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Tabulating the Impact of Litigation on the Kirtland Economy

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Chapter Ten

Tabulating the Impact of Litigation on the Kirtland Economy

Gordon A. Madsen

From the time Joseph and Emma Smith arrived at the doorstep of Newel K. Whitney in Kirtland, Ohio, on February 4, 1831, until they closed the door to their own home and departed that city on January 12, 1838, Joseph was involved in 50 lawsuits either as plaintiff or defendant. At least, that is the number located thus far; there may be more. Of the 50, five were criminal actions, treated briefly below. In the 45 civil matters, Joseph Smith Jr. was plaintiff or co-plaintiff in 7, and defendant or co-defendant in 38 (27 of which were collection cases, see fig. 1). All this litigation, with three exceptions treated at the end of this chapter, occurred between March 1834 and November 1839. During that five and a half years, Joseph was “in court” for an average of 9 cases a year. This article focuses on the financial impact that this litigation had on the Kirtland economy.

The court records for 20 of these cases are found in the Courts of Common Pleas, as they were and are called in Ohio, which are known as courts “of record”—that is, the dockets of these courts are public records kept by the county clerk and which are still retained in the Geauga County Archives and the Lake County Clerk’s Office. Kirtland and its neighboring town to the northeast, Painesville, were part of Geauga County, Ohio, in 1831. In 1840, Geauga County was split, and its northern portion became Lake County. Kirtland and Painesville were part of Geauga until 1840 and have belonged to Lake County since then. I have also included 18 cases from courts of Justices of the Peace that have thus far been located or identified. Those courts were not courts of record, and we are dependent on finding Justice of the Peace

dockets in various repositories or in the possession of descendants of those Justices of the Peace living in the environs of Kirtland in the 1830s.

In addition to the cases brought against Joseph, 13 more (fig. 2) were brought against Reynolds Cahoon, Jared Carter, and Hyrum Smith, who were the committee charged with building the Kirtland Temple and were partners in the mercantile business as well. They are also included here because they were closely connected with Joseph. In those actions, where all or one of them is named (often in company with other individual Latter-day Saints), these men are always defendants, never plaintiffs. Because the cases in which Joseph is named together with the Temple Committee are so intertwined, and most of the Kirtland litigation stems from debt incurred in connection with the construction of the Kirtland Temple, all of them are included in this study. Some of the cases that name the Temple Committee also include Joseph Smith, and they have been included in the 45 identified above. One final case involving the Temple Committee that is both civil and criminal is also treated. This paper thus summarizes 58 civil and 7 criminal actions.

Five Criminal Cases Involving Joseph Smith in Ohio

1. State of Ohio v. Hurlbut. This case, the most famous of the criminal cases in Kirtland, was tried March 31, 1834. Joseph Smith was the complaining witness in that action. Doctor Philastus Hurlbut (“Doctor” was his first given name, not a professional title) had publicly threatened Joseph’s life. A jury found Hurlbut guilty, and the Court of Common Pleas ordered him to keep the peace, and in particular, to leave Joseph Smith undisturbed. Hurlbut was also ordered to post a \$200.00 bond guaranteeing such good behavior for six months (called a peace bond), and to pay the court costs of \$112.59. He left town without paying the costs and leaving the sureties on his peace bond stranded for six months (the term of the bond). This nineteenth-century criminal procedure was the forerunner of today’s restraining orders.¹

2. State of Ohio v. Smith. In June 1835 in the Court of Common Pleas, Calvin Stoddard, brother-in-law to the Prophet, accused Joseph of assault and battery. Justice of the Peace Lewis Miller of Painesville, after hearing (a preliminary hearing) some evidence, bound Joseph over to the Court of Common Pleas, where a grand jury issued an indictment against Joseph for assault and battery. The matter was tried before the Court of Common Pleas without jury on June 16, 1835. The decision reads in part: “and the said Joseph Smith Junior Pleaded to the foregoing Indictment, and said thereof

1. For an analysis of this case, see ch. 7 in this volume.

he is guilty, unless the Court on hearing the evidence adduced shall be of opinion that he is not guilty—. And the Court having heard the evidence do adjudge that the said Joseph Smith Jun' is not guilty as he stands charged in said Indictment.—Wherefore it was ordered that he be discharged from said Indictment and go thereof without day.”² The phrase “without day” meant the defendant had no further court day scheduled—he was free.

3. State of Ohio on complaint of Newell v. Smith. On April 13, 1837, Grandison Newell claimed Joseph Smith had threatened to kill him and initiated an action under the same criminal statute that was used by Joseph against Hurlbut discussed first above. After hearing eleven witnesses for the prosecution and ten for the defense, Justice of the Peace Flint (who was conducting a similar preliminary hearing) ruled in favor of Newell and put Joseph under recognizance (or bond) to appear at the next term of the Court of Common Pleas. The record of the proceedings before Justice Flint was transmitted to the Court of Common Pleas, and a trial was held on June 5, 1837. At the conclusion of the trial, the court held: “the Court having heard the evidence adduced, are of the opinion that the complainant had no cause to fear as set forth in his said complaint—it is therefore adjudged by the court, that the said Joseph Smith Junior be discharged, and go thereof without day—at the cost of the State taxed at [blank].”³ More about Grandison Newell will appear below.

