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Securing the Book of Mormon Copyright in 1829

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Chapter Five

Securing the Book of Mormon Copyright in 1829

Nathaniel Hinckley Wadsworth

By the beginning of July 1829, Joseph Smith had completed his translation of the Book of Mormon.¹ One year removed from the harrowing loss of the initial 116 pages of the translation in 1828,² he was determined to not lose this work again, in any sense. On June 11, 1829, Joseph deposited, with or had delivered to the clerk of the Northern District Court of New York, a single, printed page (fig. 2) that resembled what would become the title page of the 1830 Book of Mormon, in order to secure a copyright to the work.³ The court clerk, Richard Ray Lansing, generated the official executed copyright form, which he retained; his record book was eventually deposited in the Library of Congress and was discovered by researchers in December 2004 (fig. 3).

A perfected copyright—the legal evidence of a property right in a creative work—would ensure that Joseph alone had the authority to publish the Book of Mormon. Securing the copyright protected the text of this book of scripture and was seen as a validation of the impending appearance of this work. In October 1829, Joseph wrote from Pennsylvania to Oliver Cowdery concerning the

1. David Whitmer stated that the translation was completed on July 1, 1829. *Kansas City Daily Journal*, June 5, 1881, cited in Larry C. Porter, “A Study of the Origins of The Church of Jesus Christ of Latter-day Saints in the States of New York and Pennsylvania, 1816–1831” (PhD diss., Brigham Young University, 1971; BYU Studies and Joseph Fielding Smith Institute for Latter-day Saint History, 2000), 96.

2. Lucy Mack Smith, *Lucy’s Book: A Critical Edition of Lucy Mack Smith’s Family Memoir*, ed. Lavina Fielding Anderson (Salt Lake City: Signature Books, 2001), 408–19.

3. Copyright Records, June 11, 1829, U.S. District Court for the Northern District of New York 1826–1831, volume 116, Rare Book and Special Collections Division, Library of Congress.

Book of Mormon: “There begins to be a great call for our books in this country. The minds of the people are very much excited when they find that there is a copyright obtained and that there is really a book about to be produced.”⁴

Joseph may have also seen the copyright as a help in recouping the considerable costs of producing the book. Another publisher could have cut into sales, but a copyright would help prevent such problems.

Most historians have treated Joseph’s June 11 filing as the sole event necessary to vest in him all legal rights to the Book of Mormon.⁵ Indeed, in January 1830, he successfully asserted his rights against Abner Cole, an opportunistic editor who pirated selections from the Book of Mormon and printed them in his newspaper.⁶ However, more than the mere filing of the title page with the clerk of the court was required to vest full copyright protection in Joseph, and his efforts to secure a federal copyright are probably not why Joseph succeeded against Cole. Indeed, the young prophet probably did not meet all five of the federal law’s requirements for a valid copyright, as discussed below. Joseph’s legal victory over Cole was more likely premised on common law rights that Joseph held in the *unpublished* manuscript simply by virtue of having created the work.

Copyright Laws in Nineteenth-Century America

Before turning to Joseph Smith’s clash with Abner Cole, readers need a general understanding of the copyright laws in the United States during the early nineteenth century. That understanding requires one to know the difference between statutory law and common law.

Statutory law is defined as “the body of law derived from statutes rather than from constitutions or judicial decisions.” It consists of all the written laws created by the legislative bodies of governments. *Common law* is “the body of law derived from judicial decisions, rather than from statutes or constitutions.”⁷ Historically, common law was believed to consist of legal

4. Joseph Smith Jr. to Oliver Cowdery, October 22, 1829, in Michael Hubbard Mackay et al., ed., *Documents, Volume 1: July 1828–June 1831*, vol. 1 of the Documents series of *The Joseph Smith Papers*, ed. Dean C. Jessee, Ronald K. Esplin, and Richard Lyman Bushman (Salt Lake City: Church Historian’s Press, 2013), 97.

5. See, for example, Richard Lyman Bushman, *Joseph Smith: Rough Stone Rolling* (New York: Alfred A. Knopf, 2005), 80; Edwin Brown Firmage and Richard Collin Mangrum, *Zion in the Courts: A Legal History of The Church of Jesus Christ of Latter-day Saints, 1830–1900* (Chicago: University of Illinois Press, 1988), 50.

6. Smith, *Lucy’s Book*, 470–75.

7. *Black’s Law Dictionary*, 8th ed. (St. Paul, Minn.: Thomson/West, 2004), 1452, s.v. “statutory law,” 293, s.v. “common law.”

truths that existed independently but were considered inarticulate until put into words by a judge. Where statutory law did not answer a question in a particular case, a judge might turn to common law and could decide the issue “in accordance with morality and custom,” and later judges would regard this decision as precedent. In 1829 both statutory law and common law provided copyright protections to an author’s work—statutory law applied to both published and unpublished works, and common law applied only to unpublished works.

As with most areas of U.S. law, the antecedents of these copyright laws can be traced back to England. The first copyright act, passed in England in 1709, was the Statute of Anne. Prior to the Statute of Anne, the Stationers’ Company, a guild of printers, held perpetual copyrights in the works it published.⁸ The new act reversed that and vested the copyright in the authors of the works. In addition, rather than preserving the perpetual nature of copyrights, the Statute of Anne granted authors the sole right to print and sell their works, subject to certain conditions, for a period of only fourteen years.⁹ Many authors and publishers took the position that this statute was merely an appendage to a common law right that gave authors lifetime ownership in their creative works. In 1774, however, the House of Lords ruled against this argument in the case *Donaldson v. Beckett*, declaring that no common law right of copyright existed. The statute alone granted authors rights in their published works. A similar statutory scheme was later adopted in America.

