IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO

WM. SCHODDE and WILLIAM W. KANE, Plaintiffs -vs- O'NEIL BROS., INC., A Corporation, Defendant.	JUDGMENT AND DECREE.

The above entitled action being at issue upon plaintiffs' verified complaint herein and upon the stipulation of the parties hereto, and upon the further allegations, stipulations, recitals and admissions of said parties contained in a certain contract under date of December 23, 1924, a triplicate original copy whereof has been duly filed herein and made a part of the pleadings herein by virtue of the said stipulation; and the matter having been submitted to the Court, sitting without a jury, a jury having been expressly waived by the said stipulation; plaintiffs appearing by their attorneys, Milton B. Badt, Esq., and Messrs. Milton B. Badt & James Dysart, and the defendant appearing by its attorneys, H. U. Castle Esq., and W. M. Kearney, Esq., (Mr. H. U. Castle, having been heretofore substituted as attorney for said defendant in place of Edwin E. Caine, Esq., heretofore acting as such attorney, but having died prior to the filing of said substitution); and Findings of Fact and Conclusions of Law having been expressly waived by and under the terms of the said stipulation filed herein; now, therefore, in consideration of the premises and the Court being fully advised as to the facts in said case by reason of the testimony submitted upon the hearing of said cause on the motion of plaintiffs for a temporary injunction heren;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

I.

That William W. Kane, one of the plaintiffs herein, is the owner of that certain agricultural property situate in the County of Elko, State of Nevada, described as follows, to-wit:

> W½ of NE¼ and SE¼ of NE¼ and E½ of NW¼ of Sec. 1, T. 35 N., R. 61 E., and S½ of N½ of Sec. 6, T. 35 N., R. 62 E; said lands comprising in all 347.5 acres;

that said William W. Kane and Wm. Schodde are each the owner of an undivided one-half interest in and to those certain agricultural lands situate in said County, described as follows, to-wit:

> N½ of S½ of Sec. 5 T. 35 N., R. 62 E., M. D. M., and a strip of land in the S½ of the N½ of said Sec. 5; beginning at the northwest corner of the S½ of said Sec. 5; running thence north on the section line between said Sec. 5 and Sec. 6, T. 35 N., R. 62 E., 889 feet; thence East and at right angles to said last mentioned line and parallel to the line dividing the N½ from the S½ of said Sec. 5, 5280 feet to the section line between said Sec. 5 and Sec. 4, T. 35 N., R. 62 E.; thence south and along the section line between said Sections 5 and 4, 889 feet to the northeast corner of the S½ of said Sec. 5; thence West and along the line dividing the N½ from the S½ of said Sec. 5, 5280 feet, to the place of beginning; containing in all 267.7 acres of land.

II.

That said defendant is the owner of that certain agricultural property situate in said County, particularly described as follows, to-wit:

> IN TOWNSHIP THIRTY-FIVE NORTH, RANGE SIXTY-ONE EAST, M. D. B. & M., IN SECTION ONE (1).
> The North-east quarter (NE¼) of the North-east quarter (NE¼);
>
> IN TOWNSHIP THIRTY SIX NORTH, RANGE SIXTY-ONE EAST, M. D. B. &M., IN SECTION THIRTY-SIX (36);
> The whole thereof.
>
> IN TOWNSHIP THIRTY-FIVE NORTH, RANGE SIXTY-TWO EAST, M. D. B. & M., IN SECTION FOUR (4),
> All of the North half (N½) and all

of the South-west quarter (SW¼);

IN SECTION FIVE (5).

Two Hundred Thirteen (213) acres in the North half (n½) of said Section Five (5) which said 213 acres is bound and particularly described as follows, to-wit:

Commencing at the North-west corner of said Section Five (5), running thence first course, East along the North Section line of said Section Five (5) one mile, to the North-east corner of said Section Five (5); thence second course, South along the East Section line of said Section Five (5), one hundred six and one-half (106½) rods to a point; thence third course, West at right angles one mile to a point on the West Section line of said Section Five (5) one hundred six and one-half (106½) rods South on said West Section line from the North-west corner of said Section Five (5); thence fourth course, north along that West section line of said Section Five (5) one hundred six and one-half (106½) rods to the point of beginning, covering and comprising all of the North half (N½) of the North Half (N½) of said Section Five (5) and part of the South Half (S½) of the North Half (N½) of said Section Five (5).

IN SECTION SIX (6).

The North half (N½) of the North-east quarter (NE¼) and the North half (N½) of the North-west quarter (NW¼).

IN SECTION NINE (9).

All of the West half (W½).

IN TOWNSHIP THIRTY-SIX NORTH, RANGE SIXTY-TWO EAST, M. D. B. & M., IN SECTION TWENTY EIGHT (28).

The South half (S½) of the South-west quarter (SW¼).

IN SECTION THIRTY-ONE (31).

The South half (S½) of the South-west quarter (SW¼).

IN SECTION THIRTY-THREE (33).

