

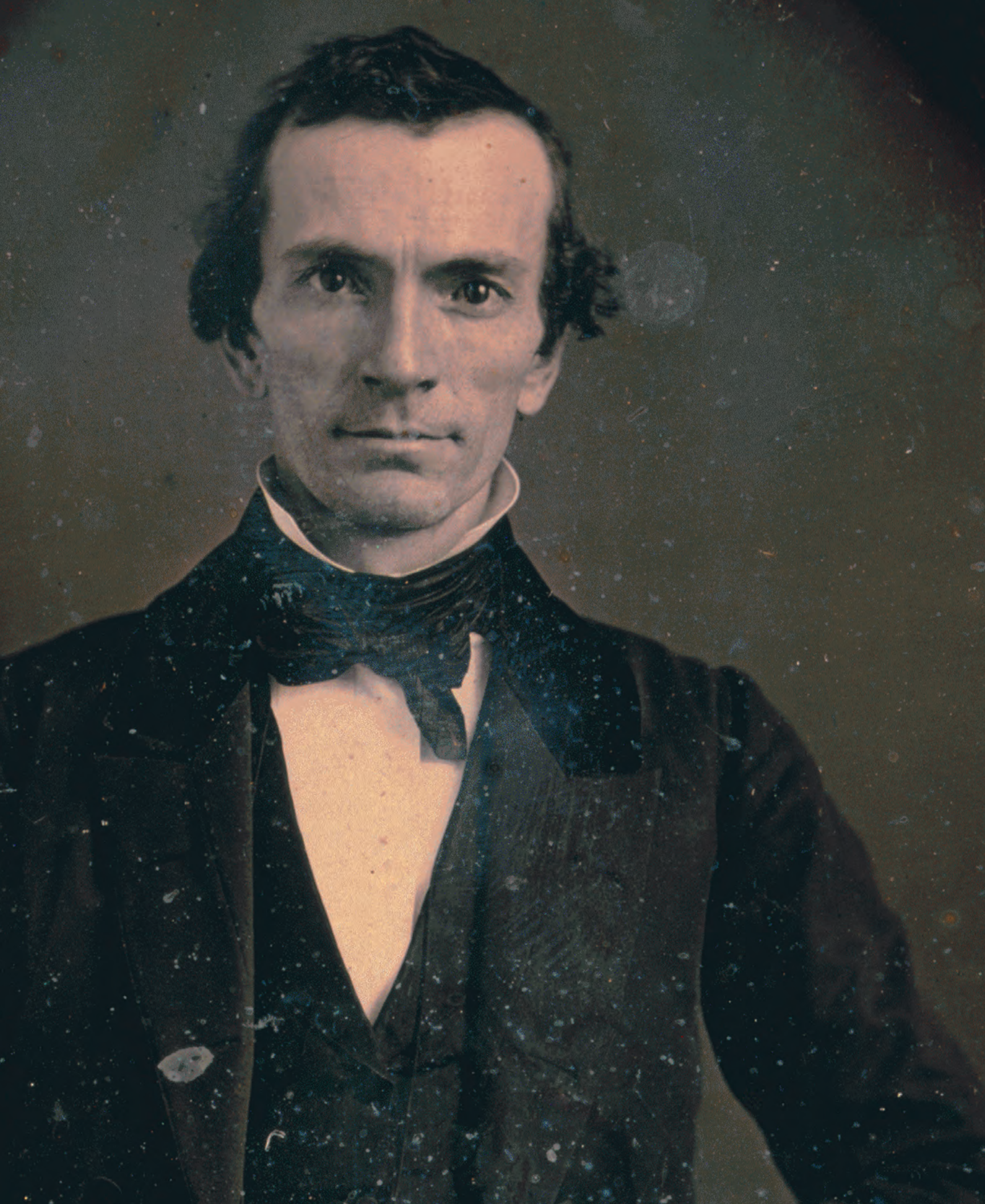
OLIVER COWDERY

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BY JEFFREY N. WALKER

The First Mormon Lawyer

Among the founding elders of Mormonism, Oliver Cowdery was the only lawyer. That intrigues me. In 2006, as a group of fellow historians¹ started preparations to celebrate Cowdery's 200th birthday,² I decided to learn more about his law practice. As I gathered materials about Cowdery,³ I found only passing references to his practice of law. This was understandable, since most of the time during which he practiced law he was out of the Church. My interest led me to Tiffin, Ohio, about 115 miles southwest from Kirtland, Ohio, where Cowdery practiced law for about eight years, from 1840 to 1848. There, to almost everyone's surprise, we located in a closed courthouse basement thousands of pages of filed documents written in Cowdery's own handwriting, still tied together with conventional blue ribbons.⁴



More than 2,000 pages of his law practice have now been digitized along with thousands of additional pages from minute and record books.⁵ As these new sources have been organized and transcribed, a window into early 19th-century frontier law has emerged, and Cowdery has arisen as a capable and respected attorney.

In my efforts to understand his legal practice, I found myself almost having conversations with Oliver Cowdery about the facts, procedures, and legal precedents of the cases he handled. His practice encompassed the full spectrum of a country lawyer's practice, representing both plaintiffs and defendants in criminal and civil matters. His pleadings evidenced a keen understanding of the unique nuances of practicing law in the 1840s. His practice came at a unique period in the development of the "American System" of law.⁶ Before 1848 American courts followed practices principally derived from the English courts of the King's Bench and Common Pleas.⁷ Commencing a case was done through a complex use of writs. Exacting language was required, thereby making formbooks a necessity. Dozens of available writs were separated into real,⁸ personal (further divided into contracts⁹ and torts¹⁰), and mixed claims.¹¹ Cowdery's practice evidenced a creative and broad understanding of the law and available procedures. At times I was surprised at his skill in approaching his cases, as he sometimes used obscure writs or processes.¹²

THE SECOND ELDER OF MORMONISM

