No. 14065

Supreme Court of Illinois

People, ex. rel. Redmond

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vs.

Nichols Wren

The People Ex. rel. Redman
vs
Nicholas Wren.

Application for mandamus.

Heat Justice delivered the following dissenting opinion: I concur in the views expressed by the majority of the court, as to the powers of the Legislature. I admit that the Legislature may, in the exercise of its unquestioned powers, form a new county out of any portion of the territory of the State, and at the same time, take away the jurisdiction of the county that had previously controlled and governed it. Having the power to do this, it may altogether omit to provide a government for the new county; or leave it temporarily without a government, ... [illegible] to be formed at a future day, by the act of the inhabitants within its limits. Such however, would be a most arbitrary and unjust exercise of power; and before a court should decide that the Legislature had thus acted, its intention should clearly and expressly appear, and not be left to inference or implication. It is a well established rule in the construction

of statutes, that the most inconvenient or absurd consequences are to result from a particular construction, that construction should be avoided, unless the meaning of the legislature is plain and manifest.

1 Blackstone Com. 78.
2 Cranch's Rep. 358.

If the construction contended for by the defendant be the correct one, the territory included within the boundaries of Marquette county, would be, from the passage of the act, to the time of the organization under its provisions, left wholly without any government for municipal and county purposes. The jurisdiction of Adams county being withdrawn, the people residing in this territory, except for judicial purposes, would be reduced to a state of anarchy, without the power or capacity to assert and secure their rights and privileges, to which, they, in common with all of the people of the State, are entitled. On an attentive examination of the act in question, I am compelled to the conclusion, that the legislature never intended to introduce a provision liable to such mischievous & unjust

consequences. There is no provision in the law to supply (taking away) the jurisdiction of Adams county; nor is there any provision for a new government before the organization. This consideration, alone, satisfies me, that the legislature never contemplated an exercise of its power, to the extent claimed. All of the provisions of the act, to my mind, seem to have been framed on the understanding, that the old government was to continue in force, until a new one was formed, in the manner prescribed, to take its place, and assume its functions. I cannot believe that an intermediate was intended. I am of this opinion. that the jurisdiction of Adams county for all purposes, continues over the new county, until its organization is complete.

entertaining these views, I am for allowing the application, and awarding a mandamus

Dec. T. 1843.

The People
v
Green

Opinion
Beasley J.

Filed 8th Jany 1844
Deck
Clk

Compared

The people ex rel. Andrew Redmon
vs
Nicholas Biren Clerk of the County Com. Couns.

Application for a writ of Mandamus

An application is made to this Court for a writ of Mandamus to Nicholas Biren Clerk of the County Commissioners Court of Adams County requiring him to make out and deliver to the relator a certificate of his election as Justice of the Peace for said County. The following facts are agreed upon by the parties

1st That the relator was duly elected on the 7th day of August 1843 a Justice of the Peace in Columbus precinct.

2d That the Columbus precinct is situated in the County of Marquette

3d That the said County of Marquette has never yet been organized.

4th That if upon a consideration of these facts this Court shall be of opinion that the jurisdiction of Adams County extended over the territory of Marquette for purposes of County government at the time of said election then in such case a peremptory mandamus shall issue against the Defts.

In granting or refusing this application the only question presented to this Court for its consideration is - Did the jurisdiction of this County of Adams extend over the County of Marquette for the purposes of County government on the 7th day of August 1843

To determine this question reference must be had to an act entitled An act to create the County of Marquette and for other purposes therein mentioned

approved Feb. 11th 1843. The first section of this act provides "That all that part of the new County of Adams lying East of Range Seven west of the fourth Principal meridian and also Sections one Twelve thirteen twenty four twenty five and thirty six of Township one South of the base line in the aforesaid range Seven be and the same is hereby created into a new County to be called the County of Marquette" — The 2nd Section ~~that the~~ directs the legal voters of said County to elect County officers on the 1st Monday of April 1843 with the exception of School Commissioner and Coroner. The 3d Section required the judges of election to return the respective poll books to Wesley D. McCann at the town of Columbus within five days after the election. and required the said McCann and two of the justices of the peace of said County to open the said returns within Seven days after the election and perform such other duties in relation to them as are required by law of Clerks of the County Commissioners Court.

