

CHAPTER XXVI

ON TRIAL

I. ORANGES AND JAIL

WITH morning came new expedients. A writ of *habeas corpus* was sued out, whereby Burr was brought back into court to continue the everlasting discussions. John Randolph left the jury room again, this time to demand from Burr the letter addressed by Wilkinson to him, dated May 13th, the reference to which Wilkinson had eliminated from the cipher letter. Burr refused to deliver any communication which had been made to him confidentially, even from such a scoundrel as Wilkinson, and Randolph retired discomfited.¹ Later, when Wilkinson himself challenged its disclosure, Burr was to say that he had placed it out of his power to deliver. It must be admitted that it was probably more than motives of honor which animated Burr in his persistent refusal. Doubtless, the missing letter contained material which would have definitely proved his filibustering intentions against Mexico, and thus rendered him liable to conviction on the misdemeanor charge.

The same day the Jury brought in additional indictments against Jonathan Dayton, John Smith, Comfort Tyler and Davis Floyd. They were making a clean sweep.

The next day, Burr's counsel appeared with an eloquent request for the removal of their client from the sultry, unsanitary jail to more comfortable and commodious quarters. Marshall looked inquiringly at Hay, who remained silent. Thereupon he ordered Burr's removal to his former lodgings near the Capitol, provided that they were first made sufficiently strong for safekeeping. Pursuant to this order Burr was shifted to the front room of Luther Martin's house, the windows were barred, the door padlocked, and a guard of seven men placed in the adjoining house to keep constant watch on the distinguished prisoner.² But he remained in these quarters only two days, for the Government could not brook such unusual favors to the man whose life it was seeking. The Executive Council of Virginia came to the rescue with an offer of three large rooms on the third floor of its penitentiary for Federal prisoners, and promised uninterrupted access to his counsel. The

proposition was accepted, and Burr was to make this his home, his reception chamber, his library and study, until August 2nd, when the trial commenced, and he was once more returned to Luther Martin's house.

Though the penitentiary was a mile and a half out of Richmond, and inhabited with the usual quota of thieves, cutthroats, and incendiaries, Burr found his life there not unpleasant. The jailer was friendly and permitted him many liberties. Well-wishers sent him "messages, notes and inquiries, bringing oranges, lemons, pineapples, raspberries, apricots, cream, butter, ice, and some ordinary articles" along with them as they streamed out to the distant penitentiary.³ He wrote regularly to Theo, and all his letters are calm and reasoned, discussing the pending trial dispassionately and as an acute exercise in law, interspersed with flashes of wit and the comic incidents of jail existence. It was August, however, before his daughter could come to Richmond, and when she did, she took, as always, the hearts of susceptible males by storm. Especially did she make a conquest of the elderly and bibulous, but redoubtable, Luther Martin. Thereafter he was more firmly than ever devoted to the interests of his client.

While Theo was fluttering male hearts in Richmond, her father, even when in jail, was making similar inroads upon feminine dispositions. While "it has almost been considered as culpable to evince towards him [Burr] the least sympathy or support; and many a hollow-hearted caitiff have I seen, who basked in the sunshine of his bounty, when in power, who now skulked from his side, and even mingled among the most clamorous of his enemies," there was "not a lady, I believe, in Richmond, whatever may be her husband's sentiments on the subject, who would not rejoice on seeing Col. Burr at liberty."⁴ The remarkable fascination of the man was timeless.

For five weeks Burr remained in the penitentiary, awaiting the opening of the new term for his trial. Five weeks, during which period the American frigate *Chesapeake* was fired on by the British warship *Leopard* in American territorial waters, an outrage to be swallowed supinely by Jefferson while he strained every nerve to force a conviction of Aaron Burr.

Meanwhile, Blennerhassett had left the Mississippi Territory in June to return to his Island and ascertain the condition of his property. After a long and arduous journey, beset with anxieties and knowing that his future was dark and uncertain, he came to Nashville on June 29th, there to hear of the proceedings against Burr. "I think," he wrote his wife bitterly, "if I should be prose-

cuted with the virulence that has marked the proceedings against Burr, my acquittal, by the trouble and expense that would be incurred to obtain it, would be worth little more than a condemnation. One thing is certain, I shall take nothing from you to fee lawyers."⁵

At Lexington, he found trouble waiting for him in the guise of a sheriff's attachment for some unpaid bills of Burr which he had indorsed. There was some ten thousand dollars' worth of these, though Burr, as far back as May, had been negotiating for their settlement. Alston had paid some of the many notes outstanding, but, with the collapse of the venture, they were coming due at a rate which his depleted resources were unable to meet.

While Henry Clay was attempting to extricate Blennerhassett from his financial difficulties by arranging an assignment of Alston's guaranties to his creditors, news came of his indictment for treason, and hard on its heels, one David Meade to arrest and convey him to Richmond for trial.⁶ Downcast, bitter, seeing the entire world through jaundiced eyes, all his dreams shattered, the poor Irish gentleman was taken away to battle for his life. His beloved Island had been sold to satisfy a modicum of his debts, Alston was pleading poverty on *his* obligations, and he was beginning to blame Burr as the author of all his misfortunes. Yet, when Blennerhassett arrived in Richmond, and refused point-blank to hire any lawyers in his behalf, Burr arranged with his own counsel — Wickham, Botts and Randolph — to represent him, and engaged himself and Alston to pay for their services at such later date as would be possible.⁷

2. ARREST OF TESTIMONY

On August 3rd, to the accompaniment of tremendous national excitement and a courtroom crowded to the very bursting, John Marshall, Chief Justice of the United States, opened the trial of the People of the United States against Aaron Burr, on a charge of treason. Once more Cyrus Griffin sat at his side, voiceless, mute. Joseph Alston of South Carolina, Burr's son-in-law, made public display of his reconciliation — after that unfortunate letter of hasty disavowal — by entering the court arm in arm with the accused. For the duration of the trial, Burr had been brought back to Martin's house for safekeeping, as nearer to the Hall of Burgesses in which the proceedings were being held.

