families as soon as it is practicable, and a door is open for them, and moove [*sic*] to the west, as fast as the way is made plain before their faces, and let their hearts be comforted for I will be with them."²⁰⁸ Smith and Rigdon left that night for Missouri, but before they left they arranged for the payment of their debts and obligations.²⁰⁹ Their families followed shortly thereafter.

Collecting on judgments in Ohio was governed by statute.²¹⁰ Once a judgment was entered, a judgment lien was automatically placed on all real property of the debtor in the county where the judgment was rendered "from the first day of the term at which judgment shall be

204. The plaintiff's costs were broken down as follows: \$5.31 in clerk costs, \$4.54 in sheriff costs, \$2.50 in witness fees, \$6.00 in jury fees and \$5.00 in attorney's fees. Smith's Trial Bill of Costs.

205. Smith's costs of \$0.75 were for clerk costs. Smith's Trial Bill of Costs.

206. The plaintiff's costs were broken down as follows: \$5.04 in clerk costs, \$4.48 in sheriff costs, \$2.25 in witness fees, \$6.00 in jury fees and \$5.00 in attorney's fees. Rigdon's Trial Bill of Costs.

207. Rigdon's costs of \$0.81 were for clerk costs. Rigdon's Trial Bill of Costs.

208. Dean C. Jessee, Mark Ashurst-McGee, and Richard L. Jensen, eds., *Journals, Volume 1: 1832–1839*, vol. 1 of the Journals series of *The Joseph Smith Papers*, ed. Dean C. Jessee, Ronald K. Esplin, and Richard Lyman Bushman (Salt Lake City: Church Historian's Press, 2008), 283.

209. Smith, History, vol. B-1, p. 780 ("on the evening of the 12th of Jan <12. Joseph & Sidney left Kirtland for Far West.> <about 10 o'clock> we left Kirtland, on horseback, to escape Mob violence which was about to burst upon us under the color of Legal process to cover their hellish designs, and save themselves from the just jud[g]ment of the Law"). On the satisfaction of debts owed by Joseph Smith and the Temple Committee, see Gordon A. Madsen, "Tabulating the Impact of Litigation on the Kirtland Economy," in Madsen, Walker, and Welch, *Sustaining the Law*, 233–42.

210. An act regulating judgments and executions (passed March 1, 1831), *Statutes of the State of Ohio* (1841), sec. 1, 467 (hereafter cited as Judgment and Execution Act).

rendered.”²¹¹ Personal property was only encumbered upon seizure.²¹² By statute the court initiated the collection process by issuing a writ of fieri facias.²¹³ This writ directs usually the local sheriff, or other officer, to first pursue the collection on any personal property of the debtor. If no personal property was located, or if after the sheriff’s sale of such personal property the judgment was not fully satisfied, the sheriff was authorized to move for the sale of the real property of the debtor.²¹⁴ Before the sheriff could proceed to sell any personal property of the debtor, he “shall cause public notice to be given of the time and place of the sale, for at least ten days before the day of sale; which notice shall be given by advertisement, published in some newspaper published in the county.”²¹⁵ If land thereafter was to be sold to satisfy the judgment, the sheriff was required to obtain appraisal as to the value of the land from “three disinterested freeholders, who shall be resident within in the county where the lands taken in execution are situated.”²¹⁶ Thirty-day notice of the sale of land was also required.²¹⁷

211. Judgment and Execution Act, sec. 2, 468.

212. Judgment and Execution Act, sec. 2, 468.

213. *Fieri facias* “is the name of the writ of execution. It is so called because when writs were in Latin, the words directed to the sheriff, were, *quod fieri facias de bonis et catallis*, &c, that you cause to be made of the goods and chattels &c. The foundation of this writ is a judgment for debt or damages, and the party who has recovered such a judgment is generally entitled to it, unless he is delayed by the stay of execution which the law allows in certain cases after the rendition of the judgment, or by proceeding in error.” Bouvier, *Law Dictionary*, s.v. “*fieri facias*”; Jacob, *Law-Dictionary*, 3:43, s.v. “*fieri facias*.”

214. Judgment and Execution Act, sec. 3, 469–70.

215. Judgment and Execution Act, sec. 9, 472.

216. Judgment and Execution Act, sec. 10, 473. These appraisers were put under oath affirming to their impartiality to perform the appraisals. The appraisals of “an estimate of the real value in money, of said estate, upon actual view of the premises” were signed by the appraisers and then returned to the sheriff. Judgment and Execution Act, sec. 10, 473. Copies of the appraisals were then filed with the clerk of the court from which the writ was issued. Judgment and Execution Act, sec. 11, 473. At the sale, the property could not be sold for less than two-thirds of appraised value. Judgment and Execution Act, sec. 12, 474.

217. Notice of the sale of such property had to take place at least thirty days before the sale in the same manner as the notice for personal property. Judgment and Execution Act, sec. 14, 474.

While it does not appear from the record that Sheriff Kimball was successful in collecting anything from Joseph Smith,²¹⁸ his efforts against Rigdon proved successful. The record notes three efforts to sell the personal property of Sidney Rigdon. The first recovered \$604.50 from the sale of such personal property. The second effort indicated that the personal property seized was “claimed by a third person and awarded to the claimant.” The third effort resulted in the sale of additional personal property that was sold for \$111.75.²¹⁹ The record is not clear as to what was levied or sold during these three collection efforts. Yet, the record does include one published notice for a sheriff’s sale of Rigdon’s personal property. Published in the *Painesville Telegraph* on February 22, 1838, it noted:

SHERIFF’S SALE: BY Virtue of an Execution issued by the Clerk of the Court of Common Pleas of Geauga county, and to me directed, I shall expose to sale at the Inn of John Johnson in Kirtland, on Monday, the 5th day of March next, between the hours of 10 o’clock A M. and 4 P.M. of said day, the following described property, to wit: 2 Bureaus, 1 cupboard, 1 box stove, 1 table, 3 stands, 1 clock and case, 1 cradle, 3 looking glasses, 4 chairs, 4 window sashes, part box glass, 5 trunks and contents, 1 barrel dried fruit, 1 basket of clothing, a quantity of zinc, 1 pail, glass bottles, bedsteads, several rolls of paper, ribbons, hearth rug, carpeting; 1 bed & bedding, 2 waiters, quantity of books, 6 tin pans, 2 castors, knives and forks, 1 inkstand, 1 urn, 2 globes, 2 brass pin setts, 2 brass candlesticks; glass ware and crockery, and sundry other articles. Taken at the suit of S.D. Rounds vs. Sidney Rigdon.

ABEL KIMBALL, 2d, Shff.

Feb. 20, 1838.²²⁰

Sheriff Kimball forwarded the \$604.50 to Grandison Newell. And \$92.00²²¹ of the \$111.75 was apparently used to pay the fees incurred on these executions on Rigdon’s personal property. It is unclear what happened to the balance of \$19.75, although it may have been applied to cover the costs assessed to Rounds for the voluntary dismissal of Parrish, Williams, Whitney, and Kingsbury.

218. Interestingly, the collection efforts against Rigdon as delineated on his Trial Bill of Costs were also duplicated on Smith’s Trial Bill of Costs, although it is clear by reading the notations that the efforts were solely against Rigdon.

219. Rigdon Trial Bill of Costs.

220. Abel Kimball, “Sheriff’s Sale,” *Painesville Telegraph*, February 22, 1838, 3.

221. These fees included \$91.50 to the sheriff and \$0.50 to the clerk of court. Rigdon Trial Bill of Costs.

In addition to executing on Rigdon's personal property, Sheriff Kimball also started the process to sell an acre lot purportedly owned by Rigdon.²²² Rigdon's Trial Bill of Costs notes that by January 20, 1838, Sheriff Kimball had such real property appraised at \$666.00. However, this lot remained unsold "by direction of Grandison Newell."²²³

Why would Newell direct that this lot not be sold? This statement in January 1838 indicates that the court understood that the judgments now belonged to Newell and not to Rounds. Thus, perhaps the answer has to do with the fact that with the departure of Joseph Smith and Sidney Rigdon to Missouri, Newell was at that point negotiating the settlement of the judgments with William Marks²²⁴ and Oliver Granger,²²⁵ as agents for Joseph Smith and Sidney Rigdon.²²⁶ On March 1, 1838, the

222. The Rigdon Trial Bill of Costs identifies this real property as follows: "part of lots five & six on Block 114 in Kirtland City Plat in Kirtland township Geauga County Ohio supposed to contain one acre of land more or less."

223. Rigdon Trial Bill of Costs.

224. William Marks (1792–1872) was a farmer, printer, publisher, and postmaster. Marks was born at Rutland, Vermont. He lived at Portage, New York, where he was baptized into the LDS Church by April 1835. He moved to Kirtland, Ohio, by September 1837, and was appointed a member of the Kirtland high council on September 3, 1837, and agent to Bishop Newel K. Whitney on September 17, 1837. Marks was made president of the Kirtland stake in 1838. Susan Easton Black, *Early Members of the Reorganized Church of Jesus Christ of Latter Day Saints*, 6 vols. (Provo, Utah: Religious Studies Center, Brigham Young University, 1993), 4:228–29; Lyndon W. Cook, *The Revelations of the Prophet Joseph Smith: A Historical and Biographical Commentary of the Doctrine and Covenants* (Salt Lake City: Deseret Book, 1985), 230–31.

225. Oliver Granger (1794–1841) was born at Phelps, New York. He was the sheriff of Ontario Co. and a colonel in the militia. Granger was baptized into the LDS Church and ordained an elder by Brigham and Joseph Young, c. 1832–33. He moved to Kirtland, Ohio, in 1833 and was appointed to the Kirtland high council on October 8, 1837. Obituary Notices of Distinguished Persons, s.v. Oliver Granger, CHL; Kirtland Council Minute Book, October 8, 1837; Obituary of Oliver Granger, *Times and Seasons* 2 (September 15, 1841): 550.

226. Joseph Smith and Sidney Rigdon appointed Oliver Granger as their "agent and attorney" relating to the Safety Society on September 27, 1837, the day before leaving Ohio for a visit with Missouri Saints. The full appointment stated:

Kirtland Ohio Set 27-1837

Know all men by these present that we Joseph Smith Jr. and Sidney Rigdon hereby appoint and constitute Oliver Granger our proper agent and attorney to act in our name to all interests and purposes as we ourselves

Rounds judgments were assigned to Marks and Granger for \$1,600, as follows:²²⁷

For and in consideration of Sixteen hundred dollars to me in hand paid by William Marks and Oliver Granger I do hereby sell assign and set over to the Said William Marks and Oliver Granger two Judgments in favor of Samuel D. Rounds and assigned to me by said Rounds against Joseph Smith jr and Sidney Rigdon of one thousand dollars each which Judgments were obtained at the Court of Common

Pleas holden at Chardon in and for the County of Geauga, to wit, on the 24th day of October 1837, and I do agree to pay all costs that has accrued on said Judgments up to this date.

Kirtland March 1st 1838
Attest Lyman Cowdery²²⁸

Statement by Grandison Newell to William Marks and Oliver Granger, March 1, 1838. Courtesy CHL.

G. Newell

could act if we were personally present: to manage conduct and bring to settlement a business which we had with J. F. Scribner of Troy City in the state of New York in relation to the paper of Kirtland Safety Society

Given under our hand at Kirtland Geauga County Ohio the day and date above written.

Sidney Rigdon
Joseph Smith Jr

Power of Attorney from Sidney Rigdon and Joseph Smith Jr. to Oliver Granger, September 27, 1837, Joseph Smith Collection. William Marks was never made agent or given power of attorney by either Smith or Rigdon. However, Marks was appointed as agent for Newel K. Whitney on September 17, 1837. Kirtland Council Minute Book, September 17, 1837. Further, Smith and Rigdon deeded land to Marks starting in April 1837 for Marks to use to settle debts in Kirtland against them and/or the Church. See Deed from Rigdon to Marks, April 7, 1837, catalog #20240, vol. 23, 535, FHL; Deed from Smith to Marks, April 7, 1837, catalog #20240, vol. 23, 538, FHL; Deed from Smith to Marks, April 10, 1837, catalog #20240, vol. 23, 535–36, FHL; Deed from Smith to Marks, April 10, 1837, catalog #20240, vol. 23, 536–37, FHL; Deed from Smith to Marks, April 10, 1837, catalog #20240, vol. 23, 538, FHL; Deed from Smith to Marks, April 10, 1837, catalog #20240, vol. 23, 539, FHL; Deed from Smith to Marks, April 10, 1837, catalog #20240, vol. 24, 189, FHL.

227. Grandison Newell to William Marks and Oliver Granger, March 1, 1838, Whitney Collection.

228. Lyman Cowdery (1802–1881) was a lawyer, constable, and probate judge. He was born at Wells, Vermont. He was the older brother of Oliver Cowdery.

Neither Marks nor Granger left an explanation as to why they sought an assignment from Newell rather than some kind of satisfaction of judgment. One possible explanation was that the judgment was in the name of Rounds and not Newell, even though Newell was the purported owner. Another possible explanation was that by taking an assignment rather than a satisfaction, Marks and Granger stepped into the shoes of the plaintiff and thereby had an effective lien on all of Smith's and Rigdon's property that applied from the date of the judgment. In such a manner Marks and Granger could protect Smith's and Rigdon's property from subsequent judgment creditors.²²⁹

Recently uncovered records appear to indicate that payment on this assignment came in the form of two transfers of real property.²³⁰ The first was a transfer to Newell on March 1, 1838, by John and Nancy Isham²³¹ of just under fifty acres located in Kirtland with a stated value of \$1,300.²³² An additional parcel of property was similarly conveyed to Newell on June 22, 1838, from Winslow and Olive Farr²³³ comprising eighteen acres with a stated value of \$300.²³⁴

229. See An act regulating judgments and executions (passed March 1, 1831), *Statutes of the State of Ohio* (1841), sec. 2, 468.

230. Gordon A. Madsen, to whom the author is again indebted, recently uncovered these property records. These records confirm that some of the debts of the Church were satisfied by the direct transfer of property from members to creditors rather than transferring the property first to an agent of the Church to be used to satisfy these outstanding obligations.

231. John Isham (1788–1840) was born in Massachusetts. He married Nancy Porter in 1816 and they moved to Madison, Geauga County, Ohio, by 1820. They moved to Kirtland c. 1837–38. Isham was involved in several land transactions relating to the settlement of debts of the LDS Church in 1838 in addition to the above-noted transfer. This included \$1,100 of land that he transferred to William Marks as agent for the Church “according to the directions of the presidency.” Accounts Payable, February 1, 1838, and March 1, 1838, Joseph Smith Collection. John Isham died in Nauvoo, Illinois. *History of Geauga and Lake Counties, Ohio*, 233; Obituary for John Isham, *Times and Seasons* 1 (May 1840): 111.

232. Geauga County Deed Book, book 25, 423–24, Geauga County Archives.

233. Winslow Farr (1794–1865) was born in New Hampshire and married Olive Freeman in 1816. He was baptized into the LDS Church in 1832 in Vermont, and he and his family moved to Kirtland, Ohio, in the spring of 1837. They moved to Missouri by the summer of 1838 and then to Nauvoo by May 1839. He died in Utah.

234. Geauga County Deed Book, book 26, 157–58.

With his acceptance of this payment, Grandison Newell had been paid a total of \$2,204.50.²³⁵ Pursuant to the assignment of claims, Newell assumed the costs incurred in the cases totaling \$24.10 for Smith and \$23.58 for Rigdon. The court record does not show that Newell ever paid these costs to the court. Thus, Newell netted from these lawsuits \$2,156.82, which is \$156.82 more than the total of the judgments. Moreover, of that amount, Newell was supposed to receive only 50 percent, with the other 50 percent going to the state of Ohio. Newell never forwarded any of this recovery to the state, as will be evidenced by his revival of these two judgments in 1859. Grandison Newell had collected more than 100 percent of the judgments, and under any ethical or legal analysis, this should have more than ended this lawsuit. Grandison Newell, however, revived these judgments in 1859 and used the law to commit a fraud on the state of Ohio long after the death of Joseph Smith in Illinois.

PART IV: GRANDISON NEWELL'S FRAUD

Joseph Smith and his brother Hyrum were murdered while being held in a jail in Carthage, Illinois, on June 27, 1844. While many anticipated that with his death the demise of the church he founded would follow, the Church continued to weather various economic and political storms and grow under the leadership of Brigham Young and the Quorum of the Twelve.²³⁶ By 1846, persecution had reached a level forcing the Church to leave Illinois altogether. A massive migration commenced in early 1847, ending in the Great Salt Lake Valley in what would become the Utah Territory. Brigham Young presided over the Church until his death in 1877.

235. \$1,600 from the Assignment of Claims and \$604.50 from the sale of Rigdon's personal property.

236. While the majority of the members of the LDS Church followed the leadership of Brigham Young and the Quorum of the Twelve, several relatively small groups also emerged claiming successorship to Joseph Smith. These included followers of Sidney Rigdon (Church of Jesus Christ of the Children of Zion [1844]), James J. Strang (Church of Jesus Christ of Latter Day Saints [Strangite] [1844]), Lyman Wight (Church of Christ [Wightite] [1844]), William E. McLellin and David Whitmer (Church of Christ [Whitmerite] [1847]), Alpheus Cutler (Church of Jesus Christ [Cutlerite] [1853]), Joseph Smith III (Reorganized Church of Jesus Christ of Latter Day Saints [now Community of Christ] [1860]) and Granville Hedrick (Church of Christ [Temple Lot] [1863]).

The assignment of the two judgments entered against Joseph Smith and Sidney Rigdon by Grandison Newell in March 1838 should have marked the end of this case, with the exception of Newell forwarding to the State of Ohio 50 percent of his net recovery of \$2,204.50. But the end of his vendetta was not nearly in sight, as the following documentary history now definitively demonstrates.²³⁷ Surely, as one biographer aptly noted, Newell considered himself the “Atilla the Hun to the Saints of Mormons.”²³⁸

Newell's Cooption of the State's Portion of the Judgment

Not only did Newell fail to forward the state's portion of the recovery, but fifteen years following the death of Joseph Smith and more than twenty years after Smith had left Kirtland, Grandison Newell solicited the help of John R. French,²³⁹ his state representative from Painesville, to have the state's portion of the recovery assigned to him, claiming that it was never recovered. Representative French introduced a bill to

237. For a brief rehearsal of these events, see Madsen, “Tabulating the Impact of Litigation on the Kirtland Economy,” 244–45.

238. Hall, *Thomas Newell and His Descendants*, 232.

239. John R. French (1819–1890) was a journalist and politician born in Gilmanton, New Hampshire; he died in Boise, Idaho. He was a printer and editor for the *New Hampshire Statesman*, in Concord, the publisher and associate editor of the *Herald of Freedom*, also in Concord, which was one of the first of the New England antislavery newspapers, and the editor of the *Eastern Journal* in Biddeford, Maine, before moving to Painesville, Ohio, in 1854. There he was the editor of the *Painesville Telegraph* from 1854 to 1858. *History of Geauga and Lake Counties*, 29. He was a member of the Ohio House of Representatives representing Lake County (formerly part of Geauga County) from 1858 to 1859. W. E. Halley and John P. Maynard, comps., *Manual of Legislative Practice in the General Assembly of Ohio* (Columbus, Ohio: F. J. Heer Printing Co., 1920), 213, 265. In 1861, he was appointed to a clerkship in the Treasury Department in Washington, and in 1864 was appointed by President Lincoln a member of the Board of Direct Tax Commissioners for North Carolina. John Niven, ed., *The Salmon P. Chase Papers*, vol. 1, Journals, 1829–1972 (Kent, Ohio: Kent State University Press, 1993), 359. He was a delegate to the State Constitutional Convention in 1867, and in 1868 was elected to Congress from the North Carolina district as a Republican. He was not reelected after his term but was chosen sergeant-at-arms of the United States Senate, and he held the office for nine years. In 1880, he was appointed secretary and disbursing officer of the Ute Commission and moved to Idaho. At the time of his death, he was editor of the *Boise City Sun*. *Appletons' Annual Cyclopedia and Register of Important Events of the Year 1890*, vol. 15 (New York: D. Appletons & Co., 1891), 647.

do just that during the Second Session of the Fifty-Third Ohio General Assembly held in Columbus, Ohio on February 4, 1859.²⁴⁰ The text of the bill, enacted under the title “An act for the relief of Grandison Newell” (the “Relief of Newell Act”), stated:

Whereas, Grandison Newell, of Lake county, Ohio, in 1838, at much personal expense, prosecuted indictments in the name of the state of Ohio against Sidney Rigdon and Joseph Smith, jr., in the court of common pleas in Geauga county, under the act entitled “an act to prohibit the issuing and circulating unauthorized bank paper,” passed January 27, 1816, and therein procured judgments against said Sidney Rigdon and Joseph Smith, jr., for the sum of one thousand dollars each; now, at the request of the said Grandison Newell, and that he may obtain reimbursement for his said expenses and outlays.

240. On February 2, 1859, the Ohio House Journal notes, “Mr. French presented the petition of Grandison Newell, praying the State to assign to him its interest in certain judgments. Which was referred to the committee on Claims.” *General Assembly of the State of Ohio, Journal of the House of Representatives of the State of Ohio*, Fifty-Third General Assembly (Columbus: Richard Nevins, 1859), 184. On February 28, 1859, the committee “to whom was referred the petition of Grandison Newell reported by bill; H.B. No. 444; A bill for the relief of Grandison Newell. Said bill was read for the first time.” House Journal, 328. The bill was read for the second time on March 1, 1859. House Journal, 334. The bill then came up for vote on March 1, 1859, where it passed on a vote of 81 yeas and no nays and the “title as aforesaid was agreed to.” House Journal, 336–37. The following day the bill was forwarded to the president of the Ohio Senate, noting, “The House has passed the following bill, and requests the concurrence of the Senate in the same: H.B. No. 444; For the relief of Grandison Newell,” where it was read for the first time. *General Assembly of the State of Ohio, Journal of the Senate of the State of Ohio*, Fifty-Third General Assembly (Columbus: Richard Nevins, 1859), 212. It was read a second time on March 2, 1859, and “committed to a committee of the whole Senate.” Senate Journal, 213. On March 3, 1859, “The Senate resolved itself into a committee of the Whole on the orders of the day, Mr. Miles in the chair, and after some time spent therein, rose, the same was agreed to. Said bill was then ordered to be read a third time now. Said bill was then read and the third time, and the question being, ‘Shall the bill pass?’ The yeas and nays were ordered, and resulted, yeas 23, nays 5.” Senate Journal, 222. On March 9, 1859, “The joint standing committee on Enrollment report that the following joint resolutions and bills are correctly enrolled: . . . H.B. No. 444; An act for the relief of Grandison Newell.” House Journal, 385. The following day, the Speaker of the House of Representatives signed the bill. Senate Journal, 248.

124 Samuel D Rounds for the use of the State of Ohio as well as for himself & ff
 Joseph Smith Jr
 Motion to revive judgment
 And now comes the said Grandison Newell by his attorney and it appearing to the Court that said judgment has been assigned to and is the property of the said Grandison Newell that due notice of this motion has been served on Henry Holcomb Administrator of said Joseph Smith Jr and that said Administrator consents that said motion be heard and determined at this Court and that said Administrator admits the facts stated in said motion and shows no cause why said judgment should not be revived it is ordered that the said judgment of the said Samuel D Rounds for the State of Ohio

Motion to Revive Judgment (October 30, 1860), Geauga Court of Common Pleas, Geauga County Archives. Photo courtesy Jeffrey N. Walker.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That the said judgments be and they are hereby assigned to said Grandison Newell, and said Grandison Newell is hereby authorized for his own use and at his own charges and expense, in the name of the state of Ohio, to revive said judgments according to the course of proceedings of said court, have execution, or institute and prosecute any suits known to the laws of this state, and have process, means and final, for the collection of said judgments; provided, that in no event shall any costs or charges made under or by virtue of this act be paid from the treasury of the state or of the counties of Lake and Geauga.

SEC. 2. This act to be in force from and after its passage.

WILLIAM B. WOODS,
 Speaker of the House of Representatives

E. BASSETT LANGDON,
 President pro tem, of the Senate.

While the purpose of the Relief of Newell Act is perfectly clear, there are several curious issues or fictions raised by the act itself.

The first obvious fiction in the preamble is the omission of any reference to Samuel D. Rounds, the plaintiff in the original cases. The court record contains no transfer or assignment of the judgments rendered in favor of Rounds and the State of Ohio to Newell. The judgments were privately settled on March 1, 1838, when Newell entered into an assignment of the judgments for \$1,600 from William Marks and Oliver Granger acting as agents for Smith and Rigdon, who had moved to Missouri. Yet this assignment was never filed with the court as a satisfaction

of the judgments. Indeed, had such occurred it would have precluded Newell from fraudulently petitioning the Ohio legislature for the act to assign the state's portion to him. And had Rounds informed Representative French that he was not the actual plaintiff, this knowledge may have proven problematic. Remember, Newell never hid from his friends that Rounds was nothing more than his straw man.²⁴¹ He even claimed to have paid Rounds \$100 to file the suits.²⁴² And by the time the initial collections efforts were taken, even the court record evidenced that Newell was the driving force and was awarded the recovery from these efforts.

However, making this reality and its accompanying efforts known to the Ohio legislature may have proven problematic for several reasons. In particular, in 1823 the Ohio Supreme Court in *Key v. Vattier* recognized the common law rule against "maintenance." As the court held, "Maintenance is defined to be an officious intermeddling in a suit that no way belongs to one, by maintaining or assisting either party with money, or otherwise to prosecute or defend it. It is an offense against public justice, as it keeps alive strife and contention, and perverts the remedial process of the law into an engine of oppression."²⁴³ Indeed, the most common method of maintenance is the use of a straw man—paying a party to bring an action for you. This is exactly what Newell did with Rounds. Newell paid Rounds to bring the case against Joseph Smith and Sidney Rigdon for him. As Bouvier pointed out, one that commits maintenance "is punishable by fine and imprisonment."²⁴⁴ Had Newell

241. Henry Holcomb, Newell's great-grandson-in-law, noted that Grandison Newell "early became involved in serious controversies with the Mormons located in Kirtland and after a series of litigations succeeded in consequence of their violation of the currency laws, in expelling them from the state." Henry Holcomb, "Personal Experience's [sic] after the Civil War," 52, MSS 3368, box 1, Henry Holcomb Papers, Western Reserve Historical Society, Cleveland, Ohio.

242. Hall, *Thomas Newell, and His Descendants*, 135, stating, "The following is a copy of Mr. Newell's own manuscript: 'Judgment obtained against Joseph Smith, Jr., and Sidney Rigdon for \$1,000 each at the fall term of 1838, in Geauga county, for issuing unauthorized bank paper. Samuel D. Rounds, the complainant, I bought off, and gave him \$100.'"

243. *Key v. Vattier*, 1 Ohio 132, 133 (1823).

244. Bouvier similarly defined maintenance as "a malicious, or at least, officious interference in a suit in which the offender has no interest, to assist one of the parties to it against the other, with money or advice to prosecute or defend an action, without any authority of law." Bouvier, *Law Dictionary*, 2:88; Jacob, *Law-Dictionary*, s.v. "maintenance," 4:215–17. See also Joseph Chitty, *A Practical*

accurately explained to Representative French that what he wanted was to be assigned the judgments obtained by Rounds, to which Newell had provided “maintenance” for bringing the case for his benefit, Newell would have run the real risk that French would have rightfully refused to entertain giving him any such help and might even have subjected himself to possible criminal prosecution.

The second fiction in the preamble of the Relief of Newell Act is that Newell had pursued the action “at much personal expense.” What expense? Costs were incurred in the various Rounds cases. First, in the four suits that were nonsuited by Rounds prior to trial, costs were assessed against Rounds totaling \$30.28. The court record shows that this amount was never paid. Second, when Newell assigned the judgments to Marks and Granger for \$1,600, he agreed “to pay all costs that has accrued on said judgments up to this date.”²⁴⁵ These costs totaled \$24.10 against Joseph Smith and \$23.58 against Sidney Rigdon. The court record shows that these amounts too were never paid. While these costs are specified in the court record, they were offset by the \$604.50 that Newell received from the sale of Rigdon’s personal property and the \$1,600 he recovered from Marks and Granger through the acceptance of real property. The fact is, these lawsuits were never a “personal expense” for Newell, but a significant moneymaker.

The third fiction in the preamble is the notation that the cases involved “prosecuted indictments in the name of the state.” This factual inaccuracy must be first viewed within the context that the cases were brought under the Act of 1816 that had been suspended by section 23 of the Act of 1824.²⁴⁶ Yet, even had the Act of 1816 been enforced during the time that these cases were brought, the cases were not brought under the criminal prong of the Act of 1816. As previously discussed, the

Treatise on the Criminal Law, vol. 1 (Philadelphia: Isaac Riley, 1819), 114–15; *Blackstone Commentaries*, vol. 5 (Philadelphia: William Young Birch and Abraham Small, 1803), 134.

245. Newell admitted to Henry Holcomb that he had “prosecuted and collected the prosecution’s part of the fine.” Henry Holcomb, *Events of Personal and Family History 1830–64*, 377, MSS 3368, box 1, Henry Holcomb Papers. Holcomb further notes, “As Mr. Newell told me that he had collected his \$1,000.00 (the part of the fine that went to the informer) . . . Mr. Newell never told me how he collected his fine or what the payment consisted in (or if he did I do not retain it in my memory).” Henry Holcomb, *Red Scrapbook #2*, 52, MSS 3368, box 1, Henry Holcomb Papers.

246. See pages 61 n. 119, 63–64, and 71–72.

Act of 1816 provided two available methods to bring a claim. Section 5 of the Act of 1816 articulated these two alternative methods: “That all fines and forfeitures imposed by this act, may be recovered by action of debt or by indictment, or presentment of the grand jury,²⁴⁷ and shall go one half to the informer where the action is brought, and the other half in aid of the public revenue of this state; but where the same is recovered by indictment or presentment, the whole shall be to the use of the state.” Under this section, when a case was brought by a citizen the case was a civil matter brought under the writ of an “action of debt.”²⁴⁸ When it was brought by the state by way of a grand jury, it was a criminal matter brought under an “indictment or presentment.” There is no dispute that the Rounds cases were all brought as civil suits based on actions of debt.²⁴⁹

Furthermore, the cases were not brought “in the name of the state.” Reuben Hitchcock, Rounds/Newell’s lawyer, had asked his father, Peter Hitchcock, who was then sitting on the Ohio Supreme Court, how the caption of the case should be stated, whether it should be brought in the name of the state or in the name of Samuel Rounds.²⁵⁰ While we do not have Peter Hitchcock’s response, applicable law indicated that in both cases it should have been brought in the name of the state.²⁵¹ Yet this is not what Reuben Hitchcock chose to do. One could suppose that Newell feared that if the case were brought in the name of the state, with Rounds only as the “informer,” then having the proceeds go to him might be more problematic. Such fears are supported indirectly by another letter Reuben Hitchcock wrote to his father asking about whether as the county prosecutor he had any conflict in dismissing Warren Parrish from the case, thereby foregoing seeking the \$1,000

247. “Presentment of the grand jury” refers to the written “accusation so presented to a grand jury.” Bouvier, *Law Dictionary*, 2:289–90. *Turk v. State*, 7 Ohio 240, 242, part II (1836) (“The oath of a grand juror requires him to ‘diligently inquire and true presentment make of all such matters and things as shall be given’ him ‘in charge, or otherwise come to’ his ‘knowledge, touching his present service,’ etc.”).

248. See note 135. It is this confusion that may have resulted in some wrongfully alleging that this case against Joseph Smith was a criminal one.

249. See pages 69–70.

250. See note 139.

251. See note 139, citing Swan.

fine against Parrish.²⁵² In any event, the facts are replete that the case was never a criminal proceeding involving indictments brought by the state.

Reviving the 1838 Judgment against Joseph Smith

Even though the act's preamble was littered with fictions, the General Assembly of Ohio passed the act that assigned the judgments to Grandison Newell. The act acknowledged that the judgments would need to be revived because they were nearly twenty-two years old. Newell would have to go to court to so revive the judgments and, if revived, to pursue collections on them. Interestingly, the legislature seemed to take some pains to make sure that Newell could not come back to it and seek any further relief, noting "that in no event shall any costs or charges made under or by virtue of this act be paid from the treasury of the state or of the counties of Lake and Geauga."²⁵³ After waiting nearly twenty months before doing anything with the Relief of Newell Act,²⁵⁴ Grandison Newell filed a motion on October 30, 1860, to have the judgments revived in the Geauga County Court of Common Pleas. Ironically, William Perkins, who had been the attorney for Joseph Smith and Sidney Rigdon in the underlying case, filed this new motion and now was representing Grandison Newell.²⁵⁵

Appointment of an Administrator

Yet the acceptance of this motion needed to be preceded by one other court action, namely, the appointment of an administrator over Joseph

252. See pages 81–82.

253. Geauga County was formed on December 31, 1805, the second county in the Connecticut Western Reserve. It was reduced in size with the formation of Cuyahoga County in June 1810 and Ashtabula County in January 1811. *Pioneer and General History of Geauga County with Sketches of Some of the Pioneers and Prominent Men* (n.p.: Historical Society of Geauga County, 1880), 20. It was further reduced in 1840 with the creation from it of Lake County. Painesville became the county seat for Lake County at that time. *History of Geauga and Lake Counties*, 23.

254. See appendix C for a summary of the legal events in this litigation.

255. See page 113.

Smith's estate. Lord Sterling,²⁵⁶ probate judge²⁵⁷ of Geauga County, made the appointment.

Ohio law required that any action brought before an Ohio court against the estate of a person who had died without a will needed to be brought against a duly appointed administrator.²⁵⁸ Joseph Smith did not leave a will when he died in Illinois, and for Ohio purposes, the appointment of an administrator was governed by statute. Ohio's "Act to provide for the settlement of the estates of deceased persons" (hereafter cited as Probate Act) was enacted in 1840 and was the operative law in 1860.²⁵⁹ Section 1 of the Probate Act provided that the probate

256. Lord Sterling (1805–1905) was elected probate judge for Lake County in 1854, commencing a three-year term in February 1855. He was reelected for a second term expiring in February 1861. Judge Sterling was admitted to practice law in Ohio in 1837 and began his practice in Willoughby, Ohio. He brought several suits against the Mormons, including *Holmes v. Smith* and others, June 5, 1837, Geauga Court of Common Pleas (Common Pleas Record book U, 86, Geauga County Archives) and *Stannard v. Young and Smith*, April 3, 1838, Geauga Court of Common Pleas (Common Pleas Record book U, 586, Geauga County Archives). Upon election as a probate judge in 1854, he moved to Painesville, Ohio. In 1878, he was elected prosecuting attorney for Lake County. C. S. Williams, *Williams' Ohio State Register and Business Mirror, for 1857: First Issue* (Cincinnati, Ohio: By the author, 1857), 85; Albert M. Sterling and Edward B. Sterling, *The Sterling Genealogy* (New York: Grafton Press, 1909), 469–71. Judge Sterling signed the administrator's letter appointing Holcomb. MS, October 29, 1860, Lake County Probate Court Records, Painesville, Ohio.