The path that led Oliver Cowdery to the legal profession is inherently intertwined with his pivotal role in the Restoration. He is remembered as the second elder of Mormonism and the sole companion to Joseph Smith at foundational moments, such as during the translation of the Book of Mormon, the restoration of the Aaronic and Melchizedek priesthoods, and the vision of Christ and the Old Testament prophets in the Kirtland Temple. No one else stood in a more unique position to either testify for or against the Prophet. And Cowdery clearly understood the unique position he held. "Being the oldest member of the Church,"¹³ he wrote to Phineas Young in 1848, "and knowing as I do what she needs, I may be allowed to suggest a word for her sake, having nothing but her interest in view."¹⁴ As a consequence of his being present during these seminal moments, his credibility is most significant, and his character and reliability can be defined by his professional practice and legal reputation.

Cowdery's years in Kirtland marked the pinnacle of his career within the Church. He led the first missionary efforts through Ohio in 1830, and his successes there soon led to Kirtland becoming the headquarters of the Church for more than seven years. His converts included Sidney Rigdon, Edward Partridge, Isaac Morley, John Murdock, Lyman Wight, Frederick G. Williams, and others who became key leaders. In December 1834 he was called by Joseph Smith to be the assistant president of the Church, a position he held until his excommunication in April 1838. During the years 1830 to 1838, Cowdery was involved in virtually every aspect of the Church in both Missouri and Ohio.

During this time Oliver saw the value and importance of the law. Building on his interests as a schoolteacher and a publisher, he devoted his professional efforts for much of his adult life to the law. For a three-month period in 1836, Cowdery kept a diary. On January 18, 1836, in what appears to be his first recorded indication of his interest in practicing law, he wrote:

Recorded blessings until evening, when a man came in by the name of Lee Reed, and said that he had been sued for an assault, and that his opponent had sought thus to destroy him: he urged me to go before the court and plead his cause. On examining the same before the court, I saw the man was guilty of a misdemeanor, and could not say but little in his behalf. He was finally bound over to await his trial before the court of common Pleas [sic]: this decision was just, for he was guilty of throwing a stick against a little child.¹⁵