But it took exactly a week, after the fanfare of opening, for the trial actually to get under way. A hundred Government witnesses

wandered around town, eating and sleeping well at Government expense, while the prosecution lawyers scurried madly about, interviewing, consulting, keeping in constant touch with Jefferson, getting their case prepared. Burr had no such difficulties. His witnesses were few; they had come to Richmond at their own expense, and the event showed that they might just as well have stayed at home. But the law of the matter was dug into with exceeding thoroughness; law books were studied and precedents searched. And Blennerhassett — in jail, and seemingly the forgotten man — was being told by a kind friend "that Col. Burr and myself could not be too much on our guard, for he was persuaded that every Democrat, to a man, now in this town, was thirsting for our blood."⁸

But Blennerhassett was more occupied with his troubled finances and bitter rage against Alston for not living up to his endorsements than with worrying about life and limb and the looming gallows. He displays a trenchant pen in the *Journal* which he kept while cooling his heels in jail. "The once redoubted Eaton," he writes, "has dwindled down in the eyes of this sarcastic town, into a ridiculous mountebank, strutting about the streets, under a tremendous hat, with a Turkish sash over colored clothes, when he is not tipling in the taverns, where he offers up with his libations the bitter effusions of his sorrows, in audibly bewailing to the sympathies of the bystanders."⁹ Eaton, Wilkinson, Dunbaugh, Allbright — the more Richmond saw of these witnesses who had been brought by a paternal Government from the ends of its domains to testify against Burr — the more it wondered whether it might not be possible, after all, that Burr's constant cry of persecution and hounding had considerable truth in it.

George Hay was at last ready to proceed on August 10th and the examination of prospective jurors commenced. But as man after man was called, and examined, it was found with monotonous regularity that one and all were strongly convinced of Burr's guilt. They had formed their rooted opinions, they said, from the newspapers, from the President's Proclamation, from the depositions of Wilkinson and Eaton which had been printed and reprinted and strewn broadcast until not a child but knew them *verbatim*. It was impossible to obtain a jury of twelve without fixed prepossessions. The tremendous outpouring of prejudicial propaganda had seen to that. Of the jurors finally chosen, only *two* had not at some time or other expressed an opinion unfavorable to Burr.

Nevertheless, four were chosen the first day — as men who might change their beliefs after hearing the testimony — and nine were

suspended for further consideration. When these came up for examination the following day, an extended argument took place concerning the general principles involved in rejecting prospective jurors because of avowed opinions. Marshall, in a masterful decision, enunciated the doctrine that any *deliberate* opinion was sufficient to disqualify from jury duty; that only such light impressions which might fairly be supposed to yield to the evidence would not be sufficient ground for rejection. With these criteria to guide the inquisition, all of the suspended jurors were rejected for cause.

Hay was in a rage. He moved sarcastically for a new panel — of 150, of 500 talesmen even — and talked of the expense. Burr was immediately on his feet to object to the insinuation that a jury could not be drawn under the Chief Justice's ruling, *provided* — and now it was he who was doing the insinuating — the marshal was really disposed to seek proper jurymen. Wickham chimed in with the remark that the first panel of 48 had contained “too many members of assembly and candidates for public favour and office.”¹⁰ The Court disregarded Hay's fantastic figures, and called for a new venire of 48 talesmen.

It was August 15th before this additional panel appeared for examination. In the meantime, Hay had written complainingly to Jefferson that “the bias of Judge Marshall is as obvious as if it was stamped on his forehead. I may do him injustice, but I do not believe that I am, when I say that he is endeavoring to work himself up to a state of firmness which will enable [him] to aid Burr throughout the trial without appearing to be conscious of doing wrong.”¹¹

Burr now did a brave thing. He could have forced the prosecution to the calling of panel after panel, and dragged out the proceedings to interminable lengths. Instead, he cut the Gordian knot by suggesting that if he were permitted to pick eight men out of the existing panel, he would permit them to be sworn in, regardless of their opinions as to himself. Hay was suspicious of this unusual proposition at first, but ultimately could see no ground for disapproval. Burr took his men practically at random, and expressed his satisfaction even with those who had already proclaimed opinions adverse to himself. He even permitted one Miles Bott to remain in the jury box, though he had boasted that his mind was completely made up, and it had been proved that he had publicly said that “colonel Burr ought to be hanged.”¹² By this time, Burr was convinced that if the case were permitted to go

to the jury, *any* jury would convict him. He must win, if at all, on matters of law.

Two days later, the completed jury filed into the jury box, the lawyers clustered like a swarm of bees at the counsel tables, every available inch of space was taken, and George Hay rose to make his opening address. He intended to prove, he told the straining audience, that Aaron Burr, on December 10th, 1806, at Blennerhassett's Island, had congregated with persons, to the number of 30 and upward, with arms in their hands, for the purpose of levying war against the United States. He would further prove, he continued impressively, that with the persons aforesaid, Burr did, on December 11, 1806, descend the Ohio and the Mississippi with force and arms to take possession of New Orleans.¹³

General William Eaton — of the colored clothes and flaming sash — was called as the first witness. He had hardly taken his seat in the witness chair before Burr began his objections. The Court had, he argued, already determined the proper course of procedure. *First* the *overt act* must be proved; *then and then only*, could corroborative evidence, such as Eaton's, be introduced into court. At once the big guns on both sides were unlimbered. William Wirt claimed that it was the prosecutor's privilege to introduce his evidence in any way he saw fit; that in this instance it was his intention to trace the chronological continuity of the treason from its birth to completion. Martin took up the cudgels for the defense, and the remainder of the day was spent in resounding oratory, a wealth of citations, both English and American, and considerable ingenuity of argument.

Marshall retired to his chamber that night to write his opinion, which he delivered on the 18th. The crime of treason, he read, consisted of both the fact and the intention; both must be proved. The Court would not interfere with the prosecution if it saw fit to introduce first its evidence of the intention, but, he added significantly, *it must be relevant to the crime charged*, and not merely corroborative of a general course outside the actual crime.¹⁴ On the face of it, the decision was a victory for the Government; actually, it was to play its part in saving Burr's life.

Whereupon the impatient Eaton was returned to the stand, to admit at once that “concerning any overt act, which goes to prove Aaron Burr guilty of treason I know nothing,” but that of Burr's treasonable intentions he knew much. His testimony, thereafter rendered with many protestations, followed the familiar pattern of his deposition, with all the fantasy and embroidery intact, and

has already been considered in detail. Because of Marshall's ruling, however, the juicy bits about assassination were omitted.

There was little cross-examination, though the important point was elucidated that on or about March 1st the Government had paid him the sum of \$10,000 on his long-unheeded claim.¹⁵ When he left the stand, he had strutted and pirouetted, but had only succeeded in amusing the spectators. His concoction no longer excited belief as in former days.¹⁶

Thomas Truxton was the next witness for the prosecution. Hay could extract but cold comfort from *his* testimony. This, too, has already been described. It was a plain, unadorned account of conversations with Burr and propositions which held nothing of treason and much of Mexican conquest, if and when the United States decided to declare war. On cross-examination he testified that "we [Burr and he] were very intimate. There seemed no reserve on your [Burr's] part. I never heard you speak of a division of the Union."

McRae: "Did he wish to fill your mind with resentment against the government?"

