

Andrew Jackson, from Correspondence of Andrew Jackson. Edited by John Spencer Bassett.

class=MsoNormal>"FINE SURPOSED BY JUDGE HALL." 1

1 These notes were evidently prepared by Jackson with a view of another letter to the public. They are in the Jackson MSS., vol. 107, nos. 23436–23448.

February, 1843.

To the Editors of the Globe.

Gentlemen, Having seen Mr. Botts speech, 2 as reported on the subject of the restoration to me of the unjust fine, imposed by judge [Hall], in the Globe of the 24th of January 1843, In which he is stated to have said "that fines has been remitted, that fine had been repaid to Genl. Jackson, every dollar of that mony Genl Jackson had received." This statement in all its parts relating to me having recd. the amount of the fine, from the Ladies of Neworleans, is a positive falshood. I repeat once for all time to come that I never recd. one cent of the mony reported to me to have been raised by the Ladies of neworleans, to meet the fine so vindictively imposed upon me by Judge Hall. The fine was paid by myself, the moment it was pronounced, by check given by A. L. Duncan and taken up by me, to prevent a wicked judge from issuing a casa 3 and when it was afterwards reported to me that the Ladies of N. O. had raised the amount to pay this fine, I at onc[e] replied I could not receive it, but requested that it should be applied to the releif of the widows and orphans who were made so during the investment of N. O. which I understood, by report , was so bestowed. I never saw, nor had one cent of the mony said to be raised by the ladies, in my possession or under my controle, and

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2 John Minor Botts, a Whig member of the House of Representatives from Virginia, and a strong opponent of Jackson on many questions. The reference is to his speech of Jan. 24, 1843. In an article in the Democratic Review for January, 1843 (XII. 58–77, see p. 76), Amos Kendall had said that the money raised in New Orleans by popular subscription to pay Jackson's fine was received by him and paid over to the families of those who suffered in defending the city. Botts seized on this assertion to declare that Jackson had received the money. How he spent it, said Botts, was no concern of anyone but Jackson. If he chose to give it away in charity that was very admirable in him; but it did not give ground for handing it back to him out of the public treasury.

3 Ca. sa., i. e., *capias ad satisfaciendum*.

class=MsoNormal>0215 191 I hope Mr. Botts may allways hereafter remember this when speaking of me and the fine so unjustly imposed, and deprived of defence. It appears Mr. Botts has been looking into my character, and found only one clear spot in it. I regret to be compelled to say in return that in my examination into his whole public character through life, I never could discover even one clear spot in his—nay, not even one gleam of virtue, or disinterested benevolence or justice or truth. Mr. Botts if he really knew any thing about the danger of the state of Louisiana when invaded By the British, the Legislature had passed a law laying an embargo to enable commodore Patterson to impress seamen to man the Gun Boats, he must have knew that it had closed the courts for four months and the militia was called out in Mass which made every man within the state a soldier who was able to bear arms, no exceptions, of Judges, justices or Legislatures, all—all were made soldiers and subject to martial law. The state being in danger, and its safety being the supreme law, created the necessity of the call in Mass of the militia into the field, and this necessity real as it was , silenced all other laws for the time the safety of the state required it, and placed all the militia under martial law and subject to its rule. Judge Hall acqui[e] sing in those laws liberated all prisoners charged with piracy, and other high crimes, without bail or main prise, and adjourned over his court over a legal

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term, which placed the time of the adjournment over four months. will Mr. Botts hazard his reputation when the Republic was thus endangered, as shewn by the acts of all its civil organs, and the militia called out in mass, that Judge Hall, because he was a federal Judge, was exempted from military duty or Mr. Luueller, because he was a Legislator, and with my camp, was exempt from the call of the militia in mass—the State declared to be in danger, and iminant danger, surrounded as it was, with a formidable and well appointed army without; and British emisaries and spies within—all of which were to be watched within, and the British army to be met and beaten without the city. Will this Mr. Botts hazard his reputation by stating that under all these circumstances, that when Judge Hall deserted the city, and fled up the country on the first approach of the enemy, raising panic and alarm by his flight, that he could not have been pursued, taken, and arraigned before a court martial for desertion—should he have the hardihood to deny this, well may it be said that he is ignorant of law, and altho he attempts to be an expounder of martial law, when the state was endangered, and the safety of the republic became the supreme law, and when real necessity of the case silenced all other laws, well may he be believed when he say that he never read law except Blackstone commentaries. the display of his ignorance is well portrayed in abusing me, for exercising the powers that necessity had imposed for the security of the country, and defence of the City. Every candid jurist on martial law taking into view all the circumstances with which Louisia[na] was surrounded will justify the exercise of the powers I adopted, being the only mode by which the country, city, constitution, and laws could be preserved. If I had not adopted them and the city and state had been conquered, then Mr. Botts would have been the first to have pronounced, that I ought to have been hung on the first tree. To this I would have said amen.

