

Chapter 17

Higbee’s “Damages” Trial against Joseph Revealed the Higbees’ Plan to Get Joseph and Hyrum Killed at Carthage

The conspiracies against Joseph and Hyrum strengthened in the spring of 1844. In spite of Francis M. Higbee promising on January 15, 1844, to be Joseph’s right-hand man forever, he soon broke his promise. On May 1, Higbee issued a complaint against Joseph before the Fifth Judicial District of Illinois at Carthage, Illinois, which was the Hancock County Seat. On May 6 the clerk of the Carthage Circuit Court issued a warrant upon the complaint of Francis M. Higbee, which was served on Joseph by Deputy Sheriff John D. Parker. Joseph was informed by the writ that Francis M. Higbee was suing him for the sum of \$5,000 for damages. However, the writ did not specify how Joseph had damaged Higbee.

Joseph soon learned that Higbee was suing him for slander for damages allegedly caused to Higbee on January 5, when Joseph made statements about him before the Nauvoo City Council meeting. As previously shown, Higbee had been asked to appear before the Nauvoo City Council as a witness, where he testified concerning rumors that William Law and William Marks were in danger of being killed (because of their opposition to plural marriage). However, he could not (or would not) tell who his informants had been. And, he absented “himself from [the] City Council without leave, when [he had been] summoned as a witness” (*LDS History of the Church* 6:178).

After he left, Joseph

referred to Francis Higbee’s testimony. Thought Francis Higbee had better stay home and hold his tongue, lest rumor turn upon him and disclose some private matters which he

would prefer kept hid. Did not believe there was any rumor of the kind afloat, or he [Higbee] could have told some of the names of his informants. Thought the young men of the city had better withdraw from his society, and let him stand on his own merits. I by no means consider him the standard of the city. (ibid., 169)

As previously explained in the minutes for January 5 (see chapter 16), testimonies and speeches by some witnesses were altogether excluded from the minutes of that meeting. It is obvious there was a sharp exchange of words between Joseph and Francis Higbee on the subject of spiritual wifery for Higbee to have left so abruptly, and for Joseph to have made such an emphatic statement against him. Since the original minutes are not available to researchers, readers must await the day when the leaders of the Utah LDS Church make available to the public all of the original minutes of the Nauvoo City Council meetings. It can be verified that the \$5,000 Higbee sought in damages was for remarks that Joseph allegedly made about him at the council meeting on January 5, 1844.

The charge by Francis Higbee came at a time when Joseph was already harassed by other conspirators, both inside and outside the Church. Joseph was certain that he could not get a fair trial at Carthage. Therefore, he made the decision to have Higbee's case against him tried at Nauvoo before the Nauvoo Municipal Court.

Sidney Rigdon Defended Joseph's Innocence During Higbee "Damages" Trial

Joseph acquired the assistance of two legal counselors to defend against Francis Higbee's demand. His attorneys were President Sidney Rigdon and Attorney G. P. Stiles. Through these attorneys, Joseph petitioned the court for a writ of *habeas corpus*, which he obtained. This gave Joseph the freedom to avoid detention during the time that trial preparation might require. It provided assurance that he would be granted the opportunity to testify under oath regarding Higbee's persecution of him. Also, it provided an opportunity for a record of the court hearing to be published in the Church's official paper, the *Times and Seasons*.

Choosing Sidney Rigdon to serve as Joseph's attorney was wise on the part of both Joseph and Sidney. Two years earlier, Joseph had been accused by Francis Higbee of attempting to take Nancy Rigdon as a plural wife. (At the time, Francis was dating Sidney's daughter Nancy.) Sidney believed Joseph was innocent of that accusation and was anxious to defend both Joseph and his daughter regarding that accusation.

Nancy Rigdon was said to be very beautiful, and when Francis Higbee was dating her, they were a most notable couple. However, in 1841 at a Nauvoo Stake High Council meeting, Joseph Smith tried Higbee for consorting with a prostitute. Higbee had to endure the humiliation of a confession about those issues and subsequent treatment to remedy a venereal disease he contracted. As a result, Nancy ended the relationship with Francis. After being convicted in Church court, humiliated by the disclosure of his disease, and being rejected by Nancy because of his sins, Higbee had a vendetta against Joseph.

