

# THE DESERET NEWS.

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## HISTORY OF JOSEPH SMITH.

NOVEMBER, 1842.

Nov.—Monday, 14.—Presided in city council, when was passed "An ordinance regulating the proceedings on writs of Habeas Corpus."

Sec. 1. Be it ordained by the city council of the city of Nauvoo, that if any person or persons, shall be, or stand committed, or detained for any criminal or supposed criminal matter, it shall and may be lawful for him, her, or them, to apply to the Municipal Court, when in Session, or to the clerk thereof in vacation, for a writ of Habeas Corpus, which application shall be in writing, and signed by the prisoner, or some person on his, her, or their behalf, setting forth the facts concerning his, her, or their imprisonment, and in whose custody, he, she, or they are detained, and shall be accompanied by a copy of the warrant or warrants of commitment, or an affidavit that the said copy had been demanded of the person or persons in whose custody the prisoner or prisoners are detained, and by him or them refused or neglected to be given; the said Court or clerk to whom the application shall be made, shall forthwith award the said writ of Habeas Corpus, unless it shall appear from the petition itself, or from the documents annexed that the party can neither be discharged nor admitted to bail, nor in any other manner relieved. Which said writ shall be issued under the hand of the clerk, and the seal of the Court; which seal may be a written one, until another shall be obtained, and shall be in the following words, to wit: "Seal of the Municipal Court of the city of Nauvoo," and said writ shall be in substance as follows to wit:

STATE OF ILLINOIS, ss  
City of Nauvoo.

The people of the State of Illinois, to the Marshal of said city, Greeting:—

Whereas application has been made before the Municipal Court of said city, that the body (or bodies) of A B, &c., is, or are in the custody of C D, &c. of &c., these are therefore to command the said C D, &c. of &c. to safely have the body (or bodies) of said A B, &c., in his custody detained as it is said, together with the day and cause of his (her or their) caption and detention, by whatsoever name the said A B, &c. may be known or called, before the Municipal Court of said city, forthwith, to abide such order as the said Court shall make in this behalf, and further, if the said C D, &c., or other person or persons having said A B, &c. in custody shall refuse, or neglect to comply with the provisions of this writ, you, the Marshal of said city, or other person authorized to serve the same, are hereby required to arrest the person or persons, so refusing or neglecting to comply as aforesaid, and bring him or them, together with the person or persons in his or their custody, forthwith, before the Municipal Court aforesaid, to be dealt with according to law; and herein fail not, and bring this writ with you.

Witness J. S., Clerk of the Municipal Court, at Nauvoo, this day of in the year of our Lord one thousand eight hundred and forty

J. S., Clerk.

and be directed to the city Marshal, and shall be served by delivering a copy thereof to the person or persons, in whose custody the prisoner, or prisoners, are detained, and said writ shall be made returnable forthwith, and the form and substance thereof, as herein set forth, and be taken and considered as part and parcel of this ordinance. To the intent that no officer, sheriff, jailor, keeper, or other person, or persons, upon whom such writ shall be served, may pretend ignorance thereof, every such writ and copy thereof served shall be endorsed with these words, "By the Habeas Corpus Act;" and whenever the said writ shall be by any person be served upon the sheriff, jailor, keeper, or other person or persons whosoever, holding said prisoner or prisoners, or being brought to him or them, or being served upon any of his or their under officers or deputies at the jail, or place where the prisoner or prisoners are detained, he or they or some of his or their under officers or deputies shall, upon payment or tender of the charges of bringing the said prisoner or prisoners, to be ascertained by the Court awarding the said writ, and endorsed thereon, not exceeding ten cents per mile; and upon sufficient security given to pay the charges of carrying him, her, or them back, if he, she, or they shall be remanded, make return of such writ, and bring or cause to be brought, the body or bodies of the prisoner or prisoners before the Municipal Court forthwith, and certify the true cause of his, her, or their imprisonment, unless the commitment of such person, or persons shall be to the county jail in Hancock county, in which case the time shall be prolonged till five days, after the delivery of the writ as aforesaid, and not longer.

Provided, nevertheless, that in case any person or persons may at any time hereafter be taken and lodged in the city or county jail, under any writ or process, as provided by the city charter of the city of Nauvoo, and shall require a writ of Habeas Corpus to issue to bring him, her, or them before the Municipal Court of said city, said writ shall issue to bring him, her, or them before said Court, and be directed to the city Marshal to be served upon the person or persons in whose custody such prisoner or prisoners may then be detained.