4. State of Ohio v. Smith. Joseph was cited for contempt in the spring of 1837 for failing to appear as a subpoenaed witness in a criminal case pending in Ravenna, Portage County (about thirty miles south of Kirtland). In his response, Joseph stated that he was only a character witness for the defendant, knowing nothing about the facts of the case, and that he had been notified that the defendant was not going to be in court on the day of trial, which proved to be true. Joseph was excused of any contempt and discharged.

5. State of Ohio v. Ritch. Finally, on September 12, 1837, Joseph was the complaining witness against one Abram Ritch in an action for “oppression by color of office.” Ritch was a constable in Kirtland and incidentally was the constable who served subpoenas and summonses and made arrests in the *Hurlbut* case noted above. Seven witnesses testified. The Justice of the Peace ruled: “The charge is not made out against the said Abram Ritch, and he go hence without day.”⁴ The Justice of the Peace who made that ruling was Oliver Cowdery, who

2. Copy of case document in possession of the author, forthcoming in the Joseph Smith Papers Legal and Business Records series.

3. Copy of case document in possession of the author, forthcoming in the Joseph Smith Papers Legal and Business Records series.

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by 1837 had become one of Kirtland's Justices of the Peace. Cowdery did not detail in his decision what the official oppressive act(s) of Ritch were about which Smith complained.

Three Cases Not Directly Involving Joseph Smith

Three other cases should here be mentioned, two of them criminal and one civil. Though not counted above, they also impacted the Kirtland economy.

State of Ohio v. Smith [Joseph Smith Sr.] et al. On August 15, 25, and 26, 1837, Joseph's father, Joseph Smith Sr., and 18 others including Joseph's brothers William, Samuel, and Don Carlos, were charged with the crimes of riot and of assault and battery on the complaint of Warren Parrish. Parrish had become leader of a splinter group, and one Sabbath prior to August 15 he with a party of his followers, armed with pistols and Bowie knives, attempted to take possession of the Kirtland Temple on August 14. Joseph Sr. and the 18 other named defendants removed them. A total of 48 witnesses gave testimony in the two-day hearing. Justice of the Peace Oliver Cowdery determined, "After mature deliberation upon the law and the evidence, it was considered that the charge against them was not sustained, and they were therefore discharged."⁵

Benjamin Bissel v. Joseph Smith Sr. et al. As a civil case footnote to the criminal one just cited, on January 26, 1838, Benjamin Bissell, who had represented all the defendants in that case, sued them all for his legal fees incurred in the case.⁶ Before he filed his declaration, he asked for a continuance, and then dropped the case. A declaration would be called a complaint in today's usage. More about the procedure will be explained hereafter.

State of Ohio v. Zebedee Coltrin, Lyman Sherman, John Sawyer, Harlow Redfield, and Willard Woodstock. The final case here involved a criminal charge arising out of the burning of the printing office and book-bindery located just west of the Kirtland Temple on January 15, 1838. The trial was held on January 17 and 19 before Justice of the Peace Warren Cowdery (who had succeeded his brother Oliver). The defendants were charged with arson. Zebedee Coltrin had left Ohio and was not arrested. Thirty witnesses testified. The prosecutor early in the presentation of the evidence dropped his

5. Oliver Cowdery, Justice of the Peace Docket, p. 226, Huntington Library, San Marino, California. Eliza R. Snow, one of the witnesses who testified, left a record of these events in Eliza Roxey Snow, *Biography and Family Record of Lorenzo Snow* (Salt Lake City: Deseret News, 1884), 20–22.

6. Copy of case document in possession of the author, forthcoming in the Joseph Smith Papers Legal and Business Records series.

claim against Harlow Redfield and made him one of the thirty witnesses. At the conclusion of the evidence, Justice of the Peace Cowdery ruled: “No facts were elicited that went to indict the prisoners of the crime charged in the complaint, either as principles [*sic*] or accessories.”⁷ They were therefore discharged.

These two criminal cases, together with the five discussed above, account for the full extent of the criminal actions involving Mormon leaders in Ohio.

Seven Civil Cases Involving Joseph Smith as Plaintiff in Kirtland

Seven civil actions in which Joseph was plaintiff (or co-plaintiff) were generally small collection matters and had little impact on the Kirtland economy. They are included in the totals above but are not listed in the accompanying figures.

Eight Miscellaneous Cases Involving Joseph Smith as Defendant in Kirtland

1. Lake v. Smith. Dennis Lake had marched in Zion’s Camp, and upon his return to Kirtland became disappointed with the march or disenchanted with the church or both. On December 10, 1834, he sued Joseph Smith to be paid for his time and effort in making the march. Two Justices of the Peace, J. C. Downen and Ariel Hanson, granted judgment to Lake for \$63.67. Joseph appealed to the Court of Common Pleas, which on June 16, 1835, reversed the judgment and ordered Lake to pay Smith’s court costs as well as his own, which totaled \$35.50.

2. George Metcalf Paymaster of 1st Brigade, 2nd Regiment, 9 Division Ohio Militia v. Samuel H. Smith. This case was an appeal from the assessment of two fines of \$.75 and \$1.00 levied on Samuel H. Smith, Joseph’s younger brother, for failure to appear at two musters of the Ohio Militia to which he had been assigned. The fine was ordered by a Militia Court of Inquiry, affirmed by a military Court of Appeals, and transferred to Justice of the Peace Downen for collection. Downen’s 1885 reminiscence states: “I issued a writ for Jo and his brother Sam Smith, for non-attendance at training. I decided that as Rev. Coe, the Presbyterian minister was exempt, I excused Joe because he was a preacher ... Sam I fined \$1.75. He appealed.”⁸ While

7. Oliver Cowdery, Justice of the Peace Docket, p. 342.

8. Copy of case document in possession of the author, forthcoming in the Joseph Smith Papers Legal and Business Records series.