Both Joseph and Sidney were aware that it would be necessary to discuss events relative to Nancy during Higbee's "Damages" hearing. This would be necessary because their defense would include a review of events in 1841 and 1842—the years Higbee was investigated before the High Council. Since he had been Nancy's suitor at the time, her name had been discussed in that previous case. This made it probable that her name would also be brought into the testimonies in this trial.

Also, in an attempt to draw Joseph into Brigham Young's plural marriage circle, Apostle Willard Richards (who favored polygamy) had forged a letter (allegedly from Joseph) that he delivered to Nancy. This was done to make Nancy and her parents, Mr. and Mrs. Sidney Rigdon, believe that Joseph was requesting her to become his plural wife. The forged letter was sure to be discussed during the "Damages" trial too.

Joseph had earlier published a denial that he authored the letter. He made an affidavit to that effect and visited the Rigdon family and reassured them of his innocence. On the other hand, Francis M. Higbee had bragged to Dr. John C. Bennett that he (Higbee) had seduced Nancy. Perhaps Joseph also discussed with Mr. and Mrs. Rigdon why Higbee had such a vendetta against him. Sidney

stated in his testimony before the Nauvoo Municipal Court that he still had in his possession Joseph's affidavit of innocence that he had not authored the letter to Nancy. Sidney Rigdon believed Joseph innocent of all these allegations. He was well prepared to defend him against those who now might try to use them again in order to damage Joseph. (For a complete discussion of the Francis Higbee, John C. Bennett, and Nancy Rigdon issues, see *Joseph Smith Fought Polygamy* 1:115–128 and 2:21–40.)

Joseph and Sidney Rigdon had shared many spiritual experiences together and were friends until Joseph's death. In February 1832, while the two men were engaged in correcting the King James Version of the Bible, they were blessed with a marvelous vision of the heavenly glories (see both RLDS and LDS Doctrine and Covenants, Section 76).

In 1842 at Nauvoo, Joseph and Sidney shared another manifestation of God's power, which no doubt contributed to Sidney's high opinion of Joseph. This occurred when President Rigdon's sixteen-year-old daughter, Eliza, became very ill with typhoid fever and died. Although she had been pronounced dead, Sidney asked Joseph to administer to her. Joseph did so, *and by the power of Christ she was raised from the dead!* (See H. P. Brown, *The Expositor* 3 [Oakland, California, May 1885]: 4; *Times and Seasons* 3 [September 15, 1842]: 922–923; *LDS History of the Church* 5:121–123; *Joseph Smith Fought Polygamy* 2:32–35.)

Joseph and Elder Rigdon had worked together in the First Presidency since March 1833, when Rigdon had been chosen first counselor to Joseph. Rigdon was very ill while imprisoned for months in Missouri jails. His illness continued after moving to the swampy river lands of Nauvoo, and he was considering moving from Nauvoo to a drier region. In January 1841 Joseph received a revelation in which the Lord reaffirmed that Rigdon was to be his counselor and promised him that he would be healed if he were faithful. The Lord directed:

If my servant Sidney will serve me, and be counselor unto my servant Joseph, let him arise and come up and stand in the office of his calling . . . and if he will offer unto me an acceptable offering, and acknowledgments, and remain with

my people, behold, I, the Lord, your God, will heal him that he shall be healed; and he shall lift up his voice again on the mountains, and be a spokesman before my face. Let him come and locate his family in the neighborhood in which my servant Joseph resides. (RLDS DC 107:32a–c; LDS DC 124:103–105)

At the time that this revelation was given to Joseph, the Rigdon family was living at Nauvoo in a house known as “the lower Stone House.” The house had belonged to Captain James White, and it stood at the west end of Parley Street, which ended at the Mississippi River. When the Keokuk Dam was constructed in 1913, the water rose over twenty-two feet, and the Stone House was inundated by water (see Richard N. Holzapfel and T. Jeffery Cottle, *Old Mormon Nauvoo 1839–1846, Historic Photographs and Guide*, 135, 136).

Elder Rigdon accepted the revelation above as having come from the Lord. Thus, he moved his family to a newly built house on Main Street, on a lot directly north of Joseph’s home. Today the Rigdon home stands as a testimony to President Rigdon’s obedience to the Lord’s counsel, which directed him to move near Joseph that he might assist him more effectively in the work of the Lord.

