"Securing" the Prophet's Copyright in the Book of Mormon: Historical and Legal Context for the So-called Canadian Copyright Revelation

Author(s): Stephen Kent Ehat

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Abstract: The 2009 publication of the Manuscript Revelation Books as part of the Joseph Smith Papers makes available, for the first time, the text of a revelation received in 1829 or 1830 by the Prophet Joseph Smith on securing the copyright of the Book of Mormon in all the world and selling a copyright for its publication in the four then-existing provinces of Canada. This revelation, commonly referred to as the Canadian copyright revelation, designated four of Joseph's associates to travel to Kingston, Upper Canada, to sell a copyright of the Book of Mormon. A group did travel to Kingston, but they were unsuccessful in finding a purchaser. Stephen Ehat's study explores where the revelation was received, the dating of both the revelation and the group's journey to Canada, the location of the four men mentioned in the revelation when it was given, the meaning in the revelation of the phrases "securing the copyright" and "sell a copyright," the state of both U.S. and Canadian copyright law in 1830, the financial need that likely led to the revelation, and the reason Joseph's messengers were sent specifically to Kingston.

Kingston from Fort Henry, by James Gray (1828). Courtesy McCord Museum, M19883.

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"Securing" the Prophet's Copyright in the Book of Mormon

Historical and Legal Context for the So-called Canadian Copyright Revelation

Stephen Kent Ehat

The recent publication of the *Manuscript Revelation Books*[1] makes available, for the first time, the text of a revelation received by the Prophet Joseph Smith on securing the copyright of the Book of Mormon in all the world and selling a copyright for its publication in the four then-existing provinces of Canada. This revelation, commonly referred to as the Canadian copyright revelation, designated four of Joseph's associates to travel to Kingston, Upper Canada, to sell a copyright of the Book of Mormon. A group did travel to Kingston, but they were unsuccessful in finding a purchaser. This brief episode in early Latter-day Saint history has led to speculation and unfounded allegations, largely because the text of the revelation was, for many years, unavailable to historians and scholars. Previously, only secondary sources provided information about the possible contents and dating of this newly available revelation, about the identities of the persons to whom it was directed, and about other circumstances surrounding it.

1. Robin Scott Jensen, Robert J. Woodford, and Steven C. Harper, eds., *Manuscript Revelation Books*, facsimile edition, first volume of the Revelations and Translations series of *The Joseph Smith Papers*, ed. Dean C. Jessee, Ronald K. Esplin, and Richard Lyman Bushman (Salt Lake City: Church Historian's Press, 2009). A transcript of the so-called Canadian copyright revelation appears on page 6 of this article, and images of the handwritten revelation from the Book of Commandments and Revelations appear on pages 12 and 13. The transcript on page 6 differs from the transcript in *Manuscript Revelation Books,* pages 31 and 33, in that line endings do not reflect the handwritten document, words inserted above the line appear in <angle brackets>, and color coding is not used to identify individuals who made editorial changes to the handwritten revelation. The symbol ◊ represents an illegible character within a partially legible word.

Transcript of the Canadian Copyright Revelation

23 Com[m]andment AD 1830

A Revelation given to ~~Joseph~~ Oliver Hyram Josiah & Joseph Knight given at Manchester Ontario C New York

Behold I the Lord am God I Created the Heavens & the Earth & all things that in them is wherefore they are mine & I sway my scepter over all the Earth & ye are in my hands to will & to do that I can deliver you o{◊\ut} of evry difficulty & affliction according to your faith & dilligence & uprightness Before me & I have cov{◊\enanted} with my Servent <Joseph> that earth nor Hell combined againsts him shall not take the Blessing out of his hands which I have prepared for him if he walketh uprightly before me neither the spiritual nor the temporal Blessing & Behold I also covenanted with those who have assisted him in my work that I will do unto them even the same Because they have done that which is pleasing in my sight (yea even all save ~~M◊◊tin only~~ it be one o{ł\nly}) Wherefore be dilligent in Securing the Copy right of my ~~Servent~~ work upon all the face of the Earth of which is known by you unto ~~unto~~ my Servent Joseph & unto him whom he willeth accordinng as I shall command him that the faithful & the righteous may retain the temperal Blessing as well as the Spirit[u]al & also that my work be not destroyed by the workers of iniquity to the{r\ir} own distruction & damnation when they are fully ripe & now Behold I say unto you that I have covenanted & it Pleaseth me that Oliver Cowderey Joseph Knight Hyram Page~~e~~ & Josiah Stowel shall do my work in this thing yea even in securing the <Copy> right & they shall do it with an eye single to my Glory that it may be the means of bringing souls unto ~~me~~ Salvation through mine only Be{~~t~~\gotten} Behold I am God I have spoken it ~~& it is expedient in me~~ Wherefor I say unto you that ye shall go ~~to Kingston~~ seeking me continually through mine only Be{~~t~~\gotten} & if ye do this ye shall have my spirit to go with you & ye shall have an addition of all things which is expedient in me <amen>. & I grant unto my servent a privelige that he may sell <a copyright> through you speaking after the manner of men for the four Provinces if the People harden not their hearts against the enticeings of my spirit & my word for Behold it lieth in themselves to their condemnation ~~&~~{◊\or} to th{~~er~~\eir} salvation Behold my way is before you & the means I will prepare & the Blessing I hold in mine own hand & if ye are faithful I will pour out upon you even as much as ye are able to Bear & thus it shall be Behold I am the father & it is through mine o{◊\nly} begotten which is Jesus Christ your Redeemer amen

Now, however, we enjoy the ability to examine the text of the revelation itself and to seek more fully to understand its contexts.

Of this revelation, written in the hand of John Whitmer, Elder Marlin K. Jensen, Church Historian and Recorder, has stated:

> David Whitmer, after he left the Church, recalled that the revelation promised success in selling the copyright, but upon return of the men charged with the duty, Joseph Smith and others were disappointed by what seemed like failure. Historians have relied upon statements of David Whitmer, Hiram Page, and William McLellin for decades but have not had the actual text of the revelation. . . .
>
> Although we still do not know the whole story, particularly Joseph Smith's own view of the situation, we do know that calling the divine communication a "failed revelation" is not warranted. The Lord's directive clearly conditions the successful sale of the copyright on the worthiness of those seeking to make the sale as well as on the spiritual receptivity of the potential purchasers.[2]

Indeed, some have sought to portray Joseph Smith as satanically "deceived"[3] in receiving it, deviously deceptive in communicating it to others,

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2. Marlin K. Jensen, "The Joseph Smith Papers: The Manuscript Revelation Books," *Ensign* 39 (July 2009): 51.

3. According to David Whitmer, Joseph Smith said that "*some revelations are of God: some revelations are of man: and some revelations are of the devil.*" Whitmer concluded that "the revelation to go to Toronto and sell the copy-right was not of God, but was of the devil or of the heart of man." David Whitmer, *An Address to All Believers in Christ. By a Witness to the Divine Authenticity of the Book of Mormon* (Richmond, Mo.: David Whitmer, 1887), 31; italics in original. Of course, all of that is a matter of faith, not merely of reasoning or historical research. Whitmer is alone in reporting the Prophet's alleged statement. Interestingly, Whitmer is alone, too, in his mistaken assertion that the revelation said the brethren "should go to Toronto" and that they "went to Toronto." The text of the revelation mentions only Kingston, telling the emissaries to go there. Page mentions only Kingston as the place where the revelation sent them, not Toronto (York).

The fact that David Whitmer founds his pamphlet *An Address to All Believers in Christ* on the alleged "failure" of the Canadian copyright revelation is of no small moment. Whitmer repeatedly argues that the "failure" of that revelation somehow proves Joseph's revelations were often man-made or worse. In personal correspondence to me, Richard L. Anderson cogently comments:

"Only a reading of this pamphlet [*Address to All Believers in Christ*] can show how fixed this concept is in David's thinking. If McLellin, who read a copy of this revelation, Page, a participant, and David, who was in Fayette at the return of two participants, all missed the meaning of the conditional revelation, then how can we be sure that David Whitmer's version of Joseph's response afterward is reported without spin? David is the only one reporting these words. All the early revelations of Joseph (including sections 8–9 to Cowdery) reiterate that Joseph's revelations are

and sufficiently "ashamed" of it that he would "never have it recorded, printed, or published." Some have argued that while the revelation sent the four emissaries to Kingston, Upper Canada, to sell the copyright there, no one in Kingston was "authorized" to buy it and therefore the revelation must have been a false one—the revelation having sent them to Kingston instead of York (later known as Toronto), where, they argue, the revelation should have sent them. Some have claimed that those sent to Kingston could not possibly "copyright the book" there. Some have claimed the revelation promised there would be a purchaser in Canada. Some have characterized the revelation as one that promised success in Canada, both in "obtaining" and in selling a copyright there. Others have even argued that in 1829 there was no such thing as Canadian copyright law.

These concerns can be addressed now by reference both to the newly available text of the revelation and to the likely historical and legal contexts in which that text and this episode can now more accurately be placed. The following discussion will be organized around various features of the text of the revelation and supply a likely historical and, where appropriate, legal context for each feature. Among the historical and legal particulars to be discussed are the location and timing of the revelation, the journey of Joseph Smith's emissaries to Canada, the meaning in the revelation of the phrases "securing the copyright" and "sell a copyright," and possible reasons Joseph's messengers were sent to Kingston instead of York.

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correct, but the desires of man or temptations of Satan have prevented them from being fulfilled.

"In the same year of the Canadian [copyright] revelation, Hiram Page received revelations, and Oliver Cowdery was told to inform Hiram that 'Satan deceiveth him' (D&C 28); right afterward David Whitmer (who accepted Page's revelations for a time) was told he was 'persuaded' by men and left to 'inquire for yourself' (D&C 30:2–3). David claims (*Address to All Believers in Christ*, 31) that JS was confronted as to why the copyright deal was not made, and got the answer, '*Some revelations are of God: some . . . of man: some . . . are of the devil*' (italics Whitmer's). David quits the quotation of JS's revelation at this point and adds, 'So we see that the revelation to go to Toronto and sell the copyright was not of God.'

"As far as the text itself, that conclusion of a failed revelation comes from David Whitmer, not from this poorly evidenced revelation from JS, which has no parallel. All of JS's known revelations in this period sustained their divine origin, and condemned the early Saints (and Joseph himself) for not living up to their challenge. Shown by the above quotations, revelations told David Whitmer and Page that they believed in revelations through Page that came from man or from the Devil. Did David mix up the late 1830 rebukes with an early 1830 revelation right after the return from Canada? No one can answer that, but the parallels throw reasonable doubt on David's memory." Richard L. Anderson to Stephen Kent Ehat, email, May 4, 2010.

Where Was the Prophet Located When He Received the Revelation?

In John Whitmer's headnote[4] to the revelation, which he inscribed in a notebook entitled A Book of Commandments and Revelations (BCR), he states that the revelation was given at "Manchester Ontario C[ounty] New

4. Neither the text of the Book of Commandments and Revelations nor the *Manuscript Revelation Books* volume editors in their explanatory materials use the word *title* or *headnote*. The word *headnote* is used here because of its use in Steven C. Harper, "Historical Headnotes and the Index of Contents in the Book of Commandments and Revelations," *BYU Studies* 48, no. 3 (2009): 53. Harper apparently includes within the headnote what could here be referred to as a title (in this case, "23 Commandment AD 1830"). Harper does not otherwise specifically give a precise definition for the word *headnote*. In this study, I use *title* as distinct from *headnote* because it seems some of the revelations (for example, "Revelation, July 1828 [D&C 3]") have a headnote without a title and others of the revelations (for example, "Answers to Questions, circa March 1832 [D&C 77]") have a title without a headnote. Of course, many times what otherwise would appear to be a title is blended into and inseparable from a headnote (see, for example, "Revelation, 13 August 1831 [D&C 62]").

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God's law recognizes man's law. Besides one "We claim," our Articles of Faith present twelve "We believes," by one of which we affirm belief "in obeying, honoring, and sustaining the law" (A of F 12). Twelve other scriptural "We believes" (D&C 134) revere "the right and control of property" (v. 2), encourage "respect and deference" to "the laws of men" (v. 6), and sanction "appeal to the civil law for redress of all wrongs" where "the right of property" is infringed (v. 11). The so-called Canadian copyright revelation concerns laws protecting the right of intellectual property. In 1829 and 1830, copyright laws of the United States, New York, and the United Kingdom protected the text of the Book of Mormon and the Prophet's interest therein.

Since 2009, when this revelation was first published, we have had opportunity more fully to appreciate the legal protection afforded to divinely revealed texts. Yet, perhaps inspired by critics of a bygone era who may have had either dim recollection of or no exposure to the actual text of the revelation, detractors seek again to complain about the revelation and events surrounding it. Like most any revelation received by Joseph Smith, this revelation, too, serves as a sort of Rorschach test: readers may come away with either complaint or admiration.

Reading some recent comments, I saw some misunderstandings about copyright laws of the 1829 to 1830 era. But that can be expected. Few of us today identify with the details of *that* legal realm. So I decided to review some of the law and historical events surrounding the revelation. It is a revelation that sent the Prophet's emissaries to Kingston, Upper Canada, both to help "secure the copyright" to the Book of Mormon in all the world and to "sell a copyright" there. These phrases have a legal context. I conducted this study in part to play a small role both to address some of the "libelous publications" (D&C 123:4) that otherwise have sought to explain away or condemn this revelation by misinterpretation of its legal context and to help clarify some of that context.

York."[5] No source heretofore has expressly stated that the Prophet was in Manchester when he received this revelation, and no source has suggested a different location; hence, there is no reason to doubt Whitmer's placement of receipt of the revelation at Manchester.

John Whitmer dates the revelation to "1830," and we know that on June 1–3, 1829, Joseph had moved from Harmony Township, Pennsylvania, to the home of Peter Whitmer Sr. in Fayette, Seneca County, New York, where translation and other events relating to the Book of Mormon occurred. On October 4, 1829, he returned to reside again in Harmony. It was not until sometime in the latter part of March 1830 that Joseph Knight Sr. transported Joseph from Harmony, Pennsylvania, to Manchester, New York. During that interim period, from October 4, 1829, to the latter part of March 1830, the Prophet is known to have visited Manchester on two occasions. These are discussed further below. One secondary source seems to confirm placement of the Prophet in Manchester when he received the revelation. Hiram Page indicates that he, Oliver Cowdery, Joseph Knight, and Josiah Stowell were all situated in Manchester, "anxious" to receive the revelation. Since Page does not mention having to wait to receive word of the revelation,[6] there seems to be no reason to suggest that the revelation was received in any place other than Manchester, as Whitmer's headnote states.

When Was the Revelation Received?

John Whitmer's title to the revelation reads "23 [that is, the twenty-third item recorded in the BCR] Commandment AD 1830." This suggests either that Whitmer believed, or that he had learned from the Prophet (in 1831, when Whitmer inscribed the revelation in the BCR), or that he had copied directly from the original text of the revelation, that it had been received in 1830.[7] While the text itself does not date the revelation more specifically than "1830," the historical context provided by later sources does provide some clues. Whitmer's title, of course, is the best and earliest evidence available. And the placement of the text of the revelation in the BCR among revelations that can be dated to the first half of April 1830 is evidence that Whitmer's reference to 1830 might possibly be narrowed to early April 1830. But various reasons exist to doubt that the revelation was received in April 1830.

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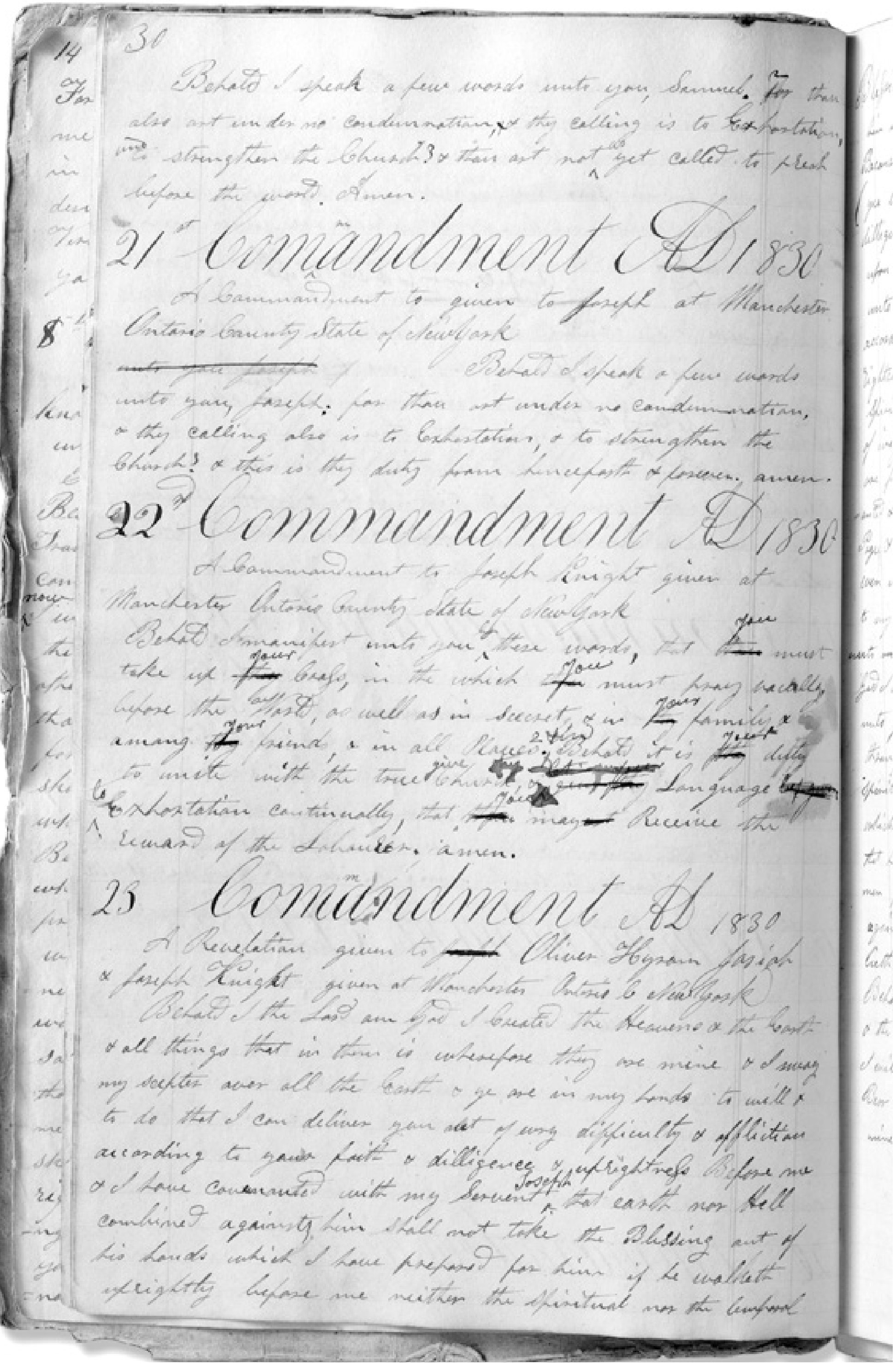
5. Jensen, Woodford, and Harper, *Manuscript Revelation Books*, 30.

6. Hiram Page to William McLellin, February 2, 1848, photocopy, Community of Christ Library-Archives, Independence, Missouri. Page's spelling is "anctious."

7. Jensen, Woodford, and Harper, *Manuscript Revelation Books*, 30.



30

Behold I speak a few words unto you, Samuel, for thou also art under no condemnation, & thy calling is to exhortation, and to strengthen the Church & thou art not as yet called to preach before the world. Amen.

21st Commandment AD 1830

A Commandment to given to Joseph at Manchester Ontario County State of New York

~~unto you Joseph~~ Behold I speak a few words unto you, Joseph: for thou art under no condemnation, & thy calling also is to exhortation, & to strengthen the Church & this is thy duty from henceforth & forever, amen.

