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Chapter Nine

Looking Legally at the Kirtland Safety Society

Jeffrey N. Walker

The Kirtland Safety Society has been the source of much debate within the historical community.[1] Most commentators agree that the Kirtland Safety Society was an imprudent venture. Some have even argued that its failure marked an almost fatal blow to Joseph Smith's leadership.[2] Charges of personal gain and illegality are often included in their critique. Unfortunately, those debating

1. Dale W. Adams, "Chartering the Kirtland Bank," *BYU Studies* 23 (Fall 1983): 467–82; Karl R. Anderson, *Joseph Smith's Kirtland: Eyewitness Accounts* (Salt Lake City: Deseret Book, 1989), 193–207; Ronald K. Esplin, "Joseph Smith and the Kirtland Crisis," in *Joseph Smith, the Prophet and Seer,* ed. Richard Neitzel Holzapfel and Kent P. Jackson (Provo, Utah: Religious Studies Center, Brigham Young University; Salt Lake City: Deseret Book, 2010), 261–90; Edwin Brown Firmage and Richard Collin Mangrum, *Zion in the Courts: A Legal History of the Church of Jesus Christ of Latter-day Saints, 1830–1900* (Urbana: University of Illinois Press, 2001), 54–58; Marvin S. Hill, C. Keith Rooker, and Larry T. Wimmer, "The Kirtland Economy Revisited: A Market Critique of Sectarian Economics," *BYU Studies* 17 (Summer 1977): 391–475; Larry T. Wimmer, "Kirtland Economy," in *Encyclopedia of Mormonism*, 4 vols. (New York: Macmillan, 1992), 2:792–93; Scott H. Partridge, "The Failure of the Kirtland Safety Society," *BYU Studies* 12 (Summer 1972): 437–54; D. Paul Sampson and Larry T. Wimmer, "The Kirtland Safety Society: The Stock Ledger Book and the Bank Failure," *BYU Studies* 12 (Summer 1972): 427–36; Mark L. Staker, *Hearken, O Ye People* (Salt Lake City: Greg Kofford Books, 2009), 463–543; Mark L. Staker, "Raising Money in Righteousness: Oliver Cowdery as Banker," MS in possession of author, an edited version of which appeared in *Days Never to Be Forgotten: Oliver Cowdery*, ed. Alexander L. Baugh (Provo, Utah: Religious Studies Center, Brigham Young University, 2009), 143–254.

2. Adams, "Chartering the Kirtland Bank," 467; Firmage and Mangrum, *Zion in the Courts,* 58; J. H. Kennedy, *Early Days of Mormonism* (Charles Scribner's Sons, 1888),

this matter offer little or no legal analysis to support their position. This article is a starting point to rectify this omission. To do so this article will be separated into three parts. The first will provide a brief background of the economy in nineteenth-century America that gave rise to the organization of the Kirtland Safety Society and how it fit into the broader national financial landscape. The second examines the events—nationally, locally, and internally—that led to the failure of the Kirtland Safety Society. And the third examines the law and the lawsuit that was filed in connection with its demise.

The Rise of the Kirtland Safety Society

The organization of the Kirtland Safety Society, known formally at its inception as the Kirtland Safety Society Banking Company, must be viewed within the broader context of banking practices, legal definitions, and the national economy in the 1830s. Although the organizers of this company gave their best efforts in following available legal and accepted business practices, the venture was met with overwhelming difficulties and challenges on several fronts.

With the election of Andrew Jackson in 1828 came the inevitable demise of America's second effort to establish a central banking system.[3] True to his reelection campaign promise in 1832, Jackson successfully caused the second bank to prematurely become ineffective by withdrawing government funds in 1833. It would finally close in 1836. With this closure and the corresponding lack of a national currency, the only available money remaining was specie. Specie, often referred to as "hard currency," included gold, silver, and copper

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164–66; Dean A. Dudley, "Bank Born of Revelation: The Kirtland Safety Society Anti-Banking Company," *Journal of Economic History* 30, no. 4 (1970): 848–53.

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

minted into coins by the government. Specie, by its very nature, was inherently and chronically in short supply,[4] particularly in Ohio.[5] Such shortages restricted economic growth, especially in frontier America.[6] To fill this growing vacuum came a rapid increase use of bank notes. Bank notes are essentially promissory notes.[7] Promissory notes are negotiable debt instruments. However, when between individuals the ability to use them as transferrable currency is very limited.[8] As Scott Partridge aptly explained:

> Banks were able and willing to meet the demand for money by the simple process of exchanging the notes of a bank for the promissory note or bill of exchange of a firm or individual, i.e., by exchanging one kind of debt for another. The evidence of a bank's debt had general acceptability as a medium of exchange; the evidence of a firm's or individual's debt did not. Thus, by monetizing private debt, the growing demand for money was met.[9]

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

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

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

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

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

9. Partridge, "Failure of the Kirtland Safety Society," 444.

Not only did bank notes increase the supply of money, it created greater liquidity. While money is the most liquid of assets, land, crops, and equipment are some of the least. As America in the early nineteenth century was predominately agrarian, specifically in the Ohio valleys,[10] farmers, while not being poor *per se*, were in a very illiquid position. The use of bank notes backed by farms allowed them to participate to a far greater extent in the local economies. In this manner local banks issuing bank notes became a principal vehicle to allow more people to participate in the growth of the economy. However, without the protections, regulations, or governance of a central banking system, these local banks were fragile financial institutions.[11]

It is within this environment that the boom years of Kirtland in the early to mid 1830s occurred.[12] With the significant influx of Mormons arriving in Kirtland throughout this time,[13] Kirtland experienced unprecedented economic growth.[14] A full array of agricultural products was being generated, including sheep, cattle, dairy, grains, and maple sugar. Manufacturing products in Kirtland included tanned goods, lumber, ash, bricks, and even cast iron products. The connection to Cleveland in 1833 by the Ohio Canal only further enhanced the economic opportunities in Kirtland.[15] Yet,

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

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

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

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

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

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

accompanying such growth came significant inflation. Land prices increased in Kirtland 500 percent between 1830 and 1837.[16] In one year alone (1836–37) food prices increased by 100 percent.[17] Such inflation was further aggravated by a shortage of money.[18] Access to banking services in Kirtland was severely limited to the Bank of Geauga headquartered in Painesville, Kirtland's economic competitor. Mormons found that such financial services were generally inaccessible as anti-Mormons were controlling them.[19] Further, the Mormons were struggling with carrying the debt associated with the building of the Kirtland Temple,[20] coupled with the closure of the United Firm in October 1836 with the various businesses being returned or given to its members. The Church had few avenues to generate income to fund its growing financial needs and obligations. These dynamics led Church leaders to look at creating their own local bank in Kirtland to alleviate these problems. Opening a local bank reasonably appeared to be a viable solution. And such a solution made good economic sense, as a local newspaper about the announcement of the opening of the Kirtland Safety Society noted: "It is said they have a large amount of specie on hand and have the means of obtaining much more, if necessary. If these facts be so, its circulation in some shape would be beneficial to community, and sensibly relieve the pressure in the market so much complained of."[21]

As Joseph Smith, Hyrum Smith, Sidney Rigdon, and Oliver Cowdery returned from Salem, Massachusetts, in September 1836, it appears that they had finalized their decision to open a bank in Kirtland.[22] By mid-October the venture was organized to accept money from initial shareholders in exchange for stock. To facilitate greater participation stock prices were kept at the unusual low price of $50 per share,[23] in contrast to other local

16. Hill, Rooker, and Wimmer, "Kirtland Economy Revisited," 411.

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

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

19. Rich McClellin, "The Kirtland Economy, a Broader Perspective," prepared for Mormon History Association Annual Meeting, Killington, Vermont, May 2005, 10–11, copy in possession of author.

20. Estimates on the debt on the Kirtland Temple range from $20–30,000 (Truman Cole, "Mormonism," *Cincinnati Journal and Western Luminary,* August 25, 1835, 4) to more than $100,000 (George A. Smith, "Gathering and Sanctification of the People of God," *Journal of Discourses,* 26 vols. [Liverpool: F. D. Richards, 1855–86], 2:213, March 18, 1855); Staker, "Raising Money in Righteousness," 1, 38.

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

22. Joseph Young to Lewis Harvey, November 6, 1880, Church History Library, The Church of Jesus Christ of Latter-day Saints, Salt Lake City (hereafter cited as CHL) ("The prophet had conceived a plan of instituting a Bank, with a view of relieving their financial embarrassment").

23. Sampson and Wimmer, "Kirtland Safety Society: The Stock Ledger Book," 427–29.

banks offering shares for between $100 and $400 per share. Small quarterly installment payments ($0.13 per share) further allowed more to participate.[24] Among the earliest investors were Brigham Young, who invested $150,[25] and Sidney Rigdon, who bought 3,000 shares.[26] By the end of October 1836, the venture had attracted 36 subscribers or investors contributing more than $4,000.[27] Joseph Smith and his household would become the largest investors in the Kirtland Safety Society, owning collectively 12,800 shares.[28] In this manner the venture was funded through private investors who in return received stock in the company. The venture then would make loans documented by banknotes. Most often, the borrower collateralized these loans with land.

An organizational meeting was held on November 2, 1836. The original organization of the Kirtland Safety Society Banking Company (the "Kirtland Safety Society") included 32 directors[29] with a Committee of the Directors of six members. This initial committee included Sidney Rigdon, President; Joseph Smith, Cashier; Frederick G. Williams, Chief Clerk; and David Whitmer, Reynolds Cahoon, and Oliver Cowdery as members. A "Constitution" for the organization was also adopted at this initial meeting. This Constitution was published as a *Messenger* extra in early December 1836. The Constitution included the following fourteen articles:

Article I:	Authorized capital stock of $4,000,000, Shares at $50 par value
Article II:	Managed by 32 directors
Article III:	Officers: President, Cashier and Chief Clerk
Article IV:	Six directors to oversee discounting
Article V:	$1 per day paid to the officers and six directors
Article VI:	Adoption of Constitution and election of officers
Article VII:	Books open for inspection
Article VIII:	Dividends every six months
Article IX:	Installment payments
Article X:	Notice for payments of installments

24. Staker, "Raising Money in Righteousness," nn. 43–45.

25. Brigham Young, Account Book, 1836–46, October 15, 1836, 1, CHL.

26. Sampson and Wimmer, "Kirtland Safety Society: The Stock Ledger Book," 427–28.

27. Sampson and Wimmer, "Kirtland Safety Society: The Stock Ledger Book," 427–28.

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

29. Who exactly comprised these thirty-two directors is not know. Based on the records available most of the members of the Quorum of the Twelve Apostles were included. For a discussion on this matter see Staker, "Raising Money in Righteousness," n. 47.