When Joseph Smith reluctantly allowed his name to be announced as a candidate for the Presidency of the United States, Joseph passed over all members of the Quorum of Twelve and chose Sidney Rigdon to be his Vice-Presidential running mate.

All of the above instances show a closeness between Joseph and Elder Rigdon that persisted until Joseph’s death. They also show how important Rigdon felt his role was in serving as Joseph’s counsel when defending him in the \$5,000 suit brought by Francis Higbee.

Transcripts from the Higbee “Damages” Trial

A major portion of the official report of the case of Francis M. Higbee’s “Damages” case against Joseph Smith, heard before the Nauvoo Municipal Court, is republished below:

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 Bennet, associate justices, presiding.

ExParte, } Messrs. Stiles & Rigdon,
JOSEPH SMITH, Sen.¹ }
ON HABEAS CORPUS. } Counsel for Smith.

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 unformal, and not of that character which the law recognises as valid, that the said

1. Joseph the Prophet was referred to as Joseph Smith Sr. after the death of his father.

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 harrass 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 petioner [*sic*] 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, 6, 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, 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.

[SEAL.]

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; }
City of Nauvoo. } Sct.

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 Mayor's 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.

W. RICHARDS, Clerk.

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

JOHN D. PARKER,
Constable.

The *Times and Seasons* then reported the following testimonies of the ongoing court case:

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

Mr. J. [G.] P. Stiles then said that the petition and papers have been read in your hearing; it is a petition for an 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 [Francis Higbee] is joined in with other persons in a conspiracy to take away Mr. [Joseph] 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 any thing: there is no action specified; is it meant for trespass, for mal-treating, 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 him here, I propose to bring in the testimony of the prisoner [Joseph Smith],

he has averred certain facts; he is ready to make oath of it if your honor require it; there is no ordinance against the prisoner taking his oath; it is within the province of the court to do so, it is the privilege of the court in any case to hear the plaintiff in any cause; law is founded on justice; there can no iniquity arise from any thing in this matter.

Sidney Rigdon [Joseph's counsel] 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 was in custody within the province of your honor; 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 is no merits, no existence of any thing, it is an ignus fatuus, a willo'-[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 any thing, if there can any merits be hatched up, we will try it.

J. [Joseph] Smith was satisfied that this thing can be brought to trial[.] [I]t 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 [Francis Higbee] 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 any thing 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 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 any thing 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 the man 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 any thing 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 forever 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 [Joseph] to proceed with the case.

The following are some important observations by the authors regarding Joseph’s words that appear in the previous two transcript paragraphs quoted. In those two paragraphs, Joseph gave important reasons why he had demanded a hearing this day—even though his accuser (Higbee) had not shown up for the trial that Higbee initiated. Joseph wanted to defend himself under oath so that there would be a legal record and protection of his innocence, as well as legal consequence for the conspirators who were slandering him. Here is a partial list of what Joseph hoped to accomplish by demanding that the trial against him be allowed to proceed:

- Joseph wanted to “show up their conspiracy” against him.
- He wanted to show that the conspiracy consisted of “men [who] are working the basest corruption.”
- He wanted to receive a “fair hearing” so that “they cannot prosecute me again.”
- Joseph declared his innocence by saying, “they have lifted up their hands against innocence.”
- He wished to “make statements of facts in order to defend myself.”
- He declared, “I must tell the story in its true light, under oath; then I can be forever set free.”

Joseph could only be “forever set free” by testifying of “the story [of Bennett, Higbee, and Nancy Rigdon] in its true light.” Joseph’s knowledge of Bennett and Higbee, and their involvement in practicing plural marriage (and calling it spiritual wifery) would establish a permanent court testimony that would have far more authority than a mere personal testimony. Joseph could reveal the names and facts of those involved with them. If the truth could be made known in court, it could be protected by the law and acted upon by the law. It would bring peace to Joseph, his family, Church members, and the city of Nauvoo.

Guilty men who break laws and try to avoid justice do not make such pleas before judges—to be tried and be held accountable for their words. Only innocent men who obey the law do such things!

Mr. Stiles [Joseph's counsel] 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; the whole matter is corrupt, and malicious and wicked.

JOSEPH SMITH sworn—Said, I must commence when Franc[i]s [*sic*] 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 every thing against me forever. 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. Bennet [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 any thing 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.] (Note: Brackets were in original.)

