

## RISING SUN TIMES.

A. E. GLENN, EDITOR AND PROPRIETOR.

FOR THE TIMES.

### THE CIRCUIT COURT.

Mr. EDITOR—Many of the readers of the Times, have doubtless seen an article in a recent No. of the Lawrenceburgh paper, in reference to the Dearborn Circuit court. Though under the editorial head, it is said that it contains a far greater quantum of legal lore, than ever fell to the share of the Palinurus of the Palladium. It is doubtless from the hand of one who has taken from the commencement a prominent part in this perplexing controversy, and who is well skilled by long experience, "To make the worse appear the better part."

We have heard that the walls of our Senate chamber during the past session, echoed arguments and opinions very similar in style and tone to those contained in this piece; and probably emanating from the same source. We believe that they cannot but be as ineffectual in their influence here as there; and that they will prove as futile, as they are unfounded.

The article commences with an announcement of the determination of Judge Eggleston to hold the next Circuit Court for this county at Wilmington. "We are advised however (it continues) that the associate Bench will not join the president Judge in this matter. The consequence of which will be in all probability, that no court will be held in this county for a year to come." The consequence herespooken of can only take place in one event, and that is by the Associate Judges expressly overruling the decision of the President Judge. Has the Editor of the Palladium authority to state that these respectable gentlemen have resolved to do this? or our part we have not so low an opinion of their character and honorable feeling, as to believe that situated as they are they will take upon themselves the responsibility of such a measure.

For what are the circumstances under which they must unavoidably come up to their decision? They are residents among the parties litigant to the case: they have their own private interests and wishes to subserve, and must inevitably partake of the bias resulting from their situation. Moreover the question is purely legal—one which refers peculiarly to the more technical principles of jurisprudence, and one upon which it would be no disparagement to these Judges, to insinuate that they can hardly be supposed eminently competent to express an opinion. The president Judge, on the other hand, situated aloof from either party, and versed profoundly in all the requisite legal learning and skill, may be deemed a person amply qualified in every respect to decide this question. Can it be possible that in the face of all these considerations the determination of Judge Eggleston will be overruled?

As to the sitting of the Circuit court at Lawrenceburgh, it is in our apprehension, entirely out of the question. The statute expressly declares that this court shall be held at the county seat, and even the Associate Judges, or at least one of them, has already united with the president judge in declaring Wilmington to be the shire-town of Dearborn county. The court therefore can never sit at Lawrenceburgh without directly contravening their own decision.

The writer of the article referred to declares, that as no time is limited for the removal of the court, except that at which the public buildings shall be completed, judicial proceedings had at Lawrenceburgh would not be *colum non judic*. The same argument would hold for fifty years to come as well as for a term, and would render the enactment of the legislature perfectly nugatory. It is well known and is undoubtedly susceptible of other proof, if any one is so foolish as to attempt to dispute the report of the commissioners, that the buildings at Wilmington are completed, and that the time for removal contemplated by the legislature has consequently arrived.

We proceed to make a few remarks upon the legal propositions laid down by the writer of the Palladium. We were not present at the last session of the Circuit Court, but we have understood that the proceedings were in substance these. On the opening of the court, Mr. Marshall, of Madison, moved for an order removing the records and adjourning the court to Wilmington, stating and offering to prove that all the antecedent provisions of the act of 1835, conditional to the removal had been complied with. To this motion several citizens of Lawrenceburgh interposed a plea claiming indemnity for the expenses which they had sustained in re-building the Court House, in that place; stating that they had

done that under an express contract with the commissioners appointed for the purpose, that Lawrenceburgh should be *forever thereafter* the permanent seat of justice of Dearborn county, and praying that the order for removal be refused until reasonable indemnity is granted, &c. This plea was demurred to and overruled. A bill of injunction was then filed, occupying the same grounds with the plea and an injunction prayed for; but the motion for that purpose was overruled and the bill dismissed. On both of these decisions of the court, it seems, appeals were taken.

It is claimed in the article above mentioned that these appeals operate as a stay to all further proceedings in the case, and that the inferior court cannot legally take another step until the appellate court has passed their judgement in the premises.

Let us look at the authorities upon this subject. The English chancery practice in case of an appeal to the House of Lords, renders a special order of the House necessary to give such appeal, the force of a supersedeas. *Blake's Chancery*. The New York Court of Errors in the case of *Irving v. Dunscomb*, 2 Wend. 298, observe, "Although the court of chancery has no power to regulate the practice on appeals to this court, it may direct on what terms and conditions the appeal shall operate as a stay of proceedings, unless this court on a special application or by a general rule, think proper to restrict that power."

