

Courtesy of the Wyandotte County Historical Society and Museum

Lyda Conley's argument presented to the Supreme Court of the United States

Editor's Note: This Supreme Court case is known as *Conley v. Ballinger*. In 1907 when Lyda Conley began her appeal to the U.S. Supreme Court the case was known as *Conley v. Garfield*. James Garfield was the Secretary of the Interior at that time. However, by the time the case was scheduled for argument, Richard Ballinger had become Secretary of the Interior. The case was one of the U.S. Supreme Court cases during the session which began in October, 1909. Ms. Conley actually presented her case before the U.S. Supreme Court on January 14, 1910.

HURON CEMETERY

KANSAS CITY, KANSAS

ARGUMENT PRESENTED TO THE SUPREME COURT OF THE UNITED STATES

BY

LYDA BURTON CONLEY

As we shall attempt to speak to you, this afternoon, about Huron Cemetery, we are mindful of the fact that "In the sweat of thy face shalt thou eat bread till thou return unto the ground; for out of it wast thou taken: for dust thou art, and unto dust thou shalt return."

History tells us that a superstitious reverence for and burial of the dead has been found a distinguishing trait of Indian character - to some extent we believe this to be true - as graves of the redmen were their only monuments so traditions were their only history. The Wyandots or Hurons, including the Eries or Erigas, Ahrendahronous, and the Attiwandorouk or "Neutral Nation" Canada, are one of the three divisions of the Wyandot-Iroquois Family - a distinct, and historically famous group, allied ethnically to the Algonquins, and linguistically, Morgan thinks, to the Dakotas.

The Wyandots of Wyandot County, Ohio having been promised 148,000 acres of land in Kansas, in lieu of their annuity, which under the treaty of Jan. 29, 1817 was to have been paid annually forever, were persuaded to sell their lands in the states of Michigan and Ohio, and came to what is now known as Wyandotte County Kansas, about the year 1842.¹ The excuse given for not keeping this agreement was that so large a tract of land could not then be found unclaimed. The Delawares, who in the year 1640 were compelled

to purchase land from the Wyandots, feeling that they owed a moral obligation to the Wyandots sold them the land in the fork of the Missouri and Kansas Rivers, consisting of 39 sections of land for which they paid \$48,000.

The Wyandots, we find adhered to the cause of the United States, during the war with Great Britain, and in consequence of such adherence their property was injured or destroyed, for which under the 12th article of the treaty of September 29, 1817, the United States engaged to pay in the course of the year 1818, damages to the amount of \$4319.39 at Upper Sandusky.

My grandfather Isaac Zane, whose Indian name was Mawcasharrow, was a scout, and also carried mail in the War of 1812. He was among the number of the head men of the tribe and chiefs who came to Kansas in the year 1843 to purchase the land of the Delaware Indians, which sale was consummated July 25, 1848. This purchase included Huron Cemetery, which under the treaty of Jan. 31, 1855 was not ceded to the United States, being then in use as a public cemetery but on the other hand the 2nd article of said treaty provided: "The portion now enclosed and used as a public burying ground shall be permanently reserved and appropriated for that purpose", and the Supreme Court of the United States in 13 Peters 498,513 and 539, held that "whenever a tract of land has been legally severed from the mass of public lands, and no subsequent law, or proclamation, or sale will be construed to embrace it, or to operate upon it, although no reservation of it be made", and have held, also, that "It is well settled in the United States that Cemeteries are among the purposes for which land may be dedicated, and it is held that, upon such dedication, the owner is precluded from exercising his former rights over the land."

The first case of record three thousand seven hundred and eighty-three years ago states "and the field of Ephron which was in Machpelah, which was before Mamre, the field, and the cave which was therein, and all the trees that were in the field, that were in all the borders round about, were made sure, unto Abraham for a possession in the presence of his children of Heth, before all that went in at the gate of his city. And after this, Abraham buried Sarah his wife in the cave of the field af Machpelah before Mamre: The same is Hebron in the land of Canaan. And the field and the cave that is therein, were made sure unto Abraham for a possession of a burying place by the sons of Heth. Gen.23:17-20, And that one hundred and eighty-three years later "Jacob called unto his sons, and, he charged them, and said unto them I am to be gathered unto my people: bury me with my fathers in the cave that is in Ephron the Hittite, In the cave that is in the field of Machpelah, which is before Mamre, in the land of Canaan, which Abraham bought with the field of Ephron the Hittite for a possession of a burying place. There they buried Abraham and Sarah his wife; there they buried Isaac and Rebekah his wife; and there I buried Leah."