On May 15, 1837, Cowdery was elected by an almost unanimous vote to serve as a justice of the peace for Kirtland, a position he held until August 1837, when he decided to move his family to Far West, Missouri.¹⁶ During these three months Cowdery heard approximately 240 cases.¹⁷

In Missouri he aligned himself with his close friend and brother-in-law David Whitmer, president of the Church in Missouri.¹⁸ By January 1838 Cowdery began making definite plans to practice law. That month he wrote to his brother Warren that he had obtained some law books to study, including “Black Stone 2 Vols. Kent 4 Vols., Commy and Doc., Starkie on Evidence 2 Vols., Story’s Commentaries I Vol., Wheaten’s International, Ohio’s reports, Missouri Doc. Statute 1 Vol. and have sent and expect in March between 50 and 60 vols more.”¹⁹ On March 10, 1838, he again wrote from Missouri to his brothers, Warren and Lyman, in Ohio, confirming that he anticipated receiving “some 55 volumes,” stating:

When I become acquainted more familiarly with the leading lawyers of the county, and the practice of the courts, if you are not here in the interim, will write you more fully. I have read some of the Supreme Court reports of this state, and think, generally, they will evince a very good knowledge of law. How I shall like the practice of the inferior courts, I cannot say. . . . I am pursuing my study as fast as health and circumstances will permit and hope I may feel competent to apply for a license in this summer.²⁰ If I do I shall have to go down the country to see one of the Judges of the Supreme Court, or attend the court itself which does not sit very near. The circuit attorneys are elected by the people—I have no doubt if L. [Lyman] was here he could get the office very soon.²¹ If we can live here in peace we can grow up with the country and have our full share of public matters.²²

This letter also noted that Cowdery apparently was already lining up legal work: “We [Cowdery and Lyman E. Johnson] have some four or five suits to attend to at the next term of the Circuit Court (2nd of April); but we will have to employ some one to advocate the suits in open court.”²³ At this point neither Cowdery nor Johnson were members of the Missouri bar, but they had already started to get clients. Perhaps this was the reason Oliver was trying to entice his brother Lyman, already a lawyer in Ohio, to come to Missouri. The statutes governing the practice of law were very clear, and Cowdery and Johnson apparently understood that they could not appear in the circuit court (which were courts “of record”) without a law license.²⁴ Lower justice-of-the-peace courts were not courts of record, however, and no license was required to represent parties there.

By spring 1838 Joseph Smith, his family, and other key leaders had left Kirtland and moved to Far West. Simultaneously, antagonism of Thomas B. Marsh and David W. Patten (members of the Twelve) and the Far West high council reached a head against David Whitmer, W. W. Phelps, and John Whitmer of the Missouri presidency. Cowdery aligned himself with his Whitmer relatives. The disputes between these men and groups festered into the apostasy and excommunication of Cowdery, the Whitmers, and several others.

On April 12, 1838, Oliver Cowdery was tried in absentia before the Far West high council court and excommunicated. He did not attend the hearing, claiming that the high council lacked jurisdiction over him because of his position as assistant president of the Church.²⁵ Nine charges were brought against him, counts one and seven dealing with his interest in being a lawyer: “1st, For stirring up the enemy to persecute the brethren by urging on vexatious lawsuits²⁶ and thus distressing the innocent,” and “7th, For leaving the calling, in which God had appointed him, by Revelation, for the sake of filthy lucre, and turning to the practice of Law.”²⁷ John Corroll and David Patten testified that Cowdery had “used his influence to urge on lawsuits.” Beyond that, Frederick Williams reported that some people had implicated Cowdery in a “bogus money” counterfeiting business in Kirtland, which Cowdery had denied, but he had not stayed in town to exonerate himself in court, as Joseph had told him to do if he was innocent. While Cowdery did not substantively defend himself against all these charges, he did submit a letter, also dated April 12, 1838, addressed to Bishop Partridge, explaining himself on several points, declaring that he had “no disposition to contend with the Council,” and requesting that they “take no view of” the nine points raised against him other than the accurate remarks about his views on “the outward governments



The Susquehanna River, near the home of Joseph Smith Jr., where Oliver Cowdery and Joseph Smith were baptized after the Aaronic Priesthood was conferred upon them by the angel John the Baptist.

