

Eugene Jensen

THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF UTAH, SITTING WITHIN AND FOR SANDETE COUNTY.

RECEIVED  
DEC 04 1891  
WATER RIGHTS  
SALT LAKE

The Gunnison Irrigation Company,  
a corporation,

Plaintiff,

vs.

Charles P. Peterson, Parley Childs,  
Anthony Madsen, Gunnison Highland  
Canal Company, a corporation,  
Joseph Christensen and W. H. Gribble,

Defendants.

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This cause came on regularly to be heard in open court on the 9th day of May, 1911, before the Honorable John E. Booth, Acting Judge, and was continued from time to time, from day to day, and was concluded on the 29th day of June, 1911, and was taken under advisement until the 31st day of December, 1912, when the court rendered its decision, Findings of Fact, Conclusions of Law and Decree in the case, Jacob Johnson, Esq., appearing for the plaintiff, A. M. Cherry and J. W. Cherry, Esqrs., appearing for the defendant Charles P. Peterson, Thurman, Wedgwood and Irvine, Esqrs., appearing for the defendants, Parley Childs, Anthony Madsen, Joseph Christensen, W. H. Gribble and the Gunnison Highland Canal Company.

That afterwards, such proceedings were had in the said case, that on the 28th day of May, 1915, an appeal from the said Decision, Findings of Fact, Conclusions of Law and Decree, to the Supreme Court of the State of Utah, was duly taken by the defendant, the Gunnison Highland Canal Company.

That on the 12th day of June, 1918, the said Supreme Court of the State of Utah, duly rendered and filed its

Decision in said case, in which said Decision the said case was remanded to this court for further hearing, as follows:

"In any event, the case is remanded for such further hearing as may be necessary to a more specific and complete adjudication of the waters in suit, in the following particulars:

(a) The precise time up to which, after June 15th, respondent shall have the right to use a flow of 111/35/65 second feet should be established:  
(b) Rights of respondent's stockholders for live stock and domestic or other purposes, if any such rights exist, should be ascertained and fixed. In these particulars the Findings of Fact and Conclusions of Law and Decree should be made specific. The Findings, Conclusions and Decree should also be recast to conform without ambiguity to the Decision herein respecting title to the excess discussed. In all other respects the action of the court below is affirmed."

That the said matters as remanded from the Supreme Court, to this court, came on regularly to be heard on the 20th day of March, 1919, before the Hon. J. D. Call, Acting Judge, and after hearing a part of the evidence the case was continued until the 20th day of December, 1920, at which time the evidence was concluded and the matters taken under advisement until the 28th day of December, 1920. And now, on this 29th day of December, 1920, the court having heard the evidence of the respective parties and having duly considered the same and being fully advised in the premises;

Upon the matters submitted by the Supreme Court to this court, the court finds from the evidence:

(a) That growing crops upon the lands of the plaintiff's stockholders require irrigation each year, up to the 1st day of November. This varies with the seasons and the kinds of crops produced; some crops, such as alfalfa and hay, require irrigation later than the 1st of November, and water has been used to irrigate lands for fall plowing, but with these exceptions the irrigation season ends about the 1st of November of each year.

(b) The court finds from the evidence, that for more than forty years last past, the stockholders of the plaintiff corporation and their predecessors in interest, have resided with their families in the town of Gunnison and upon their lands adjacent to said town, and have kept large numbers of live stock at their said homes, and have during said period, used the waters of Sanpitch River, Six Mile, Nine Miles and Twelve Miles creeks for the watering of their said live stock and for culinary and domestic purposes. That the said water is necessary for such purposes, without which the said stockholders could not live with their families and keep their said live stock at their said homes.

That the amount of water so used and necessary for such use, is two and one half second feet of water, from the 1st day of April, to the 1st day of November, and ten second feet of water from the 1st day of November to the 1st day of April following, during each year, exclusive of the amount of water used in the irrigation of their lands.