Article XI: President empowered to call meetings
Article XII: Quorum is ⅔ of directors; meetings with officers
Article XIII: Bylaws
Article XIV: Amending this constitution

With the corporate organization of the Kirtland Safety Society in place, the next step was to have the organization recognized or chartered as a bank by the Ohio legislature. The political climate seemed to dictate the Church's decision to send Orson Hyde to Columbus, Ohio, to seek a charter for the Kirtland Safety Society.[30] While the country was heavily Democratic with the elections of Presidents Jackson and then Van Buren, Geauga County, Ohio, where Kirtland was located, was a Whig stronghold in an otherwise Democratic state. And Hyde was a Whig. Hyde briefly met with Joseph Smith and others returning from Salem, where he was most likely advised about the anticipated banking venture. However, upon his return to Kirtland he did not become involved in the Kirtland Safety Society as either a member or subscriber.[31] Hyde's efforts in Columbus with the legislature were less than successful. Bad weather resulted in his late arrival, and the backroom negotiations, giving political favors, and lack of any political alliances proved fatal.[32] While one might expect that, at a minimum, he could look to his state representatives from Geauga County for assistance, these representatives were actually in competition with the Mormons from Painesville. In the end, the proposal for

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

31. Hyde was occupied during this time assisting Jacob Bump open a merchant store in Kirtland from merchandise Bump had acquired from Joseph Smith. Jacob Bump to Joseph Smith Jr., Geauga County Property Deeds, December 5, 1836, Book 22, 568; Jacob Bump Merchant Capital, Geauga County Tax Duplicates, Kirtland Chattel Tax 1837, Geauga County Courthouse, Chardon, Ohio.

32. Howard Bodenhorn, *State Banking in Early America: A New Economic History* (New York: Oxford University Press, 2003), 12–18.

a charter for the Kirtland Safety Society was never even read on the floor of the legislature as hoped before the Christmas break.[33]

By January 2, 1837, the leadership of the Kirtland Safety Society, in recognition that the chances to obtain a charter looked doubtful, decided to legally reorganize the Kirtland Safety Society from a corporate entity with a state charter to a private joint stock company. This change is often overlooked but is legally significant. Joint stock companies had existed for centuries.[34] A joint stock company is an unincorporated business entity that trades upon joint stock or partnership interests. They are business entities "assuming a common name, for the purpose of designating the society, the using of a common seal, and making regulations by means of commodities, boards of directors, or general meetings."[35] Three distinctions typically differentiate a joint stock company

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33. Staker, "Raising Money in Righteousness," 13. In contrast, at least two other ventures designed to issue notes in Geauga County were both read and introduced during this first legislative session, including the Ohio Rail Road Company in Painesville that was approved by both the House and Senate to circulate notes, and the Fairport and Wellsville Railroad Company, Grandison Newell's project. This company also received a charter and was approved to circulate notes. This railroad venture was in apparent result of having the Ohio Canal bypass Painesville. In an effort to overcome this perceived slight, Newell and his colleagues determined that having a railroad connection would eclipse the canal. Newell's plan was to build a railroad from Fairport Harbor through Painesville to Wellsville on the Ohio River. McClellin, "Kirtland Economy," 6–7. Newell was already one of the founders and a director of the Bank of Geauga headquartered in Painesville. County prosecutor Reuben Hitchcock and his father, Peter Hitchcock, a judge on the Ohio Supreme Court, also served as directors to the Bank of Geauga. Reuben Hitchcock would prosecute the case against Joseph Smith and others for operating the Kirtland Safety Society without a state charter.

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

35. Collyer, *Practical Treatise on the Law of Partnership,* 730. "By an institution of this sort is meant a company having a certain amount of capital, divided into a greater or smaller number of transferable shares, managed for the common advantage of the shareholders by a body of directors chosen by and responsible to them. After the stock of a company of this sort has been subscribed, no one can enter it without previously purchasing one or more shares belonging to some of the existing members. The partners do nothing individually; all their resolutions are taken in common, and are carried into effect by the directors and those whom they employ." J. R. McCullough, *A Dictionary, Practical, Theoretical and Historical of Commerce* (Philadelphia: Thomas Wardle, 1840), 1:455; Rianhard v. Hovey, 13 Ohio 300, 301 (1844) ("[T]he company was intended to be a joint stock company. . . . Among these, provision was made for the annual election of three directors, on the first Monday of November, who were to have power to make all contracts and arrangements

from a corporation (other than a lack of legislative approval) in the early nineteenth century. The first is the reliance by the members of a joint stock company on contractual terms rather than statutory provisions to articulate their rights and duties.[36] The amended Articles of Agreement for this new entity were prepared and published in the *Messenger and Advocate,*[37] delineating the contractual rights and duties of its members. The second is the removal of limited liability as found in corporate entities, thereby making its members jointly and severally liable for the obligations of the venture.[38] In this manner a joint stock company operates like a partnership for liability purposes. Article 14 articulates this change, providing "All notes given by said society, shall be signed by the Treasurer and Secretary thereof, and we the individual members of said firm, hereby hold ourselves bound for the redemption of all such notes."[39] And third, the members' ownership cannot be freely transferrable, as with a corporation's stock. Rather, transferability is subject to contractual agreement, not statutory or even common law rights.[40]

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necessary to effect the objects of the company, to appoint officers and agents, and to make such rules and regulations as they should see fit. The stock of the company was to be transferable by assignment, by permission of the directors at one of their regular meetings, and dividends to be declared when the funds of the company should justify.").

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

37. *Messenger and Advocate* (January 1837): 441–43.

38. "According to the common law of England, all the partners in a joint stock company are jointly and individually liable, to the whole extent of their fortunes, for the debts of the company. They may make arrangements amongst themselves, limiting their obligations with respect to each other; but unless established by an authority competent to set aside the general rule, they are all indefinitely responsible to the public." McCullough, *Dictionary,* 1:455.

39. Article 16 further provided that "[a]ny article in this agreement may be altered at any time, annulled, added unto or expunged, by the vote of two-thirds of the members of said society; except the fourteenth article, that shall remain unaltered during the existence of said company." In 1816 the legislature in Ohio passed an act to provide penalties for issuing bank notes without a charter. As part of that act, all such unauthorized bank shareholder or partner was made "jointly and severally answerable" (or liable). *Acts Passed at the First Session of the Fourteenth General Assembly of the State of Ohio* (Chillicothe, Ohio: Nashee and Denny, 1816), sec. 11, 12.

40. "Where the shares are not transferable at the mere unrestricted option of the holder, the association, as far as relates to that matter, will be legal. In the case of The *King* v. *Webb,* which has been so often referred to, the shares could not be transferred to any person who would not enter into the original covenants: nor could more than twenty be held by the

The official name of the venture was also changed to the Kirtland Safety Society *Anti*-Banking Company in an apparent effort to further evidence and give full public notice of this change in the structure and legal form of the company.[41] With these changes in place, the leaders worked to open the Kirtland Safety Society in early January 1837.[42] Within a week of opening, the venture had loaned its first installment of notes, totaling approximately $10,000 in $1s, $2s, and $3s.[43] The loans evidenced by the notes were for 90 days, the typical length for notes during this time. These initial efforts generated the exact result hoped for—increased economy activity in Kirtland. This included the funding for the construction of a road, Joseph Street, fronting the Kirtland Temple; increased sales at the Newel K. Whitney store; and the acquisitions of additional farmland. Yet, with such positive results also came the beginning of concerted

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same person, unless they came to him by operation of law; and the object of the society, which was to supply the inhabitants of Birmingham, being shareholders, with bread and flour, virtually limited the transfer of shares to persons residing in the neighbourhood. And the Court of King's Bench gladly availed themselves of these circumstances, in order to hold the association legal." Collyer, *Practical Treatise on the Law of Partnership*, 733. This component is not in the Articles of Agreement. For a comparable Ohio case, see Wells v. Wilson, 3 Ohio 425, 438 (1828) ("It seems to me incontrovertible that this is a joint stock company, or public partnership; and as such, its stock is subject to the general law operating upon such companies, where the articles of association make no distinction. It is usually a provision of the articles of association of all public joint stock companies, that the stock shall be assignable. Where this is part of the compact, it would follow, as of course, that this absolute power or right to sell the stock, agreed upon by all as a fundamental rule, could not be limited or controlled by a part. I apprehend, therefore, that this doctrine is only applicable to such public companies as have made their stock transferable by their original and fundamental compact. In such case it is a just and necessary doctrine.")

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

42. These efforts included crossing out "Cashier" and "President" replacing them with "Treasurer" and "Secretary," respectively. Joseph Smith and Sidney Rigdon continued to execute notes with Newel K. Whitney and Fredrick Williams also signing notes as "pro tempore," *latin* for "for the time." Also, a stamp "Anti" was made and they started inserting the "Anti" into the name on the notes. This practice appears to have been shortly thereafter discontinued.

43. At this point the Kirtland Safety Society had collected approximately $21,000 cash. Banking practices at the time permitted leveraging the specie to cover 5–10 percent of the notes. The Kirtland Safety Society, therefore, could have extended notes totaling between $20,000 and $40,000 and remain in compliance with such practices.

attacks on the venture. Grandison Newell led such activities by buying Kirtland Safety Society notes and then taking them to the Kirtland Safety Society to be redeemed for specie in order to deplete its capital reserves.[44] Wilford Woodruff recorded on January 24, 1837, that "We had been threatened by a mob from Panesville to visit us that night & demolish our Bank & take our property."[45] The *Painesville Telegraph,* an anti-Mormon newspaper, also started publishing aggressive articles about the dangers and alleged illegalities of the newly launched Kirtland Safety Society.[46]

Both the success of and challenges to the Kirtland Safety Society resulted in the Kirtland Safety Society leaders deciding to undertake two additional efforts to secure a state corporate charter for the Kirtland Safety Society. The first was to instruct Hyde to make additional efforts to get the proposed charter sponsored before the end of the second legislative session. Hyde made contact with Samuel Medley, a Democratic senator who was proposing banking reform.[47] Such efforts did result in getting the proposed charter read on the floor of the Senate, but the proposal failed on a 24 to 11 vote. That vote, closing this first door, came on the same day that Joseph Smith and others arrived in Monroe, Michigan,[48] seemingly opening a second door.

The second effort was to acquire a controlling interest in an out-of-state chartered bank and make the Kirtland Safety Society a branch or subsidiary of that already chartered bank.[49] This business and legal approach had been done

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44. Newell would later boast how he had "run the Mormons out of the country." Kennedy, *Early Days of Mormonism,* 168; James Thompson's Statement, *Naked Truths about Mormonism* (Oakland, Calif.: Deming, 1888), 3. Grandison Newell was a farmer, businessman, and banker from Painesville. Whether based on religious, financial, or political motives, Newell was one of the most well known and active antagonists against the Church, especially Joseph Smith and his leadership. This included providing financing for Doctor Philastus Hurlbut's 1833 trip to Palmyra to collect affidavits that were published in Eber D. Howe's anti-Mormon book *Mormonsim Unvailed* [sic]*: or, a Faithful Account of That Singular Imposition and Delusion, from Its Rise to the Present Time* (Painesville, Ohio: By the author, 1834).

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

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

47. Hyde's contact to Samuel Medley likely came through Oliver Cowdery and his prior political efforts.

48. Adams, "Chartering the Kirtland Bank," 477–79; Ohio General Assembly, *Journal of the Senate of the State of Ohio*, 35th General Assembly, 1836–37, 360–66.

