

THE DESERET NEWS.

TRUTH AND LIBERTY.

NUMBER 48.

GREAT SALT LAKE CITY, WEDNESDAY, FEBRUARY 4, 1857.

VOLUME VI.

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HISTORY OF JOSEPH SMITH.

AUGUST, 1843.

But whether he was taken there by the command of Smith and his friends, or by the voluntary act of the sheriff of Lee county, who had him in custody, does not appear by any testimony furnished by Mr. Reynolds. The affidavit of the sheriff has not been obtained; though there is an evidence on the other side to show that the sheriff of Lee county voluntarily carried Mr. Reynolds to the city of Nauvoo, without any coercion on the part of any one.

After arriving at Nauvoo, a writ of habeas corpus was issued by the municipal court of that city, and Mr. Reynolds was compelled by the authority of the court to produce Mr. Smith before that tribunal. After hearing the case, the court discharged Smith from arrest.

There is much other evidence submitted; but the foregoing is the material part of it, to be considered on the present occasion.

Now, sir, I might safely rest my refusal to order a detachment of militia to assist in retaking Smith upon the ground that the laws of this State have been fully exercised in the matter. A writ has been issued for his apprehension: Smith was apprehended, and was duly delivered by the officer of this State, to the agent of the State of Missouri, appointed to receive him. No process, officer, or authority of this State has been resisted or interfered with. I have fully executed the duty which the laws impose on me, and have not been resisted either in the writ issued for the arrest of Smith, or in the person of the officer appointed to apprehend him. If there has been any resistance to any one, it has been to the officer of Missouri, after Smith came to his custody; and every thing had been done on my part which the law warranted me in doing.

Another objection to ordering a detachment of militia, arises out of the militia laws of this State; the forty third section of which is as follows:—

"Whenever it may be necessary to call into actual service any part of the militia of this State, on a requisition of the executive of the United States, on an actual or threatened invasion of this State, or any of the neighboring States or Territories of the United States, the commander-in-chief shall forthwith demand from each division a detachment in proportion to the strength thereof, except as hereinafter excepted; which order shall be delivered by a special messenger to the several commandants of divisions, specifying the number demanded from each division; the time and place of rendezvous, if ordered to march; and if the same be detached under any particular act of the United States to endorse the same on such order: Provided that whenever the safety of any of the frontier settlements in this State, shall, in the opinion of the Governor, require it, he may exempt the militia in such settlements from being called into service, and make such further provision for the defence, as the necessity of the case may require; which exemption shall be expressed in his orders to commandants of the divisions; who, together with the commandants of brigades, regiments, battalions and companies, shall govern themselves accordingly:—And provided also, that such militia men may be required to serve as spies on their own frontiers: and that on actual invasion or any extreme emergency, the commander-in-chief, commandants of divisions, brigades, battalions and companies, may call on the whole or any part of the militia under their respective commands, as the nature of the case may require, who shall continue in service, if necessary, until the militia can be regularly called out."

The Governor has no other authority in calling out the militia, than that which is contained in this section; by which it appears that there must be either a requisition from the President, an actual or threatened invasion, or some extreme emergency to warrant the Governor in exercising this power. No one of these contingencies has arisen. There has been no requisition from the President—there has been no actual or threatened invasion of the State—nor is this such an extreme emergency as is contemplated by the law.

If we allow that force was exhibited and threatened, to compel your agent to carry his prisoner before the municipal court of Nauvoo; that the court there took cognizance of the case without jurisdiction, and against the con-

sent of your agent, it would amount at most to a riot; and to a resistance of authority in a single case, and that too under color of law and legal process. To constitute an extreme emergency, so as to justify a call for the militia, there ought, in my opinion, to be something more than a mere illegal act—something more than a design to resist the law in a single instance. The design ought to be general as in treason, rebellion, or insurrection; in which cases an universality of design is essential to constitute the offence.

If a person resists a constable or sheriff, or other officer charged with the execution of process, with an intention to resist the law in that particular instance; such an act is a misdemeanor at most—is indictable as such, and may be met by the *posse comitatus*. But something more than a mere misdemeanor must have been contemplated by the law. It would seem to me that it could never have been intended that the Governor should call out the militia in every case, where a constable or sheriff may be resisted; and even in a case of a riotous resistance it would not be an extreme emergency without some military array, some warlike show, or some threatened resistance to the government itself.