Judge Hall having aquiesed in the laws of the Legislature, opened the prison doors, let go the prisoners without bail or mainprise, and adjour[n]ed his court over one Legal term, I ask could he legally open court before the time to which it was adjourned. I suppose no one so ignorant as to say he could. Will Mr. Botts explain why after his flight did he return

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to N. o. before the country was safe by the enemy leaving our cost, and the suspension of martial law. The inference—for mischief. nothing but lenity in the Commandg Genl. saved him on his return from being tried as a deserter, by court martial.

—Judge Hall—

1rst. He approved the declaration of marital law.

2nd. after imposed, applied thro the Martial Mr. Duplessis, Mayor and others, to be exempted from the rule in its detail, that ordered the lamps to be extinguished at 9 oclock, p.m, and all found in the streets to be arrested and carried to the Provo guard and detained for examination. On the second application, having refused on the first, I with great reluctance granted the indulgence and gave a written permit for the same, by which permit, that same night the judge passed my guards and fled to Baton Rudge, leaving the city as a pray to the invading enemy, whilst his presence and proper example might have excited the citizens to a heroic defence of the city. This flight of the judge, and violation of the confidence reposed in him had a deleterious effect, by inducing the people to believe that they were in the most eminent danger, or the judge would not have so dishonably fled from the city and its defence, which occasioned me great exertions to allay and dispel.

3rd. The judge after the battle of the 8th returned to Neworleans, was received with great coolness by all his republican friends and by the ladies in particular. This was a subject of great mortification to the judge, threw him into a state of intemperence, during which, Blanck, Luueller and associates took advantage, and induced the judge to become their instrument in carrying into effect their Wicked machinations against me and the safety of our country. about this period Luuelel, had published his foul and inflammatory address to the Citizens and soldiers, which occasioned the desertion of the soldiary from their posts, mutiny within my camp and a perfect state of disorganisation and insubordination within my camp. I issued an order for his arrest, he secreted himself, until he and Blank and their associates had made arrangements with judge Hall for a writ of habeas corpus intending

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thereby to bring in contac[t] the civil and military power. This consumateed, on sunday morning the 5th of march Mr. Luueller shew himself at the coffee Hous was arrested and carried to the provo guard. on his delivery, Col. Arbuckle commanding informed of his instructions to treat him kindly etc. etc.—when he replied, with his thanks, I will not be here an hour, why so asked the Col. he replied judge Hall has issued a habeas corpus for my liberation. The col, immediately wrote me a note informing me of this fact, and asking what should be his conduct if the writ was served upon him. I replied he was 0217 193 to hold the prisoner as long as he could wield a bayonet until he recd. my order for his liberation. This was one of the events that martial law was intended to prevent.

I forthwith sent Dr. Kerr hospital surgeon to see whether judge Hall had issued the writ; he returned and reported that he had. I immediately issued an order for his arrest, for aiding and abetting mutiny in my camp. This was on the 5th—he was immediately arrested, and shortly after his arrest, I was informed, that the judge had sent for the clerk, and altered the date of the writ of habeas corpus from the 5th to the 6th. this was thereafter to shew by record, that I had arrested him before he had interfered, judicially, with the police of my camp. On being thus informed I sent for the clerk to bring with him the record of the proceedings, with which he complied—on inspection of the record the altertation from the 5th to the 6th was evident, and being informed by the clerk that this alteration was made by the judge after he was arrested, I retained the original giving the clerk an attested copy, with my reasons for retaining the original. Believing that forgery was a crime punishable in Louisiana, as well as elsewhere I held this paper to sustain the supremacy of the law, against the judge. But I was mistaken, there was no law in Louisiana punishing any forgery, but that of a Bank bill.

4th. The judge was liberated and sent beyond my encampment not to return untill the enemy had left the coast or declaration of peace. Peace at length being declared the judge returned to the City, and notwithstanding he had adjourned the court over a regular term, assumed the power to call a special court for the trial of his own cause, and presiding himself. I refer you to the documents in the hands of Mr. Kendall, and to the letter of Col.

