02-6111(L)

02-6130(CON), 02-6140(CON), 02-6200(CON), 02-6211(CON), 02-6219(CON), 02-6301(XAP), 02-6131(XAP), 02-6151(XAP), 02-6309(XAP)

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

CAYUGA INDIAN NATION OF NEW YORK,

Plaintiff-Appellee/Cross-Appellant,

SENECA-CAYUGA TRIBE OF OKLAHOMA,

Plaintiff-Intervenor-Appellee/Cross-Appellant,

UNITED STATES OF AMERICA,

Plaintiff-Intervenor-Appellee,

v.

GEORGE E. PATAKI, as Governor of the State of New York, CAYUGA COUNTY and SENECA COUNTY, and MILLER BREWING CO.,

Defendants-Appellants/Cross-Appellees.

On Appeal from the United States District Court for the Northern District of New York

PETITION FOR PANEL REHEARING OR REHEARING EN BANC BY APPELLEES/CROSS-APPELLANTS CAYUGA INDIAN NATION OF NEW YORK and SENECA-CAYUGA TRIBE OF OKLAHOMA

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MISCELLANEOUS

The Cayuga Indian Nation of New York and the Seneca-Cayuga Tribe of Oklahoma (collectively, the "Cayugas") petition for rehearing by the panel, or rehearing en banc, of the majority decision in Cayuga Indian Nation of New York v. Pataki, 413 F.3d 266 (2d Cir. 2005).

Statement Pursuant to FRAP Rule 35(b)(1)

(A) The majority opinion conflicts with City of Sherrill v. Oneida Indian Nation, __ U.S. __, 125 S. Ct. 1478, 1494 (2005). In Sherrill, the Court expressly stated that "the question of damages for the Tribe's ancient dispossession is not an issue in this case, and we therefore do not disturb our holding in [County of Oneida v. Oneida Indian Nation, 470 U.S. 226 (1985)] *Oneida II*." In Oneida II, the Court had upheld an award of monetary damages for the taking of tribal lands in 1795 in violation of the Non-Intercourse Act. 25 U.S.C. §177. Despite this clear statement that Sherrill did not disturb that holding, the majority opinion in this case expansively and erroneously read Sherrill to require dismissal of the Cayugas' claim for money damages and their $247.9 million judgment against the State of New York, based upon Non-Intercourse Act violations similar to those in Oneida II.

In addition to Sherrill and Oneida II, the majority's unprecedented decision also conflicts with the following:

- A prior decision of this Court, Oneida Indian Nation of New York v. County of Oneida, 719 F.2d 525 (2d Cir. 1983), upholding the right of Indian

tribes to obtain damages as a remedy for violations of their possessory rights following an ancient dispossession.

- Decisions of the Supreme Court and of this Court holding that where passage of time and changed circumstances render restoration of tribal sovereignty over unlawfully taken lands impossible, the Court may award monetary damages to dispossessed tribal plaintiffs. Yankton Sioux Tribe v. United States, 272 U.S. 351, 357-59 (1926); Oneida Indian Nation v. State of New York, 691 F.2d 1070, 1082-83 (2d Cir. 1982).

- Decisions of the Supreme Court and of this Court holding that ancient Indian land claims are timely if brought in compliance with 28 U.S.C. §2415, Oneida II, 470 U.S. at 244; Oneida Indian Nation v. County of Oneida, 719 F.2d at 538; Oneida Indian Nation v. State of New York, 691 F.2d at 1084, and that laches may not be applied to actions filed within an applicable statute of limitations. United States v. Mack, 295 U.S. 480, 489 (1935); Ivani Construction Corp. v. City of New York, 103 F.3d 257, 259-60 (2d Cir.), cert. denied, 520 U.S. 1211 (1997).

- In finding the United States subject to laches, the majority opinion conflicts with long-settled Supreme Court authority, including United States v. Minnesota, 270 U.S. 181, 194 (1926) and Heckman v. United States, 224 U.S. 413, 437 (1912), holding that the United States is acting in its sovereign capacity when it sues to enforce Indian property rights protected by federal law.

- The majority ruling that a claim for monetary damages may be dismissed because it is "disruptive" conflicts with prior decisions of this Court in two Oneida cases. 719 F.2d at 539; 691 F.2d at 1083.

Consideration by the full Court is therefore necessary to secure and maintain uniformity of the Court's decisions.

