

Standing Bear v. The United States

In 1877, Chief Standing Bear of the Ponca Tribe lived in an 800 square foot house he built of lumber he cut and sawed himself. The house had windows, furniture, heating stoves, and a pantry full of dishes. He was a Christian, dressed in American clothing and raised crops and livestock. His net worth probably exceeded \$150,000 in today's money. Two years later he was arrested as a fugitive and sued General George Crook of the United States Army for his release.

Standing Bear's lawsuit was the first step on the tortuous road of American Indian rights that still winds on today.

Who are the Ponca?

The Ponca are an offshoot of the Omaha, speaking a dialect of the same Siouan-rooted language as the Omaha. The Omaha are believed to have migrated from the lower Great Lakes and Ohio Valley to the Missouri River valley of Iowa and Nebraska prior to the 1700s. At this time, they moved farther into Nebraska in response to pressure from the Lakota as they were pressured in turn by the Ojibwa who were acquiring European weapons. As they moved up the Missouri, they displaced the Arikara and learned earthlodge building. They were a semi-nomadic tribe, living in tipis during their buffalo hunts, and in earthlodge villages while they farmed.

In the early 1700s, they also acquired their first horses, probably by trade with the Comanche, approximately the same time they separated from the Omaha. The separation was apparently an amicable one, as the two tribes maintained friendly relationships and frequently intermarried.

The Ponca were never a large tribe; one source estimated their number in the mid 1700s before the first onslaught of smallpox on the Great Plains at 3000, but a population of only about 800 was reported in 1800. Lewis & Clark visited an empty Ponca village 1804 and killed a buffalo there. The Ponca were away from their village buffalo hunting. This was their first major hunt in a few years due to a smallpox epidemic that left fewer than 200 of these people.

The Ponca, like most plains tribes, were heavily involved in the intertribal trade network, mostly in a local area that included European traders and the Pawnee horse dealers. As happened with other plains tribes, the convenience of manufactured goods soon made them necessities, requiring more hunting to produce furs to trade. Their involvement in the fur trade diminished as skirmishes with the Lakota dispersed the small tribe dispersed into smaller roving bands.

Ponca territory was between the feuding Teton Lakota (Sioux) and Pawnee. In the 1820s, harassment by the Teton increased, and in 1824, all of the Ponca chiefs were killed in a single attack. Finally, in the early 1830s the Ponca allied with the Teton as smallpox once again reduced their population. In the 1840s the tribe dispersed westward along the Niobrara River and almost disappeared from historical records. There were apparently occasional contacts with freelance traders and a visit from Father Pierre DeSmet in 1848. During this time they fought against or beside the Lakota. Bison were becoming more difficult to find due to the robe trade and wasteful hunting by Euro-Americans.

In 1846 the Ponca welcomed a group of Mormon pioneers to spend the winter near the Ponca village. The pilgrims' weapons, including a small cannon, apparently fit in well with the Poncas' need for defense.

Living between the warring Lakota and Pawnee, the Ponca had to be tough and resilient. In 1848, a group of Ponca warriors boasted that if troops were sent to keep them in line they would take the soldiers pants off.

The Home Reservation

The land near the Niobrara River that the Poncas occupied was inadvertently included in a treaty with the Omaha 1854, surrendering that land to the government and opening it to settlement.

The first non-Indian settlement appeared two years later when the town of Niobrara was founded and a small fort and several other buildings were constructed. The Ponca objected to this invasion of their territory and burned the settlement, except for the fort, during the winter of 1856-1857, but by the next summer new buildings were already rising. The Ponca continued to harass the settlers and destroy property until a treaty in 1858 established a reservation between the Niobrara and Missouri rivers. The reservation boundaries were changed in 1865 to include tribal burial grounds omitted in the earlier treaty.

In 1863 the 7th Iowa Cavalry stationed in Niobrara reported what was recorded as “The Ponca Skirmish”, in which they repelled an attack on the town of Niobrara. However, the report from Indian Agent J. B. Hoffman indicates a rampage of rape, robbery, vandalism and slaughter committed by the volunteers of Company B. Several women and children were brutally murdered and several more injured. After an investigation, Company B was transferred to another post. Private Milton Spencer of the 6th Cavalry wrote, “The Indians were promised that the murderers of their squaws should be punished. They said they were satisfied and that they had no hard feelings toward their white brothers. Well, the soldiers have not been punished. And it is easy to guess the feelings of the Poncas.”

