

A HIGHER Court of the United States having refused to hear the appeal in the habeas corpus case of the Ponca Indians...

We do not understand the situation. To make the matter plain, it will be necessary to give some account of the case.

Determined to endure this injustice no longer, Standing Bear at the head of the sickly and half-starved remnant of his tribe...

The simple fact is that a great blunder was made in reference to the Poncas, and a terrible wrong was inflicted upon them...

The Indians are human beings; degraded, ignorant, repulsive, it is true. But they have rights which the Government and the advanced races of mankind are in duty bound to respect.

Second—That General Crook, the respondent, being commander of the military department of the "State, has control of the arms, under color of the authority of the United States and in violation of the laws thereof.

Third—That no rightful authority exists for removing by force any of these Poncas to the Indian Territory, as General Crook has been ordered to do.

Fourth—Indians possess the inherent right of expatriation as well as the more fortunate white race, and have the inalienable right to life and liberty and the pursuit of happiness, so long as they obey the laws and do not trespass on forbidden ground.

Fifth—Being restrained of liberty under color of the authority of the United States and in violation of the laws thereof, the relations must be discharged from custody, and it is so ordered.

Jumping at conclusions is unwarranted by anything in this declaration, many editors have become excited and have consequently uttered a great deal of nonsense.

The decision in the case of the Ponca Indians, recently rendered by Judge Dundy of the United States District Court for the District of Nebraska, wherein he holds that under the laws of the United States there is no power to restrain Indians to their reservation...

If it is claimed that the paper above named is not a leading journal and therefore its opinion is not remarkable, we will clip from a long article in the New York Herald on the same subject:

"If this judgment is not merely a makeshift, if it is good law, it will apparently follow as a certain consequence that there is no warrant whatever in law for the very existence of the reservation system or for any of the present system of official relations between the government and the Indians."

Now the decision of Judge Dundy affects only the Poncas, and such other tribes of Indians similarly treated, with whom the Government has made no treaty requiring their confinement to a reservation. It must be understood that the Poncas belonged to no reservation. They were in the same condition as the remnants of bands of Indians who located on Bear River in this Territory some time ago, and were driven from their homes and uncreased crops by the soldiers under Executive orders and required to move to Fort Hall. They did not belong to that reservation. They were cultivating the soil and raising instead of begging their bread. They were quiet, inoffensive, anxious to learn the industry of civilization, and stupidly allied to brutality and bigotry forced them from their crops just ready for the harvest, and from lands a portion of which some of them had entered under the pre-emption laws of the United States.

It was a dastardly deed, for which there was not the slightest possible excuse, as no one believed the ridiculous story told by a few Corinne speculators for the purpose of getting some troops quartered among them, and thus reviving for a little while the life and fortunes of their dying village.

Judge Dundy's decision has no reference to the power of the Government to keep on their respective reservations the tribes with whom it has made treaties, and who have by those treaties agreed to reside upon such reservations. Here are the Judge's own remarks in explanation of this point:

"As there is no law of the United States or treaty stipulation setting apart a reservation in Indian Territory for these Indians, nor for any other Indians, nor for any other race, who coveted the lands the Poncas had occupied. The country on which these Indians were forced to locate was a most unhealthy place, and unsuited to Indian modes of life. The provisions doled out to them were insufficient, the water was bad, the air was full of malarious poison, and in a short time death put an end to the survivors of at least one third of their number.

Determined to endure this injustice no longer, Standing Bear at the head of the sickly and half-starved remnant of his tribe, started with them on the back trail for Nebraska. On their way cold, fatigue, hunger and hostile members of other tribes terribly decimated their ranks, and when they reached the place of their former homes they were in a deplorable condition. Gen. Crook was on the spot ready to carry out the orders of the Department—for which no blame is to be attached to him, as he merely acted upon the instructions received—and they were manacled and started again on the path to the region of certain death. The miserable band halted at Omaha on the way to the reservation, when several gentlemen, among whom were a member of the Herald's editorial staff and some Omaha lawyers, united in an attempt to procure justice for the outraged redskins. Mr. H. Tibbles of the Herald issued out a writ of habeas corpus, and the lawyers agreed to plead the case. The writ was issued, the march of the Indians was stopped, and after a gallant legal fight in Judge Dundy's court, the chivalrous attorneys, of whom J. L. Webster and N. J. Poppleton were chief, gained the day, and the Poncas were set at liberty. The points decided in the Judge's ruling were:

"First—That an Indian is a person within the meaning of the laws of the United States, and has, therefore, the right to sue out writ of habeas corpus in a federal court and before a federal judge in all cases where he may be confined or in custody under color of the authority of the United States, or where he is restrained of liberty in violation of the Constitution or laws."

Second—That General Crook, the respondent, being commander of the military department of the "State, has control of the arms, under color of the authority of the United States and in violation of the laws thereof.

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"Who's there?" said "It's me." He had not seen his brother then, and did not know he was dead until two weeks later.

Cross-examined. — Mrs. Spiers told me my brother had been shot but did not tell me to go for a doctor. I went to Spencer Raymond, and he went to old man Raymond. Did not see the body then, though I must have passed it. Nephil Stephens was at old man Raymond's and he told me my brother was dead. I saw the corpse about three minutes before they carried it away.

THOMAS H. BULLOCK. Examined the body. Saw the wound in the mouth. Saw the burned powder inside. None of the front teeth were out.