Joseph was initially involved in the action, he was excused by Downen. Samuel appealed on the basis that he was a “minister of the gospel” like his brother. The Court of Common Pleas affirmed the judgment of Justice Downen against Samuel and added “damages” of \$.20 plus the costs of court from both courts, totaling \$32.40. What started out as a \$1.75 fine mushroomed into \$34.35. Samuel was compelled to sell a cow to make payment.

3. Six claims before an unnamed Justice of the Peace in Painesville. On July 27, 1837, while Joseph Smith, Sidney Rigdon, Brigham Young, and others were en route to Canada, they were intercepted in Painesville and taken before a Justice of the Peace, and six different civil matters or claims were presented. Five were dismissed that day. In the sixth, a trial date was set five weeks later, and bail was posted by Anson Call. The trial occurred on said date, and Joseph was discharged. No court documents have surfaced regarding those cases. Only references to them from journals of Joseph, Brigham Young, and Anson Call corroborate the fact that they occurred.⁹

Twenty-Seven Collection Cases Involving Joseph Smith

Three other civil actions will be dealt with in some detail further below, but the 27 civil collection matters (fig. 1) will now be addressed as a block. But first, some foundation needs to be established. Promissory notes in frontier America were more than memoranda of debt. They were frequently exchanged or circulated (by the process of endorsing the back of the note) almost as if they were legal tender or specie. Moreover, it was far easier to bring a lawsuit based on a promissory note than a contract, written or oral, or on an open account of a business. When such promissory note was ultimately presented to its maker to be redeemed, the maker after paying the note would tear off his signature at the bottom, thus preventing it from being circulated further, and it would constitute a convenient receipt of payment. If the obligor did not tear off the signature, and the note came into other hands, it could be recirculated and ultimately brought back to him and he would have to pay it a second time.

Of the 326 promissory notes still extant executed by Joseph Smith, the Joseph Smith Legal Papers team has not yet matched each of the lawsuits described below, all of which were based on promissory notes, with the appropriate notes, assuming they are extant.

9. 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), 2:502 (hereafter cited as *History of the Church*); “History of Brigham Young,” *Millennial Star* 25 (August 8, 1863): 503–4.

Next, it will be helpful to list the prominent Mormon business firms or entities that were doing business in Kirtland during the 1830s:

Printing Firm, sometimes called **United Firm**. Printing and other businesses. Included Joseph Smith, Sidney Rigdon, Frederick G. Williams, William W. Phelps, Oliver Cowdery, Newel K. Whitney, John Johnson Sr., and others temporarily in and out.

F. G. Williams & Co. Successor to the Printing Firm, with some of the above named partners in and out over the time period, ultimately concluding with Williams and Cowdery as partners.

N. K. Whitney & Co. N. K. Whitney's sole proprietorship. Whitney store, ashery, saw mill, and other businesses.

Smith, Cowdery & Co. Joseph and Oliver as partners operated what was called "Joseph's Variety Store."

Smith, Rigdon & Co. Joseph and Sidney Rigdon's store in Chester.

Carter, Cahoon & Smith. Jared Carter, Reynolds Cahoon, and Hyrum Smith, the Temple Committee. Also operated a store sometimes alternately under the name of **Cahoon, Carter & Co.**

Boynton & Johnson. John Boynton and Luke Johnson's store.

Pratt, Young & Smith. Parley P. Pratt, Brigham Young, and Hyrum Smith's stone quarry.

Kirtland Safety Society. An attempted corporation that became a joint stock company. Joseph Smith, Sidney Rigdon, Frederick G. Williams, Newel K. Whitney, Horace Kingsbury, and Warren Parrish were directors at time of the Rounds suit referred to hereafter.

All the individuals named in the various businesses above are co-defendants, in various combinations, together with a number of other co-signers on the assorted promissory notes sued on in the cases below.

Tabulated in figure 1 are the records of the Joseph Smith cases and the entries in the execution docket for those cases, which is the history of collection efforts and payments made. Not all payments were reported to the county clerk, keeper of the execution docket. There is evidence of payments which were not listed in the execution docket. The docket is dependent on the conscientiousness of the creditors or the insistence of the debtors to require the creditor to go to the courthouse after the debt is paid and record it. To date, from secondary sources, not from cancelled notes or recorded admissions of payment, a little over \$8,000.00 in such undocketed payments to creditors have been uncovered, not all of which are traceable to litigating creditors.

The columns on figure 1 show the plaintiffs' names; date of the action; amount sued for (the claim); if discontinued (meaning presumably abandoned before a declaration, known today as the complaint, was filed); if

Figure 1. Collection Cases against Joseph Smith Jr.