[Joseph continued] Bennet said Higbee pointed out the spot where he [Higbee] 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 [Sidney Rigdon and his wife, Phebe], when Higbee and Bennet 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; Bennet 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 Bennet, 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 [Francis M. Higbee] 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 Chauncy Higbee, Charles A. Foster and Dr. [Robert] Foster said they would shoot me; and the only offence against me is telling the truth. I did say that Dr. Foster did steal a raw hide, I have seen him steal a number of times; 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.

BRIGHAM YOUNG sworn, With regard to Francis M. Higbee, at the time that is spoken of, I stopped opposite Mr. [William] Laws' [*sic*] store, we had been conversing with Dr. Bennet when I came into the room, Francis Higbee rather recoiled and wished to withdraw; he went out and sat upon a pile of wood. He said it is all true, I am sorry for it, I wish it had never happened. I understood Bennet who related some of the circumstances, he cried and begged of us to

forgive him, and said if he could be permitted to stay in the city as a private individual he should be happy; that was about what he said; it is true, I am sorry for it[.] I wish it had never been so; as we came up, Dr. Bennet, Mr. Higbee, and Mr. [Joseph] Smith, had been talking about it, I have not mentioned it before, I knew of the whole affair, it was on the 4th of July [1841], or a few days after—it was shortly after I came from England. I was in the City Council when Mr. Higbee said all was settled.

[Brigham Young] Cross-examined:—I have heard Dr. Bennet say all these things were facts; he acknowledged that Higbee had the _____ [a venereal disease] and that he had doctored him, he acknowledged that, and a great deal more.

I will make one statement in our conversation with Dr. Bennet. I told Dr. Bennet that one charge was seducing young women, and leading young men into difficulty—he admitted it—if he had let young men and women alone it would have been better for him.

SIDNEY RIGDON, sworn, In relation to the matters before the court I am unacquainted with[.] I was sick at the time [in 1841] but I have heard it talked of back and fro.

Cross-examined:—I recollect Joseph Smith came to me with a complaint against Higbee and Bennet, and made affidavit that it was true; I have the affidavit in my house. I went to see Higbee on last Saturday, I found him at Mr. Morrisons—he was waiting for a steam boat—I endeavored [*sic*] to prevail on him to relinquish his undertaking; he [Higbee] said I have no character in Nauvoo, for I have none to lose, I tried to convince him that he had a character and might be looked upon with respect, but he flatly contradicted me, and said he had none, and that was the reason why he persecuted Joseph Smith—as he had no character, he did not care what he did—he had nothing to lose by it—that is the substance of our conversation.

HYRUM SMITH sworn,—I recollect a settlement of difficulties between Francis M. Higbee and my brother Joseph, about which some of the court may recollect. I recollect Dr. Bennett asking forgiveness of the [Masonic] Lodge when

there was about sixty present—Francis M. Higbee acknowledged that it was the truth, that he was sorry, and had been a thousand times; he acknowledged his connection with the woman on the hill; I did think he was with Dr Bennet at the time, the statement of Bennet was, that he was guilty, he was sorry and asked forgiveness, he said he had seduced six or seven, he acknowledged it, and said if he was forgiven, he would not be guilty any more. Francis said he knew it was true, he was sorry and had been a hundred times; the very things that we had challenged him with, he acknowledged. I told Francis that it had better be settled he said, Joseph had accused him—if his character was gone all was gone, he said he would settle it and they [Joseph and Higbee] went into the room, he did not deny any charge, he said he was sorry, that he wanted it buried, and it was agreed to do so. Francis did not say any thing about his sickness, but Dr. Bennet made those observations to him that he had doctored him in the time of his sickness.

Cross-examined.—I asked Francis if he did not tell Dr. Bennet that he had seduced a girl, he replied, I told Dr. Bennett that I did seduce her, but I tell you I never did it; I told him so for my own notion of things; I do not recollect of him saying [that he had got a bad disorder with the French Girl] he said he should not have been seduced, if it had not been by Dr. Bennet, when charged with them, Francis said they were true; that they were alledged a hundred times; he said “I will alter, I will save my character.” I have never heard from brother Joseph any thing about his character, Joseph did not accuse him of any thing before the police; he said Francis had better take care, Francis was a little dissatisfied, but that difference was settled; I was present; he said he would not receive any thing again from abroad; he would not take any steps by hearsay, he would come to him and tell him, there were several present when this took place.