Judge Van Zile then wanted the case postponed until Spencer Raymond could be found. Judge Emerson said he could not do it unless the District Attorney would take all the time they wish to get him. Judge Emerson offered to postpone the trial until Wednesday afternoon. Judge Van Zile wanted to introduce the testimony of Spencer Raymond, as given before the coroner's inquest, and before the grand jury. Defense objected. Van Zile then said he would get his case, leaving it to the discretion of the court to admit Raymond's testimony, when found. Judge Tilford, previous to the prosecution's closing, moved that they be compelled to bring Mr. Raymond on the stand, as he was in the house at the time of the homicide, and it was the duty of the prosecution to bring all witnesses into court, or at least matter. Judge Emerson overruled the motion. Defense excepted.

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Gentlemen of the Jury: You have heard the testimony in this case for the prosecution, and it now becomes my duty to read you the defense. The killing of the deceased, Henry Wadman, by the defendant, Joseph Dudley, at the time and place named in the indictment, is conceded, but we shall prove to you, conclusively, that this killing was done in self-defense. We shall show you, by competent evidence, that the defendant was threatened repeatedly by the deceased, not only to other individuals who committed these things, but also to himself personally. We shall also show you that for five years preceding this homicide a criminal feud existed between the deceased and the wife of the defendant; that the deceased had become so enamored with the defendant's wife, that he had already effected a separation, had caused her to leave her husband and move to the home of her father; that he was so determined to possess this woman that he would even sacrifice the life of the defendant, if he had seen her. The defendant had no knowledge, not even a suspicion, of the criminality existing between these two parties, or of any impropriety until after his wife had left. The pretext that she had made for leaving was so frivolous, so unsatisfactory to him, and that he had been so great that he desired a reconciliation, and the deceased fearing it would take place, and in order to prevent it, that he had threatened to kill the defendant, and gave him the first hint that he ever had of this illicit intercourse. He said to the defendant: "You had better be true to your father, and I am the father of all her children." Of course the defendant did not and could not believe this; innocence, gentleness and the fact that the defendant had been true to his father, and as he thought more about it, a dreadful fear came upon him that, perhaps, there might be some truth in it, and that he had been wronged, until finally, when he was a full stranger, or he had indeed been so lately betrayed, he went to Plain City, Draper, some seventy miles, to see his wife and learn from her whether or not this charge was true. He reached there the next day, and found the wife of one of his children, and there gentlemen of the jury, by that little new-made grave, he learned from his wife the story of her fall. She also told him before she separated, that the deceased had preceded him to Draper; that he had told her that he would prevent her husband from going to Draper and telling the story of her shame to her parents and relatives, even if he should have to kill him and bury him in the sand. This statement of the defendant, when made, was so convincing, and so full of truth, that he was so impressed upon the defendant's mind, that he was so sure of her love for her, that he was so sure of her revivified and intensified. He was undecided what to do. Should he take her back? Could a reconciliation take place, or must he cast her away? In this state of uncertainty he returned to Ogden. When he reached there he met the deceased, and inquired what his wife had said about it, and what she had told him.

Now, gentlemen, if there had been a man in that state of mind, who had been told that his wife had been murdered in his heart, would he then have reeked his vengeance upon the deceased? But, not so with such design. He told him to keep away, not to cross his threshold, not to interfere with his family, and that he would never see him again. They met at other times before the homicide, always on friendly terms; for the defendant was still revering in his mind the conversation which he had had with the deceased, and he did not desire to proclaim upon the streets her shame and degradation. We will also prove to you, gentlemen of the jury, that about the time of the separation of Mr. Dudley from her husband, the deceased borrowed a pistol and that he had that pistol in his possession until the time of his death; that it was returned to the deceased some days after his death. We will show you that he had a pistol on the very day of the homicide, and that he was even at the very time of the homicide. And, now, gentlemen, we come to what occurred on that eventful evening. We shall show you that the deceased went to the house of Mr. Raymond at late hour, after dark. He went in and sat down with a few minutes' conversation, and then he got up and beckoned the defendant to follow him out. He did so. The deceased led the way through the door along the south side of the house until he got in front of the window, when stopping suddenly and turning around, facing the defendant, he put his hand back as if to draw his pistol, and said: "Take it back, by God, or I'll blow your 6-brains out!" On hearing this, the defendant immediately struck the deceased with a whip which he had in his hand, and cried: "Help! Murder!" They clinched, and after struggling some time the defendant succeeded in getting hold with his left hand of the right wrist of the deceased, who was at the time

struggling to get his pistol. While this struggle was going on the deceased, who was followed by the defendant, which had resulted to the defendant in consequence of the damnable conduct of this man, came to the window, and there he realized with what a desperate character he was dealing; a man that had betrayed his trust, dishonored a friend, and destroyed the sacred name of wife; who, when left in charge of his employer's property and as the protector of his family, demonstrated the ability of that sanctity; remembering these things and the many threats that had been made against his life, and the last threat, the color of his face turned white, and he uttered still ringing in his ears, "Take it back by God, or I'll blow your 6-brains out," and the defendant, who was so rudely asked to retract, the defendant, feeling that his life was in imminent peril, and believing that the only way to save himself was to slay the man who had uttered these threats, and who was then there struggling with all his might to reach the deadly weapon with which to execute upon him the threat he had just made. I Wednesday afternoon Judge Van Zile wanted to introduce the testimony of Spencer Raymond, as given before the coroner's inquest, and before the grand jury. Defense objected. Van Zile then said he would get his case, leaving it to the discretion of the court to admit Raymond's testimony, when found. Judge Tilford, previous to the prosecution's closing, moved that they be compelled to bring Mr. Raymond on the stand, as he was in the house at the time of the homicide, and it was the duty of the prosecution to bring all witnesses into court, or at least matter. Judge Emerson overruled the motion. Defense excepted.

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