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BY ELIHU STOUT.]

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## THE WESTERN SUN

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FROM THE NASHVILLE REPUBLICAN.

JEFFERSON.—NO. IV.

The next charge of the Richmond meeting "he has suspended the writ of *habeas corpus* upon his individual authority," besides the fault of expression in using *individual* where *official* was required, and the daring incongruity between a belief in these charges and the early declaration of the meeting that they apprehend from the General "no attack on public liberty," and "repose undiminished confidence in his love of country," an incongruity which shows that the end of their address had forgotten the beginning, contains a positive mistatement of fact. General Jackson did not suspend the writ of *habeas corpus*. I am perfectly aware, that the true question growing out of the defence of New Orleans is not whether the writ of *habeas corpus* was or was not suspended, but whether General Jackson did or did not, on that memorable occasion, perform his duty. I am also satisfied, that no friend to his country, can lay his hand on his heart & say, he did not perform it. But his *merit* is so rich in relation to that defence, that I am willing to pursue the criminal inquiry set on foot by the unfounded irrelevant charge of the meeting, confident of being able to show, that their own mode of investigation must demonstrate the general's renown, and their own injustice.

It appears to me, that the public writers in Virginia, who have been shivering their lances against the "broad circumference" of General Jackson's fame, and especially the contrivers of this address, imitate the acts of necromancers, who, in calling up the dead, and communicating with the devil, are represented to begin by alarming the spectators with exhibitions of skulls and skeletons, prodigious shadows on the wall, magical circles on the floor, blue flames, vivid smoke, and other such fearful sights. So, the politicians alluded to, always endeavor to terrify and mislead the judgment of their reader, by parading a number of technical phrases—the *writ of habeas corpus*, the *liberty of the citizen*, the *liberty of the press*, &c., as if these constitutional blessings had been destroyed by general Jackson, and had not, in fact, been preserved to the people of New Orleans, by his prudence, patriotism and valor. This pernicious sophistry, results, in part, from the absence of facts for the foundation of their attack; in part, from the brood of attorneys produced by their ponderous jurisprudence; and, in part, from their exclusive reading of English history and English law, wherein these safeguards of freedom are frequently seen struggling under the grip of oppression, and faintly dawning out after a night of darkness. But here, where they are the stuff of our political life, as general and current as the air we breathe, they should be contemplated without agitation, and handled without hysterics. If the Richmond meeting would condescend to follow the advice of Dr. Franklin to Buffon, and would *ascertain facts before they philosophise*, they would find, that Gen. Jackson did not suspend the writ of *habeas corpus*. On the contrary, in order to prevent any interference of this delicate process of civil authority, at a crisis so dangerous, with the military power, as they had recommended to the legislature of Louisiana, as they had assumed the power of laying an embargo and of closing the courts of justice, to suspend the writ of *habeas corpus*. His recommendation was not complied with. But, let me ask, did the writ of *habeas corpus* ever discharge a soldier under confinement in the camp of gen. Washington, or of gen. Greene, or of any other commander, in time of war and invasion? Gen. Jackson had found it necessary, as there was a levy *en masse*, of the citizens, to incorporate the city of New Orleans within the limits of his camp by encompassing it with a chain of sentinels, and extending, of consequence, over it, (what the attorneys call martial law.) the influence of the rules and articles established by congress for the government of the armies of the United States, whether of regulars or militia. But this extensive castration, which made a populous city seem to revolve around a small army, is objected to. Facts will show, with what justice. When Gen. Jackson arrived at New Orleans, he found the population prostrate with fear and despondency. His presence, prowess, and activity, wakened a very different spirit; the patriotic citizens manifesting ardour and confidence, and gradually distinguishing themselves from the disaffected French, who, under the auspices of the French consul, and out of gratitude to the English for the restoration of the Bodubons, were discovering "an awful squinting at monarchy." Governor Cluborne had written to gen. Jackson, "the country is said to be filled with spies and traitors"—"there is in this city a greater spirit of disaffection than I had anticipated"—my greatest difficulty is with the European Frenchmen, who, after giving their adhesion to Louis the Eighteenth, have, through the medium of the French consul, claimed exemption

