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Serving as Guardian under the Lawrence Estate, 1842-1844

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Chapter Fifteen

Serving as Guardian under the Lawrence Estate, 1842–1844

Gordon A. Madsen

Edward Lawrence, a convert to The Church of Jesus Christ of Latter-day Saints from Canada, arrived in Illinois in the winter of 1839–40, the same winter that the Saints were expelled from Missouri. Traveling with him were his wife, Margaret, their six children, his brother John with his family, and others, most of whom, like Edward, had been introduced to the gospel by John Taylor and Almon W. Babbitt. Edward Lawrence bought a farm from William and Amelia Ayers in Lima, Adams County, Illinois, just south of its border with Hancock County.[1] Edward and Margaret had six children: Maria, sixteen; Sarah, thirteen; James, eleven; Nelson, nine; Henry, four; and Julia Ann, three. Margaret was pregnant with their seventh child when Edward died. His exact death date is not known, but he had made his will on November 5, 1839, and it was admitted to probate on December 23, 1839, confirming his death between those two dates. Daughter Margaret was born April 5, 1840.[2]

The primary importance of Edward Lawrence's estate lies in its relevance to the fiduciary integrity of Joseph Smith, who agreed to serve gratuitously as guardian of the Lawrence children. Joseph Smith's actions as guardian have been seen as negligent or even exploitive, based on an 1887 interview

1. William and Amelia Ayers to Edward Lawrence, Warranty Deed dated February 15, 1839, recorded July 31, 1839, Deed Book O, 95, Adams County Recorder's Office, Quincy, Illinois.

2. Edward Lawrence, Will, in Adams County Circuit Clerk's Record Archive, 1:44–46 (hereafter cited as Lawrence, Will). The probate file, while incomplete, contains nineteen documents, unpaginated, Adams County Circuit Clerk, Probate Records, box 28, certified copy in my possession (hereafter cited as Lawrence Probate Papers).

of William Law by Wylhelm Wymethal. Law was involved because he signed with Hyrum Smith as one of Joseph's sureties in connection with the administration of the guardianship. But until now, no one has researched the probate records in Adams County to examine this case and these allegations carefully. These recently discovered probate documents allow Joseph Smith's honorable and responsible involvement to be documented, step-by-step, through the legal progress of the estate and guardianship, compelling a significant reappraisal of the accuracy of the Law-Wyl reminiscence that impugns the honesty of Joseph and Emma Smith and others, while denying that Law committed any irresponsible act.[3]

Illinois Probate Law and Edward's Estate

Under the Illinois probate law then in force, when someone died leaving a will, that document was presented to a probate justice of the peace and "admitted" (proved by witnesses to be the genuine last will and testament of the deceased). These witnesses had seen the testator sign the will at the time it was being made and then appeared in court after his death to testify about it. The judge then ordered that letters of administration be issued to the executors named in the will, giving them authority to carry out its provisions.[4] If the deceased person left minor children, the court was required to appoint a guardian for them and whatever property they inherited until they came of legal age (twenty-one for sons and eighteen for daughters), whether or not the will named a guardian.

Edward's will appointed his wife, Margaret, his brother John, and his friend Winslow Farr as executors of his will.[5] An entry at the bottom of the will signed by Andrew Miller, the probate justice of the peace, admitted the will to probate; Joseph Orr and John H. Stockbarger, who had both signed the will as witnesses, testified in person that it was, in fact, Edward's will.[6] Missing from

3. I am deeply indebted to Stanley L. Tucker, attorney at law in Carthage, Illinois, who, in the early 1990s, shared with me his copy of the Lawrence guardianship file which he found in the Adams County probate records. Prior to that time, I had searched only the legal records of Hancock County, in which Nauvoo is located.

4. Today "Letters of Administration" relate to the estates of people who die *without* a will; their court-appointed agents are called administrators. The writ issued to executors who carry out the provisions covered by a will is called "Letters Testamentary." In nineteenth-century Illinois, "Letters of Administration" covered all estates, and the terms "executors" and "administrators" were used interchangeably.

5. Lawrence, Will, 45.

6. Lawrence, Will, 46.

the file are the order appointing the three executors and the letters of administration that Miller would have issued to them; but other documents in the file make it clear that Margaret Lawrence, John Lawrence, and Winslow Farr were, indeed, appointed on June 4, 1841, as executors and acted in that capacity.

Margaret's appointment has particular significance. Illinois probate law of that time gave a widow two choices. Within six months after her husband's death, she had to choose to take what her husband had given her in his will or reject it and claim a dower interest in the estate. Illinois statutes defined "dower" as one-third of the husband's personal property and one-third of his real property for life, meaning that she could occupy, farm, or rent the property but could not mortgage or encumber it in any way that would extend beyond her lifetime. There was no mandate that she physically occupy the property, although most widows did. As a practical matter, one-third often meant occupying the whole real estate unless it could conveniently be divided ("partitioned," in legal parlance) so that the widow got the home, for example, and the guardian could manage the remaining two-thirds. Under Illinois law, after the widow's death, the deceased husband's children or other heirs would inherit it.[7] If Margaret had claimed a dower, she would have received her "distribution" (meaning, the one-third of Edward's personal and real property) while the other two executors would have then turned over the remaining two-thirds to the court-appointed guardian to manage. The fact that Margaret served as a co-executor indicates that she chose to take the inheritance that Edward had granted her in the will.

Executors typically had four principal legal duties: (1) to gather the property owned by the deceased, both real and personal (this duty existed regardless of whether there was a will or whether a will covered all of the property) and have it appraised by two or more independent, court-appointed appraisers; they could not be heirs or relatives; (2) to notify all creditors of the deceased (usually by publishing an announcement in a local newspaper) to present their claims against the deceased by a stated deadline; (3) to pay the deceased's debts and expenses of the last illness and funeral; and (4) to distribute the remaining estate to the heirs, unless the will provided otherwise.[8] Edward's will did provide otherwise. He ordered that the estate remain intact during Margaret's life. It was relatively common for a husband's will to make other arrangements for the property if his widow remarried, but Edward's will did not include such a provision.

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7. *The Public and General Statute Laws of the State of Illinois, 1839* (Chicago: Stephen F. Gale, 1839), "Wills," sec. 40, p. 696.

8. *The Public and General Statute Laws,* "Wills," secs. 95–125, pp. 710–17.

Edward willed to Margaret "the interest arising from one-third of all my Estate Both Real and personal During her natural lifetime and after the death of my Said wife I do order my said Executors to Divide the Remainder of the Said property and Estate that I have given to my wife as aforesaid Equally amongst all my legal Heirs then living."[9] Thus, by electing to take her bequest as stated in Edward's will, Margaret was entitled to the "interest" of one-third of the estate; this provision did not mean partitioning the estate into thirds with interest from that one-third paid to her, but rather one-third of the "interest" of the whole estate. Since comparatively few estates in rural Illinois were composed of income-producing assets, "interest" was statutorily defined as 6 percent of the total value of the estate, whether or not the estate was income-producing.[10] Thus, Margaret was entitled to an annual payment of 2 percent of the value of the estate until her death.

Edward's will had not named a guardian, and thus the court-appointed guardian of the minor children would serve until the youngest child died or came of age. At that point, the guardian and executors were expected to render an accounting to the court, make a final distribution, and close the estate.[11]

Inventory, Appraisal, and Notice to Creditors

The surviving records in the Lawrence Probate Papers enable us to trace the legal stages, step by step. The first was the inventory and appraisal of Lawrence's estate filed February 18, 1840.[12] It begins by listing livestock (one horse, three cows), a wagon, household furnishings and miscellaneous tools, and ends with twelve promissory notes or mortgages that were owed to Edward at the time of his death, most of them by individuals living in Canada. The total appraised value of the estate is listed as $2,793.76, with these notes and mortgages accounting for $2,615.34.[13]

The next item in the Lawrence Probate Papers is a newspaper clipping headed "Administrator's Notice":

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9. Lawrence, Will, 44.

10. *The Public and General Statute Laws*, "Interest." sec. 1, p. 343.

11. *The Public and General Statute Laws*, "Interest." sec. 1, p. 343; "Wills," pp. 686–724; "Minors, Orphans and Guardians," pp. 465–69.

12. The court-appointed appraisers were T. G. Hoekersmith, Isaac Wilson, and John C. Wood.

13. Appraisal, February 18, 1840, Lawrence Probate Papers.

> The undersigned having taken out letters of administration on the estate of Edward Lawrence, deceased, late of Adams county Illinois, will attend before the Probate Justice of the Peace at his office in Quincy, in said county, on the first Monday of September 1840, for the purpose of settling and adjusting all claims against said estate. All persons indebted to said estate are requested to make immediate payment to the undersigned.

It was signed by Margaret Lawrence, Winslow Farr, and John Lawrence, as "Administrators of the estate of Edward Lawrence."

Attached to the notice are the certifications by the publishers of the *Quincy Whig* confirming that the notice had been published in the paper for four consecutive weeks, between July 18 and August 8, 1840.[14] Creditors could make their claims by early September, but debtors were asked to make payment immediately. By August, the executors had completed the first two steps of their responsibilities: identifying the heirs (including posthumous daughter Margaret), collecting and appraising the estate assets, and publishing the notice to creditors. A new development, however, frustrated moving to the third and fourth steps—Margaret's marriage to Josiah Butterfield on December 24, 1840.[15] Butterfield, a Mormon living at Bear Creek in Adams County, was a widower. His wife, Polly, had died on September 20, 1840, following an eighteen-month illness and leaving one known child, Josiah Jr., age unknown. The Butterfield-Lawrence marriage thus occurred three months after Polly's death and about a year after Edward's. This union had far-reaching implications for the Lawrence estate's ultimate disposition.

