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Winning against Hurlbut's Assault in 1834

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Chapter Seven

Winning against Hurlbut's Assault in 1834

David W. Grua

Joseph Smith became well acquainted with the legal system in Ohio during his seven years there. Through encounters, he seems to have developed a guarded view of the law's prospect for delivering justice. At first, he had a firm belief that, through faith and God's assistance, he could obtain justice through the judicial process. He was willing to go before the courts to present his complaints with confidence that he would ultimately prevail against all challenges. But after 1837, when those who opposed him began assailing him with what he called "vexatious lawsuits,"¹ he learned he could not rely on courts for his protection and rights.

Important in Joseph Smith's legal experience was the April 1834 case of *Ohio v. Doctor Philastus Hurlbut*. This was his first appearance in the courts of Ohio and a rare occasion on which he took the initiative in a judicial action. In December 1833, Hurlbut, an excommunicated Latter-day Saint, had threatened publicly to kill Smith in Kirtland, Ohio. Coming in the midst of a season of persecution of the Saints in Ohio and Missouri, this threat was one that the young President of the Church was not willing to let pass. He filed an official complaint with the Geauga County authorities, requesting them to prevent Hurlbut from carrying out his threat. As the prosecution proceeded during the first four months of 1834, Smith recorded his prayers to the Lord that the courts would be filled with the spirit of justice.

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

Events Leading to This Legal Action

Although the case itself began on December 21, 1833, events occurred nine months earlier that set it in motion. In March 1833, the newly baptized Doctor



Orson Hyde. Courtesy of the Church Archives, The Church of Jesus Christ of Latter-day Saints.

Philastus Hurlbut (Doctor was his given name) arrived in Kirtland, Ohio. Joseph Smith recorded that Hurlbut visited the Smith home on March 13 to discuss the Book of Mormon.² Five days later, Sidney Rigdon ordained Hurlbut an elder, and on March 19 Hurlbut was called to serve a mission in Pennsylvania.³

Shortly after establishing himself in Pennsylvania, Hurlbut's fellow missionary Orson Hyde accused Hurlbut of immorality before a church council in Kirtland, which excommunicated him on June 3, 1833, for "unchristian conduct with the female sex."⁴ Hurlbut, however, was not present at this hearing and appealed the decision. He traveled to Kirtland, confessed his offense, and the council reinstated him on June 21, 1833. It was soon evident that his repentance was not sin-

cere, as two days later the council excommunicated Hurlbut for claiming to outsiders that he had "deceived Joseph Smith's God."⁵

Hurlbut determined to pursue the matter by lecturing against Joseph Smith and the Church. While delivering his anti-Mormon lectures in Pennsylvania, Hurlbut sensationalized the ill-founded theory that the Book of

2. Joseph Smith, Journal, January 11, 1834, Church History Library, The Church of Jesus Christ of Latter-day Saints, Salt Lake City; Dean C. Jessee, *Papers of Joseph Smith*, 2 vols. (Salt Lake City: Deseret Book, 1989-92), 2:19. Most of the documents cited here from Church History Library are available in *Selected Collections from the Archives of The Church of Jesus Christ of Latter-day Saints*, 2 vols. (Provo, Utah: Brigham Young University Press, 2002), DVD 20.

3. "Kirtland Council Minute Book," 12, 14, 16, Church History Library; Benjamin Winchester, *The Origin of the Spalding Story* (Philadelphia: Brown, Bicking, and Guilbert, 1840), 6.

4. "Kirtland Council Minute Book," 12; Orson Hyde to George G. Adams, June 7, 1841, in Benjamin Winchester, *Plain Facts* (England, 1841).

5. "Kirtland Council Minute Book," 21-22.