257. Constitution of the State of Ohio, art. IV, sec. 7.

258. The difference between an administrator and an executor is that an executor is designated by will and approved by the court, while the court appoints an administrator when a person dies without a will (intestate).

259. In 1853, the Ohio General Assembly adopted a completely revised code of civil procedure. "An act to establish a Code of Civil Procedure," passed March 11, 1853, *Acts of a General Nature Passed by the Fiftieth General Assembly of the State of Ohio* (Columbus: Osgood and Blake, 1853). This revision was patterned after the 1848 revisions made under the direction of David Dudley Field in New York. These changes were sweeping in nature, making a clean break from the English system of writs and complex form pleadings to merging actions in law and equity into one action using simple, concise language. As explained in the report to the New York legislature in 1850: "This Code is intended to embody the whole law of the state, concerning judicial remedies in civil cases . . . and all of the common law, on the subject of civil remedies . . . The purpose of the constitutional provision and of the statute under which this code is prepared, was to make legal proceedings more intelligible, more certain, more speedy, and less expensive. Heretofore the records of the courts, have been sealed books to the mass of the people . . . In

could be opened either where the deceased died or in “any county in which there is any estate to be administered.”²⁶⁰ Section 12 of the Probate Act provided for the appointment of an administrator “of an estate of an intestate.” Selection of the individual entitled to be appointed was determined by the following order of priority: “First: His widow, or next of kin, or both, as the court may think fit.”²⁶¹ This section further provides that if the widow or next of kin does “not voluntarily either take or renounce the administration, they shall, *if resident within the county*, be cited by the court, or notified by a party in interest, for that purpose.” This first priority did not apply in this case because neither Emma Smith nor any of Joseph Smith’s next of kin lived within Geauga County where this proceeding was filed. “Secondly: . . . the court shall commit it to one or more of the principal creditors, if there be any competent and willing to undertake the trust.”²⁶² Using a creditor as an administrator, however, is conditioned on first finding that “the person so entitled [for example, the widow or next of kin] to administration are incompetent, or evidently unsuitable for the discharge of the trust, or if they neglect, without sufficient cause, to take the administration of the trust. Thirdly: If there be no such creditor . . . the court shall commit administration to such other person as they shall think fit.”²⁶³

On October 29, 1860, Henry Holcomb was appointed by the Lake County Probate Court²⁶⁴ as the administrator over the estate of Joseph

a country where the people are sovereign, where they elect all officers, even the judges themselves, where education is nearly universal, it was not long possible, to keep the practice of the courts enveloped in mystery.” Arphaxed Loomis, David Graham, and David Dudley Field, *The Code of Civil Procedure of the State of New York* (Albany: Weed, Parson and Co., 1850), iii, v, viii. Ohio would be an early adopter of what would be referred to as the “Field Code.” Edward Walford, *Men of the Time: A Biographical Dictionary of Eminent Living Characters, (including Women)* (New York: Routledge, Warne and Routledge, 1862), 284. The Probate Act, therefore, must be read in light of the Ohio 1853 Code of Civil Procedure.

260. Act to provide for the settlement of the estates of deceased persons, *Statutes of the State of Ohio of a General Nature, in Force January 1, 1854* (Cincinnati: H. W. Derby and Co., 1854), sec. 1, 365 (hereafter cited as Probate Act).

261. Probate Act, sec. 12, 366 (emphasis added).

262. Probate Act, sec. 12, 367.

263. Probate Act, sec. 12, 367.

264. Probate courts were established by the 1851 Constitution of the State of Ohio to be located in each county in the state. Constitution of the State of Ohio, art. IV, secs. 7 and 8. Probate courts had exclusive jurisdiction to appoint administrators. Probate Act, sec. 2 (2), 746.

Know all Men by these Presents, That we Henry Holcomb
as principal & Grandison Howell & Henry
Holcomb Thomas Wilder as Sureties
 of the County of Lake, in the State of Ohio, are held and firmly bound unto the State of Ohio, in the
 penal sum of five hundred Dollars, to the payment of which sum well and
 truly to be made to the said State of Ohio, we do bind ourselves, our heirs, executors and administrators, joint-
 ly and severally, by these presents.

Sealed with our Seals, and dated the 29th day of October in the year
 one thousand eight hundred and sixty-----

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That if the above named-----

Henry Holcomb
 Administrator of all and singular the goods, chattels, rights and credits, which were of
Joseph Smith Jr deceased, late of Illinois
 in the County of Lake, aforesaid, shall.

FIRST: Make and return into Court, on oath, within three months, a true inventory of all the moneys,
 goods, chattels, rights and credits of the deceased, which have or shall come to his possession or knowledge,
 and also, if required by the Court, an inventory of the real estate of the deceased.

SECOND: Shall administer according to law, all the moneys, goods, chattels, rights and credits of the deceased,
 and the proceeds of all his real estate that may be sold for the payment of his debts, which shall at any
 time come to his possession, or to the possession of any other person for him.

THIRD: Shall render upon oath, a true account of his administration within eighteen months, and at any
 other times when required by the Court or the law.

FOURTH: Shall pay any balance remaining in his hands upon the settlement of his accounts, to such
 person as the Court or law shall direct. And,

FIFTH: Shall deliver the letters of administration into Court, in case any Will of the deceased shall
 be hereafter duly proved and allowed: then this obligation shall be void, otherwise it shall remain in full force
 and virtue in law.

H. Holcomb L.S.
G. Howell L.S.
H. Holcomb L.S.
T. Wilder L.S.

Filed..... 186.....

Administrator's Bond appointing Henry Holcomb the administrator over the estate of Joseph Smith. October 30, 1860, Lake County Probate Court Records. Photo courtesy Jeffrey N. Walker.

Smith. Just who was Henry Holcomb and how did he qualify to be Smith's administrator? The answer is another strange twist in Newell's elaborate fraud and use of straw men. Henry Holcomb²⁶⁵ was the grandson-in-law of Grandison Newell, Holcomb having married Emily Sawyer, Newell's granddaughter.²⁶⁶ Newell would live with the Holcombs for the last eighteen years of his life in Painesville, Ohio.²⁶⁷ Holcomb recalled about his appointment: "Sometime after the passage of the bill [the Relief of Newell Act] Mr. Newell asked me if I would act as administrator of the Joe Smith estate; that in order to get a title to the property it would be necessary to have an administrator appointed; but that it would consume but little of my time as he and Mr. Perkins would transact the business. About all I would have to do would be to sign papers."²⁶⁸

265. Henry Holcomb (1830–1919) was a hardware store owner and furnace manufacturer in Painesville, Ohio. He was born in Youngstown, Mahoning County, Ohio. He served as a band musician in the 2nd Brigade, 3rd Division, 23rd Army Corps during the American Civil War. Holcomb, "Personal Experience's."

266. Grandison Newell married Betsey Smith on April 16, 1807. They had eight children. Their oldest was a daughter, Saloma, born on May 24, 1810. Saloma married Harvey Sawyer on March 30, 1828. They had two children: a son, Addison, and a daughter, Emily. Emily was born on August 7, 1834. She married Henry Holcomb on August 30, 1852. They had two daughters, Eva, born on May 15, 1855, and Urania, born on August 9, 1862. Hall, *Thomas Newell, and His Descendants*, 132, 138, 140.

267. Holcomb, Red Scrapbook #2, 76½. Newell would die at Holcomb's home on June 10, 1874, in Painesville. Holcomb details the events leading to his death at age 88: "Monday, April 20th [1874] . . . I saw a runaway horse with the front wheels of a wagon attached dashing down Mentor and Washington Streets. At the corner of Washington Street and a lane extending from the front of the High School building to Mentor Avenue, they came up behind Mr. Newell, who was walking towards town, and striking him, knocked him against the fence and left him lying senseless on the sidewalk. After [Newell was] carried into the residence of Dr. Gage, I was notified, and after hitching Dan to the Rockaway I drove down and brought him home. He was found to have received serious abrasions on his head and arm and was considerably bruised. In about a week his wounds began to heal and he was able to walk back and forth outside. But on the last of May or first of June, he was walking back and forth on the porch for exercise, he remarked that he was not feeling so well, and expressed a regret that he had not been killed outright, as it would have relieved him from his sufferings. Soon after making the remark, he took to his bed, and rapidly began to decline. He was quite feeble the 7th, helpless the 8th and died the 10th." Holcomb, "Personal Experience's," 50–51.

268. Holcomb, *Events of Personal and Family History*, 377–78.

Holcomb later recounted: "Upon solicitation of Mr. Newell (who was my wife's maternal grandfather and a member of my family for eighteen years) to act as administrator on the Joseph Smith estate (he and Hon. Wm. L. Perkins, who was equally interested, to do all the legal business and bear half of the expense), I became administrator."²⁶⁹ Holcomb then mentioned "a statement of the transaction" that "was handed to me by Mr. Perkins some time afterwards." In pertinent part, it discloses, "At this place in the original is written in pencil, in my hand writing, the following words and figures, I paid to Holcomb \$5.00."²⁷⁰ Holcomb commented on this payment:

I do not think I ever received anything for services as administrator of the "Joe" Smith estate. I remember that Mr. Newell offered me \$5.00 but I declined to receive it as I had done nothing to earn it. I must have signed papers, but the only business transaction I remember in connection with it was to go to the Court House at the advertised hour and cry off the property from the porch. The only one present were Mr. Perkins, who bid in the property, Mr. Newell, Auditor B.D. Chesney, and myself. It may be that Mr. Newell paid me the \$5.00 afterwards when we had our yearly settlement. Mr. Newell, I remember, was as persistent in wanting to pay me the money as I was in declining.²⁷¹

Neither Newell nor Holcomb left any explanation as to why Newell wanted Holcomb to be appointed as administrator. Yet again, like Samuel Rounds, Holcomb was nothing more than a straw man for Newell. And again the crime of maintenance appears to have been committed by Newell.²⁷²

But did Holcomb actually qualify as the administrator for Joseph Smith's estate? Section 12 of the Probate Code provides some answers. Certainly Holcomb was not kin of Joseph Smith, and thus does not qualify under the first priority for an administrator. Should any efforts have been made to notify the widow or next of kin that an administrator was needed in cases where the widow or next of kin resided outside the county where the probate was filed? Perhaps not, but the 1832 Ohio Supreme Court in *Dixon v. Cassell* called for some extra effort by the

269. Holcomb, Red Scrapbook #2, 76½.

270. Holcomb, Red Scrapbook #2, 76½–76¾.

271. Holcomb, Red Scrapbook #2, 76¾–76⅞. This entry is signed and dated at the end of this quote, "Henry Holcomb. Painesville, O. Sept. 25, 1909." The notations to fractional pages were apparently used to add pages to the scrapbook.

272. See pages 102–3.

court of common pleas “if the estate exceeds one hundred dollars in value.”²⁷³ In a case such as this, which had attracted interest in the state legislature, one might have expected the court to extend some courtesy to the Joseph Smith family.

Under the second priority, “any person” who is a creditor of the deceased can be appointed to serve as an administrator. Holcomb, however, was not a creditor of Joseph Smith. The Ohio Supreme Court in *Bustard v. Dabney* discussed the propriety of selecting a creditor to serve as administrator and held that “where the heirs and representatives reside in another state, and where no letters of administration have been taken in Ohio . . . the creditor may himself take letters of administration, and thus have complete remedy at law.”²⁷⁴ Under applicable statute and case law, then, the next appropriate administrator in this matter was not Holcomb, but Grandison Newell. Yet Newell stayed in the shadows and proposed the appointment of Holcomb. Such appointment was made under the catch-all provision of Section 12, which allowed the Court to appoint “such other person as they shall think fit,” presumably if no administrator could be found of higher priority.

And so, Holcomb, at the request of both Newell and his attorney, Perkins, was appointed administrator of the estate of Joseph Smith. The record simply noted: “on the 29th day of October AD 1860 one Henry Holcomb was duly appointed and qualified as administrator of the Estate of the said Joseph Smith Jr.”²⁷⁵

Once appointed as administrator, the law required Holcomb to provide a bond, “with two or more sufficient sureties, in such sum as the court shall order, payable to the state of Ohio.”²⁷⁶ The purpose of the bond was to make sure the administrator properly managed the deceased estate. Responsibilities included: (1) to provide an inventory of the deceased property to the court within three months following his appointment,

273. *Dixon v. Cassell*, 5 Ohio 533, 533 (1832).

274. *Bustard v. Dabney*, 4 Ohio 68, 68, 71 (1829). The court further found: “If the widow, or next of kin, will not accept the trust, then any creditor of the intestate, who shall apply, may be appointed . . . Pursuing the provisions of this law, the complainant has complete and adequate remedy. He is a ‘creditor,’ and, if no other person will do it, may take letters of Administration.”

275. Common Pleas Record 36:339, October 30, 1860, Geauga County Archives; see also Administrator’s Letter, October 29, 1860, Lake County Probate Court Records; Journal Record, October 29, 1860, book D, 103, Lake County Probate Court Records.

276. Probate Act, sec.13, 367.

(2) to administer, according to applicable law, the assets of the deceased to his debts, (3) to provide an accounting of his actions within eighteen months following his appointment, (4) to pay any balance of the assets to heirs or where the court may direct, and (5) to notify the court should a will be discovered.²⁷⁷ Holcomb secured an “Administrator’s Bond”²⁷⁸ for \$500 on the day of his appointment, with Grandison Newell and Thomas Wilder²⁷⁹ as sureties. However, as Holcomb readily admitted, he did virtually nothing to comply with these enumerated responsibilities.

Holcomb’s Scant Performance as Administrator

The judgment against Joseph Smith was more than twenty-two years old. Under Ohio law, after five years a judgment became dormant and was no longer a lien on any of the debtor’s property.²⁸⁰ To pursue collections on a dormant judgment first required that the judgment be “revived.”²⁸¹ A revival was done by motion and required the “consent of

277. Probate Act, sec.13, 367.

278. Lake County Probate Court Records, October 29, 1860; Journal Record, October 29, 1860, book D, 103.

279. Thomas Wilder (1785–1878) was Grandison Newell’s brother-in-law, having married Deidamia Newell (1788–1860), Grandison’s younger sister, in 1808. Thomas and Deidamia named one of their sons Grandison Newell. Hall, *Thomas Newell, and His Descendants*, 142, 229–33; Almira L. White, *Genealogy of the Descendants of John White of Wenham and Lancaster, Massachusetts (1638–1900)*, vol. 1 (Haverhill, Mass.: Chase Brothers, 1900), 472.

280. An act to establish a code of civil procedure, passed March 11, 1853, *Acts of a General Nature passed by the Fiftieth General Assembly of the State of Ohio* (Columbus: Osgood and Blake, 1853) (“Code of Civil Procedure”), sec. 422, 126, provided: “If execution shall not be sued out within five years from the date of any judgment, that now is or may hereinafter be rendered in any court of record in this State, or if five years shall have intervened between the date of the last execution issued on such judgment and the time of suing out another writ of execution thereon, such judgment shall become dormant, and shall cease to operate as a lien on the estate of the judgment creditor.” Section 421 of the Code of Civil Procedure further provided that the “lands and tenements of the debtor within the county where the judgment is entered, shall be bound for the satisfaction thereof, from the first day of the term, at which judgment is rendered.”

281. Revival of a judgment by reference was governed by the provisions for reviving a cause of action against a deceased person. Code of Civil Procedure, sec. 417, 125 (“If a judgment become dormant, it may be revived in the same manner, as prescribed for reviving actions before judgment”).

such representatives or successor” if the debtor was deceased.²⁸² Newell moved to revive only the judgment against Joseph Smith in the Geauga Court of Common Pleas. No explanation is given as to why a similar motion was not filed against Sidney Rigdon. While the Relief of Newell Act had assigned both of the judgments to Newell and while the assignment of the judgments from Newell to Marks and Granger was never filed with the court, the Geauga Court of Common Pleas did include notations about collection efforts against Rigdon. These efforts included three executions on Rigdon’s personal property, for which a total of \$716.25 was recovered.²⁸³ As this was itself more than half of the total judgment, it would make sense that Newell would not move to revive the Rigdon judgment and thereby raise the issue about his prior successful collections efforts.

Filed by William Perkins on October 30, 1860, the motion to revive the judgment against Joseph Smith was straightforward:

And now comes the said Grandison Newell by his attorney and it appearing to the Court that said Judgment has been assigned to and is the property of the said Grandison Newell. That due notice of this motion has been served on Henry Holcomb Administrator of said Joseph Smith Jr and that said Administrator consents that said motion be heard and determined at this Court and that said administrator admits the facts stated in said motion and shows no cause why said Judgment should not be revived it is ordered that the said Judgment of the said Samuel D Rounds for the State of Ohio as well as for himself against the said Joseph Smith Jr. rendered at the October Term 1837 of this Court for one thousand dollars Debt and twenty three dollars and thirty five cents costs of suit be and the same is hereby revived against the said Henry Holcomb as such administrator of the said Joseph Smith Jr. deceased and that execution issue in the name of the said Samuel D Rounds for the benefit of the said Grandison Newell against the said Henry Holcomb as such administrator to be levied of the goods and chattels²⁸⁴ of the said Joseph

282. Code of Civil Procedure, sec. 410, 124. “If either or both the parties die after judgment, and before satisfaction thereof, their representatives, real or personal, or both, as the case may require, may be made parties to the same, in the same manner as is prescribed for reviving actions before judgment; and such judgment may be rendered, and execution awarded, as might or ought to be given or awarded against the representatives, real, or personal, or both, of such deceased party.” Code of Civil Procedure, sec. 416, 125.

283. See pages 94–95.

284. Chattels are “any article of movable good.” Noah Webster, *An American Dictionary of the English Language* (New York: S. Converse, 1828) s.v. “chattel”;

Smith Jr. at the time of his death, and also his costs herein taxed at two dollars and fifty one cents.²⁸⁵

A notice from Henry Holcomb was attached to the motion to revive the judgment against Joseph Smith. It perfunctorily noted:

I Henry Holcomb Admr of Joseph Smith Jr acknowledge Notice that the above motion will be made to Court aforesaid now in [*space*] Session and consent that the same may be heard and determined at the present term And admit that the facts stated in said motion are true

Painesville Oct 30. 1860

H Holcomb

The Geauga County Court of Common Pleas was held in Chardon, the county seat, with Judge Horace Wilder presiding.²⁸⁶ Holcomb apparently did not even appear in court with Newell during the term of court, but rather signed the above-quoted notice in Painesville, Lake County, where he resided.

This motion was brought in accord with existing law that required that a request for revival was to be made by motion,²⁸⁷ and because

Chattels “is a term which includes all kinds of property except the freehold or things which are parcel of it.” Bouvier, *Law Dictionary*, s.v. “chattels.”

285. This motion is found both within the general pleadings in the Common Pleas Record 36:339, MS, Geauga County Archives, October 30, 1860 (the “1860 Common Pleas Record”), as well as a separate pleading captioned as “Motion to revive Judgment,” in the Common Pleas Journal, book R, 208–9, October 31, 1860, Geauga County Archives (the “Motion to Revive”).

286. Horace Wilder (1802–1889) was born in West Hartland, Connecticut, and graduated from Yale College in 1823. After practicing law in both Connecticut and Virginia, he moved to Ohio in 1827 and was admitted to the Ohio bar the following year. He was elected prosecuting attorney for Ashtabula County in 1833. In 1855, he was elected judge of the Court of Common Pleas of the ninth judicial district (composed of Ashtabula, Geauga, and Lake Counties) to fill the vacancy of Judge Reuben Hitchcock. He formed a law partnership with Edward Fitch in 1863 under the name of Wilder & Fitch. That partnership lasted only about a year because Wilder was selected as a member of the Ohio Supreme Court in 1864. He sat on the Ohio Supreme Court only until 1865 and retired in 1867 when he moved to Red Wing, Minnesota, where he died. George I. Reed, ed., *Bench and Bar of Ohio* (Chicago: Century Publishing and Engraving, 1897), 231; Levi J. Burgess, *Reports of Cases Argued and Determined in the Supreme Court of Ohio* (Albany: Banks and Brothers, 1891), xi–xii; William B. Neff, *Bench and Bar of Northern Ohio* (Cleveland: Historical Publishing, 1921), 67.

287. “The order may be made on the motion of the adverse party, or of the representatives or successor of the party who died, or whose power ceased,

the facts and request were “made by the consent of the parties,” the court was empowered to immediately revive the judgment.²⁸⁸ The court ordered the revival of the judgment against Joseph Smith in the amount of \$1,000, plus \$23.35 in costs as was originally awarded in October 1837 (hereafter cited as revived judgment).

While on its face this revival appears properly obtained, there appears to be one glaring omission—what about any notice that might have been given to Joseph Smith’s widow, Emma Smith, or his then living children, Julia M. Smith, Joseph Smith III, Frederick G. Smith, Alexander H. Smith, and David Hyrum Smith?²⁸⁹ No notice was ever sent to them regarding the revival of the judgment against their husband and father, Joseph Smith. And the law indeed required such notice. Section 406 of the Code of Civil Procedure²⁹⁰ provided for just this situation:

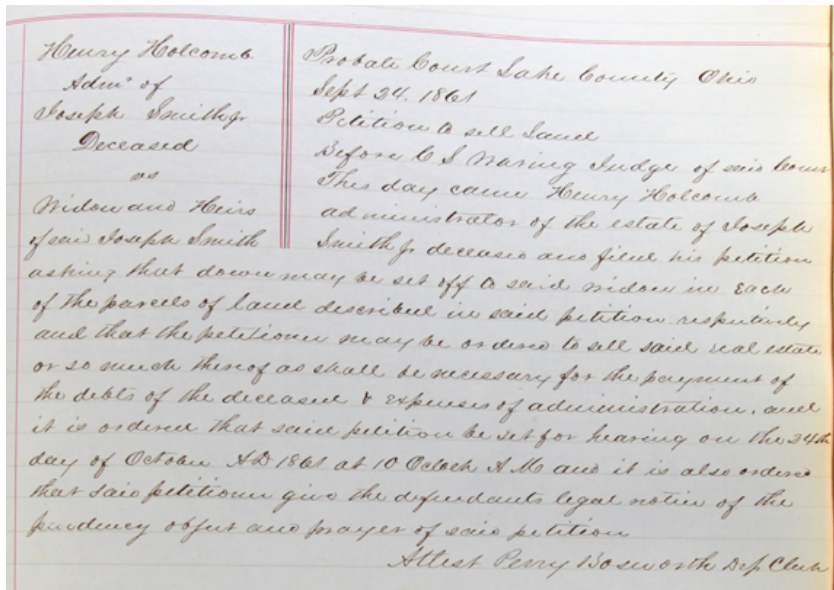
When plaintiff shall make an affidavit, that the representatives of the defendant, or any of them in whose name the action may be ordered to be revived, are non-residents of the State, or have left the same to avoid the service of the order, or so concealed themselves that the order cannot be served upon them, or that the names and residences of the heirs or devisees of the person against whom the action may be ordered to be revived, or some of them, are unknown to the affiant, a notice may be published for six consecutive weeks, as provided by section

suggesting his death, or the cessation of his powers, which, with the names and capacities of his representatives, or successor, shall be stated in the order.” Code of Civil Procedure, sec. 404, 123.

288. Code of Civil Procedure, sec. 405, 123 (“If the order is made by the consent of the parties, the action shall forthwith stand revived.”). The court record noted that, “this motion has been served on Henry Holcomb administrator of said Joseph Smith Jr. and that said administrator consents that said motion be heard and determined at this Court and that said administrator admits the facts stated in said Motion and shows no cause why said Judgment should not be revived.” 1860 Common Pleas Record.

289. Joseph and Emma Smith had ten children: Alvin Smith (b. June 15, 1828, d. June 15, 1828), Thaddeus and Louisa Smith (b. April 30, 1831, d. April 30, 1831), Joseph Murdock Smith (b. April 30, 1831, d. March 29, 1832), Julia Murdock Smith (b. April 30, 1831, d. Sept. 12, 1880), Joseph Smith III (b. Nov. 6, 1832, d. Dec. 10, 1914), Frederick Granger Smith (b. June 20, 1836, d. April 13, 1862), Alexander Hale Smith (b. June 2, 1838, d. Aug. 12, 1909), Don Carlos Smith (b. June 13, 1840, d. Aug. 15, 1841), and David Hyrum Smith (b. Nov. 17, 1844, d. Aug. 29, 1904). At the time that the judgment was revived all the living children were in Nauvoo, Illinois.

290. Code of Civil Procedure, sec. 406, 123–24.



Receipt of the Petition to Sell Lands, September 24, 1861, Lake County Probate Court Records. Photo courtesy Jeffrey N. Walker.

seventy-two,²⁹¹ notifying them to appear on a day therein named, not less than ten days after the publication is complete, and show cause why the action should not be revived against them; and if sufficient cause be not shown to the contrary, the action shall stand revived.

Emma Smith and her children were all living in Nauvoo, Illinois, in 1860.²⁹² This being the case, it is uncertain whether publishing notice as

291. Section 72 provided: "The publication must be made six consecutive weeks, in some newspaper printed in the county where the petition is file, if there be any printed in such county; and if there be not, in some newspaper printed in this State, of general circulation in that county." Code of Civil Procedure, sec. 72, 68.

292. On April 6, 1860, a conference was held in Amboy, Illinois, where Joseph Smith III, Joseph Smith Jr.'s oldest surviving son, was sustained as the "Prophet, Seer, and Revelator of the Church of Jesus Christ" and ordained "President of the High Priesthood of the Church." Thus would be the formal organization of what would become the Reorganized Church of Jesus Christ of Latter Day Saints, now the Community of Christ. *The History of the Reorganized Church of Jesus Christ of Latter Day Saints*, vol. 3 (Independence, Mo.: Herald House, 1867), 250–51. The headquarters for the Reorganized Church

required in a paper circulated in Geauga or Lake Counties would have provided Emma Smith or her children actual notice of the proceedings in any event.

Petition to Sell Lands Supposedly Owned by Joseph Smith

Grandison Newell would wait almost another year before taking any efforts to collect on the revived judgment against Joseph Smith. On September 19, 1861, Henry Holcomb, as administrator for Joseph Smith's estate, by William Perkins, now acting as the administrator's attorney, filed a "Petition to Sell Lands" with the probate court for Lake County.²⁹³ Probate Judge Milton Canfield²⁹⁴ presided over these proceedings, Probate Judge Lord Sterling's term having expired in February 1861. The Petition to Sell Lands represented to the court that "there is no personal property of the decedent in said County or state within his Knowledge." This representation complied with existing law that required that any personal property be first levied before real property could be sold to satisfy a judgment.²⁹⁵

would be in Nauvoo, Illinois, until January 1866, when Joseph Smith III moved to Plano, Illinois. Roger D. Launius, *Joseph Smith III—Pragmatic Prophet* (Urbana: University of Illinois Press, 1995), 149. Emma Smith lived in Nauvoo until her death in 1879.

293. Petition to Sell Lands, September 19, 1861, Lake County Courthouse, Painesville, Ohio; Journal Record, October 29, 1860, book D, 175. This petition could have been filed "either in the court of common pleas of the county in which the real estate of the deceased, or any part thereof, is situated, or in the court which issued his letters testamentary or of administration." Probate Act, sec. 118, 382.

294. Milton C. Canfield (c. 1821–1875) was elected probate judge for Geauga County in 1858 for his first three-year term. He served as probate judge until 1866. He came from one of the most prominent families in Chardon, Ohio. He was the co-editor of the *Free Democrat* from 1849 to 1850. He was the prosecuting attorney for Geauga County from 1847 to 1850 and 1854 to 1858. He was in law partnership with his cousin, D. W. Canfield in Chardon, from 1866 to 1871. He served as mayor of Chardon in 1870. He was elected as a judge on the court of common pleas in 1871 and served there until his death. *Pioneer and General History of Geauga County*, 64, 68, 70, 344, 345; *History of Geauga and Lake Counties*, 23, 103.

295. Code of Civil Procedure, sec. 423 noted: "The writ of execution against the property of the judgment debtor, issuing from any cord of record in this State, shall command the officer to whom it is directed, that of the goods and chattels of the debtor, he cause to be made the money specified in the writ; and for want of goods and chattels, he cause the same to be made of the lands and tenements of the debtor." The Probate Act similarly requires that the personal property be sold first to satisfy any debts of the decedent (sec. 70). "As soon as the executor or administrator shall ascertain that the personal estate

Yet, how could Holcomb actually make this representation? As previously discussed, Holcomb did nothing as the administrator but sign pleadings prepared by Newell and Perkins.²⁹⁶ But despite this failure, the representation was most likely true, for Joseph Smith had left Kirtland more than twenty-three years previously and had never returned to Ohio.

The Petition to Sell Lands sought to sell two parcels: The first was a thirteen-acre parcel (the “13-Acre Property”) that included parts of lots 29, 41, and 42 in Kirtland Township.²⁹⁷ Joseph Smith acquired the 13-Acre Property from Samuel Canfield²⁹⁸ on October 1, 1836, for \$500.²⁹⁹

in his hands will be insufficient to pay all the debts of the deceased . . . he shall apply to the court of common pleas for authority to sell the real estate of the deceased.” Probate Act, sec. 117, 382.

296. The original appointment of Holcomb as administrator included the appointment of Leonard Rich, George Frank, and Dexter Damon, “whose duty it shall be to have all and singular the said goods and chattels [of Joseph Smith, Jr.] inventoried and appraised.” Lake County Probate Court Records, October 29, 1860. No such inventory or appraisal was ever filed with the court, further supporting the reality that by 1860, Smith had no personal property within the jurisdiction of the court. See also Journal Record, October 29, 1860, book D, 103.

297. The legal description in the Petition to Sell Lands of this parcel is as follows: “Beginning at the center of the highway lately laid out in the north line of lands deeded to Samuel Canfield; thence west sixty-six rods to a post; thence south fifteen rods to a post; thence south 58 degrees west nineteen rods to the lot line; thence south along the lot line 8 rods to a post; thence east parallel with the north line sixty-nine rods to the center of the highway thence bounding on the center of the highway northerly to Mr. Young’s northwest corner; thence west eight rods to a post; thence north eight rods to a post; thence east thirteen rods to the highway; thence northerly bounding on the center of the highway four rods north & south to the place of beginning: Containing thirteen acres of land subject to all legal highways” (spelling corrected).

298. Samuel Canfield (1783–1861) was born in Danbury, Connecticut. He married Martha Sabrina Davenport in 1804. He joined the LDS Church by 1834 and was ordained an elder in March 1835 in Kirtland, Ohio. He purchased stock in the Society. He did not migrate with the Church to either Missouri or Illinois. He died in Newbury, Geauga County, Ohio. Jeannette Grosvenor, *Card File of Geauga County, Ohio, Cemetery Inscriptions, ca 1800–1983* (Salt Lake City: Genealogical Society of Utah, 1988), microfilm available in FHL; Historian’s Office of The Church of Jesus Christ of Latter-day Saints, “MHC B-1,” 579; Frederick Novy and Marguerite Lambert, *Novy-Garwood Family Records and Connections* (Madison, Wis.: Mennonite Family History, 1990), 87–88.

299. The deed to the thirteen-acre property was executed on October 1, 1836, and signed by both Samuel Canfield and Sabrina, his wife. Frederick G. Williams

It does not appear that this property was transferred out of Joseph Smith's name during his lifetime, thereby indeed making it available for execution by a creditor of his estate. The only caveat is a small portion of this property located on lot 29 (a sliver along the southern border of this lot encompassing $\frac{79}{160}$ of an acre). That sliver of property was conveyed by Smith to William Marks on April 7, 1837, and then transferred back to Smith, as "Sole Trustee in Trust" for the Church on February 11, 1841. There is no explanation as to why only that portion of lot 29 was so transferred and not the rest of this property. One could suppose that the intention was to transfer all of this property to Marks, as was done with other properties owned by Smith at the time, but the legal description was incomplete. Regardless of the intentions, the record appears clear that all but $\frac{79}{160}$ of an acre remained in Joseph Smith's name from the date of transfer on October 1, 1836, through Newell's collection efforts in 1862.

The second parcel was clearly the real object of Newell's efforts.³⁰⁰ While just more than an acre, the Petition to Sell Lands appropriately noted, after giving the legal description,³⁰¹ that this "is the same land on

witnessed the signatures as a justice of the peace. The reverse side of the deed notes that the property was actually transferred on October 28, 1836, and recorded on November 12, 1836. It was recorded in the Geauga County Records, book V, 430–31.

300. Henry Holcomb recalled that just after Newell approached him about becoming the administrator of the estate of Joseph Smith for the purpose "to get a title to the property," he rode with Newell to Kirtland "to see if the property there could be utilized to satisfy the judgment." When there they were "looking the temple over . . . I remember that I advised him to raze the temple and sell the stones; as that was the surest way to dispose of the Mormon business in that part of the country. But in reply he said the materials wouldn't sell for enough to pay for tearing the temple down; and that he thought he could get more out of it to sell it for what it would bring. The temple was kept locked, but was empty, deserted, and appeared to be fast dropping to ruin." Holcomb, *Events of Personal and Family History*, 377–79.

301. The legal description of this parcel in the Petition to Sell Lands is as follows: "known as part of lot No 30 and is bounded as follows, to wit, on the south by land formerly owned by Isaac Moore; beginning near the North east Corner of the said Moores land in the Center of the road leading from Kirtland to Flats to Chester and running west on the north line of said land twenty two rods; thence north seventeen rods to a stake marked No 1; thence East to the west line of the lot owned by the Methodist Episcopal Society on which their meeting house stands; thence south to the south west corner of said society's land lot; thence east to the center of the road before mentioned; thence southwardly to the place of beginning containing one acre and one hundred and fifty four and a half rods" (spelling corrected). This legal description was incomplete.

which stands the ‘Mormon Temple’ so called.” As one might expect, the land upon which the Kirtland Temple was built has an interesting history, not the least of which is the consequences of this litigation.³⁰² One might assume that the land that included the Kirtland Temple (hereafter cited as Temple Property) was a sizable parcel. Instead, the parcel from the outset was just a bit more than an acre—just enough land to include the footprint of the temple³⁰³ along with the print shop that was directly behind the temple. In Newell’s Petition to Sell Lands, he identifies the basis upon which he asserts that the Temple Property belonged to Joseph Smith: “the following described real Estate situated in said Kirtland township deeded by John Johnson to said Joseph Smith Jr., by deed dated the 4th day of January 1837.”³⁰⁴

A review of the chain of title (see appendix D) that included this deed is critical to understand whether in fact Joseph Smith owned the Temple Property in 1861 when Newell sought to have it sold to satisfy the revived judgment. The Temple Property was part of a large parcel of property that Turhand Kirtland³⁰⁵ acquired from the Connecticut Land Company³⁰⁶

While it did identify that the land was within the Kirtland Township, it failed to identify that the Kirtland Township is no. 9 in Lake County or that it was part of Tract 1 within the township (at the time, Kirtland Township was divided into two tracts).

302. For a summary of the chain of title of the Temple property, see appendix D. See also Kim L. Loving, “Ownership of the Kirtland Temple: Legends, Lies, and Misunderstandings,” *Journal of Mormon History* 30, no. 2 (2004): 1–80.