(B) This case is of extraordinary importance because the intricate jurisprudence of Indian land claims and related issues that have developed over many years in the Supreme Court, and to a very large extent in this Court, has been completely undermined by the majority's opinion. That opinion obliterates much of that jurisprudence, holding that no claim or remedy is available in law or equity for an historical taking of Indian land in violation of federal statute and a federal treaty. All Indian land claims based upon historic takings are now subject to dismissal.

Statement of the Case

Shortly before the U.S. Constitution went into effect on March 4, 1789, the State of New York acquired three million acres of land from the Cayuga Nation, promising to protect the Cayugas' remaining 64,015 acres. In State Treaties of 1795 and 1807, the State acquired all of the Cayugas' remaining lands, but by then those lands were federally protected by the Non-Intercourse Act and the 1794 Treaty of Canandaigua, both of which the State disregarded and violated.

In the present epic litigation to remedy this injustice, the district court granted summary judgment on liability to the plaintiffs in 1991, and in 2001, after extensive further litigation, awarded the Cayugas a $247.9 million monetary judgment as the sole remedy for their dispossession.

On June 28, 2005, a majority of a panel of this Court dismissed the entire case, relying solely upon the recently decided Sherrill case, and improperly reading it in a manner that violates well-established principles of federal Indian law.

The Cayuga Majority Misapplied The Supreme Court's Holding In Sherrill

In Sherrill, the Supreme Court held that the Oneida Indian Nation, because of laches and related equitable considerations, could not reestablish sovereignty by reacquiring its reservation lands through open market purchases.

The Cayuga majority did not find the Supreme Court's statement in Sherrill, that its ruling did not affect damage remedies in land claim litigation, to be "dispositive".[1] On that basis, it purported to apply the equitable considerations discussed in Sherrill, including laches, to dismiss all of the Cayugas' claims and the judgment for monetary damages. 413 F.3d at 273-74. The Cayuga majority

[1] Dissenting Justice Stevens clearly understood that sustaining the monetary damage remedy in Oneida II, with which he alone disagreed, was part of the Sherrill holding: "It seems perverse to hold that the reliance interests of non-Indian New Yorkers that are predicated on almost two centuries of inaction by the Tribe do not foreclose the Tribe's enforcement of judicially created damages remedies for ancient wrongs, but do somehow mandate a forfeiture of a tribal immunity...." 125 S. Ct. 1497 (Stevens, J. dissenting).

quotes, but fails to act upon, the Sherrill Court's description of the Oneidas' claim as involving "grave, but ancient, wrongs, and the relief available must be commensurate with that historical reality." 413 F.3d at 274, quoting Sherrill, 125 S. Ct. at 1491 n. 11. Clearly, Sherrill did not contemplate that a tribe such as the Cayugas, all of whose lands had been taken in violation of federal law and federal treaty, would be left with no remedy whatsoever for these "ancient wrongs."

The majority opinion conflicts with the decision of this Court in Oneida Indian Nation of New York v. County of Oneida, 719 F.2d 525 (2d Cir. 1983), and the Supreme Court's affirmance in Oneida II, upholding the right of an Indian tribe to recover monetary damages for an ancient dispossession. In Oneida II, the Court stated that the application of laches or other equitable defenses to a claim for damages "would be novel indeed" and "would appear to be inconsistent with established federal policy." 470 U.S. at 245 n.16.

The Cayuga majority's enlargement of Sherrill to overrule not only its own precedent, but also that of the Supreme Court in Oneida II, violates the repeated admonition of the Supreme Court that Courts of Appeals should leave "to this Court the prerogative of overruling its own decisions." Rodriguez de Quijos v. Shearson/American Express, Inc., 490 U.S. 477, 484 (1989). See also, Agostini v. Felton, 521 U.S. 203, 237 (1997).