In 1783, the Continental Congress, lacking the authority to make a federal copyright law, recommended that each state establish its own copyright law. Following the pattern set forth in the Statute of Anne, Congress recommended that authors be given rights to their works for at least fourteen years. Most states complied with the request of Congress, including New York in 1786. Trouble soon arose, however, because copyright protection in one state could not guarantee an author’s protection in another state. Moreover, inconsistencies from one state to another demonstrated that the states could not “separately make effectual provision for [copyrights].”¹⁰ Solving this problem was important enough that copyright law was covered in the United States

8. John Tehranian, “Et Tu, Fair Use? The Triumph of Natural-Law Copyright,” *University of California at Davis Law Review* 38 (February 2005): 465, 467–68.

9. An Act for the Encouragement of Learning by Vesting the Copies of Printed Books in the Authors or Purchasers of such Copies during the Times Therein Mentioned, 1709, 8 Ann., c. 21 (Eng.).

10. James Madison, No. 43, in Alexander Hamilton, John Jay, and James Madison, *The Federalist*, ed. George W. Carey and James McClellan, Gideon edition (Indianapolis: Liberty Fund, 2001), 222.

Constitution, ratified in 1789, through the granting of power to the United States Congress to enact federal copyright law.

Under the Constitution, the states ceded to the federal government the power “to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.”¹¹ Under this authority, Congress enacted the first federal copyright statute in 1790 (see fig. 1).¹² The Copyright Act of 1790 granted to “the author and authors of any map, chart, book or books . . . the sole right and liberty of printing, reprinting, publishing and vending such map, chart, book or books, for the . . . term of fourteen years from the time of recording the title thereof in the [district court] clerk’s office.”¹³ The copyright was renewable for an additional fourteen years, provided the author met certain conditions. The disparate state copyright statutes were preempted as the federal government exercised full authority to create statutory copyright law.

The protections afforded by this federal statute went further than some state protections.¹⁴ Under the new law, after an author or proprietor (a person who had acquired the rights from the author) had secured the copyright to a book, any other person who printed or published the work without consent of the author or proprietor, or who knowingly sold unauthorized copies, was required to forfeit all such copies to the author or proprietor.¹⁵ The offender was also required to “pay the sum of fifty cents for every sheet which shall be found in his or their possession,” with one-half of the payment going to the copyright holder and the other to the federal government.¹⁶ If an author failed to do all that was necessary to secure a copyright in a book, he or she could still print and sell it, but the statute would not preclude others from likewise printing and selling the work.

Some lawyers argued that this federal statute functioned concurrently with the common law in protecting an author’s rights in his or her creative

11. U.S. Constitution, art. 1, sec. 8, par. 8.

12. An Act for the Encouragement of Learning, by Securing the Copies of Maps, Charts, and Books, to the Authors and Proprietors of Such Copies, during the Times Therein Mentioned (May 31, 1790), 1st Cong., 2d sess., ch. 15, in *Statutes at Large of United States of America, 1789–1873*, 17 vols. (Washington, D.C.: [various publishers], 1845–73), 1:124 (hereafter cited as 1790 Act).

13. 1790 Act, ch. 15, sec. 1, *Stat.*, 1:124.

14. The New York law, for example, would permit another to publish an author’s work if the author refused to publish a sufficient number of copies or charged an unreasonably high price for his books. An Act to Promote Literature (April 29, 1786), sess. 9, ch. 54. *Laws of New York*, 299.

15. 1790 Act, ch. 15, sec. 2, *Stat.*, 1:124–25.

16. 1790 Act, ch. 15, sec. 2, *Stat.*, 1:125.

Figure 1. Provisions from the U.S. Copyright Law in Effect in 1829

1790 SEC. 1. Any person or persons, being a citizen or citizens of these United States, or residents therein, his or their executors, administrators or assigns, who hath or have **purchased or legally acquired** the copyright of any such map, chart, book or books, in order to print, reprint, publish or vend the same, shall have the sole right and liberty of printing, reprinting, publishing and vending such map, chart, book or books for the term of **fourteen years** from the recording the title thereof in the clerk's office, as is herein after directed: And that **the author** and authors of any map, chart, book or books, for the like term of fourteen years from the time of recording the title thereof in the clerk's office as aforesaid. And if, at the expiration of the said term, the author or authors, or any of them, be living, and a citizen or citizens of these United States, or resident therein, the same exclusive right shall be continued to him or them, his or their executors, administrators or assigns, for the **further term** of fourteen years: *Provided*, he or they shall cause the title thereof to be a second time recorded and published in the same manner as is herein after directed, and that within six months before the expiration of the first term of fourteen years aforesaid.

SEC. 2. If any other person or persons, from and after the recording the title of any map, chart, book or books, and publishing the same as aforesaid, and within the times limited and granted by this act, shall print, reprint, publish, or import, or cause to be printed, reprinted, published, or imported from any foreign kingdom or state, any copy or copies of such map, chart, book or books, **without the consent** of the author or proprietor thereof, first had and obtained in writing, signed in the presence of two or more credible witnesses; or knowing the same to be so printed, reprinted, or imported, shall publish, sell, or expose to sale, or cause to be published, sold or exposed to sale, any copy of such map, chart, book or books, without such consent first had and obtained in writing as aforesaid, then such offender or offenders shall **forfeit all and every copy** and copies of such map, chart, book or books, and all and every sheet and sheets, being part of the same, or either of them, to the author or proprietor of such map, chart, book or books, who shall forthwith destroy the same: And every such offender and offenders shall also forfeit and **pay** the sum of fifty cents for every sheet which shall be found in his or their possession, either reprinted or printing, published, imported or exposed to sale, contrary to the true intent and meaning of this act, the one moiety [half] thereof to the author or proprietor of such map, chart, book or books who shall sue for the same, and the other moiety [half] thereof to and for the use of the United States, wherein the same is cognizable.

