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Suffering Shipwreck and Bankruptcy in 1842 and Beyond

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Chapter Fourteen

Suffering Shipwreck and Bankruptcy in 1842 and Beyond

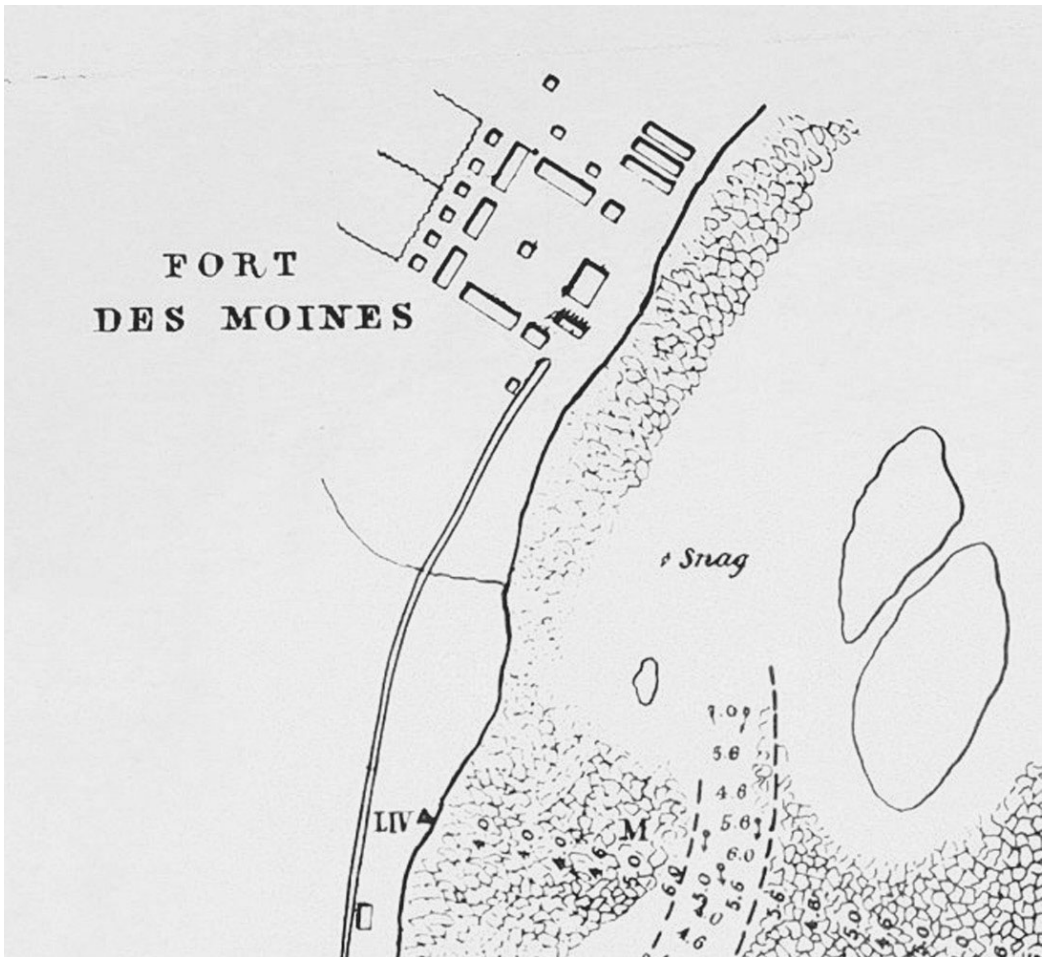
Joseph I. Bentley

Although Joseph Smith was no stranger to accusations of fraud, one of the most serious began in the summer of 1842. Struggling to keep his head above financial water, he petitioned for bankruptcy under the new federal Bankruptcy Act, passed the year before. His petition was denied for reasons that went beyond the strict merits of the case and attacked him as an individual. The chief reason was Joseph's role in purchasing the steamboat *Nauvoo*, a symbol of the Mormons' bright economic hopes. When the *Nauvoo* ran aground in November 1840 after just two months of operation, a cascade of legal and financial calamities followed in its wake. These legal entanglements produced more than sixty court documents and generated serious consequences for Joseph Smith, his family, and the Church.

The Steamboat *Nauvoo*

The story begins with a physical obstacle: the Des Moines rapids. On August 31, 1840, the First Presidency urged all Latter-day Saints to gather yet again in a new place: Nauvoo, Illinois, which was established as the new Church headquarters.[1] Many Mormons, including most foreign immigrants, had to travel up the Mississippi River to reach their new Zion. The biggest obstacle to navigating this five-thousand-mile-long "Father of Waters" was

1. Joseph Smith, *History of The Church of Jesus Christ of Latter-day Saints,* ed. B. H. Roberts, 2d ed. rev., 7 vols. (Salt Lake City: Deseret News, 1932–51), 4:183–87, hereafter cited as *History of the Church*.

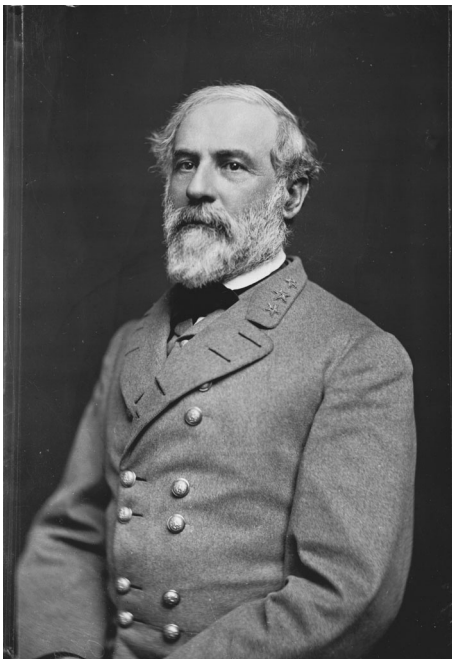


Des Moines Rapids. The narrow channel of the Mississippi River, with its depth measurements shown between the broken lines, flowed between the west bank and the two small islands. National Archives, Fortifications map file, Records of the Office of the Chief of Engineers, Record Group 77.

this eleven-mile-long limestone outcropping just below Nauvoo. Passage was possible only through a narrow channel along the Iowa side. It was so hazardous that large steamers had to off-load their cargo onto smaller boats or overland vehicles before navigating the outcropping. Wrecked steamers that had attempted to run these white-knuckle rapids and another fourteen-mile-long stretch above Nauvoo were strewn along both of these treacherous areas.[2] This obstacle presented both a challenge and a commercial opportunity for some industrious Latter-day Saints.

