

1959

# N. M. Long & Co. et al v. Cannon-Papanikolas Construction Co. et al : Brief of Appellants

Utah Supreme Court

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Mark, Johnson, Schoenhals & Roberts; Attorneys for Appellants;

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# IN THE SUPREME COURT OF THE STATE OF UTAH

N. M. LONG & COMPANY,  
a corporation, and  
MAGGIE J. SMITH,

*Plaintiffs and Appellants*

R. KAY MOWER AND  
MRS. M. H. MOWER,

*Plaintiffs in  
Intervention and appellants,*

vs.

CANNON-PAPANIKOLAS  
CONSTRUCTION COMPANY,  
a partnership, EDWARD HOLMES,  
and GRANT JENSEN,

*Defendants and Respondents.*

FILED

MAR 9 - 1959

Clerk, Supreme Court, Utah

Case No.  
8999

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## APPELLANTS' BRIEF

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MARK, JOHNSON,  
SCHOENHALS & ROBERTS,  
*Attorneys for Appellants*  
by E. L. Schoenhals  
Salt Lake City, Utah

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## APPELLANTS' BRIEF

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### FACTS

In 1886 the grandfather to the present plaintiff, R. Kay Mower, by extensive excavations, development of springs, construction of ditches to convey the water into the excavation, and the construction of a cement dam on the west end of the excavated area, created the Mower Pond or lake in the Holladay area. He also developed water in the surrounding area and conveyed it by ditches into the

lake and developed springs in the bottom of the lake. The area was a slough prior to this work, T-51. The building of the lake created a large water reservoir. As soon as the lake was developed, fish were immediately placed therein, 118-12. Upon the death of Grandfather Mower, plaintiff's father continuously raised fish in the pond, and upon his death, the plaintiff, R. Kay Mower, continued raising fish and made additional improvements with a total investment of about \$17,000.00. The lake accommodated 60,000 fish, 130-15, and sustained fish therein every year, including the winter season, since 1887 until the defendants installed the drains hereinlater referred to, 132-5; 119-2 and 19; 118-30; 124-9.

More than two second feet of water flowed through this lake with such a surge and volume as to prevent weeds or moss or scum from growing or accumulating in the lake, 85-15; 145-1; 142-8. The lake had sufficient water during the winter to sustain fish life. The lake was never dry until the defendants installed their drains immediately to the north of the lake as hereinlater more fully set forth, 124-12; 143-17. After the installation of the drains the lake dried up every winter and with very little flow through the summer, causing it to become full of weeds, moss, and scum, and give off foul and offensive odors in the summer—147-21, and fish life could no longer be sustained in the lake—124-12; 143-22.

Prior to the installation of defendants' drains more than two second feet of water flowed through and out of the Mower Pond into a ditch referred to as the Long Ditch. The Smith place, consisting of about six acres had used the water from the Long Ditch for irrigation purposes prior to 1883 and continuously to the present time—court's

findings T-51; and 159-23; 160-6. The premises were irrigated and farmed by William Smith from 1883 and continuously to the time of his death. His widow, one of the plaintiffs, with their son, a polio victim, have ever since the death of William Smith farmed the same—161-16 et seq. Prior to the installation of the defendants' drains the widow Smith, the present plaintiff, and her son, had used about two second feet of water for irrigating the acreage which provided them a living from truck gardening, produce, and vegetables, together with the rental from part of the land. Adjoining the Smith premises and the last property on the ditch is the Long property, consisting of about 19 acres. Water was used for irrigating these premises prior to 1883—findings T-51. The 19 acres were very highly developed, having 1,000 fruit trees—201-5, and 400 grape vines—201-15; the balance of the acreage was irrigated for the production of vegetables and produce. Cement ditches and headgates conveyed and handled the water—200-4. There was also built in connection with the farm elaborate storage facilities with electrical refrigeration and insulated large storage facilities to take care of the fruit and produce raised on the farm. The storage facilities cost \$10,000.00—191-8.

