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In the spring of 1837, Lt. Robert E. Lee, at this time a thirty-year-old veteran of eight years in the United States Army Corps of Engineers, was ordered west to save the harbor of St. Louis from impinging snags and sandbars and to improve navigation to the upper Mississippi by attacking the Des Moines rapids. These rapids masked an eleven-mile outcropping of limestone extending from Warsaw on the south to Commerce (later Nauvoo) on the north.

Bringing from Louisville a little steamboat and several smaller craft, Lee completed the necessary river surveys in 1837 and began blasting rock at the rapids during the time of low waters in the summers of 1838 and 1839. The cabin of the steamboat *Des Moines* served as Lt. Lee's office and sleeping quarters during the busy season. The steamboat was used to tow the smaller craft that were working on the rapids. By the time higher water and ice forced discontinuance of operations in the fall of 1839, Lee's detachment had made the needed improvements at St. Louis, had thoroughly charted the upper river course, and had widened and deepened the channel in two critical areas of the rapids.[1]

Although most of the contemplated work remained to be done, a nationwide depression brought fiscal stringencies, and Congress, in the summer of 1840, refused appropriations to continue the work. Lee was compelled to conclude his river operations and accepted a new assignment in the East.[2]

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[1]Douglas S. Freeman, *R. E. Lee: A Biography,* 4 vols. (New York: C. Scribner's Sons, 1934–1935), vol. 1, chaps. 9, 11; D. L. Enders, "The Des Moines Rapids: A History of Its Adverse Effects on Mississippi River Traffic and Its Use as a Source of Water Power to 1860" (M.A. thesis, Brigham Young University, 1973), pp. 16, 31, 36–38, 45–55, 69–70.

[2]Freeman, *R. E. Lee,* 1:178–80; Enders, "The Des Moines Rapids," pp. 55–56. Lee's brilliant work, especially on the critical St. Louis harbor, had established his professional standing in the Corps of Engineers twenty years before his career culminated as Commanding General of the Confederate forces during the Civil War.

Acting as agent for the United States, Robert E. Lee disposed of his equipment at a public auction held in Quincy, Illinois, on 10 September 1840. Among the properties sold were two keelboats, eight large deck stows, and the steamboat *Des Moines.*

During the winter of 1838–1839, the last year of Lee's river operations, the Mormons were forced to flee *en masse* from Missouri to Illinois. By the summer of 1840, the founding of Nauvoo was secure; Mormons were gathering in sufficient numbers to make Nauvoo one of the largest cities in Illinois. On 31 August 1840 the First Presidency of the Church issued a letter to all Church members advising them that the time had come "for the upbuilding of the Kingdom" and for erecting a temple in Nauvoo. Those interested in assisting in this great work were formally invited to "come to this place."[3]

The anticipated influx of new population for Nauvoo and the surrounding area created important commercial opportunities for river traffic. Thus, it is not surprising that prominent Mormon entrepreneurs were interested in acquiring the steamboat and keelboats that Robert E. Lee put on sale in Quincy the following month.

The terms of sale were advertised as "8 months credit, the purchasers giving notes with 2 approved endorsers."[4] The successful bidder for the steamboat and keelboat was Peter Haws, a prominent Mormon businessman who was later to have a leading role in the construction of the Nauvoo House, a hotel for travelers on the Mississippi. Haws paid with a $4,866.38 promissory note payable to Robert E. Lee, agent for the United States, or order, at the Bank of the State of Missouri in St. Louis, eight months after its date of 10 September 1840.[5] The note was signed by Peter Haws, Henry W. Miller, George Miller, Joseph Smith, and Hyrum Smith, in that order. Henry and George Miller were

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[3]See Joseph Smith, *History of The Church of Jesus Christ of Latter-day Saints,* ed. B. H. Roberts, 2nd ed. rev., 7 vols. (Salt Lake City: Deseret News, 1932–51), 4:185–87 (hereafter cited as *HC*). See also Robert Bruce Flanders, *Nauvoo: Kingdom on the Mississippi* (Urbana: Univ. of Illinois, 1965), pp. 40–48.

[4]*Quincy Whig,* 5 September 1840, p. 3, col. 3.

[5]The originals of this promissory note and twenty-seven other documents comprise an eighty-seven-page collection of letters and reports written during the years 1841 to 1852 by or between the United States Treasury Department and various federal marshals, United States attorneys, and cabinet members concerning related events subsequent to this sale. These original source documents are located at the National Archives in Washington, D.C., as part of the records of the Solicitor of the Treasury, Record Group 206, part 1 (1841–1852); hereafter cited as Treasury Papers.

Mormon businessmen and Church officials.[6] Haws, Henry Miller, and George Miller signed the note in Quincy on the date of the auction, but Joseph and Hyrum Smith, who apparently did not attend the auction, signed in Nauvoo.[7]

Although it is not clear from the face of the note, it appears from subsequent documents that Peter Haws was the real principal in the steamboat purchase and that the Millers and Smiths were only sureties for his obligation.[8] But since the terms of sale required "two approved endorsers," the sureties' role was essential. The original papers in the transaction show the thoroughness and care Robert E. Lee exerted in obtaining letters from prominent public figures authenticating the good character and financial integrity of the sureties.[9] In addition to the promissory note signed by Haws, the Millers, and the Smiths, Lt. Lee received an endorsed note, also in the amount of $4,866.38, payable to Haws, George Miller, and the two Smiths, signed by Charles B. Street and Marvin B. Street as obligors and by Robert F. Smith as surety. This note, which the purchasers gave as additional security, apparently represented a transaction in which the Streets acquired a part interest in the steamboat. Before evacuating his headquarters at St.

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[6]Henry W. Miller was stake president at Freedom, Illinois (*HC,* 4:311). George Miller lived on the Iowa side of the river just across from Nauvoo, where he had a farm and woodyard to supply river steamers. (Letter of George Miller, 26 June 1855, "Letters of Bishop George Miller," *Journal of History* [*of the Reorganized Church of Jesus Christ of Latter Day Saints*] 10 [January 1917]:27. Hereafter cited as RLDS *Journal of History.*) He apparently acted quite frequently as surety or guarantor for Church officers in other business transactions (*HC,* 5:266). On 24 January 1841 George Miller was called to the office of Bishop in the Church in place of Edward Partridge, deceased (*HC,* 4:286; Doctrine and Covenants of The Church of Jesus Christ of Latter-day Saints [Salt Lake City: The Church of Jesus Christ of Latter-day Saints, 1967], 124:20–21; hereafter cited as D&C). Both George and Henry Miller were leaders with Peter Haws and others in the financing and construction of the Nauvoo House (*HC,* 4:311).

[7]See promissory note, in Treasury Papers. A possible reason for Joseph and Hyrum's remaining in Nauvoo is that their father, Joseph Smith, Sr., died of consumption on 14 September 1840 and probably would have been near death on 10 September (*HC,* 4:189).

[8]See sources cited in footnotes 9 and 26. Register of Miscellaneous Suits in Which the United States Is a Party or Interested, 1834–1848 (hereafter cited as Register of Miscellaneous Suits), in Treasury Papers, specifically identifies Peter Haws as the "Principal" and lists the other four co-makers as "sureties" in the transaction with Robert E. Lee. Even though only sureties, these parties had an obvious interest in promoting Mississippi River traffic. George Miller was already involved with river traffic on the Iowa side; the Smiths had been charged by the Church High Council with the responsibility to "superintend the affairs of the ferry between Nauvoo and Montrose [Iowa]" (*HC,* 4:95). Joseph Smith later acquired a part interest in the *Maid of Iowa,* a steamboat that was utilized as a ferry in 1843–1844 (*HC,* 5:386, 417–18; see fn. 148).

[9]In a 10 September 1840 letter to Captain Lee, U.S. Senator Richard M. Young and D. G. Whitney, a Quincy merchant, stated that the Smiths and Millers were all "good and sufficient for said amount [of the note] and that the Government [was] safe in accepting the same." In a separate letter to Lee on the same date, concerning only the Millers (and concurred in by Illinois Governor Thomas Carlin as to Henry Miller only), Senator Young stated that he had known both Millers "for many years," that they were "considered men in very good circumstances and of ... industrious habits," that both were "proprietors of some valuable lands and other property ... good for several thousand dollars," and that they were "men who would not promise what they are not able to perform." (Treasury Papers.)

Louis, Robert E. Lee endorsed the Mormons' promissory note and deposited it, along with the Streets' note, at the Bank of Missouri for collection when due the next spring.[10]

As soon as it was acquired, the steamboat (renamed the *Nauvoo*) was remodeled and entered in the upper Mississippi River trade.[11] This included hauling lead from the mines upriver in Galena to the market in St. Louis.[12] According to George Miller, Joseph Smith took two trips on the steamer "to keep out of the way of the officers of the law" who were then seeking his arrest to face old charges in Missouri.[13] But before the close of navigation that fall, the steamer was wrecked by running upon the rocks and sandbanks outside the usual steamboat channel.

On 10 August 1840, one month before the Army sale in Quincy, Peter Haws, George Miller, Joseph Smith, and Hyrum Smith had engaged the services of two steamboat pilots, brothers named Benjamin and William Holladay, who were represented to be "skillful and competent pilots with understanding [of] the steamboat channel of the upper Mississippi River."[14] Immediately after the steamer's wreck, Haws, George Miller, and the Smiths engaged counsel and brought a civil action against the Holladay brothers, alleging that they had wrecked the steamboat either carelessly or with intent to destroy it, inflicting $2,000 damage to the vessel and causing plaintiffs to lose $1,000 in profits from operations.[15] The sheriff arrested the Holladay brothers on 30 November 1840, but they were soon released on bond and apparently fled the state.[16]

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[10]Robert E. Lee to Charles B. Penrose, Solicitor of the Treasury, 7 June 1841, in Treasury Papers.

[11]Letter of George Miller, 26 June 1855, RLDS *Journal of History* 10 (January 1917):27; Flanders, "The Des Moines Rapids," pp. 160–61. The Nauvoo Collection of the Historical Department Archives of The Church of Jesus Christ of Latter-day Saints, Salt Lake City, Utah (hereafter cited as Church Archives), has the "ledger" of the steamboat *Nauvoo,* which records the initial debt to the United States and sets out shipping charges from mid-September to mid-December 1840 but has no information on the proprietors of the business. As for the keelboats, it appears that they ultimately might have been used to transport lumber from the pineries of Wisconsin and the upper Mississippi for building the Nauvoo House, the Temple, and other structures in Nauvoo, a project to which George Miller personally devoted a great deal of time (*HC,* 5:57–58, 386).

[12]Summons, pleas, and demurrers in original case file in Smith v. Street, Hancock County Circuit Court, May Term, 1844, Courthouse, Carthage, Ill.

[13]Letter of George Miller, 26 June 1855, RLDS *Journal of History* 10 (January 1917):27.

