

OREGON SUPREME COURT DECISIONS

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being all the land in section 28 that is irrigated by the Joseph Cunha ditch and land in cultivation. In section 27, the northwest quarter of the northwest quarter there is 32.96 acres and there is 2.12 acres of orchard, and .9 acres of grain, and 1.29 acres being leveled. In the southwest quarter of the northwest quarter of section 27 there is 2.6 acres of alfalfa, no orchard, no grain. In the northeast quarter of the northwest quarter of section 27 there is 1.30 acres of alfalfa, 2.20 acres of orchard, and 9.91 acres being leveled at this time. In the southeast quarter of the northwest quarter of section 27 there is 15.47 acres in alfalfa, no orchard or no grain. In the southwest quarter of the northeast quarter of section 27 there 7.2 acres of alfalfa, no orchard or no grain. This being all the land that is under the Joseph Cunha ditches, or that is in cultivation."

It will be observed that Canfield's testimony as taken and reported by the stenographer makes him say, respecting the irrigable land in the southwest quarter of the southwest quarter of section 22: "There is .54 acres of alfalfa, no orchard and 55.5 acres of grain." As the area thus noted would make a 40-acre tract contain 56.04 acres, it is very evident the stenographer made a mistake in the decimal point. The sum of the areas of the irrigable land on the various tracts as noted is 154.23 acres. In awarding to defendant 150 inches of water it is believed the trial court took the area thus computed as the basis of the quantity reasonably required for irrigation. By moving the decimal point one integer to the left, changes the 55.5 acres to 5.55, thereby reducing the irrigable land to 104.28 acres as the proper sum of the several tracts. This view is confirmed by an examination of the map prepared by Canfield from his measurements of the land which shows a very small part of the 40-acre tract referred to as susceptible to irrigation.

Predicated upon the award made by the court as applicable to 154.23 acres, the actual area would be entitled to 101.41 inches, and we believe 100 inches is sufficient properly to irrigate the defendant's land.

The determination of the lower court will therefore be modified and 100 inches of water will be given as the measure of the defendant's right; but in all other respects the decree is affirmed.

Mr. Justice Bean took no part at the hearing or in the consideration of this cause on appeal.

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