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IN THE FOURTH DISTRICT COURT OF THE STATE OF UTAH  
IN AND FOR WASATCH COUNTY

PROVO RESERVOIR COMPANY, a  
corporation,

Plaintiff.

-vs-

PROVO CITY, a municipal  
corporation, et al.,

Defendants.

No. 2888 Civil.

REPLY TO COUNTER CLAIMS OF THE  
DEFENDANTS JOSEPH HATCH, et al.

Now comes the plaintiff and in reply to the counter claims of Joseph Hatch; Emma Wherritt; Ulric Abegglen; Joseph F. Abegglen; Chris Mitchell; Felix Martin; J. E. Peterson; John U. Buehler; Frederick Re-mund; Jesse Nelson; Jesse Nelson Jr.; George Nelson; Alfred L. Alder; James T. Alder; W. W. Alder; William M. Casper; J. M. Casper; James Casper; George R. Carlile; William Winterton; Hyrum S. Winterton; Wm. H. Winterton; William L. VanWagoner; Mrs. E. L. Hanks; E. L. Brown; George H. Edwards; John B. Fowers; John O. Edwards; P. W. Edwards; Joseph S. Wright; Joseph R. Murdock; John B. Fowers and Elizabeth Fowers as ex-ecutors of the last will and testament of John Fowers, deceased; William Daybell; John M. Ritchie; Henry F. Watson; George Daybell, George W. Daybell, Fred Daybell and Robert Daybell, as partners doing business under the name of George Daybell and Sons; Ellen C. Wright; Dermont Huffaker as administrator of the estate of D. S. Huffaker, deceased; W. R. Wright, John VanWagoner; T. Fred Winterton and Moroni Winterton, and admits, denies and alleges, as follows,-

1.

Admits paragraphs one thereof.

2.

(a) In reply to subdivision "a" of paragraph 3, plaintiff admits that the defendants therein named are the owners in severaity of lands aggregating 82 acres, and that they have irrigated said lands with water from the Provo River through what is known as the Mitchell ditch; and alleges that the said several parties have sufficient water to irrigate all of said lands until the Wasatch Irrigation Company and Midway Irri-gation Compāny close their dams in each and every year for what is known as the low water season, and that thereafter during each and every year the said defendants have not had nor used upon their said lands to exceed 1½ second feet of water, and that all of the water

used by said defendants upon the said lands through the said ditch has been seepage water coming into the channel of the said Provo river below what is known as the Midway Irrigation Company's dam.

(b) In reply to subdivision "b" of said paragraph 3, plaintiff admits that the defendants therein named are the owners in severalty of lands aggregating 28 acres which are watered from the Provo river through what is known as the Philip Smith drough, and admits that the said defendants during the high water season of each and every year have irrigated the said lands with such ~~x~~ quantities of water as they chose to divert, and alleges that during what is known as the low water season and after the dams of the Midway Irrigation Company and the Wasatch Irrigation Company, are placed in said river, that the said defendants have never had for use upon their lands to exceed  $\frac{1}{2}$  second foot of water, and that all of said water was seepage coming into the said river below what is known as the Midway Irrigation Company's dam.

(c) In reply to subdivision "c" of said paragraph 3, plaintiff admits that the defendants therein named are the owners in severalty of ~~lands~~ lands situated on the west side of the Provo river at a point below the county road leading from Heber to Midway, and that said lands aggregate 79 acres; that all of said lands are irrigated through what is known as the Island ditch of the Midway Irrigation Company, which is diverted from the Provo river at a point immediately below the county bridge on the road between Heber and Midway, and that the water so used by said defendants is distributed to them by the Midway Irrigation Company through its irrigation system for all of the said lands.

(d) In reply to subdivision "d" of said paragraph, the plaintiff admits that the defendants therein named are the owners in severalty of lands situated on the west side of the Provo river aggregating  $83\frac{1}{2}$  acres which are irrigated from the water of the Provo river through

what is known as the Nelson ditch, but plaintiff alleges that during the low water season when the dam of the Midway Irrigation Company is placed in the Provo river to divert water into the Island ditch, that all of the water of said Provo river is diverted at said dam and that there is no water left in the said river to run down to and into the Nelson ditch from which said defendants irrigate their said 83½ acres.

(e) In reply to subdivision "e" of said paragraph, plaintiff admits the same.

(f) In reply to subdivision "f" of said paragraph, plaintiff admits that the defendants, William L. VanWagoner and Hyrum S. Winterton are the owners in severalty of lands aggregating 30.20 acres of land irrigated from Snake Creek through a ditch diverting said water from a point on said Snake Creek immediately above the concrete measuring gate situated in Snake Creek and just east of the line of the county road leading from Midway to Charleston, and plaintiff alleges that the entire flow of water of the natural stream of Snake Creek at said point during the low water season, does not exceed  $\frac{1}{2}$  second foot.