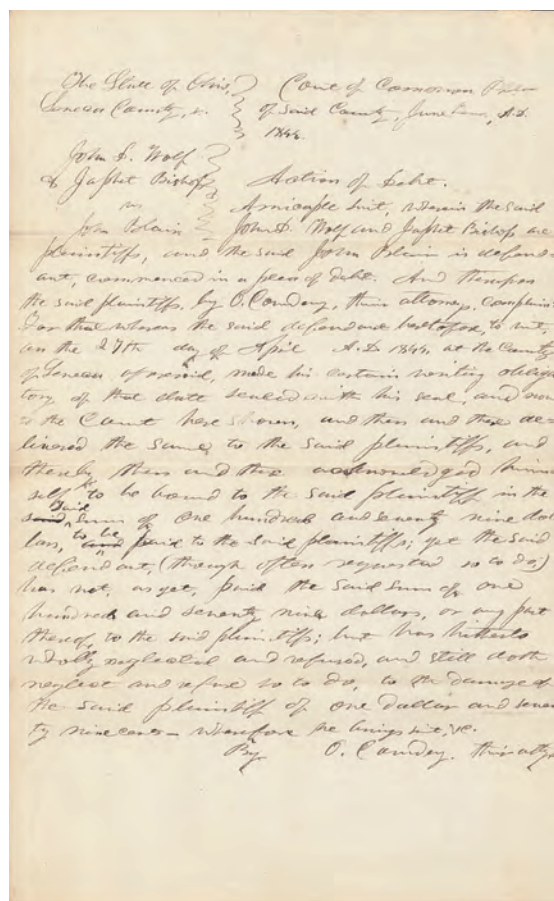
After his excommunication in April 1838, Cowdery continued to explore practicing law in Missouri, possibly moving from Far West to Daviess County. These options ended abruptly in June 1838 when Sidney Ridgon purportedly authored a lengthy ultimatum to the recent dissenters, including Oliver Cowdery, threatening, “You shall have three days after you receive this communication . . . for you to depart with your families peaceably; which you may do undisturbed by any person; but in that time, if you do not depart, we will use the means in our power to cause you to depart; for go you shall.”²⁹

While a number of those purged during this time actively turned against the Church, Cowdery bowed out gracefully, temporarily relocating to Richmond, in Ray County, where he concentrated his efforts on leaving Missouri, possibly to go to Springfield, Illinois, to further his preparations to practice law. In a letter dated June 2, 1838 (before his departure from Far West), Cowdery explained to his brothers his disappointment at having not received the law books as anticipated: “I suppose I could get some yet, but if I go to Ill. soon, I think I better defer for the present, as I presume they can be had cheaper there than here, besides a transportation back.” He continued, “I have already written you all the books I have. I shall probably get Chitty’s Criminal Law, Russell on Crimes, Selwyn’s Nisi Pricas, Hawkin’s Pleas of the Crown & some one on Chancery Practice—may be Maddock’s or Story’s Equity, and perhaps some others.”³⁰ Cowdery summarized his professional ambition to base his practice of law on solid treatises and skillful writing:

Cowdery also showed his collegial personality as he solicited others to join him in relocating to practice law with him:

By August 1838 Cowdery finalized plans to leave Missouri. Yet instead of going to Illinois he decided to return to Ohio to be near his family and practice law with his brother Lyman. In this regard, Lyman wrote:

Wolf v. Bishop (Seneca County, Ohio, Court of Common Pleas, June term 1844) involved a Writ of Debt action. Pleading is in the handwriting of Oliver Cowdery.