#### CONCLUSIONS OF LAW

From the foregoing Findings of Fact the court finds as its Conclusions of Law:

(a) That the plaintiff, the Gunnison Irrigation Company, is the owner of, and entitled to receive and use 111/55/55 second feet of water, continuous flow, from the waters of Sanpitch River, Six Mile Creek, Nine Mile Creek and Twelve Mile Creek, plus the amount awarded for watering of live stock, culinary and domestic purposes, from the 15th day of June to the 1st day of November of each and every year.

(b) That the plaintiff, the Gunnison Irrigation Company, is the owner of and entitled to take and receive, from the waters of Sanpitch River, Six Mile Creek, Nine Mile Creek and Twelve Mile Creek two and one half second feet of water, continuous

from the 1st day of April to the 1st day of November, and ten second feet of water, continuous flow, from the 1st day of November to the 1st day of April, following, during each and every year, plus the amount of water awarded to it for the irrigation of the lands of its stockholders, to be distributed to its stockholders for watering live stock, culinary and domestic purposes.

RECAST OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECREE.

The Court, having heard all the evidence and proofs produced and the stipulations of the parties herein, and duly considered the same, and being fully advised in the premises, and it appearing therefrom to the satisfaction of the Court:

1.

That the plaintiff, the Gunnison Irrigation Company, and the defendant Gunnison Highland Canal Company, are corporations respectively organized and existing under the laws of the State of Utah.

2.

That the stockholders of the plaintiff corporation, the stockholders of the defendant corporation, and the other defendants, are the owners in severalty of the lands described and referred to in the complaint and the answers filed herein, to the amounts thereof, and that said lands are arid and require irrigation to make them productive.

3.

That Six Mile Creek is a natural stream of water arising in the mountains east of the town of Sterling in Sanpete County, and flowing from thence in a westerly direction, past the said town of Sterling, and into Sanpitch River; that said creek is fed by numerous springs, rain and melting snow; that the amount of

water flowing in said creek varies with the seasons, and one season with another, but usually contains the most water in the months of May, June and July, of each year.

4.

That Nine Mile Creek is a natural stream of water, arising between the said town of Sterling, and the town of Mayfield, in Sanpete County, and flowing thence in a westerly direction, into the Sanpitch River. That said creek is fed from springs, snow and seepage and waste waters from irrigated lands.

5.

That Twelve Mile Creek is a natural stream of water, arising in the mountains east of the town of Mayfield, in Sanpete County, and flowing from thence in a westerly direction, past the said town of Mayfield, and into the Sanpitch River. That said Creek is fed by numerous springs, rains and melting snow. That the amount of water flowing in said creek varies with the seasons, and one season with another, but usually contains the greatest amount of water in the months of May, June and July of each year.

6.

That the Sanpitch River is a natural stream of water, arising in the northeastern part of Sanpete County, and flowing from thence in a southwesterly direction, past its junction with said Six Mile, Nine Mile and Twelve Mile Creeks, and into the Sevier River, in Sanpete County. That said Sanpitch River is fed by numerous branches, tributaries, springs, rains, melting snow, the seepage and waste water from the irrigated lands along its course, including the three creeks above mentioned and named. That the amount of water flowing in said River, varies with the seasons and one season with another, but during the

irrigation season of each and every year, all the waters of said river above its junction with said Six Mile Creek are diverted therefrom for the irrigation of lands above said junction with said Six Mile Creek by persons entitled to its use, but who are not parties to this action, and the only waters flowing in said river above its said junction with said Six Mile Creek is the seepage and waste waters from the irrigated lands above said point.

7.

That many years prior to the year 1888, the stockholders of the plaintiff corporation, the Gunnison Irrigation Company, their grantors and predecessors in interest, entered upon said river and said creeks, at various points, below the junction of said river with said Six Mile Creek and above Gunnison City, in Sanpete County, and constructed ditches and canals leading from said river and creeks, to and upon their said lands respectively, and constructed and placed dams in the channels of said river and creeks, at the head of their said ditches and canals, and by means of said dams, ditches and canals diverted all the waters flowing in the said Sanpitch River, immediately above its junction with said Six Mile Creek, one half of the waters of said Six Mile Creek, the other one half of the waters of said Six Mile Creek being owned and used by the inhabitants of the town of Sterling, who are not parties to this action, 2.1518 second feet of the waters of the said Nine Mile Creek, the remainder of the waters of said Nine Mile Creek being owned and used by the grantors of the defendant, Gunnison Highland Canal Company, .58/100 of all the waters of the said Twelve Mile Creek, ~~being owned~~ the remaining 42/100 of the waters of the said Twelve Mile Creek being owned and used by the inhabitants of the Town of Mayfield, in Sanpete County, who are not parties to this action. And conveyed said waters in their said ditches

