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HISTORY OF JOSEPH SMITH.

OCTOBER, 1842.

Oct.—Sunday, 16.—I copy the following from the New York Herald:—

THE MORMONS.

Arlington House, October 16, 1842.

Gen. J. G. Bennett—Sir:—Some time since I addressed a letter to Joseph Smith, the Mormon Prophet, in answer to a letter of his introducing to my "kind attention" a friend of his from the Holy City of Nauvoo.

In this letter I expressed my regret that the quarrel between him and John C. Bennett should have at all found its way to the public eye, this being the sole cause of placing him in his present awkward situation. I likewise commiserated with him in his affliction, and signed myself, at the conclusion of my letter, as his friend, which I really am, and the friend of all good Mormons, as well as other good men.

Why should I not be Joseph Smith's friend? He has done nothing to injure me, nor do I believe he has done any thing to injure Ex-Governor Boggs of Missouri. The Governor no doubt under strong feelings, may have thought and believed that Smith had preconcerted the plan for his assassination; but there is no legal evidence whatever of that fact, none by which an unprejudiced jury would convict any man; yet to send this man into Missouri, under the present requisition, would be an act of great injustice, as his ruin would be certain.

How could any man, against whom there is a bitter religious prejudice, escape ruin, being in the circumstances of Smith? Look at the history of past ages—see the force of fanaticism and bigotry in bringing to the stake some of the best of men; and in all these cases the persecutors had their pretences, as well as in the case of the Mormon chief. Nothing follows its victim with such deadly aim as religious zeal, and therefore nothing should be so much guarded against by the civil power.

Smith, I conceive, has just as good a right to establish a church, if he can do it, as Luther, Calvin, Wesley, Fox, or even King Henry the Eighth. All these chiefs in religion had their opponents, and their people their persecutors. Henry the Eighth was excommunicated, body and bones, soul and all, by his holiness the Pope; still the church of England has lived, as well as all the other sects.

Just so it will be with the Mormons. They may kill one prophet, and confine in chains half his followers, but another will take his place, and the Mormons will still go ahead. One of their Elders said to me, while conversing on this subject, that they were like a mustard plant, "If you don't disturb it, the seed will fall and multiply; and if you kick it about, you only give the seed more soil, and it will multiply the more."

Undertake to convince them that they are wrong, and that Smith is an impostor, and the answer is, laying the hand on the heart, "I know in my own soul that it is true, and want no better evidence: I feel happy in my faith, and why should I be disturbed?"

Now I cannot see but what this is the sentiment that governs all religiously disposed persons, their object being heaven and happiness, no matter what their church and creed. They therefore cannot be put down while the Constitution of the United States offers them protection in common with all other sects, and while they believe that their eternal salvation is at stake. From what I know of the people, I fully believe that all the really sincere Mormons would die sooner than abandon their faith and their religion.

Gen. John C. Bennett has stated that, to conquer the Mormon Legion it would require five to one against them, all things taken into consideration, and that they will die to a man sooner than give up their Prophet.

Now is the arrest of this man worth such a sacrifice of life as must necessarily follow an open war with his people? The loss of, from one to three thousand lives, will no doubt follow in an attempt to accomplish an object not in the end worth a button. Persecute them and you are sure to multiply them. This is fully proved since the Missouri persecution, as, since that affair, they have increased one hundred fold.

It is the best policy, both of Missouri and Illinois, to let them alone; for if they are drove farther west, they may set up an Independent Government, under which they can worship the Almighty as may suit their taste. Indeed I would recommend to the Prophet to pull up stakes and take possession of the Oregon Territory in his own right, and establish an independent empire. In one hundred years from this time, no nation on earth could conquer such a people. Let not the history of David be forgotten. If the Prophet Joseph would do this, millions would flock to his standard and join his cause. He could then make his own laws by the voice of revelation, and have them executed like the act of one man.

With respect to myself, I would just repeat that I am the Prophet's friend, and the friend of his people, merely from sympathy, as my name has ever been lifted on the side of the persecuted and oppressed. I have never in my life followed

the fat Ox, nor bowed for a favor on my own account to mortal man. While I despise the proud man, I am proud to the proud man, and humble to the humble, and where men were contending, have ever thrown myself on the weakest side.