2. Joseph I. Bentley, "In the Wake of the Steamboat *Nauvoo*: Prelude to Joseph Smith's Financial Disasters, *Journal of Mormon History* (Salt Lake City, Winter 2009), 24–25, hereafter cited as "Joseph Smith's Financial Disasters."

Starting in 1836, Congress charged the U.S. Army Corps of Engineers with the challenging task of making the Mississippi River navigable, starting with the Des Moines rapids.[3] The officer placed in charge was First Lieutenant Robert E. Lee, age thirty, who would later become the commander of the Confederate army during the Civil War.[4] Lee began blasting and removing rock in the Des Moines rapids during 1838. By 1839, he had straightened and widened the channel from thirty to fifty feet and lowered it to a depth of five feet, removing more than two thousand tons of rock. However, the national depression that had begun in 1837 continued to worsen. In 1840, Congress ordered Lee to discontinue all operations and auction off his equipment, including his headquarters boat, the *Des Moines*.



Robert E. Lee, March 1864. Library of Congress.

Congress's decision proved a tempting opportunity for a group of five Mormon entrepreneurs, including Joseph Smith. At a public auction held at Quincy, Illinois, on September 10, 1840, the Mormons purchased the *Des Moines* and other river equipment from then-Captain Lee as the U.S. government's selling agent. The boat weighed 93 tons, was 120 feet long, and was about half the size of an average Mississippi steamer—hence, admirably suited to negotiate the rapids. It was designed to be one of the new city's first commercial enterprises, a fact its new owners underscored by naming it the *Nauvoo*.

The five Mormon purchasers were Peter Haws as principal, with four endorsers or guarantors: Joseph and Hyrum Smith, George Miller (later named the third bishop of the Church), and Henry W. Miller (unrelated to George). They came without cash but with letters of recommendation from Thomas Carlin, governor of Illinois, and Richard M. Young, U.S. Senator for

3. Mark Twain called this task of taming the Mississippi River "a job transcended in size by only the original job of creating it." *Id* at 25.

4. Later renowned for his role as commander of the Confederate military forces during the Civil War, this was Lee's first major military assignment after graduating from West Point in 1830. See Douglas S. Freeman, *Robert E. Lee: A Biography,* 4 vols (New York: C. Scribner's Sons, 1934–35), Vol. 1, Chaps. 9, 11.

Illinois. The purchase price was $4,866, and Lee accepted a promissory note due in eight months.[5]

Although the note is not clear, subsequent documents show that Peter Haws was the principal and the Millers and Smiths were only sureties for his obligation.[6] The sureties role, however, was essential, since the sale terms required "two approved endorsers." In addition, Robert E. Lee was very careful to obtain letters from prominent public figures authenticating the good character and financial integrity of the sureties.[7]

Concurrent with their purchase of the steamboat, the Mormons sold a five-sixth interest in the *Des Moines* to a consortium of two brothers (Charles and Marvin Street) and a third party as surety, Robert F. Smith (no relation to Joseph).[8] Ultimately Joseph, Hyrum, and the others sued the Streets and Robert F. Smith on February 7, 1844, to collect the balance of their unpaid note. That suit was dismissed the year after Joseph and Hyrum's deaths.[9]

As soon as the Mormons acquired their steamboat, they put it to work transporting passengers and freight up and down the Mississippi. One month earlier, on August 10, 1840, they had hired two river pilots, William and Benjamin Holladay. The *Nauvoo* had been plying the Mississippi for less than two months when it ran aground on November 14, only two months after the purchase. Apparently the damage was serious enough that the

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5. The original promissory note for $4,866 and thirty-seven other documents comprise an eighty-seven-page collection of reports by and correspondence between the U.S. Treasury Department and various U.S. attorneys, marshals, and cabinet members, catalogued as Records of the Solicitor of the Treasury, Record Group 206, part 1, 1841–52, National Archives, Washington, D.C. (hereafter cited as "Treasury Papers").

6. See Register of Miscellaneous Suits in Which the United States Is a Party or Interested, 1834-1848 and Treasury Papers. The Treasury Papers specifically identify Peter Haws as the "Principal" and lists the other four signers as "sureties" in the transaction with Lee.

7. In a 10 September 1840 letter to Captain Lee, U.S. Senator Richard M. Young and D. G. Whitney, a Quincy merchant, state that the Smiths and Millers were all "good and sufficient for said amount [of the note] and that the Government [was] safe in accepting the same." "Treasury Papers."

8. Dallin H. Oaks and Joseph I. Bentley, "Joseph Smith and the Legal Process: In the Wake of the Steamboat *Nauvoo*," *Brigham Young University Law Review* 2, no. 3 (1976): 169, hereafter cited as "Joseph Smith and Legal Process." As justice of the peace and captain of the Carthage Grays in 1844, Robert F. Smith was later responsible for ordering Joseph and Hyrum Smith to jail, where they were murdered in June 1844. Bentley, "Joseph Smith's Financial Disasters," 28.

9. The dismissal date was May 22, 1846. See Bentley, "Joseph Smith's Financial Disasters," 28; see also Oaks and Bentley, "Joseph Smith and Legal Process," 171.

Nauvoo never operated again under Mormon control.[10] As a result, the Mormons sued the pilots as well. A complaint subsequently filed against them on April 23, 1841, alleged that the "defendants represented themselves to be skillful and competent pilots with understanding of the steam boat channel of the Mississippi River."[11]

Although he was on board the ship when it ran aground,[12] Joseph Smith certainly did not see himself as responsible for the wreck. On November 30, 1840, he and his co-owners hired counsel and had a writ issued in Carthage to arrest the Holladays for "taking possession of said Steam boat Nauvoo as pilots … but intending to injure the plaintiffs … willfully and with intent to destroy said boat ran the same upon rocks and sandbars out of the usual Steam boat channel of said river." They "greatly injured the hull and rigging"—more specifically, that "twelve or thirteen of the bottom timbers of said boat are cracked or split." The plaintiffs claimed $2,000 in damages to the boat plus $1,000 in lost profits. The Hancock County sheriff arrested both of the Holladays on November 30, 1840, but they were immediately released on bail and apparently fled from the state.[13] On April 23, 1841, the Mormons filed with the Hancock County Circuit Court in Carthage a civil action in "trespass on the case," a form of breach of contract against the Holladays. The case was dismissed on May 7, 1841, at plaintiffs' request, likely because the defendants had disappeared, along with any prospect of recovering damages.