Truxton: "I was pretty full of it myself, and he joined me in opinion."¹⁷

Before the day's session ended, Peter Taylor, the gardener, had once more recited his story of the warning message to Burr, of Blennerhassett's wild talk, of the men on the Island; that some of them had guns, whether rifles or muskets he did not know, and that they had powder and lead. But Burr, he admitted, was not present on the Island during the assemblage of the men and the ensuing flight.

The defense had reason to be satisfied with the first day's proceedings. Aside from Eaton's pretty well discredited testimony, nothing had been harmful, and much had been favorable.

Nor was Burr uncomfortable in his new quarters. In fact, Blennerhassett, not as well situated, was bursting with envy. He noted in his Journal, "Jourdan tells me, Burr lives in great style, and sees much company within his gratings, where it is as difficult to get an audience as if he really were an Emperor." Solitary, broken in fortunes and in health, the Irishman added bitterly of his erstwhile confederate that "the vivacity of his wit, and the exercise of his proper talents, now constantly solicited here in private and public exhibition, while they display his powers and address at the levee and the bar, must engross more of his time than he can spare for the demands of other gratifications."¹⁸ Blennerhasset could never understand this buoyancy and childlike optimism which animated Burr in the darkest hours, when he should have been sub-

missively crushed under the weight of his misfortunes, and attributed it wrongly to an insensitivity of spirit and an indifference to his, Blennerhassett's, personal difficulties.

In accordance with Jefferson's scheme of blank pardons and other more devious methods of obtaining essential evidence against Burr, Colonel De Pestre, Burr's Chief of Staff, was approached with an offer to provide for him handsomely in the American Army, "if his principles or engagements were not adverse to the administration. The Col. replied, that he understood the hint, but it neither suited his honor nor character to serve in such employment."¹⁹ Baffled, the secret agents turned their attention to Blennerhassett. Editor Duane, of the *Aurora*, visited him in his cell, and under the guise of a pretended friendship, warned him that Burr was intending to make him the scapegoat, but that he could save himself, if only he would confess in writing to the entire plot.²⁰ Evidently Blennerhassett could not or would not deliver the requisite information, for the matter was quietly dropped.

On the following day, August 19th, the trial was resumed with the appearance of the Morgans on the stand, who repeated their tale of innuendoes and *manner* of speech rather than of actual words. They were followed by Jacob Allbright, the Dutch hired hand, who stumbingly went through his story of seven — or was it eight? — muskets that were leveled at General Tupper. And all the while, the protagonist of his story sat listening attentively, yet not once did Hay dream of calling *him* to the witness chair to confirm this remarkably pat evidence that a war had been declared and levied against the United States on that night of December 10th.

Then the witnesses came in quick succession, most of them contributing but little of value to the proceedings. William Love, Blennerhassett's personal servant; Dudley Woodbridge, the contractor for the expedition, and Blennerhassett's former partner. From what that worthy had told him, he testified, he had inferred "that his object was Mexico." He also enlivened the day by declaring that "it was mentioned among the people in the country, that he [Blennerhassett] had every kind of sense but common sense."²¹ A statement for which he was later to apologize to the indignant Irishman, as well as for other derogatory references.

On the 20th, Simeon Poole testified that he had been sent by the Governor of Ohio to arrest Blennerhassett, and, hiding himself on the opposite shore that night of December 10th, had seen men moving about a fire, that there were men stationed on the island shore who "appeared to have guns, and looked like sentinels."

After several other witnesses had described the doings on the

Island, Burr arose to object to further *collateral* testimony of this kind. All the witnesses had testified, and the prosecution had admitted, that on the night of December 10th, he, Burr, had been far away from the place where, it was maintained, acts of war were occurring. In fact, he had then been in Kentucky, a good many miles away. Marshall turned to Hay and inquired if he had any other witnesses to the *overt act*. Hay admitted he had not; that as to this phase of the counts against Burr all the evidence was in.

Whereupon the defense formally moved for an arrest of all further testimony. This was the supreme effort, the move toward which all their strategy had been directed. John Wickham had been chosen to make the opening address in support of the motion.

For two whole days he hammered home his argument, while judges and lawyers and laymen listened agape. Such a wealth of closely reasoned logic, of brilliant phraseology, of learned citations and happy wit, of marshaled facts and masterful weaving into an ordered fabric, had never been heard in an American court before, and perhaps not since. Tazewell, a member of the Grand Jury which had indicted Burr, and himself a lawyer of note, declared that it was "the greatest forensic effort of the American bar."²²

Wickham took the position that no person could be convicted of treason in levying war who was not personally present at the commission of the act charged. There was, he admitted, an ancient English doctrine of *constructive* treason, whereby the overt act of associates could be imputed to another, no matter how far distant from the scene; but in a magnificent argument he shredded that doctrine into little pieces, citing and subjecting to a merciless analysis every case that had ever been reported on the subject, pointing out with irrefutable logic the obvious errors piled on errors in the reasoning of the judges, the misconceptions of legal elementals, the barbarous prejudices and the injustices committed in its name. That doctrine, he declared, had been based on artificial constructions and to bolster an artificial tyranny. The Constitution of the United States, being a new and original compact, should be judged *per se*, and for the plain intent of the words employed. There was no common law of the United States, derived from England, he argued forcibly; only the common law of the several states that made up the Union. The Constitution *created* the offense of treason, and by the exact wording of the appropriate sections must they be bound. Nothing was contained in those plain and emphatic words about the overt acts of *others*; only of the overt acts of the *accused*.

And, Wickham continued, even if he were wrong on his first

point, the indictment had been drawn in defective fashion. It had charged Burr with the overt act itself, instead of naming an act committed by others, with Burr aiding and abetting, as the testimony had been intended to prove, and that therefore the indictment must be dismissed. For a third point: as an accessory, Burr could not be convicted of treason until the principals had been found guilty, and that therefore the entire proceeding was premature. For a fourth point: that the *facts* disclosed no such criminal assemblage on the Island as charged. It was lawful for guns to be carried in the Western country; they were part of the indispensable equipment of every man. There was no evidence anywhere of a military plot of any kind.

Marshall, following him closely, interrupted to inquire whether there were any reported cases in which it was shown that the presiding judge had the right to decide whether or not the evidence submitted to the jury was or was not proof of an overt act. Wickham contended that such a right was inherent, that the jury might find the *truth* of the facts, but the judge must decide as a matter of law whether such facts so found, constituted in law an overt act. Which was sound doctrine, and universally followed today.

He proceeded with his argument. Force was necessary to accompany any levying of war. Only Allbright had in anywise testified to forcible resistance to General Tupper. Even if his evidence were true, it was not enough. The Constitution called for *two* witnesses to the overt act. And why, he demanded pertinently, had Tupper himself not been called? Furthermore, there was no evidence that Tupper had acted on a warrant or authority; that none could be presumed from his office, as he was from Ohio, and the Island was in Virginia; and that, in any event, resistance to process is a crime, but not the crime of treason.

