The Court Archive:
Nomaque

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In the early days of Illinois history, few cases in the state courts directly addressed Native American rights. The federal government primarily held responsibility over these matters. Three U.S. Supreme Court cases reinforced the non-citizen status of the Native population. *Johnson v. McIntosh*, 21 U.S. 543 (1823) ruled that Native Americans did not have legal right to convey real property as they merely occupied their lands. *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831) asserted federal authority over Native peoples, declaring tribes to be "domestic dependent nations," which restricted their ability to govern themselves. *Worcester v. Georgia*, 31 U.S. 515 (1832) established that the federal government, not the states, had the right to regulate Native American land.

Despite the 1787 Northwest Ordinance's encouragement to preserve peace, to observe good faith, and to prohibit land acquisition without Native consent, the federal government was responsible for the forcible relocation of the Native tribes after inequitable treaties and wars.

Before relocation, there were many tribes in Illinois. The Cahokia, Mishigama, Peoria, Tamaroa, and Kaskaskia were several that were a part of the Illini Confederation. Other tribal nations that lived in Illinois were the Ho-Chunk (Winnebago), Potawatomi, Tapouaro, Sauk, Fox, and Kickapoo.

By Illinois statehood in 1818, only a handful of Native Americans were still living in Illinois. Peoria County's first murder case in 1825 involved Nomaque, a member of the Potawatomi tribe. Nomaque had gotten into a fight with Pierre Laundri, a French hunter and trader. The circumstances that led to the brawl are unknown, but Nomaque stabbed Laundri in the stomach, and Laundri died from his wound.

Nomaque was arrested, and a grand jury indicted him for murder. William Hamilton, son of Alexander Hamilton, defended the Native American. The jury found Nomaque guilty and sentenced him to death, but he appealed the decision to the Illinois Supreme Court in *Nomaque v. People*, 1 Ill. 145 (1825). Justice Theophilus Smith wrote the opinion reversing the circuit court's decision, citing several irregularities: 1) the foreman of the grand jury did not sign his name, 2)

the petit jury was not sequestered, 3) one juror admitted making up his mind before the trial began, and 4) the circuit judge dismissed the jury before Nomaque's request to poll the jurors.

When the case returned to Peoria County, Nomaque was again tried for murder, but he argued that the Peoria County Circuit Court did not have jurisdiction because he was a member of the Potawatomi tribe and only bound by state laws as his tribe had made by treaty. The judge disagreed, and Nomaque was again found guilty of murder. He again appealed to the Illinois Supreme Court but escaped before the appeal concluded, leading to its dismissal.

Several years later, Nomaque allegedly joined the Native forces in the Black Hawk War of 1832, was severely wounded at the Battle of Stillman's Run, and then killed by a Peoria man who recognized him.

Nomaque's case continues to be cited as legal precedent. As recently as 2021 in *People v. Jackson*, 2021 IL App (1st) 180672, the Illinois Appellate Court "held that the right of a criminal defendant to have the jury polled was so important that it belonged exclusively to the defendant, meaning counsel could not waive it on the defendant's behalf by allowing the jury to be dismissed before polling."