

JOSEPH SMITH III AND THE KIRTLAND TEMPLE SUIT

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On 23 February 1880, Judge L. S. Sherman of the Court of Common Pleas, Lake County, Ohio, announced the decision awarding ownership of the historic Kirtland Temple, the Mormon religious edifice completed in 1836, to the Reorganized Church of Jesus Christ of Latter Day Saints, the plaintiff in the case. Judge Sherman's opinion noted in part:

That the said Plaintiff, the Reorganized Church of Jesus Christ of Latter Day Saints is a religious Society, founded and organized upon the same doctrines and tenets, and having the same church organization, as the original Church of Jesus Christ of Latter Day Saints, organized in 1830, by Joseph Smith, and was organized pursuant to the constitution, laws and usages of said original Church, and has branches located in Illinois, Ohio and other States. . . .

And the Court do further find that the Plaintiff, the Reorganized Church of Jesus Christ of Latter Day Saints, is the True and Lawful successor of, and successor to the said original Church of Jesus Christ of Latter Day Saints, organized in 1830, and is entitled in law to all its rights and property.¹

Members of the Utah-based Church of Jesus Christ of Latter-day Saints might argue that the question of which church was the legitimate successor was not really at issue in this case, that it was merely a routine suit to quiet title to real estate and was decided on technical grounds. And indeed, the LDS church was not even represented in the court. However, Judge Sherman's finding was very important to members of the Reorganized church during the years following its issuance since it was the affirmation of a legal tribunal that their church was the legal successor to the early Mormon movement.²

While the outcome of the lawsuit was favorable toward the Reorganization, many important questions could be asked about the legal actions. Why, for instance, did the Reorganized church press its lawsuit at this particular time? Why did it not sue earlier? Why, moreover, did the church as an organization sue at all since two of its leading officials—President Joseph Smith III and a close adviser,

¹Reorganized Church of Jesus Christ of Latter Day Saints vs Lucius Williams, et al., p. 488, Record T, Court of Common Pleas, Lake County Courthouse, Painesville, Ohio.

²For representative expressions of this view, see Inez Smith Davis, *The Story of the Church* (Independence, Mo.: Herald Publishing House, 1969), 554; Elbert A. Smith, *The Church in Court* (Lamoni, Iowa: Herald Publishing House, n.d.), 3–6; Joseph Smith III, "The Memoirs of President Joseph Smith (1832–1914)," *Saints' Herald* 82 (3 December 1935): 1553–54; Israel A. Smith, "The Kirtland Temple Litigation," *Saints' Herald* 90 (9 January 1943): 40–43, 54. An opposing opinion about the outcome of the case can be found in Paul E. Reimann, *The Reorganized Church and the Civil Courts* (Salt Lake City: Utah Printing Co., 1961).

Mark H. Forscutt—already held a title to the temple and were in possession of the building? Indeed, these men were two important defendants named in the lawsuit. Why, also, did Judge Sherman rule in this manner? What issues arose during the lawsuit to support the judge's opinion during the case? The Reorganized church has developed an explanation that satisfactorily answers these questions for the membership.³ Essentially, the church's explanation is that when Joseph Smith, Jr., and the majority of the Saints departed from Kirtland in 1838 they abandoned the temple. For almost forty years the building was used by a variety of individuals and groups as a school, as office space, and upon several occasions as a place of worship. During this period, however, none of these individuals or groups held legal title to the building, paid taxes on the property, or performed anything more than cursory maintenance upon the structure.⁴

Beginning on 29 October 1860, the probate court of Lake County, Ohio, took action to settle the question of ownership of property in the Kirtland area that had been recorded in the name of Joseph Smith, Jr., the Trustee in Trust for the Church. A part of this property included the temple. The court concluded that all this Kirtland property should be sold to pay the debts that Joseph Smith had incurred to a local merchant, Grandison Newell, and other residents of the area. The probate court made the appropriate arrangements for the sale, and on 18 April 1862 sold the property to William L. Perkins, a prosperous businessman in the area. On the same day Perkins conveyed that portion of Smith's estate containing the temple in a quit claim deed to Russell Huntley, a member at one time or another of several Mormon splinter

³The basic outline of the story can be found in Davis, *Story of the Church*, 554; Smith, "Kirtland Temple Litigation"; Joseph Smith III and Heman C. Smith, *The History of the Reorganized Church of Jesus Christ of Latter Day Saints* (Independence, Mo.: Herald Publishing House, 1969), 4:304–6.