In January or early February 1841, co-executor John Lawrence, filed an undated and untitled petition with the court alleging that Edward's will stated: "And I do further request of my brother, John Lawrence, that he shall act as my agent or Attorney and I do by this, my last will and testament, constitute him, the said John Lawrence, my legal Attorney to collect all moneys due me in the province of Canada."

John contended that Margaret refused to give the notes to him. He also made a more serious accusation: that "Margaret had in her possession at the death of the said Edward money belonging to his estate which she has not accounted for and that she still has the same or has embezzled it." He requested that the court require Margaret and her new husband to appear

14. Administrator's Notice, clipping from the *Quincy Whig*, in Lawrence Probate Papers.

15. *Marriages of Adams County, Illinois,* vol. 1: *1825–1860,* 4 vols. (N.p.: Great River Genealogy Society, 1979–83), 1:17.

before Justice Miller and "answer under oath touching the money as aforesaid in their or her possession."[16]

On February 11, Justice Andrew Miller held a hearing on this petition. Margaret and Josiah countered that executors are not obliged to answer to their co-executors for their conduct or be required to disclose under oath their conduct in the management of estate affairs. After hearing the evidence and attorneys' argument for both parties,[17] Justice Miller ordered that the Butterfields make such a disclosure under oath. The Butterfields' attorneys announced their intention to appeal.[18] Then, just a week later, on February 18, John Lawrence, Winslow Farr, and Josiah Butterfield filed an "Agreement to Dismiss Appeal," conditioned on the requirement that Margaret and Josiah deliver the promissory notes and the other personal property and money to the court.[19] Although a modern reader would wonder why Josiah, but not Margaret, signed this agreement, a nineteenth-century participant would not because "coverture," the idea that a married woman's civil identity converges with her husband, was then the law in Illinois and most of the other states of the Union.[20] Thus, Margaret could act in her own name as a widow (or, in legal terms, a "feme sole"); but upon remarriage, her identity had been subsumed into Josiah Butterfield's, and he became the new co-executor.

The following day, February 19, a supplemental inventory and appraisal of the assets that Margaret had earlier withheld were filed, adding $1,910.62½ to the value of the estate.[21] Five months later, a bill of sale dated July 7, 1840, totaling $154.56¼ was added to the file, followed nine months later on April 3, 1841, for $177.05. These two bills accounted for the sale of most of the personal

16. John Lawrence, untitled and undated petition, Lawrence Probate Papers.

17. Miller's order names "Backenstos and Warren" as the Butterfields' attorneys but does not identify John's attorney. "Backenstos" may well be Jacob B. Backenstos, who by May 1843 had become the clerk of the Circuit Court of Hancock County. There is no record that he ever practiced law in either Adams or Hancock County, however. The 1840 census lists "J. B. Backenstos" as living in Sangamon, Adams County, Illinois. Calvin A. Warren, a resident of Quincy, served as Joseph Smith's attorney in several matters during 1842–43. After the assassinations of Joseph and Hyrum Smith, he represented some of the accused murderers.

18. Order, February 11, 1841, Lawrence Probate Papers.

19. Agreement to Dismiss Appeal, Lawrence Probate Papers. The agreement was signed February 17 and filed February 18, 1841.

20. John Bouvier, *A Law Dictionary Adapted to the Constitution and Laws of the United States of America and of the Several States of the American Union*, 15th ed. (Philadelphia, J. B. Lippincott Company, 1888), s.v. "Coverture."

21. Supplemental Appraisal, February 19, 1841, Lawrence Probate Papers.

property listed in the two appraisals, as the Illinois statute required.[22] A second, undated summary then itemized those sales along with the estate's other assets, showing its final value as $4,155.26½.[23]

Guardianship

A separate responsibility of the court was to appoint a guardian for Edward's seven children, all of whom were under legal age when he died. Minor children whose father had died were classed as "orphans" even if their mother was alive; a father's will could name a guardian but the court would still have to confirm the appointment. When a decedent failed to designate a guardian under Illinois law, children who were age fourteen and older could nominate their own choice for guardian, and the court would appoint that guardian for them.[24] As a widow, Margaret could have been named as that guardian (assuming that the children over fourteen nominated her); but because of her remarriage, she had lost her separate legal identity, and Josiah would have become the children's guardian.

Two of the children were over fourteen: Maria (seventeen) and Sarah (fourteen). Rather than nominate their stepfather or their uncle, John Lawrence, the two girls nominated Joseph Smith as guardian for them and their siblings. Their reasons remain undocumented. Perhaps the friction between Uncle John and their mother made John an unappealing candidate. Josiah and his son had moved into the Lawrence home in Lima, and the adjustment difficulties in stepfamilies are notorious.

These speculations about John Lawrence's and Josiah Butterfield's unsuitability, however, do not explain why the girls chose Joseph Smith. No record seems to suggest any prior acquaintance with or association between any of the Lawrences and Joseph Smith. But Joseph accepted the nomination and was thus injected squarely into the family dynamic.

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22. *The Public and General Statute Laws*, "Wills," sec. 91, pp. 709–10. "The executor or administrator shall, as soon as convenient, after making the inventory and appraisment, as hereinbefore directed, sell at public sale all the personal property, goods, and chattels of testator … for the payment of the debts and charges against the estate."

23. Sale Bill #1, July 7, 1840; Sale Bill #2, April 3, 1841, revised summary of assets, n.d., Lawrence Probate Papers.

24. *The Public and General Statute Laws*, "Minors, Orphans and Guardians," sec. 1., p. 465: "The courts of probate, in their respective counties, shall admit orphans, minors, above the age of fourteen years, father being dead, to make choice of guardians, and appoint guardians for such as are under the age of fourteen years, in all cases where such minor shall be possessed of, or entitled to real or personal estate."

Four documents in the Lawrence Probate Papers, all dated June 4, 1841, spell out the next steps. Following the law, the guardian (Joseph) and his two sureties (Hyrum Smith and William Law) first signed a bond which guaranteed that they would "faithfully discharge the office and trust of such guardian" and spelled out their duties: rendering periodic accounts of the guardianship, complying with court orders, and paying to wards at the proper time "all moneys, goods, and chattels, title papers and effects."[25] The bond they posted was in the amount of $7,759.06, $95.98 more than twice the estate value.

Buttressing the bond, as the law required, Hyrum and William filed a supporting affidavit certifying that each of them had a net worth of "more than eight thousand dollars after all their just debts are paid." Next, Justice Miller made the formal appointment. The final piece of paperwork acknowledged delivery of the promissory notes and other estate assets to Smith, for which he signed a receipt at the document's foot.[26] The assets turned over to Joseph totaled $3,831.54.

What happened next is not completely clear. Often wards went with their property to the guardian's home, or the guardian (usually when there were no surviving parents) placed the minors in a foster home. No statutory or customary rules applied, and housing for the wards took a variety of forms almost as disparate as other marital and family connections. In the Lawrence family, as of June 1841, Maria (eighteen), Sarah (fifteen), James (thirteen), and Nelson (eleven) were all out of the Lima home. That fact is documented by a bill dated June 4, 1842, that Josiah Butterfield submitted to Joseph Smith as guardian for Butterfield's "supporting" the three youngest children (seven-year-old Henry, six-year-old Julia Ann, and two-year-old Margaret) for one year beginning June 4, 1841.[27] Had the older siblings remained at Lima, Butterfield would have also included their support in his bill. From the Church's 1842 Nauvoo census, it appears that Maria and Sarah had joined Joseph and Emma's household, although the date of their move to Nauvoo is not documented. James was living with Hyrum Smith. Nelson's

25. *The Public and General Statute Laws*, "Minors, Orphans and Guardians," sec. 1., pp. 465–66: "The courts of probate shall take, of each guardian appointed under this act, bond with good security, in a sum double the amount of the minor's estate, real and personal, conditioned as follows."

26. These four documents are the beginning papers in a separate Lawrence Guardianship file, box #28 of the Adams Circuit Court clerk's records (hereafter cited as Lawrence Guardianship file). Certified copy in my possession.

27. Josiah Butterfield to "Joseph Smith, Guardian," Bill for Support, June 4, 1842, Lawrence Probate Papers. This bill is filed with the probate papers rather than the guardianship papers.

whereabouts during this period are unknown, but he was somewhere in the Nauvoo vicinity.[28] It is also unknown whether the new housing arrangement was mutually agreed between the Butterfields, Lawrences, and Smiths, or whether lingering or new friction arose between those older children and their stepfather that prompted the move of all four. In all events, no complaint or motion was made in Judge Miller's court protesting or dissenting from this arrangement.

Managing the Estate and Joseph's Guardianship

Illinois law of the 1840s did not require a guardian to keep estate assets separate from his own property, as modern law requires. However, James Kent's influential *Commentaries on American Law* (1844 edition), notes:

> The guardian's trust is one of obligation and duty, and not of speculation and profit. He cannot reap any benefit from the use of the ward's money. He cannot act for his own benefit in any contract, or purchase, or sale, as to the subject of the trust. If he settles a debt upon beneficial terms, or purchases it at a discount, the advantage is to accrue entirely to the infant's benefit. He is liable to an action of account at common law, by the infant, after he comes of age; and the infant, while under age, may, by his next friend [a relative who is of legal age], call the guardian to account by a bill in chancery. . . . Every general guardian, whether testamentary or appointed, is bound to keep safely the real and personal estate of his ward, and to account for the personal estate, and the issues and profits of the real estate, and if he make or suffers any waste, sale, or destruction of the inheritance, he is liable to be removed, and to answer in treble damages.