303. The Kirtland Temple’s footprint is 4,071 square feet. The interior measures 55 feet by 65 feet. The temple’s walls are two feet thick, adding four feet to both its length and width.

304. Spelling corrected.

305. Turhand Kirtland (1755–1844) was born in Wallingford, Connecticut, fought in the American Revolutionary War for New York, and was general land agent and stockholder of the Connecticut Land Company. He owned nearly two thousand acres of land in Kirtland—which is named after him. He never resided in Kirtland but settled in Poland Township, Trumbull County, Ohio, in the southeastern corner of the Western Reserve. Harry F. Lupold and Gladys Haddad, *Ohio’s Western Reserve* (Kent, Ohio: Kent State University Press, 1988), 61. He was a co-incorporator of the Western Reserve Bank in 1811 and a judge of the court of common pleas for Poland County, a trustee, state representative, and senator for the same county. *History of Trumbull and Mahoning Counties*, vol. 1 (Cleveland: H. Z. Williams and Bro., 1882), 76, 253, 263, 426.

306. The Connecticut Land Company was formed by a group of private investors in 1795 to acquire three million acres of the Connecticut Western

in 1799.³⁰⁷ Kirtland would sell just more than 51 acres of this large parcel, including the Temple Property, to Peter French³⁰⁸ on July 2, 1827.³⁰⁹ Peter French sold 103 acres, including the 51 acres to Joseph Coe³¹⁰ on April 10, 1833.³¹¹ Coe was appointed to be the agent for the Church in acquiring this property.³¹² The purchase price was \$5,000 with a \$2,000 down payment and the \$3,000 balance on two \$1,500 promissory notes, the first due in one year and the second in two years.³¹³ John Johnson provided the down payment from the sale of his farm in Hiram, Ohio. Coe transferred the Temple Property to Newel K. Whitney & Co. on June 17, 1833.³¹⁴ Whitney had joined the Church in November 1830. In 1831, he was made bishop for the Church in Kirtland. By revelation on June 4, 1833, Whitney in his capacity as bishop was given the stewardship over the Temple

Reserve from the State of Connecticut for \$1.2 million. The Connecticut Western Reserve was that portion of land in what is now the northeastern part of Ohio that Connecticut “reserved” when it ceded its western lands to the Federal Government in 1786. The Western Reserve Historical Society, “The Connecticut Land Company and Accompanying Papers,” tract no. 96, part 2 (Cleveland, Ohio, 1916), 69–96.

307. Abstract of Title prepared by George E. Paine, certified on January 5, 1878, containing entries beginning on March 13, 1799, item 1, Community of Christ Library-Archives, Independence, Missouri (hereafter cited as Abstract).

308. Peter French (1774–after 1850) was a farmer and tavern keeper. He was born in New York and moved to what is now Lake County, Ohio, in about 1799, becoming one of the first settlers in that part of the Western Reserve. By 1811, French had moved to Kirtland, where he built Kirtland’s first brick building in about 1830, which was part of this sale to Joseph Coe in 1833. Christopher G. Crary, *Pioneer and Personal Reminiscences* (Marshalltown, Iowa: Marshall Printing Co., 1893), 6; Anne B. Prusha, *A History of Kirtland, Ohio* (Mentor, Ohio: Lakeland Community College Press, 1982), 23–26.

309. Abstract, item 5.

310. Joseph Coe (1784–1854) was a farmer born in Cayuga County, New York. He was baptized into the LDS Church and ordained an elder after moving to Kirtland in 1831. He was ordained a high priest in 1831 and served on the Kirtland high council from 1834 to 1837. Minute Book 2, October 1, 1831; February 17, 1834; and September 9, 1837, CHL. He was excommunicated in 1838.

311. Deed, Peter French (and his wife, Sally) to Joseph Coe, book 17, 359, Geauga County Archives.

312. Kirtland Council Minute Book, March 23, 1833.

313. Mortgage, Joseph Coe to Peter French, book 17, 38, Geauga County Archives. Discharge of this mortgage was not recorded until September 18, 1848.

314. Deed, Joseph Coe to Newel K. Whitney & Co., book 17, 360, Geauga County Archives.

Property.³¹⁵ Construction of the Kirtland Temple began on June 5, 1833, and the edifice was dedicated on March 27, 1836.

These transfers are straightforward and make sense. However, things became more complicated when on May 5, 1834, nearly a year later, John Johnson deeded to Joseph Smith the Temple Property.³¹⁶ The deed specified in what capacity Joseph Smith received the Temple Property: “Joseph Smith Junior *President of the Church of Christ* organized on the 6th of April, in the year of our Lord, one thousand eight hundred and thirty, in the Township of Fayette, Seneca County and State of New York, and was called the church of the Latter day saints . . . *and his successors in the Office of Presidency of the aforesaid Church*” (emphasis added). This deed is significant in two respects. First, it is coming from John Johnson. A review of the prior deeds reveals that John Johnson’s name does not appear. While he made the down payment, as part of the transaction between Peter French and Joseph Coe in April 1833, the actual conveyance was individually to Coe. However, any question as to the validity of Johnson’s legal claim to the Temple Property was resolved on

315. While holding the Temple Property as bishop for the LDS Church in Kirtland was based on revelation (Kirtland Council Minute Book, June 4, 1833), it is peculiar that Coe did not transfer it to Whitney in his individual (or ecclesiastical) capacity, but rather to his company, Newel K. Whitney & Co. There is no explanation as to why it was transferred to his business rather than to him personally. As discussed herein, Whitney would subsequently transfer it as if he held it personally.

316. Deed, John Johnson (and his wife, Elsey) to Joseph Smith Junior, book 24, 478, Geauga County Archives. The legal description of this deed is materially the same as that noted in the Petition to Sell Lands, but not identical. This description was as follows: “a certain lot piece or parcel of land situated laying and being in Kirtland Township No. 9, in the 9th range of Townships, in the Connecticut Western Reserve, in the State of Ohio, and which is also in the county of Geauga and is known as part of lot No. 30, in tract one and is bounded as follows, to wit: On the south by land belonging to Frederick G. Williams formerly the farm of Isaac Moore, commencing near the northeast corner in the center of the road leading from Kirtland Mills to Chester and running west on the north line of said land 22 rods, thence north 17 rods to a stake marked No. 1, thence east to the center of said road from thence to the place of beginning supposed to contain One Acre and 154½ rods subject to all highways that may be on said land be the same more or less, with all and singular the houses, Woods, water, ways privileges and appurtenances thereto belonging in or any wise appertaining unto him . . .”

September 23, 1836, when Newel K. Whitney conveyed a large tract of property that included the Temple Property to Johnson.³¹⁷

Under the legal doctrine of “estoppel by the deed,” Johnson receiving the Temple Property from Newell K. Whitney validated, confirmed, and ratified the May 5, 1834, conveyance by Johnson of the Temple Property to Joseph Smith. The Ohio Supreme Court in 1831 explained this legal doctrine: “The obligation created by estoppel not only binds the party making it, but all persons privy to him; the legal representatives of the party, those who stand in his situation by act of law, and all who take his estate by contract, stand in his stead, and are subjected to all the consequences which accrue to him. It adheres to the land, is transmitted with the estate; it becomes a muniment³¹⁸ of title, and all who afterward acquire the title take it subject to the burden which the existence of the fact imposes on it.”³¹⁹

This doctrine is directly applicable to Johnson’s conveyance of the Temple Property to Joseph Smith *before* Johnson actually acquired a legal interest³²⁰ in the property. This issue was corrected two years later when Newel K. Whitney conveyed the Temple Property to Johnson. Had no other conveyance ever taken place, Joseph Smith, in his capacity

317. Deed, Newel K. Whitney (and his wife, Elizabeth Ann) to John Johnson, book 22, 497, Geauga County Archives.

318. Muniment is “a writing by which claims and rights are defended or maintained.” Noah Webster, *An American Dictionary of the English Language* (New York: S. Converse, 1828), s.v. “muniment.”

319. *Douglass v. Scott*, 5 Ohio 194, 198 (1831); see also *Allen v. Parrish*, 3 Ohio 107, 134 (1827) (“John Allen having, at the time he executed the deed to G. W. Allen, an interest in the refugee lands, which he was not prohibited by law from selling, and having conveyed with covenants of general warranty, the subsequent issuing of a patent to him for the land now in controversy, in fee and in severalty, will inure to the benefit of his grantee, and he is estopped; and his heirs, to prevent circuity of action, are rebutted by his covenants from denying that he had title to the particular tract described in such patent.”); and *Bond v. Swearingen*, 1 Ohio 395, 412 (1824) (“The authorities, both English and American, abundantly and clearly show that had N. Massie, after executing his deed to B. Abrams, acquired, by patent from the government or otherwise, a perfect title to the lands conveyed by him, he, his heirs, and all others claiming under him, would have been estopped from setting up the after-acquired title to the prejudice of his grantee . . . The heirs of Massie, standing in his place and inheriting from him, are bound by his warranty, and estopped by his grant from controverting the goodness of his title at the time he conveyed”).

320. Johnson had an equitable interest in the Temple Property at the time that the legal title was transferred by French to Coe as a result of Johnson having paid the \$2,000 down payment.

as President of the Church, had clear title to the Temple Property the moment Johnson received the property from Whitney. However, John Johnson conveyed the Temple Property again to Joseph Smith on January 4, 1837, noting that the prior deed to Smith “is supposed to be illegal, for which reason this last deed is executed.”³²¹ This redeeding to Joseph Smith was undoubtedly based on Johnson having deeded the property to Smith before he actually acquired title to it. This redeeding, however, was legally unnecessary to cure any deficiency that may have been found in the prior conveyance based on the doctrine of estoppel by the deed.

The January 4, 1837, transfer from Johnson to Smith created another issue. Rather than conveying it to Joseph Smith in his capacity as President of the Church, as was noted in the May 5, 1834, deed,³²² Johnson simply conveyed the Temple Property to Joseph Smith. This conveyance

321. Deed, John Johnson (and his wife, Elsey) to Joseph Smith Junior, book 24, 100, Geauga County Archives.

322. Ohio law provided for holding property in trust for religious societies. An act captioned as “Act securing to religious societies a perpetuity of title to lands and tenements, conveyed in trust for meeting houses, burying grounds, or residence for preachers,” passed on January 3, 1825, *Statutes of the State of Ohio* (1841), sec. 1, 783 provided: “That all lands and tenements, not exceeding twenty acres, that have been, or hereafter may be conveyed, by devise, purchase or otherwise, to any person or persons, as trustee or trustees, in trust for the use of any religious society within this state, either for a meeting house, burying ground, or residence for their preacher, shall descend, with the improvements and appurtenances, in perpetual succession, in trust, to such trustee or trustees as shall, from time to time, be elected or appointed by any such religious society, according to the rules and regulations of such society, respectively.”

The conveyance to Joseph Smith from John Johnson on May 5, 1834, of the Temple Property appears to have been made in express compliance with this provision. So too is the February 11, 1841, conveyance by William Marks to Joseph Smith of the Temple Property. “This act was intended to remove all difficulty arising from defective conveyances, and seems to us amply sufficient to effect the object, whether the trust be secret and implied, or expressed in the conveyance.” *Methodist Episcopal Church of Cincinnati v. Wood*, 5 Ohio 283, 287 (1831). Ironically, had the Church been incorporated under Ohio’s “Act in relation to incorporated religious societies,” passed March 5, 1836, *Statutes of Ohio* (1841), sec. 1, 782, it could not hold any land, “exceeding in quantity, one acre . . . or any other property not exceeding the annual value of one thousand dollars.” Consequently, holding the Temple Property in *trust* for the Church was the most appropriate and legally available method.

The Church finally incorporated in Ohio in 1841 by an “Act to incorporate the Church of Christ of Latter Day Saints,” *Acts of a Local Nature passed by the Thirty Ninth General Assembly of the State of Ohio* (Columbus: Samuel Medary,

had no legal effect on what or how Joseph Smith received the Temple Property, since Johnson in his May 5, 1834, deed had already deeded his entire interest in the Temple Property and this transfer was ratified under the doctrine of estoppel by the deed when Johnson received the Temple Property from Whitney on September 23, 1836.

On April 10, 1837, Joseph Smith conveyed the Temple Property to William Marks³²³ along with several other properties at the same time.³²⁴ Marks held the Temple Property and other properties and used some of these properties to settle obligations of Joseph Smith and the Church after Smith had left Ohio in January 1838. On February 11, 1841, William Marks conveyed the Temple Property back to Joseph Smith as “sole Trustee in trust for the Church of Jesus Christ of Latter day Saints.”³²⁵ Smith held the Temple Property in this capacity until his murder in Carthage, Illinois, on June 27, 1844.³²⁶

1841), 8–9. Its original “associates” were Oliver Granger, Thomas Burdick, Daniel Carter, Hiram Winters, and John Knapp.

323. Deed, Joseph Smith Jr. to William Marks, book 23, 536, Geauga County Archives. See note 224 for biographical information about William Marks.

324. See note 226.

325. Deed, William Marks to Joseph Smith Jr., book A, 327, Lake County Court Records.

326. Subsequent to the death of Joseph Smith, the next conveyance of the Temple Property was on November 23, 1845, when William Marks quitclaimed the property to Newel K. Whitney and George Miller, “trustees in trust for the Church of Jesus Christ of Latter Day Saints, and their successors in office.” Deed recorded August 25, 1846, William Marks to Newel K. Whitney and George Miller, book E, 109, Lake County Court Records. As Marks had conveyed all of his interest in the Temple Property to Smith on February 11, 1841, he had nothing to quitclaim to Whitney or Miller by this quitclaim deed. On August 15, 1846, Almon W. Babbitt, Joseph L. Heywood, and John S. Fullmer, as “trustees in trust for the Church of Jesus Christ of Latter-day Saints,” conveyed the Temple Property to Reuben McBride. Deed recorded January 2, 1847, Almon W. Babbitt, Joseph L. Heywood, and John S. Fullmer to Reuben McBride, book E, 227, Lake County Court Records. Whitney and Miller resigned as trustees for the Church on January 24, 1846, and Almon W. Babbitt, Joseph L. Heywood, and John S. Fullmer were appointed to replace them. Reuben McBride conveyed the Temple Property to George Edmunds Jr. on December 14, 1846. Deed recorded January 2, 1847, Reuben McBride (and his wife, Mary Ann) to George Edmunds Jr., book E, 228, Lake County Court Records. George Edmunds Jr. conveyed the Temple Property back to Almon W. Babbitt, Joseph L. Heywood, and John S. Fullmer on April 6, 1847. Deed recorded May 15, 1847, George Edmunds Jr. (and his wife) to Almon W. Babbitt, Joseph L. Heywood, and

Based on these conveyances, Joseph Smith's only "claim" to the Temple Property would be either (1) in his capacity as "President of the Church of Christ organized on the 6th of April, in the year of our Lord, one thousand eight hundred and thirty, in the Township of Fayette, Seneca County and State of New York, and was called the church of the Latter day saints . . . and his successors in the Office of Presidency of the aforesaid Church," that he received from John Johnson on May 5, 1834, or (2) acting as "sole Trustee in Trust for the Church of Jesus Christ of Latter day Saints," as he received the Temple Property back to him from William Marks on February 11, 1841. In either event, Joseph Smith did not have a personal or individual right, claim, or interest in the Temple Property. His interest was as a fiduciary for the Church. And it appears that at the time of his death this was understood by all the people involved.

For example, the leadership of the Church understood this as evidenced by the recorded conveyances by successor trustees of the Church after his death.³²⁷ His widow, Emma Smith, and the executors and administrators of his estate also understood this by the fact that the Temple Property was never included as property of Joseph Smith during the probate of his estate. Finally, Joseph Smith III actually bought the Temple Property in 1873³²⁸ rather than making any claim of inheritance. Ironically, in 1879 the Reorganized Church of Jesus Christ of Latter Day Saints (now the Community of Christ) initiated a lawsuit claiming ownership of the Temple Property on the basis that at the time of Smith's death he was holding the Temple Property as trustee to the church he founded and that the

John S. Fullmer, book E, 228, Lake County Court Records. There the property stayed until the present action brought by Grandison Newell.

327. That the Temple Property was indeed considered an asset of the LDS Church is further evidenced by an action filed by the Church under its incorporated name on September 30, 1844, called the "Church of Christ of Latter Day Saints of Kirtland," in the Lake County Court of Common Pleas against Jacob Bump (who had aligned with Sidney Rigdon [known as the "Rigdonites"]) to replevin twenty keys to locks and to unlock the temple. The court issued a writ of replevin on September 30, 1844, the day it was filed, but by October 9, 1844, the writ was returned, noting that the sheriff had not found any such keys. The action was dismissed on April 8, 1845, with costs assessed against the plaintiff. Lake County Court of Common Pleas, Journal, book B, 249, 350.

328. Joseph Smith III and Mark H. Forscutt acquired the Temple Property from Russell Huntley for \$150 on February 17, 1873. Deed from Russell Huntley to Joseph Smith III and Mark H. Forscutt, book 5, 67, Lake County Court Records.

Reorganized Church was “the legal true and legitimate successor of the Original Church of Jesus Christ of Latter Day Saints.”³²⁹

Petition and Sale of the Temple Property

With this complicated background in mind, we can return to the steps taken next by Grandison Newell to have the Temple Property sold to satisfy the judgment. In the Petition to Sell Lands prepared by Perkins, the basis for Joseph Smith’s ownership of the Temple Property was described as “deeded by John Johnson to said Joseph Smith Jr by deed dated the 4th day of Januay 1837.” Newell’s choice to make the claim that Smith owned the Temple Property by way of the January 4, 1837, deed from John Johnson was not a random decision. As discussed above, the only time that Joseph Smith was deeded the Temple Property personally was the January 4, 1837, deed from Johnson. Consequently, so long as one looks only at this deed, a colorable claim that Smith personally owned the Temple Property and therefore the property was part of Smith’s estate is created. Yet such an assertion materially misrepresents the true nature of the rights that Joseph Smith had in the Temple Property. Consider the following material omissions: On May 5, 1834, John Johnson conveyed all of his interest in the Temple Property to Joseph Smith. This conveyance was subsequently ratified by the doctrine of estoppel on the deed when Johnson was deeded the Temple Property by Newel K. Whitney on September 23, 1836. Thus, when Johnson redeeded the Temple Property to Smith on January 7, 1837, Johnson had nothing more to convey. When Johnson conveyed the Temple Property to Smith on May 5, 1834, he specified that Smith received the property as “President of the Church of Christ . . . and his successors in the Office of Presidency of the aforesaid Church.” Joseph Smith never owned the Temple Property. He always held the Temple Property in trust for the Church.

Despite this reality, Perkins chose to omit these facts as he prepared the Petition to Sell Lands. Holcomb never truly acted as an administrator for the estate of Smith in reviewing independently whether such a claim was true and instead affirmatively represented to the state that “the said decedent died seized in fee simple of the following real estate

329. Petition captioned as “The Reorganized Church of Jesus Christ of Latter Day Saints v. Lucius Williams, Joseph Smith, Mark H. Forscutt, The Church in Utah of which John Taylor is president and Commonly known as the Mormon Church & John Taylor President of Said Utah Church,” dated August 18, 1879, Lake County Court Records.

situated in the Township of Kirtland in Lake County in the State of Ohio. . . .” And so with that representation, the process moved forward to have the Temple Property sold as a personal asset of Joseph Smith.

Part of this process was the need to determine exactly what was owed under the revived judgment. Pursuant to applicable law, interest accrued on his judgment at six percent per annum.³³⁰ No interest accrued on the costs.³³¹ On October 24, 1861, Holcomb filed with the probate court a “Statement of Debts.” The only debt that he reported was the one “assigned by Rounds and the State of Ohio to Grandison Newell.” The statement noted that the judgment was entered on October 14, 1837, and revived on October 22, 1861, and that the “balance due principal & interest” was \$1,347.46. How this total was calculated is uncertain. Had Newell applied the statutory simple interest of six percent per annum by the number of years between the entry of the judgment and its revival of just more than twenty-four years, the principal and interest due would have been \$1,444. Despite this difference, per Newell’s calculation, \$1,347.46 was now due and collectible.

Another complicating factor in the sale of the property would be the “dower” interest that Joseph Smith’s widow, Emma, had if in fact Joseph Smith owned the Temple Property as claimed by Newell. A dower interest is the wife’s interest upon the death of her husband of one-third of the value of the land and improvements obtained during the marriage.³³² This issue was addressed in the Petition to Sell Lands³³³ as required by law:³³⁴

330. An act fixing the rate of interest (passed January 12, 1824), *Statutes of Ohio* (1854), sec. 1, 481.

331. An act to regulate the fees of clerks of the courts of common pleas (passed May 1, 1852), *Statutes of Ohio* (1854), sec. 17, 410 (“No interest shall be taxed or collected on the cost bill of any suit or proceeding, had in any of the courts of this state.”).

332. An act relating to dower (passed January 28, 1823), *Statutes of Ohio* (1854), sec. 1, 329 (“That the widow of any person dying, shall be endowed of one full and equal third part of the lands, tenements and real estate of which her husband was seized, as an estate of inheritance, at any time during the coverture”); Bouvier, *Law Dictionary*, s.v. “dower”; *Allen v. McCoy*, 8 Ohio 418 (1838) (a historical examination of the law surrounding the dower interest from English common law to Ohio statutory law).

333. Petition to Sell Lands, September 19, 1861.

334. Probate Act, secs. 122 and 123, 383.

Your petitioner prays that the said Emma and her said husband, and the said Joseph Smith son & heir of said decedent, & his other heirs if there shall be found to be others, may be made parties defendants to this petition; that the dower of the said Emma may be set off to her in each of said parcels of land respectively, that your petitioner may be ordered to sell said real estate, or so much thereof as he shall find necessary to the payment of the debts of the deceased and expenses of Administration, & for suit others & further relief as the court shall find him entitled to.

Holcomb further represented to the court by an attached affidavit that these persons to be added to the probate “reside out of state and at Nauvoo in the State of Illinois.”³³⁵ Under applicable law, when defendants were out of state, notice of the petitioned sale could be made “by publication of the object and prayer of the petition, four weeks successively previous to the term of the court at which an order of sale will be asked, in some newspaper of general circulation in the county where the deceased last dwelt.”³³⁶

Starting on September 25, 1861, and running for four consecutive weeks in *The Press and Advertiser*,³³⁷ a newspaper printed in Painesville, the following legal notice was printed:

EMMA, widow of Joseph Smith, Jr., and her husband, and Joseph Smith, son of said Joseph Smith, Jr., and the other heirs of said Joseph Smith, Jr., deceased, are hereby notified that Henry Holcomb, Adm’r of the said Joseph Smith, Jr, has filed in the Probate Court of Lake County, Ohio a petition for the sale of the real estate of said decedent, and will in pursuance of the prayer of said petition, on the 24th day of October, 1861, or as soon thereafter as Counsel can be heard, ask for an order for the assignment of dower to the said Emma, widow of the said Joseph Smith, Jr., in and for the sale of the following real estate, of which the said Joseph, Jr, died seized, or so much thereof as may be necessary for the payment of his debts, to wit, parts of

335. This portion of the Petition to Sell Lands noted: “The Petitioner is for want of Knowledge to set forth with certainty the names and places of residence of the heirs of the said Joseph Smith Jr., but says that said decedent died leaving one son who is his heir & entitled to the west estate of inheritance in the premises above described from the said decedent, whose name is Joseph Smith & whose place of residence is Nauvoo aforesaid & is all the heir known to the Petitioner, & if there are others their names & places of residence are wholly unknown to the petitioner” (grammar and spelling corrected).

336. Probate Act, sec. 126, 383.

337. *The Press and Advertiser* was published in Painesville from 1860 to 1861, when the publishers of the *Painesville Telegraph* acquired it.

lots 29, 41 and 42 of tract No. 1, situate in Kirtland Township, in said County, containing thirteen acres of land, more or less, deeded by Samuel Enfield to said decedent. Also part of lot thirty, in said township, deeded by John Johnson to the decedent, containing one acre and 154 ½ rods, being the same land on which the "Mormon Temple," so called, stands.

HENRY HOLCOMB,

Adm'r of Joseph Smith, Jr., deceased.

WM. L. PERKINS, Att'y.

Dated Sept. 23, 1861.³³⁸

The printing of this legal notice was filed with the probate court on October 24, 1861. At the same time, the probate court appointed per statute three appraisers³³⁹ to appraise³⁴⁰ both the 13-Acre and Temple Properties and entered an order to these appraisers "to proceed, after having been duly sworn as affirmed, set off and assigns to Emma widow of Joseph Smith Jr. by metes and bounds, (or especially as of rents and profits, in case no division can be made,) one full equal third part of value of the following described real estate as her dower."³⁴¹ However, by November 6, 1861, the probate court was informed that Guy Smith, one of the three appraisers, "is temporarily absent from his home" and therefore "unable to perform his duties as such appraiser."³⁴² The court replaced Guy Smith with A. S. Richards, as "a judicious disinterested freeholder of the vicinity." The three appraisers were, therefore,

338. It cost \$3.12 to print and run this notice. Notice to Widow and Heirs, October 24, 1861, Lake County Courthouse. A copy of the actual notice as printed in the *Press and Advertiser* was attached to the pleading.

339. The probate court originally appointed Guy Smith, George Frank, and Reuben Harmon as the three appraisers.

340. Probate Code sec. §138 provided: "If the deceased left a widow, entitled to dower, the court shall appoint three judicious, disinterested men of the vicinity, to set off and assign, by metes and bounds, in each, or one or more of the tracts of land, (or specially, as of the rents and profits, if no division can be made,) the dower of the widow of the deceased, and to appraise the premises, subject to the incumbrance of dower so assigned."

341. Order of Appraisal, October 24, 1861, Lake County Court Records (hereafter cited as Appraisal Order); Journal Record, October 24, 1861, book D, 181.

342. Appointment of Appraiser, November 6, 1861, Lake County Court Records (hereafter cited as Appointment); Journal Record, November 5, 1861, book D, 185.

Henry Holcomb
Adm^r of
Joseph Smith's
Estate
vs
Widow & Heirs

Probate Court Lake County Ohio
February 3^d 1862

It is remembered that on this 3^d day of February
AD 1862 before Charles J. Waring Probate Judge
in & for said County as a Court of Probate
sitting this cause came on to be further heard
upon the motion of the petitioners for the issue of an order of sale
and the appraisers heretofore ^{appointed} having made and filed their report
herein on the 25th day of November AD 1861 and the Court having
examined the same defined that the appraisers is duly made
It is thereupon ordered by the Court that the same be approved and
confirmed and that the said Emma widow hold in severally the
lands so assigned and set off to her as her dower estate in the
tract of thirteen acres in the petition first described and also that
the said Emma Widow shall receive the sum of Four \$1000 dollars
annually during life as & for her dower estate in the parcel of
land in the petition secondly and lastly described & that the
same be & is hereby made a lien & charge upon said lands and
that the same shall be payable annually on the 1st day of April
of each year during her life and in default of payment thereof
an execution shall issue therefor against said lands as upon
judgments at Law. And it is also further ordered by the Court
that the petitioners proceed to sell the lands in the petition secondly
subject to said Widows dower interest in the parcel first described
in said petition and to her line as above set forth upon the parcel
secondly in said petition described. And for that purpose it is
ordered that he shall give notice four weeks consecutively of the
time & time & place of sale prior thereto in the Painesville Telegraph
and it is further ordered that said sale shall be by public auction
at the door of the Court House of Lake County and shall be for cash
in hand upon the day of sale and that the petitioners make
return of his proceedings herein upon the 4th day of March
AD 1862. Order of sale issued accordingly.

Attest Perry Roseworth Dep. Clerk

Order of Sale (February 3, 1862), Lake County Probate Court Records. Photo courtesy Jeffrey N. Walker.

A. S. Richards,³⁴³ George Frank,³⁴⁴ and Reuben Harmon,³⁴⁵ and they entered into an oath that “they would, upon actual view, honestly and impartially assign dower, and appraise the real estate of Joseph Smith Jr., deceased, in pursuance of the within order of the Probate Court of said County.”³⁴⁶

343. A. S. Richards was a farmer while he lived in Lake County, Ohio. In 1884, he wrote a letter from Washington, D.C., to H. G. Tryon in Lake County reminiscing fondly his days as a farmer in Ohio. The letter is quoted by Tryon in his opening address as chairman of Lake County Institute, an agricultural organization located in Painesville. *Thirty-Ninth Annual Report of the Ohio State Board of Agriculture, with an Abstract of the Proceedings of the County Agricultural Societies, for the Year 1884* (Columbus: Myers Brothers, 1885), 575–78.

344. George Frank (1812–1892) moved to Kirtland around the same time the Mormons arrived in Kirtland. He was a farmer, as well as owned a “well-known tavern on the old Chillicothe road within a stone’s throw of the celebrated Mormon temple.” He died in Painesville. Harriet T. Upton, *History of the Western Reserve*, vol. 3 (Chicago: Lewis Publishing Co., 1910), 1779. George Frank and his brother jointly bought several pieces of property in and around Kirtland between 1838 and 1848. Their first purchase was a one-acre parcel from Nancy Rigdon (Sidney Rigdon’s mother) on January 18, 1838. Geauga County Records, book 25, 303.

345. Reuben P. Harmon (1814–1906) was born in Licking County, Ohio, and moved with his family to Painesville in 1819 and then to Kirtland in 1822. Harmon was a schoolteacher and later a professor. Paul E. Dornbos, transcriber, *Autobiography of Reuben Plum Harmon of Kirtland Lake County Ohio* (Painesville, Ohio: Lake County History Center, 2001). Harmon Jr. owned property in Lake County as early as 1838 when he purchased 31 acres from his brother Oliver Harmon on August 14, 1838. Geauga County Records, book 26, 310. He purchased nearly 150 additional acres between 1845 and 1849. Lake County Records, book D, 131 (100 acres); book E, 294 (11 acres); book F, 508 (23 acres); and book G, 415 (10.5 acres).

A “Testimony of Reuben P. Harmon” about Joseph Smith noted: “I was acquainted with Joseph Smith. I never knew anything bad about him. His reputation was good, his honesty never was questioned. I was not a member of any church. I have heard reports about them but I have lived among them here in Kirtland and never saw anything out of the way.” A. H. Parsons, *Parsons’ Text Book* (Independence, Mo.: Ensign Publishing House, 1902), 54, quoting selections from *Public Discussion of the Issues between the Reorganized Church of Jesus Christ of Latter Day Saints and the Church of Christ (Disciples): Held in Kirtland, Ohio, beginning February 12th, and closing March 8th, 1884, between E.L. Kelley of the R.C. of J.C. of Latter Day Saints and Clark Braden, of the Church of Christ* (St. Louis: Clark Braden, 1884), 391–92.

346. Appraisal Order, p. 2. Oath dated November 16, 1861. The oath is in accord with Probate Code §140 that provides: “The appraisers shall be sworn by some officer authorized to administer oaths, and a certificate thereof shall be inserted in, or annexed to their return; and they shall afterwards, upon actual

Ten days later, these three appraisers returned to the probate court and submitted their written report on the appraisal of the 13-Acre and Temple Properties. For the 13-Acre Property, including Emma Smith's dower interest, the appraised value was \$242.58. For the property "on which stands the 'Mormon Temple' so called," the appraisers first concluded "we do find that said premises are entire, and that no division thereof can be made by metes and bounds and do therefore set off and assign to the said Emma as for her dower therein, the sum of four and $\frac{11}{100}$ dollars yearly during her life,³⁴⁷ being one third part of the clear annual rents issues and profits of said premises."³⁴⁸

That means that the appraisers determined that the fair rent for the Kirtland Temple was just more than \$12.00 per year. While this number does seem extremely low, it should be noted that there are no records indicating that Emma Smith ever received even this small amount during her life.

The appraisers secondly concluded that the fair market value of the Temple Property, "subject to said encumbered by the payment of said sum (the dower) at three hundred twenty-five dollars." By statute the appraisers were paid \$1.00 each for their services.³⁴⁹ On February 3, 1862, the court accepted the appraisals and ordered the sale subject to proper advertisement.³⁵⁰

Notice of the sale required advertising the sale in a newspaper located in the county where the property was located for four successive weeks. This was done starting on February 6, 1862, by publishing the notice of sale for the two parcels under the title "Administrator's Sale" in the *Painesville Telegraph* and then republishing it on February 13, 20,

view, perform the duties required of them by the order of the court, and make return of their proceedings, in writing to the court."

347. It was Perkins who calculated that \$4.11 was Emma's dower interest. Only the valuation of the two properties was filled in by the appraisers. It appears that Perkins (possibly along with Newell) determined the fair rental value of the Temple Property that formed the basis for Emma Smith's dower interest.

348. Captioned by the court as "Order of Appraisal," November 16, 1861, Lake County Court Records, this pleading appears to have been prepared by William Perkins, Newell's attorney and partner in this transaction. This conclusion was based on comparing the bills for legal services that Perkins sent to Joseph Smith and this pleading. Perkins left blank the amount of the appraisal for each parcel that appears to have been filled in by one of the appraisers.

349. Probate Code, §141 provided that the "appraisers shall each receive one dollar per day, for services performed by them in the county in which they reside."

350. Journal Record, February 3, 1862, book D, 214.

and 27, 1862. This notice provided “on the fourth day of March 1862, between the hours of 2 and 3 o’clock P.M., in the town of Painesville, Lake County, Ohio, at the door of the Court House,³⁵¹ will be sold to the highest bidder the following real estate, as the property of Joseph Smith, Jr., deceased.”³⁵²

On March 4, 1862, the sale of the two properties took place as advertised. Henry Holcomb recounted about the sale: “On the day and hour advertised for the sale of the temple and land, I went to the Court House and standing near the round wooden columns in front,³⁵³ rather noisily cried off the temple and land, while Mr. Perkins—who with Mr. Newell and Benjamin D. Chesney, County Auditor—very quietly bid them in.”³⁵⁴

William Perkins was the only bidder on both parcels. As reported to the probate court, “William L. Perkins having bid for the premises first in the petition [the 13-Acre Property] described One Hundred and sixty three Dollars and being the best and highest bidder, & the same being more than two thirds of the appraised value thereof, I struck off and sold the same to him for that sum.”³⁵⁵

The sale conformed to the applicable law that provided that improved property could “not be sold for less than two thirds of the appraised value; and if not improved, for less than one half the appraised value.”³⁵⁶ On April 18, 1862, the court confirmed that all steps had been properly

351. The Probate Code, §144 provided that the “sale shall be made by public vendue, at the door of the court house, in the county in which the order of sale shall have been made or at such other place as the court may direct.”

352. Notice of Sale, April 18, 1862, Lake County Court Records. A copy of the actual advertisement is attached to this pleading.

353. This was most likely the first courthouse to be built in Painesville after Lake County was formed in 1840. As noted in *History of Geauga and Lake Counties*, 24: “Some time during the year 1840 the foundation was laid for a courthouse in Painesville. The plans for their building were made by George Mygate, architect, afterwards of Milwaukee, Wis. The structure, although commenced soon after the organization of the county, was not completed until sometime in the summer of 1852. The building was erected by Harvey Woodworth, who took it upon a contract so ruinously below that of any of the other bidders, as necessarily to involve him in a heavy loss in carrying out its provisions. This building has been enlarged, four new offices and a capacious fireproof vault constructed in which to store valuable county records, etc.”

