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Performing Legal Marriages in Ohio in 1835

Author(s): M. Scott Bradshaw

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Editor(s): Gordon A. Madsen, Jeffrey N. Walker, and John W. Welch

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Chapter Eight

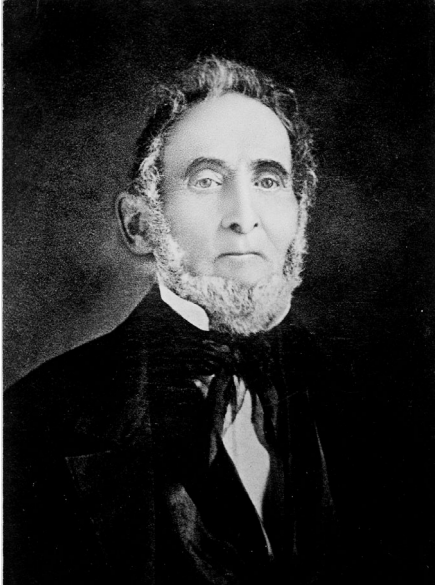
Performing Legal Marriages in Ohio in 1835

M. Scott Bradshaw

During the 1830s, ministers from a wide range of Christian denominations performed marriages in Ohio. Attempting to compile a comprehensive list of such churches would be a mammoth task, but a sampling of the court records from several Ohio counties shows that representatives from at least a dozen religious denominations were actively solemnizing marriages. These denominations included Anabaptists, Baptists, Congregationalists, Disciples of Christ, Episcopalians, Evangelicals, German Reformed, Mennonites, Methodists, Presbyterians, Unitarians, Universalists and, of particular interest to readers here, Latter-day Saints.¹

Most of these ceremonies were performed under a provision of Ohio law that prescribed procedures through which any ordained minister could be

1. County records in Ohio sampled for this article include Champaign County Court of Common Pleas, Minutes, October 1835–October 1836, Ohio State Historical Society, Columbus, Ohio (hereafter cited as OSHS); Tuscarawas County Court of Common Pleas, Journal, November 1835, OSHS; Cuyahoga County Court of Common Pleas, Journal Books F and G, April 1832–October 1835 microfilm, Family History Library, The Church of Jesus Christ of Latter-day Saints, Salt Lake City, Utah (hereafter cited as FHL); Geauga County Court of Common Pleas, Final Record Book T, and Journal Book M, March 1833–October 1837, microfilm, FHL; Jackson County Court of Common Pleas, Journal Book D, 1834, microfilm, FHL; Wayne County Court of Common Pleas, Journal Book 6, March 1833–October 1835, microfilm, FHL; Portage County Court of Common Pleas, Journal, September 1830–May 1837, County Microfilming and Records Center, Ravenna, Ohio; Medina County Court of Common Pleas, Journal Books B and C, 1831–1837, and Book E, June 1835–October 1837, Medina County Courthouse, Medina, Ohio.



Sidney Rigdon. Courtesy Church History Library, The Church of Jesus Christ of Latter-day Saints.

licensed to solemnize marriages. The county courts of common pleas issued licenses to perform marriages, and the granting of these licenses was a routine matter. According to law, a minister merely needed to appear before a county court and produce “credentials of his being a regular ordained minister of any religious society or congregation.”² The statute provided that, once granted, such licenses were to be valid for as long as the minister continued serving the same denomination.

My survey of Ohio county court records revealed only one denial of a request for a license to perform marriages. In March 1835, Sidney Rigdon made a motion for a license before the judge of his county court, Presiding Judge Matthew Birchard of the Geauga County Court of Common Pleas, which had jurisdiction over the Kirtland area. Even though Rigdon held the priesthood in the LDS Church and was a counselor to Joseph Smith in the presidency of the Church, the judge still refused Rigdon’s motion, holding that he was not a “regularly ordained minister of the gospel within the meaning of the Statute.”³ Whether or not intentional, the judge’s denial, which seems to reflect mostly local hostilities, as discussed further below, must have signaled to other Mormon elders not to bother applying. Geauga County court records do not contain any evidence that other Saints either requested or were denied licenses to solemnize marriages.

The denial of Rigdon’s motion was not the only problem he had with the court over the marriage issue. Court records show that Rigdon was indicted in June 1835 and tried in October for illegally solemnizing the 1834 marriage of Orson Hyde and Marinda Johnson.

2. An Act Regulating Marriages, January 6, 1824 (hereafter cited as 1824 Act), in *Acts of a General Nature, Enacted, Revised, and Ordered to be Reprinted, . . .* (Columbus: Olmsted and Bailhache, 1831), 429–31, section 3 (hereafter cited as 1831 Acts). This act is also found in J. R. Swan, *Statutes of the State of Ohio, of a General Nature, . . .* (Columbus: Samuel Medary, 1841), 582–84 (hereafter cited as 1841 Statutes).

3. Geauga County Court of Common Pleas, Journal Book M, 380–81.

Again, Geauga Court of Common Pleas Judge Matthew Birchard presided, not only over the grand jury that issued the indictment against Ridgon, but the ensuing trial as well. The court record cryptically recounts the trial:

And now at this term of Said Court that is to say, at the term there of first aforesaid comes the Prosecuting Attorney for the County, and also the defendant in person, and thereupon a Jury were empanelled and Sworn. – Whereupon the ~~said~~ Prosecuting Attorney Says he will no further prosecute this Indictment – Whereupon it is ordered that the said Sidney Ridgon be discharged from said Indictment and go thereof without day.⁴

A contemporary news report on October 30, 1835, provides further details pertaining to this trial:

The performance of the marriage ceremony by Ridgon having been proven, on the part of the prosecution, Ridgon produced a license of the Court, which had been granted to him several years ago, as a minister of the gospel of that sect usually called Campbellites, but who call themselves disciples, to continue so long as he remained a minister in regular standing in that denomination. The prosecution then undertook to prove by parol⁵ that he had abandoned that church, and joined the Mormons, and held principles inconsistent with his former faith. It appeared that the society of disciples kept minutes of their proceedings, and no church record of his dismissal being offered, the Court rejected the testimony,⁶ and a *nolle prosequi*⁷ was entered.⁸

4. Geauga County Court of Common Pleas, Criminal Record, Final Record Book T, 4, MS, Geauga County Courthouse, Chardon, Ohio. “Without day” meant without delay.

5. *Parol evidence* is oral rather than written. John Bouvier, *A Law Dictionary*, 6th ed. (Philadelphia, PA: Childs & Peterson, 1856).

6. Under the “parol evidence rule,” a party cannot present oral evidence to contradict unambiguous written documentation. In this case, the prosecutor was attempting to contradict the Campbellite church records that never noted Ridgon’s dismissal by testimony. Judge Birchard rejected this attempt.

7. *Nolle Prosequi* means that “an entry made on the record, by which the prosecutor or plaintiff declares that he will proceed no further”; the effect of a *nolle prosequi* is to release the defendant, “but it does not operate as an acquittal; for he may be afterwards reindicted, and even upon the same indictment, fresh process may be awarded.” Bouvier, *Law Dictionary*.