PORTER ROCKWELL SWORN—he recollected the conversation but not very distinctly, but he did recollect that Francis M. Higbee acknowledged to Joseph Smith that he was guilty of the charges preferred against him. . . .

MR. WHEELOCK, sworn:— With regard to this case I know nothing, but through a circumstance occurring at Nash-vill[e]. Elder [James] Blakesly [Blakeslee] came to my house to preach, he preached and was upholding the authorities of the Church very much, he came over here and apostatized the same day; I then came over and went to see him, I asked him why he had changed his mind so quick? he said he had seen affidavits of the guilt of Mr. Smith, he told me Mr. Higbee was going about to the different conferences. I told him I thought he had better send some one else, his [Higbee's] conduct was not the best and I know of circumstances that were not right. Once I was a mate on a Steam Boat, and Higbee was clerk, we had not much cabin; we had some females on board; I and another had given up our room to some ladies for the night; it was my watch, and I went into the cabin for my Buffalo Robe, about one o'clock in the night, when I saw him leaning over the berth where one of the ladies slept; this was in the night—and he had no business there, no gentleman had any right there; I gave up my berth to the ladies; I felt indignant at such conduct, his conduct towards the lady passengers was unbecoming, and particularly in one who professes so much virtue as he now does.

JOEL S. MILES, sworn:— I have seen Francis M. Higbee go into rooms with females, but what their intentions were I did not know, I might have seen him two or three times; I think he has done that which is not right, I should judge from conversations with him, that was the case: I presume he has a good many times; I might recollect twenty times, he has frequently told me of things of that kind, it is a private case to be sure—he has told me, that he had commenced an action against Joseph Smith for slander; I met Francis to day, I asked him about the fuss, when he said he had got Mr. Smith up for slander; he said he should not come here—but did not say why, I recollect the time that he was sick, when Dr. Bennet attended him, I went to see him nearly every day, I understood Mr. Higbee to say that he was prosecuting Mr. Smith for slander; that he was up before the Municipal Court, he told me he supposed I was wanted to prove that

he was a thief, whoremaster, and every thing else.

H. J. [G.] SHERWOOD, sworn;—I have several times had conversations with Higbee; I recollect that near two years ago there was a fuss about John C. Bennets spiritual wife system before the High Council. I recollect a French woman coming up from Warsaw, and that Francis M. Higbee had medical assistance * * * * * Dr. Bennet attended him, Joseph administered unto him but it was irksome; Higbee assented that it was so, he did not contradict it, he promised to reform—he would do better, he would do so no more.

HEBER C. KIMBALL, sworn—I think it is near two years: I had some conversation with Francis M. Higbee, he expressed himself indignant at some things; he expressed himself that he was sorry, he would live a new life, he never would say a word against President Joseph Smith; he had an inclination to write that what he published [against Joseph] was false. I exhorted him to go and recall what he had said. I afterwards saw him in Cincinnatti [*sic*], when he promised by every thing sacred that he would come home, reform, and then go and publish this doctrine, for it was true; he said he had taken a course that was wrong towards President Smith, and was sorry for it. He said he would study at Cincinnatti, for his character was ruined here. When we were in Quincy, we went over to Missouri, and exhorted him to alter his conduct. The last time I conversed with him, he said, “if I had taken your council, I should now have been a man looked on with respect; he said he was not connected with the people that opposed President Smith and never would”—he much regretted the course he had taken.

[The Ruling of the Court]

After hearing the foregoing evidence in support of said petition, it is considered and ordained by the court; 1st, That the said Joseph Smith, Senior, be discharged from the said arrest and imprisonment, complained of in said petition, on the illegality of the writ, upon which he was arrested, as well as upon the writ of the case, and that he go hence without day. Secondly, Francis M. Higbee’s character having been so

fully shown, as infamous, the court is convinced that this suit was instituted through malice, private pique and corruption; and ought not to be countenanced; and it is ordained by the court that said Francis M. Higbee pay the costs.

In testimony whereof, I hereunto
set my hand and affixed the seal
[Seal] of said court, at the city of Nauvoo,
this 8th day of May, 1844.

WILLARD RICHARDS, Clerk.

(*Times and Seasons* 5 [May 15, 1844]: 537–541)

The various implications of the “Damages” case above will be discussed further in chapters 18, 19, and 20 of this volume.

