

849-OK  
FORM NO. 499  
No. 849

Due and full service of within -----

acknowledged this ----- day

of -----, 189

Attorney for -----

IN THE *Circuit* COURT  
OF THE UNITED STATES

FOR THE  
DISTRICT OF WASHINGTON,

*Eastern* Division.

THE UNITED STATES

vs.

*P. J. O'Brien, et al*

*Bill of Complaint*

FILED IN THE  
U. S. Circuit Court

MAR 26 1902  
A. REEVES  
*Wilson R. Gay*  
CLERK

WILSON R. GAY,

UNITED STATES ATTORNEY,

SEATTLE, WASHINGTON.

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

.....  
United States of America, the  
Tribe of Squaxon Indians, other-  
wise Squawkson Indians, Tye Bob,  
Peter Clamsh, John Bowers, \_\_\_\_\_  
and \_\_\_\_\_, Plaintiffs,

-vs-

P. J. O'Brien, M. J. Cunningham,  
Fred J. Brown, W. R. Lotz, \_\_\_\_\_  
Winstanley, \_\_\_\_\_ Doherty and  
\_\_\_\_\_ Miller, a co-part-  
nership doing business as Winstan-  
ley, Doherty & Miller,  
Defendants.

No. *149*  
Bill of Complaint.

To the Judges of the above entitled Court:

Come now the plaintiffs above named, by Edward E. Cushman, Assis-  
tant United States Attorney, and for themselves and others similarly  
situated, make this their bill of complaint here against the defendants  
above named, and allege:

I.

That each of the individual plaintiffs above named is a member of  
the tribe of Squaxon Indians, and that Tye Bob and \_\_\_\_\_  
are the hereditary chiefs of that tribe.

II.

That heretofore, on the 26th day of December, 1854, a treaty was  
made and entered into between the United States, by and through Isaac  
I. Stevens, Governor of the Territory of Washington and Superintendent  
of Indian Affairs of the said Territory, on the one part, and the head  
men and delegates of the Nisqually, Squaxon, otherwise Squawkson, and  
other tribes belonging near the head of Puget Sound, on the other part.  
(10 Stat., page 1132)

III.

That by the terms and conditions of said treaty certain lands  
therein described were ceded, relinquished and conveyed by said Indians

to the United States. It was further therein provided as follows:

"That there is, however, reserved for the present use and occupation of the said tribes and bands the following tracts of land, viz: The small island called Klahchemin, situated opposite the mouths of Hammersley's and Totten's Inlets, and separated from Hartstene Island by Peales Passage, containing two sections of land by estimation, (other lands), all of which tracts shall be set apart, and so far as necessary, surveyed and marked out for their exclusive use; nor shall any white man be permitted to reside upon the same without permission of the tribe and the Superintendent or Agent. x x x x x x

Article III. The right of taking fish at all usual accustomed grounds and stations is further secured to said Indians in common with all citizens of the Territory, and of erecting temporary houses for the purpose of curing, together with the privilege of hunting, gathering roots and berries and pasturing their horses on open and unclaimed lands. Provided, however, that they shall not take shell fish from any beds staked or cultivated by citizens."

IV.

That the above described land was reserved for the occupation and use of the Squaxon tribe of Indians above named, and since the making of said treaty has been continuously occupied by such tribe.

V.

That since the making of said treaty said Island has been surveyed by the Government of the United States and found to contain 1494.15 acres; that under the provisions of said treaty and the sixth article of the treaty with the Omahas, this land has been allotted to the members of said tribe of Indians, but that said survey and said allotments do not include or attempt to convey any portion of the tide lands of said island.

VI.