By inserting this communication it is presumed that no one will hold the Herald responsible for the sentiments it contains; yet I have no doubt that there are thousands of independent, liberal minded men in this country who think as I do. Neither the Mormon Prophet nor his people can add any thing to my fortune or reputation. I expect nothing from them, they are a poor and industrious people, and having nothing to give. I am influenced in my conduct towards them by a spirit of benevolence and mercy, and hope the Governor and State of Illinois will act in like manner. It is true I was commissioned in their legion, through the instrumentality of their enemy General John C. Bennett, an act entirely of their own, without my agency; but I was as much their friend before as since.

The Missouri persecution fixed my attention and commiseration on the people. It must be recollected too, that the Mormon Prophet and his people are the most ardent friends and promoters of literature and science. These are elementary principles in their social system, and this certainly, is contrary to every thing like despotism.

I hope, therefore, and with great deference express that hope, that Ex-Governor Boggs will withdraw his demand for the Prophet, and let those poor people rest in peace. Both he and Governor Carroll will feel much more at peace with themselves by quashing the whole proceeding.

Most respectfully, Your humble servant,
JAMES ARLINGTON BENNET,
Counselor at Law, &c."

By this I discover a spark of liberty, burning in the bosom of the writer; may it continue to burn and burn, till it once more fires the whole land with its heavenly influence.

Thursday, 20.—Early this morning I arrived at home on a visit to my family; during the day I was visited by several of the brethren, who rejoiced to see me once more. Emma is still getting better, and is able to attend to a little business having this day closed contract, and received pay for a quarter section of land of Brother Job V. Barnum.

Chicago, October 20, 1842.

Sidney Rigdon, Esq.—Dear Sir:—In answer to your favors of the 17th inst. Mr. Warren was correct in the information he gave you of my opinion of the illegality of the requisition made by the Governor of Missouri upon the Governor of this State, for the surrender of Joseph Smith, and that the Governor of this State should cause him to be arrested, for the purpose of being surrendered; I had no doubt but the Supreme Court of this State would discharge him upon Habeas Corpus—subsequent examination has confirmed me in that opinion.

I understand from your letter, and from the statement of facts made to me by Mr. Warren, that the requisition of the Governor of Missouri is accompanied by an affidavit of Ex-Governor Boggs, stating in substance that on the 6th day of May last he was shot while sitting in his house, with intent to kill, and as he verily believes, the act was committed by O. P. Rockwell, and that Joseph Smith was accessory to the crime before its commission, and that he has fled from justice. That it can be proved that Joseph Smith was not in the State of Missouri at the time the crime was committed, but was in this State; that it is untrue that he was in the State of Missouri at the time of the commission of the said crime, or has been there at any time since; he could not therefore have fled from that State since the commission of said crime.

The right on the part of the Governor of Missouri to demand Smith, and the duty on the part of the Governor of this State to deliver him up; if they exist, are given and imposed by that clause of the Constitution of the United States, which declares, that a person charged in any State with treason, felony, or other crime who shall flee from justice and be found in another State; shall on demand of the Executive authority of the State from which he fled, be delivered up to be removed to the State having jurisdiction of the crime."

It is unnecessary to refer to the act of congress in relation to the delivery up of fugitives from justice, as congress has just so much power and no more than is expressly given by the said clause in the Constitution—the Constitution is the best exponent of itself—what persons, then can be surrendered up by the Governor of one State to the Governor of another?

First. He must be a person charged with treason, felony, or other crime, "it is sufficient if he be charged with the commission of crime, either by indictment found, or by affidavit.

Second. He must be a person who shall flee from justice and be found in another State."

It is not sufficient to satisfy this branch of the Constitution, that he should be "charged" with having fled from justice, unless he has actually fled from the State where the offence was committed, to another State, the Governor of this State has no jurisdiction over his person and cannot deliver him up.