22d Commandment AD 1830

A Commandment to Joseph Knight given at Manchester Ontario County State of New York

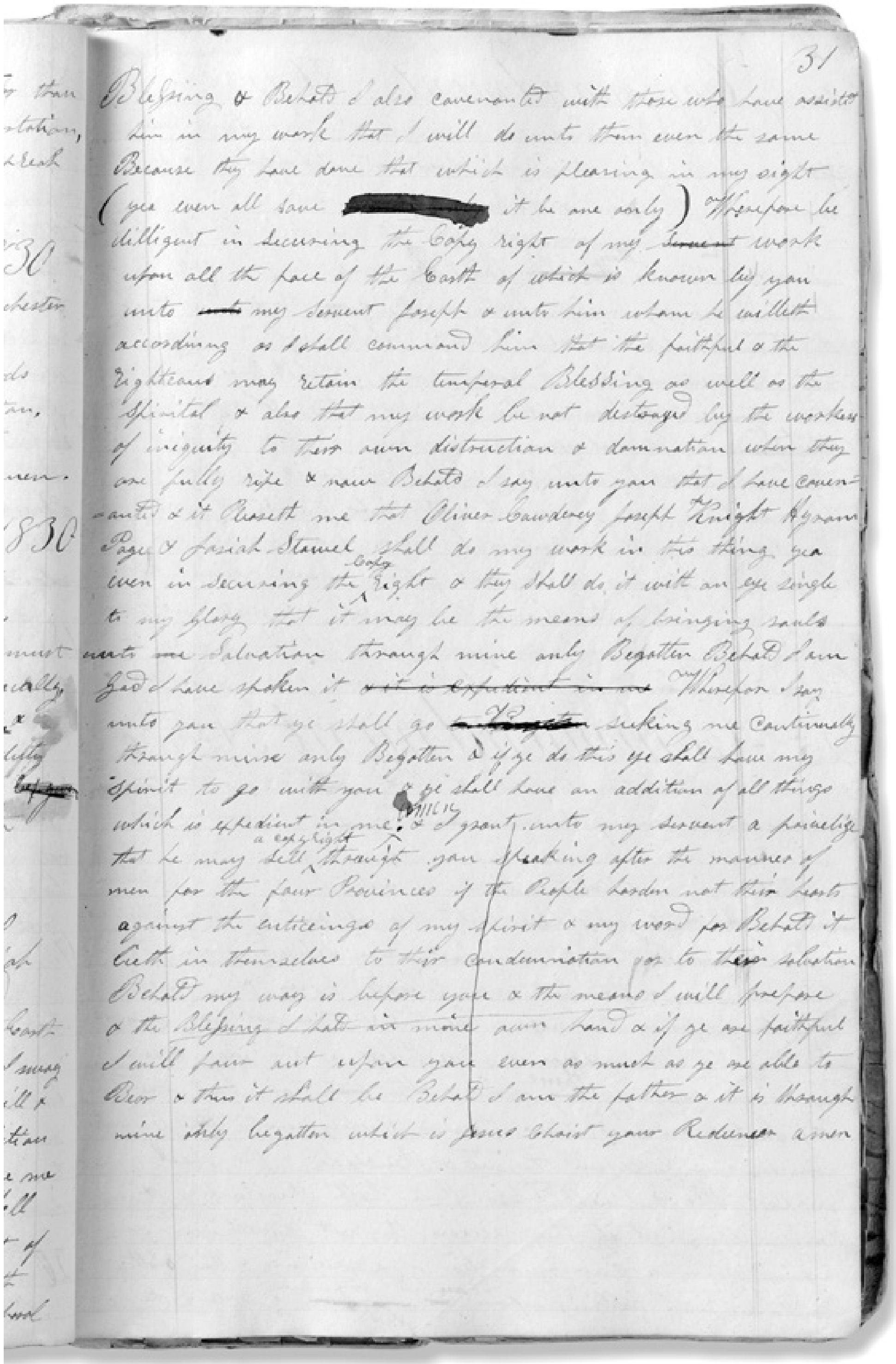
Behold I manifest unto you by these words, that you must take up your cross, in the which you must pray vocally before the world, as well as in secret, & in your family & among your friends, & in all places. Behold it is your duty to unite with the true church, & give your language to exhortation continually, that you may receive the reward of the labourer, amen.

23 Commandment AD 1830

A Revelation given to Oliver Hyrum Joseph & Joseph Knight given at Manchester Ontario C New York

Behold I the Lord am God I Created the Heavens & the Earth & all things that in them is wherefore they are mine & I sway my scepter over all the Earth & ye are in my hands to will & to do that I can deliver you out of every difficulty & affliction according to your faith & dilligence & uprightness Before me & I have covenanted with my Servent Joseph that earth nor Hell combined against him shall not take the Blessing out of his hands which I have prepared for him if he walketh uprightly before me neither the spiritual nor the temporal

Photograph of page 30 in the Book of Commandments and Revelations. Courtesy Church History Library, © Intellectual Reserve, Inc.



31

Blessing & Behold I also covenanted with those who have assisted him in my work that I will do unto them even the same Because they have done that which is pleasing in my sight (yea even all save [redacted] it be one only) Wherefore be dilligent in secureing the Copy right of my ~~servent~~ work upon all the face of the Earth of which is known by you unto ~~unto~~ my servent Joseph & unto him whom he willeth according as I shall command him that the faithful & the righteous may retain the temperal Blessing as well as the Spirital & also that my work be not destroyed by the workers of iniquity to their own distruction & damnation when they are fully ripe & now Behold I say unto you that I have covenanted & it Pleaseth me that Oliver Cowdery Joseph Knight Hyram Page & Josiah Stowel shall do my work in this thing yea even in secureing the copy right & they shall do it with an eye single to my glory that it may be the means of bringing souls unto ~~me~~ Salvation through mine only Begotten Behold I am God I have spoken it ~~& it is expedient in me~~ Wherefor I say unto you that ye shall go ~~to Kingston~~ seeking me continually through mine only Begotten & if ye do this ye shall have my spirit to go with you & ye shall have an addition of all things which is expedient in me. wisely & I grant unto my servent a privelige that he may sell a copyright through you speaking after the manner of men for the four Provinces if the People harden not their hearts against the enticeings of my spirit & my word for Behold it lieth in themselves to their condemnation or to their salvation Behold my way is before you & the means I will prepare & the Blessing I hold in mine own hand & if ye are faithful I will pour out upon you even as much as ye are able to Bear & thus it shall be Behold I am the father & it is through mine only begotten which is Jesus Christ your Redeemer amen

Photograph of page 31 in the Book of Commandments and Revelations. Courtesy Church History Library, © Intellectual Reserve, Inc.

Before addressing some of these historical clues, we should discuss what the *Manuscript Revelation Books* volume editors suggest in this regard. While Whitmer dates the revelation as having been received in 1830, volume editors Jensen, Woodford, and Harper date the receipt of the revelation more specifically as "Circa Early 1830." How early in 1830, the editors do not expressly state. But they do seem to take at least a preliminary position that the revelation was received between April 6 and April 16, 1830. Speaking generally on the topic, Harper observes: "Whitmer recorded several of the revelations in a different order than they appear in the Doctrine and Covenants. In some instances, it is obvious that he was not recording the revelations in their order of receipt. In other instances, particularly the earliest revelations, Whitmer's order of recording reflects a chronology of some events that differs from what has been assumed to be the historical order."[8] Jensen, Woodford, and Harper do specifically note, moreover, that of the first eighty items inscribed in the BCR (which include the Canadian copyright revelation), "only four dated items are known to have been copied into the book out of chronological order."[9] The volume editors specifically identify the four known nonchronologically inscribed items,[10] and their table of BCR inscription documents[11] catalogs the BCR placement of the four items they identify: (1) "Articles and Covenants, 10 April 1830 [D&C 20]"; (2) "Explanation of Scripture, circa December 1830 [D&C 74]"; (3) "Revelation, circa 8 March 1831–B [D&C 47]"; and (4) "Revelation, 1 November 1831–B [D&C 1]." While the editors could not say with certainty that the Canadian copyright revelation was recorded out of order, they simply proposed that it be dated "Circa Early 1830." In the manuscript, it is positioned between April 6, 1830 (the date recorded in the BCR for the seventeenth item [D&C 21]) and April 16, 1830 (the date recorded in the BCR for the twenty-fourth item [D&C 22]).[12]

However, further evidence of when the revelation was received can be gleaned from hints in related historical events and associated documents, combined with newly available hints from the text of the revelation itself. Even though John Whitmer's title to the revelation dates it in 1830, for the sake of completeness I will also consider dates in 1829. The impetus for this exercise is created by three considerations: (1) Hiram Page states that the

8. Harper, "Historical Headnotes and the Index of Contents," 53.

9. Jensen, Woodford, and Harper, *Manuscript Revelation Books*, 5.

10. Jensen, Woodford, and Harper, *Manuscript Revelation Books*, 3.

11. Jensen, Woodford, and Harper, *Manuscript Revelation Books*, xi–xv.

12. The *Manuscript Revelation Books* editors did not assign items 18 through 22 a specific date; they are dated simply "April 1830."

Prophet's associates anticipated the revelation before it was received, and "when it came," the group, seemingly without any or much ensuing delay, departed for Upper Canada;[13] (2) David Whitmer indicated that those who went to Canada "crossed the lake [Lake Ontario] on the ice;"[14] and (3) April 6, 1830, appears to be too late a date for receipt of the revelation, because contemporaneous Canadian newspaper reports (discussed further below) indicate that while the lake was frozen over that year by as early as mid-January, it had thawed and was navigable by April 1. While none of the major secondary sources[15] assigns either an exact date or an exact period of time to receipt of the Canadian copyright revelation, after gleaning from historical sources information about the events that created a need for the revelation, and then framing the earliest and latest possible times for receipt of this revelation, and considering all possible dates within that time frame for the revelation's receipt, I will suggest that the Canadian copyright revelation is perhaps a fifth revelation to have been recorded into the BCR out of chronological sequence, and also that receipt of the revelation almost surely predated April 6, 1830, and, indeed, probably was received at some time between mid-January and early March 1830.

The Need to Be Met. It has long been held that the effort to sell a copyright in Canada was made to help meet the need for money to fund the printing of the Book of Mormon in Palmyra. The secondary sources do state (1) that at the time the revelation was received, there was an outstanding need to obtain immediate funds to pay for the printing of the Book of Mormon, owing to a then-apparent inability of Martin Harris immediately to produce the needed money;[16] and (2) that the revelation was intended to commission emissaries to go to Canada in part to obtain funds for the purpose of paying Grandin. While initially, in June of 1829, it was contemplated that Martin Harris was to pay one-half of the printing costs and Joseph and Hyrum were to pay the other half,[17] the full responsibility apparently later

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13. Page to McLellin, February 2, 1848.

14. John L. Traughber, "False Prophecies," undated paper, John L. Traughber Papers, box 2, folder 26, Manuscripts Division, J. Willard Special Collections, Marriott Library, University of Utah, cited in H. Michael Marquardt, *The Rise of Mormonism: 1816–1844* (Longwood, Fla.: Xulon Press, 2005), 155.

15. For purposes of this article, a "secondary source" is one authored by someone who either wrote or lived at a time contemporaneous with the event (such as Page and Whitmer), as opposed to what is characterized here as a "derivative source," namely, a source authored by one who relies only on primary, secondary, or other derivative sources but not personal experience.

16. Traughber, "False Prophecies."

17. Lucy Smith, *Biographical Sketches of Joseph Smith the Prophet, and His Progenitors for Many Generations* (Liverpool: S. W. Richards, 1853), 142.

fell to Harris alone, when Joseph and Hyrum could not come up with their half.[18] By mortgaging a portion of his farm, Harris apparently guaranteed that he would meet the entire obligation of all three men.

Hiram Page states, "Joseph heard that there was a chance to sell a copyright in Canada for any useful book that was used in the States. Joseph thought this would be a good opportunity to get a handsome sum of money which was to be (after the expenses were taken out) for the exclusive benefit of the Smith family and was to be at the disposal of Joseph."[19] Presumably, Page's reference to money, after expenses, being intended for the "benefit" and "disposal" of the Prophet and his family included money needed to meet the costs incurred by the printing of the Book of Mormon in Palmyra.

David Whitmer was more direct: "Hyrum Smith, the 'Patriarch,' proposed that some of them take the manuscript to Canada, and there sell the copyright for sufficient money to enable them to get out the publication. A [¶] REVELATION WAS PROCURED [¶] 'to order' and 'warranted to fit.'"[20] In an even more detailed explanation, Whitmer refers to the money needed to print the Book of Mormon and states:

> Brother Hyrum thought they should not wait any longer on Martin Harris, and that the money should be raised in some other way. Brother Hyrum was vexed with Brother Martin, and thought they should get the money by some means outside of him, and not let him have anything to do with the publication of the Book, or receiving any of the profits thereof if any profits should accrue. He was wrong in thus judging Bro. Martin, because he was doing all he could toward selling his land. Brother Hyrum said it had been suggested to him that some of the brethren might go to Toronto, Canada, and sell the copy-right of the Book of Mormon for considerable money: and he persuaded Joseph to inquire of the Lord about it. Joseph concluded to do so.[21]

Of course the text of the revelation itself instructs those to whom it is directed to "sell" a copyright and speaks of the "temporal Blessing" that would not be taken out of the Prophet's hands and the "temperal" blessing that his associates would "retain" if they all were faithful. It appears to be correct that the revelation was intended to authorize action that would meet the need for money for the printing of the Book of Mormon; thus, in

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18. See Susan Easton Black and Larry C. Porter, "For the Sum of Three Thousand Dollars," *Journal of Book of Mormon Studies* 14, no. 2 (2005): 4–11, 9.

19. Page to McLellin, February 2, 1848.

20. "David Whitmer Talks," *Salt Lake Daily Tribune,* October 17, 1886, 5. See also *Omaha Herald*, October 10, 1886; *Des Moines Daily News*, October 16, 1886; *Chicago Inter-Ocean*, October 17, 1886; *Philadelphia Press*, October 17, 1886.

21. Whitmer, *Address to All Believers,* 30–31.

order to more accurately establish the date the revelation was received, it would be helpful to know when it was that the need for such money first arose and where the Prophet was located at various times during the subsequent period.

Outer Time Limits for Receipt of the Revelation. Laying aside for the moment David Whitmer's report that those who went to Canada "crossed the lake on the ice,"[22] we will briefly examine the period of time from just prior to June 11, 1829, when the title of the Book of Mormon was deposited with the clerk of the United States District Court for the Northern District of New York, through March 26, 1830, the date of the publication of the Book of Mormon,[23] to the latter half of April 1830, after organization of the Church. The Prophet and his associates apparently first perceived a need to obtain funding for the printing of the Book of Mormon just prior to the time of depositing the title of the book with the clerk of the U.S. District Court, that is, just prior to June 11, 1829. The Prophet's mother reports that Joseph arrived at Palmyra and there "met Mr. Grandin, and writings were drawn up between them to this effect: That half of the price for printing was to be paid by Martin Harris, and the residue by my two sons, Joseph and Hyrum. These writings were afterwards signed by all the parties concerned." Lucy dates this agreement to a time prior to when the Prophet "secured the copyright" (that is, prior to June 11, 1829), which transaction with the copyright she says occurred "soon after" the agreement.[24] We know that it was on about June 3, 1829, that Joseph Smith, Oliver Cowdery, and David Whitmer arrived from Harmony, Pennsylvania, and relocated to the Peter Whitmer farm in Fayette, New York, the trip having taken about three days.[25] This at least places the Prophet in the vicinity of Manchester at that time and, absent reference to the on-ice lake crossing, would probably be the earliest time the revelation would have been received.

Where was the Prophet on June 11, 1829, when the printed copy of the title of the Book of Mormon was deposited in the office of the court clerk? In my estimation, Nathaniel Wadsworth is correct in concluding that, based on available evidence, we simply do not know for sure whether on June 11, 1829, Joseph was in Utica personally making the deposit, whether he had traveled to another place where the court may have held a special session local to Fayette,

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22. Traughber, "False Prophecies."

23. Hyrum Smith proposed that some emissaries would take with them "the manuscript" (from which a reasonable inference can be drawn that the Palmyra printing was not yet complete). "David Whitmer Talks," 5.

24. Lucy Smith, *Biographical Sketches of Joseph Smith*, 142.

25. See John W. Welch, "The Coming Forth of the Book of Mormon," in *Oliver Cowdery: Scribe, Elder, Witness,* ed. John W. Welch and Larry E. Morris (Provo, Utah: Neal A. Maxwell Institute for Religious Scholarship, 2006), 39, 47, 70 n. 28.

or whether someone else traveled to Utica or elsewhere for him—or for that matter, whether the printed copy of title had simply been mailed to Utica. Wadsworth quotes Larry C. Porter's accurate observation that it is "not certain whether Joseph Smith simply submitted his title entry by mail to [Richard R.] Lansing at Utica, New York, or whether it was delivered by hand."[26]

Thereafter, though still in June of 1829, the Prophet was located in Palmyra near Manchester (being there on about June 24 when the Eight Witnesses were shown the plates of gold and possibly being there still on June 26 when Egbert B. Grandin published the title page of the Book of Mormon as a "curiosity" in the *Wayne Sentinel*). On or about July 1, 1829, the Prophet completed the translation while in Fayette, some thirty-five miles from Manchester.

Then, some time in early July of 1829, the Prophet went to reside in Harmony, Pennsylvania. Importantly, all of the above-mentioned dates precede August 25, 1829, when Martin Harris mortgaged his farm to assure payment of $3,000 to Grandin for the printing of the first 5,000 copies of the Book of Mormon.[27]

In an October 22, 1829, letter to Oliver Cowdery, the Prophet wrote the following from Harmony, Pennsylvania:

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26. See, for example, Nathaniel Hinckley Wadsworth, "Copyright Laws and the 1830 Book of Mormon," *BYU Studies* 45, no. 3 (2006): 83, citing Larry C. Porter, "Egbert Bratt Grandin," in *Book of Mormon Reference Companion*, ed. Dennis L. Largey (Salt Lake City: Deseret Book, 2003), 308. It may very well be that Grandin, under the Prophet's direction, sent the draft title page to the clerk in Utica for deposit rather than the Prophet himself personally presenting it. There is evidence to suggest that this may have been the manner in which Grandin presented titles for deposit. Grandin, as "proprietor" of a different book, apparently did not personally appear in Utica, when on April 30, 1830, he is said to have deposited the title of that other book with Lansing. On April 30, 1830, Lansing recorded that Grandin on that day "hath deposited in this Office the title of a Book the right whereof he claims as Proprietor in the words following, to wit: *Notes on title IV. chapter II of part III of the Revised Statutes of the State of New York entitled 'of courts held by Justices of the peace*.'" Copyright Record Books, Northern District of New York, September 25, 1826, to May 18, 1831, vol. 3, page 131, Rare Book and Special Collections, Library of Congress. On that very same day, however, Grandin apparently would have been busy in his printing office in Palmyra, publishing the April 30, 1830, issue of his weekly newspaper, *The Wayne Sentinel*. See *Wayne Sentinel*, April 30, 1830, p. 1, col. 1 ("published eve[r]y Friday, by E. B. Grandin, at his printing office and book-store—Main-street, West end of Thayer & Grandin's Row, Palmyra, Wayne Co. N. Y."). Since the distance from Palmyra to Utica is 116 miles (a round trip of about four days—see note 38 below), it seems unlikely he personally presented his title for deposit in the clerk's office in Utica on the same day that he issued his paper in Palmyra.

27. Wayne County (New York) Mortgages Record, 3:325–26.

> There begins to be a great call for our books in this country the minds of the people are very much excited when they find that there is a copy right obtained and that there is really [a] book about to be printed I have bought a horse of Mr. [Josiah] Stowell and want some one to come after it as soon as convenient Mr. Stowell has a prospect of getting five or six hundred dollars he does not know certain that he can get it but he is a going to try and if he can get the money he wants to pay it in immediately for books.[28]

While this letter clearly places the Prophet in Harmony at the time, it has parenthetical significance of a related nature. Wherever the Prophet was when he purchased the horse from Josiah Stowell—Stowell, for all we know, lived in South Bainbridge, Chenango County, New York, at the time of the purchase, and the letter indicates the Prophet wrote from Harmony, Pennsylvania, approximately twenty-three miles away—the fact that the Prophet spoke of Stowell as having "a prospect of getting five or six hundred dollars" that he wanted to pay in immediately "for books," clearly seems to invite the inference that the time when Stowell entertained such a prospect of income is a time separate from when he experienced a similar prospect of income (though of a much higher amount of money) from an attempted sale of a copyright in Canada. (Hiram Page reports the amount involved in the hoped-for Canadian copyright transaction to be $8,000.)[29]

On November 6, 1829, Oliver wrote from Manchester to the Prophet, located in Harmony at the time, reporting on the printing of the book. Similarly, Cowdery wrote from Manchester to the Prophet, again located in Harmony, on December 28, 1829. And on January 16, 1830, Joseph signed what amounts to a promissory note agreeing that Martin Harris shall have "an equal privilege" with the Prophet and his friends "of selling the Book of Mormon." That document bears a written attestation of the Prophet's signature thereon, signed by Oliver Cowdery in "Manchester."[30]

Since John Whitmer's headnote to the Canadian copyright revelation evidently places the Prophet in Manchester when he received the revelation, we perhaps are justified (1) in concluding that the Prophet's presence in Palmyra on June 24, 1829, could be one occasion when the revelation was received and (2) in eliminating, *with two significant exceptions* (discussed further below), the entire period from early July 1829 to about

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28. Joseph Smith to Oliver Cowdery, October 22, 1829, Joseph Smith, Letterbook 1:9, Church History Library, The Church of Jesus Christ of Latter-day Saints.

29. Page to McLellin, February 2, 1848.

30. Agreement, Joseph Smith and Martin Harris, Manchester, New York, January 16, 1830, DS, in handwriting of Oliver Cowdery, Historical Society of Pennsylvania.

March 26, 1830, as the time when the revelation was received, for during all of that period, apparently, the Prophet was located, not in Manchester, but in Harmony.