⁴For instance, by 1 October 1838 the "Western Reserve Teacher's Seminary and Kirtland Institute" had begun using the building as a school, and during the later 1840s and early 1850s J. F. Ryder, a local photographer, used the temple as his gallery (Western Reserve Teacher's Seminary and Kirtland Institute, Broadside, 17 July 1838, Lake County Historical Society, Mentor, Ohio; I. T. Frary, "Mormonism's First Temple," *American Antiquities Journal*, October 1947, 10; S. J. Kelley, "Brigham Young and Kirtland's Mormon Temple," Kirtland File A, Lake County Historical Society). Various Latter Day Saint groups also met in the temple intermittently after 1840. For example, in 1841 Joseph Smith, Jr., reestablished a stake at Kirtland, presided over by Almon Babbitt, the group using the temple continuously until at least 1844 ("Minutes of the Conference at Kirtland," *Times and Seasons* [Nauvoo, Ill.] 3 [1 November 1841]: 587–89; "A Record of the First Quorum of Elders Belonging to the Church of Christ in Kirtland, Geauga Co., Ohio, 1836–1870," 28 March 1841–3 October 1841, Reorganized Church of Jesus Christ of Latter Day Saints Library–Archives, Independence, Mo.). After the death of the Prophet, members of the splinter groups led by Sidney Rigdon, James Colin Brewster, and Zadoc Brooks held meetings in the Kirtland Temple at one time or another during the 1840s and 1850s (*Latter Day Saints' Messenger and Advocate* [Pittsburgh, Pa.] 2 [15 March 1845]: 145; Reuben McBride to Brigham Young, 28 July 1845, Brigham Young's Incoming Correspondence, The Church of Jesus Christ of Latter-day Saints Historical Department, Salt Lake City; "The Word of the Lord to His People," *The Olive Branch* [Kirtland, Ohio] 1 [December 1848]: 81–83; "Proclamation," *The Olive Branch* 1 [February 1849]: 127; James C. Brewster, "The Re-establishment of the Churches," *The Olive Branch* 1 [March 1849]: 145–49; Steven L. Shields, *Divergent Paths of the Restoration* [Bountiful, Utah: Restoration Research, 1982], 84–85).

groups and a man who had long had an interest in the temple.⁵ Huntley held the temple for more than a decade, but on 17 February 1873 Joseph Smith III and Mark H. Forscutt acquired Huntley's title for \$150. They controlled the Kirtland Temple without dispute until 1875 when the RLDS church leadership, Smith and Forscutt included, determined that the quit claim deed was insufficient to ensure the perpetual ownership of the property and that the church should undertake a lawsuit to secure a final settlement. Accordingly, the Presiding Bishop, the church's chief financial officer, filed suit in the Lake County Court of Common Pleas in 1878 and received a favorable verdict in February 1880. In the view of the Reorganized church, the reason for the favorable verdict was simple; it was predicated on the evidence presented by the church's attorneys about the legitimacy of the movement within Mormondom.⁶

While certain questions about the nature of the court case are outside the parameters of this study, some issues concerning the background of the case could possibly be reexamined. For example, some evidence suggests that the Kirtland Temple suit arose not so much from the practical desire to clear the title and secure the sacred structure for the Reorganization but rather in large measure because of some peculiar financial difficulties on the part of Joseph Smith III and Mark H. Forscutt. The letter reproduced here was written by Joseph Smith III to Alexander Fyfe in response to a request for reimbursement for the funds that Fyfe had loaned Mark H. Forscutt some years before with the temple property as collateral.⁷ In the letter Smith explained his and Forscutt's attempt to sell the temple in 1875 to the city of Kirtland to raise funds to pay certain financial obligations. They were unsuccessful in this attempt because of the complications of the title, whereupon they sought to gain clear title from the Reorganized church as a corporation. When they failed in this attempt, the Presiding Bishop decided to pursue legal action to clear the title for the church organization, not for the personal gain of two of its leaders. The original letter

⁵"Estate of Joseph Smith, Jr., Deceased," Administrative Docket A, p. 240, Lake County Courthouse; Real Estate Record D, pp. 81, 371, Lake County Courthouse; Real Estate Record S, p. 526; "Abstract of Title and Encumbrances: To Land in the Township of Kirtland County of Lake and State of Ohio," The Clark and Pike Company, Abstractors and Engineers, Willoughby, Ohio, copy in Kirtland Temple Historic Center, Kirtland, Ohio.