49. When the Kirtland Safety Society opened for business in January 1837, Ohio law did not prevent a bank properly chartered in one state to open a branch in Ohio. The closest

numerous times by large banking institutions in the East as they acquired banks as branches or affiliates in various states throughout the country. The leaders of the Kirtland Safety Society selected the Bank of Monroe, located in Monroe, Michigan, as its target for such a merger or acquisition. The Bank of Monroe was one of the oldest banks in Michigan, having been chartered in 1827. Monroe, Michigan, was only 150 miles from Kirtland. By February 10, 1837, Joseph Smith, Hyrum Smith, Sidney Rigdon, and Oliver Cowdery arrived in Monroe to close on the deal. Previously, to avoid a possible conflict of interest, Oliver Cowdery had resigned from the Kirtland Safety Society[50] and disposed of his other business interests in Kirtland. The owners of the Bank of Monroe sold their controlling interest in that bank to the Kirtland Safety Society, with the Society paying upfront $3,000 in Cleveland drafts and receiving notes totaling more than $20,000 from principals of the Bank of Monroe.[51] As a part of the deal Cowdery was appointed as a director and vice president of the Monroe Bank.[52] Cowdery stayed in Monroe when the others returned to Kirtland.

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applicable law was enacted on March 14, 1836, by the Ohio General Assembly entitled, "an act to prohibit the establishment, within this State, of any branch, office, or agency of the Bank of the United States, as recently chartered by the Legislature of the Commonwealth of Pennsylvania." *Acts of a General Nature, passed at the First Session of the Thirty-Fourth General Assembly of the State of Ohio* (Columbus: James B. Gardiner, 1836), 37–39. This act was enacted to prohibit anyone to open a branch in Ohio of the Bank of the United States whose twenty-year charter expired on April 10, 1836. M. St. Clair Clarke and D. A. Hall, *Legislative and Documentary History of the Bank of the United States: Including the Original Bank of North America* (Washington, D.C.: Gales and Seaton, 1832), 713. Three years later, in 1839, the Ohio General Assembly enacted a law that expanded the scope of the 1836 act to include "any bank, or other association or company incorporated by the laws of any other State, or by the laws of the United States." An act to prohibit the establishment within this State of any branch, office, or agency of the United States Bank of Pennsylvania, or any other bank or corporation incorporated by the laws of any other State, or by the laws of the United States, and for other purposes, *Acts of a General Nature, Passed by the Thirty-Seventh General Assembly of Ohio, At Its First Session Held in the City of Columbus* (Columbus: Samuel Medary, 1839), sec. 2, 10 (passed February 9, 1839). As anticipated by the directors of the Kirtland Safety Society, through the Bank of Monroe's charter the Kirtland Safety Society could become a branch office.

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

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

52. Staker, "Raising Money in Righteousness," 21–24; "Kirtland Safety Society to Bank of Monroe," reprinted in *Painesville Republican,* February 23, 1837.

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

Note issued by the Bank of Monroe, September 1, 1837, signed by Oliver Cowdery. Courtesy Jeffrey N. Walker.

The Fall of the Kirtland Safety Society

Despite these efforts that appeared to have resolved the Kirtland Safety Society's charter issue, the national Panic of 1837 ultimately thwarted all efforts to create a viable banking venture. The panic started in New York City in mid-February 1837. Banks across the nation began to close in March 1837. Rioting and looting was widespread throughout the country—starting in the East. Many have pointed to President Jackson's policy change requiring all federal land acquisition to be made in specie rather than notes as a catalyst to the panic.[53] The federal government sought to stem the panic by releasing more specie into the economy, totaling more than $9,000,000. Such efforts did little to improve the situation. The panic was devastating to the Bank of Monroe, resulting in its temporary closure. In fact, all the banks in Michigan would close.[54] This financial setting resulted in Michigan enacting what would be the nation's first "free banking" laws.[55] Enacted on March 15, 1837, this act removed the requirement that a bank needed a state-approved charter.[56] This innovation undermined those banks already having charters in Michigan. With the closure, albeit temporary, of the Bank of Monroe, Cowdery resigned as a director and returned to Kirtland.[57] Banks throughout

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53. Peter Rousseau, "Jacksonian Monetary Policy, Specie Flows and the Panic of 1837," *Journal of Economic History* (June 2002): 457–88.

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

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

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

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

Ohio were similarly decimated. Even the Bank of Geauga closed. The Kirtland Safety Society was similarly affected. With the hope of its survival diminishing, Joseph Smith and Sidney Rigdon stopped issuing any notes and instead looked to collect on the loans that were starting to come due in April 1837. The discount and loan book for the Kirtland Safety Society evidences that some notes were indeed redeemed.[58]

The final and decisive blow to the Kirtland Safety Society came in May 1837 with disagreement (and disaffection and even excommunication in some cases) with various Mormon leaders,[59] including Orson and Parley Pratt, Luke and Lyman Johnson, Frederick G. Williams, John Boynton, Warren Parrish, and, most importantly for the Society, John Johnson. John Johnson had acquired 3,000 shares in the Kirtland Safety Society, the maximum number of shares allowed. He had pledged much of his real property as collateral for this purchase. This collateral was essential in keeping the Kirtland Safety Society solvent. However, with his departure from the Church, Johnson took with him his property, transferring much of it to family members.[60] While Johnson's actions appear to have been in violation of the terms and conditions of the Kirtland Safety Society, no legal action was ever taken against him.[61] With such defections and financial

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

59. In fact, as Ronald Esplin explained, "The 1837 Kirtland crisis, or Kirtland apostasy as it is sometimes known, cost us perhaps a third of the leadership—not a third of the members, but some of the elite, some of the well-educated, some of the more prosperous." Esplin, "Joseph Smith and the Kirtland Crisis," 262. This apostasy reached its full strength by the end of May 1837. Charges were brought against some of these leaders before the Kirtland High Council on May 29. At the same time, Lyman and Luke Johnson, Orson Pratt, and Warren Parrish countered with charges of their own delivered to Bishop N. K Whitney against Joseph Smith and Sidney Rigdon. John Boynton joined in the charges against Smith and Rigdon. Most of the charges involved the operations of the Kirtland Safety Society. Wilford Woodruff, *Wilford Woodruff's Journal, 1833–1898, Typescript,* ed. Scott G. Kenney, 9 vols. (Midvale, Utah: Signature Books, 1983–84), May 28, 1837; Fred C. Collier and William S. Harwell, eds., *Kirtland Council Minute Book* (Salt Lake City: Collier's Publishing Co., 2002), May 29, 1837; Charges submitted by L. E. Johnson, Orson Pratt, Warren Parrish, and Luke Johnson, May 29, 1837, Newel K. Whitney Collection, L. Tom Perry Special Collections, Harold B. Lee Library, Brigham Young University.

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

61. While the other members of the Kirtland Safety Society undoubtedly would have had a claim against John Johnson for unilaterally taking his real property out of the venture, under joint stock company law, Johnson may have had a defense. As explained in Rianhard v. Hovey, 13 Ohio 300, 302 (1844), "How far are the stockholders liable for debts contracted by the directors? It may be admitted that, as to many persons parties to this suit, the acts of the directors in departing from the original objects of the association, and engaging in

reversals, both Joseph Smith and Sidney Rigdon resigned and withdrew from the institution in June 1837.[62] Yet, even with their resignations, Warren Parrish and Frederick G. Williams, now disaffected from the Church, took control of the Kirtland Safety Society and continued to make loans by issuing more banknotes.[63] Parrish in particular abused his position as the president of the Society, replacing Sidney Rigdon.[64] Parrish was accused of massive malfeasance during his tenure as president including forgery[65] and embezzlement.[66]

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

> To the brethren and friends of the church of Latter Day Saints, I am disposed to say a word relative to the bills of the Kirtland Safety Society Bank. I hereby warn them to beware of speculators, renegades and gamblers, who are duping the unsuspecting and the unwary, by palming upon them, those bills, which are of no worth, here. I discountenance and disapprove of any and all such

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hazardous undertakings foreign to and adverse to it, was such a violation of their rights as gives them, in a court of equity, no just claim to contribution; and yet, as to creditors, the case may be quite different. Had such stockholders seen proper to step forward and assert their own rights at the time, and given notice to the public, they could not have been made responsible for any debts subsequently contracted. They neglected, however, to take any measures to inform the public, and left the directors in the sole management of their property, in the exercise of their name as a firm, and of the credit of the firm."

62. The Stock Ledger for the Kirtland Safety Society contained entries to July 2, 1837, which effectively matched the withdrawal by Smith and Rigdon. While some have argued that the bank stopped issuing notes in February, these references clarify the matter. Sampson and Wimmer, "Kirtland Safety Society: The Stock Ledger Book," 429.

63. *Elder's Journal* 1 (August 1838): 58.

64. This change likely took place on May 1, 1837, at the semiannual meeting of the Kirtland Safety Society.

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

66. Many claimed that Parrish stole more than $20,000 from the Kirtland Safety Society. Orson F. Whitney, *Life of Heber C. Kimball* (Salt Lake City: Tevens and Wallis, 1945), 100; Staker, *Hearken, O Ye People,* 547, n. 98; Brigham H. Roberts, comp., *A Comprehensive History of The Church of Jesus Christ of Latter-day Saints: Century I,* 6 vols. (Salt Lake City: Deseret News, 1930), 1:405. Frederick G. Williams was appointed president after Joseph withdrew. *Elders' Journal* (August 1838): 58; Frederick G. Williams, *The Life of Dr. Frederick G. Williams, Counselor to the Prophet Joseph Smith* (Provo, UT: BYU Studies, 2012), 454–73.

> practices. I know them to be detrimental to the best interests of society, as well as to the principles of religion.
>
> JOSEPH SMITH Jun.

Such "Caution" effectively ended the Kirtland Safety Society. Yet the fall-out was yet to be fully felt. One expected a plethora of litigation to result from the failure of the Kirtland Safety Society, as it is estimated that more than two hundred individuals had bought stock in the venture suffered losses[67] in addition to the numerous parties who held Kirtland Safety Society notes.[68] Yet only one case was filed against Joseph Smith, and that was by his nemesis, Grandison Newell.[69]

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67. Anderson, *Joseph Smith's Kirtland,* 193; Hill, Rooker, and Wimmer, "Kirtland Economy Revisited," specifically appendix C for a list of the stockholders on the Kirtland Safety Society's ledger book. For a discussion about the ledger book, see Sampson and Wimmer, "Kirtland Safety Society: The Stock Ledger Book." The Smith household (including Joseph Sr. and Lucy, Hyrum and Jerusha, Joseph Jr. and Emma, Samuel, Sophronia Stoddard, Katherine Salisbury, and Lucy Jr., not to mention uncles, aunts, and other relatives) suffered the greatest losses, having owned 12,800 shares of stock (approximately 33 percent of the outstanding stock) in the Society. Their losses were followed, in size, by the Rigdon family (including Sidney, Phebe, and Sidney's mother, Nancy), who owned 4,400 shares of stock (approximately 11 percent of the outstanding stock). The John Johnson family losses would have been between the Smiths and the Rigdons, having owned 8,200 shares of the outstanding stock (approximately 13 percent) had John Sr. not withdrawn his collateral in an obvious effort to mitigate his potential losses. Staker, *Hearken, O Ye People*, 524–25. Wilford Woodruff recounted, "Warren Parrish, who was a clerk in the Bank, afterwards acknowledged he took 20,000 dollars, and there was strong evidence that he took more." Jessee, "Kirtland Diary of Wilford Woodruff," 398 n. 77.

