

Joseph Smith and the 1834 D. P. Hurlbut Case

David W. Grua

Joseph Smith, the Latter-day Saint Prophet, was not a lawyer by training, but he became well acquainted with the court system in New York, Ohio, Missouri, and Illinois during his brief lifetime. Through his encounters with the law, he developed a distinct view of the law's prospect for delivering justice. At first, Smith had a firm belief that, through faith and God's assistance, he would find justice. He was willing to go before the courts to present his complaints with confidence that he would ultimately prevail against all challenges. But after 1837, when his enemies began assailing him with numerous "vexatious lawsuits,"¹ he learned he could not rely on courts for his protection and rights.²

Important in Joseph Smith's legal experience was the April 1834 case of *Ohio v. Doctor Philastus Hurlbut*, Joseph's first appearance in the courts of Ohio and a rare occasion on which he took the initiative in a judicial action. In December 1833, Hurlbut, an excommunicated Latter-day Saint, had threatened publicly to kill Smith in Kirtland, Ohio. Coming in the midst of a wider persecution of the Saints in Geauga County, Ohio, during the winter of 1833–34, and occurring a short time after the Latter-day Saints in Missouri had been expelled from their Jackson County homes, this threat was one the young President of the Church was not willing to let pass. He filed an official complaint with Geauga County authorities, requesting them to prevent Hurlbut from carrying out his threat. As the prosecution proceeded during the first four months of 1834, Smith recorded his prayers for deliverance in his daily journal, revealing his strong belief that the Lord would fill the courts with the spirit of justice.

Previous historical treatments of *Ohio v. Hurlbut* have focused primarily on Hurlbut's anti-Mormon activities and have commented only

David W. Grua

As an undergraduate history student at Brigham Young University, I worked as a research assistant for John W. Welch, Robert K. Thomas Professor of Law. Professor Welch, serving as an editor for the Joseph Smith Papers Legal Series, asked me to compile data on the 1834 *Hurlbut* case and to write up my research.

At first the project seemed daunting, as I had no legal training. With the help of a legal dictionary and some law books and by consulting with Dr. Welch and other lawyers, I learned enough to understand this relatively simple case. I've since come to

know that many a lawyer in the nineteenth century learned the law in the same way.

briefly on the case within its legal context.³ A notable exception is Firmage and Mangrum's *Zion in the Courts*. The authors recognized the importance of the case in understanding the early Church's legal experience, but their brief analysis did not seek to connect the case to Joseph Smith's own developing views toward the law. Furthermore, its brevity obscured many important elements of the case.⁴ This article presents the first legal examination of *Ohio v. Hurlbut* in light of all of the known pertinent court records and within the religious context of Joseph Smith's earliest legal experience in Ohio.

Pretrial Events

Although the case itself began on December 21, 1833, events occurred nine months earlier that set it in motion. In March 1833, the newly baptized Doctor Philastus Hurlbut (Doctor was his given name) arrived in Kirtland, Ohio. Joseph Smith recorded that Hurlbut visited the Smith home on March 13, 1833, to discuss the Book of Mormon, marking an early interest in the foundational scripture.⁵ Five days later, Sidney Rigdon ordained

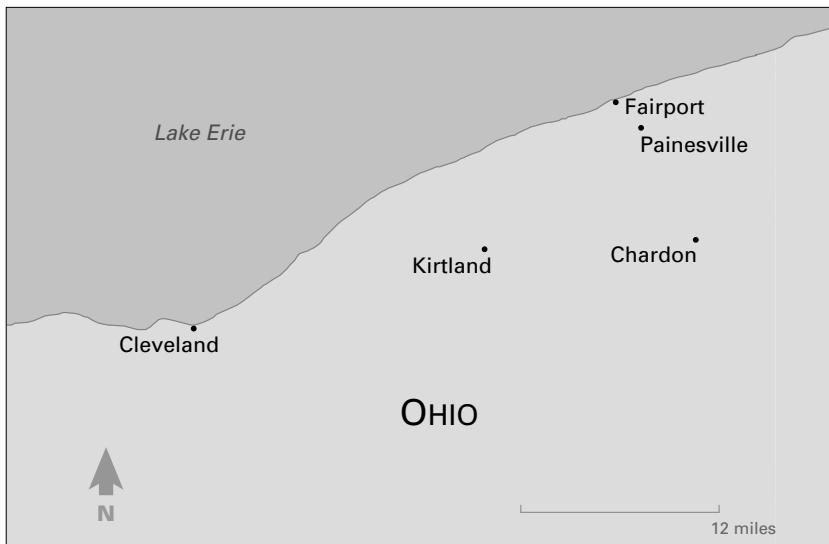
Hurlbut an elder, and on March 19, 1833, Hurlbut was called to serve a mission in Pennsylvania.⁶

Shortly after establishing himself in Pennsylvania, Hurlbut's fellow missionary Orson Hyde accused Hurlbut of immorality before a church council in Kirtland, which excommunicated Hurlbut on June 3, 1833 for "unchristian conduct with the female sex."⁷ Hurlbut, however, was not present at this hearing and appealed the decision. He traveled to Kirtland, confessed his offense, and the council reinstated him on June 21, 1833. It was soon evident that he was not sincere in his repentance, as two days later the council excommunicated Hurlbut for claiming to outsiders that he had "deceived Joseph Smith's God."⁸

Hurlbut determined to pursue the matter by lecturing against Joseph Smith and the Church. He thereby became the darling of churches opposed to Smith.⁹ While delivering his anti-Mormon lectures in Pennsylvania, it appears, Hurlbut heard about a novel written several years earlier by Solomon Spalding entitled *Manuscript Found*. The unpublished manuscript allegedly resembled the historical parts of the Book of Mormon. Hurlbut met a man named Jackson, who had known Spalding and was familiar with Spalding's novel. Jackson stated to Hurlbut that the Book of Mormon was remarkably similar to Spalding's novel.¹⁰ Hurlbut immediately returned to Kirtland, where he reported what he had heard about the Spalding novel, thereby exciting certain audiences against the already unpopular Mormons. In a contemporary letter, Smith mentioned that Hurlbut was "lieing in a wonderful manner and the people are running after him and giving him mony."¹¹ Hurlbut still needed more evidence if his claims were to be taken seriously. After gathering financial support from anti-Mormons in Geauga County, Hurlbut embarked in late July or early August on a journey that took him through Ohio, Massachusetts, Pennsylvania, and New York.¹² He spoke with Spalding's relatives about *Manuscript Found* and acquired statements from Smith's former Palmyra neighbors concerning the character of the Smith family.¹³ Historian Richard Anderson has shown that Hurlbut influenced or tampered with the statements by guiding each toward negative conclusions about the Smith family.¹⁴