(g) In reply to subdivision "g" of said paragraph, the plaintiff admits that the defendants therein named are the owners in severalty of lands aggregating 140.6 acres, all of which said lands are irrigated from what is known as Midway Spring Creek, during what is known as the high water of each and every year and for the high water season only, and that the amount and quantity used by the said several defendants upon their said lands does not exceed, at any time,  $2\frac{1}{2}$  second feet.

(h) In reply to subdivision "h" of said paragraph, the plaintiff admits that the defendant William Winterton has had the use of, not to exceed  $\frac{1}{2}$  second foot continuously from the sources mentioned in said subdivision, for use upon the lands and for the fish ponds mentioned therein.

(i) In reply to subdivisions " i, j, k, l, m, n, o, p, q, & r of said paragraph, plaintiff admits the same but alleges that the said lands and all thereof, do not require for the proper and economical irrigation thereof, in excess of 1 second foot of water for each 60 acres of land.

(s) In reply to subdivision "s" of said paragraph, plaintiff admits that the defendants therein named are entitled to water sufficient to properly irrigate 250 acres of land, but alleges that the water necessary to properly and economically irrigate the said lands does not exceed 1 second foot of water for each 70 acres of said land.

(t) In reply to subdivision "t" of said paragraph, plaintiff alleges that it has no information upon which to form a belief as to the number of acres of irrigated land owned by the defendant John M. Ritchie, and therefore denies that he is the owner of 93 acres of land or any other or greater quantity than 50 acres, but admits that the defendant John M. Ritchie is entitled to water to irrigate the lands of said ranch that have heretofore been irrigated ~~the same~~, with water from said river, in quantities sufficient to properly irrigate the same, and plaintiff alleges that the said lands do not require for their proper irrigation water in the excess of 1 second foot for each 70 acres of land.

(u,v) In reply to subdivision "u & v" of said paragraph, plaintiff admits the same.

(w) In reply to subdivision "w" of said paragraph, plaintiff alleges that it has no information with regard to the allegations therein and therefore denies the same.

3.

In reply to paragraph 4, of said counter claims, plaintiff admits that all of said lands require some irrigation in order to produce agricultural crops, the amount and quantity therefor being unknown to plaintiff.

4.

In reply to paragraph 5, thereof, the plaintiff admits that the appropriations of the several defendants were all prior in point of time to the appropriations and rights claimed by this plaintiff, except the rights of plaintiff as set forth in paragraphs 29a, 29b, 29d & 29e, of plaintiff's complaint filed herein, and plaintiff alleges as to said rights, that plaintiff's right as to time of appropriations and use are ~~in~~ equal to the rights of each and all of the said several defendants.

5.

Plaintiff general denies each and every allegation of the said several counter claims not hereinabove specifically admitted or denied.

6.

Further answering said counter claims plaintiff alleges that none of the lands of the several defendants mentioned in said counter claims require a duty of water for the proper irrigation thereof and the production of crops thereon, in excess of 1 second foot of water for 60 acres of land.

WHEREFORE plaintiff demands judgment against the several defendants in accordance with the prayer of its complaint.

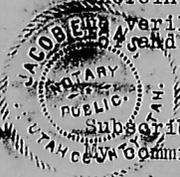
A. C. Hatch, Jacob Evans  
- A. B. Booth & A. J. Evans  
Attorneys for Plaintiff

STATE OF UTAH, )  
County of Utah ) SS.

R. J. Murdoch, being first duly sworn says, that he ~~is~~ is an officer of the plaintiff, Provo Reservoir Company, a corporation, to-wit the Hunting thereof; that he has read the foregoing reply and knows the contents thereof and that the same is true of his own knowledge except as to matters therein stated on information and belief and that as to those matters he verily believes it to be true, and that he makes this verification in behalf of the plaintiff corporation.

R. J. Murdoch  
Subscribed and sworn to before me this the 4<sup>th</sup> day of May, A.D. 1914.  
Commission expires on the 2<sup>nd</sup> day of September, A.D. 1917

service of above reply is  
hereby accepted this 16 day of June, 1914  
witness my hand and the seal of the Notary Public.  
Jacob Evans



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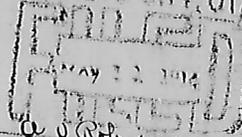
Provo Reservoir Co

vs.

Provo City et al

Reply to the counter-  
claims of defendants

AT PROVO CITY, UTAH



BY A. J. Robinson CLERK  
J. M. Chapman DEPUTY