That the Squaxon Indians and other tribes making said treaty were prior to and at the time of making that treaty, and are now, fishing, clam and oyster digging Indians; that the Squaxon Indians have always depended for the greater part of their food on the fish they have caught in the waters surrounding said island and the clams, oysters and shell fish that they have dug from the lands of that island between high and low water mark; that the selections and reservations of land made by said Indians at the time of entering into said treaty were all of them on tide water, and were selected with the view and chiefly valuable to

them for the fishing privileges and oyster and clam beds which formed a part of said reservations; that Squaxon Island as a reservation was chiefly valuable for these rights; that compared with the upland of that Island there were, and are now, extensive tide flats and lands, all of which are, and were at the time of making said treaty, natural oyster and clam beds that had been for years prior to the entering into said treaty worked and cultivated by the members of said tribe of Indians.

VII.

That all of the foregoing facts were well known to the United States, its officers and agents, and to Isaac I. Stevens, Governor and Superintendent as aforesaid; that said treaty was made in the English language, with which the Government of the United States and its agents were familiar, and with which the Indians of said tribe were unfamiliar; that at the time of entering into said treaty it was intended and agreed between the parties thereto, and was explained to the headmen and members of said tribe by the said Isaac I. Stevens, that said treaty reserved and granted to said Indians all of said Island, upland and tide land, and in addition, enough of the waters surrounding said island to enable a steamer to run at low tide.

VIII.

That Congress by the Enabling Act of February 27, 1889, providing for the admission of Washington Territory as a State, provided among other things as follows:

Sub-division 2 Section 4:

"That the people inhabiting said proposed states do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian or Indian tribes, and until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States."

IX.

That by the constitution of the State of Washington it was provided, Article XVII, Section 1:

"The State of Washington asserts its ownership to the beds and shores of all navigable waters in the state up to and including the

line of ordinary high tide in waters where the tide ebbs and flows, and up to and including the line of ordinary high water within the banks of all navigable rivers and lakes: Provided, that this section shall not be construed so as to deprive any person from asserting his claim to vested rights in the courts of the state.

Sec. 2. The State of Washington disclaims all title in and claim to all tide, swamp and overflowed lands patented by the United States, provided the same is not impeached for fraud.

Article XXVI, sub-division 2:

That the people inhabiting this state do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries of this state, and all lands lying within said limits owned or held by any Indian or Indian tribes, and that until the title thereto shall have been extinguished by the United States the same shall be and remain subject to the disposition of the United States, and the said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States."

X.

That all of the lands, upland and tide land alike, of said Squaxon Island have been, since the making of the foregoing treaty, owned and held by said tribes and the individuals thereof, subject to the title and interests of the United States, and that the title in and to the tide lands of said Island has never been extinguished by the United States.

XI.

That upon the allotment to the Indians of said tribe of the lands of said Island and reservation, Lots 6 and 7 of Section 27, Township 20 North, Range 2 West, W. M., were allotted to Slolatah; that said land <sup>so</sup> ~~was~~ allotted abuts upon the waters of Pallalah Bay and the tide lands hereinafter described; that John Bowers and \_\_\_\_\_ and \_\_\_\_\_, members of said tribe, are by descent from Slolatah the owners of the land above described.

XII.

That the State of Washington has made a contract of purchase and sale to the defendant, P. J. O'Brien, wherein and whereby it undertakes to sell to the said P. J. O'Brien, upon the payment of certain sums of money, and to make a deed and conveyance to him of the following tracts of tide land, the same being a part and portion of said Squaxon Island, to-wit:

Beginning at the meander corner to the North fractional 1/16 Sec. of frac. Sec. 27, Tp. 20, N., Range 2, W. initial point cor. 1 for place