SEC. 3. No person shall be entitled to the benefit of the act, in cases where any map, chart, book or books, hath or have been already printed and published, unless he shall first deposit, and in all other cases, unless he shall before publication **deposit a printed copy** of the title of such map, chart, book or books, in the clerk's office of the district court where the author or proprietor shall reside: And the clerk of such court is hereby directed and required to **record the same** forthwith, in a book to be kept by him for that purpose, in the words following, (giving a copy thereof to the said **author or proprietor**, under the seal of the court, if he shall require the same.) "District of ____ to wit: *Be it remembered*, That on the ____ day of ____ in the ____ year of the independence of the United States of America, A.B. of the said district, hath deposited in this office the title of a map, chart, book or books, (as the case may be) the right whereof he claims as author or proprietor, (as the case may be) in the words following, to wit: [here insert the title] in conformity to the act of the Congress of the United States, intituled 'An act for the encouragement of learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies, during the times therein mentioned.' C.D. clerk of the district of _____." For which the said clerk shall be entitled to receive **sixty cents** from the said author or proprietor, and sixty cents for every copy under seal actually given to such author or proprietor as aforesaid. And such author or proprietor shall, within two months from the date thereof, cause a copy of the said record to be **published in one or more of the newspapers** printed in the United States for the space of four weeks.

SEC. 4. The author or proprietor of any such map, chart, book or books, shall, within six months after the publishing thereof, **deliver**, or cause to be delivered to the Secretary of State **a copy** of the same. . . .

SEC. 6. That any person or persons who shall print or publish any manuscript, without the consent and approbation of the author or proprietor thereof, . . . shall be liable to suffer and pay to the said author or proprietor all damages occasioned by such injury, to be recovered by a special action on the case founded upon this act, in any court having cognizance thereof.

1802 Supp., SEC. 1. . . . In addition . . . he shall . . . give information by causing **the copy of the record**, which, by [the 1790 act] he is required to publish in one or more of the newspapers, **to be inserted at full length** in the title-page or in the page immediately following the title of every such book or books. [**Boldings added.**]

works. But, the United States Supreme Court rejected that argument in 1834 in the case *Wheaton v. Peters*, holding that no common law copyright existed in *published* works.¹⁷ At the same time, the Supreme Court accepted the commonly held position that common law copyright protection existed for *unpublished* works:

That an author, at common law, has a property in his manuscript, and may obtain redress against any one who deprives him of it, or by improperly obtaining a copy endeavors to realise a profit by its publication, cannot be doubted; but this is a very different right from that which asserts a perpetual and exclusive property in the future publication of the work, after the author shall have published it to the world.¹⁸

Thus, in affirming an author's property interest in his unpublished manuscript, the *Wheaton* decision established a principle of copyright law under the common law, according to which Joseph Smith could have successfully asserted copyright protection regarding the Book of Mormon before, but not after, the book's publication. After publication, Joseph would have had to rely on compliance with the federal statute.

Obtaining a Federal Statutory Copyright

To secure a copyright under the federal statute, Joseph Smith would have had to meet all the statute's requirements. The 1790 copyright law, as amended in 1802, granted an author the copyright in a work commencing at the time the title was filed in the clerk's office, but more than that initial step was required. No person was "entitled to the benefit of this act" unless that person satisfied the following five requirements:¹⁹

- (1) Give notice to the clerk: "Deposit a printed copy of the title of such map, chart, book or books, in the clerk's office of the district court where the author or proprietor shall reside."²⁰
- (2) Pay the clerk: "Sixty cents" for the clerk's preparation of the copyright certificate and "sixty cents for every copy under seal actually given to such author or proprietor."²¹

17. *Wheaton v. Peters*, 33 U.S. 591 (Supreme Court of the United States 1834).

18. *Wheaton v. Peters*, 657.

19. 1790 Act, ch. 15, sec. 3, *Stat.*, 1:125.

20. 1790 Act, ch. 15, sec. 3, *Stat.*, 1:125.

21. 1790 Act, ch. 15, sec. 3, *Stat.*, 1:125.

- (3) Give full notice in the book: “Give information by causing the copy of the record [the clerk’s certificate] . . . to be inserted at full length in the title-page or in the page immediately following the title of every such book or books.”²²
- (4) Give notice to the public: “Within two months from the date [of the certificate], cause a copy of the said record to be published in one or more of the newspapers printed in the United States for the space of four weeks.”²³
- (5) Provide a public copy of the book: “Within six months after the publishing [of the book], deliver, or cause to be delivered to the Secretary of State a copy of the same, to be preserved in his office.”²⁴

Evidence Relevant to Joseph Smith’s Compliance with the Statutory Requirements

Joseph Smith clearly satisfied the first and third requirements, and presumably the second. However, he may well have fallen short regarding the fourth and fifth requirements.

Requirement 1. Richard Ray Lansing, clerk of the United States District Court for the Northern District of New York, processed Joseph’s filing for the Book of Mormon copyright in June 1829. He gave to Joseph a signed office copy of the copyright application, which has been held for many years in the archives of the Church in Salt Lake City and published on occasion. The official court-executed copy of the copyright form and the accompanying “title” page were recently located in the Library of Congress (see figs. 2, 3).²⁵ Requirement 1 was fully met.

It would be interesting to know more about how and where the filing with Lansing was accomplished. Joseph Smith’s personal record simply states that he went to Palmyra, New York; secured a copyright; and agreed to pay Egbert Grandin three thousand dollars to print five thousand copies of the

22. An Act Supplementary to an Act, Intituled “An Act for the Encouragement of Learning, by Securing the Copies of Maps, Charts, and Books to the Authors and Proprietors of Such Copies during the Time Therein Mentioned,” and Extending the Benefits Thereof to the Arts of Designing, Engraving, and Etching Historical and Other Prints (April 29, 1802), 7th Cong., 1st sess., ch. 36, sec. 1, in *Statutes at Large of United States of America*, 2:171 (hereafter cited as 1802 Act).

23. 1790 Act, ch. 15, sec. 3, *Stat.*, 1:125.

24. 1790 Act, ch. 15, sec. 4, *Stat.*, 1:125.