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

69. In April 1837, Newell filed a complaint with Painesville Justice of the Peace Edward Flint claiming that he had "just cause to fear and did fear, that Joseph Smith, Jr. would kill him or procure other persons to do it." Based on Newell's complaint, Justice Flint issued a warrant for the arrest of Smith. Joseph Smith was arrested and brought before Justice Flint on May 30, 1837, to respond to these allegations. Because of the limited jurisdiction of justices of the peace, Justice Flint could only hold a hearing to determine whether there was sufficient evidence to establish probable cause that a crime had been committed. If Justice Flint so found, he would require the accused to enter into a recognizance, thereby agreeing to appear at the next term of the Court of Common Pleas, where the charges

The Aftermath of the Kirtland Safety Society

Banking began in Ohio in 1803 during its first legislative session[70] with the granting of a corporate charter to the Miami[71] Exporting Company on April 15, 1803, for the purpose of exporting agricultural products and banking, including the right to issue notes.[72] Other privately chartered banks soon dotted Ohio, including the Bank of Marietta and Bank of Chillicothe in 1808, Bank of Steubenville in 1809, Western Reserve Bank and Bank of Muskingum in 1812, Farmers' & Mechanics' Bank in 1813, and the Dayton Manufacturing Company in 1814.[73] During this same time, various other businesses in Ohio began carrying on banking operations without charters. For example, in 1807 the Alexandrian Society of Grantsville, which was chartered for literary purposes, began issuing bank notes. The Bank of Marietta and Farmers' & Mechanics' Bank began operations as a bank before they had received their charters from the legislature. "Many other unauthorized banks were established in the state [Ohio] during the years 1811 to 1814, and by the

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would be tried and to keep the peace during the interim. Justice Flint postponed this preliminary hearing until June 3, 1837, at the request of the defendant for additional time to prepare. On June 3, 1837, Joseph Smith appeared with his attorneys Benjamin Bissell and William Perkins. James Paine appeared with Newell. During this hearing Justice Flint heard the testimony of nearly a dozen witnesses after which he determined that probable cause existed to place Smith under a $500 recognizance bond to appear on the first day of the next term of the Geauga Court of Common Pleas on the charge and to keep the peace. Justice Flint also put three of the witnesses, Sidney Rigdon, Orson Hyde and Solomon Denton, under recognizance of $50 each to appear and testify at the next term of the Geauga Court of Common Pleas in this matter. He then prepared a transcript of his actions and forwarded it to the Geauga Court. The June term of the Geauga Court commenced the following Monday, June 5, 1837. The Geauga Court of Common Pleas heard the case on Friday, June 9, 1837, where the evidence was again presented. At the conclusion of this trial the court discharged Joseph Smith and ordered the state to pay all court costs.

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

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

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

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

close of the latter year the large amount of notes issued by these institutions had become a matter of concern to the legislature."[74]

The Ohio General Assembly formally addressed this public problem by passing its first act prohibiting the unauthorized issuing of bank notes on February 8, 1815.[75] As one commentator in 1896 noted, "In 1815, Ohio commenced a war which she carried on longer and more vigorously, because apparently with less success, than any other State, against unauthorized bank notes."[76] In the next session, the Ohio legislature strengthened its attack on unauthorized banking activities by enacting on January 27, 1816, "An act to prohibit the issuing and circulating of authorized bank paper" (the "Act of 1816"). The Act of 1816 provided for a $1,000 penalty against any "officer, servant, agent or trustee" of an unincorporated "bank or money association."[77] The Act of 1816 also provided that an "informer" could bring an action of debt (a civil action) against violators of the Act and receive 50 percent of the recovery, with the other 50 percent "going to aid to the public revenue of the state."[78] The Act of 1816 further made all shareholders or partners in any such banking venture jointly and severally liable "in their individual capacity, for the whole amount of the bonds, bills, notes and contracts of such bank."[79] As these provisions indicate, the Act of 1816 was focused at punishing the bank, its officers, and owners—the direct and indirect *suppliers* of unauthorized bank note in circulation.[80]

In 1823, during the Twenty-First General Assembly of the State of Ohio, a three-person committee was formed to revise the laws of Ohio.[81] The rational was explained by resolution that the frequent revisions of the laws of

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

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

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

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

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

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

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

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

the state have resulted in "an unavoidable consequence, [of] our statutes become in short order, so voluminous and complicated, that it is difficult for officers of our government, and still more so for those less conversant with our statute books, to determine what is the law, by which they are regulate their conduct."[82] During previous sessions when laws were enacted, revised, amended or repealed, the legislature had concurrently worked to reconcile such changes with the then existing laws. This process resulted in the General Assembly having "revise[d] the laws of a general nature, three times in a period of thirteen years."[83] Yet such efforts proved problematic, taking up much of the time and energy of legislature and even then the "revised laws have not therefore, presented to the public, that definite and concise, that simple and uniform code, which is so desirable."[84] The remedy was to appoint a three-person committee tasked with the responsibility

> to digest and compile a code of laws, containing the principles of the laws now in force, expunging therefrom such acts and parts of acts, as have been repealed, have expired by limitation, or have been superseded and rendered nugatory by subsequent acts; . . . to draft separate bills containing such new principles as they may be directed by the General Assembly to adopt; or such as they may think proper to recommend; and also separate bills containing the necessary amendments of such other acts as will be affected by such new principles, so that those principles may be adopted or rejected by the General Assembly without destroying the harmony of the code.[85]

As a result this committee proposed a new Act to regulate judicial proceedings where banks and bankers are parties, and to prohibit bank bills of certain descriptions (the "Act of 1824").[86] Section 23 of this Act specifically addressed unauthorized entities issuing bank notes:

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

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

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

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

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

> That no action shall be brought upon any notes or bills hereafter issued by any bank, banker or bankers, and intend for circulation, or upon any note, bill, bond or other security given, and made payable to any such bank, banker or bankers, unless such bank, banker, or bankers shall be incorporated and authorized by the laws of this state to issue such bills and notes, but that all such notes, and bills, bonds, and other securities shall be held and taken in all courts as absolutely void.[87]

Section 23 of the Act of 1824 effectively superseded the Act of 1816. Its aim was not to stop the *supply* of unauthorized bank notes, as the Act of 1816 had tried to do, but rather aim at stopping the *demand* for such unauthorized bank notes by declaring such notes to be void and unenforceable in court.[88] This shift in focus remained the law in Ohio until 1840, when the General Assembly of Ohio repealed Section 23 of the Act of 1824.[89] Thus, the Act of 1824, and not the Act of 1816, was the operable law at the time when the notes of the Kirtland Safety Society were being circulated. Not only did the General Assembly in 1840 repeal Section 23, it also reaffirmed that with its repeal the Act of 1816 was no longer suspended.[90]

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

88. The suspension of the Act of 1816 by section 23 of the Act of 1824 did not prevent actions to be brought by the state under its criminal code. In Cahoon v. State, 8 Ohio 537 (1838) brought during the time that the Act of 1816 was suspended: Cahoon was indicted for circulating banknotes from a nonexistent corporation. Cahoon's counsel objected to the jury instruction arguing that the jury should have been charged that "if they found the note offered in evidence was issued by an *existing* bank or company, they should acquit, whether the bank was incorporated or not." Cahoon v. State, 8 Ohio 537 (1838) (emphasis in original). In remanding the case, the Ohio Supreme Court held that the "offence is the uttering of such note, knowing it to be of a non-existing bank or company, and not the uttering a note knowing it to have been issued by an existing unincorporated bank." Cahoon v. State, 8 Ohio 538 (1838). Criminal charges were never brought against any of the directors of the Kirtland Safety Society. Under the analysis the court used in Cahoon v. State, any such charge would have proven ineffective, as the Kirtland Safety Society was indeed in existence when it opened for business.

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

90. *Acts of a General Nature by the Thirty-Eighth General Assembly of the State of Ohio,* 113–17. A new act "to prohibit unauthorized Banking, and the circulation of unauthorized Bank paper" was enacted in 1845 (hereafter cited as the "Act of 1845"). The Act of 1845 was similar to the Act of 1816 in that it provided for a $1,000 penalty to officers, directors or owners of an unauthorized bank, but broadened those subject to the penalty to include

The legal effects of the suspension of the Act of 1816 with the enactment of Section 23 of the Act of 1824 and then the repeal of Section 23 and the reinstatement of the Act of 1816 in 1840 was discussed by the Ohio Supreme Court in *Johnson v. Bentley,* 16 Ohio 97 (1847). The defendants in that case interposed a general demurrer (a demurrer being an attack on the legal sufficiency of an action) over a judgment entered against them under the Act of 1816 for being officers of an unauthorized bank issuing bank notes. The defendants argued that the enactment of Section 23 of the Act of 1824 effectively repealed the Act of 1816. Consequently, when Section 23 itself was repealed in 1840 and the General Assembly did not reenact the Act of 1816, any claims brought under the Act of 1816 were rendered invalid. In affirming the judgment against the alleged bankers, Justice Nathaniel C. Reed[91] unequivocally held that

> [t]he act of 1824 did not repeal the act of 1816, it only suspended its action. If it had repealed it, the repeal of the repealing act would not have revived it.... Under the act of 1816, suits could be maintained upon the notes and bills of unauthorized bankers. The 23d section of the act of 1824 declared that the courts should no longer entertain such suits. The 11th section of the act of 1816, which fixed the liability of illegal bankers upon their bills and notes, remained unaffected. But the 23d section of the act of 1824, forbid the courts to entertain any suit or action upon such liability. Then, after the passage of the act of 1824, there was a liability without a right of action to enforce it. The remedy was denied,—it has been restored by a repeal of the act denying it. This is, then, a mere case of suspending remedy, and the legislature has the full power to restore it.[92]

"every person who ... become[s] in any way interested" in an authorized bank. The Act of 1845 eliminated the provision whereby a citizen could bring a suit and share in 50 percent of the recovery. Act of 1816, sec. 5.

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

92. Johnson v. Bentley, 16 Ohio 97, 99–100 (1847); Lewis v. McElvain, 16 Ohio 347, 356 (1847) (By the act of March 23, 1840, this provision of the act of 1824 was repealed. And the court held in the before-cited case of Johnson *v.* Bentley et al., "that inasmuch as this provision was repealed, the bills and notes were left as under the law of 1816, and that although void by the law of 1824, still that the plaintiffs could recover—in other words,

Justice Reed further discussed that the policy behind the enactment of Section 23 of the Act of 1824 that precluded the remedies under the Act of 1816 was aimed at "alarming the people, and refusing a remedy upon such paper … [with the] evident intention to create distrust in the public mind."[93] However, "after a trial of the policy of the 23d section of the act of 1824 for sixteen years, it was found that it did not check illegal banking.… To have protected such men in their ill-gotten wealth, by the 23d section of the act of 1824, would have been a species of legalized robbery. The legislature [in 1840], therefore, repealed that clause of the [1824] act, which forbid suits to be brought by the holders of such paper."[94]

Thus, during the period that the Kirtland Safety Society operated (November 1836–November 1837), the Act of 1816 was suspended and replaced by the Act of 1824. Section 23 of the Act of 1824 provided that no claims could be brought under the Act of 1816 and that no holder of a bank note from an unauthorized bank could bring an action against any of the officers, directors or owners of such bank.