Possible Dates When the Revelation May Have Been Received. From late June 1829 to late March 1830, the Prophet traveled on two occasions temporarily from Harmony to Manchester to take care of matters pertaining to the printing of the Book of Mormon. On the first trip, he sought to address the unauthorized printing of portions of the Book of Mormon text by Abner Cole. On the second, he sought to deal with matters concerning the costs of printing the Book of Mormon. The two visits appear to have been in quick succession. The first is well known. Cole published a newspaper, *The Reflector*, which Grandin printed. Cole apparently had seen printed pages of the Book of Mormon in Grandin's shop as early as September 2, 1829,[31] and by January 2, 1830, had printed and published the first of a number of newspaper installments setting forth extensive passages of Book of Mormon text. It appears that Oliver was aware of the first printing before it occurred, apparently having discovered it on Sunday, December 27, 1829.[32] When Oliver and Hyrum were unable to convince Cole not to go forward with the printing, they asked Joseph's father what to do, and Joseph Sr. traveled from Manchester to Harmony to tell the Prophet of the situation. The two returned from Harmony to Manchester, arriving there apparently one week after Oliver's discovery, on Sunday, January 3, 1830, "nearly stiffened with the cold."[33] The Prophet convinced Cole to agree to submit the matter to an arbitration, seeking to get Cole to desist,[34] which he did (but not until publishing two more extracts on January 13 and 22, 1830). At some point, either immediately or shortly after the January 3 confrontation with Cole (and apparently before the January 13 publication), the Prophet returned to Harmony. Lacking evidence of a prolonged stay in Manchester, it seems likely the Prophet returned to Harmony without delay.

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31. "The Golden Bible, by Joseph Smith Junior, Author and Proprietor, Is Now in Press and Will Shortly Appear," *Reflector* 1 (September 2, 1829): 2.

32. Andrew H. Hedges, "The Refractory Abner Cole," in *Revelation, Reason, and Faith: Essays in Honor of Truman G. Madsen,* ed. Donald W. Parry, Daniel C. Peterson, and Stephen D. Ricks (Provo, Utah: Foundation for Ancient Research and Mormon Studies, 2002), 462–63.

33. Lavina Fielding Anderson, ed., *Lucy's Book: A Critical Edition of Lucy Mack Smith's Family Memoir* (Salt Lake City: Signature Books, 2001), 474. The Prophet's mother dates Hyrum's discovery and Joseph's confrontation with Cole on two successive Sundays. Lucy Smith, *Biographical Sketches of Joseph Smith the Prophet,* 148–50.

34. Lucy Smith, *Biographical Sketches of Joseph Smith,* 149–50.

Joseph Smith the Prophet, by Danquart Weggeland, courtesy Church History Museum.

At some time after the January 3 confrontation with Cole, the Prophet's family evidently was "again compelled to send for" the Prophet, this time to deal with matters concerning the costs of printing the Book of Mormon.[35] On January 16, 1830, the Prophet executed a note to Martin Harris,[36] doing so *in Manchester*.[37] Thus, the Prophet's second trip from Harmony to Manchester occurred in time for him to sign that note (the subject of the note being the same as the purpose of the second trip). The Prophet apparently had time to confront Cole (on January 3), return to Harmony, travel again to Manchester, and arrive there the second time by January 16; the round trip, apparently, could be accomplished within one week (the Prophet's father had done it between Sunday, December 27, 1829, and Sunday, January 3, 1830).[38]

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35. Lucy Smith, *Biographical Sketches of Joseph Smith,* 149–50. Lucy's history does seem to allow for the passage of some time between the Prophet's two visits to Manchester, for while she states that after he returned to Pennsylvania he was "not long to remain there," she also invites the inference that those who opposed the publication had enough time to "perceive[] that the work still progressed," "call[] a large meeting," "gather[] their forces," "organize[] themselves into a committee of the whole," "appoint[] a committee to wait upon E. B. Grandin, and inform him of the resolutions which they had passed." Of course, all of these events could have occurred immediately after the Prophet left Manchester at the end of his first visit and while he was traveling. The Prophet may have been in Harmony between his two visits to Manchester for only a few days, if that, or for some longer period, though (according to Lucy) it was "not long."

36. In his forthcoming *Documentary History of Oliver Cowdery*, Richard L. Anderson will present and explain evidence that the note was executed by the Prophet and not his father.

37. Hedges, "Refractory Abner Cole," 462.

38. Hedges expresses concern about whether Joseph Smith Sr. could possibly have made "the 240-odd-mile round-trip between Manchester and the Prophet's home near Harmony in six days at most—no small feat, considering the time of year." See Hedges, "Refractory Abner Cole,"462. Stating the journey was "difficult,"

Because Page seems to indicate that he and his associates departed from Manchester, it is likely that they did not tarry there for long after the revelation was received and before departing for Canada (the four men otherwise resided elsewhere).[39] And because David Whitmer reported that those who went to Canada "crossed the lake on the ice,"[40] the revelation could have been received in the middle of January.[41] Of course, when the Prophet arrived in Manchester the second time and how long he tarried there during his second trip is not known. And because the frozen lake had apparently thawed and broken up by April 1, 1830, it may be surmised, based on the timing of the thaw alone, that the latest time when the revelation may have been received would be at some time shortly before April 1, 1830. More on this will be discussed below, in connection with the timing of the trip to Canada.

However, a few other factors may play a role in dating the Prophet's receipt of the revelation. According to David Whitmer, it was "early in the spring of 1830, before April 6th" that the Prophet "gave the [seer] stone to Oliver Cowdery and told [Whitmer] as well as the rest that he was through with it, and he did not use the stone anymore."[42] Because David Whitmer indicates that on the occasion when the Prophet received the Canadian copyright revelation he "had not yet given up the stone" and had "looked into the hat in which he placed the stone, and received [the] revelation,"[43]

Hedges cites "a later reference by Lucy to the expense incurred from making trips to Harmony this winter" as suggesting "that Joseph Sr. made the journey by stage, most of which averaged about sixty miles per day at the time through regular and frequent substitutions of horses." Hedges does not provide a citation to the "sixty-miles-per-day" calculation. According to William Renwick Riddell, "London to Toronto in 1836," reprinted in *Canadian National Railways Magazine* (April 1922), part of the travels of Anna Brownell Murphy Jameson included passage both on a stagecoach from Utica to Rochester, a trip of "about 135 miles," which Riddell reports "took 36 hours" and passage on a carriage from Rochester to Lewiston, a trip of "70 miles" which took "28 hours." The trips on stagecoach and carriage were made in lieu of passage on a steamboat on the Erie Canal because the canal was frozen. Jameson's stagecoach trip averaged 3.75 miles per hour (or sixteen hours to travel sixty miles), and the carriage trip 2.5 miles per hour (twenty-four hours to travel sixty miles).

39. Page to McLellin, February 2, 1848.

40. Traughber, "False Prophecies."

41. "The thermometer has ranged from 10° below, to 20° above 0, for the last ten days. The Lake is firmly frozen, and a cheap and safe style of travelling has revived the intercourse with our brethren of the *independent* portion of the world." *Kingston Chronicle*, January 30, 1830, p. 2, col. 6.

42. Whitmer, *Address to All Believers*, 32.

43. Whitmer, *Address to All Believers*, 30–31.

the dating of the receipt of the revelation, according to Whitmer, would necessarily be some time prior to April 6, 1830.

While spring technically began on March 21 in 1830,[44] that does not necessarily mean that Whitmer's reference to "early in the spring" in that year must constitute a reference to a time on or after March 21; other dates earlier in March that year were nonetheless referred to as dates in "spring."[45] Noah Webster's 1828 dictionary does not limit the definition of "spring" to dates after the vernal equinox; rather, Webster defines spring to be "the season of the year when plants begin to vegetate and rise; the vernal season. This season comprehends the months of March, April, and May, in the middle latitudes north of the equator."[46] Hence, at least linguistically speaking, David Whitmer's timing of the relinquishment of the seer stone ("early in the spring") allows for a dating of the receipt of the revelation at some point prior to that, perhaps in early March of 1830 or even before. The timing for delivery of the seer stone is elsewhere attributed to "about" the time when, on February 12, 1830, Lucius Fenn wrote to Birdseye Bronson concerning the anticipated publication of the Book of Mormon.[47]

It is true that as late as March 1830 the Prophet received a revelation that instructed Martin Harris "not [to] covet [his] own Property but impart it freely to the printing of the Books of Mormon" (BCR, 27), that he "Pay the Printers debt" (BCR, 27). But concerns expressed by the Prophet about Martin making payment on the debt Harris had "contracted with the printer" (D&C 19:35), of course, also predated March 1830. And attempts at securing and selling a copyright in Canada after the March 26, 1830, United States release date of the Book of Mormon likely would have not been efficacious, for at that point, the work, legally, would have been considered dedicated to the public, and piracy in Canada would have been much more likely without a copyright secured there (if others considered publishing the book to be

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44. The vernal equinox in 1830 fell on March 21. See Ivan Smith, "Vernal Equinox," http://ns1763.ca/equinox/vern1788-2211.html.

45. See, for example, "PASSAGE FROM IRELAND, (FIRST SPRING SHIP.) The ship BENJAMIN RUSH, will leave BELFAST FOR BALTIMORE about the first of March next," *American & Commercial Daily Advertiser*, morning ed., January 7, 1830, p. 1, col. 2); "PASSAGE FROM IRELAND. (FIRST SPRING SHIP) The ship BENJAMIN RUSH, Captain Duff will sail from BELFAST for BALTIMORE, early in MARCH NEXT," *American & Commercial Daily Advertiser*, morning ed., February 20, 1830, p. 1, col. 2.

46. Noah Webster, *An American Dictionary of the English Language* (New York: S. Converse, 1828; New Haven: Hezekiah Howe, 1828), s.v. "spring."

47. See Welch, "Coming Forth of the Book of Mormon," 51. Welch is cautious not to assign a date to the Prophet's relinquishment of the stone and by the placement of his sentences gives the impression it was after February 12, 1830.

financially attractive). And in any event, the secondary sources seem to indicate that Hyrum Smith had suggested that some of the brethren "take the *manuscript*" (not the printed book) to Canada,[48] implying that the printed book was not at that time in existence. In one of his accounts, David Whitmer, in a rather condemnatory text, specifically dates receipt of the revelation to "January, 1830" and adds, without mention of Knight and Stowell, that "Cowdery and Page crossed the lake on the ice and went to Kingston."[49] If the emissaries indeed "crossed the lake on the ice," not only Kingston harbor but the lake itself would need to have been frozen at the time, and it appears even the ice in the Kingston harbor was pretty much dissipated prior to the end of March 1830, as discussed further below.

Of course, David Whitmer could have been wrong about both the January 1830 date and the crossing of the lake on ice. But certain other evidence lends credence to the proposition that the revelation was received prior to April 1830. Three of the supposed four participants in the Canadian trip apparently were unavailable to travel to Canada during the entire period between about March 26 and about April 18, 1830. Shortly after March 26, 1830, for instance, Joseph Knight Sr. reportedly had driven the Prophet from Harmony, Pennsylvania, to Manchester, New York, to pick up some copies of the Book of Mormon, which had just come off the press. On the way, the Prophet told him that a church must be organized.[50] If Knight indeed did travel to Canada, it apparently did not occur in late March 1830, when he was traveling with the Prophet from Harmony to Manchester. And on Tuesday, April 6, 1830, Oliver Cowdery and Joseph Knight were present for the organization of the Church at the home of Peter Whitmer Sr. in Fayette Township, New York.[51] Of the seven extant listings of the six men who

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48. "David Whitmer Talks," 5. See also *Omaha Herald*, October 10, 1886; *Des Moines Daily News*, October 16, 1886; *Chicago Inter-Ocean*, October 17, 1886; *Philadelphia Press*, October 17, 1886.

49. Traughber, "False Prophecies."

50. Dean C. Jessee, "Joseph Knight's Recollection of Early Mormon History," *BYU Studies* 17, no. 1 (1976): 36.

51. Although contention is made that no documentary evidence places Oliver Cowdery in Fayette on the day the Church was organized, Oliver himself, if he was performing his edit based on personal knowledge, apparently places himself there, on the day of the organization of the Church, as evidenced by his own handwritten correction in BCR, 28 (now D&C 21; see Jensen, Woodford, and Harper, *Manuscript Revelation Books,* 26–27), correcting John Whitmer's original inscription of "1829" to read "April 1830" but not changing the reference to "Fayette." Whitmer's heading to this revelation, manifestly available for Cowdery to correct in any way (which he did by editing the date), continued to state after Cowdery's edit that the revelation was received "at Fayette."

organized the Church on that day, all seven name Oliver Cowdery.[52] So Oliver was not in a position to be traveling to Canada at that time. And one week later, on Sunday, April 11, 1830, at Fayette, Oliver Cowdery preached the first public discourse after the organization of the Church and on that day baptized six converts in Seneca Lake, including Canadian-trip participant Hiram Page and Page's wife, Katherine. And one week after that, on Sunday, April 18, 1830, Cowdery baptized seven more converts. In addition, in an 1877 letter, McLellin states the revelation was received while the Book of Mormon "was at the printer's."[53]

Based on the above analysis of presently available evidence (and further evidence discussed below about the timing of the trip to Canada), it seems reasonable at least preliminarily to suggest that the Canadian copyright revelation was received no earlier than about January 16 or 20, 1830, when the Prophet visited Manchester, shortly before or as Lake Ontario first began to freeze over, and no later than about the first part of March 1830, while the Prophet still had possession of the seer stone and before or as Lake Ontario thawed. First, however, it is important to identify who was told to travel there and who actually did travel.

To Whom Was the Revelation Directed?

The historical headnote for the revelation states that the revelation was "given to ~~Joseph~~ Oliver Hyram Josiah and Joseph." Whether the original text from which John Whitmer made his inscription into the BCR contained the first instance of the word "Joseph" is, of course, not known, since the original text is nonextant. And whether that first (stricken) "Joseph" refers to the Prophet or to Joseph Knight is not known. Perhaps Whitmer merely inscribed the name "Joseph" accidentally (maybe having just finished reading the names "Oliver Hyram Josiah and Joseph" on the original document). By first writing the word "Joseph" after the phrase "given to," Whitmer may possibly have inadvertently meant to write something meaningful that may have come to his mind at the time he was inscribing the revelation in the BCR, even if the original text from which he was inscribing his copy may not have used the word "Joseph." And that meaningful thing would be that the revelation was given (vouchsafed or revealed) to the Prophet Joseph. There is no apparent reason to believe (or disbelieve)

52. Richard Lloyd Anderson, "Who Were the Six Who Organized the Church on 6 April 1830?" *Ensign* 10 (June 1980): 43–45.

53. William E. McLellin to John L. Traughber, February 19, 1877, William E. McLellin Notebook, MS 666, box 2, folder 40, John L. Traughber Collection, Marriott Library.

that in writing the word "Joseph" (and then striking it out), Whitmer was actually copying that word from the original manuscript of the revelation. It would appear at first blush that Whitmer struck through the word "Joseph" immediately after he wrote the word and that it was merely an inscription error that he immediately caught.

By stating that the revelation was "given" to "Oliver Hyram Josiah and Joseph," Whitmer's headnote seemingly invites the inference that the revelation was received by the Prophet and directed to the four named men. It does not seem that either the Prophet or Whitmer can reasonably be charged with conveying the notion that the revelation was revealed to and received by those four named men, as if it were a revelation vouchsafed jointly to the four (or five) men. (Some of the BCR revelations, of course, are shared experiences.)[54] The BCR is, after all, a book of revelations generally given to and received by Joseph Smith and communicated by him to others. David Whitmer's mention of the Prophet's use of the seer stone seems to confirm this was a revelatory experience of the Prophet's alone, not one shared or received by multiple recipients. Consistent with the inference mentioned above, the entire text of the revelation uses the third person to refer to the Prophet and the second person to refer to the four named men.

Where Were Cowdery, Page, Stowell and Knight Located at the Time the Revelation Was Received?

The text of the revelation does not state where Cowdery, Page, Stowell, and Knight were located at the time the revelation was received. However, an account by Hiram Page, one of the participants, evidences that at the time the four emissaries were preparing to leave in response to the revelation, they already had "*assembled* at father Smiths" (whose home was in Manchester, Ontario County).[55] Indeed, Page states in more detail that the four men had already been "chosen . . . by revilation"—perhaps referring to an initial, unrecorded revelation, received *prior* to the time the Prophet received the revelation now recorded in the BCR (in other words, there may possibly have been at least two revelations involved in the Canadian copyright matter, one by which the four men were chosen and one by which they were commanded to go to Canada)—that they had assembled together and then, without delay, departed. Says Page: "Oliver Cowdery, Joseph Knights,

54. Daniel Peterson, "Many of Prophet's Revelations Were Shared Experiences," *Mormon Times*, February 24, 2011, http://www.mormontimes.com/article/19831/Many-of-Prophets-revelations-were-shared-experiences?s_cid=search_queue&utm_source=search_queue.

55. Page to McLellin, February 2, 1848; italics added.

Hiram Page and Joseah Stoel were *chosen* (as I understood *by revilation*) to do the buisaness; we were living from 30 to 100 miles apart . . . it was told me we were to *go by revilation* but when we assembled at father Smiths, the[re was] *no revilation for us to go* but we were all anctious to *ge[t] a r[evila]tion to go; and when it came* we were to go to kingston."[56] The text of the revelation in the BCR does not seem, on its face, to "choose" the four men; rather, it is directed to them almost as if they already had been chosen. It seems from Page's account that a first revelation choosing the four men may have precipitated their travels to Manchester from their separate residences, culminating in their assembly at the home of Joseph Smith Sr. Then, while there, having no revelation commanding them to go, they anxiously waited some unspecified but apparently short amount of time for the Prophet to receive the revelation that is recorded in the BCR, which he likely received while the four men were still gathered in Manchester.

At the time of these events, Page states, the emissaries themselves "were *living* from 30 to 100 miles apart." In early 1830, Oliver Cowdery apparently was still boarding with the Whitmer family in Fayette, Seneca County, New York. He had evidently arrived there in the summer of 1829 with Joseph and Emma, and he was present when the Church was organized there in the spring of 1830.[57] On April 11, 1830, Oliver Cowdery baptized Hiram Page in Seneca Lake.[58] The 1830 United States Federal Census enumeration places Page in Fayette Township, Seneca County, New York;[59] the enumeration date is not recorded. Both the Prophet's history[60] and Joseph Smith—History 1:56 place Josiah Stowell's residence in October of 1825 in Chenango County, New York. On June 28, 1830, the Prophet was charged with disorderly conduct and taken to South Bainbridge, Chenango County for trial, where Stowell testified on the Prophet's behalf.[61] The 1830 United

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56. Page to McLellin, February 2, 1848.

57. John K. Carmack, "Fayette: The Place the Church Was Organized," in *Sperry Symposium Classics: The Doctrine and Covenants,* ed. Craig K. Manscill (Provo, Utah: Religious Studies Center, Brigham Young University; Salt Lake City: Deseret Book, 2004), 48–55.

58. History [1839 draft], Joseph Smith, James Mulholland scribe, Church History Library, transcript in *Papers of Joseph Smith, Volume 1: Autobiographical and Historical Writings,* ed. Dean C. Jessee (Salt Lake City: Deseret Book, 1989), 244.

59. 1830 United States Federal Census, Fayette, Seneca, New York, roll 109, p. 68.

60. Manuscript History of the Church (December 1805–August 30, 1834), vol. 1, Church History Library.

61. Newel Knight, Holographic reminiscences, ca. 1846 (Newell Knight Journal), Church History Library, transcript in *Early Mormon Documents,* comp. and ed. Dan Vogel, 5 vols. (Salt Lake City: Signature Books, 1996–2003), 4:30–31. See

States Federal Census enumeration places Stowell's residence in Bainbridge, Chenango County, New York;[62] the date of the enumeration is not recorded. And in early 1830, Joseph Knight apparently was still living on his farm, as he had since 1811, located at Pickerel Pond, immediately to the east of Nineveh, Colesville Township, Broome County, New York, for in June of 1830, a mob seeking to harass the Prophet surrounded Knight's residence, located in that place. The 1830 United States Federal Census enumeration places Knight's residence in Colesville Township, Broome County, New York.[63]

Based on this analysis, it would appear that the four men were *living* about 113 miles apart (the distance from Fayette to Bainbridge being about 113 miles); the distance from Bainbridge to Manchester, the location where the revelation was received, is about 130 miles. Thus, it would appear that the four men were located at their respective residences when the apparent first revelation, the one that chose them, was received. Then, while they were assembled at Manchester, the revelation that would send them to Canada was received.

Who Went to Canada?

No contemporaneous evidence seems to be extant identifying who actually did go to Canada. Later accounts differ. The text of the revelation is directed to Oliver Cowdery, Hiram Page, Josiah Stowell, and Joseph Knight and tells them to go to Canada. Page names all four as having been chosen by revelation to do the business, states they "all" were anxious to receive a revelation to go, and then states that after the revelation came and after they departed, "when [we] got their; there was n[o] purcheser."[64] Nothing in Page's text, between his naming of all four men and his use of the word "we" changes that "we" to mean fewer than all four. And William McLellin, recipient of Page's 1848 letter, indicates the revelation was "for Oliver and friends" (plural), indicating that McLellin apparently understood the revelation was directed to at least three persons.[65] On the other hand, while stating that

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also Vogel, *Early Mormon Documents,* 4:53–54; *Times and Seasons* 4 (December 15, 1842): 39–41; Jessee, *Papers of Joseph Smith,* 1:251–54.

62. 1830 United States Federal Census, Bainbridge, Chenango, New York, roll 86, p. 2.

63. 1830 United States Federal Census, Colesville, Broome, New York, roll 85, p. 54.