In 1868 the Poncas land was included in the Great Sioux Reservation; whether this occurred by error, by fraud, or as appeasement to the more powerful Lakota bands, the error was never fully corrected. This gave the Sioux even more reason to harass the Poncas. A small Army detachment at the Ponca agency offered token defensive assistance, but the Ponca were even at risk while working their fields.

Like the nearby white homesteaders, their crops were often marginal, eaten by locusts or otherwise failed completely; the small tribe lived on the edge. But unlike the homesteaders, who could move on to find better land, the Ponca were confined to their reservation.

Relocation

In 1875, the Ponca chiefs signed a document that they believed would allow them to live with their friends on the Omaha reservation; the term “Indian Territory”, later to become Oklahoma, was lost somewhere in the translation.

In August of 1876, Congress appropriated funds to move the tribe to Oklahoma, supposedly for their own protection from Sioux raids. This action was taken in spite of despite a January peace between the Ponca and Brule’ Sioux, and in the face of growing tribal opposition to the move.

Indian Agency Inspector Edward Kemble ordered the tribe to pack up and move on orders of the president. Chief Standing Bear replied that his people had lived on their land for generations and hoped to grow old and die there.

Kemble replied “Hurry up, settle it among yourselves, be quick. Talk like men; be brave”.

Eventually, Indian Commissioner John Quincy Smith allowed a tribal delegation to visit Indian Territory to see the land, then to Washington to see the president (Rutherford B. Hayes).

Ten Ponca Chiefs were taken to Indian Territory in February of 1877 to select land. They didn't like what they saw; they called the land "stony and broken", and found the residents poor and dirty, and said, "We did not wish to sink as low as they seemed to be."

The Osage privately warned them that this was a bad land. They were shown two other pieces of land, but the chiefs were no longer interested. They were disgusted with Inspector Kemble and only wanted to return home.

Inspector Kemble and Agent James Lawrence told the chiefs that they must choose a piece of land or they would be left there. Head Chief White Eagle said they were left "without money, pass, or interpreter, in a strange country, among a strange people, because we would not select a piece of land."

So eight of the chiefs walked home, leaving two elderly chiefs who were unable to make the six hundred mile trek. They arrived at the Otoe agency on March 7, half starved, with bleeding feet. They reached the Omaha agency on March 12, and with help from friends and relatives, sent the president a telegram explaining their problem, and that they were "hungry, tired, shoeless, footsore, sad at heart and in trouble." The President did not reply.

Three days later, Standing Bear delivered a letter to the *Sioux City Daily Journal*. The editor called it "a plain and unimpassioned statement from the sufferers of a great wrong, victims of deceit and subterfuge who had conducted themselves peaceably and honestly." Finally, as they neared home, they visited the office of the *Niobrara Pioneer*, again stating their case to the press.

In the meantime, Indian Commissioner John Quincy Smith authorized the Poncas be removed to the Quapaw Reserve in SE Kansas. The Quapaw had not been consulted, nor given their consent.

When White Eagle & Standing Bear arrived home, they found that the two old chiefs had agreed to advise the tribe to prepare for removal and had been brought home. The return of the eight other chiefs rekindled the opposition to removal. Kemble and Agent Lawrence called for a council. Standing Bear ordered the agents off the reservation. Standing Bear's brother, Big Snake, head of the Ponca military society, stood up and wordlessly crossed his arms, a defiant figure standing head and shoulders above his older brother and the rest of the tribe. Intimidated by Standing Bear's defiant words and Big Snake's menacing posture, the agents departed in a rage.

The next morning, soldiers from Fort Randall dragged Standing Bear and his brother from their beds in front of their wives and families. They were taken away in chains, confined at the fort and appeared before a military tribunal. They were released by the fort commander who telegraphed President Hayes, requesting abandonment of the Ponca removal plan. The President did not reply.

Other supporters of the Ponca included clergymen in Yankton, Niobrara, Sioux City, & Omaha, and missionaries at Indian agencies. Local residents sided with the Poncas as well, preferring them as neighbors over the more aggressive Lakota of Spotted Tail's band. Rev. Alfred Riggs, missionary to the Santee Sioux, wrote to the Secretary of Interior emphasizing that the Ponca had not given consent to their removal and that their land was protected by two treaties. Niobrara attorney Solomon Draper spoke to Kemble on behalf of the Ponca but was rebuffed. Traveling to Washington, Draper did no better with Commissioner Smith.