As appeals are proceedings derived from the civil law, they must be regulated either by special enactments or by rules of practice established by courts of competent authority. With respect to appeals from magistrates, our statute, like that of New York, has specially enacted that they shall in all cases operate as a stay to further proceedings on the judgement appealed from. If an appeal is *ex vi termini* a supersedeas where is the necessity of an act declaring it so? But the statute which declares that the Supreme court shall have no jurisdiction of cases appealed, (of, a certain amount,) if a supersedeas be refused, expressly recognizes that in other cases a stay of proceedings in the inferior court is not an inseparable incident of an appeal.

In case of the motion for a bill of injunction, even granting that the entire administration of justice could be stopped in county by such a process in any imaginable cases whatever—and granting that in face of the constitution, which declares that the several circuit courts shall be held in the respective counties, as may be directed by law, a single individual may, by any process, shut the door of justice for years upon the citizens of Dearborn county—granting all this I say, it would certainly be strange if, upon its rejection, the party could receive all its benefits. And yet it is claimed that this rejected bill of injunction, resuscitated by an appeal, shuts the door of the court house, and opens that of the gaol, stops the administration of justice, and lets the felon and the defrauder go free. If such effects spring from the dismissal of this bill, what would not have resulted had it been granted?

But a strong argument is afforded by the considerations *ab inconvenienti*, resulting from this case. There is something so preposterous in the idea that a private person by an appeal upon a groundless and frivolous plea, or a motion which has been overruled, can put a public court under the ban of a bill of injunction, and suspend the execution of the laws for an entire county, that no man of sense can entertain it for a moment. The appellant is required to give bonds to sustain all costs and damages resulting from his appeal in ordinary cases. But what would be the penalty of such a bond in this case?

Who could estimate the cost and damage to the county and the community—the injuries of crime unpunished, debts unpaid, rights unprotected, and wrongs unredressed?

A word as to the claim of indemnity. The law which the writer referred to, quotes to sustain this claim unfortunate tells against him. We want but the general principle that the acts of preceding legislatures cannot tie the hands of their successors; and the proposition established in *Elwell vs. Tucker*, that the legislature has power to remove county seats, (2 Black. 143) on such terms as they deem reasonable, to guide us to a correct decision of this question. In this case suppose the legislature deemed the citizens of Lawrenceburgh already reasonably repaid, in the advantages which they have derived from their long possession of the county seat. Or if we construe the act of 1827 into the conditions of a contract, let it be set forth according to

its legal effect. The phrase then—that Lawrenceburgh shall be *forever thereafter* the permanent seat of justice of the county of Dearborn, will take this form, "shall be so long as the legislature please, the permanent seat of justice," &c. If the legislature has gone further than this, they have stepped out of their constitutional limits, and the faith of the State is not pledged to the execution of their acts. And if any individuals have relied upon such acts, it is their own folly, and they cannot demand as a matter of right, any indemnity from the state. But in this case, how stand the facts? Can the petitioners for indemnity come into the court with clean hands, and plead the full performance of all their obligations? Have they fulfilled the conditions of their contract? Have they constructed the court-house after the manner and form prescribed in their stipulations? Has the county never been called upon to contribute some hundreds towards its completion? Are the ferries in the vicinity of the claimants free? We fear that they will be compelled to "rail the seal from off their bond," before they can in any case claim damages of the state for the breach of its contracts.

In conclusion, were the writer in question invested, as he complacently remarks, with judicial power, we doubt not but that (alas! poor human nature!) public convenience would still be sacrificed to private interest. We doubt not but that the loudly expressed and reiterated desire of the people, would be hushed by the whispers of selfishness and that the voice and vote of the majority would yet be denominated "the whim and caprice of the multitude." Doubtless we the rude rabble should be cautioned not to come betwixt the wind and his nobility! And doubtless those who have for years enjoyed the advantages of the county seat, at the inconvenience and expense of the public, would now be permitted to claim as a right and a monopoly, what was formerly granted as a favor.

But we live to thank our stars, that even seven hundred a year has left us better judges than this.

FOR THE TIMES.

### To the Electors of Dearborn county:

In the discussion of the subject of division, the sole question should be, will it benefit a majority of the inhabitants of the county? Not whether this place or that requires it, but simply whether the majority will be benefited by it?

