

# THE DESERET NEWS.

TRUTH AND LIBERTY.

NUMBER 3.

GREAT SALT LAKE CITY, WEDNESDAY, MARCH 26, 1856.

VOLUME VI.

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## HISTORY OF JOSEPH SMITH.

JANUARY, 1843.

In the United States Circuit Court. District of Illinois, of the December term, 1842, December 31st day.

In the matter of Joseph Smith, on petition for habeas corpus.

And now at this day comes the said Joseph Smith by Justin Butterfield, his attorney, and presents to the court his petition setting forth that he has been arrested and is detained in custody by William F. Elkin, sheriff of Sangamon county, upon a warrant issued by the governor of the State of Illinois, upon the requisition of the governor of Missouri, as a fugitive from justice; and that he is also arrested by Wilson Law, and by him also held and detained in custody (jointly with the said sheriff of Sangamon county) upon a proclamation issued by the governor of the State of Illinois; that he is arrested and detained as aforesaid under color of a law of the United States, and that his arrest and detention is illegal and in violation of law, and without the authority of law in this, that the said petitioner is not a fugitive from justice, nor has he fled from the State of Missouri; and praying that a writ of habeas corpus may be issued by this court, directed to the said William F. Elkin and Wilson Law, commanding them forthwith and without delay to bring the petitioner before this court to abide such order and direction as this court may make in the premises: upon reading and filing of which said petition, it is considered and ordered by the court that a writ of habeas corpus be issued as prayed for in said petition returnable forthwith.

And thereupon a writ of habeas corpus was issued in the words and figures following, to wit: The United States of America to William F. Elkin, sheriff of Sangamon county, State of Illinois, and Wilson Law, greeting:

We command you that you do forthwith, without excuse or delay, bring or cause to be brought, before the circuit court of the United States for the district of Illinois, at the district court room in the city of Springfield, the body of Joseph Smith, by whatever name or addition he is known or called, and who is unlawfully detained in your custody, as it is said, with the day and cause of his caption and detention, then and there to perform and abide such order and direction as the said court shall make in that behalf. And hereof make due return under the penalty of what the law directs.

Witness, Roger B. Taney, chief justice of the supreme court of the United States at Springfield, in the district of Illinois, this 31st day of December, A.D. 1842, and of our Independence the 67th year.

JAMES F. OWINGS, Clerk.

And afterwards on the said 31st day of December aforesaid the said writ of habeas corpus was returned, with returns endorsed thereon in the words and figures following:—

I, William F. Elkin, sheriff of Sangamon county, do hereby return to the within writ, that the within named Joseph Smith is in my custody by virtue of a warrant issued by the governor of the State of Illinois, upon the requisition of the governor of the State of Missouri, made on the affidavit of L. W. Boggs, and a copy of the said warrant, requisition and affidavit is hereunto annexed, dated December 31, 1842.

WM. F. ELKIN,  
Sheriff S. C., Illinois.

I, Wilson Law, do return to the within writ that the said Joseph Smith is in my custody by virtue of an arrest made by me of his body under and by virtue of a proclamation of the governor of the State of Illinois, a copy whereof is hereunto annexed, dated December 31, 1842.

WILSON LAW.

The return to the within writ of habeas corpus appears by the foregoing returns and the schedule hereunto annexed, and the body of said Joseph Smith is in court.

WM. PRENTISS,

U. S. Marshal, district of Illinois.

December 31, 1842.

And afterwards to wit on the same day aforesaid, upon the return of the said writ of habeas corpus, the following orders were made in this cause:—

In the matter of Joseph Smith, on habeas corpus.