Back to Kirtland

In late November and early December 1833, word reached Geauga County that a mob had expelled the Latter-day Saints from Jackson County, Missouri.¹⁵ Geauga County anti-Mormons, emboldened by this news, began to threaten Smith and his followers in Ohio with a similar expulsion. On December 5, 1833, Smith wrote to Edward Partridge and others



Ohio communities relevant to the 1834 Hurlbut case. Joseph Smith filed the complaint against D. P. Hurlbut in Kirtland, traveled twelve miles to Painesville to attend the three-day January 1834 hearing, and traveled more than eight miles to Chardon for the six-day April 1834 trial.

in Missouri that “the inhabitants of this county threaten our destruction and we know not how soon they may be permitted to follow the examples of the Missourians.”¹⁶ George A. Smith later said of this time period: “In consequence of the persecution which raged against the Prophet Joseph and the constant threats to do him violence it was found necessary to keep continual guard to prevent his being murdered by his enemies, who were headed by Joseph H. Wakefield and Dr. P. Hurlbert . . . during the fall and winter I took part of this service going 2½ miles to guard at President Rigdon’s.”¹⁷ Although Latter-day Saints recorded their memories of these events, Wakefield and his fellow anti-Mormons did not leave any account of their involvement in the persecution.

In mid-December 1833, Hurlbut returned to Kirtland and began to lecture on his material. How and when Hurlbut threatened to kill Smith remains shrouded in historical mystery. Not one contemporary description has survived to shed light on what Hurlbut actually said. George A. Smith later stated that “in delivering lectures he [Hurlbut] had said he would wash his hands in Joseph Smith’s blood.”¹⁸ It is apparent that Joseph Smith was not present when Hurlbut threatened the Prophet’s life. Despite

the lack of details, it is clear that a threat did occur and that Smith felt constrained to take his complaint before the county officials.¹⁹

On December 21, 1833, Smith went to the office of John C. Dowen, justice of the peace for Kirtland Township.²⁰ There he filed a complaint against Hurlbut, stating that there was “reason to fear that Doctor P. Hurlbut would Beat wound or kill him or injure his property.”²¹ The complaint asked the court to compel Hurlbut to keep the peace.²² The Ohio statute relevant to the case reads:

It shall be lawful for any person to make complaint on oath or affirmation, before a justice of the peace, stating, amongst other things, that the person making such complaint has *just cause to fear, and does fear*, that another *will beat, wound, or kill him* or her, or his or her ward, child, or children; or will commit some other act of personal violence upon him, her or them; or will burn his or her dwelling house, or out-house, or will maliciously injure, or *destroy his or her property*, other than the buildings aforesaid.²³

On December 27, 1833, Justice Dowen issued an arrest warrant directing that Hurlbut be apprehended and brought before Painesville Justice of the Peace William Holbrook.²⁴

On January 4, 1834, Kirtland Constable Stephen Sherman brought Hurlbut to Justice Holbrook’s office in Painesville. Justice Holbrook postponed the hearing until January 6, 1834, during which time Hurlbut remained in the custody of Constable Sherman.²⁵ A probable reason for the delay was that witnesses needed to be subpoenaed and prepared to give testimony concerning the threat. By statute, a justice of the peace could delay the hearing for thirty-six hours while material witnesses were found and prepared.²⁶ Word of the arrest quickly spread throughout Geauga County. Non-Mormon B. F. Norris wrote on January 6, 1834, that “Smith has sworn the peace against a man named Hurlbert who has ben engaged for about three months in trasing the origin of the book [of] mormon. He has returned and was arrested yesterday and has his trial tomorrow.”²⁷

Constable Sherman brought Hurlbut before Justice Holbrook on January 6, 1834, only to be turned away again. The court record states that “not being yet ready for the examination on the part of the State this cause is again postponed to the 13th of January 1834, at 9 o’clock a.m.”²⁸ This rescheduled hearing was apparently in violation of the statute governing the postponement of hearings; it is unknown which party requested the additional time. Concurrently, it seems that Hurlbut requested that he be transferred from Constable Sherman in Kirtland to Constable Abraham Ritch of Painesville.²⁹ The court record does not state why this occurred,

but perhaps Constable Sherman had been keeping Hurlbut in Kirtland and the constable did not want to continue traveling back and forth.

Hurlbut's arrest did not impede the other Geauga County anti-Mormons from continuing their threats. Norris wrote, "It is said that the inhabitants have threatened mobing them. They are now arming themselves with instruments of war such as guns sords dirks spontoons &c

Smith has four or five armed men to guard him every night they say they are not going to be drove away as they ware at missory they will fight for there rights."³⁰ On January 8, 1834, the day after this letter was written, the anti-Mormons acquired

a cannon and fired it in a threatening manner. Oliver Cowdery said, "We suppose [they meant] to alarm us, but no one was frightened, but all prepared to defend ourselves if they made a sally upon our houses."³¹ This show of force was the closest that the Church's enemies actually came to acting out their threats during the winter of 1833–34.

Joseph Smith, in the meantime, was preparing spiritually for the upcoming hearing. On January 11, 1834, he gathered together with some of the more prominent Latter-day Saints in Kirtland. In preparing his testimony for the hearing, Smith dictated some of his memories of Hurlbut, and then one of the brethren prayed for Joseph, petitioning the Lord for deliverance from the anti-Mormon. "That the Lord would grant that our brother Joseph might prevail over his enemy, even Doctor P. Hurlbut, who has threatened his life, whom brother Joseph has caused to be taken with a precept; that the Lord would fill the heart of the court with a spirit to do justice, and cause that the law of the land may be magnified in bringing him to justice."³² Although the prayer was not uttered by Smith himself, he had it recorded in his journal, thus illustrating his belief that through faith the Lord would deliver him from his enemies and ensure that justice was done.