This wreck dashed any hopes the operators had of paying off their note to the United States when it came due on May 10, 1841. When the default became apparent, Captain Robert E. Lee promptly asked the Solicitor of the Treasury (Charles B. Penrose) and the Secretary of War (John Bell) to sue the Mormons for collection. Since all signers of the note were then living in Illinois, Montgomery Blair, then U.S. Attorney for Missouri and later a member of Lincoln's first cabinet, transferred the case to Justin Butterfield,

10. Perhaps the Streets, who owned a majority interest in the enterprise, may have taken it over and rehabilitated it.

11. Complaint in Smith v. Holladay, Hancock County Circuit Court, May Term, 1841, Courthouse, Carthage, Ill.

12. Bentley, "Joseph Smith's Financial Disasters," 30.

13. See Bentley, "Joseph Smith's Financial Disasters," 31; see also Oaks and Bentley, "Joseph Smith and Legal Process," 170. Today's procedure is very different, but in the nineteenth century it was customary for the plaintiffs to have an arrest warrant issued, thus requiring the defendants to post bail (November 30, 1840). The witnesses were not subpoenaed until April 3, 1841, after a Samuel Hicks, possibly the plaintiffs' attorney, filed an affidavit. The actual suit was filed almost three weeks later on April 23.

U.S. Attorney for Illinois. Moving the paperwork took several months; but on April 3, 1842, Butterfield filed suit in Springfield to collect the debt. A month later on May 4, a summons was served on all four sureties; but the sheriff reported back that the actual principal, Peter Haws, was "not found." Federal judge Nathaniel Pope in Springfield called up the case three times on successive dates. No defendants appeared at any of the three dates, so on June 11, he entered a default judgment for $5,212—the original note principal plus interest and the costs of the suit.[14]

The U.S. Attorney, Justice Butterfield, was the driving force in the legal proceedings to collect the steamboat debt. One of the ablest attorneys in the state with a practice in Chicago and Springfield, he had been appointed to his current position by John Tyler's Whig administration, which took office in 1840. Although he later appeared as Joseph's attorney in the 1842 extradition hearing before Judge Pope, Butterfield vigorously pursued collection of the debt and obstructed Joseph's attempts to obtain a discharge in bankruptcy, which would have eliminated the debt.[15]

Why didn't the Mormons pay the $5,000 note owed to the U.S. government, or even appear in court to contest the suit or negotiate a settlement of the debt? First, from a legal perspective, Joseph Smith and the other three cosigners may have been only secondarily liable, and hence had a possible defense against collection, since the principal, Peter Haws, was not even served. But there is no record that the cosigners sought legal advice on the issue. Under the circumstances, a lawyer would have probably advised them to contest or settle the case, since the consequences of taking a default judgment were severe, including the possible seizure of real property.

Second, it seems likely that the four Mormons simply lacked the means to come up with even a partial payment. Times were hard in the United States, and nowhere harder than in Illinois. The Panic of 1837 and the resulting depression that had forced the sale of the *Des Moines* in the first place had strained everyone to his or her financial limits. In Illinois, the two largest banks failed in 1840 and 1841, and what little commerce existed was largely by barter. The Mormons were among the most cash-strapped in the state. They had incurred tremendous debts to Isaac Galland and Horace Hotchkiss in acquiring land to build up Nauvoo and were falling behind in making

14. Complete Record of the United States District Court for the District of Illinois, Vol. 1, no. 1600 (1819–27, Federal Records Center, Chicago), 529–31. This is the only case that lies outside the 1819–1827 time period covered by that volume and is the next-to-last entry in the volume. See also Oaks and Bentley, "Joseph Smith and Legal Process," 172–73.

15. Oaks and Bentley, "Joseph Smith and Legal Process," 184, 187.

payments on the obligations. Also, the very means they were counting on to enable payment—cash that would be generated by the *Nauvoo*—was wrecked with the steamboat.

Third, they probably attributed much of their financial pain to the federal government already. Up to fifteen thousand Saints had been driven from their homes in Missouri. In the process, they had lost huge sums of money, much of it paid to the federal government for homesteads in northern Missouri. In early 1840, Congress had rejected a mammoth "memorial" signed by 3,491 Saints.[16] Thus, at a time when there were many demands on their limited cash, it is easy to understand why Mormons lacked motivation to repay the federal government as a top priority.

Fourth, on May 6, 1842—one month before the default hearing and judgment on June 11, and two days after the sheriff served his summons for debt—ex-governor Lilburn W. Boggs was shot at his home in Missouri. Although seriously wounded, he survived. Joseph could prove that he was in Nauvoo on that day, and therefore not subject to extradition. Still, he was accused of being an accomplice and spent most of the summer in hiding to avoid being seized or extradited back to Missouri, a measure with which Illinois Governor Thomas Carlin was cooperating. Joseph therefore would have been hesitant to appear in an Illinois court at a time when the state was seeking his extradition.

Fifth, and perhaps most significantly, Joseph and Hyrum had just filed for bankruptcy. If their petition had been successful, the steamboat debt and all of their other financial obligations would have been discharged.[17] However, Joseph's petition was denied.

Bankruptcy

Declaring bankruptcy was a new option in American finance. To help relieve debtors from the nationwide depression that had begun with the Panic of 1837, Congress on August 19, 1841, passed a relatively simple bankruptcy act (see fig. 1)

16. U.S. Senate, Record Group 46 (1840–44), April 5, 1844.

17. Bankruptcy Act of 1841, chap. 9, 5 Stat., 440–49. See Oaks and Bentley, "Joseph Smith and Legal Process," 173–77. The act was only eight pages long. Its second sentence simply began as follows: "All persons whatsoever . . . owing debts who shall, by petition, set forth to the best of his knowledge and belief, a list of his or their creditors, their respective places of residence, and the amount due to each, together with an accurate inventory of his or their property . . . and therein declare themselves to be unable to meet their debts and engagements, shall be deemed bankrupts within the purview of this act, and may be so declared accordingly by a decree of such court."