Kent then discusses the general statutory prohibition against selling any of the ward's real property unless authorized by the court, and concludes:

> And if the guardian puts the ward's money in trade, the ward will be equally entitled to elect to take the profits of the trade, or the principal, with compound interest, to meet those profits when the guardian will not disclose them. So, if he neglects to put the ward's money at interest, but negligently, and for an unreasonable time, suffers it to lie idle, or mingles it with his own, the

28. Nauvoo Stake, Ward Census, 1842, microfilm of holograph, 49, LDS Church History Library.

> court will charge him with simple interest, and in cases of gross delinquency, with compound interest. These principles . . . apply to trustees of every kind.[29]

In short, guardians were prohibited from profiting from the wards' estates and could be removed from guardianship and/or slapped with three-fold punitive damages if they did. They were also enjoined from leaving the estate idle or intermingling it with their own unproductive assets, a lack of action for which they would also be charged with simple or compound interest or the profits attributable to the estate assets. In other words, the sanctions against guardians' self-enrichment or idleness were removal and/or imposition of interest—simple, compound, or treble—depending on the severity of the misconduct or neglect. Those sums would be collected from the bonds posted by the guardians and their sureties at the times of their appointment to serve.

The law also gave guardians broad powers to expend the funds on behalf and for the benefit of their wards, including the expense of their education. Additionally, the same statute obliged guardians to render accounts "from time to time" to the probate court, for adjustment, if necessary. The court had the power to remove and replace a guardian or require him and his sureties to furnish a larger bond as additional security for the guardian's faithful performance.[30]

Without being ordered to do so, Joseph rendered an accounting to the court on June 3, 1843, which showed receipts, expenses, and status of the estate to that date. Figure 1 shows a list of expenses for June 1841 to June 1842. The first three items show efforts to collect the Canadian notes: the first item establishes that "W. & W. Law" collected a note for $705, for which they received a fee of $14.00 ("W. & W. Law" being William Law and his brother Wilson).

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29. James Kent, *Commentaries on American Law*, 5th ed., 4 vols. (New York: James Kent, 1844), 2:228–31. See also Rowan v. Kirkpatrick, 14 Ill. 1 (1852), and Bond v. Lockwood, 33 Ill. 212 (1864). The Rowan case began in 1844. The Bond case quotes the Rowan decision with approval. Both cases adopt and apply the principles in *Kent's Commentaries*, which were, by Smith's time, widely used by judges and attorneys. *Kent's Commentaries* were the American equivalent and competitor to *Blackstone's Commentaries*. See also the cases summarized in Bouvier, *Law Dictionary*, s.v. "Guardian."

30. *The Public and General Statute Laws*, "Minors, Orphans and Guardians," sec. 7, p. 466. See also secs. 8–11, pp. 466–67. At no time during Smith's lifetime was any petition filed with Probate Justice Miller on behalf of the Lawrence children asking for Smith's removal or for an accounting or increase of the bond.

The second item is a note from a J. Campbell for $500.00 on which no interest could be collected for one year. Joseph therefore took an expense of $30.00. A corroborating receipt reads: "Rec'd. of Joseph Smith a note on J. Campbell of upper Canada for five hundred dollars payable next July, without interest, which when collected we promise to pay to said Joseph Smith or order Nauvoo Ill. Jan. 24th, 1842. W & W. Law."[31]

The third item is a $597.50 note also collected by the Laws. Another receipt likewise confirms that the Law brothers were assigned to collect this note: "Received of Wilson Law Four Hundred and fifty Dollars in part payment of monies collected by said Wilson Law in Canada for which I have claim on said Law. Joseph Smith."[32] This particular receipt apparently refers to item 3, since items 1 through 3 are the only debts in Figure 1 connected to "W & W Law," and would suggest that, of the original $597.50, $450.00 had been collected and paid to Joseph, leaving $147.50 still due. Those entries also indicate that Edward Lawrence's brother John did not act as collector in Canada after all. As discussed below, the remaining $147.50 of this debt was likely never collected in full. The document trail concerning the Canadian collections stops with this itemized list in Joseph Smith's accounting. However, as Figure 2 shows, Joseph increased the value of the estate annually at the statutorily required rate of 6 percent and paid Margaret Lawrence Butterfield her share as though he had possession and use of all the Lawrence assets.

The fourth item in figure 1 shows that Joseph paid a fee pursuant to an order of Judge Miller, and item 5 is the payment of Josiah Butterfield's bill. The next item documents Joseph's payment to Margaret of her annual statutory interest. The remaining entries are for items of clothing from Joseph's Nauvoo store for all of the Lawrence children except daughter Margaret, who was three in 1843. Because Nelson appears on this list, he was presumably living in or near Nauvoo.

Figure 2 further details Joseph's expenses in behalf of the Lawrence children, as well as his summary of the fluctuations in the estate for the previous two years (1841–43). The sum of $3,831.54 was the estate's value when Joseph Smith was appointed guardian. Those entries read:

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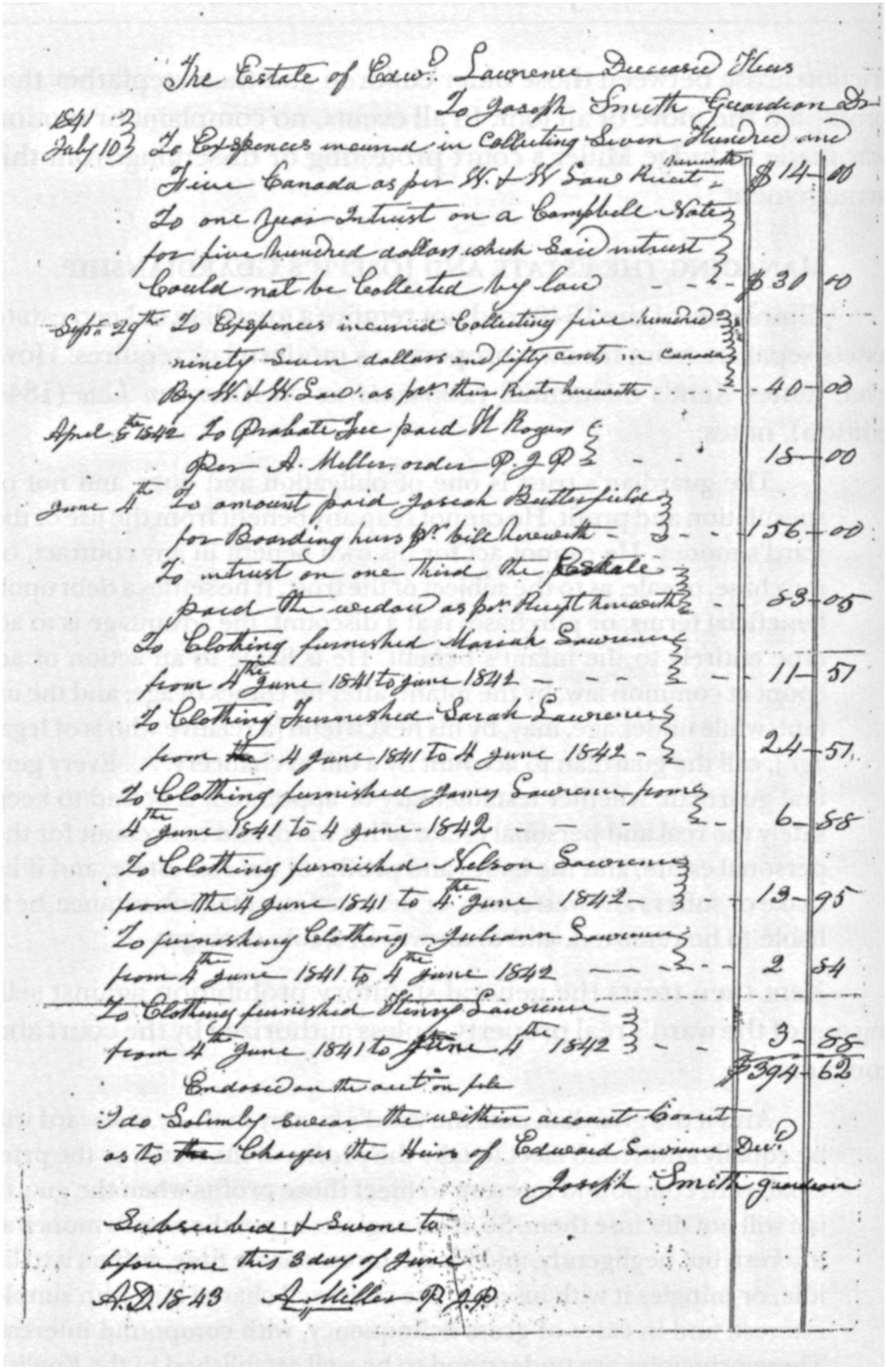
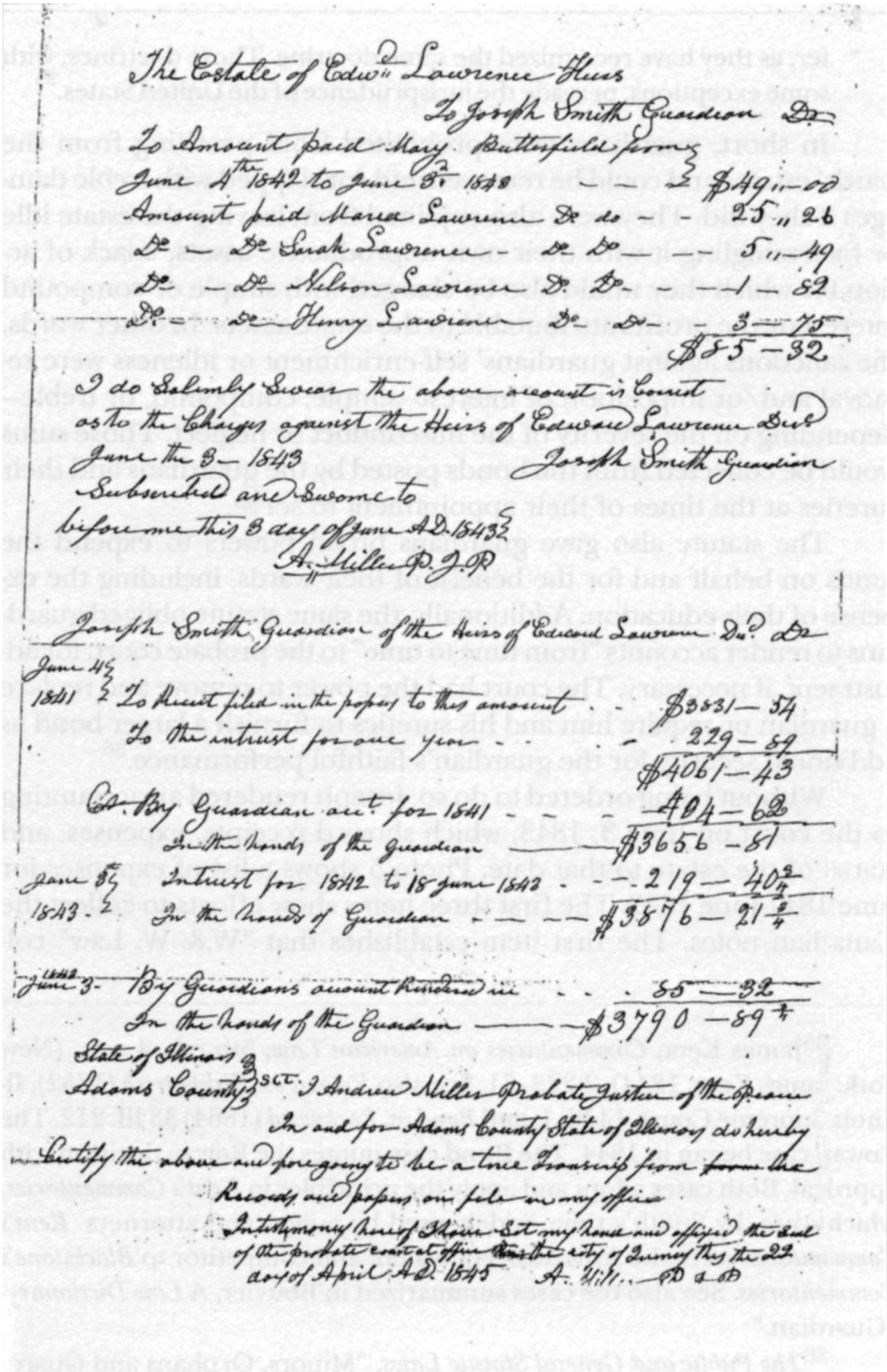
31. W. & W. Law, Receipt, [n.d.], Joseph Smith Collection, LDS Church History Library. "Or order" was a standard legal term meaning that the note's owner—the named payee—could endorse it to a third party; in other words, if Joseph had endorsed this Law receipt to someone else, that third party could collect from Law pursuant to Joseph's "order."