The majority's misapplication of Sherrill is largely grounded on its failure to properly distinguish between rights and remedies. The Sherrill Court, which

clearly understood that it was dealing only with the latter, recognized this distinction.[2] Citing D. Dobbs, Law of Remedies §1.2, p. 3 (1973), the Supreme Court noted that "[t]he substantive questions whether the plaintiff has any right ... are very different questions from the remedial questions ... what the measure of the remedy is." 125 S. Ct. at 1489. The Supreme Court put this general principal into the specific context of Indian land claim cases by citing with approval Navajo Tribe of Indians v. New Mexico, 809 F.2d 1455, 1467 (10th Cir. 1987) ("The distinction between a claim or substantive right and a remedy is fundamental"), and a decision by Judge McCurn in which he had precluded the Oneida Nation from seeking ejectment against private landowners while maintaining a damage claim against the State of New York, by noting the "sharp distinction between the existence of a federal common law right to Indian homelands and how to vindicate that right [emphasis in original]." 125 S. Ct. at 1489. Thus, Sherrill clearly recognized that a tribe could maintain a Non-Intercourse Act-based land claim, and obtain money damages for its dispossession, even if equitable considerations might bar other, more disruptive, forms of relief for the same claim.

The majority opinion failed to apply this "fundamental" distinction by repeatedly mischaracterizing the nature of the Cayugas' underlying claim and how

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[2] Judge Hall's dissent collects five quotes demonstrating that Sherrill "confines its holding to the use of laches to bar certain relief, not to bar a claim or all remedies[.]" 413 F.3d at 288.

it had been treated in the district court. Thus, the majority refers to the Cayugas' cause of action here as a "possessory claim," 413 F.3d at 274-76; one that "is and always has been one sounding in ejectment." Id. at 274. Yet, as the dissent correctly notes, and as the complaints filed by the Cayugas and the United States in the district court clearly bear out, the plaintiffs here "sought several forms of relief, including declaratory relief, ejectment,[3] an accounting, and trespass damages ..." Id. at 280. Thus, it is correct, as the dissent finds, that "the plaintiffs here have sought money damages from the filing of this case," Id. at 281.

The majority's failure to distinguish claims from relief, and the devastating results that flow from that failure, is also demonstrated by the majority's inaccurate statement that the "District Court found that laches barred the possessory land claim, and the considerations identified by the Supreme Court in Sherrill mandate that we affirm the District Court's finding that the possessory land claim is barred by laches." 413 F.3d at 277. In fact, the district court did not find the Cayugas' "claim" barred by laches. As the dissent correctly notes, citing to the relevant district court decisions, the district court held that laches did not bar the Cayugas' claim, but subsequently held that equitable considerations "did prevent the award of the equitable remedy of possession," Id. at 290 n.14. In fact, contrary to the

[3] While the majority appears to assume that possession is the only available remedy for an ejectment claim, as Judge Hall correctly states, mesne profits, which are damages for lost use of land during dispossession, is an established remedy for ejectment. 413 F. 3d at 283.

majority's characterization, the district court concluded that "[s]urely the Cayugas are entitled to relief for the past two centuries during which they have been deprived of their homeland; but ejectment is not the answer." Cayuga X, 1999 U.S. Dist. Lexis 10579 at *98. The dissent characterizes this conclusion as "properly distinguishing between claims and remedies ...." Id. The majority's failure to so distinguish leads it to a conclusion that is both unwarranted and inconsistent with the rule and reasoning of Sherrill.

The Cayuga majority found that the same equitable considerations that doomed the Oneidas' claim of restored sovereignty in Sherrill applied to the facts of the twenty-five year old Cayuga litigation. 413 F.3d at 277. However, unlike Sherrill, in Cayuga, the district court made factual findings after a month-long bench trial that the Cayugas were not guilty of laches. The majority dismissed these factual findings because they were made in the context of a trial on prejudgment interest, 413 F.3d at 279-80, stating that the case should have been dismissed long before reaching that stage.[4] The majority found that the long period between the Cayugas' loss of their land and the filing of this case requires dismissal on the ground of laches, despite the district court's factual findings,

[4] As Judge Hall noted, the district court had also previously ruled that the Cayugas did not unreasonably delay commencing its lawsuit when the court, after conducting an evidentiary hearing, denied the remedy of ejectment. 413 F.3d at 282 n. 3. The district court denied ejectment because of the prejudice to innocent landowners. Such concerns have no bearing on an award of monetary damages against the State of New York.

which are not to be set aside unless clearly erroneous. Rule 52, F.R. Civ. P. The majority holds that an Indian land claim based upon an historical taking must always be dismissed on the ground of laches. Even a judicial determination after a lengthy trial that the Indians were not in fact guilty of laches carries no weight; the presumption of laches is apparently irrebutable under the majority's analysis.