The 4th Section provides that as soon as the County officers shall have been elected and qualified the said County of Marquette shall be considered organized. ~~and provides also that~~ that it shall form a part of the fifth judicial Circuit. and have two terms of the Circuit Court annually. It also makes Columbus a temporary County Seat. The fifth Section provides "That all suits and prosecutions that have been commenced or may hereafter be commenced in the Circuit Court of Adams County before the organization of said County

of Marquette shall not be affected by the act but all suits and prosecutions to commenced as aforesaid shall be prosecuted to final termination in the Circuit Court of the said County of Adams and the officers of the said County of Adams are hereby authorized and required to issue and execute all writs that may be necessary to the prosecution of such suits and prosecutions to final termination any where within the limits of said County of Marquette, The 6th section directs that all persons of the several Constables elected in the County of Adams who reside in the limits of the County of Marquette shall hold their offices and have same election in the said County of Marquette as though they had been originally elected in said County."

The 7th section directs that Daniel Harris School Commissioner George Smith County Commissioner and Jonas Lyon Coroner who had been elected for Adams County but residing within the limits of Marquette County to serve out their respective terms of office in Marquette and ~~directs~~ directs that the vacancies then occasioned in Adams should be filled as in other cases. The 8th section directs the ~~County Commissioners of Marquette~~ School Commissioner of Marquette to transfer the School fund to the School Commissioner of Adams who elected and qualified.

The 9th Section provides for the election of three representatives to the general assembly from Adams two from Marquette. and a Senator by the joint vote of both Counties. The residue of the act contains regulations relative to the record of Marquette and the adjustment of the finances between the two counties - and the last section declares the act to be in force from its passage.

The first section of the act detaches a portion of territory from the old County of Adams and creates the same into a new County ~~by~~ called "Marquette" - The language used is susceptible of but one construction - The intention of the legislature ~~to create a new County~~ is expressed in the most positive terms - It declares that a new county is absolutely created - and the only question that can arise in determining the power and effect of this section is a question of legislative power in relation to counties - As the Constitution of this State contains no restriction either express or implied upon the action of the legislature, ~~in relation to municipal Corporations~~ - in such a case it can be held that it has absolute control over municipal corporations to create change modify or destroy them at pleasure - This position will hardly be ~~denied~~ questioned

The following authorities if authorities are necessary may be adduced in support of it -

Coles vs The County of Madison Brake 120 and 121 - where this court ~~says~~ says "All public incorporations which are established as a part of the policy of this State are subject to legislative control and may be changed modified enlarged restrained or repealed to suit the ever varying exigencies of the State - Counties are Corporations of this character and are consequently subject to legislative control - Were it otherwise the object of their incorporation would be defeated It cannot be doubted that Madison County as a County might be stricken out of existence and her interest as a popular action thereby defeated ~~In principle~~ This is a strong case The same doctrine will be found in Wilcox vs

Corporation, page 26. Sections 11 and 12.
2 Kents Commentaries 275. The people vs Morrell
21 Wendell 579. Storys Com. on the Const. 260.
The County of Marquette is therefore absolutely
created by the first section. The 2nd section con-
tains the crux of the question. Here it will
be seen that a legal duty is imposed upon the inhab-
itants of Marquette to elect county officers on
the first Monday of April 1843. It was not left
optional with them to organize or not. it was
positively enjoined upon them as a specific
duty. which as citizens they were called upon to
perform. The third and fourth sections seem
seem to dispel all doubt if doubt could exist
on the subject. The fourth Section declares
that when the county officers shall have been
elected and qualified the county shall be con-
sidered organized and not previous to. organ-
ization which it is contended the two counties were
still united for purposes of county government
the third Section directs the election returns to be
made to Wesley D. McCann, at Columbus
and he with two other justices of the peace of Marque-
tte co. substituted, to act as a clerk of the County Com-
missioners court of said county in relation to said
returns. Here are three distinct circumstances to
be noted. 1st. Wesley D. McCann two justices of the peace of Marquette
County are elected to act instead of clerk of the
County Commissioners court of said County.
2nd ly. Election returns are directed to be made
to Wesley D. McCann at Columbus
instead of being received by the Clerk of the County Commissioners Court