[14]Complaint in Smith v. Holladay, Hancock County Circuit Court, May Term, 1841, Courthouse, Carthage, Ill.

[15]The complaint for "trespass on the case" fails to state the precise scene or date of the mishap (ibid.).

[16]The outcome of the civil action, which was formally filed with the circuit court on 23 April 1841, is not known with certainty, but it was probably abandoned and dismissed for want of prosecution because of inability to recover damages from the absent defendants. See Bond Notice, re Smith v. Holladay, Hancock County Circuit Court, May Term, 1841, Courthouse, Carthage, Ill.

The steamboat mishap dashed its operators' hopes of meeting their obligations to the United States on the note falling due on 10 May 1841, and the various parties fell into controversy over who should bear the loss. On 7 February 1844 Peter Haws, George Miller, and Joseph and Hyrum Smith brought an action against Charles B. Street, Marvin B. Street, and Robert F. Smith for the $4,000 unpaid balance on their note.[17] It appears from the papers filed in this lawsuit that Haws and his associates had sold the Streets a five-sixth interest in the steamboat and two keelboats, plus two promissory notes from third parties totalling about $800, taking the Streets' note in part or full payment. Because of the damage to the steamboat, the Streets refused to pay their obligation. In defense, the Streets cited a multitude of grievances against the Mormon plaintiffs: the third-party notes received from the plaintiffs were uncollectible; the plaintiffs had failed to deliver one keelboat; and the steamboat had been delivered in a damaged condition, without tackling, anchors, or chimney. In addition, the steamboat had been so slow in delivering a cargo of 180 tons of lead from Galena to St. Louis (probably due to the wreck) that the shipper had suffered serious loss. As a result, the steamboat was encumbered with a lien and gained an unfavorable reputation that interfered with obtaining other cargos. Other encumbrances were alleged, including the expense of raising the steamer's chimney from the Mississippi (probably sunk at the wreck), the cost of new chimneys, and various losses of trade, all totaling well over $4,000, which the Streets sought to set off against their obligation on the note. After a prolonged series of pleas and demurrers, with various rulings by the court, the Mormons' action was finally dismissed on 26 May 1846.[18]

The period 1840–1841 was not an easy time for Mormon businessmen to sustain a large cash loss. The Panic of 1837 followed a period of wild speculation, particularly along the western frontier, and resulted in several years of severe depression throughout the United States.[19] This crisis led to the passage of the Bankruptcy Act of 1841. Flanders describes the general economic conditions in Illinois during the early 1840s as "near a state of collapse" with

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[17]Summons, pleas, and demurrers in original case file in Smith v. Street, Hancock County Circuit Court, May Term, 1844, Courthouse, Carthage, Ill.

[18]Ibid. Circuit Court Record, Hancock County, Book "D," pp. 131, 136, 158, 171, 223–24, 226, 242, 318, 325, 438, and 443 (costs assessed against the plaintiffs), Courthouse, Carthage, Ill.

[19]See C. Warren, *Bankruptcy in United States History* (Cambridge, Mass.: Harvard Univ. Press, 1935), pp. 52–56, 175 fn. 14.

"financial ruin spread throughout the state."[20] The Mormon people were in more desperate straits than the rest of the country generally. As many as 15,000 of them had been driven from their homes in Missouri during the winter of 1838–1839 and had lost property in an amount estimated at between one and two million dollars.[21] Pressed by these losses and by even earlier ones originating in Ohio, leaders in a general conference of the Church held on 4 October 1841 resolved that Church assets should not be appropriated to settle old claims that might be brought forward from Ohio and Missouri.[22]

The due date on the note given for the purchase of the steamboat passed without payment. Notified by the Missouri Bank of the default, Captain Robert E. Lee wrote to his superiors suggesting that the Solicitor of the Treasury order suit on the note.[23] The Solicitor promptly requested that Montgomery Blair, then U.S. Attorney in St. Louis, institute legal proceedings and arrest the obligors if they entered Missouri.[24] When months passed without success under this plan, Blair passed the responsibility for collection to Justin Butterfield, U.S. Attorney for the District of Illinois.[25] Butterfield filed a complaint in the United States District Court for the District of Illinois on 3 April 1842.[26] On 4 May 1842 a summons was served on defendants Henry Miller, George Miller, Joseph Smith, and Hyrum Smith; Peter Haws was not found. It directed them to appear in court in Springfield on the first Monday of June 1842. Thereafter the case was called in Springfield on three separate days, but none of the defendants appeared. Consequently, on 11 June 1842, Judge Nathaniel Pope entered a default judgment against the defendants for the $4,866.38

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[20]Flanders, *Nauvoo: Kingdom on the Mississippi,* p. 167.

[21]See Mormon petition to Congress in 1839 requesting redress of wrongs committed against members of the Church while in Missouri (*HC,* 4:24–38).

[22]Ibid., p. 427.

[23]Robert E. Lee to Charles B. Penrose, Solicitor of the Treasury, 7 June 1841; Col. Joseph G. Totten, Chief Engineer, to John Bell, Secretary of War, 27 May 1841; both letters in Treasury Papers.

[24]Charles B. Penrose, Solicitor of the Treasury, to Montgomery Blair, U.S. Attorney for Missouri, 1 June 1841, in Treasury Papers. Arrest on civil process was a common means of beginning a civil action during this period of time (see Dallin H. Oaks, "Habeas Corpus in the States–1776–1865," *University of Chicago Law Review* 32 (1965):243, 264–66).

[25]Charles B. Penrose, Solicitor of Treasury, to John Bell, Secretary of War, 1 June 1841, in Treasury Papers.

[26]Complaint, United States v. Miller, indexed as the next to the last entry in complete Record of the United States District Court for the District of Illinois, vol. 1, no. 1600 (1819–1827), pp. 529–31, Federal Records Center, Chicago. The full title of this 1843 case is *The United States of America vs. Henry W. Miller, George Miller, Joseph Smith and Hyrum Smith, Impleaded with Peter Hawes* [sic]. This is the only case that is not within the 1819 to 1827 time period covered by that volume.

amount of the note, plus "damages" (probably interest) of $317.93 and court costs of $28.18¾, making a total of $5,212.49¾.[27] Under well-recognized principles of law, this judgment became a lien on all real estate then owned by Joseph Smith and the other obligors.[28]

Following routine practice for the collection of judgments, in July 1842 and again in 1843, writs of execution were issued to the United States Marshal to seize all "goods, chattels, lands, tenements and real estate of the defendants." In each instance the Marshall returned the writs after a few months with this endorsement: "No property found of the defendants subject to said execution."[29] The collection efforts of the United States government did not include any action on the $4,866.38 note payable from the Streets to Haws, George Miller, and the Smiths that had been assigned to the government as collateral security for the Mormons' obligation.

In addition to the general economic depression, the damage to the steamboat, and the nonpayment of the Streets' note, there are other possible reasons for the Mormons' default. First, by 1841 it appeared that the United States government was not willing to appropriate any sums to redress the loss of land and other injuries suffered by the Mormons in Missouri, even though much of the land the Mormons lost was originally acquired from the United States for cash.[30] It was no secret that Church officials had expected a substantial cash settlement from Congress to help defray

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[27]Justin Butterfield to Charles B. Penrose, Solicitor of the Treasury, 13 October 1842; Report of U.S. Marshal to Solicitor of the Treasury, 24 January 1843, both in Treasury Papers. There is no evidence that Joseph Smith had any advance notice of any of these proceedings until he was personally served on 4 May 1842. A possible reason for his failure to appear at the Springfield hearings in June is that on 6 May, two days after Joseph was served, Lilburn W. Boggs (governor of Missouri during the Mormons' expulsion from that state) was shot by an unknown assailant in Independence, Missouri. The Mormons were blamed for this incident, and Joseph Smith had to take precautions against being kidnapped or officially extradited to Missouri to face charges of alleged complicity in the matter. (See *HC,* 5:86–169, 234–37; John J. Stewart, *Joseph Smith: The Mormon Prophet* (Salt Lake City: Mercury Publishing Co., 1966), pp. 172–75.

[28]Law of 3 March 1845, chap. 57, sec. 1, [1845] Rev. Stat. Ill., pp. 300–01; Law of 17 January 1825, sec. 1, [1833] Rev. Laws Ill., pp. 370–71; Jones v. Guthrie, 23 Ill. 367 (1860); Reynolds v. Henderson, 7 Ill. (2 Gilm.) 111, 118 (1845); Rogers v. Dickey, 6 Ill. (1 Gilm.) 637, 644–45 (1844).

[29]Complete Record of the United States Circuit Court for the District of Illinois, vol. 4, no. 1603 (18 June 1841 through 17 July 1852), pp. 488–89 (hereafter cited as Chancery Records). This volume is located at the Federal Records Center in Chicago; a copy of this case is filed in the Brigham Young University Archives as Ms. no. A74–22. See Report of U.S. Marshal to Solicitor of the Treasury, 24 January 1843, in Treasury Papers.

[30]Flanders, *Nauvoo: Kingdom on the Mississippi,* pp. 128–29; see letters from Horace R. Hotchkiss to Sidney Rigdon and Joseph Smith, 7 March 1840, and to Joseph Smith, 1 April 1840, in *HC,* 4:98, 100–02.

current obligations.[31] Thus, it is not surprising that they did not find it in their hearts or their pocketbooks to pay the federal government.

Second, Joseph Smith and the other cosigners of the note as sureties may have been only secondarily liable. If they simply guaranteed Peter Haws's debt, they might have become legally responsible for its payment only if Haws was first sued and defaulted. Nevertheless, when Joseph Smith prepared a list of his debts totalling $73,066.38 during the spring of 1842, he included the following entry at the top of the list of nine creditors:[32] "To the United States of America, September 10, 1840–$4,866.38."

Federal efforts to collect this admitted obligation ran into almost insurmountable difficulties largely because during the first two years of the Mormon settlement in Nauvoo the financial activities of the Church and the personal financial affairs of Joseph Smith were indistinguishable. Efforts to separate the Church's property from the personal property of Joseph Smith began in the winter of 1840–1841, a time of great activity in the formal organization of civic, business, and Church activities in Nauvoo.[33] A special conference of the Church held at Nauvoo on 30 January 1841 took a step of great importance to the Church and its properties by electing Joseph Smith sole trustee-in-trust.[34] This action was confirmed on 8 February 1841 in the manner provided by Illinois law when Joseph and others filed a sworn statement with the county recorder of Hancock County[35] certifying that Joseph was elected sole trustee and vested with

> plenary powers, as sole Trustee in Trust for the Church of Jesus Christ of Latter-day Saints, to receive, acquire, manage, or convey

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[31]See allegations contained in Memorial of inhabitants of Nauvoo in Illinois praying redress for Missouri injuries and also in Memorial of the constituted authorities of the City of Nauvoo in Illinois praying to be allowed a territorial form of government, both dated 5 April 1844, in Records of the U.S. Senate, Record Group 46, in Treasury Papers.