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Jos. Bradford a creole of Louisiana an intimate acquaintance of Mr. Conrads, of whom I request you to inquire of Col Bradfords character and standing as a Gentleman, who will be compelled from truth to give him a high character and from their intimacy and being schoolmates can prove the Cols. hand writing, and foreclose his denial on argument if the subject is again discussed in the senate—which I hope now may be the case, when the conduct of the judge as well as mine may be fairly laid before the people. There are hundreds of Louisianians that will confirm all the Col. Bradford has stated. With great respect your unalterable friend

Mr. Berrien, Byard etc. say cases of necessity may arise, that would make Marshall law excusable, but that such was not the case at Neworleans. Let us test the matter by facts, and law. I lay it down as maxim that has and will stand the test of investigation, that the safety of the state, or republic is the supreme law, and when its safety is endangered and it becomes necessary for its defence, that marshall law should be proclaimed, that it is just to impose it, and under another maxim, that when necessity speaks it silences all law, and becomes supreme. Let us test the threatned danger of Louisiana in Decbr 1814 and spring 1815, by facts. In Decbr. 1814, she was threa[tened] by invasion by a large and well appointed army of great Britain from without 0218 194 (whose avowed object was conquest, to add Louisiana to her Dominion, for which purpose, was brought with her army a full civil corps, Governor, judges, Collectors, and all other officers, necessary, to establish a civil Government, the moment they conquered the city—proof of this—this civil corps were all captured by Capt. Shields, as they were returning to the British fleet after the battle of the 8th of January.) and was threatened on her borders, by the Indians, and within by a rising of the negroes, instigated by British emisaries, abolitionist, spies and traitors. The Legislature of Louisiana being in session in December 1814, from the eminent danger with which the state was threatened, passed laws, laying an embargo to enable commodore Patterson to impress seamen to man the Gun Boats—laws shutting the courts for four months, and liberating all prisoners, and judge all [Hall] acquiesing in those laws, liberated all the prisoners, charged with piracy and other crimes against the

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united States without bail or mainprise, and ajourned over his court for one regular term, and the militia of Louisiana were called out in mass. This made every man capable of bearing arms a soldier—no exceptions, of judges, justices or Legislatures, but all were made soldiers and subject to martial law. The republic being in danger and its safety becoming the supreme law—the militia being called out in mass, necessity made all soldiers, and subject to martial law. Added to this the state had appointed its committees of safety, and of defence, and these all united on recommend'g the general to proclaim martial law. it was proclaimed, and from the facts stated and showing a real necessity, it silenced all other laws whilst it existed, and until the danger with which the state was surrounded ceased, when martial law ceased also, but not untill the republic safety was secured by the enemy leaving our shores, or a declaration of peace by the Government. But say these men the Genl. imprisoned Judge Hall. Judge Hall had become a soldier when the safety of the state was endangered, and the militia called out in mass to defend it, and was subject to military law and when, on the first demonstration of the enemy he deserted the city and fled up the country creating by his flight, panic in the city, I could have, justly, had him arrested and tried as a deserter. will any man of candour, who understands any thing about martial law deny this. The Republic being endangered, and its safety being the supreme law made all soldiers capable of bearing arms and all subject to martial law so long as it was in danger. But judge Hall is Eulogised by the Whiggs for his energy in imposing the fine—not a word said about his tyranny in sitting in his own cause, and violating the constitution by depriving me to be heard in my own defence. Taking a v[i]ew of the case in its true light, the command'g Genl. was not only excusable, but justifiable, and if he had not assumed the responsibility that he did, which saved the City he ought to have been hung on the first tree, if the City had been captured.

I would like to see the testimony on which this Kentuckian states the fact that I ordered the arrest of Judge Lewis and Dick. Judge Lewis was a soldier in Capt. Beals company of riffle men, and who from beginning of the siege to the peace, was on all occasions meeting, and ready to 0219 195 meet the foe, and defend the country, and if my recollection does