Plaintiffs	Date Filed	Claim	Discontinued	Settled	Satisfied	Balance
1. Holmes & Dayton	June 1837	\$183.30			\$183.30	0
2. Bank of Geauga	June 1837	\$3,018.00		\$3,018.00		0
3. T. Martindale	June 1837	\$6,000.00		\$6,000.000		0
4. H. Kelly	June 1837	\$2,083.47			\$541.41	\$1,542.06
5. Pattersons	June 1837	\$610.37			\$610.37	0
6. Cyrus Lake	July 1837	\$53.24			\$53.24	0
7. Unshur	August 1837	\$39.96			\$39.96	0
8. Newbold	October 1837	\$400.00		\$400.00		0
9. Eaton	October 1837	\$1,185.66				\$1,185.66
10. Barker & Bump	October 1837	\$214.34	\$214.34			0
11. Seymour & Griffith	October 1837	\$150.00	\$150.00			0
12. J. Wright	October 1837	\$1,055.31		\$1,055.31		0
13. W. Foster	December 1837	\$100.45		\$100.45		0
14. Jacob Bump	January 1838	\$45.14		\$45.14		0
15. Jacob Bump	January 1838	\$854.28			\$854.28	0
16. M. Allen	January 1838	\$120.56			\$120.56	0
17. Wm. Spencer	January 1838	\$56.41	\$56.41			0
18. Ray Boynton & Harry Hyde	April 1838	\$881.15				\$881.15
19. C. Stannard	April 1838	\$256.40	\$256.40			0
20. Com'l Bank of Lake Erie	April 1838	\$1,230.00		\$1,230.00		0
21. Bailey & Reynolds	April 1838	\$1,000.00		\$1,000.00		0
22. Holmes & Holmes	April 1838	\$10,000.00		\$10,000.00		0
23. M. Allen	June 1838	\$0.00				0
24. Halstead & Haines	April 1838	\$2,337.35			\$948.00	\$1,389.35
25. Underwood	April 1838	\$1,685.55			\$1,685.55	0
26. Joseph Coe	June 1839	\$900.00	\$900.00			0
27. J. Bump	October 1842	\$0.00				0
Totals		\$34,460.94	\$1,577.15	\$22,848.90	\$5,036.67	\$4,998.22

Figure 2. Collection Cases against Temple Committee

Plaintiffs	Date Filed	Claim	Discontinued	Settled	Satisfied	Balance
1. I. Goodman	October 1836	\$237.40			\$237.40	0
2. S. Corning	October 1836	\$592.47				\$592.47
3. Goodman & Goodman	October 1836	\$645.17			\$645.17	0
4. Dockstader	March 1837	\$500.00	\$500.00			0
5. H. Kelly*	March 1837	\$2,093.80			\$506.73	\$1,587.07
6. J. Newbold	October 1837	\$469.00		\$469.00		0
7. R. Boynton*	April 1838	\$890.97				\$890.97
8. Leavitt & Lord	?	\$729.78	\$729.78			0
9. J. Scribner	April 1838	\$956.80				\$956.80
10. Thompson, Phelps, & Douglas	June 1838	\$958.11	\$958.11			0
11. Keeler, McNeil, & Rosseter	June 1838	\$4,000.00	\$4,000.00			0
12. Otis Eaton	November 1838	\$539.00		\$539.00		0
13. Chancy J. Caulkins	November 1838	\$678.00			\$678.00	0
Totals		\$13,290.50	\$6,187.89	\$1,008.00	\$2,067.30	\$4,027.31

*These debts are duplicated in the list in figure 1. The debt due to H. Kelly is the same as figure 1, line 4. The debt due to R. Boynton is the same as Ray Boynton and Harry Hyde in figure 1, line 18. These people sued both Joseph Smith and the Temple Committee for the same debt, which was incorrect procedure. The variation in amounts is due to different court fees involved.

settled (meaning paid before the trial); if satisfied (meaning paid after judgment); and balance (cases where no record of payment appears in the execution docket, and presumably the amount still owing at the time accounts were turned over to Oliver Granger, as explained below).

The list of creditors is composed of two banks (creditors 2 and 20); five New York City merchants (creditors 4, 9, 18, 21 and 24); two Buffalo merchants (creditors 5 and 8); one Painesville merchant (creditor 11); two Kirtland landowners (creditors 3 and 22, whose claims [\$6,000.00 and \$10,000.00] were the two largest filed, both of which were paid or “settled” prior to trial); the engraver who made the plates for the printing of the Kirtland Safety Society banknotes (creditor 25); a farmer who supplied one-third of the money to purchase the Egyptian papyri (creditor 26); and an assortment of smaller claimants.

Figure 2 relates to the Temple Committee with the same columns and data. In two instances the same creditor sued Joseph and associates and the Temple Committee on the same debt. The first, Hezekiah Kelly (#4 in fig. 1 and #5 in fig. 2) obtained a judgment against Joseph et al. for \$2,083.47 and against the Committee in the same amount. A partial payment of \$541.41 is reflected in the judgment docket, leaving an unpaid balance of \$1,542.06. While Joseph and associates and the Temple Committee were individually jointly liable for the whole debt, the creditor (Kelly) under the law then (as now) was not allowed to collect twice on the same promissory note or debt. So, in terms of arriving at a total remaining indebtedness, these entries amount to a duplication of the same debt. The same is true of Ray Boynton (creditor #18 against Joseph, et.al. and #7 against the Temple Committee). His judgment against Joseph was \$881.15 and against the Committee is \$890.97, the difference being reflected in the respective court costs assessed. No payment of record appeared in the respective execution dockets on this debt.