When he finally sat down, he had covered every possible point, exhausted every possible precedent, and had established himself as one of the great lawyers of the age. His argument had taken two days, and filled some 65 pages of the printed Reports.

The prosecution was in a panic. Evidently they had expected nothing like this motion in arrest of further testimony, or such a magnificent effort as that of Wickham. Hay asked for leave to submit further evidence to prove the act, thereby admitting that his case was weak and required bolstering. But his additional witnesses proved of little help. Israel Miller, a member of Tyler's party, testified to the presence of 32 men, of the existence of about 5 rifles, 3 or 4 pair of pistols; and that on the Island itself there had been 1 blunderbuss, 2 pairs of pistols, and 1 fuscue. Nothing else.

Purley Howe swore that he had called to deliver 40 boat poles, that a boat with two men carrying rifles had ferried over to the Ohio shore for them, and that they had refused to permit his companion to accompany them back to the Island in their boat.²³ This was all that the desperate Hay could supply to make up deficiencies in evidence.

When once more the prosecution rested, Edmund Randolph arose for the defense to continue the thread of Wickham's argument. But his efforts added little to the rich, lustrous weave of his predecessor. On August 21st he had closed. The prosecution lawyers huddled in indecision; then Hay asked for a lengthy adjournment to "enable them to answer the elaborate arguments of the counsel for the accused; which having occupied two whole days in the delivery must have been prepared with infinite labour and industry." The defense objected to a lengthy postponement, arguing rightly "that the counsel for the United States ought to have come prepared to prosecute and to understand and repel every argument and every defense of which the cause was susceptible."²⁴ Hay and his associates, with months of preparation, with the resources of the Government in back of them, were still not adequately armed at all points. Yet Marshall, with an eye to public opinion and the open whispers about his probity, granted an adjournment until August 24th.

When Court opened again, it was discovered that McRae had been chosen to lead the forces of rebuttal. He argued that the Constitutional provisions concerning treason were not new or novel, but were identical in every word with the English Statute governing the same offense; hence English decisions and English precedents must control in the interpretation of the law. And, cried he, in England those words have been held sufficient to convict traitors even though they personally were far away from the scene of the overt act. Burr, he thundered, was a *principal*, not an accessory; hence Burr was *legally* present at Blennerhassett Island the night of December 10th, though perhaps not in corporeal body.

William Wirt took up the argument on August 25th. He was a brilliant orator, of the florid, imaginative school. Yet he started prosaically enough with the evocation of Marshall's own words in the prior case of Bollman and Swartwout, words which had been tossed off redundantly without adequate consideration, and which, like Banquo's ghost, rose ever to plague him anew. Relentlessly he hammered them home — "If a body of men be assembled, for the purpose of effecting by force a treasonable purpose, all those who perform any part, however minute, or however remote

from the scene of action . . . are to be considered as traitors" — while Marshall twisted uncomfortably in his seat.

Turning to look squarely at the composed prisoner, Wirt insisted that Burr was the principal in the atrocious crime, not a mere underling, and that in any event the distinction between principal and accessory was not recognized by the Constitution and the Statutes of the United States; *that* distinction, he said scornfully, is recognized only by the English common law, which the defense had attempted with much labor to prove inapplicable. But dry law and cogent reasoning were too much for Wirt's particular talents. He swung gratefully into that passionate apostrophe to Harman Blennerhassett, the dupe, the innocent victim of Burr's machinations, that "man of letters, who fled from the storms of his own country to find quiet in ours," that man who had "carried with him taste and science and wealth; and lo, the desert smiled!" that man who "on a beautiful island in the Ohio" reared "a palace and decorates it with every romantic embellishment of fancy," the wife of whose bosom was "lovely even beyond her sex"; and then, he shouted dramatically, as he rose on the viewless wings of fancy, "in the midst of all this peace, this innocent simplicity, and this tranquillity, this feast of the mind, this pure banquet of the heart, the destroyer comes; he comes to change this paradise into a hell." Is this poor gentleman the principal and is Burr then the accessory?²⁵ Exhausted with this lovely word-painting he had evoked — a painting that was to fix the picture of the serpentine Burr in the minds of generations to come — Wirt ended prosaically enough with an etymological dissection of the word *levy*, and sat down — having taken the better part of two days and 67 pages in the Reports for his effort. It represented the best speech on the part of the prosecution, though on a considerably lower level than the cool, logical reasoning of Wickham for the defense.

Benjamin Botts next arose, to take up cudgels once more for Burr. Wirt's flowery designs had made a deep impression upon the spectators and jury, if not on the judges themselves. Whereupon Botts opened with mock apologetics. "I cannot promise you, sir, a speech manufactured out of tropes and figures," and proceeded then with sharp satire to ridicule and bring to naught the florid rhetoric of his opponent. While Wirt, he smiled, sports with sleeping Venuses with voluptuous limbs and wanton nakedness, "I am compelled to plod heavily and meekly through the dull doctrines of Hale and Foster." Every one rocked with laughter, and the spell was broken. That much accomplished, he turned to the discussion

of a point heretofore overlooked. The prosecution itself had admitted that all those on the Island, with the possible exceptions of Blennerhassett and Tyler, had been ignorant of Burr's purposes, not knowing them to be treasonable. How then, he demanded, was it a treasonable assemblage, where those involved meditated no war on the United States, would have shrunk in horror from the very thought of it? Taylor's testimony was next taken up and demolished with nimble satire until nothing was left of that worthy's bellicose descriptions. Then he turned his attention to the President himself, and paid his respects in no uncertain language. The whole prosecution, he charged, was but an attempt to bolster the waning prestige of an Administration beyond contempt; he traced in damning detail the devices, the fraud, the chicanery employed to place Burr high on the gallows, the clever manipulation of public sentiment to that end. The courtroom was a sounding-board to reach the ears and minds of the nation.

Hay rose in rebuttal, and took nearly two days for his speech. He had been ill, and perhaps that accounts for the listlessness of his argument. But he was not above making thinly veiled threats against Marshall. He adverted to the case of Fries before Justice Chase, "for his conduct in which," he was speaking directly now to Marshall, "with other causes, he was afterwards impeached." Yes, he continued — and there was no doubt in the minds of the crowded courtroom as to his meaning — "the censure which the judge drew on himself was not on account of his opinions, however incorrect they might be, but for his arbitrary and irregular conduct at the trial; which was one of the principal causes for which he was afterwards impeached. He attempted to wrest the decision from the jury, and prejudice the case before hearing all the evidence in it; the identical thing," he exclaimed, "which this court is now called upon by these gentlemen themselves to do."²⁶

Marshall overlooked the open threat, but not so Charles Lee, next counsel to be heard. He pounced upon it with glee, shook it like a rag, held it up for the inspection of all and sundry, thereby forcing Hay to a faint denial that such had been his meaning, and a mild acceptance of his disclaimer by Marshall himself.