354. Holcomb, *Events of Personal and Family History*, 384.

355. Report of Sale, April 18, 1862, Lake County Court Records.

356. Probate Code, §143, 385.

completed for the sale of the property.³⁵⁷ Perkins bid the exact minimum amount to buy the property, using as credit the revived judgment against Joseph Smith. The Temple Property was similarly sold: "And the said William L. Perkins having bid for the premises secondly in the Petition described Two Hundred and seventeen Dollars, and he being the best and highest bidder therefor; & the same being more than two thirds of the appraised value thereof, I struck off and sold the said last mentioned premises to him for that sum."³⁵⁸

The Report of Sale was duly signed by "H. Holcomb, Admr of Joseph Smith Jr., Decd." The Kirtland Temple was sold for \$217, on a credit bid. Perkins purchased both properties by using the revived judgment—hence the credit bid—thereby not having to expend any actual money.

The sale further confirmed that William Perkins, Joseph Smith's attorney during the underlying action and then Grandison Newell's attorney in the revival and collection on the judgment from that action, was indeed in partnership with Newell. Henry Holcomb would remove all doubt as he included in his papers immediately following his description of the sale:

Some time before Mr. Perkin's death he handed me a paper and said it was a memorandum of the Joe Smith estate business, and that I ought to keep it. The following is a copy:

Statement of Joe Smith's judgment its avails & division between G. Newell & Wm L. Perkins.

G. Newell paid expenses costs and taxes \$27.69 Perkins paid expenses and taxes \$2.72 = 24.97. Half of the surplus is 12.48. Perkins refunded to Mr. Newell premium and policy on his house 9.00 cash paid to him 3.48 = \$12.48.

The Temple and lot was sold - \$150.00 of which there was paid down \$50.00 which was equally divided. For the balance B. Whitney & others gave note at 1 year due May 1, 1863. 1863, May 1st and after the note paid to Perkins \$160.00.³⁵⁹

13 acres was sold to H. Dixon for his note for \$150.00 which was paid to Perkins July 1st 1863. 106 + 156.00³⁶⁰

357. Journal Record, October 29, 1860, book D, 232–33.

358. Report of Sale.

359. There appears to be a mistake here—it should be \$106.00, with \$6.00 being interest, not \$160.00.

360. The additional \$6.00 must have been for interest.

Of this Perkins is to pay Rich \$10.00, Newell is to pay Frank \$25.00 = 35.00—221.00³⁶¹ This is to be equally divided. Each should receive this sum net \$110.50.

1863 June 1st Paid Newell \$40.50. July 30, \$95.00 = \$135.00, out of which Newell pays French \$25.00 = \$110.50, and whatever Holcomb charges Perkin and Newell are to pay equally.

Signed Wm L. Perkins and G. Newell.³⁶²

The Report of Sale of the two lots was filed with the probate court³⁶³ on April 18, 1862. The probate court confirmed the sale³⁶⁴ of the parcels that same day.³⁶⁵ An administrative deed executed by Henry Holcomb, as administrator of the Joseph Smith estate, transferred the 13-Acre and

361. The math breaks down here. From the calculations noted by Perkins, Perkins had collected \$106.00 for the balance on the Temple Property and \$156.00 on the 13-Acre Property for a total of \$262.00. From that amount, Perkins was to pay Rich \$10.00 and Newell to pay Frank \$35.00. This left a balance of \$217.00, not \$221.00.

362. Holcomb, *Events of Personal and Family History*, 385–86. As a post-script, Perkins noted, “At this place on the original is written in pencil, in my handwriting, the following words and figures, ‘I paid to Holcomb \$5.00. The within is a copy of the original made by me this 1st day of August 1877. The original remains in my possession & is for Mr. Holcomb who was administrator of Jose Smith. All the original papers in my hands, except the original settlement, I delivered to Mr. Holcomb. Wm L. Perkins.” Holcomb, *Events of Personal and Family History*, 386. A similar inclusion of this memorandum from Perkins is found in Holcomb, *Red Scrapbook #2*, 76½–76¾. However, as previously cited, Holcomb adds, “I do not think I ever received any thing for services as administrator of ‘Joe’ Smith estate. I remember that Mr. Newell [not Mr. Perkins] offered me \$5.00 but I declined to receive it as I had done nothing to earn it.” Holcomb, *Red Scrapbook #2*, 76¾.

363. Probate Code §145 required that the “administrator shall make return of his proceedings, under the order of sale, to the next term of the court after the sale.”

364. Probate Code §145 continued: “and the court, after having carefully examined such return, and being satisfied that the sale has, in all respects, been legally made, shall confirm the sale, and order the executor or administrator to make a deed to the purchaser. The order, confirming the sale, and for a deed, shall be entered by the clerk upon the minutes of the court.”

365. The deed for the sale noted that “a Sale duly made, and reported to, and confirmed by said Court, on the 18th day of April in the year of our Lord one thousand eight hundred and sixty-two.” Deed, Joseph Smith Jr. per Administrator to William L. Perkins, October 24, 1862, Lake County, Deed Records, volume S, 526–27, Lake County Court Records; Record of Real Estate, book D, 81–88, October 29, 1860, Lake County Probate Court Records.

Temple Properties to William Perkins on April 19, 1862.³⁶⁶ On the same day, Perkins and his wife, Margaretta, sold and transferred the Temple Property by way of a quitclaim deed to Russell Huntley for \$150.00.³⁶⁷ The following year, Perkins sold the 13-Acre Property to H. Dixon, also for \$150.

As shown in appendix D, Russell Huntley³⁶⁸ owned the Temple Property for more than ten years. During that time he spent considerable money in repairs to the temple.³⁶⁹ On October 15, 1866, he sold a small portion (approximately a quarter of an acre) of the Temple Property

In 1862, the Lake County Court of Common Pleas held court three times a year, commencing on February 11, May 13, and September 30. “Times of Holding Court,” *Acts of a General Nature and Local Laws and Joint Resolutions Passed by the Fifty-Fourth General Assembly of the State of Ohio: At Its Second Session* (Columbus: Richard Nevins, 1861), 195. If the sale were being conducted by the court of common pleas, Newell and Perkins would have had to wait until May to finalize the sale. However, as the sale was under the jurisdiction of the probate court, Newell and Perkins could file the Report of Sale and get immediate response, for the probate court, by constitution, was “open at all times.” Constitution of the State of Ohio, art. IV, sec. 7.

366. Deed, Joseph Smith Jr. pr Administrator to William L. Perkins, October 24, 1862, Lake County Court Records.

367. Deed, William L. Perkins and wife (Margaretta S.) to Russell Huntley, April 19, 1862, Lake County, Deed Records, volume S, 371, Lake County Court Records.

368. Russell Huntley (1807–1890) was a successful businessman who bought various properties in Kirtland during his affiliation with Zadoc Brooks, who founded a splinter group from the Mormons. In 1858, he financed the unauthorized printing of the Book of Mormon for Brooks. Four thousand copies were printed and are often referred to as the “Brooks Edition” or the “Brooks-Huntley Edition.” When this group failed, the Reorganized Church of Jesus Christ of Latter Day Saints (now the Community of Christ) used this version until it printed its own version in 1874. Shane J. Chism, *A Selection of Early Mormon Hymnbooks, 1832–1872* (Tucson, Ariz.: n.p., 2011), 237.

369. Roger Launius wrote the following about Huntley taking care of the Kirtland Temple: “Huntley was delighted with his purchase. The Kirtland Temple held special significance for him because of the religious activities that had taken place there and the opportunities it held for continued worship. He spent over \$2,000 to stabilize the exterior of the building, appointed a caretaker, and allowed the Reorganized Church branch and civic organizations to hold activities.” Launius, *Joseph Smith III: Pragmatic Prophet*, 256. See also “Statements of Joseph Smith,” in Heman C. Smith, ed., *Journal of History* (Lamoni, Iowa: Board of Publication of the Reorganized Church of Jesus Christ of Latter Day Saints, 1919), 442–43.

to Lucius Williams, also by quitclaim.³⁷⁰ He then conveyed this small piece of land to Seth Williams on May 10, 1869.³⁷¹ During his ten-year ownership of the Temple Property, Huntley moved to DeKalb County, Illinois,³⁷² where he met and became friends with Joseph Smith III³⁷³ and Mark Forscutt.³⁷⁴ Huntley sold the remaining portion of the Temple Property, which included the Kirtland Temple, to Joseph Smith III and Mark H. Forscutt for \$150.00 on February 17, 1873, also by way of quitclaim.³⁷⁵ It was through this series of transfers that the Reorganized

370. Quitclaim Deed, Russell Huntley to Lucius Williams, October 15, 1866, Lake County, Deed Records, volume X, 318, Lake County Court Records.

Transferring by quitclaim deed in both of these transfers is worthy of a comment. A quitclaim deed does not include any warranties. Bouvier, *Law Dictionary*, s.v. “quit claim.” This includes a warranty of clear title. Conveying by quitclaim therefore may be seen as evidence that Perkins knew that the legitimacy of the title he was conveying was questionable.

371. Quitclaim Deed, Lucius Williams to Seth Williams, May 10, 1869, Lake County, Deed Records, book 2, 237, Lake County Court Records.

372. Huntley moved to DeKalb County, Illinois, by the mid-1860s, where he became acquainted with members of the RLDS Church, including Joseph Smith III and Mark Forscutt. He joined the RLDS Church while in Illinois. He moved to California by the 1870s and from there continued his work to build the RLDS Church, at one point lending the RLDS Church \$5,000. He left the RLDS Church late in life, aligning himself with another splinter LDS group led by David Whitmer. Launius, “Joseph Smith III and the Kirtland Temple Suit,” 113–15.

373. Joseph Smith III (1832–1914), the eldest surviving son of Joseph and Emma Smith, was sustained as President of the Reorganized Church of Jesus Christ of Latter Day Saints on April 6, 1860. He continued in that position until his death. Launius, *Joseph Smith III: Pragmatic Prophet*, 115–40.

374. Mark H. Forscutt (1834–1903) was a convert to Mormonism in Godmanchester, England. He migrated to Salt Lake City with his newly married wife in 1860 where he became a secretary to Brigham Young. He left the LDS Church principally over the issue of polygamy. Forscutt became connected with John Morris’s schism from the LDS Church, becoming an apostle under Morris. By 1865, Forscutt had joined the Reorganized Church of Jesus Christ of Latter Day Saints (now Community of Christ) where he became a personal friend of Joseph Smith III. He remained a follower of the RLDS until his death. Eric P. Rogers, “Mark Hill Forscutt: Mormon Missionary, Morrisite Apostle, RLDS Minister,” *John Whitmer Association Historical Journal* 21 (2001): 61–90.

375. Quitclaim Deed, Russell Huntley to Joseph Smith III and Mark H. Forscutt, February 17, 1873, Lake County, Deed Records, book 5, 67, Lake County Court Records.

Church of Jesus Christ of Latter Day Saints made their initial and most significant claims of ownership of the Kirtland Temple.³⁷⁶

EPILOGUE

The Kirtland Temple is often viewed as the highest point of the Mormon experience in Kirtland, Ohio. The Kirtland Safety Society has been viewed as the lowest. And yet these two divergent experiences are connected in a most unlikely way. No longer can it be genuinely debated whether or not the legal proceedings brought by Grandison Newell's straw man, Samuel Rounds, against the directors of the Safety Society were legally flawed. Indeed, they were brought under an 1816 statute regarding the issuance of banknotes that had been suspended in 1824. The remedy sought under that 1816 statute was thus legally unavailable. Nevertheless, and on that ground alone, judgments were entered by a trial court against Joseph Smith and Sidney Rigdon in October 1837.

No legal actions were brought against any officers or directors of the Safety Society for fraud, negligence, or breach of fiduciary duty. Indeed, the directors made concerted efforts to shore up the Society, as banks were failing all over the country. Notice had been given to the public that the Society was not operating as a bank chartered by the legislature of the state of Ohio but rather was operating as a joint stock company, another regular legal form of business, similar to a general partnership. After the many consequences of the 1837 economic downturn, and fearing for their safety, Smith and Rigdon left Kirtland the night of January 12, 1838. Most Mormons left Kirtland by the following summer, leaving the recently finished Kirtland Temple behind. Smith and Rigdon left agents in Kirtland who settled the judgments with Grandison Newell and all other creditors who came forward.

Lacking a clear owner, the Kirtland Temple started to fall into disrepair in the 1840s. Then, based on several misrepresentations, Newell managed to get a personal favor pushed through the Ohio House of Representatives in 1859, even though he had failed to pay the state its

376. See appendix C. The Reorganized Church of Jesus Christ of Latter Day Saints' (RLDS) legal effort to obtain clean title to the Kirtland Temple is beyond the scope of this article. In summary, the RLDS filed suit against various parties who had or may have had an interest in the Kirtland Temple (including Joseph Smith III and Mark Forscutt) in August 1879. This action was dismissed in February 1880. See appendix C for a summary of the events in this litigation. The RLDS would ultimately acquire title to the Kirtland Temple by way of adverse possession.

portion of his recovery back in 1838. With the 1859 Act in hand, Joseph Smith's perpetual nemesis then fraudulently revived the judgment more than fifteen years after Joseph Smith had been murdered in Illinois and the majority of the Mormons had trekked to the Great Salt Lake Basin. Unlawfully using yet another straw man, this time as supposed administrator of Joseph Smith's estate, and without giving direct notice to survivors of Joseph Smith's family or to other creditors, Grandison Newell then laid claim to the Kirtland Temple Property, even though Joseph Smith was not in its chain of title. In 1862, the property was then sold to William Perkins, who had been Joseph Smith's lawyer in the 1837 litigation and who now was actually in partnership with Newell; he purchased the property at auction, bidding the exact minimum two-thirds of the appraised value. These miscarriages of justice and other unethical actions resulted in the Kirtland Temple being sold on a credit bid for \$217 and then resold the same day for \$150 to a local citizen, with the land being sold a year later for an additional \$150. This new owner worked to save the temple for more than a decade until he sold it to Joseph Smith's oldest son. The Reorganized Church of Jesus Christ of Latter Day Saints, under Joseph Smith III's leadership, would thereafter preserve the Kirtland Temple.

Today the Kirtland Temple is owned and cared for by the Community of Christ. It stands as a monument to the early Saints of Kirtland. It is said that the Kirtland Temple is the most costly temple relative to the poverty of those that built it. That cost included all that was lost with the failure of the Kirtland Safety Society.

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Appendix A

November 2, 1836, Minutes of the Kirtland Safety Society Bank and Articles of Organization³⁷⁷

Minutes of a meeting of the Stockholders of the Kirtland Safety Society Bank; held on the 2nd day of November, A. D. 1836. When the following preamble and articles were read three times by Orson Hyde, and unanimously adopted.

We the Stockholders of the Kirtland Safety Society Bank, for the more perfect government and regulation of the same, do ordain and establish the following constitution.

ARTICLE I. The capital stock of said Bank shall not be less than four millions of dollars; to be divided into shares of fifty dollars each; and may be increased to any amount, at the discretion of the directors.

ARTICLE II. The management of said Bank shall be under the superintendence of thirty two directors, to be chosen annually by, and from among the Stockholders of the same; each Stockholder being entitled to one vote for each share, which he, she or they may hold in said Bank; and said votes may be given by proxy or in *propria persona*.

ARTICLE III. It shall be the duty of said directors when chosen to elect from the number a President, Cashier, and chief Clerk. It shall be the further duty of said directors to meet in the Director's Room, in said Banking house, on the first Mondays of November and May of each year at 9 o'clock A. M. to inspect the books of said Bank, and transact such other business as may be deemed necessary.

ARTICLE IV. It shall be the duty of said directors to choose from among their number six men, who shall meet in the Banking house on Tuesday of each week, at 4 o'clock P. M. to examine all notes presented for discounting, and enquire into, and assist in all matters pertaining to the Bank.

ARTICLE V. Each director shall receive from the Bank one dollar per day for his services when called together at the semi-annual and annual meetings. The President, Cashier, chief Clerk and the six, the committee of the directors, shall receive a compensation for their services as shall be agreed by the directors at their semi-annual meetings.

ARTICLE VI. The first election of directors as set forth in the second article, shall take place at the meeting of the Stockholders to adopt

377. Published as a broadside extra of the *Messenger and Advocate*, December 1836.

this constitution, who shall hold their office until the first Monday of November, 1837 unless removed by death, or misdemeanor, and until others are duly elected. Every annual election of directors shall take place on the first Monday of November of each year.—It shall be the duty of the President, Cashier, and chief Clerk, of said Bank to receive the votes of the Stockholders by ballot, and declare the election.

ARTICLE VII. The books of the Bank shall be always open for the inspection of the Stockholders.

ARTICLE VIII. It shall be the duty of the officers of the Bank, to declare a dividend once in six months; which dividend shall be apportioned among the Stockholders, according to the installments by them paid in.

ARTICLE IX. All persons subscribing stock in said Bank shall pay their first installment at the time of subscribing; and other installments from time to time, as shall be required by the directors.

ARTICLE X. The directors shall give thirty days notice in some public paper, printed in this county, previous to an installment being paid in. All subscribers residing out of this State, shall be required to pay in half the amount of their subscriptions at the time of subscribing, and the remainder, or such part thereof as shall be required at any time by the directors after thirty days notice.

ARTICLE XI. The President shall be empowered to call special meetings of the directors, whenever he shall deem it necessary; separate and aside from the annual and semi-annual meetings.

ARTICLE XII. Two thirds of the directors shall form a quorum to act at the semi-annual meetings; and any number of the six, the committee of the directors, with the officers of the Bank, or any one of them may form a quorum to transact business at the weekly meetings; and in case none of the six are present at the weekly meetings the officers of the Bank must transact the business.

ARTICLE XIII. The directors shall have power to enact such by-laws as they may deem necessary from time to time, providing they do not infringe upon this constitution.

ARTICLE XIV. Any article in this constitution may be altered at any time, amended, added unto, or expunged by vote of two thirds of the Stockholders.

SIDNEY RIGDON, *Ch'n*,
Attest OLIVER COWDERY, *Cl'k*.

Appendix B

January 2, 1837, Minutes of the Kirtland Safety Society Bank and Articles of Agreement³⁷⁸

Minutes of a meeting of the members of the "Kirtland Safety Society," held on the 2d day of January, 1837.

At a special meeting of the Kirtland Safety Society, two thirds of the members being present, S. Rigdon was called to the Chair, and W. Parish chosen Secretary.

The house was called to order, and the object of the meeting explained by the chairman; which was:

1st. To annul the old constitution, which was adopted by the society, on the 2d day of November, 1836: which was, on motion, by the unanimous voice of the meeting, annulled.

2nd. To adopt Articles of Agreement, by which the Kirtland Safety Society are to be governed.

After much discussion and investigation, the following Preamble and Articles of Agreement were adopted, by the unanimous voice of the meeting.

We, the undersigned subscribers, for the promotion of our temporal interests, and for the better management of our different occupations, which consist in agriculture, mechanical arts, and merchandising; do hereby form ourselves into a firm or company for the before mentioned objects, by the name of the "Kirtland Safety Society Anti-Banking Company," and for the proper management of said firm, we individually and jointly enter into, and adopt, the following Articles of Agreement.

Art. 1st. The capital stock of said society or firm shall not be less than four millions of dollars; to be divided into shares of fifty dollars each; and may be increased to any amount, at the discretion of the managers.

Art. 2d. The managers of said company shall be under the superintendence of thirty-two managers, to be chosen annually by, and from among the members of the same; each member being entitled to one vote for each share, which he, she, or they may hold in said company; and said votes may be given by proxy, or in *adopria persona*.

Art. 3d. It shall be the duty of said managers, when chosen, to elect from their number, a Treasurer and Secretary. It shall be the further duty of said managers to meet in the upper room of the office of said

378. Published as "Articles of Agreement," *Messenger and Advocate* 3 (January 1837): 441-43.

company, on the first Mondays of November and May of each year, at nine o'clock, A. M. to inspect the books of said company and transact such other business as may be deemed necessary.

Art. 4th. It shall be the duty of said managers to choose from among their number, seven men, who shall meet in the upper room of said office, on Tuesday of each week, at 4 o'clock, P. M. to inquire into and assist in all matters pertaining to said company.

Art. 5th. Each manager shall receive from the company one dollar per day for his services when called together at the annual and semi-annual meetings. The Treasurer and Secretary, and the seven, the committee of the managers, shall receive a compensation for their services as shall be agreed by the managers at their semi-annual meetings.

Art. 6th. The first election of managers, as set forth in the second article, shall take place at the meeting of the members to adopt this agreement, who shall hold their office until the first Monday of November, 1837, unless removed by death or misdemeanor, and until others are duly elected. Every annual election of managers shall take place on the first Monday of November, of each year. It shall be the duty of the Treasurer and Secretary of said company, to receive the votes of the members by ballot, and declare the election.

Art. 7th. The books of the company shall be always open for the inspection of the members.

Art. 8th. It shall be the duty of the managers of the company, to declare a dividend once in six months; which dividend shall be apportioned among the members, according to the installments by them paid in.

Art. 9. All persons subscribing stock in said firm, shall pay their first installment at the time of subscribing; and other installments from time to time, as shall be required by the managers.

Art. 10. The managers shall give thirty days notice in some public paper, printed in this county, previous to an installment being paid in. All subscribers residing out of the State, shall be required to pay in half the amount of their subscriptions at the time of subscribing, and the remainder, or such part thereof, as shall be required at any time by the managers, after thirty days notice.

Art. 11th. The Treasurer shall be empowered to call special meetings of the managers, whenever he shall deem it necessary; separate and aside from the annual and semi-annual meetings.

Art. 12. Two thirds of the managers shall form a quorum to act at the semi-annual meetings, and any number of the seven, the committee of

the managers, with the Treasurer and Secretary, or either of them, may form a quorum to transact business at the weekly meetings; and in case none of the seven are present at the weekly meetings, the Treasurer and Secretary must transact the business.

Art. 13th. The managers shall have power to enact such by-laws as they may deem necessary, from time to time, providing they do not infringe upon these Articles of agreement.

Art. 14th. All notes given by said society, shall be signed by the Treasurer and Secretary thereof, and we the individual members of said firm, hereby hold ourselves bound for the redemption of all such notes.

Art. 15. The notes given for the benefit of said society shall be given to the Treasurer, in the following form:

“Ninety days after date, we jointly and severally promise to pay A.B. or order [blank] dollars and [blank] cents, value received.”

A record of which shall be made in the books at the time, of the amount, and by whom given, and when due—and deposited with the files and papers of said society.

Art. 16. Any article in this agreement may be altered at any time, annulled, added unto or expunged, by the vote of two-thirds of the members of said society; except the fourteenth article, that shall remain unaltered during the existence of said company. For the true and faithful fulfillment of the above covenant and agreement, we individually bind ourselves to each other under the penal sum of one hundred thousand dollars. In witness whereof we have hereunto set our hands and seals the day and date first written above.

Appendix C

Chronology of Legal Events

Case One: *Rounds v. Smith, et al.* (Geauga County Common Pleas)

Samuel Rounds (acting for Grandison Newell) brought a suit against Joseph Smith Jr., Sidney Rigdon, Warren Parrish, Frederick G. Williams, Horace Kingsbury, and Newel K. Whitney in a plea of debt claiming violation of §1 of the Act of 1816 that forbade banking without a valid charter granted by the legislature. • Feb. 8, 1837.

Writ of Summons issued against defendants. • Feb. 9, 1837.

Sheriff Abel Kimball left copy of the writ with Smith's wife at his home. • Feb. 10, 1837.

Sheriff Abel Kimball left copy of the writ with Rigdon's wife at his home. • Feb. 10, 1837.

Sheriff Abel Kimball left copy of the writ with Williams's wife at his home. • Feb. 10, 1837.

Sheriff Abel Kimball served Kingsbury. • Feb. 10, 1837.

Sheriff Abel Kimball served Whitney. • undated.

Sheriff Abel Kimball served Parrish. • Mar. 17, 1837.

Returns of Summons are reviewed by court and case continued until the June term. Perkins & Osborn make appearance as counsel for defendants. • Mar. 21, 1837.

Rounds files his declaration (complaint) (date noted only in Kingsbury's file). • Apr. 24, 1837.

Demurrers heard and denied. Motion to amend pleadings by defendants granted. Cases continued until Oct. term. • June 10, 1837.

All defendants excepting Smith and Rigdon nonsuited. Separate jury trial against Smith and Rigdon held both finding in favor of Rounds. Judgment of \$1,000 and costs rendered against Smith and Rigdon, each. Smith and Rigdon filed Bills of Exception over the judgment. • Oct. 24, 1837.

Record of Judgment entered against Smith and Rigdon. • Oct. 25, 1837.

Fieri Facias writs issued against Smith's and Rigdon's real and personal property. • Nov. 6, 1837.

Part of lots 5 and 6 of block 114 in Kirtland City Plat in Kirtland, roughly one acre of land, levied to satisfy this judgment. The land was appraised at \$666, and remained unsold by direction of Newell. • Jan. 20, 1838.

Notice of Sheriff's sale of personal property belonging to Rigdon. • Feb. 20, 1838.

Sheriff's sale of Rigdon's goods. • Mar. 5, 1838.

Assignment of judgment from Newell to William Marks and Oliver Granger for \$1,600. • Mar. 14, 1838.

Reported to the court that Newell received \$604.50 for sale of property belonging to Rigdon that was auctioned by Sheriff Kimball, as well as a lot of approximately one acre in Kirtland appraised at \$666.00, which remained unsold at the direction of Newell. • Apr. 3, 1838.

Case Two: *Holcomb, Administrator of Smith, Widow & Heirs* (Geauga County Common Pleas and Probate Court of Lake County)

"An Act for the Relief of Grandison Newell." The Ohio Legislature assigned

the state's portion of both \$1,000 judgments in 1837 qui tam cases (totaling \$1,000) to Newell as "reimbursement" for expenses Newell claimed in having prosecuted cases (the "Judgment"). Act also permitted Newell to revive Judgments through the courts. • Mar. 10, 1859.

Henry Holcomb appointed as administrator of the Estate of Smith. • Oct. 29, 1860.

Motion to Revive the Judgment against Joseph Smith filed by Newell; Holcomb consented to the revival. • Oct. 30, 1860.

Court revived Judgment against Smith in favor of Newell in the amount of \$1,000 and \$23.35 costs plus any new costs. • Oct. 31, 1860.

Petition to Sell Lands filed by Holcomb with Emma Smith's dower rights be set off in the sale. • Sept. 19, 1861.

Legal Notice to widow and heirs to be published in *The Press and Advertiser*. • Sept. 23, 1861.

Statement of Debts filed. Newell claimed \$1,347.46, in principal and interest. • Oct. 22, 1861.

Appointment of Appraisers (A.S. Richards, George Frank, and Reuben Harmon [the "Appraisers"]). • Nov. 6, 1861.

Order of Appraisal ordering Appraisers to appraise two lots. The first totals 13 acres ("lot 1") and the second of about one acre (includes the temple) ("lot 2") in Kirtland Township. • Nov. 16, 1861.

Appraisal: Lot 1 = \$242.58; lot 2 = \$325.00. • Nov. 16, 1861.

Notice of Sale of lots 1 and 2, published in the *Painesville Telegraph* for four consecutive weeks; sale to be conducted on Mar. 4, 1862. • Feb. 4, 1862.

Sale of lots 1 and 2. • Mar. 4, 1862.

Petition to Sell Lands; lot 1 is sold to William Perkins for \$163.00; lot 2 is sold to Perkins for \$217.00. • Apr. 18, 1862.

Deed to lots 1 and 2 to Perkins. • Apr. 19, 1862.

William L. Perkins conveyed lot 2 containing Kirtland Temple to Russell Huntley in a quitclaim deed. Retains lot 1, likely for his fees. • Apr. 19, 1862.

Huntley sold $\frac{5}{16}$ of an acre (not including the temple) of lot 2 ("lot 2a") to Lucius Williams. • Oct. 15, 1866.

Lucius Williams sold lot 2a to Seth Williams. • May 10, 1869.

Huntley sold the remainder of lot 2 ("lot 2b") (including the temple) to Joseph Smith III and Mark H. Forscutt for \$150. • Feb. 17, 1873.

Case Three: *The Reorganized Church of Jesus Christ of Latter Day Saints (RLDS) v. Williams, et al.* (Lake County Common Pleas)

Petition filed. • Aug. 18, 1879.

Request to issue Summons to Lucius Williams (crossed out) Sarah F. Videon. • Aug. 18, 1879.

Affidavit of Publication. • Aug. 18, 1879.

Summons to Sarah F. Videon. • Aug. 20, 1879.

Sheriff's Return on service of Videon. • Aug. 20, 1879.

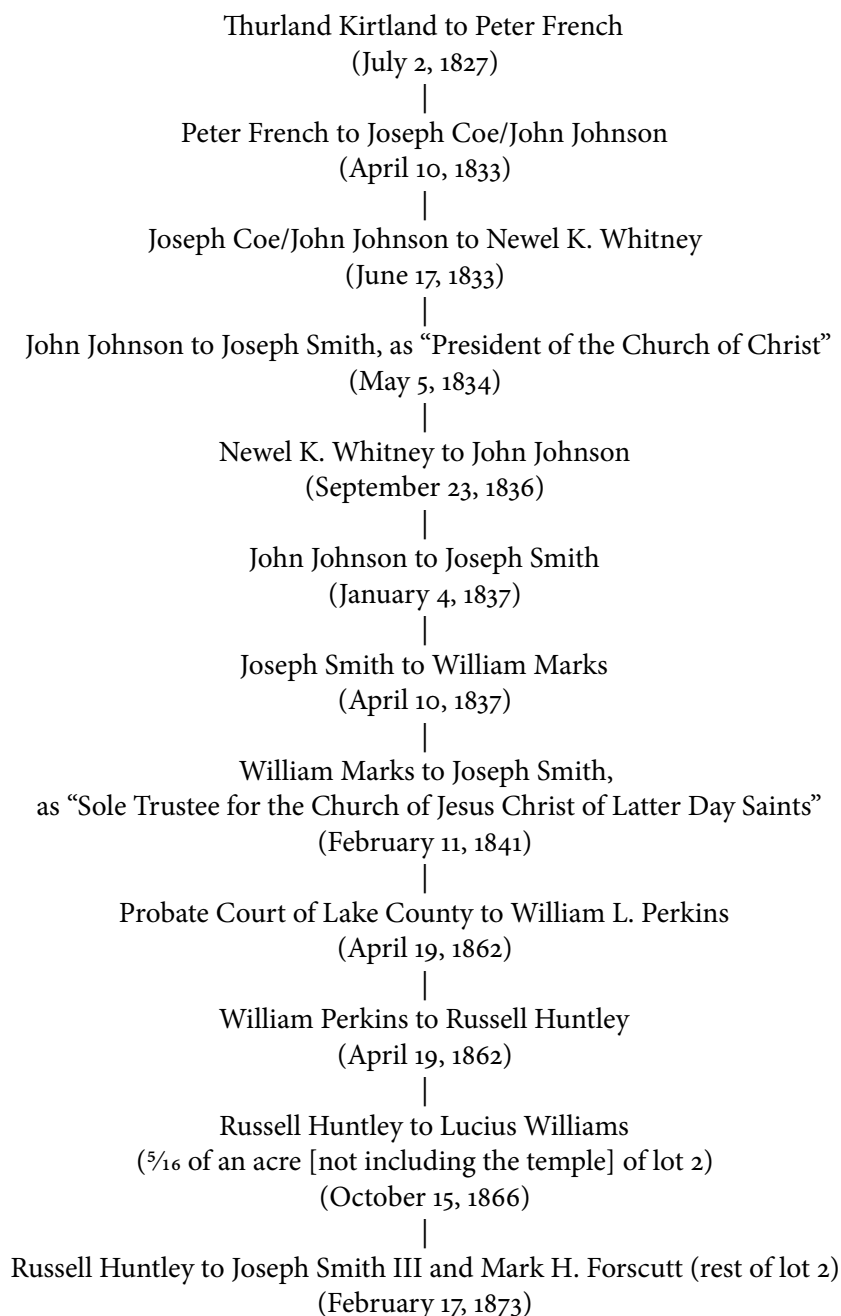
Notice of suit filed six consecutive weeks starting on Aug. 21, 1879, in the *Painesville Telegraph* (filed on Feb. 13, 1880). • Oct. 6, 1879.

Continuance of case. • Nov. 10, 1879.

Order of Dismissal. • Feb. 21, 1880.

Appendix D

Summary Chain of Title to the Temple Property



“Hard” Evidence of Ancient American Horses

Daniel Johnson

The suggestion of horses and chariots in pre-Columbian America has long been an easy target for critics of the Book of Mormon. Those who believe in this unique book of scripture have been hard-pressed to defend this aspect of the record and some may have wavered in their faith while trying to circumnavigate this stumbling block. Finding proof of horses in the New World has been a goal for many scholars of The Church of Jesus Christ of Latter-day Saints who have offered various theories as a means of explanation, yet hard evidence still remains elusive.

However, although incomplete, the geological and archaeological record does provide support for horses and even wheeled vehicles in ancient America. The extinction of the ancient horse and the origins of the modern horse in the Americas have become clouded and unsure in light of the latest research. Much of this evidence is not questionable or even that new, but still, sadly, both critics and faithful members of the Church are unaware of it. Several valid arguments are worth considering.

The topic of horses in the Book of Mormon’s depiction of the ancient New World is undoubtedly a controversial one. Although hard evidence is available to consider, so far no incontrovertible proof of Book of Mormon horses exists—that is to say, physical remains conclusively dated to around 500 BC (and earlier) from supposed Book of Mormon lands in Mesoamerica are yet to be found. Because of this, more than any other criticism of the Book of Mormon, its inclusion of horses has generated greater accusation of its supposedly fraudulent nature. The horse is still used in this day and age to cast doubt on the book’s divine origins. Critics have long pointed to the mention of horses as an anachronism and

Daniel Johnson

This article began as a presentation given at the Book of Mormon Archaeological Forum's 2012 conference. Jack Welch, who was the keynote speaker that year, approached me afterward to suggest that I prepare it for submission to *BYU Studies*. The content of my talk was drawn from research I did during the writing of *An LDS Guide to the Yucatán*. One of the sites described in that book was a series of caves where scientific work that had special sig-



nificance to this topic had been done. Book of Mormon horses have long been somewhat enigmatic and a challenge not always overcome by members of the Church. It is still a topic that easily attracts skeptics, whose arguments are well known. Regardless of what we have been told for so long, the true history of the horse in the Americas is a dimly lit moving target and the final story is yet to be told. Without finding a final answer, I have come across enough evidence that should improve the quality of this debate among Church members and critics. The final article is the result of countless hours of study and research, along with invaluable assistance in formatting, revising, and editing provided by others.

evidence of its modern invention. Since 1830, their mention has seemed a bit problematic, but everyone should remember that the prevailing belief during Joseph Smith's time (and to some degree, still in ours) was that there were no horses in America before the arrival of the Spanish. Therefore, why mention them at all, especially since they are not an integral part of the storyline?