The court found that all of these parties plaintiff had had their respective water rights adjudicated, and determined in April, 1914 under Civil No. 8921 with an award to them and the right of plaintiff Mower to use the water in the pond for the propagation of fish and with the rights of the parties, William Smith, the husband of plaintiff, Maggie J. Smith, and Brigham Smith, the predecessor in interest of the plaintiff, N. M. Long, to use two second feet of water through the Long ditch during the irrigation sea-

son—findings T-52, and Exhibit 30. The other party was enjoined from interfering with such use. All parties had, without interruption, enjoyed their respective rights up to the time that the defendants installed their drains in 1954 and immediately upon the complete installation of the drains in 1955 there was no water running through the pond or in the ditch to irrigate and sustain the crops—120-24; 204-5.

The defendants undertook the subdivision and development of a large tract of land immediately to the north of the Mower Pond and the Long Ditch and placed large and extensive drains therein during the summer of 1954. See Exhibit 12 for drains. The drains were near the source of supply to the Mower Pond and said drains were two feet lower than the bottom of the deepest part of the Mower Pond, see Exhibit 11 and T-81-1. The drains were approximately 8 feet beneath the surface of the ground—74-28.

The drains developed and exhausted  $7\frac{1}{2}$  second feet of water at a level so low it could not be used for irrigation by plaintiffs, 90-9; 90-17. After the installation of the drains there was no longer water in the ditch and it was necessary, in order to save all trees and crops on the Long place to install a pumping system at a cost of \$3,500.00, 209-13. Exhibit 28 shows the comparative annual electric costs of pumping the water.

Exhibit 24 is a copy of water application filed by Long to pick up irrigation water at this new lower level source.

Exhibit 25 is the protest to said application. There has been no determination of rights in connection with the use of said water as pumped. The drains returned the water

into the Spring Run Creek at a level at the lower end of the Long property where it could no longer be used on the property without pumping.

In the second cause of action the plaintiff, Maggie J. Smith, the widow of William Smith, established that she and her son had crops maturing which failed by reason of lack of water, with a substantial loss in 1954 and the inability to mature any crops at all in 1955 or any year thereafter following the installation of the drains.

The intervening plaintiff, Mower, claimed and established that there had been spent by his grandfather and father \$8,000.00—142-17 and that he had spent \$9,000.00—142-2, for the development of parking facilities, arbors, sidewalks, cement decks, buildings, and a pavillion from which he had made as much as \$175.00 in a single day—146-4, as rental for the exclusive use of the pavillion, fishing and boating facilities to guests, and also established that because of the lack of water and inability to raise fish, together with the fact that the lack of water caused weeds and moss and scum to grow and the stagnant condition gave off foul and offensive odors—147-21, and preventing him from using the facilities therein provided for recreational and boating and fishing purposes, and the propagation of fish—120-21; 122-23; 147-20.

The court found no cause for action on all three causes.

### Point I

1. THE COURT ERRED IN FINDING THAT DEFENDANTS' DRAINS DID NOT TAKE PLAINTIFFS' WATER AND SUPPLY.



## Point II

2. COURT ERRED IN NOT FINDING DEFENDANTS HAD DEPRIVED THE PLAINTIFFS OF THEIR ADJUDICATED WATER RIGHTS.

## Point III

3. PLAINTIFFS WERE ENTITLED TO INJUNCTIVE RELIEF.

## Point IV

4. PLAINTIFFS WERE ENTITLED TO DAMAGES.

## ARGUMENT

## Point I

THE COURT ERRED IN FINDING THAT DEFENDANTS' DRAINS DID NOT TAKE PLAINTIFF'S WATER AND SUPPLY.

The court found at T-53 there was no direct evidence defendants' drains took the water either from the pond or the ditch. This is an action in equity. The lower court considered and evidence was received entitling plaintiffs to injunctive relief against the defendants, preventing them from operating their drains—T-58.