64. Page to McLellin, February 2, 1848.

65. William E. McLellin to Joseph Smith III, commenced July 1872, Community of Christ Library-Archives. McLellin's account was retold in a letter by J. L. Traughber [to James T. Cobb?], circa 1881, in Wilhelm Wyl [Wilhelm Ritter von Wymetal], *Joseph Smith, the Prophet, His Family and His Friends* (Salt Lake City: Tribune and Publishing Co., 1886), 311. See Vogel, *Early Mormon Documents*, 5:333.

before the revelation was received Hyrum Smith had proposed that "some of them" (not "two" of them) take the manuscript to Canada, David Whitmer, a nonparticipant, also states that the revelation directed "that *two* of the brethren go to Canada" and that "they went,"[66] adding that "Hiram Page and Oliver Cowdery went" and that "Hiram Page and Oliver Cowdery returned from Canada."[67] David Whitmer states that he and the Prophet were present at David's father's (Peter Whitmer Sr.'s) house in Fayette when the *two* (Page and Cowdery) returned and that Jacob Whitmer and John Whitmer were also present and witnessed their return. As discussed below on the question of when the emissaries went, all accounts agree that Cowdery and Page went, a key fact concerning the timing of the trip.

This discrepancy may be attributable to the following. It may be that Cowdery, Page, Stowell, and Knight all went—as attested by participant Page—but that only two (Cowdery and Page) returned to where the Prophet and the Whitmer brothers were located at the time (in Fayette), with the other two (Stowell and Knight) returning, instead, to their own respective homes (Stowell to Chenango County and Knight to Broome County). Beyond that, there does not seem to be reliable evidence to suggest that fewer than all four men sent by the revelation actually did go to Canada.

When Did the Emissaries Go to Canada?

Related to the question of when the revelation was received is the question of when the emissaries departed for Canada. The text of the revelation states nothing about when the emissaries were to depart. The secondary sources—participant Hiram Page's 1848 letter,[68] nonparticipant William McLellin's 1872[69] and 1877[70] accounts, and nonparticipant (and dissident) David Whitmer's 1886[71] and 1887[72] accounts—are silent on when the trip actually occurred. As mentioned above, however, in another account, David Whitmer specifically dates receipt of the revelation in "January, 1830" and adds,

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66. "David Whitmer Talks," 5, italics added. See also *Omaha Herald*, October 10, 1886; *Des Moines Daily News*, October 16, 1886; *Chicago Inter-Ocean*, October 17, 1886; *Philadelphia Press*, October 17, 1886.

67. Whitmer, *Address to All Believers*, 30–31.

68. Page to McLellin, February 2, 1848.

69. William E. McLellin to Joseph Smith III, 1872, William E. McLellin Notebook, MS 666, box 1, folder 22, Traughber Collection.

70. McLellin to Traughber, February 19, 1877.

71. "David Whitmer Talks," 5. See also *Omaha Herald*, October 10, 1886; *Des Moines Daily News*, October 16, 1886; *Chicago Inter-Ocean*, October 17, 1886; *Philadelphia Press*, October 17, 1886.

72. Whitmer, *Address to All Believers,* 30–31.

without mention of Knight and Stowell, that "Cowdery and Page crossed the lake on the ice and went to Kingston."[73] While there is no evidence whether or how Whitmer may have learned those two purported facts from a person with firsthand knowledge of them, there seems to be no apparent reason to discount his statement other than that he made it long after he left the Church and had a motive to speak derogatorily about its history. But why a detail about the emissaries crossing the lake "on the ice" would further any negative bias does not seem readily apparent. And that Whitmer, decades later, would be able to relate so rare an occurrence as the freezing of Lake Ontario and to place the emissaries' crossing over its ice in January 1830 without having some basis in fact for his account seems implausible.

Assuming, for the sake of argument, that Whitmer's "on the ice" travel narrative is incorrect, the period during which the trip might have occurred seems otherwise greatly expanded; assuming the narrative is correct, the period is greatly narrowed. If incorrect, a trip to Canada could have occurred at any time before or after the first half of April 1830 or in early or mid-1830, for that matter. But for the apparent fact that Hyrum Smith intimates the emissaries would take the "manuscript" with them instead of a printed book (which fact alone would suggest a trip to Canada prior to March 26, 1830) and but for the fact (further discussed below) that absent an international accord between the United States and Canada, publication of the book in the United States dedicated the book to the public and may have rendered ineffectual any attempt to secure a copyright in Canada, if the trip occurred after the lake thawed, it could have been at any time after about the middle or end of March.

But if Whitmer is correct in stating the trip was "on the ice," the time constraints for the trip are quite defined. From about January 20, 1830, at the very earliest to about mid-March or the beginning of April 1830 at the latest, the conditions of Lake Ontario apparently accommodated travel "on the ice" across the frozen lake from New York to Kingston,[74] whether by foot or, if the ice was thick enough, even *by horse*.[75] To the extent that

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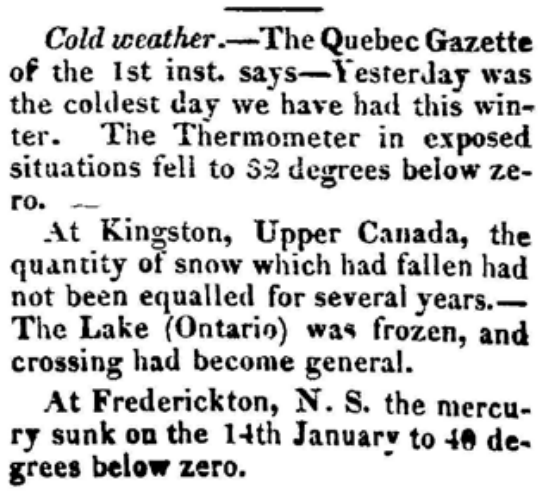
73. Traughber, "False Prophecies."

74. Bennett and Olsen state the party "likely walked across frozen Lake Ontario from Sacketts Harbour near Oswego, New York, to their Canadian destination of Kingston." Richard E. Bennett and Daniel H. Olsen, "Of Printers, Prophets, and Politicians: William Lyon Mackenzie, Mormonism, and Early Printing in Upper Canada," in *Regional Studies in Latter-day Saint Church History—Ohio and Upper Canada,* ed. Guy L. Dorius, Craig J. Manscill, and Craig James Ostler (Provo, Utah: Religious Studies Center, 2006), 181.

75. See Terrot R. Glover and Delano Dexter Calvin, *A Corner of Empire: The Old Ontario Strand* (Cambridge: University Press, 1937), 113.

nonparticipant David Whitmer's account is correct in indicating that the emissaries "crossed the lake on the ice," those approximate dates seem to be the earliest and latest dates for the trip (and hence the earliest and latest dates for receipt of the revelation, too).



Cold weather.—The Quebec Gazette of the 1st inst. says—Yesterday was the coldest day we have had this winter. The Thermometer in exposed situations fell to 32 degrees below zero.

At Kingston, Upper Canada, the quantity of snow which had fallen had not been equalled for several years.—The Lake (Ontario) was frozen, and crossing had become general.

At Frederickton, N. S. the mercury sunk on the 14th January to 40 degrees below zero.

A report on the severe winter of 1830, *Republican Compiler,* February 23, 1830, page 2.

Only on very rare occasion is the entire lake known to have frozen over from the New York shores to the Canadian shores over the full fifty miles of water. According to Terrot R. Glover and Delano Dexter Calvin, Lake Ontario is known to freeze "across its full width of fifty miles," though it does so "seldom."[76] "About four inches of ice will carry a horse."[77] For example, such a full freeze apparently occurred in February of 1934 and may have occurred, or at least nearly occurred, in 1874, 1893, and 1912.[78] Apparently, in 1920, the ice extended all the way from Rochester to Cobourg. It was rare for the entire lake to freeze over during the winter, and steamboats nevertheless did sometimes make wintertime lake trips through the ice when the ice was not too thick.[79] But the winter of 1829–1830 may have been one of those occasions when the entire lake froze over and navigation by boat was foreclosed by ice too thick to be broken by boats. Indeed, various contemporary reports mention the freezing and thawing of Lake Ontario during the winter of 1829–30.[80]

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76. See Glover and Calvin, *Corner of Empire*, 112.

77. See Glover and Calvin, *Corner of Empire*, 113.

78. See Gary May, "The Day the Lake Froze Over," *Watershed Magazine* (Winter 2008/2009), available at http://www.garymay.ca/article18.htm.

79. See, for instance, Henry O'Reilly, *Settlement in the West: Sketches of Rochester* (Rochester: William Alling, 1838), 83.

80. Regarding the freezing, see Kenneth A. Perry, *The Fitch Gazetteer: An Annotated Index to the Manuscript History of Washington County, New York,* 4 vols. (Bowie, Md: Heritage Books, 1999), 4:565; *Kingston Chronicle*, January 9, 1830, p. 2, col. 1 ("For the first time this season, the Bay was frozen across this morning"); *Kingston Chronicle*, January 30, 1830, p. 2, col. 6; *Republican Compiler*, February 23, 1830, p. 2, col. 5; David Stevenson, *Sketch of the Civil Engineering of North America* (London: John Weale, 1838), 69–70, who wrote, "The centre of the lakes, where the water attains a considerable depth, is not frozen every season, but a vast sheet of ice

Page, the one participant who leaves us an account, does not state when he and the other emissaries departed, stating only that "when" the revelation came, "we were to go to kingston."[81] How long the four emissaries tarried in Manchester before departing is not stated. Given the fact that the four emissaries reportedly had arrived in Manchester from their disparate residences before the revelation was received, it would seem reasonable to conclude that after Joseph Smith received the revelation they did not tarry long in Manchester before departing. Whitmer places the trip in January of 1830.[82] Larry E. Morris offers a "Book of Mormon Chronology" in which he dates the trip to Kingston as "circa January 1830."[83] Susan Easton Black and Larry C. Porter date the trip to Kingston as "in the winter of 1829–1830," though they do not supply a source or analysis substantiating that dating.[84]

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is annually formed round their margins. . . . In the year 1826, the ice at the margin of Lake Ontario was within a half an inch of being two feet in thickness"; John McTaggart, *Three Years in Canada: An Account of the Actual State of the Country in 1826–8,* 2 vols. (London: Henry Colburn, 1829), 1:67, who reported, "Sometimes towards the centre they will not freeze at all, unless the frost be very severe. The road for sleighs is, therefore, round the sides. . . . Often horses and sleighs will break smack through, sink beneath the ice, and be seen no more." See also *Kingston Chronicle*, April 3, 1830, p. 2, col. 6; (Bellows Falls) *Vermont Chronicle*, February 19, 1830, 31, issue 8, col. D (quoting the *Quebec Gazette*: "The Lake [Ontario] was frozen, and crossing had become general"); and see what appears to be a bit of hyperbole (and error) in "LAKE ONTARIO FROZEN OVER," (San Francisco) *Daily Evening Bulletin*, February 16, 1885, issue 111, col. F: "Hamilton, Ont., Feb. 15. Within the recollection of man Lake Ontario never before was frozen over. Where the lake is sixty miles wide there stretches a field of solid ice, but no man has dared to cross. In other winters the lake was frozen only in a sheltered strip along the shore, and a strong east wind would break up what is to-day a frozen sea. Fishermen in this neighborhood have not been able to lift their nets for thirty-three days."

Regarding the thawing, see *Kingston Chronicle*, April 3, 1830, p. 2, col. 6, stating: "The steamboat *Niagara* touched at this place on Thursday last [April 1, 1830], on her route from Prescott to York and Niagara. . . . The ice still lingers in our harbor—but looks so much exhausted that a final dissolution must soon take place." While the harbor ice then was nearly exhausted and near final dissolution, the passage of the *Niagara* on the lake outside the harbor (from Prescott, northeast of Kingston, to York, southwest of Kingston) indicates that by April 1, 1830, the lake otherwise would not be passable on foot or by sleigh or horse.

81. Page to McLellin, February 2, 1848.

82. Traughber, "False Prophecies."

83. Larry E. Morris, "Book of Mormon Chronology," Maxwell Institute Occasional Paper no. 5, http://mi.byu.edu/publications/papers/?paperID=9&chapterID=71. No citation or explanation is given to support the date "circa January 1830."

84. Black and Porter, "For the Sum of Three Thousand Dollars," 10 n. 36.

Dale R. Broadhurst[85] dates the trip ("to Toronto, Ontario, Canada to try and sell the rights for the printing of the Book of Mormon in Canada") as "1829 mid-July?"[86]

But before addressing the questions regarding the emissaries' arrival in Canada and their actions there, it will be good to examine certain legal issues central to the purpose of their journey.

What Is a Possible Meaning of the Phrase "Securing the Copyright"?

This section in this paper is necessarily lengthy for two reasons. First, the text of the revelation uses legal terminology relating to copyright law (the words *secure* and *copyright*) and those words are not commonly understood correctly. And second, some of the legal landscape relating to copyright law, both in the United States and Canada in 1830, has changed over the years. The BCR text quotes the Lord's statement that "it Pleaseth me that Oliver Cowderey Joseph Knight Hyram Pagee & Josiah Stowel shall do my work in this thing yea even in securing the <Copy> right" (with the word "Copy" interlineated above the line by Whitmer, apparently at the time of the original inscription). Because the words *securing* and *copyright* are legal terms, the following discussion necessarily must include discussion of then-contemporary legal principles and then-contemporary usage of the words. Doing so will help to place the phrase "securing the Copyright" in proper context. Concerning the text of the revelation itself, it is noteworthy that the text uses the definite article "the," suggesting that "the copyright" spoken of was something that already existed. As will be shown further below, though this sounds odd to us today, that precisely was the situation. Modern laymen generally use the word *copyright* and words related to it in colloquial fashion. Generally, at least until recently, we have thought that we must do something in order to "obtain" a copyright. In the case of a book, we have been conditioned to think that after writing a book we must "register" it for it to be "copyrighted." We have seen the "c-and-circle" symbol ("©") and have understood it to be some sort of evidence that we "have" a "copyright."

Those who are somewhat more sophisticated in their understanding know that prior to 1989, use of the copyright symbol ("©"), the abbreviation

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85. See Oberlin College Archives, "RG 30/294—Dale Broadhurst (1947–)," http://www.oberlin.edu/archive/holdings/finding/RG30/SG294/biography.html.

86. The Oliver Cowdery Pages, "Oliver Cowdery Chronology," http://oliver cowdery.com/history/Cdychrn1.htm. Mr. Broadhurst supplies no source for his assignment of this date. He also speculates that "their [Oliver Cowdery's and Hiram Page's] route of travel may have taken them near Cattaraugus Co., NY (where Oliver's brothers Warren and Dyar then lived)."

"Copr.," or the word "Copyright," followed by the year of the first publication of the work and the name of the copyright holder was required in the United States for some reason or another. And perhaps they know that in 1989, in enacting the Berne Convention Implementation Act, the use of such copyright notices became optional, though lack of use of one these marks would likely reduce damages in an infringement lawsuit (because use of such a notice could reduce an infringer's likelihood of success in asserting a defense of "innocent infringement"). But all of that is from times more modern than 1830.

In addition, people today generally think of "having" a copyright, which gives authors a "right to publish" their work. And if they have "secured" a copyright, people think they have "obtained" one. And, indeed, on June 11, 1829, the Prophet caused a printed copy of the title of the Book of Mormon to be filed in the office of the clerk of the United States District Court for the Northern District of New York. And the clerk of the district court thereupon issued a record of deposit attesting to the filing. But it is not strictly correct to refer to that record-of-deposit document as "the copyright" of the Book of Mormon or to think that, by virtue of having caused the recording of that document, the Prophet thereby "obtained" a copyright. If we employ an inaccurate understanding as a means of trying to understand the legal principles behind the simple language of the revelation, we may end up misunderstanding what this aspect of the revelation actually means.

It is helpful first to understand the fundamental meaning of the two legal words "copyright" and "secure" in order to more fully appreciate what the revelation probably means in telling the Prophet's four emissaries to be faithful in "securing the copyright" in all the world. "The revelations were not God's diction, dialect, or native language," historian Richard Bushman has written. "They were couched in language suitable to Joseph's time."[87] Indeed, as the Lord states in the revelation that was given as a preface to the Book of Commandments, "These commandments are of me & were given unto my Servents in their weakness *after the manner of their Language*."[88]

"Copyright." As laymen, we often think that word, all by itself, means the "right to copy." After all, the word *copyright* is comprised of those two words, *copy* and *right*. But that understanding is only partially correct.

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87. Richard Lyman Bushman with Jed Woodworth, *Joseph Smith: Rough Stone Rolling* (New York: Knopf, 2005), 174. See also Grant Underwood, "Revelation, Text, and Revision: Insight from the Book of Commandments and Revelations," *BYU Studies* 48, no. 3 (2009): 80–81.

88. Revelation, 1 Nov. 1831–B, in Jensen, Woodford, and Harper, *Manuscript Revelation Books*, 225 [D&C 1:24], italics added.

Actually, the word *copyright* can better be understood when one recognizes, first, that formerly it was two words (sometimes hyphenated, sometimes not, which then transitioned to being one word), and, second, that one of those words (*copy*) had a meaning different in 1830 from the meaning generally attributed to it today.

"Copy." Today, the word *copy* generally means second or subsequent manifestation of a book, document, or other writing or object, one that is exactly like or that duplicates, imitates, or is a transcription or reproduction of an original. But *copy,* in one additional sense, actually refers to *the original itself*, the original manuscript of a work, the thing to be imitated, the matter to be set in type or put on a printing plate. This usage is evident, for example, in the terms *copywriter,* one who writes original copy, usually for advertising, and *copy editor,* one who edits copy before publication. Thus, Noah Webster in 1828 (like others in later English dictionaries) gave three definitions of *copy*—the first two defining the term as we generally use it today, and the third being the one that interests us here because it stands as a core part of the word *copyright.* Webster's third definition is: "An original work; the autograph; the archetype. Hence, that which is to be imitated in writing or printing. Let the child write according to the copy. The copy is in the hands of the printer. Hence, a pattern or example for imitation. His virtues are an excellent copy for imitation." This older sense is commonly described in the legal literature. For example, in 1912, Richard Rogers Bowker explained:

> COPYRIGHT (from the Latin *copia*, plenty) means, in general, the right to copy, to make plenty. In its specific application it means the right to multiply copies of those products of the human brain known as literature and art.
>
> There is another legal sense of the word "copyright" much emphasized by several English justices. Through the low Latin use of the word *copia*, our word "copy" has a secondary and reversed meaning, as the pattern to be copied or made plenty, in which sense the schoolboy copies from the "copy" set in his copy-book, and the modern printer calls for the author's "copy."
>
> Copyright, accordingly, may also mean the right in copy made (whether the original work or a duplication of it), as well as the right to make copies, which by no means goes with the work or any duplicate of it.[89]

Thus, for example, the United States Supreme Court, in 1834, could say, "In England, beyond all question, an author had, at common law, the sole and exclusive property in his copy" and "the opponents of literary property

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89. Richard Rogers Bowker, *Copyright: Its History and Its Law* (Boston: Houghton Mifflin, 1912), 1.

insisted, that an author had no natural right to his copy."[90] The original manuscript and the printer's manuscript of the text of the Book of Mormon constituted the Prophet's "copy." In it he possessed certain "rights."

"Right." This word is pretty much understood today as it was in Joseph's day. But the way the word *right* combines with the word *copy* to form the legal word *copyright* reminds us (1) we are only partially correct when we think the nature of an author's right is a "right to make copies" of a work, and (2) we are correct when we speak of an author's right as intangible property and technically incorrect (at least legally) when we speak of a copyright as a tangible piece of paper. As to the concept of a "right to make copies," an author does not enjoy simply a right to make copies (though surely an author does), but, more importantly, an author enjoys the right to exclude others from making copies. It is a negative right. And it is a right that exists from the moment of creation of the "copy"; in other words, the Prophet possessed a copyright in each page of his manuscript from the moment he caused each page to be inscribed. Thus, for example, Webster defines *copyright* not as the right to make copies but, rather, as "the *sole* right which an author has in his own original literary compositions; the *exclusive* right of an author to print, publish and vend his own literary works, for his own benefit; the like right in the hands of an assignee."[91] It is what is known as an "exclusive right"[92] (a right to exclude others); a "right to *exclusive* publication"[93] (a right to exclude others from publishing). Apart from dictionary definitions, legal doctrine too, of course, recognized that the right involved is a right to exclude others from publishing and profiting from an author's or proprietor's copy. Case opinions routinely state that "copyright is, in fact, only a negative right to prevent the appropriation of the labours of an author by another."[94]

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90. *Wheaton v. Peters*, 33 U.S. 591, 656 (1834). It is of no importance, in the United States, that both prior to and after *Wheaton* and, indeed, for two hundred years in Britain after *Donaldson v. Beckett* (1774) it was apparently erroneously believed—a "myth"—that there existed "perpetual common law copyright in the author's unpublished manuscript." See Ronan Deazley, "Commentary on Donaldson v. Becket (1774)," in *Primary Sources on Copyright (1450–1900),* ed. L. Bently and M. Kretschmer, http://www.copyrighthistory.org/cgi-bin/kleioc/0010/exec/ausgabeCom/%22uk_1774%22. In the United States, the question had not been decided prior to 1834.

91. Webster, *American Dictionary,* s.v. "copyright"; italics added.

92. *Oxford English Dictionary*, 2d ed. (1989), s.v. "copyright."

93. *American Heritage Dictionary of the English Language*, 4th ed. (2006), s.v. "copyright"; italics added.