8. *Chardon Spectator and Geauga Gazette*, October 30, 1835, p. 3, col. 1, cited in *Contemporary Accounts of the Latter-day Saints and Their Leaders Appearing in Early Ohio*

This newspaper report is helpful. First, it explains that at least a partial trial took place. This clarifies why a jury was empanelled, as noted in the court record. Second, it indicates that Ridgon tried to use his 1826 Campbellite license to marry to justify his performing the marriage of Hyde and Johnson. Third, it confirms that the prosecutor knew that Ridgon was no longer a Campbellite minister and in fact was a Mormon minister. The prosecutor clearly understood that the Ohio Marriage Act specifically provided that a license issued by a court of common plea based on a minister's credential was only valid, "so long as he shall continue a regular minister in *such* society or congregation."⁹ While the prosecutor was not successful, Ridgon (and Smith) would understand that another legal avenue for marrying was necessary.

While Judge Birchard's refusal of Rigdon's motion may have dissuaded LDS elders from making similar requests in Geauga County, at least one elder was not deterred from performing marriages—even without a license. County marriage records show that on November 24, 1835, Joseph Smith solemnized the marriage of Newel Knight and Lydia Goldthwaite Bailey. These records also show that during the next two months, Joseph performed an additional ten weddings. By June 1837, he had married a total of nineteen couples in Kirtland.¹⁰

Joseph's decision to perform marriages apparently surprised some of the Saints. This is evident from the accounts of the Knight-Bailey wedding. Lydia's history states that Joseph's brother Hyrum was "astonish[ed]" when he learned that Joseph intended to personally marry her and Newel. Probably referring to Sidney Rigdon's legal troubles, Lydia's history explains that Ohio law "did not recognize the 'Mormon' Elders as ministers" and that LDS elders had been arrested and fined for performing marriages.¹¹ Newel was also amazed. He noted in his journal that Joseph did not have a license to perform marriages and that without this the authorities could impose a penalty.¹²

Joseph was not timid in announcing his intent to solemnize marriages. During the Knight ceremony, he stated that LDS elders had been "wronged" in connection with the marriage license issue and explained that from this

Newspapers, comp. Milton V. Backman, 3 vols. (Provo, Utah: Brigham Young University, 1976), 2:n.p.

9. 1824 Act, section 3 (emphasis added).

10. Geauga County Marriage Records, Book C, microfilm of holograph, 141–42, 144, 165, 188–89, 233–34, FHL. Other Latter-day Saint elders also performed marriages.

11. Homespun [Susa Young Gates], *Lydia Knight's History* (Salt Lake City: Juvenile Instructor Office, 1883), 30.

12. Newel Knight, Autobiography and Journal, folder one, [45–46], Church History Library, The Church of Jesus Christ of Latter-day Saints, Salt Lake City.

time forth he intended to marry couples whenever he saw fit.

Joseph also predicted that his enemies would never be able to use the law against him.¹³

Nor was the Prophet silent with respect to the uncertainty over his authority to solemnize marriages. In comments made during a Sunday sermon, just days after the Knight wedding, Joseph justified his action by explaining that he had done as God commanded him. He further stated that it was his right, or “religious privilege,” as he put it, to perform marriages. Not even the U.S. Congress, he said, had “power to make a law that would abridge the rights of [his] religion.”¹⁴

Not surprisingly, Newel’s and Lydia’s comments regarding Ohio law and Mormon elders have led some historians to assume that Joseph Smith acted without legal authority when he married couples in Kirtland. These writers have used the term “illegal” quite freely in describing these weddings, also noting that, in the case of the Knight wedding, Lydia had not obtained a divorce from her previous spouse, Calvin Bailey, an abusive husband who had abandoned Lydia several years earlier.

No historian has been more direct in questioning the propriety of Joseph’s performance of marriages than Michael Quinn:

[I]n November 1835 he [Joseph] announced a doctrine I call “theocratic ethics.” He used this theology to justify his violation of Ohio’s marriage laws by performing a marriage for Newel Knight and the undivorced Lydia Goldthwaite without legal authority to do so.¹⁵

Quoting Newel’s surprise at Joseph’s performance of the marriage, Quinn continues:



Lydia Goldthwaite Bailey Knight.
Courtesy Church History Library,
The Church of Jesus Christ of
Latter-day Saints.

13. Homespun [Susa Young Gates], *Lydia Knight’s History*, 31.

14. Quoted in Newel Knight, *Autobiography and Journal*, folder three, page 6.

15. D. Michael Quinn, *The Mormon Hierarchy: Origins of Power* (Salt Lake City: Signature Books, 1994), 88.

In addition to the bigamous character of this marriage, Smith had no license to perform marriages in Ohio. . . .

Two months later Smith performed marriage ceremonies for which neither he nor the couples had marriage licenses, and he issued marriage certificates “agreeable to the rules and regulations of the Church of Jesus Christ of Later-day Saints.” Theocratic ethics justified LDS leaders and (by extension) regular Mormons in actions which were contrary to conventional ethics and sometimes in violation of criminal laws.¹⁶

Others, such as Richard Van Wagoner, have likewise accused Joseph Smith of disregarding the law:

Smith’s performance of this marriage was one of his earliest efforts to apply heavenly guidelines on earth despite legal technicalities. Not only was Smith not a lawfully recognized minister, but Lydia Bailey, whose non-Mormon husband had deserted her, was never formally divorced.¹⁷

Although these and other historians have concluded that the Prophet was acting illegally in marrying the Knights, no writer to date has tested this assertion.¹⁸ In view of the negative spin that Quinn and Van Wagoner put on Joseph’s actions, it seems appropriate to study this issue and related circumstances in greater detail. The results of this research may surprise some readers. As is detailed in this chapter, Joseph was indeed within his statutory rights in assuming the authority to solemnize marriages. Moreover, he was correct when he stated that performing marriages was his “religious privilege.” Ohio’s marriage statute and history provided clear grounds for these conclusions.

The Knight-Bailey Marriage

As is evident from the previous quotes, much of the controversy surrounding Joseph’s decision to solemnize marriages stems from his performance

16. Anson Phelps Stokes and Leo Pfeffer, *Church and State in the United States* (New York: Harper and Row, 1964), 71–72.

17. Richard S. Van Wagoner, *Mormon Polygamy: A History*, 2nd ed. (Salt Lake City: Signature Books, 1989), 7.

18. The story of the Newel Knight–Lydia Bailey wedding is retold and reinterpreted by William G. Hartley in “Newel and Lydia Bailey Knight’s Kirtland Love Story and Historic Wedding,” *BYU Studies* 39, no. 4 (2000): 6–22; see also other retellings in the sources cited there and in the original version of the article in *BYU Studies*.

of the Knight-Bailey wedding. While some of the primary sources do seem to cast doubt on the Prophet's legal authority, they also contain facts that attest to a general concern for legal compliance on the part of all parties involved. Newel in particular exhibited a grasp of legal issues that, though flawed, seems to have set the tone for events leading to his marriage.