32. Joseph Smith, Receipt to Wilson Law, April 11, 1844, Newel K. Whitney Collection, L. Tom Perry Special Collections, Harold B. Lee Library, Brigham Young University, Provo, Utah.



The Estate of Edwd. Lawrence Deceased Hers
To Joseph Smith Guardian &c
1841
July 10 To Expences incurred in Collecting Seven Hundred and
Five Canada as per W. & W. Saml Rivett Esqrs Receipt $ 14-00
To one Years Intrust on a Campbell Note
for five hundred dollars which Said intrust
Could not be Collected by law - - - $ 30-00
Sept. 29th To Expences incurred Collecting five hundred
ninety Seven dollars and fifty cents in Canada
By W. & W. Saml. as per their Receipt herewith - - - 40-00
April 6th 1842 To Probate Fee paid H Rogers Esq
Per A. Miller order P.J.P - - - 15-00
June 4th To amount paid Josiah Butterfield
for Boarding hers pr. bill herewith - - - 156-00
To intrust on one third the Estate
paid the widow as per Receipt herewith - - 83-05
To Clothing furnished Mariah Lawrence
from 4th June 1841 to June 1842 - - - - 11-57
To Clothing Furnished Sarah Lawrence
from the 4 June 1841 to 4 June 1842 - - 24-57
To Clothing furnished James Lawrence from
4th June 1841 to 4 June 1842 - - - - 6-58
To Clothing furnished Nelson Lawrence
from the 4 June 1841 to the 4 June 1842 - - - 13-95
To furnishing Clothing Juliann Lawrence
from 4th June 1841 to 4th June 1842 - - - 2-84
To Clothing furnished Henry Lawrence
from 4th June 1841 to June 4th 1842 - - - 3-58
$ 394-62
Endorsed on the acct on file
I do Solimly Swear the within account Contains
as to the Charges the Heirs of Edward Lawrence Dec'd
Joseph Smith guardian
Subscribed & Sworne to
before me this 3 day of June
A.D. 1843 A. Miller P.J.P

Figure 1. On June 3, 1843, Joseph Smith voluntarily submitted an accounting of his 1841–42 guardianship, including attempts to collect the debts in Canada and payment to Josiah Butterfield for "boarding" his three young stepchildren.



The Estate of Edwd Lawrence Heirs

To Joseph Smith Guardian Dr

To Amount paid Mary Butterfield former June 4th 1842 to June 3d 1843 — — $49 — 00

Amount paid Maria Lawrence Dr do — — 25 " 26

Dr — Dr Sarah Lawrence — Dr Dr — — 5 " 49

Dr — Dr Nelson Lawrence Dr Dr — — — 1 — 82

Dr — Dr Henry Lawrence Dr Dr — — 3 — 75

$85 — 32

I do Solimly Swear the above account is Correct as to the Charges against the Heirs of Edward Lawrence Decd

June the 3 — 1843 Joseph Smith Guardian

Subscribed and Sworne to before me this 3 day of June A.D. 1843

A. Miller P.J.P

Joseph Smith Guardian of the Heirs of Edward Lawrence Decd Dr

June 4 1841 — To Amount filed in the papers to this amount — $3831 — 54

To the intrust for one year — — 229 — 89

$4061 — 43

Cr By Guardian acct for 1841 — — — $404 — 62

In the hands of the Guardian — — $3656 — 81

June 3 1843 — Intrust for 1842 to 18 June 1843 — — 219 — 40 2/4

In the hands of Guardian — — — $3876 — 21 2/4

June 3 1843 — By Guardians amount Rendered in — — 85 — 32

In the hands of the Guardian — — $3790 — 89 2/4

State of Illinois } ss.
Adams County } ss.

I Andrew Miller Probate Justice of the Peace in and for Adams County State of Illinois do hereby Certify the above and foregoing to be a true transcript from the Records and papers on file in my office

In testimony thereof I have set my hand and affixed the Seal of the probate court at office in the city of Quincy this the 22 day of April A.D. 1845 A. Miller P.P. & P.

Figure 2. On this second page of Joseph Smith's accounting of his 1841–42 guardianship, submitted to the court on June 3, 1843, he enumerates the money paid to or for the four older children (Maria, Sarah, Nelson, and Henry) and the payment to Margaret Lawrence Butterfield.

1841	To Recei[p]t filed in the papers to this amount	$3,831.54
	To the interest for one year	229.89
		$4,061.43
	As by Guardian acct. for 1841	404.62[33]
	In the hands of the Guardian	$3,656.81
June 3.	Interest for 1842 to 18 June 1843	219.40¾
1843	In the hands of the Guardian	$3,876.21¾
1843		
June 3	By Guardians account herein in	85.32
	In the hands of the Guardian	$3,790.89¾

These numbers show how a guardian rendered an accounting to the probate court. The estate is enlarged by 6 percent (the legal rate of interest) at the beginning of each year ($229.89 is 6 percent of $3,831.54; $219.40¾ is 6 percent of $3,656.81). The expenses (the sums underlined) are deducted, and the net remaining value of the estate is then used to compute the chargeable interest or enlargement for the following year. Joseph charged himself 6 percent of the full, stated value of the estate, even though its assets (the Canadian notes, originally totaling $1,784) had not been fully collected and likely never were.

Unlike Josiah Butterfield, who billed the estate for boarding Edward's three youngest children, Joseph made no claim against the estate for boarding or supporting Sarah and Maria, nor did Hyrum for James, nor did whoever cared for Nelson. Furthermore, Joseph was entitled by statute to make a claim of 6 percent as compensation for acting as the children's guardian, but he never did.[34]

Among the estate's assets listed by the clerk on other documents pertaining to the Butterfield Estate was a "house in Lima & a Farm," valued at $1,000.

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33. The $404.62 is $10.00 more than the $394.62 shown in figure 1 as the total expenses for the first year. Was an additional item of $10.00 added to the total? Or was it an error of arithmetic?