of the old County of Adams at Jenney -
2d. The whole of this regulation must precede the organization of Marquette - Now from these circumstances the conclusion is irresistible that before organization - an absolute separation for all purposes for election purposes subsisted between the two Counties - The only part of the law which qualifies or restrains the general and absolute operation of the first section is the fifth - This extends the jurisdiction of the circuit Court of Adams county over the territory of Marquette until the organization of the latter county judicial jurisdiction is the exclusive subject of legislative regulation - The jurisdiction of a circuit court can be extended over a circuit or district as well as over a county - In the exercise of this acknowledged power the legislature has extended the jurisdiction of the circuit Court of Adams over Marquette till organization This will prevent that forfeiture of justice which might have otherwise occurred in consequence of the neglect of the inhabitants to organize their county - That portion of the law which provides for the continuance of those officers originally elected for Adams County but residents of Marquette territory in office as officers of Marquette county for the full term of their respective offices - and which also provides for the proportion of legislative representation to which each county shall be entitled - and the adjustment of the finances between the two Counties - unquestionably contemplates unequivocally the total and absolute separation

of the two counties for those purposes.
The legislature has in many instances left the organization of a new county to the vote of the people. In such cases an option is given to the inhabitants to organize or not. But in the present case it is different. We can find no provision in this law which will even tolerate such an implication. The legislature has created a county, and required the inhabitants in certain terms to organize it. Can the fact that any of the citizens, to obey the injunction of law can defeat the object of the law? Such a doctrine would be to sanction anarchy and encourage disorganization. Let this court lay down the principle, that, any portion of the people, can defeat the object of a public law, by disobeying its injunctions, and, it would be nothing more or less than to give judicial sanction to practical nullification. The creation of a municipal corporation depends in no degree upon the assent or dissent of the inhabitants of the particular locality, unless such a condition be contained in the law of its creation. See Greenleaf's evidence Section 381. This doctrine is asserted. The following language is used by that perspicuous writer. "Corporations it is to be observed are chiefs into public or municipal

* or the Statute book

or private Corporations. The former are composed of all the inhabitants of any of the local or territorial portions into which the country is divided in its political organization - Such are counties towns, boroughs, local parishes and the like.
In these cases the attribute of incorporation is conferred on the entire mass of inhabitants and again is modified or taken away at the mere will of the legislature according to its own views of public convenience and without any necessity for the consent of the inhabitants thereof not ordinarily against it. They are termed Quasi Corporations and are dependent on the public will the inhabitants, not, in general deriving any private and personal rights under the act of incorporation. Its office and object being not to grant private rights but to regulate the manner of performing public duties." ~~This doctrine from the~~ This is the language of the author of an excellent work on evidence and is the established doctrine on the subject.
It was urged in argument that a Corporation of this kind becomes dissolved by the neglect of the Corporators to elect officers. This principle does not apply to Counties or other public corporations - In the case of the Mayor and Commonalty of Colchester vs Seaber 3 Burrows 1866.
Lord Mansfield and the other judges decided that a public Corporation would not be dissolved although its whole body of Magistracy was gone and the day of election had passed so that they could not proceed further by their own power. The Corporation in such case remains

dormant and quiescent."

The principal argument urged on behalf of the relator was "that to give Marquette the essential constituents of a county it must be organized and that until organization the people are deprived of the right of exercising the elective franchise and are not permitted to vote within Adams County. and it was asked whether the legislature could possibly intend to do any act that could be productive of such injustice. The whole of this argument is founded in fallacy. 1st The inhabitants of Marquette have all the rights powers and capacities possessed by the citizens of any other county in this State. and the consequences complained of spring from their neglect to exercise their capacities. 2nd. It was their duty to elect officers, at the time and in the manner prescribed by law. They had the capacity to do this and failed to exercise that capacity so that instead of being deprived of rights they have neglected the performance of specific duties - ~~the argument would apply with equal force~~, men who neglect to vote for county officers at a general election might as well complain of being deprived of the elective franchise. In a state of society the exercise of rights depends upon the performance of duties. and this constitutes one of the best securities of this form of government. It must be recollected that there are other rights than those of the inhabitants of Marquette concerned in this question. The inhabitants of Adams

have the rights also. ~~They have~~ ~~keeps~~ ~~strictly~~ ~~they have~~ ~~complied~~ ~~with~~ ~~the~~ ~~requisite~~ ~~to~~ ~~conformity~~ ~~to it~~ They have organized in conformity to the law and constitute a separate community with separate interests subject to the control and management of a district corporation - and for the citizens of Marquette, to interfere in the municipal government of Adams county would be an invasion of the corporate rights of its citizens -

