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[From the Millennial Star.]

Up! Arouse Thee, O Beautiful Zion.

Up! arouse thee, O beautiful Zion,
Wake, awake, 'tis the warder's deep cry,
For the seasons of slumber hath ended,
And the spoiler is watchful and nigh.
With courage elate, and heart to be great,
All deadly incumbrance cast down,
Gird on for the fight, your armor so bright,
For the prize is a glorious crown.

Up! arouse thee, O beautiful Zion,
Give the mammon care-clouds to the wind,
When the bugle's shrill summons is—Rally!
'Tis but cowards would linger behind.
You've foes to overcome in each heart and home
Then fix'd be your purpose, and high,
With God at your head, O feel not dismay'd,
But press forward to conquer or die!

O who would shrink from the glorious strife,
With so dazzling a prize in view?
Who so base as to herd with the traitor?
It sparketh not dastard for you.
Who with nerve like steel, and soul that can feel
For the good, for the pure and the brave,
Will be foremost in right, and trust God's might
The honor is thine—the heav'ns can save!

Destruction and gloom hangs over the earth,
Though unseen by the working throng,
And hark! there'll be death in the echoes
Of the gathering, ominous storm:
Then arouse thee, O beautiful Zion,
Wake, awake, 'tis the warder's deep cry,
For the seasons of slumber hath ended,
And the spoiler is watchful and nigh.
GLASGOW. E. M.

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HISTORY OF JOSEPH SMITH.

MAY, 1844.

Wednesday, 8.—Returned home. At 10 a.m. went before the municipal court on the case "Francis M. Higbee vs. Joseph Smith." I insert the report of the trial as published by direction of the court:

"MUNICIPAL COURT.

CITY OF NAUVOO, Illinois.

Third Day, Regular Term, May 8, 1844.

Before Alderman N. K. Whitney, acting chief justice, and Aldermen Daniel H. Wells, William Marks, Orson Spencer, George W. Harris, Gustavus Hills, George A. Smith, and Samuel Bennett, associate justices, presiding.

EX-PARTE, } Messrs. Stiles & Rigdon,
JOSEPH SMITH, SEN. } Counsel for Smith.
ON HABEAS CORPUS. }

This case came before the court upon a return to a writ of *habeas corpus* which was issued by this court on the 6th of May instant, upon petition of Joseph Smith, sen., as follows:

'STATE OF ILLINOIS, }
CITY OF NAUVOO. } Sct.

To the Honorable Municipal Court in and for the City of Nauvoo:

The undersigned, your petitioner, most respectfully represents that he is an inhabitant of said city; your petitioner further represents that he is under arrest in said city, and is now in the custody of one John D. Parker, deputy sheriff of the county of Hancock, and State of Illinois; that the said Parker holds your petitioner by virtue of a writ of '*capias ad respondendum*,' issued by the clerk of the circuit court of the county of Hancock, and State of Illinois, at the instance of one Francis M. Higbee of said county, requiring your petitioner to answer the said Francis M. Higbee, 'of a plea of the case,' damage five thousand dollars; your petitioner further represents that the proceedings against him are illegal; that the said warrant of arrest is informal, and not of that character which the law recognizes as valid; that the said writ is wanting and deficient in the plea therein contained; that the charge or complaint which your petitioner is therein required to answer is not known to the law.

Your petitioner further avers that the said writ does not disclose in any way or manner whatever any cause of action; which matter your petitioner most respectfully submits for your consideration, together with a copy of the said warrant of arrest which is hereunto attached.

Your petitioner further states that this proceeding has been instituted against him without any just or legal cause; and further that the said Francis M. Higbee is actuated by no other motive than a desire to persecute and harass your petitioner for the base purpose of gratifying feelings of revenge, which, without

any cause, the said Francis M. Higbee has for a long time been fostering and cherishing.