94. See, for example, *Alfred Bell & Co. v. Catalda Fine Arts*, 191 F.2d 99, 103 n. 16 (2d Cir. 1951).

An author's "right in his copy" is, of course, intangible. While the "copy" is tangible, the "right" is not. As to the intangible nature of copyright, the word *right* refers to a "just claim; legal title; ownership; the legal power of exclusive possession and enjoyment" and a "just claim by courtesy, customs, or the principles of civility and decorum."[95] And thus a copyright necessarily is "an intangible, incorporeal right."[96] For example, the June 11, 1829, document executed by Richard Ray Lansing, memorializing the deposit of the title of the Book of Mormon, is *evidence* of a copyright, even though technically (legally speaking) the document is not the copyright itself (though it is not inappropriate to speak of it that way in nonlegal terms).

What "Copyright" Did the Revelation Ask the Emissaries to Help "Secure"?

The revelation speaks of "the" copyright that the brethren are to help "secure" in all the world. Regardless what steps the Prophet had already taken to "secure" a copyright in the United States pursuant to United States statutes, what was "the" copyright that the emissaries were to secure in Canada according to the laws of the United Kingdom and elsewhere in the world? Answers can be gleaned from an understanding of the differences and similarities between an author's *prepublication common-law* copyright and an author's or proprietor's *postpublication statutory* copyright.

The right the Prophet had in his "copy" from the moment he first inscribed words on his copy (manuscript) was a prepublication "copy right" recognized by the common law—law that exists independent of the statutes. An author's prepublication right in his copy, of course, was reflected in statutory law but did not derive from statutory law. The nature of an author's prepublication rights can be seen in how the law dealt with the question of the *duration* of the author's common-law prepublication right in his copy.

Prior to publication, an author's right to control his copy was, and continued to be, viewed as a right existing in perpetuity, one that could be exercised without limitation of time and that would expire only when the author first published the work.

> Common law copyright is premised on a natural law conception of intellectual property that endows the author with a perpetual and absolute right to do with his creation as he pleases. It traces its origin to England's Statute of Anne, which destroyed the common bookseller's printing monopoly by making the author rather than the bookseller the initial owner of a copyright of limited duration. In limiting copyright as an

95. Webster, *American Dictionary*, s.v. "right."
96. 3 *Nimmer on Copyright* (1982) at § 12.01[C].

> instrument of monopoly, the Statute of Anne endeavored to eradicate censorship and to promote human advancement by securing public access to a plentitude of learning materials. However, a gaping loophole remained with respect to the rights of authors: the Statute did not protect a work between the time of its creation and publication. Filling this gap, common law copyright bestowed an absolute right to exclude the world up to the point of publication.[97]

Underlying the question of duration of copyright was the philosophical question, argued in England in the 1700s, whether some form of literary property (or property right in a creation of literature) had existed from time immemorial. That is, did that intangible property right exist at common law (prior to the enactment of the Statute of Anne)? If so, it was argued, the Statute of Anne could not have—or ought not be viewed to have—destroyed the right. The Statute of Anne, it was argued, either "secured" or "vested" a copyright of fourteen years to "the author of any work." Did that serve to destroy a perpetual copyright that had existed prior to the 1710 enactment of the Statute of Anne? In other words, once an author published a work and relinquished the prepublication perpetual copyright, did the author regain that right once the statutory period expired?

The debate over that question went on for decades. But, importantly, that debate took place in the United Kingdom. And it pertained to a statute that was enacted in the United Kingdom decades after colonies like New York and Pennsylvania had come into existence, inheriting in their creation portions of the common law of England. Questions pertaining to the perpetuity of a copyright (and whether a copyright was, on the one hand, legislatively "created" or "vested" in an author or, on the other hand, legislatively "secured" to an author) were not authoritatively decided in America until the United States Supreme Court ruled in an opinion published in 1834 (and the question had not even presented itself in court until that case was filed in 1831), all taking place subsequent to the time the Book of Mormon was first published. An understanding of the history of and arguments presented in that 1831–1834 litigation both is crucial to understanding what steps the Prophet (and the law) may rightly have considered essential to securing a United States statutory copyright in 1829 and 1830

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97. Justin Graham, "Preserving the Aftermarket in Copyrighted Works: Adapting the First Sale Doctrine to the Emerging Technological Landscape," *Stanford Technology Law Review* 1 (2002): par. 37, http://stlr.stanford.edu/STLR/Articles/02_STLR_1. For further information about the Statute of Anne and the history of British copyright law, see Edward L. Carter, "'Entered at Stationers' Hall': The British Copyright Registrations for the Book of Mormon in 1841 and the Doctrine and Covenants in 1845," herein.

and helps in understanding the nature of the prepublication common-law copyright an author enjoyed independent of and prior to taking steps to secure a statutory copyright both in the United States and in Canada.

In 1831, a man named Henry Wheaton filed a bill in equity in the United States Circuit Court for the Eastern District of Pennsylvania. From 1816 to 1827, Wheaton had served as the third Reporter of Decisions of the Supreme Court of the United States, and during his tenure in office he had compiled and published the opinions of the Court, including lengthy annotations and summaries of the arguments made in Court. But all of this useful material made his twenty-four volumes of reports too costly for most lawyers. He was succeeded in office by Richard Peters, who looked at Wheaton's work and decided to eliminate from the volumes all of the arguments and annotations. Peters thus produced a six-volume abridged edition. Though Wheaton had received a salary for his government work, he had sought to cover the expenses of preparing the voluminous reports by selling them. Peters's abridged edition devastated Wheaton's market. So Wheaton sued Peters, claiming copyright infringement. The case was decided by Circuit Judge Joseph Hopkinson in 1832. Wheaton lost.[98]

Judge Hopkinson ruled that copyright within the United States was purely the creation of the Congressional statutes of 1790 and 1802. The judge held that in order for an author to receive copyright protection, the author must comply with all of the federal statutory requirements of depositing a printed copy of the title of the book "in the clerk's office of the district where he shall reside"; of publishing the clerk's record of deposit "in one or more newspapers for four weeks"; and "within six months after the publishing thereof, [of] deliver[ing] or caus[ing] to be delivered to the secretary of state a copy of the same to be preserved in his office." A factual question arose as to whether that last act had been accomplished; a legal question arose as to whether that act was actually even required in order for Wheaton to prevail.

Judge Hopkinson ruled that there was no federal common law, that one must look to the states and, even then, that the states did not necessarily adopt the entire English common law—assuming there was an English common law of copyright to have been adopted. The state law the judge looked to was Pennsylvania's law, and in it he saw nothing that afforded protection to Wheaton. Wheaton then appealed to the United States Supreme Court.

In the Supreme Court, Wheaton was represented by Elijah Paine and Daniel Webster. There, again, Wheaton lost. The court affirmed Judge Hopkinson and stated, regarding the United States statute, "Congress, then, by

98. *Wheaton v. Peters*, 29 Fed. Cases 862 (No. 17,486) (C.C.E.D. Pa. 1832).

this act, instead of sanctioning an existing right, as contended for, created it."[99] The highest court essentially ruled that the federal statute created a right in an author to be able to exclude others from copying the author's work postpublication. But in the process of reaching this decision, the court also reaffirmed the existence and nature of the author's prepublication right. The court ruled that indeed the common law undoubtedly protects the right to one's *unpublished* writings—for example, a diary, personal letters, a manuscript for a book—but "this is a very different right from that which asserts a perpetual and exclusive property in the future publication of the work, after the author shall have published it to the world."[100]

This ruling, together with the arguments leading up to it, is important to understanding the situation faced by Joseph Smith and any others who published books within the United States prior to the 1834 decision in the *Wheaton* case.[101] Webster had argued that Pennsylvania recognized an author's prepublication right in his copy (his manuscript). In this, he was held to be correct. And, as shown further below, the same was true under New York law.

As to the question of a limited-time, postpublication monopoly granted under the federal copyright statute, Webster also argued and was fully justified in arguing—for the court had not yet ruled—that a distinction existed between "conditions precedent" and "conditions subsequent." When the statute imposed conditions for authors seeking to "secure" a copyright, some conditions, even if not met, were not essential to an author's success in securing a copyright. And though Webster and his co-counsel, Mr. Paine, would lose on this point, it is significant that it was still an undecided, arguable point in 1829 and 1830, and therefore just as much a valid view of "the law" as not.

At issue in the *Wheaton* case was whether the deposit in the office of the secretary of state was a condition precedent or a condition subsequent. Webster and Paine argued, in essence, that certain requisites were required of the author in order to assert a postpublication right to a work. But failing to comply with a requisite did not destroy the copyright if a requisite was not a condition precedent. Mr. Paine argued as follows:

> The publication of the record in the newspapers, and the delivery of the copy to the secretary of state, are not made conditions precedent at all by the acts of congress, or if at all, only as to the right to the security provided by the acts. A non observance of the statutory directions in these particulars, does not deprive the author of the ordinary remedies by an

99. *Wheaton v. Peters*, 33 U.S. 591 at 660–61.
100. *Wheaton v. Peters*, 33 U.S. 591 at 658.
101. *Wheaton v. Peters*, 33 U.S.

> action on the case and bill in equity. Besides, the publication of the record, and delivery of the copy, were at most intended only as a means of notice of the author's right; and actual notice, in this case abundantly shown, dispenses with those modes of constructive notice. . . .
>
> The month which may elapse after the right attaches, and before publication, and the six months before depositing the copy; show, that these things are not conditions precedent.[102]

In short, if in 1834 at oral argument this was a reasonable contention, surely in 1829 and 1830 it was a reasonable contention also.

Thus, while it may be entirely accurate to state that "Joseph Smith could have successfully asserted copyright protection regarding the Book of Mormon before" the book's publication, relying on common-law copyright protection that he enjoyed for his as-yet unpublished work,[103] it is probably also appropriate to assert, as Nathaniel Wadsworth cautiously suggests, that the Prophet "may well have fallen short regarding the fourth and fifth [statutory] requirements" (of publishing the clerk's record in one or more newspapers printed in the United States for four weeks, and of delivering a copy of the book to the secretary of state), and thus may not have satisfied completely the federal requirements "to secure a copyright in the Book of Mormon."[104] To that we could add, that should be of no concern, for in 1829 and 1830, the law was not yet settled that the acts of newspaper publication and deposit with the secretary of state were conditions precedent.

Thus, as of March 26, 1830, the date of publication of the Book of Mormon in the United States, the question had not yet been resolved exactly what was required for an author to secure a postpublication statutory copyright. As far as legitimate legal arguments went prior to 1834, only the first act—of depositing with the clerk of the district court (which Joseph had satisfied)—was a condition precedent.[105]

And as to the existence of an author's prepublication common-law copyright, said Justice Thompson in his dissent in *Wheaton* (a statement that could just as easily be said to have been the law prior to the Court's 1834 issuance of the *Wheaton* opinion):

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102. *Wheaton v. Peters*, 33 U.S. 591 at 607–8.

103. Wadsworth, "Copyright Laws and the 1830 Book of Mormon," 81.

104. Wadsworth, "Copyright Laws and the 1830 Book of Mormon," 81, 84.

105. The *Wheaton* courts (Circuit and Supreme) did not address the question of whether the second statutory requirement (causing the copy of the clerk's record of deposit at full length in the title-page or in the page immediately following it) was or was not a condition precedent to securing a copyright, for in *Wheaton* that act had indisputably been performed and no issue of fact or of law pertaining to it was raised or decided.

> It is very clear that, previous to the statute of Anne, the perpetual common law right of authors, was undisputed. That after that statute, in the case of Miller v. Taylor, it was held, that this common law right remained unaffected by the statute, which only gave a cumulative remedy. That the subsequent case of Donaldson v. Beckett, limited the right to the times mentioned in the statute. But that for all violations of the right during that time, all the common law remedies continued, although no entry of the work at Stationers Hall had been made, according to the provisions of the statute. Such entry being necessary, only for the purpose of subjecting the party violating the right, to the penalties given by the act.[106]

As applied to Joseph Smith in January 1830, this would mean that he indeed had every right to confront Abner Cole, both on account of his author's prepublication common-law copyright and on account of the fact that he had taken the one step, perhaps the only truly necessary step, in the process of securing his postpublication federal statutory copyright, which may well explain why Cole lost the arbitration and acquiesced. And because the Cole incident occurred prior to the publication of the Book of Mormon, it was not the Prophet's apparently already-secured postpublication statutory copyright he enforced, but his prepublication common-law copyright, one he enjoyed from the moment his scribes put pen to manuscript.

The major point to be understood regarding the Prophet's prepublication right is that once the manuscripts of the Book of Mormon had been written, a prepublication common-law author's copyright already thereby existed ("subsisted"), and would subsist indefinitely until the book was first published, a right enforceable in law without reference to any statute and without need to comply with any statutory requirements that otherwise pertain to postpublication protections—such as the requirements of registration (deposit) of the title, publication of notice in a newspaper, and the like.[107] Under the common law, "the property of an author . . . in his intellectual creation [was] absolute until he voluntarily part[ed] with the same."[108] Under the common law of New York, "an author retains his right in his manuscript until he relinquishes it by contract, or some unequivocal act indicating an intent to dedicate it to the public. An unqualified publication by printing and offering for sale is such a dedication."[109]

> The author of a literary work or composition has, by law, a right to the first publication of it. He has a right to determine whether it shall be published

106. *Wheaton v. Peters*, 33 U.S. 591 at 680.

107. These are discussed in excellent fashion in Wadsworth, "Copyright Laws and the 1830 Book of Mormon," 77–91.

108. *American Tobacco Co. v. Werckmeister*, 207 U.S. 299 (1907).

109. *Palmer v. De Witt*, 47 N.Y. 532, 543 (1872).

> at all, and if published, when, where, by whom, and in what form. This exclusive right is confined to the first publication. When once published it is dedicated to the public, and the author has not, at common-law, any exclusive right to multiply copies of it or to control the subsequent issues of copies by others. The right of an author or proprietor of a literary work to multiply copies of it to the exclusion of others is the creature of statute. This is the right secured by the "copyright" laws of the different governments. It is said by Yates, J., in *Miller v. Taylor* (4 Burr. 2303, 2379), "that it is certain that every man has a right to keep his own sentiments if he pleases; he certainly has a right to judge whether he will make them public, or commit them only to the sight of his friends. In that state, the manuscript is, in every sense, his peculiar property, and no man can take it from him, or make any use of it which he has not authorized, without being guilty of a violation of his property; and as every author or proprietor of a manuscript has a right to determine whether he will publish it or not, he has a right to the first publication, and whoever deprives him of that priority is guilty of a manifest wrong, and the courts have a right to stop it."[110]

Thus, in the Prophet's case, in addition to whatever perpetual copyright he may have held under English common law applicable in the Canadian provinces of the British empire, New York common law would also have recognized that his prepublication written expression constituted "property" that belonged "exclusively" to him until publication (and then statutory rights would be recognized postpublication upon compliance with statutory requirements).[111] Thus, if the Prophet's emissaries went to Canada prior to the Palmyra publication of the Book of Mormon on March 26, 1830, "the" copyright the Prophet at that time enjoyed was a common-law, prepublication copyright. The emissaries would have been able to "secure" in Canada a postpublication copyright under British law by compliance with whatever procedure the law there required, as will be discussed below. And if the emissaries went to Canada after March 26, 1830, the common-law right arguably no longer existed *within the United States (more specifically, within New York and by virtue of the New York common law)* and the right that the emissaries would secure in Canada would not be the Prophet's United States statutory copyright but a Canadian copyright (or more precisely, a United Kingdom copyright).

This is not to say that the statutes of the United Kingdom or of the United States ignored the existence of the common-law copyright; rather, the opposite is true. Indeed, starting in 1790, an author's prepublication right to exclude others from publishing his work continued to enjoy protection even under the United States copyright statutes (which otherwise were for

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110. *Palmer v. De Witt*, 47 N.Y. (1872) at 536–37.

111. *Folsom v. Marsh*, 9 Fed. Cas. 342, 346 (C.C.D. Mass. 1841).

the most part concerned with protection postpublication), which statutes actually did provide protection during the prepublication period apart from the common law. The U.S. Copyright Act of 1790 contained a section providing that any person printing or publishing an author's *manuscript* without the consent of the author or the assignee "shall be liable" for all damages caused by such a publication.[112] In 1841, Justice Story concluded that the law of 1790 had recognized, "by implication to the author, or legal proprietor of any *manuscript* whatever, the sole right to print and publish the same."[113]

Thus, the Prophet already possessed a copyright prior to March 26, 1830, when the Book of Mormon was published, and indeed prior to June 11, 1829, when he caused the clerk of the district court to record the fact that a printed copy of the title of the Book of Mormon had been deposited in the clerk's office. The Prophet's copyright subsisted since the moment his clerks inscribed the Book of Mormon text on the manuscript pages. And from the moment of depositing the title of the Book of Mormon with the clerk of the federal court, the Prophet arguably had perfected his federal statutory copyright, which he would begin to enjoy from the moment of the work's publication. But of the two, it seems that it is the prepublication copyright that is the subject of the Canadian copyright revelation. The postpublication statutory copyright was a creature of United States federal law; it existed only within the boundaries of the United States. But the Prophet's common-law author's prepublication copyright existed everywhere (because it was "property" and was recognized as such everywhere, including in Canada). It was intangible personal property, to be sure, but property nonetheless, property that the Prophet was free to secure, transfer, assign, or sell as he saw fit. And the revelation enjoined his representatives to take steps to help "secure" it in all the world.

"Secure." As is the case with many words, the term *secure* has several definitions, two of which are relevant to the Canadian copyright revelation: "to obtain" and "to protect." Many who have discussed the circumstances surrounding the Canadian copyright revelation have spoken helpfully by using general, nonlegalistic, understandable terms about the "securing" of the copyright, referring to the act the Prophet accomplished on June 11, 1829, as one whereby he "applied" for and "obtained" a copyright in the clerk's office of the United States District Court for the Northern District of New York. This is understandable. This looks to one definition of the word *secure* in the sense of "to obtain." However, now that we have access to the text of the revelation and see that it employs the law-related terms *copy right* and

112. See Copyright Act of 1790, ch. 15, § 6, 1 Stat. 124, 125 (1790).

113. *Folsom v. Marsh*, 9 Fed. Cas. 342, 347 (C.C.D. Mass. 1841); italics added.

secure, we should probably deal more strictly with what the law required in order to be clear about what it was that the Prophet actually did on June 11, 1829, whether his act did or did not constitute either "securing" or "applying" for a copyright. We should also examine what exactly Joseph's four emissaries were to accomplish in Canada in their attempt at "securing the Copyright" there.

It is commonly said that on the day the Prophet caused the record of deposit to be recorded, and by virtue of that act, he "secured" or "obtained" the copyright in the Book of Mormon. Such terminology is accurate if the word "secured" is understood as referring to the postpublication, statutory copyright the Prophet ultimately sought. Depositing the printed copy of the title was one step in the attempt to "secure" or, as it were, "obtain" *that* copyright protection.

But in a more technical, legal sense, it is more accurate for the word *securing,* when it is used in the text of the revelation, to be understood in the sense not of "obtaining" but of "protecting" or "recognizing." The term *securing* is used twice in the revelation. First, the Lord commends those who have assisted Joseph in the work and charges them to "be diligent in Securing the Copy right of my work upon all the face of the Earth." Since the prepublication copyright already existed, this statement should probably be understood to mean that the four men to whom the revelation was directed were to secure, or protect, that copyright in some way.

Later in the revelation, the Lord says, "Behold I say unto you that I have covenanted & it Pleaseth me that Oliver Cowderey Joseph Knight Hyram Pagee & Josiah Stowel shall do my work in this thing yea even in securing the <Copy> right . . . & I grant unto my servent a privilege that he may sell <a copyright> through you speaking after the manner of men for the four Provinces." From this dual statement, it appears that the four men were to travel to Canada to secure *the* copyright (the prepublication copyright that already existed under both U.S. and Canadian law) and accomplish this by selling *a* copyright (presumably either an interest in his prepublication common-law copyright or a postpublication copyright in Canada), as the following two sections substantiate.