On August 28th, Luther Martin, the heavy artillery of the defense, went into action to end the interminable argument on the motion. It was the longest, as well as the most impassioned thundering of the entire proceedings. It also took two days and 118 pages of reported text. The fires of constant potations burned in his veins and exalted his rhetoric and tremendous invective. He

attacked the reasoning of Marshall himself in the Bollman and Swartwout case, he attacked the Government and Jefferson with better words, he called on Marshall to tread the path of righteousness and undeviating justice amid the bloodthirsty clamor of prosecution and populace alike, and he spoke in idolatrous accents of Theodosia, the lovely daughter of his client. After him, as an anti-climax, Edmund Randolph said a few words. It was the afternoon of August 29th when the historic debate, one of the longest and most brilliant in history, came to a close. The issue rested now in the hands of the judges.

After two days of consideration, Chief Justice Marshall read his decision on the motion of the defense to arrest further testimony. It took three hours to read, and represents his longest reported opinion. First he paid his respects to the assemblage of counsel. Said he, "A degree of eloquence seldom displayed on any occasion has embellished a solidity of argument and a depth of research by which the court has been greatly aided in forming the opinion it is about to deliver."²⁷ In fact, to a large extent he followed almost verbatim the citations, the logic and the reasoning of the defense, especially that of John Wickham in his notable address.

It would not profit to attempt a thorough analysis of his decision, which is a landmark in American jurisprudence, and settled definitively for all time that the pernicious doctrine of constructive treason held no place in American law and *mores*. But the pertinent parts of his decision are as follows. "The present indictment charges the prisoner with levying war against the United States," he declared, "and alleges an overt act of levying war. That overt act must be proved, according to the mandates of the constitution and of the act of congress, by two witnesses. It is not proved by a single witness." At one swift stroke he had struck the prosecution down in its tracks. "The presence of the accused," he resumed, "has been stated to be an essential component part of the overt act in this indictment, unless the common law principle respecting accessories should render it unnecessary; and there is not only no witness who has proved his actual or legal presence, but the fact of his absence is not controverted. The counsel for the prosecution offer to give in evidence subsequent transactions at a different place and in a different state, in order to prove — what? the overt act laid in the indictment? that the prisoner was one of those who assembled at Blennerhassett's [*sic*] island? No: that is not alleged. It is well known that such testimony is not competent to establish such a fact. The constitution and law require that the

fact should be established by two witnesses; not by the establishment of other facts from which the jury might reason to this fact. The testimony then is not relevant." Hence, he ended impressively, the jury, having heard the opinion of the Court on the *law*, "will apply that law to the facts, and will find a verdict of guilty or not guilty as their own consciences may direct."²⁸

The defense was jubilant, the prosecution downcast and sullen. Hay asked for an adjournment to September 1st to consider his course under the Court's opinion. It was granted. On the adjourned day, he shrugged his shoulders. He had nothing further to offer. Whereupon the jury retired to consider its verdict, and returned shortly. "We of the jury say that Aaron Burr is not proved to be guilty under this indictment by any evidence submitted to us. We therefore find him not guilty."²⁹

Instantly the entire battery of defense lawyers were on their feet, protesting against the form of the verdict as unusual, informal and irregular. Burr demanded that the Court either send the jury back with instructions to alter it to the proper form, or make the correction itself. Colonel Carrington, foreman of the jury, interposed that it was intended as a verdict of acquittal, but that if it were informal, the jury had agreed to alter it. He was immediately contradicted by Mr. Parker, another jurymen, who vehemently declared he would not consent to any alteration of the verdict. Marshall ruled the verdict in effect to be a verdict of acquittal, and directed an entry on the record of "not guilty."³⁰

The trial of treason was over, and Burr had once more repelled the malignancy of fate and the Administration. The one flaw in the ointment was the illegal verdict — an attempt by Parker, a Jeffersonian partisan, to leave the poison of doubt still in the minds of the people. Though the defense was right, and the verdict should have been corrected, Marshall preferred to arouse no further violent debates and cries of favoritism. It was let stand.

3. THE MISDEMEANOR IS TRIED

With the principal discharged, the underlings were swiftly disposed of. A *nolle prosequi* was entered on the treason charge against Dayton. But Hay had not exhausted the arsenal of his weapons. Immediately following the verdict he had written to Jefferson that "Wirt, who has hitherto advocated the *integrity* of the chief-justice, now abandons him. This last opinion has opened his eyes, and he speaks in the strongest terms of reprobation."³¹

"The event has been (what was evidently intended from the be-

ginning of the trial) . . ." raged Jefferson in return, "not only to clear Burr, but to prevent the evidence from ever going before the world. But this latter case must not take place. It is now, therefore, more than ever indispensable, that not a single witness be paid or permitted to depart until his testimony has been committed to writing, either as delivered in court, or as taken by yourself in the presence of any of Burr's counsel, who may choose to attend to cross-examine. These whole proceedings will be laid before Congress, that they may decide whether the defect has been in the evidence of guilt, or in the law, or in the application of the law, and that they may provide the proper remedy for the past and the future." Burr and Marshall alike were to feel the full impact of his wrath. "The criminal is preserved," he exclaimed, "to become the rallying point of all the disaffected and the worthless of the United States, and to be the pivot on which all the intrigues and the conspiracies which foreign governments may wish to disturb us with, are to turn. If he is convicted of the misdemeanor, the Judge must in decency give us a respite by some short confinement of him; but we must expect it to be very short."³²

Obediently Hay moved, on September 2nd, to commit Burr on a new treason charge, this time predicated on a continuing overt act, starting at the mouth of the Cumberland and extending all the way down the rivers to Bayou Pierre, and that he be forwarded to the appropriate district for trial. In another jurisdiction, he thought, the Federal judges might be more pliant to the avowed will of the Administration. But the defense smelled the rat, and so did Marshall. It was necessary, they argued, and he ruled, that the misdemeanor indictment be first disposed of at Richmond. On September 3rd, after a heated discussion, Burr was admitted to bail in the sum of \$5,000, which Dayton and William Langbourne promptly furnished, and the prisoner once more walked the streets of Richmond, a free man.