So, while the creditors could look to all the judgment debtors jointly and severally, the total debt of Joseph and the Committee needs to be reduced by the duplications. Taking the unpaid balance of the Kelly judgment of \$1,542.06 and using the lower judgment in Boynton’s cases of \$881.15, the total unpaid debt of record from figures 1 and 2 of \$9,025.53 is reduced by \$2,423.21, leaving the actual Mormon litigated and unpaid debt of record at \$6,602.32.

One case with its appeal, not included in figure 2, should be mentioned because it is neither a criminal nor a collection case and was appealed to the Ohio Supreme Court of Judicature. On August 11, 1836, Charles Morse sued the Temple Committee (Carter, Cahoon, and Hyrum Smith), plus Jacob Bump,

Orson Hyde, and William Barker in a civil action of trespass, but the nature of his claim was that these defendants had committed “false imprisonment” and “unlawful detention” of his body in the Kirtland Temple for a period of several hours, claiming \$300.00 damages. Thus Morse brought a civil action claiming a criminal offense. A jury was empanelled in the Court of Common Pleas, and at the end of the plaintiff’s testimony, the court ruled: “The Court are of the opinion that the same does not support the case set forth in the declaration (Plaintiff’s Complaint), the Court therefore direct a non suit for that reason: And thereupon the jury are discharged from the further consideration of the premises. Therefore it is considered that the said defendants go hence without day, and recover of the said plaintiff their costs in this behalf expended to be taxed.” Morse appealed. The Supreme Court of Judicature affirmed the lower court’s decision and ordered Morse to pay the costs in both courts, which amounted to \$78.¹⁰

To these totals in the previous tables needs to be added a mortgage on the Kirtland Temple signed by Joseph, Sidney Rigdon, and Oliver Cowdery plus the Temple Committee, in the amount \$4,500.00, which was paid sometime around January 1841. While no release of the mortgage was recorded, neither was an action to foreclose the mortgage ever initiated.

The agent who accomplished most of this liquidating of debt was Oliver Granger, assisted for a period by William Marks, who were left behind in Kirtland when Joseph and Sidney departed on January 12, 1838. Many of the Saints deeded land (valued at \$7,450.00) to Granger upon their departure from Kirtland for him to dispose of “for the debts of the church,” and in exchange for corresponding land in Missouri (fig. 3). Those deeds and accompanying receipt/orders were the precursor and historical setting for the revelation received by Joseph Smith on July 8, 1838, in answer to the query, “O Lord, show unto thy servants how much thou requirest of the properties of thy people for a tithing.”¹¹ The first two verses answer, “Verily, thus saith the Lord, I require all their *surplus* property to be put into the hands of the bishop of my church in Zion, For the building of mine house, and for the laying of the foundation of Zion and for the priesthood, and for *the debts of the Presidency of my Church*” (D&C 119:1–2, italics added). Certainly property in Kirtland being abandoned would qualify as “surplus” property.

10. Supreme Court Records (Geauga County), Book C, p. 139–41, Geauga County Archives, Chardon, Ohio.

11. “Revelation, 8 July 1838—C [D&C 119],” The Joseph Smith Papers, <http://josephsmithpapers.org/paperSummary?target=x4756>.

Figure 3. Property Transferred to Oliver Granger

Grantor	Grantee	Date Recorded	Amount
John Johnson	Oliver Granger	April 19, 1838	\$600.00
William Barker	Oliver Granger	May 4, 1838	\$1,000.00
John Smith	Oliver Granger	May 18, 1838	\$400.00
Osmyn M. Deuel	Oliver Granger	May 18, 1838	\$2,400.00
Sally Berman & others	Oliver Granger	May 18, 1838	\$1,700.00
Levi Richards	Oliver Granger	April 24, 1839	\$800.00
John P. Green	Oliver Granger	May 18, 1839	\$100.00
Arza Judd Jr. & others	Oliver Granger	November 30, 1839 (1849?)	\$450.00
Total			\$7,450.00

Figure 4. Property Transferred from Oliver Granger

Grantor	Grantee	Date Recorded	Amount
Oliver Granger	John W. Howden	May 18, 1838	\$1,700.00
Oliver Granger	John W. Howden	May 18, 1838	\$3,022.00
Oliver Granger	Lyman Cowdrey	October 22, 1838	\$1,000.00
Oliver Granger	Henry W. Stoddard	April 27, 1839	\$400.00
Oliver Granger	Roger Plaisted	April 27, 1839	\$300.00
Oliver Granger	William Perkins	April 27, 1839	\$100.00
Oliver Granger	Benjamin Goff	July 10, 1839	\$7.41½
Oliver Granger	John Norton	June 3, 1840	\$25.00
Oliver Granger	Harmon Orrin	August 1840	\$?
Oliver Granger	Anna Burdick	March 3, 1841	\$400.00
Oliver Granger	Isaac Dudley	August 17, 1841	\$200.00
Oliver Granger	William M. Halstead	May 27, 1842	\$461.00
Oliver Granger	John Howden	May 24, 1842	\$400.00
Total			\$8,015.41½

It is difficult now to ascertain which of the debts of the Saints Granger paid, since no accounting or report from Granger to Smith has thus far been located. It is assumed, however, that those debts sued on after January 1838 and those beginning with the Patterson case (number 5 in fig. 1) that show payment dates after January 1838 were Granger settlements. However, one satisfaction after judgment was shown in the execution docket to have been paid by Almon W. Babbitt, who for a short time at a later period was head of the Kirtland Stake of the Church. The following statement gives some indication of Granger's work:

To all whom it may concern.

