

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT IN AND  
FOR GARFIELD COUNTY, STATE OF UTAH

\*\*\*\*\*

New Escalante Irrigation Company, :  
(A Corporation) :  
Plaintiff :  
vs. :  
Delbert Heaps, :  
Defendant. :  
: :  
: :

D E C R E E.



*Dec. a. 1894*  
*97-1200*

This cause came on regularly for hearing on the 16th day of June, A. D., 1919, upon the complaint of plaintiff herein, the answer and counterclaim of the defendant, J. H. Erickson appearing as counsel for the plaintiff and Messrs. Bean and Hunt appearing for the defendant.

Whereupon, the said plaintiff and defendant being present in court, together with their counsel, as aforesaid, and in open court, entered into the following stipulation, whereby the rights to the use of the water in controversy herein, as between plaintiff and the defendant, are declared to be as follows:--

1. That as a first and Primary right to the use of the waters of Escalante Creek and its tributaries, as set forth in said complaint, the plaintiff, to-wit:-- The New Escalante Irrigation Company, a corporation, of Garfield County, Utah, is entitled to 30 cubic feet per second of time to be measured at or near the headgates or points of distribution where the said plaintiff diverts the said waters into its canals or ditches, and distributes the same to its stockholders;
2. That whenever the plaintiff's first and primary right, as above stated, has been supplied and there is still water in excess of the above amount, then, as a secondary right to the use of said waters, the defendant shall be entitled to one cubic foot of water per second of time, to be diverted and used upon his said lands as set forth in the answer of the defendant.
3. That whenever the rights of the plaintiff and the defendant have been supplied, as above stated, and there is water in the said Escalante Creek and its tributaries, in excess of the amount as set forth as a first and secondary right, then as a third right to the use of the said waters, the plaintiff is entitled to the use of 10 cubic feet per second of time, the same to be measured at or near its headgates or points of diversion where the plaintiff now diverts the said waters into its canals and ditches;

4. That whenever the waters of said Escalante Creek and its tributaries, as aforesaid, are in excess of the amounts set forth as a first, second and third rights, then in such event, and as a fourth right to the use of said waters, the defendant shall be entitled to the further amount of one cubic foot of water per second of time, the same to be diverted and used upon his lands as set forth in his said answer.

5. Said rights are based upon the economical and beneficial use of the said waters and each of the parties shall at their own expense, install suitable weirs for the measurement of the said waters at or near the points where the parties hereto divert the waters from the said creek or its tributaries;

6. All claims for damages in this action are hereby waived by the respective parties.

The court shall retain jurisdiction in this action for the purpose of appointing a commissioner to measure and distribute the waters in accordance herewith, whenever it deems it necessary, the expenses thereof to be borne by the parties according to their respective rights, each party to pay its own costs herein.

WHEREFORE, by reason of the above and foregoing stipulation of the said parties, it is

ORDERED, ADJUDGED AND DECREED

A. That as a first and primary right to the use of the waters of Escalante Creek and its tributaries, in Garfield County, Utah, the New Escalante Irrigation Company, a corporation, plaintiff herein, for the use and benefit of its stockholders, is entitled to 30 cubic feet of water per second of time, during the entire irrigation season of each and every year, to be measured at or near its headgates or points of diversion, where the said plaintiff now diverts the said waters into its canals and ditches;

B. That after the distribution of the 30 cubic feet of water per second of time, as a first and primary right from the said creek and its tributaries to the said plaintiff, if there shall be more water in the said creek and its tributaries than required to supply the said first and primary right, as above stated, then the defendant, Delbert Heaps, shall be and he is hereby decreed, as a secondary right, one cubic feet of water per second of time, to be measured at or near the point where he now diverts the said waters, and the same to be used upon his said lands as set forth in his said answer;

C. That after the primary right of the plaintiff hereinbefore set forth, and the secondary right of the defendant as hereinbefore set forth, shall have been fully supplied, if there yet remains water in said creek and its tributaries, then as a third right to the use of said waters, there is hereby decreed to the plaintiff 10 cubic feet of water per second of time to be measured at or near the headgates or

points of distribution where the plaintiff now diverts its waters;

D. That when the first, second and third rights, as herein before stated, have been fully supplied and there is yet water in the said creek and its tributaries in excess of said amounts, then and in such event, the defendant is hereby decreed the use of one further cubic foot of water per second of time, to be measured at or near the point where he now diverts the same, and to be used upon his said lands as mentioned in said answer.

E. That the title of each of the parties hereto to the said waters and the use thereof, as herein defined and decreed, is hereby quieted as against the other party to this action;

F. That each of the parties to this suit, their agents, servants, and employees are hereby perpetually enjoined and restrained from in any manner or at all interfering with the use of the waters which are hereby decreed to belong to the other parties to this action, or to either or any of them, and are likewise restrained and enjoined from in any manner interfering with the full, free and uninterrupted use of said waters, as hereinbefore decreed.

The Court hereby retains jurisdiction of this action, for the purpose of enforcing this decree, and for the purpose of appointing a commissioner of Court, from time to time, to supervise the construction and maintenance of suitable gates and weirs for the measurement and distribution of the waters and to distribute said waters to the parties herein in proportion to their respective interests to the same, as herein decreed, the expenses of which shall be paid by the parties in proportion to the respective interests in the waters, as herein defined and decreed;

That each of the parties hereto shall pay their own witness fees and costs of suit.

Dated this 25th day of June, A. D. 1919.

/s/ Henry N. Hayes  
Judge of Court

Received copy of above decree this 24th day of June 1919.

.s. Bean & Hunt  
Attorneys for Defendant

Filed June 28, 1919

/s/ Ann Cooper, Clerk

by /s/ J. T. Partridge, Deputy

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF UTAH  
IN AND FOR THE COUNTY OF GARFIELD

-----  
-----

-----  
New Escalante Irrigation Company,  
a corporation - - Plaintiff.

vs.

Delbert Heaps, - - Defendant.  
-----

Order appointing

It appearing to the Court that owing to the dispute of the Parties in the above entitled action, concerning the amount or quantity of waters now available for distribution in the Escalante Creek and tributaries to which the parties herein are entitled by virtue of the Decree of Court rendered and filed herein, that it is necessary that a Commissioner be appointed herein to measure and distribute the waters according to said Decree, NOW THEREFORE UPON MOTION OF THE RESPECTIVE ATTORNEYS FOR THE SAID PARTIES, IT IS ORDERED THAT GEORGE H. BARNEY, of Escalante, Utah, Be and he is hereby appointed Commissioner of this Court for the purpose of installing suitable weirs and measuring and distributing the waters to the above named parties in accordance with the Decree of Court rendered and filed herein, the expense of which is to be borne as in said Decree provided. Provided, that before entering upon his duties, the said George H. Barney shall give a bond in the sum of \$500.00 and take and subscribe to his oath of office; said George H. Barney to serve until further order of the court.

Done at Chambers this 21st day of July 1919.

/s/ Henry N. Hayes  
Judge of Court