The Justice Court

The preliminary hearing determined if the prosecution had sufficient evidence to send the case to the county court. The county prosecuting attorney didn't attend these preliminary hearings,³³ thus requiring Smith as the aggrieved party to retain a lawyer. He hired Benjamin Bissell, who had started his law career in 1830.³⁴ Bissell served as an ad hoc prosecuting

David Grua, one of the Joseph Smith Papers team, has chronicled the earliest known legal case involving Joseph Smith in Ohio. It is also the first in which he was the initiating party. He is not called plaintiff, because it was a criminal rather than a civil action. Joseph was the “complaining witness.” The defendant, Doctor (his given name, not a title) Philastus Hurlbut, had threatened Joseph’s life. Joseph brought the action, the result of which put Hurlbut under a court order supported with a bond to “keep the peace.” This legal procedure was the forerunner of proceedings of this generation that give rise to what today are called restraining orders. Grua surrounds the court record with the references from Smith’s journal from the time, as well from writings of other early Mormon leaders and newspaper accounts that flesh out its historical context.

—Gordon A. Madsen, Utah Bar

attorney for this hearing, calling witnesses for the state and presenting the state’s case.³⁵ Justice Dowen later recalled, “Bissel, one of Ohio’s ablest lawyers . . . was always counsel for the Mormons in important cases.”³⁶

As a defendant, Hurlbut was entitled to engage a lawyer on his behalf. He retained James A. Briggs, who was admitted to the bar only three months earlier, in October 1833.³⁷ Briggs, despite his inexperience, was familiar with the situation because of his association with anti-Mormons that funded Hurlbut’s research.³⁸ Although this hearing was designed to allow the prosecution to present its case, Briggs took advantage of the opportunity to make arguments for his client and cross-examined the state’s witnesses.

On January 13, 1834, Smith traveled the twelve miles from Kirtland to Painesville for the preliminary hearing. Although only Justice of the Peace William Holbrook was identified in the court record, eyewitnesses reported that two Painesville justices presided at the hearing.³⁹ The identity of the second justice remains unknown. The Methodist church on the southeast corner of the public square served as the court house.⁴⁰ According to Briggs, “The matter attracted a great deal of curiosity . . . the church was filled to overflowing.”⁴¹ The prominence of Joseph Smith combined with the upheaval caused by Hurlbut’s anti-Mormon preaching made it impossible for the hearing to be held in a smaller arena. Many citizens in the county wanted to witness Hurlbut, “the exposer of the Mormon

mystery,” on trial.⁴² Prominent Mormon leaders Oliver Cowdery, Orson Hyde, and Parley P. Pratt attended in support of Smith.⁴³

Bissell called sixteen witnesses over the next three days to testify concerning the alleged threat: Amos Hodges, Curtis Hodges, Sarah Wait,

Having Joseph Smith testify about the origin of the Book of Mormon was central to the hearing.

Burr Riggs, Mary Copley, Joseph Allen, M. Hodges, David Elliot, Joseph Smith Jr., Leman Copley, Charles Holmes, Samuel F. Whitney, S. Clayton, Joseph Wakefield, J. Wait, and E. Goodman.⁴⁴ Most of these witnesses were members of the LDS

community or people who had relatives that had joined the Mormons. The majority of the witnesses gave evidence against Hurlbut, while four of the witnesses surely testified in Hurlbut’s defense. Charles Holmes was a known supporter of Hurlbut.⁴⁵ Samuel F. Whitney, Newel K. Whitney’s brother, viewed Joseph Smith unfavorably.⁴⁶ Joseph H. Wakefield had been an elder in the Church but had apostatized and funded Hurlbut’s research.⁴⁷ Leman Copley testified for Hurlbut in this hearing. Two years later, Copley decided that he had been wrong and asked for Smith’s forgiveness.⁴⁸

Justice Holbrook allowed the lawyers to discuss topics unrelated to Hurlbut’s guilt or innocence. A letter sent from “the presidency of the high Priesthood” on January 22, 1834, stated that the trial included an investigation of “the merits of our religion.”⁴⁹ It appears that the origin of the Book of Mormon was central to the hearing. Charles Grover remembered that he “was witness at a lawsuit in Painesville and again heard Hurlbut lecture. At the close Square [Squire] Holbrook read to the audience from Spaulding’s ‘Manuscript Found.’”⁵⁰ Hurlbut’s research, which the whole audience had been hearing about for months, was discussed at length. Eber D. Howe recorded Leman Copley’s trial testimony, which related a strange account of Smith meeting Moroni in the woods.⁵¹

Briggs recorded that Smith was on the witness stand on two of the three days. Briggs asked Smith to give the court his account of finding the plates used to translate the Book of Mormon. Bissell objected, since that topic had nothing to do with Hurlbut’s guilt or innocence. He then withdrew the objection because everyone in the room wanted to hear the account.⁵² “[Smith] testified that when he dug into the earth, and reached the plates, that he was kicked out of the hole he had dug and lifted into the air by some ‘unseen power.’”⁵³

Briggs felt he was hard on Smith during his cross-examination. “I guess, in my speech to the Court in the case, I must have been rather hard on

the Prophet and his testimony and Mormonism,” he wrote.⁵⁴ “I paid my respects to one of the leaders of the Kirtland Mormons in such a manner that he said, ‘if it was not for [Joseph Smith’s] religion he would whip that young lawyer Briggs.’ Perhaps I am the only one that ever escaped a flogging on account of a man (that is, Smith) being a Mormon.”⁵⁵

At the conclusion of the testimony, Justice Holbrook gave his ruling:

It is the opinion of the Court that the Complainant had reason to fear that Doctor P. Hurlbut would beat wound or kill him or injure his property as set forth in his complaint and it is the consideration of the Court that the defendant enter into a recognizance to keep the peace generally and especially towards the Complainant, and also to appear before the Court of Common Pleas on the first day of the term thereof next to be held in and for said County and not depart without leave, or stand committed till the judgement of the Court be complied with.⁵⁶

Unfortunately, the court record did not state the dollar amount of the recognizance (that is, the bond Hurlbut was required to post). The amount required by law was between \$50 and \$500.⁵⁷

Waiting for April

Holbrook’s unwillingness to dismiss the charges turned the tide of public opinion momentarily; the hostility that Hurlbut had stirred up receded immediately. On January 22, 1834, the Presidency of the High Priesthood wrote to the scattered Church members in Missouri. The Presidency, although obviously concerned with the welfare of their Missouri brethren, were pleased to relate that their own local problems seemed to be dissipating. With the favorable decision by Justice Holbrook, those problems suddenly became manageable. “There is not quite so much danger of a mob upon us as there has been. The hand of the Lord has thus far been stretched out to protect us. . . . Thus [Hurlbut’s] influence was pretty much destroyed, and since the trial the spirit of hostility seems to be broken down in a good degree but how long it will continue so we cannot say.”⁵⁸

Six days later, on January 28, 1834, Smith met with Oliver Cowdery and Frederick G. Williams. With Williams acting as scribe, Smith continued the dictation of Hurlbut’s story from where they left off on January 11, 1834. He said that Hurlbut “saught the destruction of the saints in this place and more particularly myself and family” (a vague reference to Hurlbut’s lectures and the threat). Smith then recorded that “as the Lord has in his mercy Delivered me out of his hand till the present and also the church that he has not prevailed viz the 28 day of Jany 1834 for which I off[er] the gratitud[e] of my heart to Allmighty God for the same.” This is all that Smith recorded about the January preliminary hearing and its

he takes.

