

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

PROVO RESERVOIR COMPANY,
a corporation,
Plaintiff,
vs.
PROVO CITY, et al,
Defendants,

No. 2888 Civil
CONTEMPT PROCEEDING
Copy of Testimony of Hyrum
Heiselt given in Behalf of
Plaintiff Provo Reservoir
Company, a corporation, in the
above entitled cause, June
13, 1916, P.M. Found in Vol. II.
of the Official Transcript of
Evidence given in said Cause
Pages 560 to 566, both Inclusive.

HYRUM HEISELT, called by the plaintiff, being
duly sworn, testified as follows:

DIRECT EXAMINATION by Mr. A.L. Booth

- Q State your name?
- A Hyrum Heiselt
- Q Where do you live?
- A Provo Canyon
- Q How long have you lived there?
- A About twelve years
- Q Where do you live with reference to the mouth of the canyon?
- A Just a mile above the mouth of the canyon.
- Q And where is that with reference to the intake of the
Provo Reservoir's Company's canal?
- A Right at the intake.
- Q Where is it with reference to the intake of what was the
Blue Cliff Canal?
- A About little less than a mile below the intake of the
Blue Cliff.
- Q Where is the Blue Cliff Canal from your house?
- A The Blue Cliff?
- Q Yes, the old site of the Blue Cliff Canal?

A About fifty feet up the hill from the house.

Q And ~~where~~ have you been acquainted with the Blue Cliff Canal since you have been living there?

A Yes sir

Q Do you know of some springs that used to rise in - either rise in or flow into the Blue Cliff Canal?

A Yes sir.

Q About how many of them were there from the head of the canal down to the mouth of the canal.

A Well, I don't know the amount, some small springs, about two that are fairly good ones.

Q Did you see the water from those springs running into the Blue Cliff Canal when you first went there to live?

A Yes sir.

Q And for how many years after that did you see it continue to run in that canal?

A I cannot say as to that because I never kept any particular notice of it, but it was running in -- the seasons they were using the Blue Cliff up until the Provo Reservoir Company bought it.

Q What became of this water after the Provo Reservoir Company bought the Blue Cliff interest?

A I cannot say. There was one spring just above my place that they call the Maple Spring, that was run into the river after the Reservoir Company bought it/

Q And did it run into the river above the head of the Provo Reservoir Company's canal?

A Yes sir, I put it in the river.

Q You put it in the river?

A Yes sir.

Q How did you get it into the river?

A I made a ditch from the spring or from the Blue Cliff canal down to the railroad track and made a box and run it across the railroad track, and it dropped into the river from there.

Q Who was the water commissioner at that time, if you know?

A Mr. Thomas.

Q Who directed you to turn this water into the river?

A Provo Reservoir Company.

Q Were you told why they wanted it to go into the river?

A No

MR. THOMAS: Object to this as hearsay and incompetent.

THE COURT: Objection is overruled, I take it it is merely to prove the claim or assertion of right.

MR. A. L. BOOTH: Yes

THE COURT. Nothing else.

Q Do you know whether or not Mr. Thomas issued the same amount of water out to the Provo Reservoir Company below where you turned it into the river?

A I don't know, as far as knowing is concerned, I don't know. He said he did, and he was there for that purpose.

Q He was acting under the court's order, was he?

A Yes sir, that was what he said.

Q Do you know what is called the Pony Steele Farm?

A Yes sir.

Q Where is that with reference to your place?

A It joins me on the west.

Q Are there any springs arising on that farm?

A Yes sir.

Q Who owns the farm now, the Pony Steele?

A The Provo Reservoir Company.

Q Have you known these springs ever since you have lived where you now reside?

A Yes sir.

Q What has been done with the water from the Pony Steele, coming up on the Pony Steele farm since you have lived there?

A Been used on the farm?

Q All of it?

A Yes sir.

Q For what purpose?

A To raise fruit, irrigate fruit.

Q Has any part of it ever gone into the river during the irrigation season?

A No sir.

Q Have you personally used it?

A I have been taking care of it.

Q You have been taking care of the Pony Steele Farm?

A Yes sir.

Q And have used this water personally for the Provo Reservoir Company on that farm?