William F. Elkin and Wilson Law having made return to the writ of habeas corpus issued in this cause and brought the body of the said

Joseph Smith into court, on motion of Justin Butterfield, his attorney, it is ordered that the said Joseph Smith be admitted to bail; and thereupon came the said Joseph Smith in proper person, principal, and James Adams and Wilson Law, sureties, and severally acknowledge themselves to owe and be indebted to the United States of America in the sum of two thousand dollars each, to be levied of their respective goods and chattels, lands and tenements, but to be void on condition that the said Joseph Smith shall be and appear before the circuit court of the United States for the district of Illinois, now sitting from day to day, and shall not depart without leave of the court. And thereupon it is ordered that this cause be set for hearing on Monday next; and it is further ordered that the governor of Illinois and the attorney general be informed by the marshal that Joseph Smith, arrested on a warrant issued for his apprehension by the governor of Illinois, 31st December, 1842, is before this court on habeas corpus, and that the case will be heard on Monday, January 2nd, 1843, and that a copy of this order be handed to each of those officers.

It is ordered that the governor of Illinois and the attorney general be informed by the marshal that Joseph Smith, arrested on a warrant issued for his apprehension by the governor of Illinois, 31st Dec., 1842, is before this court on a writ of habeas corpus, and that the case will be heard on Monday 2nd January, 1843, and that a copy of this order be handed to each of those officers.

United States of America, } I, James F. Owings, clerk of the circuit court of the United States, for the district aforesaid do certify that the foregoing is a true copy of an order passed by said court the 31st day of December, 1842.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court at Springfield, this 31st day of December, A.D. 1842.

JAMES F. OWINGS, Clerk.

Delivered a copy of the within order to Thos. Ford, governor, and Josiah Lamborn, attorney general of the State of Illinois, December 31st, 1842.

WM. PRENTISS, Marshal.

In the matter of Joseph Smith on habeas corpus; copy of order, marshal's fees for serving on two, 4,00; returning 12, 4,12.

And afterwards to wit, on the 2nd day of January, A.D. 1843, Justin Butterfield, attorney for said petitioner, filed the written denial of the said petitioner of the matters and things set forth in the return to the said writ of Habeas Corpus, which denial is in the words and figures following, viz:

Circuit Court of the United States, } District of Illinois. }  
In the matter of Joseph Smith upon Habeas Corpus.

Joseph Smith, being brought up on Habeas Corpus before this court, comes and denies the matter set forth in the return to the same in this, that he is not a fugitive from the justice of the State of Missouri; but alleges, and is ready to prove, that he was not in the State of Missouri at the time of the commission of the alleged crime set forth in the affidavit of L. W. Boggs, nor had he been in said State for more than three years previous to that time, nor has he been in that State since that time; but on the contrary, at the time the said alleged assault was made upon the said Boggs, as set forth in said affidavit, the said Smith was at Nauvoo, in the county of Hancock, in the State of Illinois, and that he has not fled from the justice of the State of Missouri, and taken refuge in the State of Illinois, as is most untruly stated in the warrant upon which he is arrested, and that the matter set forth in the requisition of the Governor of Missouri, and in the said warrant, are not supported by oath.

JOSEPH SMITH.

State of Illinois, ss.

Joseph Smith, being duly sworn, saith that the matter and things set forth in the foregoing statement, are true.

JOSEPH SMITH.

Sworn and subscribed to before me this 2nd day of January, 1843.

JAMES F. OWINGS, Clerk.

And afterwards to wit on the same day and year last aforesaid, the following order was made in this cause, viz:—

In the matter of Joseph Smith, on Habeas Corpus.

At this day comes the said Joseph Smith, and by Justin Butterfield, his attorney, files his written denial, verified by affidavit, of the matters and things set forth in the return to the writ of Habeas Corpus issued in this cause; and at the same time also comes Josiah Lamborn, attorney general of the State of Illinois, and on his motion it is ordered that this cause be continued for hearing until Wednesday morning next.

And afterwards to wit on the 4th day of January, 1843, Josiah Lamborn, attorney general of the State of Illinois, filed his objections to the jurisdiction of this court in this cause, and moved to dismiss the proceedings herein, which said motion and objections are in the words and figures following, viz:—

United States of America, }

In the circuit court of the State of Illinois. }

In the matter of Joseph Smith.