Thirdly, That the Lord would grant that our brother Joseph might prevail over

his enemy, even Doctor P. Hurlbut, who has threatened his life, whom brother Joseph ^{caused to be} has taken with a precept; that the Lord would fill the heart of the court with a spirit to do justice, and cause that the law of the land may be magnified in bringing him to justice.

Fourthly, That the Lord would

Excerpt from Joseph Smith's Ohio "Book for Record," January 11, 1834, spanning pages 44 and 45: "Thirdly, that the Lord would grant that our brother Joseph might prevail over his enemy, even Doctor P. Hurlbut, who has threatened his life, whom brother Joseph has caused to be taken with a precept; that the Lord would fill the heart of the court with a spirit to do justice, and cause that the law of the land may be magnified in bringing him to justice." This passage, a prayer recorded by Frederick G. Williams, demonstrates Joseph's trust in the Lord and in the legal system for deliverance from persecution.

aftermath. But these journal entries show with powerful clarity Smith's religious sincerity and a psalmodic trust that the Lord would intervene and deliver him from the enemy. The brethren then knelt "before the Lord being agre[e]d and united in pray[er] that God would continue to deliver me and my brethren from <him> that he may not prevail again[st] us in the law suit that is pending." The prayer ended with a plea to soften the hearts of wealthy Geauga County land owners, at least one of whom had funded Hurlbut's research.⁵⁹ This prayer offers another example of Smith's positive views toward the law and his belief that not only would the Lord intervene on his behalf, but also that justice could be found in the American legal system.

The following months witnessed considerable speculation in Geauga County concerning the impending trial. Hurlbut's supporters claimed that the whole proceeding was a sham brought about by the judge so that the lawyers could continue to harass Joseph Smith before the county court. Hearing such rumors, the editors of the *Evening and the Morning Star* reported that

A very grave judge to the west of this, of the THEE, and THOU, Order, in the *greatness* of his wisdom and righteousness, embraced every favorable opportunity to impress the public mind, as we were informed as far as his influence would extend, that the Justice's court, held in Painsville, only bound Hurlbut over to the County Court, that the lawyers might have a fair opportunity of *rediculing*, and *scandalizing*, Jo. Smith, as he

My progenitor and namesake was closely associated with the events surrounding this first Ohio trial involving Joseph Smith. As the Prophet's scribe and his counselor in the First Presidency, Frederick G. Williams actively participated in the discussions that were held and the prayers that were offered in connection with the suit brought against Doctor Philastus Hurlbut. This trial and other experiences with the law that followed convinced Williams of the need for members of the Church to be involved in the workings of government, especially the judicial system. Not long thereafter, Frederick G. Williams ran for and was elected a justice of the peace for Geauga County, Ohio, thus becoming the first member of the Church to hold an elected government office.

—Frederick G. Williams, Brigham Young University

was pleased to call him. This was doubtless the desire of his *own* heart, otherwise, he would not have charged the Justices in Painsville with disregarding their oaths so far, as to bind an innocent man [that is, Hurlbut] over to the court of his country, for trial, for such base purposes.⁶⁰

In this heightened state of rumor, prediction, and speculation, the April trial approached. Activity also continued in the courts. Assistant Prosecuting Attorney for Geauga County Reuben Hitchcock⁶¹ met with Justice Holbrook and made a copy of the proceedings of the preliminary hearing, as well as a copy of the recognizance to keep the peace.⁶²

In the County Court

On March 31, 1834, Smith traveled eight miles to appear before the Geauga County Court of Common Pleas in Chardon.⁶³ Although Hurlbut had been ordered to appear before the court on that day, several cases were being heard, meaning that the Hurlbut case would not be held for several more days. Who served as counsel for Hurlbut remains unknown. Briggs made no mention of representing him beyond the January hearing. The prosecuting attorney, although not named in the court record, was probably Stephen Matthews.⁶⁴ No historical source indicates that Bissell helped with the prosecution.

On April 1, 1834, Smith recorded that he spent the day making subpoenas for witnesses.⁶⁵ He must have then given the subpoenas to the clerk, who had authority to serve them.⁶⁶ In preparation for the trial, Smith wrote his feelings about the Lord's goodness and prophesied concerning Hurlbut's fate: "My soul delighteth in the Law of the Lord for he forgiveth my sins and <will> confound mine Enemies the Lord shall destroy him who has lifted his heel against me, even that wicked man Docter P. H[u]rlbut he <will> deliver him to the fowls of heaven and his bones shall be cast to the blast of the wind <for> he lifted his <arm> against the Almity therefore the Lord shall destroy him."⁶⁷

On April 2 and 3, 1834, Smith attended court. He later recorded in his official history: "Hurlbut was on trial for threatening my life."⁶⁸ President Judge Matthew Birchard⁶⁹ listened to the examination of seventeen prosecution witnesses: Curtis Hodges, Sarah Waite, Burr Riggs, Mary Copley, Joseph Allen, David Elliot, Joseph Smith, John P. Markill, Peter French, Solomon Webster, Jotham Maynard, Edmund Gillett, Simon Wright, James Boyden, Irvin Hodges, Arial Hanson, and Truman Waite.⁷⁰ The defense called seven witnesses. Charles Holmes, Samuel F. Whitney, and John C. Dowen⁷¹ were each cross-examined. Matthew Allen also testified for the defense but was not cross-examined. Daniel Copley, who was

Hurlbut's missionary companion and was excommunicated on the same day as Hurlbut,⁷² was sworn with Harvey Smith and Samuel Wheeler to testify on Hurlbut's behalf, but the record indicates that they did not actually testify.⁷³