In this case, there has been no warlike array in the proceedings of Smith and his friends; no exhibition of arms, and no actual force of an illegal character. Mr. Reynolds was not subjected to illegal imprisonment. He was arrested on lawful process, and although that process may have been wrongfully obtained, yet his arrest was not riotous or unlawful, but according to the forms of law. Mr. Reynolds continued in the custody of the sheriff by virtue of that process, until he was taken to Nauvoo; and although he was taken to that city against his will, and was by that means compelled to take his prisoner there, yet was he taken by lawful process; by an authorized officer who acted, so far as I have any evidence, freely and voluntarily in so doing. In no one aspect of the case can I consider the present an extreme emergency, warranting a call for the militia according to the provisions of law in this State.

Thus, sir, I have stated to you the principal reasons which have influenced me in refusing to order a call of the militia. To my mind they are entirely satisfactory; and I hope they will meet with the approval of your excellency and the citizens of Missouri.

I have the honor to be

Your excellency's most obedient servant,

THOMAS FORD."

Tuesday, 15.—Went in the evening to see Mr. La Forest exhibit feats of strength.

Wednesday, 16.—At 10 a.m. attended the funeral of Gen. James Adams, who was buried with masonic honors.

I sent Sidney Rigdon's affidavit to Governor Ford.

Thursday, 17.—I held mayor's court through the day, and tried several suits.

Elders P. P. Pratt and O. Hyde started from Nauvoo for Boston, via Chicago.

Elder J. M. Grant wrote me a letter, reporting the church in Philadelphia to be in a prosperous condition.

Friday, 18.—Conversed with Mr. Swartout of Quincy, and bought from him thirteen quarter sections of land. Visited the lumber yard.

Elders Young and Kimball visited Mount Holly, New Jersey.

Saturday, 19.—"GREAT MEETING OF ANTI-MORMONS!"—At a public meeting of the citizens of Hancock county, without distinction of party, held at the court house in Carthage, in pursuance of previous notice, on Saturday, the 19th of August, A.D. 1843.

Major REUBEN GRAVES was called to the chair, and Wm. D. ABERNETHY appointed secretary. The object of the meeting was then stated by Valentine Wilson, in an animated address. The meeting was afterwards addressed by Walter Bagby, and also by Hiram Boyle of Adams county.

On motion of F. J. Bartlett, a committee of nine was appointed by the chair to draft and report resolutions for the action of the meeting.

F. J. Bartlett, Walter Bagby, Valentine Wilson, G. M. Swope, R. T. Madison, J. A. Bebee, John Wilson, Henry Hunter, and John Cameron, were appointed that committee.

After a short absence, the committee submitted the following

REPORT.

Your committee respectfully request to be excused from making a formal report at this time, owing to the short time allowed them and the importance of the business that has called us together, and ask to be discharged from further duties; and recommend that a committee of six be appointed to draft resolutions and make a report to an adjourned meeting.

Whereupon the following gentlemen were appointed to compose that committee, viz:—

Walter Bagby, F. J. Bartlett, Stephen Owen, Stephen H. Tyler, Valentine Wilson, and Joel Weston.

The meeting then adjourned, to meet again at this place, on the 6th of Sept. next, at 1 o'clock, p.m.

REUBEN GRAVES, Chairman.
W. D. ABERNETHY, Secretary."

Sunday, 20.—I was at home all day. My brother Hyrum preached at the stand, and Sidney Rigdon read a copy of a letter to shew the people that he was not guilty of treachery.

Monday, 21.—I received a letter from Mr. Patrick, covering one from Mr. J. Hall, of Independence, Missouri, breathing hard things against us as a people. I gave instructions to have them copied with some additional remarks, and sent to Gov. Ford. The following is a copy of the letter, with the comments of the Neighbor thereon:—

"Independence, Mo., July 23, 1843.