Whoever will cast an eye over the map of Dearborn county will see at once that some natural and opposing barriers present themselves which neither time nor labor can ever surmount. They will see that the county is a very large one, and that its surface is broken by huge hills and broken valleys, except on the immediate borders of the Ohio river. They will see it cut up by rapid streams of water that in wet seasons pour their torrents from the back country in such profuse abundance as to render them impassable. They will see, too, that these barriers operate much more unfavorably upon some than upon other parts of the county—that if the county seat is at either end, the other parts suffer, and that if placed in the centre, still, the difficulties are not obviated, because the people from both extremities must cross all the streams to reach it, while those of the centre cross none, hence three fourths of them are subjected to great trouble and expense for the gratification, simply of the other fourth.

But, fellow citizens, if the county were laid by the natural boundaries that present themselves on the map, no such difficulties to any of our inhabitants could arise; and the only cause, that presents itself to me why it was not done, is to be attributed to the errors of judgement that prevailed at an early day in which we were organized—to a misconception of the future growth and population of the county and a consequent inability to judge of and make provisions for its future wants and necessities. This is an error that is liable to obtain in the first settlements of all new counties, and it is one of which we cannot, in justice, hold our predecessors accountable; because it is an error that time only develops. But as a county opens and the tide of emigration pours its thousands to its forests—as these last give place to the rich fields of the husbandman and numbers are multiplied, and facilities of trade become desirable, then it is that new wants arise—thence it is that difficulties present themselves that in earlier days were never once thought of. And who does not know this to be a natural occurrence? Every man witnesses it in the settlement and improvement of his own farm—in the location and construction of his own dwelling house.

Dearborn county, then, was organi-

zed at an early day, and its boundaries as well as its county seat were well enough adapted to the wants of its early inhabitants. They were few, and the sparseness of population made it necessary that the county should be large. But the day has already arrived when, from the great increase of population, her boundaries are found to be too extensive, and the location of the county seat inconvenient. An effort has been made to correct the evil by the removal of the county seat: but it has not had the desired effect; nor, indeed, can it ever have, while the numbers to be accommodated are continually swelling, and at the same time are spread over such a wide extent of territory. They have to travel too far—they have to climb too many hills and cross too many streams, besides, that their interests must continually clash.

The only way in which we can remove these evils, is to reduce the size of our county. In vain shall we remove the seat of Justice from point to point; the object will never be accomplished whilst our county embraces such a wide extent of territory, so disconnected and so divided in interests. But let us adapt its size to our circumstances, and let us set to it natural boundaries, as far as practicable, and soon, very soon, will the prevailing tide of public strife subside, every discordant feeling be allayed, and separate interests and selfish propensities serving no longer the purposes of contention, good will and union of sentiment will be restored, no more to be broken up. I know that some object to small counties on account of the taxes necessary to be imposed for their support: but I am clearly of opinion that in the case of Dearborn county, the taxes necessary for the support of a new county will not be equal to the waste of time and necessary expenditure that must be lost in traveling to and from the seat of justice, even if it should be located at Wilmington. This, however, I consider a moral impossibility; and our friends of the centre have certainly deceived themselves into a great disappointment. I know enough of the views of our citizens to know, that not one third are in favor of that point; and the seat of justice will either be located at some other place, or Dearborn county will pass years to come, accursed with party feuds and bitter strife—an occurrence, the result of which I dread to dwell upon.

If division, then, is the only remedy for the evils we suffer, (and I verily believe it is,) it behoves us all to give support to that measure; and as we now have the opportunity to elect members to the legislature in whom we can confide and with whom we can safely rest the subject, let us unite upon them and bring our unhappy collision to a speedy and healthful close—let us support the division ticket, composed of DAVID GUARD, JOHN P. DUNN, ABEL C. PEPPER and PINKNEY JAMES.

### AN IMPARTIAL INVESTIGATOR.

FOR THE TIMES.

### To the People of Dearborn county:

FELLOW CITIZENS:—The crisis has come. You are now about to decide a question of the utmost importance, not only to yourselves, but to every citizen of Indiana. You are now about to decide whether our laws are to be disregarded and trampled under foot, or whether they are to be maintained: whether Dearborn county is once more to be restored to peace, or convulsed by internal discord.