⁶Smith and Smith, *History of Reorganized Church*, 4:304.

⁷Alexander Fyfe had been born in Scotland on 23 July 1841. As a young man he came to the United States and settled in the Midwest. He came into contact with the Reorganized church during the Civil War and was baptized by Elder John T. Phillips on 26 June 1865 at Blue Ridge, Jackson County, Missouri (Early Reorganization Minutes, 1852–1871, 31 December 1871, p. 819, Reorganized Church Library–Archives). By the latter part of 1870 Fyfe had settled at Belleville, Illinois, about twenty miles east of St. Louis, where he met Mark Forscutt, an appointed minister working for the church in the area (*True Latter Day Saints' Herald* 18 [1 January 1871]: 24). Later Fyfe settled in Kirtland, Ohio, where he was living when this correspondence with Joseph Smith III took place.

is contained on pages 380–84 in the Joseph Smith III Letterpress Book #3, covering the period between 18 February 1880 and 30 June 1883, held in the library–archives of the Reorganized Church of Jesus Christ of Latter Day Saints, Independence, Missouri. It was written, unlike most of the other letters in this book, so that two pages of the letter were on one page of the book. It has been reproduced without textual changes, although explanatory notations have been added where necessary.

Dear Bro Alexander Fyfe

July 9th [18]81

I have labored under the impression that I had written to you once, stating quite plainly all I knew about the Temple and M. H. Forscutt's note.⁸

About 1872 or 3, Bro Russell Huntley, deeded the Kirtland Temple to Elder Forscutt and myself.⁹ He held under title derived by the forcing to sale a claim against my father's personal estate.¹⁰ Elder F. and I never paid anything out on the Temple except taxes, to

⁸In the early 1870s, while he was working for the church as a full-time minister in the St. Louis area, Forscutt organized a cooperative store supported by several church members in the area as well as by other interested parties. He assembled, initially, about fifteen investors who each gave \$100 to the venture and intended to recover their money once the cooperative proved successful. Among these individuals was Alexander Fyfe, who obtained from Forscutt a personal note for the money payable upon the sale of the temple (see Smith, "Memoirs," *Saints' Herald* 82 [3 Dec. 1935]: 1553).

⁹Russell Huntley was born in 1807. He had been a resident of Kirtland, Ohio, during the early 1850s, while a follower of Zadoc Brooks, one claimant to the mantle of the Prophet. Huntley, a prosperous businessman, purchased considerable property in Kirtland, but after the demise of Brooks's movement in the 1850s he sold his property and engaged in other pursuits. He eventually settled in DeKalb County, Illinois, where he met several Reorganized church members, among them Joseph Smith III and Mark Forscutt. Huntley and Forscutt became good friends over the course of several months, and in the process Forscutt brought Huntley into the Reorganization (Smith, "Memoirs," 1167–68, 1552–53; "Review of 'Error Exposed,'" *True Latter Day Saints' Herald* 1 [March 1860]: 69–76; Russell Huntley to John M. Adams, 20 April 1868, Miscellaneous Letters and Papers, Reorganized Church Library–Archives).

Later Huntley moved to California and aided the efforts of the Reorganization on the Pacific Slope for several years. In 1876, when Joseph Smith III made his first far western trip, he renewed his acquaintance with Huntley. While in California, Huntley proposed to Smith that he lend the church a sizeable sum of money for investment, the proceeds to be placed in a trust to fund the publication of the sealed portion of the plates from the Book of Mormon. The Reorganized church leadership accepted this proposition, and within a short time Huntley loaned the church \$5,000 at seven percent interest. Before three years had passed, however, several business reverses forced Huntley to ask for the return of his money. The church's bishopric could not return it immediately, although Huntley received the principal with interest within a year of his request. This business venture, along with other difficulties concerning the Reorganization, prompted Huntley to withdraw his membership and to affiliate with a Mormon splinter group led by David Whitmer; he remained with this group until his death in 1890 (Henry A. Stebbins to Russell Huntley, 27 December 1876, 24 January 1877, 8 March 1877, all in Forscutt–Stebbins Letterbook, Reorganized Church Library–Archives; Hiram P. Brown to Joseph Smith III, 7 June 1880, Joseph Smith III Papers, Reorganized Church Library–Archives; Joseph Smith III, "Editorial," *Saints' Herald* 28 [15 Jan. 1881]: 23; *The Return* [Davis City, Iowa] 2 [Sept. 1890]: 333–36).