However, there was one large exception: *Rounds v. Smith,* the only piece of litigation actually pursued in this regard against Joseph Smith. On February 9, 1837, slightly over a month after the bank had opened on January 3, 1837, Samuel D. Rounds[95] initiated six suits against each of the then Committee of Directors of the Kirtland Safety Society Anti-Banking Co., including Joseph Smith, Sidney Rigdon, Warren Parrish, Frederick G. Williams, Newel K. Whitney, and Horace Kingsbury.[96] Samuel Rounds sued as a straw man for

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that the repeal of the law of 1824 set up or gave validity to notes and bills which were uncollectible when issued. Such, at least, is the effect of the decision").

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

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

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

96. Horace Kingsbury (ca. 1798–1853) was a jeweler and silversmith. He was born in New Hampshire and moved to Painesville, Ohio, in 1827. He joined the LDS Church and was ordained an elder in 1832. He was elected a Painesville trustee in 1847 and mayor in 1848.

Grandison Newell. Newell later reportedly said that he paid Rounds $100 to bring the cases.[97] Newell's involvement is beyond dispute, as he even starts to appear in the court pleadings themselves shortly after judgment is entered in October 1837.[98] These suits were specifically brought under the Act of 1816, alleging damages as provided under Section 1 of $1,000[99] in each case. These suits were also brought as *qui tam*[100] suits as provided for in Section 5 of the Act of 1816[101] that allowed the informer, here Rounds, to recover 50 percent of

97. Mary A. Newell Hall, a Newell family historian, quoted Grandison Newell as saying, "Samuel D. Rounds, the complainant, I bought off, and gave him $100. I have been to all the vexation and troubles and paid all costs from the first commencement." Mary A. Newell Hall, "Thomas Newell and His Descendants" (Southington, Conn., 1878), 132–38, as cited in Adams, "Grandison Newell's Obsession," 173.

98. See for example, collection efforts on the judgment entered against Rigdon noted on the Bill of Goods that the sale of property owned by Rigdon that was appraised for sale on January 29, 1838, "remained unsold by direction of Grandison Newell," as well as paying to Newell the $604.50 that was recovered by the sheriff over the same personal property of Rigdon. Bill of Costs, October 24, 1837, Geauga County Court of Common Pleas, Execution Docket G, 106, Geauga County Courthouse.

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

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

101. Section 5 of the Act of 1816 provided: "That all fines and forfeitures imposed by this act, may be recovered by action of debt or by indictment, or presentment of the grand jury, and shall go one half to the informer where the action is brought, and the other half in aid of the public revenue of this state; but where the same is recovered by indictment or presentment, the whole shall be to the use of the state." This language parallels similar acts enacted by Congress shortly after the enactment of the Constitution. For example, a 1791 act of Congress provided that "One half of all penalties and forfeitures incurred by virtue of this act shall be for the benefit of the person or persons who shall make the a seizure, or shall first discover the matter … And any such penalty and forfeiture shall be recoverable with costs of suit, by action of debt, in the name of the person or persons entitled thereto." Harold J. Krent, "Executive Control over Criminal Law Enforcement: Some

the fine imposed. Rounds retained Reuben Hitchcock[102] to represent him in this action.[103] Hitchcock was also the state prosecutor for Geauga County.[104] Consequently, Hitchcock was the attorney for Rounds, as well as the State of Ohio. Each suit was captioned "Samuel D. Rounds v. [Defendant]."[105]

Lessons from History," *American University Law Review* 38 (1989): 296–97. This relationship between the state and the informer creates a quasi-criminal situation, criminal in that if the state itself pursued the matter it squarely is a criminal matter. However, when a private citizen brings the suit it is civil in nature. Krent notes, in this regard, "Through the qui tam actions, private citizens helped enforce the criminal laws. Such actions were long considered quasi-criminal. Indeed, during the nineteenth and early twentieth centuries, civil qui tam actions represented the functional equivalent of criminal prosecution." Krent, "Executive Control," 397. This relationship clearly existed in the Act of 1816 with the distinction that if the state itself brought the action it would have been criminal via indictment from a grand jury with the entire amount going to the state. This being the case, the law in such quasi-criminal actions requires a higher standard for proof. As noted by the 1835 United States Supreme Court in United States v. The Brig Burnett, 34 U.S. 682, 691 (1835) that held "no individual should be punished for violation of a law which inflicts forfeiture of property, unless the offense shall be established beyond a reasonable doubt."

102. Reuben Hitchcock (1806–83) was an attorney, judge, banker and railroad executive. He was born in Burton, Geauga Co., Ohio, and son of Peter Hitchcock, also an attorney and justice on the Illinois Supreme Court. Reuben attended Yale College, 1823–26. He was admitted to Ohio bar about 1831. Moved to Painesville, Geauga (now Lake) Co., Ohio, about 1831.

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

104. Reuben Hitchcock was the prosecuting attorney for Geauga County from 1837 to 1839.

105. Reuben Hitchcock in a letter to his father dated February 6, 1837, asks: "I wish to ascertain the practice in this State, when it is provided that the penalty may be recurred by action of debt or indict— on half to the informed + the other half to the State, but if recovered by indictment the whole goes to the State— In case an action of debt is brought at the instance of an informer should the suit be in the name of the State of Ohio for of the informer qui tam— I have examined considerably I can find nothing in our decisions on the subject, and know not what the old fashioned qui tam actions are in this State— If consistent with your duty will you inform me on this point." Reuben Hitchcock to Peter Hitchcock, February 6, 1837, Western Reserve Historical Society, Cleveland, Ohio. While we do not have Peter Hitchcock's reply, Reuben determined to bring the case in the name of the informer, Rounds, and not the State of Ohio. Joseph R. Swan, *A Treatise on the Law Relating to the Powers and Duties of Justices of the Peace and Constables in the State of Ohio* (Columbus: Isaac N. Whiting, 1839), 487 ("Where a statute creates a penalty, and authorizes a recovery before a justice by an action in debt, but is silent as to the person or corporation in whose name the penalty shall be prosecuted, the action should, in general, be brought in the name of 'The State of Ohio' . . . But if part be given to him, or to any other informer who shall sue, and part to some other person, or corporation, then the suit should be brought by the party aggrieved, or by the informer;

Rounds had writs of summons[106] ordered by Presiding Judge Van R. Humphrey[107] and issued by the court clerk, David D. Aiken,[108] against each defendant on February 9, 1837. These summons commanded that the various defendants appear before the Geauga County Court of Common Pleas on March 21, 1838, to answer the action of a plea of debt[109] for $1,000, each. Describing the claim, the Summons was endorsed noting,

> Suit brot to recover of deft a penalty of $1000 incurred by acting on the 4th day of Jan.y 1837, as an officer of a Bank not incorporated by law of this State and denominated "The Kirtland Safety Society Anti Banking Co." contrary to the Statute in such case made and provided. Amt. claimed to be "due $1000.[110]

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who, with the person or corporation entitled to a portion of the penalty should be named in the process") (hereafter cited as Swan, *Duties of Justice of the Peace*).

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

107. Van Rensselaer Humphrey (1800–1864) was a teacher, lawyer, and judge born in Goshen, Connecticut. He moved to Hudson, Ohio in June 1821 and in 1824 was elected Hudson Township justice of the peace. He was a member of the Ohio House of Representatives in 1828 and 1829 and elected by the Ohio Legislature as president judge of the Court of Common Pleas for the Third Judicial District in 1837. A position he would hold until 1844.

108. David Dickey Aiken (1794–1861) was the Geauga County clerk from 1828 to 1841. He was made an associate justice of the Geauga County Court of Common Pleas in 1846.

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

110. Each Writ of Summons was identical in this regard. See Transcripts of Proceedings for each defendant each dated October 24, 1837, Geauga County Court of Common Pleas, Final Record Book U, Geauga County Courthouse: 353–54 for Warren Parrish (hereafter cited as "Parrish Transcript"), 354–56 for Frederick G. Williams (hereafter cited as "Williams Transcript"), 356–57 for Newel K. Whitney (hereafter cited as "Whitney Transcript"), 358–59 for Horace Kingsbury (hereafter cited as "Kingsbury Transcript"),

Sheriff Abel Kimball[111] served the Summons on the defendants.[112] The returns of the Summons were reviewed by the Geauga County Court of Common Pleas on March 21, 1837, during its March term and the court continued the case until the June term.[113]

On April 24, 1837,[114] Rounds, by his counsel, Reuben Hitchcock, filed his declaration ("Declaration") with the court. A declaration is roughly the equivalent of the filing of the complaint today.[115] The Declaration, using the pleadings from the case brought against Joseph Smith as illustrative, in pertinent part, stated (paragraph numbers and emphasis added):

1. Samuel D. Rounds who sues as well for the State of Ohio as for himself complains of Joseph Smith Junior in a plea of debt.
2. For that the said Joseph Smith Junior on the fourth day of January in the year of our Lord one thousand eight hundred and thirty seven at Kirtland township in said County of Geauga **did act as an officer,**

359–62 for Sidney Rigdon (hereafter cited as "Rigdon Transcript"), 362–64 for Joseph Smith (hereafter cited as "Smith Transcript"). Collectively cited as "Trial Transcripts."

111. Sheriff Abel Kimball (1800–1880) was a farmer born in Rindge, New Hampshire, and moved to Madison, Geauga County, Ohio, in August 1813. He served as Geauga County second Sheriff beginning in 1835 and as Sheriff from 1838 to 1841.

112. Sheriff Abel Kimball's service was as follows: Joseph Smith: left a copy with his wife at his home on February 10, 1837 (Smith Transcript); Sidney Rigdon: left a copy with his wife at his home on February 10, 1837 (Rigdon Transcript); Frederick G. Williams: left a copy with his wife at his home on February 10, 1837 (Williams Transcript); Horace Kingsbury: personally served on February 10, 1837 (Kingsbury Transcript); Newel K. Whitney: personally served undated (Whitney Transcript); Warren Parrish: personally served on March 17, 1837 (Parrish Transcript).

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

114. Only in the Kingsbury Transcript is the date of the filing of the Declaration noted. In the rest of the Transcripts the date is literally left blank.

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

servant, agent and trustee of a Bank called "The Kirtland Safety Society Anti Banking Co." which said Bank was not then and there **incorporated by law;** contrary to the Statute in such case made and provided whereby and by the force of the said statute the defendant has forfeited for said offence the sum of one thousand dollars and thereby and by force of said statute an action hath accrued to the plaintiff who sues as aforesaid to have and demand of and from the defendant for the said State of Ohio and for himself, the said sum of one thousand dollars one half for the said State of Ohio and the other half for the plaintiff.

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

> aforesaid; but has always neglected and refused so to do; which is to the damage of the plaintiff the sum of one thousand dollars, and therefore he brings this suit &c.[116]

The Declaration demarcated that the claims brought were based on Act of 1816 for unauthorized banking. The allegations were drafted to squarely fit within the language of the Act of 1816. Paragraph 2, above, alleged a claim for a $1,000 penalty for being a principal in an unauthorized bank. This claim and penalty had been provided in Sections 1 and 2 of the Act of 1816. Paragraph 3, above, alleged a claim for a $1,000 penalty as a result of said person identified in paragraph 1, above, for "the discounting of paper and lending money." This claim and penalty used the exact language of "discounting of paper and lending money" that had been found in Section 3 of the Act of 1816.