The West half (W½) of the Northwest quarter (NW¼) and all of the South-west quarter (SW¼).

Consisting of Twenty-two Hundred Fifty-three (2253) Acres, more or less.

III.

That the said Conway Creek (sometimes called Renshaw Creek) is

a natural surface stream having its source in the snows and snow waters in the Ruby Mountains in Clover Valley, Elko County, Nevada, and flowing thence in a general southeasterly direction through the respective lands of the parties to this action.

IV.

That the said parties to this action, and their respective predecessors, by means of dams, ditches, headgates and other appliances, diverted and appropriated, and have applied to a beneficial use, upon the respective lands owned and claimed by them and their predecessors in interest, for a period of more than 40 years continuously preceding the date hereof, all of the waters of the said Conway Creek (sometimes known as Renshaw Creek), and that all of the waters of said source during all seasons of the year are necessary for the irrigation of the lands of the said parties in the proportions hereinafter set forth; that the said parties hereto and their predecessors in interest have also, during said period, used the waters of said creek for domestic purposes and for watering stock.

V.

That the said parties are entitled, pursuant to diversion, appropriation and continuous beneficial use, by themselves and their predecessors in interest, to the use of the waters of said Conway Creek in the following proportions, to-wit: That the said plaintiffs are entitled to the use of one-half (1/2) of said waters, and that the defendant is entitled to the use of one-half (1/2) of said waters, measured at the point of intake of the diverting ditch of the said plaintiffs in the Northwesterly portion of the NW¼ of the SW¼ of Sec. 36, T. 36 N; R. 61 E., M.D. M.

VI.

That there shall be constructed, at the expense of the plaintiffs a concrete division box or dam or other permanent appliance in accordance with such plans and specifications as may be prepared by C. F.

1 DeArmond or W. H. Settelmeyer, either or both of whom are hereby
2 appointed by the Court for that purpose, which box shall divide
3 the waters of said creek at all periods of constant or varying flow
4 and at all times, as nearly exactly as may be practicable, in the
5 following proportions, to-wit, to deliver one-half (1/2) thereof
6 into the said diverting ditch of the said plaintiffs and to de-
7 liver one-half (1/2) thereof down the natural channel of saic Con-
8 way Creek, thereafter to be subject entirely to the diversions of
9 said defendant.
10 VII.
11 That the parties hereto are the owners of the right to the use
12 of the said waters to the extent and in the manner as in the last
13 preceding paragraph set forth.
14 VIII.
15 That each of the said parties shall pay his or their own costs
16 incurred in this action.
17 IX.
18 That the construction of said concrete box hereinabove referred
19 to shall be made as soon hereafter as practicable, and that the
20 said Engineer hereinabove named for that purpose shall commence
21 the construction thereof as soon as he may deem the same practica-
22 ble, and that the plaintiffs shall pay the entire cost thereof.
23 X.
24 That none of the parties hereto shall have or recover any damages
25 from any or either of the other parties to this action by reason
26 of the diversion or use by any of said parties of any of the waters
27 herein referred to.
28 XI.
29 That each of the parties to this action, and the servants, agents,
30 employees, attorneys and successors of each of the said respective
31 parties, be, and they hereby are, and each of them hereby is, per-
petually enjoined and restrained from in any way or manner molest-

ing or interfering with the rights of any of the other parties to this action as hereby fixed and from in any way or manner interferring with the use of the waters of said Conway Creek or Renshaw Creek by any of the other parties to this action as hereby fixed, allotted and determined, and from in any way or manner asserting any rights in or to the said waters or the use of said waters other than as herein provided.

Done in Open Court this 27 day of December, 1924.

J. M. McNamara
Judge of said District Court.

Endorsed:

Filed December 27, 1924
M. J. Keith,
County Clerk.

By M.B. Grover, Deputy

(Signed)

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Done in Open Court this 27 day of December, 1924.

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Judge of said District Court.

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M. J. Keith,
County Clerk.
By M B Grover, Deputy

STATE OF NEVADA
COUNTY OF ELKO } ss.

I, M. J. Keith, County Clerk and Ex-Officio Clerk of the District Court of the Fourth Judicial District of the State of Nevada, in and for the County of Elko, do hereby certify that the annexed is a full, true and correct copy of JUDGMENT AND DECREE in the case of WM. SCHODDE AND WILLIAM W. KANE, PLAINTIFFS, VS. O'NEIL BROS., INC., A CORPORATION, DEFENDANT.

as the same appears on file and of record in my office.

WITNESS my hand and the seal of said court affixed, this 27th day of December, A. D., 19.24.

M J Keith
Clerk.

By M B Grover
Deputy Clerk.

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WM. SCHODDE AND WILLIAM W. KANE,

PLAINTIFFS,

VS.

O'NEIL BROS., INC., A CORPORATION,

DEFENDANT.

CERTIFIED COPY

JUDGMENT AND DECREE.

MILTON B. BADT & JAMES DYSART

Attorneys for PLAINTIFFS.

ELKO, NEVADA