Figure 1. Bankruptcy Act, Effective Feb. 1, 1842–Mar. 3, 1843

SEC. 1. All persons whatsoever, residing in any State, District or Territory of the United States, owing debts, which shall not have been created in consequence of a defalcation as a public officer; or as executor, administrator, guardian or trustee, or while acting in any other fiduciary capacity, who shall, by petition, setting forth to the best of his knowledge and belief, a list of his or their creditors, their respective places of residence, and the amount due to each, together with an accurate inventory of his or their property, rights, and credits, of every name, kind, and description, and the location and situation of each and every parcel and portion thereof, verified by oath, or, if conscientiously scrupulous of taking an oath, by solemn affirmation, apply to the proper court, as hereinafter mentioned, for the benefit of this act, and therein declare themselves to be unable to meet their debts and engagements, shall be deemed bankrupts within the purview of this act, and may be so declared accordingly by a decree of such court….

SEC. 3. All the property, and rights of property, of every name and nature, and whether real, personal, or mixed, of every bankrupt, except as is hereinafter provided, who shall, by a decree of the proper court, be declared to be a bankrupt, within this act, shall, by mere operation of the law, ipso facto, from the time of such decree, be deemed to be divested out of such bankrupt, without any other act, assignment, or other conveyance whatsoever; and the same shall be vested, by force of the same decree, in such assignee as from time to time shall be appointed by the proper court for this purpose…. *Provided, however,* that there shall be excepted from the operation of the provisions of this section the necessary household and kitchen furniture, and such other articles and necessaries of such bankrupt as the said assignee shall designate and set apart, having reference in the amount to the family, condition, and circumstances of the bankrupt, but altogether not to exceed in value, in any case, the sum of three hundred dollars; and, also, the wearing apparel of such bankrupt, and that of his wife and children; and the determination of the assignee in the matter shall, on exception taken, be subject to the final decision of said court.

SEC. 4. Every bankrupt, who shall bona fide surrender all his property, and rights of property, with the exception before mentioned, for the benefit of his creditors, and shall fully comply with and obey all the orders and direction which may from time to time be passed by the proper court, and shall otherwise conform to all the other requisitions of this act, shall (unless a majority in number and value of his creditors who have proved their debts, shall file their

written dissent thereto) be entitled to a full discharge from all his debts, to be decreed and allowed by the court which has declared him a bankrupt, and a certificate thereof granted to him by such court accordingly, upon his petition filed for such purpose; … and if any such bankrupt shall be guilty of any fraud or willful concealment of his property or rights of property, or shall have preferred any of his creditors contrary to the provision of this act, or shall willfully omit or refuse to comply with any orders or directions of such court, or to conform to any other requisites of this act, or shall, in the proceeding under this act, admit a false or fictitious debt against his estate, he shall not be entitled to any such discharge or certificate …. *Provided*, That no discharge of any bankrupt under this act shall release or discharge any person who may be liable for the same debt as a partner, joint contractor, endorser, surety, or otherwise, for or with the bankrupt. And such bankrupt shall at all times be subject to examination, orally, or upon written interrogatories in and before such court, or any commission appointed by the court therefor, on oath, or, if conscientiously scrupulous of taking an oath upon his solemn affirmation, in all matters relating to such bankruptcy and his acts and doings, and his property and rights of property, which, in the judgment of such court, are necessary and proper for the purposes of justice …. And if, upon a full hearing of the parties, it shall appear to the satisfaction of the court, or the jury shall find that the bankrupt has made a full disclosure and surrender of all his estate, as by this act required, and has in all things conformed to the directions thereof, the court shall make a decree of discharge, and grant a certificate, as provided in this act.

SEC. 5. All creditors coming in and proving their debts under such bankruptcy, in the manner hereinafter prescribed, the same being bona fide debts, shall be entitled to share in the bankrupt's property and effects, pro rata, without any priority or preference whatsoever, except only for debts due by such bankrupt to the United States, and for all debt due by him to persons who, by the laws of the United States, have a preference, in consequence of having paid moneys as his sureties, which shall be first paid out of the assets; and any person who shall have performed any labor as an operative in the service of any bankrupt shall be entitled to receive the full amount of the wages due to him for such labor, not exceeding twenty-five dollars….

SEC. 6. The district court in every district shall have jurisdiction in all matters and proceedings in bankruptcy arising under this act, and any other act which may hereafter be passed on the subject of bankruptcy; the said jurisdiction to be exercised summarily, in the nature of summary proceedings in equity,… and the jurisdiction hereby conferred on the district

court shall extend to all cases and controversies in bankruptcy arising between the bankrupt and any creditor or creditors who shall claim any debt or demand under the bankruptcy....

SEC. 7. All petitions by any bankrupt for the benefit of this act, and all petitions by a creditor against any bankrupt under this act, and all proceedings in the case to the close thereof, shall be had in the district court within and for the district in which the person supposed to be a bankrupt shall reside, or have his place of business at the time when such petition is filed, except where otherwise provided in this act....

SEC. 10. In order to ensure a speedy settlement and close of the proceedings in each case in bankruptcy, it shall be the duty of the court to order and direct a collection of the assets, and a reduction of the same to money, and a distribution thereof at as early periods as practicable, consistently with a due regard to the interests of the creditors, ... and all the proceedings in bankruptcy in each case shall, if practicable, be finally adjusted, settled, and brought to a close, by the court, within two years after the decree declaring the bankruptcy....

SEC. 12. If any person, who shall have been discharged under this act, shall afterward become bankrupt, he shall not again be entitled to a discharge under this act, unless his estate shall produce (after all charges) sufficient to pay every creditor seventy-five per cent on the amount of the debt which shall have been allowed to each creditor....

SEC. 14. Where two or more persons, who are partners in trade, become insolvent, an order may be made in the manner provided in this act, either on the petition of such partners, or any one of them, or on the petition of any creditor of the partners; upon which order all the joint stock and property of the company, and also all the separate estate of each of the partners, shall be taken, excepting such parts thereof as are herein exempted; and all the creditors of the company, and the separate creditors of each partner, shall be allowed to prove their respective debts; ... and the sum so appropriated to the separate estate of each partners shall be applied to the payment of his separate debts; and the certificate of discharge shall be granted or refused to each partner, as the same would or ought to be if the proceedings had been against him alone under this act; and in all other respects the proceedings against partners shall be conducted in the like manner as if they had been commenced and prosecuted against one person alone....