Securing a State Common-Law Copyright Formerly in New York State. Common-law copyright protection arises as a matter of state law. The common law insured perpetual copyright protection prior to publication, and a party seeking common-law protection derives such protection from the common law of the state.[114] The first New York State Constitution

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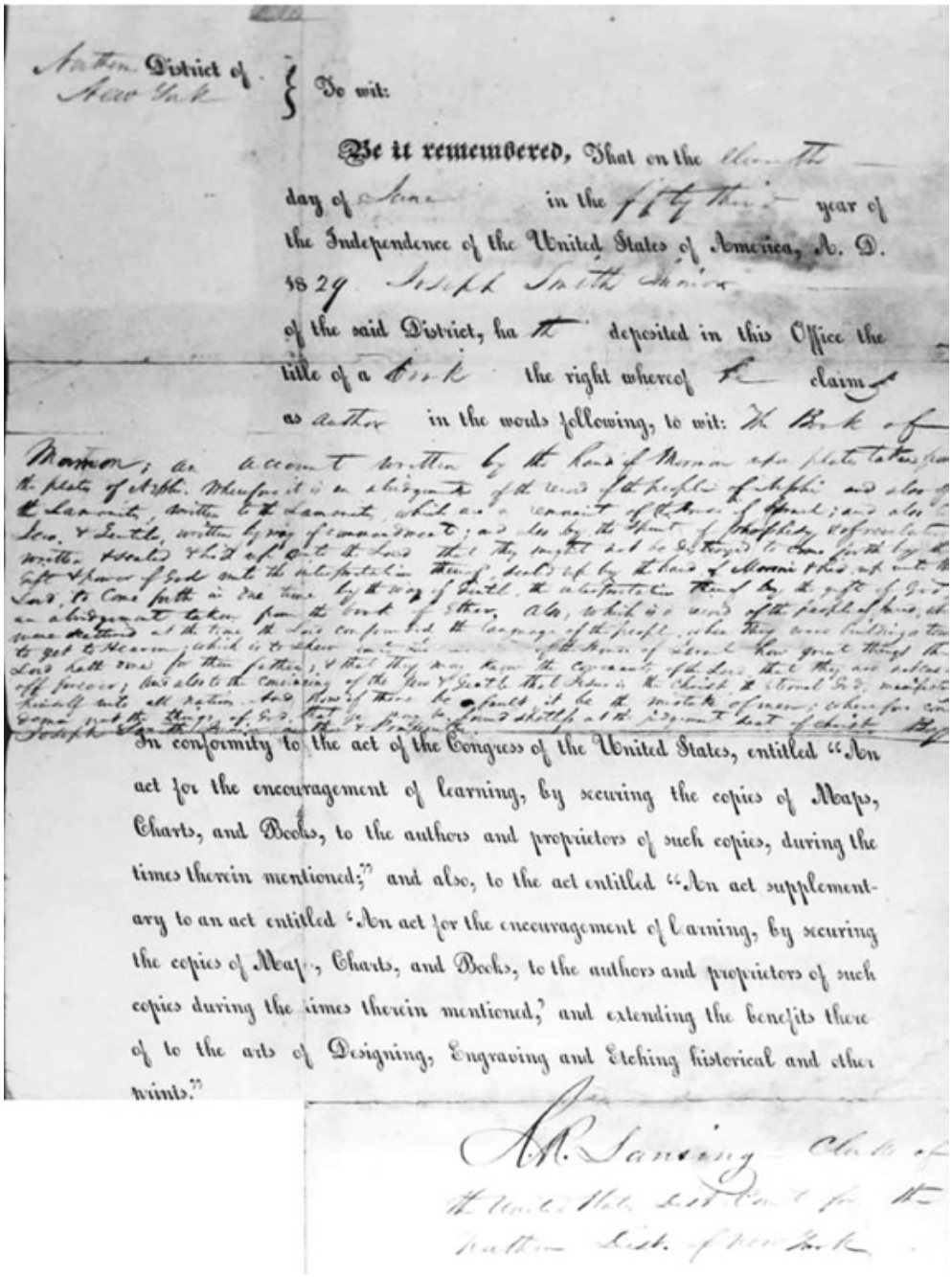
114. See *Wheaton v. Peters*, 8 Pet [33 U.S.] at 658. Apart from seeking relief under the federal copyright, the plaintiff in *Wheaton* argued the existence of a



Northern District of New York } To wit:

Be it remembered, That on the [illegible] day of June in the fifty third year of the Independence of the United States of America, A. D. 1829 Joseph Smith Junior of the said District, has deposited in this Office the title of a Book the right whereof he claims as author in the words following, to wit: "The Book of Mormon; an account written by the hand of Mormon upon plates taken from the plates of Nephi. Wherefore it is an abridgment of the record of the people of Nephi and also of the Lamanites, written to the Lamanites, which are a remnant of the House of Israel; and also to Jew & Gentile, written by way of commandment; and also by the spirit of prophecy & revelation. Written & sealed & hid up unto the Lord that they might not be destroyed; to come forth by the gift & power of God unto the interpretation thereof, sealed up by the hand of Moroni & hid up unto the Lord, to come forth in due time by the way of Gentile. The interpretation thereof by the gift of God. An abridgment taken from the Book of Ether. Also, which is a record of the people of Jared, which were scattered at the time the Lord confounded the language of the people, when they were building a tower to get to Heaven; which is to show unto the remnant of the House of Israel how great things the Lord hath done for their fathers; & that they may know the covenants of the Lord, that they are not cast off forever; and also to the convincing of the Jew & Gentile that Jesus is the Christ, & Eternal God, manifesting himself unto all nations. And now if there be fault it be the mistake of men; wherefore condemn not the things of God, that ye may be found spotless at the judgment seat of Christ." By Joseph Smith Junior Author & Proprietor

In conformity to the act of the Congress of the United States, entitled "An act for the encouragement of learning, by securing the copies of Maps, Charts, and Books, to the authors and proprietors of such copies, during the times therein mentioned;" and also, to the act entitled "An act supplementary to an act entitled 'An act for the encouragement of learning, by securing the copies of Maps, Charts, and Books, to the authors and proprietors of such copies during the times therein mentioned,' and extending the benefits there of to the arts of Designing, Engraving and Etching historical and other prints."

A. R. Lansing Clerk of the United States Court for the Northern Dist. of New York

The Prophet's copy of the clerk's record of deposit of the title of the Book of Mormon in the office of the United States Court for the Northern District of New York, evidencing the Prophet's compliance with the first and perhaps only mandatory requirement to secure federal postpublication copyright protection. Courtesy Church History Library, © Intellectual Reserve, Inc.

in 1777 permitted the continuation of colonial common law, derived from English common law. One such principle was that the creator of a literary work was entitled to perpetual common-law copyright protection in the absence of abrogation by statute.[115] The New York State Legislature acted to supplant postpublication common-law copyright protection when it passed a statute in 1786 "to promote literature."[116] The statute restricted the copyright protection an author of a literary work could receive after first publication for up to twenty-eight years. This statute was superseded by Congress in 1790 when the first national copyright act was enacted.[117] Consistent with the statutory abrogation rule, the Court of Appeals of New York established that New York common law would provide copyright protection to a literary work up to the point that federal law governed—namely, from and after publication.[118] An author's perpetual prepublication common-law copyright (to be the first and only to publish the work) persisted unaffected.

Securing a Copyright Formerly in the Canadian Provinces. The law of copyright applicable in the Provinces of Canada in the 1829–1830 era depended not at all, of course, on the provisions of copyright law as they may have existed in the United States. While in the United States, the

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common-law copyright upon which relief might be granted. He pointed to the words "by securing" in the federal copyright clause (U. S. Constitution, art. I, § 8, cl. 8) and argued that because the word "secure" signifies "to protect, insure, save and ascertain," it follows that the use of the term *in the Constitution* indicated an intention not to originate or create a right but, rather, to protect one already in existence. Although in 1834 (after publication of the Book of Mormon) the Supreme Court rejected the argument and held that the term "by securing" referred to the securing of a future right, not an existing right, the Court nevertheless did acknowledge the existence of common-law copyright in unpublished manuscripts. And as to the question of the existence of a common-law copyright law in Pennsylvania that would protect an author postpublication, the majority opinion in *Wheaton* has been criticized for its "unpersuasive analysis of Pennsylvania common law." 1 *Nimmer on Copyright* § 4.03, at 4–18.

115. See James Madison, *Federalist,* no. 43. See also John F. Whicher, "The Ghost of Donaldson v. Beckett: An Inquiry into the Constitutional Distribution of Powers over the Law of Literary Property in the United States," *Bulletin of the Copyright Society of the U.S.A.* 9 (December 1961): 131–43; Joseph Taubman, *Copyright and Antitrust* (New York: Federal Legal Publications, 1960), 9, 14.

116. L 1786, ch 54.

117. See Act of May 31, 1790, reprinted in Thorvald Solberg, comp., *Copyright Enactments, 1783–1900*, Library of Congress, Copyright Office, Bulletin no. 3 (Washington, D.C.: Government Printing Office, 1900), 30–32.

118. See, for example, *Jewelers' Mercantile Agency v. Jewelers' Weekly Publ. Co.*, 155 N.Y. 241 (1898) at 247; see also *Palmer v. De Witt*, 47 N.Y. 532 (1872) at 536; *Estate of Hemingway v. Random House*, 23 N.Y.2d 341 (1968) 346.

"securing" of a copyright under the statutes has entailed, to some degree or another, a requirement of registration, whether such a requirement existed in the Canadian Provinces in 1829–1830 must be determined by reference to the law in effect then and there, and both common-law copyright protection and statutory protection existed in Upper Canada and the other provinces in 1830 (and as to the latter, statutory form of protection, notably, the registration requirement—the United Kingdom's requirement of registration of a title in the records at Stationers' Hall,[119] upon which the United States fashioned its deposit-with-the-clerk requirement—was not yet applicable in any of the Canadian provinces).

Under common law in Canada, that an author enjoyed rights in a manuscript prior to publication is clearly both an underlying premise of and the subject of express statement of rationale in *White v. Geroch.*[120] There Chief Justice Abbot held that the English Copyright Act 1814 did not impose upon authors as a condition precedent to their deriving any benefit under that act that the composition should be first printed, and therefore an author did not lose his copyright by selling his work in manuscript before it was printed. One cannot talk of "losing" a copyright "in a manuscript before it is printed" unless a copyright indeed subsists in a manuscript before it is printed. Expressly stated, Chief Justice Abbot said that "the object of the Legislature [in enacting the Statute of Anne] was, to confer upon authors, by the Act in question, a more durable interest in their compositions, than they had before. . . . The 8 Anne. c. 18, gave to authors a copyright in works not only composed and printed, but composed and not printed; and I think that it was not the intention of the Legislature . . . to abridge authors of any of their former rights."[121]

Nevertheless, when fully considered, the cases, both in England and in America, long have recognized that

> an author has, at common law, a property in his intellectual production before it has been published, and may obtain redress against anyone who deprives him of it, or, by improperly obtaining a copy, endeavors to publish or to use it without his consent. The right still exists, *independent of all statutes concerning copyrights*, although in the United States, this common-law right for a long time [was] recognized and continued in force by express provision in the copyright acts. In England, by the Copyright Act of 1911, the common-law copyright in unpublished works [was] abrogated, and all rights [were required to be] claimed under the statute and

119. For a more complete discussion of British copyright law, particularly the role of Stationers' Hall, see Carter, "'Entered at Stationers' Hall,'" herein.

120. *White v. Geroch* (1819) 2 B & Ald 298; 1 Chit 24; 106 ER 376.

121. *White v. Geroch* (1819) 2 B & Ald 298, pp. 300–1.

> [were] only such as the statute [gave]. The act, however, [gave] copyright in unpublished works.[122]

Noteworthy, again, is the fact that, unlike the situation with the securing of a federal copyright in the United States pursuant to United States federal statute, "authors, according to common law, had the exclusive right to the first publication for perpetuity, but the right was annulled once the work was published." In other words, for a common-law prepublication copyright to subsist in the Canadian Provinces, the author need do nothing more than to fix the text of his work in a tangible medium (that is, put pen to manuscript). The author and his assigns secure or protect that right by acting in conformity with the conditions of its existence, namely, by diligently forbidding publication of the manuscript[123] by others prior to the time the author directs.

Moreover, the Statute of Anne (1709) provided for statutory copyright protection in Upper Canada, Lower Canada, New Brunswick, and Nova Scotia, the "four provinces"[124] of Canada. In 1831, two residents of Kingston, Upper Canada, both printers, office holders, and justices of the peace—James Macfarlane, publisher of the *Kingston Chronicle*, and Hugh Christopher Thomson, publisher of the *Upper Canada Herald*—"took upon themselves the risk and responsibility of publishing" *The Statutes of the Province of Upper Canada; Together with Such British Statutes, Ordinances of Quebec, and Proclamations, as Relate to the Said Province*.[125] Thus was published by two private parties what was advertised as "a faithful transcript of the Provincial

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122. William B. Hale, "Common-Law Rights," in William Mack and William Benjamin Hale, "Copyright and Literary Property," vol. 13 of *Corpus Juris* (New York: American Law Book Co., 1917), 947, § 4, italics added. The tense of the verbs is changed in the quotation to accommodate the fact the work cited was published in 1917.

123. The material to which the prepublication common-law copyright applied could expand as the amount of material added to the manuscript expanded. See *Cary v. Longman* (1801) 1 East. 358; 3 Esp. 273; 102 ER 138 (holding that if an author makes very considerable additions to a work before printed, he obtains a copyright in the additions, and can maintain an action for an infringement of it). Thus, the text to which the Prophet's prepublication common-law copyright applied expanded over time as he continued to dictate text for inclusion in the manuscript.

124. Although from 1713 to 1867 and 1784 to 1867, respectively, Nova Scotia and New Brunswick were *colonies* in the British Empire, it was not uncommon to refer to them as "provinces"; see, for example, 6 Geo. IV. c. 59 (1826), par. xiii.

125. James Nickalls Jr., *The Statutes of the Province of Upper Canada; Together with Such British Statutes, Ordinances of Quebec, and Proclamations, as Relate to the Said Province* (Kingston, Upper Canada: Hugh C. Thomson and James Macfarlane, 1831), "Advertisement" after title page and preceding page 1.

Laws, as they have, from time to time, been printed by authority."[126] The publication sets forth "such British Statutes, Ordinances of Quebec, and Proclamations, as Relate to the Said Province." The contents of this publication and of a few references in the newspapers they published present an interesting background for the 1830 revelation.

The second of the "British Statutes" reprinted in the *Statutes of the Province of Upper Canada* was "an act for making more effectual provision for the government of the province of Quebec in North America,"[127] paragraph 18 of which provided

> that nothing in this act contained shall extend, or be construed to extend, to repeal or make void, within the said province of Quebec, any act or acts of the parliament of Great Britain heretofore made, for prohibiting, restraining, or regulating the trade or commerce of his Majesty's colonies and plantations in America; but that all and every the said acts, and also all acts of parliament heretofore made concerning or respecting the said colonies and plantations, shall be, and are hereby declared to be in force within the said province of Quebec, and every part thereof.[128]

And while the compilation did not contain the text of any of the British statutes dealing with copyright, nor did it set forth any of the others of the thousands of British statutes that did not specifically "relate to the said province," it did contain the text of a then-recently enacted Canadian statute, passed in 1826, titled "An Act to Encourage the Progress of the Useful Arts within This Province," dealing with patents for "the inventor of any new and useful art, machine, manufacture, or composition of matter."

The statute entitled "British Act to Amend the Several Acts for the Encouragement of Learning,"[129] enacted in 1814, provided that copyright protection extended to the British dominions in Canada. Section 4 of that act clarified that copyright was infringed where "any bookseller or printer, or other person whatsoever, in any part of the United Kingdom of Great Britain and Ireland, in the Isles of Man, Jersey or Guernsey, or in any other part of the British dominions, shall 'print, reprint or import' any such book or books without the consent of the proprietor or proprietors thereof first had and obtained in writing."[130]

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126. Nickalls, *Statutes of the Province of Upper Canada,* "Advertisement" after title page and preceding page 1.

127. Otherwise known as "The Quebec Act, 1774," 14 George III, c. 83 (U. K.).

128. Nickalls, *Statutes of the Province of Upper Canada*, 6, 9.

129. (1814) 54 Geo. 3 c. 156.

130. Reflecting this, Daniel J. Gervais, Professor of Technology Law, University of Ottawa, and Member of the Law Society of Upper Canada and the Bar of Quebec, discussed the "Origins of the Canadian Act," referring to "the first copyright statute"

Thus, prior to the British Copyright Act of 1842, copyright matters in the United Kingdom and its colonies were governed both by the common law and by the Statute of Anne. Afterwards, there would be two preconfederation (pre-July 1, 1867) provincial laws offering locally legislated copyright protection in Canada, and those statutory provisions would offer protection only within the provinces where the laws were enacted. In 1832, *after* the visit of the Prophet's emissaries to Kingston in Upper Canada, Lower Canada would enact its "Act for the Protection of Copy Rights." When Upper Canada joined Lower Canada *in 1841*, the Lower Canada statute was confirmed for Upper Canada as well and renamed "An Act for the Protection of Copy Rights in this Province." Nova Scotia enacted its own legislation in 1839, which was superseded by the British Act in 1867. But in 1829 and 1830, no *local* statutory enactment governed copyrights in Upper Canada or in any of the other three provinces of Canada. In and after the union of Upper Canada and Lower Canada in 1841, local legislation began to come into play in the securing of postpublication copyright protection, supplementing the Statute of Anne in affording such protection—though not replacing common-law principles that recognized prepublication copyright protection (which principles, of course, continued in force even after enactment of the local legislation).

Significantly, as to the registration requirement of the Statute of Anne, which otherwise required the registration of a title at Stationers' Hall, such registration *did not ensure protection for a colonial imprint* (and hence colonial imprints apparently were not so registered).[131] In short, in 1829–1830,

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("the Statute of Anne, 1710 [UK], 8 Anne, c. 19") and stating that Canada's 1921 *Copyright Act* "is clearly a common law-based statute, . . . many parts of which have survived to this day." Daniel J. Gervais, "The Purpose of Copyright Law in Canada," *University of Ottawa Law & Technology Journal* 2, no. 2 (2005): 326.

131. Ruth Panofsky, "Case Study: Thomas Chandler Haliburton's *The Clockmaker*," in *History of the Book in Canada, Volume 1, Beginnings to 1840,* ed. Patricia Lockhart Fleming, Gilles Gallichan, and Yvan Lamonde (Toronto: University of Toronto Press, 2004), 352. Indeed, enforcement of a postpublication statutory copyright under the Statute of Anne was apparently not available to a Canadian colonial publisher when someone else in the kingdom issued their own copy of a Canadian work. This, of course, does not reflect any lack of property right protection prepublication. For this reason, none of the known publications printed and published in York and Kingston from 1814 to 1835 appear in the registers of Stationers' Hall. See *Books and Pamphlets Published in Canada, Up to the Year Eighteen Hundred and Thirty-Seven, Copies of Which Are in the Public Reference Library, Toronto, Canada* (Toronto: Public Library, 1916), 15–39. See also William Kingsford, *The Early Bibliography of the Province of Ontario, Dominion of Canada, with Other Information* (Toronto: Rowsell and Hutchison; Montreal: Eben Picken, 1892), 27–29, 31–33,

the common law provided prepublication copyright protection, and the Statute of Anne 1709 provided for postpublication copyright protection in Upper Canada, Lower Canada, New Brunswick, and Nova Scotia, the four provinces of Canada at the time of the revelation; no provincial legislation governed the securing of a copyright and indeed no public law and only principles of contract law apparently governed the sale of an author's intangible prepublication rights in his copy.

In What Sense Was It Appropriate in 1830 to Speak of "Obtaining" a Copyright?

In his October 22, 1829, letter to Oliver Cowdery, Joseph wrote "that there is a copy right obtained."[132] While an author in 1830 was possessed of his common-law prepublication right in his copy (his manuscript), which subsisted from the moment of inscription, and while the author could enforce that right to exclude others from publishing the manuscript, the author of course could also begin to take steps to secure a statutory, postpublication copyright under the 1790 and 1802 Congressional statutes within the United States and under the Statute of Anne within the United Kingdom, including within Canada, to protect the work once it was dedicated to the public (published). That postpublication, limited-time protection, secured by statutes, is a right that did not exist under common law from the moment of inscription of a text in a manuscript; rather, it was a creature of statute and came into existence through compliance with the statutory requirements (though in 1830 it was not yet clear which requirements were mandatory, essential, indispensable ones and which ones were merely directory and not essential). Of the statutory postpublication copyright, it was fully appropriate to speak in terms of "obtaining" such a copyright. Indeed, the cases speak in such terms. For example, in *Ewer v. Coxe*, Judge Washington of the United States Circuit Court for the Eastern District of Pennsylvania paraphrased the requirements imposed by the 1802 United States statute on those who "shall thereafter *seek to obtain* a copyright."[133] Judge Hopkinson, too, in his opinion in *Wheaton* later would cite to *Ewer* and comment that it was not a new question whether Wheaton, in failing to deliver a copy of

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35. Compare Robin, Myers, ed., *Records of the Worshipful Company of Stationers, 1554–1920* (Cambridge, UK: Chadwyck-Healey, 1985). I checked all relevant pages of the registers for the appearance of any of the known publications printed and published in York and Kingston from 1814 to 1835 and found none of them to have been registered in the registers of Stationers' Hall.

132. Smith to Cowdery, October 22, 1829.

133. *Ewer v. Coxe*, 4 Wash. C.C.R 487 at 490, italics added.

his book to the secretary of state, failed to perform an essential or merely a directory act—an "injunction or direction to an author"—while he was otherwise "*seeking to obtain* a copyright."[134]

But it should be remembered that the fact the Prophet may have used the word *obtain* in a different writing does not force the word *secure* as used in the revelation to mean "obtain." This point is important; the text of the revelation itself does not use the word *obtain* in connection with any act pertaining to the copyright (be it in the United States or in Canada). And in any event, if one or more or all such references to "secure" in contexts relating to a copyright actually were intended to convey the idea of to "obtain" a copyright, the copyright thus spoken of would be a statutory copyright, not the prepublication, common-law author's copyright already possessed by the Prophet.