In a case like the present the duty of the court is plain and obvious Our duty is not to declare what the legislature ought to have done but what it actually has done - not to legislate but simply declare what the law is - If a law operates oppressively it is the province of the legislature to afford redress - but while it continues a law it is the duty of the citizen to obey it and of courts of justice to declare and enforce it - It has been urged in argument that the inhabitants can still organize the county without the aid of legislation This point is not involved in the decision of the case and we abstain from expressing any opinion in relation to it - It is the opinion of the court that the jurisdiction of Adams did not extend over the County of Marquette for purposes of county government on the 7th day of August 1843 -

The application for a writ of mandamus is therefore refused - and the relator ~~is to~~ pay the costs of the proceeding -

Dec. T. 1843.

The people &c. rel.
Andrew Redman
vs
Nicholas Wren

Application
for
Mandamus

Filed 8th Jan 1844
E Peck
Clk

Compared

The People on the relation of Redman
vs
The Clerk of the Co. Com. Court of Adams County

Wilson, Chief Justice, delivered the following dissenting opinion:

It appears from the facts in this case, that the relator, Redman, was elected a justice of the peace, at the August election, 1843, for the Columbus district, which district is situated within the territorial limits assigned to the proposed county of Marquette. The returns of the election were made to Wren, who is the Clerk of the County Commissioners' Court of Adams County, who has refused to open the returns, & give the said Redman a certificate of his election, so as to enable him to obtain a Commission as a justice of the peace of Adams County.

The application to this Court for a writ of mandamus, grows out of the act of the legislature passed in 1843, for the division of Adams county, and the creation of the county of Marquette, out of a portion of the territory of the former; and, by the argument of the parties, the allowance of the writ is made to depend upon the question, whether the jurisdiction of Adams county extended over the territory of Marquette county, in August 1843; or in other words, whether the territory of Marquette was detached from Adams county, in August 1843, and was a separate and distinct county at that time, for all county and all other purposes, except judicial purposes.

The majority of the court are of opinion that said territory of Marquette, was a separate and distinct county, in August, 1843; and I believe it is admitted, and at any rate cannot be controverted with any show of reason, that if it was a separate county in August, it became such, upon the passage of the act in 1843, which went into immediate operation; as there was no action or circumstance to change its character, between those periods of time. To this opinion I dissent, and will state the reasons for so doing.

The question submitted to the decision of the court depends upon the construction of the act of the legislature of 1843. By the first section of which it is provided, that a certain portion of the now county of Adams (within the described boundaries) be, and the same

is hereby created into a new county, to be called the county of Marquette. The 2d section provides for the election of county officers on the first monday of april, 1843. The 4th section declares, that as soon as the county officers shall have been elected, and qualified, the said county of Marquette shall be considered organized, and notice thereof shall be given to the judge of that circuit, and circuit courts shall thereafter be held in said county. And by the 5th section, all suits and prosecutions that have, or may hereafter be commenced in the circuit court of the county of Adams, before the organization of the county of Marquette, shall be prosecuted to final termination in the circuit court of the county of Adams

These I believe are all the provisions of the act necessary to recite, in order to understand the question before the Court. The other parts of the act relate to the court house, the revenue, and the time & manner of holding elections, &c.

In the construction of this act, it has been said that a large number of citizens feel a deep interest. I have, therefore, as far as in my power, given it that consideration which its importance deserves, and from the view I have taken of the subject, I am constrained to say, that in my opinion, the construction given the statute by the majority of the court, is incompatible with both the letter and spirit of the statute. But before I give my views upon this point, upon which I propose to rest my opinion, it may be proper briefly to inquire, how far it is within legislative competency, to impart to this act, such an operation as it must necessarily have, under the

construction it has received. If it can be made to appear, that the legislature does not possess the power, that will afford a strong objection against imputing to that body the intention of exercising it, unless the language will admit of no other interpretation.