Mormon was based on an unpublished manuscript written several years earlier by Solomon Spalding entitled *Manuscript Found*. Hurlbut also accused Joseph Smith of “lieing in a wonderful manner” so that “people are running after him and giving him mony.”⁶ After gathering financial support from anti-Mormons in the area around Kirtland, Hurlbut embarked in the summer of 1833 on a journey through Ohio, Massachusetts, Pennsylvania, and New York, generating evidence against Joseph.⁷

In late November and early December 1833, word reached Kirtland that a mob had expelled the Latter-day Saints from Jackson County, Missouri.⁸ Geauga County anti-Mormons, emboldened by this news, began to threaten Smith and his followers in Ohio with a similar expulsion. Tensions were high. On December 5, 1833, Smith wrote to Edward Partridge and others in Missouri that “the inhabitants of this county threaten our destruction and we know not how soon they may be permitted to follow the examples of the Missourians.”⁹ George A. Smith later said of this time period: “In consequence of the persecution which raged against the Prophet Joseph and the constant threats to do him violence it was found necessary to keep continual guard to prevent his being murdered by his enemies, who were headed by Joseph H. Wakefield and Dr. P. Hurlbert . . . during the fall and winter I took part of this service going 2½ miles to guard at President Rigdon’s.”¹⁰ Wakefield and his fellow anti-Mormons left no account of their involvement in these persecutions.

In mid-December 1833, Hurlbut returned to Kirtland and began to lecture on his material. How and when Hurlbut threatened to kill Smith remains unknown, but George A. Smith later stated that “in delivering lectures he [Hurlbut] had said he would wash his hands in Joseph Smith’s blood.”¹¹ Joseph felt constrained to take his complaint before the county officials.¹²

6. Joseph Smith to William W. Phelps and others, August 18, 1833, Church History Library.

7. Winchester, *Origin of the Spalding Story*, 7–11.

8. On Kirtland’s reaction to the Missouri troubles, see Milton V. Backman Jr., *The Heavens Resound: A History of the Latter-day Saints in Ohio, 1830–1838* (Salt Lake City: Deseret Book, 1983), 162–74.

9. Joseph Smith to Edward Partridge and others, December 5, 1833, Joseph Smith Letterbook 1, 68–69, Church History Library.

10. George A. Smith, “Memoirs,” 12, George A. Smith Collection, Church History Library.

11. George A. Smith, in *Journal of Discourses*, 26 vols. (Liverpool: F. D. Richards, 1855–86), 11:8, November 15, 1864.

12. “Mormon Trial,” *Chardon Spectator and Geauga Gazette*, April 12, 1834, page 3.

The Justice Court

On December 21, 1833, Joseph Smith went to the office of John C. Downen, justice of the peace for Kirtland Township, and filed a complaint against Hurlbut, stating that there was “reason to fear that Doctor P. Hurlbut would Beat wound or kill him or injure his property.” The complaint asked the court to compel Hurlbut to keep the peace.¹³ The Ohio statute relevant to the case reads:

It shall be lawful for any person to make complaint on oath or affirmation, before a justice of the peace, stating, amongst other things, that the person making such complaint has *just cause to fear, and does fear*, that another *will beat, wound, or kill him* or her, or his or her ward, child, or children; or will commit some other act of personal violence upon him, her or them; or will burn his or her dwelling house, or out-house, or will maliciously injure, or *destroy his or her property*, other than the buildings aforesaid.¹⁴

On December 27, 1833, Justice Downen issued an arrest warrant directing that Hurlbut be apprehended and brought before Painesville Justice of the Peace William Holbrook.¹⁵ Oddly, the warrant issued by Downen did not direct that Hurlbut be brought before Downen himself; but the Ohio statute allowed this.¹⁶ He may have done this because Hurlbut was residing in, or close to, Painesville at the time, or Justice Downen may have felt that Hurlbut would receive a more impartial hearing in Painesville than in Mormon Kirtland.

On January 4, 1834, Kirtland Constable Stephen Sherman brought Hurlbut to Justice Holbrook’s office in Painesville. Justice Holbrook postponed the hearing until January 6, 1834, during which time Hurlbut remained in the

13. Record Book P, 431–32. Geauga County Archives and Records Center, Chardon, Ohio. This legal action was used as a preventive measure to impede individuals from acting out threats.