34. *The Public and General Statute Laws*, "Wills," sec. 121, p. 718: "Executors and administrators shall be allowed, as a compensation for their trouble, a sum not exceeding six per centum on the whole amount of personal estate, … with such additional allowances for costs and charges in collecting and defending the claims of the estate, and disposing of the same as shall be reasonable." "Minors, Orphans, and Guardians" sec. 14, p. 467 in the same source spells out: "Guardians on final settlement, shall be allowed such fees and compensation for their services as shall seem reasonable and just to the judge of probate, not exceeding what are, or shall be allowed to administrators."

On April 1, 1842, Joseph sold the farm, but not the home, to William Marks for $1,150, a profit to the estate.[35] The deed was signed and acknowledged on April 1, 1842, but was not filed with the county recorder until October 17, 1853—eleven years later. The reconstituted Butterfield household lived in the home until sometime in 1842, when they moved to Nauvoo. There is no record that Joseph sold, rented, or otherwise disposed of the Lima home.

Also a major asset of the Lawrence Estate was the *Times and Seasons*, the Church's official newspaper. At first it was a monthly periodical published by Don Carlos Smith (Joseph's youngest brother) and Ebenezer Robinson (both of whom had learned the printing business under Oliver Cowdery in the Church's printing office at Kirtland). Don Carlos died August 7, 1841, and Robinson continued printing until February 4, 1842, producing also the Nauvoo edition of the Book of Mormon.[36] Then Willard Richards, acting as Joseph's agent, contracted to purchase the printing establishment from Robinson for $6,600. John Taylor and Wilford Woodruff were appointed the new editors, under Joseph's supervision; and over the ensuing months, or perhaps years, Smith paid Robinson in full.[37] While the paper trail is incomplete, Smith invested whatever Lawrence estate funds he ultimately obtained, together with some of his own capital, to finally pay the $6,600.00. He treated the printing operation as an asset of the Lawrence estate. By December 1842, Smith signed a formal five-year lease with Taylor and Woodruff for the printing establishment, including the building in which it was housed.[38] Since the estate's value was $3,790 in June 1843, the difference of $2,810 to make up the $6,600 purchase price of the print shop came from Joseph's personal assets.

Preparing the Proposed Final Accounting

On January 23, 1844, Joseph's principal financial clerk, William Clayton, noted in his journal: "Joseph sent for me to assist in settling with Brother [John] Taylor about the Lawrence Estate." Clayton worked that day on posting

35. Book 17 of Deeds, p. 77, Adams County Recorder's Office.

36. Kyle R. Walker, "'As Fire Shut Up in My Bones': Ebenezer Robinson, Don Carlos Smith, and the 1840 Edition of the Book of Mormon," *Journal of Mormon History* 36, no. 1 (Winter 2010): 1–40.

37. Ebenezer Robinson, "Items of Personal History of the Editor," *The Return* 2 (October 1890): 346. The printing establishment consisted of two presses with type, a stereotype foundry, a bindery, and stereotype plates of the Book of Mormon and Doctrine and Covenants, plus incidental equipment and supplies, all of which were itemized in the lease.

38. Lease, December 1, 1842, Joseph Smith Collection.

books and preparing accounts for its settlement.[39] If Clayton finished this summary and accounting, they have not survived. The source that Joseph used for his 1842–43 accountings to the court were "Joseph Smith's Daybook B" and "Joseph Smith's Daybook C"—the running ledgers Clayton and others used to record transactions in Joseph's Red Brick Store in Nauvoo.[40] Presumably, Clayton also used them for his accounting on the Lawrence estate. They cover from the beginning of Joseph's guardianship on June 4, 1841, through January 15, 1844, apparently the last entry Clayton posted. They corroborate the accountings Joseph rendered to the court for the years ending in June 1842 and June 1843, enumerate clothing or other goods that the Butterfields and Lawrence children received from Joseph's store, and include cash payments directly to them, payments of travel expenses, tavern bills, charges from "Yearsleys Store" for Mrs. Butterfield or the Lawrence sisters, and tuition to "Luce's school" for the children.

As noted above, Joseph's accounting for 1842–43 shows an "interest" payment to Margaret Butterfield of $49. The spreadsheets show additional payments amounting to $26.81 dated two days later on June 6, 1843, two days after the 1843 accounting. The 1843 accounting to the court also fails to show a payment to Butterfield for boarding his three youngest step-children, but the later spreadsheet entries show his payments. As of January 1844, Joseph owed Margaret and Josiah Butterfield $272.81 from the estate; but the daybooks show that he actually paid them $319.39—an overpayment of $46.58. The daybooks further show that, between June 1843 and January 1844, Joseph made additional payments, either for or directly to the three younger Lawrence children, of $111.01. For the whole period from June 1841 through January 1844, payments to or for Maria Lawrence totaled $89.78 and those for Sarah amounted to $93.31.

Transferring the Guardianship

After the Apostles returned from their mission to Great Britain in June and July 1841, Joseph Smith transferred many of his Church and business

39. George D. Smith, ed., *An Intimate Chronicle: The Journals of William Clayton* (Salt Lake City: Signature Books, 1991), 124–25.

40. "Joseph Smith's Daybook B" and "Joseph Smith's Daybook C," Masonic Lodge Library, Cedar Springs, Iowa. In the 1960s, James L. Kimball received permission to copy all of the entries in both volumes. From them, he extracted all the entries related to the Lawrence estate, Margaret and Josiah Butterfield, and the Lawrence children, and graciously shared them with me. In July 2003, I visited this library and verified all the Lawrence items.

responsibilities to them.[41] By January 23, 1844, as Clayton noted in his journal, Smith began arranging to transfer the Lawrence guardianship to John Taylor, perhaps because Taylor had been associated with the Lawrence family's conversion. Figure 3, the agreement prepared to facilitate that transfer, specified that Taylor,

> for the considerations hereinafter mentioned doth hereby bind himself to assume the Guardianship of the Estate of Edward Lawrence deceased and to free the said Joseph Smith from all liabilities and responsibilities for the same.... And further to obtain and give over to [meaning "take over from"] the said Joseph Smith all obligations, receipts & liabilities now laying [*sic*] in the hands of the Judge of Probate.[42]

The "considerations" mentioned in this agreement were the printing office, lot, equipment, and supplies, which Joseph had had William W. Phelps, Newel K. Whitney, and Willard Richards appraise on January 23–24. Smith was disappointed at their low evaluation $2,832.[43] Smith had paid Robinson more than double that amount over the previous years and had considered the printing business to be well in excess of the Lawrence estate's value, which by January 1844 amounted to $3,360.49¾.[44] However, neither Smith nor Taylor signed this agreement; and Taylor, though he took some steps to implement it, was overtaken by the rapidly developing events that resulted in Joseph Smith's death six months later.

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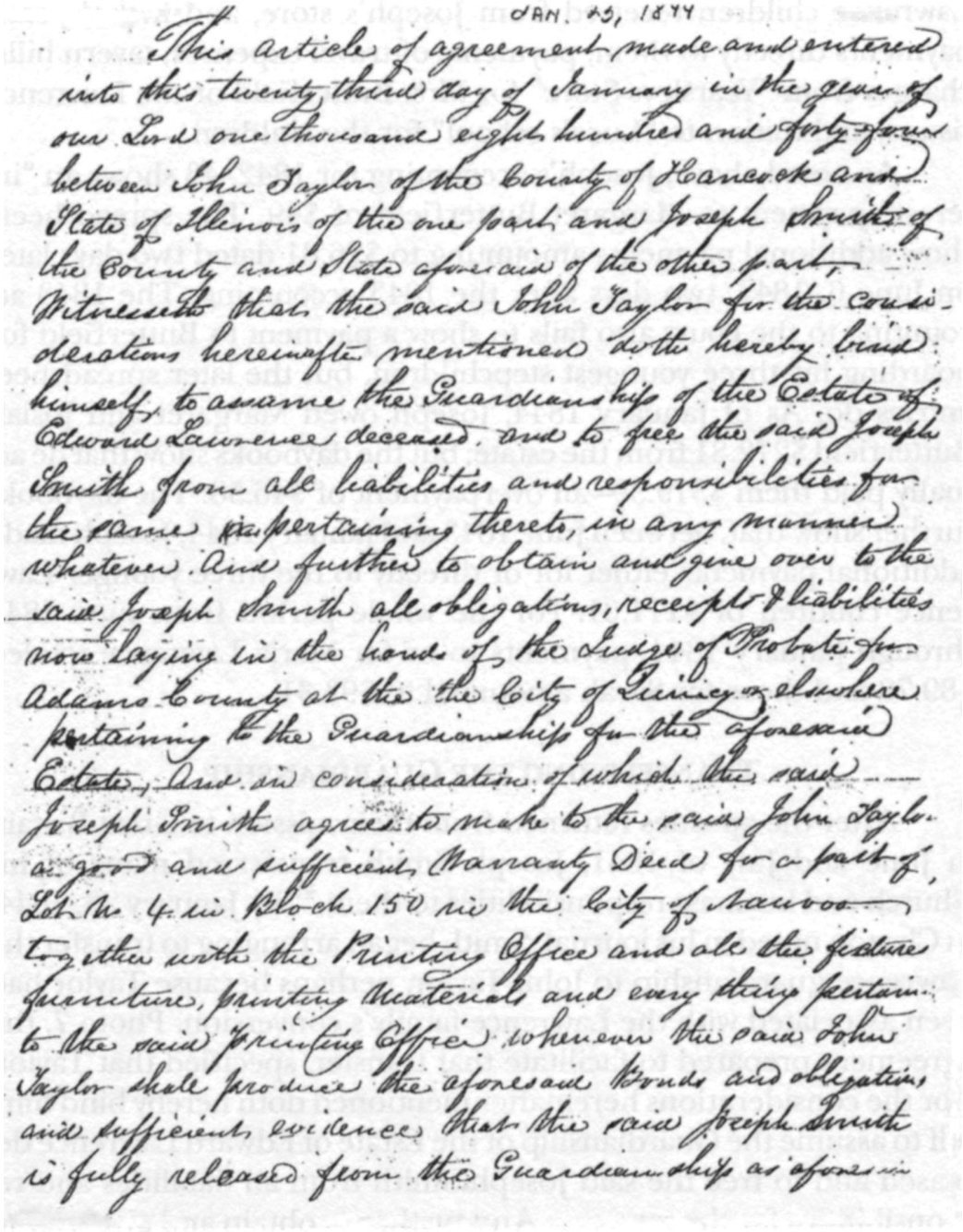
41. Ronald K. Esplin, "Joseph, Brigham, and the Twelve: A Succession of Continuity," *BYU Studies* 21, no. 3 (Summer 1981): 301–41.