For the more convenient government, and better administration of justice, the whole state has been laid off and organized into counties. This division and organization is sanctioned by the constitution, and I admit the doctrine generally, that the state may create, modify, and destroy counties, and that they may carry this power into effect by any appropriate means, that does not conflict with the constitution. But while I admit that the legislature may destroy a county, I am not to be understood as admitting that they can deprive any portion of the territory of the state of a county organization and government. This would be to place a portion of the citizens out of the pale of law & government, and would produce a complete state of anarchy. Such an act of the legislature, would, in my opinion, be an abandonment of its highest obligations, and an infringement of the spirit of the constitution, if not its letter. The only manner that occurs to my mind, by which the legislature can destroy a county, is, by annexing it to one or more organized counties. No interregnum would then take place; the government of the county to which it was annexed, would be extended over and embrace it, simultaneously with its annex-

-ation; and thus no evil or inconvenience would occur.

I have said thus much upon the power of the Legislature over the counties of this State, to prevent any misapprehension as to what was meant by this court in the case of Coles vs. the County of Madison, in which it is said by way of illustration, that the legislature has a Breese authority to destroy a county.

The authority of the Legislature to pass laws for the creation of new counties, and provide for their organization, is also admitted with the qualification however growing out of the peculiar provisions of our constitution, which requires the cooperation of the people of the new county, in order to organize it. By the constitution, the qualified voters of the different counties are to elect county commissioners, a sheriff and coroner, and by various laws, they are to elect such other county officers as are essential to an organization of the county. Had therefore any portion of the voters of Marquette held an election, and elected county officers as the law required, and they had qualified, the county would have been duly organized, and would have been one of the counties of the State. But no such election has been held, and it is admitted that unless the officers are elected and qualified, the county cannot be organized. From these considerations, then, it results, that the concurrent action of both the Legislature and the people are necessary to create a new county. The legislature must pass the law, defining the limits of the county, and authorizing the election of officers; then and not until then

is the new county created. The act of the Legis-
-lature only forms an inchoate county; the
act of the people is necessary to ratify it, and
give it vitality and being; and untill such
ratification, all the corporate franchises remain
in abeyance. This view of the subject accords with
the principle laid down by the supreme court
of the United States in the case of the Dartmouth
College (1) That when a corporation is to be brought
into existence by some future acts of the corporators,
the franchises remain in obeyance untill such
acts are done, and when the corporation is brought
into life, the franchises instantly attach to it.

But for the provision of our constitution, I
should entertain no doubt but the legislature, in
virtue of their general powers, to pass all laws that
are necessary for the promotion of the general welfare,
might, if they had deemed it expedient, constituted a
new county, and organized it in any manner they
thought proper. But under the provision of the con-
-stitution referred to, the right of organizing, and
consequently the right of refusing to organize, seems
clearly to be vested in the people, and if so, the legis-
-lature can not divest them of it. Whether this pro-
-vision, requiring the agency of the people in organ-
-izing a county, be a wise one or not, is not a question
of judicial cognisance. It may however be observed,
that in a government like ours, in which the sov-
-ereign power is lodged in the hands of the people,
there can be no danger in allowing to the people a
negative voice in the creation of a municipal cor-
-poration, which is usually granted as a boon, and
in which they have the deepest interest, and it is

also to be observed, that the authorities referred to in relation to the power of the Legislature to create municipal corporations, without the consent of the corporators, can have no application to this case, under the view I have taken of it, inasmuch as the objection to the exercise of this power, in the present case, grows out of the peculiar provisions of our constitution. But if we concede to the Legislature the power of creating a county, without organization and county government, still the additional question remains, as to whether it intended, by the act under review, to exercise it. In my opinion they did not, Upon this point my conviction is so clear, that I propose resting my dissent to the opinion of the majority of the Court mainly upon it, while what I have said, as to the want of power in the Legislature, is, I think, entitled to serious consideration, and will afford some aid in arriving at their intention. From some of the provisions of the act of 1843, it may be inferred that the Legislature proceeded upon the supposition, that the inhabitants of Marquette would organize by the election of county officers; But I do not admit that, that act will bear the interpretation that the Legislature intended the territory of Marquette should be detached from Adams county, and be erected into a separate and distinct county upon the passage and operation of the act, which were simultaneous, without regard to its organization. This however is the construction contended for, and in support of it much stress is laid upon the first section of the act, which provides, that a certain portion of the new territory of the county of Adams, (which is then described) be, and the same is hereby erected a new county, to be called the county of Marquette. This, it is said, is a legislative declaration

of such potent energy, as, of itself, to create the county of Marquette at once, without any thing more. If so, it settles the whole question in dispute; but this is an assumption, not proof, and cannot therefore be admitted. The first section of the act, standing alone, and without reference to the other parts of it, would seem to countenance the conclusion drawn from it. But considered in connexion with other sections, it will appear manifest that it was intended to create the county only upon the condition of its organizing.