Burr, turning on his enemies, counterattacked with a demand for the production of a subpoenaed letter from Wilkinson to Jefferson, dated November 12, 1806. Hay declared he was willing to place it in the hands of the court for inspection, but that it must not be made a matter of public record. Burr insisted, whereupon Hay declared dramatically he would rather rot in jail than be recalcitrant to his trust. Marshall ruled gravely that Burr might see the letter, but he would later decide whether it should be entered into the record, either in whole or in part. The battle was in progress all over again.

But it was in the nature of an anti-climax. The misdemeanor

charge was comparatively unimportant, and it was recognized on all sides that it was merely Jefferson's peculiar method of making a record for the benefit of Congress. Burr was legally still the defendant; actually Chief Justice Marshall was now, from the point of view of the Administration, the prisoner at the bar; and all efforts were to be directed to prove his bias so conclusively that Congress must necessarily impeach and remove him from the path of Republican principles.

Blennerhassett, freed on a *nolle prosequi* on the treason count, and admitted to bail on the lesser charge, visited Burr. He was bitter against him and Alston, though he was compelled to admit that Alston had taken over some of his notes, had paid others, and had never failed to acknowledge his indebtedness. All his comments during this period are colored by his spleen and resentment, which was only human. His Island, his personal property, had all been sold to cover his notes; his family was far away to the south struggling in the grip of poverty; he was a ruined man. He could not understand how Burr, against whom civil suits had already been commenced on his financial obligations, and equally a ruined man, could be "as gay as usual, and as busy in speculations on reorganizing his projects for action as if he had never suffered the least interruption. He [Burr] observed to Major Smith and me, that in six months our schemes could be all remounted; that we could now new-model them in a better mould than formerly, having a clearer view of the ground, and a more perfect knowledge of our men."

Misfortune could not defeat Burr as it had Blennerhassett. The latter was amazed, and somewhat contemptuous of his former idol. Instead of formulating vain, impossible schemes, Burr, he insisted, should devote all his energies to the "destruction of those enemies who have so long and so cruelly wreaked their malicious vengeance upon him."³³ But Burr was incapable of striking back at his persecutors with the weapons they had employed against him. In all his long life there is no instance of a vengeful disposition on his part.

The second trial opened on September 9, 1807. The count was the preparation of a military expedition against Spain on United States soil. It was as short and speedy as the first had been long-drawn-out. Almost identic evidence was offered as to acts and declarations in Wood County; then, following a familiar path, Hay proffered evidence as to acts committed outside the jurisdiction of Virginia. On swift objection, Marshall rejected such testimony, and gave further opinion that the declarations of a third party, or

acts of accomplices, not in the presence of the accused, were inadmissible.

On September 15th, Hay, finding once more that most of his testimony was under legal prohibition, moved to discharge the jury, but Burr insisted on a verdict. Accordingly, the jury went through the necessary motions and brought in a straight verdict of "not guilty."

4. FURTHER COMMITMENT

Hay was not through. He now opened his strategy — as directed by Jefferson — to compel the judicial recording of *all* the evidence in the case. He moved to commit Burr on the new charge of treason, which would bring with it trial in Ohio, Kentucky or Mississippi, or all of them. Once again Marshall sat as a committing magistrate, without benefit of jury, while Hay placed all the witnesses hitherto debarred upon the stand to give their testimony, as well for Congress and the listening public as for the benefit of the Court. To the great disgust of the defense, Marshall permitted the widest latitude before himself in the introduction of this testimony. Evidently he had an eye open for the political effect, and was doubly cautious to avoid even the appearance of shutting off the Government case. He had no stomach for impeachment possibilities; during the trial of Judge Chase he had shown himself rather a badly frightened man than a fearless exponent of what he conceived to be judicial sanctity.

The witnesses were numerous, and the testimony interminable. Only the most important of these will be considered here. Jacob Dunbaugh, for example, the sergeant from Fort Massac, who had been posted as a deserter by Captain Bissell when he had failed to return to the fort at the expiration of his furlough. Wilkinson had found him apt material for his purposes, inasmuch as he could have imposed a rigorous sentence upon him for his offense. He was accordingly prodded into a long, complicated story. Burr had asked him to persuade ten or twelve of the garrison at Fort Massac to desert and accompany him; he had tried to get him to steal arms and munitions from the fort. Dunbaugh even implicated his superior officer, Bissell, as an accessory to Burr's plot. But most important of all, from the point of view of the prosecution, was his testimony of what took place at Cole's Creek. When the militia, he averred, were about to seize the expedition, Burr and Willie, his secretary, secretly chopped with axes in Burr's private room on the boat, while Dunbaugh, in hiding, watched the weird pro-

ceedings. He saw, he swore, two bundles of arms lowered through the holes they had made in the gunwales, and deposited with a great splash into the muddy waters of the Mississippi. He had also seen, he testified veraciously, over forty stands of arms, pistols, blunderbusses, swords, tomahawks, bayonets and fuseses in great profusion.³⁴

But on cross-examination his evidence was completely and thoroughly discredited. The facts as to his desertion and subsequent pardon by Wilkinson were elucidated, and he was forced to admit that he had written Bissell that "as both of us might be injured by this transaction, if he would say that he had sent me as a spy, it would clear both him and myself."³⁵ The most damning evidence against Dunbaugh's integrity, however, was discovered later in the form of a letter to Bissell. "With sorrow I take Pen in hand to inform you," he wrote lachrimosely, "that I had to tell the officers that you sent me as a Spy against Colonel Burr and had to make outt what I new againg him. I wrote that you sent me on that Purpes. The[y] thought My Captain [Bissell] was interested. I told them that he did not know what Burr's mening was to take some men down the River with him. . . . I should be thankful if my Captain would send some money if their is any for me and my Boots if my detes air paid."³⁶

But the grand event was the second performance of General James Wilkinson, who rehashed all his old testimony, made certain notable contradictions in details, and finally produced the much-advertised cipher letter. It was Botts who noted the erasures, and compelled Wilkinson to admit, after much hemming and hawing and shifting of ground, that such erasures and alterations had been made to protect himself. All through his days on the stand, he was self-contradictory, evasive, asking permission continually to change testimony formerly given, standing on his privilege as to State secrets, declining to answer questions on the ground of self-incrimination. A sorry performance, indeed, and one that Jefferson could not possibly have relished. Instead of clinching his case against Burr and Marshall, it only excited ridicule and contempt among informed people.

