

EDWARD LIVINGSTON'S ADDRESS TO THE PUBLIC, [Concluded.]

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 on himself all responsibility for the arrest of ERICK BOLLMAN, on a charge of misprision of treason against the government and laws of the U. S. and has adopted measures for his safe delivery to the executive of the U. S.—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 danger 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, counselors 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 were in court, and being answered that he was not, 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 evidence that Dr. Bollman brought a draught upon him for two thousand dollars and upwards, from Col. 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. Rogers: 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 Rogers some time in February or March last, that there were 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 Rogers thought Keene so little in earnest that the circumstance, had never occurred to him until within a few days past. (a)

(a) 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:

"Sir, In my conversation with you this morning, I think you stated that you had not a 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 and are not set forth in your affidavit? Whether any of them have been arrested, and whether one or more, are not now in the service of the United States."

"Your immediate answer to this note will much oblige your most obedient servant."

(Signed) EDWARD LIVINGSTON. December 26, 1806. To Dr. Rogers."

"Sir, In our conversation I mentioned that there was a possibility that I might have introduced

The general in the course of his address, (for it was a long one) of which I do not pretend to give the detail, 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 declare 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 cautiously offered, that one of the judges would wait on his excellency at any time that might be convenient to him to take his deposition. He then 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 demanded, I even descended to entreat 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 are either weak in themselves or they were feebly urged, for with a grief and astonishment I cannot well 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 understood was made that the charge should be specified in court on the following day, but I thought it a duty to myself, I immediately cleared up to the satisfaction of the court and audience, the circumstances on which the charge seemed principally to rest; with this view I had during the course of the accusation sent for some papers from my house, and after having with some difficulty got over the objections which the forms of the court presented to my

names in my affidavit which were not mentioned by Mr. Keene to me, because the persons suspected had been frequently spoken of in my hearing, but believed that I was correct. I likewise mentioned that I had not then placed confidence in Mr. Keene's narrative, supposing that Burr would not have chosen a wild rattling fellow such as he is, to further his schemes. The names of all the persons mentioned by Mr. Keene, were set forth in my affidavit, none of whom have I believe been arrested, one of them is in the service of the United States, but he, with another, were noticed in my certificate, otherwise than the rest.

(Signed) W. ROGERS, Surgeon U. S. Navy. To Edward Livingston, Esq." Dec. 26, 1806.

From this it appears among other facts that Mr. Keene mentioned the names of several gentlemen, none of whom have been denounced, or arrested, and one of whom is actually an officer now employed under general Wilkinson's command. If the general then gave credit to this information, why are not the others denounced? If he did not, why is it made the ground of accusation against me? As to the payment of the money to Bollman, and let it be remembered that no secret was made of the transaction, that I told it to the prosecutor for the U. S. as appears by the following certificate.

"Shortly after receiving information of the arrival of Dr. Bollman in this territory, Mr. Edward Livingston informed me, that Bollman had presented to him an order for about two thousand dollars, drawn in favor of Bollman by Col. Burr, and at the same time expressed his surprise that Burr should have been indebted to Bollman."

(Signed) "JAMES BROWN. Dec. 19, 1806."

"And that a few days after general Wilkinson's arrival, I openly mentioned it to him, if he thought it an evidence of guilt, why did he continue his intimacy with me? If he had other proofs as he once hinted, why are they not brought forward? No efforts of mine have been wanting to provoke enquiry as appears by my conduct in court and by the following letter delivered to Judge Hall, on the day it bears date:

"Sir, It is now upwards of a week since general Wilkinson charged me at the bar of the Superior court, with a participation in high crimes against the U. S. promising to support them by affidavit; though you may probably have heard this circumstance, yet as you cannot act without authentic information, I take the liberty of stating it that the general may be summoned to lay any charges he may have against me before the proper tribunal, or that his neglect or incapacity to produce them may be another evidence of the unfounded nature of his accusation. I am with great respect, your most obedient servant, (Signed) EDWARD LIVINGSTON. December 26th, 1806."

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 New 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 to 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 his 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 arrangements that would do full justice to my character.

He arrived sometime after the hour appointed, but apologised 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 thought 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 born, but the pain which these accusations must give to my friends at a distance, the hu-

manating circumstances of being a newspaper assertion of innocence, the certainty that it never be so effectually done as by the mode proposed; and (should I be called pusillanimous when I do) 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 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 counselors 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 connexion 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 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, and 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, and separate me forever from my family and 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 it is not far distant, when a strict account will be taken as well of the wanton abuses of power, as the shameful dereliction of duty which permits them; but let us shew by our zeal in support of our 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 arbitrary power that has been usurped over us.

I have said that we must suffer. Never were two words more applicable to 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. Millions of cowardly informers skulk around the proconsular office. Their tales add food to feelings of pre-existent animity, 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. 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 these measures? Are the courts shut? Do the judges refuse their duty? Do 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 extrajudicial 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. Where-as 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 quit 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 Wilkinson, 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 case 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 IN-VITE. 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.

EDW. 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) EDW. LIVINGSTON. Sworn this 16th day of December, 1806, before me Dom. A. Hall, District Judge of the United States, for the Orleans district.

I am authorized to state, that official communication has been made to general Wilkinson, that the proper tribunal was ready to receive and act upon any charges he might think proper to make.

PHILADELPHIA, Feb. 11, Extract of a letter from a gentleman who went out in the ship Nancy, dated KINGSTON, (Jam.) Jan. 7.

"I take the liberty to inform you of our misfortunes at St. Jago de Cuba, while there we were all sick, and one man died—On the 16th of December we left St. Jago, and eight days after was captured by the British sloop of war, Lark, and brought in here. The schooner is not yet cleared, but the captain expects she will be.—The ship *Mineiro*, of Philadelphia, was brought in a few