Judge Birchard adjourned the case for the weekend on Friday, April 4, 1834. On Monday, April 7, 1834, Smith knelt with Newel K. Whitney, Oliver Cowdery, Frederick G. Williams, and Heber C. Kimball to pray "that I may prevail against that wicked Hurlbut and that he be put to shame."⁷⁴ It is probable that testimony resumed this day. A reporter for the *Chardon Spectator and Geauga Gazette* attended the trial on Tuesday, April 8, 1834, and wrote: "The court house was filled, almost to suffocation, with an eager and curious crowd of spectators, to hear the Mormon trial, as it was called."⁷⁵

The official court record no longer exists. The *Chardon Spectator and Geauga Gazette* is the only surviving contemporary source to give an account of the testimony. By combining this source with a late reminiscence of Hurlbut's witness Samuel Whitney, we can reconstruct some of what the witnesses said. First, testimony was heard concerning Hurlbut's reputation. It was determined that Hurlbut had once been a member of the Mormon society but had been excommunicated for misconduct. Whitney stated, "Jo testified in court that Hurlbut was expelled for base conduct with lude women."⁷⁶ According to the *Chardon Spectator and Geauga Gazette*, other witnesses testified, "After this, he [Hurlbut] discovered, that Joe was a false prophet, and the Book of Mormon a cheat;—began lecturing against it, and examining and collecting proof that the story of the Book of Mormon was taken from a manuscript romance, written by one Spalding, who formerly lived at Conneaut, and who died before publication."⁷⁷ These statements set the stage for testimony concerning the threat on Smith's life.

The *Chardon Spectator and Geauga Gazette* stated, "Many witnesses testified to threats of revenge from Hurlbut." Justice of the Peace John C. Dowen, who testified in Hurlbut's behalf, said this concerning the nature of the threat: "Hurlbut said he would 'kill' Jo [Smith]. He meant he would kill Mormonism."⁷⁸ This argument was probably Hurlbut's main defense. It is true that Hurlbut posed a serious threat to the church as an entity, but most other witnesses gave evidence in support of the claim that Hurlbut indeed intended to physically enact violence upon Smith.

Dowen's statement shifted the testimony from the actual nature of the threat to the question of whether or not Smith had reason to fear bodily injury, considering the fact that he was in a predominantly Mormon community. A female witness, either Mary Copley or Sarah Wait, when asked on cross-examination why she did not immediately inform Smith of the

David Grua's detailed work on the legal documents in the 1834 case of *Ohio v. Doctor Philastus Hurlbut* should be of help to all biographers of Joseph Smith. This careful reconstruction of that legal proceeding sets the record straight on several details, which invites further reflection. Never before have historians realized how often Joseph Smith found himself in court. *BYU Studies* has published articles on his 1826 trial in South Bainbridge, his 1838 hearing in Richmond, Missouri, and other legal difficulties, but many more of his judicial encounters remain to be analyzed.

The experiences of Joseph Smith have been compared with those of the Apostle Paul. Certainly, Joseph and Paul have the courtroom in common. The book of Acts reports over and over how Paul found himself accused before judges and magistrates, only to be delivered, and similarly Joseph would never be convicted.

Both Joseph and Paul were able to keep an amazing number of things going while being assailed by vexatious lawsuits. In Joseph's case, during the three months between the initial *Hurlbut* hearings and the conclusion of the trial alone, he worried about the problems faced by the Saints in Missouri, conducted priesthood conferences and council meetings, received sections 102 and 103 of the Doctrine and Covenants, traveled in Pennsylvania and New York to recruit volunteers and raise support for Zion's Camp, and was concerned with family matters and economic arrangements.

In *Ohio v. Hurlbut*, Joseph Smith found himself on the side of the prosecution. To his great relief, Joseph's complaint was vindicated by the state prosecutors. But, significantly, he would rarely again complain to judicial authorities about people who perpetually harassed him. Perhaps the Prophet was disappointed in the upshots of this courtroom victory. After all, Hurlbut did not repent; he was not reclaimed in friendship. Moreover, Hurlbut was able to evade the arm of justice; for three years, the sheriff could not find him, and by then Joseph had left the state of Ohio for good. Meanwhile, Hurlbut had sold his materials to Eber D. Howe, who gladly published them as the first anti-Mormon book, *Mormonism Unvailed*, promptly advertised for sale in the *Painesville Telegraph* in November 1834. While justice may have been done in the Hurlbut case, these outcomes were less than satisfying. Thus, although Joseph Smith probably came away from the Hurlbut case with a positive attitude toward the court system, he may also have sensed its inherent limitations as well.

—John W. Welch, Brigham Young University

threat, said “that she did not believe Hurlburt, or any other human being, had the power to hurt the prophet.” Smith, however, in his own three-hour long testimony, was much more humble in his assessment of “divine invulnerability,” stating that he did fear for his life.⁷⁹

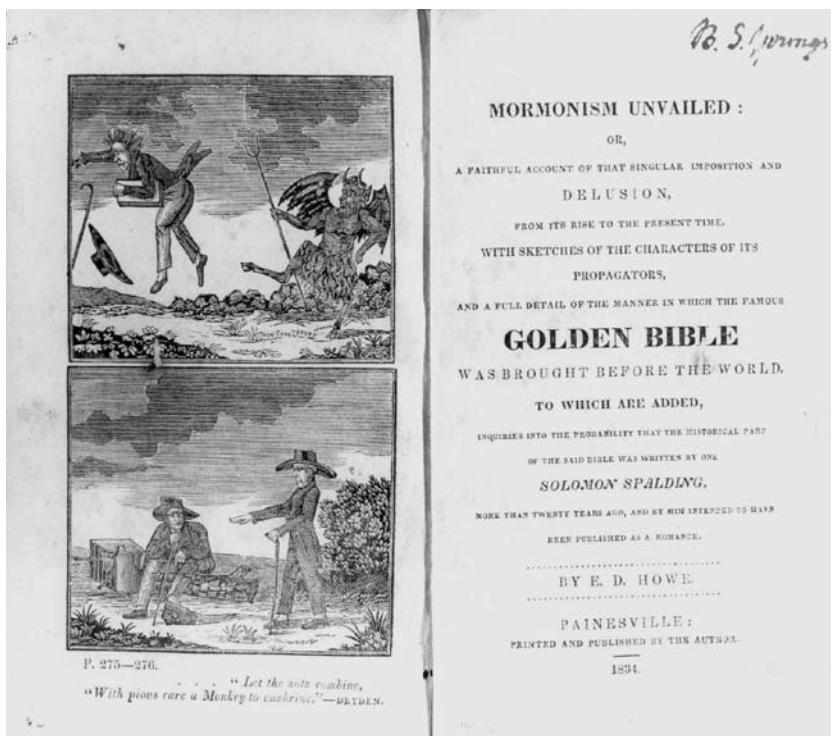
According to Samuel Whitney, Smith “testified that he had no arms and that his house was not guarded.”⁸⁰ It appears that the attorneys were attempting to reconstruct the violent atmosphere in Kirtland in order to provide context to the threat and to determine if Smith really had reason to fear for his life, for when Whitney took the stand, he was asked about the ominous atmosphere in Geauga County. “I was a witness and supposed I was to testify about the firing of guns in Kirtland which had brought together the Mormon men under arms several times; they were in constant fear of being mobbed.”⁸¹ Soon, however, the attorneys began to question Whitney about the character of Joseph Smith:

I was asked if I believed Jo. S. the M prophet was a man of truth and veracity. I told them I was not sworn to tell what I believed. After considerable debate by the counsel the judges decided it was a proper question. I said I did not for Jo knew he had sworn to things which he was well aware I knew were not true. Jo had told me a short time previous, while I was painting my bro’s store (he at that time was living in the dwelling part of it), that he had a sword and pistol, and that his house was guarded by six men every night. He told me their names.⁸²

Unfortunately, no other historical source has survived to shed further light on the Prophet’s testimony about guards. Whitney’s memory of these events was recorded fifty years later and therefore cannot be accepted without reservation. George A. Smith and others confirmed that they guarded Smith’s home during the winter of 1833–34.⁸³

After hearing the concluding testimony on Wednesday, April 9, 1834, Judge Birchard ruled that the court was “of opinion that the said complainant had ground to fear that the said Doctor P. Hurlbut would wound, beat or kill him, or destroy his property as set forth in said complaint.”⁸⁴ Hurlbut was then ordered to enter into new recognizance for \$200 to keep the peace and be of good behavior towards the citizens of Ohio generally and especially toward Smith for six months. Two of Hurlbut’s friends, Charles Holmes and Elijah Smith, acted as sureties.⁸⁵ Hurlbut, as the losing party, was also ordered to pay the court costs of \$112.59.⁸⁶ The total number of trial days remains unknown, but Smith, along with several other witnesses, was paid \$3.00 at \$.50 per day on April 9, 1834, suggesting that the trial lasted six days split between two weeks.⁸⁷

Smith recorded in his journal a statement summarizing the court’s decision that illustrated his belief that he could receive a fair trial in the



Courtesy L. Tom Perry Special Collections, BYU

Mormonism Unvailed, published in 1834 in Painesville, Ohio, seven months after the D. P. Hurlbut trial. While Eber D. Howe is listed as the author, the book contains many of Hurlbut's anti-Mormon materials. On the frontispiece are two images showing an interpretation of events Joseph Smith related at the January 1834 preliminary hearing.

American courts as well as his humility and gratitude: "On the 9 [April 1834] after an impartial trial the Court decided that the said Hurlbut was bound over under 200 dollars bond to keep the peace for six month[s] and pay the cost which amounted to near three hundred dollars all of which was in answer to our prayer for which I thank my heavenly father."⁸⁸ Over the next two years, Geauga County sheriffs failed to collect the court costs.⁸⁹

On April 10, 1834, Oliver Cowdery wrote, "Hurlbut the apostate has just been bound to keep the peace under \$200 bond in the circuit court in this county for threatening the life of Bro. Joseph Smith, Jr. We are not in any fear that the kingdom will be overthrown by him."⁹⁰ The immediate threat imposed by Hurlbut to the Latter-day Saints was thus quelled in April 1834. Hurlbut the anti-Mormon preacher was momentarily silenced.

It also seems that the other Geauga County anti-Mormons took notice of the proceedings and halted their threats for a time. However, Hurlbut found other, ultimately more damaging ways to continue his attack against Smith. Although defeated in court, Hurlbut soon saw to the publication of his arguments against Smith by selling his research to editor Eber D. Howe, publisher of the *Painesville Telegraph*, who agreed to publish the research in book form. The book was first advertised in November 1834, in that newspaper, under the title of *Mormonism Unveiled*.⁹¹ At that point, Hurlbut himself dropped out of the picture of Church history. He later joined the United Brethren Church, and on various occasions found himself embroiled in controversy with that church's leaders, indicating that Smith was not the only religious figure with whom Hurlbut had trouble.⁹²

Conclusion

Ohio v. Hurlbut taught Joseph Smith some specifics of the law of the land. The case hinged on the legal definitions of threats and fear, two things that would follow Smith throughout his life. Smith learned how the law of the land could prevent his enemies from acting out their threats and how he could lessen his own fears. Smith also came away from the case with a distinct belief that he could receive impartial treatment from the American court system. These lessons contributed toward Smith's developing understanding of the law.

Although after 1837 Smith expressed his displeasure with "vexatious suits," *Ohio v. Hurlbut* shows that at least as late as 1834 he believed strongly that justice could be found in the courts. The prayers uttered by Smith and recorded in his journal throughout the case illustrate how his religion affected his views toward the law:

Smith's views were recorded in prayer. The fact that Smith's views toward the case were recorded in prayer form illustrates that Smith thought of the case in a spiritual sense. Smith did not give long treatises to explain his opinions on his legal cases, but rather articulated them in his prayers to God for help.

Smith believed God would intervene. Just as David of old, Smith believed that if he prayed with faith, God would intervene and deliver him from his adversary. Unlike others of the nineteenth century who had begun to relegate God to a purely spiritual sphere and deny His ability to enter the secular realm, Smith believed that God still reigned over both the spiritual and the physical.

Smith believed he could receive justice in the American court system. Smith had opinions about America's cultural institutions, from marriage

to the economy. The law was no different, and he therefore had strong feelings about America's legal institution and his prospects of justice therein. These prayers indicate that he believed strongly that the courts were a viable and strong institution that could ensure that justice be done.

These points suggest that Smith was both religiously sincere and a dedicated American, but of course in his own way. Understanding Smith's views toward the American legal system is an important step toward comprehending Smith's (and, by extension, Mormonism's) relationship with American culture. In summation, the Latter-day Saints who prayed for Smith on January 11, 1834, said it most clearly when they earnestly implored the Lord "that the law of the land may be magnified."

David W. Grua (davidgrua@hotmail.com) is a legal historian for the forthcoming Joseph Smith Papers, a multivolume collection of all extant Joseph Smith documents, including legal papers. He earned a BA in history from Brigham Young University. The author would like to thank John W. Welch, Gordon Madsen, and Sharalyn Duffin, all of the Joseph Smith Papers team, for their comments on the paper. He would also like to thank Dale Broadhurst, an independent historian living in Hilo, Hawaii, for sharing his many years of inexhaustible work compiling historical documents relating to D. P. Hurlbut.