Secretary of Interior Carl Schurz promised to "look into the matter", but in the end allowed the removal to proceed, apparently preferring to believe the reports from his agents. E.A. Howard replaced Kemble as Indian Agency Inspector.

On April 16, 1877, 170 to 180 Poncas who wanted or accepted relocation left for Indian Territory. They arrived at the Quapaw Reservation June 12, after a grueling 600 mile trip.

In early May, four companies of soldiers were sent to “compel” the removal of the remaining Poncas. When soldiers started kicking in doors and loading household goods into wagons, head chief White Eagle again called on attorney Solomon Draper, who telegraphed the president. The president did not reply.

Crossing the storm-swollen Niobrara, Ponca men rescued soldiers who had been swept off their horses. On May 19, twenty-five soldiers escorted 523 Poncas on their trail of tears, leaving behind their homes, farm equipment, and any other goods they were unable to sell or carry with them. Ponca women who were married to Yankton and Omaha men were separated from their friends and relatives and sent to live with their husbands’ tribes.

As soon as the caravan was out of sight, the 3 Ponca villages were leveled on orders of the inspector and agent. 236 houses, plus all the barns and outbuildings, the grist mill, sawmill, and blacksmith shop, even the church and school were torn down. The only building left was the agency building.

The Omaha learned of the Poncas’ forced exodus. Chief Iron Eye and his daughter Bright Eyes rode the Omaha’s fastest horses and met the Ponca caravan near the town of Columbus, Nebraska. Iron Eye, aka Joseph LaFlesche, was the brother of Ponca chief White Swan (Frank LaFlesche). His daughter Bright Eyes (Suzette LaFlesche), was a graduate of the Elizabeth School for Young Ladies and principal of the Presbyterian Mission School on the Omaha reservation. They found the Poncas weak and sick, including Standing Bear’s adult daughter Prairie Flower, a good friend of Bright Eyes. Iron Eye and Bright Eyes were discovered among the Poncas and ordered to leave, followed by a military escort.

On June 5, Standing Bear’s daughter died; the Christian ladies of Milford, NE came and prayed with Standing Bear and his family as Prairie Flower was buried in the church cemetery. The next day another child died in a windstorm.

They reached their destination near Baxter Springs, Kansas on July 9; a total of nine children & adults had died on the journey. They found their more compliant relatives who had left earlier sick, ragged, and living on one meal a day. The only housing available was flimsy tents; malaria and fevers ran through the tribe. Even inspector Howard, perhaps worried about his own career, wrote Commissioner Smith that the Ponca relocation was a mistake and that “a great mortality will surely follow.” True to his prophesy, by the end of 1877, one hundred and fifty-eight members of the tribe had died. Within two years one third were felled by disease.

In November, White eagle, Standing Bear, and other chiefs were taken to Washington. They met with President Hayes and new Indian Commissioner Ezra Hayt, who Chief Spotted Tail of the Lakota would later call “a bald-headed liar”. The Ponca were promised the return of the goods they had left behind and would be allowed to choose new land, but no funds were allotted for their move, no rations or supplies. The remnant of this peaceful farming band walked another 200 miles to their new reservation on the Arkansas River in Spring of 1878. They received no provisions, and nearby white settlers collected food for the starving tribe. Most of the people were too sick to farm; those who were able had no implements or work animals. Even their horses were dying. Chief White Eagle said, “We are as grass that is trodden down.”

Small groups began to slip away from the reservation, some seeking refuge at the Yankton reservation across the Missouri from their old territory. As supplies and farm equipment arrived, conditions began to improve, and by the summer of 1879, houses were built and crops planted, though sickness still ran rampant.

But by this time, Standing Bear and his clan had already become fugitives.

Breaking Away

Early in the winter of 1878, Standing Bear's teenage son Bear Shield became ill. Traditional remedies failed and there were no doctors assigned to treat members of the tribe.

Bear Shield spoke English, and could read and write, a great help to his father and the other chiefs. Like his father, he was a Christian, and would read the bible to other members of the tribe. But he also held traditional Ponca beliefs. A person must be buried near the bones of his ancestors, or he would spend the afterlife wandering alone. Bear Shield did not want to spend eternity alone, and Standing Bear promised his dying son that he would be buried among his ancestors in his native homeland on the Niobrara.