Defining the Issue

If the Book of Mormon is merely an early nineteenth-century fabrication attempting to appear authentic, then it should not include any horses in its historical narrative. However, even though Joseph Smith made

corrections and grammatical changes to subsequent editions published during his lifetime, he left the accounts of horses intact. Arnold Friberg's illustration of Helaman on his massive white charger notwithstanding, the Book of Mormon does not ever say that anyone rode horses or used them in battle. Perhaps the terrain in much of Mesoamerica would have made the Old World use of horses and chariots for warfare impractical in the promised land. Only twice are they mentioned along with chariots: once among the Lamanites (Alma 18:9–10, 12; 20:6) and once among the Nephites (3 Ne. 3:22). All other instances of horses in the Book of Mormon (not including examples from the Isaiah chapters) describe them as among indigenous animals or kept in herds. Book of Mormon readers can logically infer that their use was for transportation or as beasts of burden, but these uses are not specifically described. It may be that they were also used as food.

Several theories that attempt to address the issue of pre-Columbian horses will be examined in this article, some of which are mutually exclusive. Therefore, not all can be correct. Latter-day Saint apologists have offered various explanations for Book of Mormon horses. Critics have rejected this so-called “shotgun” approach as unfocused attempts to answer the question with a multitude of conflicting theories. This is not a valid criticism of the apologetics, since analysts may not really know the complete answer to what Book of Mormon “horses” were, how they were used, how commonplace they were, or how long they survived on this continent. Therefore, several possibilities can reasonably be considered. Although Latter-day Saints may never have the final answers to all of these questions, a serious, concerted, and objective effort to study this issue may result in more hard evidence for horses in the Americas outside of the traditionally accepted timeframe, which is now seen to be continually in need of updating.

Before going any further, readers should remember that Book of Mormon references to horses are somewhat infrequent and not a crucial part of the narrative. According to Ether 9:19, the Jaredites had horses. They apparently were still around when Lehi's party landed because Nephi briefly mentions them along with other large animals in 1 Nephi 18:25. Interestingly, the elephants, cureloms, and cumoms mentioned in the Jaredite history are nowhere to be found in Nephite records. A generation or more later, Enos 1:21 relates that the Nephites had many horses among their flocks. The Lamanite king Lamoni is described as having horses and chariots in Alma 18:9–10. In 3 Nephi 6:1, the Nephites still had horses among their animals when they returned to their lands after dealing with the Gadianton robbers. The last mention of horses is

roughly AD 26, well before most known surviving writing or artifacts in Mesoamerica, so readers do not need to look for horses from any date later than this. Critics of the Book of Mormon point to an apparent lack of horses in surviving writings, art, and artifacts from ancient America. This may be true, but because much of the knowledge of these ancient cultures comes from archaeological finds from a much later date than the Book of Mormon's own history (such as the Classic and Postclassic periods of the Maya region), this lack of reference is not necessarily applicable to Book of Mormon details. Not finding references to horses from these and later cultures should not be seen as problematic. Culturally and chronologically (perhaps even geographically), Nephites are not the Maya, Aztecs, or Inca. Just because Book of Mormon groups had something, it does not necessarily follow that known American groups would have the same experience historically.

Large Animals for Draft and Transportation

Archaeologists note that indigenous New World cultures had no draft animals or beasts of burden. Even if this is true, at least the Maya did understand the concept. A case in point is artifact Kerr #196 of the Maya Vase Database. It depicts a mythological tale involving the three stones of creation, one of which is shown carried on a deer.¹ Not only is the deer bearing the stone on its back, but also some sort of contrivance or constructed device is apparently worn by the animal, with the stone strapped to it. Even though this is a depiction of a fantastic tale of gods and divine acts, the artist carving this vase would unlikely be able to invent such a scene without first being familiar with some actual, real-life precedent.

One possibly pre-Columbian artifact is an obvious depiction of a rider mounted on some indeterminate animal. Originally from Oaxaca, it now resides in the American Museum of Natural History in New York City. Described as a rattle, the wheeled effigy was obtained by Marshall H. Saville on one of his expeditions to Oaxaca between the years 1898 and 1902.² The extraordinary feature is the human figure, unfortunately incomplete, seated on the animal's back with legs clasping the

1. Full-color image available at http://research.mayavase.com/kerrmaya_hires.php?vase=196.

2. Gordon F. Ekholm, "Wheeled Toys in Mexico," *American Antiquity* 11, no. 4 (1946): 224. See also Paul R. Cheesman, "The Wheel in Ancient America," *BYU Studies* 9, no. 2 (1969): 185–97.



Maya Vase #K196, © Justin Kerr, used by permission.



Wheeled effigy from Oaxaca, Mexico. © American Museum of Natural History, 30.0-3274, used by permission.

sides of the animal in a manner exactly like that of a horseback rider. Clay fillets are also found behind and in front of the rider, obviously representing some form of saddle. On this basis alone, the artifact has been classified as post-Conquest because common knowledge would deny the understanding of such a concept (or the animal necessary for it) before accepted European contact. However, some experts claim that no such artifacts were made after the arrival of the Spanish.³ The museum's own listing for the artifact describes it as coming from the Late Classic/Postclassic Periods, AD 900–1521.

The mention of chariots brings another supposed anachronism to critics' minds: wheels. Although wheels are never specifically described in the Book of Mormon, they are easily imagined on chariots. What these chariots were or if they had wheels has not been determined,⁴ so the opponents' demands for wheels in ancient America do not have to be met. Supporters of the Book of Mormon are never in a position of needing to show evidence for something not mentioned within its pages. However, supposing for the sake of argument that Lamanites and Nephites were knowledgeable about wheels (Lehi's group would certainly have been familiar with them), why have archaeologists not discovered any concrete examples? A possible answer from scientist, author, and publisher Tim McGuinness, PhD, who is not a member of the Latter-day Saint faith, is enlightening. According to him, "Wheels might have been in limited use, but the technology was lost, and no artifacts remain. It is known that warfare was widespread throughout ancient America, in Mesoamerica and in the Andean region of South America especially. It is probable that numerous advances in technology were lost, as the artisans that developed them were overrun and killed or made captive. This may be one of the reasons we see sophisticated crafts devolve into more primitive, as occurred in many regions. If there were limited wheel makers, they may have expired before being able to spread the knowledge needed."⁵ If an answer this measured and

3. See Richard A. Diehl and Margaret D. Mandeville, "Tula and Wheeled Animal Effigies in Mesoamerica," *Antiquity* 61, no. 232 (July 1987): 243.

4. See John L. Sorenson, *An Ancient American Setting for the Book of Mormon* (Salt Lake City: Deseret Book; Provo, Utah: FARMS, 1996), 296; and John L. Sorenson, *Mormon's Codex: An Ancient American Book* (Provo, Utah: Neal A. Maxwell Institute for Religious Scholarship; Salt Lake City: Deseret Book, 2013), 312–19.

5. Quote found at PrecolumbianWheels.com. This website is no longer active but was archived at <http://archive.is/eJ2q> as of July 23, 2015.

supportive of the idea of wheels as lost technology were to be offered up by Latter-day Saint apologists, critics of the Church would likely attack it as being unobjective and biased.

Gordon Ekholm, curator emeritus of anthropology at the American Museum of Natural History in New York, was an authority on pre-Columbian archaeology of Mexico and Central America. In 1949, Ekholm displayed at the museum a detailed exhibition showing parallels between advanced cultures in southern and eastern Asia and the Maya civilization, suggesting that the Maya's forebears had migrated across the Pacific. In his opinion,

The evidence to be presented indicates that the Indians of Mexico had some knowledge of the principle of the wheel in pre-Conquest times. This will come as a surprise to many, because the supposed absence of any knowledge of this principle in the New World has often been stressed in discussions concerning the origin of the American Indian and his cultures. It is held that the absence of the wheel is proof that contact with the developed cultures of the Old World could not have occurred and that the higher aspects of the New World cultures must have been autochthonous developments. This argument is not necessarily nullified by the finding of wheeled toys in Mexico, but because of them it certainly cannot be used without some reservation.⁶

A fascinating variant to wheeled artifacts is what are known as composite types in which a person or animal is shown riding on an obviously artificial platform. Examples of this type are rare but are known and accepted. The Los Angeles County Museum of Art has an example from Veracruz, dated from AD 450 to 650. It depicts a dog standing on an unknown wheeled vehicle. Richard A. Diehl and Margaret D. Mandeville discuss the topic of wheeled effigies, stating that most, if not all, wheeled figurines were made during the early Postclassic (before the Spanish arrival), if not earlier.⁷ On the topic of the needed draft animals, they continue by saying, "Ironically, until the end of the Pleistocene, Mesoamerica did contain large animals which could have been domesticated; horses, camels, and even elephant forms inhabited Mexico and Central America until the Palaeoindian hunted them to extinction. Further south, in the Andes, there were llamas and alpacas which might

6. Ekholm, "Wheeled Toys in Mexico," 222.

7. Diehl and Mandeville, "Tula and Wheeled Animal Effigies in Mesoamerica," 240.



Dog standing on wheeled vehicle, from Veracruz, Mexico. © The Los Angeles County Museum of Art, AC1996.146.40, used with permission.

have pulled wheeled vehicles.”⁸ Why some of these large, native, and potentially useful animals vanished from this hemisphere is a mystery not yet fully resolved. Several answers currently exist in the scientific community.

Although such wheeled toys, figurines, or effigies are now commonly known and accepted, no large-scale practical examples of working wheels have been found, so this outcome immediately raises the question, why not? Everyone seems to assume that ancient American peoples had no need for such devices or never quite made the leap from theoretical plaything to functioning tool. On this very topic, Ekholm notes, “Seemingly uncommon, however, are toys or models—for instance, toy bows and arrows involving principles which could have been put to use in cultures where they are not so used or in cultures not in contact with peoples who did use them. When its full implications are considered, the presence of wheeled toys in the New World must be recognized as

8. Diehl and Mandeville, “Tula and Wheeled Animal Effigies in Mesoamerica,” 244.

completely unexpected.”⁹ He concludes by suggesting that “toy” vehicles found in Mexico may be the result of contact with or influence from Old World cultures. In his day, he felt that some controversies regarding New and Old World contact had yet to be resolved. Perhaps such is still the case.

In considering an answer to the critics, analysts must first become familiar with their positions. A concise statement of such an argument is found on that modern bastion of knowledge, Wikipedia: “Horses are mentioned fourteen times in the Book of Mormon, and are portrayed as an integral part of the cultures described. There is no evidence that horses existed on the American continent during the 2,500–3,000 year history of the Book of Mormon (2500 BC–AD 400). Horses evolved in North America but *are believed* to have become extinct on the American continent at the end of the Pleistocene. Horses did not reappear in the Americas until the Spaniards brought them from Europe. They were brought to the Caribbean by Christopher Columbus in 1493, and to the American continent by Cortés in 1519.”¹⁰ Analysts certainly agree that the Spanish *reintroduced* horses to the Americas, but when or even *if* they became extinct on these continents is the issue at hand.

Linguistic Explanations and the Tapir Suggestion

LDS apologists have offered several possible responses to what some analysts label as the apparent anachronism of the horse. A weaker argument is that Nephi is using Hebrew words such as “horse” (סוס, *sûs*) and “ass” (חמור, *chāmôr*) to describe large mammals unknown to him but similar in some aspects to a horse or an ass, with which he certainly was familiar. On its surface, this response is potentially valid, since new animals can be difficult to name. The hippopotamus got its name from Greeks who decided to call this strange animal a “water horse,” although no one today confuses the two. Did Nephi and subsequent record keepers simply do the same thing? He wrote, “There were beasts in the forests of every kind, both the cow and the ox, and the ass and the horse, and the goat and the wild goat” (1 Ne. 18:25). Interestingly, of the six animals mentioned, they are paired up by similarity: ox and cow can be gender-specific terms for bovines (or different but similar beasts), an

9. Ekholm, “Wheeled Toys in Mexico,” 226.

10. “Anachronisms in the Book of Mormon,” http://en.wikipedia.org/wiki/Book_of_Mormon_anachronisms, emphasis added.

ass and a horse belong to the same genus and are very similar (genetically close enough that they can be bred together), and a goat and a wild goat must be similar. Perhaps also noteworthy about the pairs is that for Jews, oxen/cows are clean animals, asses/horses are unclean, and goats are clean. Nephi did not mix the two distinctions. The words Nephi chose and whatever the original Hebrew connotations are would make an appropriate topic for further study, but that is beyond the scope of this article.

Such being the case, a likely candidate for Nephi's "horse" has to be Baird's tapir.¹¹ It was the largest known land mammal native to Central America at the time of European contact. It is actually related to the primitive horse and known in Spanish as the *anteburro*.¹² The tapir is the national animal of Belize, where it is also known as the mountain cow.¹³ In Mexican languages, it is called *tzemen* in Tzeltal; in Lacandón, it is called *cash-i-tzimin*, meaning "horse of the jungle."¹⁴ Body mass in adult tapirs can range from 150 to 400 kilograms (330 to 880 pounds). Interestingly, like horses and other hoofed animals, tapirs exhibit the flehmen response, curling back the lips to allow for greater smelling or olfactory reception of pheromones. With a bit of imagination, readers can see why Nephi would have called this animal a horse if he had no Hebrew vocabulary for it. Similarly, the Maya during the Spanish Conquest, having no word for the European horse, called it *tzimin* (tapir), an animal they did know.¹⁵ All in all, this explanation may make some sense, but it does not win over many opponents of the Book of Mormon. A better challenge must be forthcoming if the critics are to take notice. What if Nephi and his successors really did write about horses as Book of Mormon readers of today would know them?

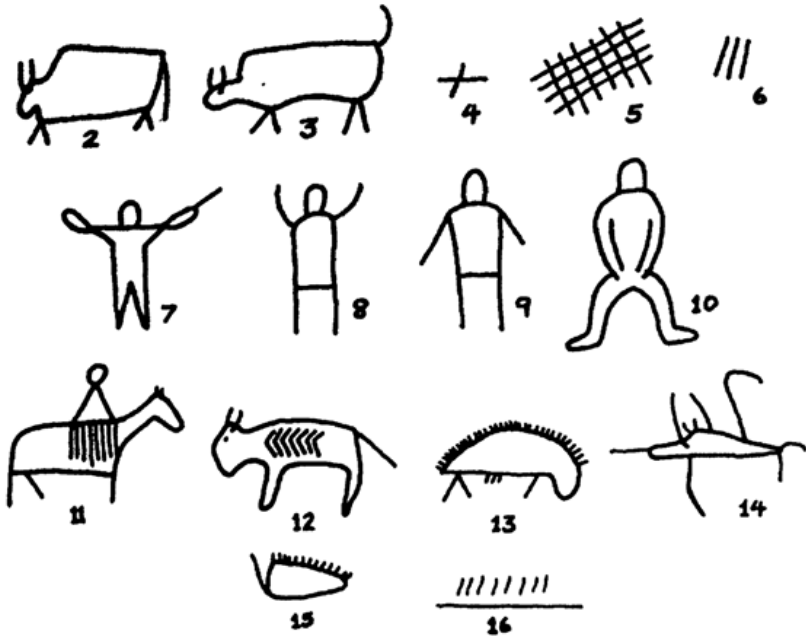
11. See Sorenson, *Ancient American Setting for the Book of Mormon*, 295, 299.

12. San Diego Zoo Global, "Tapirs, *Tapirus spp.*," May 2009, <http://library.sandiegozoo.org/factsheets/tapir/tapir.htm>.

13. Belize.com, "Belize Flag and National Symbols," <http://www.belize.com/belize-flag>.

14. "Status and Action Plan of Baird's Tapir," in Daniel M. Brooks, Richard E. Bodmer, and Sharon Matola, eds., *Tapirs: Status Survey and Conservation Action Plan* (Cambridge, U.K.: IUCN Publications Services, 1997), 30, available on line at <http://www.tapirback.com/tapirgal/iucn-ssc/tsg/action97/ap97-06.htm>.

15. See Diego de Landa, *Yucatan before and after the Conquest* (New York: Dover Publications, 1978), 109.



Freehand sketches of petroglyphs from the Black Mesa area of Cimarron County, Oklahoma, Cave II.

Early History of the Native American and the Horse

For such to be the case, analysts should be able to find evidence of pre-Columbian horses later than the end of the last ice age. The horse became an integral part of many native tribes of North America and does appear in ancient art and depictions from time to time. An example from North America is a petroglyph found in the Black Mesa area in Cimarron County, Oklahoma. The inscribed images are unable to be dated with certainty, but because figure 11 is obviously a mounted horse, scholars have supposed that it could not be older than the first contact of indigenous tribes from this region with European explorers with horses.¹⁶ How long ago did that happen? If no horses were here until European contact, when and how did the Native American first obtain the horse? In *The Indian and the Horse*, Frank Gilbert Roe attempts to

16. See Tim W. Clark, "Some Petroglyphs from the Black Mesa Area of Cimarron County, Oklahoma," in *Proceedings of the Oklahoma Academy of Science for 1967* (Norman: Oklahoma State University, 1967), 140.

find an answer to this very question. However, the verifiable information obtained by his research leaves him a bit puzzled.¹⁷ Many native groups seemed to be very familiar with horses and horsemanship and were even masters at equestrian skills at a surprisingly early time. As far back as initial contact occurred, white explorers were encountering horse cultures among native peoples. The horses' true origins seem shrouded in mystery. A few examples bear this out.

The first European in some territories west of the Hudson Bay was Antony Henday. He describes the local Blackfoot not only as possessing horses in 1754 but also being well supplied in numbers.¹⁸ For this honest observation, he was denounced and discredited as a liar for almost twenty years until he was vindicated by a later explorer, Matthew Cocking, in his travels from 1772 to 1773.¹⁹

Le Page du Pratz, one of the first French explorers to travel in the southern Gulf Coast area of North America, speaks of horses as being numerous in the area now known as Louisiana in 1719. Others corroborated his account. Without going into much detail, he also describes these horses as appearing different from the European horse.²⁰

In addition to tribes in the Rocky Mountains that already had horses around this time, the Snake Indians, who lived in southern Idaho and eastern Oregon, should be mentioned. Also known as the Shoshoni, they had horses not later than 1700—and probably much earlier.²¹

The Tejas, indigenous to northern Mexico, were described in 1682 as being “a settled people . . . [who] raised grain in such abundance that they even fed it to their horses.”²² The Missouri, a tribe for which that state is named, were visited by Henri de Tonti in 1682, who describes them as having horses at that time.²³

17. See Frank Gilbert Roe, *The Indian and the Horse* (Norman: University of Oklahoma Press, 1955), 134, 247.

18. See Clark Wissler, “The Influence of the Horse in the Development of Plains Culture,” *American Anthropologist* 16 (1914): 10.

19. See Burpee’s note in Antony Henday, “The Journal of Antony Hendry [Henday],” ed. Lawrence J. Burpee, *Proceedings and Transactions of the Royal Society of Canada*, 3d ser., sec. II (1907): 307–54.

20. Roe, *Indian and the Horse*, 69.

21. Roe, *Indian and the Horse*, 128; and Francis D. Haines, “Where Did the Plains Indians Get Their Horses?” *American Anthropologist* 40, no. 1 (1938): 116.

22. Herbert Eugene Bolton, *Spanish Exploration in the Southwest, 1542–1706* (New York: n.p., 1916), 314–15, 324, 330–37.

23. Roe, *Indian and the Horse*, 83; and Wissler, “Influence of the Horse in the Development of Plains Culture,” 2, 6.

The Arikaras of North Dakota had extensive trade with the Gatakas and Apache involving horses as early as 1680.²⁴ Oddly enough, wild horses in Virginia were described as a pest in 1669.²⁵ Horse aficionados must wonder where these pesky and supposedly numerous wild horses came from. The standard answer is suspect.

The Pawnee are thought to have had horses by 1650 or even as early as 1630.²⁶ Although the Apache had been trading for horses in the latter half of the seventeenth century, they had been using them since much earlier times. The first use was as food. Historians do not know when the Apache made the transition to using them as mounts and beasts of burden, but it was likely between 1620 and 1630 and possibly earlier.²⁷ Anthropologist Clark Wissler suggests that tribes like the Pawnee and the Kiowa had begun "horse raiding . . . in the early years of 1600."²⁸

Official accounts of native horse use and possession extend into the sixteenth century as well. Francisco de Ibarra traveled in the Sonora Valley of Mexico in 1567. His record states that some tribes in that region were not only acquainted with the horse but also were practiced horsemen by that time.²⁹ Knowing what horses are and that they can be useful is one thing. But being able to raise, care for, train, and use them effectively is quite another. If an indigenous group is seen as accomplished in horsemanship and has a deep cultural connection to the horse by a certain date, analysts could naturally suspect that the actual introduction of that animal to that people must have been much earlier than typically believed. Native American beliefs, although disregarded by most nonnative scholars, provide another perspective on these origins. For example, the Comanche thought that the Great Spirit had created horses especially for them.³⁰ The Blackfoot's claim of having horses extends as far back as their traditions.³¹

24. George E. Hyde, "The Mystery of the Arikaras," *North Dakota History* 18 (1951): 190, 217.

25. Wissler, "Influence of the Horse in the Development of Plains Culture," 7.

26. Wissler, "Influence of the Horse in the Development of Plains Culture," 6.

27. D. E. Worcester, "The Spread of Spanish Horses in the Southwest," *New Mexico Historical Review* 19 (1944): 226.

28. See Wissler, "Influence of the Horse in the Development of Plains Culture," 10.

29. Robert Moorman Denhardt, *The Horse of the Americas* (Norman, Okla.: n.p., 1947), 87–92; see ch. 2.

30. J. Frank Dobie, Mody C. Boatright, and Harry H. Ransom, eds., *Mustangs and Cow Horses* (Austin: Texas Folk-Lore Society, 1940), 331.

31. John C. Ewers, "Were the Blackfoot Rich in Horses?" *American Anthropologist* 45 (1943): 603.



Discovery by Europeans of horses found among Native American tribes. Graphic by Daniel Johnson.

“Strays” from Spanish Expeditions

The current scholarly position is that all these and other “native” horses must be descended from European stock, mostly Spanish and Portuguese. Researchers originally believed that these early progenitors were strays from conquering expeditions. However, no clear, obvious evidence supports this theory.³² In fact, historical records affirm just the opposite. Cavalry was of utmost importance to the Spanish and their horses’ fate was always recorded. They certainly did not think that their horses escaped and survived in the wild.³³ Even if this were the case, the stray hypothesis works only if both stallions and mares escape together, remain together, flourish in the new land, breed, and continue to pursue these behaviors successfully for generations. Although supporting evidence is severely

32. See Roe, *Indian and the Horse*, 33–34; and Thornton Chard, “Did the First Spanish Horses Landed in Florida and Carolina Leave Progeny?” *American Anthropologist* 42 (1940): 91–92.

33. See Roe, *Indian and the Horse*, 35, 42.

lacking, this simple explanation is still accepted.³⁴ This outcome has certainly happened from time to time and has eventually resulted in herds of wild horses roaming the American Southwest, where they have flourished in what is essentially their ancestral homeland. However, the pertinent question is whether it happened early enough to explain the aforementioned accounts of horses kept by indigenous peoples in North America and documented by early European explorers.

Besides the expedition by Cortés, the first three important Spanish land expeditions with horses were led by Pánfilo de Narváez, Hernando de Soto, and Francisco Vázquez de Coronado.³⁵ By conventional wisdom, horses from these expeditions would have to be the earliest sources for horses later described among indigenous peoples. As documented by the Spanish conquerors and their chroniclers themselves, the actual events of each of these excursions into the New World prove such an assertion practically impossible.

Pánfilo de Narváez left port in Cuba in 1528 and attempted to sail around to Havana on the other side of the island. He started out with eighty horses on board his ships. However, they did not all survive the catastrophes that befell his group. High winds prevented his arrival at Havana, blowing his fleet into the Gulf of Mexico. Unable to reach the Mexican coast, they eventually landed in modern-day Florida. By this time, only forty-two horses remained.³⁶ Barely five months later, just one was left alive, the rest having been killed in battle or eaten.³⁷ The fate of this surviving horse is unknown, but a solitary animal, regardless of sex or condition, could hardly have engendered a population.

Researchers used to believe that horses discarded by Hernando de Soto's men in 1541 were the ancestors of all American horses west of the lower Mississippi.³⁸ That assertion now rests firmly in the realm of fiction. In 1539, de Soto left Cuba with 243 horses on board. Of these, 223 landed on the Florida coast, twenty having died during the voyage across the

34. Jay F. Kirkpatrick and Patricia M. Fazio, "The Surprising History of America's Wild Horses," July 24, 2008, *Live Science*, <http://www.livescience.com/9589-surprising-history-america-wild-horses.html>.

35. Roe, *Indian and the Horse*, 52.

36. Morris Bishop, *The Odyssey of Cabeza de Vaca* (New York: n.p., 1933), 33, 38, 43.

37. Bishop, *Odyssey of Cabeza de Vaca*, 43–47, 50–52, 65.

38. Wissler, "Influence of the Horse in the Development of Plains Culture," 9–10.

water. Three years later, 150 had perished. By 1542, only forty remained.³⁹ In 1543, his decimated forces launched from the lower Mississippi River. The good animals, numbering twenty-two, were put on board rafts and taken with them; the rest were made into jerky so the men could survive. By their final departure, de Soto had died, overcome by semitropical fever. His successor, Luis de Moscoso Alvarado, records that only four or five horses, all stallions, remained at this time. They were left behind as the surviving Spanish forces departed the mainland and sailed away. The Spanish account states that these few horses were killed by native tribes before the Spanish boats were even out of sight.⁴⁰

Francisco Coronado's foray in 1540 into the American Southwest contained the largest contingent of horses yet, 558. His records list 556 *caballos*⁴¹ (horses), and two *yeguas* (mares).⁴² While *caballos* is a generic term in Spanish meaning horses of either gender, the specific mention of mares in addition undoubtedly shows the previous group to be male (likely *caballos enteros*, or stallions). No geldings are mentioned; the preference among Spanish soldiers was for stallions of a solid color. Their belief was that multicolored horses were good only for carrying packs.⁴³ Usually, mares were forbidden as an encumbrance to the expedition.⁴⁴ In this case, regardless of the fate of individual horses, the ratio of males to females in this expedition was not favorable to originating a new population.

Because the first Spanish horses were brought to the American mainland by Hernán Cortés in 1519, the record of his expedition is also worthy of note. By comparison with later groups, the sixteen horses he brought are quite insignificant numerically. Six of those were mares, which is a high percentage in light of the norm.⁴⁵

39. Hernando de Soto, *Narrative of the Career of Hernando de Soto, in the Conquest of Florida, 1539–1542*, ed. by E. G. Bourne, 2 vols. (New York: n.p., 1922), 2:55; 1:142, 154.

40. Roe, *Indian and the Horse*, 39; and cited by Frank Dobie, *The Mustangs* (Boston: Little, Brown, and Company, 1952), 34.

41. *Caballos* is the modern Spanish term. Coronado's muster lists them as either "cauallos" or "cavallos."

42. Arthur S. Aiton, "Coronado's Muster Roll," *American Historical Review* 44, no. 3 (1938): 556–70, especially 557.

43. R. B. Cunningham Graham, *The Horses of the Conquest* (London: Heinemann, 1930), 138.

44. Roe, *Indian and the Horse*, 51.

45. William H. Prescott, *History of the Conquest of Mexico*, 3 vols. (Philadelphia: David McKay, 1892), 1:249–50; Roe, *Indian and the Horse*, 50.

Cavalry was a rare and valuable commodity in the New World at this time. For this excursion starting at Cozumel and then on to the Gulf Coast and into the Aztec empire, Cortés paid between four hundred and five hundred gold *pesos* for each one.⁴⁶ By the end of his campaign, their value had doubled to between eight hundred and a thousand *pesos* each.⁴⁷ Because of this high value (both monetary and tactical), unnecessary risks with them were not taken. Bernal Díaz del Castillo records the deaths of horses as well as of soldiers. Cortés's own horse died before their first major battle.⁴⁸ At first buried by the Spanish to hide the fact that these fearsome beasts, unknown in Mexico, were mere mortal creatures, the conquerors eventually resorted to eating their fallen steeds as their situation became more desperate.⁴⁹

Although Spanish cavalry was extremely effective against native Mexicans, most major battles resulted in horse injuries or casualties. Before reaching the heart of the Aztec empire, all surviving horses had been wounded.⁵⁰ One mare foaled on board the ship, theoretically bringing the total number to seventeen. Obviously, a newborn colt would not have been much good in battle and could not have been mounted, so it does not figure into the official record. Later Mexican legends point to this young horse as the first stray lost in the Americas, but the accounts are more the stuff of myth than of accurate, historical fact.⁵¹ Despite all conjecture to the contrary, no mention is made in Díaz's accounts of lost or stray horses.

As can be seen, the Spanish kept very detailed records of their horses in the New World. Fatalities and injuries were noted. Also evident is the fact that real dangers existed against the survival of horses in this new, foreign land, whether stray or not. Many were killed in battle, lamed, eaten by the soldiers, or gored by buffalo in northern regions.

The land of the Spanish Conquest was not the cultural environment described in the Book of Mormon; there were no more Nephites and Lamanites as depicted during its timeline. Apparently, horses had been absent in Mesoamerica for a long time, possibly even a millennium

46. Prescott, *History of the Conquest of Mexico*, 1:250 n.

47. Prescott, *History of the Conquest of Mexico*, 3:136.

48. Bernal Díaz del Castillo, *The Discovery and Conquest of Mexico*, ed. Genaro García (n.p.: Farrar, Straus and Cudahy, 1956), 96.

49. Prescott, *History of the Conquest of Mexico*, 1:383; 2:323.

50. Prescott, *History of the Conquest of Mexico*, 1:397.

51. See Roe, *Indian and the Horse*, 146–47; Dobie, *Mustangs*, 97 n.

or more, by the time of the European arrival. Indigenous peoples in New Spain of the sixteenth century had no knowledge of these animals. The initial fear and awe of horses by the Aztec and Maya was quickly replaced by hatred and the ability to effectively kill them in battle, which was noted by de Soto, Coronado, and Cortés. Perhaps to demonstrate this new understanding and lack of fear, the native guides for de Soto's group showed the Spaniards skulls of horses left behind by de Narváez's earlier expedition.⁵² The initial advantage enjoyed by Spanish cavalry began to dissipate as the mystique of horses wore off.

Spanish conquest and settlement in this new land was halted after reaching the territory of present-day Texas. A major factor for this limit of their expansion was the Plains Indians, who already had horses.⁵³ Spanish superiority in battle appears to have relied heavily on this one tactical advantage.

The Pinto Problem in North and South America

The mystery only deepens when the Indian pony is considered. It is notable for its unique, "hang-dog" appearance, which barely hints at its unfailing stamina. Not only for this characteristic was it prized by native tribes, but also they preferred its multicolor coat, also known as pinto or piebald.⁵⁴ This value is in sharp contrast to the European preference for solid-colored horses. The preferred steed for Spanish cavalry was a stallion of primarily one color. For American horses to have this piebald coat, horses of similar coloration as progenitors would have had to be extant. Spanish records do occasionally mention multicolored horses,⁵⁵ but this mention is by far the exception rather than the rule. A further complication is that this horse variety was quite common in North America but was virtually unknown in South America.⁵⁶ If they could all be traced back to modern European stock, the expectation would be that of finding pintos on both continents.

52. De Soto, *Narrative of the Career of Hernando de Soto*, 1:47–48; 2:7; Bishop, *Odyssey of Cabeza de Vaca*, 53.

53. Denhardt, *Horse of the Americas*, 103.

54. Roe, *Indian and the Horse*, 148–49; Dobie, Boatright, and Ransom, *Mustangs and Cow Horses*, 247.

55. Denhardt, *Horse of the Americas*, 51, 198.

56. Roe, *Indian and the Horse*, 149, 151.

According to one author on the subject, at least one original pinto would be required among the ancestors of American horses if they were to be found in later wild herds.⁵⁷ In *The Indian and the Horse*, Roe dedicates an entire chapter to this “problem.” Although accepting that no native American horse was available for cross-breeding, he also states that all Indian ponies must be lineal descendants of the earliest European horses brought to the American continents. The Northern Plains horse was typically a pinto, which was practically unknown in the pampas of South America. Inbreeding has been disregarded, and selective breeding among the Spanish would have been more than unlikely, based on their dislike, even contempt, for this coloration. The numbers of multicolored or pinto horses originally brought by the Spanish were practically negligible, and the disparity of their appearance in wild horse populations in North versus South America has not been resolved. Roe concludes that it may never be.⁵⁸

Another explanation for the origin of horses among Native Americans is theft. Yes, indigenous peoples eventually did steal horses from European settlements, but when their first reaction of fear, awe, or hatred is considered, this outcome would not be expected for quite some time. Even today, everyone knows that animals like cows are useful for food, but no one unfamiliar with the animal would be tempted to steal, transport, and care for one. People today like their cows in nice little packages in the meat section of the grocery store. Natives who did steal horses must have not only known that horses could be useful, but they must also have known how to manage and control them. That feat would have required prior experience or familiarity. In Chile, Peru, and Brazil, indigenous tribes were stealing, riding, and breeding horses from 1540 onward.⁵⁹ At this point, records do not show large numbers of horses imported to South America, and many of those numbers are now considered exaggerated.⁶⁰ Yet wild horses were reported in this region, some provinces being full of them.⁶¹

57. Denhardt, *Horse of the Americas*, 197.

58. See Roe, *Indian and the Horse*, 135, 140–42, 144–49.

59. Madaline W. Nichols, “The Spanish Horse of the Pampas,” *American Anthropologist* 41 (1939): 119–29, especially 127.

60. See Roe, *Indian and the Horse*, 46.

61. R. B. Cunninghame Graham, *The Conquest of the River Plate* (London: n.p., 1924), 121, 238–43, 267–73.



Carving that could be of a man standing next to a horse, at Chichén Itzá. Photo and details by Daniel Johnson, 1999.

“Horses” in Mesoamerican Art

From time to time, the claim has been made by some Latter-day Saint authors that horses occasionally are seen in Mesoamerican art,⁶² but these images are sometimes difficult to track down and are often very subjective. One intriguing example often cited is found at Chichén Itzá. It is located on the side of a building called the Temple of the Wall Panels. On its north and south sides, it has blocks carved with scenes of various animals. One of the blocks on the south panel shows an image that has been interpreted by some Latter-day Saint scholars to be a man standing next to a small horse. That image is shown here with an outline added to show what details remain in the eroded façade. It may be a horse, but that is difficult to determine for sure. The carving is definitely pre-Columbian, but most of the construction at Chichén Itzá dates to the ninth and tenth centuries AD, long after the close of the Book of

62. See Diane E. Wirth, *A Challenge to the Critics* (Bountiful, Utah: Horizon Publishers, 1986), 52–55.

Mormon. This dating would mean that knowledge of horses survived for a long time, if not the actual animals themselves. If the Chichén Itzá carving is not a depiction of a horse but some other real animal, then the only other known candidate is a tapir, or possibly a deer, although no antlers are visible. Latter-day Saint General Authority Emeritus Ted Brewerton had photos taken of this particular block in 1966, and he believed it to be the image of a horse. He also believed that the panel has been removed since then,⁶³ but it was still there in 1999. Because it is actually part of a permanent building at the site, it is likely still there. These and other rare images are fascinating, and while they may be seen as evidence, they should not be taken as proof. They do not convince critics, either.