14. An Act Defining the Powers and Duties of Justices of the Peace and Constables, sections 9 and 33.1 (passed March 1831 and took effect June 1) (hereafter cited as Justices of the Peace Act), *Acts of a General Nature, Enacted, Revised, and Ordered to be Reprinted, . . .* (Columbus: Olmsted and Bailhache, 1831), emphasis added; J. R. Swan, *Statutes of the State of Ohio, of a General Nature, . . .* (Columbus: Samuel Medary, 1841), 502–535.

15. John C. Downen, Statement, January 2, 1885, p. 3, Chicago Historical Society. See Justices of the Peace Act, section 33.4. Justices of the Peace Act, section 10, states that warrants may be returned before any justice of a county. Downen, a Methodist, had moved to Kirtland in 1832 and was elected justice of the peace in 1833. Holbrook was a justice of the peace in Painesville at least from 1831 to 1834.

16. Justices of the Peace Act, section 10, at 196, and section 33.2, at 199–200.

custody of Constable Sherman.¹⁷ A probable reason for the delay was that witnesses needed to be subpoenaed and prepared to give testimony concerning the threat. By statute, a justice of the peace could delay the hearing while material witnesses were found and prepared.¹⁸ By statute, postponements could occur “from time to time . . . until the cause of delay be removed” as long as the defendant was not in jail for more than a total of thirty-six hours. Thus, it is probable that Hurlbut was not kept in jail during the postponement, but simply remained in the custody of the constable.¹⁹ In the meantime, word of the arrest quickly spread throughout the county.

Constable Sherman brought Hurlbut before Justice Holbrook on January 6, 1834, only to be turned away again. The court record states that “not being yet ready for the examination on the part of the State this cause is again postponed to the 13th of January 1834, at 9 o'clock a.m.”²⁰

The preliminary hearing determined if the prosecution had sufficient evidence to send the case to the county court. The county prosecuting attorney did not attend these preliminary hearings,²¹ thus requiring Joseph Smith as the aggrieved party to retain a lawyer. He hired Benjamin Bissell, who had a reputation as one of Ohio's ablest attorneys. He served as the ad hoc prosecuting attorney for this hearing, calling all witnesses for the state and presenting the state's case.²²

17. Record Book P, 431–32.

18. Justices of the Peace Act, section 22.

19. Upon postponement of a civil case, if the defendant did not give bail for his later appearance, the justice had to commit him to jail, “there to remain until the time appointed for the trial, which shall not exceed three days from the return of such *capias*; or the justice may order the constable to hold such defendant in custody, until the plaintiff shall have notice and time to attend and proceed to trial.” Justices of the Peace Act, sections 19 and 20. Swan, *Statutes of the State of Ohio* 509.

20. Record Book P, 431–32. The civil act provided that trial could be postponed for up to twenty days as a matter of right and longer if both parties consented. Justices of the Peace Act, section 23, at 510. If a material witness resided in another state or county, or was otherwise absent, continuance could be extended, “on good cause shown, by affidavit, and on payment of the costs of such continuance” for up to ninety days. Justices of the Peace Act, section 23, p. 510.

21. Swan, *Statutes of the State of Ohio*, 738a.

22. It was not part of the legal duty of a county prosecuting attorney to attend to prosecutions on behalf of the state before individual justices of the peace; his duties were confined to the county court of common pleas and the state supreme court. An Act to Provide for the Election of Prosecuting Attorneys (January 29, 1833), section 2; Swan, *Statutes of the State of Ohio*, 738. Justices of the Peace Act, section 11, specifies only that the justice conducts an examination. A nineteenth-century commentary on Ohio law explained how

he takes.
 Thirdly, That the Lord would
 grant that our brother Jo-
 seph might prevail over
 his enemy, even Doctor P. Hurl-
 but, who has threatened his
 life, whom brother Joseph
 has ^{caused to be} taken with a precept;
 That the Lord would fill
 the heart of the Court with
 a spirit to do justice, and
 cause that the law of the
 land may be magnified
 in bringing him to justice.
 Fourthly, That the Lord would

Excerpt from Joseph Smith's Ohio "Book of Record," January 11, 1834, spanning pages 44 and 45: "Thirdly, that the Lord would grant that our brother Joseph might prevail over his enemy, even Doctor P. Hurlbut, who has threatened his life, whom brother Joseph has caused to be taken with a precept; that the Lord would fill the heart of the court with a spirit to do justice, and cause that the law of the land may be magnified in bringing him to justice." Courtesy of the Church Archives, The Church of Jesus Christ of Latter-day Saints.