J. Lamborn, attorney general of Illinois, moves

the court to dismiss the proceedings herein, for the reason that this court has no jurisdiction.

1st. The arrest and detention of said Smith was not under, or by color of authority of the United States, or any of the officers of the United States, but under and by color of authority of the State of Illinois, and by the officers of Illinois.

2nd. When a fugitive from justice is arrested by authority of the Governor of any State, upon the requisition of any other Governor of another State, the courts of justice, neither State or Federal, have any authority or jurisdiction to enquire into any facts behind the writ.

J. LAMBORN,

Attorney General of Illinois.

And afterwards to wit on the same day and year last aforesaid, the following order was made in this cause, viz:—

In the matter of Joseph Smith, on Habeas Corpus.

And now again at this day comes the said Joseph Smith, by Justin Butterfield, his attorney; and at the same time also comes Josiah Lamborn, attorney general of the State of Illinois, and enters his motion to dismiss the proceedings herein, for want of jurisdiction, and the court having heard the allegations and proofs herein, and the arguments of counsel upon the same, and also upon the aforesaid motion, and not being sufficiently advised, took time, &c.

And afterwards to wit on the same day and year aforesaid, Justin Butterfield, attorney for said petitioner, filed the affidavits, of which the following are copies:—

Circuit Court of the United States, } District of Illinois. }

In the matter of Joseph Smith, upon Habeas Corpus.

District of Illinois, ss.  
Stephen A. Douglas, James H. Ralston, Almeron Wheat, J. B. Backenstos, being duly sworn, each for himself says that they were at Nauvoo, in the county of Hancock, in this State, on the seventh day of May last, that they saw Joseph Smith on that day reviewing the Nauvoo Legion at that place, in the presence of several thousand persons.

J. B. BACKENSTOS,

STEPHEN A. DOUGLAS.

Sworn to and subscribed in open court, this 4th January, 1843.

JAMES F. OWINGS, Clerk.

Circuit Court of the United States, } District of Illinois. }

In the matter of Joseph Smith, upon Habeas Corpus.

District of Illinois:—Willson Law, Henry G. Sherwood, Theodore Turley, Shadrach Roundy, Willard Richards, William Clayton, and Hiram Smith, being duly sworn, say that they know that Joseph Smith was in Nauvoo, in the county of Hancock, in the State of Illinois during the whole of the sixth and seventh days of May last; that on the sixth day of May aforesaid the said Smith attended an officer drill at Nauvoo from ten o'clock in the forenoon to about four o'clock in the afternoon, at which drill the said Joseph Smith was present. And these deponents, Hiram Smith, Willard Richards, Henry G. Sherwood, John Taylor, and William Clayton were with the said Smith, at Nauvoo aforesaid, during the evening of the sixth day of May last, and sat with said Joseph Smith in Nauvoo Lodge from six until nine o'clock of said evening. And these deponents, Hiram Smith, Willard Richards and William Marks, were with the said Smith at his dwelling-house, in Nauvoo, on and during the evening of the fifth day of May last, and conversed with him; and all of the deponents aforesaid, do say that on the seventh day of May aforesaid the said Smith reviewed the Nauvoo Legion, and was present with the said legion all that day, in the presence of many thousand people, and it would have been impossible for the said Joseph Smith to have been at any place in the State of Missouri at any time, on or between the sixth and seventh days of May aforesaid. And these deponents, Willard Richards, William Clayton, Hiram Smith, and Lorin Walker, say that they have seen and conversed with the said Smith at Nauvoo, aforesaid daily, from the tenth of February last until the first of July last, and know that he has not been absent from said city of Nauvoo, at any time, during that time, long enough to have been in the State of Missouri; that Jackson county in the State of Missouri, is about three hundred miles from Nauvoo.

WILSON LAW,  
HENRY G. SHERWOOD,  
THEODORE TURLEY,  
SHADRACH ROUNDY,  
WILLARD RICHARDS,  
WILLIAM CLAYTON,  
JOHN TAYLOR,  
WILLIAM MARKS,  
LORIN WALKER.