Horse Survival in the Americas after the Ice Age

Prior to the mid-1800s, apparently ancient horse teeth or bones had been found in North America, but they did not attract any scientific attention until much later. Primitive horse leg and foot bones were among the fossils found at Big Bone Lick, Kentucky, in an expedition sent by Thomas Jefferson in 1807, but were dismissed or ignored at the time.⁶⁴ The remains were sent to the White House to be studied, displayed, and put in collections (including Jefferson's own), but the mammoth fossils generated the greatest interest.⁶⁵ The existence of ancient, indigenous horses on the American continent first came to light in 1840, when (Sir) Richard Owen, a noted paleontologist, described a fossilized horse tooth found by Charles Darwin in Argentina.⁶⁶

In 1847, paleontologist Joseph Leidy published "On the Fossil Horse of America," proving that ancient horses lived in North America.⁶⁷ Only

63. Ted Brewerton to author, September 2012.

64. The Academy of Natural Sciences of Drexel University, "Ancient Horse (*Equus* cf. *E. complicatus*)," archived at <https://web.archive.org/web/20120224183205/http://www.ansp.org/museum/jefferson/otherFossils/equus.php>; The Academy of Natural Sciences, "Ancient American Horses," archived at <https://web.archive.org/web/20070205181807/http://www.ansp.org/museum/leidy/paleo/equus.php>.

65. Kentucky State Parks, "Big Bone Lick History," <http://parks.ky.gov/parks/historicsites/big-bone-lick/history.aspx>.

66. Richard Owen, *Fossil Mammalia*, part 1, no. 4, of *The Zoology of the Voyage of H.M.S. Beagle*, ed. Charles R. Darwin (London: Smith Elder, 1840), 108–9.

67. *Encyclopædia Britannica*, s.v. "Leidy, Joseph," <http://www.britannica.com/biography/Joseph-Leidy>.

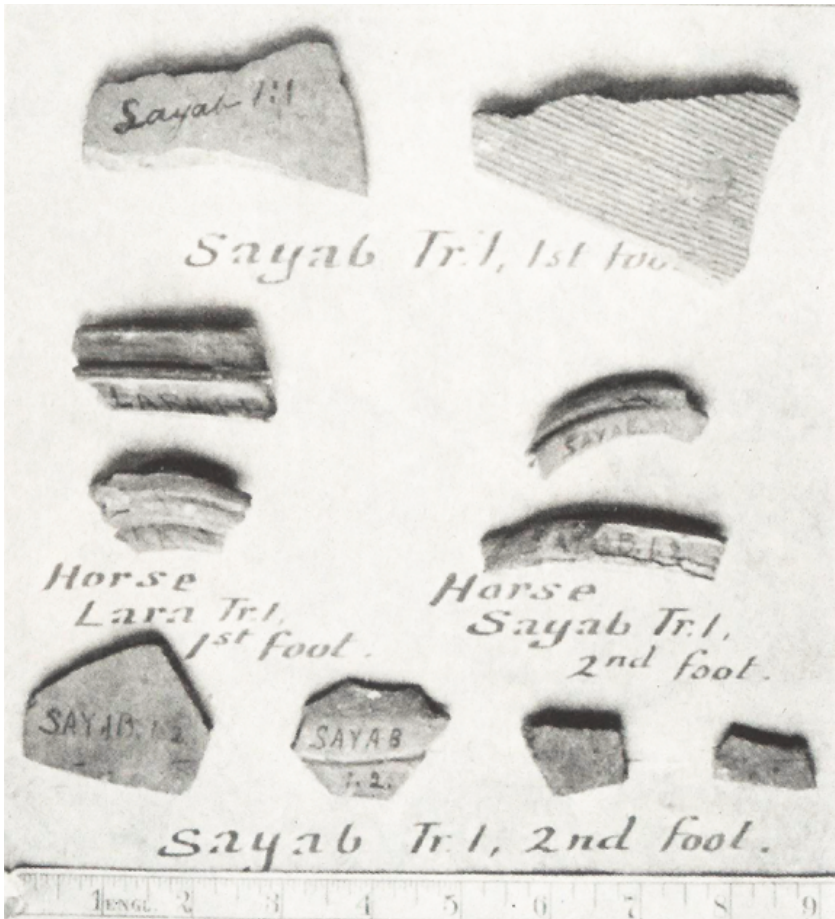
afterward did it become acceptable to admit that horses existed on this continent anciently. In fact, researchers now believe that horses, camels, early elephant types, and other large animals evolved first in this hemisphere before migrating to Asia and then becoming extinct here for a combination of reasons that are still debated. Was it climate change, hunting by early man, disease, or a combination of factors? The generally accepted answer has been that horses died out about 10,000 BC,⁶⁸ but if we look hard enough, we will see respected scientists pushing that date forward thousands of years. For example, Ross MacPhee, curator of mammalogy at the American Museum of Natural History, and his colleagues collected core samples of the permafrost that provided a clear picture of the local Alaskan fauna at the end of the last ice age. One core, deposited between 10,500 and 7,600 years ago, confirmed the presence of both mammoth and horse DNA. To make certain there was no contamination, the team did extensive surface sampling around Stevens Village with the same result.⁶⁹ MacPhee also believes that small populations of humans could not have killed all the megafauna in the Americas and that climate change is an incomplete answer. For him, disease and pathogens brought by migrating humans are the best explanation. "The fossil record's very incomplete, and just because the most recent remain is from 12,500 years ago, that doesn't mean that the horse became extinct at this time," said study coauthor Andrew Solow of Woods Hole Oceanographic Institute.⁷⁰ For supporters of the Book of Mormon, this convincing evidence of horse existence in the western hemisphere from 8500 to 5600 BC is encouraging.

As the change in attitude since the 1840s is considered, analysts will recognize that on the subject of horses, the Book of Mormon was actually ahead of its time. If it had been written according to the knowledge of the day, horses would not have appeared within its pages. But now horse fossils, as well as unfossilized bones and teeth, have been found in North, Central, and South America. In North America alone, up to nine varieties of ancient horse are known, including the Western

68. Kirkpatrick and Fazio, "Surprising History of America's Wild Horses."

69. Live Science Staff, "Mammoths Were Alive More Recently Than Thought," *Live Science*, December 15, 2009, <http://www.livescience.com/9771-mammoths-alive-thought.html>; Sebastian Zieler, "Mammoths Had More Time," *University Post*, University of Copenhagen, <http://universitypost.dk/article/mammoths-had-more-time>.

70. Bjorn Carey, "Humans May Have Wiped Out Wild Horses," *Live Science*, May 1, 2006, <http://www.livescience.com/717-humans-wiped-wild-horses.html>.



Some of Mercer's horse remains. Image from Henry C. Mercer, *The Hill-Caves of Yucatan*, used by permission.

Horse (*Equus occidentalis*), the Mexican Horse (*Equus conversidens*), the Yukon Horse (*Equus lambei*), Scott's Horse (*Equus scotti*), and the Complex-tooth Horse (*Equus complicatus*). Some of these varieties were quite large, growing to the size of modern horses. The Western Horse stood $14\frac{1}{2}$ hands tall at the shoulder, much like the modern Arabian, but had a stockier build, similar to a modern mustang.

On the topic of ancient American horse remains, Mesoamerica also plays an important role. In 1895, Henry Mercer explored twenty-nine caves in the Yucatán Peninsula looking for evidence of prehistoric

habitation. He left without finding any fossils or what he was looking for initially and published his account in 1896. Most caves contained potsherds, human refuse, and animal bones, including horse remains. In Actún Lara, he found two horse teeth in the first foot of excavation. In Sayab Actún, he found two horse teeth in the second foot of excavation. In Actún Chektaleh, a horse bone fragment was found in the second foot of excavation.⁷¹ Other unidentified large mammal bones, such as part of a rib, were also found. At the time, he did not attach any significance to them, because using the knowledge of the day, he did not recognize them for what they were. They looked to be post-Conquest, but other Yucatán finds suggest this was not the only possibility. His assessment was that the horse remains were from the modern horse, *Equus caballus* (also *Equus equus*), but closer examination by paleontologist Edward D. Cope gave a more likely classification of the extinct *E. conversidens* (Mexican horse), only known in central Mexico and North America and only as fossils. However, according to Cope, Mercer's finds were unfossilized.⁷²

Horse teeth were also found in a cenote at Mayapán, a major post-classic site on the Yucatán Peninsula. It was the last great Maya capital, flourishing after the collapse of Chichén Itzá until about AD 1440.⁷³ Researchers can safely say that no living horses existed in the Yucatán or elsewhere in Mesoamerica by then. The teeth were found along with pottery fragments, and judging by their stratigraphic location and degree of mineralization, analysts designate them to be pre-Columbian as well. They are currently at the Museum of Comparative Zoology at Cambridge, Massachusetts, labeled as "Equus, from bottom stratum of unconsolidated black earth, Pre-Columbian." By at least 1957, this information had been published in scientific journals. Experts had to admit that indeed pre-Columbian horses existed in the Yucatán, but they did not wish to imply that horses were known among the Maya, vaguely stating that the remains must be from a "pre-Maya" time. The teeth have been classified as *E. occidentalis* and *E. conversidens*,⁷⁴ similar to Mercer's finds. Oddly enough, this seemingly revolutionary information

71. Henry C. Mercer, *The Hill-Caves of Yucatan* (Norman: University of Oklahoma Press, 1975), 40, 68–69, 170.

72. Mercer, *Hill-Caves of Yucatan*, 172n.

73. Simon Martin and Nikolai Grube, *Chronicle of the Maya Kings and Queens* (London: Thames and Hudson, 2000), 228.

74. Clayton E. Ray, "Pre-Columbian Horses from Yucatan," *Journal of Mammalogy* 38 (May 1957): 278.



Horse bone and tooth fragments from Mayapán. © The Agassiz Museum, Harvard University, MCZ 3937, used by permission.

was relegated to one page of the General Notes section near the end of the *Journal of Mammalogy*.⁷⁵ It can be found sandwiched between “Three Additional Records of Antlered Female Deer” and “Longevity of Captive Mammals.”

75. Ray, “Pre-Columbian Horses from Yucatan,” 278.

In addition to these teeth, other bones and artifacts found in 1977 in two lateral extensions of the Huechil Grotto at Loltún, known as El Túnel and El Toro, have been described by Peter Schmidt of the Instituto Nacional de Antropología e Historia (INAH) as “problematic” and “complicated.”⁷⁶ Unfortunately, very few details about the findings have been published. According to the study, Level VII of El Túnel contained fifty-nine horse bone fragments. Most of the data come from stratigraphic excavations in El Toro. Labeled I to XVI, the levels represent the caves’ chronology, with level I being the most recent and XVI the most ancient. Bones and bony fragments of Pleistocene megafauna have been found in most of El Toro’s levels, but the only published radiocarbon dating comes from levels VII and VIII. Taken from various pieces of charcoal, the date is 1805 B.C., with an error of ± 150 years,⁷⁷ well after the ice age. But this is not all. Sadly, as Schmidt laments, forty-four horse bone fragments have been recovered from levels VII to II, all supposedly from later time periods and also containing Classic and Preclassic ceramics! He exclaims that something has happened in Loltún that is still hard to explain: The survival of extinct animals like the Western Horse and Mexican Horse may need to be extended to the beginnings of the Ceramic Era, which “would not please paleontologists.” He has also said that the presence of Pleistocene *Equus conversidens* in ceramic layers has been interpreted as possible proof of the survival of the extinct horse into the Holocene, the current geological epoch. Had he read Ray’s article in the *Journal of Mammalogy* published twenty years before his dig, he may have been less surprised.

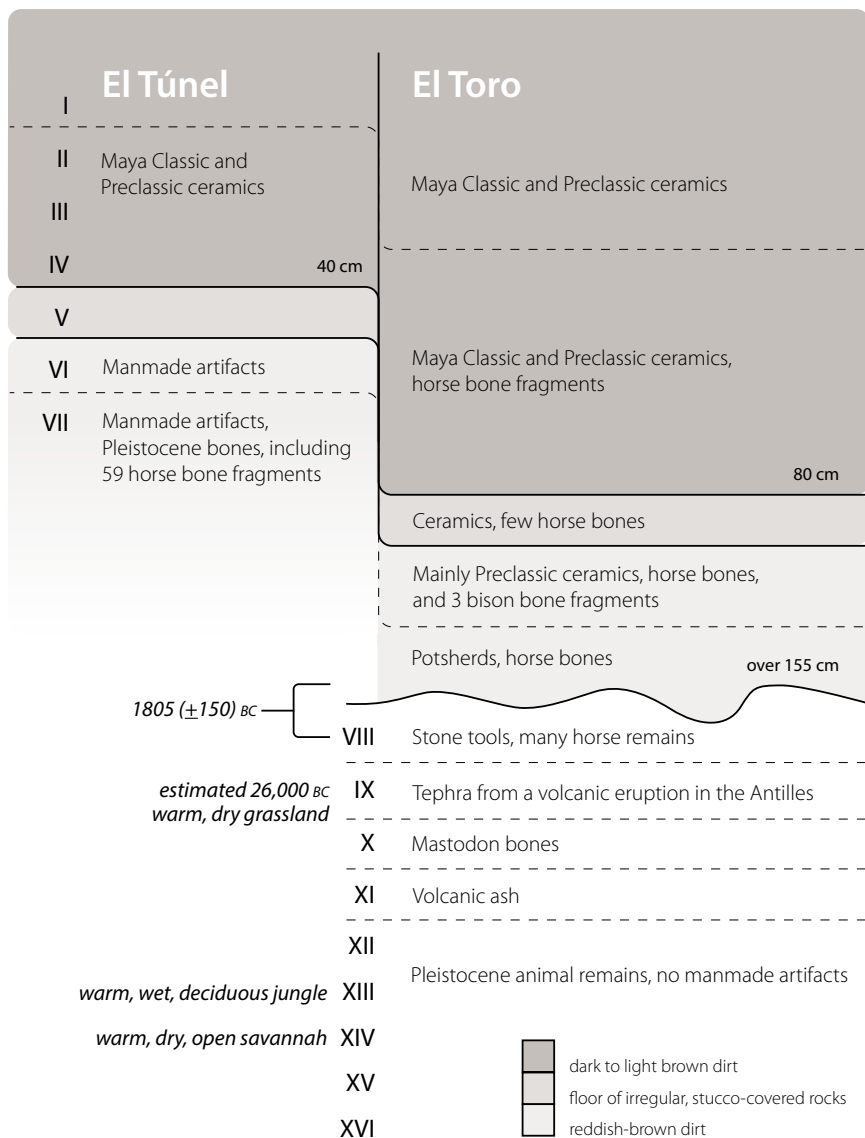
Although these findings may seem earth-shattering, some critics are aware of them and have dismissed them without much apparent consideration. They note the results of tunneling rodents in the cave floor and suggest that this activity has moved bones from their original strata into higher layers.⁷⁸

As unlikely as this explanation appears, supporters of the Book of Mormon need to be cautious about the evidences they accept and support, especially in controversial areas. However, Schmidt’s 1988 report

76. See Peter J. Schmidt, “La Entrada del Hombre a la Península de Yucatán,” in *Orígenes del Hombre Americano*, comp. Alba González Jácome (Mexico: Secretaría de Educación Pública, 1988), 254–55.

77. Schmidt, “La Entrada del Hombre a la Península de Yucatán,” 253.

78. “Horses,” <http://mormonthink.com/backup/horses.htm>.



Summary of the excavation of El Túnel and El Toro. Graphic by Daniel Johnson using results published in Schmidt, “La Entrada del Hombre a la Península de Yucatán.”

does not suggest that tunneling rodents adequately explain the controversial findings. If that were the case, his exclamations of surprise and concern would not have been included. As the report itself states, something happened in Loltún that is hard to explain with the current understanding of the history of the horse in the Americas. Digging rats have not solved that problem.

Since 2000, Steven E. Jones (formerly of Brigham Young University) has been working with Wade Miller from the BYU Department of Geology, INAH archaeologist Joaquín Arroyo-Cabres, and others to conclusively date ancient American horse bones. An unpublished 2012 paper Jones coauthored with Miller contains some of their initial findings. Out of forty-five *Equus* samples they tested from Mexico, thirty-eight had insufficient collagen for AMS (accelerator mass spectrometry) dating; one was from the ice age; and the others dated to after the Spanish Conquest. However, they have had surprising results from some North American samples. A horse bone from Pratt Cave near El Paso, Texas, dated from 6020 to 5890 BC. Another specimen from Wolf Spider Cave in Colorado dated from AD 1260 to 1400. A bone from Horsethief Cave in Wyoming dated to 1100 BC. Most of these dates were obtained through AMS dating, but the Wolf Spider specimen's date was obtained with thermoluminescent methods. Some Native American traditions also support the existence of horses from a post-Pleistocene but pre-Columbian era.⁷⁹ Jones graciously provided his paper, and more results from their ongoing research are eagerly awaited. Miller currently has samples at the University of Arizona for C-14 dating, but results were not in as of the writing of this article.

The Question of the Bashkir Curly

Analysts can safely say it is likely that no horses existed in the Yucatán Peninsula or elsewhere in Mesoamerica by the Maya Postclassic era. But what if some horse populations survived in remote enough areas and in small enough numbers not to have been noticed by the Spanish conquerors and other European settlers? Such a possibility exists. A breed of horse known alternately as the Bashkir curly or the North American curly is noteworthy for more than its curly, hypoallergenic coat. Its mysterious origins are still unknown and are the subject of

79. Steven E. Jones, "Were There Horses in the Americas before Columbus?" unpublished paper, 2012.

much debate within the curly horse community.⁸⁰ The Bashkir curly is named for a region in Russia located in the Ural Mountains. Known today as Bashkiria or Bashkortostan, this area is not known for curly-coated horses. However, the lokai, a breed from Tajikistan, more often has a curly coat. The curly in North America could have descended from this or other Asian breeds; however, in 1868, Charles Darwin cited an account by Félix de Azara, who observed curly horses in Paraguay in the late eighteenth century, long before any known documentation of their transportation from Asia.⁸¹ No connection can be demonstrated between American curlies and the Russian Bashkirs; genetic studies suggest the former are not descended from the latter.⁸² How the curly horse got to the Americas is still an enigma, despite ongoing study and research. There is even a preference among some equestrian groups for the name “North American curly,” but keeping or removing “Bashkir” is highly debated. Some speculation has been evident outside the Latter-day Saint community that curlies may have crossed over the Bering Strait from Asia anciently and survived until modern times, becoming essentially a native American breed, although there is no fossil evidence.⁸³ They then may have gone undetected by European settlers until the nineteenth century or later. Could these be remnants of Book of Mormon horses?

80. “History of the Curly Horse,” *Curly Horse Country*, http://curlyhorsecountry.com/history_curlyhorses.htm.

81. International Museum of the Horse, “The American Bashkir Curly,” <http://www.imh.org/exhibits/online/american-bashkir-curly>; Silver Storm Farm, “American Curly Horse,” <http://www.silverstormfarm.com/curly-horse-info.html>; Charles Darwin, *The Variation of Animals and Plants under Domestication*, 2d ed., rev., 2 vols. (New York: D. Appleton, 1915), 2:189–90.

82. Department of Animal Science, Oklahoma State University, “Breeds of Livestock—Bashkir Curly Horse,” February 4, 1997, <http://www.ansi.okstate.edu/breeds/horses/bashkircurly>; S. Thomas, “The Curly Horse Identification Project of the CS Fund Conservancy (a Case Study),” in *Genetic Conservation of Domestic Livestock*, ed. Lawrence Alderson (Wallingford, Oxon: CAB International, on behalf of the Rare Breeds Survival Trust, 1990), 154–59.

83. See, for example, American Bashkir Curly Horse Registry, “The Curly Horse Breed,” <http://www.abcregistry.org/#/curly-horse-info/4553749478>; Silver Storm Farm, “American Curly Horse.”

Conclusion

Although available valid evidence is worth considering, the question of horses in the Book of Mormon has not been decisively answered and may never be resolved to anyone's complete satisfaction. Hard evidence will go only so far in dealing with this and other related issues. Much of the information presented in this article is not new; some data have been known for over a century. The information should be common knowledge, but sadly it is not. The issue of horses in the Book of Mormon is still used by critics of The Church of Jesus Christ of Latter-day Saints as a means of attack and by some of its own members as justification for their loss of faith in the Book of Mormon and, subsequently, the religion itself. This situation is lamentable, for it is often based on a foundation of ignorance. The same question is still being thrown about, with an apparent disregard of the latest (or even some of the earliest) scientific knowledge on the subject. Those who wish to defend the authenticity of Latter-day Saint scripture can easily educate themselves to improve the quality of the debate.

The teachings contained in the Book of Mormon carry much more weight for the modern world than whether Nephites and Lamanites really had horses. But it is a valid question, and it deserves a thoughtful response. A possible and certainly reasonable answer is based on the theory that horses as people today would recognize them did indeed inhabit the ancient lands known to peoples in the Book of Mormon during the relevant time periods. Likely, science today would classify them as the Western Horse and the Mexican Horse, whose remains have been found in the Americas. They were used in a manner not explicitly stated by those who kept the Book of Mormon record. Sometime after AD 26 (3 Ne. 6:1), their numbers began to dwindle in the original Book of Mormon lands through warfare, predation, ecological changes, or other unknown events. Any surviving populations were pushed to the extreme north and south, and their existence was forgotten by subsequent cultures inhabiting the original areas, such as the Maya, Toltecs, Aztecs, and many others who did not understand this "new" animal reintroduced by the Spanish Conquest. Small pockets of horses may have continued to survive in remote enough locations in North and South America that they were not discovered until centuries after initial European contact and were thought to have descended entirely from Old World horses reintroduced to this continent in modern times. This is a solid hypothesis based on sound, up-to-date scientific research,

which excludes controversial claims. However, it is by no means the only possible answer.

Book of Mormon analysts must admit that logical reasons exist for the lack of incontrovertible evidence for ancient horses or other “proofs” of the Book of Mormon. Its readers will probably never find an ancient gold plate written in reformed Egyptian saying, “Welcome to Zarahemla,” and signed by King Benjamin. If that were the case, faith in the Book of Mormon would be unnecessary. Latter-day Saints may long for proof, and their opponents may demand it, but Alma’s words to the Zoramites may be particularly relevant to these kinds of issues today: “Yea, there are many who do say: If thou wilt show unto us a sign from heaven, then we shall know of a surety; then we shall believe. Now I ask, is this faith? Behold, I say unto you, Nay; for if a man knoweth a thing he hath no cause to believe, for he knoweth it. . . . And now, behold, I say unto you, and I would that ye should remember, that God is merciful unto all who believe on his name; therefore he desireth, *in the first place, that ye should believe*, yea, even on his word” (Alma 32:17–32; emphasis added).

Daniel Johnson is the principal author of *An LDS Guide to Mesoamerica* and *An LDS Guide to the Yucatán*. He has had a lifelong interest in ancient cultures, especially from the Americas, and his first trip to Mexico was in 1999. Since then, Daniel has led friends on excursions to Central America and has given firesides about his research and travels to ancient Maya sites. He has spoken on archaeological topics at the Book of Mormon Archaeological Forum’s annual conferences. He served a mission in the Argentina Buenos Aires North and the Argentina Mendoza missions and now works as a digital artist and teaches at Northern California colleges.

Aliens

A whiteout from the stratosphere
has buried the house
in silence, a void no one
will be escaping.
Security lights blink on
five brothers here before dawn
to save my parents,
the oldest boy shivering
in a windbreaker and slick
shoes, the ten-year-old
with socks for gloves.

They might be miserable with a dad
who gave them snow shovels for Christmas
and now insists they enter glacial dark,
but they are intergalactic seekers,
the driveway endless distance
they must plow through. They radio
each other from their small craft.

I offer hot chocolate,
a friendly port, but they say
they must return to the mother ship
and sleep two more hours
to keep enemy lasers from piercing
their brains and thinking their thoughts.

Their quest: saving the galaxy. Light years
from now they will look back
at the blue planet, that wobbly
little star, recall explosions, drifts, blasts
through ice chunks, powder, glaze,
proud they helped earthlings risk
kindness, that they cleared a path.

—Susan Elizabeth Howe

Stranded in the Stars

Sheldon Lawrence

My wife asked me if I had the keys, but only after the car door locked shut, so her question was asked in suspense and hope—waiting to see what damage had been done to our trip to the sand dunes. I did not have the keys. I had left them in the car so they would not get lost in the sand. Our spontaneous trip to the dunes just got more interesting.

For the past ten thousand years, wind has collected tiny grains of sand from the vast Snake River Plain in Idaho and deposited them on the land just ten miles north of my home. The dunes cover 175 square miles, and they happen to be some of the best in the country. People from all over the United States come with campers and expensive toys—dirt bikes, dune buggies, four-wheelers—to play on the enormous, golden mountains of glass powder.

To my young children, the place is like an inconceivably large sandbox. So after getting an ice cream in town, they begged for a quick trip out to the dunes. It was evening, and we had less than an hour before the sun would set. The children were already making their way up a mountain of sand near the road when the door locked shut, the keys dangling from the ignition. And with a kind of mutual agreement that comes only with experience, we dismissed the blame-placing discussion, deciding instead to play a while before worrying about our predicament. So we climbed up the hills of sand as well, in the way that children do, on all fours, like animals.

On top of the sand dunes, the kids ran and jumped from the crests of the great, stationary waves. They buried each other up to their necks, while occasional gusts of wind would cause the fine sand to snake and

swirl along the surface, making them squint their eyes and breathe carefully through their noses.

In the sunset, the dunes seemed otherworldly, like we had just landed on a barren planet in a distant solar system. It was easy to forget we were only miles from farmland and neighborhoods. Perhaps it is the otherworldliness of the place that causes me to reflect, nearly every trip to the dunes, on a startling figure I once heard. It turns out that scientists have estimated the number of stars in the known universe. The number is incomprehensibly large, so to get a sense of it, they say, consider the grains of sand on all the beaches and deserts and dunes of the planet. Then multiply that by ten.

I think of the thousands of miles of coastline trimming each continent. Somewhere on Australia's Golden Coast, a surfer tracks a few hundred grains of sand into a beachside café—a cluster of stars in some distant galaxy. Somewhere in Indonesia, a coconut lying on the beach has a thousand grains of sand stuck to its brown husk; the sand on ten such coconuts equals more stars than are visible to the naked eye on a clear night.

Then there are the great deserts of the world. The Sahara alone covers over three and a half million square miles. Three and a half million. Now multiply that by the number of sand particles in each square mile. We can keep going to the Arabian Peninsula, where many have died just trying to travel from one end to the other. Then to the Atacama, the Gobi, the Mojave—all of them times ten.

But even these deserts and beaches are abstractions. It is the sand dunes here in my own backyard that fuel my imagination. If I had been told that all the stars in the universe equaled the grains of sand in the rolling hills upon which my children played, I would have found the comparison equally incomprehensible. A spoonful of this fine sand must hold tens of thousands of grains. And some of the dunes here are four hundred feet deep. My human brain refuses the math. At some point numbers become meaningless, just symbols separated with commas in sets of three.

It's hard not to feel lost in the numbers when I perceive myself on our little speck of dust, orbiting just one grain of sand in the vast cosmic dunes. It's hard not to feel stranded, marooned, locked out and lost with no way back. But it's also hard not to enjoy the mystery, the infinite playfulness, the wonder of being a participant in the absurd extravagance of creation. When Moses is given a vision of the universe, the Lord declares, "Worlds without number have I created" (Moses 1:33). Perhaps perceiving Moses's bewilderment, the Lord assures him, "But all things

are numbered unto me, for they are mine and I know them” (Moses 1:35). Maybe this is all we need in order to enjoy the adventure—to know that someone, somewhere, is keeping an eye on the fallen sparrows, the hairs of our head, and the grains of sand. Someone knows where we are and how to bring us home.

We continued to play. My daughter wanted to be buried, so I filled the bucket and poured waterfalls of galaxies onto her legs. We jumped into black holes, dug into nebula, and made sand angels in red giants and white dwarfs. But the problem of getting home remained, lurking in the background. As twilight set in, I took charge and ventured off in search of a solution. There was a campground just a half mile away, where, perhaps, someone might have a hanger, or a tool of some sort that I could wedge between the window and door, wiggle it around, and—I had no idea how such things worked—hope for the best.

The walking was slow and hard, each foot losing its grip and giving in to the soft powder, but I finally stumbled into the campground and found the camp host. He had no phone, but offered me some “universal keys” that he said just might open our door, and I was certainly welcome to give them a try. He seemed eager and hopeful about the keys, so I accepted them politely to reward his generosity, knowing even as he spoke that they wouldn’t work.

But in the end, there was no need for magical keys or jimmy-rigged tools. Back at the car, my wife, having learned to not rely wholly on my efforts, had flagged down a passing car whose occupants did indeed have a phone. She made the call for help to someone who knew us, knew where we were, and knew how to rescue us. Within minutes, a kindly neighbor was headed our way with an extra set of keys, racing across the cosmos to bring us home.

This essay by Sheldon Lawrence won second place in the *BYU Studies* 2015 personal essay contest.

Bradley J. Kramer. *Beholding the Tree of Life:
A Rabbinic Approach to the Book of Mormon.*

Draper, Utah: Greg Kofford Books, 2014.

Reviewed by Richard Dilworth Rust

Ever since his mission president in Florida assigned him to make the Jews in Miami his special project, Bradley J. Kramer has been passionate in learning about and from the Jewish people. This has included studying Hebrew, visiting synagogues, attending seminars and Torah classes, and doing everything he could to understand better how Jews approach their scriptures. Also holding an MA in English (University of North Carolina at Chapel Hill) and being a devoted student of the Book of Mormon, Bradley Kramer in *Beholding the Tree of Life* invites his Mormon readers to “understand the things which were spoken unto the Jews . . . [through being] taught after the manner of the things of the Jews” (2 Ne. 25:5). The book fits well the main purpose of the Contemporary Studies in Scripture series of Greg Kofford Books in its exploration of the “richness and complexity found in the standard works.”

Following Nephi, who understood “the things of the Jews” and who “beheld” the tree of life in his vision, Kramer invites his readers to use rabbinic principles embodied in Nephi’s vision in order to read the Book of Mormon more carefully and rigorously. These principles were put forth by the Talmudic sages, developed by classic medieval Jewish commentators, and emphasized by many contemporary rabbis. In this book that links rabbinic approaches to the Hebrew scriptures and studies of the Book of Mormon, Bradley Kramer sets forth tools developed through centuries by rabbis that help one connect to Jewish modes of studying scripture and help one find greater meanings in the Book of Mormon.

A rabbinic approach, as described by Rabbi Morris Kertzer, involves spending “a long time on a page. We do not read rapidly through a biblical text, so much as we read a single verse or two, and let our eyes meander through various commentaries on the page, playing with the

various ways Jews in times past have read a passage before us.”¹ In chapter 1, “The Fruit and the Tree,” Kramer introduces several key principles prominent in the rabbinic interpretive tradition. Believing that God wrote the entire Torah, Talmudic rabbis and their medieval descendants considered that each element of the Torah’s text—“every word and action, even gaps in the text—possessed potential significance for the reader.”² They believed the scriptures should be read deeply on several levels and from many perspectives. Too, they considered it essential to read the scriptures with others and in connection with other books. For them, knowledge was not the final goal; rather, scripture study itself was considered an experience with God.

In his second chapter, Kramer explains the four levels of rabbinic reading that are encapsulated in the acronym PaRDeS. It stands for *Peshat*, the literal level of meaning; *Remez*, the allegorical level; *Derash*, the sermonic level; and *Sod*, the mystical level. Kramer reveals these levels at work in the Book of Mormon. He demonstrates how both Nephi and Moroni encourage their readers “to have a *sod* experience with the text of the Book of Mormon as well as understand its plain sense, its allegorical meaning, and its sermonic significance” (42).

In his third chapter, Kramer explores additional tools found in rabbinic writings that apply well to close readings of the Book of Mormon. These “keys” or aspects of the scriptures comprise: opening sentences, the contiguity principle, similarities between different texts, differences between similar texts, repetitions and redundancies, and word order. Kramer cites Rabbi Avigdor Bonchek, a gifted Torah teacher at Hebrew University, who explains in his book *Studying the Torah* how following these keys provides a guide to in-depth interpretation of the Hebrew scriptures. Kramer then skillfully shows how they can be applied well to a close reading of the Book of Mormon.

It is not enough, though, to read closely on one’s own. In chapter 4, “Reading with Others,” Kramer tells how successful formal study of the Torah requires a partnership, or *chavrutot* (singular *chavrutah*). He quotes Rabbi Norman J. Cohen as saying, “Each one of us also needs someone with whom to study continually, from whom we can learn

1. Morris N. Kertzer, *What Is a Jew?*, 56, quoted by Bradley J. Kramer, *Beholding the Tree of Life: A Rabbinic Approach to the Book of Mormon* (Draper, Utah: Greg Kofford Books, 2014), xiv.

2. Norman J. Cohen, *The Way into Torah*, 74, quoted by Kramer, *Beholding*, 10.

in a variety of ways.”³ Kramer shows how Nephi could be considered a *chavrutah*. In *Beholding the Tree of Life*, which is even more meaningful on a rereading, Kramer implicitly becomes a *chavrutah* for his readers.

The first part of *Beholding the Tree of Life* treats what Kramer calls “Contemplating the Branches.” The second part, set forth in six chapters, is called “Appreciating the Roots.” It pertains to the Hebrew scriptures as the roots from which the rabbinic tradition sprang. Kramer shows how the study of the Torah was inseparably connected to the other books in the Jewish canon and quotes Rabbi Cohen’s affirmation that scriptural “intertextuality lies at the core of Torah learning.”⁴ Just as there is significant intertextuality between sections of the Torah and various writings of the Prophets, so is, as Kramer shows, the Book of Mormon intertwined with the Hebrew scriptures structurally as well as topically.

Kramer finds the basic historical structure of the Hebrew scriptures (beginnings, law-giving, judges, kings, prophets) to be mirrored chastically in the Book of Mormon (prophets, kings, judges, law-giving, beginnings). In great detail, Kramer shows the Book of Mormon’s structural connection to the Hebrew scriptures. He says:

By presenting their historical periods in reverse and by providing positive examples, the Book of Mormon counters the negative examples that dominate the Hebrew Scriptures. In other words, just as the Torah and the Prophets move “downward,” describing period-by-period the mistakes that accumulate gradually, building inexorably to the final, widespread dispersion of the Israelite people, so the Book of Mormon moves upward, reiterating the gravity of those mistakes, to be sure, but also providing examples of people making better decisions and assuring its readers that the consequences of those historical mistakes are neither everlasting nor permanently part of their situation. (116)

Kramer also shows how ancient situations in the Hebrew scriptures and in the Book of Mormon are, through the rabbinic approach, translated into modern terms.