[32]"Schedule setting forth a list of petitioners, creditors, their residence and the amounts due each," cited in Fawn Brodie, *No Man Knows My History,* 2nd ed. rev. enlarged (New York: Knopf, 1971), p. 266, as located in the library of the Reorganized Church of Jesus Christ of Latter Day Saints. For a copy of the complete schedule, see footnote 61.

[33]The act to incorporate the city of Nauvoo, the Nauvoo Legion, and the University of Nauvoo passed the Illinois Legislature and was signed by the governor on 18 December 1840 (*HC,* 4:239–45). It was implemented by formal actions of the elected officials of Nauvoo early in February (*HC,* 4:288–96). On 23 February 1841, the Illinois Legislature passed an act incorporating "The Nauvoo House Association" and four days later passed another act incorporating "The Nauvoo Agricultural and Manufacturing Association" (*HC,* 4:301–05; see also *HC,* 4:274–86, and D&C 124).

[34]*HC,* 4:286.

[35]This certificate was recorded 8 February 1841 as Instrument No. 87 in "Bonds and Mortgages," Book 1, Hancock County Records, Carthage, Ill., p. 95. See *HC,* 4:287–88. The original copy of the certificate is in the Church Archives.

> property, real, personal, or mixed, for the sole use and benefit of said Church.[36]

By their sworn statement, the Church authorities were acting "agreeably to the provisions of an act entitled, 'An Act Concerning Religious Societies,' approved February 6, 1835,"[37] which authorized a religious society to elect or appoint "any number of trustees, not exceeding ten," in whom title to land and improvements owned by the society would be vested.[38]

At a special conference of the Church held in Nauvoo on 16 August 1841, Joseph Smith recommended, and the conference resolved, that "the time had come when the Twelve should be called upon to stand in their place next to the First Presidency, and attend to the settling of emigrants [sic] and the business of the Church at the stakes."[39] Specifically, the Twelve were to "take measures to assist emigrants [sic] who may arrive at the places of gathering, and prevent impositions being practiced upon them by unprincipled speculators."[40] This change was for the stated purpose of lightening the work load of President Joseph Smith so that he might give greater attention to his prophetic duties. The Twelve promptly issued an epistle to the Saints in all parts of the world urging them to gather to the vicinity of Nauvoo, where towns and cities would be designated for their settlement.[41]

The Twelve took notice of the fact that, because of the peculiar situation of the Church up to that point, it had been necessary for the properties of the Church to be "taken and holden by committees of the Church, and private individuals."[42] Now that the Church had a regularly appointed trustee-in-trust, however, it was

> voted unanimously, that we advise the trustee-in-trust to gather up all the deeds, bonds, and properties belonging to the Church, and which are now held either by committees or individuals, and take the same in his own name as trustee-in-trust for the Church of Jesus Christ of Latter-day Saints, as soon as such arrangements can be made consistently with his various and multiplied cares and business.[43]

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[36]*HC,* 4:287.
[37]Ibid.
[38]Law of 1 March 1835, [1834] Laws of Ill., p. 147 (approved 6 February 1835). Note that this act did not incorporate the Church or its president.
[39]*HC,* 4:403.
[40]Ibid, p. 402.
[41]Ibid., pp. 409–10.
[42]Ibid., p. 413.
[43]Ibid.

At the same time, in consideration of the love they felt for Joseph Smith and his family and the great losses the Smiths had sustained by the persecutions in Missouri and elsewhere, the Twelve voted unanimously

> that we for ourselves, and the Church we represent, approve of the proceedings of President Smith, so far as he has gone, in making over certain properties to his wife, children, and friends for their support, and that he continue to deed and make over certain portions of Church property which now exist, or which may be obtained by exchange, as in his wisdom he shall judge expedient, till his own, and his father's household, shall have an inheritance secure to them in our midst, agreeably to the vote of the general conference of the Church held at Commerce in October, 1839.[44]

Within a few months of these events, Joseph Smith began signing legal instruments that distinguished between his personal capacity and his status as trustee-in-trust for the Church. Printed deed forms by which land was conveyed to or from Joseph Smith "as sole trustee in trust for the Church" were in common use in Nauvoo beginning in 1842.[45]

One of the most important deeds executed during this period was a deed from Joseph and Emma Smith (in their individual capacities) to Joseph Smith as trustee-in-trust for the Church. The deed was dated 5 October 1841, the last day of the Church's semi-annual general conference, at which numerous Church property transactions were discussed and the responsibility of Joseph Smith to take title to Church property as trustee-in-trust was reemphasized. The deed was delivered and notarized that same day in the presence of two witnesses.[46] It covered 239 Nauvoo city lots (approximately 300 acres), comprising most of the south half of the

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[44]Ibid., pp. 412–13. Responding to rumors that Joseph Smith was "enriching himself on the spoils" of the Church, Brigham Young and the Quorum of the Twelve, on 12 October 1841, wrote an epistle to the Church members setting forth the extent of Joseph Smith's personal possessions:

> When Brother Joseph stated to the general conference the amount and situation of the property of the Church, of which he is Trustee-in-Trust by the united voice of the Church, he also stated the amount of his own possessions on earth; and what do you think it was? We will tell you: his old Charley (a horse) given him in Kirtland, two pet deer, two old turkeys and four young ones, the old cow given him by a brother in Missouri, his old Major (a dog), his wife, children and a little household furniture; and this is the amount of the great possessions of that man whom God has called to lead His people in these last days. (Ibid., pp. 437–38.)

[45]The Joseph Smith Collection in the Church Archives (hereafter cited as Joseph Smith Collection) contains approximately ten such deeds dated 1842 and 1843, as well as three handwritten bonds relating to the sale of Nauvoo real estate by or to Joseph Smith as trustee-in-trust, dated 1841 and 1842.

[46]The deed is in Box 4, folder 7, Joseph Smith Collection. The lengthy notarial certificate was verified by Ebenezer Robinson, Justice of the Peace, and by Willard Richards, witness.

riverfront section of Nauvoo originally purchased in 1839.[47] In accordance with principles of law, this deed was effective on the date of its valid execution and delivery; but in order to give added protection against the possible interests of third parties, it was desirable that it be recorded. This was done at the office of the county recorder in Carthage on 18 April 1842.[48] This six-month delay in recording such an important deed was later relied upon as evidence of an intent to defraud.

While the Mormon leaders were engaged in these rearrangements of property ownership, Congress, on 19 August 1841, passed a bankruptcy act to become effective 1 February 1842.[49] This law was the first federal bankruptcy law permitting debtors to file voluntary petitions in bankruptcy.[50] The Congressional debates and action on the Bankruptcy Act received their share of attention in the non-Mormon newspapers of western Illinois, which published at least two reasonably accurate summaries.[51] The Mormon press made no mention of the subject until two months after the law went into effect.

Despite the newspaper publicity in Warsaw and Quincy, which included warnings that persons interested in discharge should act quickly since there were efforts to repeal the bankruptcy law in Congress,[52] there was no sudden rush to the bankruptcy court. An examination of the notices that the law required to be published in the local press shows that bankruptcy petitions

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[47]Flanders, *Nauvoo: Kingdom on the Mississippi,* p. 170. An examination of the original Nauvoo city plat dated 30 August 1839, recorded in Hancock County Plat Book No. 1, pp. 38–39, shows that the transfer in question covered most of the southerly or lower part of Nauvoo (Section 2, Township 6 North, Range 9 West of the 4th principal meridian) bounded by Ripley Street to the north, Wells Street to the east, and the Mississippi River bend to the south and west, including all of the Hugh and William White and Galland purchases. Only 31 of the 270 blocks in this area were completely excluded.

[48]See fn. 46; Hancock County Deed Book "K," pp. 159–61.

[49]Bankruptcy Act of 1841, chap. 9, 5 Stat., pp. 440–49.

[50]See Warren, *Bankruptcy in United States History,* p. 60. The prior short-lived federal Bankruptcy Act of 1800 permitted only compulsory bankruptcy instituted by creditors (ibid., p. 20).

[51]Articles covering the progress and passage of the bankruptcy bill were published in the *Quincy Whig,* 14 August 1841, p. 1, col. 7; 28 August 1841, p. 2, col. 6; 4 September 1841, p. 3, col. 1; *The Warsaw Signal,* 1 September 1841, p. 3, col. 1; 8 September 1841, p. 2, col. 4. Summaries appear in *The Warsaw Signal,* 8 September 1841, p. 2, col. 4, and 27 October 1841, p. 3, cols. 1–2.

[52]See *The Warsaw Signal,* 5 January 1842, p. 2, col. 1; 2 February 1842, p. 2, col. 3. General information concerning procedures for filing in bankruptcy was publicized in *The Warsaw Signal,* 5 January 1842, p. 2, col. 1, and *Quincy Whig,* 12 February 1842, p. 2, col. 3. Applications could be filed with the federal District Court clerk in Springfield after 1 February 1842 (*Quincy Whig,* 12 February 1842, p. 2, col. 3). Notice of publication in two newspapers (including one at Springfield) was required at least twenty days before bankruptcy hearings could be held (*The Warsaw Signal,* 5 January 1842, p. 2, col. 1).

started with a trickle and became numerous only for those law firms that promoted and advertised for the bankruptcy business. The first notices published in western Illinois were for non-Mormons in Quincy, Adams County, where a law firm with an aggressive advertising campaign promoted bankruptcy and captured most of the business.[53] With the exception of a single notice published in March, no bankruptcy notices were published in Hancock County newspapers until mid-April.[54]

The firm of Ralston, Warren & Wheat initiated the bankruptcy remedy among the Mormons with a visit to Nauvoo in April 1842. The initial issue of *The Wasp* (16 April), Nauvoo's first general weekly newspaper, carried a notice that this firm was "prepared to attend to all applications for discharge under the Bankrupt Law" and that a member of the firm would be in Carthage and Nauvoo on or about 14 April for three or four days on such business.[55] So far as can be determined from a search of available newspapers, diaries, and minutes of official meetings, this April visit was the Mormons' first introduction to the idea of bankruptcy. In just three weeks, *The Wasp* carried its first notices of Mormons filing petitions in bankruptcy. The first group, twelve in number, included Joseph and Hyrum Smith and Sidney Rigdon.[56] Other Mormons filed their notices later that spring or summer, making a total of at least twenty-six who applied for the benefits of the Bankruptcy Act.[57]

Joseph Smith received his first explanation of the Bankruptcy Act from Calvin A. Warren in Nauvoo on 14 April 1842. The *History of the Church,* taken from Joseph's personal papers and the notes of his clerks, records a brief but generally accurate summary of the Act, along with Joseph's doubts about whether he should

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[53]During January, February, and March of 1842, the *Quincy Whig* carried notices in which the Quincy law firm of Lot, Dixon & Gilman advertised their availability to handle cases under the Bankruptcy Act (e.g., *Quincy Whig,* 19 February 1842, p. 3, col. 3). Most of the increasing numbers of published notices of bankruptcy filings for Adams County in 1842 listed this firm as solicitor (see, e.g., *Quincy Whig,* 26 February 1842, p. 3, cols. 1–2; 5 March 1842, p. 3, col. 3; 2 April 1842, p. 3, col. 2; 9 April 1842, p. 3, col. 3; 16 April 1842, p. 3, col. 3).

