

The Church in Court

**Compiled and Arranged by
Elbert A. Smith**

No. 1241

Herald Publishing House, Independence, Missouri

**Reorganized Church of Jesus Christ of
Latter Day Saints**

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DECISIONS OF UNITED STATES AND CANADIAN COURTS AFFECTING
THE STANDING OF THE REORGANIZED CHURCH OF
JESUS CHRIST OF LATTER DAY SAINTS.

INTRODUCTION.

The Church of Jesus Christ of Latter Day Saints was organized April 6, 1830. Joseph Smith, sometimes known as Joseph Smith the Martyr, was the chief instrument in the hands of God in perfecting this organization.

Joseph Smith was slain June 27, 1844. A period of confusion and disorganization ensued. Ambitious leaders arose. Among them was Brigham Young, who led a certain number to Utah, where they acquired more or less temporal power, and where they began to promulgate certain doctrines, such as polygamy, that had been no part of the belief of the church in the days of Joseph the Martyr.

Other members of the original church came together and reorganized on the original plan, forming what has since been termed the Reorganized Church. Joseph Smith, the oldest son of Joseph Smith the Martyr, took his place at the head of the Reorganized Church April 6, 1860. He had received a divine personal call to that position, besides having been blessed and set apart for that work by his father.

The Reorganized Church claims to be in fact the church of Christ. It claims further to be the legal heir, and in succession to all rights, privileges, and properties belonging to the church established in 1830.

These claims have been challenged, and on several occasions the question has been carried to the civil courts, where evidences could be weighed before unprejudiced tribunals and where an authoritative decision could be rendered.

THE KIRTLAND TEMPLE SUIT.

February 23, 1880, the Reorganized Church of Jesus Christ of Latter Day Saints, by its attorneys, appeared before the Court of Common Pleas, Lake County, Ohio, (see journal entry, February term, 1880,) as plaintiff, asking for possession of the Kirtland Temple, an edifice erected during the early days of the church, and prior to the death of Joseph Smith the Martyr. The church in Utah, then presided over by John Taylor, was named with others as defendants.

Judge L. S. Sherman rendered the following decision:

Now at this term of the Court came the Plaintiff by its attorneys, E. L. Kelley, and Burrows and Bosworth, and the Defendants came not, but made default; and thereupon, with the assent of the Court, and on motion and by the consent of the Plaintiff a trial by jury is waived and this cause is submitted to the Court for trial, and the cause came on for trial to the Court upon the pleadings and evidence, and was argued

by counsel; on consideration whereof, the Court do find as matters of fact:

1st. That notice was given to the Defendants in this action by publication of notice as required by the statutes of the State of Ohio; except as to the Defendant, Sarah F. Videon, who was personally served with process.

2d. That there was organized on the 6th day of April, 1830, at Palmyra, in the State of New York, by Joseph Smith, a religious society, under the name of "The Church of Jesus Christ of Latter Day Saints," which in the same year removed in a body and located in Kirtland, Lake County, Ohio; which said Church held and believed, and was founded upon certain *well defined doctrines*, which were set forth in the *Bible, Book of Mormon, and Book of Doctrine and Covenants*.

3d. That on the 11th day of February, A. D. 1841, one William Marks and his wife, Rosannah, by Warranty Deed, of that date, conveyed to said Joseph Smith as sole Trustee-in-Trust for the Church of Jesus Christ of Latter Day Saints, being the same Church organized as aforesaid, the lands and tenements described in the petition, and which are described as follows:

[The description of the land is omitted.—E. A. S.]

And upon said lands said Church had erected a church edifice known as The Temple, and were then in the possession and occupancy thereof, for religious purposes, and so continued until the disorganization of said Church, which occurred about 1844. That the main body of said religious society had removed from Kirtland aforesaid, and were located at Nauvoo, Illinois, in 1844, when said Joseph Smith died, and said Church was disorganized and the membership (then being estimated at about 100,000) scattered in smaller fragments, each claiming to be the original and true Church before named, and located in different States and places.