When Mr. Smith is brought up on a Habeas Corpus, he will have a right, under the 3d Sec. of our Habeas Corpus Act, to introduce testimony and shew that the process upon which he is arrested, was obtained by false pretence; that it is untrue, that he fled from the State of Missouri, to evade being brought to justice there, for the crime of which he is charged, he will have the right to place himself upon the platform of the Constitution of the United States, and say I am a citizen of the State of Illinois: I have not fled from the State of Missouri or from the "justice" of that State, on account of the commission of the crime with which I am charged. I am ready to prove that the charge of having fled from that State is false, and I am not, therefore, subject under the Constitution of the United States to be delivered up to that State for trial.

You say in your letter to me, that you doubt whether on a Habeas Corpus the Court would have a right to try the question, whether Smith was in Missouri at the time of the commission of the crime of which he is charged. To this, I answer, that upon a Habeas Corpus the Court would be bound to try the question, whether Smith fled from justice from Missouri to this State; the affidavit of Mr. Boggs is not conclusive on this point—it may be rebutted—unless Smith is a person who has fled from justice he is not subject to be delivered up, under the express provisions of our own Habeas Corpus Act, he has a right to show that the affidavit is false, and that the order for his arrest was obtained by false pretences. Again, the affidavit on its face was not sufficient to authorize the arrest of Smith, it is evasive and deceptive, it does not show that he fled from the State of Missouri to evade justice for the commission of the crime of which he is charged by Governor Boggs.

Robert G. Williams, in the year 1835, was indicted in the State of Alabama for attempting to incite rebellion and insurrection in that State; he was demanded by the Governor of that State, of the Governor of New York, and the requisition stated that he had fled from justice. The Governor of the State of New York (Marcy) took notice that the said Williams was a citizen of the State of New York, and had not fled from justice, from Alabama, and on that ground alone refused to surrender him up. This was a stronger case than that of Smith's, as an indictment had been found. Governor Marcy puts his refusal upon the express ground that by the Constitution of the United States, the Governor of one State had no right to demand, nor the Governor of another State a right to surrender up one of his citizens unless he had fled from justice; and it was the right and the duty of the Governor upon whom the demand was made to inquire into the fact whether he had fled from justice before he made the surrender.

I have the book containing all the proceedings in this case of Williams; there are several other cases equally in point and they proceed upon the ground that the Governor of a State has no jurisdiction over the body of a citizen; to arrest and surrender him up to a foreign State, unless he is a fugitive from that State, unless he has fled from that State to evade "justice," or in other words to evade being tried for the offence with which he is charged.

In a despotic form of Government the sovereign power is the will of the monarch, who can act in every instance as may suit his pleasure; but can the Governor of one of our States, of his own mere will, without any authority from the Constitution, or the Legislative power of the State, arrest and deliver up to a foreign government any person whatever? If he can do this, then is the liberty of the citizen wholly at his disposal.

The writ of Habeas Corpus is a writ which every person imprisoned or unlawfully detained has a right to prosecute for the recovery of his liberty, and if he is in custody by process from a competent power he is entitled to his discharge when the jurisdiction has been executed.

The government of this State has no power or jurisdiction over the person of a citizen of this State to arrest and cause him to be delivered up and transported to another State, except the power expressly given to him by the Constitution of the United States; and what is that power? It only authorizes the Governor of one State to surrender up a fugitive from justice, to return him back to the State from whence he has fled.

First. The person to be surrendered up must be a fugitive from the State to which it is attempted to surrender him.

Second. He must be a fugitive from justice; in other words he must have been in the State when and where the crime was committed and have fled from that State to evade being apprehended and tried for that crime.

Third. Unless he is in fact such a fugitive from justice the Governor has no power, by the laws or Constitution, to deliver him up.

Fourth. If he is charged with being a fugitive from justice and the Governor cause him to be apprehended on that charge; he has a right to sue out a Habeas Corpus, and when brought up on that writ he has the undoubted right of showing that the Governor has no constitutional power to deliver him up to another State; that he has not "fled from justice into this State," and is not such a person as the Constitution authorizes the Governor to deliver up, and that it would be an

excess of jurisdiction on the part of the Governor to deliver him up.