According to Lydia's account, when Newel proposed, he attempted to persuade Lydia that her prior marriage to Calvin Bailey was not a legal impediment. Newel explained that "according to the law she was a free woman, having been deserted for three years with nothing provided for her support." Lydia seems to have been unimpressed with these arguments based on human law. She was more concerned with the "law of God," apparently fearing the moral implications of this second marriage.¹⁹

None of the accounts clarify exactly what Newel meant when he assured Lydia that the law made her "free"; however, a review of Ohio statutes shows what he likely had in mind. According to a definition of the crime of bigamy adopted in Ohio in 1831, individuals previously married could legally remarry, without any necessity of obtaining a divorce, if the prior spouse had been "continually and willfully absent for the space of three years."²⁰ Newel may also have had in mind a provision of state divorce law, which allowed abandonment for three years to serve as grounds for divorce, though this alternative seems less likely.²¹ Divorces require time-consuming judicial action, a fact that would have been common knowledge even in the nineteenth century.

Judging by the terms of the 1831 bigamy statute, Newel's assessment of Lydia's rights was unquestionably correct. Lydia could indeed have remarried without fear of prosecution and without first obtaining a divorce. The exact date Bailey left her is unknown, but facts contained in her history and Newel's journal suggest that she had been abandoned for at least three years and possibly four.²² Nevertheless, Newel seems to have been unaware that

19. Homespun [Susa Young Gates], *Lydia Knight's History*, 27–28.

20. An Act for the Punishment of Crimes, 1831, section 7, *1831 Acts*, 136.

21. An Act concerning Divorce and Alimony, January 6, 1824, section 1, in *1831 Acts*, 431–32; An Act to Amend the Act, Entitled An Act concerning Divorce and Alimony, December 31, 1827, section 1, *1831 Acts*, 433.

22. Available evidence is contradictory as to when Calvin Bailey abandoned Lydia. Her history suggests that it was "about three years" after her marriage in 1828, thus suggesting an 1831 date. *Lydia Knight's History*, 11. His journal states that Calvin left Lydia shortly after the birth of her second child, a son. Genealogical sources show that this child was born on February 12, 1832, making an early 1832 date the most likely one. In either case, at the time of Newel's proposal to her, Lydia would have met the three-year requirement

earlier in 1835 the state legislature adopted a new bigamy statute.²³ This law lengthened to five years the time required to constitute abandonment—a requirement Lydia would not have met. Of course, the terms of that bigamy statute still required that, in order to be convicted, a married person had to have “a husband or wife living,” which Lydia probably did not have.

While Newel may have been mistaken in his understanding of the three-year-abandonment provision under the prevailing Ohio bigamy statute, his reference to Lydia being “free” under the law establishes an important part of the context for subsequent events. After Lydia rebuffed Newel’s proposal, Newel turned to God in fasting and prayer and then decided to seek the advice of the Prophet Joseph.²⁴ Lydia’s account describes what happened next:

Accordingly, Joseph presented his petition to the Lord, and the reply came that Lydia was free from that man. God did not wish any good woman to live a life of loneliness [*sic*], and she was free to marry. Also that the union of Newel and Lydia would be pleasing in His sight.²⁵

Joseph’s use of the precise word that Newel employed—free—would seem to tie his response to Newel’s initial legal argument. The Prophet’s confident response also laid to rest the moral concerns Lydia had. The Prophet assured her that she would not lose her salvation in remarriage; in fact, God would be pleased with her marriage to Newel.

Trusting in Joseph’s word, the couple made immediate plans to marry. Lydia’s history reports that their confidence in the Prophet was soon vindicated. Shortly after their marriage on November 24, 1835, the couple learned that Calvin Bailey, Lydia’s previous husband, had died, a fact they took as convincing proof of the inspiration in Joseph’s reply.²⁶ Oddly, Quinn and Brooke characterized this union as “bigamous,” yet omitted Lydia’s highly significant mention of Bailey’s actual death. The death of Lydia’s former husband prior to her remarriage would have made bigamy a nonissue if it had been raised, for without proof that his death occurred after the marriage, the

for remarriage but not the newer, five-year requirement. The birth date of Lydia’s second child is found under “Lydia Goldthwait,” b. 1832, Ancestral File 4.19, AFN:2SPB-TR. Newel’s account is found in Knight, *Autobiography and Journal*.

23. An Act Providing for the Punishment of Crimes (1835), sections 7 and 42, *1841 Statutes*, 230, 239.

24. *Lydia Knight’s History*, 28.

25. *Lydia Knight’s History*, 28.

26. The death date of Calvin Bailey is unknown. Several researchers have searched extensively for it, as yet unsuccessfully.

state could not have borne its burden of proof in prosecuting Lydia for bigamy. Consequently, any liability that Joseph otherwise might have incurred for solemnizing such a marriage—if in fact it had been bigamous—thereby probably became a moot issue.²⁷

Newel's journal shows that he was concerned with another legal issue besides Lydia's right to remarry, namely compliance with the Ohio marriage statute. Newel reports having gone by horse to the county clerk to obtain a marriage license (not to be confused with a license to solemnize marriages), returning by 3 P.M. on the day of the marriage.²⁸ A search of county records confirms that Newel did indeed comply with sections 6 and 7 of the Ohio statute and received a license for his marriage to Lydia.²⁹

Joseph Smith's Compliance with the Ohio Marriage Statute

While the accounts of marriages that Joseph Smith later performed are not as detailed as those of the Knight-Bailey wedding, they contain important facts evidencing Joseph Smith's compliance with the Ohio marriage statute. However, some of these later accounts contain important facts. For example, an entry in Joseph's journal contains a transcription of a marriage certificate he issued in January 1836 to William Cahoon and his bride, Nancy Miranda Gibbs.³⁰ This is the same certificate that Quinn refers to (quoted previously), seemingly suggesting there was something improper in the issuance of these certificates. In reality, the wording of this certificate and of the Ohio marriage statute helps prove the legality of Joseph's performance of this marriage. A brief examination of Ohio marriage law will demonstrate this point.

The Ohio marriage statute in force during Joseph Smith's Ohio years was entitled *An Act Regulating Marriages*. Passed by the Ohio legislature on January 7, 1824, this act specified rules for marriage age, consanguinity, and licensing and specified who could solemnize marriages (see fig. 4). It also

27. Under section 9 of the 1824 Act, a fine could be imposed on anyone solemnizing a marriage “contrary to the true intent and meaning” of the act. How this provision might theoretically have applied to Joseph's actions is not clear. Determining the “intent” of a statute is an imprecise process, especially with older statutes for which few judicial precedents or legislative history materials are available.

28. Knight, *Autobiography and Journal*, folder one, [45].

29. This license, dated November 25, 1835, is located in Geauga County Marriage Licenses, 1833–1841, microfilm of holograph, FHL. Joseph's journal and county records place the date of the actual marriage on November 24.