The death of his son was the final blow, and Standing Bear planned an escape; escape from the "warm land" that was so unhealthy for his people and a return to his native land on the plains to bury his son properly and farm his native soil. Plans were made, provisions and horse feed secretly set aside, and four teams and wagons were made ready, including Standing Bear's last two surviving horses. They were able to scrape together twenty dollars in cash.

On January 2, 1879, eight men, six boys, and thirteen women & girls set out in the cold, damp morning, leaving Big Snake to look after the remaining members of the clan. Among the fugitives were Crazy Bear, an Omaha, and Cries for War, a Yankton, men with Ponca wives and families who had followed the displaced tribe south after being separated from their friends and relatives.

Subject to arrest for leaving the reservation without a pass, the ragged band avoided towns. As Lt. John Bourke wrote later, "molesting no one and subsisting upon charity. Not a shot was fired at anyone, not so much as a dog was stolen."

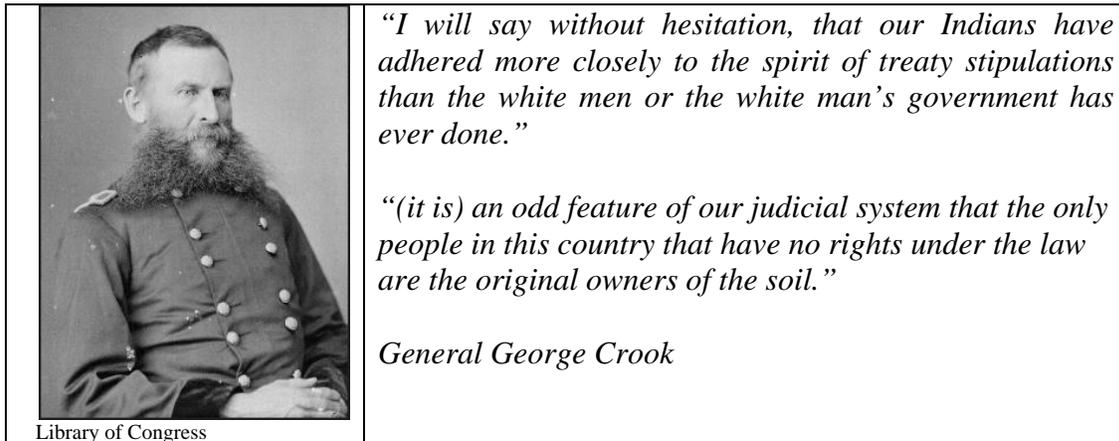
In late February, as the refugees approached the Omaha reservation, Iron Eye and Bright Eyes again slipped away without passes and brought the refugees to their village.

Iron Eye promised Standing Bear and his people sanctuary as long as they wanted to stay and would provide land, seed and implements for them to raise their own crops. Unfortunately, others would interfere with Iron Eye's promise.

Through a series of telegrams, Secretary of Interior Schurz ordered Standing Bear and his band arrested. Through his officers, General George Crook assigned a small detachment for the task, led by Lt. William Carpenter. The Poncas surrendered themselves at Iron Eye's village and headed for Fort Omaha with the sympathetic soldiers following a half mile behind.

On Friday March 28, Iron Eye and his daughter again left the reservation, this time to meet with General Crook. General George Crook was an 1852 graduate of West Point and a Civil War veteran. He had at one time been President Hayes' commanding officer. Troops under his command had subdued the Paiutes and fought for and against the Apache in Arizona Territory, finally making peace with Cochise. His defeat at Rosebud Creek by the Lakota warriors under Sitting Bull may have prevented his sharing Custer's fate at the Little Big Horn.

Crook tried to treat Indians with respect and avoid conflict whenever possible. Through his experiences, he had come to oppose the government's Indian policy, but as a professional soldier and officer, considered it improper to speak out publicly.



Gen. Crook met with the Omaha chief and his daughter and at 1:00 am on Sunday met secretly with a deputy editor of the Omaha Daily Herald, Thomas Tibbles. The two Omahas may also have been present. Thomas Henry Tibbles was 39 years old, a former abolitionist fighter with John Brown and a former circuit riding Episcopal preacher who rode with a bible and a six-shooter. He had previously worked with Crook to thwart an unfair treaty with the Brule' Sioux. One recent author indicates that both Crook and Tibbles may have been initiated to the Omaha tribe's Soldier Lodge through a Sun Dance ceremony.

