

File No.17455.

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

JAMES P. RAINE,
Plaintiff,)
vs.)
FRANK A. PERRY,
Defendant.)

STIPULATION in settlement of said action, and for a JUDGMENT and DECREE therein.

WHEREAS, the above named James P. Raine, plaintiff, and the above named Frank A. Perry, defendant, the parties of the above entitled action, have settled and adjusted the issues joined between them in said action, and have stipulated and agreed upon a judgment and decree settling and adjusting between them their differences set forth in the pleadings in said action.

NOW, THEREFORE, in consideration of said action, and settlement and adjustment thereof, the said parties respectively agree and obligate themselves as follows, to-wit:

- 1 - A final judgment and decree shall be entered in said action, in pursuance and in conformity with this stipulation and agreement.
- 2 - Each party shall pay his own costs incurred and expended in and concerning this litigation; and each party shall pay one half of the jury fees and one half of the clerk's court costs.
- 3 - The said defendant, Frank A. Perry shall be permitted to use the waters of the said Trout Creek, a tributary of said Pine Creek; and as between plaintiff and defendant, shall be adjudged the owner of the right to use the same.
- 4 - The said defendant, Frank A. Perry, shall be permitted to use sufficient of the water of Pine Creek to irrigate the land of the said Frank A. Perry now owned by him in Pine Creek Valley, and heretofore, at any time, irrigated by him by the waters of said Pine Creek; And after the 10th day of July, of each year, the said Frank A. Perry shall not be permitted to use any of the waters of said Pine Creek for irrigating purposes, excepting that Frank A. Perry shall be permitted at all times to use for the irrigation of said or any land belonging to him, or for any beneficial purpose all the waters of said Trout Creek, during the entire year.
- 5 - The said defendant, Frank A. Perry, shall not be permitted to increase the area of his lands irrigated by the waters of said Pine Creek, or divert or use the waters of said Pine Creek after the 10th day of July of each year, except at such times as there is sufficient water flowing at the head of the irrigating ditch of said plaintiff, James P. Raine, known as the Pine Creek ditch, and at such times as said Raine shall not require the use of the waters of the said Pine Creek for irrigating the land described in the complaint.
- 6 - In the use of the waters of Pine Creek for irrigating purposes, the said defendant Frank A. Perry, shall maintain and keep in repair the four dams now existing upon his ranch, or dams of equal height and efficiency, but of no greater height, for the purpose of restraining and holding back the waters flowing in said Pine Creek; and said dams shall be kept in repair, and shall restrain and hold back the waters impounded thereby of said Pine Creek until the 25th day of June of each year.
- 7 - Said Frank A. Perry shall not be permitted to increase the use of the water of Pine Creek upon his land at any time or in any manner to the injury or detriment of the plaintiff, James P. Raine, his heirs or assigns.
- 8 - On and after the 25th day of June in each year, the said plaintiff, James P. Raine, shall be permitted to gradually open the said dams of the defendant, and shall be permitted to lower the same, and let the water held back and impounded thereby flow down in the channel to his land, at such times and in such quantities as he requires for the irrigation of his said land, and for the irrigation of the crops growing thereon, and for his stock and domestic purposes.

But in the lowering the dams and letting down the water so impounded, the said plaintiff, James P. Raine, shall leave the first dam above the lowest dam, known as the dam in the calf pasture until July the 10th. The said plaintiff, James P. Raine shall open or cause to be opened all the dams, and shall let down, or cause to be let down all the water impounded or held back by said dams, or either of them on or after the 10th day of July of each year, if the said defendant, Frank A. Perry, so requires.

9 - The said James P. Raine shall be responsible for all injury or damage caused or done by reason of the letting down of the waters by him, or at his request hold back or impounded by the said dams or either of them; and shall hold and save the said Frank A. Perry free and harmless from damage by reason of any such act in the premises.

It is further agreed that the said plaintiff, James P. Raine, his heirs or assigns shall have license and permission to enter into and upon the land and premises of the said defendant, Frank A. Perry, for the purpose of constructing and maintaining a waste water ditch to catch and carry the drainage or waste water from the irrigation of the lands of said defendant, Frank A. Perry, the said ditch to be constructed along the north line of the ranch of said Perry.

IN WITNESS WHEREOF, the said parties have hereunto subscribed their names and set their seals, this the 18th day of September, in the year of our Lord, one thousand eight hundred and ninety-six.

J.P. RAINE, (SEAL)
FRANK A. PERRY (SEAL)

DISTRICT COURT OF THE STATE OF NEVADA, FOURTH JUDICIAL
DISTRICT, ELKO COUNTY.