SEC. 17. This act shall take effect from and after the first day of February next.

that became effective on February 1, 1842. It was the first bankruptcy law in the United States that permitted a debtor to file a voluntary petition and thereby discharge all his debts by listing and then surrendering virtually all of his assets.[18] (Wearing apparel and necessary household articles of debtor's family not exceeding $300 in value were exempt.) A court-appointed trustee or "assignee" would then take title and liquidate these assets and pay the debtor's creditors according to a set of priorities specified in the act. Appropriately, debts due the United States and bankruptcy administration costs took priority over all other debts.

On April 14, 1842, two full months before the default judgment, Joseph and other Mormons hopeful of finding relief through this act met with Calvin A. Warren. Warren was a Quincy lawyer who had just successfully filed his own petition for bankruptcy and was becoming a leader in the bankruptcy business. Joseph's father had been jailed for debt in New York, so Joseph knew how oppressive debt could become. Still, he expressed some doubt about the new law: "The justice or injustice of such a principle in law, I leave for them who made it, the United States."[19]

Although it was difficult to disentangle Joseph's personal debt from debts incurred on the Church's behalf, when he added them up, his total obligations were just over $73,000.[20] Ultimately, he decided to avail himself of the relief promised by this federal law due to the mobbings and plunderings he had suffered (blamed in part on inaction by the very Congress that had enacted the new bankruptcy law), the necessity of contracting heavy debts for the benefit of his family and friends, the fact that bankruptcy petitions by his own debtors had prevented his collections from them, and the fact that he would otherwise face numerous writs, lawsuits, and probable destitution. Thus on April 18, Joseph rode to Carthage with his brother Hyrum, his clerk Willard Richards, and nine other hopeful petitioners to file with the clerk of the Hancock County Circuit Court on behalf of the Federal District Court in Springfield. The steamboat debt was the first one listed and, after Joseph's

18. Oaks and Bentley, "Joseph Smith and Legal Process," 177.

19. *History of the Church*, 4:594.

20. The bankruptcy petition itself has never been found, but see the complete schedule of Joseph's debts, apparently prepared for filing his petition in bankruptcy, in Fawn M. Brodie, *No Man Knows My History: The Life of Joseph Smith, the Mormon Prophet*, 2d ed. rev. (1945; New York: Alfred A. Knopf, 1971), 266.

death, it became the second largest debt in his estate.[21] Additionally, the petition listed assets of nearly twenty thousand dollars.[22]

In spite of the benefits afforded under the bankruptcy law, Joseph still felt obligated to pay other debts. For example, within a few weeks of filing for bankruptcy, Joseph wrote land developer Horace R. Hotchkiss, Joseph's largest creditor, to explain why he had been forced to this step but assured him of his continuing intention to pay the debt in full.[23] By listing the steamboat debt first on his application and assuring other creditors of his continued intent to repay, it appears that Joseph's primary purpose for filing bankruptcy was to relieve himself of the steamboat debt.

Just three weeks after Joseph applied for bankruptcy, the U.S. Treasury Department issued a circular officially discouraging U.S. Attorneys from opposing any bankruptcy applications, consistent with the act's intention of supplying debt relief. Although the Bankruptcy Act of 1841 was repealed in March 1843, the U.S. District Court Clerk for Illinois reported that no bankruptcy discharges had been refused by any court and that only eight of the 1,433 applications had been opposed in Illinois. The low figure was not unusual: nationally only 765 debtors were refused a discharge of their obligations for any reason, with only thirty refused due to fraud.[24] However, Joseph and Hyrum Smith were two of the eight being opposed in Illinois. Treasury Solicitor Charles B. Penrose authorized Justin Butterfield to "take the necessary steps" to oppose them.[25] On October 1, Butterfield filed formal objections seeking to discharge both Smith petitions in Springfield federal court. Handling these affairs for the United States government, Penrose and Robert E. Lee were determined that the steamboat debt must be paid.

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21. The largest debt was owed to Horace R. Hotchkiss & Co. of New York, the real estate firm from which the Church and Joseph had purchased most of the land for Mormon settlement. Brodie, *No Man Knows My History,* 266. See also Oaks and Bentley, "Joseph Smith and Legal Process," 174, 179.

22. Oaks and Bentley, "Joseph Smith and Legal Process," 177–80. The other nine who filed for bankruptcy at the same time were not involved in the *Nauvoo* case: Samuel H. Smith, Jared Carter, Elias Higbee, John P. Greene, Henry Sherwood, Reynolds Cahoon, Vinson Knight, Arthur Morrison and George Morey. *The Wasp*, May 7, 1842, 3. According to various records, at least 26 Mormons were ultimately discharged in bankruptcy under the 1841 act. See Oaks and Bentley, "Joseph Smith and Legal Process," 180, n. 65.

23. *History of the Church,* 5:6–7, 51–52, 195–96, 382–83.

24. Oaks and Bentley, "Joseph Smith and Legal Process," 180, 189. In practice there were few protections for creditors and unlimited opportunities for fraud by debtors, leading to a hasty repeal of the law only one year after its effective date, on March 3, 1843.

25. Penrose, Letter to Justin Butterfield, August 12, 1842, Treasury Papers. See also Oaks and Bentley, "Joseph Smith and Legal Process," 180–82.

Opposition was largely based on a series of letters John C. Bennett had published in the Springfield, Illinois, *Sangamo Journal*. Bennett was a disaffected Mormon who had been expelled late in May 1842 from his positions as mayor of Nauvoo and counselor to Joseph Smith.[26] On June 11, Judge Pope had issued the default judgment against Joseph Smith and others for nonpayment of the steamboat debt, and that same month Bennett launched a wide range of accusations against Joseph Smith, which Butterfield cited in his letters to the Treasury Solicitor.[27] In this July 4, 1842, letter, Butterfield accused Joseph of hiding assets from his creditors and fraudulently conveying property by recording deeds after the law was passed.

Justin Butterfield. Courtesy Church History Library, The Church of Jesus Christ of Latter-day Saints.

