

EDWARD LIVINGSTON'S APPEAL.

From the New-Orleans Gazette of Dec. 30. TO THE PUBLIC.

I make no apology for laying the following statement before the public. It is not an affair of mere private interest, but of serious public concern, to which I claim the attention of my fellow-citizens.

Having unfortunately been a sufferer in the extraordinary scenes now exhibited in this territory, the justification of my own character, forces me to detail a series of events, too public to be doubted; but so new in the history of our country, that they will not obtain easy belief at a distance, and can scarcely be realized by those who daily behold them.

A dictatorial power assumed by the commander of an American army—the military arrest of citizens charged with a civil offence—the violation of the sanctuary of justice, by first entering it with a complaint, and then dragging the accused from its bar; an attempt to overawe by denunciations, those who dared professionally to assert the authority of the laws; the recorded unblushing avowal of the employment of military force to punish a civil offence; the hardy menace of persevering in the same course; and the asserted but incredible cooperation of the supreme executive of the country, in these proceedings, are circumstances that must command attention, and excite the corresponding sentiments of grief, indignation and contempt.

My primary object, however, is my own exoneration from a charge solemnly made against me in the hearing of hundreds, at the bar, where my character is my only support, and by a man whose situation ought to give weight to his assertions. In the performance of this necessary but humiliating task, I shall be obliged to speak of myself and of my affairs with a particularity that will be tedious, and would be improper, if it were not necessary for my defence.

About three years previous to the present period, I left the city of New-York, where I abandoned every thing that could bind me to a country—the friends of my early youth—the companions of my riper years—a numerous and affectionate family—children from whom I had never been separated, and whom the tenderest and most melancholy recollections had rendered doubly dear to my heart. I left there every thing but fortune. Circumstances unnecessary to repeat, had involved me considerably in debt, and an unsettled account with the United States, to whom I was probably indebted between thirty and forty thousand dollars, rendered it more necessary that I should make some sacrifice to do justice to my creditors, rather than exonerate myself by the means which the law provided for persons in my situation. I resigned an honorable and the most lucrative office in the State; and I embarked for this place in December, 1803—I arrived in February following, having made an assignment of a large landed property for the benefit of my creditors, and brought with me only a sum of about one hundred dollars, and a letter of credit for one thousand more, furnished by my brother, to whom I am still indebted for the amount—these means were nearly exhausted before the opening of the courts. As soon as I could commence the duties of my profession, I undertook them with industry and zeal, and soon found that by perseverance, I should in a few years be enabled to attain the objects nearest my heart; the payment of my debts, and the return to my family and friends. The profits of my profession were invested in lands, because their certain increase of value, promised a speedier accomplishment of my wishes. About two months since, that happy period seemed to approach; I had exonerated a very valuable and extensive tract of land, from all incumbrances, and had pointed it out, to the officers of the treasury, as the means of liquidating my balance with the public. I had sold a plantation to Mr. Davis, which after paying an incumbrance on that and another tract, left me his mortgage for the sum of twelve thousand dollars, payable one half in one, and the other half in two years; and I was on the point of accepting offers which were made me for the sale of another. These details though tedious, are not unnecessary. It will be seen that this fund which I destined for my private creditors, was by its application to that purpose, made the reason or pretext for the injuries I have received.

On the 26th of Nov. gen. Wilkinson arrived in this city. Having been on terms of intimacy with him since my arrival here, I called on him the evening he arrived; he returned my visit and supped with me, and in the course of that evening, I informed him that Dr. Bollman had brought me an order for money from col. Burr, and expressed his surprise as to the manner in which he could have become indebted to Mr. Bollman, whom I understood to have been in failing circumstances in Philadelphia. The general both then, and in several visits which I subsequently made, gave me no reason to suspect that this circumstance had made any impression, but behaved with his usual cordiality to me, which continued until the very night before his denunciation.

On Sunday afternoon, the 14th December, Dr. Bollman was arrested by a military order; two other persons, Mr. Ogden and Mr. Swartwout, on a like order, were arrested and confined on board of a bomb ketch in the river. These circumstances, with some others of the same nature, caused a very great sensation on Monday, when they were known; but having only a slight acquaintance with Bollman, and none whatever with the other gentlemen, I did not

think myself obliged, unless professionally called upon, to take any steps for their release.

