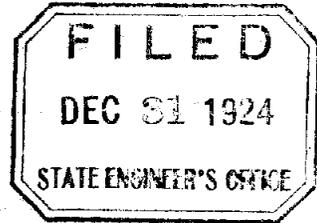


1 IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
2 OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO
3

4
5 WM. SCHODDE and WILLIAM W. KANE,
6 Plaintiffs,
7 -vs-
8 O'NEIL BROS., INC., A Corporation,
9 Defendant.
10



JUDGMENT AND DECREE.

11
12 The above entitled action being at issue upon plaintiffs' ver-
13 ified complaint herein and upon the stipulation of the parties
14 hereto, and upon the further allegations, stipulations, recitals
15 and admissions of said parties contained in a certain contract
16 under date of December 23, 1924, a triplicate original copy where-
17 of has been duly filed herein and made a part of the pleadings
18 herein by virtue of the said stipulation; and the matter having
19 been submitted to the Court, sitting without a jury, a jury having
20 been expressly waived by the said stipulation; plaintiffs appear-
21 ing by their attorneys, Milton B. Badt, Esq., and Messrs. Milton
22 B. Badt & James Dysart, and the defendant appearing by its attor-
23 neys, H. U. Castle Esq., and W. M. Kearney, Esq., (Mr. H. U.
24 Castle, having been heretofore substituted as attorney for said
25 defendant in place of Edwin E. Caine, Esq., heretofore acting as
26 such attorney, but having died prior to the filing of said substi-
27 tution); and Findings of Fact and Conclusions of Law having been
28 expressly waived by and under the terms of the said stipulation
29 filed herein; now, therefore, in consideration of the premises and
30 the Court being fully advised as to the facts in said case by reason
31 of the testimony submitted upon the hearing of said cause on the
32 motion of plaintiffs for a temporary injunction herein;

1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

2 I.

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

6 $W\frac{1}{2}$ of $NE\frac{1}{4}$ and $SE\frac{1}{4}$ of $NE\frac{1}{4}$ and $E\frac{1}{2}$ of $NW\frac{1}{4}$
7 of Sec. 1, T. 35 N., R. 61 E., and $S\frac{1}{2}$
8 of $N\frac{1}{2}$ of Sec. 6 T. 35 N., R. 62 E; said
9 lands comprising in all 347.5 acres;

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

13 $N\frac{1}{2}$ of $S\frac{1}{2}$ of Sec. 5 T. 35 N., R. 62 E.,
14 M. D. B. & M., and a strip of land in the $S\frac{1}{2}$ of
15 the $N\frac{1}{2}$ of said Sec. 5; beginning at the
16 northwest corner of the $S\frac{1}{2}$ of said Sec.
17 5; running thence north on the section
18 line between said Sec. 5 and Sec. 6, T.
19 35 N., R. 62 E., 889 feet; thence East and
20 at right angles to said last mentioned
21 line and parallel to the line dividing the
22 $N\frac{1}{2}$ from the $S\frac{1}{2}$ of said Sec. 5, 5280 feet
23 to the section line between said Sec. 5
24 and Sec. 4 T. 35 N., R. 62 E.; thence
25 south and along the section line between
26 said Sections 5 and 4, 889 feet to the
27 northeast corner of the $S\frac{1}{2}$ of said Sec. 5;
28 thence West and along the line dividing
29 the $N\frac{1}{2}$ from the $S\frac{1}{2}$ of said Sec. 5, 5280
30 feet, to the place of beginning; contain-
31 ing in all 267.7 acres of land.

32 II.

33 That said defendant is the owner of that certain agricultural
34 property situate in said County, particularly described as fol-
35 lows, to-wit:

36 / IN TOWNSHIP THIRTY-FIVE NORTH, RANGE SIXTY-
37 ONE EAST, M. D. B. & M., IN SECTION ONE (1).
38 The North-east quarter ($NE\frac{1}{4}$) of the
39 North-east quarter ($NE\frac{1}{4}$);

40 IN TOWNSHIP THIRTY SIX NORTH, RANGE SIXTY-
41 ONE EAST, M. D. B. & M., IN SECTION THIRTY-
42 SIX (36);
43 The whole thereof.