This court may review the evidence submitted since this is a proceeding in equity to determine whether plaintiffs were entitled to injunctive relief. Even if this were not equity a reversal would be required since the finding is directly contrary to the evidence with no evidence to support a no cause of action.

Plaintiffs had as an expert witness John A. Ward, the most prominent civil engineer in the State of Utah. Mr. Ward has been an engineer engaged in ground water problems since 1934-T69-13. Ward worked for Salt Lake City on ground water problems from 1934 to 1941. Ward then was in the State Engineer's Office and in charge of ground water from 1941 to 1954 and since 1954 he has been an independent engineer on ground water problems. He was the only ground water expert produced at the trial. Mr. Ward's home is such that from his window he could view the Mower Pond and all of the irrigation facilities and the subdivision during the installation of the drains. Ward, since 1934, had made measurements and reviewed every year to 1958 the ground water at the very site involved in this litigation, and was familiar with ground water levels and measurements, water pressures, water productivity and flow in the specific area, and was familiar with the flow and quantity of water therein—69-27; 72-18.

After the installation of the defendants' drains in the early spring of 1957 Mr. Ward undertook an intensive, extensive and meticulous survey to determine all water levels between the plaintiffs' source of water supply and the drains in the subdivision installed by the defendants.

To accomplish this Mr. Ward prepared special pipes, perforating them in certain areas and driving them into the ground at the significant points designated and shown on Exhibit 12. Ward then at various times as noted on Exhibit 11 measured the water level and very carefully determined the water levels in these pipes at the indicated points covering the entire area and recorded all data on a specially prepared graph—Ex. 11. This exhibit records at the time indicated the water level and the comparative

flow of the water between plaintiffs' water productive area and the defendants' drains each time taken, see Exhibit 11 and T-79-1.

Mr. Ward's testimony indicated that he had explored all the underground area, all undersurface strata in the area involved, and was familiar with the composition of the undersurface area between the drains and the water sources—79-26, and from the examination made he found it all to be very porous and gravel composite with little or no impedance to water flow, with the water flowing very freely therethrough—82-17.

Mr. Ward also testified and demonstrated from Exhibit 11 that the water flowed from the Mower Pond and the productive area into the drains, rather than through the pond and into the Long Ditch—92-6; 87-15; 79-1. Ward testified that Exhibit 11 was to scale each square represented two feet and the graph demonstrated that in the area between the water source and the drains the water level sloped toward the drains four feet in a 150 foot distance—109-19. While this is not such a drop as to create a cascade of the water into the drains, it was obvious that plaintiffs' water source was going into defendants' drains. Ward stated that in his opinion the drains had definitely drained the water that otherwise had flowed through the Mower Pond and also drained the two second feet the plaintiffs had used for irrigation as aforesaid—87-15; 92-8. Ward stated no where in the area had he observed such a marked differential of water grading and sloping 4 feet in 150 foot distance or the grading down stream toward defendants' drains dropping 4 feet in 150 foot distance, 109-19. Ward testified that much of the water used by Smith and Long was developed in the Hansen Pond being

the first part of the ditch as it flowed—84-4, and that defendants drains were as close as 50 feet from the ditch—325-28. He further testified that if the drains were stopped, the water would again flow through the Mower Pond and into the Long Ditch as it had prior to the installation of the drains—92-4; 93-17; 91-29, and that there was nothing in the area or any changes in conditions which had stopped the flow of water through the pond and through the ditch, other than the installation of the defendants' drains—T-87-15; 109-19. He gave the reason therefor that water flows in the direction of the grading and that the high elevation of the productive area compared with a slope of four feet in every 150 foot distance to the drains, together with the porosity of the ground, with little or no resistance demonstrated definitely that the water was going from the productive area into the drains—82-17; 92-10. Ward testified that the installation of the drains was the sole cause of the loss of water to these plaintiffs—87-15. The court found Ward expressed an opinion the drains were responsible merely by a casual observation—T-53.