Huntley had long wanted to gain possession of the Kirtland Temple because of the religious significance it held for him, and he gained his opportunity when the Lake County probate court began liquidating the assets of the Kirtland estate of Joseph Smith, Jr., on 29 October 1860. He acquired a quit claim deed to the temple property on 18 April 1862 from William L. Perkins, purchaser of the real estate from the court-ordered sale. Huntley spent over \$2,000 to renovate the building and afterward allowed the tiny Reorganized church congregation in Kirtland to use the building ("Estate of Joseph Smith, Jr., Deceased"; "Abstract of Title and Encumbrances"; Joseph Smith III, Diary, 17 February 1873–17 March 1873, Reorganized Church Library–Archives; George E. Paine, "Abstract of Title," 5 January 1878, copy in Kirtland Temple Historic Center).

¹⁰This assertion was not entirely true, for Henry Holcomb, the administrator of the Joseph Smith, Jr., estate in Lake County, and the probate court agreed to sell the property "to pay debts against decedent, Joseph Smith, Jr., and it was ordered by the Court that the Widow, Emma, shall receive \$4.11 annually, during life" (Paine, "Abstract of Title").

the amount of \$66, and a little over, mostly paid by me, Bro F. refunding to me from time to time his part.¹¹ The Bishop and some others always held that Bro. Huntley had no title, and that the Temple belonged to the *church*, not to Elds. F. and I. In 1875, a Mr. Carpenter, of Kirtland corresponded with me wishing to buy the temple for a Town Hall, he being a Town officer.¹² I wrote him that we would sell for \$2,500.¹³ He thought they would take it; but must first look up the title. This we did in July 1875. I went to Kirtland in the latter part of July to complete sale and make out papers, when Mr. Carpenter informed me that the Town would not buy, as the *title* was not *in* Eld. F. & I. But if we would perfect the title and get a deed from the *church*, they might talk with us. Of course, I could not promise, nor do that, as, if the property was not mine and Bro. F's we would not sell what was not ours.¹⁴ At the next, or a later Conference the Bishop was ordered to make inquiries as to title of Kirtland Temple. He did so, securing an abstract of Title. This showed [the] property in the church. He was ordered to proceed to perfect title. He asked me and Bro. F. to deed [our title to the church]. I told him that we would not deed; but that the church must proceed in the Court. This he at once proceeded to do. The Court decided the property belonged to the Church, and not

¹¹Between the date Joseph Smith III and Mark Forscutt acquired the temple title in 1873 and the time that the lawsuit began, the two men paid \$66.29 for taxes. Once the decision for court action had been made in January 1878, they refused to pay any further taxes (Joseph Smith III to Joseph F. McDowell, 16 June 1877; Joseph Smith III to Mark H. Forscutt, 3 March 1880; both in Joseph Smith III Letterbook #1A, Reorganized Church Library-Archives). President Smith wrote to the collector of taxes explaining the situation: "I have been informed that the property is church property and as such not subject to taxation. This will therefore give you notice that neither Mr. Forscutt nor myself will hold ourselves responsible for the taxes now due" (Joseph Smith III to Collector of Taxes for Kirtland, 23 February 1878, Joseph Smith III Letterbook #1A). He also told Forscutt of the action:

The Bishop has procured an abstract of title to the Temple at Kirtland; and upon that abstract, it has been decided by legal authority, that the title is in the church, and the property not subject to tax.

As there will be a trial of this as soon as an attempt is made to collect the taxes; I have notified the Collector of the fact. I have also directed the possession to be delivered to the Bishop, subject to further action.

This I have done as precautionary measures against improper complications (Joseph Smith III to Mark H. Forscutt, 22 February 1878, Joseph Smith III Letterbook #1A).