25. See note 3 above.

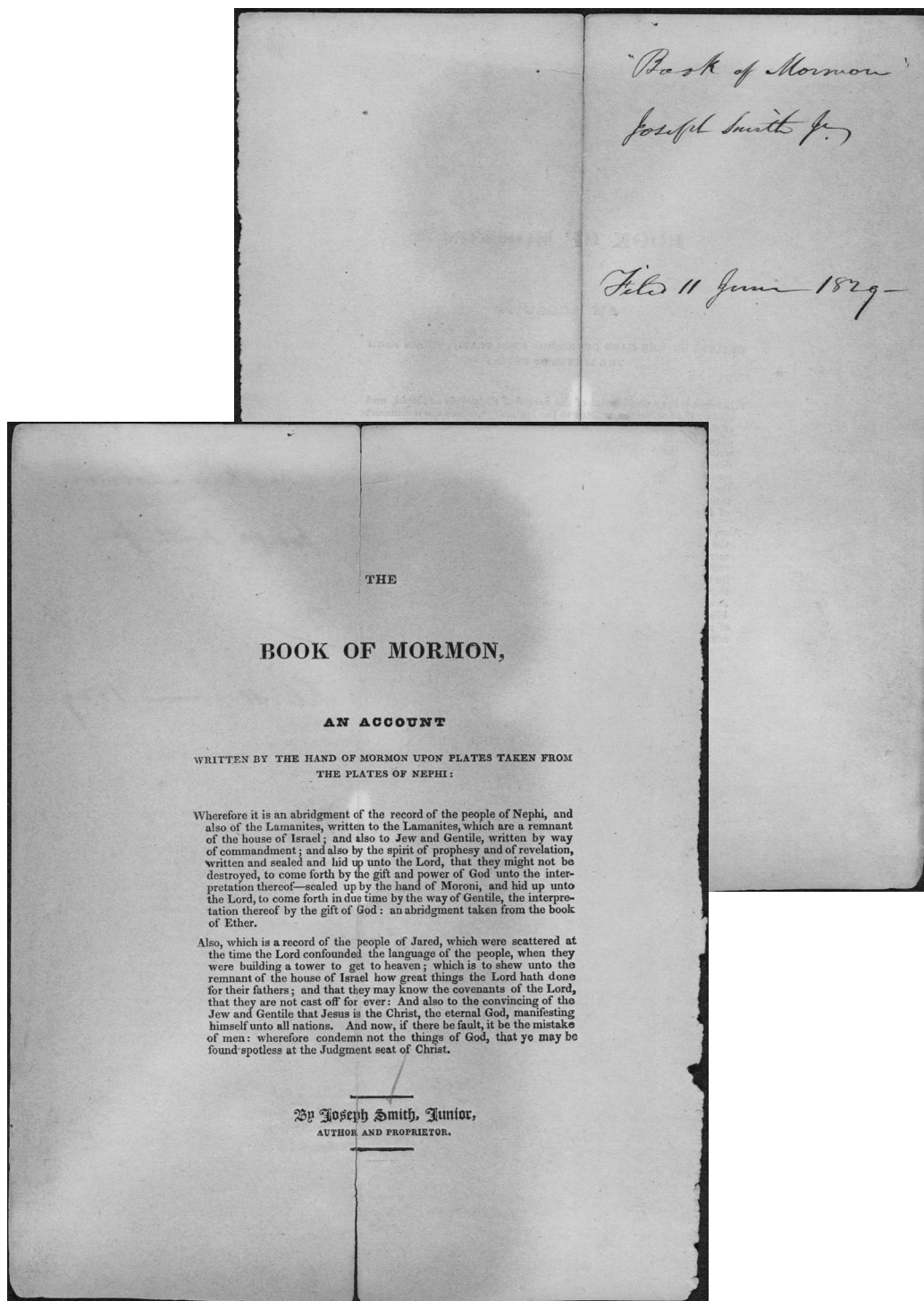


Figure 2. Front and reverse sides of the preliminary printing of the title page to the Book of Mormon, dated and filed on June 11, 1829. Courtesy Rare Book and Special Collections, Library of Congress.

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Northern District }
of New-York, } Do wit:

Be it remembered, That on the eleventh
day of June in the fifty third year of
the Independence of the United States of America, A. D.
1829 Joseph Smith Senior
of the said District, hath deposited in this Office the
title of a Book the right whereof he claims
as Author in the words following, to wit: The
Book of Mormon, an account written by the hand of Mormon upon plates
taken from the plates of Nephi; Wherein it is an abridgement of the records of the people
of Nephi and also of the Lamanites, which are a remnant of the house of Israel,
and also of Jew & Gentile written by way of commandment and also by the spirit
of prophecy & of revelation, written & sealed & hid up unto the Lord, that they
might not be destroyed, to come forth by the gift & power of God unto the latter
generation thereof - sealed up by the hand of Mormon & hid up unto the Lord, to come
forth in due time by the way of Gentile, the interpretation thereof by the gift of God, an abridge-
ment taken from the book of Ether: Also, which is a record of the people of Israel, which
were scattered at the time the Lord confounded the language of the people, when they were building
a tower to get to heaven, which is to show unto the remnant of the house of Israel how great
things the Lord hath done for their fathers; & that they may know the covenants of the Lord
that they are not cast off forever: and also to the convincing of the Jew & Gentile that
Jesus is the Christ, the eternal God, manifesting himself unto all nations. And know if there
be fault, it be the mistake of man; wherefore in witness that the things of God, that
ye may be firm & spotless at the judgment seat of Christ. By Joseph Smith Senior, au-
thor & proprietor.