## Point II

**COURT ERRED IN NOT FINDING DEFENDANTS HAD DEPRIVED THE PLAINTIFFS OF THEIR ADJUDICATED WATER RIGHTS.**

Defendants contended sewers had been placed on Highland Drive. Defendants did not show the distance from or the elevation of the sewers with respect to the plaintiffs' water supply or that the sewers had any effect on the flow of water in the area. The witness was a party defendant and a layman.

Moreover, Ward testified that there was no other changes of ground water in the area other than construction of defendants' drains accounting for appellants' loss of water. 87-15. Ward further on re-direct verified that the sewer had nothing to do with plaintiffs' loss of water—324- . Ward also testified he inspected the installation of the sewer and every few hundred feet manholes were constructed on the sewer line—317-16. Further that these manholes were so constructed with cement going deeper and the cement intercepts the pipe and the manholes were watertight—318-24, preventing water from flowing along the sewer pipe—318-27, and no water can pass through or pass around the manholes—319-1. This line of testimony is further amplified in the subsequent pages of the transcript fortifying Ward's position in stating there was no change in the area accounting for loss of appellants water other than defendants' drain installations.

### Point III

#### PLAINTIFFS WERE ENTITLED TO INJUNCTIVE RELIEF.

Plaintiffs were entitled to injunctive relief by reason of the authorities and rational set out in points 1 and 2. Moreover, the lower court having found that a prior adjudication had enjoined other parties from interfering with plaintiffs' valuable water rights was bound to give judicial recognition to the prior judicial determination. The law of res judicata applies. The lower court was also fully advised on the law relative to diligence rights and the following well-known Utah cases cited:

Hansen v. Salt Lake City, 205 P2d 255 115 U 404  
 "However, it has been held that under the early

federal and state statutes and laws above referred to that where a party *developed or collected percolating waters* on the public domain and appropriated them to a beneficial use, or where percolating waters supplied the source of a natural stream which had been appropriated to a beneficial use during the time when the lands through which such water percolated were public lands, the later private owner of such lands could not rightfully interfere with such use of such waters to which they have been previously appropriated. . . .”

Bullock v. Tracy, 294 P2d 707-4 U2d 370

“So we affirm the trial court’s holding that the right to the use of this water which has been developed and used in this system was acquired by the owners of the ground where the source of the supply was located developing and diverting this water into their system and beneficially using it therein prior to 1935, and no application to appropriate such water was necessary at that time to establish the right to the use of such waters. . . .”

In addition to plaintiffs having an adjudication of their rights, the court finding at T-52 required the additional conclusion of law that a right existed which required as a conclusion of law that plaintiffs were entitled to injunctive relief.

Rasmussen v. Moroni Irr. Co. et al.  
189 P 572 56 U 140

“. . . and enjoined the defendants from interfering . . .”

“By what we have said we do not wish to be understood as holding that the appellant may not drain his lands and by that means reclaim them. In doing that he must, however, permit the water he drains

therefrom to flow into the Sanpitch River for the use of respondents, precisely as that water flowed into the river before he commenced his drainage system. . . .”

The above case has never been reversed and is still the law in Utah. Respondents in draining the land did not drain the same so as to place the water through the Mower Pond or in plaintiffs’ ditch, but wasted it, dropping it at a lever where all appellants lost it.

The court was also fully advised on adverse use by the following well-known Utah cases:

Smith v. Sander et al, 189 P2d 701 112 U 517

“ . . . which held the water right to the use of appropriated water could be obtained by adverse possession before our legislature in Session Laws of Utah, 1939, . . . and prohibited the acquiring of the right to the use of either appropriated or unappropriated waters by adverse possession. . . .”

Welsville, etc., et al. v. Lindsay, etc., et al.  
137 P2d 634 104 U 448

“It follows, therefore, that notwithstanding the statute of appropriation, as between private claimants, water rights in Utah can be acquired by adverse user and possession. . . .”