As a defendant, Hurlbut was entitled to engage a lawyer on his behalf. He retained James A. Briggs, who was admitted to the bar only three months earlier. Briggs, despite his inexperience, was familiar with the situation because of his association with anti-Mormons who funded Hurlbut's research.²³ Although this hearing was designed to allow the prosecution to present its case, Briggs took advantage of the opportunity to make arguments for his client and cross-examined the state's witnesses.

On January 13, 1834, Smith traveled the twelve miles from Kirtland to Painesville for the preliminary hearing. Although only Justice of the Peace William Holbrook was identified in the court record, eyewitnesses reported that two Painesville justices presided at the hearing.²⁴ The identity of the second justice remains unknown. The Methodist church on the southeast corner of the public square served as the courthouse and was filled to overflowing.²⁵

Bissell called sixteen witnesses over the next three days to testify concerning the alleged threat.²⁶ Most of these witnesses were members of the LDS community or people who had relatives who had joined the Mormons. The majority of the witnesses gave evidence against Hurlbut, while four apparently testified in Hurlbut's defense.²⁷ Justice Holbrook allowed the lawyers to discuss at length topics unrelated to Hurlbut's guilt or innocence. The trial became something of an inquest concerning the merits of Mormonism, especially the Book of Mormon. Joseph Smith himself was on the witness stand on two of the three days. Briggs asked Smith to give the court his account of finding the plates used to translate the Book of Mormon. Bissell objected, since that topic

these lawyers were to examine the witnesses. See John J. Manor, *A Treatise on the Criminal Law of the State of Ohio* (Toledo: Commercial Book and Job Steam-Printing House, 1857), 524–26.

23. James A. Briggs, letter to the editor, *Cleveland Leader and Morning Herald*, January 1884; James A. Briggs to John Codman, March 1875, in John Codman, "Mormonism," *International Review* 11 (September 1881): 222.

24. James A. Briggs, letter to the editor, *New York Tribune*, January 31, 1886. Howe said that two magistrates of Painesville Township heard the case. Eber D. Howe, *Mormonsim Unveiled [sic]: or, a Faithful Account of That Singular Imposition and Delusion, from Its Rise to the Present Time* (Painesville, Ohio: By the author, 1834), 276.

25. Briggs to Codman.

26. Record Book P, 431–32.

27. Journal M, p. 193, Geauga County Archives and Records Center, Chardon, Ohio; Mark Staker, "'Thou Art the Man': Newel K. Whitney in Ohio," *BYU Studies* 42, no. 1 (2003): 116–17; Samuel F. Whitney, statement, March 6, 1885, pp. 17–19, microfilm, Church History Library; George A. Smith, in *Journal of Discourses*, 7:112, November 15, 1864. That Wakefield funded Hurlbut's research, see *Painesville Telegraph*, January 31, 1834; Joseph Smith, Journal, April 1, 1836.

had nothing to do with Hurlbut's guilt or innocence. He then withdrew the objection because everyone in the room wanted to hear the account.²⁸

At the conclusion of these testimonies, Justice Holbrook gave his ruling:

It is the opinion of the Court that the Complainant had reason to fear that Doctor P. Hurlbut would Beat wound or kill him or injure his property as set forth in his complaint and it is the consideration of the Court that the defendant enter into a recognizance to keep the peace generally and especalley towards the Complainant, and also to appear before the Court of Common Pleas on the first day of the term thereof next to be holden in and for said County and not depart without leave, or stand committed till the judgement of the Court be complied with.²⁹

Unfortunately, the court record did not state the dollar amount of the recognizance (that is, the bond Hurlbut was required to post). The amount required by law was to be between \$50 and \$500.³⁰ A 1837 leading Ohio law treatise states:

The recognizance should be for such an amount, as will be likely to insure a compliance with its conditions. The justice ought, therefore, in determining its amount, to take into consideration the nature of the offense, and the character and property of the defendant. . . . The amount should not be oppressive, but never so small as to hold out an inducement to the accused to forfeit his recognizance.³¹

It is likely that the prosecution witnesses whose testimonies were deemed material were also recognized to appear at the trial before the Geauga County Court of Common Pleas.³²

Holbrook's unwillingness to dismiss the charges turned the tide of public opinion momentarily, and hostilities receded immediately. The Church leaders wrote: "There is not quite so much danger of a mob upon us as there has been. The hand of the Lord has thus far been stretched out to protect

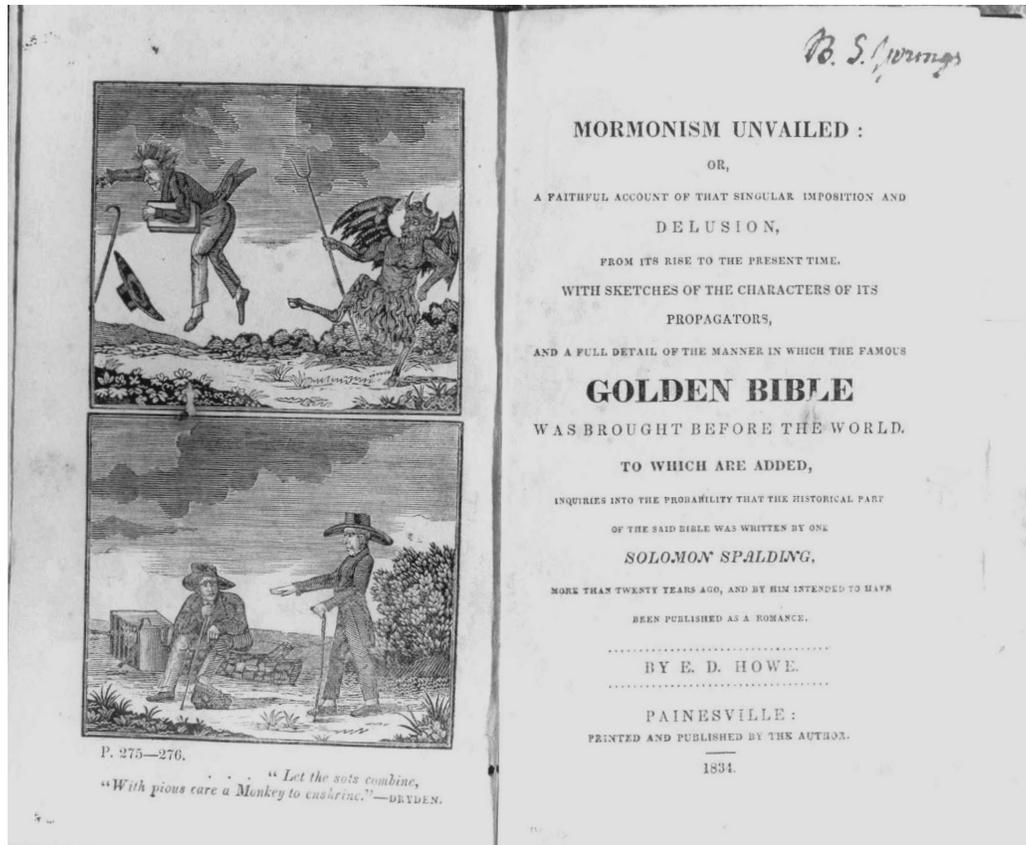
28. James A. Briggs, *Naked Truths about Mormonism*, January 1888, 4.

29. Record Book P, 431–32.

30. Justices of the Peace Act, section 12.

31. Swan, *Statutes of the State of Ohio*, 482–83.

32. An Act Directing the Mode of Trial in Criminal Cases (March 7, 1831), section 2, *Acts of a General Nature, Enacted, Revised, and Ordered to be Reprinted*, . . . , 155.