In conformity to the act of the Congress of the United States, entitled "An act
for the encouragement of learning, by securing the copies of Maps, Charts,
and Books, to the authors and proprietors of such copies; during the times therein
mentioned;" and also, to the act entitled "An act supplementary to an act enti-
tled "An act for the encouragement of learning, by securing the copies of
Maps, Charts, and Books, to the authors and proprietors of such copies during
the times therein mentioned;" and extending the benefits thereof to the arts of De-
signing, Engraving, and Etching historical and other prints."

J. P. Spring Clerk of the Dist.
Court of the United States for the Northern
District of New York

Figure 3. Joseph Smith's copyright certificate for the Book of Mormon. Courtesy Rare Book and Special Collections, Library of Congress.

book.²⁶ It is unlikely that the copyright form was filed in Palmyra, since the law required applicants residing in Palmyra or Fayette to file in the federal district court located in Utica. Still, a filing in or near Palmyra is not out of the question, for the clerk of the court may have been there for some function of the court, but no evidence to that effect has been found.

Also unknown is how the title page was delivered to Richard Lansing. Church historian Larry C. Porter writes, “It is not certain whether Joseph Smith simply submitted his title entry by mail to Lansing at Utica, New York, or whether it was delivered by hand.”²⁷ Alternatively, Joseph may have made the difficult trip to Utica, about one hundred miles each way from Fayette, or another person may have carried the signed forms on Joseph’s behalf. Alternatively, the title page may have been simply submitted to Lansing by mail. In a letter to Hyrum Smith from St. Lawrence County, New York, dated June 17, 1829, Jesse Smith, Hyrum’s uncle, refers to a visitor he received, as a “fool” who “believes all [about the golden plates] to be a fact.”²⁸ Richard Lloyd Anderson suggests that the man referred to in Jesse’s letter was Martin Harris, who, on his way to St. Lawrence County, could have stopped in Utica to deposit the title page of the Book of Mormon in the district court.²⁹

Regardless of where, or by whom, the form was submitted, Lansing signed the copyright certificate, which identified Joseph Smith as “author and proprietor” of the work. This wording came from the federal statute, which made copyrights available to authors or proprietors of books or other works. Furthermore, as John W. Welch has pointed out, “A *translator* was qualified, for copyright purposes, as the author of a book he had translated.”³⁰

Requirement 2. Together with this filing, Joseph must have paid the requisite fee, or he would not have received the certificate in return. The fees probably totaled \$1.20: sixty cents for recording the official copy and another sixty cents for giving a copy of the certificate to Joseph.³¹ Presumably, this fee was paid.

26. 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), 1:71.

27. Larry C. Porter, “Egbert Bratt Grandin,” in *Book of Mormon Reference Companion*, ed. Dennis L. Largey (Salt Lake City: Desert Book, 2003), 308.

28. Jesse Smith to Hyrum Smith, June 17, 1829, Joseph Smith Letterbook (1837–43), Church History Library, published in Dan Vogel, comp. and ed., *Early Mormon Documents*, 5 vols. (Salt Lake City: Signature Books, 1996), 1:553.

29. Richard L. Anderson, interview by author, March 2005, Provo, Utah.

30. John W. Welch, “Author and Proprietor,” in Welch, *Reexploring the Book of Mormon*, 156, citing an 1814 English case and an 1859 district court case.

31. The sum of \$1.20 would equal about \$70 in today’s dollars.



The restored E. B. Grandin & Co. printing press, where the first copies of the Book of Mormon were printed. Photo courtesy John W. Welch.

Requirement 3. Joseph met the third requirement by having the full wording of the certificate received from Lansing printed on the back of the title page of the 1830 edition of the Book of Mormon.

Requirement 4. Less certain is whether Joseph completely satisfied the statutory requirement of publishing the court’s certificate in a local newspaper for four weeks within the two months after filing the book’s title. On June 26, 1829, Egbert B. Grandin, with whom Joseph contracted to print the Book of Mormon, published the text of the book’s title page in his Palmyra newspaper, the *Wayne Sentinel*. This text was again published in August by two other local papers: in the *Palmyra Freeman* on August 11, and in the *Niagara Courier* on August 27.

While publishing the text of the title page was probably an attempt to follow the law, the law technically required the publication of the entire copyright certificate. Furthermore, the title page did not appear in a newspaper “for four weeks” before August 11, 1829, the two-month date before which the publishing requirement was to be met.

On March 26, 1830, Grandin again published the title page of the Book of Mormon in the *Wayne Sentinel* and announced that the book was available for purchase. This was followed by publication of the book’s title page in the

Wayne Sentinel on April 2, 9, 16, and May 7. These consecutive notices may have been a second attempt on the part of Grandin and Joseph Smith to satisfy the legal requirements for obtaining a copyright. Richard Lloyd Anderson notes that Joseph and his associates “may have thought they were complying with the intent of the law by printing just what they had originally submitted to the clerk of the court—the title page.”³² While the notices in Grandin’s newspaper could have merely been advertisements for the sale of the book, the fact that there were four of them within two months, the time period mentioned as required by the statute, might indicate otherwise. Still, these notices, coming almost a full year following Joseph’s original filing with R. R. Lansing, would not appear to satisfy the technical requirements of the law.

Requirement 5. Given the evidence of Joseph’s efforts to comply with the foregoing statutory requirements, it is quite possible that he or Grandin sent a copy of the published Book of Mormon to the U.S. Secretary of State, who at the time was Martin Van Buren. However, no record has survived indicating that a copy was submitted to Van Buren, as required, within six months of the book’s publication, which should have occurred by September 26, 1830.³³

Based on all available evidence, Joseph Smith did not satisfy all five federal requirements to secure a copyright in the Book of Mormon. But he was not alone in his shortcomings. An extensive examination of several New York and Pennsylvania newspapers printed in the 1820s revealed very few occasions on which an author published the full copyright certificate from any federal district court.³⁴ At the same time, advertisements for the sale of newly published books are numerous. Moreover, several books published in the early nineteenth century claimed to be copyrighted but did not include a copy of the court’s certificate printed in the book.³⁵ Though some authors no doubt complied with every aspect of the federal copyright statute, it may still be true that Joseph Smith did more than most.