& family Silvester has more than don it and besides made great proficiency in his study, he would have a good examination.³³

Lyman further encouraged Cowdery's move "back home," noting, "I would go to your place but I do not see as I could do you the good that you would do your self by comeing here."³⁴ Cowdery moved back to the Kirtland area by late 1838.³⁵ There he started his study of the law in earnest under the tutelage of Benjamin Bissell,³⁶ a prominent attorney in Painesville.³⁷ Cowdery was well acquainted with Bissell, who previously represented the Church's interest in various lawsuits while headquartered in Kirtland.³⁸ Oliver studied law through 1839, was admitted to the Ohio bar,³⁹ and commenced practice with his brother Lyman as early as January 1840.⁴⁰

During this time Cowdery became politically active in the Democratic Party in the Kirtland area. He was chosen as a delegate for Geauga County for the bicounty senatorial convention in which Benjamin Bissell was elected a state senator. It appears that these political activities led him to the city of Tiffin, Ohio, in 1840. William Lang, who studied law under Cowdery, described Cowdery's introduction to Tiffin:

In the spring 1840, on the 12th day of May, he [Oliver Cowdery] addressed a large Democratic gathering in the street between the German Reformed Church of Tiffin and the present residence of Hez. Graff. He was on a tour of exploration for a location to pursue his profession as a lawyer. . . . In the fall of the same year he moved with his family to Tiffin and opened a law office on Market Street.⁴¹

A TENACIOUS ADVOCATE

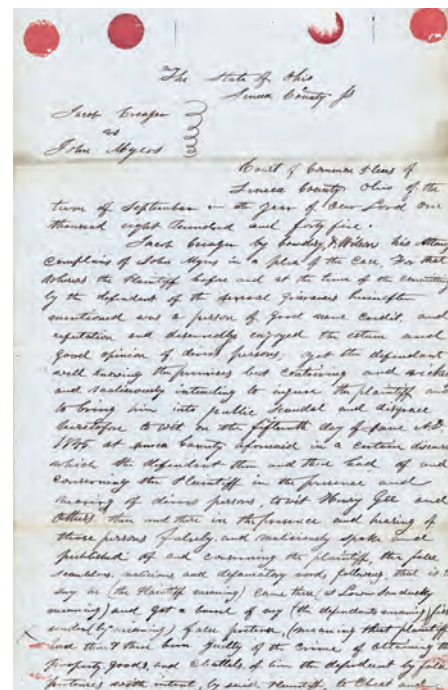
The first known case filed by Oliver Cowdery in Tiffin is dated August 31, 1840, and captioned as *Cronise v. Betz* (Seneca County, Court of Common Pleas), an assault and battery case representing the defendant. The second is *Stucky v. Stucky* (Seneca County, Court of Common Pleas, September 19, 1840), a complicated case of partitioning real property. Cowdery's name alone appears on these pleadings. Court files⁴² show that by mid-November 1840 Cowdery had partnered with Joel W. Wilson.⁴³ They would remain partners throughout Cowdery's eight years in Tiffin.

Consider this interesting sample of cases from Oliver Cowdery's practice, demonstrating the breadth of his frontier law practice:

1. *Boyer v. Shawhan* (Seneca County, Court of Common Pleas, January 10, 1842). In this case Boyer sued Shawhan, alleging that Shawhan stole a yoke of oxen. Boyer claimed damages of \$75 for the loss of his oxen, another \$75 to acquire a replacement pair of oxen, and a final \$75 for expenses incurred due to having the oxen stolen. Cowdery successfully defended Shawhan, and costs of \$14.39 were assessed against Boyer. Boyer appealed the judgment. After the filing of the appeal the parties settled the matter, with Shawhan agreeing to pay the court costs.

2. *Briggs v. Tyler* (Seneca County, Court of Common Pleas, May 7, 1845). The first part of this case was brought before a justice of the peace by Catherine Briggs, a young unmarried woman who delivered a child on April 7, 1845. Catherine alleged that Asa Tyler was the father. The justice of the peace found that Tyler was the father and ordered him to pay to Catherine \$40 and \$2.80 in costs. In the second part of this case, Cowdery represented Catherine's father, Joseph Briggs, against Tyler under the writ of "seduction of a servant." Under this writ, Briggs sought damages due to Tyler impregnating Catherine and leaving her unable to perform her duties to the family, claiming damages of \$1,000. After taking a series of depositions and protracted settlement discussions, the case settled, with Tyler paying court costs.