Mr. James Alexander, however, a gentleman who ranks deservedly high as an advocate in this territory, made an affidavit of the arrest, and applied, as I have heard, on Monday, to one of the judges of the superior court, for the allowance of an *habeas corpus*; this was refused, and he was directed, as he afterwards told me, to make his motion in open court. On coming there about eleven o'clock, on Tuesday morning, the 16th day of December, he accosted me, and requested that I would join him in an application to the court for an allowance of the writ. I did not hesitate to do my duty on the occasion, though I had reason to believe from the violent measures which had already taken place that I might expose myself to danger. I followed Mr. Alexander in a concise statement of the facts, and the writ was allowed. On Wednesday having been assured that Bollman had already been removed from the territory, I did not urge the return of the writ, and at general Wilkinson's request, it was postponed till the day after, when it having been understood that the return was to be made by the general in person, the court was unusually crowded; about twelve o'clock he arrived, and the ordinary business being suspended, he arose and made the following return:

"The undersigned, commanding the army of the United States, takes to himself all responsibility for the arrest of Erick Bollman, on a charge of misprision of treason against the government and laws of the United States, and has adopted measures for his safe delivery to the executive of the United States.—It was after several consultations with the governor and two of the judges of this territory, that the undersigned has hazarded this step for the national safety, menaced to its base by a lawless band of traitors associated under Aaron Burr, whose accomplices are extended from New-York, to this city. No man holds in higher reverence the civil institutions of his country than the undersigned, and it is to maintain and perpetuate the holy attributes of the constitution, against the uplifted hand of violence, that he has interposed the force of arms in a moment of extreme peril, to seize upon Bollman, as he will upon all others, without regard to standing or station, against whom satisfactory proof may arise, of a participation in the lawless combination."

Signed, "JAMES WILKINSON."

This was introduced and followed by a speech of some length, in the course of which he read the copy of the affidavit he had sent on as the accusation against Bollman, and followed it by remarks tending to alarm the minds of his hearers, with apprehensions of serious and immediate dangers from the invasion of the territory by Mr. Burr, and the traitorous designs of his adherents, whom he represented to be numerous in the city, and two of whom were, he said, COUNSELLORS OF THE COURT. After deliberately casting his eyes round the bar, and seeming to enjoy the astonishment, perhaps the fears of a set of men, who found themselves exposed to this inquisition, he asked whether Mr. Alexander was then in court? and on his being answered in the negative, he requested that he might be sent for, and committed to close confinement, as he intended before he left court to prefer against him a charge of high treason. Mr. Alexander not being at that moment to be found, general Wilkinson proceeded to state the circumstances on which he grounded his charge against him. Having finished these, he proceeded nearly in the following words, "As for Mr. Livingston, I have the evidence that Dr. Bollman brought a draft upon him for two thousand dollars and upwards, from Colonel Burr, which he paid and I hold in my hand an affidavit which confirms his guilt; he then read parts and suppressed other parts of an affidavit, which he said was made by Dr. Rodgers: of this document I have been unable to obtain a copy, but the part that was read respecting me was in substance, that Mr. Keene, a gentleman of this city, who has been absent for many months, had told Rodgers some time in February or March last, there was a number who had agreed to undertake an expedition to Mexico, and on being urged to declare who they were, had answered 'there's Livingston'; but the affidavit added in substance, that Rodgers thought Keene so little in earnest that the circumstance had never occurred to him until within a few days past."

The general in the course of his address (for it was a long one) of which I do not pretend to give the details, justified his measures, from the principle of necessity, said that "desperate cases required desperate remedies," that it "was necessary to cut off a limb to preserve the body," to "lop off a rotten branch to save the tree," he finished by requesting that his oath might be taken to the truth of the charges he had exhibited; but at the moment when he raised his hand to pray that God would so help him, as he should tell the truth, the court suggested the propriety of reducing his testimony to writing, he then hesitated, and though his counsel was at his side, though one of the judges requested him to take a seat on their bench, and offered to reduce his charges to writing himself, yet he refused this service, and seemed more inclined to accept another which was as courteously offered, that one of the judges would wait on his excellency at any time that might be convenient to him, to take his deposition. Hitherto during this scene so degrading to the administration of justice, so alarming to every friend of personal freedom, so calculated to excite my own indignation and surprise, I had been silent; but alarmed at the turn I saw the business was taking, I now rose and de-

