

ANNUAL STATEMENT

Table with financial data for the Pacific States Savings and Loan Company, including sections for Receipts, Disbursements, Assets, and Liabilities.

OFFICIAL COUNT OF STATE FUNDS

Table showing state funds for Ormsby County, including State School Fund Securities, Nevada State Bonds, and United States Bonds.

IN THE SUPREME COURT OF THE STATE OF NEVADA

Ebenezer Twaddle and Ebenezer Twaddle as Special Admr. of the Estate of Alexander Twaddle, deceased. Plaintiffs and Respondents v. Theodore Winters, A. C. Winters, L. W. Winters and Samuel Longabaugh. Defendants and Appellants.

From 2d Judicial District Court, Washoe County. Messrs. Cheney and Massey, attorneys for Plaintiffs. Alfred Chartz, attorney for Defendants.

DECISION

The respondents have moved to dismiss the appeal from the judgment because it was not taken within one year, and to dismiss the appeal from the order of the district court denying appellants motion for a new trial, also to strike from the records the statement on motion for a new trial, upon the ground that the statement was not filed within the time prescribed by law.

Pursuant to this request Judge Murphy occupied the bench in Reno until July 31, 1903, when a recess was taken until a further order of the court. There was no other session until Judge Currier's return on August 17th.

ON THE MERITS This action was brought by Alexander Twaddle in his life time and by Ebenezer Twaddle, as co-owners, for 150 miners inches running under a six inch pressure of the waters of Ophir Creek, alleged to have been appropriated by their grantors in the year 1856.

Witnesses appeared to sustain, and others to dispute plaintiffs' right as initiated a half century ago, and the same is true regarding the claims of these defendants. The record affords a glimpse of pioneer history at a period preceding to the admission of this State into the Union, and portrays the building and decay of saw and quartz mills by the banks of the stream.

On behalf of the defendant other witnesses testified that they were over the ground and saw no ditch and that none existed there during those earlier years. It is unnecessary for us to detail the conflicting portions of the evidence. These were carefully considered by the district court, and for the reasons stated in its decision, enforced by statements in deeds made many years before any controversy arose.

The argument advanced concedes that if Judge Murphy had gone to Reno and entered the order in open court it would have been good, but under this contention if he had stepped through the door into the chambers and made it it would have been void. Orders extending the time for filings are business usually, or properly transacted in chambers and under Section 2573 can and ought to be made as effectually in any part of the State by the judge having the case in charge.

Under the assertion of the complaint of the appropriation of water "by means of certain dams, ditches and a flume" the court properly decreed to plaintiffs the right to use the water through either or both the ditches running to their lands. They would have that right in the upper ditch if their interest in it is only an undivided two-thirds, as the court has given them jointly with the defendants in the lower ditch, and whether the grantee of Lake owns and can assert a right to an undivided one-third interest, is a question as foreign as the ownership of the mansion, and one which ought not to be determined by the judgment in the absence of any issue or allegation concerning it.

light of reason as applied to the ordinary rules of practice, and give due weight to the later section. Apparently the object of this legislation was to prevent the granting of extensions and the meddling of judges in cases which they had not tried or which were not properly under their control, and yet in the case of the absence or inability of the judge who tried the action, to grant relief, or allow extensions to be made to deserving litigants.

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At this point the judge found that 121 inches of water which he had measured below about 1100 feet of the flume, and he estimated that the old flume would carry from 200 to 250 inches. From his examination of the premises and the character of the soil the court was of the opinion that the plaintiffs' position and were entitled to at least the amount of water they had flowing in the flume at the time he made the examination, and he decreed them a prior right to 184 miners inches running under a four inch pressure or 3 1/2 cubic feet per second from April 15th to Nov. 15th of each year, and 20 inches or 2 1/2 of one cubic foot per second for domestic use and watering stock at other times.

The motion to dismiss the appeal from the order overruling the motion for a new trial and to strike out the statement is denied.