Butterfield took Bennett's claims seriously, even going to Nauvoo and Carthage in September 1842 to examine land records. On October 11, he wrote to the Solicitor of Treasury that he had found enough conveyances to sustain Bennett's accusations of fraud and reported that he had successfully blocked Joseph's bankruptcy petition at the court hearing on October 1. However, Judge Nathaniel Pope ordered these cases to be set over for further hearings in Springfield on December 15.[28]

Butterfield's objections to discharge might have been overcome had Joseph obtained better legal counsel. The bankruptcy law provided that a deed would be "utterly void" if made "in contemplation of bankruptcy," or, "in contemplation of the passage of a bankrupt law" as that would constitute a

26. *History of the Church,* 5:12, 18–19; Roberts, T*he Rise and Fall of Nauvoo,* 135–40. Bennett apparently was also involved in efforts to extradite Joseph Smith to Missouri to face charges involving the attempted assassination of ex-Governor Boggs (see *History of the Church,* 5:250–51; Stewart, *Joseph Smith: The Mormon Prophet,* 171).

27. John C. Bennett, Letter to the Editor, *Sangamo Journal*, July 9, 1842, 2, and July 15, 1842, 2; Justin Butterfield, Letter to Charles B. Penrose, Solicitor of the Treasury, August 2, 1842, Treasury Papers. See also Oaks and Bentley, "Joseph Smith and Legal Process," 180–85.

28. Justin Butterfield, Letter to Charles B. Penrose, Solicitor of the Treasury, October 11, 1842, Treasury Papers; Objections to discharge of Joseph Smith under Bankruptcy Act of 1841, October 1, 1842, LDS Church Library. See also Oaks and Bentley, "Joseph Smith and Legal Process," 182.

fraud. There is no evidence that Joseph Smith had understood or even heard of the Bankruptcy Act until attorney Calvin A. Warren explained it to him in Nauvoo on April 14, 1842. Thus, the government had the burden to prove that the debtor had contemplated bankruptcy when making the deed. The law also said that any conveyance made "more than two months before the petition is filed"[29] was presumed to be valid and legal.

The main deed in question was a huge transfer of 239 town lots in Nauvoo (about 300 acres), which Joseph as an individual made to himself as a trustee for the Church. That deed of transfer was signed and notarized on October 5, 1841, and thus valid on the date of its execution, long before the law's effective date of February 1, 1842, and well outside the two-month presumption period. However, the deed was not recorded in Carthage until April 18, the same day Joseph filed for bankruptcy. Bennett claimed that it was signed just before the filing, then fraudulently backdated just before it was filed. If this accusation were true, then the deed would have been "deemed utterly void."[30]

Neither Bennett nor Butterfield gave any evidence to support the charge of fictitious backdating. In fact, there is substantial contrary evidence. The October 5, 1841, deed on its face contains sworn statements signed in Nauvoo by two witnesses—Willard Richards and Ebenezer Robinson, an authorized notary and justice of the peace, respectively—proving that the deed was in fact signed on that date.[31] Indeed, perfectly valid deeds were often not officially recorded for long periods of time. That was particularly true because Nauvoo did not have a Registry of Deeds until March 10, 1842.[32] Moreover, during the six months between the signing of the deed and its recording in Carthage, there is no record that Joseph visited Carthage. Therefore, he would have had no opportunity to register the deed without making a special trip on horseback, and at least four of the months would have had notoriously unpleasant weather. Finally, October 5 was the logical date for the deed. It was the last day of LDS General Conference, at which the Quorum of the Twelve had agreed that Joseph should separate Church property from his

29. Bankruptcy Act of 1841, chap. 9, sec. 2, 5 Stat., p. 442.

30. Bankruptcy Act of 1841, chap. 9, sec. 2, 5 Stat., p. 442. See also Oaks and Bentley, "Joseph Smith and Legal Process," 176, 182–84.

31. The witnesses were Willard Richards and Ebenezer Robinson, an authorized notary and justice of the peace, respectively. In 1976 this deed was in box 4, fd. 7, LDS Church Library. See Oaks and Bentley, "Joseph Smith and Legal Process," 176.

32. Even after the Nauvoo registry was established on March 10, 1842, it was still the normal practice to record them in the county office in Carthage. Indeed, only two deeds were recorded in Nauvoo before Joseph's April 18, 1842, recording in Carthage. See Bentley, "Joseph Smith's Financial Disasters," 37–38.

own assets and convey to his own ownership enough Church property to support his family.[33]

Initially, Butterfield successfully opposed both Joseph and Hyrum's attempts to be discharged in bankruptcy, but the case was put over to December 15. Once again, Butterfield assured his superiors in Washington, D.C., that he would defeat Joseph Smith's application by causing the allegedly fraudulent conveyances to be set aside, then executing the expected judgment against Joseph's assets. On December 15, however, Butterfield permitted Hyrum to be discharged in bankruptcy and recommended approval of a proposal made by Joseph's representatives in Springfield to settle the entire debt to the United States on the following terms: The note would be paid off in four equal annual installments, secured by a mortgage on real property worth double the amount of the debt.

Why such a change of heart? By this time Butterfield had become Joseph's own lawyer. Soon after the October 1 hearings, Joseph Smith's attorney, Calvin A. Warren, and Joseph's counselor, Sidney Rigdon, engaged Butterfield to oppose Missouri's efforts to extradite Joseph back to that state for the Boggs shooting.[34] Butterfield then persuaded Thomas Ford, the newly elected governor who had just taken office on December 8, 1842, to countermand his predecessor's approval of the extradition and to support Joseph's position. On Butterfield's advice, Joseph allowed himself to be arrested in Nauvoo on December 26, 1842, and the case was successfully tried in Springfield on January 4–5, 1843, before the same Judge Pope in charge of Joseph's bankruptcy matter. In a highly notable habeas corpus decision, Judge Pope granted Joseph a complete release from the extradition order.[35]

To add to the foregoing ironies, Joseph paid Butterfield's fee of $500 with only $50 in cash and the rest with two notes, which Butterfield willingly accepted, thereby evidencing some respect for Joseph's financial integrity.[36]

When Butterfield inquired of Penrose whether the bankruptcy terms were acceptable, Penrose made a prompt counteroffer to Butterfield on January 11, 1842: Joseph must pay one-third of the debt in cash and the reminder in

33. *History of the Church*, 4:412–13, 427; Oaks and Bentley, "Joseph Smith and Legal Process," 184–85.

