

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF HARNEY

CHARLES WALKER,

Plaintiff,

vs.

GEORGE G. RICHMOND, J.B.Mallory,
and W. F. Owens,

Defendants.

No. 2351
FINDINGS OF FACT AND
CONCLUSIONS OF LAW

The above entitled cause having heretofore been regularly referred to the official reporter for the taking and reporting of the testimony, and submitted to the court on such report to _____ with briefs and oral argument of respective counsel, and after due consideration of the testimony submitted and the briefs and arguments submitted by counsel, the court makes and enters the following:

FINDINGS OF FACT

1st. That the plaintiff Charles Walker is the owner and in possession of the following described real property located in Harney County, State of Oregon, to-wit:

The east half of the West half and the East half
Section 36, Township 22 South, Range 31, East
of the Willamette Meridian.

2nd. That the defendant George C. Richmond is the owner and in possession of the following real property situated in Harney County, State of Oregon, to-wit:

The southwest quarter of the northwest quarter
and the southwest quarter of Section 13, the
north half of the northwest quarter of Sec-
tion 24, all of Section 25; all in Township 22 South,
Range 31 East of the Willamette Meridian.

3rd. That the defendant L. S. Hebner was during the pendency of this suit substituted for the above named defendant W. F. Owens, and said defendant L.S.Hebner is the owner and in the possession of the following described real property situated in Harney County, State of Oregon, to-wit:

The west half of the southeast quarter;
the southwest quarter of the northeast
quarter and the southeast quarter of the
northwest quarter of Section 24, Township
22 South, Range 31 East of Willamette
Meridian.

4th. That all the lands above described, in their natural condition, are semi-arid in character and require irrigation to produce full and valuable crops.

5th. That Prather Creek is a perennial stream which rises in the foothills north of the Harney Valley, and flows almost due south through the lands of the parties to this suit above mentioned, and on reaching the level valley surface its waters spread out and sink in the ground, and said creek is not a tributary of any other stream system or body of water.

That said stream has a spring run-off, or flood season, that generally decreases as the season advances until there is very little water flowing in the stream after the first day of July of each year.

6th. That it appears from the pleadings, the testimony and the record herein that the use of the waters discharged from several springs are involved in this suit, and in regard thereto the court finds as follows:

a. That the waters of the spring which rises in the bed of Prather Creek in Section 25, above described, a few hundred yards north of the south boundary of said section, have been used for more than ten years last past for stock water on Section 36 herein mentioned by the plaintiff and his predecessors in interest, and by such adverse use plaintiff has acquired title for use on said section 36, and plaintiff given the exclusive right to use and develop the same with a priority of 1884.

b. That the waters of the several springs arising on defendant Richmond's land in sections 13 and 24 above described, and which springs are mentioned in the record herein, are independent of the said Prather Creek and the waters from these springs should be decreed to the defendant Charles C. Richmond for use upon the said lands upon which they arise with a priority of 1883.

7th. That the waters of Prather Creek are and at all times mentioned in the pleadings and decree entered herein have been used for beneficial watering and irrigation of portions of the lands hereinbefore described and such use is appurtenant to the respective tracts as set forth in the decree herein.

8th. The court finds that the irrigated lands comprising 290 acres, of the holdings of the plaintiff, Charles Walker are entitled to and shall be awarded the right to the use of the water of Prather Creek and its tributaries with date of priority of 1884;

That the irrigated lands, comprising 59.04 acres, of the holdings of the defendant George C. Richmond, located in sections 13 and 24 above mentioned, are entitled to and awarded the right to the use of the water of said springs arising thereon and of said Prather Creek with a priority of 1883.

The court finds that the water right claimed from Prather Creek by the defendant Richmond for the irrigation of his lands in section 25, township 22 south, range 31 east, W.M., has long been lost by non-use and abandonment and no water right is decreed to said land in this suit from said stream or any of its tributaries.

That the irrigated land, comprising 22 acres, in the holdings of the defendant L. S. Hebner are entitled to and shall be awarded the right to the use of the waters of said Prather Creek with a priority of 1898.

9th. That the irrigation season for the lands above mentioned is found to be from March 1st to July 1st of each year; and the duty of water or the amount necessary for the proper irrigation of said land is fixed at three acre feet per acre to be distributed and used thereon during each irrigation season as above prescribed.

The court finds that all parties to this suit hereby awarded a water right shall have the right to stock water from said Prather Creek throughout the year when same is available, but said stockwater right not to be in addition to the amount subject to use for the irrigation of said lands during the irrigation season.

10. The Court finds that the plaintiff and his predecessors in interest constructed and for more than ten years last past have maintained and operated a ditch diverting water from Prather Creek within the boundaries of the West half of the south-east quarter of section 24 herein mentioned and described and extending southerly, parallel with said creek across Section 25, herein mentioned and referred to, to and upon plaintiff's land in Section 36, and that the plaintiff has acquired the right to operate, use and maintain the same exclusively in such reasonable manner as shall least burden and interfere with the use of said Section 25.

As CONCLUSIONS OF LAW, based upon the foregoing findings of fact, the court finds that it has jurisdiction of the parties to this suit and that there is competent testimony to support a decree determining the relative rights of the respective land-owners to the use of the waters of Prather Creek, and that the equities in said suit are as recited in said findings and the respective parties are entitled to be decreed a water right for the areas and with dates of priority as therein mentioned^{and} that each party shall pay his own costs in this suit.

Done and dated this 20th day of November, 1931.

Filed Nov. 23, 1931
Wm. M. Carroll, Clerk.
Recorded Book E, page 555

W. W. Wood
Circuit Judge