from the draft, as French subjects," though they had come into the American family of choice, under the treaty of cession, and exercised the rights of citizenship ever since, as gen. Jackson discovered by inspecting the election polls. The Governor adds, that, after consulting legal advisers, he had taken upon himself to banish a suspected inhabitant, by ordering him "to depart from the state in forty-eight hours." So sensible indeed, were all the faithful citizens, & every prominent authority in New-Orleans, of the necessity of removing all obstructions to the enforcement of the paramount law of self defence, that the legislature, having no power under the constitution to regulate or restrain commerce, passed an act laying an embargo, which the governor sanctioned, and the citizens acquiesced in. In that case the legislature acted, and wisely acted, on the principle of self-preservation, recognized in the preamble to the constitution, "to provide for the common defence;" and did that for their constituents which Congress, to whom they had delegated the power, would, if they could, have done for them.—The legislature also passed a law, closing the courts of justice for four months, which the governor assented to, and the judiciary solemnly approved. And Judge Hall himself, discharged without bail or recognizance, persons committed and indicted for capital offences, against the United States—concurring with other departments of power, in their conviction of the *legal necessity* of superseding the less essential and elementary provisions of law, by the great law of self-defence. And was Gen. Jackson, who held all the power which the U. States could exert in defense of this important and vulnerable position, to resist these practical analogies, and revolt from this great law, at a moment when the writ of *habeas corpus* was perverted to endanger liberty, when the hopes of the nation, the interests of millions, the lives of thousands, rested on his single arm? Was he to repeat for his country the *Bladensburg races*, or to fight for her the battle of New-Orleans?

Had he fashoned his conduct to suit the taste and win the applause of the Richmond meeting, he might have had Generals and Attorney-Generals, Barristers and Merchants, from the city, cowering about his lines, discouraging his men, disconcerting his measures, and scampering away from the enemy. He chose rather to have citizen soldiers, and to make those who owned the power contended for, share in the toil and danger of its protection. A rich and testy dealer of cotton, who looked as if "but for these vigilans he would himself have been a soldier," accosted the General, who was piling up cotton bales against Wellington's bastion, and requested that he would "be a *guard for his cotton*." "Certainly," replied the General, "your request shall be complied with—here, sergeant, give Major gen. Lewis a musket and ammunition, and station him by the line of defense; no one can be better qualified to guard the cotton than the owner of it." Thus the *de aler* was dealt with. His commanding words, confirmed by the example of the other authorities, and by the pressure of the moment, suggested to Gen. Jackson the prevalence of comprehend New Orleans itself in his compass of taking. The city he was to defend under his protection. The measure was discussed with eminent citizens in the presence of Judge Hall, and approved by others, was not exempted by him. It was advised and adopted distinctly on the ground of *public necessity*, of which all were convinced, and none even now can doubt. If the noted Louailler, under the influence of the royalist Blanque, and the officious Judge (whose fault is atoned by the fact that he soon repented it, and he died a sincere friend and admirer of Gen. Jackson) brought, *without necessity*, and upon a secondary principle, the civil authority into collision with the military power, when exerted *from necessity*, and from the primary objects of the constitution, it was no fault of the General. It is not the first time that enactments, provided for the liberty of the citizen have been found temporarily incompatible with the safety of the state. Hence the well known maxim of the civil law, *Inter arma silent leges*. It is not the only conflict that has or can be found between separate provisions, or between the end and details of our constitution. Treaties, when approved by the Senate and ratified by the President, are declared to be "the supreme law of the land," and yet members of the House of Representatives claim, and justly too, the right of disregarding this supreme law, and of interfering with their power over bills of revenue. The right of property is secure under the constitution; and yet, in certain causes, a military officer may seize the means of subsistence or of transportation, leaving only a fair compensation to the owner, on the just ground of necessity. The trial by jury is the birth-right of the citizen, and a dearer right than that secured by the *habeas corpus* and yet the judicial power sets this right at defiance, and punishes for contempt, without the intervention of a jury, upon the ground of legal necessity. In violation of the same right, our legislative bodies punish arbitrarily any citizens who may attempt an abuse of their dignity or privileges, and Mr. Clay himself exercised this power in the case of John Anderson. The truth is, these anomalies must be tolerated even in our fair and effective system, on the ground of necessity. They are essential to the principles they seem to oppose. The inconsistency of military power with the spirit of our institutions, arises from the nature of things—not from the character of this or that commander but from the opposite character of peace and war, and the adverse dispositions of mind on which these conditions of society are founded.