At that secret meeting, Crook expressed his displeasure with his orders. He asked Tibbles to help and said, "If we can do something for which good men will remember us when we're gone, that's the best legacy we can leave."

At dawn, as the Omahas headed back to their reservation, Tibbles headed for the fort north of the city to visit the Poncas. He found several of them ill, and, according to the captain of the guard, too sick to travel. Standing Bear was at first unwilling to talk, expecting to make a formal statement before General Crook the next day, but after Tibbles displayed some secret lodge signs, Standing Bear called the other chiefs to meet with Tibbles.

Chief Buffalo Chip was first to speak. He told Tibbles that the Poncas had been happy and healthy farming on the Niobrara. He suggested that instead of sending them back to the warm land, the government should just shoot them, as the results would be the same.

Standing Bear then spoke at length of events that began with the 1868 treaty that gave their land to the Sioux, leading up to the death of his son. His wife Suzette also spoke, relating again their son's last request, and finally indicating that a return to Indian Territory would mean death to the small children surrounding the meeting. Overcome with emotion, Tibbles left the shelter to compose himself before continuing to speak with Standing Bear. Returning to Omaha, Tibbles spoke to the ministers of as many churches as possible, trying to gain support for Standing Bear and his people.

On Monday, Standing Bear appeared to make his statement to General Crook. Though the meeting had no legal status, Standing Bear wore his full ceremonial attire to speak officially for his followers. Tibbles and Crook's aide Lt. Bourke sat nearby to take notes. Bourke was such a habitual note taker that the Apache had named him Paper Medicine Man; the Lakota called him Ink Man. Standing Bear addressed the officers as "my friends and brothers". He stated simply that he wanted to return to his

old home to bury his son and for the sake of his people, for the sake of the women and children. He asked God to guide the officers to help his people. He said, “My brothers, a power I cannot resist crowds me down to the ground.” In the end, Crook sadly replied that there was little he could do but follow orders.

On April 1, Omaha newsboys shouted “Read all about it!” as Tibbles’ multi-page story hit the streets. From the earliest form of the Associated Press, the story was repeated in Chicago, New York, and other major cities, most accompanied by editorials supporting the Poncas. However, as the days went by, no change of heart came from the Washington bureaucrats. Tibbles sought a lawyer who would defend the Poncas’ rights. Most of the city’s attorneys advised him that Indians had no rights.

A New Battleground

Thomas Tibbles knew John Lee Webster from college. After consideration and with grave doubts of the outcome, Webster agreed to represent Standing Bear & the Poncas. Webster requested assistance from Andrew Jackson Poppleton, prominent Omaha citizen, eloquent speaker, accomplished attorney and chief counsel for the Union Pacific Railroad. Poppleton felt they had a good case, and the attorneys planned to file suit for a writ of habeas corpus against General Crook. Habeas corpus is Latin for “you have the body”; the writ requires a jailer him to bring forth the prisoner for charges or release him. There was still the question of whether an Indian had rights in court, but they would contend that by leaving the rest of the tribe in Indian Territory, they had severed their tribal ties and were entitled to protection under the constitution.

The lawyers didn’t know Gen. Crook well. How would he react to being cast as the bad guy? To being summoned into court by Standing Bear? As the attorneys explained their plan, Gen. Crook listened, his face expressionless until a smile began to form. Now the task was to find the right judge. The only choice was Elmer Scipio Dundy, an outdoorsman with an imposing manner, not afraid of controversy or precedent-setting. A telegram to his office disclosed that he was off bear hunting.

Riders and telegrams were sent to track down the judge, while Gen. Crook waited in dread of the orders that would send the Poncas back to Indian Territory.

By April 8, Judge Dundy was back in his courtroom in Lincoln, reading the detailed petition prepared by Webster and Poppleton, and signed by Standing Bear and the other leaders of the Ponca. He promptly issued the writ of habeas corpus that was served on Gen Crook later that day. Now General Crook was legally blocked from obeying any orders from the Interior or War departments. Crook promptly wired his commander, General Sheridan in Chicago.

When word reached Interior Secretary Schurz and Indian Commissioner Hayt, they immediately saw the case as a challenge to their Indian policy. On April 10, the US District Attorney was directed to appear for the United States to have the writ dismissed under the grounds: “...Indians stand as wards of the government, and are under the same relations to the government as minors to their parents...” This paternalistic attitude stretched back many decades, even before Captain Meriwether Lewis’s speech to the Yankton Sioux in 1804, repeatedly addressing the Yanktons as “children”.