[54]See *The Warsaw Signal,* 9 March 1842, p. 3, col. 6; 12 April 1842, p. 3, col. 6; 20 April 1842, p. 3, cols. 1, 6.

[55]*The Wasp,* 16 April 1842, p. 3, col. 4.

[56]Ibid., 7 May 1842, p. 3, cols. 2–4. Others are listed in *Sangamo Journal,* 6 May 1842, p. 1, cols. 4–7; 1 July 1842, p. 3, cols. 1–7, p. 4, cols. 1–7.

[57]Ibid., 14 May 1842, p. 3, col. 4; 18 June 1842, p. 3, col. 4; 16 July 1842, p. 3, cols. 2, 4; *Sangamo Journal,* 1 July 1842, p. 3, col. 4, p. 4, col. 7. By letter dated 3 June 1842 to Joseph Smith, attorney Calvin Warren referred to a total of twenty-six bankruptcy cases committed to his care in Nauvoo, and with his letter of 13 July 1842 he transmitted notices of another six for publication in the Nauvoo *Wasp* (Box 3, folder 2, Joseph Smith Collection).

seek the relief it provided.[58] Despite his expressed concern about "the justice or injustice of such a principle in law," Joseph finally decided he was justified in taking "that course to extricate [himself], which the law had pointed out,"[59] due to the mobbings and plunderings he had suffered (blamed in part on inaction by the very Congress that had enacted the new bankruptcy law), the necessity of contracting heavy debts for the benefit of his family and friends, the fact that bankruptcy petitions by his own debtors had prevented his collections from them, and the fact that he would otherwise face destitution, "vexatious writs, and lawsuits, and imprisonments." On 15 April he was "busily engaged in making out a list of debtors and an invoice of [his] property to be passed into the hands of the assignee."[60] His list of debts totaled $73,066.38; the invoice of his properties totaled approximately $20,000 in money and notes receivable, plus inventoried real and personal property, with no estimated value recited.[61]

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[58]*HC,* 4:594–95. The law provided that any person "owing debts, which shall not have been created in consequence of a defalcation as a public officer; or as executor, administrator, guardian or trustee, or while acting in any other fiduciary capacity" would be privileged to file a petition setting out a list of creditors and the amount due to each, together with an accurate inventory of all of his property, rights, and credits, and "declare themselves to be unable to meet their debts and engagements." The Act provided that such persons "shall be deemed bankrupts within the purview of this act," whereupon the court should appoint an assignee to manage and dispose of their property (but exempting the family's wearing apparel and necessary household articles not exceeding $300 in value) and pay the proceeds to the creditors, after which a qualifying bankrupt would "be entitled to a full discharge from all his debts." (The Bankruptcy Act of 1841, chap. 9, secs. 1–4, 5 Stat., pp. 440–43.)

[59]*HC,* 4:594–95.

[60]Ibid., pp. 599–600.

[61]The complete list of Joseph's debts as cited by Brodie, *No Man Knows My History,* p. 266, is as follows:

To The United States of America, Sept. 10, 1840	$ 4,866.38
To Horace R. Hotchkiss and Co., Fair Haven, Conn.	$50,000.00
To John Wilkie, Nauvoo	$ 2,700.00
To William and Jacob Backenstos, Carthage	$ 1,000.00
To John (name illegible)	$ 1,100.00
To Truman Blodget	$ 100.00
To William F. Cahoon, Nauvoo	$ 500.00
To Edward Partridge's estate, Nauvoo	$10,000.00
To Amos Davis, Nauvoo	$ 2,800.00
Total	$73,066.38

An undated three-page "Inventory of Property," signed by Joseph Smith (Joseph Smith Collection; Item 7-Z-b-7, Wilford C. Wood Collection, in custody of Lillian Woodbury Wood, Woods Cross, Utah; hereafter cited as Wood Collection), and the schedule of creditors apparently arose out of Joseph's efforts to comply with the Bankruptcy Act (see Flanders, *Nauvoo: Kingdom on the Mississippi,* pp. 168–70).

On Monday, 18 April 1842, Joseph and other Mormon leaders rode to Carthage to swear to their affidavits of insolvency before the clerk of the County Commissioner's Court, as required by law.[62] Joseph Smith explained in the *History of the Church* that he and his companions "were reduced to the necessity of availing [them]selves of the privileges of the general bankrupt law" because of the "utter annihilation of [their] property by mob violence in the state of Missouri, and the immense expenses which [they] were compelled to incur, to defend [them]selves from the cruel persecutions of that state."[63] Within a few weeks, Joseph wrote land developer Horace R. Hotchkiss, probably his largest creditor, to explain why he had been forced to this step but assured him of his continuing intention to pay the debt in full, perhaps even from the inventory of property that would be turned over to the assignee upon obtaining a discharge in bankruptcy.[64]

The persons who filed bankruptcy applications during the spring of 1842 generally received discharges from all their debts during the fall of 1842.[65] The national mood at that time was in favor of facilitating these discharges. In fact, a Treasury circular of 9 May 1842 officially discouraged U.S. Attorneys from opposing applications in bankruptcy and limited their fees to a mere per diem allowance of $5 while attending hearings to oppose such applications.[66] On 3 January 1843 the clerk of the United States District Court in Illinois reported that no decrees of final discharge had yet been refused in that court and that only eight of the 1,433 applications then pending in bankruptcy had been opposed by creditors.[67]

But the laws were often abused. Non-Mormon land developer

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[62]*HC,* 4:600. The Prophet's complete application for bankruptcy has never been discovered. Since he never received a decree of discharge, it is likely that neither his application nor any of the subsequent proceedings were officially preserved. (Flanders, *Nauvoo: Kingdom on the Mississippi,* p. 169 fn. 68.)

[63]*HC,* 4:600. Further explanations and justifications for this step are supplied in B. H. Roberts, *The Rise and Fall of Nauvoo* (Salt Lake City: Bookcraft, 1965), pp. 132–33.

[64]*HC,* 5:6–7, 51–52, 195–96, 382–83.

[65]According to contemporary newspaper notices and correspondence to Joseph Smith from Calvin Warren, dated 3 June 1842, and from the firm of Aldrich & Chittenden, dated 28 July 1842, the District Court in Springfield granted primary decrees for at least twenty-six Mormon applicants on 8 June 1842 and scheduled hearings for their final discharge on 1 October 1842 (Box 3, folder 2, Joseph Smith Collection). Except for Joseph and Hyrum Smith, there is no indication that any of these applicants failed to obtain a discharge at the 1 October hearings in Springfield, and even Hyrum Smith was ultimately discharged in December (see fn. 92).

[66]Justin Butterfield to Charles B. Penrose, Solicitor of the Treasury, 2 August 1842, in Treasury Papers.

[67]Status report from James F. Owings, the Illinois District Court clerk, in response to request from Daniel Webster, Secretary of State, 3 January 1843, in *S. Exec. Doc. No.* 19, 27th Congress, 3rd Session, 2 (1842–1843):173–74.

Mark Aldrich and non-Mormon bankruptcy attorney Calvin A. Warren obtained discharges from substantial debts and then reacquired most of their own property, directly or indirectly, by purchase at relatively nominal prices at the bankruptcy sale.[68] Such abuses led to the early repeal of the bankruptcy legislation.[69]

Despite official reluctance to challenge bankruptcy applications and the ease of obtaining discharges during this period, Joseph Smith's case was singled out for special attention and opposition. His initial enemy was John C. Bennett, the disaffected Mormon who had been expelled late in May 1842 from his positions as mayor of Nauvoo and counselor to Joseph Smith.[70] In June and July, Bennett published a series of letters in the Springfield, Illinois, *Sangamo Journal,* making a wide range of accusations against Joseph Smith, including a charge that Joseph was attempting to swindle his creditors by fraudulently conveying or "secreting property . . . for the benefit of himself and family in order to obtain the benefit of the Bankrupt Act."[71]

The first of Bennett's letters appeared during the same month that U.S. Attorney Justin Butterfield obtained a default judgment (June 1842) against Joseph Smith and others in the matter of the steamboat obligation. During August 1842, Butterfield obtained permission from the Solicitor of the Treasury to oppose Joseph and Hyrum Smith's applications for discharge in bankruptcy. In making this request, Butterfield referred specifically to John C. Bennett's charges and even enclosed a copy of one of Bennett's July letters in the *Sangamo Journal.* Butterfield also indicated that the other defendants were all "insolvent."[72] In his reply, the Solicitor of the Treasury directed Butterfield to "take the necessary

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[68]General Bankruptcy Records, United States District Court for the District of Illinois, 3 (1838–1858):258–66, 283–88, 471, 493–96, 500.

[69]In Illinois, the situation got so far out of hand that on 10 February 1843 the General Assembly at Springfield adopted a joint resolution calling for a repeal of the Bankruptcy Act in view of the "unjust advantages of the law," which allowed debtors utterly to disregard their obligations (*Journal of the House of Representatives of Illinois,* 13th Gen. Ass'y [1843], p. 358).

[70]*HC,* 5:12, 18–19; Roberts, *The Rise and Fall of Nauvoo,* pp. 135–40. Bennett apparently was also involved in efforts to extradite Joseph Smith to Missouri to face charges involving the attempted assassination of ex-Governor Boggs (see fn. 27; *HC,* 5:250–51; Stewart, *Joseph Smith: The Mormon Prophet,* p. 171).

[71]Justin Butterfield to Charles B. Penrose, Solictor of the Treasury, 2 August 1842, in Treasury Papers (summarizing "Gen. Bennett's Third Letter" in *Sangamo Journal,* 15 July 1842, p. 2, cols. 6–7).