A Yes sir.

Q There is one spring there you have a half interest in, isn't there?

A Yes sir.

Q Where does that come up?

A On the Pony Steele farm.

Q Which part of it?

A On the east part.

Q Right along next to your land?

A Yes sir.

Q How many springs then are there on the Pony Steele farm?

A Three.

Q With the exception of this?

A No, with that one too-- three without that.

Q Three without that?

A Yes sir.

Q You say you own a half interest in that?

A Yes.

Q With the exception of this half interest that you own, has the water from all these four springs been used exclusively on the Pony Steele farm since you have lived at your present place of residence?

A There was one year--

Q During the irrigation season?

A There was one year for a short time that the reservoir company put that water in the river, and it was measured in and measured out into the reservoir canal.

Q Did anybody else use it, anybody else but the Reservoir Company use any portion of this water on the Steele farm since you have been there?

A No sir.

Q Now, going back to these springs in the Blue Cliff Canal, do you know of a certain spring above your place that has been taken by Provo City into its pipes within the last year or so?

A Yes sir.

Q Where is that spring with reference to your land?

A It is on my land, but it would be-- I don't know just how far it would be over the east line, cannot hardly say.

Q Previous to the time that Provo City took this water into its pipe about a year ago, what was done with the water from that spring?

A Why, run down the ditch, Blue Cliff ditch and sank, as far as I know.

Q As long as the Blue Cliff Canal was being used was that taken as a part of the irrigation water?

A Yes sir. After the Blue Cliff canal was abandoned, why, it-- I don't know what become of the water.

Q ~~xxxxix~~ Did the Blue Cliff-- do you remember the year it was taken over by the Reservoir Company?

A No, I don't.

Q You remember whether it was about 1911?

A Well, I won't say, because I can't remember exactly.

MR. JACOB EVANS: May I ask whether or not it may be stipulated that the plaintiff owns the Pony Steele springs, with the exception of the one half interest that is owned by Mr. Heiselt? testified to by the witness here, and thereby eliminate that feature of the case. These springs, I understand it, don't flow into the river in the summer time at all, the whole quantity of water springing up in these springs being used by these parties.

THE COURT: You are asking about the Pony Steele?

MR. A.L. BOOTH: The springs on the Pony Steele farm, consisting of four.

MR. RAY: The Provo Bench will so stipulate, I think. Of course, that does not affect our claim to the right to have them used at that place, in order that the return water may come, and we have our right to protest a change of the place of use.

THE COURT: No question of change of place of use at this time.

MR. JOHN E. BOOTH: We will join in that stipulation, clients I represent.

MR. COLEMAN: We would want to see Mr. Goddard, the water commissioner before we agreed to that.

THE COURT: Then I take it the stipulation cannot be entered into now.

MR. COLEMAN: We want to consult Mr. Goddard and he is not in the room at this time.

5:00 P. M. Recess to 9:30 A. M. ^{Monday June 14, 1916} June 14, 1916.

MR. JACOB EVANS: I would like to ask now if the parties are willing to stipulate that the plaintiff owns what is known as the Pony Steele Springs, and that the plaintiff and the defendant Hyrum Heiselt jointly own what is known as the Heiselt Springs?

MR. COLEMAN: No, we will not stipulate that. In fact, Mr. Heiselt claims all the springs on that place.

MR. JACOB EVANS: That is a matter between Mr. Heiselt and us, he only claims half of it to us. The springs, as the evidence shows don't run off the land at all.

THE COURT: I take it none of the other parties would be interested except the plaintiff and Mr. Heiselt, if they admit the springs belong to the plaintiff and Mr. Heiselt together.

MR. COLEMAN: The Pony Steele springs you ask for a stipulation for?

MR. JACOB EVANS: Yes, as well as the other springs.

Mr. JOHN E. BOOTH: If the court please, I represent Mr. Heiselt, and so far as the plaintiff and Mr. Heiselt are concerned they have stipulated what their rights are. Of course, that could not bind the people outside of them, but there is no difficulty between the plaintiff and Mr. Heiselt.

MR. JACOB EVANS: I want to call Mr. Wentz for one question.