of beginning. Thence N. 4°00' E 4.90 chs. Thence N. 23°30' W. 6.30 chs. Thence N. 87°00' W. 4.40 chs. Thence S. 44°00' W. 9.60 chs. Thence S. 75°00' W. 6.00 chs. Thence N. 4°00' E. 5.10 chs. Thence N 5°45' W. 7.15 chs. from which point the meander cor. to frac Sec's 22 & 27 same township and range bears N. 74°00' W. 17.40 chs. Thence S. 39°45' W. 4.45 chs. Thence S. 33°00' W. 5.90 chs. Thence S. 50°00' W. 2.40 chs. Thence S. 12°00' E. 4.20 chs. Thence S. 28°58' E. 14.24 chs. From this point the meander 1/4 Sec. cor. bears S. 24°30' W. 8.75 chs. Thence N. 67°15' E. 9.20 chs. Thence N. 42°30' E. 7.80 chs. Thence N. 65°30' E. 6.30 chs. to the place of beginning, containing 37.01 acres.

Beginning at the 1/4 Sec. meander cor. to frac. Sec. 27, Tp. 20 N., R. 2 W. Thence N. 24°30' E. 8.75 chs. to initial point cor. 1 for place of beginning. Thence N. 28°58' W. 14.24 chs. along the Sw. boundary of Lot No. 1 Thence S. 58°00' W. 14.15 chs. Thence N. 64°30' W. 1.00 chs. Thence N. 28°00' W. 2.25 chs. Thence N. 7°00' W. 3.20 chs. from which point the meander cor. to frac. Sec.s 22 & 27 same township and range bears N. 12°52' 30" E. 21.11 chs. Thence S. 30°00' W. 6.00 chs. Thence S. 15°00' W. 5.00 chs. Thence S. 45°00' E. 3.00 chs. Thence N. 57°30' E. 7.00 chs. Thence N. 62°00' E. 8.00 chs. Thence S. 50°00' E. 3.00 chs. Thence S. 13°00' E. 6.22 chs. Thence N. 24°30' E. 5.20 chs. to place of beginning, containing 13.65 acres.

XIII.

That the other defendants above named have or claim to have some interest under the contract of the said P. J. O'Brien in and to said lands.

XIV.

That the State of Washington has not, and never had, any right, title or interest in and to said lands last above described, or any of the tide lands of said island, but that the lands last above described are the property of the plaintiffs above named, and that they are entitled to their possession, to the exclusion of all other persons.

XV.

That the contract of sale made and entered into by the State of Washington with the said P. J. O'Brien, and his claims and pretensions, and that of the other defendants herein, constitute a cloud upon the title of the plaintiffs in and to said tide land above described. That acting under and by virtue of the claim and right of this contract with the State, the said defendant, P. J. O'Brien and the other defendants have forbidden, excluded and driven from said tide lands the individual plaintiffs above named, and prevented and denied them access to said lands and their ancient right to take shell fish therefrom, and that the defendants will, unless restrained by this Court, continue to har-

arrass, annoy and prevent the individual plaintiffs above named and the members of said tribe from access to said lands and the right and opportunity to pass over said tide lands in going from or returning to the uplands of said island, and in taking from said tide lands oysters, clams and other shell fish.

XVI.

That plaintiffs are without adequate or other remedy at law for redress of the grievances herein complained of.

Wherefore, plaintiffs pray that a subpoena issue, citing defendants to appear at a special time and place and there true answer make to this bill of complaint, ~~xxx~~ but not upon oath, the express advantage of which is hereby expressly waived; that the defendants, their servants and agents, and all persons claiming by, through or under them, be restrained and enjoined, pending the determination of this suit, from interfering with or hindering the plaintiffs from passing over said tide lands or from taking therefrom oysters, clams or other shell fish, or from fishing in the waters over said tide lands; that it be adjudged and decreed by this Court that all right, title and interest in and to the tide lands of Squaxon Island, and the tide land specifically above described, is in the plaintiffs, to the exclusion of the State of Washington, the defendants herein, or any other persons claiming by, through or under them. Plaintiffs further pray that they have their costs herein, and for such other and further relief as to the Court may seem just and proper.

R. C. Knapp  
Attorney General.

Wilson R. Sney  
United States Attorney.

Edward G. Cushman  
Assistant United States Attorney.