Securing Copyrights Internationally

One other matter of importance to understanding the law-related language of the revelation is the fact that in 1830 copyright laws in the United States and Canada predated international treaties pertaining to copyright. Reciprocal copyright treaties between nations did not exist at the time the Prophet was dealing with the publication of the Book of Mormon. The United Kingdom would not authorize its first reciprocal treaties until 1838 and 1844 (and though such treaties were authorized, none was made). And the most important early international reciprocal agreement would be an 1846 accord between Britain and Prussia, which would eventually lead to the Berne Convention of 1886. Significantly, prior to such reciprocal treaties, Canadian, American, and other publishers continued to regard the work of a foreign (that is, nonresident) author as unprotected "common" property within the borders of their respective countries until properly protected therein. Thus, although many years later the Berne Convention would greatly simplify the copyright process among nations, in Canada, in the United States, and elsewhere, numerous unauthorized reprints from "the other side of the border" would continue to appear even until as late as 1891, when, for example, the United States itself finally agreed to discontinue sanctioning literary piracy of works created by authors residing beyond its borders. This was long after 1830.

Indeed, it would not be until 1837 that British novelists (including Charles Dickens) even began to petition the American Congress to discontinue sanctioning literary piracy of British works by American printers.

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134. *Wheaton v. Peters*, 33 U.S. 591, 656.

And not until American author Mark Twain complained in the latter half of the nineteenth century would the United States government give a listening ear to pirated authors. Twain complained of Canadian piracies of his works, which he attempted to prevent by establishing temporary residence in Canada on the date of publication of each of his works.

> The absence of international copyright laws allowed Canadian publishers to prey on Mark Twain's early books. He was hurt badly in 1876, when the Toronto publisher Charles Belford issued *Tom Sawyer* before the American edition even appeared. To combat this problem, Mark Twain spent several weeks in Montreal in November–December 1881 with James R. Osgood to meet a residency requirement to protect his *The Prince and the Pauper* copyright.[135]

Prior to the advent of reciprocal copyright treaties, an author needed to comply with the law of each jurisdiction in order to secure his copyright within that jurisdiction. In prior days, it was more common to speak of a United States copyright; a Canadian copyright; a German or French or Italian copyright. In our present day, because of international accords, we speak more commonly of a copyright enforceable everywhere. Thus, when the revelation spoke of the effort to secure "the" copyright in all the world, it spoke of protecting within each jurisdiction that one indivisible right the Prophet enjoyed in his copy; and when it spoke of the privilege to sell "a" copyright in Canada, it spoke of selling a divisible portion of that right in Canada (an act that was possible, too, in all other jurisdictions, such as in England and elsewhere, such as would later be done there, for example, with the Book of Mormon and the Doctrine and Covenants).

What Is the Meaning of the Phrase "Sell a Copyright"?

The BCR text, as originally inscribed, states that the Lord grants unto his "servent a privelige that he may sell a copyright through you . . . for the four Provinces if the People harden not their hearts against the enticeings of my spirit & my word." The BCR text thus here refers to "a" copyright that the "servent" has a "privelige" to sell—one that he "may" sell (either is granted permission to sell or possibly may sell)—through "you" (the four recipients of the revelation, "Oliver Cowderey Joseph Knight Hyram Pagee & Josiah Stowel"). The Prophet's prepublication common-law copyright was an intangible personal property right, already enjoyed by the Prophet. That right could be secured and sold within any jurisdiction. The Prophet, either

135. R. Kent Rasmussen, *Mark Twain A to Z: The Essential Reference to His Life and Writings* (New York: Facts on File, 1995), 54.

himself or through agents, could comply with the laws of the United States, of Canada, of England, and of any other jurisdiction to secure the copyright within each of those jurisdictions and, if he chose (or was directed) to do so, he could sell a portion of that right within any one or more jurisdictions.

In Palmyra, the Prophet did not sell a copyright to E. B. Grandin; rather, he retained it to himself and simply arranged to pay Grandin for the work of typesetting, printing, binding, and publishing (and perhaps also advertising). Insofar as concerns the text of the revelation inviting the Prophet to send emissaries to Kingston to sell a copyright for the four provinces of Canada, the revelation gave him a privilege to sell an interest in the copyright there. The means by which the copyright in the Book of Mormon would be "secured" in Canada would be to vest the right in someone in Canada. And that would be done by selling it to a local publisher or other interested party there.

Some have portrayed the Prophet's actions as an attempt to sell "the" copyright of the Book of Mormon.[136] Of course, the revelation text speaks of securing "the" copyright in all the world and selling "a" copyright for the four provinces.

To the modern ear in a post–Berne Convention world, portraying the Prophet as having sought to "sell the copyright" gives the impression that the Prophet, in effect, was, so to speak, "throwing in the towel," "selling the farm," entirely "giving up," ridding himself of *all* right to publish the book everywhere simply to obtain protection (and money) at least somewhere. But nothing could be further from the truth. First, of course, and most importantly, the revelation does not speak of selling "the" copyright. Indeed, in Joseph's day, an author could not be said to sell "the" copyright in the same sense in which we speak of it today. Second, there is no evidence that in sending the emissaries to Canada the Prophet conveyed to Grandin any instruction to stop work.

Prior to the existence of international treaties where one country recognizes the copyright protection afforded by the laws of another country, an author's copyright protection extended only to the borders of the country in which he performed (or authorized others to perform) his acts of printing and publication; the laws of that country were not enforced by the government of the country across the border to protect him in that other

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136. See, for instance, Mormon Research Ministry, "The Attempt to Sell the Book of Mormon Copyright," http://mrm.org/attempt-to-sell-copyright; "Did Joseph Smith Attempt to Sell the Book of Mormon Copyright?" http://www.angelfire.com/sk2/ldsdefense/copyright.html; and The FAIR Wiki, "Book of Mormon/Attempt to Sell Copyright," http://en.fairmormon.org/Book_of_Mormon/Attempt_to_sell_copyright.

jurisdiction. But in pre–Berne Convention times, an author could sell (or assign) "a" copyright in one country and "a" copyright in another country and thus secure to the "copy" protection in each. And doing so in each respective country would, according to the laws of each country, provide postpublication protection within each country.

Could a United States Author or His United States Agent Secure or Sell a Copyright in Canada without Being a British Subject?

The Prophet, an American citizen, sent four American citizens to Canada to sell a copyright, thus to help secure the copyright in all the world, including in Canada. Would he have been legally able to accomplish those tasks through them? Would his copyright have been recognized there? Could he have sold it through emissaries there? Some have contended that "only British subjects could hold copyright in Canada."[137] On this point, it should be noted that the law that disallowed non-natural-born subjects (aliens) from enjoying copyright protection in Britain and its dominions was not decided until after 1830.

In *Tonson v. Collins,*[138] the question of copyright was carefully considered, and Mr. Thurlow admitted that "it is of no consequence whether the author is a natural-born subject, because this right of property, if any, is personal, and may be acquired by aliens." The question of whether or not the author of a book must be a British subject, or at least resident within the British dominions at the time of publication was not seriously considered until it was first argued in the 1835 case of *D'Almaine v. Boosey.*[139] In that case, the Court of Exchequer decided that the work of a foreigner indeed would be entitled to protection but only if it was first published in England by an English assignee. However, between 1761 and 1835, the law provided otherwise.

As pointed out by Mr. Justice Williams in the 1854 case of *Jefferys v. Boosey,*[140] it had occurred to neither the counsel nor the judges in the 1824 case of *Clementi v. Walker*[141] "that copyright could not be gained by a foreign author who was resident abroad at the time of the publication." Justice Williams also noted that in the 1835 *D'Almaine* case "the very question arose" and the court "granted an injunction in protection of the copyright of a foreigner," though it was granted only to one "who had first published in

137. Joe Geisner at http://www.fairblog.org/2009/09 /22/copyright-revelation/.
138. *Tonson v. Collins,* 1 Wm. Blackstone 301, 96 Eng. Rep. 169 (1761).
139. *D'Almaine v. Boosey*, 4 Younge & C. Exch. 494. *See* 4 H.L.C. at 859–60.
140. *Jefferys v. Boosey,* 4 H.L.C. 815, 837.
141. *Clementi v. Walker,* 2 B. & C. 861.

England." In the 1854 case of *Routledge v. Low,*[142] the court held that a foreign author who was resident even for a few days in Canada, having gone there expressly for the purpose of acquiring copyright while her book was published in London, nevertheless was an author within the Act, whose literary work could qualify for copyright protection, a proposition that had not been disputed in *Jefferys v. Boosey.* Thus, an argument to the effect that in 1830 "only British subjects could hold copyright in Canada" must yield to the dictates of 1830 English law, which held the opposite.

Why Were the Four Emissaries Sent to Kingston and Could a Copyright Be Sold There?

The BCR text of the revelation as John Whitmer originally inscribed it states, "Wherefor I say unto you that ye shall go to Kingston," with the phrase "to Kingston" later stricken by an unidentified scribe. Interestingly, a close reading of the text of the revelation shows it does not actually express a purpose in sending the emissaries to Kingston. Comments by others, after the fact, have stated that the revelation sent the emissaries to Kingston to there sell a (or as they uniformly state, sell "the") copyright. In this, of course, they may be correct. But the phrase "go to Kingston" and the phrase "sell a copyright through you" are removed from one another by forty-six words, and the sentence in which the latter phrase appears does not express a location where the emissaries are to do anything; rather, it is part of a sentence that expresses what areas will be impacted by what they are called to do, namely that the Prophet may "sell a copyright through you . . . for the four Provinces." Notwithstanding this, we will here accept as a premise that the reason the emissaries were sent to Kingston was to try to sell a copyright. But was Joseph required to send his agents to any particular Canadian city to sell the right to someone to publish the Book of Mormon for the Canadian reader? If so, did that location have to be Kingston? Did it have to be York?

Between 1814 and 1830, it appears that at least three publishers—Stephen Miles,[143] Hugh C. Thomson (also sometimes "Thompson"), and James

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142. *Routledge v. Low,* 4 H. L. C. 815.

143. Interestingly, Stephen Miles was born at Royalton, Sharon Township, Windsor County, Vermont; Sharon Township was also the birthplace of the Prophet Joseph Smith. Born October 19, 1789, Miles was sixteen years older than the Prophet, and as an eighteen-year-old apprentice to Windsor printer Nahum Mower, Miles emigrated with him in 1807 to Montreal. By 1810, Miles was in Kingston, involved in the printing of the *Kingston Gazette*. In March 1811, Miles withdrew from Kingston to seek employment as a journeyman printer, first in Plattsburgh, New York, and then in Montreal, but by September of that same year he was back in Kingston, this time for good. Miles was "a member of the Methodist group in Kingston" and "a class leader

Macfarlane (also sometimes "McFarlane")—had both printed and published at least thirty books and pamphlets in Kingston, Upper Canada, all authored by others and hence provide evidence of the purchase of the right to publish each respective author's works at that place.[144]

With at least three publishers in Kingston having published at least thirty publications in the years prior to 1830, selling a copyright there was probably easy enough *if there was a willing buyer*. Indeed, the publication by Hugh C. Thomson of Julia Catherine Beckwith Hart's 1824 piece of fiction, *St. Ursula's Convent* (two volumes, 237 pages) and by James Macfarlane of David Chisholme's political book, *The Lower Canada Watchman* (491 pages), seems adequate evidence of the availability of at least two publishers in Kingston who had the *physical* wherewithal to print the Book of Mormon. Whether any had the motivation to do so (financial, spiritual, or otherwise) is a separate issue. Kingston publishers James Macfarlane and Hugh Thomson had the *ability* in 1831 to publish, with Kingston printer Francis M. Hill, such "a prestige volume" that its "typographical execution will equal if not surpass that of any work ever published in Canada."[145]

In 1830, Kingston was apparently a more inviting commercial destination in general than was York. For example, the population of Kingston, "the largest and most populous of the towns in Upper Canada, and called the key to the provinces," was about 3,500 in 1830[146] compared to a population figure for York in 1830 of 2,860.[147] (It took six years for Kingston to reach a population

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and occasional local preacher." He established "the first religious weekly in Upper Canada, the *Kingston Gazette and Religious Advocate*, which ran from 20 June 1828 to 26 March 1830." *Dictionary of Canadian Biography, Vol. IX (1861–1870)* (Toronto: University of Toronto/Université Laval, 1976), s.v. "Miles, Stephen." I find no indication that any members of the Miles family met any members of the Smith family.

144. See "Books and Pamphlets Published in Canada," 15–39; see also Kingsford, *Early Bibliography of the Province of Ontario,* 27–29, 31–33, 35.

145. See H. P. Gundy, "Publishing and Bookselling in Kingston Since 1810," *Historic Kingston* 10 (January 1962): 28.

146. Robert Brown Sneyd, "The Role of the Rideau Waterway, 1826–1856" (master's thesis, University of Toronto, 1965), 205–6. The Kingston Historical Society lists the town's population in 1831 as 3,587. See Kingston Historical Society, "Chronology of the History of Kingston," http://kingstonhistoricalsociety.ca/chrono.html.

147. Canada Department of Agriculture, *Censuses of Canada, 1665 to 1871,* vol. 4 (Ottawa: I. B. Taylor, 1876), 102. "Although York enjoys the rank of the capital [of Upper Canada], and the presence of the legislature, Kingston will ever be the head quarters of all relating to military, naval, *and commercial affairs*." John Morison Duncan, *Travels through Part of the United States and Canada in 1818 and 1819* (Glasgow: University Press, 1823), 2:113; italics added. See also F. H. Armstrong, "Toronto in 1834," *Canada Geographer* 10 (September 1966): 172.

of "about 5,500 souls."[148] It took only four years (when it was incorporated as a city) for York to more than triple its population to 9,254 inhabitants.[149] But in 1830, Kingston was the larger of the two possible destinations.

Of course, York may well have been a more inviting center for pursuing publication interests. During the 1829 calendar year alone, publishers in York churned out fourteen publications (five of them being strictly religious in nature); during that same year, publishers in Kingston produced only three (all being purely religious in nature).[150] But nothing in logic or theology requires that a revelation concerned with the sale of publishing rights conform its commands to the seeming convenience or ease with which those rights can be sold in one place as opposed to another.

The fact that buying and selling of authors' rights occurred freely in Kingston is simply a matter of historical reality. And no known legal impediment to it occurring in Kingston is known. Indeed, no geographical impediment to the purchase of an author's rights is provided for either in the Statute of Anne or in the common law. Julia Beckwith Hart sold her rights to *St. Ursula's Convent; or, The Nun of Canada* in Kingston, where the novel also was published (at Hugh C. Thomson's *Upper Canada Herald* office).[151]

Similarly, the 1830 Watertown, New York, publication of a cookbook titled *The Cook Not Mad, or Rational Cookery; Being a Collection of Original and Selected Receipts* (Watertown: Knowlton & Rice, 1830)[152] was followed

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148. Andrew Picken, *The Canadas: Comprehending Topographical Information Concerning the Quality of the Land, in Different Districts; and the Fullest General Information: For the Use of Emigrants and Capitalists, Compiled from Original Documents Furnished by John Galt, Esq.,* 2d ed. (London: Effingham Wilson, 1836), 113.

149. The City of Toronto Archives, FAQ, http://www.toronto.ca/archives/toronto_history_faqs.htm#population.

150. See Patricia Lockhart Fleming, *Upper Canadian Imprints, 1801–1841: A Bibliography* (Toronto: University of Toronto Press in cooperation with the National Library of Canada, 1988), items nos. *434, 435, 438,* 439, *441, 442,* 446, 449, 450, 453, 455, 456, 457, and 458 (York publications, italicized numbers identify books that were "strictly religious in nature") and items nos. *443, 445,* and *448* (Kingston publications, all italicized because all were "strictly religious in nature"), pp. 121–28. In calendar year 1830, York's publishers produced twenty-six works (nine religious in nature), and Kingston's produced four (one religious in nature).

151. George L. Parker, "Courting Local and International Markets," in Fleming, Gallichan, and Lamonde, *History of the Book in Canada,* 346.

152. The word *receipts* is an older form of the word *recipes.* See, for example, "World Wide Words: Michael Quinion Writes on International English from a British Viewpoint," available at http://www.worldwidewords.org/qa/qa-rec1.htm. See also *Oxford English Dictionary,* 2d ed., s.v., "receipt" (at http://www.bl.uk/learning/resources/oed/50199019(2).htm) and s.v. "recipe" (at http://www.bl.uk/learning/resources/oed/50199169(2).htm).

by a Kingston, Upper Canada, publication of the same book (with differing title page but identical contents).

After publication of the Book of Mormon in the United States, the rights to the book likely would have had no value *in Canada.* Piracy, on both sides of the border, was common. And in order to give a publisher in Canada incentive to publish the book and forbid others from publishing it without the Prophet's permission, the natural and legally appropriate action would have been to sell a copyright to a willing buyer in Canada. A Canadian publisher likely would have then simply published the book either pursuant to a short-run lease[153] or pursuant to the purchase of a partial interest in the copyright. The publication history of the 1830 American *Cook Not Mad* cookbook, republished in 1831 in Kingston, reflects this reality. Notwithstanding its publication in Canada, sales of the American text of *The Cook Not Mad* continued in the United States, advertised for sale in bookstores everywhere, even in Palmyra.[154]

One might ask why the Prophet's four emissaries did not simply go *also* to York, as might be suggested by what they were told by the Kingstonians. Perhaps they did. Whitmer says they did. The time of year was not an impediment; the best time to travel between Kingston and York was in the wintertime, "when the roads were frozen hard."[155] York might have been seen as a place where the emissaries could seek and receive governmental assistance, at least for the costs of the printing of the Book of Mormon. Prior to the formation of legislative assemblies, official publications ordered by Canadian colonial governments were printed in private printing offices as well as by "king's printers," official printers who were appointed (or sometimes self-appointed) as such. With the establishment of Upper Canada's bicameral parliament in 1791, "the legislative branch now had the authority to have documents printed without asking for authorization from the executive."[156] However, in addition to the printing of official

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153. As suggested by Bennett and Olsen, "Of Printers, Prophets, and Politicians," 180.

154. See *Wayne Sentinel,* November 27, 1835, p. 3, col. 4; and *Wayne Sentinel,* May 29, 1836, p. 3, col. 6, and numerous issues in the interim.

155. See Roger Hall and Gordon Dodds, *A Picture History of Ontario* (Edmonton: Hurtig Publishers, 1978), 36: "Some idea of the impenetrable forests and woods that pressed in upon the would-be traveller can be grasped from James Cockburn's watercolour of a stretch along the track between the towns of Kingston and York before the days of regular traffic (c. 1830). The best time to travel was winter, when the roads were frozen hard; the worst in the spring or fall when mud and ruts became axle-deep."

156. Gilles Gallichan, "Official Publications," in Fleming, Gallichan, and Lamonde, *History of the Book in Canada,* 312.

publications, "the state played a modest role in supporting publications that were not official *by purchasing copies or providing funds for the printing of non-governmental works*."[157]

What Might Be Meant by the "Temporal Blessing" Mentioned in the Revelation?

As discussed above, the revelation apparently was received in part to help the Prophet acquire means to meet the financial burden of printing the Book of Mormon in Palmyra. The BCR text refers to "the temporal Blessing" that shall not be taken out of the Prophet's hands. The text also refers to the "temperal Blessing" that the "faithful & the righteous" are to "retain." The secondary sources clearly connect the need for funds for printing the Book of Mormon with the effort to sell a copyright in Canada. And indeed, the general historical context of the Prophet's and his brother's financial circumstances, within which the revelation was received, seems to bear that out. In "the forepart of June 1829,"[158] Joseph and Hyrum together evidently accepted one-half of the $3,000 financial obligation and Martin Harris the other half, the Prophet's mother reporting that Joseph "met Mr. Grandin, and writings were drawn up between them to this effect: That half of the price for printing was to be paid by Martin Harris, and the residue by my two sons, Joseph and Hyrum."[159] On August 17, 1829, Egbert B. Grandin contracted to print the Book of Mormon in exchange for the promise by Martin Harris and the Smith brothers to pay $3,000 for the work. On August 25, 1829, Harris signed an indenture of mortgage, offering a portion of his farm property as security for the promise to pay Grandin, with Grandin enjoying a right to foreclose on the real property eighteen months later in the event of default. But during the period of time when the book was being typeset and printed, Grandin enjoyed only a secured promise of payment. He apparently received no payments from anyone for his work, apparently not receiving any payment until 1832 when the full amount reportedly was paid.

By December of 1829, Grandin was possibly pressing for cash to pay his workers. Lucy Mack Smith reports that Grandin suspended printing because of a reported community agreement not to purchase the book, which of course portended few or no future sales and hence little or no income from which payment would be made. Because Martin Harris had secured his promise to

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157. Gallichan, "Official Publications," 315; italics added.

158. John H. Gilbert, "Memorandum, made by John H. Gilbert Esq, Sept 8th. 1892," King's Daughters' Free Library, Palmyra, New York.

