

INDIANS AS THE LAW SEES THEM

Remarkable Declaration by United States Judge De Haven.

WHY HE GAVE A LIGHT SENTENCE.

Red Men Not to Be Judged by the High Standard of the Caucasian.

LAWYERS HAVE VARIED OPINION.

Many Think That the Judge Made a Mistake When He Gave That Peculiar Opinion.

I must take into consideration the fact that the deceased was the aggressor, and I don't think that the conduct of this defendant should be measured by the same high standard that should be applied to one of our own race.

Such was the remarkable and unusual statement made by United States District Judge de Haven yesterday morning when about to sentence Dick Bell, an Indian of



JUDGE J. J. DE HAVEN.

Speaking of the decision just after he had left the bench Judge de Haven said to a CALL reporter: "Of course there is no law on this matter, but if I could have done so I should have been glad to instruct the jury on the point and would have told them that they might consider the fact that the defendant was an Indian. I think that a half-breed Indian, who has associated with Indians all his life, is not to be judged by the same standards as a civilized man. Although the law makes no distinction of this kind, and although there is probably no precedent for my position, I felt it my duty to consider the nationality of the defendant. I think it a matter proper to be viewed by the court, as it is within judicial discretion. The pardoning power in every State and nation has the right to consider such things, and I felt that in a matter of judicial discretion I had the same right to view all the facts of race and environment."

the Round Valley Reservation, for the manslaughter of George Steele, a half-breed Indian, on the same reservation. Steele and the prisoner had quarreled and Bell shot and killed Steele. It was a killing done, so far as could be learned, in the heat of passion and without premeditation. Bell was convicted of manslaughter.

The sentence was eighteen months' imprisonment at hard labor in the San Quentin penitentiary and to pay a fine of \$100.

The Judge's remarks were a puzzle to the laymen who heard them. They had always believed that Justice was blind to the person of the criminal, as well as to the person of the prosecutor. They were, therefore, surprised to hear from the lips of an eminent jurist a declaration in an Indian should not be looked upon in the same light as a murder or any other crime by a white man who were at a loss to understand.

Several prominent attorneys were asked for their opinion as to the soundness of the Judge's declaration. None of them knew the name of the Judge who had rendered it. Had they known that the author was the Judge of a court situated in this State, they would no doubt have declined, by reasons of professional ethics, to offer any criticism of it. Being ignorant of the location of the court and of the identity of the judge they spoke their minds freely and as lawyers without bias or prejudice. The opinions thus obtained were sufficiently diverse to be looked upon as entirely original. They are given here.

Attorney E. L. Campbell—The reasons assigned by the court for the particular punishment inflicted upon the prisoner are certainly peculiar and unusual. If the decision is correctly reported, views as expressed are certainly erroneous. Punishments for crime are inflicted, not for the purpose of vengeance or raising suffering to the person convicted, but solely for the protection of society in the

prevention of a repetition of the offense. The Legislatures of the various States and of the United States have determined that these deterrent punishments shall be, and no court is justified in affixing a punishment for any purpose except the protection of society. No doubt the courts have the right to exercise the law relating to the maximum and minimum punishment, and there was no necessity for assigning any reason for its decision. On the theory expressed by the court the term of imprisonment should, in my opinion, have been sentenced instead of shortened, as an Indian, to whom the law of a human is a casual, is dangerous to be at large.

Judge Fox of the Supreme Court—This is not a case of a local question. The court decided the point in his judicial discretion and not in violation of the statutes. If there was any attempt to make an Indian or any other race shall be adjudged on a different basis than a white man or any other race the court has surely gone beyond its law. Circumstances alter cases, and when a question is left to the discretion of the court there is always a wide range, I am hardly able to see why an Indian would suffer more in jail than a white man.

Attorney R. M. F. Soto—I never heard of any such precedent, and I do not think there ought to be any distinction between an Indian and any other class of citizens in murder cases or other crimes. It is one country and there is one law for all classes, whether white, black, Chinese or Indians. I do not think an Indian would suffer more than a white man, and I am sure that an Indian should be two standards of punishment or why the Judge took the position he did.

Ex-Supreme Justice Van R. Peterson—The premises in this case seem to be false. I do not know what Judge rendered the decision you have shown me, but I think his reasoning is odd. The Indian is not a man of delicate nervous organization, for which reason he does not suffer as a civilized man does. He is made like an animal. He feels the punishment for a time, but when the physical system gets accustomed to new conditions he is all right. He does not feel the pains of disgrace and remorse, but he soon learns to love the food and the ease of his position. There is no distinction between races in the law, and I do not think it would be safe as a precedent to say that Indians who commit manslaughter or murder should be punished more leniently or severely than others.

Council W. L. Dudley of Stockton—The reasoning of the court seems to me to be peculiar. I have never seen any precedent for such a distinction as that which you quote. It strikes me that an Indian cannot suffer so keenly as a white man of intelligence and education, for more than half of the pain of imprisonment is mental.

M. A. Dorn—The law makes no such distinction as the court has made, but justice is blind and regards all men as equal. The two-fold purpose of punishment is to remove the criminal temporarily or permanently from society and to warn other members of society of the consequences of evil-doing. In my judgment no term of punishment will have any effect on the average Indian, except to keep him away from society and therefore protect it from his ravages. The who advantage in punishing an Indian, therefore, is that which comes to the people at large, for the Indian is not reformed. Under this view it occurs to me that the longer the term of imprisonment the better. The comparative suffering of non-offending of an Indian, therefore, is not a proper subject for judicial consideration.

Ex-Judge D. J. Murphy—I think there

PHELAN His Veto of Illegal Public Work Contracts Is Sustained.

Supervisors Meet for the First Time After a Vacation of Six Weeks.

Mr. Lackmann Introduces a Resolution to Compel Chinatown Guides to Pay a License.

The Board of Supervisors met for the first time in six weeks yesterday, the summer vacation having come to an end.

Mayor Phelan's veto of a bill for work on Bond street public property was sustained, his pointing being that the board had no right to let such contracts except by bids in open competition and that the law in this respect had not been complied with.

Supervisor D. Vany stated that to sustain the veto would work a hardship on the contractors as they had already done considerable work on the contract, but when the matter went to a vote there were no dissenting voices.

The Knickerbocker Athletic Club was granted a permit to hold a boxing contest in November on a date yet to be decided.

J. Whelan was appointed janitor of the Fire Commissioners' rooms, Vice Michael Whelan, deceased.

The matter of appointing George Colwell police patrol driver, vice J. H. Hyman, resigned, went over one week.

Supervisor D. Vany granted a leave of absence of sixty days, dating from October 6, and Assessor Stone was given permission to leave the city for thirty days, beginning at date.

Proposals introduced by Supervisor Lackmann to tax Chinatown guides \$10 a quarter was referred to the License Committee.

C. L. Taylor, gas inspector, reported that a gas company had removed thirty-six gas pipes, and the request of Pusi-master Montague, had allowed the posts to remain for the accommodation of letter-boxes until the Government can supply proper posts.

STREET IMPROVEMENTS. Summary of Work Acted On by the Board.

The following is a complete summary of the street improvements which passed the Board of Supervisors at yesterday's session:

RECOMMENDED PASSED TO RESOLUTION ORDERING:

De Haro, Twenty-second to Twenty-third—Sewers, etc.

De Haro and Twenty-third—Same.

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