Reardon v. Westwood, 203 P2d 922 115 U 215

“In an arid state like ours it is very important that *all of the waters be used in the most beneficial and economical way possible and that none be wasted.* It is also important that the *owners of the land shall not be disturbed in the beneficial use of the waters on their land in accordance with their previous custom and conditions.* . . .”

These cases also establish the rights of plaintiffs to invoke injunctive relief. Defendants cited as their leading case Peterson vs. Cache County Drainage, 294 P 289 77 U 256. Counsel invites the court's attention to the following distinctions between the Peterson case and the case at bar:

(1) "The plaintiff does NOT here COMPLAIN because he has in INSUFFICIENT SUPPLY of percolating water to supply his needs, (2) but his complaint is founded upon the claims that the water table in his land was so LOWERED by the construction of the defendant's drainage canal that he CANNOT now IRRIGATE his premises by the method of SUB-IRRIGATION as he was wont to do before the drainage canal was constructed. . . ."

(3) "In his complaint the plaintiff alleges that the defendant was negligent in the construction of its drainage canal in two particulars, . . ."

(4) "No evidence was offered at the trial . . ."

(5) "The evidence failed to show that defendant was negligent in constructing the drainage canal in the wrong place. . . ."

(Numbers and emphasis supplied.)

There are five distinct differences between the Peterson case and the case at bar. In the Peterson case no water was being wasted, as a matter of fact, application of water on agricultural land was being increased by making adjacent land more productive and water was being conserved. In the Peterson case the only thing required of the plaintiff was to spend some time irrigating rather than enjoying irrigation with no effort on his part by sub-irrigation. The plaintiffs in the case at bar never claimed a sub-irrigation



right, nor do they now contend for any such right. Plaintiffs in the case at bar did not predicate their entire theory upon negligence in the installation of the drains as was done in the Peterson case. In the Peterson case they put no proof on with respect to their only theory, to wit: Negligence. The entire theory of the Peterson case rested upon the claim of negligence in the installation of the drains. Moreover, the Peterson case did not seek relief because of the lack of water or the insufficient supply of water.

The Peterson case is the law of this state with respect to correlative rights in the use of land to so use it as to be consistent with the rights of the adjacent owners in AGRICULTURAL use and the application of water available for beneficial use.

It is defendants' contention and claim that they had the right to drain the water from the land and to convert the land from pasture land into more valuable land, namely, for the building of homes and the construction of a large subdivision. They made no claim to the water other than the right to waste it—findings T-53.

It is plaintiff's position that under the facts plaintiffs had no adequate remedy at law and the defendants may not take the water without injunctive relief being made available to plaintiffs. The courts have consistently held the mere fact that another's land may be made more valuable by draining can not deprive the adjacent land owners of their water rights and that injunctive relief should be granted—164 A.L.R. 696, 164 New York 304—*Stroble v. Kerston Company*.

“. . . the fact that drainage of a mine was more

valuable to the mine owner than the flow of a spring or creek, prevented by such drainage, was to the owner of the land across which the creek flowed, was held in *Eckel v. Springfield Tunnel & Development Co.* (1927) 87 Cal. App. 617, 262 P 425, to be immaterial in an action to enjoin interference with the natural flow of the water, since private property cannot be taken for private use upon the ground that it is more valuable to the taker than to him from whom it was taken. . . .”

‘While the courts will not overlook the needs of important manufacturing interests, nor hamper them for trifling causes, they will not permit substantial injury to neighboring property, with a small but long-established business, for the purpose of enabling a new and great industry to flourish.’

*Chestatee Pyrites Co. v. Cavenders Creek Gold Min. Co.* 45 S. E. 267

*Eckel v. Springfield Tunnel & Development Co.* 262 P 248-Cal.