3. *Creager v. Myers* (Seneca County, Court of Common Pleas, September 3, 1845) was a slander suit. Creager, Cowdery's client, claimed that Myers had slandered him by asserting that Creager had stolen a barrel of fish. Creager sought \$1,000 in damages. Discovery was



Declaration (complaint) in *Creager v. Myers* (Seneca County, Ohio, September term 1845) to bring a slander action. Pleading is in the handwriting of Oliver Cowdery.

completed, including taking four depositions. The case was tried over four days. Seventeen witnesses were called. Judgment was found for Creager, and he thereafter assigned \$255 of the judgment to Cowdery for the attorney's fee—a considerable amount in the 1840s.

4. *Munger v. Munger* (Seneca County, Court of Common Pleas, May 15, 1846). Cowdery, representing the husband, filed a petition for divorce on the basis that Munger's wife had left him for more than three years. He also sought the custody of the five children—all girls. As Mrs. Munger had apparently abandoned the family, notice (or service) of the petition was published in the local newspaper. Cowdery took four depositions of witnesses supporting Mr. Munger's petition. Five months later Cowdery presented the depositions in court, and the petition was ultimately granted.



The Oliver Cowdery Monument,
Richmond, Missouri.

As with most legal practices, Cowdery spent a great percentage of his time seeking collections for various clients. While these cases may be considered simple, as most attorneys can attest, collection work often requires considerable creativity, and Cowdery's collection efforts show creative ability. In *Cornell v. Wayman* (Seneca County, Court of Common Pleas, November 27, 1843), Cowdery was retained to seek collections against Moses Cornell for a judgment entered against Thomas Wayman on June 24, 1837, for \$28 in a Justice's Court. Cornell had initially sought to avoid the execution on his property by allegedly transferring his property to his father immediately prior to the judgment being entered. Six years later Cowdery brought this action in the chancery division of the Court of Common Pleas to seek an equitable rather than legal remedy, because by that time the property was back in Wayman's name but mortgaged. The mortgage was the result of Wayman having been elected as a constable, which required Wayman and two other sureties to post a bond. These sureties placed a mortgage on the property as collateral for liabilities they might incur as sureties during the tenure of Wayman's appointment. Arguments by Cowdery included that Wayman's term had expired, therefore any such need for the mortgage had expired. Further, Cowdery argued that as a result of the expiration of the term, the chancery court could determine if the sureties were subject to any financial liability and whether any proceeds from the sale of the property should be allocated to them. Ultimately

the court agreed with Cowdery's analysis, finding that \$15.84 be allocated to the sureties and \$39.76 be allocated to Cornell (which included interest and costs). Ironically, no attorney's fees were allocated to Cowdery for his efforts. Cowdery filed an exception over this omission, and the court thereafter amended the ruling by adding \$10 for attorney's fees. As this case demonstrates, Cowdery was a tenacious advocate for his clients.

A MAN OF INTEGRITY AND HONOR

A survey of the 10 years that Cowdery spent outside of the Church (1838–48) permits an examination of his character independent of any influence of Church dynamics. In his own words he gave an accounting of this decade to the Saints upon his return and rebaptism in early November 1848 in the vicinity of Council Bluffs, Iowa:

*I feel that I can honorably return. I have sustained an honorable character before the world during my absence from you, this tho a small matter with you, it is of vast importance. I have ever had the honor of the Kingdom in view, and men are to be judged by the testimony given.*⁴⁴

On this occasion, Cowdery further assured the high council that he was not seeking to be reinstated to his position within the Church: "I am out of the Church. I know the door into the Church, and I wish to become a member thro[ugh] the door. I wish to be a humble member. I do not come here to seek honor."⁴⁵ He concluded:

Daguerreotype of Oliver Cowdery (on contents page and pages 38–39), circa 1846, by James Presley Ball from Cincinnati, Ohio; discovered in 2006 by Patrick Bishop in the Library of Congress and Photographs Division.