and canals to and upon their said lands, and there used the same for the purposes of irrigating, and did thereby irrigate 7250 acres of land and the crops growing thereon, and also for culinary and domestic purposes and the watering of live stock, and have ever since so used said waters for said purposes and that said waters were then otherwise unappropriated by any other persons.

8.

That 145 second feet of water, constant flow, is necessary for the proper irrigation of plaintiff's said lands, from the 1st day of April to the 15th day of June, and 111.35/65 second feet of water, constant flow, is necessary for the irrigation of said lands, from the 15th day of June to the 1st day of November of each year. And, in addition thereto, two and one half second feet of water, constant flow, is necessary for culinary and domestic purposes and for watering live stock, from the 1st day of April to the 1st day of November, and ten second feet of water, constant flow, from the 1st day of November to the 1st day of April, following, each and every year, is not more than sufficient to supply plaintiff's stockholders for the purposes above mentioned.

9.

That in the year 1888, all the original appropriators of the waters of said river and creeks, as above stated, for the purpose of the better maintaining, managing and controlling said dams, ditches and canals, and the regulating and distributing of said waters, formed themselves into a corporation, called "The Gunnison Irrigation Company", which is the plaintiff corporation herein, and by proper deeds of conveyance conveyed to the plaintiff corporation, each of their rights, titles and interests in and to the said dams, ditches and canals and the said waters from said river and creeks, and the said plaintiff

is now the owner thereof.

10.

That in the year 1888, the plaintiff commenced the construction of a reservoir at a point immediately above the junction of the said Sanpitch River and the said Six Mile Creek, and continued said construction with reasonable diligence to its completion, by constructing a dam across the bed of said Sanpitch River, for the purpose of storing the waters of said river at that point, also for the purpose of storing the waters of said Six Mile Creek during the winter, spring and high water seasons of said creek, and constructed a canal leading from said creek to said reservoir, and ever since the construction of said reservoir and canal the plaintiff has stored the waters of said river at said point, and the winter, spring and high waters of said Six Mile Creek in said reservoir, and have drawn said water so stored in said reservoir therefrom, and used the same upon their, the lands of its stockholders, for irrigating the same and for watering the live stock, culinary and domestic purposes, at such times when there was not sufficient waters in said creeks for said purposes, said waters so stored not being then otherwise appropriated by any person or persons.

11.

That during certain seasons in certain years in the past there has been more water flowing in the said Sanpitch River and from said creeks, than the plaintiff was entitled to, and the defendant Charles P. Peterson, Parley Childs, Anthony Madsen, Joseph Christensen and W. H. Gribble have used the same or a portion thereof for the irrigation of their lands, but this has been in subordination to the rights of the plaintiff.

12.

That the defendant, <sup>Highland</sup> Gunnison Canal Company, have not used any of the waters of said river, or said creeks as described herein, except the waters from Nine Mile Creek, in excess of the said 2.1518 second feet used by the plaintiff.

#### CONCLUSIONS OF LAW

As Conclusions of Law from the foregoing Findings of Fact the court finds:

1.

That the plaintiff is entitled to fill its said reservoir, and to keep it full, to its present capacity, from the waters of Sanpitch River above its junction with Six Mile Creek, and also, <sup>from</sup> one half of the waters of said Six Mile Creek, during the winter, spring and high water seasons of each and every year, and the words "high water seasons" shall be construed to mean any time when the combined natural flow of water from Sanpitch River, one half of the waters of Six Mile Creek, 2.1518 second feet of the waters of Nine Mile Creek and 58/100 of the waters of Twelve Mile Creek, shall exceed in the aggregate 155 second feet of water. And may draw water from said reservoir and convey the same down the channel of said river to its dams, ditches and canals and apply the same to the irrigation of the lands, watering live stock, culinary and domestic purposes, of its stockholders, at such times and in such quantities as it may deem proper. Provided, that the amount of water so drawn from said reservoir in conjunction with the natural flow of waters from said River and Creeks, received by the plaintiff, shall not exceed in the aggregate, in any one year, the amount

of water to which the plaintiff is entitled.

