

rum were both arrested on a charge of treason against the State of Illinois. The affidavits upon which the writs issued were made by Henry O. Norton and Augustine Spencer.

On Tuesday afternoon the two Smiths and other persons on the charge of riot, appeared before R. F. Smith, a justice of the peace, residing at Carthage, and by advice of counsel, in order to prevent if possible, any increase of excitement, voluntarily entered into recognizance in the sum of five hundred dollars each with unexceptionable security, for their appearance at the next term of the circuit court for said county. The whole number of persons recognized is fifteen, most if not all of them leading men in the Mormon church.

Making out the bonds and justifying bail necessarily consumed considerable time, and when this was done it was near night, and the Justice adjourned his court over without calling on the Smiths to answer to the charge of treason, or even intimating to their counsel or the prisoners, that they were expected to enter into the examination that night. In less than an hour after the adjournment of the court, constable Bettersworth who had arrested the prisoners in the morning appeared at Hamilton's Hotel, at the lodgings of the prisoners and their counsel and insisted that the Smiths should go to jail, Mr. Woods of Burlington, Iowa, and myself, as counsel for the prisoners, insisted that they were entitled to be brought before the justice for examination before they could be sent to jail. The constable to our surprise, thereupon exhibited a mittimus from said justice as follows:

STATE OF ILLINOIS, }
Hancock county. }

The people of the State of Illinois to the keeper of the Jail of the said county, greeting:

Whereas Joseph Smith and Hyrum Smith of the county aforesaid have been arrested upon the oath of Augustine Spencer and Henry O. Norton, for the crime of treason, and has been brought before me as a Justice of the Peace in and for said county, for trial at the seat of justice thereof, which trial has been necessarily postponed by reason of the absence of material witnesses, to wit: Francis M. Higbee and others; Therefore I command you in the name of the people to receive the said Joseph Smith and Hyrum Smith into your custody in the jail of the county aforesaid, there to remain until discharged by due course of law.

Given under my hand and seal, this 25th day of June, A. D. 1844.

(Signed,) R. F. SMITH, J. P. [L. S.]

His Excellency did not think it within the sphere of his duty to interfere, and the prison-

ers were removed from their lodgings to jail.— The recitals of the mittimus so far as they relate to the prisoners having been brought before the justice for trial, and it there appearing that the necessary witness of the prosecution were absent, is wholly untrue, unless the prisoners could have appeared before the justice without being present in person or by counsel; nor is there any law of Illinois within my knowledge which permits a justice to commit persons charged with crimes, to jail without examination as to the probability of their guilt.

On Wednesday forenoon the Governor in company with one of his friends, visited the prisoners at the jail, and again assured them that they should be protected from violence, and told them that if the troops marched the next morning to Nauvoo as his excellency then expected they should be taken along in order to insure their personal safety.

On the same morning, some one or more of the counsel for the prosecution, expressed their wish to me, that the prisoners should be brought out of jail for examination; they were answered that the prisoners had already been committed, and that the justice and constable had no further control of the prisoners; and that if the prosecutors wished the prisoners brought out of jail, they should bring them out on a writ of Habeas Corpus or some other due course of law. The constable after this conversation went to the jail with the following order to the jailor:

STATE OF ILLINOIS, }
Hancock County. }

To David Bettersworth, constable of said county:

You are commanded to bring the bodies of Joseph Smith and Hyrum Smith from the jail of said county, forthwith before me at my office for an examination on the charge of treason, they having been committed for safe keeping until trial could be had on such examination and the state now being ready for such examination.

Given under my hand and seal this 26th day of June, 1844.

(Signed,) R. F. SMITH, J. P. [L. S.]

And demanded the prisoners, but as the jailor could find no law authorizing a justice of the peace, to demand prisoners committed to his charge, he refused to give them up, until discharged from his custody by due course of law.

Upon the refusal to give up the prisoners, the company of Carthage Greys marched to the jail, by whose orders I know not, and compelled the jailor against his will and conviction of duty, to deliver the prisoners to the constable, who, forthwith, took them before Justice