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Can an Indian Tribe Recover Land Illegally Taken in the Seventeenth Century?

by Richard B. Collins

County of Oneida, New York
v.
Oneida Indian Nation of New York State
(Docket No. 83-1065)

New York
v.
Oneida Indian Nation of New York State
(Docket No. 83-1240)

Argued October 1, 1984

ISSUES

In 1795, the state of New York acquired land from the Oneida Indian Nation in violation of federal law. Two New York counties are now record owners of part of the land. The case now before the Court presents it with several related questions to resolve. Do the Oneidas have a federal right to sue the counties for damages measured by the land's rental value? If so, does the long passage of time defeat their claim? Or did the federal government ratify the transaction after 1795, making it lawful? If the Oneidas recover from the counties, may the counties recover in turn from the state of New York?

FACTS

At the time of the Revolutionary War, the Oneida Nation inhabited central New York. The Oneidas sided with the colonists against the British, and the new nation rewarded them in a 1784 treaty that secured ownership of their land. But the state of New York ignored the treaty and acquired Oneida land in a series of transactions. Most of the Oneidas' land, almost five million acres, was acquired in 1788. After the Constitution was adopted, Congress passed a law that made acquisition of Indian land void unless approved by the federal government. New York ignored this law and specific federal warnings in 1795, when the state purchased another 100,000 acres of Oneida land. The transaction was irregular and possibly fraudulent. No chiefs signed for the Oneidas, and the state paid the Oneidas 50 cents an acre, then sold the land to settlers for more than seven times as much.

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Over the years, the Oneidas protested New York's actions, but no suit was filed until the present action in 1970—175 years after the land was taken. The Oneidas sued two New York counties over ownership of 872 acres taken in 1795. They did not seek return of the land but asked for damages based on the land's rental value for the years 1968 and 1969. Despite the limited scope of the case, all parties agree that its outcome will affect other Indian claims in New York and other eastern states, claims that cover sizable amounts of land.

The lower federal courts dismissed the case based on lack of federal court jurisdiction, but in 1974, the Supreme Court reversed and sent the case back for trial. The counties then brought the state of New York into the case, claiming that as the original wrongdoer, the state ought to reimburse the counties for anything the Oneidas recover. This time the lower federal courts ruled in favor of the Oneidas and awarded a money judgment. They also held that the state must reimburse the counties.

The counties and state obtained Supreme Court review of their legal defenses to the judgment. In effect, they admit the 1795 transaction was illegal but argue that the Oneidas have no legal remedy, or that defenses based on the passage of time bar the Oneidas' claim, or that the federal government retroactively approved the 1795 transaction after that date. The Court asked the federal government to file a brief stating the views of the United States, and the federal brief sided with the Oneidas.

In briefing the case to the Supreme Court, all parties concentrated on the question of whether the Oneidas have a federal court remedy for the illegal land taking. But during oral argument to the Court, the Justices showed much greater interest in the issues based on the passage of time, particularly the question of a possible statute of limitations. Those who heard the oral argument believe that these issues will determine the outcome.

BACKGROUND AND SIGNIFICANCE

The background of this case is more ancient even than 1795. The European nations that made discovery claims in the Americas adopted a rule that acquiring land ownership from the Indian nations was a sovereign prerogative and monopoly. Original Indian ownership was recognized, but the Indians could transfer their land only to the European sovereign. In the many cir-

cumstances of discovery and conquest, this rule was often violated. Events were often far from any instrument of crown authority, and the violators had political power, the Indians none. But the rule remained the norm, so that violations had to be cured, at least after the fact, and subjects of the crown who claimed under the rule usually prevailed over those who violated it.

The United States inherited this rule from the British crown but had to apply it to a federal system. There is some uncertainty about the law during the Confederation, but it is settled that under the Constitution, the federal government has plenary control over Indian affairs. This power was exercised by the First Congress and by every Congress since. A 1790 law regulated trade with the Indians and declared void any acquisition of land from them unless approved by the federal government. This law was renewed in 1793, 1796, 1799, 1802 and 1834. The 1834 law remains in effect. The Oneidas claim that New York's 1795 acquisition violated the 1793 law, and that later laws preserved the illegality. One of the counties' defenses argues that the claim expired in 1796 with the 1793 law.

Federal Indian policy evolved into a relationship in which the federal government often acts as trustee of Indian property, and this trusteeship bears on the issues before the Supreme Court. It is settled law that the United States can sue to recover Indian property, and one argument the New York counties make is that only the federal government can sue to remedy the illegal 1795 transaction, not the Oneidas.

The statute of limitations issue that dominated oral argument before the Supreme Court is complex. The only federal statute of limitations for Indian claims applies expressly to suits by the federal government. It would not bar land claims, so it does not bar a suit by the United States to remedy the 1795 transaction, but its relation to the Oneidas' suit is uncertain. The counties argue that there is no federal statute of limitations applicable to the Oneidas, and that in this situation, the Court should "borrow" a state statute under which the Oneidas' claim would be barred. The Court has done this for some kinds of legal claims, but it is uncertain whether the Oneidas claim should be one of them. The Oneidas and the federal government argue that Congress has indicated that the tribes' claims should not be barred.

The significance of this case is the subject of considerable discussion in the petitions and briefs before the Court. The counties argue that a decision against them will impair private land titles in much of central New York and in other states, a result the Court should avoid. They are joined by friend of the Court briefs on behalf of other New York owners of record, similar parties to an Indian land claim in South Carolina and the American Land Title Association. The Oneidas emphasize that similar Indian land claims, particularly one in Maine, have been settled by Act of Congress without any harm

to private owners. The federal brief goes further. While supporting the Oneidas on the issues in this case, it argues that Congress has the power to extinguish the Oneidas' claim by retroactively approving the 1795 transaction, and that it could do so without any compensation to the Oneidas. It also argues that a number of defenses not raised in this case by the counties might bar recovery against private owners of record. The probable consequences of a decision are argued to the Supreme Court in many cases, but it is fair to say these questions are unusually prominent in this one.

ARGUMENTS

For the Counties of Oneida and Madison, New York (Counsel of Record, Allan van Gestel, 28 State Street, Boston, MA 02109; telephone (617) 523-5700)

1. The Oneidas do not have a cause of action against the counties under federal law.
2. The Oneidas' claim should be barred by the applicable statute of limitations.
3. Rights under the 1793 statute have abated.
4. The United States subsequently ratified the 1795 transaction.
5. The Oneidas' claim presents solely nonjusticiable political questions.

For the State of New York (Counsel of Record, Robert Abrams, Attorney General, The Capitol, Albany, NY 12224; telephone (518) 474-8101)

(The state made the same arguments as the counties' 1, 3 and 4 above.)

1. The counties' claim for indemnity is barred by the state's sovereign immunity.
2. The state has not consented to the counties' indemnification claim.

For the Oneida Indian Nation of Wisconsin and the Oneida Indian Nation of New York (Counsel of Record, Arlinda Locklear, 1712 N Street, NW, Washington, DC 20036; telephone (202) 785-4166)

For the Oneida of the Thames Band Council (Counsel of Record, Robert T. Coulter, 601 E Street SE, Washington, DC 20003; telephone (202) 547-2800)

1. The Oneidas have a federal common law cause of action for trespass.
2. The Oneidas have a federal cause of action under the 1793 statute.
3. The United States has not ratified the 1795 transaction.
4. The Oneidas' claim is not barred by any statute of limitations.
5. The Oneidas' claim does not present a nonjusticiable political question.

AMICUS ARGUMENTS

These are summarized in the "Background and Significance" portion of this article.