That one of said fragments, estimated at ten thousand, removed to the Territory of Utah under the leadership of Brigham Young, and located there, and with accessions since, now constitute the Church in Utah, under the leadership and

Presidency of John Taylor, and is named as one of the defendants in this action.

That after the departure of said fragment of said church for Utah, a large number of the officials and membership of the original church which was disorganized at Nauvoo, reorganized under the name of the Reorganized Church of Jesus Christ of Latter Day Saints, and on the 5th day of February, 1873, became incorporated under the laws of the State of Illinois, and since that time all other fragments of said original Church (except the church in Utah) have dissolved, and the membership has largely become incorporated with said Reorganized Church which is the Plaintiff in this action.

That the said Plaintiff, the Reorganized Church of Jesus Christ of Latter Day Saints is a Religious Society, *founded and organized upon the same doctrines and tenets, and having the same church organization, as the original Church of Jesus Christ of Latter Day Saints, organized in 1830, by Joseph Smith*, and was organized pursuant to the constitution, laws and usages of said original Church, and has branches located in Illinois, Ohio and other States.

That the church in Utah, the Defendant of which John Taylor is president, has *materially and largely departed from the faith, doctrines, laws, ordinances and usages of said original Church of Jesus Christ of Latter Day Saints, and has incorporated into its system of faith the doctrines of celestial marriage and a plurality of wives, and the doctrine of Adam-god worship, contrary to the laws and constitution of said original Church.*

And the Court do further find that the Plaintiff, the Reorganized Church of Jesus Christ of Latter Day Saints, is the *True and Lawful* continuation of, and successor to the said original Church of Jesus Christ of Latter Day Saints, organized in 1830, and is entitled in law to *all its rights and property.*

The leading points sustained by the above quoted decision may be summarized as follows:

The Reorganization is the legal successor to the church organized April 6, 1830, under the leadership of the Prophet Joseph Smith.

That polygamy and kindred false doctrines were first promulgated and adopted by the church in Utah, such doctrines not having any place in the faith of the original church during the days of the Prophet Joseph Smith.

That the Reorganized Church, being one with the original church in organization and doctrine, is the legal continuation of said church, and heir to all its rights and properties.

THE RULING OF A CANADIAN COURT.

May 19, 1893, Hiram Dickout, a regularly ordained priest of the Reorganized Church of Jesus Christ of Latter Day Saints, at Niagara Falls, Canada, solemnized the marriage of Abraham H. Taylor and Alice E. Vance.

Priest Dickout was arraigned before a police magistrate and fined ten dollars. The charge in effect was that the Reorganized Church of Jesus Christ of Latter Day Saints was not a Christian denomination, and hence under the laws of the Dominion (R. S. O., ch. 131, sec. 1,) a minister of that church could not legally solemnize a marriage.

An appeal was taken and the case came before Chief Justice Armour, in the Court of the Queen's Bench, Chancery, Common Pleas Division of the High Court of Justice, for Ontario, at Toronto, November 28, 1893. The following decision was

rendered by Judge Armour, see Ontario Reports, vol. 24, pp. 250-254, also report in the *Toronto Mail*, November 28, 1893; also in the *Globe*:

We think it quite clear that this conviction can not be maintained. The defendant was clearly a duly ordained minister of this religious body, and there is no doubt that it is *a religious denomination within the words of the statute*. Assuming that Christianity is the law of the land in a sense, *there is nothing contrary to Christianity in the tenets of this body*. It is true they have some authorized works supplemental to the Bible, but that is the case with every church or denomination. The Church of England has its creeds, and the Presbyterian Church its confession. That does not make the church an anti-Christian one. The statute should receive a wide construction. It does not say "Christian," but "religious." If it said "Christian," it would exclude Jews. The fundamental law of the province makes no distinction between churches or denominations. Every person is at liberty to worship his Maker in the way he pleases. We have, or ought to have, in this country, perfect freedom of speech and perfect freedom of worship. *Conviction quashed.*

Under the above decision Latter Day Saints enjoy equal rights with other churches in Canada and retain their standing as a religious body. Enemies of the church sometimes charge that it is not Christian, but the charge can not be maintained before an unprejudiced court.