Eaton, too, came in for a barrage from the defense. It was asserted, and evidence was introduced as tending to prove, that the "hero of Derne" had been court-martialed and convicted on a charge of selling soldiers' rations and public supplies for his own profit. Major Bruff followed, to pour his hot-shot into the aching sides of Wilkinson. Burr then called Thomas Power, Spanish spy and former agent of Wilkinson, to prove that Wilkinson was in

the pay of Spain. But Power took refuge in a question of privilege — he was Spanish born and still an officer in the service of Spain — and refused to testify. Thus ended at last the examination of over fifty witnesses, with Burr unwell, lawyers exhausted, and Marshall so patient, and yet so wavering that Burr declared angrily that he "did not for two days together understand either the questions or himself . . . and should in future be put right by strong language."³⁷

On October 19th, Marshall ruled there was not sufficient evidence to commit on another charge of treason, but there was on the misdemeanor, and accordingly he committed both Burr and Blennerhassett to Ohio for trial in bail of \$3,000 each, which was furnished. Thus one sorry farce had come to an end, and another seemingly was opening. Burr had been tried on various charges in various courts to the number of seven, and each time had been acquitted or released. Was the malice of the Administration to pursue him forever and ever? Burr wrote bitterly to Theo, now returned to her home, "This opinion [of Marshall] was a matter of regret and surprise to the friends of the chief justice, and of ridicule to his enemies — all believing that it was a sacrifice of principle to conciliate *Jack Cade*. Mr. Hay immediately said that he should advise the government to *desist from further prosecution*. That he has actually so advised there is no doubt."³⁸

This was true. Hay had no stomach for any further proceedings. He was infinitely weary of the whole tangled mess. He was disgusted, too, with the king's favorite, General Wilkinson. "My confidence in him is shaken, if not destroyed," he wrote Jefferson. "I am sorry for it, on his own account, on the public account, and because you have expressed opinions in his favor; but you did not know then what you soon will know."³⁹

But Jefferson was never to repudiate the General, even after the facts were known. To do so would have entailed a loss of his own prestige. He had entangled himself too thoroughly to break loose now. And Jefferson was not honest enough or courageous enough to admit publicly and frankly that he had made a mistake, that he had been deceived. Wilkinson was to be protected, not only through the remainder of his own Administration, but in succeeding ones. A Congressional investigation of the double-jointed General resulted in a hasty whitewashing which convinced no one; at the outbreak of the War of 1812 he was actually given high command, with inglorious results. He ended rather sornily in Mexico, unhonored, unwept, a stench in the nostrils of Spaniards and Americans alike.

5. MOB SPIRIT

Burr was free temporarily, though the new indictment still hung over him, never to be dismissed, a sword of Damocles, to be released at any whim of the Government. That, contrary to the general belief, Jefferson still persisted in his determination to try Burr again and again until somewhere, somehow, a conviction could be attained, is evidenced by a letter addressed by him to Albert Gallatin, dated March 10, 1808. A rumor had reached him that Burr had sailed to New Orleans, and he wished Gallatin to warn Claiborne and the colonel of militia in that territory. "I presume," he added, "that a writ may be obtained from Ohio grounded on the indictment, by which Burr may be arrested any where and brought back to trial."⁴⁰

Even as late as 1809, when Burr was actually in Europe, the officers of Government were still nosing like bloodhounds on their victim's trail. Rodney thought Burr was in Philadelphia, and was trying to get a warrant issued against him on the hoary charge of *treason*, and have him returned again to Richmond for trial.⁴¹

It is no wonder, then, that Burr decided at length that the time had come for him to seek fresh fields and pastures new. In the eyes of the general public he was guilty, in spite of acquittals and *nolle proseques*. Popular indignation still ran high. And his creditors were descending upon him like a horde of devouring locusts. They harried him with writs and held him under civil arrest in his own house, pending bail for security. Luther Martin did yeoman service for his friend, putting up his personal security in the sum of \$15,000. He was willing, declared Blennerhassett, even to sacrifice his money, if need be, because of his idolatrous admiration for Mrs. Alston.⁴²

Jefferson forthwith laid the records of the case before Congress, seeking Marshall's impeachment, while that Judge very prudently retired to the hills until the storm blew over. Burr traveled to Baltimore in the company of Luther Martin, Blennerhassett and others. The Republican press raged and ranted, and incited to violence. They went to a hotel and engaged a suite of rooms. Immediately, all the political Democrats threatened to leave the tainted quarters. That evening, November 2nd, excitement ran high in town. A printer named Frely led a mob under the windows of their suite, drew them up in straggling order, had a fife and drum play the "Rogues' March," gave three derisive cheers, interspersed with hoots and catcalls, and marched off. Luther Mar-

tin almost suffered a stroke in his wrath, but Burr had not been present to witness the shameful scene.⁴³

The following day the excitement grew more intense. Incendiary speeches were made, and even more incendiary handbills distributed, inciting to mob violence.

AWFUL!!!

The public are hereby notified that four "choice spirits" are this afternoon, at 3 o'clock, to be marshaled for execution by the hangman, on Gallows Hill, in consequence of the sentence pronounced against them by the unanimous voice of every honest man in the community. The respective crimes for which they suffer are thus stated on the record: first, Chief Justice M. for a repetition of his X.Y.Z. tricks, which are said to be much aggravated by his *felonious* capers in open Court, on the plea of irrelevancy; secondly, His Quid Majesty, charged with the trifling fault of wishing to divide the Union, and farm *Baron* Bastrop's grant; thirdly B—, the chemist, convicted of conspiring to destroy the tone of the public Fiddle; fourthly, and lastly, but not least, *Lawyer* Brandy-Bottle, for a false, scandalous, malicious Prophecy, that, before six months, "Aaron Burr would divide the Union." N.B. The execution of accomplices is postponed to a future day.⁴⁴

Marshall, Burr, Blennerhassett and Martin — all involved in the indiscriminate fury of the mob.

Tyler fled precipitately from the city, Blennerhassett, in alarm, hastened to Burr's quarters to seek aid, Luther Martin demanded protection from the Mayor and received consoling assurances. But the latter would not guarantee Burr's safety. Instead, he sent a police guard to escort him and Swartwout hurriedly to the stage-coach then leaving for Philadelphia, which was boarded, the horses whipped up, and they clattered away "under the good wishes of many spectators." Two troops of horse and police drew up in front of the house in which Martin and the others had barricaded themselves, heavily armed and swearing to defend themselves to the death. A mob of about 1500 maddened people swarmed through the streets, shouting and yelling, prepared with viscous tar and sticky feathers, and dragging after them carts with the effigies of the "four choice spirits" attired for execution. The police wisely refrained from interfering, and, after a few windows had been broken, and the effigies hanged, the wild emotion spent itself, and the rioters scattered to their holes.⁴⁵

Hounded, proscribed, threatened with tar and feathers by mobs, soon to be indicted in Ohio, harried by creditors with civil actions — where could the hunted man turn now?