manded, I even descended to *intercedere* the court that my accuser should not leave the bar without establishing his charge on oath, without leaving the affidavit on which it was founded; that I might be committed if guilty to the prison, which I merited; but that if innocent as I declared myself to be, I might not be obliged to return to my family through the crowd of my fellow-citizens who surrounded me, loaded with suspicions of the highest crimes. I represented that public justice, as well as a regard for private character required this step. I adverted to my situation as an officer of the court. I stated that my accuser was at the bar, that he had requested my arrest, that he had time to deliberate upon, to prepare and produce his charges, and until he was required to reduce them to writing had declared himself ready to substantiate them on oath. I know not whether these reasons were good, to me they appeared irresistible, but doubtless they were feeble urged; for with a grief and astonishment I cannot forgo to describe, I saw the general retire from the bar after receiving the thanks of the presiding judge for the communication, and an apology for the trouble they had given him. I was somewhat consoled by a promise which I understood was made, that the charge should be specified in court on the following day, but I thought it a duty to myself, immediately to clear up to the satisfaction of the court and audience, the circumstances on which the charge seemed principally to rest. With this view during the course of the accusation I sent for some persons of difficulty got over the objections which the forms of the court presented to my being heard, I stated that among the debts I had contracted in New-York and which were unpaid when I left it, were two notes, both the property of col. Burr, but which were in the hands of the house of Dunham and Davis, and which were sued in their names, but as I believed for his use; that a judgment had been entered against me on these notes in January 1804, after my departure from N. York; that the judgment had been assigned to Aaron Burr, by the house of Dunham and Davis, and that he had sent out the exemplification of the judgment and the assignment, which I produced more than a year since, to Mr. Daniel Clark of this city, for collection; and finally, that on Dr. Bollman's arrival in this city, he had brought me an order from col. Burr, which I produced in the following words:

"Philadelphia, 26th July, 1806.

"Dear sir, doctor Bollman will receive whatever you may be disposed to pay him on my account, and will give a discharge on payment of 1500 dollars, a part, at least, of this sum will be necessary to him. But I should not have troubled you if I could have paid him from other resources."

Signed, "AARON BURR."

To Edward Livingston, *esq.* And that being unable to discharge my debt in money, I had, after a delay of two months subsequent to his arrival, given him an order for the amount upon capt. Samuel B. Davis, payable in one and two years; that captain Davis having purchased a plantation from me, and being my debtor to a larger amount payable at those periods, had accepted my order and given his note for the amount which was credited on his mortgage to me; to prove these facts, I produced the records, and appealed to Mr. Davis, then in court, who confirmed them.

With respect to Mr. Rogers' affidavit, I observed, that it was difficult to reply to a document which had only been partially read; that Mr. Keene, upon whose hearsay I was accused, had been long absent from the country, and that on his return, I was persuaded a satisfactory explanation of the business would be made; but that in all events, I pledged myself most solemnly to God and my country, that I was utterly ignorant of any of the plans which it was said colonel Burr was executing, either for dismembering the union, or contravening its laws, except what I had heard from the newspapers, the communication of general Wilkinson, or public report, and that I had never held any communication, either written or verbal with him, or any other person whom I knew or suspected to be concerned with him, on the subject of those plans.

There is a force in the language of truth, there is a commanding aspect in the looks of innocence, that can rarely be assumed by falsehood or guilt, and I am persuaded few, if any of my auditors, retired with impressions of my prejudice. The general seems to have thought so too, for, on the following day, when I went to court to hear the charges he had engaged to exhibit, I met a gentleman of my family, who, in answer to my earnest inquiry, whether the general's affidavits were prepared, told me that intelligence had arrived which did not leave him leisure to attend to them, and that he did not believe they would that day be produced—seeing my extreme chagrin at this delay, he told me he was persuaded that the general would feel much gratified if I could exonerate myself from the charge, that he had been forced into the accusation by imperious circumstances, but that he had little doubt, if I could remove his suspicions as to the payment of the money to Bollman (which he added, was the principal circumstance) that he would be ready to do me ample justice; and concluded by suggesting the propriety of calling on the general. This I refused to do, but said that I would reflect on the other proposition; and after consulting with some friends, I determined to send the papers I had read in court, with some others, which I was sure must remove every doubt as to the nature of the transaction. Meeting the gentleman shortly after, I told him my determination, and he appointed an hour to call on me for the documents, and expressed a joy, which I am sure he felt, on the prospect of an arrangement that would do full justice to my character. He arrived some time after the hour appointed, but apologized for the delay, by stating that he had since been to the general, that he was desirous to