It is an acknowledged principle, that when the legislature adopts a statute that has received a settled construction, they are presumed to have adopted that construction also. This principle may be fairly applied in the construction of this act. By reference to the statute book, it will be found, that the legislature has, at different times, passed various acts for the creation of new counties, all of them similar to the present one, and the first section of several, identical with the first section of this, except the variance necessary to describe their respective boundaries; yet according to the practical construction of these acts, the counties were to be created and go into operation only at a future day, and when organized, and in some instances they were to be created only upon the contingency of a ratification which in some cases was never received, as was the fact with regard to the contemplated county of Milton, and it consequently never was created. This uniform operation of former statutes, passed for the creation of new

counties, by which, in every instance, organization was regarded as necessary to their creation & separate existence, ~~creation~~ ~~existence~~, must have been well known to the legislature, and affords a strong presumption that they intended that this one should receive the same construction, and have the same operation. If the legislature had not intended by this act, that organization, by the election and qualification of county officers, should be necessary to the creation of the new county, they would not have adopted language and enactments, so like those of other statutes, which had received that construction. Nothing would have been easier, or more probable, under such circumstances, than to have declared that the county should be created, and go into operation, upon the passage of the act, or at some other appointed time, if such had been their intention, in place of declaring what acts on the part of the inhabitants would constitute an organization. I can perceive no object in this declaration, but to fix the epoch of the creation of the county.

In construing a statute for the purpose of ascertaining the intention of the legislature, we are not to limit our attention to a single sentence or section of a statute. We are not therefore to conclude, from the first section of this act alone, that the legislature intended that the territory of Marquette should become a county before it was organized; but we must construe this section in connection with others, so as to arrive at a correct conclusion. The fourth section provides, that as soon as the county officers of Marquette shall be elected and qualified, the said county shall be considered organized, and by the 5th section, all suits and prosecutions that

have been commenced, or may hereafter be commenced in the circuit court of the county of Adams, before the organization of the county of Marquette, shall be prosecuted to termination in the county of Adams. These provisions, when taken in connexion with the first section, qualify its operation, and clearly indicate the intention of the legislature, that the existence of Marquette as a distinct county, should not take place, until it was organized according to the fourth section. If this was not the intention, why require suits and prosecutions arising within the territory of Marquette, to be commenced and prosecuted in the county of Adams, until the organization of the former, and no longer. In this view of the subject, the legislature will avoid the absurd incongruity of requiring the judicial proceedings of one separate & distinct county, from being carried on in another; and in this view of the law, they will also escape the no less absurd incongruity and anomaly, of having created a mongrel half-kind of county, a county for some purposes, and for other purposes equally legitimate, not a county.

Another rule in the construction of a statute, strikingly applicable to this case, is, that when great inconvenience or absurd consequences are to result from a particular construction, that construction should be avoided, unless the meaning of the legislature is plain and manifest. 1 Black Com. 98; 2 Cranch 358. This rule which requires the court

to look to the consequences of a particular construction, and if inconvenient or absurd consequences are likely to result from it, then, avoid it, does in my opinion strongly admonishes to avoid that construction, which will detach the territory of Marquette from Adams county, and constitute it a separate county before its organization. Some of the consequences of this construction will be, that a large portion of the citizens of the state will be put out of the pale of government, and while the government will be unable to collect from them the taxes necessary for its support, they will be denied the administration of justice within their county, and deprived of the right of the electoral franchise, a right that lies at the foundation of all our institutions, and without which there is no security to the people, against wrong and oppression under any form of government.