Sworn to and subscribed in open court, this 4th Jan. 1843.

OWINGS, Clerk.

And afterwards to wit on the 5th day of January, 1843, the following order was made in this cause, viz:—

In the matter of Joseph Smith on Habeas Corpus.

And now, at this day, comes again the said

Joseph Smith, by Justin Butterfield, his attorney, and at the same time also comes Josiah Lamborn, attorney general of the State of Illinois, and the court being now sufficiently advised of, and concerning the motion heretofore entered to dismiss the proceedings in this cause, it is considered that said motion be denied, and the court having fully considered the petition of the said Joseph Smith, and the matters and things set forth in the return made to the writ of Habeas Corpus issued herein, and being now sufficiently advised of and concerning the same: It is considered and adjudged that the matters and things set forth in the return to the said writ of Habeas Corpus are wholly insufficient in law to authorize the arrest and detention of the said Joseph Smith; and it is further considered, ordered and adjudged by the court that the said Joseph Smith be fully released and discharged from the custody of William F. Elkin, sheriff of Sangamon county, under the warrant of the Governor of the State of Illinois, mentioned in the said return, and also from the custody of William Law, on the proclamation of the said Governor, mentioned in the said return, and that he go hence without day.

United States of America, } I, James F. Owings, clerk of the United States Circuit Court for the district of Illinois, do certify that the foregoing is a true and correct copy of the record and proceedings before said court in the matter of Joseph Smith, on petition, to be discharged on Habeas Corpus, as the same remain on the record and files of said court.

In testimony whereof I have hereunto subscribed my name, and affixed the seal of said court at Springfield, this sixth day of January, A.D. 1843, and of our Independence the 67th year.

JAMES F. OWINGS, Clerk.

I do hereby certify that I have inspected the foregoing record, and that there is now no further cause for arresting or detaining Joseph Smith therein named by virtue of any proclamation or executive warrant heretofore issued by the Governor of this State, and that since the judgment of the circuit court of the United States for the district of Illinois, all such proclamations and warrants are inoperative and void.

Witness my hand and seal, at Springfield, this 6th day of January, 1843.

THOMAS FORD,  
Gov. of Ill.

The opinion of Judge Pope, as recorded in this history, was copied from the "Sangamo Journal," and believed to be Judge Pope's opinion, as corrected and altered by him from the report furnished him by my secretary.

In the Judge's opinion on the bench, he remarked like this:—"Were it my prerogative to impeach Congress for any one thing, it would be for granting power for the transportation of fugitives on affidavit, and not on indictment alone." He also passed several severe strictures on the actions of different governors and officers concerned in my case, but which I suppose he thought proper to omit in his printed copy.

I received many invitations to visit distinguished gentlemen in Springfield, which time would not permit me to comply with; also, a ticket from the manager to attend the theatre this evening, but the play was prevented by the rain.

OLD SPANISH PROVERBS.—He is a rich man who has God for his friend.

He is the best scholar who hath learned to do well.

A handful of mother wit is worth a bushel of learning.

When all men say you are an ass, it is time to bray.

Change of weather finds discourses for fools.

God comes to see or look upon us without a bell.

You had better leave your enemy something when you die, than live to beg of your friends.

He is my friend who grinds at my mill.

Enjoy that little you have, while the fool is looking for more.

Saying and doing do not dine together.

Money cures all diseases.

We talk, but God does what he pleases.

May you have good luck, my son, and a little wit will serve your turn.

Gifts break through stone walls.

Go not to your doctor for every ail, nor to your pitcher for every thirst.

There is no better looking-glass than an old true friend.

A wall between two preserves friendship.

The creditor always has a better memory than the debtor.

Setting down in writing is a lasting memory.

Praise the man whose bread you eat.

God keep me from him whom I trust; from him whom I trust not, I shall keep myself.—[Ex.]

Sidney Smith said of a great talker, that it would greatly improve him if he had, now and then, "a few flashes of silence."

Those who plot mischief live in fear and die miserable.