do me justice, was anxious that I should exonerate myself from the charge, but that it was absolutely necessary he should see me in order to shew some papers which had not been exhibited, and which, I understood, were to explain the reasons why he had tho't himself obliged to accuse me; but that the payment of the money to Bollman was still the principal charge, and this being explained, he would almost venture to pledge himself, that general Wilkinson would appear in an open court, to be called at his request, and make any statement I could reasonably desire, to remove the effect of his charge. The idea of presenting myself, and making explanations to a man who had so cruelly injured me, appeared at first too degrading to be borne, but the pain which these accusations must give to my friends at a distance, the humiliating circumstances attending a newspaper assertion of innocence, the certainty that it could never be so effectually done as by the mode proposed; and (shall I be called pusillanimous, when I add) the fear of inevitable ruin to my family from a military arrest and removal, all concurred to produce the reluctant assent, which after a delay of some hours I gave to the proposition of calling at head quarters in company with a friend. Eight in the evening was the hour appointed. The gentleman to whom I before alluded, was so perfectly persuaded that the visit would end in the most satisfactory arrangement, and expressed so friendly a pleasure in the prospect, that I could scarcely believe him in earnest, when, at the hour appointed, with a mortification he did not attempt to conceal, he met me on the gallery at head quarters with a message.—"That the general had received a letter that determined him not to see Mr. Livingston or any of his friends." This cruel insult added to injuries I had received made me feel the humiliation to which I had exposed myself, and I returned home with the firm persuasion that I should find the guard for my arrest stationed at my door. In this I was mistaken. As yet I have preserved my life; but how long I shall be permitted to enjoy either depends upon the caprice or suspicions of a man who has upon record declared himself above the laws, and in open court asserted the propriety of cutting off a member to preserve the body. At that moment I had peculiar reasons to apprehend violence. Mr. Alexander and myself were the two counsellors who had dared to question the legality of Bollman's imprisonment. We had both been on the second day after publicly denounced, the one as a traitor, the other as participating in treason. An accusation in form had been promised against both, and a few hours before I was insulted at head quarters, Mr. Alexander had been forcibly dragged thither by a military guard. I had no other connection with this gentleman than that which arises from practicing at the same bar. He is a man much younger than myself, and we were never on very intimate terms. His politics and mode of thinking upon many points, were diametrically opposite to mine, but I have always observed in him the manners of a gentleman, and the principles of a man of honor. His most intimate acquaintance at the bar having entered the family of General Wilkinson, Mr. Alexander sent to me the moment of his arrest—he confided to me his professional papers, and gave me charge of his effects. I performed on that occasion the duties I owed to a man whose character I esteemed, whose situation interested me, & on whose guilt, notwithstanding the denunciation which had been made, I had no right to pronounce. I dared to take an *habeas corpus* for his release, to send him some trifling supplies, and to write him a note in which I assured him that I would follow his directions in the disposal of his property, and expressed a persuasion, of which I have now no doubt, that his voyage to the U. States, though disagreeably begun would terminate in his restoration to liberty. This was my second offence, and it produced as I have been informed and believe, the insulting refusal to receive the visit I had been invited by the general to make.

My first crime was the act of professional duty, I have before detailed, and it was followed by the denunciation which has forced me before the tribunal of the public.

I have not appealed to it however, until the jurisdiction of every other has been declined by my accuser. I waited with a respectful but impatient silence, until the court met on Monday, after a recess of four days. I applied to the judges to know whether any accusation had been made against me, being answered in the negative, and the attorney of the district for the U. States, then in court, having to the same question made the same reply, I addressed the court nearly to the effect contained in this publication. I shewed from the exposure of my private affairs, the utter improbability of my entering into designs so subversive of every plan I had formed. In designs, which if successful, must banish me from my country, & separate me forever from my family & friends, and if they proved abortive, must end in my irretrievable ruin. And I concluded by offering them, as I now offer to the public, as a pledge of my innocence, or a proof of my insanity, the annexed affidavit. If guilty of the crime laid to my charge, I must be distracted as well as depraved, to add the voluntary guilt of perjury to my other offences.

I content myself in this statement of facts with such details as are necessary to my own justification. Should they find their way to the seat of government, such of them as relate to our political situation, must attract the notice of our representatives. In the mean time we must suffer the evils to which we are exposed. Let us, however, do it with fortitude, and never be tempted to any act which may seem to enlist us on the side of those who trample on our constitution, sport with our liberties, and violate our laws. Let us remember that the day of retribution will arrive, and is not far distant.

EDWARD LIVINGSTON.

New-Orleans, 26th Dec. 1806.

Edward Livingston, of the city of New-Orleans, counsellor at law, being duly sworn on the Holy Evangelist of Almighty God, doth depose, that he hath never had any communication, written or verbal, direct or indirect, with Aaron Burr, or any other person, whom he knows or has any reason to suspect, to be concerned with him in the plans now said to be carrying on, hostile to the union, laws or constitution of the United States, relative to any such plans, and that he is utterly ignorant of the existence of any such schemes, on the part of the said Aaron Burr, or his adherents, except from the public papers, the communication of general Wilkinson, and the voice of public report.