32. Richard L. Anderson, interview, quoted in Porter, “Egbert Bratt Grandin,” 308.

33. A search of the records in the Library of Congress containing the lists of books submitted to Martin Van Buren as Secretary of State by the district courts for copyright yields no entry showing that a copy of the Book of Mormon ever made its way to Washington following its publication in March 1830. The author thanks James H. Hutson and Barbara Cramer for checking volumes 342, 343, and an unnumbered volume, catalogued as Copyright Records, Department of State, covering submissions from September 24, 1827, through January 7, 1832.

34. After thoroughly searching several contemporary newspapers, Don Enders and research assistants for John W. Welch have concluded that authors generally did not publish their copyright certificates in newspapers.

35. For example, Washington Irving’s *A History of New York*, published in New York in 1809, contains only the words “Copy-right secured according to Law.”

Legal Consequences of Failing to Meet All of the Statute's Requirements

In light of these shortcomings, one wonders: would these defects have compromised Joseph's full copyright protection of the Book of Mormon? Court opinions from the time indicate that Joseph's actions would have been insufficient to uphold statutory copyright protection in court, despite his good-faith efforts and partial compliance.

In 1824, Judge Bushrod Washington of the United States Supreme Court, sitting on the Circuit Court in the Eastern District of Pennsylvania, ruled that an author must comply strictly with all the provisions of the copyright act to receive its benefits.³⁶ In light of the language in the 1802 amendment, Judge Washington held that a person seeking copyright protection must perform all of the acts prescribed by the copyright law "before he shall be entitled to the benefit of the act." Under this analysis, Joseph Smith would not have been entitled to copyright protection for the Book of Mormon. The United States Supreme Court, in its 1834 *Wheaton* decision, agreed with Judge Washington, declaring that compliance with all of the provisions of the copyright act was necessary to secure the statutory rights.³⁷ But, as mentioned previously, common law would have prevented others from publishing the Book of Mormon before the book's public release, and this is the strongest legal explanation for Joseph's success against Abner Cole in January 1830.

Abner Cole's Infringement

Joseph Smith did not leave a record of his encounter with Cole. The only account of the dispute comes from Joseph's mother, Lucy Mack Smith, who recorded the incident several years after its occurrence. The conflict arose while Joseph was spending most of winter 1829–30 in Harmony, Pennsylvania, with his wife, Emma. During this time, Hyrum Smith, Oliver Cowdery, and Martin Harris oversaw the printing of the Book of Mormon in Palmyra.³⁸ Egbert B. Grandin handled the publishing of the book at his print shop and gave Hyrum and Oliver access to the shop every day except Sunday.

36. *Ewer v. Coxe*, 8 Federal Cases 917, 919–20 (Circuit Court, Eastern District Pennsylvania, 1824).

37. *Wheaton v. Peters*, 591.

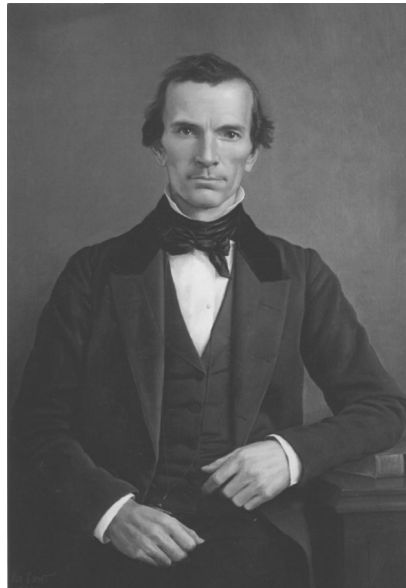
38. See John W. Welch, "The Miraculous Translation of the Book of Mormon," in *Opening the Heavens: Accounts of Divine Manifestations, 1820–1844*, ed. John W. Welch (Provo, Utah: Brigham Young University Press; Salt Lake City: Deseret Book, 2005), 98–99; Richard L. Bushman, *Joseph Smith and the Beginnings of Mormonism* (Chicago: University of Illinois Press, 1984), 108–9.

Lucy reports that one Sunday, probably in December, “Hyrum became very uneasy” and felt “something was going wrong at the printing Office.”³⁹ Oliver at first resisted Hyrum’s suggestion to go to Grandin’s shop on Sunday, but soon the two men were on their way to the office. There they found Abner Cole busily printing a newspaper.⁴⁰

Hyrum asked Cole why he was working on Sunday. Cole responded by saying that evenings and Sundays were the only times when he was able to use the printing press. Hyrum and Oliver soon discovered that Cole was violating more than the religious law of the Sabbath—Cole was copying passages from the Book of Mormon to include in his newspaper, the *Reflector*.⁴¹

In fact, Cole had begun writing about Joseph Smith and his work in the first issue of the *Reflector* on September 2, 1829: “The Gold Bible, by Joseph Smith Junior, author and proprietor, is now in press and will shortly appear. Priestcraft is short lived!”⁴² Three months later, on December 9, Cole, who wrote under the pseudonym of Obadiah Dogberry, announced in his paper that he would soon begin to provide his readers with selections from the Book of Mormon. Cole likely had no difficulty in procuring printed sheets of the Book of Mormon, discarded or otherwise, conveniently located at Grandin’s shop. The first selection, 1 Nephi 1:1–2:3 in the current edition of the Book of Mormon, appeared in the January 2, 1830, issue of the *Reflector*.⁴³

Hyrum informed Cole that a copyright had been secured for the book, but Cole indignantly refused to stop his work. After a lengthy debate, Hyrum and Oliver left the print shop after they were unable to dissuade Cole from his course.⁴⁴



Oliver Cowdery. Courtesy of the Church Archives, The Church of Jesus Christ of Latter-day Saints.