Force is the principle of war. Equity the spirit of peace. These two elements however elaborated by civilization or ramified into consequences, cannot be divested of their original discordance. The prudence of our magistrates, and the patriotism of our citizens, have in most instances, prevented their collision; but Louailler and Judge Hall determined to bring them into conflict. On the 13th of February, Admiral Cochrane had written to General Jackson that he had received from Jamaica unofficial intelligence of peace. The General received his letter on the 21st, and immediately addressed to him this inquiry—"whether he considered the intelligence

as authorizing a cessation of hostilities?" which inquiry he answered in the negative. But with the retreat of the enemy to their ships, the danger appeared to many to be over, and the impatience of military duty which this impression created, was the motive upon which Louailler operated. Although the General in a proclamation had cautioned the citizens "not to be thrown into false security by the intelligence of peace," observing even if it were true that a peace had been signed in Europe, it could not put an end to the war until it should be ratified by the two governments,—although the British who had been re-inforced by a larger body of fresh troops lay in half a day's sail of New Orleans, by a passage which the batteries at *Chf Mentreur* and at *Port Coguilles* defended, Louailler published a piece that caused the Louisiana companies which manned these batteries, to desert, return into the city, and leave it exposed. He was arrested for exciting mutiny and desertion in the camp, and for giving intelligence to the enemy, and to discharge him from arrest, Judge Hall issued his writ. The writ was resisted. It was proved by the testimony of the clerk, that the writ was actually issued before the arrest of Louailler, and that the date had been altered by the Judge to suit the occasion.—This was proof of complicity on his part, that rendered the proceeding most exceptionable. But Gen. Jackson declined evading himself of this defect, and met the principle fairly, asserting the necessity of adhering to his plan of defence, and maintaining military power. Nor did he stop to ascertain what statue had conferred on a district Judge, the United States power to issue a process, which, touching the liberty of the citizen, and being in nature the creature of statute, would more properly emanate from the state judiciary. As all other commanders in this Union, on occasions of less necessity, had done, he kept the civil process out of the camp. And would the gentlemen of Richmond have had him yield to the officious Judge and malcontent citizens—to suffer his troops to desert, and defences to be abandoned, when a superior hostile force, caused to defeat, and intent on "beauty and beauty" was not farther from New Orleans than City Point is from Richmond—New Orleans far more important to lose and difficult to recover than Richmond? Was the temporary restraint of Louailler, the momentary suppression of his *caecities scribendi*, a greater evil than the permanent conquest of New Orleans. The meeting describe the writ of *habeas corpus* as the *shield of individual liberty*,—but at the crisis referred to, the power of General Jackson was thus *shield of the liberty of thousands, and individual liberty was not to endanger so great a stroke*. He who brought it into collision with this great object, acted like a bitter foe to his country, and was no more entitled to respect than he would have been, had he on the 8th of January interposed his person between the American riflemen and the enemy, and insisted on the former not firing for fear of taking his life. The tenth is, the Judge, the citizens, the army and the people, were all embarked in the same vessel, and in the same storm. Measures proper for the defence of all, were by the law of necessity, obligatory on all, and the pilot to whose strong arm the helm was consigned, would have been guilty both of crime and folly, had he relinquished it merely because land was in sight.—This, General Jackson would not do, and his patriotic frankness has exalted the lasting gratitude of the American people. The sentiments which the same people entertain for those who rail at him for serving—not saving his country—for not permitting his sentinels to be *subpœna'd* from their posts, or his men removed by writ of *habeas corpus* from their guns, acts which however venomous could have been found to justify—the Richmond meeting will be able to discover, should they, who are so pure from all stain of military glory, ever hereafter make an appeal to their fellow citizens for promotion to political honors. But the civil authority, which from its mid administration, he was obliged to offend, he propitiated in a manner so signal, as to return it greater strength and sanctity than the folly of its object and its agent had taken away. When peace was announced, he hastened to appear before Judge Hall in court, and offered an argument to show cause why he should not be punished for contempt.

The judge refused to hear his defence. At a subsequent day he attended to receive sentence, and when the judge, trembling at the murmurs of the indignant crowd hesitated to pronounce it, "fear not" said the illustrious prisoner, waving the multitude to silence with his hand—"Fear not your honour; the same arm which repelled the invasion of the enemy, shall protect the deliberations of the court." The sublime humility to the patriot General did not end here. The ladies of New Orleans, whose enchantments had been saved from terror and pollution, not by the *habeas corpus*, but by his valour, contributed a fund to discharge the fine. But they found he had anticipated them—he had paid one thousand dollars out of that small fortune, the whole of which he had pledged to the banks of New Orleans, to raise money for its defence. And when their gratitude would force the contribution upon him, he preserved his independence, and displayed his humanity, by requesting that the money should be applied to the relief of the widows and orphans of the brave citizens who had fallen in the campaign.