Until Marquette is organized, and county offices are elected, no circuit courts can be held in it, by the express provision of the statute, But it was contended, in the argument, that although Marquette was a county for internal government, and political purposes, that for all judicial purposes, Adams could exercise jurisdiction over it, This position I deem incorrect; no principle is more universally acknowledged, than, that persons charged with the commission of crime, must be indicted by a grand jury of the county in which the crime is committed. The constitution

also secures to every person charged with a criminal offence, a "speedy public trial by an impartial jury of the vicinage;" This expression, by a jury of the vicinage, is well understood to be a jury of the county where the crime is committed. This being a right, then secured to the accused by the constitution, cannot be taken from him against his will, by the legislature. The perpetration of a crime therefore in the county of Marquette, however attrocious it may be, cannot be punished. The reasons that led to the adoption of this provision in the constitutions of the states of the union, is well understood. The practice of sending the accused abroad for trial, remote from his friends and witnesses, was regarded by the founders of our government, as unjust and oppressive, and although the hardship in this case may be considered comparatively trifling, as the counties are adjoining, ~~But~~ yet if the accused can be sent to the adjoining county for trial, he may upon the same principle, be sent to the most remote county in the state. The wrong in both cases is the same, they differ only in degree; and are both, alike forbidden by the constitution.

Other injurious consequences flow from the construction of the act, ~~that~~ which creates Marquette a county before organization. The inhabitants of that territory can not be coerced to contribute their proportion of revenue. They have no officers to assess, or collect it; and for a like reason, it is utterley impossible for these people to exercise the elective franchise in the manner

=ner prescribed by law; and it requires no comment upon the value and importance of this privilege, to prove the extent of wrong done by withholding it from a single citizen entitled to its exercise; and it is no answer to the objection in reference to any of these pernicious results, that they can be corrected by subsequent legislation. That is an argument that might, with equal propriety, be urged in favour of any law however unjust and unconstitutional; it is in effect saying that we should submit to wrong, because we are entitled to redress.

It was also urged by counsel, that notwithstanding the time fixed by law for organizing the county of Marquette has passed, that the people can yet organize under a proclamation of the Governor. This is certainly a new doctrine, that gives to the proclamation of the Governor of this state, the force and effect of law, and one which I think calls for no argument for its refutation, although urged with apparent seriousness by able counsel.

It is admitted that the recognition of Marquette as a county, in its present condition, will place the people of that county in an unfortunate situation; but it is said they have brought the evil upon themselves, by neglecting to vote for and elect county officers. That this was not merely a privilege, but a legal obligation, and that their complaints now, are like those of a man who has refused to vote, should then complain that he was denied the exercise of the right. This I think is a misapplication of the case. I do not understand

that these people complain of having been denied the priviledge of voting for county officers on the first Monday in april, but they complain, that because they omitted to vote on that occasion, they are to be denied the exercise of this right, at every subsequent election that may occur. This complaint cannot be regarded as unreasonable, for by this construction, a statute for the creation of a new county, which is usually regarded as a enactment in favor to the inhabitants, is converted into a penal ~~act~~ by depriving them of a cherished and valuable franchise, and that too without the commission of any offense known to the law. The position that a citizen is under a legal obligation to vote at an election cannot be correct. If such an obligation existed, it could be enforced by legal process; but I presume it will not be contended that this can be done. I cheerfully admit that every one entitled to this valuable privilege is under a moral and political obligation, to exercise it in such a manner as in his judgment is best calculated to promote the public welfare; but there is no such legal obligation; and the legislature can no more compell a man to vote, than they can say for whom he shall vote. Such a power would be subversive of the fundamental principles of the government.

The people of Marquette then have violated no legal obligation in failing to elect county officers, and organize the county, and are not therefore obnoxious to the charge of multiplication and rebellion to the laws. I regard the act under consideration as a tender on the part of the Legislature, to the people of the territory of Marquette, of

the privilege of having a new county, but which was not to go into operation, until by the agency of the people it was organized by the election and qualification of the county officers, as the act requires; and that contingency not having happened, the territory of Marquette still constitutes for every purpose, a part of the county of Adams. This construction I believe is in harmony with the spirit of the constitution, and accords not only with all that gave to similar acts passed for a like object, but also with the intention of the Legislature as expressed, and as ascertained by the application of well established rules of interpretation to the act itself; while so many and such serious evils must necessarily result from an opposite one, which we ought not to suppose the Legislature contemplated producing, when as in this case, such an intention is not plainly expressed, That I can not subscribe to it. I am therefore of opinion that the mandamus ought to be allowed.

W. Wilson

Dec. T. 1843.

The People ex rel
Andrew Redman
&
Nicholas Wren

Dissenting Opinion
of Wilson. Ch: Justice.

Compared

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