In Philadelphia he found temporary refuge at the house of George Pollock, where he remained in hiding for a while. His old friend, Charles Biddle, found him "concealed in a French

boarding-house . . . pale and dejected . . . generally alone," and talking of suicide. He was shocked at the change which a few short months had made. "How different from what he had been a short time before," he exclaimed, "when few persons in the city were not gratified at seeing him at their tables, where he was always one of the most lively and entertaining of the company."⁴⁶

Fallen and proscribed!

Blennerhassett followed Burr to Philadelphia with the fixed monomania of his own misfortunes. He demanded from the bankrupt man payment of the \$7,000 due him on their open account, and made a scene. He even started suit in Philadelphia, only to find himself forestalled by Lockett, another creditor. Burr was to be permitted no peace, no breathing-space. Barely had he managed to raise bail to release himself from Lockett's suit, than Wilkins of Pittsburgh filed action for money lent. Late one night the sheriff descended again upon the luckless man. In despair, Burr turned to his sole source of help — Charles Biddle. But Biddle was not at home. Finally a Mr. Hollowell, a lawyer, was reached and consented to go bail for the former Vice-President of the United States.⁴⁷ Nicholas Biddle, brother to Charles, found him completely "broken in fortune & character, & . . . pursued by his creditors." Though himself without partiality for Burr, he tendered his legal services free in the many pending suits for the sake of old family friendship, and felt called upon to explain the matter in apologetic tones to others.⁴⁸ The touch of the disgraced is a leprosy to be avoided.

Yet Jefferson was writing "He cannot see what shape Burr's machinations will take next. If we have war with Spain, he will become a Spanish General. If with England, he will go to Canada and be employed there. Internal convulsion may be attempted if no game more hopeful offers. But it will be a difficult one, and the more so as having once failed."⁴⁹ Had it not been for the gravity of the foreign situation, to which Jefferson was at last compelled to turn his attention, the President would not have let his victim slip so easily.

The other members of the Conspiracy suffered varying fortunes. Blennerhassett finally quit Philadelphia to join his wife and children at Natchez, to make his home in the Mississippi Territory and farm a thousand acres of cotton. All his fortune had disappeared in the deluge; creditors hounded him as well as Burr, his Island was gone, his mansion in ruins, his beloved library, chemical apparatus, furniture, everything, was attached and sold to satisfy insatiable claims.

But real dirt farming was not for him, and he busied himself in brooding over his wrongs, making constant demands on Alston for all the damage he had suffered; until finally, desperate, he yielded to the ways of blackmail. He would, he threatened Alston, show "other motives of action besides those already offered. These are certainly of a character and complexion I regret it should be my lot to exhibit to the public. To you, however, it belongs to say whether they shall remain shrouded within the sanctuary of your own breast, or stalk forth the heralds of the private treason and public *perjury* they will proclaim infallibly to the honest Democratic electors of South Carolina, who would thence remove you from the chair of their assembly with a different kind of zeal from that through which they placed you in it." He has written an account of all the proceedings, he went on darkly, and intended to publish it, together with all correspondence, if Alston did not pay him forthwith.⁵⁰ Alston was Governor then, and hence politically vulnerable. The baseness of the attempt may be extenuated only by the despairing condition of the man. It failed him, yet the book still remained unpublished, to be used again as a threat against Burr in 1813.

He removed to New York in 1812, and later to Montreal, where he practiced law obscurely. In 1822 he sailed to Ireland to seek a reversionary claim, there to die nine years later, aged 63, on the Island of Guernsey.

Senator John Smith, the Kentucky storekeeper, avoided expulsion from the Senate by a single vote; Jonathan Dayton went West and rebuilt his fortunes; General John Adair served with distinction in the War of 1812 and was finally chosen Governor of Kentucky; Bollman tried to establish himself as a physician in the United States, failed, and returned to Europe after many vicissitudes; Samuel Swartwout, thirty years later, became Collector of the New York Port and embezzled the public funds; Jackson won enduring fame in the forthcoming war and rose to the Presidency of the United States. Varying fortunes, and a wide scattering of the men who had followed Burr in his glamorous schemes.

But for Aaron Burr himself there was no peace. All the forces of an outraged society were unleashed against him, he was an outlaw, an outcast, still in danger of life and liberty. Europe beckoned him as at once a mode of escape and a means to a new life. For, in spite of misfortunes that would have crushed another man, he had not given up his plans. Mexico still lured with irresistible force, a guiding beacon to all the remaining years of his life. And only in the Chancellories of Europe was there hope now

for success and rehabilitation. He would go to England first and try his luck. From his hiding-place in Philadelphia he sent Samuel Swartwout, still unswervingly loyal, to London with a letter to his fellow-conspirator, Charles Williamson, announcing that he was on his way. But Williamson, before Burr could meet him, had been sent by the British ministry on a mission to the West Indies, to die of yellow fever in Havana, thus shattering, unknown to him, Burr's last hopes of success.⁵¹

CHAPTER XXVII

MAN WITHOUT A COUNTRY

1. FLIGHT

AT the age of 51, Aaron Burr stood on the threshold, his past life in ruins, with eyes turned to Europe, eternally optimistic. Yet his flight from the shores of the country that had spurned him required stealth and finesse. Too many were eager to know his whereabouts, and chain him, if they could, to the very soil he wished to leave. He made his way by devious means to New York, and engaged passage on the British packet, *Clarissa Ann*, under the pseudonym of H. E. Edwards. For a month preceding the date of departure he lay concealed in the houses of his friends, not daring to show his face. To cast off suspicion, he wrote Theo, "Make — publish, about the time you get these, that Gamp passed through that place on the — day of June, on his way to Canada, accompanied by one Frenchman and two Americans or Englishmen."¹ Which announcement duly appeared in the public prints. *Gamp*, *Gampy*, *Gampillo*, *Gampasso*, were pet names current in the family, and were used indiscriminately for Aaron Burr himself and his little grandson, Aaron Burr Alston.

On June 7, 1808, muffled against inquiring looks, H. E. Edwards boarded the packet, anchor was weighed, sails bellied to catch the vagrant breeze, and Burr had set sail for the unknown. But first there had been a tragic leave-taking from one Mary Ann Edwards, likewise muffled, and otherwise known to fame as Theodosia Burr Alston, with tears and desperate affection on the one side, and smiling, albeit Spartan fortitude on the other.

Halifax was the packet's first port of call, and Burr held to the seclusion of his cabin most of the way, shunning the usual sea-going intimacy with the other twenty-six passengers on board. At that Nova Scotian port he was welcomed by Sir George Prevost, a relative on his deceased wife's side, who furnished him with letters of introduction to family and friends in England, as well as a passport certifying that "G. H. Edwards was bearer of dispatches to the Right Honorable Lord Castlereagh, at whose office he was immediately to present himself on his arrival at London."²

The passage was comparatively swift; by July 13th, he had