Sec. 2. Where any person or persons not being committed or detained for any criminal or supposed criminal matter, shall be confined, or restrained of his, her, or their liberty, under any color or pretence whatever, he, she, or they may apply for a writ of Habeas Corpus, as aforesaid, which application shall be in writing, signed by the party, or some person on his, her, or their behalf, setting forth the facts concerning his, her, or their imprisonment, and wherein the illegality of such imprisonment consists, and in whose custody he, she, or they are detained; which application, or petition, shall be verified by the oath or affirmation of the party applying, or some other person on his, her, or their behalf, if the confinement or restraint is by virtue of any judicial writ or process, or order, a copy thereof shall be annexed thereto, or an affidavit made that the same had been demanded and refused: the same proceedings shall thereupon be had in all respects, as are directed in the preceding Section, and any officer, person or persons, knowing that he or they have an illegal writ, or not having any writ, who shall attempt through any false pretext to take or intimidate any of the inhabitants of this city, through such pretext, shall forfeit for every such offence a sum not exceeding one thousand dollars, nor less than five hundred dollars, or in case of failure to pay such forfeiture, to be imprisoned not more than twelve months nor less than six months.

Sec. 3. Upon the return of the writ of Habeas Corpus, a day shall be set for the hearing of the cause of imprisonment or detainer, not exceeding five days thereafter, unless the prisoner or prisoners shall request a longer time. The said prisoner or prisoners may deny any of the material facts set forth in the return, or may allege any fact to show, either that the imprisonment or detention is unlawful, or that he, she, or they, is or are then entitled to his, her, or their discharge, which allegations or denials shall be made on oath. The said return may be amended by leave of the Court; before or after the same is filed, as also may all suggestions made against it, that thereby material facts may be ascertained. The said Court shall proceed in a summary way to settle the said facts, by hearing the testimony and arguments, as well of all parties interested civilly, if any there be, as of the prisoner or prisoners, and the person or persons who holds him, her, or them in custody, and shall dispose of the prisoner or prisoners as the case may require. If it appear that the prisoner or prisoners are in custody by virtue of process from any Court, legally constituted, he, she, or they can be discharged for the following causes. First, Where the Court has exceeded the limits of its jurisdiction, either as to the matter, place, sum, person, or persons; second, where though the original imprisonment was lawful, yet by some act, omission, or event which has subsequently taken place, the party has become entitled to his, her, or their discharge; third, where the process is defective in some substantial form required by law; fourth, where the process though in proper form has been issued in a case, or under circumstances where the law does not allow process, or orders for imprisonment or arrest, to issue; fifth, where although in proper form the process has been issued or executed by a person or persons, either unauthorized to issue or execute the same, or where the person or persons having the custody of the prisoner or prisoners under such process is not the person or persons empowered by law to detain him, her, or them; sixth, where the process appears to have been obtained by false pretence or bribery; seventh, where there is no general law, nor any judgment, order, or decree of a Court, to authorize the process, if in a civil suit, nor any conviction, if in a criminal proceeding. In all cases where the imprisonment is for a criminal or supposed criminal matter, if it shall appear to the said Court that there is sufficient legal cause for the commitment of the prisoner or prisoners, although such commitment may have been informally made, or without due authority, or the process may have been executed by a person or persons not duly authorized, the Court shall make a new commitment, in proper form, and directed to the proper officer or officers, or admit the party to bail, if the case be bailable.

Sec. 4.—When any person or persons shall be admitted to bail on Habeas Corpus, he, she, or they shall enter into recognizance with one or more securities in such sum as the Court shall direct, having regard to the circumstances of the prisoner or prisoners, and the nature of the offence, conditioned for his, her, or their appearance at the next Circuit Court to be held in and for the county where the offence was committed, or where the same is to be tried. Where the Court shall admit to bail, or remand any prisoner or prisoners brought before the Court, on any writ of Habeas Corpus, it shall be the duty of said Court to bind all such persons, as do declare any thing material to prove the offence, with which the prisoner or prisoners are charged by recognizance to appear at the proper Court having cognizance of the offence, on the first day of the next term thereof, to give evidence touching the said offence, and not to depart the said Court without leave; which recognizance so taken, together with the recognizance entered into by the prisoner or prisoners, when he, she, or they are admitted to bail, shall be certified and returned to the proper Court on the first day of

the next succeeding term thereof. If any such witness or witnesses shall neglect or refuse to enter into a recognizance as aforesaid, when thereunto required, it shall be lawful for the Court to commit him, her, or them to jail until he, she, or they shall enter into such recognizance, or be otherwise discharged by due course of law, if the Court shall neglect or refuse to bind any such witness or witnesses, prisoner or prisoners, by recognizance as aforesaid, or to return any such recognizance, when taken as aforesaid, the Court shall be deemed guilty of a misdemeanor in office and be proceeded against accordingly.