[72]Justin Butterfield to Charles B. Penrose, Solicitor of the Treasury, 2 August 1842, in Treasury Papers. The United States had standing to oppose the discharge since it was a creditor under the judgment on the steamboat debt. This was, in fact, the most important claim, since the Bankruptcy Act provided that debts due the United States should be paid in full, ahead of all other creditors. (Bankruptcy Act of 1841, chap. 9, sec. 5, 5 Stat., p. 444.)

steps" to oppose the applications of both Joseph and Hyrum Smith, consistent with the aim of keeping the cost to "as small an amount" as possible.[73]

After a September trip to consult land records in Nauvoo and Carthage, Butterfield wrote the Treasury Solicitor on 11 October 1842 that he had found sufficient evidence to sustain Bennett's accusations of fraud by Joseph Smith and had even found other deed conveyances to or from Joseph not mentioned by Bennett.[74] Butterfield probably discovered some of the many conveyances Joseph Smith continued to execute or receive (probably on the advice of counsel) in his capacity as trustee for the Church after he had filed for bankruptcy in his personal capacity.[75] In any event, Butterfield wrote that he had appeared at the 1 October hearings in Springfield, armed with certified copies of various deeds, and had successfully opposed the Smiths' discharges in bankruptcy.[76]

Butterfield's written objections to discharge, as formally filed with the court on 1 October, contained several general grounds for opposition:[77]

1. *Wrongful conveyances in contemplation of bankruptcy.* Butterfield first charged that Joseph Smith in contemplation of bankruptcy transferred property to persons who were not bona fide creditors or purchasers for a valuable consideration.[78] Butterfield did not identify any specific conveyances or include other supporting details for his general objections, other than by reference to Bennett's published accusations. Bennett's earlier attack had specified

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[73]Charles B. Penrose, Solicitor of the Treasury, to Justin Butterfield, 12 August 1842, in Treasury Papers. Notwithstanding the government's policy of confining the per diem allowance to time spent actually attending hearings, the solicitor agreed to compensate Butterfield at "the customary fee for each day engaged about this business," plus travel expenses.

[74]Justin Butterfield to Charles B. Penrose, Solicitor of the Treasury, 11 October 1842, in Treasury Papers.

[75]*HC,* 4:608, 5:21, 25, 296. In evaluating Joseph Smith's petition for bankruptcy, Flanders mistakenly charges that "Smith chose to ignore the provision of the law that no trustee-in-trust was eligible for bankruptcy" (Flanders, *Nauvoo: Kingdom on the Mississippi,* p. 169). However, the Bankruptcy Act did not prevent the discharge of *persons* who were trustees but only of "*debts* . . . created . . . [by an] executor, administrator, guardian or trustee, or while acting in any other fiduciary capacity" (Bankruptcy Act of 1841, chap. 9, sec. 1, 5 Stat., p. 441 [italics added]). Statute quoted more fully in footnote 58. A person who could not obtain a bankruptcy discharge from his trustee debts was nevertheless eligible for discharge from his personal debts, which is what Joseph Smith attempted to obtain. (See Chapman v. Forsyth, 43 U.S. [2 How.] 202 [1844]; Morse v. City of Lowell, 48 Mass. [7 Met.] 152 [1843].)

[76]Justin Butterfield to Charles B. Penrose, Solicitor of the Treasury, 11 October 1842, in Treasury Papers.

[77]Objections to discharge of Joseph Smith under Bankruptcy Act dated 1 October 1842, in Box 4 of Joseph Smith Collection and as item 7-Z-b-8 & 39 in Wood Collection.

[78]This objection relates generally to the second portion of section 2 of the Bankruptcy Act of 1841, chap. 9, 5 Stat., p. 442.

seven conveyances that he alleged were fraudulently made by Joseph Smith—one to his wife, Emma, four to his children, and two to himself as trustee for the Church.[79] However, four of these conveyances were made by persons not related to Joseph Smith or his family and therefore would not qualify as conveyances "made or given by [a] bankrupt" within the prohibitions of the Act. As to the remaining three, the issue was whether Joseph made them "in contemplation of bankruptcy."

2. *Preferential transfers to certain creditors prior to passage of the Act.* Butterfield further charged that since 1 January 1841 Joseph Smith had made invalid transfers to some of his creditors in preference to other creditors in contemplation of the passage of the Bankruptcy Act.[80] Although Butterfield listed no examples, Bennett's earlier charges had. All of the conveyances Bennett had specified in his published letters were executed and recorded after 1 January 1841. However, none were made to *creditors* of Joseph Smith or his family. Therefore, unless Butterfield found proof that Joseph had made at least one conveyance to a creditor, this objection was ill-founded, even if, as is by no means certain, such conveyance could be shown to have been made "in contemplation of passage" of the Bankruptcy Act.

3. *Transfers after passage of the Act.* According to Butterfield's objections, after passage of the Act on 19 August 1841, Joseph Smith, in contemplation of bankruptcy, transferred property to some of his creditors and to other persons in order to give them a priority or preference over his general creditors.[81] Of the seven conveyances cited by Bennett, only two were dated or recorded after passage of the Act. One was the major conveyance to the Church. Again, the issue was whether these two conveyances were made "in contemplation of bankruptcy."

4. *Concealment of assets and omissions from inventory.* Perhaps relying on the fact that the conveyances cited in Bennett's newspaper accusations were not found in the inventory of property filed by Joseph Smith, Butterfield charged that Joseph failed to make an accurate inventory of his property rights and credits as required by the Act, thereby willfully concealing such property from his creditors or attempting to preserve the same for the future benefit of

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[79]Letter from John C. Bennett to the Editor, 4 July 1842, in *Sangamo Journal,* 9 July 1842, p. 2, cols. 6–7.

[80]This charge relies on the second paragraph of section 2 of the Bankruptcy Act (see fn. 78).

[81]This allegation corresponds with the first portion of section 2 of the Bankruptcy Act (see fn. 78).

himself and family by causing conveyances to his wife, children, and friends to be made but not listed in such inventory.[82] This objection is basically the same as some of the foregoing objections, but it relies on a separate section of the Act.

Since John C. Bennett was then an implacable enemy of the Mormons, his charges of fraud carry little weight. But those of U.S. Attorney Justin Butterfield, one of the best lawyers of his day, are entitled to careful consideration.

In order for any deed executed by Joseph Smith to be deemed void and fraudulent under this law, the government had to prove that the deed had been made either "in contemplation of bankruptcy" or "in contemplation of the passage of a bankrupt law."[83] There is no evidence that Joseph Smith had understood or even heard of the Bankruptcy Act until attorney Warren explained it to him in Nauvoo on 14 April 1842. As shown earlier, none of the Mormon newspapers carried any prior information concerning the new bankruptcy law, and no one in or around Nauvoo had filed for bankruptcy before Calvin Warren advertised in the Nauvoo paper and visited Nauvoo to promote his bankruptcy business. Joseph Smith filed four days later, and a procession of other Mormons followed.

As previously noted, Justin Butterfield did not substantiate his general allegations of fraud with any evidence. Nor did he make a specific allegation that prior to filing in bankruptcy Joseph Smith had made a single conveyance in contemplation of bankruptcy. In contrast, there is abundant evidence, summarized above, to show that the deeds probably relied upon by Justin Butterfield at the 1 October bankruptcy hearing were executed according to a policy adopted prior to the Bankruptcy Act–and vigorously promoted by the Quorum of the Twelve–of separating Joseph's personal properties from those held in trust and of making adequate provision for his family out of the latter.

In addition, Butterfield's objections ignored the following crucial provision of the Act:

> *Provided,* That all dealings and transactions by and with any bankrupt, bona fide made and entered into more than two months before the petition filed against him, or by him, shall not be invalidated or affected by this act.[84]

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[82]This objection refers to section 1 of the Bankruptcy Act (see fn. 78). See also Inventory of Property (fn. 61).

[83]Bankruptcy Act of 1841, chap. 9, sec. 2, 5 Stat., p. 442.

[84]Ibid.

Thus, the bankruptcy law did not invalidate or affect any dealings and transactions "entered into more than two months before" the filing of a petition in bankruptcy. Consequently, all of Joseph's bona fide deeds prior to 18 February 1842 were immune from attack under the bankruptcy law. Although we cannot be sure which deeds were relied upon by Butterfield, all but one of the deeds publicized by Bennett were dated as having been made in 1841, and only two were recorded after 18 February 1842.[85]

By far the most substantial conveyance listed by Bennett was the last deed recorded by Joseph Smith before he filed for bankruptcy: the conveyance dated 5 October 1841, transferring 239 Nauvoo lots (300 acres) to himself as trustee for the Church.[86] Bennett claimed that, despite its earlier date, this deed was actually executed a day or two before Joseph's filing for bankruptcy—that it was fictitiously backdated to 5 October 1841 and then recorded at the county seat 18 April 1842 while Joseph was there to file for bankruptcy.[87] If the deed were backdated in this manner, it would have been fraudulent and void under the bankruptcy law.

However, there is persuasive evidence to support the accuracy of the 5 October 1841 date. First, the sworn statements of reliable witnesses to the delivery and notarization of the deed on 5 October are evidence of its authenticity. Second, official deed records for this period show that it was not uncommon for executed deeds to be held unrecorded for months or even years before being entered in the official county records. This was particularly true during the period preceding the spring of 1842, when the Nauvoo Registry of Deeds was established to afford greater recording convenience for the Mormons. Third, there is no indication in Church journals that Joseph Smith visited Carthage at any time between 5 October 1841 and 18 April 1842. Finally, and perhaps most importantly, the conveyance in question related logically to other transactions that took place within the Church organization in October 1841.

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[85]Letter from John C. Bennett to the Editor, 4 July 1842, in *Sangamo Journal,* 9 July 1842, p. 2, cols. 6–7 (listing the seven separate conveyances).

[86]See text accompanying fns. 46 and 47.

[87]Letter from John C. Bennett to the Editor, 4 July 1842, in *Sangamo Journal,* 9 July 1842, p. 2, cols. 6–7. In support of this charge, Bennett baldly stated, without further elaboration: "for so Joe informed me." He also claimed that a "Mr. Marshall, Mr. Sherman and others, of Carthage, will state that the writing [on the deed] was *fresh,* and *changed materially in appearance soon after.*"

> The coincidence of the bankruptcy with the recording of this deed is not extraordinary, and there seems to be nothing to substantiate Bennett's charge. The October 5, 1841, date was acknowledged on the deed by Ebenezer Robinson as Justice of the Peace. It was the last day of a semi annual General Conference that had concerned itself with the Hotchkiss debt and the land problems of the Church in general. The Twelve had been urging Smith to get the Church properties deeded to the Trustee-in-Trust, and it is reasonable to assume that the transfer in question was made at that time.[88]

After Butterfield successfully opposed the Joseph and Hyrum Smith applications for discharge in bankruptcy at the 1 October 1842 hearings, the court set their cases over for further hearings on 15 December. Butterfield predicted to his superiors that he would defeat the application of Joseph Smith in December.[89]

During November and early December, Joseph conferred with counsel and made further preparations to pursue his attempt to be discharged in bankruptcy. For example, a journal entry of 4 December 1842 records Joseph's continued efforts to inventory his property and schedule his liabilities so that he and Hyrum "might be prepared to avail [themselves] of the laws of the land as did others."[90]

On 9 December, Hyrum Smith, Willard Richards, Heber C. Kimball, Peter Haws, and others started for Springfield to attend the bankruptcy hearing. Why Joseph did not accompany them does not appear.[91]

Contrary to Butterfield's confident prediction that he would finally defeat the applications of Joseph and Hyrum Smith, Hyrum was granted his discharge in bankruptcy at the 15 December hearing, and an "arrangement" was made with Justin Butterworth for Joseph's discharge.[92] By written offer dated 16 December 1842, Joseph's delegates to Springfield proposed, on behalf of the Church High Council, "to secure the payment of the judgment in favor

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[88]Flanders, *Nauvoo: Kingdom on the Mississippi,* p. 170.

