

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

-----  
PROVO RESERVOIR COMPANY,       \*  
A Corporation,                    )  
                                  Plaintiff,        )

No. 2888 Civil

vs.                                )

BRIEF ON UNCERTAINTY OF DECREE.

PROVO CITY, ET AL.                )  
                                  Defendants,        )

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"A decree should ascertain and fix with definiteness and certainty the rights and liabilities of the respective parties to the cause. If it is uncertain and indefinite in these particulars it is at least erroneous, and may be void. Thus a decree is erroneous if it is inconsistent in its different parts, and it may be void...."

21 C.J. Sec.844, p.658.  
Citing Welch v.Louis, 31 Ill.446

"Thus, in a suit to enforce specific performance of a contract in regard to the division of a tract of land between two joint owners, a decree which gave a certain specified portion first to one party and then awarded the same portion to the other party, and made no disposition of the residue of the tract, was declared void for uncertainty. Welch v.Louis, 31 Ill. 446."

"A judgment must be specific and certain, or capable of being made so by proper construction and such as defendant may readily understand and be capable of performing. Where the record entry is wholly uncertain, repugnant or contradictory it is at least erroneous and has been held in many cases to be wholly void.

33 C.J. Sec. 128, p. 1195

"A decree in an action to establish water rights provided that plaintiff was entitled to one-half of the waters of the normal flow of a creek after June 15th of each year, and that defendants were entitled to one-half of the waters of the normal flow of the creek after June 15th of each year, and that the title to each be quieted, and the defendants are entitled to whatever amount of the high and surplus waters of said creek they may desire to use prior to the 15th. day of June of each and every year. Held that, since the decree fixed no time when the normal flow ceased or high waters began, it was not sufficiently definite."

Lost Creek Irr. Co.v.Rex et al (Ut.)  
73 Pac. 660.

"A judgment must be sufficiently certain to constitute an estoppel between the parties and to be enforced by the court, and a judgment placing a servitude upon defendants' land, which gave plaintiffs the right 'in and to sufficient water for household purposes,' from a spring thereon, but did not state the amount of water plaintiffs would need for household purposes, nor mention the number of stock to be watered, or the number of houses to be supplied, was insufficient."

Powers, et al v. Perry et al. (Cal)  
106 Pac. 595

"All judgments must be specific and certain. They must determine the rights recovered or the penalties imposed, and be such as the defendant may readily understand and be capable of performing."

The People ex rel, v. Pirfenbrink,  
96 Ill. 69

"(a) Judicial statements of rule- (1) A judgment, to be binding, must be certain and complete in itself, without reference to anything else by which to ascertain its meaning. Dickerson v. Walker, 1 Ala. 48. (2) A judgment, to be valid, must be certain and conclusive as to the subject matter and parties to the action, and must be capable of execution. Alexander v. Leland, 1 Ida. 425. (s) There must be a reasonable certainty in every judgment, that defendant may be able to plead it in bar to any subsequent suit for the same cause of action. Stirling v. Garritee, 18 Mc. 468. (4) A judgment must be so certain that the clerk can issue an execution by inspection of it, without reference to other entries. Boyken v. State, 3 Yerg. (Tenn) 426. Also see supra Sec. 118, text and note 99.!!

33 C.J. Note 62. p. 1195-6

"A decree so ambiguous in its terms as to be incapable of being rendered certain within the requirements of the law will be set aside for that reason."

22 L.R.A. N.S. (W.V.) 1094

"Decrees awarding a party enough water to irrigate his land or sufficient water for household purposes, or one good irrigation stream of water, have been held defective for uncertainty."

Wiel on Water Rights, Vol. 1, Sec. 639, 3rd. Ed.

"A judgment defining and determining conflicting claims, rights, and interests of appropriators of water for irrigation purposes must be definite and certain respecting the relief granted.

2. WATERS AND WATER COURSES 152(11)- APPROPRIATION OF WATER- DETERMINATION OF RIGHTS- JUDGMENT.

"A decree adjudging that defendants were the owners by prior appropriation of sufficient water from a stream to fill their ditch of specified dimensions, without specifying the grade or fall of the ditch or the velocity of the water, flowing therein, or even the amount of land irrigated thereby, was void for uncertainty."

Sharp v. Whitmore et al  
Same v. Peterson et al, (Utah)  
168 Pac. 273.

Hardy v. Beaver Co. Irr. Co. (Utah) 234 Pac. 524

"An person interested or affected by a void judgment may attack it collaterally, in a proper case, or in a direct proceeding to have it stricken from the record as a nullity."

5 A.L.R. 284

--"What is collateral attack.

4. A collateral attack is an attempt to impeach a judgment, whether interlocutory or final, in a proceeding not instituted for the purpose of annulling the judgment."

12 A.L.R. 1157 (Mo.)

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~~Wiel on Water Rights, Vol. 1, Sec. 639, 3rd. Ed.~~

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No 2888.

"Proposed Decree"

IN DIST. COURT  
UTAH CO., UTAH.

\*FILED\*

JAN 26 1921

*William M. Sales* Clerk  
*E. B. Dastug* Deputy

MICROFILMED

MAR 1977