30. Scott H. Faulring, ed., *An American Prophet's Record: The Diaries and Journals of Joseph Smith* (Salt Lake City: Signature Books, 1987), 116 (January 19, 1836).

prescribed when and how records of marriages were to be filed, and it stipulated penalties for various violations.³¹ The crucial language in section 2 of the act provides:

It shall be lawful [1] for any ordained minister of any religious society or congregation, within this State, who has, or may hereafter, obtain a license for that purpose, as hereinafter provided, *or* [2] for any justice of the peace in his county, *or* [3] for the several religious societies, agreeably to the rules and regulations of their respective churches, to join together as husband and wife, all persons not prohibited by this act.³²

Accordingly, the language of this act specifies that “ordained ministers” could receive licenses to solemnize marriages from the local courts of common pleas. But even if Judge Birchard were not inclined to grant these licenses to Latter-day Saint elders, the Mormons still had other avenues open to them under this statute. According to this same section, a justice of the peace could also perform marriages. Indeed, the Mormons elected several justices of the peace in Geauga County during their stay in Kirtland. This included Oliver Cowdery, Horace Kingsbury, Frederick G. Williams, and Seymour Brunson, all of whom performed marriages in Kirtland specifically noting that it was done under color of that office. Records indicate that they married a total of 34 couples between 1835 and 1837. Other than Joseph Smith (who married 20 couples while in Kirtland), these were virtually the only other Mormons performing marriages in Kirtland. The only other person to do so was Sidney Rigdon, who not only married Orson Hyde and Marinda Johnson in September 1834 that resulted in his indictment, but also two other marriages prior to the Hyde/Johnson marriage, including marrying Brigham Young to Mary Ann Angel in March 1834, and two other couples after the litigation over the Hyde/Johnson marriage in late 1836.

But the statute also provided that marriages could also be performed by the “several religious societies, agreeably to the rules and regulations of their respective churches.” For those acting under the second half of section 2, there was no requirement for the person or religious society performing the marriage to hold a license from a county court.³³

An examination of entries in Joseph Smith’s journal suggests that he intended the marriages he performed to be valid under this latter category.

31. The provisions of the 1824 Act stood virtually unchanged for decades.

32. 1824 Act, section 2, italics added.

33. See 1824 Act, section 2.

The Cahoons's marriage certificate, for example, shows that Joseph explicitly used the precise language of the Ohio statute. The Prophet stated that he married the Cahoons "agreeably to the rules and regulations of the Church of Christ of Latter-Day Saints on matrimony."³⁴ Likewise, a marriage Joseph performed in January 1836 included similar language: his journal states that he married John Boynton and Susan Lowell "according to the rules and regulations of the church of the Latter-day Saints."³⁵ The use of statutory wording on these two occasions would not seem to have been coincidence. Rather, Joseph seems to have intended to show unequivocally that the marriage was valid under the third clause of section 2 of the state of Ohio's marriage statute.³⁶

While the case for the legality of these later marriage ceremonies may be clear, what of the Knight-Bailey marriage? The accounts contain no evidence that the Prophet used the language of the statute on this occasion. Such language, however, was not necessary. No provision of the law required such a reference, and other denominations, such as the Quakers, performed marriages in Ohio under the "rules and regulations" clause without making explicit reference to the statute in their marriage certificates.³⁷ Thus, under the law, Joseph needed only to act according to the rules and regulations of the Church. If he did this, then the Knight-Bailey marriage would have been legally performed, regardless of whether Joseph knew of his statutory authority or made any explicit reference to it.

The Church's rules for marriage were included in the section entitled "Marriage" near the end of the 1835 Doctrine and Covenants (see fig. 1).³⁸ These rules were drafted earlier in 1835 and adopted in August of that year at an assembly of Saints in Kirtland.³⁹ The Church rules likely were the "rules ... on matrimony," that Joseph followed in marrying the Cahoons in January 1836, as it may well have served as Joseph's guide in marrying the Knights in November 1835.⁴⁰ This likely possibility is suggested by a comparison of the

34. Faulring, *American Prophet's Record*, 116 (January 19, 1836).

35. See Dean C. Jessee, ed., *The Papers of Joseph Smith*, 2 vols. (Salt Lake City: Deseret Book, 1989–92), 2:153–54 (January 20, 1836).

36. See 1824 Act, section 2.

37. For an example of a Quaker marriage certificate, see H. E. Smith, "The Quakers, Their Migration to the Upper Ohio: Their Customs and Discipline," *Ohio Archaeological and Historical Society Publications* 28 (1928): 35–85.

38. *Doctrine and Covenants of the Church of the Latter Day Saints* (1835), section 101 (hereafter cited as *Doctrine and Covenants* [1835]).

39. See Robert J. Woodford, "The Historical Development of the Doctrine and Covenants," 3 vols. (Ph.D. diss., Brigham Young University, 1974), 3:1784–85.

40. Faulring, *American Prophet's Record*, 116 (January 19, 1836).

rules to the accounts of the Knight event. In this document, one finds the substance of the actual ceremony and the procedures to be followed.⁴¹

Even if Joseph Smith had deviated from these rules set forth in the 1835 Doctrine and Covenants, his status as prophet of the Church would arguably have qualified his wording per se as “rules and regulations” under the statute. This follows from passages in the Doctrine and Covenants that established Joseph as a revelator and a “Moses” to his people and passages that instructed the people to be obedient to Joseph’s word (D&C 21:1; 28:2–3). Thus, the Knight wedding would again have been valid because Joseph, the recognized revelator for the Church, performed it under a claim of divine authority.

While it is evident that Joseph acted in accordance with Ohio’s marriage statute when he married the Knights, Joseph’s account is silent on the issue of legality of this particular action. Newel and Lydia seem to have been worried about something, perhaps the question of whether Lydia’s former husband was still alive. Perhaps they were unsettled by the wording of printed marriage license forms used by the clerk of the court in Geauga County. Those forms contained a blank for the names of the parties intending to marry and stipulated that the ceremony was to be performed either by a justice of the peace or a minister of the gospel holding a license to solemnize marriages issued by any Ohio county court. Once the names were filled in and the clerk signed and dated the form, the marriage license became valid. What these forms did not state is that “religious societies” also had authority to perform marriages.⁴² Lest the mention of this omission raises doubts as to Joseph’s authority under the “religious societies” clause, it must be pointed out that these forms did not hold the force of law. The wording on the forms was not prescribed by Ohio statute.⁴³ Rather, forms seem to have been printed locally, in the case of Geauga County, creating a time-saving convenience for county clerk D. D. Aiken (see fig. 2).⁴⁴

41. Doctrine and Covenants [1835], section 101. Joseph’s accounts are found in Jesse, *Papers of Joseph Smith*, 1:145–46 (November 24, 1835); and 2:88–89 (November 24, 1835); “Manuscript History of The Church of Jesus Christ of Latter-day Saints,” November 24, 1835, Church History Library; and Joseph Smith Jr., *History of The Church of Jesus Christ of Latter-day Saints*, ed. B. H. Roberts, 2d ed., rev., 7 vols. (Salt Lake City: Deseret Book, 1971), 2:320 (hereafter cited as *History of the Church*).

42. See marriage license of James D. Davis and Roxana Davis, dated January 13, 1831, Davis Family Papers, Church History Library; and marriage license of Robert B. Thompson and Mercy R. Fielding, dated June 4, 1837, Mercy F. Thompson Papers, 1837–45, Daughters of Utah Pioneers Collection, Church History Library.