Paragraph 4, above, alleged a claim for a $1,000 penalty for being a principal in "a certain other Bank" that was also unauthorized. As previously noted, the Kirtland Safety Society was originally formally as "The Kirtland Safety Society Banking Company" on November 2, 1837. This name was changed in January 1837 to "The Kirtland Safety Society Anti-Banking Company." This change was further evidenced by replacing "President" with "Secretary" and "Cashier" with "Treasurer" on the notes that had been already executed in anticipation of opening the bank. Also, a stamp was made with the word "Anti" and was used on some of the executed notes to indicate the name change. However, the majority of notes distributed did not have "Anti" stamped on them.[117] Consequently, the allegations in paragraph 4, above, may be making reference for notes that were lent and discounted under the name "The Kirtland Safety Society Banking Company," instead of "the Kirtland Safety Society Anti-Banking Company." Finally, each of the paragraphs in the Declaration made reference to a 50/50 split between Rounds, as the plaintiff, and the State of Ohio. These references are in accord with Section 5 of the Act of 1816 that had provided that the penalty "shall go one half to the informer where the action is brought, and the other half in aid of the public revenue of this state."

Based on the foregoing, it is clear that the Declaration is squarely, indeed, exclusively based on the Act of 1816. Rounds's attorney, Reuben Hitchcock, further confirmed this in a letter to his father dated June 26, 1837, in which he describes the lawsuits as "qui tam suits vs the Mormons under the act prohibiting the circulation of unauthorized Bank paper to recover the penalty

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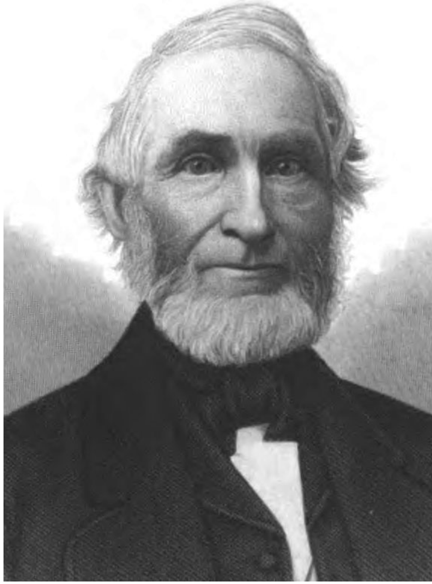
116. Trial Transcripts.

117. Staker, *Hearken O Ye People*, 479.



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

one half of which goes to the informer & the other half 'in aid of the public revenue of the State,'" actually quoting the Act of 1816.[118] The problem with Hitchcock's action, however, is that Section 23 of the Act of 1824, as discussed above, had suspended the Act of 1816. Consequently, regardless of the veracity of factual allegations made in the Declaration, as a matter of law Rounds had not stated a viable cause of action. And it appears that that is what Joseph Smith and his fellow defendants' attorneys, William Perkins[119] and Salmon S. Osborn,[120] rightly understood as they filed demurrers in each case to be heard during the June 1837 term.[121] As explained by Giles Jacob:

118. Reuben Hitchcock to Peter Hitchcock, June 26, 1837. See Act of 1816, sec. 5.

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

120. Salmon Spring Osborn (1804–1904) opened a law office in Chardon, Geauga Conty, Ohio, in partnership with R. Giddings in 1828. He moved to Painesville, Ohio, in about 1833 and formed the law firm of Perkins & Osborn the following year.

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

> Painesville Oct 29. 1838
>
> Joseph Smith Jr Esq
>
> Dear Sir
>
> At suggestion of our friend Mr. Granger we sent your statement of our amt & demands—You know I threw my whole influence, industry & whatever talents I have faithfully into your affairs—do something for me. "The labourer is worthy of his hire"

> For in every action the point of controversy consists either in *fact* or in *law*; If in *fact,* that is tried by the jury; but if in *law,* that is determined by the court. A *demurrer,* therefore, is as issue upon matter of law. It confesses the facts to be true, as stated by the opposite party; but denies that by the law arising upon those facts, any injury is done to the plaintiff; or that the defendant has made out a lawful excuse; according to the party which first demurs, rests or abides in the law upon the point in question. As, in the matter of the declaration be insufficient in law then the defendant demurs to the declaration.[122]

> In the Qui tam suits of Rounds, we have charged the different individuals according as we thought was about right in proportion to our services—I spent a great deal of time & labor in my office in those suits & though unsuccessfully it was no fault of ours you know. Parrish's billed & we have a judgt against him for his proportion & presume it will be collected—
>
> I have heard much of you troubles & take an interest in your welfare & believe you must prevail, not withstanding all persecutions—
>
> I read Mr. Rigdons elegant & spiritual 4th of July address for mail, please present my compliments to him & wish him well for his prosperity—We have a small amount against Mr. Marks, which he will recognize, He escaped our collection when he left—
>
> Yours truly
> Wm Perkins
>
> P.S. We also sent an amount against Mr George W Robinson & a __ G.W. Robinson

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

122. Jacob, *Law-Dictionary,* s.v. "demurrer" (emphasis in original); Bouvier, *Law Dictionary*, s.v. "demurrer"; Green v. Dodge and Cogswell, 6 Ohio 80, 84 (1833) (Facts are taken as true in the demurrer and court only looks at the application of the law); Belmont Bank of St. Clairsville v. Beebe, 6 Ohio 497, 497–498 (1834) ("This case stands before the court on a demurrer to the declaration ... The omission of this averment makes the count bad"); Pennsylvania and Ohio Canal Co. v. Webb, 9 Ohio 136, 138 (1839) ("The first question arising upon the demurrer is upon the sufficiency of the declaration").

Perkins's use of demurrers appears both appropriate and fatal to the declarations filed by Hitchcock. Such an argument would be straightforward: For purposes of the demurrers the facts alleged in the declarations would be taken as true. However, even when taken as true, Hitchcock had failed to allege a legally viable claim in the declaration as each and every claim is made under the Act of 1816, which had undisputedly been suspended by the Act of 1824. Consequently, the Declaration, and each claim asserted therein, should be dismissed.

Unfortunately, the demurrers that would confirm that this was the legal argument actually raised by Perkins have not survived. Rather, the court record merely notes: "This cause came on to be heard upon a demurrer to the declaration of the plff. & was argued by counsel[123] on consideration ~~thereof~~ whereof it is adjudge that the said demurrer be overruled with costs on motion of the def. leave is given him to amend—on payment of the costs—and this cause is continued until the next term [in the fall of 1837]."[124] However, after the trial of this case, Perkins & Osborn prepared bills of exceptions that included the argument "that the statute upon which the suit was founded was not in force."[125] The importance of this argument was certainly not lost on them. The *Painesville Republican* even wrote about the problems with the Act of 1816 in the context of the Kirtland Safety Society in an article dated January 19, 1837, noting,

> a law of this state passed February 22, 1816, "to prohibit the issuing and circulating of unauthorized Bank Paper," published in the Telegraph last week, if now in force, might subject persons who give these bills a circulation, to some trouble. It is doubted however, by good judges, whether the law to which we have alluded, is now in force, or if in force, whether it is not unconstitutional, and therefore not binding upon the people.[126]

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

124. Overruled Demurrer in Rounds v. Smith, June 10, 1837, Common Pleas Journal, Book N, 223, Geauga County Courthouse; Overruled Demurrer in Rounds v. Rigdon, June 10, 1837, Common Pleas Journal, Book N, 223; Overruled Demurrer in Rounds v. Kingsbury, June 10, 1837, Common Pleas Journal, Book N, 222; Overruled Demurrer in Rounds v. Williams, June 10, 1837, Common Pleas Journal, Book N, 223; Overruled Demurrer in Rounds v. Parrish, June 10, 1837, Common Pleas Journal, Book N, 223; Overruled Demurrer in Rounds v. Whitney, June 10, 1837, Common Pleas Journal, Book N, 222 (collectively the "Overruled Demurrers").

125. Perkins & Osborn Billings.

126. "Anti-Banking Company," *Painesville Republican*, January 19, 1837.

In a February 16, 1837, article entitled "For the Republican," the *Painesville Republican* further articulated the problems with the Act of 1816:

> The law of 1816, under which these suits are instituted, has long since become obsolete and inoperative. In the year 1824, the legislature appointed by joint resolution, a committee to revise generally the laws of the State. That committee, in their sound discretion, adopted such laws as were suited to the genius and spirit of the age, and rejected such as were not; but which were made upon the spur of the occasion without much reflection or deliberation.[127]

With the denial of the demurrers and the conditional granting of leave to amend, thereby continuing the case, the court accessed costs against the defendants for $1.05 each that included court costs and the opposing counsel's legal fees.[128] Payment of the costs was a condition to allow the defendants

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

128. Bill of Costs in Rounds v. Smith, June 5, 1837, Geauga County Court of Common Pleas, Execution Docket G, 15, notes that it was paid, but no date of payment; Bill of Costs in

to amend their responses to the declarations—essentially to file answers. This requirement was in accord with the practice and law of the time.[129] The answers filed by the defendants are also not extant.[130] However, from the trial transcripts, one can derive from the bills of exceptions prepared by defendants' counsel, the answers included the following:

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

The trial of these cases took place during the October term of the Geauga County Court of Common Pleas, commencing on October 24, 1837, the first

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

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

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

day of the term.[131] They were argued before a four-judge bench,[132] including presiding judge Van R. Humphrey, and associate judges John Hubbard,[133] Daniel Kerr[134] and Storm Rosa.[135] The first matter of business when these cases were called was Rounds's decision to not pursue the actions against four of the six defendants, namely Warren Parrish, Frederick G. Williams, Newel K. Whitney, and Horace Kingsbury. The trial transcripts of Williams, Whitney, and Kingsbury each note: "And now at this term of said court, comes the defendant, and the plaintiff being three times demanded to come and prosecute his suit, comes not but makes default."[136] Entering default to dismiss these actions conformed to Ohio law.[137]

In contrast, the trial transcript regarding the action against Warren Parrish stated: "And now at this term of said Court … comes the said plaintiff and discontinues his suit."[138] No reason is given in the record why the case against Parrish is treated differently. A possible rationale for the difference may be found in a letter sent by Reuben Hitchcock to his father, Peter Hitchcock, dated June 26, 1837, where he asked the following question:

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131. Trial Transcripts.

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

133. John Hubbard (1780–1854) was a farmer and judge born in Sheffield, Massachusetts. He moved to Madison, Geauga County, Ohio, by 1812. He was elected as an associate judge for Geauga County Court of Common Pleas in 1827.

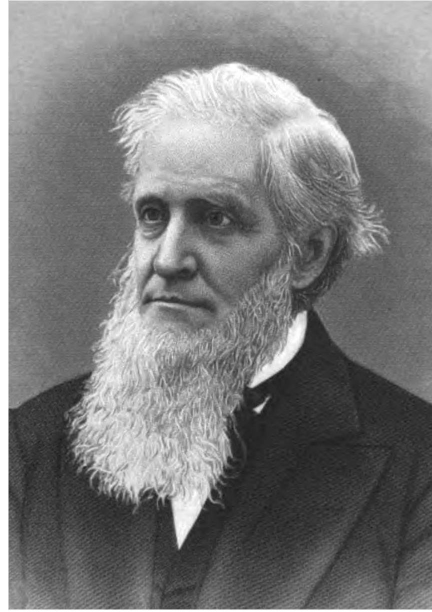
134. Daniel Kerr (1791–1871) was a farmer, postmaster, and judge born in Fallowfield, Pennsylvania. He moved to Painesville, Ohio, before 1816. He then moved to Mentor, Ohio, where he became postmaster in 1819. Kerr returned to Painesville, where he was elected as an associate judge for the Geauga County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

135. Storm Rosa (1791–1864) was a doctor, judge, teacher, and newspaper editor. Born in Coxsackie, New York, he moved to Painesville, Ohio, in 1818. He was a teacher at the Medical College of Willoughby University in 1834, located in Chagrin, Ohio. He was elected as an associate judge of Court of Common Pleas for Geauga County in 1836. Rosa was also the editor of the *Painesville Telegraph* from September 1838 to July 1839.