This may certify that during the year of Eighteen hundred and thirtyseven I had dealings with Messrs Joseph Smith Jr and Sidney Rigdon together with other members of the society, to the amount of about three thousand dollars, and during the spring of Eighteen Hundred and thirty eight, I have received my pay in full of Col Oliver Granger to my satisfaction. And I would here remark that it is due Messrs Smith & Rigdon & the society generally, to say that they have ever dealt honorable and fair with me, and I have received as good treatment from them as I have received from any other society in this vicinity: and so far as I have been correctly informed, and made known of their business transactions generally they have so far as I can judge been honorable and honest, and have made every exertion to arrange & settle their affairs; & I would further state that the closing up of my business with said society has been with their agent Col Granger appointed by them for that purpose; and I consider it highly due, Col Granger from me here to state that he has acted truly and honestly with me in all his business transactions with me, and has accomplished more than I could have reasonably expected. And I have also been made acquainted with his business in this section, and wherever he has been called upon to act, he has done so, and with good management he has accomplished and effected a close of a very large amount business for said society, and as I believe to the entire satisfaction of all concerned.

John W Howden

Painsville Geauga Co Ohio Oct 27th 1838¹²

12. "Certificate from John W. Howden, 27 October 1838," The Joseph Smith Papers, <http://josephsmithpapers.org/paperSummary/certificate-from-john-w-howden-27-october-1838>.

Howden was Clerk of the Court of Common Pleas, and thus likely the recipient of some of the Granger payments as agent for some of the litigation creditors.

Granger doubtless made payments to parties who did not sue, but from the incomplete record it appears that the overwhelming majority of Smith's and the Church's Kirtland debts were paid. Research is ongoing regarding the Granger property transactions and payments, but at present \$8,015.41½ in payments to creditors (fig. 4), including, but not limited to the litigating creditors listed above, have been documented. Granger died in Kirtland on August 25, 1841. Reuben McBride succeeded him in the debt-paying assignment for a short time.

Accumulating the totals yields the following:

	<i>Amount Claimed</i>	<i>Amount Discontinued, Settled, or Satisfied</i>
Joseph Smith Cases	\$34,460.94	\$29,462.72
Temple Committee Cases	\$13,290.50	\$9,263.19
Adjustment for duplicate judgements		\$2,423.21
Kirtland Temple Mtg	\$4,500.00	\$4,500.00
Totals	\$52,251.44	\$45,649.12

Thus, we can conclude that 87 percent of the litigated debt is shown to have been dropped, settled, or paid, with \$6,602 (\$4,998 plus \$4,027 minus the duplications of \$2,423) left outstanding. If amounts of undocketed payments may be attributed to those creditors, this percentage moves upward accordingly.

No consideration is given in this paper to the impact the Kirtland Safety Society's failure had on the Kirtland economy, for two principal reasons. First, there is no indication that any of the major creditors listed above ever took or traded in the bank's notes. Certainly no bank notes were alleged to be part of any of their claims sued on. Second, in this writer's opinion those who have written about the bank have made estimates about the total number and dollar value of banknotes actually circulated based on variable and unknown facts, the most glaring of which is that there is no hard evidence now extant of what dollar amount was actually issued or redeemed. Even Fawn Brodie admits that the bank's failure had little, if any, impact on the Kirtland economy.¹³

13. "The rise and fall of the bank brought very little actual change to Kirtland's economy." Fawn Brodie, *No Man Knows My History* (New York: Knopf, 1966), 199.

Three Special Cases

Now, to the consideration of the final three civil cases not yet discussed.

The Russell Farm. This was the only mortgage foreclosure action brought against Joseph in Kirtland. On October 10, 1836, Alpheus C. Russell sold his 132.4-acre farm to Joseph Smith, Reynolds Cahoon, and Jacob Bump for \$12,904, taking as the purchase price six promissory notes which had staggered payment dates: five of the notes were for \$1,000.00 each payable June 1, 1837, 1838, 1839, 1840, and 1841 and the sixth note for \$6,904.00 payable June 1, 1842. The promissory notes and a mortgage for the purchase price were signed by the three purchasers and their wives, and the mortgage was filed with the Geauga County Recorder.

Apparently no payments were made on any of the notes. Russell waited until June 1843, one year after the due date on the sixth note, before he filed his action to foreclose the mortgage. Jacob Bump and his wife Abigail were the only purchasers then still in Kirtland, and the case was heard during the March 1844 term of court, when final judgment of foreclosure, which, with the accumulated interest, totaled \$16,409.61, was entered. The farm was appraised, pursuant to the statutory requirements, at \$2,376, and a sheriff's sale was conducted at which Russell was the only bidder. He bid \$1,584, which was two-thirds of the appraisal, the statutory minimum acceptable bid. Russell made no effort thereafter to proceed against the Bumps, Smiths, or Cahoons on his deficiency judgment (\$16,409.61 less \$1,584.00). Russell retained the property until his death in 1860 and it remained in the family until 1876.¹⁴

Newell and the Kirtland Safety Society. The final two litigations both involve Grandison Newell, Samuel D. Rounds, and Henry Holcomb against Joseph Smith, Sidney Rigdon, Frederick G. Williams, Newel K. Whitney, Horace Kingsbury, and Warren Parrish, all directors of the Kirtland Safety Society. This drawn-out matter involves the bank, the Kirtland Temple, incorporating the Church in Ohio and the long-after-the-fact probating of the would-be Ohio portion of Joseph Smith's estate.

