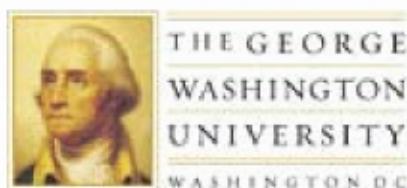


The Burger Court Opinion Writing Database

*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

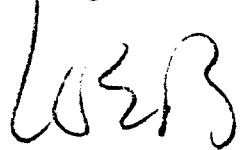
Re: No. 72-851 - Oneida Indian Nation of New York State
v. County of Oneida, New York

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, 1975

Date dictated:

In 72-1021, Order and Opinion. Concurring
of Justice I have believed with Justice Rehnquist and the view

that the opinion.

W. O. Douglas
WILLIAM O. DOUGLAS

To: Chief Clerk

cc: Recd. Clerk

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.

WW
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,

Bill

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,



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.

Circulated: 12-6-23

Recirculated: _____

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.

[December —, 1973]

MR. JUSTICE WHITE delivered the opinion of the Court.

Both §§ 1331 and 1332 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."¹ Section 1331 requires that the amount in controversy exceed \$10,000. Under § 1332, 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.

¹ 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 § 1332:

"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."

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

pp 15, 16

From: White, J.

2nd DRAFT

Recirculated: _____

Recirculated: 12-11-1

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 Second Circuit.

[December —, 1973]

MR. JUSTICE WHITE delivered the opinion of the Court.

Both §§ 1331 and 1332 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."¹ Section 1331 requires that the amount in controversy exceed \$10,000. Under § 1332, 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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Under § 1332:

"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."

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,



Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

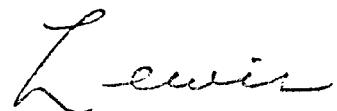
December 11, 1973

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

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

Dear Byron:

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

Sincerely,



Mr. Justice White

lfp/ss

cc: The Conference

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-851

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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.

[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,

W

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

From Rehnquist, P.

G. R. G. L. G. 1970

No. 72-851

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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.

[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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