2.

The plaintiff is entitled to ten second feet of water, constant flow, from the combined waters of Sanpitch River, one half of the waters of Six Mile Creek, 2.1518 second feet of the waters of Nine Mile Creek and 58/100 of the waters of Twelve Mile Creek from the first day of January, to the 1st day of April, 147.50/100 second feet of water, constant flow, from April 1st to June 15th, 114.04 second feet of water, constant flow, from June 15th to November 1st, and ten second feet of water, constant flow, from November 1st to January following, during each and every year, for irrigation, watering live stock, culinary and domestic purposes, and said rights are prior and superior to the rights of the defendants and each of them from said sources of supply.

3.

At any time, between the 1st day of January and the 1st day of April, of each year, and when the plaintiff's said reservoir shall be full, to its present capacity, and the combined waters from the overflow of said reservoir, one half of the waters of Six Mile Creek, 2.1518 second feet of the waters of Nine Mile Creek and 58/100 of the waters of Twelve Mile Creek, shall exceed ten second feet, and at any time between the 1st day of April, and the 15th day of June when the said combined waters from said overflow and creeks shall exceed 147.50/100 second feet, and at any time, between the 15th day of June and the 1st day of November when said combined waters shall exceed in quantity a continuous flow of 114.04 second feet, and at any time between the 1st day of November and the 1st day of January following when the waters of Sanpitch River

rising below the Reservoir Dam combined with the waters of Nine Mile Creek and Twelve Mile Creek, shall exceed 10. second feet, the defendant, Charles P. Peterson, shall be entitled to  $\frac{3}{4}$  of a second foot of water from any such excess, but subject and subordinate at all times to the rights of the plaintiff as hereinbefore defined. That after the rights of the plaintiff, and the defendant Charles P. Peterson, as above defined, shall have been fully supplied, the defendant, Parley Childs, Anthony Madsen, Joseph Christensen and W. H. Gribble, shall be entitled to  $\frac{2.50}{100}$  second feet of water from any excess. But subject and subordinate at all times to the rights of the plaintiff, and the defendant Charles P. Peterson, as above defined. The defendant, Gunnison Highland Canal Company, is entitled to all the excess waters from said sources of supply after the rights of the plaintiff and all the other defendants' rights shall have been fully supplied, as hereinbefore defined.

4.

Each of the parties to this action should be enjoined, restrained and forbidden, <sup>to</sup> in any manner interfere with the rights of any other party to this action, as herein defined.

5.

A Commissioner should be appointed, as provided by law, to measure and divide the waters involved in this suit, in accordance with the Decree herein, to the respective parties entitled to the same, as defined by the Decree herein, and in accordance with the terms and conditions thereof.

6.

All costs since the appeal, should be paid by the plaintiff and the defendant, the Gunnison Highland Canal

Company, in equal proportions.

#### DECREE

WHEREFORE, by reason of the law and the premises, the Findings of Fact and the Conclusions of Law filed herewith, and upon the motion of Jacob Johnson and Lewis Larson attorneys for the plaintiff,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1.

That the plaintiff, the Gunnison Irrigation Company, is the owner of what is known as the Gunnison Reservoir, and is entitled to fill said reservoir and to keep it full of water, to its present capacity, from the waters of Sanpitch River above its junction with Six Mile Creek, also from one half of the waters of said Six Mile Creek, during the winter, spring and high water seasons of each and every year, and the words "high water seasons" shall be construed to mean all times when the combined waters of Sanpitch River, one half of the waters of Six Mile Creek, 2.1518 second feet of the waters of Nine Mile Creek and 58/100 of the waters of Twelve Mile Creek shall exceed in the aggregate 155 second feet of water.

2.