Mormonism Unveiled, published in 1834 in Painesville, Ohio, seven months after the D. P. Hurlbut trial. While Eber D. Howe is listed as author, the book contains many of Hurlbut's anti-Mormon materials. On the frontispiece are two images showing an interpretation of events Joseph Smith related at the January 1834 preliminary hearing. Courtesy L. Tom Perry Special Collections, Harold B. Lee Library, Brigham Young University.

us. . . . Since the trial the spirit of hostility seems to be broken down in a good degree but how long it will continue so we cannot say."³³

Six days later, on January 28, 1834, with Frederick G. Williams as scribe, Joseph Smith continued dictating the Hurlbut story from where they left off on January 11, 1834. He said that Hurlbut "saught the distruction of the saints in this place and more particularly myself and family" (a vague reference to Hurlbut's lectures and the threat). Smith then recorded that "as the Lord has in his mercy Delivered me out of his hand till the present and also the church that he has not prevailed viz the 28 day of Jany 1834 for which I off[er] the gratitud[e] of my heart to Allmighty God for the same." The brethren then

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

knelt and prayed that God would continue to deliver them in the pending law suit and ended with a plea to soften the hearts of wealthy Geauga County land owners, including one who had funded Hurlbut's research.³⁴

In the following months, speculation arose in Geauga County concerning the impending trial. Hurlbut's supporters claimed that the whole proceeding was a sham brought about by the judge so that the lawyers could continue to harass Joseph Smith before the county court. In this heightened state of rumor, prediction, and speculation, the April trial approached. Activity also continued in the courts. Assistant Prosecuting Attorney for Geauga County Reuben Hitchcock met with Justice Holbrook and made the required copy of the proceedings of the preliminary hearing, as well as a copy of the recognizance to keep the peace.³⁵

The County Court

On March 31, 1834, Smith traveled 9–10 miles to appear before the Geauga County Court of Common Pleas in Chardon.³⁶ Although Hurlbut had been ordered to appear before the court on that day, several cases were being heard, meaning that the Hurlbut case would not be held for several more days. Who served as counsel for Hurlbut remains unknown. Briggs made no mention of representing him beyond the January hearing. The prosecuting attorney, although not named in the court record, was probably Stephen Mathews.³⁷

On April 1, 1834, Smith recorded that he spent the day making subpoenas for witnesses.³⁸ He must have then given the subpoenas to the clerk, who had authority to serve them.³⁹ In preparation for the trial, Smith wrote his

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

35. "It shall be the duty of every justice of the peace, in criminal proceedings, to keep a docket thereof . . . : and when the party accused shall be recognized, or committed for the want of such recognizance, he shall transmit or deliver a transcript of such proceedings to the clerk of the court, or prosecuting attorney . . . ; which transcript shall contain an accurate bill of all the costs that have accrued, and the items of charge composing the same." Justices of the Peace Act, section 21, at 197.

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

37. Mathews served as prosecuting attorney of Geauga County from 1828 to 1835. *Pioneer and General History of Geauga County* (Burton, Ohio: Historical Society of Geauga County, 1880), 70. Reuben Hitchcock was his assistant prosecuting attorney.

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

39. Actually, the clerk would then give them to the constable, who would deliver them. An Act Directing the Mode of Trial in Criminal Cases (March 7, 1831), section 22, *Acts of a General Nature, Enacted, Revised, and Ordered to be Reprinted*, . . .

feelings about the Lord's goodness and prophesied concerning Hurlbut's fate: "My soul delighteth in the Law of the Lord for he forgiveth my sins and will confound mine Enimies the Lord shall destroy him who has lifted his heel against me, even that wicked man Docter P. H[u]rlbut he will deliver him to the fowls of heaven and his bones shall be cast to the blast of the wind for he lifted his arm against the Almyty therefore the Lord shall destroy him."⁴⁰

On April 2 and 3, 1834, Smith attended court. Presiding Judge Matthew Birchard⁴¹ listened to the examination of seventeen witnesses for the prosecution and seven witnesses for the defense.⁴² Judge Birchard then adjourned the case for the weekend on Friday, April 4, 1834. On Monday testimony resumed, and on Tuesday "the court house was filled, almost to suffocation, with an eager and curious crowd of spectators, to hear the Mormon trial, as it was called."⁴³