Sec. 5. Where any prisoner or prisoners brought up on a Habeas Corpus shall be remanded to prison, it shall be the duty of the Municipal Court remanding him, her, or them, to make out and deliver to the sheriff, or other person or persons to whose custody he, she, or they shall be remanded, an order in writing stating the cause or causes of remanding him, her, or them. If such prisoner or prisoners shall obtain a second writ of Habeas Corpus, it shall be the duty of such sheriff or other person or persons upon whom the same shall be served to return therewith the order aforesaid; and if it shall appear that the said prisoner or prisoners, were remanded for an offence adjudged not bailable, it shall be taken and received as conclusive, and the prisoner or prisoners shall be remanded without further proceedings.

Sec. 6. It shall not be lawful for the Municipal Court on a second writ of Habeas Corpus obtained by such prisoner or prisoners; to discharge the said prisoner or prisoners, if he, she, or they are proven guilty of the charges clearly and specifically charged in the warrant of commitment with a criminal offence, but if the prisoner or prisoners shall be found guilty, the Municipal Court shall only admit such prisoner or prisoners to bail, where the offence is bailable by law, or ordinance, or remand him, her, or them to prison where the offence is not bailable; or being bailable if such prisoner or prisoners shall fail to give the bail required.

Sec. 7. No person or persons who have been discharged by order of the Municipal Court on a Habeas Corpus, shall be again imprisoned, restrained, or kept in custody for the same cause, unless he, she, or they, be afterwards indicted for the same offence, or unless by the legal order or process of the Municipal Court where he, she, or they are bound by recognizance to appear; the following shall not be deemed to be the same cause. First, if after a discharge for defect of proof, or any material defect in the commitment in a criminal case, the prisoner or prisoners should be again arrested upon sufficient proof and committed by legal process, for the same offence; Second, if in a civil suit the party or parties have been discharged for any illegality in the judgment or process, and are afterwards imprisoned by legal process, for the same cause of action; Third, generally whenever the discharge has been ordered on account of the nonobservance of any of the forms required by law, the party or parties may be a second time imprisoned if the cause be legal and the forms required by law observed.

Sec. 8. If any person or persons shall be committed for a criminal matter, in case of the absence of a witness or witnesses whose testimony may be considered to be of importance in behalf of the people, the Municipal Court may adjourn from time to time at its discretion, provided they decide upon the case within thirty days, if it shall appear by oath or affirmation that the witness or witnesses for the people of the State are absent, such witness or witnesses being mentioned by name and the Court shown where in their testimony is material.

Sec. 9. Any person or persons being committed to the city or county jail, as provided in the Charter of the city of Nauvoo, or in the custody of any officer, sheriff, jailor, keeper, or other person or persons, or his or their under officer or deputy, for any criminal or supposed criminal matter, shall not be removed from said prison or custody into any prison or custody unless it be by Habeas Corpus, or by an order of the Municipal Court, or in case of sudden fire, infection or other necessities; if any person or persons shall after such commitment as aforesaid, make out, sign, or countersign any warrant or warrants, for such removal, then he or they shall forfeit to the prisoner or prisoners aggrieved a sum not exceeding five hundred dollars to be recovered by the prisoner or prisoners aggrieved, in the manner hereinafter mentioned.

Sec. 10. If any member of the Municipal Court, or the Clerk of said Court shall corruptly refuse or neglect to issue writ or writs of Habeas Corpus when legally applied to in a case where such writ or writs may lawfully issue, or who shall for the purpose of oppression unreasonably delay the issuing of such writ or writs, shall for every such offence forfeit to the prisoner or prisoners, party or parties aggrieved a sum not less than five hundred dollars and not exceeding one thousand dollars, and be imprisoned for six months.