The home where Oliver Cowdery died, Richmond, Missouri.

*I have not come to seek place, nor to interfere with the business and calling of those men who have borne the burden since the death of Joseph. I throw myself at your feet, and wish to be one of your number, and be a mere member of the Church, and my mere asking to be baptized is an end to all pretensions to authority.*⁴⁶

Cowdery was rebaptized that November by Orson Hyde, who was president of the Quorum of the Twelve Apostles—a calling that Cowdery, David Whitmer, and Martin Harris had ordained him to February 15, 1835. Cowdery stayed in the Council Bluffs area for several months, assisting Orson Hyde in setting up a printing business and making plans to open a nursery in Utah. He and his family then traveled to visit his wife’s family back in Missouri in January 1849, with the plan to make the trek as soon as possible to Utah. As they tarried in Richmond, Missouri, with David Whitmer’s family, in an effort to earn some money for the trip west, Cowdery was admitted to the Missouri bar on March 7, 1849.⁴⁷ Yet his health was failing. He was asked by the First Presidency of the Church to travel with Almon W. Babbitt to Washington, DC, to seek the admittance of the “State of Deseret into the Union.”⁴⁸ However his health continued to deteriorate, preventing him from traveling to Washington on behalf of the Church.

Early in 1850 he was visited by Jacob Gates, an old Mormon acquaintance, to whom he testified in legal tones:

*Jacob, I want you to remember what I say to you. I am a dying man, and what would it profit me to tell you a lie? I know . . . that this Book of Mormon was translated by the gift and power of God. My eyes saw, my ears heard, and my understanding was touched, and I know that whereof I testified is true. It was no dream, no vain imagination of the mind—it was real.*⁴⁹

On March 5, 1850, Oliver Cowdery died at David Whitmer’s home, surrounded by his family and friends. He was 43 years of age.

Although he was one of the significant founding fathers of Mormonism, Cowdery spent nearly half of his adult life outside the Church. During that decade when he was silent in Church history, he made important contributions to his community as an attorney. In studying Cowdery’s legal practice, his integrity, ability, reputation, concern, and capacity as an attorney are evident. Documents from his law practice in Tiffin demonstrate his intellectual and professional skills. Echoing this sentiment is William Lang’s remembrance of Cowdery, his mentor and colleague, written in 1880:

*Mr. Cowdery was an able lawyer and a great advocate. His manners were easy and gentlemanly; he was polite, dignified, yet courteous. He had an open countenance, high forehead, dark brown eyes, Roman nose, clenched lips and prominent lower jaw. He shaved smooth and was neat and cleanly in his person. He was of light stature, about five feet, five inches high, and had a loose, easy walk. With all his kind and friendly disposition, there was a certain degree of sadness that seemed to pervade his whole being. His association with others was marked by the great amount of information his conversation conveyed and the beauty of his musical voice. His addresses to the court and jury were characterized by a high order of oratory, with brilliant and forensic force. He was modest and reserved, never spoke ill of any one, never complained.*⁵⁰

Oliver Cowdery’s professional life as an attorney complements—indeed supports—the unique place that he filled as Joseph Smith’s scribe, companion, editor, assistant, and friend. Oliver Cowdery should be honored as the first Mormon lawyer and as a professional person any aspiring attorney can look to as an example.



NOTE

This article was originally published as a brochure to accompany the unveiling of the portrait *Oliver Cowdery*, painted by Ken Corbett in 2006. Presented to the Law School on November 5, 2013, by the Church History Department, the painting was commissioned by the Mormon Historic Sites Foundation from the daguerreotype on pages 38–39. The notes for this article are available in the brochure, located online at www.law2.byu.edu/site/files/info/CowderyWeb1.pdf.