1. Dean C. Jessee, ed., *The Papers of Joseph Smith*, 2 vols. (Salt Lake City: Deseret Book, 1989–92), 2:214.

2. Max Parkin, "The Nature and Cause of Internal and External Conflict of the Mormons in Ohio between 1830 and 1838" (master's thesis, Brigham Young University, 1966), 263–78. See also 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, 1988), 55–58.

3. The case is mentioned briefly in Fawn M. Brodie, *No Man Knows My History: The Life of Joseph Smith, the Mormon Prophet*, 2d ed. (New York: Alfred A. Knopf, 1979), 143–45; Donna Hill, *Joseph Smith, the First Mormon* (New York: Doubleday, 1977), 155–57; Dale W. Adams, "Doctor Philastus Hurlbut: Originator of Derogatory Statements about Joseph Smith, Jr.," *John Whitmer Historical Association Journal* 20 (2000): 83; Parkin, "Nature and Cause of Internal and External Conflict," 121–22.

4. Firmage and Mangrum, *Zion in the Courts*, 52.

5. Joseph Smith, Journal, January 11, 1834, Church Archives, The Church of Jesus Christ of Latter-day Saints, Salt Lake City; Jessee, *Papers of Joseph Smith*, 2:19. Smith did not record his memories of Hurlbut's visit until January 1834, right before a preliminary hearing was held to evaluate the prosecution's case against Hurlbut. Smith recorded here what his testimony would be at the hearing.

Most of the documents I have cited from Church Archives are more readily available in *Selected Collections from the Archives of The Church of Jesus Christ of Latter-day Saints*, 2 vols. (Provo, Utah: Brigham Young University Press, 2002), DVD 20.

6. "Kirtland Council Minute Book," 12, 14, 16, Church Archives; Benjamin Winchester, *The Origin of the Spalding Story* (Philadelphia: Brown, Bickering, and Guilbert, 1840), 6.
7. "Kirtland Council Minute Book," 12; Orson Hyde to George G. Adams, June 7, 1841, in Benjamin Winchester, *Plain Facts* (England, 1841).
8. "Kirtland Council Minute Book," 21–22.
9. Winchester, *Origin of the Spalding Story*, 7.
10. Winchester, *Origin of the Spalding Story*, 8–9.
11. Joseph Smith to William W. Phelps and others, August 18, 1833, Church Archives.
12. Winchester, *Origin of the Spalding Story*, 9–11.
13. Eber D. Howe, *Mormonism Unveiled* (Painesville, Ohio: By the author, 1834), 231–69, 278–90.
14. See Richard L. Anderson, "Joseph Smith's New York Reputation Reappraised," *BYU Studies* 10, no. 3 (1970): 283–320. See also Rodger I. Anderson, *Joseph Smith's New York Reputation Reexamined* (Salt Lake City: Signature Books, 1990); and Richard L. Anderson, review of *Joseph Smith's New York Reputation Reexamined*, by Rodger I. Anderson, *Review of Books on the Book of Mormon* 3 (1991): 52–80.
15. For a discussion of Kirtland's reaction to the Missouri troubles, see Milton V. Backman Jr., *The Heavens Resound: A History of the Latter-day Saints in Ohio, 1830–1838* (Salt Lake City: Deseret Book, 1983), 162–74.
16. Joseph Smith to Edward Partridge and others, December 5, 1833, Joseph Smith Letterbook 1, 68–69, Church Archives.
17. George A. Smith, "Memoirs," 12, George A. Smith Collection, Church Archives.
18. George A. Smith, in *Journal of Discourses*, 26 vols. (Liverpool: F. D. Richards, 1855–86), 11:8, November 15, 1864.
19. "Mormon Trial," *Chardon Spectator and Geauga Gazette*, April 12, 1834, page 3.
20. Record Book P, 431–32, Geauga County Archives and Records Center, Chardon, Ohio.
21. Record Book P, 431–32.
22. Record Book P, 431–32. This legal action was used as a preventive measure to impede individuals from acting out threats. Blackstone called it "preventive justice." William Blackstone, *Commentaries on the Laws of England*, vol. 4, *Of Public Wrongs* (Oxford: Clarendon Press, 1765–69; reprint, Buffalo: William S. Hein & Co., 1992), 248–49.
23. An Act Defining the Powers and Duties of Justices of the Peace and Constables (March 11, 1831), *Acts of a General Nature, Enacted, Revised, and Ordered to Be Printed at the First Session of the Twenty-Ninth General Assembly of the State of Ohio*, section 9 and section 33.1 (Olmsted and Bailhache, 1831); emphasis added; hereafter referred to as Justices of the Peace Act.
24. John C. Dowen, Statement, January 2, 1885, p. 3, Chicago Historical Society. See Justices of the Peace Act, section 33.4. Justices of the Peace Act, section 10 states that warrants may be returned before any justice of a county.
25. Record Book P, 431–32.