Your petitioner further states that he is not guilty of the charge preferred against him, or of any act against him, by which the said Francis M. Higbee could have any charge, claim, or demand whatever against your petitioner.

Your petitioner further states that he verily believes that another object the said F. M. Higbee had in instituting the proceeding was, and is, to throw your petitioner into the hands of his enemies, that he might the better carry out a conspiracy which has for some time been brewing against the life of your petitioner.

Your petitioner further states that the suit which has been instituted against him has been instituted through malice, private pique and corruption.

Your petitioner would therefore most respectfully ask your honorable body to grant him the benefit of the writ of *habeas corpus*, that the whole matter may be thoroughly investigated, and such order made as the law and justice demands in the premises; and your petitioner will ever pray.

JOSEPH SMITH, Sen.

Nauvoo, May 6th, 1844.

'STATE OF ILLINOIS, }
City of Nauvoo. } Sct.
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 of one Joseph Smith, senior, of the said city of Nauvoo, is in the custody of John D. Parker, deputy sheriff of Hancock county, and State aforesaid:

These are therefore to command the said John D. Parker, of the county aforesaid, to safely have the body of said Joseph Smith, senior, of the city aforesaid, in his custody detained, as it is said, together with the day and cause of his caption and detention, by whatsoever name the said Joseph Smith, senior, 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 John D. Parker, or other person or persons, having said Joseph Smith, senior, of said city of Nauvoo, 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, Willard Richards, clerk of the municipal court at Nauvoo, this 6th day of May, in the year of our Lord one thousand eight hundred and forty-four.

WILLARD RICHARDS,

Clerk, M. C. C. N.

'I hold the within named Joseph Smith, senior, under arrest, by virtue of a *capias ad respondendum*.

Hancock Circuit Court,
To May Term, A.D. 1844.

Francis M. Higbee, }
vs. } In case.
Joseph Smith. }

The day of his caption, May 6th, 1844.

To damage, five thousand dollars.

WM. BACKENSTOS, S. H. C.

By J. D. PARKER, D. S.'

'STATE OF ILLINOIS, }
Hancock county. } ss.

The people of the State of Illinois,

To the Sheriff of said county greeting:

We command you that you take Joseph Smith, if to be found within your county, and him safely keep, so that you have his body before the circuit court of said county of Hancock on the first day of the next term thereof, to be holden at the court house in Carthage, on the third Monday in the month of May instant, to answer Francis M. Higbee, of a plea of the case; damage, the sum of five thousand dollars as he says; and you have then there this writ, and make due return thereon in what manner you execute the same.

Witness, J. B. Backenstos, clerk of said circuit court at Carthage, this first day of May, in the year of our Lord one thousand eight hundred and forty-four.

J. B. BACKENSTOS, Clerk,
By D. E. HEAD, Deputy.'

'The sheriff is directed to hold the within named defendant to bail in the sum of five thousand dollars.

J. B. BACKENSTOS, Clerk,
By D. E. HEAD, Deputy.'

'This is a true copy of the original now in the possession of William B. Backenstos, sheriff of Hancock county.

By J. D. PARKER, Deputy.'

'STATE OF ILLINOIS, }
Hancock county, } Sct.
City of Nauvoo.

To Mr. Francis M. Higbee:

Sir,—You will please to take notice that Joseph Smith, senior, has petitioned for a writ of *habeas corpus* from the municipal court of said city, praying that he may be liberated from the custody of John D. Parker, deputy

sheriff of Hancock county, by whom he is held in custody on a *capias ad respondendum*, issued by the circuit court of Hancock county on the first day of May instant, to answer Francis M. Higbee on a plea of the case, &c.; which writ is granted, and you will have the opportunity to appear before the municipal court, at 10 o'clock a.m., on the 7th of May instant, at the council chamber in said city, and show cause why said Joseph Smith, senior, should not be liberated on said *habeas corpus*.

Witness my hand and seal of }
Seal. } court this 6th day of May, 1844,
WILLARD RICHARDS,

Clerk M. C. C. N.'