The Cayuga majority also applied Sherrill's ruling that a "shift in governance" would be too disruptive to the district court's award of monetary damages in Cayuga. As Judge Hall stated, however, unlike a finding that would restore possession to the Cayugas, "there does not appear to be anything in the money damages award in this case that would be disruptive." 413 F.3d at 285. When the Cayuga majority attempted to illustrate the purportedly disruptive nature of the Cayugas' damage claim, the panel spoke in terms of "the ejectment of tens of thousands of landowners," and a remedy that "would call into question title to over 60,000 acres," 413 F.3d at 275, and not in terms of any disruption actually resulting from a monetary award.

The majority's ruling that an award of monetary damages may be overturned because it is "disruptive" is also contrary to this Court's ruling in Oneida, 691 F.2d at 1083, citing numerous cases that found claims justiciable despite the fact that they "resulted in wide-ranging and 'disruptive' remedies," and 719 F.2d at 539, which rejected an argument that the Court's award of damages to the Oneidas would have "catastrophic ramifications".

Similarly, an award of monetary damages does not violate the impossibility doctrine relied upon by Sherrill, and misapplied by the Cayuga majority. As the Supreme Court ruled in Yankton Sioux Tribe v. United States, 272 U.S. 351, 357 (1926), and as this Court recognized in Oneida, 691 F.2d at 1083, where repossession by Indians of wrongfully taken land is deemed an impossible remedy, the court has authority to award monetary relief for the wrongful deprivation. See also Felix v. Patrick, 145 U.S. 317, 334 (1892).

The Majority Opinion Ignored Federal Statutes Affecting Indian Land Claims

In its determination to shoehorn the Cayuga case into what it perceived as the Sherrill holding, the majority opinion failed to address two important federal statutes that directly affect the justiciability of the Cayugas' land claim.

A. The Non-Intercourse Act.

Reduced to its essentials, the majority opinion concludes that equitable principles can wholly bar a claim and thereby prohibit any relief whatsoever for a state's violation of the Non-Intercourse Act. This holding, however, conflicts with the plain language of the Non-Intercourse Act itself and Congress' obvious intent in enacting this protective statute.

The 1793 version of the Act in effect when the unlawful State Treaties of 1795 and 1807 acquiring Cayuga land were entered into, and still codified at 25 U.S.C. §177, provided, in pertinent part:

> ...no purchase or grant of lands, or of any title or claim thereto, from any Indians or nation or tribe of Indians, within the bounds of the United States, shall be of any validity in law or equity, unless the same be made by a treaty or convention entered into pursuant to the Constitution. (emphasis added).

Congress, by expressly providing that land transactions with Indian Tribes that violate the Act shall be of no validity "in law or equity" has clearly precluded courts, such as the majority here, from in effect validating unlawful land conveyances, and leaving the tribes with no relief or recourse whatsoever, based on a judicial determination of what is "fair" or "equitable."

Sherrill holds that equitable principles may bar a particular remedy. But the far broader holding of the majority opinion here, that equity can wholly close the courthouse door to a tribe whose land has been taken in violation of the Act, is inconsistent with the mandate of Congress that no such transaction "shall be of any validity in law or equity...."

B. 28 U.S.C. §2415

In 1966, and through amendments adopted in 1982, Congress enacted a modern statute of limitations for certain claims, including contract and tort suits for monetary damages brought by or on behalf of Indians. 28 U.S.C. §§2415(a) and (b). It is well settled that the statute applies to suits filed by Indian nations as well as by the United States. Oneida II, 470 U.S. at 242-43.

There was never any dispute in the present case that the complaint was filed within the statute of limitations established by §2415. 413 F.3d at 280-81 (Hall, J. dissenting) ("It bears noting that the statute of limitations established by Congress did not expire until approximately three years following the date this action was filed."). Although the majority opinion paid lip service to this statute, it found that the statute did not exist until 1966, "one hundred and fifty years after the cause of action accrued." 413 F.3d at 279. This conclusion is at odds with the statute which expressly provides that all claims that had accrued prior to the enactment of the statute were deemed to have accrued on its enactment. 28 U.S.C. §2415(g). See also, Oneida II, 470 U.S. at 242. Similarly, H.R. Rep. No. 96-807 states that the purpose of the Indian Claims Limitation Act was to extend the limitations period for "actions on behalf of Indians which accrued prior to July 18, 1966." 1980 U.S.C.C.A.N. 207. The legislative history of §2415 also demonstrates that the statute was intended to preserve ancient Indian land claims. See, e.g., H.R. Rep. No. 95-375 (1977), reprinted in 1977 U.S.C.C.A.N. 1616, 1618; p. 1621 (letter from Secretary of Interior to Committee stating that many Indian land claims date back to the 18th and 19th centuries); p. 1622-23 (letter from Justice Department regarding claims by Maine Indians based on aboriginal holdings).[5]