“It may be that the defendant would derive a greater benefit from the drainage of its mine than the plaintiff receives from the use of the water flowing from the spring, but that fact is wholly immaterial. The value of a flow of 24 inches of water is in no sense unsubstantial or negligible, and it is elementary that private property cannot be taken for private use upon the ground that it is more valuable to the taker than to him from whom it is taken. *Scott v. Fruit Growers’ Supply Co.* (Cal. Sup.) 258 P. 1095 . . .”

It is significant also to consider the fact that the defendants have attempted to put their lands to extraordinary unusual use, contrary to its natural habitat and facilities.

In an editorial in the Salt Lake Tribune dated January 15, 1957 entitled "Our Shrinking Crop Land" wherein it is stated:

"Creating and maintaining a favorable climate for industrial expansion was the theme of the annual agriculture-industry conference at the Hotel Utah, sponsored by Utah State University of Agriculture and Applied Sciences, Logan. The day's discussion was climaxed, however, with a panel of experts emphasizing how industry is encroaching on the already-inadequate farm lands of the state. The problem is not confined to Utah. The U. S. Soil Conservation Service estimated that 27 million acres of productive land will be withdrawn from agriculture by 1975 and used for factories, parking lots, airports, highways and residential subdivisions. . . .

"Dale Despain, Utah County planning consultant, reported that only 1½ per cent of the total land area of Utah is arable (under cultivation and irrigation) and said that this is shrinking as more industries take over choice farm land. . . .

"He and other panelists pointed out that although industrialization is highly desirable and should be encouraged, the agricultural base should be maintained in the interest of balanced economic and social progress . . . ."

The editorial was called to the attention of the lower court for the reason that the Utah Supreme Court, as have other courts in arid areas, sustained this position.

The decision of this court in this case will have far-reaching effect throughout the State of Utah and other arid areas in either encouraging or discouraging the use of irrigable land for industrial and subdivision purposes.

There will never be a better opportunity to discourage the taking away of productive agricultural land. In other words, had the lower court awarded damages only in this case, it would have sanctioned the condemnation of productive agricultural land for industrial purposes.

There is plenty of non-irrigable land on the hills and benches closer to the city limits than defendants' subdivision. Injunctive relief will encourage industry and subdivisions to utilize areas where they will not interfere with valuable agricultural water rights.

In stating this position I do not pretend to be the genius who conceived this most judicious policy. This court has already in decisions more aptly stated this policy formation and has done so in very choice words.

Weber Basin Water Conservancy District v. Gailey,  
327 P2d 177 ....U....

"It has always been the fundamental policy of our water law to encourage the putting of water to the highest beneficial use *and to keep it so employed*. . . .

"This set the pattern which has been followed ever since because water has always been the principal limiting factor to our growth and development. It is an *indispensable resource which cannot be replaced* nor substituted for, and there is no way, presently at least, of augmenting it; whereas population is always increasing. For that reason the *conservation* and efficient use of water has become increasingly more important, not only to agriculture, but to our growing industry, and in fact, to every phase of life . . . ."

Kano v. Arcon, 326 P2d 719

"In 1955 some of the defendants acquired the adja-

cent upstream property and subdivided it. They installed a drain that dried up the ponds. . . .

*"It became necessary, therefore, for the plaintiffs to hoist the water by pumping. . . ."*

*"It seems that at the time the drain was installed, and thereafter, there was about as much water spilling into the natural chanel from the drain as found its way there previously. Had the defendants deposited the water so that it could have been employed with the aid of gravity, as before, this litigation would not have ensued.*

*"Defendants urge that this is simply a drainage, not a water case, and that a person, in improving his property, has a right to drain it with impunity even though the water table in his neighbor's land be lowered. . . ."*

#### Point IV

#### PLAINTIFFS WERE ENTITLED TO DAMAGES.

The Widow Smith and her son established that in 1954 because of lack of water the Smiths only matured about 50 per of their crops—216-19; 217-7. In 1955 and all subsequent years the Smiths were unable to mature crops and did not attempt to do so because of lack of water to further farm the area—215-28. The Smiths leased a part of the property for \$75.00 in 1954—163-9, \$50.00 in 1955 and were unable to obtain anything for leaseholders rights thereafter because of the lack of water.