JAMES P. RAINE,)
Plaintiff,)
vs.)
FRANK A. PERRY,)
Defendant.)

JUDGMENT AND DECREE

This cause came on for trial by the Court, with a jury, Robert M. Clarke, and E.S. Farrington appeared as attorneys for the plaintiff; and B.F. Curler and J.W. Dorsey appeared as attorneys for the defendant.

The trial commenced on September 15, 1896, and continued until September 17th of the same year, and on said 17th day of September, the parties by themselves in writing and by their respective attorneys in open court compromised their differences and settled and adjusted the issues joined between them in the pleadings, and stipulated for and agreed upon a judgment and decree.

WHEREUPON, the jury was withdrawn and discharged and an order made and entered for a decree and judgment in pursuance of said agreement and stipulation.

Now in consideration of the premises and of the said stipulation and agreements, and in pursuance thereof it is considered, ordered, adjudged and decreed by the Court as follows, to-wit:

- 1- Each party shall pay his own costs incurred and expended in and concerning this litigation, and each party shall pay one-half of the jury's fee and one half of the clerk's court costs.
- 2 - The said defendant, Frank A. Perry, shall be permitted to use the waters of said Trout Creek, a tributary of said Pine Creek, and as between Plaintiff and defendant the said defendant is hereby adjudged and decreed the owner of the right to use the same.
- 4 - The said defendant, Frank A. Perry, is and shall be permitted to use sufficient of the water of Pine Creek to irrigate the land of the said Frank A. Perry now owned by him in Pine Creek Valley, and heretofore, at any time, irrigated by him by the waters of said Pine Creek; and after the 10th day of July, of each year, the said Frank A. Perry shall not be permitted to use any of the waters of said Pine Creek for irrigating purposes, excepting that Frank A. Perry shall be permitted at all times to use for the irrigation of said or any land belonging to him, or for any beneficial purpose all the waters of said Trout Creek, during the entire year.

5. The said defendant, Frank A. Perry, shall not be permitted to increase the area of his lands irrigated by the waters of said Pine Creek or divert or use the waters of said Pine Creek after the 10th day of July of each year, except at such times as there is sufficient water flowing at the head of the irrigating ditch of said plaintiff James P. Raine, known as the Pine Creek ditch, and at such times as said Raine shall not require the use of the waters of the said Pine Creek for irrigating the land described in the complaint.

6. In the use of the waters of Pine Creek for irrigating purposes, the said defendant Frank A. Perry, shall maintain and keep in repair the four dams now existing upon his ranch, or dams of equal height and efficiency, but of no greater height, for the purpose of restraining and holding back the waters flowing in said Pine Creek; and said dams shall be kept in repair, and shall restrain and hold back the waters impounded thereby of said Pine Creek until the 25th day of June of each year.

7. Said Frank A. Perry shall not be permitted to increase the use of the water of Pine Creek upon his land at any time or in any manner to the injury or detriment of the plaintiff, James P. Raine, his heirs or assigns.

8. On and after the 25th day of June in each year, the said plaintiff, James P. Raine, shall be permitted to gradually open the said dams of the defendants, and shall be permitted to lower the same, and let the water held back and impounded thereby flow down in the channel to his land, at such times and in such quantities as he requires for the irrigation of his said land, and for the irrigation of the crops growing thereon, and for his stock and domestic purposes. But in lowering the dams and letting down the water so impounded, the said plaintiff, James P. Raine shall leave the first dam above the lowest dam, known as the dam in the calf pasture until July the 10th. The said plaintiff, James P. Raine shall open or cause to be opened all the dams, and shall let down, or cause to be let down all the water impounded or held back by said dams, or either of them on or after the 10th day of July of each year, if the said defendant, Frank A. Perry so requires.

9. The said James P. Raine shall be responsible for all injury or damage caused or done by reason of the letting down of the waters by him, or at his request held back or impounded by the said dams or either of them; and shall hold and save the said Frank A. Perry free and harmless from damage by reason of any such act in the premises.

It is further ordered, adjudged and decreed that the said plaintiff, James P. Raine, his heirs or assigns shall have license and permission to enter into and upon the land and premises of the said defendant, Frank A. Perry, for the purpose of constructing and maintaining a waste water ditch to catch and carry the drainage or waste water from the irrigation of the lands of said defendant, Frank A. Perry, the said ditch to be constructed along the north line of the ranch of said Perry.

Dated, September 18, 1896.

G.F. TALBOT,
District Judge.

Recorded at the request of J.P. Raine March 5, A.D. 1928 At 40 minutes past 4 P.M.

Peter Meriardo----Recorder.