43. S.v. “Forms,” index, *1831 Acts*.

44. The marriage license for Robert and Mercy Thompson bears a small notation in the lower left corner, partially obscured, which indicates that the form was printed in Cleveland.

Figure 1. 1835 Doctrine and Covenants, Section 101

MARRIAGE

According to the custom of all civilized nations, marriage is regulated by laws and ceremonies: therefore we believe, that all marriages in this church of Christ of Latter Day Saints, should be solemnized [1] in a public meeting, or feast, prepared for that purpose: and [2] that the solemnization should be performed by a presiding high priest, high priest, bishop, elder, or priest, not even prohibiting those persons who are desirous to get married, of being married by other authority. [3] We believe that it is not right to prohibit members of this church from marrying out of the church, if it be their determination so to do, but such persons will be considered weak in the faith of our Lord and Savior Jesus Christ. Marriage should be [4] celebrated with prayer and thanksgiving; and [5] at the solemnization, the persons to be married, standing together, the man on the right, and the woman on the left, shall be addressed, by the person officiating, as he shall be directed by the holy Spirit; and [6] if there be no legal objections, he shall say, [7] calling each by their names: “You both mutually agreed to be each other’s companion, husband and wife, observing the legal rights belonging to this condition; that is, keeping yourselves wholly for each other, and from all others during your lives.” And [8] when they have answered “Yes,” he shall [9] pronounce them “husband and wife” in the name of the Lord Jesus Christ, and by virtue of the laws of the country and authority vested in him: [10] “may God add his blessings and keep you to fulfill your covenants from henceforth and forever. Amen.” [11] The clerk of every church should keep a record of all marriages, solemnized in his branch. [12] All legal contracts of marriage made before a person is baptized into this church, should be held sacred and fulfilled. Inasmuch as this church of Christ has been reproached with the crime of fornication, and polygamy: we declare that we believe, that [13] one man should have one wife; and one woman, but one husband, except in case of death, when either is at liberty to marry again. [14] It is not right to persuade a woman to be baptized contrary to the will of her husband, neither is it lawful to influence her to leave her husband. All children are bound by law to obey their parents; and to influence them to embrace any religious faith, or be baptized, or leave their parents without their consent, is unlawful and unjust. We believe that all persons who exercise control over their fellow beings, and prevent them from embracing the truth, will have to answer for that sin. **[Numbers indicate rules and regulations to be observed.]**

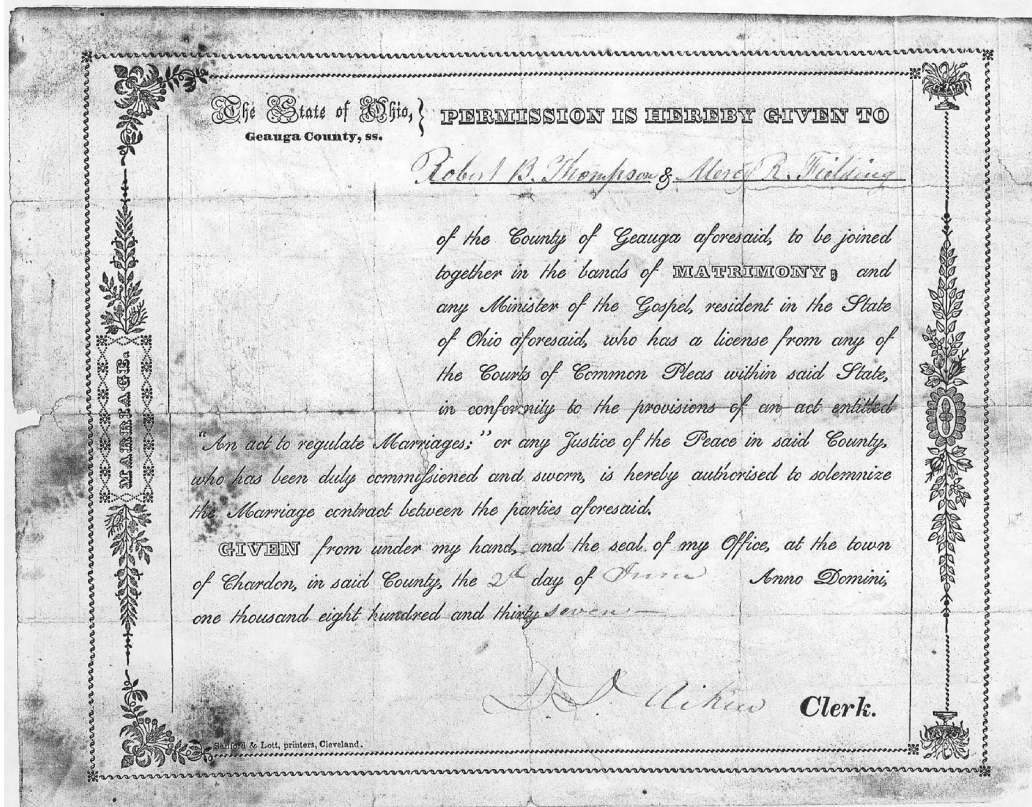


Figure 2. Marriage license of Robert B. Thompson and Mercy R. Fielding, the last recorded couple Joseph Smith married in Kirtland, Ohio. Courtesy Daughters of Utah Pioneers Museum, Salt Lake City.

Moreover, other facts clearly attest to the legality of the marriages he performed. For example, he submitted the certificates for marriages he performed to the county clerk for recording. Section 8 of the Ohio marriage act required that a certificate be submitted, within three months of each wedding, signed by the minister or justice who had performed the ceremony. Joseph's journal and county marriage records show that the Prophet complied with this requirement, as he submitted records for several marriages. The first of these was the certificate for the Knight-Bailey marriage, recorded by Aiken on February 22, 1836, two days prior to the deadline. That Joseph made this filing deadline and at the same time submitted several other marriage certificates shows that this submission was not an almost-belated afterthought (see fig. 3).⁴⁵ Furthermore, the county clerk could not have recorded these certificates if they were invalid or illegal on their face.

45. See Jessee, *Papers of Joseph Smith*, 2:178 (February 22, 1836); *History of the Church*, 2:398; Geauga County Marriage Records, Book C, 141–42, 144, 165, 188–89, 233–34.