42. Agreement, January 24, 1844, in Trustee in Trust Miscellaneous Financial Papers, Joseph Smith Collection. "Trustee in Trust," was the term frequently used to designate "a person in whom some estate, interest, or power in or affecting property of any description is vested [held] for the benefit of another." Bouvier, *Law Dictionary*, "Trustee." It was the statutorily designated title in Illinois to be used by agents or officers of churches who held title or possession of said church's property. Hence, Joseph was listed on Church property as "Trustee in Trust."

43. According to Joseph Smith, Journal, January 23, 1844, LDS Church History Library: "W. W. Phelps, N. K. Whitney and W. Richards prized the printing office & Lot at $1,500—printing apparatus. $950. Binde[r]y, $112. founde[r]y, $270. Total, $2,832." and January 24, "Called at my office about 1 oclock thought the appr[a]isal of the printing office was too low."

44. That figure is the June 1843 accounting total ($3,790.89) minus the daybook expenses paid between June 1843 and January 1844 ($319.39 and $111.01 paid to or for the children). The total presumes that all of the Canadian notes had been collected, which was probably not the case.


JAN. 23, 1844

This article of agreement made and entered into this twenty third day of January in the year of our Lord one thousand eight hundred and forty four between John Taylor of the County of Hancock and State of Illinois of the one part and Joseph Smith of the County and State aforesaid of the other part. Witnesseth that the said John Taylor for the considerations hereinafter mentioned doth hereby bind himself, to assume the Guardianship of the Estate of Edward Lawrence deceased. and to free the said Joseph Smith from all liabilities and responsibilities for the same pertaining thereto, in any manner whatever. And further to obtain and give over to the said Joseph Smith all obligations, receipts & liabilities now laying in the hands of the Judge of Probate for Adams County at the the City of Quincy or elsewhere pertaining to the Guardianship for the aforesaid Estate. And in consideration of which the said Joseph Smith agrees to make to the said John Taylor a good and sufficient Warranty Deed for a part of Lot No 4 in Block 150 in the City of Nauvoo together with the Printing Office and all the fixtures furniture, printing Materials and every thing pertaining to the said Printing Office whenever the said John Taylor shall produce the aforesaid Bonds and obligations and sufficient evidence that the said Joseph Smith is fully released from the Guardianships as aforesaid

Figure 3. These "Articles of Agreement," dated January 23, 1844, constituted the beginning steps in transferring the guardianship for the Lawrence children and estate from Joseph Smith to John Taylor, who was purchasing the *Times and Seasons* printing office. The document remained unsigned because the intermediate steps were not taken before Joseph's death in June 1844.

For Taylor to be appointed guardian was a multi-step process that would have required Taylor, plus two new sureties, each of whose net worth was more than $6,720 (twice the $3,360 value of the estate), and probably Joseph Smith as well, to appear in Quincy before Justice Miller to sign the necessary papers. Joseph would have needed, at the same time, to give John a warranty deed for the lot and a transfer document for the printing equipment and supplies. Perhaps the final decision to transfer the guardianship was not made until June 4; but three weeks later, Joseph was dead.

The transfer of the printing operation had its own legal complexities. The firm of Taylor and Woodruff was a partnership publishing the semi-monthly *Times and Seasons* and the weekly *Nauvoo Neighbor.*[45] On March 27, 1844, they dissolved the partnership, and Taylor assumed the lease, previously held jointly, of the printing plant and building.[46] Witnessing this document were Elias Smith, Maria Lawrence, and Sarah Lawrence. It seems reasonable, therefore, that Maria and Sarah understood that the printing enterprise assets constituted the main asset of the estate, as validated by their acting as witnesses. Maria was twenty, and Sarah would turn eighteen two months later.

Litigation

On April 11, 1844, as noted above, Joseph Smith acknowledged receiving $450 as part payment of the money that the Law brothers had collected in Canada and "had claim" for the balance, which the brothers acknowledged. But they refused to pay. On May 2 when Joseph "sent William Clayton to Wilson Law to find out why he refused paying his note, he [Law] brought in some claims as a set-off which Clayton knew were paid, leaving me no remedy but the glorious uncertainty of the law."[47]

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45. Peter Crawley, *A Descriptive Bibliography of the Mormon Church: Vol. 1, 1830–1847* (Provo, Ut.: BYU Religious Studies Center, 1998), 1:92–94, 218–19.

46. John Taylor, Untitled notice, Nauvoo, March 27, 1844, John Taylor Papers, LDS Church History Library.

47. Joseph Smith Jr., *History of The Church of Jesus Christ of Latter-day Saints,* ed. B. H. Roberts, 2d ed. rev., 7 vols. (Salt Lake City: Deseret Book, 1971), 6:350. None of the quotation appears in Joseph's Nauvoo Journal. However, Clayton wrote on May 2, 1844: President Joseph "desired me to go to [the] Mr. Laws to find out why they refused to pay their note. I went with Moore and asked Wilson what he meant by saying he had got accounts to balance the note. He seemed to tremble with anger & replied that he had demands for his services when he was ordered to call out the Legion to go meet Smith besides money that he had expended at that time. I told him that was a new idea & that Genl Smith had had no intimation of any such thing. Wm Law came in and mentioned $400 which was

Events unfurled rapidly from that point on. Disaffected over both plural marriage and what the Law brothers saw as Joseph's domination, they broke openly with the Church and were excommunicated on April 18, 1844. On May 24, a grand jury in Carthage issued an indictment against Joseph Smith for "Perjury and Adultery" based on testimony by William Law, Robert D. Foster, and Joseph H. Jackson.[48] The indictment named Maria Lawrence as co-respondent (partner) in the adultery charge.[49] Having been forewarned of the coming indictment, Smith, on May 27, rode to Carthage "thinking it best to meet my enemies before the court and have my Indictments investigated." His attorneys, William Richardson, Onias Skinner, and Almon W. Babbitt, pressed the court for an immediate hearing; but the prosecution, claiming that a necessary witness was unavailable, moved the court to grant a continuance to the next term of court. Smith's journal continues, "I was left to give bail to the Shirif at his option & he told me I might go home and he would call and take bail some time."[50] Such a procedure was perfectly acceptable in the nineteenth century, since courts convened only quarterly. An individual who was arrested gave bail to appear at the next term of court and went to jail only if and when he failed to appear and was rearrested.

The consequences of such an indictment were both legally and socially scandalous. Maria Lawrence's reputation would have been publicly damaged, independent of what the reputational consequences might have been to Joseph. She and her sister had been sealed to Joseph on May 11, 1843, nearly two years after the guardianship was created, with Emma's initial consent but later repudiation.[51] Even if this celestial marriage could have been made

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borrowed of Baily $300 of which I am satisfied was paid, and the other $100 Wm Law said he would pay and give it to help defray the expense of the persecution but he now demands the $100 and some more of the $300." Quoted in James B. Allen, *No Toil nor Labor Fear: The Story of William Clayton* (Provo, Ut.: Brigham Young University Press, 2002), 410–11.

48. See chapter 16 below.

49. People v. Joseph Smith, May 24, 1844, Circuit Court Record, Hancock County, Book D, 128–29.

50. Joseph Smith, Journal, May 27, 1844.

51. Lyndon W. Cook, *Nauvoo Marriages [and] Proxy Sealings, 1843–46* (Provo, Ut.: Grandin Book, 2004), 46–47; Linda King Newell and Valeen Tippets Avery, *Mormon Enigma: Emma Hale Smith,* 2d ed. (Champaign, Ill.: University of Illinois Press, 1994), 143–46; Todd M. Compton, *In Sacred Loneliness: The Plural Wives of Joseph Smith* (Salt Lake City: Signature Books, 1997), 474–80. For plural marriage more generally, see Danel Bachman and Ronald K. Esplin, "Plural Marriage," *Encyclopedia of Mormonism*, 4 vols. (New York: Macmillan Publishing, 1992), 3:1091.

known, it would not have alleviated the scandal—it would have just turned it in another, even more flamboyant, direction.

On the day following Joseph's appearance in Carthage, May 28, 1844, William Law petitioned Probate Justice Miller stating "that he has reason to believe and does believe that the said Joseph Smith who has possession of property to a large amount belonging to said heirs, is in danger of becoming utterly insolvent, if he is not already so." The heirs were in obvious financial jeopardy if this were the case. Law added that in fact "Hiram Smith the co-surety … has … been declared a bankrupt under the general bankrupt Law of the United States." He asked Miller to "require from said guardian supplementary security."[52] Although Law did not say so, he was obviously trying to be released from his own liability on the guardian's bond. However, Joseph Smith's death interrupted any action Miller may have taken in response to Law's petition.