[89]Justin Butterfield to Charles B. Penrose, Solicitor of the Treasury, 11 October 1842, in Treasury Papers.

[90]*HC,* 5:200. See also pp. 183–84, 195–97.

[91]Ibid., pp. 200, 204, 207.

[92]Copy of decree of final discharge entered by U.S. District Court for Illinois on 16 December 1842, certified by Court Clerk James F. Owings, found in Hyrum Smith Collection, Ms. d 891, Box 2, Church Archives. See *HC,* 5:205. No explanation has been discovered as to why Hyrum Smith was allowed his discharge, but it was presumably due to his relatively small holdings in contrast to Joseph's. The Treasury Department consistently regarded Joseph Smith as the primary target for opposition, and the Solicitor's consent to Hyrum's discharge was apparently neither sought nor given. In addition, Butterfield listed fewer grounds of objection in his October opposition to Hyrum's application than in that of Joseph Smith's. (Item 4-N-b-40, folder #44, in Wood Collection; see fn. 77.)

of the United States" by providing "a Bond, signed by individuals sufficiently good and responsible," for the amount of the judgment ($5,212.49), payable in four equal annual installments with interest. Payment on the bond, in turn, would be secured "by a mortgage on real estate, situated in the State of Illinois, to which there shall be a perfect title and worth double the amount of the said debt."[93]

Despite the obvious generality of the Mormon proposal (which did not identify the individuals who would sign the bond or the real estate that would be given as security) and the disadvantage of a four-year payoff period, Butterfield immediately wrote the Treasury recommending that the offer be accepted and that the government's resistance be withdrawn so that Joseph Smith could be discharged in bankruptcy.[94] Butterfield's willingness to accept this offer—a startling contrast to his previous spirited opposition to Joseph Smith—may have been affected by his recent closer acquaintance with Joseph while acting as counsel *for* the Mormon prophet in another matter. In a notable controversy that began in October and concluded in a federal proceeding on 5 January 1843, Butterfield successfully obtained Joseph's complete release from a Missouri extradition order on charges of complicity in the attempted murder of ex-Governor Boggs.[95] During the trial preparation and in-court proceedings in Springfield the last week of December and the first week of January, Joseph Smith worked closely with Butterfield and was impressed by his forceful arguments and judicious management of the case. This cordial respect

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[93]Letter from "the High Council," signed by Hyrum Smith, Peter Haws, Heber C. Kimball, Henry G. Sherwood, Alpheus Cutler, and Willard Richards, to Justin Butterfield, 16 December 1842, in Treasury Papers.

[94]Justin Butterfield to Charles B. Penrose, Solicitor of the Treasury, 17 December 1842, in Treasury Papers.

[95]See fn. 27. On Butterfield's advice, Joseph had himself arrested in Nauvoo on 26 December 1842, arrived in Springfield 30 December, and appeared before Judge Pope for trial 4 January 1843 (*HC,* 5:173–79, 206, 209, 211–12, 220). A contemporary of Justin Butterfield described one colorful episode during this trial:

> On the trial of Joe Smith, the great Mormon prophet, at Springfield, before His Honor Judge Pope, of the United States District Court, the courtroom was crowded, and a large number of ladies were seated on both sides of the judge, upon the bench. Butterfield, who had been employed to defend the prophet, in opening the case, bowing to the judge and waving his hand to the ladies, said: "May it please your Honor, I appear before the Pope, in the presence of angels, to defend the prophet of the Lord!"

Usher F. Linder, *Reminiscences of the Early Bench and Bar of Illinois,* 2nd ed. (Chicago: Chicago Legal News Co., 1879), p. 88. Judge Pope's long and scholarly decision of 5 January 1843, completely clearing Joseph Smith of all charges and granting his discharge, is reproduced in *The Wasp,* 28 January 1843, p. 1, cols. 2–4, p. 2, cols. 1–4, and in *HC,* 5:223–31.

was apparently mutual,[96] and during the trial, which was held before the same federal judge (Pope) who had issued the U.S. note default judgment and presided over the bankruptcy matter, Butterfield stoutly defended Joseph Smith as "an innocent and unoffending man."[97] As compensation for his legal services, Butterfield received $50 in cash and accepted two notes of $230 each from Joseph Smith,[98] hardly indicating any distrust of the Prophet's personal or financial integrity. Joseph also took advantage of this relationship to seek Butterfield's advice on 5 January concerning the pending bankruptcy matter and certain technical consequences that might flow from his discharge in bankruptcy.[99]

Meanwhile, the Treasury Solicitor, by return letter of 11 January 1843, directed Butterfield to reject the Mormon proposition he had recommended. The Solicitor reasoned that if the bond offered by the Church High Council were defaulted the prospect of collecting it would be at least as formidable as a proceeding against the assets of Joseph Smith. As a counteroffer, however, the Solicitor proposed an immediate payment of one-third of the debt with a confession of judgment for the balance, to be secured by a mortgage payable in three annual installments. He authorized Butterfield to withdraw opposition to the discharge in bankruptcy if these terms were accepted, but otherwise directed him to resist the discharge and proceed to collect the judgment by a suit against Joseph Smith's property.[100]

This counterproposal, which might well have been put into effect, was either delayed or failed to reach Butterfield at all. On 25 May 1843, Butterfield sent a second letter inquiring whether the Treasury would authorize him to accept the original Mormon proposal.[101] It is unclear whether Butterfield ever received a response to that inquiry, and the matter apparently passed from official attention for over a year, although Joseph Smith and Butterfield did

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[96]The Prophet also had cordial social encounters and religious discussions with Justin Butterfield, Judge Pope, and Judge Pope's family (*HC,* 5:222–23, 232–33).

[97]*HC,* 5:222. Butterfield also described Joseph Smith in the following terms: "If there is a difference between him and other men, it is that this people believe in prophecy, and others do not; the old prophets prophesied in poetry and the modern in prose" (ibid.).

[98]Ibid., p. 232.

[99]See Joseph Smith Journal, 21 December 1842 to 10 March 1843, pp. 102–03 (January 1843), on file in Box 1, folder 5, Church Archives. The subject matter of this discussion primarily concerned the status of the Hotchkiss debt and the survivability following bankruptcy of any rights to Nauvoo properties purchased from the Hotchkiss syndicate.

[100]Charles B. Penrose, Solicitor of the Treasury, to Justin Butterfield, 11 January 1843, in Treasury Papers.

[101]Justin Butterfield to Charles B. Penrose, Solicitor of the Treasury, 25 May 1843, in Treasury Papers.

have further cordial communications on various subjects.[102] Before the matter of Joseph's discharge in bankruptcy was finally resolved, he and Hyrum were murdered at Carthage on 27 June 1844.[103] So it was that because of unresolved United States government opposition arising out of an unpaid judgment from his suretyship role in the purchase of the steamboat *Nauvoo,* Joseph Smith was never discharged in bankruptcy.[104]

The bankruptcy act that went into effect 1 February 1842, and proved to be of no benefit to Joseph Smith, was of only short-lived benefit to anyone. In practice, it provided few protections for creditors; it was administered so loosely that it encouraged mishandling of properties and misstatement of assets and liabilities by debtors. It proved an insufficient aid to an honest debtor but an unlimited opportunity for fraud by a dishonest one. The next session of Congress hastily repealed the law on 3 March 1843, just thirteen months after it became effective.[105]

With the death of Joseph Smith on 27 June 1844, the focus of controversy over his steamboat debt to the United States shifted from the federal district court, exercising bankruptcy jurisdiction, to the state probate court in Hancock County, Illinois, where the intestate estate of Joseph Smith was administered. Since Joseph left no will, his property descended to his wife, Emma, and surviving children: Julia M. Smith (adopted), age thirteen, Joseph Smith III,

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[102]For example, on 19 March and 2 April 1843, Joseph exchanged letters with Butterfield concerning the incarceration of Orrin Porter Rockwell, Joseph Smith's bodyguard, who was held in a Missouri jail for allegedly shooting ex-Governor Boggs (*HC,* 5:303, 308, 326). Butterfield visited Nauvoo during October 1843. Joseph Smith spent considerable time "preparing some legal papers," then "riding and chatting" with Butterfield (*HC,* 6:45–46). The final journal references to Justin Butterfield involve letters to him on 18 January 1844 and in May 1844 (*HC,* 6:179, 406).

[103]See Dallin H. Oaks and Marvin S. Hill, *Carthage Conspiracy: The Trial of the Accused Assassins of Joseph Smith* (Urbana: Univ. of Chicago Press, 1975), for an account of the murder and subsequent trial of the accused assassins. Five weeks after the assassination, Justin Butterfield included the following cryptic entry in his report of the June 1844 term of the District Court: "I defeated Joseph Smith the Mormon Prophet from obtaining the benefit of the Bankrupt Act." Butterfield stated that he would next travel to Quincy to gather further evidence and then file a bill in chancery against the assets of Joseph Smith. (Justin Butterfield to Charles B. Penrose, Solicitor of the Treasury, 6 August 1844, in Treasury Papers.)

[104]Several historians have erroneously stated or implied that Joseph Smith received a discharge in bankruptcy. See Roberts, *The Rise and Fall of Nauvoo,* pp. 132–33; Brodie, *No Man Knows My History,* p. 266; Della S. Miller and David E. Miller, *Nauvoo: The City of Joseph* (Santa Barbara: Peregrine Smith, Inc., 1974), pp. 31–32.

[105]An act to repeal the Bankruptcy Act, chap. 82, 5 Stat. (1843), p. 614. During its brief existence, more than 33,739 debtors availed themselves of the Bankruptcy Act to wipe out over $445 million worth of liabilities while relinquishing only $43 million worth of assets. Nationwide, only 765 applicants were refused discharge as of 1 February 1843, and only 30 were rejected on grounds of fraud. (F. Noel, *A History of the Bankruptcy Clause of the Constitution of the United States of America* [1918], p. 143; *Cong. Globe,* 37th Congress, 3rd Session [1862], p. 124; *Cong. Globe,* 27th Congress, 3rd Session [1843], pp. 341–42.)

twelve; Frederick G.W. Smith, eight; Alexander Smith, six; and David Hyrum Smith, a posthumous child born 18 November 1844. Such inheritance was, of course, subject to the prior rights of creditors of the estate.

