

# The Burger Court Opinion Writing Database

## *Oneida Indian Nation of New York v. County of Oneida*

414 U.S. 661 (1974)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University  
Forrest Maltzman, George Washington University



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

December 20, 1973

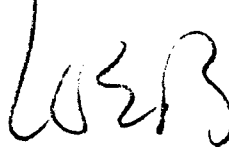
Re: No. 72-851 - Oneida Indian Nation of New York State  
v. County of Oneida, New York

Dear Byron:

Your opinion has persuaded me that the Federal interest in Indian problems and lands overrides the factors that held me back from affirmance.

I now join you.

Regards,



Mr. Justice White

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

November 2, 1972

Dear Chief:

In 72-871, Griffin v. Education V. County

of Grading I have talked with Stren and he will  
write the opinion.

WILLIAM O. DOUGLAS

The Chief Justice

cc: The Conference

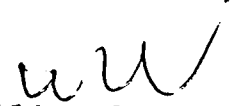
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

December 7, 1973

Dear Byron:

Please join me in your opinion in 72-851 Oneida Indian  
Nation of New York State v. The County of Oneida.

  
William O. Douglas

Mr. Justice White

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

December 7, 1973

RE: No. 72-851 Oneida Indian Nation v.  
County of Oneida, New York, et al.

Dear Byron:

I was the other way but you persuade  
me and I agree.

Sincerely,



Mr. Justice White

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

December 11, 1973

72-851 - Oneida Indian Nation  
v. Oneida County

Dear Byron,

I am glad to join your opinion for  
the Court in this case.

Sincerely yours,

P.S.

Mr. Justice White

Copies to the Conference

To: The Chief Justice  
Mr. Justice Douglas  
~~Mr.~~ Justice Brennan  
Mr. Justice Stewart  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

1st DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

Circulated: 12-6-73

Recirculated: \_\_\_\_\_

No. 72-851

The Oneida Indian Nation of  
New York State et al.,  
Petitioners.  
v.  
The County of Oneida,  
New York, et al.

On Writ of Certiorari to  
the United States Court  
of Appeals for the Sec-  
ond Circuit.

[December —, 1973]

MR. JUSTICE WHITE delivered the opinion of the Court.

Both §§ 1331<sup>1</sup> and 1362 of Title 28 of the United States Code confer jurisdiction on the District Courts to hear cases "arising under the Constitution, laws or treaties of the United States." Section 1331 requires that the amount in controversy exceed \$10,000. Under § 1362, Indian tribes may bring such suits without regard to the amount in controversy. The question now before us is whether the District Court had jurisdiction over this case under either of these sections.

<sup>1</sup>Section 1331 (a) provides:

"The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of \$10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States."

Under § 1362:

"The district courts shall have original jurisdiction of all civil actions, brought by any Indian tribe or band with a governing body duly recognized by the Secretary of the Interior, wherein the matter in controversy arises under the Constitution, laws, or treaties of the United States."

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pp 15, 16

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
✓ Mr. Justice Stewart  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

2nd DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

Circulated: \_\_\_\_\_

Recirculated: 12 - 11 -

No. 72-851

The Oneida Indian Nation of New York State et al. Petitioners, v. The County of Oneida, New York, et al.	}	On Writ of Certiorari to the United States Court of Appeals for the Sec- ond Circuit.
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[December —, 1973]

MR. JUSTICE WHITE delivered the opinion of the Court.

Both §§ 1331 and 1362 of Title 28 of the United States Code confer jurisdiction on the District Courts to hear cases "arising under the Constitution, laws or treaties of the United States."<sup>1</sup> Section 1331 requires that the amount in controversy exceed \$10,000. Under § 1362, Indian tribes may bring such suits without regard to the amount in controversy. The question now before us is whether the District Court had jurisdiction over this case under either of these sections

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"The district courts shall have original jurisdiction of all civil actions, brought by any Indian tribe or band with a governing body duly recognized by the Secretary of the Interior, wherein the matter in controversy arises under the Constitution, laws, or treaties of the United States."

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

December 27, 1973

Re: No. 72-851 -- Oneida Indian Nation of N. Y. State v.  
County of Oneida

Dear Byron:

Please join me in your opinion.

