

United States v. O'Brien et al. Chronology re TAS Application

December 26, 1854	Treaty of Medicine Creek signed designating Squaxin Island as reservation Ratified
August 15, 1899	Application to Purchase Oyster Lands No. 1766. Ex 13
January 13, 1900	Affidavit of Publication. Ex. 12
March 2, 1900	Contract of Sale No. 1766 Cunningham. Ex. 1
March 1902	United States filed Bill of Complaint against Cunningham et. al.
May 23, 1902	Restraining order issued against Cunningham et. Al.
September 24, 1903	Decision on Demurrer to Bill of Complaint
November 7, 1903	Order
February 6, 1904	Memorandum Decision on Motion Judgment
February 26, 1904	Decree

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IN THE UNITED STATES CIRCUIT COURT FOR THE DISTRICT OF WASHINGTON,
WESTERN DIVISION.

United States of America, the Tribe
of Squaxon Indians, otherwise
Squawkson Indians, Tyee Bob, Peter
Clamsh, John Bowers, _____
and _____,

Plaintiffs,

vs.

No.
Order.

P. J. O'Brien, M. J. Cunningham, Fred
J. Brown, W. R. Lotz, _____
Winstanley, _____ Doherty and
_____ Miller, a co-partner-
ship doing business as Winstanley, Doherty &
Miller,

Defendants.

This matter having come on heretofore on the 21st day of May, .
1902, upon the return day of the order to the defendants to show
cause why an injunction pendente lite should not be made herein,
and it appearing to the Court that said order was duly and regularly
served on the defendants and that they have made no appearance or
showing herein why said injunction and restraining order should not
be made, and it appearing to the Court that pending the final
determination of this litigation such an order as prayed is
necessary and proper, and the Court being fully advised in the
premises:

NOW on motion of Edward E. Cushman, Assistant United States
Attorney and Attorney for the plaintiffs, it is Ordered and
Adjudged that the defendants, P. J. O'Brien, M. J. Cunningham,

Fred J. Brown, W. R. Lotz, _____ Winstanley, _____ Doherty and
_____ Miller, their agents and servants, and all
persons claiming or acting by, through, under or by authority of
them, or either of them, are hereby restrained and enjoined from
in any way, manner or means from interfering with or hindering the
plaintiffs or any of the individual members of the Squaxson Indian
Tribe from passing over and across the tide lands of said island
either in coming from or returning to said islands and are further
restrained and enjoined from interfering with or hindering them
in their taking either floating fish or shall^e fish from
or above said tide lands and the waters thereon pending the final
determination of this suit and until the further order of this
Court.

Done in open Court this 23rd day of May, 1902.

C. H. Hayford
Judge.

170 F. 508
Circuit Court, D. Washington, Western Division.

3 Cases that cite this headnote

UNITED STATES et al.
v.
O'BRIEN et al.

No. 849.
|
September 24, 1903,
|
and February 6, 1904.

Synopsis
In Equity.

West Headnotes (1)

- [1] **Indians** → Lands included and boundaries; appropriation and diminishment
- Water Law** → Ownership by State

209Indians
 209IVReal Property
 209k156Reservations or Grants to Indian Nations or Tribes
 209k158Lands included and boundaries; appropriation and diminishment (Formerly 209k10)
 405Water Law
 405XVNavigable Waters
 405XV(C)Lands Under Water
 405XV(C)1Ownership and Control in General
 405k2646Ownership by State
 405k2647In general (Formerly 270k36(1) Navigable Waters, 209k10)

Under Const.Wash. art. 26, by which the state forever disclaimed "all right and title * * * to all lands * * * owned or held by any Indian or Indian tribes," the state has no title, and can convey no right, to any of the shore lands surrounding Squaxon Island, which prior to the admission of the state had been set apart by treaty as a reservation for the Squaxon Indians and was then actually used and occupied by them, including the beach and shore.

This suit was instituted by the government of the United States, jointly with a number of Indians as complainants, for an injunction to restrain vendees of the state of Washington from interfering with the Indians in their occupancy and use of the shore of an island which, by a treaty made with the Indians, was designated as an Indian reservation. The suit was defended by the state of Washington. A demurrer to the bill of complaint was overruled. Thereafter the case was submitted on the bill and answer, and a decree was rendered in favor of the complainants.

Attorneys and Law Firms

*508 P. C. Knox, Atty. Gen., Wilson R. Gay, U.S. Dist. Atty., and Edward E. Cushman, Asst, U.S. Dist. Atty.

J. W. Robinson, for defendants.

W. B. Stratton, Atty. Gen., for intervener.

On Demurrer to Bill of Complaint.

Opinion

HANFORD, District Judge.