In a slap at Judge Dundy and the attorneys, Hayt told the Associated Press, “No attorney has the right or can appear for an Indian, until authorized to do so by the Indian Department.” Other press releases followed the same theme and continued the misinterpretation of the 1875 agreement with the chiefs.

US attorney for the Nebraska District Genio M. Lambertson had been District Attorney for just five months. He was certain the case would be thrown out. From their first meeting, General Crook let the young DA believe they were both on the same side.

After the response had been filed, Judge Dundy set a date for all parties to appear before him in Omaha on April 30. The judge was delayed, but on the morning of May 1, a packed gallery awaited the opening of *Standing Bear et al v. Crook*, as the case was officially known. General Crook and his aides appeared in full dress uniforms. The general's uniform included a sash and ceremonial sword, despite his preference for non-regulation attire. District Attorney Lambertson shook the general's hand and sat next to him. Standing Bear entered, followed by his wife and grandson, his brother Yellow Horse, and Buffalo Chip, chief of the Medicine clan. Standing Bear wore his tattered European clothes, topped with his council attire of buckskin smock, beaded belt, bear claw necklace and red blanket. With General Crook's blessing, two Indians were also in the gallery; Iron Eye and Bright Eyes. An interpreter was present, but not to translate for the benefit of the litigants; an Indian had never been accepted as a litigant in any previous case.

At the marshal's call of "All rise!", Judge Dundy entered and took his seat at the bench. The Poncas, understanding little or no English, followed the example of the rest of the room and rose, then sat as the session was called to order. Apparently, Tibbles had no scruples about swaying the case in advance, and had thoroughly briefed the judge on the background of the case.

After the attorneys introduced themselves, Judge Dundy revealed the Poncas claim that they had severed their tribal ties and were attempting to be self sufficient. Further, that while they were engaged in said activity, they were arrested and detained by the respondent, General George Crook. Poppleton and Lambertson argued over legal points, the judge allowed an addition to the DA's previous response to the petition, contesting the claim of severance of tribal relations. By this point, the majority of the gallery may have been baffled or bored by the proceedings.

Then John Webster stood and launched the case for the petitioners. The first witness was Willie Hamilton, clerk at the reservation store and interpreter for the court. His testimony alternated between both sides of the case, but his answer to a final question interjected by Webster favored the Poncas. The next witness was Lt. Carpenter, who had led the arrest detail. Among his statements was his observation that most of the Poncas wore "citizens' clothes". After objections and cross examinations, his testimony benefited neither side. The judge called a lunch recess.

Now Standing Bear took the stand, with Willie Hamilton as interpreter. Immediately, Lambertson objected. "Does this court think an Indian is a competent witness?" Judge Dundy sternly replied that "the law makes no distinction on account of race, color, or previous condition.", making it clear that he had already accepted the Poncas' severance from the tribe. Through the interpreter, Standing Bear testified that he and his family had lived well but not prosperously farming their home land. Then over the DA's objections, Webster had him relate the story of their removal, the bad land, poor soil, sickness and death. At one point, Standing Bear stood up and raised his voice. "I am brought here, but what have I done? I don't know. It seems to me as if I have no place on earth. I want a place where I can work and support my family, and when done with life, die peaceably." After a warning from the judge, Standing Bear sat down and Webster resumed his questions. Standing Bear testified that he no longer considered himself a chief; he felt as poor as the rest.

Now it was Lambertson's turn to ask questions. Standing Bear had been well briefed on what might be asked and answered warily as the DA pursued his doubts regarding the group's severance of tribal ties. He stated his desire to return to his own land and to bury his son.

Lambertson countered this emotional appeal with a trick question. “Do you intend living in the same manner as you did before?” In other words, as a tribal Indian on a reservation.

The judge overruled Webster’s objection. Standing Bear, well coached on what he might be asked, answered, “I might go there and go to work.” He added that the Omaha wanted him to stay with them and raise a crop so he would have food for his return to his homeland. He also had to concede that he had accepted government rations while on the Omaha reservation. When Standing Bear left the witness stand, Webster announced that the relators had no further witnesses.

The young district attorney, confident in his case, announced that he had no witnesses to call, but would rely on the facts of the case. He also proposed to file the additional response approved during the morning session, contesting the claim of tribal separation. When he read the statement, General Crook voiced a strong objection, declaring that he did not want this statement appearing above his signature. At the judge’s admonition he continued his protest through the army judge advocate seated next to him, stating his belief that the Poncas had indeed severed their tribal relations and were attempting to live independently. This hinted for the first time Gen. Crook’s true position in the case.