Could Washington himself have shown greater respect to the law, on greater fidelity to the country? It has been said that Washington never refused to comply with civil process. But he was a dictator, and who ever dared to oppose the civil process against his power? Did he not execute deserters, without even a military trial? Did he not punish mutineers by decimation and instant death? Did he not forage in New Jersey as in an enemy's country—in each case, on the ground of *necessity*? He did, and his conscience and his country both approved him. While Jackson, acting with less rigor, under equal necessity, is denounced by the Richmond meeting as "this agent of illegal enormities."

\* His orical Memoir by Latour. † Marshall's Life of Washington, Vol. 4, p. 404—5.

## Laws of the Union.

AN ACT for the relief of the Purchasers of the Public Lands, reverted for non payment of the Purchase Money.

BE it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That, in all cases where public lands have been purchased, on which a further credit has not been taken under the provisions of the act of the 2d of March, 1821, and have reverted, or are liable to revert to the United States, for failure to pay the purchase money, or have been sold by the United States by reason of such failure to pay, and in all cases where one-twentieth of the purchase money shall have been deposited and forfeited to the United States, it shall be the duty of the Register of the Land Office, where the purchase or deposit was made, to issue, upon application to the person, or persons, legally entitled to the benefit of the payments made previous to such reversion or sale, his, her, or their legal representatives or assigns, a certificate for the amount so paid, and not refunded, which shall be received and credited, as cash, in payment of any public land that has been heretofore, or may hereafter be sold by the United States, in the state or territory in which such original purchase or deposit was made.

Sec. 2. And be it further enacted, That it shall be the duty of the Commissioners of the General Land Office to prescribe the form of such certificates, which shall, in every case, specify the tract or tracts of land so reverted or sold, the amount paid, date of payments, and by whom made; and it shall be the duty of the Register issuing such certificates, to keep a record of the same, and to forward to the General Land Office, at the close of each month, an abstract of the certificates issued during the month; and for each certificate, the officer issuing the same shall be entitled to receive, from the applicant, the sum of fifty cents.

Sec. 3. And be it further enacted, That the said certificates, when received in payment for lands, shall be entered in the books of the Land Office where received, and transmitted with the accounts of the Receiver of Public Moneys, to the General Land Office, in such manner as the Commissioner of the said office shall prescribe; and if, upon comparison of the original with the returns from the office whence any certificate issued, it shall appear to the satisfaction of the said Commissioner, that such certificate has been issued and duly paid, according to the true intent and meaning of this act, the same shall be passed to the credit of the person paying the same as so much cash.

Sec. 4. And be it further enacted, That, for any moneys forfeited, on lands sold at New York or Pittsburgh, the certificate shall be issued by the Secretary of the Treasury;—which certificates shall be received in payment for lands, at any of the Land Offices of the United States, as the certificates issued in conformity to the foregoing provisions of this act are made receivable.

Sec. 5. And be it further enacted, That, in no case shall a certificate be issued to any person, except to the person who originally forfeited the lands, or to his heir or heirs; nor shall a grant issue or the lands purchased with any script be transferred, until six months after the certificate shall have been deposited in the office.

Sec. 6. And be it further enacted, That, if any tract of land, returned as sold to the General Land Office, shall have been paid for in forged or altered certificates, such sale shall be void, and the land subject to be sold again, at public or private sale, as the case may be; and, in case any such forged or altered certificate shall be received upon any debt for land heretofore sold, or in part payment of any tract of land that may be hereafter sold, it shall be the duty of the Commissioner of the General Land Office, by advertisement, or in such other manner as he shall direct, to give notice thereof to the person making such payment; and it, within six months after such notice, such person shall not pay into the proper Land Office the amount so falsely paid, the tract of land upon which such payment was made, shall, with all money actually paid thereon, be forfeited to the United States.

Sec. 7. And be it further enacted, That, when two or more persons have become purchasers of a section or fractional section, the Register of the Land Office for the District in which the lands lie, shall, on application of the parties, and a surrender of the original certificate, issue separate certificates of the same date with the original, to each of the purchasers, or their assigns, in conformity with the division agreed on by them; Provided, That, in no case, shall the fractions so purchased be divided by other than north and south, or east and west lines; nor shall any certificate issue for less than eighty acres.

Approved—2d May, 1828.

## AN ACT to amend the Acts concerning

Naturalization

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the second section of the act, entitled "An act to establish an uniform system of naturalization,