The question to be examined into upon the return of the Habeas Corpus, would be a mere question of locality, the question would be, was Smith in this State or not at the time the crime was committed in Missouri? If he was in this State at that time, then he could not be a fugitive from justice, from Missouri, in the sense of the Constitution, and the Governor would have no power to deliver him up.

The argument that because Governor Boggs has made affidavit that Smith has fled from justice, his affidavit is to be taken as conclusive on that point, and that upon the return of a Habeas Corpus, Smith would be precluded from controverting or showing the falsity of that affidavit, is too absurd to require a serious answer.

The liberties of the citizens of this State are not held on quite so feeble a tenure, nor does the Constitution authorize the Governor to transport the citizens of this State upon a mere "charge" made by a citizen of another State; such is not the meaning of the Constitution; that instrument only authorizes the delivery up of such persons "who shall flee," upon the demand of the Executive authority of the State from which they "fled." There must have been a "flight" in fact and in deed from the State where the offence was committed or the Governor has no jurisdiction to "deliver up."

If the charge of having "fled" is made, and the Governor acting in *bona fide* is attempting to deliver up upon that charge, the person attempted to be made the victim has a clear and undoubted constitutional right, by means of a writ of Habeas Corpus, to test its truth before a judicial tribunal of the country, and if the charge is proven to be false, the Governor is ousted of his jurisdiction over the person of the prisoner, and he is restored to his liberty, before he has undergone the penalty of the transportation to a foreign country upon the mere charge of an interested or partial witness.

The power of the Executive of a State to surrender up a citizen to be transported to a foreign State for trial, is a most tremendous power which might be greatly abused, were it not limited by constitutional checks, and the citizen secured against its despotic exercise by the writ of Habeas Corpus.

In the case of Williams, the Governor of New York, in his reply to the Governor of Alabama, says, "what occurs daily in the ordinary course of criminal proceedings, may take place in regard to persons transported to a distant jurisdiction for trial. It may happen that an innocent man will be accused, and if demanded, he must be delivered up, should your exposition of the Constitution be sanctioned. Under these circumstances his condition would be perilous indeed, dragged from his home, far removed from friends, borne down by the weight of imputed guilt, and unable, probably to obtain the evidence by which he might vindicate his innocence; if appearances were against him he could scarcely hope to escape unmerited condemnation."

The American colonists regarded the exercise of this power, as an act of revolting tyranny, and assigned it in the Declaration of Independence, as one of the prominent causes that impelled them to a separation from the British Empire. A power which may be thus oppressively used, should be resorted to with the greatest caution. When its exercise is invoked it is not sufficient that the case may apparently come within the letter of the Constitution; it is the duty of the Executive, before yielding a blind obedience to the letter of the law, to see that the case comes within the spirit and meaning of the Constitution.

It may be pleasing as well as instructive to look into the proceedings of the Executive of our Sister State, and witness, that by faithfully administering the law in relation to the delivery up of fugitives from justice, according to its spirit and meaning, they have saved, at least, two of the citizens of Illinois from becoming victims to its abuse. In the year 1839, the Governor of the State of New York was presented with the copy of an indictment by a grand jury in the city of New York against John and Nathan Aldrich, for fraud in obtaining goods by false pretences, and was requested to make a requisition upon the Governor of Illinois, to surrender them up as fugitives from justice.

Now here was a case which came exactly within the letter of the law of Congress in relation to fugitives from justice. An indictment had been found charging them with having committed a crime. But did the Governor of New York make the "requisition"? No; he referred the application to the Hon. John C. Spencer, now Secretary of War, and one of the most enlightened lawyers of the age.

The following is an extract of Mr. Spencer's opinion upon the case:—

The constitutional provision under which requisitions may be made by the Governor of one State upon the Governor of another was a substitute for the principle recognized by the law of nations, by which one Sovereign is bound to deliver to another fugitives who have committed certain offences. These offences are of the deepest grade of criminality, and robbers, murderers, and incendiaries, and those enumerated, as proper to be surrendered. Following the analogy