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not fail me Dick was one of Capt. Peter Ogden troop of Cavalry—it is not [to] be supposed that either would attempt to interfere or resist the order of their Genl. if they had I should certainly have treated them as Judge Hall, but neither Lewis or Dick was arrested nor did I ever hear before, that Either of them had interferred until after the order imposing martial Law was revoked, and Hall returned, when Dick and Hall commenced the prosecution against me—the Judge presiding on his own cause, imposing rules to appear and shew cause why an attachment should not issue—then refusing to hear the cause tendered under his own rule But condem his victim unheard. will this enlightened Kentuckian determine whether this is administering Justice agreable to the constitutional rights of every american citizen. I nearly note on the subject of Loueller arrest, that he secreted himself from the issuing of the order for his arrest, until he had made arrangements with judge Hall for the writ of habeas corpus , and when delivered to the Col. of the provo guard said, on being told that I had given directions for his good treatment replied, with thanks, that this was unnecessary as he would not be there but a short time, be[ing] asked why, he replied that judge Hall had issued a writ of habeas Corpus for him on which Col. Arbuckle wrote me [a] note and in my reply told him the prisoner was to be held as long as he could wield a bayonet until liberated by my orders—made inquiry into the matter, found Hall had so issued the writ and forthwith gave orders for the arrest of D. A. Hall and sent Capt. Butler (So. C.) with file of men for him and Dr. Wm Butler

3rd. It is positively false that judge Hall was confined until the militia was discharged—the moment the official account of the ratification of the treaty reached me, the order of martial law was revoked, and the militia discharged.

As to any publication made by judge Hall as alluded to by this Kentucky luminary I never have heard of before, nor do I believe that the judge ever made such a publication—certain I am I have never seen or hea[r]d of it before and this Kentuckian has made this publication for political purposes and to throw a dark shade over my fame whilst congress has the subject before them at the instance of several of the states, without any solicitation on my part—this eno[r]mous Kentuckian ought to have stated where judge

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Halls publication could be found, for it is positively untrue that ever the Judge made any application to me to join any corps—there were a veteran corp, or corps, of ancients enrolled for the protection of the city, under the command of my aid Capt. Thos. Le. Butler, in which judge Hall might have enrolled himself if he had wished it. But instead of this having applied for an exemption of the rule laid down in the details of the order promulgating marshall law, and obtaining it from me, the judge, violating the confidence I had reposed in him the same night, by it, passed my guards and fled to the upper country from whence he never returned until after the battle of the 8th. his flight induced many to believe that I could not defend the country and did injury, by creating great despondence in many, and occasioned many applications 0220 196 for permission to take their families up the country. When the judge returned, after the 8th, he was met by the Ladies and many of his old associates with great coolness, he being a batcheller, and having fled from their defence and leaving them as a pray to the brutality of an infuriated British soldiary on the event of the city being taken when his presence might have stimulated to energetic defence mortified him—threw him into a state of dissipation and in the arms of Blank Luueller and Co, and be[c]ame their tool, and induced to bring the civil and military power in colision and thereby if they could destroy my fame, by opening to the enemy a safe avenue to return, and if failed in this, to cry out military despot, tyrant and destroy me in that way—if this failed to mulck me in fines by a tyrant and unjust judge, sitting in his own cause, to hear no defence believing that the feelings of the Citizen soldiary of Louisia would resist this tyranny of an unjust Judge—could this clike accomplish this, then their ends would have been accomplished, and all laid to me, and the cry of tyranny and prostration of all civil power overthrown. But my influence prevailed and all the machinations of these traitors and conspirators were overthrown with all their secrete wire workers, among whom some of my officers of rank were secretelly combined.

It is true, that Judge Hall was not arrested until he gave evidence, of combination, with these conspirators who had excited mutiny in my camp, and combined with those who were also endeavouring to bring the civil and military into conflict, and as the judge had

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been present when the necessity of imposing military law was discussed, and the morning it was promulgated when he heard it read in my office with uplifted hands declared, "Now the country may be saved, without it, the country would be lost. But this Kentuckian says, judge Hall denied that he ever approved martial law. I say he did, and I call for the proof of his denial. I expect it has been fabricated in the fertile brains of this famed Kentuckian and expounder of martial law, who has no name, or if he has is ashamed of it.

This learned Kentuckian in martial , states that he had his information from Genl. Adair. I have great doubt of this, for I cannot believe that Genl. Adair could be guilty of making such a statement so entirely devoid of truth, and the whole statement as coming from Genl. Adair I pronounce positively false—false—false.