THE TEMPLE LOT SUIT.

This case was tried before Judge John F. Philips, in the Circuit Court of the United States, for the Western District of Missouri, Western Division, at Kansas City, Missouri.

The property involved was a tract of land in the

city of Independence, Missouri, known as the Temple Lot, acquired by the church in the early thirties, and at a later date claimed by a body of people known as the Church of Christ, more commonly called "Hedrickites."

The Reorganized Church of Jesus Christ appeared as plaintiff, the Church of Christ or "Hedrickites" as defendant. The dominant church in Utah came to the aid of the defendant, not openly, but to such an extent that Judge Philips in his decision spoke of it as "the power behind the throne." They furnished many leading witnesses, including Wilford Woodruff, president of the Utah church, Lorenzo Snow, president of the Utah twelve, and at least two of the women who had become notorious by reason of their claim that they were plural wives of Joseph Smith the Martyr.

Able attorneys represented both sides, and many witnesses were summoned. An abstract of the evidence fills a book of five hundred and ninety-seven pages. The decision of the judge occupies an additional twenty-eight pages.

The question was largely one of doctrine, and a desperate attempt was made to prove that Joseph Smith the Martyr taught polygamy. Every effort possible was made to break down the claim of the Reorganized Church to succession.

The judge sustained the Reorganized Church on every material point. On an appeal to the Appellate Court the decision as to the possession of the property was set aside and the defendants were per-

mitted to retain possession of the Temple Lot, solely on the ground that the Reorganized Church had not moved soon enough, a question of *laches*. The decision of Judge Philips as to the weight of evidence presented and the standing of the Reorganized Church as the legal successor to the church established April 6, 1830, was never reversed and still stands. The Reorganized Church was merely unfortunate in not presenting its claims at a date sufficiently early to come within the statute of limitation.

In this decision, rendered March 16, 1894, Judge Philips said:

Beyond all cavil, if human testimony is to place any matter for ever at rest, this church was one in doctrine, government, and purpose from 1830 to June, 1844, when Joseph Smith, its founder, was killed. It had the same federal head, governing bodies, and faith. During this period there was *no schism, no secession, no "parting of the ways," in any matter fundamental, or affecting its oneness.*

The *only* authorized and recognized books of doctrine and laws for the government of the church from 1830 to 1846 were the Bible, the Book of Mormon, and the Book of Doctrine and Covenants. The Book of Doctrine and Covenants, which consisted principally of claimed divine revelations to Joseph Smith, was the edition published at Kirtland, Ohio, in 1835, and at Nauvoo in 1845. . .

There can be no question of the fact that Brigham Young's assumed presidency *was a bold and bald usurpation.* The Book of Doctrine and Covenants (printed in 1846) page 411, containing a revelation to Joseph Smith, January 19, 1841, gave unto them "my servant Joseph, to be a presiding elder over all my church, to be a translator, a revelator, a seer, and a prophet." . . . The book clearly taught that the suc-

cession should descend lineally and go to the first-born. Joseph Smith so taught, and, before his taking off, publicly proclaimed his son Joseph, the present head of Complainant Church, his successor, and he was so anointed. . . .

The Book of Mormon itself inveighed against the sin of polygamy. . . . Conformably to the Book of Mormon, the Book of Doctrine and Covenants expressly declared "that we believe that one man should have but one wife, and one woman but one husband." And this declaration of the church on this subject reappeared in the Book of Doctrine and Covenants, editions of 1846 and 1856. Its first appearance as a dogma of the church (the dogma of polygamy) was in the Utah Church in 1852.

Claim is made by the Utah Church that this doctrine is predicated of a revelation made to Joseph Smith in July, 1843. No such revelation was ever made public during the life of Joseph Smith, and under the law of the church it could not become an article of faith and belief until submitted to and adopted by the church. *This was never done.* . . .