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plaintiffs. Although his flume was erected many years ago Longabaugh did not show any prior appropriation and the decree properly enjoins him from interfering with that part of the water of Ophir Creek awarded to the plaintiff, because he ran a flume into one owned by Winters, and joined with the other defendants in answering and resisting the rights of plaintiffs. The decree does not prevent him from taking any water in the creek in excess of the amount awarded to plaintiffs. Nor does it in any way interfere with the water belonging to him coming from other sources. This he may turn into Ophir Creek and take out lower down provided he does not diminish the flow to which plaintiffs are entitled.

On May 20, 1903, John Twaddle, the father and predecessor in interest of the plaintiffs, conveyed to M. C. Lake "one-third of that certain water ditch and flume known as the Twaddle ditch, leading from what is now known as the Ophir Creek to the land of said Twaddle, southerly from said creek through the lands of C. E. Wooten and M. C. Lake, with the privilege of running water through said flume and ditch to what is known as the Bowers' Mansion or grounds, the expense of maintaining said ditch and flume to be paid by each in proportion to their interests in same."

Under the assertion in the complaint of the appropriation of water "by means of certain dams, ditches and a flume" the court properly decreed to plaintiffs the right to use the water through either or both the ditches running to their lands. They would have that right in the upper ditch if their interest in it is only an undivided two-thirds, as the court has given them jointly with the defendants in the lower ditch, and whether the grantee of Lake owns and can assert a right to an undivided one-third interest, is a question as foreign as the ownership of the mansion, and one which ought not to be determined by the judgment in the absence of any issue or allegation concerning it.

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having it flow by lands of riparian owners to finally waste by sinking and evaporating in the desert. The California decisions cited for appellants may no longer be considered good law even in the state in which they were rendered.

In the recent case of Kansas v. Colorado before the Supreme Court of the United States, Congressman Neesham testified that irrigation had doubled and tripled the value of property in Fresno and Kings counties, California, that they had to depart from the doctrine of riparian rights and under that doctrine it would be difficult to make any future development; that there has been a departure from the principles laid down in Lux v. Haggins, because at that time the value of water was not realized, that the decision has been practically reversed by the same court on subsequent occasions, and that the doctrine of prior appropriation and the application of water to a beneficial use is in effect in force now in that State.

We must decline to award the defendants the waters of the stream as riparian proprietors and patentees of the land along its banks prior to 1867. The case will be remanded for a new trial unless there is filed on the part of the plaintiffs within thirty days from the filing hereof, a written consent that the judgment be modified by limiting the use of the 184 inches, or 3 1/2 cubic feet per second of water awarded to the plaintiffs, to such times as may be necessary for the irrigation of their crops or lands or for other beneficial purposes, between April 15 and October 15 of each year, and by allowing plaintiffs for the remainder of the time the 20 inches awarded to them, when necessary for their household, domestic and stock purposes, and by striking from the decree the words:

"It is further ordered and decreed that said plaintiffs have the exclusive right to use and the exclusive use of said Upper Twaddle Ditch and Flume at all seasons of the year." If such consent is so filed the district court will modify the judgment accordingly and as so modified the judgment and decree will stand affirmed.

We concur: Fitzgerald, C. J. Noyes.

Quarterly Report

Ormsby County, Nevada. Receipts.

Table of quarterly receipts for Ormsby County, Nevada, including County Licenses, Gaming Licenses, Liquor Licenses, and various taxes.

Disbursements.

Table of quarterly disbursements for Ormsby County, Nevada, including State fund, General fund, Salary fund, and various other expenses.

Repopulation.

Table of population statistics for Ormsby County, Nevada, including receipts from Oct. 1st to Dec. 30, 1905, and disbursements from Oct. 1st to Dec. 30, 1905.

Recapitulation.

Summary table of financial data for Ormsby County, Nevada, including State fund, General fund, Salary fund, and various other items.