[5] Although the Cayuga majority cited this Court's opinion in Oneida Indian Nation v. New York, 691 F.2d 1070 (2d Cir. 1982), for its holding that the Oneida suit was timely because it "was within the statute of limitations of 28 U.S.C. §2415," 413 F.3d at 279, the majority failed to properly apply the statute to the Cayuga

A basic infirmity in the majority's application of laches to the Cayugas' claims is that it violates the well-settled principle that laches does not apply to actions filed within an applicable statute of limitations. See e.g., United States v. Mack, 295 U.S. 480, 489 (1935); Cross v. Allen, 141 U.S. 528, 537 (1891); United States v. Milstein, 401 F.3d 53, 63 (2d Cir. 2005); Ivani Contracting Corp. v. City of New York, 103 F.3d at 259-60; United States v. Repass, 688 F.2d 154, 158 (2d Cir. 1982). Clearly, Congress has the power to determine that claims may be brought on behalf of Indian Nations to remedy ancient wrongs. Judges may not disregard Congress' will and apply their own sense of equity to refuse to hear such claims.

The Majority Erroneously Applied Laches To The United States

Unlike Sherrill, in this case the United States intervened in its trustee capacity on behalf of the Cayugas. The majority applied laches to the claims of the United States, ruling that the unavailability of the defense of laches against the United States is not a *per se* rule. 413 F.3d at 278-79. However, the rule that laches is not a defense to suits by the United States when it acts in its sovereign capacity to enforce a public right or national policy is absolute, as the Supreme

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claim. The majority concluded that Sherrill "effectively overruled" this Court's ruling in Oneida, 691 F.2d at 1084, that "suits by tribes should be held timely if such suits would have been timely if brought by the United States." 413 F.3d at 277 n. 6. The majority's reading of Sherrill would also overrule the Supreme Court's decision in Oneida II, 470 U.S. at 244, and the Oneida panel in 719 F.2d at 538, which reached the same conclusion.

Court has repeatedly ruled. See Alaska Dep't of Environmental Conservation v. Environmental Protection Agency, 540 U.S. 461, 514 (2004) (Kennedy, J. dissenting) ("The principle that the United States are not bound by any statute of limitations, nor barred by any laches of their officers, however gross, in a suit brought by them as a sovereign Government to enforce a public right, or to assert a public interest, is established past all controversy or doubt," quoting United States v. Beebe, 127 U.S. 338, 344 (1888)). See also, United States v. Summerlin, 310 U.S. 414, 416 (1940); Board of County Commissioners v. United States, 308 U.S. 343, 351 (1939).

In United States v. 93 Court Corp., 350 F.2d at 388, this Court similarly ruled that it was bound by the "well settled" rule of law that the United States is exempt from the defense of laches. See also, United States v. Milstein, 401 F.3d at 63; United States v. Angell, 292 F.3d 333, 338 (2d Cir. 2002); United States v. Repass, 688 F.2d at 158.

The United States acts in its sovereign capacity and in furtherance of national policy when it sues in its trustee capacity on behalf of Indian nations, as it did here when it filed its complaint in intervention on behalf of the Cayugas. See, United States v. Minnesota, 270 U.S. 181, 194 (1926). (The United States' "interest arise out of its guardianship over the Indians and out of its right to invoke the aid of a court of equity in removing obstacles to the fulfillment of its obligations; and in both aspects the interest is one which is vested in it as a

sovereign.") United States v. Osage County, 251 U.S. 128, 132 (1919); Heckman v. United States, 224 U.S. 413, 437 (1912); United States v. Nashville, Chattanooga & St. Louis Ry. Co., 118 U.S. 120, 126 (1886). Contrary to these well-established principles, the majority concluded that the United States was not acting to enforce a public right or protect the public interest, 413 F.3d at 279 n. 8, despite the fact that it was acting here to enforce a federal statute that has been in effect since 1790.