My dear old Friend:—Your letter, dated on the 12th, and mailed on the 14th inst., is just at hand, and not being able to answer your questions correctly, or advise you judicially, in relation to the Rockwell case, until after I see him and some others of my friends, I will postpone that part of this letter until to-morrow, and in the meantime will say such things as I can write about without much reflection.

Sheriff Reynolds, upon his return, gave me his compliments from you, and for the first time I learned that you resided in Illinois. He also gave a narrative of his adventures in your State, which was anything but favorable, either to the reputation of your people, or yourself, as a law abiding people, or a profound or honest lawyer. Certainly there can be but little virtue in the community; and little honesty in the officers of law, who will trample upon the forms of justice, the laws of the country, and bid open defiance to both, in the manner that Sheriff R. informs us that you acted with him, after his arrest of the Mormon Prophet. That the State courts have a right, upon a writ of habeas corpus, to investigate the legality of all imprisonment within their respective chartered limits, whether such imprisonment is by the authority of the United States or of a State, no sound lawyer perhaps will doubt; but it is equally certain that no court upon such writ has any right to go beyond the forms and the prima facie evidence of the case. If the officers of courts and the community, are so corrupt as to disregard their own laws, and trample them under their feet, and liberate their criminals in defiance of law, then it appears to me that the power of self government is extinct; if Illinois, by her own authority cannot capture the Prophet, it will be but a small matter to raise volunteers enough here to raze the city of Nauvoo to the ground; if Illinois fails to deliver up Jo Smith, there will be something serious between the two States. Missouri will have Jo Smith for trial or impose as powerful restrictions as the constitution will allow, upon the intercourse of the citizens of Illinois in Missouri. If the Governor of Illinois is so imbecile as to allow his warrant to be disregarded by the Mormons, and permit the Prophet to go at large, then let him be impeached, and a new, honorable, energetic man be placed in his stead. I have it from a high source that Missouri will hold the whole State responsible for the treatment of our messenger, and for the delivery of the Prophet. Had you liberated the Prophet by a regular writ of habeas corpus, without mistreating our Reynolds, I should have gloried in my acquaintance with you, but to have done it in the manner it was done, reflects no honor either on yourself, your people, or your government. The Mormons are only a lawless banditti, and I fear the pestilence has contaminated the whole community; and if Reynolds' opinions be correct, yourself among the rest. Holy Jo was not afraid of the 'injustice of our people'; it is the just punishment, and their violated laws that he fears.

I will now give you an impartial opinion of the prejudices against Rockwell here, and my opinion of his guilt. There is not a man in this community but believes him guilty. There is a chain of circumstances against him so strong that no rational man can doubt his guilt. I was at Boggs' house two minutes after the deed, it is in sight of mine, and the insidiousness of the offence renders it difficult to restrain the citizens from hanging him up without judge or jury. So far, however, we have succeeded in quelling it; but should he be discharged upon trial, the power of man cannot save him. (More to-morrow.) J. HALL."

"The foregoing letter was sent from J. Hall, of Independence, Missouri, to a respectable lawyer of Dixon, Ill., and by him with an explanatory letter enclosed and forwarded to Gen. Smith, of this city; and, after retaining copies, it was thought advisable to forward both the originals to Governor Ford, for his consideration. By this proceeding it is not to be understood that the citizens of Nauvoo fear that 'volunteers from Missouri will raze Nauvoo to the ground'; there is too much honor and patriotism in Illinois to allow such a barbarous and disgraceful transaction, but it was done to apprise his excellency of the mode and manner of doing business in cases of emergency in Missouri, and to shew his excellency how much responsibility he and the State were under in case the Prophet should not be delivered up on the requisition of Missouri, where, according to the nicest calculations of the famous lawyer Hall, taking Rockwell's case for a sample, if he was discharged upon his trial, 'the power of man could not save him'!!!

As to the non-intercourse or 'restrictions' which Missouri may assume, or inflict over the

citizens of Illinois, we have nothing to say. The Latter Day Saints have seen Boggs' signature to such a bill as that, and many know the penalty.

There is little need of comment on Mr. Hall's famous letter, for to us it seems to be of itself, a comment that makes honesty, virtue, and common sense blush; and law, liberty and republicanism shudder! We appeal to the liberal minded and proud hearted Americans, whether such a spot upon the withering character of Missouri could be removed any more than an African could be washed white, or a wolf be possessed of the innocence of a lamb, unless the Lord interfered.