It is my opinion that the whole of the Squaxon Island was lawfully reserved for the use of the Indians, and that by the treaty referred to in the bill of complaint, and the laws of the United States, it has always been unlawful for white men to reside upon or occupy any part of said island. The Indians, for whose use the island was reserved, used and occupied the entire island, including the beach and shore, at the date of the enabling act and the adoption of our state Constitution, and by the terms of the enabling act, and the compact between the people of this state and the United States government, contained in the Constitution, this state entirely disclaimed 'all right and title * * * to all lands *509 * * * owned or held by any Indian or Indian tribes.'

This disclaimer applies not only to lands owned by the

Indians, whether patented or unpatented, but also to all lands held— that is to say, occupied and used— by individual Indians or by tribes.

It is my opinion that the proposed sale of a rim encircling this island reservation is not only an injustice to the Indians, but an unwarranted exercise of power by officers of the state government, and that the defendants have acquired no rights whatever by virtue of the contracts under which they claim.

Demurrer overruled.

On Motion for Judgment on the Bill of Complaint and Answer.

All of the defendants have joined in an answer to the bill of complaint herein, which answer contains a full and candid admission of all of the facts set forth in the bill of complaint which in the opinion of the court are material. By denial of knowledge or information sufficient to form

a belief, the answer makes an issue as to whether the Squaxon Indians have worked or cultivated oyster beds or clam beds in tide waters surrounding the island; but I hold that it is immaterial whether the Indians did or did not work or cultivate oyster beds or clam beds, since enough is admitted to make certain that the Indians by their continued exclusive possession and use of the whole island held and claimed the same at the time of, before, and since the adoption of the Constitution of the state of Washington.

Upon consideration of the bill and answer, it is the opinion of the court that the complainants are entitled to a decree for the relief prayed for in full, and the court directs that a decree be prepared accordingly.

All Citations

170 F. 508

Dec. Reg.
196

No. *849*

IN THE *Grant* COURT
OF THE UNITED STATES
FOR THE
DISTRICT OF WASHINGTON

United States et al

vs.

O. J. Bin et al.

honor

Filed **FILED** _____, 190
U. S. CIRCUIT COURT
DISTRICT OF WASHINGTON. Clerk
By **FEB 26 1904** Deputy
A. Reeves Ayres Clerk
Mrs. [Signature] DEPUTY

COPY

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Record Group No. RG 21 US Circuit Court

Additional Information Box 97;

Western District Washington;

Tacoma Case Files

File: #849 U.S. vs P.J. O'Brien, et al.

IN THE UNITED STATES CIRCUIT COURT FOR THE DISTRICT OF WASHINGTON,
WESTERN DIVISION.

.....	:	
United States of America, et al,	:	
Complainants,	:	
-vs-	:	No. 849
P. J. O'Brien, et al,	:	
Defendants.	:	D E C R E E.
State of Washington,	:	
Intervening Defendant.	:	
.....	:	

This matter having heretofore come on for hearing upon the motion of complainants for a judgment and decree upon the bill and answer and the admissions therein, and the Court having rendered its memorandum of decision herein, granting the relief prayed by the complainants, the Court from the admissions in said bill and answer, finds and adjudges that the complainants are the owners of all the lands, upland and tide-land of Squawksin Island.

The Court further finds and adjudges that neither the defendants, the intervening defendant, the State of Washington, nor either or any of them, have any right, title or interest in or to the lands of said Squawksin Island, nor in the tide lands surrounding and abutting on said Island.

The Court further finds and adjudges that the lands described in paragraph twelve of the bill of complaint are the property and lands of the complainants herein, and that neither the defendants, or any of them, nor the intervening defendant, the State of Washington, have any right, title or interest therein.

The Court further finds and adjudged that that certain contract of purchase and sale entered into between the intervening defendant, the State of Washington, and the other defendants herein, whereby the State of Washington undertook to sell and contract to sell the said tide lands described in said paragraph twelve of the bill of complaint, constitutes a cloud upon the title of the complainants in and to said lands.

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It is further ordered and adjudged that the said contract be, and the same is hereby avoided and set aside, and that the defendants, and each of them, and the intervening defendant, the State of Washington, their and its officers, agents, servants and employees, are hereby forever restrained and enjoined from entering upon or occupying any of the lands on said Squawksin Island, or the tide lands surrounding and abutting on said Island, and more especially that portion of the tide lands abutting upon the upland of said Island, which said tide land is described in paragraph twelve of the bill of complaint, and that each and all of said persons and parties are hereby forever restrained and enjoined from in any manner asserting or making claim of title or interest in or to said lands, and from in any way interfering with the title, possession or cultivation of said lands by the complainants, or those claiming or to claim by through or under them.

Done in open Court this 25th day of February, 1904.

C. H. Hanford
Judge