'The above trial is deferred until Wednesday, the 8th instant, 10 o'clock a.m.

WILLARD RICHARDS, Clerk.'

'I have served the within by reading to the within named Francis M. Higbee.

JOHN D. PARKER, Constable.'

Mr. Higbee did not appear either by himself or counsel.

Mr. George P. Stiles then said: The petition and papers have been read in your hearing; it is a petition for a writ of *habeas corpus* on the grounds—1st, the insufficiency of the writ, and other causes assigned. The insufficiency of the writ is sufficient to discharge the prisoner; it is the privilege and option of this court if the writ is invalid. It is the privilege of the prisoner to have all the matters investigated, in order to prove that the prosecutor is joined in with other persons in a conspiracy to take away Mr. Smith's life. Although it is competent for the court to discharge on account of the insufficiency of the writ, yet we want an examination into the matters, in order that all may be understood.

All warrants should disclose the crimes known to the court, so that the prisoner might know what answer to make; the prisoner might have had to lay in jail six months because he knows nothing what he is charged with in the writ; it might be that he is charged with debt; that he had to pay to Francis M. Higbee the sum of five thousand dollars, or anything. There is no action specified; is it meant for trespass, for maltreating, beating, or slander, or what other crime?—so that the damage of five thousand dollars might be known for what it is.

The writ is void for want of substance and form; all who are familiar with law, common sense, or justice, must know that it is indefinite—no charge defined. If we are not released here we shall be released in the circuit court on account of the insufficiency, but we are now willing to investigate the merits of the case. We know nothing but from information from other sources, and we want this court to determine whether we are held to any charge to Francis M. Higbee; we have given him notice to attend here, if he has any cause to keep us here.

I propose to bring in the testimony of the prisoner; he has averred certain facts; he is ready to make oath of them if your honors require it. There is no ordinance against the prisoner taking his oath; it is within the province of the court to allow him to do so; it is the privilege of the court in any case to hear the plaintiff; law is founded on justice.

Sidney Rigdon said: It has been truly stated that this court has nothing before it on which it can act. There is a prisoner brought into court who is in custody within the province of your honors; those papers have been read but they disclose no crime—no guilt; there are no merits to try; they present no meritorious cause of action; they do not present the prisoner's guilt in any form whatever; what are the merits? Shall we try him for horse stealing, burglary, arson, or what? You shall hear the merits if you can find them out; then the court has power to try. Is it burglary, arson, or something else? What is the point to try? Those papers know no crime; this court knows no crime; there are no merits, no existence of anything; it is an *ignis fatuus*—a Will-o'-the-wisp, to arrest somebody for doing nothing—to have the privilege of trying a law suit about nothing. The court never says Francis M. Higbee ever preferred anything; if there can be any merits hatched up, we will try them.

Joseph Smith said: I am satisfied that this thing can be brought to trial; it appears I am a prisoner, and by the authority of the circuit court. I petitioned this court for a hearing; I am a prisoner, and aver that it is a malicious prosecution, and a wicked conspiracy, got up by men for the purpose of harassing me, and decoying me into their hands. I want to show that this man has joined a set of men who have entered into a conspiracy to take away my life.

After hearing the case you have power to punish, imprison, or fine, or anything you please; you have a right to punish the offender; if I am a criminal you have a right to punish me, and send me to the circuit court; but if I am as innocent as the angels of heaven, you have power to send the prosecutor to trial if crime is proved against him. They have no merit in their cause; I want to show up their conspiracy—that these men are working the basest corruption; they have lifted up their hands against innocence. You have power to hear the petitioner on his oath; I will show you a precedent. Look at the federal court of this district; the case was made out by affidavit which I swore to before the court.