34. Obviously, conflict of interest rules (to the extent that they existed at all) were different then. A modern attorney would not have taken the extradition case, since that would have been contrary to the best interest of Butterfield's existing client, the United States.

35. Oaks and Bentley, "Joseph Smith and Legal Process," 187–88; *History of the Church*, 5:173–79.

36. *History of the Church*, 5:232.

Steamboat *Martha.* Detail of *Independence, the Start of the Santa Fe Trail,* 1842, by John Stobart, available at http://steamboattimes.com/artwork_1.html.

three equal annual installments, to be secured by the same property initially proposed to Butterfield.[37] It is unclear whether Butterfield ever received this letter, since he sent a second inquiry to the Treasury Solicitor on May 25, 1843.[38] There is no record of any further communication on this subject; and on June 27, 1844, Joseph and Hyrum were murdered at Carthage Jail.[39] For the moment it appeared that efforts to collect the steamboat debt or to conclude the bankruptcy matter had passed into history. But this was not to be the final conclusion.[40]

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37. Charles B. Penrose, Solicitor of the Treasury, Letter to Justin Butterfield, January 11, 1843, Treasury Papers; see also Oaks and Bentley, "Joseph Smith and Legal Process," 188.

38. Justin Butterfield to Charles B. Penrose, Solicitor of the Treasury, May 25, 1843, in *Treasury Papers*; Oaks and Bentley, "Joseph Smith and Legal Process," 188.

39. For an account of the murder and subsequent trial of the accused assassins, see Dallin H. Oaks and Marvin S. Hill, *Carthage Conspiracy: The Trial of the Accused Assassins of Joseph Smith* (Urbana: University of Illinois Press, 1975). Joseph Smith and Justin Butterfield did have several cordial subsequent communications on other subjects. For example, on March 19 and April 2, 1843, Joseph exchanged letters with Butterfield concerning the incarceration of Orrin Porter Rockwell, who was held in a Missouri jail for allegedly shooting ex-Governor Boggs. *History of the Church*, 5:303, 308, 326. Butterfield also visited Nauvoo in October 1843, when Joseph spent considerable time "preparing some legal papers," then "riding and chatting" with Butterfield. *History of the Church*, 6:45–46. Joseph sent letters to Butterfield on other matters in January and May 1844. *History of the Church*, 6:179, 406.

40. On July 4, 1843, one year before Butterfield's stated intention to proceed against Joseph Smith's assets after defeating him in bankruptcy application, the federal circuit court with jurisdiction over the default judgment had sent a federal marshal out with another writ to pursue any assets of the served defendants. On December 18, 1843, the

The Lingering Effects of the Steamboat Debt

It was the same unpaid steamboat debt that wrecked Joseph's efforts to be discharged in bankruptcy in 1842 and ultimately encumbered his estate after his death. In July 1844 Joseph's widow, Emma Smith, was appointed to administer the estate under the jurisdiction of the state probate court. However, she was six months pregnant and soon failed to post the bond required by the court. On September 19, the court revoked her authority as the estate administrator and appointed a Mormon creditor of the estate, Joseph W. Coolidge, to replace her. During his four-year administration, Coolidge sold all available personal property, realizing approximately $1,000 to pay funeral expenses and the costs of estate administration. After Coolidge moved west with the Saints who followed Brigham Young, the court appointed John M. Ferris, another Mormon creditor, as administrator on August 8, 1848. Ferris was much more rigorous in his efforts to identify and prepare for sale the real property to pay more creditors.[41]

Before Ferris could sell off any land, however, the United States under Zachary Taylor's Whig administration took the final step that stifled payment to any other creditors. After conferring with Justin Butterfield (who was then serving in Washington, D.C., as U.S. Commissioner of the General Land Office), U.S. Attorney Archibald Williams in August 1850 filed a twenty-five page complaint, including a long creditor's bill, with the federal circuit court in Springfield to collect the steamboat debt, which by then amounted to $7,870, including costs and interest.[42] He invoked the court's unique powers to act in equity as a chancery court to sell all Illinois properties owned or transferred by Joseph prior to his death.[43] Before it was over, the massive suit named as defendants Emma and all heirs of Joseph Smith, plus more than a hundred others who had acquired land from Joseph. At issue were some 312 town lots and 29 tracts of land—well over 4,000 acres. The court

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marshal returned the writ with this endorsement: "No property found of the defendants, subject to said execution." The steamboat debt remained unpaid for another nine years.

41. Oaks and Bentley, "Joseph Smith and Legal Process," 189–91.

42. Complete Record of the United States Circuit Court for the District of Illinois, vol. 4, no. 1603, pp. 486–506, June 18, 1841, through July 17, 1852, Federal Records Center, Chicago; hereafter cited as Chancery Records.

43. For more details about "chancery courts with powers of equity," see Bentley, "Joseph Smith's Financial Disasters" 42 and Henry C. Black, "Equity," in *Black's Law Dictionary*, 4th ed. (St. Paul, Minn.: West Publishing, 1951), 634. Here, for example, the remedy being sought was to revoke or set aside all conveyances deemed fraudulent. Since the U.S. Bankruptcy Act of 1841 had long since been repealed and a new bankruptcy law had not been enacted, there was no clear remedy or mechanism for doing that under general common law in America.

transcript is 211 pages in length, by far the longest legal document involving Joseph Smith. The sole basis for the suit was Joseph's alleged conveyances of this land, made in his individual capacity and as trustee for the Church, with intent "to hinder, delay and defraud his creditors"—the same charges first raised by John C. Bennett and Justin Butterfield in 1842.[44] Archibald Williams asked the court to set aside all such conveyances as void and to sell the property to pay off the steamboat debt.[45]

The judge in this case was Thomas Drummond, an experienced state court judge newly appointed to the federal bench, who went on to serve with distinction in that capacity for the next thirty years.[46] Significantly, his resolution of the case said nothing at all about fraud, even though it had been urged for many years. Instead, Drummond applied three legal theories to seize and sell real property that Joseph Smith had once owned. First, Drummond ruled that the June 11, 1842, default judgment that Nathaniel Pope had entered against Joseph Smith and others became a lien against all properties individually owned by Joseph at that time or at any time thereafter, taking precedence over all claims to property acquired from Joseph after that date. It also took precedence over the claims of any family members who inherited property upon Joseph's death. Second, he invoked an 1835 state law that prevented a church from owning more than ten acres.[47] (There is no evidence that Joseph or other Church leaders were ever aware of this limitation.) Third, as a result, all parcels Joseph had owned as sole trustee-in-trust for the Church that exceeded the ten-acre statutory limitation were legally deemed to be his own individual property and therefore subject to foreclosure of the judgment lien.