26. Justices of the Peace Act, section 22.
27. B. F. Norris to Mark Norris, January 6, 1834, Mark Norris Papers, Burton Historical Collection, Detroit Public Library, Detroit. It seems that Norris was a day behind in his news. “Swearing the peace” was a common law term that denoted the action to compel individuals to keep the peace. Blackstone, *Of Public Wrongs*, 252.
28. Record Book P, 431–32.
29. Record Book P, 431–32.
30. B. F. Norris to Mark Norris.
31. Oliver Cowdery to W. W. Phelps and John Whitmer, January 21, 1834, Oliver Cowdery Letter Book, Huntington Library, San Marino, California.
32. Joseph Smith, Journal, January 11, 1834; Jessee, *Papers of Joseph Smith*, 2:19.
33. J. R. Swan, *Statutes of the State of Ohio* (Columbus: Samuel Medley, 1841), 738a.
34. A. G. Riddle, *History of Geauga and Lake Counties, Ohio: With Illustrations and Biographical Sketches of Its Pioneers and Most Prominent Men* (Philadelphia: Williams Brothers, 1878; reprint, Evansville, Ind.: Unigraphic, 1973), 30.
35. Justices of the Peace Act, section 11, specifies only that the justice conducts an examination. It does not state that both parties must have lawyers to examine the witnesses. However, a nineteenth-century commentary on Ohio law explained how these lawyers were to examine the witnesses. See John J. Manor, *A Treatise on the Criminal Law of the State of Ohio* (Toledo: Commercial Book and Job Steam-Printing House, 1857), 524–26.
36. Dowen, Statement, 1.
37. James A. Briggs, letter to the editor, *Cleveland Leader and Morning Herald*, January 1884.
38. James A. Briggs to John Codman, March 1875, in John Codman, “Mormonism,” *International Review* 11 (September 1881): 222.
39. James A. Briggs, letter to the editor, *New York Tribune*, January 31, 1886. Howe said that two magistrates of Painesville Township heard the case. Howe, *Mormonism Unveiled*, 276.
40. Briggs to Codman.
41. Briggs to Codman.
42. “Mormon Trial,” *Chardon Spectator and Geauga Gazette*, April 12, 1834, page 3.
43. Briggs, letter to the editor, *New York Tribune*.
44. Record Book P, 431–32.
45. Journal M, p. 193, Geauga County Archives and Records Center, Chardon, Ohio.
46. Mark Staker, “Thou Art the Man: Newel K. Whitney in Ohio,” *BYU Studies* 42, no. 1 (2003): 116–17; Samuel F. Whitney, statement, March 6, 1885, pp. 17–19, microfilm, Church Archives.
47. George A. Smith, in *Journal of Discourses*, 7:112, November 15, 1864. For evidence that Wakefield funded Hurlbut’s research, see *Painesville Telegraph*, January 31, 1834.
48. Joseph Smith, Journal, April 1, 1836.
49. Presidency of the High Priesthood, Ohio, to the Brethren Scattered from Zion, Missouri, January 22, 1834, Joseph Smith Letterbook 1, p. 81.

50. Deming, ed., "Charles Grover's Statement," *Naked Truths about Mormonism*, January 1888, 3. *Naked Truths about Mormonism* was a short-lived newspaper printed in Oakland, California. Grover's name does not appear on the official list of witnesses.

51. Howe, *Mormonism Unveiled*, 276–77.

52. Hon. Jas. A. Briggs Statement, *Naked Truths about Mormonism*, January 1888, 4.

53. Briggs, letter to the editor, *Cleveland Leader and Morning Herald*. See also Hon. Jas. A. Briggs Statement, *Naked Truths about Mormonism*.

54. Briggs to Codman.

55. Briggs, letter to the editor, *Cleveland Leader and Morning Herald*.

56. Record Book P, 431–32.

57. Justices of the Peace Act, section 12.

58. The Presidency of the High Priesthood to the Brethren scattered from Zion, January 22, 1834, Joseph Smith Letterbook 1, p. 81.

59. Joseph Smith, Journal, January 28, 1834; Jessee, *Papers of Joseph Smith*, 2:20. See also *Painesville Telegraph*, January 31, 1834.

60. Editor of the Star [Oliver Cowdery], *Evening and the Morning Star*, April 1834; emphasis in the original.

61. Record Book P, 431–32; *Pioneer and General History of Geauga County* (Burton, Ohio: Historical Society of Geauga County, 1880), 517.

62. Record Book P, 431–32; Justices of the Peace Act, section 20, 21.

63. Joseph Smith, Journal, March 31, 1834; Jessee, *Papers of Joseph Smith*, 2:27.

64. Matthews served as prosecuting attorney of Geauga County from 1828 to 1835. *Pioneer and General History of Geauga*, 70.

65. Joseph Smith, Journal, April 1, 1834; Jessee, *Papers of Joseph Smith*, 2:28.

66. Actually, the clerk would then give them to the constable, who would deliver them. An Act Directing the Mode of Trial in Criminal Cases (March 7, 1831), *Acts of a General Nature, Enacted, Revised, and Ordered to be Printed at the First Session of the Twenty-Ninth General Assembly of the State of Ohio*, section 22 (Olmsted and Bailhache, 1831).

67. Joseph Smith, Journal, April 1, 1834; Jessee, *Papers of Joseph Smith*, 2:28.

68. 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), 2:47.

69. Birchard was President Judge from 1833 to 1837. *History of Portage County* (Chicago: Warner, Beers and Co., 1885), 332. The nature of this legal action did not allow for trial by jury. It appears that although this action was tried before the county court, the Justices of the Peace Act defining breach of the peace was used. See Justices of the Peace Act, sections 15–18.

70. 1831–1835 Execution Docket, p. 110, Geauga County Archives and Records Center, Chardon, Ohio.

71. Dowen allowed Hurlbut to stay at his home when Hurlbut was in Kirtland. Dowen, Statement, 3.

72. "Kirtland Council Minute Book," 21–22.

73. 1831–1835 Execution Docket, p. 110.

74. Joseph Smith, Journal, April 7–9, 1834; Jessee, *Papers of Joseph Smith*, 2:28.

75. "Mormon Trial," *Chardon Spectator and Geauga Gazette*, April 12, 1834, page 3.
76. Whitney, Statement, 17.
77. "Mormon Trial," *Chardon Spectator and Geauga Gazette*, April 12, 1834, page 3.
78. Dowen, Statement, 3.
79. "Mormon Trial," *Chardon Spectator and Geauga Gazette*, April 12, 1834, page 3.
80. Whitney, Statement, 18.
81. Whitney, Statement, 18.
82. Whitney, Statement, 17–19.
83. George A. Smith, "Memoirs," 12.
84. Record Book P, 432.
85. Journal M, p. 193.
86. Justices of the Peace Act, section 17; Record Book P, 432.
87. 1831–1844 Order Book, April 9, 1834, Geauga County Archives and Records Center, Chardon, Ohio; *An Act Directing the Mode of Trial in Criminal Cases* (March 7, 1831), *Acts of a General Nature, Enacted, Revised, and Ordered to Be Printed at the First Session of the Twenty-Ninth General Assembly of the State of Ohio*, section 24 (Olmsted and Bailhache, 1831).
88. Joseph Smith, Journal, April 7–9, 1834; Jessee, *Papers of Joseph Smith*, 28–29. The court costs of \$112.59, combined with the \$200 recognizance, would account for the figure of \$300.
89. Execution Docket F, p. 82, Geauga County Archives and Records Center, Chardon, Ohio.
90. Oliver Cowdery to John F. Boynton, April 10, 1834, Oliver Cowdery Letter Book, 40, Huntington Library.
91. *Painesville Telegraph*, November 28, 1834.
92. Adams, "Doctor Philastus Hurlbut," 86–87.