Before beginning, a quick primer on the mechanics of a civil action or lawsuit in 1830s Ohio is in order. A suit was commenced by a plaintiff or his attorney appearing at the county courthouse and requesting the clerk of the Court of Common Pleas to issue a writ of summons instructing the sheriff to hand or "serve" the written summons (which contained only a skeletal recital

14. Copy of case document in possession of the author, forthcoming in the Joseph Smith Papers Legal and Business Records series.

of the relief sought) on the defendant or defendants. After serving the summons, the sheriff would file a paper called a return of service stating the fact of delivery of the summons and the date and place of delivery. At the next term of court (terms of court were scheduled every three months), the plaintiff would file a declaration. This was a detailed outline of his claim against the defendant(s). Today that declaration is called a complaint. At the following term of court or any time prior thereto, the defendant(s) or their attorney would file a responsive document called a plea, sometimes named a demurrer. In today's usage that is called an answer. Procedural motions could be made and continuances could be granted, but ultimately a hearing or trial with or without a jury would be held and a judgment arrived at. Then either party could give notice of intent to appeal the decision and file a bill of exceptions, which outlined the issues of law or fact which the appellant claimed were erroneously dealt with by the trial court. If no appeal was pursued, the judgment would stand, and if it were for money damages in favor of the plaintiff, part of the judgment would order the sheriff to forthwith execute on (sell) the defendant(s)'s property to satisfy the judgment.

One month after the Kirtland Safety Society Anti-Bank (so named because it had failed to obtain a corporate charter from the Ohio legislature and thus could not be a bank) had opened its doors, on February 9, 1837, Samuel D. Rounds, who was in reality Grandison Newell's front man, suing *qui tam* (a legal phrase meaning "and for another") filed six requests for summons against the six directors of the Kirtland Safety Society.¹⁵ This generated six cases, one each for Smith, Rigdon, Williams, Whitney, Kingsbury and Parish. The Ohio banking statute provided that operating as a bank without a state charter was illegal and punishable by a fine of \$1,000.00 and permitted any interested or affected citizen to bring a *qui tam* action on his own behalf and on the behalf of the state. "Behalf" is the right word because the law provided that the State and the litigant would split the resulting penalty equally, if any. After the declaration, plea, motions, continuances, and so forth, the two trials of Joseph and Sidney began on October 24, 1837. Separate juries and the full panel of all four judges of the court were in attendance at both trials, which were both concluded that same day. The other four cases were discontinued on the plaintiff's motion. The verdict was against each defendant, and the court imposed the fine of \$1,000.00 against each. Joseph's and Sidney's attorney did file a bill of exceptions and a notice of intent to appeal.¹⁶

15. See ch. 9 for a full discussion of this litigation.

16. In a prosecution on a related criminal statute making it a felony to "make, alter, publish, pass, or put in circulation, any note or notes, bill or bills, of a bank, company, or association,

The appeal, however, was not pursued and the execution docket shows that the sheriff in January 1838 levied on and sold personal property of Sidney Rigdon amounting to \$604.50, and some other personal property whose ownership (Sidney's or Joseph's) he does not indicate, which he also sold for \$111.75. After deducting his and the clerk's fees, which total \$111.75, the record discloses "Shff. Paid Grandison Newell \$604.50." (Note that it was not paid to Samuel D. Rounds, the plaintiff of record). Then on March 1, 1838, Newell sold the judgments to William Marks and Oliver Granger:

For and in consideration of Sixteen hundred dollars to me in hand paid by William Marks and Oliver Granger I do hereby sell assign & set over to the said William Marks and Oliver Granger two Judgements in favor of Samuel Rounds and assigned to me by said Rounds against Joseph Smith and Sidney Rigdon of one thousand dollars each which Judgements were obtained at the Court of Common Pleas holden at Chardon in and for the County of Geauga to wit on the 27th day of October 1837, and I do agree to pay all costs that has accrued on said Judgments up to this date.

G. Newell

Kirtland March 1st 1838

Attest Lyman Cowdery¹⁷

So, after collecting \$604.50 from the sheriff, Grandison Newell sold or assigned the two judgments to William Marks and Oliver Granger for \$1,600. He neither paid the sheriff and clerk their fees, nor reimbursed Marks and Granger for them as agreed. Remember he was entitled to only half of the judgments. There was no accounting rendered to the court showing that he ever remitted to the State of Ohio its one-half.

which never did, in fact, exist" knowing the same to be the fact, the Ohio Supreme Court, in December 1838 in the case of *Wilbur Cahoon v. State* (1838), 8 Ohio Reports 538–9, overturned the conviction of Cahoon, because "The offense is the uttering of such note, knowing it to be of a non-existing bank or company, and not the uttering of a note knowing it to have been issued by an existing unincorporated bank" (*italics added*). That reasoning would suggest that had Joseph's and Sidney's appeals been perfected, the judgments against them would likely also have been overturned, if the Supreme Court, being consistent, felt the proscribed conduct was limited to those institutions which claimed to be banks without charters, as opposed to existing institutions not claiming to be banks.

17. G. Newell, Assignment of the Rounds Judgment by Grandison Newell to Oliver Granger and William Marks, N. K. Whitney Papers, L. Tom Perry Special Collections, Harold B. Lee Library, Brigham Young University.