Webster was now called upon to deliver his closing argument. He had not planned on Lambertson’s failure to call witnesses; it was late afternoon of a humid spring day and he did not want his statement interrupted when court was adjourned for the evening. His motion for adjournment was dismissed, but as he rose and began speaking, he was suddenly and conveniently overcome by the heat. Court was adjourned.

At this point, Standing Bear was uneasy with the trial. He had understood nothing more than a few words. He had not been able to make the points he wanted, including branding Commissioner Hayt a liar. Accustomed to speaking for himself in council, he was frustrated by the court protocol of having others speak for him. He told Tibbles, “No man can talk for another as well as he can for himself.” Tibbles visited Judge Dundy the next morning and requested that Standing Bear be allowed to make a statement on his own behalf. An arrangement was promised.

When the trial resumed on May 2, Webster summarized several points:

The Omaha had title to their land and could invite anyone they wanted.

Indian tribes could not be moved at the “whim and pleasure” of the commissioner.

Treaties signed by the Poncas required the tribe’s consent before relocation.

“These... are not savages or wanderers. They cultivate the soil, live in houses and support themselves.” Farming, after all, was what the government wanted the Indians to do.

He stressed that the law only allowed the army to hold persons who had committed crimes and hand them over to civil authorities.

Finally, Webster quoted civil rights activist Frederick Douglass: “A man belongs to himself until you storm the citadel of heaven and wrest from the bosom of God man’s title deed to himself!” In other words, to own another man is to defy God.

Lambertson began by condescendingly honoring Webster and Poppleton “for their generosity in coming to the assistance of these poor people, prisoners and friendless in a strange land.” He disregarded the fact that the Poncas had been in their native territory among their friends and relatives when arrested.

Confident that the case would be thrown out, he nevertheless covered all angles in his three hour summation. He questioned the jurisdiction of the court to issue the writ or even hear the case and said that the judge had erred in considering petition from an Indian – a non-citizen, and supported his view with the customs of habeus corpus:

No application for a writ from an Indian had ever been considered in federal court;

In the British origin of Habeas Corpus, the law applied to free subjects only; He cited the Dred Scott case in which the Supreme Court ruled that a slave was not a citizen, but property. Following this thinking, Indians were not citizens, but wards or property of the government.

He continued, pointing out that:

The Poncas had been given equipment & stock by government;

Ponca treaties prohibited their leaving res w/out permission;

Omaha treaties prohibited non-members from entering;

The Poncas forced removal had no bearing on case;

The Poncas consent for relocation was not necessary, as new laws passed by congress superseded previous treaties, including an 1871 decision that no new treaties would be made.

Therefore, the government had the right to arrest escaped Indians and trespassers on reservations, therefore the writ must be dismissed.

After an adjournment for supper, Andrew Poppleton, chosen for his oratorical ability, began his final address on behalf of Standing Bear. He spoke in a strong voice, using eloquent words, dramatic pauses and theatrical gestures. The courtroom above the Omaha post office was his stage and he was playing the lead role. He expressed surprise that the government's defense painted Poncas as savages without rights. He spoke at length on treaties:

No new reservation had been set aside by congress for the Poncas;

The Congressional decision in 1871 specifically stated that previous treaties would not be affected;

The equipment & stock given by the government was in exchange for hundreds of square miles of Ponca territory.

He then focused on Standing Bear's right to a writ of habeas corpus.

He would not believe that the court would consider these people as nothing more than wild beasts.

Nothing in the Constitution forbade Indians seeking legal protection.

Children and the insane had the right to Habeas Corpus

He quoted numerous definitions of habeas corpus, none of which specified citizenship as a requirement, and finally stated, "If there is no precedent for the issuing of a writ on behalf of an Indian, then I say in God's name it's high time to make one."

Now both sides had presented their closing arguments, and Judge Dundy announced that he would consider the case and hand down his decision at a later date. He then whispered to the marshal "Court is adjourned." The marshal turned and whispered, "Hear ye, hear ye, the Honorable District Court of the United States is now adjourned."