The official court record no longer exists. The *Chardon Spectator and Geauga Gazette* is the only surviving contemporary source to give an account of the testimony. By combining this source with a late reminiscence of Hurlbut's witness Samuel Whitney, we can reconstruct some of what the witnesses said. First, testimony was heard concerning Hurlbut's reputation. It was determined that Hurlbut had once been a member of the Mormon society but had been excommunicated for misconduct. Whitney stated, "Jo testified in court that Hurlbut was expelled for base conduct with lude women."⁴⁴ According to the *Chardon Spectator and Geauga Gazette*, other witnesses testified, "After this, he [Hurlbut] discovered, that Joe was a false prophet, and the Book of Mormon a cheat;—began lecturing against it, and examining and collecting proof that the story of the Book of Mormon was taken from a manuscript romance, written by one Spalding, who formerly lived at Conneaut, and who died before publication."⁴⁵ These statements set the stage for testimony concerning the threat on Smith's life.

The *Chardon Spectator and Geauga Gazette* stated, "Many witnesses testified to threats of revenge from Hurlburt." Justice of the Peace John C. Downen, who testified in Hurlbut's behalf, said this concerning the nature of the threat:

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

41. Birchard was elected to the Common Pleas bench in 1832 and served as Presiding Judge from 1833 to 1837. *History of Portage County* (Chicago: Warner, Beers and Co., 1885), 332. The nature of this legal action did not allow for trial by jury.

42. 1831–1835 Execution Docket, p. 110, Geauga County Archives and Records Center, Chardon, Ohio.

43. "Mormon Trial," 3.

44. Whitney, Statement, 17.

45. "Mormon Trial," 3.

“Hurlbut said he would ‘kill’ Jo [Smith]. He meant he would kill Mormonism.”⁴⁶ This argument was probably Hurlbut’s main defense. It is true that Hurlbut posed a serious threat to the Church as an entity, but most other witnesses gave evidence in support of the claim that Hurlbut indeed intended to physically enact violence upon Smith.

Downen’s statement shifted the testimony from the actual nature of the threat to the question of whether or not Smith had reason to fear bodily injury, considering the fact that he was in a predominantly Mormon community. A female witness, when asked on cross-examination why she did not immediately inform Smith of the threat, said “that she did not believe Hurlburt, or any other human being, had the power to hurt the prophet.” Smith, however, in his own three-hour-long testimony, stated that he actually did fear for his life.⁴⁷

According to Samuel Whitney (younger brother of Newel K. Whitney and a minister in the Methodist church in Kirtland), Smith “testified that he had no arms and that his house was not guarded.” It appears that the attorneys were attempting to reconstruct the violent atmosphere in Kirtland in order to provide context to the threat and to determine if Smith really had reason to fear for his life, for when Whitney took the stand, he was asked about the ominous atmosphere in Geauga County. “I was a witness and supposed I was to testify about the firing of guns in Kirtland which had brought together the Mormon men under arms several times; they were in constant fear of being mobbed.”⁴⁸ Soon, however, the attorneys began to question Whitney about the character of Joseph Smith:

I was asked if I believed Jo. S. the M prophet was a man of truth and veracity. . . . I said I did not for Jo knew he had sworn to things which he was well aware I knew were not true. Jo had told me a short time previous, while I was painting my bro’s store (he at that time was living in the dwelling part of it), that he had a sword and pistol, and that his house was guarded by six men every night.⁴⁹

No other surviving source sheds further light on the Prophet’s testimony about guards. Whitney’s memory of these events was recorded fifty years later and, therefore, cannot be accepted without reservation. George A. Smith and others confirmed that they guarded Smith’s home during the winter of 1833–34.⁵⁰

46. Downen, Statement, 3.

47. “Mormon Trial,” 3.