¹²In his memoirs, written thirty-five years after the event, Joseph Smith III recalled that Carpenter was a local public school official who wanted to purchase the building for use as an educational facility (Smith, "Memoirs," 1553).

¹³Without question, Joseph Smith III had purchased the building with the intention of selling it to offset an overburdening financial obligation. Beginning in 1856, when a farming partnership Joseph had entered with his brother Frederick G. W. Smith began to falter as a result of general economic hardship in the Midwest, the brothers had to borrow extensively to continue operations. By the winter of 1858 they were more than \$2,500 in debt, and when Frederick died suddenly in 1862 the debts incurred in the partnership became the sole responsibility of Joseph. These, along with other financial obligations made later, remained with the prophet throughout his life. Periodically he complained about the weight of his debts to his friends and always encouraged his children to avoid such financial troubles. For instance, he wrote to his son Israel A. Smith in 1898: "Let me reiterate my counsel, 'Keep out of debt.' Forty years of paying interest has emphasized this lesson on me and I want my sons to profit from my errors" (Joseph Smith III to Israel A. Smith, 26 December 1898, Miscellaneous Letters and Papers; see also Joseph Smith III to Cousin Mary B., 4 December 1877, Joseph Smith III Letterbook #1A; Joseph Smith III to Israel A. Smith, 17 February 1898, Miscellaneous Letters and Papers). Furthermore, almost a year before Joseph Smith III had acquired formal title to the temple from Huntley, but after the two parties had discussed the transfer, Joseph wrote to his mother, Emma Smith Bidamon, at Nauvoo, Illinois, explaining that he had written to the city of Kirtland offering the temple for sale. He noted, "Should I be able to sell for the price offered I will be able to get out of debt, for which I shall feel profoundly grateful to the Lord. However, I dare not build any air castles, they are such cob house affairs" (Joseph Smith III to Emma Smith Bidamon, 8 March 1872, Miscellaneous Letters and Papers).

¹⁴Apparently, Joseph Smith III sought to persuade the Presiding Bishop of the church, Israel L. Rogers, to give him a quit claim deed for the property so he could complete the sale, but Bishop Rogers refused, demanding instead a deed from Smith and Forscutt for their claim to the property, but they refused as well. This established the necessity of the lawsuit to clear the title (Smith, "Memoirs," 1553).

to Smith, Forscutt & others.¹⁵ I asked Conference to refund taxes, which they ordered the Bishop to do and he did, paying me \$33.67 and Bro. Forscutt \$33.67, or about that sum, amounts paid by us on taxes assessed to us in temple during our holding it.¹⁶

Bro Russell Huntley, after he got possession, spent about \$2,500.00 roofing and repairing, but Bro Forscutt & I, not a dollar except a few dollars received for rent by Bro Joseph McDowell, at one time our agent in charge of Temple, and which he expended in refitting the assembly room to hold Sunday services in.¹⁷ Bro. Forscutt seems to be of the opinion that the Church should pay to him and me, the \$2,500 expended by Bro Huntley; but I do not so hold. It could not be paid to us of right; unless Bro Huntley had expressly assigned his claim, which he did not. If the Church is bound to pay anyone it is Bro. Huntley; but I think, even he could not legally collect.

As for Bro Forscutt's note to you, neither myself, as an officer of the Church, nor as an individual; nor the Bishop, nor the Church, is under a particle of obligation to you in any sense. We had nothing to do with the making of the note, either as principals, or securers, or endorsers; and it is entirely useless to hold the note as a claim against the Church which it is bound to liquidate.¹⁸

At the time Bro Forscutt gave you the note he believed that Huntley's title was good, and I knew nothing to the contrary. Both supposed that we had the right to sell. The effort to sell was genuine, and we both supposed that the sale was made; and I went to Kirtland in purpose to complete it. But the men to whom we were to sell thought it best to inquire about it; and they found our title at fault, and declined unless I would make the title in behalf of the Church, which I neither could, nor would. Bro Forscutt fully believed that he held half interest in a *bone fide* title and that the sale was valid, (as I fully believe), and therefore made no misrepresentation to you at the time he made the note to you.