The majority in Cayuga relied on cases where laches had been applied to the United States when it acted, not as a sovereign, but in a commercial setting.[6] Since the Supreme Court's decision in 1886 in United States v. Nashville, Chattanooga & St. Louis Ry. Co., and until the majority decision, the Courts have carefully demarcated the circumstances when laches may be applied to the United States. The majority decision is unprecedented in ruling that laches may be applied to the United States when it sues in its sovereign capacity.

CONCLUSION

The petition should be granted.

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[6] In ruling that laches may be asserted against the United States, the majority relied upon the opinion by the Seventh Circuit in United States v. Admin. Enters., Inc., 46 F.3d 670, 672-73 (7th Cir 1995). However, that case confirmed that the defense against the United States is only available when the government is "seeking to enforce either on its own behalf or that of private parties what are in the nature of private rights", but the defense in not available in "government suits to enforce sovereign rights." 46 F.3d at 673.

Dated: New York, NY
August 22, 2005

Respectfully submitted,

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ADDENDUM

H

Briefs and Other Related Documents

United States Court of Appeals,
Second Circuit.
CAYUGA INDIAN NATION OF NEW YORK,
Plaintiff-Appellee-Cross-Appellant,
Seneca-Cayuga Tribe of Oklahoma,
Plaintiff-Intervenor-Appellee-Cross-Appellant,
United States of America, Plaintiff-Intervenor-Appellee,
v.
George PATAKI, as Governor of the state of New York, et al., Cayuga County and
Seneca County, Miller Brewing Company, et al.,
Defendants-Appellants-Cross-Appellees.
Docket Nos. 02-6111(L), 02-6130(CON), 02-6140(CON), 02-6200(CON), 02-6211(CON), 02-6219(CON), 02-6301(CON), 02-6131(XAP), 02-6151(XAP).

Argued: March 31, 2004.
Decided: June 28, 2005.

Background: State, county, and private defendants appealed from a judgment of the United States District Court for the Northern District of New York, 165 F.Supp.2d 266, Neil P. McCurn, Senior District Judge, awarding tribal plaintiffs approximately $248 million in damages and prejudgment interest against the State for the late-eighteenth-century dispossession of their land, in violation of the Nonintercourse Act. Tribal plaintiffs cross-appealed from the award of prejudgment interest and the denial of the remedy of ejectment.

Holdings: The Court of Appeals, José A. Cabranes, Circuit Judge, held that:
(1) tribe's possessory land claim sounding in ejectment was barred by laches;
(2) no basis existed for finding constructive possession or immediate right of possession as could support claim for trespass damages; and
(3) United States, as plaintiff-intervenor in Indian tribe's suit, was subject to defense of laches.

Reversed.

Hall, District Judge, filed opinion dissenting in part and concurring in part in the judgment.

West Headnotes

[1] **Indians** ⇐27(4)
209k27(4) Most Cited Cases
Equitable doctrines, such as laches, acquiescence, and impossibility, can, in appropriate circumstances, be applied to Indian land claims, even when such a claim is legally viable and within the statute of limitations.

[2] **Indians** ⇐27(4)
209k27(4) Most Cited Cases
Indian tribe's possessory land claim sounding in ejectment, which sought possession of over 60,000 acres of land in upstate New York and the ejectment of tens of thousands of landowners, was barred by laches where unlawful dispossession of tribe's land occurred in the late-eighteenth-century.

[3] **Indians** ⇐19
209k19 Most Cited Cases
Because Indian tribe was barred by laches from obtaining an order conferring possession in ejectment over lands from which tribe was unlawfully dispossessed in the late-eighteenth-century, no basis remained for finding constructive possession or immediate right of possession as could support claim for trespass damages in the amount of the fair rental value of the land for the entire period of tribe's dispossession.

[4] **Indians** ⇐27(4)
209k27(4) Most Cited Cases
United States, as plaintiff-intervenor in Indian tribe's suit to regain possession of lands from which it was unlawfully dispossessed in the late-eighteenth-century, was subject to defense of laches.
***267** Martin R. Gold (Raymond J. Heslin, Robert P. Mulvey, of counsel), Sonnenschein Nath & Rosenthal, LLP, New York, NY, for Cayuga Indian Nation of New York.

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