The *habeas corpus* is granted on the testimony of the petitioner. It is the law in Blackstone, that where no other matter is in existence, and the prisoner swears he is innocent, and his character for truth is supported by good testimony, he must be discharged; and he then goes away as free as the proud eagle. If I have the privilege of testimony under oath to the facts that they make slander of, then they cannot do anything with it.

Suppose that I am an eye witness to the crime of adultery, or any other crime, and know verily for myself that the man is guilty of adultery, or other crime, and I speak of it, the man may sue me for damages, although I know him to be guilty; but if I swear to it in a court he cannot hurt me.

If I have the privilege of giving testimony under oath, they can never do anything with me; but if you discharge me on the insufficiency of the writ, they can prosecute me again and again; but if you give me a fair hearing they cannot prosecute me again. I want the oath to go to the world; I must make statements of facts in order to defend myself. I must tell the story in its true light under oath; then I can be for ever set free. May I not have the privilege of being protected by law? The peace of myself, my family, my happiness and the happiness of this city depend upon it.

The court allowed him to proceed with the case.

Mr. Stiles said: This is a malicious prosecution, and we have averred that it is malicious, and have a right to prove it. There is an insufficiency in the writ; the writ did not show any crime had been committed, and we can show that we are not guilty of any plea in the case. There is no charge or case against us, and the whole matter is corrupt, and malicious, and wicked.

JOSEPH SMITH sworn—said: I must commence when Francis M. Higbee was foaming against me and the municipal court in my house. Francis M. Higbee said he was grieved at me, and I was grieved at him. I was willing on my part to settle all difficulties, and he promised if I would go before the city council and tell them, he would drop everything against me for ever.

I have never mentioned the name of Francis M. Higbee disrespectfully from that time to this, but have been entirely silent about him; if any one has said that I have spoken disrespectfully since then, they have lied; and he cannot have any cause whatever. I want to testify to this court of what occurred a long time before John C. Bennett left this city. I was called on to visit Francis M. Higbee; I went and found him on a bed on the floor.

[Here follows testimony which is too indelicate for the public eye or ear; and we would here remark that so revolting, corrupt and disgusting has been the conduct of most of this clique, that we feel to dread having anything to do with the publication of their trials. We will not however offend the public eye or ear with a repetition of the foulness of their crimes any more.]

Bennett said Higbee pointed out the spot where he had seduced a girl, and that he had seduced another. I did not believe it; I felt hurt and labored with Higbee about it; he swore with uplifted hands that he had lied about the matter. I went and told the girl's parents; when Higbee and Bennett made affidavits, and both perjured themselves; they swore false about me so as to blind the family. I brought Francis M. Higbee before Brigham Young, Hyrum Smith and others; Bennett was present, when they both acknowledged that they had done these things, and asked us to forgive them. I got vexed, my feelings had been hurt; Higbee has been guilty of adulterous communication, perjury, &c.; which I am able to prove by men who heard them confess it.

I also preferred charges against Bennett—the same charges which I am now telling; and he got up and told them it was the truth, when he pleaded for his life, and begged to be forgiven. This was his own statement before sixty or seventy men; he said the charges were true against him and Higbee.

I have been endeavoring to throw out shafts to defend myself, because they were corrupt, and I knew they were determined to ruin me. He has told the public that he was determined to prosecute me because I slandered him, although I tell nothing but the truth.

Since the settlement of our difficulties I have not mentioned his name disrespectfully; he wants to bind up my hands in the circuit court, and make me pay heavy damages for telling the truth.

In relation to the conspiracy, I have not heard Francis M. Higbee say he would take away my life, but Chauncey Higbee, Charles A. Foster, and Dr. Foster, said they would shoot me; and the only offence against me is telling the truth. I did say that Dr. Foster stole a raw hide. These are the things that they now want to ruin me for—for telling the truth.

When riding in the stage, I have seen him put his hand in a woman's bosom, and he also lifted up her clothes. I know that they are wicked, malicious, adulterous, bad characters; I say it under oath; I can tell all the particulars from first to last.