Three weeks after Joseph's death, his widow, Emma, obtained an appointment as administratrix of his estate. At the same time, she was appointed legal guardian of the minor children named above.[106] About two months later, when Emma failed to post the additional bond required by the court, the presiding judge revoked her authority as administratrix. On 19 September 1844 the court appointed in her place Joseph W. Coolidge, a creditor, who then began the process of inventorying the property.[107] During the four years he served as administrator, Coolidge assembled and sold the personal property of the estate, realizing approximately $1,000, which he paid out for claims covering funeral expenses and costs of administration.[108] He also received twenty creditors' claims totaling less than $5,000, including miscellaneous claims of approximately $850, and a single claim in the amount of $4,033.87, claimed by the heirs of Edward Lawrence.[109] Coolidge was not a vigorous administrator and apparently did nothing after 1845 either to receive additional creditors' claims or to assemble real estate assets to pay claims already received.[110]

Coolidge was replaced on 8 August 1848 by John M. Ferris of Hancock County, who was appointed at the request of Almon W. Babbitt, another creditor. The affidavit asking for the appointment of a successor alleged that Coolidge had left the state and had failed to settle his accounts as required by law.[111] The record in a subsequent proceeding suggests that Coolidge may have absconded with some of the property of the estate.[112]

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[106]See Probate Record of Hancock County, Book "A" (1840–1846), pp. 341–42, Hancock County Courthouse, Carthage, Ill. (hereafter cited as Probate Record).

[107]Ibid., pp. 354–55, 362; Probate Record "C" (1844–1849), pp. 28, 43.

[108]Chancery Records, p. 490.

[109]Probate Record "A," pp. 412, 421; Claim Record of Hancock County, Book "C," p. 242. Apparently, many of the creditors listed in Joseph Smith's 1842 petition for bankruptcy may have erroneously believed that their claims had been discharged in bankruptcy, since none of those debts (except that of the United States) was pressed or allowed as a claim against the estate. (See fn. 61.)

[110]Coolidge did sue William Law, an editor of the *Nauvoo Expositor,* and recovered a default judgment for $200 and foreclosure of a mortgage on a lot in Nauvoo (Hancock County Circuit Court Record, Book "D" [21 May 1845], p. 258). The Mormons' suppression of the *Expositor* led to Joseph Smith's arrest and eventual murder (see Dallin H. Oaks, "The Suppression of the *Nauvoo Expositor,*" *Utah Law Review* 9 [1965]:862). The second largest claim received by Coolidge was $100 pressed by Charles Ivins, a coeditor of the *Expositor.*

[111]Probate Record "E" (1842–1849), pp. 191, 212; Probate Record "C," p. 322.

[112]Chancery Records, pp. 491–92.

Ferris was a more vigorous administrator than his predecessor. On 4 January 1849, just five months after his appointment, he filed a six-page inventory of real property owned by the decedent.[113] Perhaps encouraged by the possible existence of additional assets for the payment of their claims, at least nine new creditors—most of them claiming large amounts—filed claims during 1848 and 1849. The final total of thirty-seven claims asserted by thirty-one creditors against the estate of Joseph Smith through 19 April 1849 aggregated $25,023.45,[114] which amount probably represents claims in addition to the approximately $1,000 Coolidge had already paid out. The second largest claim was that of the United States, involving the judgment entered 11 June 1842 on the suretyship debt for the purchase of the steamboat *Nauvoo.*

In the ordinary course of administering an intestate estate that had more debts than liquid assets for payment, an administrator would seek judicial sale of the real estate inherited by the widow and children in order to obtain additional cash to pay the debts of the decedent.[115] That step seemed justified in the case of Joseph Smith's estate. In April 1849, J.M. Ferris sought authority to sell some of the property family members had inherited from Joseph Smith,[116] but before the state probate court ruled on his petition, it was preempted by a suit filed by the United States in the federal circuit court in Springfield. This proceeding effectively appropriated all of the assets that might have been used to give at least some small payment to the creditors of the estate and apparently effectively terminated all pending estate proceedings. Again, the motivating cause was the steamboat debt.

In 1843, in his last communication on this subject, the Solicitor of the Treasury instructed U.S. Attorney Justin Butterfield to pursue the collection of the judgment against Joseph Smith and others if the proposed compromise was not effected.[117] But nothing was done for a year, and a few months after Joseph Smith was murdered, Justin Butterfield was removed from office with the defeat of John Tyler's Whig administration in the fall of 1844. Little

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[113]Probate Record "E," p. 253. This inventory, dated 26 December 1848, comprises part of the Joseph Smith estate papers.

[114]Claim Record "C," p. 242 and estate papers in the Hancock County Courthouse.

[115]Law of 23 January 1829, sec. 120, [1833] Rev. Laws Ill., p. 650; Law of 3 March 1845, chap. 109, sec. 125, [1845] Rev. Stat. Ill., p. 562.

[116]Chancery Records, p. 625; notice of intention to petition court, published in *Hancock Patriot,* 12 August 1848, in Hancock County Courthouse vault.

[117]Charles B. Penrose, Solicitor of the Treasury, to Justin Butterfield, 11 January 1843, in Treasury Papers.

was done to collect the judgment during the four-year administration of Democrat James Polk.[118] When the Whigs came back into power with Taylor and Fillmore in 1849, the new U.S. Attorney for Illinois, Archibald Williams, wrote the Solicitor of the Treasury to inquire into the status of the matter.[119] The Solicitor reviewed the case with Justin Butterfield, who was then in Washington. In October 1849, the Solicitor directed Williams to file a bill to collect the judgment, just as Butterfield had proposed years before.[120] This initiated the final and most complicated chapter in an episode that had already covered a decade.

On 19 August 1850 Archibald Williams filed a twenty-page complaint in the case of *United States v. Smith*[121] before the United States Circuit Court for the District of Illinois, Judge Nathaniel Pope once again presiding.[122] This was a creditor's bill, invoking the powers of the federal court to obtain payment of the United States' judgment against Joseph Smith by selling properties he owned at his death or transferred during his lifetime. This was the final step in the government's efforts to collect the amount due on the note Peter Haws had given, and Joseph Smith had guaranteed, to Robert E. Lee for the purchase of the steamboat *Nauvoo.*

The original defendants were the widow and children of Joseph Smith, as his heirs, John M. Ferris, as the administrator of his estate, and numerous owners of real property acquired from Joseph Smith or his successors–a total of 83 defendants. Initially at issue in this litigation was the ownership of 14 tracts of land in Hancock and Adams counties (comprising almost 2,000 undeveloped acres) and approximately 260 town lots in or near Nauvoo, allegedly worth a total sum of $20,000.[123] Less than half of this

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[118]U.S. Attorney David L. Gregg did write a letter on 28 September 1846 to the new Treasury Solicitor, Barton, recommending that equity proceedings be instituted and that Justin Butterfield be engaged as a special consultant. By return letter of 6 October, Solicitor Barton discouraged Gregg's efforts, advising that neither the size of the claim nor the nature of the grounds justified the employment of additional counsel (Treasury Papers).

[119]J. C. Clark, Solicitor of the Treasury, to Archibald Williams, U.S. Attorney for Illinois, 10 January 1850, in reply to Williams' letter of 1 January 1850, in Treasury Papers.

[120]R. H. Gillet, Solicitor of the Treasury, to Archibald Williams, U.S. Attorney for Illinois, 24 October 1849, in Treasury Papers.

[121]Chancery Records, pp. 486–506. The Joseph Smith in the title refers to Joseph Smith III, the son of the deceased prophet.

[122]This was the same judge who granted the June 1842 default judgment, presided over Joseph Smith's 1842 bankruptcy hearings, and later granted Joseph his January 1843 discharge on writ of habeas corpus (see fns. 27, 76, 95–96 and accompanying text).

[123]See Chancery Records, pp. 491–501; synopsis of Archibald Williams' letter to the Treasury Solicitor, 20 January 1851, in Register of Miscellaneous Suits.

acreage had been owned by Joseph Smith in his individual capacity or by members of his family on or after the June 1842 judgment. Most of the undeveloped land and substantially all of the town lots had been owned at some time by Joseph Smith as trustee-in-trust for the Church.

The theory of the United States' complaint—frequently alleged by way of conclusion—was that numerous land conveyances Joseph Smith made in his individual capacity and as trustee-in-trust were made with intent "to hinder, delay and defraud his creditors."[124] The complaint asked that these conveyances be set aside as fraudulent and void and that the property be sold for payment of the debt to the United States.[125]

On 4 December 1850 the United States filed a supplemental complaint against 22 additional defendants, claiming 15 additional tracts of land (2,300 acres) and 52 town lots in Nauvoo and Ramus (formerly Macedonia and later Webster) that Joseph Smith was said to have purchased for his own use but held as trustee-in-trust until his death for the alleged purpose of evading payment of his debts.[126] This brought the total number of defendants to 105, involving 29 tracts of land (more than 4,000 acres) and 312 town lots. Before the case was concluded, 31 different defendants filed answers, totaling 135 pages in the written record. Another 35 defendants appeared but disclaimed all interest in the properties, and 32 defendants failed to appear.[127] This supplemental complaint also made the claim—for the first time in this controversy—that according to state law Joseph Smith was not entitled to hold more than 10 acres of real estate in trust for the Church.[128]

Judge Pope's first decree was entered 6 January 1851. He found that the United States was entitled to recover $7,870.23 (including interest and costs) upon its judgment of 11 June 1842. This amount was held recoverable from the estate and properties of Joseph Smith since the other judgment debtors had moved from the jurisdiction or were insolvent.[129] The court's decree also

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[124]Chancery Records, pp. 492, 495–96, 499, 505, 620.

[125]Ibid., pp. 504–05.

[126]Ibid., pp. 618–21; Register of Miscellaneous Suits.

[127]See Chancery Records, pp. 645–47.

[128]Ibid., p. 620.

[129]Ibid., pp. 650–54. George Miller, Henry W. Miller, and Peter Haws left Illinois in February 1846, resided in Iowa or Utah thereafter, and were reputedly insolvent from 11 June 1842 until their departure from Illinois. Hyrum Smith was also reputedly insolvent from that date until the time of his death (ibid., p. 639).

established which properties could be sold to satisfy this debt and what should happen to any proceeds remaining after the debt was satisfied. The court next appointed Charles B. Lawrence as Commissioner for the purpose of conducting the foreclosure sales. Further court degrees were entered on 14 July 1851, 13 January 1852, and 17 July 1852.[130]

It is significant that, despite the repeated allegations of fraud in the complaints, neither Judge Pope nor any other judicial officer made any finding of fraud by Joseph Smith, nor was that theory relied upon to any extent. Instead, the court decrees applied two different legal theories for collection efforts against the properties once owned by Joseph Smith.