"And his sons did unto him according as he commanded them. For his sons carried him unto the land of Canaan, and buried him in the cave of the field of Machpelah, which Abraham bought with the field for a possession of a burying place of Ephron the Hittite before Mamre."

Like Jacob of old I too, when I shall be gathered unto my people, desire that they bury me with my fathers in Huron Cemetery, the most sacred and hallowed spot on earth to me, and I cannot believe that this is superstitious reverence any more than I can believe that the reverence every true American has for the grave of Washington at Mount Vernon is a superstitious reverence.²

Huron Cemetery is known to be the oldest burial ground in the State of Kansas.³ Just when the first interment was made therein, we have not been able to ascertain.⁴ We find however, that in the year 1843, a chief by the name Matthew Peacock, aged 68 years, and in the year 1844, Squeendechtee, another chief who was at that time 61 years of age, died and was (sic) buried therein. Other chiefs whose graves we find there are Rontondo or Warpole, Tauromee, Sommodowat, Hawdownwaugh or Matthews, Monocue or Thomas, Dawatout or John Hicks, Big Tree, Tall Charles, Sarahoss, Clark Armstrong and many others space will not permit us to mention.⁵

The wisest man the world has ever known admonishes "Remove not the ancient [landmark], which thy fathers have set." And that the hand of the desecrator "remove not the old landmark; and enter not unto the fields of the fatherless": "For their redeemer is mighty; he shall plead their cause with thee."

Man goeth to his long home, and the mourners go about the street: or ever the silver cord be loose, or the golden bowl be broken, or the pitcher be broken at the fountain, or the wheel broken at the cistern.

Then shall the dust return to the earth as it was: and the spirit shall return unto God who gave it.

Transcribed from the handwritten manuscript of Lyda Burton Conley, 1909. All spelling, grammar and punctuation is identical to that of the original except where indicated.
L. Schwarzenholz, 1988

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NOTES

¹ Hancks, Larry. *Emigrant Tribes: Wyandot, Shawnee and Delaware*, 1990, p. 41. The Wyandot tribe consisting of 664 people, 25 of whom were from Michigan and 30 from Canada, left Upper Sandusky, Ohio on July 12, 1843. They arrived in Kansas on July 28, 1843.

² Hancks, Larry. *Index of Known Burials in Huron Cemetery*, 1990.
Lyda Burton Conley was buried in Huron Cemetery in 1945.

³ Landis, Margaret. *Cemeteries of Wyandotte County, Kansas*, 1976.
Although Huron Cemetery is one of the oldest cemeteries in Kansas, it does not predate burial grounds established by native and earlier emigrant tribes. The oldest cemetery in

Wyandotte County, Kansas is the Delaware Indian cemetery at White Church: earliest recorded burial, 1831.

⁴ Hancks, *Emigrant Tribes*, p. 41.

Upon the arrival of the Wyandots from Ohio in 1843, they were forced to encamp in the swampy bottom land at the mouth of the Kansas River. Sixty Wyandots died thereafter until they were able to purchase more suitable land from the Delaware. The dead had to be taken across the river and carried to the hilltop where Huron Cemetery is located.

⁵ Connelley, William E. *Huron Place*, 1896. Reprinted by City of Kansas City, Kansas, 1980.

At the time of Conley's appeal, there were only 84 recorded burials in Huron Cemetery; the earliest was that of Matthew Peacock, d. Oct. 1843.

Index of Known Burials

Presently, there are approximately 260 recorded burials in Huron Cemetery although not all sites have been located and there are many unidentified graves. The earliest record of death among the Wyandots upon their arrival in Kansas was for Charles Garrett, b. Sept. 26, 1842 - d. Sept. 1843. Unfortunately, this gravesite has not been located. The last burial in Huron Cemetery was for Frank A. Northrup, d. Feb. 28, 1965.