The Utah Church *further departed* from the principles and doctrines of the original church by changing in their teaching the first statement in the Article of Faith, which was, "We believe in God, the Eternal Father, and in his Son, Jesus Christ, and in the Holy Ghost," and in lieu thereof taught the doctrine of "Adam-god worship." . . .

It has introduced societies of a secret order, and established secret oaths and covenants, contrary to the book of teachings of the old church. It has changed the duties of the President, and of the Twelve, and established the doctrine to "Obey Counsel," and has changed the order of the "Seventy, or Evangelists." . . .

A considerable number of the officers and members of the church at Nauvoo did not ally themselves with any of the factions, *and wherever they were they held onto the faith*, refused to follow Brigham Young to Utah, and ever *repudiated the doctrine of polygamy*, which was the great rock of

offense on which the church split after the death of Joseph Smith.

In 1852 the scattered fragments of the church, the remnants of those who held to the fortunes of the present Joseph Smith, son of the so-called "Martyr," gathered together sufficiently for a nucleus of organization. They took the name of "The Reorganized Church of Jesus Christ of Latter Day Saints," and avowed their allegiance to the teachings of the ancient church; and their epitome of faith adopted, while containing differences in phraseology, in its essentials is but a reproduction of that of the church as it existed from 1830 to 1844. To-day they are twenty-five thousand strong. [At present, 1911, the membership is about sixty thousand.—E. A. S.]

It is charged by the Respondents, as an echo of the Utah Church, that Joseph Smith, "the Martyr," secretly taught and practiced polygamy; and the Utah contingent furnishes the evidence, and *two of the women*, to prove this fact. It perhaps would be uncharitable to say of these women that they have *borne false testimony* as to their connection with Joseph Smith; but, in view of all the evidence and circumstances surrounding the alleged intercourse, it is difficult to escape the conclusion that at most they were but sports in "nest hiding." In view of the contention of the Salt Lake party, that polygamy obtained at Nauvoo as early as 1841, it must be a little embarrassing to President Woodruff of that organization when he is confronted, as he was in the evidence in this case, with a published card in the *church organ* at Nauvoo in October, 1843, certifying that he knew of no other rule or system of marriage than the one published in the Book of Doctrine and Covenants, and that the "secret wife system," charged against the church, was a creature of invention by one Doctor Bennett, and that they knew of no such society. That certificate was signed by the *leading members of the church*, including John Taylor the former President of the Utah Church. And a similar certificate was published by the Ladies' Relief Society of the same place, signed by Emma

Smith, the wife of Joseph Smith, and Phoebe Woodruff, wife of the present President Woodruff. *No such marriage ever occurred under the rules of the church*, and no offspring came from the imputed illicit intercourse, although Joseph Smith was in the full vigor of young manhood, and his wife, Emma, was giving birth to healthy children in regular order, and was *enciente* at the time of Joseph's death.

But if it were conceded that Joseph Smith, and Hyrum, his brother, did secretly practice concubinage, is the church to be charged with those liaisons, and the doctrine of polygamy to be predicated thereon of the church? If so, I suspect the doctrine of polygamy might be imputed to many of the Gentile churches. Certainly it was *never promulgated, taught, nor recognized*, as a doctrine of the church prior to the assumption of Brigham Young.—Decision of Judge Philips in Temple Lot Case, pp. 20-26.

By reading the foregoing decision the reader will discover the following facts:

Brigham Young's assumption of the presidency was a bold and bald usurpation.

He it was who introduced polygamy and kindred false doctrines.

These false doctrines are denounced by the Bible, Book of Mormon, and Doctrine and Covenants, which three books were the standards of authority in the church during the days of Joseph Smith, and are still standards of authority to the Reorganized Church.

An effort to prove that Joseph Smith was a polygamist can not successfully be made before a competent court that is capable of weighing evidence, not even when his reputed plural wives are present.