A matter of mathematical calculation from the evidence submitted—214 to and through 219 shows a substantial financial loss from truck gardening from which the Smiths were obtaining a livelihood and this cause should be remanded with injunctive relief ordered and the lower court required to take evidence on the amount of damages sustained by the Smiths because the wrongful

acts of the defendants in draining the water and the damages determined.

With respect to Mr. Mower, Mr. Mower had a substantial investment between himself and his father and grandfather in excess of \$17,000.00 and he made as much as \$175.00 per day in leasing the facilities—146-4. Not only should the defendants be enjoined from interfering with his adjudicated water rights for the use of this water in raising fish but the case should be remanded, ordering injunctive relief and determining the financial loss which was substantial.

With respect to the plaintiff N. M. Long in the first cause of action, Mr. Long had a valuable investment of a sum in excess of \$25,000.00 in fruit trees alone, and was required to place in a water pumping system at a cost of \$3,500.00 to keep everything from dying, with the attending electrical costs for pumping and the case should be remanded with injunctive relief ordered and the lower court required to take evidence and determine the damages sustained by this plaintiff.

## SUMMARY

### Point I

The plaintiffs and appellants had, by prior judicial determination, the right to use the Mower Pond for raising fish and as a storage reservoir and for the irrigation facilities to irrigate the Smith farm and the Long farm. The court in its findings determined that all plaintiffs and appellants had these water rights determined and adjudicated and the former party in the litigation enjoined from interfering therewith. Moreover, the trial judge made findings

in the case at bar compelling and sustaining plaintiffs' position of ownership with respect to the water upon diligence rights as well as adverse use.

Testimony of an expert witness conclusively demonstrated that the same water was taken into the drains of the defendants and exhausted farther down the stream and that there was no other change in the area that accounted for the loss of water, and further that the stopping of the drains would restore the flow of water.

### Point 2

The evidence as submitted conclusively showed and demonstrated the downhill grade of the water level from the productive area of the defendants' drains, together with the composition of the underground surface being such that there was no impedance to block the flow of the water in a consistent grading with the porosity of the area being consistent only with the fact that the plaintiffs had been deprived of their valuable water rights by the installations of defendants' drains. Moreover, direct evidence established no other change in the area could account for the loss of the water.

### Point 3

The Supreme Court of Utah has consistently protected water rights, particularly those water rights upon which a judicial determination has theretofore been made and has granted injunctive relief preventing interference with these valuable water rights. This is particularly true where the defendants make no claim to the use of the water or correlative use rights and particularly where it is admitted that the only purpose is to enhance the value of the defendants' land in wasting the water. The law being all in accord



throughout the nation in this respect and the courts generally discouraging the wasting of water and encouraging its efficient conservative use and application in agricultural pursuits by injunction. The courts have generally sustained damage incurring by reason of being deprived of the use of the water as well as granting injunctive relief.

#### Point 4

Plaintiff Long established the necessity of installing pumps to keep his trees and growing crops from perishing for lack of water. This cost was \$3,500.00 and \$109.02 per year for electricity to pump the same. Injunctive relief would prevent future loss and the court could take evidence to determine the damage.

Plaintiff Smith showed the loss from produce which they usually sold and price and quantity thereof. Injunctive relief to prevent future loss and the court ordered to take evidence and determine damages would make her whole. Mower showed his investment and his annual income together with expense. Also the comparative income after the loss of business. Injunctive relief and the lower court ordered to take evidence and determine the loss would make him whole.

Respectfully submitted,

MARK, JOHNSON,  
SCHOENHALS & ROBERTS

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By E. L. Schoenhals  
*Attorneys for Appellants*  
903 Kearns Building  
Salt Lake City 1, Utah