The moment I recd. the dispatch from the Government of peace I disannulled martial Law and on the day after, addressed the army and discharged the militia. I think this was on the 13th and 14th of March, but as I write from memory will not be certain. I obtained from the Bank & dollar;10,000 for their subsistence etc. and the whole Kentucky militia immediately left the city for their Homes. I never had an interview with Genl. Adair from the day the Troops were discharged in Neworleans until I left it and my belief is that he had left the City before the court had finally acted upon the subject which was on the 31rst of March 1815. The truth is from the commence[ment] of this persecution against me, he was the associate of those who were my enemies and who were engaged 0221 197 in my destruction, and it is unfounded, and wholly false that ever Genl. Adair had any conversation with me on the subject of the proceedings and I trust that Kentuckian without name and great expounder of martial law, will hereafter be more careful of his facts and when he expounds the law martial to give his name that he may be made answerable for his slanders to an insulted public. I again repeat that the whole matter detailed to have been received from Genl. Adair is positively false and I expect a fabrication by this Kentuckian without name. But I have no doubt he is a true hard cider, coon, Whigg. I add, was I to defend Neworleans again under similar circumstances, I would adopt the same means, which alone enabled me to defend it successfully. But he complains of

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the treatment of the French consul. 4 Will this well read jurist on martial Law, point to an instance of as much forbearance to a Foreign Consul as to permit him to remain within his camp when besieged by an enemy. the moment Neworleans became my camp and it besieged he ought to have left it, and if he did not it was my duty to have ordered him to leave it, but I indulged him until his conduct became so injurious and insulting that I ordered him away, but none of those brave men who had faced the foe and fought the battles of the lines were ordered away.

4 See vol. II., p. 146.

I think for the following reasons it will be proper to inclose a copy of the affidavit of Capt. Butler.

first, Lueller is shewn from the statement made to have been a member of the assembly

2nd. the affidavit goes to shew clearly the disposition of that assembly, to make terms with that enemy, which was treasonable in the highest degree.

3rd. Luelleir exciting mutiny, under such circumstances in my troops, and within my camp making the inflamatory Publication the safety of the country required his arrest and immediate confinement—his influence with the disafected french, was by this means alone to be counteracted.

4th. Doctor Kerrs certificate shews, that from the cowardice of the Governor no aid could be expected—he never had afforded any. Capt Beals letter shews the temper of his mind—that he was guilty of mutiny—or which was as criminal, he knew that it existed and did not make it known to the commanding Genl.

5th. Judge Hall allowing the writ and afterwards altering the record, or affidavit in the absence of the Deponant shews at least that he had committed a high misdemeanor, and

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he had combined not only to destroy the general commndg but the defence of the country by holding forth to them that he would support and protect them from military authority.

Ft. Bower surrendered the 11th of February 1815. February 13th, notice of peace militia discharged, on the 21st of March Judge Hall issued his rule to shew cause, on the 24, appeared in court, with the cause to be shewn against the issuing writ for contempt. the answer refused to be heard. The attachment issued and made returnable 31 of March on which I appeared, was asked if I was prepared to answer interrogatories. 0222 198 I answered I was not. Being deprived of my constitutional rights of being heard in my defence, I should answer no Inter.

The national Intelligencer.

Extracts from the letters of a "Kentuckian on Martial Law."

A friend has just enclosed me the national Intelligencer, containing a lengthy publication under the above caption. The statement in the above Publication so far as relates to me being a tissue of falsehoods and false colouring and least they might gain anything by [saying] that I [have] to request that you will in the N[ashville] union give place to the following statement. I am bound to notice them least my silence might be construed to admit the statement as true.

1st. It is positively untrue that I either thrust the Louisiana Legislature out or kept them out by an armed force—on the 28th of Decbr. 1814, when I was engaged with the enemy. Mr. A. L. Duncan one of my voluntary aids, in great haste when I was passing along the line to give orders the battle raging communicated to me, that the Legislature was about to surrender the city to the enemy and the Govr. waited my orders. I replied I could not believe it, but say to the Governor, to enquire if he finds it true to blow them up. The Governor shut them out, not me, my orders would have been and so I afterwards told the Governor, that I would have shut them in provided them all necessaries, and let the

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legislated at their leisure under the thunder of the British cannon whilst their patriotic Colleagues were nobly battling with the enemy

2nd. Luueller and Judge Hall were both arrested on the 5th—it was communicated to me by the marshall, on the 5th, that in order hereafter to shew that I had imprisoned the judge, before he had interfered with the police of my camp, that the judge had sent for the clerk and altered from the 5th to the 6th. on this information I sent for the Clerk Major Claibourn who produced to me on the evening of the 5th of march the record on which plainly appeared the alteration from the 5th to the 6th, and for the base purpose of shewing, when he indited or sued me for false imprisonment, that I had him arrested before he as a judge had interfered, with the police of my camp. Will this Kentuckian, this great Luminary of the law, say that this was not a forgery, and for the basest purpose.