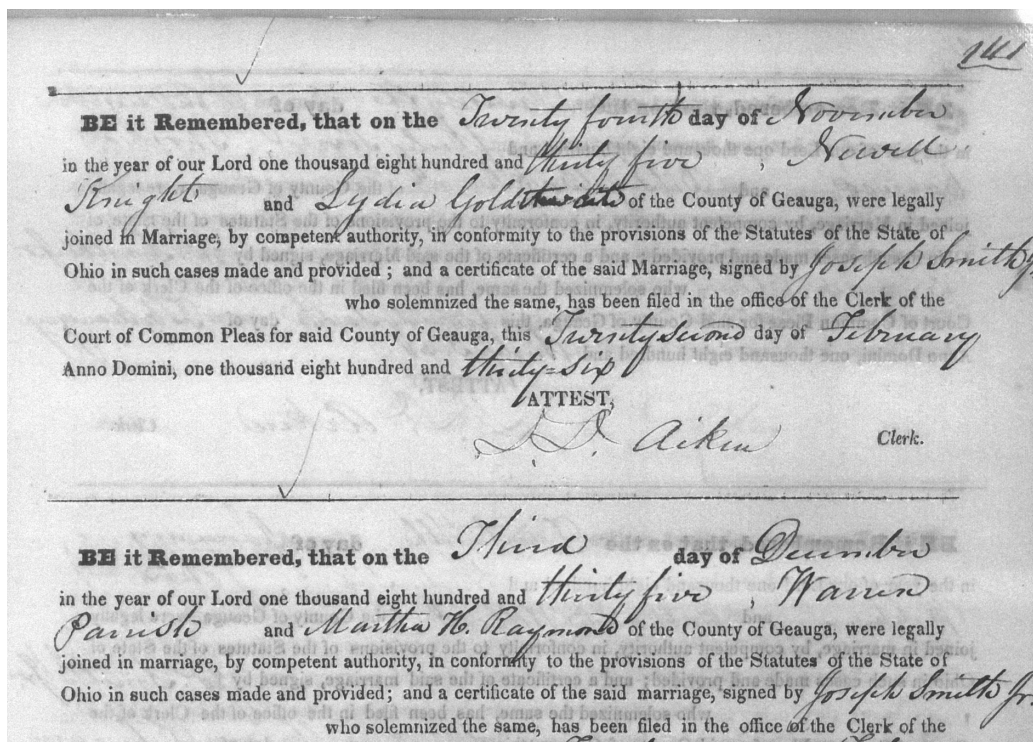


Figure 3. Geauga County records of marriages solemnized by Joseph Smith in Kirtland, Ohio, from November 1835 through January 1836. These records were filed in Geauga County within the ninety-day term prescribed by law. The records contain a record of the marriage of Newel Knight and Lydia Goldthwaite Bailey. Courtesy Judge Charles E. Henry, Geauga County Probate Court.

Evidence of scrupulous adherence to legal standards can also be seen in the case of at least one person whom Joseph married, William Cahoon. Unlike Newel Knight, who rode miles to obtain a marriage license for his wedding, Cahoon's autobiography recounts that he found a legal way to avoid this trip. Section 6 of the Ohio marriage act specified that the parties did not need a marriage license if the event was properly announced in advance and if the ceremony was held in public (see fig. 4), and Cahoon's autobiography states that these requirements were met.⁴⁶

The propriety of Joseph Smith's open performance of the Knight-Bailey marriage and several later marriages is further demonstrated by the fact that he was never prosecuted for these actions.⁴⁷ With charges against Rigdon

46. William F. Cahoon, *Autobiography*, 44, Church History Library.

47. Any indictment of Joseph for illegally solemnizing marriages would be found in the records of the Geauga County Court of Common Pleas. This is because the potential fine for this offense exceeded the jurisdictional amount of justices of the peace yet was

having been dropped only on a legal technicality just weeks prior to the Knight-Bailey marriage, Joseph could have expected to be prosecuted himself, if indeed he had acted in violation of the law. This assumption is buttressed when one considers that some citizens in the region advocated using the law as a way of challenging the influence of the Latter-day Saints.⁴⁸

not high enough to bring the case within the original jurisdiction of the supreme court. 1824 Act, section 9; An Act to Organize the Judicial Courts, February 7, 1831, section 4, *1841 Statutes*, 222–23; An Act Defining the Powers and Duties of Justices of the Peace, and Constables, in Civil Cases, March 14, 1831, section 1, *1841 Statutes*, 505–6. Likewise, as bigamy was a noncapital offense, any indictment of Lydia for this crime would also be found in these same records.

48. See, for example, Eber D. Howe, *Autobiography and Recollections of a Pioneer Printer* (Painesville, Ohio: Telegraph Steam Printing House, 1878), 44–45; “New Bible— a Hoax,” *Observer and Telegraph* [Huron, Ohio], February 10, 1831, 3.

Figure 4. Selections from the 1824 Ohio Statute on Marriage

Sec. 1. *Be it enacted by the General Assembly of the State of Ohio*, That male persons of the age of eighteen years, female persons of the age of fourteen years, not nearer of kin than first cousins, and not having a husband or wife living, may be joined in marriage: *Provided, always*, That male persons under the age of twenty-one years, female persons under the age of eighteen years, shall first obtain the consent of their fathers, respectively; or in the case of the death or incapacity of their fathers, then of their mothers or guardians.

Sec. 2. That it shall be lawful for any ordained minister of any religious society or congregation, within this State, who has, or may hereafter, obtain a license for that purpose, as hereinafter provided, or for any justice of the peace in his county, **or for the several religious societies, agreeably to the rules and regulations of their respective churches**, to join together as husband and wife, all persons not prohibited by this act.

Sec. 3. That **any minister of the gospel**, upon producing to the court of common pleas of any county within this State, in which he officiates, credentials of his being a regular ordained minister of any religious society or

congregation, shall be entitled to receive, from said court, a license, authorizing him to solemnize marriages within this State, so long as he shall continue a regular minister in such society or congregation.

Sec. 6. That previous to persons being joined in marriage, notice thereof shall be published, (in the presence of the congregation,) on two different days of public worship, the first publication to be at least ten days previous to such marriage, within the county where the female resides; **or a license shall be obtained** for that purpose, from the clerk of the court of common pleas in the county where such female may reside.

Sec. 7. That the clerk of the court of common pleas, as aforesaid, may inquire of the party, applying for marriage license, as aforesaid, upon oath or affirmation, relative to the legality of such contemplated marriage; and **if the clerk shall be satisfied** that there is no legal impediment thereto, then he shall grant such marriage license: ... and the clerk is hereby authorized to administer such oath or affirmation, and thereupon issue and sign such license, and affix thereto the seal of the county: ... and if any clerk shall in any other manner issue or sign any marriage license, he shall forfeit and pay a sum not exceeding one thousand dollars, to and for the use of the party aggrieved.

Sec. 8. That a certificate of every marriage hereafter solemnized, signed by the justice or minister solemnizing the same, shall be transmitted to the clerk of the county wherein the marriage was solemnized, **within three months thereafter**, and recorded by such clerk: every justice or minister, (as the case may be,) failing to transmit such certificate to the clerk of the county, in due time, shall forfeit and pay fifty dollars; and if the clerk shall neglect to make such record, he shall forfeit and pay fifty dollars, to and for the use of the county.

Sec. 9. That if any justice or minister, by this act authorized to join persons in marriage, shall solemnize the same contrary to the true intent and meaning of this act, the person so offending shall, upon conviction thereof, forfeit and pay any sum not exceeding one thousand dollars, to and for the use of the county, wherein such offence was committed: and if any person not legally authorized, shall attempt to solemnize the marriage contract, such person shall, upon conviction thereof, forfeit and pay five hundred dollars, to and for the use of the county wherein such offence was committed.