On June 4, Joseph met with John Taylor, Almon Babbitt, Hyrum Smith, Willard Richards, Lucian Woodworth, and William W. Phelps and decided to file a counter-suit charging the Laws, Joseph H. Jackson, and two of their associates, Charles A. and Robert D. Foster, with "perjury, slander, etc." The group "counseled Taylor to go in with a prosecution in behalf of—Maria," which he could do once he was confirmed as her guardian. As a necessary accompaniment, Joseph also "Concluded to go to Quincy with—Taylor & give up my Bonds of guardianship etc."[53] That earlier counsel meant that Joseph, after being replaced by Taylor as guardian, could in his own name solely pursue the Laws, Fosters, and Jackson and that Taylor could join in the prosecution as Maria's guardian.[54]

This plan to counter-sue against the Laws and others has some interesting legal aspects. William Law had supplied testimony under oath that led to Joseph's indictment. If the adultery case had gone to trial and the jury had found Joseph not guilty, then Law would have been liable to a criminal charge of perjury and civil liability for slander. Possibly Joseph planned to prove his innocence, not only by his and Maria's denial of sexual intercourse but also by the testimony of a reputable physician who had conducted a physical examination and found that Maria was still a virgin. It would have

52. William Law, Petition to Probate Justice Andrew Miller, May 28, 1844, holograph, Lawrence Guardianship file. "William Law Petition" is written on the wrapper of this letter, but there is no notation of the date on which it was received and filed.

53. Joseph Smith, Journal, June 4, 1844.

54. Even though Maria was then of legal age, the guardianship had not been dissolved because the estate, as required by the will, had to remain intact as long as Margaret lived, so that she could receive her "interest."

been both foolhardy and fruitless for Joseph to have even imagined countersuing without something of such weight to present at trial. The fact that Maria had lived in the Smith household for a period of time was not of much consequence, since guardians customarily housed their wards under their own roof.

No documents after this date refer to transferring the guardianship to Taylor, probably because the Laws, Fosters, and other dissidents published the first (and only) issue of the *Nauvoo Expositor* on June 7, igniting a firestorm, whose destructive path led directly to the arrest and subsequent deaths of Joseph and Hyrum Smith on June 27.

Post-Martyrdom Events

After the martyrdom of Joseph Smith, John Taylor continued to print the *Times and Seasons,* the *Nauvoo Neighbor,* and other publications until the Mormon exodus from Nauvoo beginning in February 1846. What arrangements he made, if any, with the Butterfields, Maria and Sarah Lawrence, and the younger Lawrence children were not recorded by any of the parties.

Meanwhile, Emma Smith appeared in the Hancock County Probate Court on July 17, 1844, where she was appointed administratrix of Joseph's estate and guardian of her four children, all of whom were minors, ranging from thirteen-year-old Julia to six-year-old Alexander.[55] When some creditors of the estate petitioned the court to raise the limit of her bond as administratrix, she elected to surrender her letters of administration and was succeeded by Joseph W. Coolidge, a neighbor, friend, and a creditor of the estate, on September 19, 1844. Emma continued as the children's guardian.[56]

Emma spent August 30 and September 1, 1844, in Quincy with William Clayton, to settle "the Lawrence business." Justice Miller informed them that a new guardian for the Lawrence children would need to be appointed before making a settlement.[57] At that point, Emma was seven months pregnant.

On September 5, Margaret Lawrence Butterfield, and her two sons, James and Nelson, who were by then over age fourteen, petitioned the Hancock County Probate Court to appoint Almon W. Babbitt as guardian of the five

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55. Entry, Probate Record, Hancock County, vol. A, 341, microfilm, LDS Family History Library. David Hyrum was born later on November 17, 1844.

56. Entry, Probate Record, Hancock County, vol. A, 356.

57. James B. Allen, *Trials of Discipleship: The Story of William Clayton, a Mormon* (Urbana: University of Illinois Press, 1987), 185 n. 10; also in James B. Allen, *No Toil nor Labor Fear,* 182 n. 11.

minor Lawrence children.[58] (Maria and Sarah had reached their majority.) Babbitt was appointed with a bond set at $5,000; he had four sureties.[59]

Eight months later on May 6, 1845, two events happened that had an impact on the Smiths, Lawrences, and Butterfields. Almon Babbitt submitted a claim to Coolidge of $4,033.87 against Joseph Smith's estate on behalf of the Lawrence heirs. Coolidge approved the claim.[60] On the same day, Mary Fielding Smith petitioned the probate court to be appointed guardian of John, Jerusha, and Sarah, Hyrum's children by his first wife, Jerusha Barden Smith (Jerusha's eldest daughter, Lovina, was married), and her own children, Joseph Fielding and Martha Ann. Her bond was set at $3,000, and her sureties were Robert Pierce and Almon W. Babbitt.[61] By today's standards, at least some of Babbitt's simultaneous functions would be strictly forbidden as conflicts of interest, but it was not an issue in the mid-nineteenth century, in part, perhaps, because his actions were transparently disclosed to the courts.

Four months later, on September 1, Babbitt, acting as guardian for the Lawrence minors, filed a lawsuit against Joseph Smith's estate, Hyrum Smith's estate, and William Law. His goal was to recover whatever assets he could from Joseph's estate, then obtain the remainder from Hyrum's estate and from Law, based on Hyrum's and Law's bond as sureties for Joseph as guardian. Seven weeks later on October 23, Babbitt withdrew the claim ("plaintiff takes a non-suit").[62] Then in January 1846, Babbitt filed a new action against the two estates, adding Maria and Sarah Lawrence as co-plaintiffs with

58. Almon Whiting Babbitt had a Church career filled with reverses. Germane to this paper is his mission to Canada in 1837–38 during which he, with John Taylor, was instrumental in converting the Lawrence family. He became an attorney and represented Joseph Smith and the Church before the martyrdom, and the Church and its leaders, including John Taylor, after the martyrdom. Following the Smith murders, he was appointed a trustee with Joseph L. Heywood and John S. Fullmer to dispose of the assets of the Church and of individual Mormons in Illinois as they emigrated west. Andrew Jenson, *LDS Biographical Encyclopedia,* 4 vols. (Salt Lake City: Andrew Jenson History Company, 1901–36), 1:284–86; Wilson Law v. John Taylor, Circuit Court Record, Hancock County, Book D, 178, 228 (May 1845). As noted above, Josiah and Margaret Butterfield and Margaret's three younger children—Henry, Julia Ann, and Margaret—had moved from Adams County to Nauvoo sometime in 1842. Hence, Hancock County had jurisdiction for their probate court petition.

59. Probate Record, Hancock County, vol. A, 352.

60. Probate Record, Hancock County, vol. A, 421.

61. Probate Record, Hancock County, vol. A, 422.

62. Summons, A. W. Babbitt, Guardian, v. William Law et al., Circuit Court Record, Hancock County, Book D, p. 356; photocopy at Perry Special Collections.

himself as guardian for the minor Lawrence children. This time he did not name William Law as a defendant.[63]

When the court next convened on May 19, 1846, it dismissed the September complaint in accordance with Babbitt's October non-suit motion[64] and tried the second case, filed in January. Both Coolidge and Mary Fielding Smith defaulted (failed to appear). After hearing evidence of damages, the court rendered judgment against each estate for $4,275.88 plus court costs.[65] No entry appears in the files of Joseph's estate, Hyrum's estate, or the Lawrence guardianship that Babbitt ever received any payment on these judgments, so he probably did not. He would have been legally bound as guardian to report such payments had they been made.

Babbitt had been present at the meeting on June 4, 1844, when Joseph Smith and John Taylor finalized the decision to transfer the print shop. On becoming guardian, logically he would have pursued those assets by claiming that the Lawrence children had an equitable interest in them. Perhaps he did not because the Apostles, in Nauvoo on August 12, 1844, "voted that the estate of Joseph Smith settle its own debts, and the Church have nothing to do with it." They also voted that John Taylor "hire the printing office & establishment, of the *Nauvoo Neighbor* & *Times & Seasons,* of the Church, and have nothing to do with the Lawrence estate."[66] Although John Taylor was still recovering from the bullet wounds he had received at Carthage some six weeks earlier, he attended this meeting. Even though it was very soon after the Smith brothers' deaths, creditors and ultimately the Hancock County probate and circuit courts were making strenuous efforts to include in Joseph's estate many assets that the Twelve considered to be Church property, including the Nauvoo House, the Mansion House, the Homestead, and numerous lots in Nauvoo that Joseph had sold, both as the Church's Trustee-in-Trust and in his own name. That legal tangle took until 1851 to conclude. The case

63. Making Law a judgment debtor was superfluous because of the purpose of these suits, which was a friendly act to both widows. The suits gave each of them a creditor's claim before other creditors filed, both to give the women whatever the suits recovered and perhaps to dissuade other creditors from filing claims. In Mary's case, only a few other small creditors made claims; Babbitt released his claim on that estate to facilitate its sale to the Church's trustees (of which he was one) so Mary could buy the equipment and supplies to travel west.