48. Whitney, Statement, 18.

49. Whitney, Statement, 17–19.

50. George A. Smith, “Memoirs,” 12.

After hearing the concluding testimony on Wednesday, April 9, 1834, Judge Birchard ruled that the court was “of opinion that the said complainant had ground to fear that the said Doctor P. Hurlbut would wound, beat or kill him, or destroy his property as set forth in said complaint.”⁵¹ Hurlbut was then ordered to enter into new recognizance for \$200 to keep the peace and be of good behavior toward the citizens of Ohio generally and especially toward Smith for six months.⁵² Hurlbut, as the losing party, was also ordered to pay the court costs of \$112.59, as was normal.⁵³ If a defendant lost a case, the court of common pleas was required to “render judgment against him or her for the costs of prosecution, to be taxed, and award execution therefore.”⁵⁴ The total number of trial days remains unknown, but Smith, along with several other witnesses, was paid \$3.00 at \$.50 per day, suggesting that the trial lasted six days, split between two weeks.⁵⁵

Smith recorded in his journal a statement summarizing the court's decision that illustrated his belief that he could receive a fair trial in the American courts as well as his humility and gratitude. “On the 9 [April 1834] after an impartial trial the Court decided that the said Hurlbut was bound over under 200 dollars bond to keep the peace for six month[s] and pay the cost which amounted to near three hundred dollars all of which was in answer to our prayer for which I thank my heavenly father.”⁵⁶ Over the next two years, Geauga County sheriffs failed to collect the court costs.⁵⁷

However, Hurlbut found other, ultimately more damaging ways to continue his attack against Smith. Although defeated in court, Hurlbut soon saw to the publication of his arguments against Smith by selling his research to

51. Record Book P, 432.

52. The terms of the recognizance set forth by the court mirror the statutory language, which required that the defendant “keep the peace, and be of good behavior generally, and especially towards the person complaining.” Justices of the Peace Act, section 12, at 196. The law regarding the time period for the recognizance simply stated that the recognizance be “for such term of time as the court may order.” Justices of the Peace Act, section 15, at 196.

53. Justices of the Peace Act, section 17; Record Book P, 432.

54. Justices of the Peace Act, section 17, at 196.

55. 1831–1844 Order Book, April 9, 1834, Geauga County Archives and Records Center, Chardon, Ohio; An Act Directing the Mode of Trial in Criminal Cases (March 7, 1831), section 24, *Acts of a General Nature, Enacted, Revised, and Ordered to be Reprinted*, . . .

56. Joseph Smith, Journal, April 7–9, 1834; Jessee, *Papers of Joseph Smith*, 28–29. The court costs of \$112.59, combined with the \$200 recognizance, would account for the figure of \$300.

57. Execution Docket F, p. 82, Geauga County Archives and Records Center, Chardon, Ohio.

editor Eber D. Howe, publisher of the *Painesville Telegraph*, who agreed to publish the research in book form. The book was first advertised in November 1834, in that newspaper, under the title of *Mormonism Unveiled*.⁵⁸ At that point, Hurlbut himself dropped out of the picture of Church history. He later joined the United Brethren Church, and on various occasions found himself embroiled in controversy with that church's leaders, indicating that Smith was not the only religious figure with whom Hurlbut had trouble.⁵⁹

Conclusion

Ohio v. Hurlbut hinged on the legal definitions of threats and fear, two things that would follow Smith throughout his life. Smith learned how the law of the land could prevent his enemies from acting out their threats and how he could lessen his own fears. Smith also came away from the case with a distinct belief that he could receive impartial treatment from the American court system. Although after 1837 Smith expressed his displeasure with “vexatious suits,” *Ohio v. Hurlbut* shows that at least as late as 1834 he believed strongly that justice could be found in the courts.

An earlier version of this article, with further documentation, appeared as “Joseph Smith and the 1834 D. P. Hurlbut Case,” *BYU Studies* 44, no. 1 (2005): 33–54.

58. *Painesville Telegraph*, November 28, 1834.

59. Dale W. Adams, “Doctor Philastus Hurlbut: Originator of Derogatory Statements about Joseph Smith, Jr.,” *John Whitmer Historical Association Journal* 20 (2000): 86–87.