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

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

138. Parrish Trial Transcript.



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

> I wish your advice in the following matter. Last winter I was employed by Saml D. Rounds & commence w|..|rat <qui tam> suits vs the Mormons under the act prohibiting the circulation of unauthorized Bank paper to recover the penalty one half of which goes to the informer & the other half "in air of the public revenue of the State"—Under the decisions Rounds has no right to discontinue the suits, but Kingsbury who is one of the Defts is anxious to get out of the difficulty & perhaps Rounds would let him off if he could—Under these circumstances have I as prsecuting Atty any ~~the~~ control over the suits? Have I any authority, where the County is not directly interested in the collection of money? If Rounds should ~~not~~ direct me not to prosecute the suit any fa[r]ther, should I be under any obligation to carry it on?—Please advise me on these points.[139]

Perhaps Hitchcock got Warren Parrish and Horace Kingsbury confused. If that were the case, Parrish may have paid something to Rounds to get out of the case. However, neither defaulting nor dismissing these defendants fully resolved the cases, and the Geauga County Court of Common Pleas surely understood that.[140] The following judgments were entered in each of these four cases: "The pl[ainti]ff being called to come into court and prosecute this suit comes not, Ordered that the plaintiff becomes non suit,[141] and that

139. Reuben Hitchcock to Peter Hitchcock, June 26, 1837.

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

141. Nonsuit is the "name of a judgment given against a plaintiff, when he is unable to prove his case, or when he refuses or neglects to proceed to trial of a cause after it has been put at issue, without determining such issue. It is either voluntary or involuntary. A voluntary nonsuit is an abandonment of his cause by a plaintiff, and an agreement that a

the def[endan]t recov[e]r against him his costs."[142] In each case, costs were assessed against Rounds, as follows:

Case	**Court Costs**	**Attorney's Fees**
Rounds v. Parrish:	$2.15	$5.00[143]
Rounds v. Williams:	$2.15	$5.00[144]
Rounds v. Whitney:	$2.15	$5.00[145]
Rounds v. Kingsbury:	$3.53	$5.00[146]
Total:	**$30.28**	

The court records do not show whether or not any of these costs were ever paid.

With these four cases dismissed, Rounds moved forward to try the two remaining cases. The record does not identify which case went first. A twelve-man jury tried both.[147] None of the jurors appear to be Mormons. As

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judgment for costs be entered against him. An involuntary nonsuit takes place when the plaintiff on being called, when his case is before the court for trial, neglects to appear, or when he had given no evidence upon which a jury could find a verdict." Bouvier, *Law Dictionary,* s.v. "nonsuit"; Jacob, *Law-Dictionary,* s.v. "nonsuit." There are no appeals from a nonsuit, unless the nonsuit was ordered by or proceed from the action of the court; for, if the voluntary act of the party, he cannot appeal from it. Bradley v. Sneath, 6 Ohio 490, 496 (1834).

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

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

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

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

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

147. Juries were governed by statute. Only white males over the age of twenty-one living in the county qualified as prospective jurors. An act relating to juries, *Revised Statutes*

both Joseph Smith's and Sidney Rigdon's trials occurred on the same day, one could assume that each trial took about a half day. From the trial bill of costs, $2.50 was charged for witnesses in Smith's trial,[148] and $2.25 for witnesses in the Rigdon's trial.[149] Witnesses subpoenaed and/or sworn to appear were paid $0.75 per day, as of June 1837, an increase from $0.50 per day.[150] The statute noted that this amount is a "daily" rate not per trial. One might reason that the witnesses testified in both trials during the same day and therefore the fees were split between the two trials. Thus, either 6⅓ witnesses testified at the $0.75 rate or 9½ testified at the $0.50 rate—an odd number either way.

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of Ohio (Columbus: Olmstead and Bailhache, 1831), sec. 2, 94 (passed February 1, 1831) (hereafter cited as *Revised Statutes of Ohio* (1831)). Jurors were selected thirty days prior to the start of the court's term. From those qualified to serve, twenty-seven were randomly selected by the sheriff—fifteen to serve on the grand jury and twelve to serve on the petit jury. Act relating to juries, sec. 4, 95. By statute, jurors were paid $1.00 per day. An act to regulate the fees of officers in civil and criminal cases, *Statutes of the State of Ohio* (1841), sec. 15, 401 (passed March 22, 1837, and became effective on June 1, 1837). The prior act paid the same daily amount. *Revised Statutes of Ohio* (1831), sec. 14, 225. The Smith Trial Bill of Costs notes a $6.00 charge for the jury while the Rigdon Trial Bill of Costs combined the jury and attorney's fees totaling $11.00. However, the Smith Trial Bill of Costs clarifies this combined number as it notes $6.00 for jury fee and $5.00 for attorney's fees. It is reasonable to suppose that $6.00 was charged in both cases for the jury fee. Thus, it appears that trial only lasted half a day. The jury in Joseph Smith's trial included Guy Wyman, Caleb E. Cummings, John A. Ford, William Crafts, David Smith, George Patchin, Ira Webster, Stephen Hulbert, William B. Crothers, Jason Manley, Joseph Emerson, and Thomas King. Smith Trial Transcript. Sidney Rigdon's jury included Amos Cunningham, John McMackin, Erastus Spencer, Gerry Bates, George D. Lee, William C. Mathews, William Graham, Benjamin Adams, Harrison P. Stebbins, Jonathan Hoyt, Heman Dodge, and Thaddeus Cook. Rigdon Trial Transcript.

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

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

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

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

1. Witnesses testified about the existence of the Kirtland Safety Society Anti-Banking Company on January 4, 1837, the second day that the venture was open.
2. Introduced "articles of association," alleging the creation of the Kirtland Safety Society Anti-Banking Company.
3. Introduced various "bank bills of various denominations" that were allegedly issued by the Kirtland Safety Society Anti-Banking Company.[151]
4. Testimony that Smith and Rigdon were each "a director in said 'Society' and that he assisted in issuing and loaning the same."

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

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

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

1. "Charged the Jury that said Statute [the Act of 1816] was in force;
2. "That a lending of the paper or bills was a lending of money within the statute"; and

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

3. "That if they found that the def[endan]t was a director in said society and assisted in issueing and lending said paper or bills it would constitute him an 'officer' within the meaning of the statute; and
4. "That for the purpose of coming to a conclusion they might take the whole testimony as well the appearing of the def[endan]ts names on the same [the notes]."

The jury returned a "true verdict"[152] finding that the defendant "is indebted to the plaintiff in the sum of one thousand dollars. It is therefore considered by the Court that the plaintiff recover against the defendant his debt aforesaid so found as aforesaid, and also his costs and charges by him in and about the prosecuting of this suit in that behalf expended." This could not have been a surprise to Joseph Smith, Sidney Rigdon, or their counsel. Their counsel immediately prepared and submitted a bill of exceptions[153]

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

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

that was signed by them and "sealed" or entered onto the record of the court. Joseph Smith's remedy would have to come from the Ohio Supreme Court.[154]

While a bill of exceptions is required to create an appealable record, it was only the first of several steps to appeal a final judgment.[155] Within thirty days following the trial of the case, the party appealing (the appellant) "shall enter into a bond to the adverse party,[156] with one or more good and sufficient sureties, to be approved of by the clerk of such court,[157] in double the amount of the judgment … and costs, in case a judgment or decree should

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They charged another $10.00 for "drawing bill of Exceptions for writ of Error." They also billed Smith for their representation of Sidney Rigdon, charging him $25.00 for the trial and $10 for the bill of exceptions. Billings of Perkins & Osborn.

154. Section 2 of the Act to organize the judicial court (passed on February 7, 1831), provided that the Ohio Supreme Court had "appellate jurisdiction from the court of common pleas, in all civil cases in which the court of common pleas has original jurisdiction." *Statutes of the State of Ohio* (1841), 222. Section 103 further explained: "That final judgments in the courts of common pleas, may be examined and reversed or affirmed, in the supreme court holden in the same county, upon a writ of error, whereto shall be annexed and returned therewith, at a day and place therein mentioned, an authenticated transcript of the record and assignment of error, and prayer for a reversal, with a citation to the adverse party, or his attorney." Act to organize the judicial court, 222, 678–79. Practice of the Courts Act, sec. 108, 681 ("That in civil cases an appeal shall be allowed, of course, to the supreme court, from any judgment or decree rendered in the court of common pleas, in which such court had original jurisdiction").

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

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

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

be entered in favor of the appellee."[158] During this thirty-day period, on motion of the party appealing the court may stay execution on the judgment. Once the appeal bond is entered, thereby perfecting the appeal,[159] the appellant would prepare a writ of error[160] based on the bill of exceptions[161] to be issued by the supreme court.[162] The clerk of the court of common pleas then makes "an authenticated transcript of the docket or journal entries, and of the final judgment or decree made and rendered in the case; which transcript, together with the original papers and pleadings filed in the cause" and delivers it to the office of the clerk of the supreme court, on or before the first day of the next term.[163]

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

159. Work v. Massie, 6 Ohio 503, 503 (1834) ("Section 109 of the practice act directs the mode of perfecting an appeal").

160. A writ of error "is a writ issued out of a court of competent jurisdiction, directed to the judges of a court of record in which final judgment has been given, and commending them … to send it to another court of appellate jurisdiction, therein named, to be examined in order that some alleged error in the proceedings may be corrected.… Its object is to review and correct an error of law committed in the proceeding." Bouvier, *Law Dictionary,* s.v. "writ of error"; Jacob, *Law-Dictionary,* s.v. "error."

161. Duckwall v. Weaver, 2 Ohio 13, 13 (1825) ("The defendants objected to the whole of the evidence offered; the objection was overruled, and a bill of exceptions taken. A verdict was found for the plaintiff. Judgment entered, and a writ of error taken"); Moore v. Beasley, 3 Ohio 294, 294 (1827) ("He then moved the court to instruct the jury that the case was within that statute, which was also refused, and bills of exception were taken. A verdict and judgment were rendered for the plaintiff, and a writ of error taken to reverse it, on the matters stated in the bills"); King v. Kenny, 4 Ohio 79, 80 (1829) ("Upon this bill of exceptions the writ of error was founded"); Trustees of Cincinnati Tp. v. Ogden, 5 Ohio 23, 23 (1831) ("This cause came before the court on a writ of error to the court of common pleas of Hamilton county. The case was this, as presented in a bill of exceptions"); Eldred v. Saxton, 5 Ohio 215, 2115 (1831) ("The defendant took his bill of exceptions. There was a verdict and judgment for the plaintiff for fifty-one dollars and five cents and costs, to reverse which this writ of error was brought"); James v. Richmond, 5 Ohio 337, 338 (1832) ("To this decision of the court, the defendant, by his counsel, excepted, and his bill of exceptions was sealed. A judgment having been rendered against the defendant, this writ of error is prosecuted to reverse that judgment").