Kramer’s last chapter, “Providing Prophetic Hope,” is especially enlightening as it connects the closing books of the Book of Mormon with Genesis. As an example of discovering intertextuality, Kramer affirms that “God can yet salvage something salvific from Moroni’s dark situation. Echoing the way God brings light to the primordial

3. Cohen, *Way into Torah*, 96, quoted by Kramer, *Beholding*, 77.

4. Cohen, *Way into Torah*, 87, quoted by Kramer, *Beholding*, 106.

darkness—powerfully and miraculously—the book of Mormon shows how Mormon and Moroni’s bleak account will eventually enlighten future generations and save them from a similar fate” (183).

Kramer closes his book by affirming the Holy Ghost to be “the ultimate *chavrutah* [study companion] expressed in Christian terms. . . . All in all, the book of Moroni presents the Holy Ghost—whether it be as an ever-present study companion, as a timeless commentator, or the *Shechinah* itself—as a force that fosters an unending stream of aesthetic-spiritual information flowing from divinity to humanity” (198–99).

Inspired by reading *Beholding the Tree of Life: A Rabbinic Approach to the Book of Mormon*, I invited two colleagues in the Church History Library to join me in what over several months has been a rabbinic approach to reading scriptures. It has been a stimulating and deeply enriching experience to feast on the fruit of the Tree, the words of Christ.

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David Vaughn Mason. *Brigham Young: Sovereign in America*.
Routledge Historical Americans Series. New York: Routledge, 2015.

Reviewed by Roger Terry

I first came across David Mason's writing in the *Washington Post's* "On Faith" blog, to which he contributed. Mason is a Latter-day Saint, the son of a BYU physics professor, and an associate professor of theatre at Rhodes College in Tennessee. His blog posts were atypical, to say the least, but insightful and well written. I emailed him about one of his posts, and we began an intermittent but friendly correspondence. A couple of years ago, Mason emailed me to say he was in Utah doing research for a short biography Routledge had commissioned him to write about Brigham Young, and he wondered if he could take me to lunch. I was curious. Why would a respected academic publisher ask a theatre professor to write a biography of a religious leader? I was not alone. "For reasons I'm sure I don't understand," Mason wrote me, "Routledge gave me a contract to write a Brigham Young biography, so I'm in Utah until mid-July to pretend I'm a historian."¹ Someone at Routledge had apparently seen his blog posts, as I had, and liked his writing style.

Now that the book is in print, the question is, did Mason just pretend to be a historian? I would argue no. Keep in mind, this is not a full-blown biography on the order of, say, Leonard Arrington's *Brigham Young: American Moses*, Eugene England's *Brother Brigham*, or John Turner's more recent *Brigham Young: Pioneer Prophet*. Routledge's stated purpose with its Historical Americans series is to create a collection of "short, vibrant biographies that illuminate the lives of Americans who have had an impact on the world. Each book includes a short overview of the person's life and puts that person into historical context through essential primary documents, written both by

1. David Mason to Roger Terry, email, June 4, 2013.

the subjects and about them” (ii). The list of these biographies to date is eclectic: Woody Guthrie, Frederick Douglas, Thurgood Marshall, Harry Truman, John Winthrop, John F. Kennedy, Bill Clinton, Ronald Reagan, Laura Ingalls Wilder, Benjamin Franklin, Mary Lincoln, and, of course, Brigham Young.

Mason’s biography of Young is a scant 145 pages, followed by a section of eight relevant historical documents. The idea behind the Routledge series is that these biographies are to be concise enough for use by college professors as supplemental texts for their American history courses but complete enough to give students a thorough introduction to each subject’s life. This is also the reason why the books in this series are available in paperback with a list price of \$34.95. But I would caution readers not to judge this book by its cover (or its cover price). In the context of the series’ intent, I found that Mason’s treatment of Brigham Young succeeded surprisingly well. Even after reading Turner’s more comprehensive biography, I still gleaned new information and fresh insights from the Routledge publication.

I was particularly impressed with how many original sources Mason mined, from Young’s correspondence with his wives and fellow Church leaders to his office diary and his speeches (as recorded in both the *Journal of Discourses* and the Historian’s Office Report of Speeches). Equally notable, given both the brevity of the book and the short timetable this nonhistorian scholar had to work within, is the range of secondary sources he consulted in producing this very readable history of a remarkably diverse leader. After our lunch together, I brought Mason back to the BYU Studies office and loaded him down with a copy of every book we had published that was remotely related to Brigham Young. And although the author mentions this gesture in his acknowledgements, I was interested to see that while he lists only a couple of these sources in his footnotes, he cites more than thirty different *BYU Studies* articles as well as scores of other journal articles, books, and newspaper reports—enough to fill eight pages of bibliography in a very small type size.

A book of this size and purpose must, of necessity, leave many things out, but I am pleasantly surprised at how much Mason was able to shoe-horn in. This is partly due to his writing style, which summarizes and synthesizes intricate events and interactions in readable and pithy prose. In this regard, the Routledge editors apparently knew what they were doing. There is scarcely a significant issue or event in Young’s very eventful life that Mason does not directly address or skillfully weave into his

narrative. He brings certain overarching themes to the fore and shows how these tie together to make sense of a man who could otherwise be viewed as self-contradictory and contrarian. The Brigham Young who emerges from these pages is a man driven by his commitment to the cause of Zion above all else and convinced that he has the innate ability to hold it all together.

As one would expect, this is not a hagiographic work (something a non-LDS publisher would be disinclined to produce) and the Brigham Young Mason portrays is sometimes not a very likable person. The book touches upon his charged language from the pulpit, his persecution-inspired suspicion over government intrusion, his mistrust of gentile merchants, his disputes with fellow Church leaders, his handling of the handcart program, his few now-discarded doctrinal innovations, his communitarian enterprises that were later disbanded, and his statements on race and priesthood that have troubled many, but the man depicted in this biography is still a remarkable human being as well as a believable one.

Some may feel that this book cannot provide a balanced look at Young because the author does not focus on the spiritual experiences or doctrinal contributions of this religious leader. Clearly it is beyond the publisher's parameters for a volume such as this to make the case that Young was God's representative on earth, although Mason does give an accounting early in the book of Young's initial religious ambivalence and protracted conversion to Mormonism, offering credible reasons for such a permanent personal commitment. He also makes a compelling argument that without Mormonism Brigham Young would have lived out his life in relative obscurity.

Mason divides his subject's life into a mere seven short chapters, each chronicling a major period in Young's incredible journey. These chapters are titled "Out of Obscurity," "Pushed Ahead," "A New Society," "The Exodus," "Deseret," "A Civil War," and "Brigham's Kingdom." As the story unfolds, we see a poverty-stricken child, who lost his mother when he was fourteen and whose strict disciplinarian father set him free to fend for himself at age sixteen, grow into an intensely independent man who nevertheless embraces a radical new religion, which then allows him to rise through adversity and fierce loyalty to a station of prominence (and ridicule) that few Americans have achieved.

Brigham Young is one of the most complex figures in American (and, I would argue, Mormon) history, and Mason does not shy away from any of the apparent contradictions that help define the man. Instead, by

identifying a central priority in Brigham's makeup, he attempts to bring a tentative, albeit sometimes jarring, congruence to the outwardly warring attributes of Mormonism's second prophet. Perhaps this effort can be best illustrated by Young's elaborate views regarding women. Mason points out that while Brigham promoted education for women, orchestrated their right to vote, and reestablished the Relief Society, he also "insisted that women were cursed, naturally inclined to be led by men, and ought to worry more about their children's welfare than about getting the attention of their husbands" (124). Mason reconciles Young's seeming ambivalence by suggesting that Brigham "made policy according to what would best promote the material interests of the kingdom. Wherever women could contribute to the operation and expansion of the church, he advocated their liberation. Where their emancipation threatened the stability of the organization and its male hierarchy, Brigham retrenched" (124–25). Women's right to vote was thus a strategic move aimed at strengthening Young's hold on political power in the territory in the face of the Godbeite revolt and not a cause in itself worthy of his attention. The subtle implication in Mason's focus, of course, is that he assumes Young merely turns people into instruments in a "greater" cause rather than seeing them as the underlying reason for the cause.

This view may apply to a degree, and yet even here Young is more complex and unclassifiable than Mason's framework allows. I would have liked to see him view Young even briefly through the eyes of non-Mormon writer Elizabeth Kane, for instance, who recognized that despite Brigham's sometimes gruff and authoritarian exterior, the people did seem to genuinely love him, and he them.² Nevertheless, her grudging admiration for the man still allowed for ulterior motives in Brigham's interactions with his people: "They talked away to Brigham about every conceivable matter . . . and expected him to remember every child in every cotter's family. And he really seemed to do so, and to be at home, and be rightfully deemed infallible on every subject. . . . I noticed that he never seemed uninterested, but gave an unforced attention to the person addressing him, which suggested a mind free from care. I used to fancy that he wasted a great deal of power in this way;

2. See Edward A. Geary, "Tom and Bessie Kane and the Mormons," in *Colonel Thomas L. Kane and the Mormons, 1846–1883*, ed. David J. Whittaker (Provo, Utah: BYU Studies; Salt Lake City: University of Utah Press, 2010), 121–57.

but I soon saw that he was accumulating it.”³ Indeed, such multifaceted power has rarely been accrued or exercised in American history.

Mason does not argue, however, that power itself was Brigham’s ambition. Throughout Young’s presidency, in Mason’s view, he was single-mindedly devoted to building God’s kingdom and to the concomitant belief that he, above others, possessed the capacity to direct the kingdom’s earthly affairs. Seen through this prism, many of Young’s superficially contradictory or troubling actions and policies begin to make sense at a deeper level. And this is the source of Mason’s subtitle. In his concluding words:

The kingdom Brigham aspired to rule required revolution, and he was, undeniably, a revolutionary figure. He knew poverty, he saw new, wrenching forms of it in England, and he meant to make a government that would eliminate want and desperation. He saw the determination of the United States to bring his kingdom under its control as the imposition of the same old oppression that inevitably resulted in misery, fury, and war. The enormity of the task of building an alternative, the persistence of the opposition, and the dire consequences of failure moved him to demand absolute obedience, in spite of himself. No one else, he was sure, had the insight nor the grit to see the task through.

He had no choice, then, but to be a monarch. For the sake of justice, for the sake of the people, for righteousness, and for the triumph of the kingdom, Brigham had to be sovereign in America. (140)

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3. Geary, “Tom and Bessie Kane,” 143.

Blaine M. Yorgason, Richard A. Schmutz, and
Douglas D. Alder. *All That Was Promised:
The St. George Temple and the Unfolding of the Restoration.*
Salt Lake City: Deseret Book, 2013.

Reviewed by Bruce C. Hafen

This book reflects the fortunate confluence of several factors: first, Blaine Yorgason's considerable talents as a storyteller combined with the academic skills of seasoned historians Douglas Alder and Richard Schmutz; second, the inclusion of previously unpublished journal accounts from colorful and credible participants who helped build the St. George Temple; and third, the previously little-noticed historical placement of this temple, not merely as a local story, but in its concluding role as the third temple required to complete the full restoration of temple ordinances—Kirtland, Nauvoo, and St. George.

Blaine Yorgason is well known to LDS readers for his numerous novels, such as *Charlie's Monument*, *Windwalker*, and *Chester, I Love You*. Historian Douglas Alder has made many contributions to Mormon and southern Utah history, both before and since he served as president of Dixie College from 1986 to 1993. Richard Schmutz taught history at BYU before entering the construction business, which gave him a builder's perspective on constructing a pioneer temple. All three authors were associated with the St. George Temple in recent years as sealers and ordinance workers.

A 2014 review called the book “a new and needed synthesis of this fascinating—and underappreciated—theater of Mormon history.” The book draws upon several “remarkable [and previously unpublished] journals . . . and other diaries and correspondence . . . that the authors weave into a colorful and textured narrative. The [book paints] a compelling picture of pioneer life on the red dirt of the Mormon frontier—the perils of floods, the vagaries of travel, the strenuousness of labor, the power of community, the satisfaction of hard-won victories in the face

of natural austerity: these are the stuff of the early Mormon settlement in the West.”¹

The firsthand journal accounts reveal several memorable personalities and perspectives. Dixie settler Charles Pulsipher, for example, was assigned by Apostle Erastus Snow, the St. George settlement leader, to travel throughout the towns of southern and central Utah to solicit both laborers and provisions for the temple construction workers. On one occasion, Charles was in Ephraim, entreating the local Saints to provide a dozen stone masons who could help construct the temple’s sandstone walls. He stressed the urgency of needing to finish the temple while Brigham Young was still alive.

At one point, as he recorded in his journal:

Before I was aware of what I was saying I said, “Come on down and help us build that Temple and we will come up here and help you build one in San Pete,” and when I found what I had said I was surprised for I had never heard of any intention of building [a temple] in San Pete but it was said and I knew it would be done for it wasn’t my premeditated sayings so I went right on and never let on that I had said anything out of the common.

At the close of the meeting they gathered around me and said, “So we are going to have a Temple up here in San Pete, are we?”

“Yes sir.”

“Well, when did President Young tell you about it?”

“He never told me.”

“And when did you first hear of it?”

“You heard it as soon as I did.”

“And do you think it will be so?”

“Yes, I not only think but I know it will be fulfilled.”

In about four years I sent up two hands to work on the Manti Temple, thus I filled my promise. (127–28)

The book’s early chapters recount the backbreaking settlement of St. George in 1861, a region that had been described by First Presidency member George A. Smith as the “most wretched, barren, Godforsaken country in the world”²—yet President Young still named the town

1. Ryan T., “Book Review: All That Was Promised: The St. George Temple and the Unfolding of the Restoration,” *Juvenile Instructor*, <http://www.juvenileinstructor.org/book-review-all-that-was-promised-the-st-george-temple-and-the-unfolding-of-the-restoration/>, February 6, 2014.

2. George A. Smith, in *Journal of Discourses*, 26 vols. (Liverpool: F. D. Richards, 1855–86), 9:116 (September 10, 1861).

after George A.! The remaining chapters are devoted to the details of constructing the temple (1871–77), the beginnings of ordinance work there—including the first-ever endowments for the dead—and some of the early revelations to temple president Wilford Woodruff on how the work should be done.³

One of the construction stories recounts what happened when the builders discovered an underground stream of water directly beneath the proposed site. Because any water in barren St. George was a rare and precious commodity, they recommended building on a nearby location. Brigham Young declined. He directed them to dig a deeper hole, to fill and compact the bottom of the hole with large volcanic boulders, and then to build the foundation on that base—a task that took the first eighteen months of the construction time. But as it turned out, the lava rock protected the temple's foundation not only from the water, but also from the unanticipated risk of being corroded by the alkali that was (and still is) so prevalent in the native soil (99–104).

The book's most significant contribution to Church history is that it documents the place of the St. George Temple in the larger history of the Church. As stated by one of the book's reviewers online, "The elevation of St. George into the company of Kirtland and Nauvoo makes for a fresh and important turn in the conventional story, a story that underscores the ongoing development of temple ritual beyond Nauvoo."⁴

In a fifteen-page prologue, Yorgason, Alder, and Schmutz tell us why Brigham Young was so passionate about finishing a temple before he died.

Brother Brigham chose the site for the Salt Lake Temple a few days after entering the Salt Lake Valley in 1847. But after almost twenty years of constant interruptions and frustrations, he could see that it would take twenty more years to finish it—and he knew he would never live that long. Yet he felt a keen sense of urgency because of a special charge he had received from Joseph Smith.

The prologue recounts that during Joseph's meetings with the Twelve in the months before his death in June 1844, with the Nauvoo Temple still under construction, Joseph gave them "every key, every ordinance, every principle, and every priesthood . . . that belong to the last dispensation" and then he said, "now I am free" (13). "The Lord is going to let

3. See Richard E. Bennett, "‘Line upon Line, Precept upon Precept’: Reflections on the 1877 Commencement of the Performance of Endowments and Sealings for the Dead," *BYU Studies* 44, no. 3 (2005): 38–77.

4. Ryan T., "Book Review."

me rest awhile” (15). Regarding temple ordinances, the Prophet said that the endowment for the dead was to be administered only in dedicated temples. Then he gave this very personal charge: “Brother Brigham, this [the temple ordinance work] is not arranged perfectly; however we have done the best we could under the circumstances in which we are placed. I wish you to take this matter in hand: organize and systematize all these ceremonies” (14).

The later chapters show that President Young would ultimately carry out this task, both to oversee the temple construction and to establish the ordinance work—and yet his actual time administering or overseeing ordinances *in a temple*⁵ would be limited to forty-six days in Nauvoo and the first four months of 1877 in St. George. After dedicating that temple in April 1877, he stopped to dedicate the site for the Manti Temple on his way home. A short time later he dedicated the site for the Logan Temple, and in August his mortal life came to an end.

The book also describes the revealed guidance Wilford Woodruff received regarding the administration of temple work—the first steps in his leading role for what historian Richard Bennett describes as “the transformation of temple consciousness” in the Church between 1870 and 1898.⁶

Under Brigham Young’s direction, for example, President Woodruff and a few others first put the complete temple ordinances into written form, both for the living and the dead (282–85). And in answer to Brother Wilford’s prayer about how to perform temple ordinances for his own family, he learned that any worthy person of the same gender could stand as proxy for a deceased person (see 288–90). Before that time, the Saints and their leaders had assumed that only immediate descendants could be proxies.

The 1877 visit of the U.S. Founding Fathers to President Woodruff in the St. George Temple is fairly well known, but the book explains how this visit made a major contribution to our understanding about

5. Church members were able to receive endowments and sealings for the living in Salt Lake City, both in the Council House from 1851 to 1855 and in the Endowment House from 1851 to 1885 (Karen Lynn Davidson and Jill Mulvay Derr, *Eliza: The Life and Faith of Eliza R. Snow* [Salt Lake City: Deseret Book, 2013], 86–87), but because those buildings were not dedicated temples, no endowments for the dead or child-to-parent sealings for the dead were completed in Utah until the St. George Temple was dedicated in 1877.

6. Richard E. Bennett, “‘Which Is the Wisest Course?’: The Transformation in Mormon Temple Consciousness, 1870–1898,” *BYU Studies* 52, no. 2 (2013): 5–43.

the scope of the work for the dead. Prior to this event, the Brethren had assumed that Church members were responsible to perform ordinances only for their own deceased family members and close friends. But the visit of the Founders made clear that, ultimately, temple ordinances would need to be performed for everyone (303–11).

This book is well written—readable, full of insight and historical perspective, and at times downright entertaining. It makes temples and temple ordinance work more personal and accessible by showing where and how that work began in this dispensation. Its approach—deliberately directed toward the general reader—gives it more the feel of a popular history than a rigorously academic one. But as the combined strengths of its three authors suggest, it brings together the best of an engaging personal narrative style with an academically acceptable foundation, framework, and research standard.

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Howard M. Bahr. *Saints Observed: Studies of Mormon Village Life, 1850–2005*. Salt Lake City: University of Utah Press, 2014.

Howard M. Bahr, ed. *Four Classic Mormon Village Studies*. Salt Lake City: University of Utah Press, 2014.

Reviewed by Todd L. Goodsell

In the early 1920s, a young graduate student at the University of Chicago named Nels Anderson employed a research method that was not then familiar to students of sociology, who took data from libraries and archives for their term papers. Nels took a different approach, because there was little data to be found in those locations on the group he wanted to study: homeless working men, or “hobos.” So Anderson created his own method. Over the space of a year while a student, he lived like a hobo. He visited the cheap diners where hobos with a little money could eat, and copied down the menus. He stayed in a flophouse and documented its sights and sounds and the feeling of insects crawling over him while he tried to sleep. He sat with hobos by a campfire, watched how they handled their eating utensils, and listened to their stories. He learned the nicknames that a hobo could acquire if he lost a limb after falling off a train, and he observed speakers standing on soapboxes in a public square, trying to organize the urban poor. He wrote down all of this and more. The result was a brilliant, detailed analysis of what everyday life was like for a poorly understood minority group, in what became the classic work on homelessness in the United States: Anderson’s book *The Hobo*.¹

Anderson’s work began a golden age of what came to be called the Chicago School of Sociology. A series of engaging monographs, all produced by the University of Chicago’s Department of Sociology, explored the city from a wide variety of angles: economic inequality,² juvenile delinquency,³

1. Nels Anderson, *The Hobo: The Sociology of the Homeless Man* (1923; rpt., Chicago: University of Chicago Press, 1961).

2. Harvey Warren Zorbaugh, *The Gold Coast and the Slum: A Sociological Study of Chicago’s Near North Side* (1929; rpt., Chicago: University of Chicago Press, 1976).

3. Clifford R. Shaw, *The Jack-Roller: A Delinquent Boy’s Own Story* (1930; rpt., Chicago: University of Chicago Press, 1966).

private dance halls,⁴ African-American neighborhoods,⁵ and others. A common thread through these studies was extended, up-close investigation of real people's lives, placed in the context of their communities and larger society. Robert Park, a professor in the department, captured the classic imperative of the Chicago School when he said to students:

You have been told to go grubbing in the library, thereby accumulating a mass of notes and a liberal coating of grime. You have been told to choose problems wherever you can find musty stacks of routine records based on trivial schedules prepared by tired bureaucrats and filled out by reluctant applicants for aid or fussy do-gooders or indifferent clerks. This is called "getting your hands dirty in real research." Those who counsel you are wise and honorable; the reasons they offer are of great value. But one more thing is needful: first-hand observation. Go and sit in the lounges of the luxury hotels and on the doorsteps of the flophouses; sit on the Gold Coast settees and on the slum shakedowns; sit in the Orchestra Hall and in the Star and Garter Burlesk [*sic*]. In short, gentlemen [*sic*], go get the seat of your pants dirty in real research.⁶

Getting "the seat of your pants dirty" came to represent this new (at least new to students) way of doing social science. Ethnography is more than just qualitative research. Scholars in this tradition, which continues today, believe that you cannot understand other people's experiences unless you have set aside or at least managed your own biases, spent extended periods of time in their world, and come to see how that world makes sense from their perspective. Such an approach privileges the everyday experiences of ordinary folks and discovers how complex, human, and remarkable they are after all.

The story of Nels Anderson and the Chicago School sets up what I believe is the take-home message of two books that were written and edited, respectively, by Howard Bahr. *Saints Observed* and *Four Classic Mormon Village Studies* are based on ethnographic research in rural Mormon communities during the nineteenth and twentieth centuries.

4. Paul Gosalby Cressey, *The Taxi-Dance Hall: A Sociological Study in Commercialized Recreation and City Life* (1932; rpt., Chicago: University of Chicago Press, 2008).

5. St. Clair Drake and Horace R. Cayton, *Black Metropolis: A Study of Negro Life in a Northern City*, rev. and enl. (1945; rpt., Chicago: University of Chicago Press, 1993).

6. Quoted in Martin Bulmer, *The Chicago School of Sociology: Institutionalization, Diversity, and the Rise of Sociological Research* (Chicago: University of Chicago Press, 1984), 97.

During this period, several scholars visited various Mormon settlements, spent extended time there, wrote about what they experienced, and from these writings tried to explain Mormonism to a larger audience. In the first volume, Bahr does a superb job of synthesizing the writings of several intellectuals from the nineteenth century into a kind of “team ethnography,”⁷ and the result is a composite picture of everyday Mormon culture during that time. In the second volume, he presents four complete, hard-to-find, twentieth-century ethnographies of Mormon villages, along with his own follow-up to each. Together, the volumes reveal a long tradition of ethnographic research on Mormon community life. Bahr argues that this tradition is worth continuing.

Saints Observed

In *Saints Observed: Studies of Mormon Village Life, 1850–2005*, Bahr sought to understand how educated individuals who visited Mormon villages in the nineteenth century represented Mormon culture. He selected these writers on the basis of several criteria: they were not Mormon themselves; they spent time living among the Mormons rather than just passing through; they provided some statement of how they gathered their data; and they at least intended to write an objective account of Mormon life. Bahr divided the individuals who met these criteria into two groups. The first group visited the Mormon West between 1849 and 1861; the others (whom he called the “second generation”) visited between 1872 and 1882. Finally, Bahr surveyed twentieth-century Mormon village studies, with an emphasis on Lowry Nelson and his contemporaries, and extended the tradition to today.

Bahr drew upon principles of postcolonialism, most especially the “contact zone” (8), to frame his work. Certainly he could have done more with this theory, but I find it an appropriate framework to use. It draws our attention to the encounter between the European (or the American from the East Coast, as the case may be) and the Other (in this case, the Mormons) as “a joint, constructed encounter” (8). In other words, we as readers do not simply have wealthy, privileged observers telling us the truth about the peoples they meet. Rather, we have an emergent and fluid zone of contact between various individuals and groups within a framework of pronounced inequality. Thus, we have multiple voices, multiple

7. Ken Erickson and Donald Stull, *Doing Team Ethnography: Warnings and Advice* (Thousand Oaks, Calif.: Sage, 1998).

perspectives, and contested interpretations. One can further observe where the tellers themselves are situated (historically, culturally, socio-economically, and so forth), and thus their reports about the Other are at least in part a reflection of who *they* are, not just a simple account of what they saw.

Bahr's approach using team ethnography is a difficult one, because in ethnography the field researcher is the primary research instrument. However, Bahr does a masterful job of synthesizing the different works. For each component of the research report, Bahr compares the various perspectives provided by the different observers, noting similarities but also explaining differences. The delightful consequence is that the Mormons these visitors encountered appear in three dimensions, as real, complex human beings. Readers will find that different observers had different experiences once inside Mormon culture, and even when they saw the same things, they sometimes were inclined to interpret them differently.

Bahr often had to adjudicate between different assertions. When two visitors met Heber C. Kimball and described his physical appearance in their respective accounts, one, Carvalho, found him to be "noble looking" and "well proportioned," while the other, Remy, described Kimball's body as "grotesque," "punchy," and "comic." As the leader of the "team" of ethnographers, Bahr handles these striking differences of opinion by noting that if researchers want some objective facts about what Kimball looked like, then either they must get additional data or they must live with differing views. Moreover, Bahr points out that there is another way to consider the data: what people say about the Mormons or any others may reveal more about themselves than about the others. Bahr writes, "The contrasting judgments may say more about the observers—American artist versus French aristocrat—than about Heber's phenotype" (43).

At other times, Bahr was able to stand back and allow the various ethnographers on his "team" to have a conversation with each other about what the world is to think about these Mormons. The French aristocrat Remy accused Mormons of "an excessive forwardness and a coarse freedom of manner" (103). Another visitor, who was also particularly cosmopolitan, dismissed such conversational style as simply an aspect of frontier life (105). Others were far more discerning. One visitor—who was distinguished for spending an unusual amount of time with Mormon families—noted aspects of manner that some might find offensive but provided explanations for them: First, among Mormons "a priestly tone" is simply not used, and even the prophet does not speak in a way

that some think a prophet should; second, the tendency to speak plainly and share private matters may result from the experiences of Mormons who, of necessity, had to share so much of their lives together (104–5).

The last chapter, about Mormon village studies in the twentieth century, is more of a bibliographic overview than an in-depth analysis of the cultures of Mormonism found therein. Therefore, I think of it as a brief summary of how Mormon village studies in the early twentieth century lost much of the richness present in these nineteenth-century accounts, and how these studies gradually regained such richness in the later part of the century. I have read many of the studies Bahr mentions (and I conducted two of them). Knowing that there is so much more that has been (and can be) said about Mormon cultures, this chapter leaves me eager for more of the rich detail found in the previous chapters. Nevertheless, I believe Bahr accomplished his objective—to show that this tradition continued until the present and to show where readers can look to find additional studies.

Bahr's highlighting of different perspectives makes this volume a delight to read. He guides us readers through many aspects of Mormon life during this period—social inequality, religiosity, work, family, education, and others—and we see through so many different eyes what it was like to live as a Mormon. At the same time, *Saints Observed* is limited by this thematic approach: the reader sees a synthesized picture of Mormon life that cuts across the perspectives of several different observers. We do not gain a holistic analysis of a single community. For this, we must turn to the second of these two books.

Four Classic Mormon Village Studies

In *Four Classic Mormon Village Studies*, Bahr presents four ethnographic Mormon village studies conducted in the middle of the twentieth century. Each occupies its own chapter and is followed by an afterword reporting what has happened to the village since the research was done. The four villages (and their respective ethnographers) are Gunlock, Utah (Edward Banfield); Virgin, Utah (Henri Mendras); Ramah, New Mexico (Thomas O'Dea); and Pomerene, Arizona (Wilfrid Bailey). By allowing each village study to stand as an independent social scientific study—quite a different rhetorical strategy from what Bahr chose in *Saints Observed*—readers get to see each village holistically and each ethnographer as a unique craftsman. Only one of these ethnographers was LDS (Bailey), and he was a convert to the Church. Each was associated with a university when he conducted the village study. This volume

is a treasure because it makes available several studies that were previously unpublished or difficult to acquire. The volume is also a treasure for its insights on what life was like as a Mormon and what constitutes a good ethnographic study of Mormonism.

Banfield's analysis of Gunlock is excellent. A good ethnography captures and conveys everyday life in the community so well that readers feel like they are there, that they hear the voices of the people, and that they understand the world from their perspective; Banfield's chapter is laden with quotes and stories that bring this effect. His portrayal of the community and its members is rich and nuanced, and every detail is revealing. Take, for example, this story of a Gunlock resident who was surprised that a stranger from Las Vegas could tell who he and his friends were: "The stranger saw a group of young men who had the calloused hands and weathered look of laborers but a clean-cut, polite, well-spoken manner that laborers ordinarily do not have. These could only be rural Mormons" (49). Such insights not only draw upon physical appearance but also capture the subjective experience of discontinuity when life in Gunlock is implicitly contrasted with life elsewhere.

By filling the narrative with quotes and stories, Banfield avoids drawing overly simplistic conclusions, such as depicting Mormon community strictly as either cooperative or conflict-ridden. As we all know, real life is more complicated. We see people who live so much of their lives together that they value keeping at least some aspects private. We see people who can disagree, but who will cooperate when necessary for the sake of the children or in emergencies. We see people who might be understood by outsiders as unambitious, but who in fact come up with creative solutions that meet their needs and make sense of their world. Banfield generally kept his own authorial presence in the shadows, in favor of privileging the voices of the research participants. While some might consider this decision a weakness, I see it as appropriate because he is clear about how he obtained his data. I came away feeling like I know the people of Gunlock as well as (or perhaps better than) I know my own neighbors.

Bahr does not cite postcolonial theory as a framework for this volume as he does with *Saints Observed*, but he could have carried that theory into this work too. One can read *Four Classic Mormon Village Studies* as decentering the object (the Mormon village), meaning that in these studies readers learn at least as much about the observer as they do about the observed. That perception appears most clearly in Mendras's observations of Virgin. For example, Mendras recalled his impression

of Mormon worship services, “when everyone stood up to say with disarming simplicity the naïve banalities that the Lord inspired in them,” and noted that this reminded him of his home village in France, where peasants sang in Latin without understanding what they were singing (84). Mendras conveyed his own bewilderment at the life of the Mormons: he complained about the “monotonous meals” (100); he voiced his frustrations at seeing a bishop so encumbered by work, family, and administrative tasks that he could not be “a true leader” who identifies and resolves problems (105); he observed an MIA meeting where he himself made up the attendance, but the leaders still observed all protocol and ceremony required for the meeting and the secretary filled out the proper forms (107). Some of Mendras’s comments echo those of Banfield—for example, that the LDS Church was the only organization with enough moral authority to address and resolve community problems, though Church leaders typically did not exercise this prerogative. Mendras and Banfield also agreed that residents of the village held attitudes typical of the middle class but material resources typical of the working class. I see this chapter not as a simple portrayal of Virgin, but as the product of interactions between the people of Virgin and a young, educated Frenchman who left a rural village in France only to find himself, not altogether willingly, in a rural village in Utah. This decentering helps readers see the humanity, and the assumptions that come with it, on both sides of the observer/observed divide.

Many social scientists will probably be most eager for O’Dea’s chapter. O’Dea is well remembered for his book *The Mormons*, which is considered a (possibly *the*) pivotal social scientific work on Mormonism in the twentieth century. *The Mormons* was based on fieldwork O’Dea did in Ramah, New Mexico, but it does not contain the field data on which he built his argument. Now, in *Four Classic Mormon Village Studies*, those field data are made widely available. O’Dea’s account is strikingly different from Mendras’s, in that while Mendras is perpetually seen by villagers as the outsider, O’Dea asserts that he was easily accepted into the community. This may be accounted for by his more careful preparation for the move to Ramah; however he achieved that sense of inclusion, O’Dea still produced a work that focused more on the functional integration of the community than on the ethnic flavor of the people.

To be sure, O’Dea captured some subtlety and irony in Mormonism, such as how the “gathering” necessitated a dispersion that created the village of Ramah—and that perhaps because of that dispersion, such a distant outpost developed a strong Mormon identity and tight

social cohesion. Still, I was left wishing O'Dea had provided more ethnographic data. His work on Mormonism is excellent, and I was excited to read the fieldwork behind it. Yet by comparison, Banfield's chapter seemed deeper and richer. I do not have major disagreements with O'Dea's work; I was only a little disappointed to see his structural-functionalist framework coming out so strongly in his ethnographic data from the field. A different approach would have helped me understand better what life was like in this Mormon community.

Bailey's chapter is strong when it considers a Mormon village located next to a town populated almost entirely by individuals of other faiths and asks how these two communities can learn to live together. It traces the nuanced history between these two settlements and their people, and it reveals how Mormonism can adapt and even grow when under outside pressure. On the other hand, the chapter has shortcomings in that Bailey did not fully exploit the strengths of the ethnographic method. While he did give a strong sense of the place, readers do not always hear the voices of the people who live there. Stories and quotes would have helped the reader to understand Bailey's reasoning, particularly when he makes his assertions about how Pomerene came to be imagined the way it was in the 1940s and how it underwent subsequent transitions. The chapter concludes with two selections written by Bailey, extending the narrative to 1990 and then to 2000.

Conclusion

I have heard some social scientists complain that they cannot study Mormons because the LDS Church will not make membership records and other data available for outside analysis. They say the Church will not cooperate in allowing them to gather their own data by surveying its members. The Church does its own social science research, through its Research Information Division (RID), but only a very small percentage of the research conducted through RID is made public. According to these social scientists, Mormons can be studied only if they happen to show up in sufficient numbers (such as in the General Social Survey) for them to run some limited analyses.

I find such claims to be shortsighted. Ethnography is a well-established research method in sociology and in related social sciences. Doing an ethnography of Mormons usually would not require Church approval. Formal approval is indeed needed if one wishes to claim Church sponsorship, access official membership lists or tithing records, or attend private leadership meetings and counseling sessions, but these are often

not necessary for accomplishing the goals of ethnography. The goal of ethnography is to build an understanding of the everyday worlds of the research participants through up-close involvement in those worlds and through listening to their stories. One can accomplish this goal through investigating public spaces, attending public meetings, and building relationships with people in the field. This is by no means easy; the voluminous literature on how to conduct a good ethnography attests to that. My point is that reaching this goal is not impossible, even when researchers are studying Mormons.