The Reorganized Church is in line of succession

and has kept the faith, having shaped its course in harmony with the word of God and in such a way as to merit the approval of all good men.

A STATEMENT BY HON. JULIUS C. BURROWS AND THE
HON. FRED T. DUBOIS.

Reed Smoot, a member of the twelve apostles of the dominant church in Utah, having been elected to the United States Senate, took the oath of office, March 5, 1903.

A protest against the seating of Reed Smoot having been filed with the Senate, the matter was referred to the Committee on Privileges and Elections.

This committee, composed of leading senators of the United States, summoned many witnesses, including the president of the dominant church in Utah, investigated a great mass of documentary evidence, and made a thorough and exhaustive investigation of "Mormon" history. Their work of investigation continued until June, 1906. A transcript of the evidence taken and speeches made fills four large volumes.

The Committee on Privileges and Elections was not a court, in the strict sense of the term, but it had some of the functions of a court. The Reorganized Church was not directly involved, as it had no interest in the seating of Reed Smoot, but the matter was overruled, divinely or otherwise, so that it terminated to our favor.

For these reasons, we have decided to use in this connection certain statements made by the chair-

man of the committee, United States Senator Julius C. Burrows, while reviewing the matter before the United States Senate, December 11, 1906. The position of the man making the statements, the unusual opportunity that had been his to discover the truth, the great publicity of the utterance, and the fact that it was made before one of the greatest legislative bodies in the world, gives great weight to that which we shall quote.

Concerning the origin of polygamy Senator Burrows said:

In order to induce his followers more readily to accept this infamous doctrine, Brigham Young himself invoked the name of Joseph Smith, the Martyr, whom many sincerely believed to be a true prophet, and ascribed to him the reception of a revelation from the Almighty in 1843, commanding the Saints to take unto themselves a multiplicity of wives, limited in number only by the measures of their desires. . . . Such the mythical story palmed off on a deluded people.—*Congressional Record, December 13, 1906.*

Concerning the Reorganized Church of Jesus Christ of Latter Day Saints, he said:

The death of Joseph Smith in 1844, however, carried dismay and demoralization throughout the entire membership of the Mormon church, scattering its adherents in divers directions and for the time being seemed to presage the complete overthrow and dissolution of the organization. Recovering, however, from the shock, the scattered bands soon reappeared in various parts of the country and promulgated their doctrines with increased zeal, and set to work to reassemble and reorganize their scattered forces, resulting finally in the formation of what is now known and recognized as the Reorganized Church of Jesus Christ of Latter Day Saints, with headquarters at

Lamoni, Iowa, and presided over by Joseph Smith, a son of the Prophet. The courts have *repeatedly* declared this organization to be the legitimate successor of the original Mormon church, and its adherents, numbering some 50,000 peaceable, patriotic, and law abiding citizens scattered throughout the United States in small church societies, *conforming to the laws of their country* wherever they may be and *adhering to the faith of the founder of their creed*, repudiating and denouncing the doctrine of polygamy and its attendant crimes, without temple, endowment house, or secret order, worship in the open like other church organizations, unquestioned and unmolested.—*Congressional Record, December 13, 1906.*

Another member of the Committee on Privileges and Elections, Senator Fred T. Dubois, in a speech before the United States Senate, December 13, 1906, confirmed the statements made by Mr. Burrows. Senator Dubois said:

It is only fair, I think, for me to say—and I am glad the distinguished Senator from Michigan (Mr. Burrows) treated upon it the other day—that there is a branch of the Mormons, called the “Josephites,” who ought to be separated clearly in the minds of all Senators from the Brighamite Mormons. The Josephites claim that they are the custodians of the church as it was founded. They claim that Brigham Young has interjected doctrines into the church which the Mormons did not accept in the beginning. At any rate, however that may be, the Josephite Mormons, with their headquarters at Lamoni, in the State of Iowa, and wherever they are, no matter in what part of the country, are among the best of our citizens in all respects.—*Congressional Record, December 17, 1906.*