39. Smith, *Lucy’s Book*, 470.

40. Smith, *Lucy’s Book*, 470–71.

41. Smith, *Lucy’s Book*, 471; Porter, “Study of the Origins,” 32.

42. Larry C. Porter, “‘The Field Is White Already to Harvest’: Earliest Missionary Labors and the Book of Mormon,” in *The Prophet Joseph: Essays on the Life and Mission of Joseph Smith*, ed. Larry C. Porter and Susan Easton Black (Salt Lake City: Deseret Book, 1988), 84.

43. Andrew H. Hedges, “The Refractory Abner Cole,” in *Revelation, Reason, and Faith: Essays in Honor of Truman G. Madsen*, ed. Donald W. Parry, Daniel C. Peterson, and Stephen D. Ricks (Provo, Utah: FARMS, 2002), 461.

44. Smith, *Lucy’s Book*, 472.

Impressed with the seriousness of the circumstances, Hyrum and Oliver determined that Joseph needed to be notified of Cole's actions. Accordingly, Joseph Smith Sr. went to Harmony and returned with his son on the following Sunday.⁴⁵ That night, probably January 3, 1830,⁴⁶ the Prophet went to Grandin's shop, where he found Cole and examined his paper. Joseph asserted his ownership of the book and the right to publish it and demanded that Cole cease his "meddling." Instead of refuting Joseph's publishing right, Cole sought a fight, but Joseph refused. In Lucy's reconstruction of the events, Joseph declared, "I know my rights and shall maintain them." Then, "in a low significant tone," Joseph stated, "there is Law—and you will find that out if you did not know it before."⁴⁷ This bold statement by Joseph is all the more remarkable considering that Cole was nearly twice as old as Joseph and was probably much more familiar with the law, having worked as a lawyer and justice of the peace.⁴⁸ Perhaps recognizing the inferiority of his position and not wanting to litigate the matter, Cole ultimately assented to an arbitration to determine Joseph's rights to the Book of Mormon. The arbitration was settled in Joseph's favor, and Cole agreed to stop printing the Book of Mormon passages but was apparently not assessed the damages allowed by the statute. After settling the affair with Cole, Joseph returned home to Pennsylvania.⁴⁹

Arbitration in New York in 1830

Although nothing more is known about the arbitration agreed to by Cole, an examination of general arbitration rules and procedures from the time sheds light on what may have occurred.

Prior to Smith and Cole's arbitration, the legislature in New York had passed two bills relating specifically to arbitration. First, in 1791, the legislature passed "An act for determining differences by arbitration."⁵⁰ Second, an amendment to this act was added in April 1816.⁵¹

45. Smith, *Lucy's Book*, 473–74.

46. Hedges, "Refractory Abner Cole," 463.

47. Smith, *Lucy's Book*, 474–75.

48. Hedges, "Refractory Abner Cole," 450–51. Cole was born between June 2, 1780, and August 6, 1784.

49. Smith, *Lucy's Book*, 475.

50. An Act for Determining Differences by Arbitration (February 28, 1791), 14th sess., ch. 20, *Laws of New York*, 219–20 (hereafter cited as 1791 Act).

51. An Act to Amend the Act, Entitled "An Act for Determining Differences by Arbitration," and for Other Purposes (April 17, 1816), 39th sess., ch. 210, *Laws of New York*, 242 (hereafter cited as 1816 Amendment).

The three-paragraph 1791 act had the stated purpose of “promoting trade, and rendering the awards of arbitrators the more effectual in all cases.” To these ends, the act made it lawful for parties to an arbitration to agree that the outcome of their controversy “be made a rule of any court of record in this State.” If a party thereafter refused to abide by the ruling of the arbitrator or umpire, the person would be subject to all penalties that would apply if the person had resisted the order of a court. However, the person could escape penalty if he could show, by oath, “that the arbitrators or umpire misbehaved themselves, and that such award, arbitration or umpirage, was procured by corruption, or other undue means.” Any arbitration found to be “procured by corruption or undue means” would be “void and of none effect.”⁵² In summary, an arbitration would be treated as binding as a ruling of the court if the parties so agreed.

The amendment to this law, passed in 1816, allowed “any justice of the peace, residing in any city or county in this state, in which any dispute, controversy or difference whatsoever, may have been submitted to arbitration . . . to swear or affirm the several witnesses required to give testimony before said arbitrator or arbitrators.” The amendment also made witnesses in an arbitration proceeding subject to the perjury laws of the state.⁵³

Besides these statutes, several contemporary New York cases commented on the nature of arbitrations. Arbitration, as defined by a New York court in 1830, was “a submission by parties of matters in controversy to the judgment of two or more individuals.” Those who decided the dispute, the arbitrators, were chosen by the parties.⁵⁴ Apparently a common practice was for each party to choose his own arbitrator and have those two arbitrators select a third arbitrator, or umpire, for the case.⁵⁵ The arbitrators were to act as “jurors to determine facts, [and as] judges to adjudicate as to the law; and their award when fairly and legally made, is a judgment conclusive between the parties, from which there is no appeal.” As demonstrated by the statutory provisions, arbitrations could be treated as a ruling of a court and were binding on the parties. One judge even stated that an arbitration “ought to be of a more binding force between the parties” than a jury verdict.⁵⁶

52. 1791 Act, ch. 20, *Laws of New York*, 219, 220.

53. 1816 Amendment, ch. 210, *Laws of New York*, 242–43.

54. *Elmendorf v. Harris*, 5 Wend. 516, 522 n. 1 (Supreme Court of Judicature of New York 1830).

55. *Webster’s 1828 Dictionary*, s.v. “arbitration,” available at http://65.66.134.201/cgi-bin/webster/webster.exe?search_for_texts_web1828=arbitration.

56. *Story v. Elliot*, 8 Cow. 27, 31 (Supreme Court of Judicature of New York 1827) (citations omitted).

