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Indian Revenge

Recollections of an Old Settler.

The uncivilized Indian Tribes of North America have had many peculiar laws & customs, similar in some respects to those which existed among the earliest Nations of the human race. One was the Law of Retaliation, "an eye for an eye; a tooth for a tooth". If one Indian killed another of the same tribe, the relatives of the one killed had the right to slay the murderer, at any time & place that suited him. No court was formed or jury empannelled, and but little time allowed to pass before the sentence of death was executed on the culprit. If the murderer made his escape and was not taken and delivered to the aggrieved relatives, some member of the family of the fugitive, was certain, sooner or later to fall a victim, to appease the spirit of the deceased; unless as it sometimes happened, the friends of the murderer, bought his life & pardon by liberal gifts to the family of the deceased. A case of summary execution of this law (not justice) occurred in this settlement something more than 40 years ago. At that period the country was a wilderness; there were but two white settlements within the limits of the present State of Wisconsin, Green Bay and Prairie du Chien. Several tribes occupied the country, and game of all kinds abounded. It was a custom among hunters, Indians as well as white men and half breeds, to hunt Deer at night by torch light; this was done in canoes; the torch composed of birch bark & pitch, was placed at the bow of the canoe, the hunter seated in the stern, with his gun by his side, paddle in hand, with which he slowly & silently propelled his canoe. Hunters were well acquainted with the particular spot where the deer came at night, for water and to feed on a favorite kind of grass, and at place, where there were salt licks. The deer seeing the light, would become fascinated, and stand perfectly still, so that the hunter could approach within gunshot, and obtain a view of the game, when he would fire, and seldom failed to kill at the first discharge.

On one evening in the month of May, a young half breed (part Indian and part white) started in his canoe for a torch light hunt. He ascended East River three or four miles above the present city of Green Bay, and when slowly gliding along the stream, he heard a slight noise in the bushes on the bank: the night was dark; his torch shed a lurid light in advance of the canoe. Supposing the noise to be caused by deer feeding on the margin of the stream, he cautiously approached until he could discern an object with gunshot, and believing it to be a deer, fired his gun, heavily loaded with buckshot: he saw the object drop, and immediately approached the spot, when instead of a dead Deer, to his horror he found the body of a dead Indian! The Indian had been sitting in his canoe without a torch when seen by the hunter, probably watching at a deer salt lick.

The man killed was a young Indian, a nephew of Oshkosh, one of the principal

chiefs of the Menominee Nation. His Chief with his family, including the young man killed, had arrived at Green Bay, a day or two previously and erected his Lodge on the west bank of Fox River, immediately in front of the present residence of Mrs Tank, in Fort Howard, at that time the late Judge Porlier residing there. The unfortunate half breed finding the Indian dead, and recognizing him as the relative of Oshkosh, abandoned his own canoe, and embarked in that of the Indian, with the dead body, and started for the Lodge of the chief; arriving there about daylight, he fastened the canoe and went to the Lodge, and found the family yet asleep. He immediately communicated to Oshkosh the sad intelligence of the death of his nephew, and explained how it had happened. The chief arose and without making any reply, followed the half-breed to the canoe where the corpse was - having previously armed himself with a knife, such as Indians usually carried. Arriving there the half-breed entered the canoe, and waded toward the stern, where the body lay, intending as was supposed to assist in carrying it to the lodge. The chief did not enter the canoe but waded alongside - the water being shoal - until he came alongside of the half breed, when he suddenly turned and struck him with the knife several deadly blows: the half breed fell dead instantly, and it was found on examination that the chief had inflicted upon his victim 10 or 12 wounds, any one of which might have proved fatal. This second murder was witnessed by the members of the family of the chief, four or five Frenchmen who happened to be in sight. In the forenoon of the same day, the Coroner summoned a jury and held an Inquest on the body of the murdered half breed; the jury returned a verdict of Wilful murder against Oshkosh, who was immediately arrested and committed to jail to await his trial at the term of the Court, then soon to be held here.

At a term of the U.S. Circuit Court held in June following (Judge Doty presiding) the Grand Jury found a Bill of Indictment for Wilful murder against the chief. He was arraigned; able counsel assigned him, and tried by a Jury. The evidence being positive, and the killing clearly proved the petty Jury could not do otherwise than render a verdict of Wilful Murder.

After the conviction & verdict of the jury, the counsel for the prisoner moved in arrest of judgement, and for a new trial, grounding the motion principally on two points, viz. That the prisoner was an uncivilized Indian, and that according to the laws and customs of the tribe, of which he was a member, any relative who lost one of his family by violent death by the hand of another, had the right to revenge the murder by killing the murderer; and secondly, that if the prisoner was guilty of any any offence, it could only be that of Manslaughter, and not Murder; as he was ignorant of the civil laws of the

country, and there was no proof of previous malice &c. The counsel, as well as the community at large, were surprised to hear the opinion of the court, which not only granted the motion, but went further, and ordered the discharge of the prisoner, holding that he being an uncivilized Indian, and ignorant of the civil and criminal laws of the whites, was not amenable to them. It is a provision of the laws of the United States, that murder committed by one Indian upon another Indian, in the Indian country, on land to which the Indian title had not been extinguished is not within the jurisdiction of, and cannot be tried by our civil court. The case of the Chief Oshosh differed very materially in two essential particulars, from cases arising between the natives in their own country, to wit; The half breed murdered by the chief, was not a full Indian; he was what is termed a half breed, part Indian and part white; he was civilized, lived in a French family, and spoke not only the Indian language, but also the French and a little English; Secondly, the killing did not occur in the Indian country, but in the midst of a white settlement, on land owned by the citizens and under the jurisdiction of civil court, and subject to the laws of civilization. But I do not propose to review the decision of the Court, in the case of Oshkosh, but merely advert to it as one among many other doubtful legal decisions in the early history of our Court. The chief, Oshkosh, the subject of this article, died a few years ago at an advanced age.

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