[Boldings added]

The Additional Argument of Religious Privilege

Joseph Smith actually did have legal authority to perform marriages in Ohio. He seems to have known this by January 1836, when his journal records that he performed marriages according to the “rules and regulations of the Church.” However, he may not have been certain of these rights at the time of the Knight wedding in November 1835.⁴⁹ If not, then the further question arises: what was his rationale for asserting his authority to perform this marriage? When Joseph insisted during his Sunday sermon that marrying the Knights was his right, or “religious privilege,” was he correct, or was he just using a hyperbole to create a legal fig leaf to cover his actions? As with the case of his statutory rights under Ohio marriage law, a study of this question also provides clear vindication for the Prophet. Although the issue of which ministers could solemnize marriages had been a contentious one in a number of states, by 1835 this controversy was a thing of the past. Previous legal restrictions had been lifted, and all Christian ministers enjoyed this right, even in former “establishment states,” where constitutional and statutory provisions had existed favoring particular denominations.⁵⁰ In Ohio, religious freedom had always been granted under state law. Ohio’s first constitution protected “rights of conscience” in matters of religion.⁵¹

Ohio’s marriage law always reflected the notion of religious freedom. Beginning with the state’s first marriage law in 1803 up until the passage of the 1824 marriage act (in force during the Church’s Ohio years; see fig. 4), the provisions of Ohio marriage law allowed not just ordained ministers to perform marriages but also religious groups according to their own rules. While the 1803 statute granted this latter right only to Mennonites and Quakers, later revisions extended this right to all “religious societies.” This new wording effectively granted authority for all Christian faiths to solemnize their own matrimonial contracts without the necessity of obtaining licenses from the county courts. Accordingly, Joseph was well within his rights, as a citizen of the state of Ohio, to claim his “religious privilege” under this basic rubric of Ohio jurisprudence. Indeed, the organizational status of the Church during this time would not have affected the right of its clergy to marry. Ohio law recognized unincorporated religious societies;⁵²

49. Faulring, *American Prophet’s Record*, 116 (January 19, 1836).

50. For a lengthy discussion of the history of the disestablishment of religion in America, see the original version of this article in *BYU Studies*.

51. See “Third Article in the Declaration of Rights,” *Spirit of the Pilgrims* 4 (December 1831): 648.

52. In *Methodist Episcopal Church of Cincinnati v. Wood*, 5 Ohio 283 (Ohio Supreme Court, December 1831 term), the court recognized an unincorporated splinter group from

the Marriage Act does not refer to “incorporated religious societies;” and the Ohio incorporation statute for religious societies, which was enacted principally for the purpose of owning or conveying real and personal property, never references marriage.⁵³ No evidence has been found that his performance of marriages in Ohio was ever a subject of public concern during his lifetime.⁵⁴

The Prejudicial Denial of Sidney Rigdon’s Motion for a License

In view of the abundant statutory and historical evidence supporting Joseph Smith’s performance of marriages, one wonders why Sidney Rigdon specifically, and the Saints generally, experienced difficulties in this regard. Previous scholarship has assumed that the Kirtland Saints generally received fair treatment at the hands of the county court. While this conclusion still seems valid, a number of facts related to the marriage issue invite us to take a deeper look at this assumed impartiality. Considerable evidence points toward discrimination against Rigdon and the Saints in Geauga County.

Conspicuously, other LDS elders successfully obtained licenses outside Geauga County. Elder Seymour Brunson already held such a license at the time that Elder Rigdon’s motion for a license was denied. Brunson obtained his license in Jackson County, in southern Ohio (not to be confused with the Missouri county by the same name), a place where, according to Lydia Knight, “prejudice did not run so high.”⁵⁵ A March 21, 1836, entry in Joseph’s

the incorporated Methodist Episcopal Church of Cincinnati, noting: “The body of persons, thus separated, agreed upon articles of association, differing essentially from the rules governing the Methodist Episcopal Church. By these articles of association they have since conducted their affairs, and conducted worship as a distinct church, denying all accountability, alike in the spiritual and corporate power of the Methodist Episcopal Church.” However, while it recognized the legitimacy of this separated church, the court held that it could not make a claim to any of the property of the Methodist Episcopal Church, as it was not incorporated.

53. Ch. 97, in *1841 Statutes*.

54. Milton V. Backman Jr., *The Heavens Resound* (Salt Lake City: Deseret Book, 1983), 337, states that critics continued to raise such questions after the Rigdon litigation; this statement is based on secondary sources, and they in turn reference only an affirmation of equal priesthood privilege in *Messenger and Advocate* 3, no. 7 (April, 1837), 496, and a “vexatious writ” sworn out but not further prosecuted against Joseph Smith Sr. in 1838 as reported in “History of Luke Johnson, by Himself,” *Millennial Star* 27, no. 1 (January 7, 1865), 6. Joseph Smith Jr. performed a number of marriages in Ohio, the last on June 4, 1837.

55. *Lydia Knight’s History*, 30; see also Jackson County Ohio Court of Common Pleas, Journal Book D, 49; and Ferron Allred Olson, *Seymour Brunson: Defender of the Faith* (Salt Lake City: By the author, 1998), 62.

journal records that he “prepared a number of Elders licences, to send by Elder [Ambrose] Palmer to the court [in] Medina County in order to obtain licenses to marry, as the court in this county will not grant us this privilege.”⁵⁶ Even though Joseph had already been performing marriages under, as we suppose, the “rules and regulations” clause for several months, some LDS elders probably wanted the additional assurance of holding actual licenses to solemnize marriages. Court records from Medina County confirm that two elders received licenses, though not until the June 1836 term of court.

In light of counties outside Geauga granting licenses to Mormon elders, Geauga’s refusal of Rigdon’s motion seems problematic. Why might Judge Birchard of Geauga County have refused? Birchard’s refusal cannot have been for any lack of assertiveness on Rigdon’s part. Court records show that Rigdon took the unusual step of using the services of an attorney in making his motion.⁵⁷ Evidently, Rigdon did not want to risk a refusal.

The most plausible explanation for Judge Birchard’s apparent discrimination can be found in political and religious differences that set the Saints apart from other Geauga County residents. Politically the Kirtland Saints typically voted for Democratic candidates, whereas the other residents of the county generally voted for Whig candidates.⁵⁸ Birchard himself was a Democrat and was not a church-going man.⁵⁹ One would not expect a judge to be prejudiced against any group; however, this judge may have reflected the political or religious biases of powerful local constituencies whom he would not have wanted to alienate.⁶⁰ Presbyterian Whigs virtually dominated Geauga County politics at this time and were prominent in state politics.⁶¹ Birchard’s chances for reappointment by the Ohio General Assembly at the end of his

56. Jesse, *Papers of Joseph Smith*, 2:190 (March 21, 1836).

57. Geauga County Court of Common Pleas, Journal Book M, 380–81.

58. Max H. Parkin, “Mormon Political Involvement in Ohio,” *BYU Studies* 9, no. 4 (1969): 489.

59. *The Biographical Cyclopaedia and Portrait Gallery: With an Historical Sketch of the State of Ohio*, 6 vols (Cincinnati: Western Biographical Publishing, 1884), 3:626–27. At Peter Hitchcock’s funeral, Judge Birchard spoke, even though the two were of “opposite politics.” Since the Hitchcocks were Whigs, this would imply that Judge Birchard was a Democrat. *Pioneer and General History of Geauga County with Sketches of Some of the Pioneers and Prominent Men*, 2 vols. (n.p.: Historical Society of Geauga County, 1880), 2:514.