In 1840, while Granger was still in Kirtland, Joseph, then in Nauvoo, wrote him that a possible buyer for the Kirtland Temple had surfaced and instructed him to incorporate the Church in Ohio, which meant, of course, getting a bill passed through the legislature. This time, unlike their previous attempt to get a charter for the Kirtland Safety Society, the Mormon lobbying effort was successful. So, a bank could not be chartered, but a church could. The sale of the temple, however, did not materialize.

Twenty years later, on October 22, 1860, Grandison Newell reappeared and moved the same court to revive the Rounds judgments, claiming that they had not been satisfied and that there was still real property belonging to Joseph Smith's estate situated in Kirtland which could be levied upon. The previous year, Newell had lobbied a special bill through the Ohio legislature granting him the state's "half." He then had his granddaughter's husband, Henry Holcomb, petition the Court of Common Pleas to be appointed administrator of the estate of Joseph Smith, claiming he was acting on behalf of creditors of the estate whom he represented. The purported estate property was the Kirtland Temple and a 13-acre parcel in the Kirtland flats. Holcomb was so appointed, and the full probate procedure was followed, including notices, appraisals, and so on. As a part of the probate process, Emma Smith, as surviving widow of Joseph Smith, had to be given written notice because she had a dower interest in the estate. That meant she was entitled to one-third of the income of the estate for the rest of her life. In the case of non-income producing property, as here, a computation of some simple interest formula on the appraised valuation of the estate property was used. The court determined Emma's dower interest to be \$4.11 per year for the rest of her life, to be paid through the clerk of the court by all subsequent owners of the estate property. After the probate was completed on April 18, 1862, Holcomb used Newell's newly acquired state's half of the Rounds judgments to execute on all the property. He then sold the two parcels to William Perkins (Holcomb's attorney) the following day, who paid \$217 for the temple and \$163 for the 13 acres. Perkins the same day resold the temple piece to Russell Huntley, who, nearly nine years later on February 17, 1873, sold it to Joseph Smith III and Mark H. Forscutt (a member of the RLDS church's Quorum of Twelve Apostles). A quiet title lawsuit in 1879–80 and uninterrupted occupation by the Reorganized Church of Jesus Christ of Latter Day Saints finally vested title to the temple in today's Community of Christ church.

Grandison Newell—having sold the judgments to Marks and Granger, collected \$204.50 more than the total judgments, failed to pay the costs of \$111.75, and failed to remit to the state its half—got the legislature to cede its half

to him. This action made him owner of what he had already sold. He then walked away with the temple plus thirteen acres, which he promptly sold.

Had Oliver Granger or William Marks taken the document of sale of the Rounds judgments to the county clerk and recorded it, all of Newell's machinations would have been prevented because Newell would no longer be the record owner of the judgments, and the fact that the judgments had been not only paid in full, but that the State's half remained unpaid, would have prevented his getting the legislation and frustrated the remaining events that followed. But in the end the court records in Ohio that have been recently found more than reveal his duplicitous conduct.

Conclusions

This truncated and still incomplete overview of Joseph's and the Temple Committee's legal experience in Ohio supports several tentative conclusions and reflections about both the legal and spiritual conditions in Kirtland.

On the criminal front, Joseph and his friends came off unscathed as defendants, and won a couple of cases as complaining witnesses.

Of the \$52,251.44 reduced by duplications noted above to \$49,828.23 recorded debt of Joseph and the Committee, \$43,225.91 was paid. There were no defrauded creditors, but rather paid creditors, 87 percent of whose claims were satisfied in a reasonably prompt time frame. And that payment came largely after the Saints had abandoned Kirtland and the symbol of their sacrifice, the temple. I see here shades of the similar loss in Nauvoo.

While the payment of debts in Kirtland is a part of the focus of this study, it is important to note that the payment of those debts as detailed above was not done in a vacuum. During the same time, the Saints incurred the cost of settlement in Kirtland, expulsion, and resettlement in Missouri; the cost of Zion's Camp; the cost of building of the Kirtland Temple; the absorbing of immigrating poor converts; the printing enterprise which produced the second edition of the Book of Mormon, the Book of Commandments, the Doctrine and Covenants, a hymnbook, many tracts, and two newspapers; the destruction of a press; and more. Knowing of all these contemporary economic demands leaves one wondering how any economic viability was achieved at all.

Also not mentioned here is the sacrifice of those few somewhat well-off Saints who gave their all and left Kirtland essentially impoverished. One has to ask how in an eight-year-old church did Joseph persuade people to persist in what has to be viewed as a voluntary sharing and sacrificing of their temporal goods to the point of impoverishment. One could argue that they lived

a near version of a law of consecration—if starting out at various levels of economic security and ending up in Missouri equally poor can be so called. And they did it in such numbers. One partial answer might be that they felt the spiritual rewards, particularly those tangibly experienced in the Kirtland Temple, were well worth the cost.

Joseph, in Nauvoo, looking back on those days and the additional crucibles of pain through which he and the Saints had thereafter passed, said, “These I have met in prosperity and they were my friends; and I now meet them in adversity, and they are still my warmer friends. These love the God that I serve; they love the truths that I promulge; they love those virtues, and those holy doctrines that I cherish in my bosom with the warmest feelings of my heart, and with that zeal which cannot be denied. I love friendship and truth; I love virtue and law.”¹⁸

18. *History of the Church*, 5:108.