A Review of How the Higbees Conspired to Get Joseph and Hyrum Killed at Carthage

February 26, 1844 (see chapter 14): While Joseph Smith was prosecuting Orsimus Bostwick for falsely accusing Hyrum of immorality, Bostwick’s lawyer, Francis M. **Higbee**, petitioned the judge to move the trial to Carthage. Joseph protested, warning that **Higbee’s** request was intended “to stir up the mob [at Carthage] and bring them upon us” (*LDS History of the Church* 6:225).

March 11, 1844 (see chapter 11): Concerned citizens filed legal affidavits stating that Attorney Francis M. **Higbee** and his brother, Attorney Chauncey L. **Higbee**, were conspiring to kill not only Joseph Smith but his entire family (see *Times and Seasons* 5 [May 15, 1844]: 541–542).

March 26, 1844 (see chapter 13): A warrant was issued to arrest nonmember Augustine Spencer, who had just beaten his own brother, city Alderman Orson Spencer. Augustine hated Mayor Joseph Smith. The Nauvoo City Marshal attempted to deputize Judge R. D. Foster and his brother C. A. Foster, as well as Lawyer Chauncey L. **Higbee** to assist in apprehending Spencer. However, they refused, praised Spencer, and threatened to kill the Marshal and Joseph Smith. The Marshal attempted to arrest them, but they resisted and fought. The Marshal called for help, and no one

but Joseph Smith came to assist him. One of the Fosters pulled a pistol on Joseph, but Joseph disarmed and defeated him, as well as the other Foster. Joseph and the Marshal took the Fosters, **Higbee**, and Spencer to jail (see *Nauvoo Neighbor*, April 3, 1844, and May 1, 1844).

May 8, 1844 (see chapter 17):

- Joseph Smith, while testifying before the Nauvoo Municipal Court, stated he believed Francis **Higbee**'s legal harassments of him were borne out of vengeance, and that **Higbee** was involved in a conspiracy to kill him (see *Times and Seasons* 5 [May 15, 1844]: 536).
- Joseph Smith, while testifying before the Nauvoo Municipal Court, declared: "Chauncey **Higbee**, Charles A. Foster and Dr. [Robert] Foster said they would shoot me" (ibid.).
- Sidney Rigdon, while testifying before the Nauvoo Municipal Court, stated Francis **Higbee** told him he would continue to persecute Joseph Smith (ibid., 539).

June 25, 1844 (see chapter 17): Augustine Spencer swore a writ and affidavit that Joseph and Hyrum were guilty of treason against the government, resulting in their arrest at Carthage. The documents listed Francis M. **Higbee** as a witness ready to testify that they were traitors. Justice of the Peace R. F. Smith left this record dated June 25, 1844:

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 . . . for trial . . . which trial has been necessarily postponed by reason of the absence of material witnesses, to wit: Francis M. Higbee and others. (*Times and Seasons* 5 [July 1, 1844]: 561–562; RLDS *History of the Church* 2:747; LDS *History of the Church* 6:569–570).

June 27, 1844: While awaiting trial for treason, Joseph and Hyrum Smith were killed at Carthage Jail, just as Joseph warned on February 26 that Francis M. **Higbee** was conspiring to help make it happen.

Summary

Francis M. Higbee continued to conspire against Joseph by bringing a \$5,000 suit against him. As an attorney, Higbee knew that the law could be misused as a weapon, just as surely as any other tool could be. He actively employed his expertise in the law against Joseph whenever he could.

In fact, Higbee did not even appear in court for the suit. With Sidney Rigdon as Joseph's attorney, Joseph testified that Higbee had maliciously filed this suit against him. Joseph was allowed to state his case for the court record. He showed how Higbee, with the help of John C. Bennett, had promoted lies against him. He also showed that the suit was nothing more than harassment against him and an attempt to endanger his life. The court found in Joseph's favor and dismissed the charges.

A few weeks later, Higbee played an instrumental role in bringing Joseph and Hyrum to trial in Carthage. While there, on June 25, 1844, Augustine Spencer (with Francis Higbee as a witness) charged Joseph and Hyrum with treason, causing them to be jailed. As word spread that the Smiths were captive in jail, a mob assembled, and Joseph and Hyrum were slain at the Carthage Jail two days later.