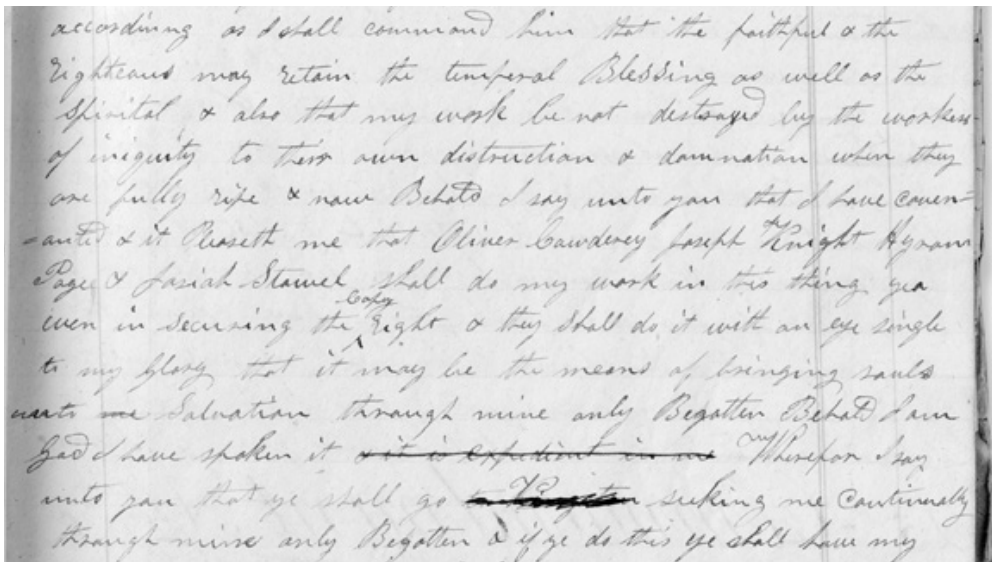
159. Lucy Smith, *Biographical Sketches of Joseph Smith,* 142.

pay by a mortgage on his farm, Grandin held good security; "but that future guarantee did not pay the typesetting and pressmen."[160] Indeed, Lucy seems to place Grandin's work stoppage between the times of the Prophet's two visits to Manchester in early 1830, a time when Harris, on the one hand, and Joseph and Hyrum, on the other, apparently were unable to pay their respective halves of the cost of printing the Book of Mormon,[161] thus suggesting that Joseph and Hyrum still, to that point in time, retained half of the payment obligation. Says Lucy:

> Joseph, after disposing of this affair [the Abner Cole matter], returned to Pennsylvania, but not long to remain there, for when the inhabitants of the surrounding country perceived that the work still progressed, they became uneasy, and again called a large meeting. At this time, they gathered their forces together, far and near, and organizing themselves into a committee of the whole, they resolved, as before, never to purchase one of our books, when they should be printed. They then appointed a committee to wait upon E. B. Grandin, and inform him of the resolutions which they had passed, and also to explain to him the evil consequences which would result to him therefrom. The men who were appointed to do this errand, fulfilled their mission to the letter, and urged upon Mr. Grandin the necessity of his putting a stop to the printing, as the Smiths had lost all their property, and consequently would be unable to pay him for his work, except by the sale of the books. And this they would never be able to do, for the people would not purchase them. This information caused Mr. Grandin to stop printing, and we were again compelled to send for Joseph. These trips, back and forth, exhausted nearly all our means, yet they seemed unavoidable.
>
> When Joseph came, he went immediately with Martin Harris to Grandin, and succeeded in removing his fears, so that he went on with the work, until the books were printed, which was in the spring of eighteen hundred and thirty.[162]

Thus it was that on August 25, 1829, by means of the mortgage arrangement with Grandin, Martin Harris apparently guaranteed not only his own half of the $3,000 obligation but apparently the Smith brothers' half as well. The parties apparently agreed, perhaps only orally, that payment of the $3,000 would be made either prior to the commencement of the work or as the work progressed. The mortgage document served as a guarantee on which Grandin could foreclose in the event timely payments were not made. And the power to foreclose would mature eighteen months after August 25, 1829. But Grandin apparently needed and demanded and was entitled to

160. Richard L. Anderson to Stephen Kent Ehat, email, March 10, 2010.
161. Lucy Mack Smith, *Biographical Sketches of Joseph Smith,* 150–51.
162. Lucy Mack Smith, *Biographical Sketches of Joseph Smith,* 150–51.


according as I shall command him that the faithful & the
righteous may retain the temporal Blessing as well as the
Spiritual & also that my work be not destroyed by the workers
of iniquity to their own distruction & damnation when they
are fully ripe & now Behold I say unto you that I have comm-
anded & it pleaseth me that Oliver Cowdery Joseph Knight Hyrum
Page & Josiah Stowel shall do my work in this thing yea
even in securing the Copy right & they shall do it with an eye single
to my glory that it may be the means of bringing souls
unto me Salvation through mine only Begotten Behold I am
God & have spoken it ~~it is expedient in me~~ Wherefor I say
unto you that ye shall go ~~to Kingston~~ seeking me continually
through mine only Begotten & if ye do this ye shall have my

Detail of page 31 in the Book of Commandments and Revelations showing the names of the four men the revelation sent to Canada as well as their destination, Kingston, which was struck through by an unidentified editor. Courtesy Church History Library, © Intellectual Reserve, Inc.

payment of money as the work progressed. And the money apparently still was owed by all three men, Martin Harris, Hyrum Smith, and Joseph Smith.

It should be noted that the indenture of mortgage document itself actually purports to memorialize "payment" of $3,000 *by Grandin to Harris* in exchange for a grant by Harris to Grandin of an interest in the farmland. Of course, Grandin surely paid no money to Harris. Rather, the "payment" referred to in the mortgage document no doubt constituted a recognition of the previously agreed-to monetary *value* of Grandin's work of typesetting and printing the Book of Mormon. Indeed, even though, as is common with such instruments, the document actually declares that the interest in the real property granted by Harris to Grandin was given "in consideration of the sum of three thousand dollars to him [Harris] *in hand paid* by the said party of the second part [Grandin], *the receipt whereof is hereby confessed and acknowledged*" by Harris,[163] it is virtually certain that no money actually passed from Grandin to Harris. But the document guaranteed repayment as if such money had been paid (having been "paid" in the form of a promise to hire workers and perform the printing tasks and fulfillment of that promise).

Harris signed, sealed, and delivered the indenture the next day, August 26, 1829. But notwithstanding the security manifested by the written

163. Wayne County (New York) Mortgage Record, 3:325–26; italics added.

mortgage, the apparent oral agreement was one that provided for payments of cash presently. And, as it turned out, by January of 1830, neither Harris nor the Smith brothers were able to derive monies either from advance book sales or from Harris's attempts to sell a portion of his farm or otherwise. Financial pressures on the Prophet, according to his mother, occasioned by the Smith family's loss of their property and the costs associated with the need to travel from Harmony to Manchester, once to confront Abner Cole and once to assuage Grandin, left the Prophet and his brother without means to make payments on their half of the obligation. But with Martin's guarantee in place, Grandin at least had the security of Martin's mortgage and perhaps also, because of the Prophet's attempts in removing Grandin's fears, both a renewed promise of attempts to make advance sales of the Book of Mormon and the prospect of payment that might be occasioned by the sale of a copyright in Canada. Hence, though it may have become apparent to Grandin that Harris and the Smiths did not have ready cash to pay Grandin (making Grandin feel justified in stopping work), the renewed prospects of ready payment apparently prompted Grandin to continue work, even though he would not be paid until January 28, 1832.[164] Grandin did apparently enjoy income from the sale of other books at this time, as discussed further below.

Regarding the question of whether Grandin either had or needed resources to pay his workers during the latter stages of printing the Book of Mormon, it would appear that within only three days after the book was published, Grandin published notice that he had, apparently just recently, dissolved the partnership between himself and Luther Howard, foreman of the bookbinding process; had become the sole person to whom debtors owing money to the partnership should make payment; and had purchased the stock in trade of the Palmyra Bookstore and would thereafter continue the business of bookselling. Whether this notice justifies the conclusion that Grandin, already enjoying income from publication of his newspaper, was flush with cash or, having paid off Mr. Howard and having purchased the stock in trade of the bookstore, was strapped for cash is not immediately apparent. More likely, Grandin was financially well off. The published notice reads:

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164. See Wayne County (New York) Mortgage Record, 5:215. See Miner T. Patton, "How It Was That My Great-Grandmother's Gold Paid for the Printing of the First Edition of the Book of Mormon" (unpublished manuscript, 1986), Church History Library. By no later than January 28, 1832, Harris had paid Grandin and the mortgage had been "redeemed, paid off, satisfied, and discharged," as attested to by Thomas Rogers II, who was "assignee of [the] indenture of mortgage."

> DISSOLUTION. THE partnership heretofore existing between the undersigned, is this day dissolved, by mutual consent. The notes and accounts due to the firm of Howard and Grandin, may be settled with E. B. Grandin, and all persons indebted are requested to call and make payment.
>
> LUTHER HOWARD.
> E. B. GRANDIN.
> Palmyra, March 29, 1830.
>
> THE subscriber, having purchased the stock in trade of the Palmyra Bookstore, respectfully informs his friends and the public, that he will continue the business of BOOKSELLING, at the old establishment, and solicits a continuation of patronage.
>
> E. B. GRANDIN.
> Palmyra, March 29, 1830.[165]

Thereafter, Mr. Howard apparently kept possession of the bound books in his bindery. Whether this was a form of security to guarantee payment to him for his bookbinding work is not known. But it is somewhat of interest that not long after receiving payment from Martin Harris in April 1831, Grandin recorded in his journal that on July 14, 1831, he "spent most of day in moving Gold Bibles from Mr. Howard's Bindery to my Bookstore."[166]

While it is not known whether in negotiating with Grandin in 1829 the Prophet considered offering to sell a copyright to Grandin (or, if he did make an offer, whether Grandin was interested), it is known that the Prophet remained "proprietor" of the book through to the time of publication. Interestingly, though the notice on March 26, 1830, announcing availability of the Book of Mormon for purchase, appearing at times thereafter in the *Wayne Sentinel,* was a notice signed by "E. B. Grandin,"[167] a copy of the notice, quoted in the *Rochester Republican*, states, "The above work, containing about 600 pages, large Duodecimo, is now for sale, wholesale and retail, at the Palmyra Bookstore, by Howard & Grandin,"[168] suggesting the partnership, though dissolved and likely winding up its affairs, continued to hold at least a possessory or custodial interest in the bound books (though the Prophet probably continued to hold title thereto as "proprietor" of the text).

In light of the above overall context portraying some of the Prophet's financial situation at this period of time, it seems, at least to me, that "the temporal Blessing" that was not to be taken out of the Prophet's hands and the "temperal Blessing" that the "faithful & the righteous" were to "retain"

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165. *Wayne Sentinel*, April 30, 1830, p. 3, col. 5.
166. E. B. Grandin, Journal, July 14, 1831. Church History Library.
167. See, for example, *Wayne Sentinel*, May 7, 1830, p. 3, col. 6.
168. *Rochester Republican*, March 30, 1830, p. 2, col. 6.

perhaps encompassed both the Prophet's own continuing ownership interest in the text (so he could control whether it be published, maintain control over the integrity of the text, and retain access to any proceeds of sales of copies of the book) as well as access by him and his associates to the financial resources necessary to pay Grandin his due while also being able otherwise to "make ends meet" in the interim. Apparently, even in early 1830, not only Martin but Joseph and Hyrum also, were financially obligated to Grandin, with Martin having guaranteed the entire payment by means of his mortgage. Perhaps this parallels what Page said: "Joseph thought this would be a good opertunity to get a handsom sum of money which was to be (after the expencis were taken out) for th exclusive benafit of the Smith famaly and was to be at the disposal of Joseph."[169]

Why Was the Presumed Inscription of the Name of Martin Harris Stricken from the Text of the Revelation?

Through close examination, the text shows an initial inscription by John Whitmer of the name of one person who was expressly excluded from the group of those who had "done that which is pleasing in [the Lord's] sight." The volume editors state that this person is likely "Martin [Harris]." The text apparently had identified Martin by name, stating "yea even all save M◊◊tin only."[170] The name likely was stricken by Whitmer himself, who apparently immediately struck out the words "M◊◊tin only." The text was heavily stricken by completely obscuring the two words with a broad stroke of ink.[171] Concerning the striking of the name of "Martin [Harris]," the volume editors in fact refer to *three* layers of deletion, though it is difficult to discern three without help from the editors.

Suffice it to say, the phrase "M◊◊tin only" appears to have been immediately stricken and immediately replaced by the phrase "it be one o{ł\nly}"; the latter phrase was not interlineated, indicating that John Whitmer himself, while first inscribing the revelation into the BCR, changed the inscribed text from "M◊◊tin only" to "it be one o{ł\nly}." This seems to suggest that the original text of the revelation, from which he copied this inscribed text, may originally have set forth the words "Martin only" and therefore that he copied those two words from the original text. But whether it was Whitmer alone or he under direction from the Prophet who made what appears to be the immediate change is, of course, not known. What apparently was the

169. Page to McLellin, February 2, 1848.

170. In *Manuscript Revelation Books,* the editors used the symbol "◊" to represent an illegible character within a partially legible word.

171. Jensen, Woodford, and Harper, *Manuscript Revelation Books*, 33, xli, xliii.

first (thin-line) strike-out seems to have been made by John Whitmer at the time of inscription; when, and by whom, the broad, obscuring ink-stroke deletion was made is not known.

The suggestion could be made that specific reference to Martin Harris, by name, probably was later rendered inappropriate by Martin's own actions themselves, by his eventual success in actually raising funds for the printing effort. In 1829, he had mortgaged a portion of his farm to *guarantee* the payment in the event of a default on his promise to pay. But in 1829 and 1830, he simply had actually not produced any money to pay Grandin. By the time the revelation was first recorded (perhaps sometime in early 1830), he still had not sold his property and produced cash. But by the time the revelation was being edited in the BCR in about spring 1831, Martin apparently had finally sold a portion of his farm and would be receiving cash for the property over the next eighteen months. While Harris had promised payment and while he had guaranteed ultimate payment (by way of foreclosure on the mortgage), no present payments had been forthcoming. Indeed, it appears that it was not until April 2, 1831 (at about the time when Whitmer was inscribing the revelations into the BCR), that Harris finally disposed of the mortgaged portion of his property, selling it to Thomas Lakey II for $3,000. Apparently, however, Martin did not receive the entire $3,000 until January 28, 1832, when John Graves purchased the property from Lakey. Under the original agreement, Lakey was to have made a series of payments to Harris from April 1831 until October 1832. When Graves purchased the property in January 1832, he paid Lakey $3,300, who then paid Harris the remaining balance of the $3,000. At that time Harris apparently paid his debt to Grandin in full.[172] Could it possibly be, perhaps, that it was after April 2, 1831, that John Whitmer was in the process of inscribing the text of the revelation into the BCR and that by then Harris had in effect "redeemed" himself (by selling the property)? Could it be that for this reason John Whitmer, or the Prophet himself, chose to more softly and gently refer to Martin, without retaining in the text of the revelation any specific mention of his name?

Hiram Page indicates that, in making preparations to go to Canada to sell a copyright, he and his three companions (Oliver Cowdery, Joseph Knight, and Josiah Stowell) had made the preparations "in a sly manor so as to keep martin Harris from dra[w]ing a s[hare] of the money."[173] Why this was done can perhaps be gleaned from David Whitmer's explanation that "Martin Harris . . . was expected to mortgage his property for the

172. Black and Porter, "For the Sum of Three Thousand Dollars," 4–11. See also Patton, "How It Was That My Great-Grandmother's Gold," 5.

173. Page to McLellin, February 2, 1848.

purpose of raising the necessary funds for the printing of the book" and that "his seeming reluctance to act in the matter, which Mr. Whitmer attributes to the cautious business-like manner in which he did everything, offended some of the brethren."[174] Of course, by the time the revelation was received, Martin already had mortgaged his farm. And, too, Martin did not mortgage his farm to raise necessary funds, as Whitmer states (a mortgage provides security for payment, not actual payment; only if, after nonpayment, the mortgage is foreclosed upon does it result in monetary proceeds). Apparently, the efforts by Harris, Joseph, Hyrum, and others to raise funds included attempts to presell the book and outright attempts by Martin to sell a portion of his farm, all apart from the mortgage otherwise guaranteeing ultimate payment to Grandin in the event funds were not raised.

Indeed, David Whitmer, in his 1887 account, states pointedly:

> Brother Hyrum thought they should not wait any longer on Martin Harris, and that the money [to print the Book of Mormon] should be raised in some other way. Brother Hyrum was vexed with Brother Martin, and thought they should get the money by some means outside of him, and not let him have anything to do with the publication of the Book, or receiving any of the profits thereof if any profits should accrue. He was wrong in thus judging Bro. Martin, because he was doing all he could toward selling his land.[175]

What the truth is about the extent of Martin's efforts and the depth and direction of Hyrum's feelings may never be known for sure; what is assumed is that Martin apparently failed to pay any monies to Grandin prior to the publication of the Book of Mormon or for nearly a year later. (Grandin probably funded the work himself, if the indenture documents and the Patton history[176] are any indication.) But by the time John Whitmer was inscribing the text into the BCR, Martin may have sold the property to Lakey and therefore may have begun making payments to Grandin.

Why Was the Revelation Edited to Seemingly End Earlier Than Its BCR Transcription Seems Otherwise to Indicate?

Presenting the results of their analysis of the text of the revelation, volume editors Jensen, Woodford, and Harper and paleographers Dean C. Jessee and Christy L. Best reveal that Sidney Rigdon was the scribe who

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174. "David Whitmer Talks," 5; see also *Omaha Herald*, October 10, 1886; *Des Moines Daily News*, October 16, 1886; *Chicago Inter-Ocean*, October 17, 1886; *Philadelphia Press*, October 17, 1886.

175. Whitmer, *Address to All Believers,* 30–31.

176. See Patton, "How It Was That My Great-Grandmother's Gold."

(1) struck the name "Joseph" from the headnote; (2) supralineated into the BCR text the name "Joseph" to identify the "servent" mentioned therein (historical context dates that interlineation in 1831); (3) apparently added an "s" to the end of the word "againsts" [*sic*]; and (4) added the "amen" at a point nine and one-half lines from the original ending of the text as inscribed by John Whitmer (Rigdon was perhaps also the one who crossed out the text from that point to the end of the revelation).[177] Of these four edits, I discuss only the fourth.

The BCR text indicates the supralineated "amen" to have been inscribed in the handwriting of Sidney Rigdon. The volume editors, in their sidenote number 37,[178] state both that "an unidentified scribe crossed out the text from this point to the end of the revelation, presumably indicating that the revelation should end with 'amen'" and that "the ink flow of the lines used to cross out the text possibly matches the ink flow of the inserted 'amen.'" The volume editors' comments about the ink flow therefore suggest that Rigdon was the person who also crossed out the text from that point to the end of the revelation.

"Rigdon's handwriting in the majority of the Book of Commandments and Revelations was inscribed in Ohio in 1831, before the volume was carried to Missouri,"[179] his corrections apparently being inscribed after "circa March 1831," when John Whitmer began to inscribe the revelations in the BCR,[180] and "prior to November 20, 1831, when John Whitmer and Oliver Cowdery departed Ohio with the BCR."[181] Whether the Prophet participated in Rigdon's editing of this revelation is not known.

Thus, the fact that the text from the insertion of "amen" to the end has been crossed out seems not only to reflect an intention to ready the text of the revelation for publication, but it also suggests that Rigdon, and possibly the Prophet, too, intended to exclude the stricken reference to Martin Harris and the stricken words "to Kingston." It should be noted, however, that in other instances when Rigdon altered the text of revelations in the BCR, evidence shows that later editors reverted Rigdon's corrections back to original text.[182]

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177. See Jensen, Woodford, and Harper, *Manuscript Revelation Books*, 31, 33 n. 37.

178. Jensen, Woodford, and Harper, *Manuscript Revelation Books*, 33.

179. Robin Scott Jensen, "From Manuscript to Printed Page—an Analysis of the History of the Book of Commandments and Revelations," *BYU Studies* 48, no. 3 (2009): 36.

180. Jensen, Woodford, and Harper, *Manuscript Revelation Books*, 5.

181. Underwood, "Revelation, Text, and Revision," 72.

182. Jensen, "From Manuscript to Printed Page," 36.

In any event, we do not know for sure what the Prophet's role was, if any, in making these editing marks.

Conclusion

In the end, what did Joseph Smith accomplish on June 11, 1829, when the title of the Book of Mormon was deposited with the clerk of the United States District Court? He took the first step, and perhaps what then could be argued was the only meaningfully mandatory step, toward securing a post-publication copyright in the Book of Mormon in the United States, making his copyright legally enforceable in federal court. What did the Prophet accomplish in the Abner Cole incident? He enforced through arbitration his author's common-law, prepublication right in his copy. And what did Joseph Smith accomplish by conveying to the emissaries the revealed command that they go to Kingston? He commissioned them to go, as author's agents, to sell a right to his copy in Canada as part of an effort to obtain funds necessary to pay the printer in Palmyra. This was also a necessary step in complying with the Lord's injunction that the Prophet's copyright be secured in all the world generally and be secured in the four Canadian provinces specifically by seeking to find a willing publisher in Canada who would purchase the right so that piracy would be thwarted, the integrity of the text could be preserved, and the word of God could be promulgated in that land. The effort was consistent with legal principles in the United States and Canada. And no doubt it reinforced in the minds of the early brethren the importance and value of the copyright held by the Prophet.

Stephen Kent Ehat (stephen@ehat.org) is a member of the State Bar of California. He is author of "How to Condemn Noxious Novels—by Brigham Young," *Century II* 1 (December 1976): 36–48. The author expresses gratitude to Richard L. Anderson, Richard Bennett, John W. Welch, and Don Bradley for helpful comments and suggestions on earlier drafts of this paper.

This paper was condensed for space. The full version appears on our website at byustudies.byu.edu.