The above is all I knew about it. That the church might properly pay the note in kindness and justice to Bro Mark, I make no question; but they are neither bound legally

¹⁵In an effort to clear the title, the church in the spring of 1876 asked George E. Paine, an attorney in Painesville, Ohio, to compile an abstract of the title. In January 1878 Paine forwarded the abstract to the Reorganized church leadership; Bishop Rogers became convinced even more by this document that the true title of the temple rested with the church rather than with any individual or group of individuals, even if they were the heirs of Joseph Smith, Jr. (Joseph Smith III to George E. Paine, 27 April 1876, Joseph Smith III Letterbook #1A; Henry A. Stebbins to George E. Paine, 14 January 1879, Forscutt-Stebbins Letterbook; Joseph Smith III to George E. Paine, 31 January 1879, Joseph Smith III Letterbook #2, Reorganized Church Library-Archives; Paine, "Abstract of Title," 5 January 1878; Smith and Smith, *History of Reorganized Church*, 4: 148, 172, 211).

¹⁶Joseph Smith III remarked in a letter to Forscutt of 3 March 1880 that "a decision has been reached in the Kirtland Temple matter, and Bro Rogers is ready to return us our taxes." The entire sum of the taxes, however, was somewhat less than this total, standing at \$66.29 for the period from June 1873 through December 1877 (Smith to Forscutt, 3 March 1880).

¹⁷Joseph F. McDowell was a Reorganized church member from Pittsburgh, Pennsylvania, who moved to Kirtland during the 1860s and was employed as Smith and Forscutt's manager of the temple. He was later succeeded in this position by his son, James McDowell. The McDowells paid the taxes on the property, collected rent from those who used the building—particularly from the Reorganized church congregation that met there during this period—and made whatever repairs were necessary for the maintenance of the building (Smith, "Memoirs," 1167; Joseph Smith III to Joseph F. McDowell, 16 June 1876, Joseph Smith III Letterbook #1A; Joseph Smith III to Frederick V. Mather, 23 December 1879, Joseph Smith III Letterbook #2).

¹⁸Fyfe held that Forscutt's mismanagement of the cooperative store in St. Louis caused its failure and that his losses should be reimbursed by either Forscutt or the Reorganized church. Joseph Smith III apparently agreed that the management of the store had been less than satisfactory. He commented in his memoirs that Forscutt had rented a large brick building outside the business district at \$600 per year, had purchased a delivery wagon and horses for \$400, and employed not only himself as manager at \$75 per month but also employed an assistant. Joseph Smith III was of the opinion that with such "a combination of overhead expenses that a company organized with a capital of twelve to fifteen hundred dollars would not be able to carry for a very long time" (Smith, "Memoirs," 1553).

nor morally. What decision the Bishopric may make I do not know, but I believe that not one of the three will favor the ~~of~~ paying of it unless ordered to be done, directly by Conference; and I think Conference would not pay you as a matter of claim against the church or the Temple.¹⁹ The Temple, has *never been sold* since the note was given, and your note is not due until *it is so sold*.

Of course, there are no intent[s] on Bro Forscutt's part to wrong you; but you pressed him to repay you money put by you into a mercantile venture, as a matter of business, in which you should have known and been prepared for the loss by failure, and to share in the loss; as you were ready to share in the proceeds of its success, and whatever blame may attach to Bro Mark in said venture, you are in part responsible, as all the working details of the plan were carefully laid down at the beginning before *all* the *stockholders*, of which you were one, if I am correctly informed. You are the only one that I am aware of who is feeling unduly distressed because of the failure of that Cooperative store venture. I find no fault, as it is none of my business. Somebody blundered; and I think several did. I, of course do not know what you will or can do, about it; nor have I any advise to give should the church ever repay to Bro Forscutt, or to me the money expended by Bro Huntley, † should he ever assign the interest to us, which I have no knowledge that he has ever done, I make no doubt that Bro Forscutt will take pleasure in repaying your money with reasonable interest, though I fail to see why he should do so except for his note; which I see no good reason for his having given.

I am sorry for your money embarrassment.

Yours Jos Smith

¹⁹Neither the church's bishopric nor the general conference ever seriously considered paying the note Mark Forscutt had given Alexander Fyfe, although the question was considered at the April 1880 meeting. Consequently, Fyfe never received the funds he thought he deserved (Joseph Smith III to Alexander Fyfe, 26 May 1880, Joseph Smith III Letterbook #3, Reorganized Church Library–Archives).