Talk of justice in Missouri! You might as well make a burning lime kiln or coal pit an ice house or a hospital! The ice would melt, and the sick would suffocate, and the power of man could not save them! No wonder a negro could be burnt alive in Missouri! No wonder a criminal could be taken out of jail and murdered, while the sheriff held a respite in his hand, in Missouri; and no wonder that a Mormon will not risk his life in Missouri; the power of man cannot save him, even if discharged by what is styled a court of justice.

To glance at the whole without recurring to the many crimes of the people of the State, officially or unofficially, whether it be feeding prisoners on human flesh, or taking them out of jail and lynching them without mercy, to help justice beforehand, or whether it be Boggs' exterminating order, or even the present hint at restriction and assumption of responsibility, we are apt to believe that the good sense and virtue of the citizens of Illinois in general, and the Mormons especially, like the old experienced rat will shun Missouri, as a whitened heap under which there is mischief concealed!"

Rode out with Mr. Moore; in the afternoon held mayor's court and tried Frederick J. Moesser for breach of temperance ordinance. Fined him \$3 and costs.

Mary Ann Young, daughter of Elder Brigham Young died, aged six years and eight months, of dropsy round the heart.

Elders B. Young, H. C. Kimball and Geo. A. Smith arrived at New York.

Tuesday, 22.—Held mayor's court, and fined Stephen Wilkinson for selling spirits without a license.

We constantly hear rumors that the people of Carthage are determined to raise a mob to drive the Mormons out of the State.

My brother Hyrum has gone to Plymouth.

Wednesday, 23.—I attended mayor's court, and tried several suits.

Sent Geo. J. Adams to Augusta to procure some articles for the Temple.

Elders O. Pratt and W. Woodruff arrived in New York, accompanied by Elders J. M. Grant and J. Sloan.

Thursday, 24.—Engaged in land business, selling and making titles of land, and settling with several individuals.

Friday, 25.—My brother Hyrum in the office, conversing about the new revelation upon celestial marriage.

Rain in gentle showers through the day, being the first of any amount that has fallen in Nauvoo since the 1st of June. The earth has been exceedingly dry, and the early potatoes nearly destroyed; corn has been stunted in its growth, and even vines much injured by the drouth.

Saturday, 26.—Six hundred houses destroyed by fire in Kingston, Jamaica; estimated damage, \$1,500,000.

The U. S. steam frigate 'Missouri' destroyed by fire.

Elder Jonathan Dunham returned from his exploring excursion west. The following is extracted from his journal:—

"Saturday, July 16, 1843. Staid all day at Zarahemla; all night at Mr. Hawley's.

Sunday, 17th. Miss Daniels finished my tent, &c.; left Hawley's at 12 o'clock, went 15 miles, and camped for the night: in the morning our horses were gone; we hunted for them some time before we found them.

18th July. Left the camp at 7 o'clock, traveled all day, came within 16 miles of the agency, camped on the prairie.

Tuesday, 19th. Left the camp at 6 o'clock; passed the agent's house half-past 12. Came to Sagar Grove creek, stopped, rested our horses, took dinner, &c., at 2 o'clock p.m.; stopped at dark on Mesquite creek, and staid all night.

Wednesday, 20th. Started at 6 o'clock, traveled 30 miles, fell in with the Sac Indians, who had been to the old Sac village after corn. At night they got drunk and fought. We encamped at dark and staid all night in the timber on a bluff bank of the Desmoines river."

Started late in the morning of Thursday, 21st; we traveled until 12 o'clock, stopped on the round flat of the Desmoines river. (here another drunken frolic which lasted all the afternoon,) left the ground at half past 2 p.m., and went 13 miles, came within 20 miles of the garrison troops or Sac settlement, and encamped on the edge of the prairie.

Friday, 22nd July, left for the Sac village, at noon we got parted from each other, and the Indians got drunk and quarreled, and Captain Joe would not go any further; he lay down, was mad, and I could not get him to go, so I left him and went towards the Sac village. Staid all night at the trading house.