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CHIEF STANDING BEAR: A PERSON UNDER THE LAW

A Trail of Tears

This is the story of Standing Bear, a Ponca chief who in 1879 won the right to be considered a person under the U.S. Constitution.

The Ponca were a small, peaceful tribe who settled between the Missouri and Niobrara rivers in what is now northern Nebraska and South Dakota. In the 1868 Treaty of Fort Laramie with the Lakota Nation, the U.S. government mistakenly gave the Poncas' land to the Sioux.

In February 1877, Standing Bear and nine other Ponca chiefs were taken by government agents to select land in Indian Territory (now Oklahoma). Unhappy with the stony, malaria-ridden country, they refused to choose. On May 19, 1877, all of the remaining Poncas were forcibly removed from their land in Nebraska. As they left, their villages were destroyed. By their arrival on July 9, nine members of the tribe, including Standing Bear's daughter Prairie Flower, had died on the Ponca Trail of Tears.

Within two years of their relocation to Indian Territory, one-third of the tribe had died from disease. Among them was Standing Bear's son, Bear Shield. Standing Bear promised his son that he would bury him among their ancestors, for according to traditional Ponca belief, this meant that he would not have to spend eternity alone.

On January 2, 1879, Standing Bear set out for Nebraska with 26 other Poncas and the body of his son. They arrived at the reservation of the Omahas two months later. Chief Iron Eye and his daughter Bright Eyes gave them food and shelter and promised that they could remain as long as they wanted.

The Federal Trial

Alerted to Standing Bear's disappearance, Secretary of the Interior Carl Schurz ordered General George Crook to arrest the band. Crook privately disapproved of the government's policies toward Indians and felt that the Poncas had been treated unfairly. He assigned a detachment to make the arrest but secretly enlisted the help of Thomas Henry Tibbles, an Omaha Herald journalist.

Tibbles wrote about the Poncas' plight in the Herald and contacted two lawyers, John Lee Webster and Andrew Jackson Poppleton, to represent Standing Bear in federal court. At Crook's suggestion, they filed a writ of habeas corpus on April 8 for Standing Bear's right to be released and to return home to his land along the Niobrara.

On May 1, 1879, *United States ex rel. Standing Bear v. Crook* began in a crowded federal courthouse in Omaha. The purpose of the trial, Nebraska District Court Judge Elmer Scipio Dundy explained, was to determine whether Standing Bear and the group of Poncas had been lawfully arrested and detained.

Webster and Poppleton argued that the Fourteenth Amendment, which grants citizenship as well as equal protection and due process of the law to all persons born or naturalized in the United States, applied to all Indians who had severed tribal relations and did not owe allegiance to any other form of government.

For the defense, Genio Madison Lambertson, U.S. Attorney for the District of Nebraska, argued that an Indian was not a citizen of the United States and was not entitled to sue in its courts.

After the legal proceedings had ended, in an unusual break from procedure, Judge Dundy allowed Standing Bear to stand up and address the court. He spoke with the aid of an interpreter, Bright Eyes, the daughter of the Omaha chief.

Home at Last

On May 12, 1879, Judge Elmer S. Dundy made history by ruling in *U.S. v. Crook*, 25 F.Cas. 695 (C.C.Neb. 1879) that an Indian is indeed a person.

“During the fifteen years in which I have been engaged in administering the laws of my country,” the opinion began, “I have never been called upon to hear or decide a case that appealed so strongly to my sympathy as the one now under consideration.” The judge noted that the Habeas Corpus Act allowed federal courts to issue writs to “persons” or “parties,” and that nowhere did it describe them as “citizens.” “I must hold, then,” he continued, “that Indians, and consequently the relators, are ‘persons,’ such as described by and included within the laws before quoted.”

Judge Dundy also ruled that General Crook had rightful authority in removing the group of Poncas from the reservation, but that his orders had been in error, for he was not instructed to convey them to the nearest civil authority. In forcing the group to return to Indian Territory, the government would deprive the Poncas of their rights.

Reactions in the press ranged from fear to elation, but none were more overjoyed than the group of Poncas who had accompanied Standing Bear in January and February. They were now allowed to remain at the Omahas’ reservation.

Restitution was made to the Ponca tribe in 1881, but the geographical split would remain. The tribe was eventually officially divided into two branches, one by the Niobrara River in Nebraska, the other in Oklahoma.

After a brief move to Indian Territory in 1889, Standing Bear returned to Nebraska and built a farmhouse by the Niobrara. He would remain there with his family until his death in 1908. He was buried near the village of his ancestors, where his descendants still reside.