64. A. W. Babbitt, Guardian, v. William Law et al., May 19, 1846, Circuit Court Record, Hancock County, Book D, 404–5.

65. A. W. Babbitt, Guardian, v. William Law et al., May 19, 1846, Circuit Court Record, Hancock County, Book D, 445–46.

66. Willard Richards, Diary, holograph and typescript, August 12, 1844, LDS Church History Library.

was resolved, however, on issues other than the creditors' assertion that Joseph had defrauded them. The only payments from Joseph's estate went to satisfy the U.S. government's claim relating to the steamship *Nauvoo*, attorneys' fees, court costs, and a negotiated dower interest granted to Emma.[67]

In other words, the Twelve instructed Taylor not to become the Lawrence children's guardian. Almon Babbitt replaced Joseph as guardian on the family's nomination, then sued Joseph's and Hyrum's estates, obtaining judgments of about $4,200 against each. His complaint left John Taylor out of the legal maneuverings and omitted William Law in the later suits, thus freeing Law from his bond as Joseph's surety.

Analysis of William Law's Statement

Now it is possible to detect several inaccuracies in William Law's 1887 interview by Wylhelm Wymethel (W. Wyl).[68]

Maria and Sarah were not, as Law asserted, "worth about $8,000.00 in English gold." Rather, their supposed worth was their potential interest in their father's estate valued only at $3,831.54 and made up primarily of promissory notes which, when delivered to Joseph Smith, they eventually might inherit.[69]

Joseph was not appointed guardian with "help" from the notorious John C. Bennett, but rather because Maria and Sarah had nominated him.

If Law's statement that Smith "naturally put the gold in his pocket" is an accusation that he absconded with the estate assets, the record makes clear that the reverse is true.

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67. Joseph I. Bentley, "In the Wake of the Steamboat Nauvoo," *Journal of Mormon History* 35, no. 1 (Winter 2009): 41–45.

68. On March 10, 1887, forty-three years after Joseph's death, Wylhelm Ritter von Wymethal, a German doctor/journalist living in Salt Lake City, was writing a series of columns for the *Salt Lake Daily Tribune* that he later published as a book under the name W. Wyl. He asked to interview William Law, then living in Shullsburg, Wisconsin, a request Law declined at least once, but to which he finally agreed. Wyl conducted the interview in person in Shullsburg at the home of Law's son, Thomas. Wyl and Law corresponded prior to the interview; and Wyl printed three of Law's letters, dated January 7, 20, and 27, 1887, in the *Tribune* on July 3, 1887; reprinted in Lyndon W. Cook, *William Law, Biographical Essay—Nauvoo Diary—Correspondence—Interview* (Orem, Ut.: Grandin Book, 1994), 102–11. The interview itself appeared in the July 31, 1887, issue of the *Tribune*; reprinted in Cook, *William Law,* 115–36.

69. Perhaps Law confused this number with the affidavit he signed as surety in which he swore that his net worth exceeded $8,000. He could not possibly, however, have thought that the estate consisted of "English gold." A more likely possibility is that the confusion was Wyl's and the English gold was his invention.

Guardians were legally allowed to co-mingle trust funds with their own, were charged with the value of the estate, and were required to account to the court for the management, receipts, and expenditures, having posted a bond to guarantee faithful performance of duties, all of which Joseph did.

Law's statements that Maria and Sarah were sealed to Joseph Smith[70] and that he, Law, signed on the guardian's bond were correct, but the co-signer was Hyrum Smith, not Sidney Rigdon, nor did these sealings impact Joseph's guardianship functions.

There is no evidence to support Law's assertion that "Babbitt found that Joseph had counted an expense of about $3,000.00 for board and clothing of the girls." The total sums expended from the estate for clothing and educating the two sisters was $89.78 for Maria and $93.31 for Sarah. Babbitt, as successor guardian, had access to the Adams County guardianship file, which he had copied. He knew that Joseph had made no such boarding claim. Thus Law's allegation was a complete fabrication.

The record also refutes Law's statement, "When I saw how things went, I should have taken steps to be released of that bond, but I never thought of it." He both "thought of it" and did indeed "take steps" to be relieved of it.

Law's recital of a confrontation between Babbitt and Emma is suspect for several reasons. When Babbitt became guardian of the younger Lawrence siblings (the "two girls" were already of legal age), Emma Smith had already relinquished her position as administratrix of Joseph's estate and Coolidge had replaced her as the party with whom Babbitt would have needed to contend. The printing establishment, which represented the corpus of the estate, was in John Taylor's possession, not Emma's. The judgments obtained against Joseph's estate were granted by default and may well have been a collusive rather than an adversarial process. Emma owned no real property in Hancock County at the time of Joseph's death, and the court put essentially all of the real property listed in his name into his estate. Emma therefore had no claim to Lawrence estate assets, nor did she have any property that Babbitt could have pursued.

Law's final claim—that he himself had authorized Babbitt to "take hold of all the property left by me in Nauvoo" together with all claims owing Law, and thus as his agent, Babbitt had paid the debt at Law's expense—is also questionable. If payment had been made from any source, Babbitt was legally obligated to report it to the court, but he made no such report.

In comparing the documentary record with the Law interview, made forty-three years after the facts to a writer who was energetically pursuing

70. Brian C. Hales, *Joseph Smith's Polygamy,* vol. 2 *History* (Salt Lake City: Greg Kofford Books, 2013), 2:48, 79 n. 58.

an anti-Mormon agenda, Mark Twain's statement seems applicable: "When I was younger I could remember anything, whether it happened or not. But as I grew older, it got so that I only remembered the latter."[71]

Aftermath

What happened to the Butterfields and the Lawrence children is an interesting story in itself, but it lies outside the focus of this article. On August 19, 1846, a promissory note between Babbitt and his fellow trustees acting for the Church, and Babbitt as "Guardian of the Minor heirs of Edward Lawrence deceased" was executed and signed. The trustees borrowed $3,884.61[72] from Babbitt-as-guardian, promising to pay "One day after date." That language made the note immediately negotiable (transferable). Written crossways across it is "Cancelled By new note," meaning that Babbitt did not cash it but kept it until it was cancelled by a new one.[73] Nearly three years later, on July 4, 1849, an unsigned receipt appears to be the final settlement between Babbitt and his co-trustees. Three items are credited to Babbitt: (1) "balance of account on books" in the sum of 3,789.91, (2) "due on note Lawrence Estate" 1248.22, and (3) a promissory note to an individual for $255.97, making a balance due of $5,294.10 "independent of services as Trustee." The receipt adds a note: "There is however some property still in his hands which he is ready to convey over and dispose of to their credit."[74]

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71. As quoted in Andre Trudeau, *Gettysburg: A Testing of Courage* (New York: HarperCollins Publishers, 2002), vii. I am indebted to my good friend and colleague Ronald O. Barney for this quotation.

72. Whether this sum represents the price of the print shop and indicates that Slocum took possession before Babbitt's last issues came off the press would be conjecture. One ought to be able to conclude, however, that the print shop brought no less than the $3,884.61 Babbitt loaned to the trustees—which, in turn, suggests that Joseph's disappointment in the 1844 appraisal of the operation was indeed justified and was $33.07 more than the $3,831.54 that Joseph was originally charged with receiving. So Joseph's augmenting the estate and buying the printing establishment, and John Taylor's and A. W. Babbitt's maintaining and reselling it, preserved the principal (corpus) intact; and if Babbitt's loan to the trustees was not all the price he obtained from Slocum, the principal was still larger than the value of the assets originally conveyed to Joseph.

73. Untitled note, Nauvoo, August 19, 1846, signed Almon W. Babbitt, Joseph L. Heywood, and John S. Fullmer, holograph, Nauvoo Trustee papers, 1846–48, LDS Church History Library.

74. Unsigned receipt, July 4, 1849, beginning "Balance of Account on Books . . .," holograph, Nauvoo Trustee papers, 1846–48, LDS Church History Library.

Obviously, Babbitt was still functioning as guardian of the Lawrence estate when this receipt was made on July 4, 1849. Whether he collected rent or some other payment from Taylor from June 1844 through March 1846 is not documented, but he at least took possession of the print shop without any adverse claim from Taylor. He loaned more than $3,800 from the estate to the Church's trustees (of which he was one) in August 1846, and three years later that debt had been reduced to just over $1,200. While it is unknown when or how Margaret and family made it to Winter Quarters, they departed from it for Utah in 1850. The reduction in the estate had occurred by July 1849; and since Babbitt had been acting as guardian at least through that date, it seems reasonable that the money helped Margaret and her children outfit themselves to cross the plains.

Maria married Almon W. Babbitt on January 24, 1846, as his plural wife and died giving birth to a son, who also died, at Nauvoo.[75] Babbitt was thus not only a guardian but a member of the family, continuing a relationship that had begun as missionary and convert in Canada. Every opportunity for an attachment was present, and plural marriage facilitated a closer union. Ultimately, it is unknown how much money the Lawrence children received from Babbitt.

Conclusion

Thanks to the probate and court records, which are often considered static and somewhat obscured by their legalese, it is possible in some measure to demonstrate what really happened during Joseph Smith's tenure as guardian of the Edward Lawrence estate. Contrary to the negative picture painted by the Law-Wyl interview, the record shows that he performed his duty honorably. He did not claim compensation for service as guardian, and he made no claim for boarding Maria and Sarah; he was more generous in expenditures for and to the children and to the Butterfields than the law required. And finally he took all the steps that time allowed to make an orderly transfer of the guardianship to John Taylor.

This article was condensed from "Joseph Smith as Guardian: The Lawrence Estate Case," Journal of Mormon History *36, no. 3 (2010): 172–211.*

75. B[enjamin] F. Johnson, Statement, *Deseret Evening News,* August 6, 1897, 5. I am indebted to friend and colleague Jeffery O. Johnson for this reference. See also Cook, *Nauvoo Marriages [and] Proxy Sealings 1843–1846,* 47.