60. A newspaper from a nearby county reported that Birchard had won favor with local citizens despite initial misgivings over his appointment that had been expressed in the press. “Judge Birchard,” *Elyria Ohio Atlas*, April 25, 1833, n.p.

61. See “Church and State,” *Painesville Republican*, September 28, 1837, 2; “Church and State,” *Painesville Republican*, October 19, 1837, 2; “Equal Rights,” *Painesville Republican*, October 19, 1837, 2.

seven-year term, or for appointment to the state supreme court bench, could have hinged to a considerable degree on the opinion local constituencies held of him.⁶²

Moreover, Judge Birchard may have denied Sidney Rigdon's application for a license in an attempt to court the favor of influential Presbyterian Whigs, although this cannot be known for sure. However, one might infer that these Presbyterians in Geauga County held views similar to other Presbyterians in the region. The tone of articles printed in the local Presbyterian press may be an indicator. Typical of many papers, the *Hudson Observer and Telegraph*, located about thirty miles south of Kirtland in Summit County, ran articles expressing skepticism or even ridiculing the spiritual claims at the root of the LDS Church. For example, in 1834, this paper commented that some of the "good people" of the area had converted to Mormonism. The paper then suggested that a few good nights of sleep should be enough to straighten out their thinking.⁶³ The editor also eagerly anticipated the publication of Eber Howe's *Mormonism Unveiled* and ran a series of unfavorable articles on the Church.⁶⁴ Similarly, at least some of the local Presbyterian clergy also seem to have taken a dim view of Mormonism. One minister in Painesville commented in a letter to his sponsoring organization that the Book of Mormon was a "mixture of fallacy & profaneness." He passed on second-hand reports of "alleged licentiousness" among Mormons and of their "annulling the marriage covenant."⁶⁵

Regardless of Judge Birchard's motives for rejecting Sidney Rigdon's motion for a marriage license, the judge's decision is not justifiable from a legal point of view. The practice in Ohio courts was to freely grant requests for marriage licenses, provided the requester presented appropriate credentials. Examples can even be found where licenses were granted to representatives of groups whose members traditionally had solemnized marriages under their own rules without licenses. Such a case occurred in Wayne County, where a Mennonite minister was granted a license to perform marriages.⁶⁶ This

62. According to the Ohio constitution, judges were appointed for seven-year terms by a joint ballot of both houses of the General Assembly. *Ohio Constitution* (1802), art. 3, section 8.

63. "Mormonism," *Hudson Observer and Telegraph*, April 3, 1834.

64. Eber D. Howe, *Mormonism Unveiled: or, A Faithful Account of That Singular Imposition and Delusion, from Its Rise to the Present Time* (Painesville, Ohio: By the author, 1834); "From the Junior Editor," *Hudson Observer and Telegraph*, May 22, 1834, 3; and the three-part series "From the Junior Editor . . . Mormonism," *Hudson Observer and Telegraph*, May 29, June 5, and June 12, 1834, 3.

65. William M. Adams to Absalom Peters, May 14, 1831, AHMSA.

66. Wayne County Court of Common Pleas, Journal Book 6, 16.

denomination had historically been categorized with Quakers and given special authority to solemnize marriages “agreeable” to its own rules.⁶⁷

Conclusions

It appears obvious that Joseph Smith was aware of the legal issues surrounding performing marriages in Kirtland. This included the reality that the local Geauga Court of Common Pleas judge was not issuing licenses to Mormons to perform marriages and the local prosecutor’s propensity to prosecute Mormons if he believed they violated the Marriage Act. With the adoption of the section on Marriage in the 1835 Doctrine and Covenants, the Mormons provided a way to qualify to perform marriages under the third category of Ohio’s Marriage Act without a license. The Prophet’s personal reliance on this understanding is supported by at least two relevant facts: First, he never sought to obtain a license to marry from any Court of Common Pleas in Ohio, as far as can be determined; and yet, second, he caused each of the twenty marriages he performed in Ohio to be recorded with the court in accordance with the requirements of the Marriage Act. If he was uncertain whether such marriages were legal, why would he risk heavy penalties to have them officially recorded? Further, if there was a claim that such marriages were illegal, why were no prosecutions ever brought? The inescapable answer to both questions is that they were accepted as legal marriages.

At the same time, he did not go out of his way to explain the legality of this to others. As the spiritual leader, it would seem more appropriate for him to discuss these marriages in religious rather than legal terms. Thus, one record reports that he explained his marriage of Newel Knight to Lydia Bailey as follows:

Our Elders have been wronged and prosecuted for marrying without a license. The Lord God of Israel has given me authority to unite the people in the holy bonds of matrimony. And from this time forth I shall use that privilege and marry whomsoever I see fit. And the enemies of the Church shall never have power to use the law against me.⁶⁸

Unfortunately, this emphasis has led some to question the legality of the marriages Joseph performed. Such concerns had some basis, as Rigdon’s

67. 1824 Act, section 2.

68. *Lydia Knight’s History: The First Book of the Noble Women’s Lives Series* (Salt Lake City, UT: Juvenile Instructor Office, 1883), 31. See also Hartley, “Newel and Lydia Bailey Knight’s Kirtland Love Story,” 7–22.

indictment certainly was not a secret. But the Prophet's explanation was simple and based on faith that God had provided a way through the third clause of section 2 of the Ohio Marriage Act.

As frustrating as Joseph Smith may have found all of these difficulties, the Prophet ultimately suffered little inconvenience as a result. Consistent with his prediction, Joseph was never arrested or prosecuted for performing the Knight-Bailey marriage or any of the subsequent marriages he solemnized in Ohio. Ironically, the most serious outcome of his decision has been the unnecessary damage to his reputation done by historians who have assumed that he acted in violation of the law. In making this assumption, these writers not only have made a mistake, but they also have missed some of the deeper meaning in the event. Joseph's performance of the Knight-Bailey marriage was not the illegal act of an unethical man. Rather, this act was a bold assertion of the rights that he believed his followers were entitled to as American citizens.

Joseph Smith's action invokes the memory of earlier "dissenting" ministers who also struggled against prejudices and whose efforts helped bring about greater religious freedom in the United States. Just as he later would personally seek redress for the Saints' wrongs in Missouri, even pleading their cause in Washington, Joseph insisted in Ohio that Latter-day Saints be accorded their privileges and protections under state marriage law. Consistent with his strong protection of individual religious liberties,⁶⁹ the Prophet acted squarely in harmony with the prevailing legal attitudes and regulations of the day in solemnizing marriages.

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69. See also J. Keith Melville, "Joseph Smith, the Constitution, and Individual Liberties," *BYU Studies* 28, no. 2 (1988): 65–74.