The first theory, which related to land Joseph had held in his individual capacity, was a simple one. By well-recognized principles of law, the judgment entered against Joseph Smith on 11 June 1842 became a lien against all land then or thereafter held in his name up until the time the judgment was satisfied and discharged.[131] As a matter of public record, this judgment lien took priority over all claims to the property acquired after 11 June 1842, including the ownership rights of the widow and children of Joseph Smith, who received gratuitous transfers from him during his life or inherited his property as heirs after his death; the rights of his administrator, who sought the property in order to satisfy the claims of unsecured creditors; and even persons who had purchased the property after the death of Joseph Smith.[132]

The only claim that would take priority over the judgment lien was the claim of Joseph's widow, Emma. By another well-settled principle of law, expressly recognized in the complaint, a surviving spouse was entitled to a dower interest in all land of which her husband died owning an estate of inheritance ("seized").[133] Since a husband held or took real property subject to his wife's dower interest, that interest ranked ahead of a judgment lien obtained by his creditors.[134]

Applying the legal rules described above, Judge Pope decreed

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[130]Ibid., pp. 653–54, 660–79, 681–97.

[131]Refer to fn. 28.

[132]Chancery Records, pp. 688, 694.

[133]Ibid., pp. 502, 521, 653. Sisk v. Smith, 6 Ill. (1 Gilm.) 503, 507, 517 (1844); Law of 3 March 1845, chap. 34, sec. 1, [1845] Rev. Stat. Ill., p. 198; Law of 1 July 1829, secs. 43, 49, [1833] Rev. Laws Ill., pp. 625–27.

[134]*Ex parte* McElwain, 29 Ill. 442, 443 (1862); Blain v. Harrison, 11 Ill. 384, 388 (1849); Shaeffer v. Weed, 8 Ill. (3 Gilm.) 511, 513 (1846); Sisk v. Smith, 6 Ill. (1 Gilm.) 503, 508, 518 (1844).

that all properties owned by Joseph Smith in his personal capacity at the time of his death were covered by the judgment lien and could be sold to satisfy that judgment, provided that one-sixth of the proceeds were paid to the widow, Emma Smith. The decree identified the various lands that could be sold under this theory.[135]

The land Joseph Smith had held as trustee-in-trust for the Church was also covered by the judgment lien, but here the court apparently relied on a second theory, the basis of which had also been introduced for the first time in the supplemental complaint. Land held in trust normally would not be covered by a judgment lien arising out of the personal debts of the trustee. Of course, if a person had conveyed his personal property to himself as trustee in order to defraud his personal creditors, as John C. Bennett and Justin Butterfield claimed Joseph Smith had done, then a court could decree a sale of trust properties to satisfy those personal creditors. This was the legal theory on which the U.S. Attorney had filed his original complaint, but fraud was not the ground upon which the court based its decree. There was no finding of fraud in this case.

The court's decree that made the trustee lands subject to a judgment lien stemming from a personal debt of the trustee was based on a legal ruling that disadvantaged all owners of property Joseph Smith had held as trustee-in-trust for the Church at the time of his death. The Illinois statute which the Church had relied on in designating Joseph Smith as trustee-in-trust for the Church made it lawful for the trustee of any religious society "to receive by gift, devise or purchase, a quantity of land not exceeding 10 acres."[136] There is no evidence that Joseph Smith or other Church leaders were ever aware of this ten-acre limitation on church ownership of land. On the contrary, entries in the *History of the Church* show continued, conscientious efforts, probably in reliance on the advice of counsel, to separate Joseph's personal properties from the properties he held for the Church, with the intent of increasing the lands owned by the Church.[137]

The judge who examined witnesses and land records found that although Joseph Smith was duly elected to the office of

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[135]Chancery Records, pp. 651–55, 688–91, 491–92. The dower claim was an estate for life in one-third of the property, which the judge valued in this case as equivalent to one-sixth of the property (ibid., pp. 654–55).

[136]Law of 3 March 1845, chap. 25, sec. 44, [1845] Rev. Stat. Ill., p. 120.

[137]See text accompanying fns. 33–48.

trustee-in-trust for the Church prior to his receipt of deeds to the properties at issue in this case, Joseph Smith as trustee had received earlier deeds for "more than ten acres of land situated in said Hancock County."[138] In a decision that is typical of traditional judicial hostility toward lands held in trust for any religious group,[139] Judge Pope decreed that all properties (in excess of the ten-acre limitation) involved in this suit that had been held by Joseph Smith as trustee for the Church prior to or at the time of his death were deemed by the law to be held in his personal capacity and therefore covered by the 1842 judgment lien.[140] As a result, the judgment lien was held to cover trust property that Joseph Smith had conveyed to Emma and the children during his lifetime pursuant to the Church resolution.[141] The judgment lien also covered properties Joseph had held as trustee-in-trust for the Church at the time of his death, which the successor trustees later sold as the Church liquidated its land holdings in connection with the move west.[142] For reasons not clear to the authors, the United States abandoned its claim to several parcels Joseph Smith had conveyed to bona fide purchasers during his lifetime.[143]

As a corollary of the court's ruling that Joseph Smith owned all trustee-in-trust (Church) properties in excess of ten acres in his personal capacity, it followed that Emma Smith owned a one-sixth dower interest in all such properties. The court so decreed.[144] As a result, persons who had purchased from the successor trustees what they thought were Church properties would now have those properties sold at a judicial sale, with one-sixth of the proceeds being paid to Emma Smith. This result must have been embarrassing to the Church and an unexpected windfall for Emma Smith, then Mrs. Lewis C. Bidamon.

So it was that when the case was finally concluded on 17 July 1852 the court's various decrees of distribution confirmed the following division of the total proceeds of the sale:[145]

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[138]Chancery Records, p. 665.

[139]For example, see St. Peter's Roman Catholic Congregation v. Germain, 104 Ill. 440, 446 (1882).

[140]Chancery Records, pp. 666–68.

[141]Ibid., pp. 641–43, 652–53, 670–73.

[142]Ibid., pp. 651–52, 664–65, 666–68, 688–89. See fn. 148. Newell K. Whitney and George Miller were named successor trustees for the Church shortly after the death of Joseph Smith. In 1846 they were replaced by Almon W. Babbitt, Joseph L. Heywood, and John S. Fullmer. (Ibid., p. 662.)

[143]Ibid., pp. 620–21.

[144]Ibid., pp. 668, 689.

[145]Ibid., pp. 650–54, 666–68, 686–92, 696–97.

Payment of the judgment of the United States, with interest	$ 7,870.23
Payment to Emma Smith Bidamon for dower rights	$ 1,809.41
The remainder, apparently for costs and expenses	$ 1,468.71
Total Proceeds of Sale	$11,148.35

Nearly all of these proceeds (ninety-five percent) were attributable to the sale of properties Joseph Smith had held as trustee-in-trust for the Church.

The parties who benefited most from the equity proceeding were the lawyers, who received their fees, Emma Smith Bidamon,[146] who obtained her dower interest, and the United States, which obtained payment in full of principal and interest on its 1842 steamboat judgment. The decedent's assets being exhausted, the other creditors who had filed claims against the Joseph Smith estate received no payment of their claims.

Who suffered the loss–from whom was the land taken that was sold in this manner? The record suggests that the biggest single loser was the estate of General James Adams, a Mormon convert to whom the successor trustees had reconveyed 1,760 acres of Hancock County land that Adams had originally conveyed to Joseph Smith as trustee in payment for Adams' fifty percent interest in the newly purchased steamboat, the *Maid of Iowa.* The land was reconveyed after the deaths of Joseph Smith and James Adams, apparently because the transaction was rescinded by mutual consent.[147] Owned at the time of the chancery sale by the Adams estate or its successors, this acreage was the principal land

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[146]It appears that Emma Smith Bidamon reinvested some of her proceeds in certain of the Smith properties that were sold at the public auctions, perhaps in an effort to preserve the equivalent of some of her late husband's lifetime transfers to their children that had been upset by the court (see Chancery Records, pp. 670, 689).

[147]Joseph Smith and James Adams each purchased a fifty percent interest in the *Maid of Iowa* in May and June 1843 (*HC,* 5:380, 386, 406, 413, 417–18; Nauvoo Trustee's Land Book "B," p. 19, located at Church Archives). The steamer was employed as a ferryboat between Nauvoo and Montrose, Iowa (*HC,* pp. 380, 386). Adams died in August 1843 (*Nauvoo Neighbor,* 16 August 1843, p. 3, col. 6; *HC,* 5:537). On 28 November 1844, the Church trustees who succeeded Joseph Smith reconveyed to Adams' executor the entire 1,760 acres of prairie land in an apparent rescission of the original arrangement or repurchase of Adams' fifty percent ownership in the steamboat (Hancock County Deed Records, Book "N," p. 453). On 9 April 1845, Brigham Young directed that the *Maid of Iowa* be sold for the best available price (*HC,* 7:395).

named in the government's supplemental complaint. It was sold for $4,800, thus representing forty-three percent of the total proceeds.[148]

Most of the other big losers were land speculators. After Joseph Smith's death, his successors, as trustees for the Church, made preparation for the Mormons' departure from Illinois by selling numerous tracts of Church properties to Samuel Bechtold of Philadelphia, George H. Todd of Evansville, Indiana, and C. E. Yates of Nauvoo.[149] Many of the tracts involved in the judgment sales were owned by these parties or their successors. As far as can be determined from the records, the Church owned no more than a token amount of this property at the time of the judicial sales in 1851–1852, the successor trustees having disposed of most saleable Church properties soon after the move west in 1845–1846.

The group that sustained the smallest loss consisted of small landowners who had purchased properties from the Church's trustees for their own use. Typically, they preserved their ownership by purchasing their own land at the judgment sale for a relatively nominal amount.[150]

CONCLUSION

The wake of the steamboat *Nauvoo* capsized or threatened financial transactions and property ownerships in Hancock County for more than a decade. What began as a straightforward business transaction, with Joseph Smith guaranteeing a promissory note that several Mormon businessmen gave for the purchase of a government surplus steamboat, ultimately produced a succession of lawsuits, forestalled Joseph Smith's attempt to obtain discharge in bankruptcy, and upset conscientious attempts to separate the Church properties from personal properties held by Joseph Smith. Although plagued by misfortune in business and bad advice about the law, Joseph Smith was nevertheless untainted by any wrongful conduct. John C. Bennett's extravagant and unsupported charges of fraud, published in the anti-Mormon press, found their way into official allegations in judicial proceedings. These allegations, which pointed to a prolonged series of transactions over many

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[148]Chancery Records, p. 682.
[149]Hancock County Deed Records.
[150]Chancery Records, esp. pp. 688–94.

years, were examined in meticulous detail by special masters and a federal judge in an 1852 Illinois equity proceeding. Neither this suit in equity, nor any other proceeding described here, resulted in any finding of improper conduct by Joseph Smith. Relying on a law fixing a ten-acre legal maximum on property that could be held in trust for a church, the federal judge decreed in 1852 that all properties Joseph Smith had held as trustee-in-trust for the Church at the time of his death were subject to judicial sale to satisfy the 1842 steamboat judgment obtained against Joseph Smith as the guarantor of another man's obligation. That decree, which upset the ownership of scores of lots and parcels of land purchased from the Church in Hancock County, stands as the final indignity suffered by the Mormons at the hands of government officials and their fellow citizens in Illinois.