Some may argue that the genre of Mormon village studies is dead. Bahr makes a case that it is not. And I believe we can take Bahr's approach and apply it to the study of Mormonism in general. I still hear claims that there are misconceptions of what it is like to be a Mormon (this is one of the stated premises of the 2014 movie *Meet the Mormons*); ethnography can help here because it is a research method that excels at showing what real life is like for real people. With these two books, *Saints Observed* and *Four Classic Mormon Village Studies*, Bahr shows us what good ethnographies of Mormons can look like.

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Mark A. Scherer. *The Journey of a People:
The Era of Restoration, 1820 to 1844.*
Independence, Mo.: Community of Christ Seminary Press, 2013.

Mark A. Scherer. *The Journey of a People:
The Era of Reorganization, 1844 to 1946.*
Independence, Mo.: Community of Christ Seminary Press, 2013.

Reviewed by Alonzo L. Gaskill

In the first official history in twenty years, Mark A. Scherer—world church historian of the Community of Christ (formerly known as the Reorganized Church of Jesus Christ of Latter Day Saints, or RLDS)—offers a much-needed update giving the position of Community of Christ theologians, historians, and leaders on Restoration history. Currently available are the first two volumes of Scherer’s trilogy, *The Journey of a People*. Volume 1 covers the period from 1820 to 1844, and volume 2 treats the years 1844 through 1946. The anticipated third volume will focus on the period from 1946 to the present and is due to be available in June 2016—just in time for the next world conference of the Community of Christ.

This is an important series for those who closely follow Mormon studies and other fields connected to the restorationist movements, along with those who study interfaith dynamics, Mormon history, and the modern approaches to that history. These works also have value for the general membership of The Church of Jesus Christ of Latter-day Saints; the laity of the Utah-based faith are likely unaware of the current position of the Community of Christ on key Restoration events, doctrines, and rites. Scherer’s work is admirable in representing the views of leaders in the Community of Christ today on topics such as religious history, doctrine, the Book of Mormon, and Joseph Smith. As Scherer points out, not all in the former RLDS Church fully agree with his interpretation of “the church story” (1:xviii). Nevertheless, what Scherer describes seems representative of what I have heard at Community of Christ gatherings and symposia over the last decade.

While there may be value for those of the LDS faith in reading these volumes—if for no other reason than to gain more understanding—

I suspect many Mormons will not care for them. Indeed, a number of LDS historians who read Scherer's first two volumes expressed concern. Owing to the length of these two books together (more than 1,100 pages) and the length limitations on this review, I will point out only a few problems.

One of the first things the reader is confronted with—particularly in volume 1—is Scherer's decision to write an “interpretive” history of the Church (1:xxii; 2:xvii). In other words, these books are not intended purely as history but as an interpretation of that history. Of course, all written history requires interpretation, and there is a place for it. Even works seen by many as circumspect, such as Richard L. Bushman's *Rough Stone Rolling*, are decidedly interpretive. Scherer seems to go further, however, informing his readers that his interpretive approach seeks to “think outside the box” (1:xxii). He even indicates that “writing a history of the Community of Christ requires imagination” (1:4). If the reader keeps this in mind, many of the “interpretive” parts—such as his tendency to draw conclusions based on what he deems “probable,” “likely,” “possible,” “reasonable,” “presumable,” or “assumable” (1:57, 82, 102, 257, 334, 341, 400)—may seem less frustrating. To explain the validity of his approach, Scherer offers the following analogy:

Imagine a ten-thousand-piece puzzle on a large table. When assembled, the puzzle presents a picture that we will call “the church story.” Although most pieces fit neatly together, there are some that do not. To remedy the incongruities, historians of earlier generations did their best to force the pieces into position even though clearly they would not fit. Through sound historical methodology, today's professional historians study carefully why the pieces do not fit. When they arrive at an answer, they fashion a new puzzle of the same church story. This is called historical revision or reinterpretation. (1:4)

Scherer informs us that his version of the history of the restored gospel “provides a new puzzle design” (1:4) that will help readers to find a place for those “pieces” of the Restoration's story that just do not fit into the constructs of a modern society. According to Scherer, “much of popular understanding . . . is based on faithful tradition and folklore rather than sound historical methodology” (1:28). Some will be comfortable with Scherer's approach and will feel he has employed “sound historical methodology.” Many, however, including theologically orthodox members of the Utah-based Church, will be bothered by his methodology and his presentation—particularly in regard to the Prophet Joseph

Smith. Latter-day Saints are more likely to find value in these books if they keep in mind both Scherer's denomination and his articulated intended approach.

Readers of these volumes will come away with a strong sense of Scherer's love for Emma Smith and her son Joseph Smith III. The author's adoration of these two key figures radiates from the pages of both volumes. Indeed, at times his descriptions of Emma and Joseph III have a hagiographic quality that members of the Community of Christ will appreciate. Those who appreciate Joseph Smith Jr., however, will sense a strong dichotomy in how Scherer treats Emma and Joseph III as opposed to how he describes the founding prophet of the Restoration.

For example, Scherer speaks of Joseph Jr. as sometimes dangerous to his followers because he did not always distinguish between when he was speaking as a man and when he was speaking as a prophet (1:10, 493). Scherer believes that Joseph was not himself sure when God was inspiring him (1:9), nor does he believe that Joseph understood many of his own revelations (1:66). Instead, many of these revelations came—in Scherer's view—from his own "life's experiences" and from his "vivid imagination" (1:61). Scherer attributes Joseph's success less to God and more to the Prophet's "amazing ability to find theological relevance in folk beliefs" (1:68). Scherer also attributes the Book of Mormon and the book of Abraham to Joseph's "vivid imagination" and plagiarism rather than to revelation or ancient texts (1:93, 95, 96–97, 98–99, 138, 209, 258, 259, 262, 409, 473, 490, 491). Scherer articulates a fairly common opinion of Joseph Jr. within the Community of Christ today and among their current leadership.

Evidence of Scherer's fondness of Joseph III over Joseph Jr. is found in his downplay of Joseph Jr.'s most important revelations. As a singular example, Scherer refers to the Civil War prophecy as a "supposed" prediction that anyone of the day could have accurately made (2:111), despite its many levels of prescience and unmatched detail. He then extols Joseph III for his prophetic insight when he published his father's prediction in the *True Latter Day Saints' Herald* a month before the war broke out (2:128).

Scherer seems to fall back on old portrayals of the Prophet that have fallen out of favor even among scholars critical of the Church, mainly because these portrayals of Joseph Smith as an indolent and manipulative man make little sense when looking at his accomplishments and the unrestrained devotion he inspired in thousands during his day. Scherer

describes Joseph as receiving revelations of convenience that required the Church to provide him with certain things such as a home (1:212n7; 2:218). Scherer asserts that problems arose for him and the Church because of his unchecked ego (1:259), along with his attempts to deceive people for gain (1:272). He writes of Joseph as coming to the realization that God was not directing him in many of his pronouncements, actions, and decisions (1:337, 341). Consequently, Scherer sees Joseph as one incorporating “heretical beliefs” into the Church because God was not the source of much of his inspiration (1:389; 2:12, 218). Scherer paints a picture of him as being lazy, intemperate, and downright ignorant (1:49, 413)—attributing language of Henry Caswell to Joseph that makes him look hickish: “Them figures is Egyptian hieroglyphics, and them which follows is the interpretation of hieroglyphics. . . . Them characters is like the letters that was engraved on the golden plates” (1:413). Scherer describes Joseph as an inept, “titular leader,” a mascot of sorts, with no real power or authority, who could not deal effectively with pressures and the fallout from his own inadequacies (1:212, 263; 2:308–9; 1:420). That being said, Scherer also speaks of the founding prophet as a man with an incredible ability to control others (2:xxvi; see also 1:22–23). Readers who are familiar with the body of evidence concerning the character of Joseph will have a difficult time agreeing with the accuracy of Scherer’s descriptions. And certainly most in both the LDS and RLDS traditions will be somewhat dismayed at Scherer’s comparison of Joseph to Hitler and Mussolini—each of which, according to Scherer, thought themselves invulnerable (1:459).

In contrast, Scherer describes the wisdom and inspiration of Joseph III. He highlights how the latter “kept avoiding his father’s mistakes” and, unlike his father, sought “moderation on controversial issues.” Joseph III would “follow his father but only so far,” ensuring that he did “not make the same mistakes” his father had made (2:112, 196, 308, 544, 546). Unlike those who followed Joseph Jr., according to Scherer, those who followed Joseph III kept their allegiance to “the only true church”—avoiding misplaced allegiance to the founder of the Restoration (2:197, 218). As readers study these volumes, they may wonder how Scherer can accept the importance of Joseph Jr.’s work as the founding Prophet while at the same time seeing Joseph III as an obviously superior leader and a necessary correction to his father’s many failings.

In addition to the measure of condescension manifest toward Joseph Jr. in these volumes, there are also several instances where Scherer misquotes sources to the detriment of the Prophet. For

example, Scherer describes Joseph as encouraging members in Missouri “to endeavor to take life, or tear down houses” (1:281). However, when examining what is actually stated in the source Scherer is quoting, one finds this:

And I [Joseph Smith Jr.] would recommend to Brother Wight to enter complaint to the governor as often as he receives any insults or injury; and in case that they [the citizens of Clay County] proceed to endeavor to take life, or tear down houses, and if the citizens of Clay county do not befriend us, to gather up the little army, and be set over immediately into Jackson county, and trust in God, and do the best he can in maintaining the ground. (*History of the Church* 2:145)

Scherer’s volume inverts the meaning of the quote, making it appear as though the Prophet was encouraging violence, when he was actually referring to how the Saints should appeal to the government and respond when violence was committed against them. Several times in his text he makes the claim that the Mormons were a violent people (1:1, 277, 292–95, 458), and the above misquote runs the risk of giving readers the impression that Scherer is intentionally misreading sources in order to substantiate his claims.

In a similar example, Scherer raises serious concerns about Joseph being ordained a “king” by the Council of Fifty, and he implies that a secret plot to take over the U.S. government was at the heart of this “ordination” (1:427–28). However, when one examines the event Scherer is describing, one finds Joseph explaining the ordination in this way: “I will advance from prophet to priest & then to King[,] not to the kingdoms of this earth but of the most high god.”¹ When studying the ordination in context, it becomes clear Joseph Jr. was not speaking of earthly kingdoms or governments. Rather, he was referring to the temple endowment and his ordination therein to become a “king” in the heavenly kingdom of God. Scherer’s tradition does not administer a temple endowment akin to what Joseph Jr. instituted in Nauvoo. Thus, Scherer’s misquote may be the result of not understanding those rites. Nevertheless, Scherer too often suggests motives and intentions on the part of the Prophet based on the misreading of texts or reliance on questionable

1. See Joseph Smith, as recorded by Willard Richards, in Andrew F. Ehat and Lyndon W. Cook, comp., *The Words of Joseph Smith: The Contemporary Accounts of the Nauvoo Discourses of the Prophet Joseph*, Religious Studies Monograph Series no. 6 (Provo, Utah: BYU Religious Studies Center, 1980), 234, 294 n. 15. Punctuation and capitalization standardized.

sources. Each is avoidable and each is problematic because of the false impressions these readings engender in the mind of the reader.

In addition to misquotations, Scherer makes claims that appear to be historically inaccurate. In his discussion of the translation of the Book of Mormon and the book of Abraham, for example, Scherer states: "Smith used a seer stone and a hat in translating portions of the Book of Mormon, yet there is no evidence that Smith used artifactual assistance in translating the Egyptian papyri" (1:412). While perhaps a small point, both Parley P. Pratt² and Wilford Woodruff³ claimed that Joseph used a seer stone or Urim and Thummim to translate the book of Abraham. Elsewhere, Scherer insists that the "Danite henchmen" were "created" by Joseph "to enforce, by violence if necessary, the 'right thinking' of the membership" (1:1; see also 1:292–95; 2:115). Scherer states that "a careful review of documentary evidence links the Prophet to the secret society from its origins" (1:294), but he then offers no such documentary evidence for his claims. Most historians put Sampson Averd as the founder of the Danites, and the documentary evidence appears to show that Joseph did not know what Averd was doing or how he was using the Danites to commit illegal acts.⁴

Scherer also repeats the tired accusation that there were no religious revivals in the area near Joseph's home in the months leading up to the First Vision. Scherer relies on Marquardt and Walters's book, *Inventing Mormonism*, as proof that the religious excitement that Joseph referred to never took place (1:59). However, historical sources thoroughly substantiate Joseph's claims; reports of ongoing revivals near the Smith home were reported in the *Palmyra Register* on June 7, 1820; August 16, 1820; September 13, 1820; and October 4, 1820 (to name only a few dates). In addition, there were other revivals in the area in the preceding years, including 1819. Scholars have thoroughly addressed

2. See Parley P. Pratt, in *Millennial Star* 3 (July 1842): 46–47.

3. See Wilford Woodruff, *Wilford Woodruff's Journal*, comp. Scott G. Kenney, 9 vols. (Midvale, Utah: Signature Books, 1983), 2:154–56 (February 19, 1842).

4. See David J. Whittaker, "The 'Danites' in Mormon History," in *By Study and Also by Faith*, ed. John M. Lundquist and Stephen D. Ricks, 2 vols. (Salt Lake City: Deseret Book; Provo, Utah: FARMS, 1990), 1:166–74; Leland H. Gentry, "The Danite Band of 1838," *BYU Studies* 14, no. 4 (1974): 421–50; James B. Allen and Glen M. Leonard, *The Story of the Latter-day Saints* (Salt Lake City: Deseret Book, 1976), 130–33; Joseph Smith Jr., *History of The Church of Jesus Christ of Latter-day Saints*, ed. B. H. Roberts, 7 vols. (Salt Lake City: Deseret Book, 1978), 3:231.

the question of revivals in upstate New York,⁵ and Scherer would have benefited his readers by pointing to the ample support for the Prophet's claims. It is difficult to understand why Scherer neglected these sources. Even if he desired to call into question the activities and motivations of the leadership in the first-generation Church, his argument would have been stronger if he had started from a position that is more historically grounded.

Scherer's choice of sources is often puzzling. He states in his introduction to volume 2 that this history of the Church is a "synthesis" of "the extensive research and writings of the church history community" (2:xvii). However, he often seems unaware of research done by the Latter-day Saint side of the Restoration movement—research that contradicts or clarifies his claims. Readers may be surprised to find that a Restoration-based history that was published in 2013 does not reference *The Joseph Smith Papers*, which are representative of the most recent research in the field. Friends in the Community of Christ inform me that volume 1 was written by Scherer a number of years before the *Papers'* availability. Volume 1 was not published until volume 2 was completed, so that the first two volumes could be sold as a set. Nevertheless, Scherer has missed many important primary and secondary sources germane to his project—sources that would have made these texts of more value to the interested reader.

In connection to the problems with sources listed above, Scherer has a tendency to make unsupportable statements that seem designed to undermine Joseph Jr.'s prophetic gifts. Scherer claims that the beheadings of Shiz and Laban in the Book of Mormon were because Joseph Jr. (during his "writing" of the text) was experiencing a "psychological reflection" on his own leg surgery when he was a youth (1:39). Scherer also says that Joseph Jr. named Nephi's antagonist brother "Lemuel"

5. See, for example, Milton V. Backman Jr., *American Religions and the Rise of Mormonism* (Salt Lake City: Deseret Book, 1965), 251–69; Milton V. Backman, "Awakenings in the Burned-over District: New Light on the Historical Setting of the First Vision," *BYU Studies* 9, no. 3 (1969): 301–20; Richard Lyman Bushman with Jed Woodworth, *Joseph Smith: Rough Stone Rolling* (New York: Alfred A. Knopf, 2005), 36–37; Milton V. Backman, *Joseph Smith's First Vision: The First Vision in Its Historical Context* (Salt Lake City: Bookcraft, 1971), 53–111; Richard L. Bushman, *Joseph Smith and the Beginnings of Mormonism* (Urbana: University of Illinois Press, 1987), 53. See also the www.fairmormon.org website, which has numerous articles addressing this topic and the historical evidence supporting Joseph Jr.'s claims.

because he had a neighbor in Palmyra named Lemuel Durfee, who did not think highly of young Joseph (1:115 n. 104). Scherer also claims that the Book of Mormon narrative about the conversion of the four sons of Mosiah was simply Joseph Jr. incorporating into his sacred text the story of the conversion of four of his brothers to Presbyterianism (1:115 n. 104). Scherer sees a link between the death by natural causes of Joseph's father-in-law (Isaac Hale) and the account in 1 Nephi of the death by natural causes of Ishmael (1:115 n. 104). There are many more of these loosely connected, shadowy intimations in Scherer's work.

The Journey of a People is a modern view that takes readers back to a previous age. Recently, the tensions between the RLDS and LDS movements have waned. Indeed, the two traditions seemed to have moved on. If anything, the divide in recent years has focused more on which movement was too conservative or too liberal. However, Scherer's new history takes readers back to a previous debate. His book is strongly apologetic in tone, often needling the Utah-based faith and its doctrines, practices, and leadership. The bias in these books is understandable—they are the history of the Church as seen through the eyes of a practitioner. Scherer presents *his* version of a faithful history, and he has every right to do so from the perspective of his denomination. How can we fault someone for standing up for his faith, as Scherer does? However, it should not be considered unseemly if scholars or those affiliated with the Utah-based church find fault with misquotations, unsupported statements, and inaccurate history.

As stated above, this is a very important work, bringing religious adherents and scholars of the restorationist movement up to date on the position of the second largest denomination springing from the ministry of the Prophet Joseph Smith. Scherer's third volume will cover the last fifty years in RLDS and Community of Christ history, a time of upheaval that caused many to question the Church. I look forward to this upcoming volume and the revelations it will provide.

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Boyd Jay Petersen. *Dead Wood and Rushing Water: Essays on Mormon Faith, Culture, and Family*.

Sandy, Utah: Greg Kofford Books, 2013.

Reviewed by Mark Brown

Boyd Jay Petersen's *Dead Wood and Rushing Water: Essays on Mormon Faith, Culture, and Family* collects a wide range of the author's work from the last fifteen years and includes everything from published essays and book reviews to the eulogies Petersen delivered at his own parents' funerals. Though the mode varies from essay to essay within the book, there is a remarkably consistent purpose throughout all his work. Petersen uses his writing to address and navigate ambiguity—specifically the problem of how to be faithful and believing when the people we love, the physical bodies we rely on, or the religious communities we embrace present trials of faith.

In his introduction, Petersen points out that the word “essay” comes from a French verb that means “to try or attempt,” and that the personal essay is a tentative effort at capturing and crystallizing ideas (7). He also draws on the metaphor from the book's title and explains his purpose in writing about his Mormonism: “In the same way dead wood nourished a river, writing has been a way for me to find redemption in defeat, hope in pain. The personal essay, in particular, gives me a way to make my life experiences meaningful. But it also helps me understand myself and what I believe. It's often in writing about a topic that I really come to understand my position” (3). While certainly not every Latter-day Saint will agree with some of the positions Petersen takes, all Mormons would benefit from thinking about their faith, their understanding of doctrine, and their political life as deeply and carefully as Petersen does here.

Many of Petersen's essays deal with the collisions between his upbringing in the LDS faith together with his desire to believe and his struggles with depression, along with his questioning nature. The essays also pay tribute to mentors who allowed Petersen to occupy the liminal state of a questioning apologist: his father-in-law, Hugh Nibley, and his former

professor and friend Eugene England. These two men figure prominently in how Petersen addresses questions regarding subjects such as women and the priesthood, politics and Mormonism, and believing when belief is hard.

His book is a collision of subjects: faith and hope, doubt and fear, the mundane and the cosmic. A particular pair of essays will suffice as an example of the kinds of collisions Petersen has encountered in his own thinking. “The Priesthood: Men’s Last, Best Hope” and “Fifteen Years Later: A Response to ‘The Priesthood: Men’s Last, Best Hope’” demonstrate Petersen’s ability to examine not just a question (Why does the Church allow the priesthood to be conferred on only men?) but also his own thinking about that question (Do I still believe what I once believed?). In the first essay, Petersen argues that priesthood is a key element enabling men to become complete. He writes:

I believe that conferring the priesthood on men is an essential and divinely inspired component of celestial marriage. It gently pushes men into acts of compassionate services and provides them with a feeling of connectedness with their families without ever “feminizing” them or insisting they are “less than men” for being more than “natural man.” Priesthood compensates for the biological and societal conditions that otherwise hold men back from attaining essential Christ-like qualities. (177)

In the second essay, Petersen shifts his focus from what the priesthood does for men to what more the Church can do for women. While Petersen affirms that he still believes in the efficacy of the priesthood in helping men to be more Christlike, he believes the Saints have had a failure of imagination “when it comes to women’s roles in the Church. We have not thought enough about creative ways to be more inclusive” (186). Latter-day Saint scripture describes the priesthood as “the right belonging to the fathers” from “the foundation of the earth” (Abr. 1:2–3), and that “this same Priesthood, which was in the beginning, shall be in the end of the world also” (Moses 6:7). While Petersen believes women will receive by revelation more priesthood authority someday, he advocates waiting until that revelation is received through orthodox priesthood channels, and his views are an opportunity for readers to grapple with orthodox priesthood texts (Mark 3:14–19; D&C 107:40–54; Abr. 1:4, 1:31; 2:10–11; and one might also add, the ordinances of the temple). Meanwhile, Petersen advocates using “imagination and direct inspiration” to find “creative and inspired solutions” to how women’s input can find more prominent, effective, and appreciable places within the Church (186).

Some argue that the Church is in a once-a-generation downswing, and it is losing more young people, women, and whole families as a global digital culture encourages questioning and dissenting voices to be heard and disseminated. Others affirm that the Church has never been stronger and note that the number of Latter-day Saint congregations continues to grow worldwide and the percentage of those seeking to remove their names from Church records remains stable. Whatever the institutional case may be, Petersen should be considered among the preeminent essayists of this moment in Mormon history. With clean, economical prose, an obviously sharp intellect, a healthy amount of self-deprecating humor, and the plaintive and very real sentiment of “Lord, I believe. Help thou my unbelief” driving his work, Petersen articulates many of the core concerns Latter-day Saints are working through in this age and models a way for those who have questions but are determined to choose faith.

Mark Brown holds an MFA in creative writing from Boise State University and a PhD in film studies from Wayne State University. He teaches composition, creative writing, and film at Delta College in Michigan. He and his wife, Suzanne, have three daughters.

Reaching the Nations: International Church Growth Almanac, 2014 Edition, Volume I: The Americas, Oceania, and Europe and Reaching the Nations: International Church Growth Almanac, 2014 Edition, Volume II: Asia and Africa, by David G. Stewart Jr. and Matthew Martinich (Henderson, Nev.: Cumorah Foundation, 2013).

Since the *Deseret News Church Almanac* stopped publishing in 2012, David G. Stewart's publications have become the only ready in-depth resource for country-by-country statistical information on the membership of The Church of Jesus Christ of Latter-day Saints. And Stewart's publications exceed what the former publication offered: they accessibly present numbers and graphs that show activity, retention, and growth rates for countries around the world. The authors also give *CIA Fact Book*-style country profiles and examine LDS growth trends and prospects for missionary work in each country.

Stewart was one of the first to make widely known the disparity between the membership numbers in the Church and the rates of self-identification as Mormon. In many countries, as few as 20 to 30 percent of baptized members call themselves Mormon when participating in sociological phone surveys. Of course, Church membership claims are entirely in keeping with the Church's covenant theology that people who have made baptismal promises are still beholden to them even if they decide to "check out" for a time. The Mormon Newsroom reminds members that "the Church cautions against overemphasis on growth statistics," but those who remain enthusiastic about dramatic LDS Church growth may not realize that the similarly fast-growing Seventh-day Adventists claim only people in pews on Saturday, and Jehovah's Witnesses claim

only those who report completing a rigorous ten hours per month of proselytizing. By these or similar standards, where would the LDS Church rank in terms of growth? There is an oft-repeated claim that the LDS Church is the fastest-growing church in the world, and this claim faces a challenge by these two other similarly-sized American-born new religious movements—not to mention the percentage growth claims that could be made by new, millions-strong Asian religions, such as Cao Dai, Bahá'í, and Tenrikyo, and the absolute number growth claims of far larger movements such as Pentecostalism and Islam.

Stewart's overall picture shows an LDS faith holding its own as a percentage of world population, and he gives a few examples, such as Mongolia, Vanuatu, and West Africa, that show truly dramatic sustained growth in active members and Church units. In many countries, especially in Latin America, poor retention rates hamper the growth of wards and stakes. Stewart uses the growth of Church units, rather than that of raw membership numbers, to indicate how many active, self-identifying Mormons there are in the world. Running a ward or stake requires a certain minimum number of reliably active Relief Society members and priesthood holders. Using this measure, Stewart finds dozens of countries that have shown thousands of new members over recent years, but little growth in numbers of Church units.

The authors provide numerous tips to help increase convert growth and retention. Perhaps ironically, the Church's apparent "go slow" policy in West Africa—which requires long evidence of attendance before baptism and focuses on building functional Church units and leadership, rather than just running up the baptismal count—has helped produce some of the most

dramatic Church unit growth in the world. This does not surprise Stewart, because his research-based prescriptions for increased growth follow this “go slow” model.

It is unclear how well received Stewart’s ideas are in the Missionary Department in Salt Lake City. His suggestions may be exactly the right course for those churches with robust growth as their only priority, but the Church also seems committed to expending limited resources on reactivation (by definition less useful in growing church numbers than proselytizing for new members), redeeming the dead, and retaining its members by investing vast time and personnel resources in youth and adult programs designed to build faith and by extension prevent LDS disaffiliation. Other factors may be involved: Does the Church simply send missionaries to whatever countries show the most potential for growth, or do they also focus on countries with financial and political stability? Does pioneer heritage, presumed Book of Mormon geography, “blood of Israel” considerations, and eschatological beliefs drive resource allocation?

For any serious Church growth statistics nerd, these volumes are not only indispensable; they are now the only game in town. These publications appear to be a self-financed labor of love, written by an orthopedic surgeon assisted by a clinical psychology graduate student. It would be a mistake to dismiss these publications by pointing out that Stewart and Martinich are not professionally trained demographers, mis-siologists, or sociologists. Stewart and Martinich have done their homework in these areas. At present, they stand virtually alone by publishing serious work in what could be a much more well-developed area of study.

—Eric Eliason

Diary of Two Mad Black Mormons: Finding the Lord’s Lessons in Everyday Life, by Zandra Vranes and Tamu Smith (Salt Lake City: Ensign Peak, 2014).

Zandra Vranes and Tamu Smith met through Genesis, a support group for black Mormons. As they moved to separate states, they created their blog *Sistas in Zion* to keep in touch, but it soon grew in popularity and they’ve been “chattin’ about church ever since” (xiii). Vranes and Smith, the sistas in Zion, have become very well known on the Mormon blogging scene and now co-host Sistas in Zion Radio. *The Diary of Two Mad Black Mormons* is their first book. Together they have sought to document their experiences of faith and humor as members of The Church of Jesus Christ of Latter-day Saints.

This book contains entries from their blog that deal with themes of faith, courage, family, and service. They do not write specifically about race, although their life experiences come out in their writing. Especially poignant is a story in which one sista learned that letting go is not a sign of weakness as she finally forgave a boy who had assaulted her years before. As she changed her thought process from seeking revenge to seeking the Lord, she realized that forgiveness is not about winning or losing, but that “letting go means living in God’s promise” (141). Their writing style is highly personal and revealing, and their entries include entertaining childhood experiences, heart-wrenching essays, and uplifting gospel musings.

Though not explicitly connected, *Diary of Two Mad Black Mormons* follows closely the approach of the Church’s “I’m a Mormon” campaign, which might be seen as an answer to a recent trend: audiences today are often more open to the voices of ordinary people than to institutional messaging.

This book specifically provides personal insights from an LDS minority group regarding how their faith applies to and influences everyday life. This collection of memoirs, published by a nationally focused imprint of Deseret Book, is well suited to any audience seeking to be equally entertained and uplifted.

—Sydney Hughes

Conversations with Mormon Historians, edited by Alexander L. Baugh and Reid L. Neilson (Provo, Utah: Religious Studies Center; Salt Lake City: Deseret Book, 2015).

“For a boy growing up on a small farm in northern Utah, it would be quite amazing if I am remembered at all. I’ve had an exciting life. In lots of ways, it’s a life I did not fully dream of when I was thinning sugar beets—better than I could have hoped, I think,” (274) says Kenneth W. Godfrey about his experience being a career historian. For the historians who work hard to ensure that people of the past are remembered, *Conversations with Mormon Historians* works hard to ensure that the historians themselves are remembered also.

This book is a compilation of interviews with some of the eminent past-generation Latter-day Saint historians—interviewed by some of the eminent LDS historians of this generation. Because both the interviewers and the interviewees have a deep adoration for Mormon history, the comradery between the scholars is palpable upon the book’s pages. The list of

distinguished historians interviewed includes Thomas G. Alexander, James B. Allen, Richard Lloyd Anderson, Milton V. Backman Jr., LaMar C. Berrett, Claudia L. Bushman, Richard L. Bushman, Kenneth W. Godfrey, Dean C. Jessee, Stanley B. Kimball, Carol Cornwall Madsen, Robert J. Matthews, Max H. Parkin, Charles S. Peterson, Larry C. Porter, and Laurel Thatcher Ulrich. Each historian brings different interests, ideas, personalities, and experiences to the book—and each makes the book an enjoyable and enlightening read.

Each chapter focuses on a different historian and includes questions about the historian’s childhood, family, education, and career. The interviewed historians have a talent for taking the reader back in time through their stories. Milton V. Backman states, “I believe that history is fascinating because it is a series of stories. It is something more than just dates. It is life experiences. It’s unfolding the past. It’s reconstructing patterns of living” (124). These historians have lived long and full lives, and the pages within the book deeply and richly unfold the past through their personal narratives. It is appropriate to acknowledge that these historians—who have spent their lives studying the histories of others—have, in turn, made history themselves. The book is filled with funny anecdotes, impressive accomplishments, and spiritual moments. Overall, *Conversations with Mormon Historians* is an informative and lighthearted read for anyone interested in any aspect of history.

—Allyson Jones

The Temple, a Holy School

Education in Zion Mural, BYU

The Education in Zion Gallery in BYU's Joseph F. Smith Building houses two murals, standing nearly twenty feet tall. One is of the Kirtland Temple and the other depicts Brigham Young Academy. It is not by accident that these murals face each other, for both represent houses of learning and the importance of the sacrifice involved in educating the whole soul.

Learning and teaching others are important principles for members of The Church of Jesus Christ of Latter-day Saints. We teach about Jesus Christ, who is the foundation of a Zion education. He is the source of all light and truth, and as we draw near to him our minds become enlarged, and we experience a desire to share our knowledge and skills so others might also have opportunities to learn and grow.

Through revelation in the Doctrine and Covenants, Latter-day Saints have been instructed to learn both sacred and secular truths, "things both in heaven and in the earth, and under the earth; things which have been [and] things which are" (88:79). And Church members believe their knowledge and intelligence "will rise with [them] in the resurrection" (130:18). Because Latter-day Saints believe all truth is ultimately spiritual, secular truths may be obtained through diligent study coupled with inspiration from the guidance of the Holy Ghost.

The Education in Zion Gallery is designed to be a learning center for students and faculty, as well as the larger community. In fact, the majority of research, design, fabrication, video production, and artwork was completed by BYU students and recent graduates.

Readers of *BYU Studies Quarterly* are invited to explore this tradition of learning by visiting the gallery. Be inspired by stories of faith, sacrifice, and strength; reflect upon your own commitment to learning as you see the murals in person.

The gallery offers a wide variety of enlightening programs, tours, and rotating exhibitions. For program dates, times, and details, visit the gallery's website at educationinzion.byu.edu.

RELATIONAL GRACE

THE RECIPROCAL AND BINDING
COVENANT OF *CHARIS*

Χάρις

BRENT J. SCHMIDT



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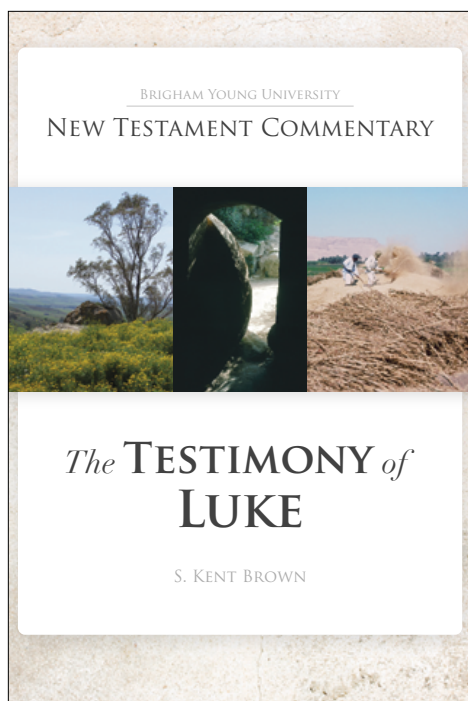
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In ancient Greece and Rome, *charis* was a system in which one person gave something of value to another, and the receiver gave service, thanks, and lesser value back to the giver. It was the word used to describe familial gifts, gifts between friends, gifts between kings and servants, and gifts to and from the gods. In Rome, these reciprocal transactions became the patron-client system.

Charis (grace) is the word New Testament authors, especially Paul, sometimes used to explain Christ's gift to people. But what is the nature of the gift? Since the fifth century, a number of Christian scholars have taught that grace is something bestowed by God freely, with little or nothing required in return. This book sets out to show that "free grace" is not what Paul and others intended.

The practice in the ancient world of people granting and receiving favors and gifts came with clear obligations. *Charis* served New Testament authors as a model for God's mercy through the Atonement of Jesus Christ, which also comes with covenantal obligations. Knowing what *charis* means helps us understand what God expects us to do once we have accepted his grace.



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Enthroned above all creation towers the exalted, glorified Christ. Descending into the darkest recesses of human agony and sin reaches the warm, caring Jesus. These two are the same person. Luke's testimony introduces us to this man become God—God the Son. He comes into our world already bearing a divine nature, already carrying divine qualities. His birth is a miracle; he is "Christ the Lord" (Luke 2:11).

The most distinguishing element of this line-by-line, word-by-word commentary is its use of Latter-day Saint scriptures—the Book of Mormon, the Doctrine and Covenants, and the Pearl of Great Price—to illuminate Luke's Gospel. For example, important LDS doctrines arise from Jesus's activity in the spirit world immediately after his death.

More than all other Gospel accounts, Luke captures the compassion and love of the Savior. Such sweet concern manifests itself particularly for the downtrodden and those forced to the margins of society. Within his text, Luke discloses the deep, divine love that runs through his narrative of the Christ.



The first three volumes of a multivolume commentary on the New Testament are now available as ebooks. *The Testimony of Luke*, by S. Kent Brown (also available in print); *The Revelation of John the Apostle*, by Richard D. Draper and Michael D. Rhodes; and *Paul's First Epistle to the Corinthians*, by Richard D. Draper and Michael D. Rhodes.

These ebooks are the first of a series of commentaries by Latter-day Saint scholars covering all books of the New Testament. The commentary series seeks to make the New Testament more accessible to Latter-day Saint general readers and scholars by employing much of current biblical scholarship while reflecting important Latter-day Saint insights. It aims to untie faith with linguistic, literary, historical, and cultural research dealing with these ancient texts.

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