That the plaintiff may draw water from said reservoir and convey the same down the channel of said river to its dams, ditches and canals and apply the same to the irrigation of the lands, watering live stock, culinary and domestic purposes, of its stockholders, at such times and in such amounts as it may deem proper. Provided, that the amount of water so drawn from said reservoir in conjunction with the natural flow of waters from said river and creeks, received by

the plaintiff, shall not exceed in the aggregate, in any one year, the amount of water to which it is entitled under this decree. And that the defendants or either of them have no right, title or interest in or to the said reservoir or the waters stored therein as defined in this decree.

3.

That the plaintiff, the Gunnison Irrigation Company, is the owner of and is entitled to receive ten second feet of water, constant flow, of the combined waters of Sanpitch River rising below the reservoir dam, the waters of Nine Mile Creek, and the waters of Twelve Mile Creek, from the 1st day of January to the 1st day of April, and 147.50/100 second feet of water, constant flow, from said river and creeks, from the 1st day of April, to the 15th day of June, and 114.04 second feet of water, constant flow, from the said river and creeks, from the 15th day of June, to the 1st day of November, and ten second feet of water, constant flow, from said river, below the reservoir dam combined with the waters of Nine Mile Creek and Twelve Mile Creek, from the 1st day of November, to the 1st day of January, following, during each and every year, for the irrigation of the lands, watering of live stock, culinary and domestic purposes of its stockholders. That said water rights is a first or primary right, and that the defendants or either of them have no rights title or interest in or to any of said waters.

4.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED. That at any time, between the 1st day of January and the 1st day of April, of each and every year, and when the plaintiff's said reservoir shall be full, to its present capacity, and the

combined waters from the overflow of said reservoir, one half of the waters of Six Mile Creek, 2.1518 second feet of the waters of Nine Mile Creek, and 58/100 of the waters of Twelve Mile Creek, shall exceed ten second feet, and at any time between the 1st day of April, and the 15th day of June when the said combined waters from said overflow and creeks shall exceed 147.50/100 second feet, and at any time between the 15th day of June, and the 1st day of November when said combined waters shall exceed in quantity a continuous flow of 114.04 second feet, during said period, and at any time between the 1st day of November and the 1st day of January when the waters of Sanpitch River rising below the dam combined with said waters of Nine Mile Creek and Twelve Mile Creek shall exceed ten second feet, the defendant Charles P. Peterson is entitled to 3/4 of a second foot of water from any such excess, but subject and subordinate at all times to the rights of the plaintiff, as hereinbefore defined. That after the rights of the plaintiff, and the defendant Charles P. Peterson, as above defined, shall have been fully supplied, the defendants, Parley Childs, Anthony Madsen, Joseph Christensen and W. H. Gribble, shall be entitled to 2.50/100 second feet of water from any excess, but subject and subordinate at all times to the rights of the plaintiff and the defendant Charles P. Peterson, as above defined. The defendant Gunnison Highland Canal Company, is entitled to all the excess waters from said sources of supply after the rights of the plaintiff, and all the other defendants rights shall have been fully supplied, as hereinbefore defined, but at all times subject and subordinate to such prior rights.

5.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED: That the plaintiff and defendants and each of them, their and each of their and its officers, agents and employees are, and each of them is, hereby perpetually enjoined, restrained and forbidden to in any manner interfere with the rights of any other party to this action, as defined by said decree, or the waters awarded to any party herein, or with the said reservoir, or the waters therein, or the ditches, dams, canals, headgates, and other appurtenances belonging to any of the other party or parties to this action, used by any of said parties in the storing, managing, regulating, controlling or distributing the waters hereby decreed to and belonging to any of the parties to this action.

6.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED: That a Commissioner be appointed, in the manner prescribed by law, who shall, when necessary, divide the waters involved in this action in the proportions and to the persons to whom the same is awarded by this decree. Any of the parties to this action may apply to the State Engineer for the appointment of such Commissioner.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED: That all costs accrued since the remanding of this cause to this court, from the Supreme Court of the State of Utah, shall be paid by the plaintiff and the defendant, The Gunnison Highland Canal Company, in equal proportions.

Dated this \_\_\_\_\_ day of December, 1920.

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Acting Judge.