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

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

However, in the present two cases (*Rounds v. Smith* and *Rounds v. Rigdon*) nothing in the record evidences that appeal bonds were ever secured, motions were ever made to stay execution on the judgments, or writs of error ever requested. The court entered the judgments in both cases on October 25, 1837.[164] Consequentially, while the bills of exceptions delineate the legal basis for an appeal of the judgments, the appeals were never perfected or further pursued. Their lawyers, Perkins & Osborn, stopped billing after the trial and preparations of the bills of exceptions.

One can only speculate as to why these appeals were not further pursued by Joseph Smith or Sidney Rigdon. Neither the litigants nor their attorneys left an explanation. Legally the appeal should have been considered very strong. Yet, while the law appears clear now, at the time the courts had yet to rule on this issue and public opinion was indeed split.[165] Smith and Rigdon would have to consider that the four-judge court had expressly refused to apply the law as argued by their counsel that the Act of 1816 was suspended. It would not be until 1840 that the Ohio Supreme Court ruled on this matter affirming their position.[166] Consequently, the appeal must have looked more problematic then than it does today.

Collection efforts against Smith and Rigdon were commenced on November 6, 1837—exactly two weeks after the trials and judgments. Judgment against Smith totaled $1,024.10, comprised of the $1,000 penalty under the

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

165. See above, pp. 211–12.

166. See above, pp. 196–201.

Act of 1816, $23.35 in plaintiff's costs[167] and $0.75 in defendant's costs.[168] Judgment against Rigdon totaled $1,023.58, comprised of the $1,000 penalty under the Act of 1816, $22.77 in plaintiff's costs[169] and $0.81 in defendant's costs.[170]

Amidst these collection efforts Joseph Smith received the following revelation on January 12, 1838: "Thus Saith the Lord, let the Presidency of my Church, take their families as soon as it is practicable, and a door is open for them, and moove to the west, as fast as the way is made plain before their faces, and let their hearts be comforted for I will be with them."[171] Smith and Rigdon would leave that night for Missouri.[172] Their families would follow shortly thereafter.

Collecting on judgments was governed by statute.[173] Once a judgment was entered, a judgment lien was automatically placed on all real property of the debtor in the county where the judgment was rendered "from the first day of the term at which judgment shall be rendered."[174] Personal property was only encumbered upon seizure.[175] By statute the court initiated the collection process by issuing a writ of fieri facias.[176] This writ directs usually the

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

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

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

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

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

172. Joseph Smith Jr., *The 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), 3:1 ("On the evening of the 12th of January, about ten o'clock, we left Kirtland, on horseback, to escape mob violence, which was about to burst upon us under the color of legal process to cover the hellish designs of our enemies, and to save themselves from the just judgment of the law").

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

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

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

176. Fieri facia "is the name of the writ of execution. It is so called because when writs were in Latin, the words directed to the sheriff, were, *quod fieri facias de bonis et catallis, &c,* that you cause to be made of the goods and chattels &c. The foundation of this writ is a judgment for debt or damages, and the party who has recovered such a judgment is

local sheriff, or other officer, to first pursue the collection on any personal property of the debtor. If no personal property was located, or if after the sheriff's sale of such personal property the judgment was not fully satisfied, the sheriff was authorized to move for the sale of the real property of the debtor.[177] Before the sheriff could proceed to sell any personal property of the debtor, he "shall cause public notice to be given of the time and place of the sale, for at least ten days before the day of sale; which notice shall be given by advertisement, published in some newspaper published in the county."[178] If land thereafter was to be sold to satisfy the judgment, the sheriff was required to obtain appraisal as to the value of the land from "three disinterested freeholders, who shall be resident within in the county where the lands taken in execution are situated."[179] Thirty-day notice of the sale of land was also required.[180]

While it does not appear from the record that Sheriff Kimball was successful in collecting anything from Joseph Smith,[181] his efforts against Rigdon proved successful. The record notes three efforts to sell the personal property of Sidney Rigdon. The first recovered $604.50 from the sale of such personal property. The second effort indicated that the personal property seized was "claimed by a third person and awarded to the claimant." The third effort resulted in the sale of additional personal property that was sold for $111.75.[182] The record is not clear as to what all was levied or sold during these three collection efforts. Yet, the record does include one published notice for a

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generally entitled to it, unless he is delayed by the stay of execution which the law allows in certain cases after the rendition of the judgment, or by proceeding in error." Bouvier, *Law Dictionary,* s.v. "fieri facias"; Jacob, *Law-Dictionary,* 3:43, s.v. "fieri facias."

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

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

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

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

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

182. Rigdon Trial Bill of Costs.

sheriff's sale of Rigdon's personal property. Published in the *Painesville Telegraph* on February 22, 1838, it noted:

> SHERIFF'S SALE
>
> BY Virtue of an Execution issued by the Clerk of the Court of Common Pleas of Geauga county, and to me directed, I shall expose to sale at the Inn of John Johnson in Kirtland, on Monday, the 5th day of March next, between the hours of 10 o'clock A M. and 4 P.M. of said day, the following described property, to wit: 2 Bureaus, 1 cupboard, 1 box stove, 1 table, 3 stands, 1 clock and case, 1 cradle, 3 looking glasses, 4 chairs, 4 window sashes, part box glass, 5 trunks and contents, 1 barrel dried fruit, 1 basket of clothing, a quantity of zinc, 1 pail, glass bottles, bedsteads, several rolls of paper, ribbons, hearth rug, carpeting; 1 bed & bedding, 2 waiters, quantity of books, 6 tin pans, 2 castors, knives and forks, 1 inkstand, 1 urn, 2 globes, 2 brass pin setts, 2 brass candlesticks; glass ware and crockery, and sundry other articles. Taken at the suit of S.D. Rounds vs. Sidney Rigdon.
>
> ABEL KIMBALL, 2d, Shff.
>
> Feb. 20, 1838.[183]

Sheriff Kimball forwarded the $604.50 to Grandison Newell. And the $92.00[184] of the $111.75 was apparently used to pay the fees incurred on these two executions on Rigdon's personal property. It is unclear what happened to the balance of $19.75.

In addition to executing on Rigdon's personal property, Sheriff Kimball also started the process to sell an acre lot purportedly owned by Rigdon.[185] Rigdon's Trial Bill of Costs notes that by January 20, 1838, Sheriff Kimball had such real property appraised at $666.00. However, this lot remained unsold "by direction of Grandison Newell."[186]

Why would Newell direct that this lot not be sold? Clearly the court understood that the judgments belonged to Newell and not to Rounds. Thus, perhaps the answer has to do with the fact that Newell was at that point

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183. *Painesville Telegraph,* February 22, 1838, 3.

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

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

186. Rigdon Trial Bill of Costs.

negotiating the settlement of the judgments with William Marks[187] and Oliver Granger,[188] as agents for Joseph Smith and Sidney Rigdon.[189] On March 1, 1838, he would assign the Judgments to Marks and Granger for $1,600, as follows:[190]

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187. William Marks (1792–1872) was a farmer, printer, publisher, and postmaster. Marks was born at Rutland, Vermont. He lived at Portage, New York, where he was baptized into the LDS Church by April 1835. He moved to Kirtland, Ohio, by September 1837, appointed a member of the Kirtland high council on September 3, 1837, and agent to Bishop Newel K. Whitney on September 17, 1837. Marks was made president of the Kirtland stake in 1838.

188. Oliver Granger (1794–1841) was born at Phelps, New York. He was the Sheriff of Ontario Co. and colonel in the militia. Granger was baptized into the LDS Church and ordained an elder by Brigham and Joseph Young, ca. 1832–1833. He moved to Kirtland, Ohio, in 1833 and was appointed to the Kirtland high council on October 8, 1837.

189. On September 27, 1837, Joseph Smith and Sidney Rigdon appointed Oliver Granger as their "agent and attorney" relating to the Kirtland Safety Society. The full appointment stated:

> Kirtland Ohio Set 27-1837
>
> Know all men by these present that we Joseph Smith Jr. and Sidney Rigdon hereby appoint and constitute Oliver Granger our proper agent and attorney to act in our name to all interests and purposes as we ourselves could act if we were personally present: to manage conduct and bring to settlement a business which we had with J. F. Scribner of Troy City in the state of New York in relation to the paper of Kirtland Safety Society
>
> Given under our hand at Kirtland Geauga County Ohio the day and date above written.
>
> Sidney Rigdon
> Joseph Smith Jr

Power of Attorney from Sidney Rigdon and Joseph Smith Jr. to Oliver Granger, September 27, 1837, Joseph Smith Collection, CHL. William Marks was never made agent or given power of attorney by either Smith or Rigdon. However, Marks was appointed as agent for Newel K. Whitney on September 17, 1837. Kirtland High Council Minutes, September 17, 1837, CHL. Further, Smith and Rigdon deeded land to Marks starting in April 1837 for Marks to use to settle debts in Kirtland against them and/or the Church. See Deed from Rigdon to Marks, April 7, 1837, FHL, 20240, vol. 23, 535; Deed from Smith to Marks, April 7, 1837, FHL, 20240, vol. 23, 538; Deed from Smith to Marks, April 10, 1837, FHL, 20240, vol. 23, 535-536; Deed from Smith to Marks, April 10, 1837, FHL, 20240, vol. 23, 536-537; Deed from Smith to Marks, April 10, 1837, FHL, 20240, vol. 23, 538; Deed from Smith to Marks, April 10, 1837, FHL, 20240, vol. 23, 539; Deed from Smith to Marks, April 10, 1837, FHL, 20240, vol. 24, 189.

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

> For and in consideration of Sixteen hundred dollars to me in hand paid by William Marks and Oliver Granger I do hereby sell assign and set over to the Said William Marks and Oliver Granger two Judgments in favor of Samuel D. Rounds and assigned to me by said Rounds against Joseph Smith jr and Sidney Rigdon of one thousand dollars each which Judgments were obtained at the Court of Common Pleas holden at Chardon in and for the County of Geauga, to wit, on the 24th day of October 1837, and I do agree to pay all costs that has accrued on said Judgments up to this date.
>
> G. Newell
>
> Kirtland March 1st 1838
> Attest Lyman Cowdery[191]

With acceptance of this payment, Grandison Newell had been paid a total of $2,204.50.[192] Pursuant to the assignment of claims, Newell assumed the costs incurred in the cases totaling $24.10 for Smith and $23.58 for Rigdon. The record does not show that Newell ever paid these costs to the court. Thus, Newell netted from these lawsuits $2,156.82, which is $156.82 more than the total of the judgments. Moreover, of that amount, Newell was only supposed to receive 50 percent with the other 50 percent going to the state of Ohio. Newell never forwarded any of this recovery to the state, as will be evidenced by his revival of these two judgments in 1859. A full discussion of these later developments is a matter to be continued at another time. At this point in this litigation, however, it is already clear that Grandison Newell had collected more than 100 percent of the judgments, and under any ethical or legal analysis, this should have more than ended this lawsuit. Grandison Newell, however, had no ethical boundaries in this matter, and in reviving these judgments in 1859 he would use the law to commit a fraud on the state of Ohio long after the death of Joseph Smith in Illinois.[193]

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

192. $1,600 from the Assignment of Claims and $604.50 from the sale of Rigdon's personal property.

193. For further information, see the end of ch. 10 below.