Sincerely,



T. M.

Mr. Justice White

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

December 11, 1973

Dear Byron:

Re: No. 72-851 - Oneida Indian Nation of N. Y. v.  
Oneida City

Please join me.

Sincerely,

  
A handwritten signature in cursive script, appearing to read "Harry", is written over a horizontal line.

Mr. Justice White

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

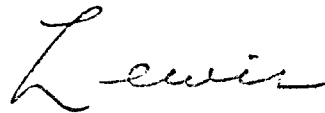
December 11, 1973

No. 72-851 Oneida Indian Nation v. County of Oneida

Dear Byron:

At the Conference I voted for reversal on the ground that § 1362 conferred the necessary jurisdiction. It seemed to me that there was sufficient ground in the legislative history, supported by the policy considerations involved, to reach this result. I was not disposed to think that § 1331 conferred jurisdiction. I have read your thorough opinion with much interest, but will need to do some further thinking before coming to rest on the jurisdictional issue. I will, in any event, join in the judgment of the Court.

Sincerely,



Mr. Justice White

lfp/ss

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

January 15, 1974

No. 72-851 Oneida Indian Nation v. County  
of Oneida

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Dear Bill:

Please join me in your concurring opinion.

Sincerely,



Mr. Justice Rehnquist

lfp/ss

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

January 16, 1974

No. 72-851 Oneida Indian Nation v. County  
of Oneida

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Dear Byron:

Although I have joined Bill Rehnquist's concurring opinion, I  
would like also to join your opinion for the Court.

Sincerely,

*Lewis*

Mr. Justice White

lfp/ss

cc: The Conference

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-851

The Oneida Indian Nation of New York State et al., Petitioners, v. The County of Oneida, New York, et al.	}	On Writ of Certiorari to the United States Court of Appeals for the Sec- ond Circuit.
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[January —, 1974]

MR. JUSTICE REHNQUIST, concurring.

The majority opinion persuasively demonstrates that the plaintiffs' right to possession in this case was and is rooted firmly in federal law. Thus, I agree that this is not a case which depends for its federal character solely on possible federal defenses or on expected responses to possible defenses. I also agree that the majority decision is consistent with our decision in *Gully v. First National Bank*, 299 U. S. 109 (1936). However, I think it worthwhile to add a brief concurrence to emphasize that the majority opinion does not disturb the long line of this Court's cases narrowly applying the principles of 28 U. S. C. 1331 and the well-pleaded complaint rule to possessory land actions brought in federal court.

As the majority seems willing to accept, the complaint in this action is basically one in ejectment. Plaintiffs are out of possession; the defendants are in possession, allegedly wrongfully; and the plaintiffs claim damages because of the allegedly wrongful possession. These allegations appear to meet the pleading requirements for an ejectment action as stated in *Taylor v. Anderson*, 234 U. S. 74 (1914). Thus the complaint must be judged according to the rules applicable to such cases.

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

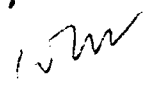
January 16, 1974

Re: No. 72-851 - Oneida Indian Nation v. County of Oneida

Dear Byron:

Please join me. Although I have circulated a printed concurring opinion in this case, I would also like to join the opinion of the Court.

Sincerely,



Mr. Justice White

Copies to the Conference

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-851

From Rehnquist, J.

Circulated

1/12/74

The Oneida Indian Nation of New York State et al., Petitioners, v. The County of Oneida, New York, et al.	} On Writ of Certiorari to the United States Court of Appeals for the Sec- ond Circuit.
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[January —, 1974]

MR. JUSTICE REHNQUIST, with whom MR. JUSTICE POWELL joins, concurring.

The majority opinion persuasively demonstrates that the plaintiffs' right to possession in this case was and is rooted firmly in federal law. Thus, I agree that this is not a case which depends for its federal character solely on possible federal defenses or on expected responses to possible defenses. I also agree that the majority decision is consistent with our decision in *Gully v. First National Bank*, 299 U. S. 109 (1936). However, I think it worthwhile to add a brief concurrence to emphasize that the majority opinion does not disturb the long line of this Court's cases narrowly applying the principles of 28 U. S. C. 1331 and the well-pleaded complaint rule to possessory land actions brought in federal court.

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