Following the practice common in such complex equity cases, the court appointed attorney Robert S. Blackwell as a special "master" to inspect properties listed in the complaints, to examine title records for such parcels, and to make recommendations to the court on questions of fact and law. The

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44. Chancery Records, 492, 495–96, 499, 505, 620.

45. Chancery Records, 504–5. See also Oaks and Bentley, "Joseph Smith and Legal Process,"192–93.

46. The presiding judge, not clearly identified in the chancery records, was not Nathaniel Pope, who had died in January 1850. Rather, newly appointed Thomas Drummond was the judge. See Bentley, "Joseph Smith's Financial Disasters," 42.

47. Chancery Records, 620. Actually, the Illinois law under which Joseph Smith held Church lands as trustee restricted such holdings to no more than five acres. See An Act Concerning Religious Societies, February 6, 1835, Section 1, *[1835] Rev. Laws of Illinois*, 147–48. However, by the time of the chancery court decision, the statutory limitation had been raised to ten acres. Law of March 3, 1845, Chap. 34, section 1, *[1845] Rev. Stat. Ill.* 198. See Oaks and Bentley, "Joseph Smith and Legal Process," 194–95.

judgment lien theory upon which the court ultimately relied first appeared in Blackwell's initial report of December 31, 1850.[48] After receiving that report, the court appointed Charles B. Lawrence as special commissioner to conduct three foreclosure sales after the court approved each of the master's reports and specified the various lands to be sold.[49]

As a result, on April 18, 1851, Lawrence sold 98 lots and six tracts at the Nauvoo House for a total of $2,710.30.[50] At the Carthage Courthouse on November 8, a second sale disposed of 51 lots and 14 tracts for $7,277.75. And finally, on May 3, 1852, four more tracts "with improvements" were sold in Quincy at the Adams County Courthouse for $1,160.35, making a grand total of $11,148.35 in sales proceeds. Over 95 percent of these proceeds came from the sale of properties Joseph had held as trustee-in-trust for the Church.[51]

Who was most harmed by this series of foreclosures and sales? Ironically, it was the estate and successors of General James Adams, a prominent Mormon convert and close friend of Joseph Smith. He had conveyed 1,760 acres to Joseph Smith as trustee, even more ironically, in payment for Adams's half interest in another steamboat, the *Maid of Iowa.* During the public auction at the Carthage Courthouse on November 8, 1851, Adams's land sold for $4,800—representing 43 percent of the total gross sales proceeds.[52]

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48. Chancery Records, 643, 651–53. Specifically, the court held: "That the said deceased [Joseph Smith] at the time of the renedition [*sic*] of said Judgement and for a long time thereafter was seized in fee of [meaning that he held] the following real estate upon which said Judgement at the time of the death of the said deceased was a lien."

49. Chancery Records, 637–48, 653–54.

50. Chancery Records, 669–74.

51. By the time of the settlement, the Church owned no more than a token amount of the property being sold. No action seems to have been taken against the Church, then based in Utah, to recover losses resulting from the poor title of the land sold by Church trustees prior to the Saint's departure in 1845. Perhaps either warranty deeds were not given, or the prospect of a lawsuit against a far-distant party was simply too burdensome, especially in light of the fact that most affected landowners were able to repurchase their lands for modest sums at the judicial sales. Oaks and Bentley, "Joseph Smith and Legal Process," 198. Incidentally, the United States government acquired land by bidding in part of the debt it was owed without having to put up any cash. As a result, the federal government's name appeared on the title to many Nauvoo properties, mystifying LDS researchers who were unaware of these historic auctions.

52. James Adams died in August 1843. Obituary notice, *Nauvoo Neighbor*, August 16, 1843, 3; *History of the Church*, 5:537. After Joseph's death, the successor Church trustees reconveyed to the executor of Adams's estate the entire 1,760 acres, either in recission of the original arrangement or as a repurchase of Adams's 50 percent ownership in the *Maid of Iowa*. Hancock County Deed Records, Book "N," p. 453; Oaks and Bentley, "Joseph Smith and Legal Process," 197–98.

But the ironies were not yet complete. A claim that would finally take legal priority over the judgment lien was the dower interest of Joseph's widow, Emma.[53] The judge awarded her one-sixth of all cash proceeds realized from the foreclosure sales. She and her second husband, Lewis C. Bidamon, apparently used the proceeds to buy back the Mansion House and other properties at the final foreclosure sale on May 3, 1852.[54] Next to the federal government, which received $7,870.23, the next largest amount ($1,809.41) went to Emma. The remaining $1,468.71 of the $11,148.35 in total proceeds went for legal and court expenses and other administrative costs.[55] The estate assets being exhausted, no other creditors received further payment.

Conclusion

Since his days in Palmyra, Joseph Smith had been persistently accused of being a fraud and a scoundrel. The massive *Nauvoo* debt collection case was just another opportunity for such charges to be leveled against him. Yet in this case, the fraud charge remained unproven. However, more was at stake than Joseph's reputation. Although buying the steamboat *Nauvoo* on credit was not the beginning of his financial woes and was not even his largest debt, it became a critical factor with effects that outlived Joseph himself. The *Nauvoo*'s wreck in November 1840 ultimately capsized Joseph Smith's attempts to obtain a discharge in bankruptcy and led to the foreclosure of scores of Nauvoo town lots and outlying parcels previously owned by Joseph or the Church.

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53. A surviving wife was entitled to a statutory dower interest (one-third) in all real property held by her husband at death. Since a husband took and held real property subject to his wife's dower interest, the dower interest ranked ahead of any subsequent creditor's claim or lien. Oaks and Bentley, "Joseph Smith and Legal Process," 194–95.

54. Emma's dower interest here was an estate for life in one-third of all real estate; but in this case, the judge valued her interest for life as equivalent to an immediate one-sixth of all cash proceeds if Emma would relinquish her dower claim, which she did. Chancery Records, 654–55.

55. Oaks and Bentley, "Joseph Smith and Legal Process," 196–97.