A person's choice to submit to arbitration rather than litigate a case in a courtroom was often money-driven. Arbitration offered an end to dispute "with very little expense to the parties." Still, arbitration did not offer the same prospects for justice as an official courthouse. Arbitrators, though chosen for their impartiality, would "frequently mingle in their decisions their own knowledge of the matters in dispute." "Their ends are mainly honest," but their decisions, "though intelligible, are not drawn up with technical accuracy."⁵⁷

If an arbitrator's decision was not consistent with the law, it would still be binding on the parties,⁵⁸ and an arbitration decision could not be appealed to a court except in the case of an arbitrator's misconduct.⁵⁹ And while an arbitrator's decision would be binding on the parties involved, the decision would not be binding on third parties.⁶⁰

The Smith-Cole Arbitration

With all of these legal norms in place, we can imagine what might have occurred between Joseph and Abner Cole. The date of their arbitration is unknown, but it did not occur on the Sunday of Joseph's visit, for that would have violated the Sabbath law, and the two men also needed time to procure witnesses and arbitrators. Further extracts of the Book of Mormon appeared in the *Reflector* on January 13 and 22, suggesting the arbitration might have concluded several days after Joseph arrived in Palmyra.⁶¹

Given Cole's legal experience, the two parties probably first would have agreed on the question to be arbitrated, namely, whether Joseph's claim to property rights or copyright in the book were sufficient to prohibit Cole's publishing of part of its text. Joseph also may have wanted to recover monetary damages or to confiscate Cole's printed pages as granted under the federal copyright statute.

Next, the two may have agreed on arbitrators. Possibly each chose a man to act as an arbitrator, and those two men then chose a third. In accordance

57. Jackson v. Ambler, 14 Johns. 96, 103 (Supreme Court of Judicature of New York, 1817).

58. Mitchell v. Bush, 7 Cow. 185, 187 (Supreme Court of Judicature of New York, 1827).

59. Cranston, et al. v. The Executors of Kenny, 9 Johns. 212, 213 (Supreme Court of Judicature of New York, 1812) (citations omitted).

60. Vosburgh v. Bame, 14 Johns. 302, 304 (Supreme Court of Judicature of New York, 1817).

61. Hedges, "Refractory Abner Cole," 463. For an alternate suggestion of the dating and order of events with Cole, see Vogel, *Early Mormon Documents*, 2:407–8.

with the statute, the local justice of the peace may have sworn in any witnesses who would testify before the arbitrators.

The arbitrators apparently ruled against Cole. Their decision, whether legally sound, was binding on Cole, and no known claim was ever made that the arbitrators' decision was corrupt and therefore void. Lucy Mack Smith did not specify the premise of Joseph's defense—whether he relied on the statutory copyright law or on the common law. If the arbitrators based their decision on the federal statutory copyright law, they must have concluded that Joseph's actions had been sufficient to acquire that protection. After all, Joseph could not have been expected to have complied yet with the statutory requirement of delivering a copy of the book to the secretary of state, since copies were still not available. But his failure to give public notice of his copyright within two months of receiving his certificate would have been more problematic. Thus, what is more likely, and also more consistent with the law, is that the arbitrators' decision in Joseph's favor was based on the common law protection of authors' rights in unpublished manuscripts, not on Joseph's unperfected copyright filing.

For legal purposes, one would need to ask: Was the Book of Mormon published or unpublished in January 1830? When Cole was copying portions of the Book of Mormon, many of the work's pages had been printed. But printing alone did not constitute publishing, for the copyright statute distinguished the two, granting authors the right of “printing, reprinting, publishing and vending” a book covered by the statute.⁶² Simply because portions of the Book of Mormon had been printed under Joseph's authorization does not mean they had been published.

The 1828 *Webster's Dictionary* defines “publish” as meaning “to send a book into the world; or to sell or offer for sale a book, map or print.”⁶³ As is well known, the Book of Mormon was not available for purchase until March 26, 1830,⁶⁴ but at least portions of it had been distributed before then. In 1829, Thomas B. Marsh obtained the proof sheet of the first sixteen pages of the book and used it to teach others about the book. Solomon Chamberlain also obtained sixty-four pages of the unbound book from Hyrum Smith and used them in his preaching. Oliver Cowdery gave his brother Warren some pages

62. 1790 Act, ch. 15, sec. 1, *Stat.*, 1:124.

63. *Webster's 1828 Dictionary*, s.v. “publish.”

64. In the May 26, 1830, issue of the *Wayne Sentinel*, notice was given that the Book of Mormon had been published.

of the book, which Warren showed to others. Even Joseph Smith apparently used proof sheets to promulgate the work.⁶⁵

If Cole had been aware of those events, he might have argued that the Book of Mormon (or at least portions of it) had indeed been published, or sent forth to the world. Still, Joseph could have answered that the distributions of a few proof sheets were limited and private in nature. If the arbitrators based their decision on the common law, they believed the Book of Mormon had not been published. This result is consistent with Joseph's words to Cole where he asserted his ownership of the book and his right yet to publish it.

Whatever Abner Cole's and Joseph Smith's arguments may have been, and whatever the basis was for the arbitrators' decision, the decision was more binding upon the parties than a judgment in court. Joseph apparently received no damages, and Cole apparently never contested the judgment. Joseph Smith was never again involved in any other legal disputes regarding the copyright to the Book of Mormon.

Conclusion

The episode with Abner Cole is perhaps the first instance where Joseph Smith asserted legal rights that had a direct impact on the religious work to which he devoted his life. Convinced of the justice of his cause, the twenty-four-year-old prophet confidently told Cole that he knew the law and that it would protect him; Joseph did not hesitate to dispute the older and more experienced editor. Even though Joseph may have been somewhat overconfident in his knowledge of statutory copyrights, he correctly realized the protection of the law. Possibly because of his efforts to secure a copyright for the Book of Mormon, or more likely even without the need to invoke those efforts, Joseph was successful in this legal defense of the work God had called him to do.

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65. Porter, "Field Is White," 79–83.