Standing Bear was now called before the bench with a new and more educated interpreter – Bright Eyes, daughter of the Omaha chief. Standing Bear stood in his ceremonial attire, a combination of Plains Indian and European styles. Though he spoke in his own language, his use of phrasing, pauses, and gestures was as eloquent as Poppleton's. In the course of his speech, he raised his hand and made one of his most moving statements: "That hand is not the color of yours. But if I pierce it, I shall feel pain. If you pierce your hand you also feel pain. The blood that will flow from mine will be the same color as yours. I am a man. The same God made us both." He then spoke of a dream or vision in which he and his family are trapped between a raging, rising river and a man backed by soldiers. If the man does not let them pass, they must sink beneath the flood. Standing Bear looked Judge Dundy in the eye and said, "You are that man."

At a glance from the judge, the marshal called, "All rise!" Although the judge had not announced his decision, the gallery cheered, and General Crook shook Standing Bear's hand.

Now the waiting began, and it was not until May 12 that Judge Dundy handed down his lengthy decision that ended with this ruling:

1. That an Indian is a PERSON.
2. That Gen Crook, the respondent, has custody of the relators in violation of United States laws.
3. No authority exists for returning the relators to Indian Territory.
4. Indians have the inalienable right to life, liberty, and the pursuit of happiness.
5. The relators must be discharged from custody and it is so ordered.

After the Battle

Standing Bear had won his fight, not on the battlefield, but in the courtroom, setting an example for other tribes far into the future. Politicians and suppliers involved in the reservation system saw this decision as a threat to their power and profits.

The Ponca band was free, but had no money, no farm equipment, no food. The Omaha helped, and the citizens of the city of Omaha formed a relief fund. The secretary of the War Department allowed the Poncas to stay on government land near the Omaha reservation. Bear Shield's bones were buried in the soil of his ancestors along the Niobrara.

Even though Judge Dundy's decision should have set a precedent, the law of the land had not changed, nor had the mindset of many of its people. Standing Bear, Tibbles, Bright Eyes and her brother Frank went on a speaking tour of the eastern states, crusading for Indian rights

Later in May, Big Snake tried to take advantage of his brother's court victory and left the reservation to buy horses from the Cheyenne. He and his party were arrested and returned to their reservation. In October, while resisting arrest on false charges, he was beaten, shot and killed in the Agent's office.

President Hayes finally responded and launched a Senate investigation. The Poncas, despite their departure from the rest of the tribe, were eventually recognized as a separate tribe, the Northern Ponca. 26,000 acres were returned to the tribe in 1881 with \$165,000 restitution. By this time, conditions in Indian Territory had improved and less than half of the tribe returned to Nebraska. The Northern tribe called themselves *Osni-Ponka*; Cold Poncas, the Southern tribe, *Maste-Ponka*; Warm Poncas.

The Ponca Tribe Today

In the 1890s, the Dawes Act & allocation of tribal land to individual members broke up the continuity of the Northern Ponca community. Tribal status was terminated in 1966 under a government policy begun in 1945. As during the allocation proceedings of the previous century, political and financial pressures were applied to encourage acceptance of the measure. Members began efforts for reinstatement in the early 1970s, and tribal status was reinstated in 1990 by Act of Congress. Under the reinstatement act, tribal trust land ownership is limited to 1500 acres which cannot be used for a residential reservation.

The Northern Ponca tribe now numbers over 2300 registered members scattered over 40 states and two foreign countries, not counting those serving overseas with the U. S. armed forces. Tribal offices serve 15 counties in Nebraska, Iowa, and South Dakota. The tribe owns 180 acres of land, a small buffalo herd, powwow grounds, and earthlodges that are used for ceremonial and educational purposes. The tribal headquarters and museum in Niobrara includes the headdress that Standing Bear presented to attorney A. J. Poppleton after the trial.

What are long range effects of this landmark case? If an Indian is a person, then, as a person he is also a citizen and has the right to vote. Progress on this matter was very slow.

1884	John Elk case; a person cannot be a United States citizen and a member of an Indian tribe
1887	Dawes act granted citizenship only to Indians who gave up their tribal affiliations
1901	Citizenship for Indians in "Indian Territory" (Oklahoma).
1919	Indians who served in WWI granted citizenship
1924	Citizenship granted to all American Indians, but states imposed restrictions
1948	Arizona & New Mexico are last 2 states to grant Indians right to vote
1965	Voting rights act and its amendments through 1982

Like Lincoln's Emancipation Proclamation, Judge Dundy's landmark decision was not the end, but the beginning, of a long and rocky road to equality.

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