(Signed) EDWARD LIVINGSTON.

Sworn this 26th day of December, 1806, before me Dom. A. Hall, District Judge of the United States, for the Orleans district.

NOTE.

"On the day this was sent to the press, I had a conversation with Dr. Rogers, in consequence of which the following correspondence passed between us.

"In my conversation with you this morning, I think you stated that you had not a very perfect recollection of the names mentioned by Mr. Keene, to you, as those of persons engaged in a Mexican expedition, and that you may have mentioned some in your affidavit from hearing them frequently spoken of. You also stated, if I recollect right, that you did not think from Mr. Keene's manner, that he was in earnest, and that the circumstance made very little impression upon you at the time.

"I also wish you to state whether other names (I do not wish you to particularize them) were not mentioned by Mr. Keene, as I set forth in your affidavit. What

when a sister accuseth a brother, she is not of the wanton abuse of powers, the shameful delinquency of duty which permits them to be let us shew by our zeal in support of the country, by our submission to lawful authority, and by an intrepid opposition to every foreign or domestic foe, that there is no pretext for the dictatorial power that has been usurped over us.

I have said that we must suffer. Never were two words more applicable, that is our situation. It is one, the most dreadful to an independent mind of any that can be imagined. Subject to the uncontrolled will of a single man with whom the hear-say tales of slander are proofs, and who, on his own evidence arraigns, condemns and punishes the accused, dooms him to imprisonment, banishment and ruin; by whom the tribunals are insulted, and to whom the civil executive apparently surrenders its force. What state of things can be worse? No caution can protect, no consciousness of innocence secure. The evidence is taken in private. Multitudes cowardly informers skulk about the prosecutor's office. Their tales add food to feelings of pre-existent enmity, or avenge their own quarrels by secret denunciations of guilt. The objects of official suspicion are confined in unusual remote prisons. Their letters are intercepted. Communication with them is restricted, and they are, it is said, exposed to a dangerous voyage on the ocean, in the most inclement season of the year. The possibility too, of their being intercepted by a Spanish force, and condemned to perpetual imprisonment in their dungeons or mines, is not the least probable, or the least frightful part of the picture.

In the mean time where is the necessity that exists for those measures? Are the courts shut? Do the judges refuse their duty? (†) Are the ordinary prisons insecure? No! the course of justice has, except by these events been undisturbed. The officers are at their posts, nor is there any appearance of violence at the civil authority. Instead, therefore, of securing the punishment of the prisoners, these extra-judicial arrests are the only means that perhaps could be devised for screening them if guilty, from punishment. On their arrival in the United States, they must be surrendered to the civil power, and the arrest appearing to be illegal they must be enlarged.

The witnesses who could here (if the charges are well founded) have substantiated their guilt, being at a great distance, time will be given them to escape, and that punishment so necessary to be inflicted on the crimes which they are charged with will be eluded. Whereas if the civil authority had been applied to, and suffered to take its course, sufficient and what is perhaps of more consequence, prompt justice would have been done. An awful example would have been offered on the spot, which would have appalled the guilty, or a speedy acquittal to the innocent, would have destroyed those sympathies which illegal and violent measures always create. At a moment when union is more necessary than at any other period, the shadow of injustice ought to have been avoided.

A consideration of these consequences, a conviction of the illegality of the arrests and a sense of duty induced me, in compliance with the request of a fellow practitioner, to attempt a judicial release of Dr. Bollman, of whose guilt as is now stated, there was sufficient proof to have warranted a commitment here.

The same sense of duty induced me to issue another writ of *habeas corpus*, for Mr. Alexander and Mr. Ogden. The latter gentleman had been brought a few days prior to this before judge Workman, and was discharged. In defiance to all civil authority, he was included in the same order for arrest with Mr. Alexander, and was taken on Monday out of his lodgings by a party of armed dragoons, and I suppose sent out of the territory, for the return to the *habeas corpus* in this cause was a reference to that in the case of Bollman.

I know not what effect this publication will have. It may JUSTIFY ME TO MY COUNTRY, which is the first wish of my heart. It may be the means of producing a strict scrutiny into my conduct which I INVITE. It may draw down the further vengeance of my accuser, which I will never DEPRECATE. But whatever may be the event, nothing can destroy the consciousness I enjoy of my own rectitude on this occasion, nor the determination in my humble sphere, to resist oppression and assert the empire of the LAWS.

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