Need the tale of oppression be told again? Need we reiterate the injuries that present themselves on the map, which the citizens of Dearborn county have endured for years; what those injuries are, or from whom they have come? Need it be told to any one that they have all emanated from Lawrenceburgh? That less than twenty individuals have been the cause of the difficulties of this county; and that they have put the citizens of Dearborn county to more than five thousand dollars expense? These facts have been so abundantly demonstrated, and every citizen has felt so sensibly the injury, that no one can now be found ignorant of it.

Yes, fellow citizens, the crisis has come. You now have it in your power to restore to Dearborn county the peace and tranquility of which she has been so long deprived, and to the laws their proper administration. You have it now in your power to decide whether the poor shall be trampled upon by the rich—whether rail road and bank usurpers can buy your suffrages, or whether you will maintain the exercise of sound principles, mid the contentions of party strife; and stand firm, like the rocks of Gibraltar, mid the war of contending elements.

How stands the matter now? The Lawrenceburghers not content with having kept Dearborn county for the past two years in a state of feverish

and dangerous excitement—not content with having deprived justice of her due, and crime of its deserved punishment, are now with unparalleled impudence attempting to effect their designs by mounting the baseless hobby of division. What a base attempt—what brazen faced assurance. Do they suppose that we, fellow citizens, are the mean hirelings of wealth? That a bounteous Providence has decreed their promotion at the expense of all the rest of the people? Or do they suppose that they are the only individuals endowed with the slightest shadow of comprehension; that they are the chosen ambassadors of Heaven, commissioned to think and act for us all? Should these be their opinions they are mistaken. They have built a castle in the air, which like the baseless fabric of a vision, will be blown away by the breeze of popular indignation, and no wreck will be left behind.

To those who are honestly in favor of a division of Dearborn county, we will only say, that it never can be effected, because it is unconstitutional. And strange as it may now appear, two of the candidates who now solicit your suffrages, and declare themselves in favor of a division, have hitherto been warm opposers of it. David Guard and John P. Dunn have repeatedly declared their opposition to the measure, both as it respects its expediency and its constitutionality.

When the second relocation of the county seat of this county was made at Lawrenceburgh, there were a few who spoke of a division. And it was then that this same David Guard voted at the idea, as being in itself ridiculous, unconstitutional, and destructive to the best interest of Dearborn county. But,

"A change came o'er the spirit of his dream." Lawrenceburgh having enjoyed the benefits of the county seat from 1829, to 1835 the people conceived it to be for the interest of Dearborn county to remove it from Lawrenceburgh and locate it in a more healthy and convenient situation. This is accordingly done, and done to the satisfaction of all of Dearborn county, with the exception of Lawrenceburgh, whose citizens immediately raised a rebellion, which has been kept up to the present time. They have tried every expedient of which they have been capable to prevent the laws from being enforced and they now plainly see that, after all their fond expectations, a defeat is inevitable.

But being goaded by shame on the one side and cupidity on the other, they have resolved to make one more desperate effort. And knowing that if their real motives were known they must inevitably fail, they have adopted a plan, by which they think they can gull the people, come off victorious, and bring the county seat back again to Lawrenceburgh. But to do this, men must be found willing to use the necessary means to accomplish the ends—men must be found willing to try division until after the election, and when elected, to try and get the county seat back to Lawrenceburgh. Dunn and Guard are selected as the most suitable persons to carry this plan into execution. These two men are now before you, fellow citizens, soliciting your suffrages, and the question for you to decide, is, can you vote for them?

Are the principles of Dunn the same as they have heretofore been, when he opposed division; and does the Constitution remain as firm and inviolable in the opinion of Guard as it did in 1828? Nay, verily, a change has indeed come o'er the spirit of his dream. The same Heavens are indeed over his head, and the same river rolls through the streets of his town; Lawrenceburgh remains still the same God forsaken slough; but David, Oh David! how hast thou and the constitution changed! Well might it now be asked, what has become of David, who in 1828 stood forth like a warning angel on the watch tower of liberty; and declared to the world that Dearborn county never should be divided—that the Constitution, that immortal charter of liberty must be maintained; and should be maintained; even if it had to be done at the expense of his political salvation. Well might one who heard his clamor about the sanctity of the constitution in 1828, exclaim, Oh man! where is thy consistency? Has political honesty left the world, and it given place to the hydra of demagogues.

Has moral honesty gone glimmering with the things that were? Has she ceased to raise her voice, or is it only drowned by the momentary clamor of defeated speculators, or the sickly whinnings of contemptible pygmy politicians?

As one more evidence that the policy of the Lawrenceburghers is totally incompatible with the general welfare