Sec. 11. If any officer, sheriff, jailor, keeper, or other person or persons upon whom any such writ shall be served, shall neglect or refuse to make the returns as aforesaid, or to bring the body of the prisoner or prisoners according to the command of the said writ, within the time requir-

ed by this ordinance, all and every such officer, sheriff, jailor, keeper or other person or persons shall be guilty of a contempt of the Municipal Court who issued said writ: whereupon the said Court may and shall issue an attachment against said officer, sheriff, jailor, keeper, or other person or persons, and cause him or them to be committed to the city or county jail as provided for by the city Charter of the city of Nauvoo, there to remain without bail or mainprize, until he or they shall obey the said writ; such officer, sheriff, jailor, keeper, or other person or persons shall also forfeit to the prisoner or prisoners, party or parties aggrieved a sum not exceeding one thousand dollars and not less than five hundred dollars.

Sec. 12. Any person or persons having a prisoner or prisoners in his or their custody, or under his or their restraint, power, or control, for whose relief a writ or writs of Habeas Corpus is issued, who with intent to avoid the effect of such writ or writs, shall transfer such person or persons to the custody of, or place him, her, or them under the control of any other person or persons, or shall conceal him, her, or them, or change the place of his, her, or their confinement, with intent to avoid the operation of such writ or writs, or with intent to remove him, her, or them out of the State, shall forfeit for every such offence one thousand dollars, and may be imprisoned not less than one year, nor more than five years. In any prosecution for the penalty incurred under this section, it shall not be necessary to show that the writ or writs of Habeas Corpus had issued at the time of the removal, transfer, or concealment therein mentioned, if it be proven that the acts therein forbidden were done with the intent to avoid the operation of such writ or writs.

Sec. 13. Any sheriff, or his deputy, any jailor or coroner having custody of any prisoner or prisoners committed on any civil or criminal process, of any Court or Magistrate, who shall neglect to give such prisoner or prisoners a copy of the process, order or commitment, by virtue of which he, she, or they are imprisoned, within six hours after demand made by said prisoner or prisoners, or any one on his, her, or their behalf, shall forfeit five hundred dollars.

Sec. 14. Any person who knowing that another has been discharged, by order of the Municipal Court, on a Habeas Corpus, shall contrary to the provisions of this ordinance, arrest or detain him or her again for the same cause, which was shown on return of such writ, shall forfeit one thousand dollars, for the first offence, and two thousand dollars for every subsequent one.

Sec. 15. All the pecuniary forfeitures incurred under this ordinance shall be and inure to the use of the party for whose benefit the writ of Habeas Corpus was issued, and shall be sued for and recovered with costs by the city attorney, in the name of the city by information, and the amount when recovered shall without any deduction, be paid to the parties entitled thereto.

Sec. 16. In any action or suit for any offence against the provisions of this ordinance, the defendant or defendants may plead the general issue, and give the special matter in evidence.

Sec. 17. The recovery of said penalties shall be no bar to a civil suit for damages.

Sec. 18. The Municipal Court upon issuing a writ of Habeas Corpus, may appoint any suitable person to serve the same, other than the Marshal, and shall endorse the appointment on the back of said writ.

Sec. 19. This ordinance to take effect and be in force from and after its passage, any act heretofore to the contrary thereof in any wise notwithstanding. Passed Nov. 14, 1842.

JOSEPH SMITH, Mayor.

JAMES FLOAN, Recorder.

Many other bills were discussed on this and previous days.

Tuesday, 15.—About home. Wrote for the Times and Seasons the following "Valedictory":—

"I beg leave to inform the subscribers of the Times and Seasons that it is impossible for me to fulfil the arduous duties of the editorial department any longer. The multiplicity of other business that daily devolves upon me, renders it impossible for me to do justice to a paper so widely circulated as the Times and Seasons. I have appointed Elder John Taylor, who is less encumbered and fully competent to assume the responsibilities of that office, and I do not but that he will give satisfaction to the patrons of the paper. As this number commences a new volume it also commences his editorial career."

JOSEPH SMITH.

Elder Taylor proceeded to his duties as editor. Elder Bradley Wilson died suddenly in his 74th year. He received the gospel in Ohio, removed his family to Missouri, and was driven to Nauvoo in 1839. He has left seven sons and 39 grandchildren residing in Nauvoo.

Wednesday, 16.—About home. In the evening started on a journey to the counties North in company with John D. Parker.

Thursday, 17.—There was a severe snow storm, and Elder Alpheus Harmon (who was just returning from a mission) and another man were frozen to death on the prairie between Nauvoo and Carthage. The Mississippi was frozen over, which fulfilled my prophecy of the fifth instant.