44 / IN TOWNSHIP THIRTY-FIVE NORTH, RANGE SIXTY-
45 TWO EAST, M. D. B. & M., IN SECTION FOUR (4).
46 All of the North half ($N\frac{1}{2}$) and all

1 of the South-west quarter ($SW\frac{1}{4}$);

2 IN SECTION FIVE (5).

3 Two Hundred Thirteen (213) acres in the North
4 half ($N\frac{1}{2}$) of said Section Five (5) which said
5 213 acres is bound and particularly described
6 as follows, to-wit:

7 Commencing at the North-west corner of said
8 Section Five (5), running thence first
9 course, East along the North Section line of
10 said Section Five (5) one mile, to the
11 North-east corner of said Section Five (5);
12 thence second course, South along the East
13 Section line of said Section Five (5), one
14 hundred six and one-half ($106\frac{1}{2}$) rods to a
15 point; thence third course, West at right
16 angles one mile to a point on the West Sec-
17 tion line of said Section Five (5) one
18 hundred six and one-half ($106\frac{1}{2}$) rods South
19 on said West Section line from the North-
20 west corner of said Section Five (5); thence
21 fourth course, north along that West sec-
22 tion line of said Section Five (5) one hun-
23 dred six and one-half ($106\frac{1}{2}$) rods to the
24 point of beginning, covering and comprising
25 all of the North half ($N\frac{1}{2}$) of the North Half
26 ($N\frac{1}{2}$) of said Section Five (5) and part of the
27 South Half ($S\frac{1}{2}$) of the North Half ($N\frac{1}{2}$) of
28 said Section Five (5).

17 IN SECTION SIX (6).

18 The North half ($N\frac{1}{2}$) of the North-east quar-
19 ter ($NE\frac{1}{4}$) and the North half ($N\frac{1}{2}$) of the
20 North-west quarter ($NW\frac{1}{4}$).

20 IN SECTION NINE (9).

21 All of the West half ($W\frac{1}{2}$).

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

24 The South half ($S\frac{1}{2}$) of the South-west quar-
25 ter ($SW\frac{1}{4}$).

25 IN SECTION THIRTY-ONE (31).

26 The South half ($S\frac{1}{2}$) of the South-west quar-
27 ter ($SW\frac{1}{4}$).

27 IN SECTION THIRTY-THREE (33).

28 The West half ($W\frac{1}{2}$) of the Northwest quarter
29 ($NW\frac{1}{4}$) and all of the South-west quarter ($SW\frac{1}{4}$).

30 Consisting of Twenty-two Hundred Fifty-three
31 (2253) Acres, more or less.

31 III.

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

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

5 IV.

6 That the said parties to this action, and their respective pred-
7 ecessors, by means of dams, ditches, headgates and other appli-
8 ances, diverted and appropriated, and have applied to a beneficial
9 use, upon the respective lands owned and claimed by them and their
10 predecessors in interest, for a period of more than 40 years con-
11 tinuously preceding the date hereof, all of the waters of the
12 said Conway Creek (sometimes known as Renshaw Creek), and that all
13 of the waters of said source during all seasons of the year are
14 necessary for the irrigation of the lands of the said parties in
15 the proportions hereinafter set forth; that the said parties here-
16 to and their predecessors in interest have also, during said
17 period, used the waters of said creek for domestic purposes and for
18 watering stock.

19 V.

20 That the said parties are entitled, pursuant to diversion, appro-
21 priation and continuous beneficial use, by themselves and their
22 predecessors in interest, to the use of the waters of said Conway
23 Creek in the following proportions, to-wit: That the said plain-
24 tiffs are entitled to the use of one-half ($1/2$) of said waters,
25 and that the defendant is entitled to the use of one-half ($1/2$) of
26 said waters, measured at the point of intake of the diverting ditch
27 of the said plaintiffs in the Northwesterly portion of the NW $\frac{1}{4}$ of
28 the SW $\frac{1}{2}$ of Sec. 36, T. 36 N., R. 61 E., M. D. H.

29 VI.

30 That there shall be constructed, at the expense of the plaintiffs
31 a concrete division box or dam or other permanent appliance in accor-
32 dance 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 said 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-
32 petually enjoined and restrained from in any way or manner molest-

1 ing or interfering with the rights of any of the other parties to
2 this action as hereby fixed and from in any way or manner inter-
3 ferring with the use of the waters of said Conway Creek or Renshaw
4 Creek by any of the other parties to this action as hereby fixed,
5 allotted and determined, and from in any way or manner asserting
6 any rights in or to the said waters or the use of said waters other
7 than as herein provided.

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

9
10 J. M. McNamara
11 Judge of said District Court.

12 Endorsed:
13 Filed December 27, 1924.
14 M. J. Keith,
15 County Clerk.

16
17
18
19
By *M. J. Keith*, 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. SCHODEDE 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., 1924.

M. J. Keith
Clerk.
By *M. J. Keith*
Deputy Clerk.

No. 2642.

*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'HEIL PROS., INC.,
A CORPORATION,

DEFENDANT.

CERTIFIED COPY

JUDGMENT AND DECREE.



MILTON B. BADT & JAMES DYSART

Attorneys for PLAINTIFFS.