

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

Amended Answer of Defendants
to Affidavit of Plaintiff
in Contempt Proceedings.

Come now Provo City, a Municipal corporation of the State of Utah, and O.K.Hansen, Mayor of said Provo City, and Charles Hopkins and J.Elmer Jacobsen, city commissioners of said Provo City, and Frank Deming, city engineer of said Provo City, and Clark Newell, superintendent of waterworks of said Provo City, the defendants named in the affidavit made and filed herein by R.J.Murdock in behalf of the plaintiff above named against said defendants in contempt proceeding in the above entitled cause, and by leave of court first being had and obtained file this their amended answer to the allegations and statements contained in said affidavit, and said defendants admit, deny, and allege as follows, to-wit:

1. Said defendants deny that they have any knowledge or information sufficient to enable them to form a belief as to the statements and allegations made in unnumbered Paragraph 1 of said affidavit of said R.J.Murdock.

2. Said defendants admit that on the 2nd. day of May, A.D.1921, a decree was entered by the above entitled Court in

the above entitled cause wherein it was ordered, adjudged and decreed as follows,- "That under this decree the Provo River System is sub-divided into divisions, viz: The Provo Division, and the Wasatch Division; that the Provo division shall include all that area below and including what is known as and commonly called the "Wright Ranch"; and, "That the rights to the use of water in the Provo division are herein subdivided according to the date of appropriation and as stipulated by the parties herein, and such sub-divisions are designated classes, A,B,C, D,E,F,G,H,I, and J."

3. Said defendants further admit that Paragraph 35 of said decree is as follows,-

"-35-

Provo Reservoir Company:

"As the successor in interest to the rights of the Blue Cliff Canal Company, a corporation heretofore and now existing under the laws of the State of Utah, to fifty second feet from January 1st to December 31st of each year, which said 50.00 second feet consists of the waters of "Maple" or commonly called "Yellow Jacket Spring", "Pony Steele Springs" excepting one-half of the "Joint Spring" and all other springs originally arising in or discharging their waters into the Blue Cliff Canal, and sufficient water from Provo River which when added to the spring water will aggregate the said 50.00 second feet.

"The point of diversion of all of said waters shall be at the location of the present head-gate of the present Provo Bench Canal, which is below the tailrace of the Utah- Power & Light Company's present Olmstead Hydro-electric Plant, or at such other point or points as will not interfere with the use of the river portion of said water by the Utah Power & Light Company through its said Olmstead Plant as at present located."

But said defendants, and each of them, specifically deny that

the plaintiff, on the 11th. day of September, 1926, or at any other time since the entry of the decree mentioned in this paragraph, to-wit: the 2nd. day of May, 1921, was, or had been, the owner, or in the possession of any of the waters mentioned in this paragraph, or any right, title, or interest in the same.

4. Said defendants further admit that Paragraph 125 of said decree is as follows, to-wit:

"125. It is further ordered, adjudged and decreed that each and all of the parties to this action and their successors and assigns, and they, and each of their agents, servants and employees, and all persons acting for them, or in their interests, are forever enjoined and restrained from, in any manner, or at all interfering one with the other in the full, free and unrestricted use of the quantity of the waters of said river awarded to them, and from in any manner, or at all, interfering with the distribution of such water by the commissioner to be appointed by the court."

5. Said defendants further admit that Provo City is a municipal corporation in Utah County, State of Utah; that the other defendants named in said affidavit of said R.J.Murdoch are officers, agents, servants and employees of said Provo City, and that said Provo City was one of the defendants in said cause No.2888 Civil, and that Provo Reservoir Company, a corporation, was the plaintiff in said Cause No.2888 Civil.

6. Said defendants further admit that said decree in said cause No.2888 Civil has never been revised or modified in any manner and is now in full force, virtue and effect.

7. Said defendants further admit that under the provisions of said decree certain of the waters of said Provo

River were decreed and awarded to the plaintiff herein Provo Reservoir Company, and that certain of the waters of said Provo River were decreed and awarded to said Provo City.

8. The defendants deny that they have any knowledge or information sufficient to enable them to form a belief as to the truth or falsity of the allegations and statements of said R.J.Murdock in his said affidavit that by said decree all the waters of said Provo River and its tributaries were by said decree adjudicated or awarded to the several owners thereof.

9. The defendants deny each and every allegation contained in said affidavit of said R.J.Murdock except such as are herein specifically admitted. The defendants deny that they, or either of them, ever at any time in wilful disregard of said decree or in wilful contempt of the same, or at all, wrongfully, or otherwise, diverted or conveyed any waters into the pipe lines of the defendant Provo City which were awarded or decreed to the plaintiff Provo Reservoir Company by said decree; Defendants specifically deny that said Provo Reservoir Company has been damaged by any act or omission to act on the part of the defendants, or either of them, in the sum of \$1000.00, or in any other sum, or at all.

As a further answer to said affidavit of said R.J. Murdock and by way of an affirmative defense thereto, the defendants allege as follows, to-wit:

1. That Provo City now is, and at all the times here-

in mentioned was, a municipal corporation chartered as such under the laws of the State of Utah. That the defendants O.K.Hansen, Charles Hopkins, J.Elmer Jacobsen, Frank Deming, and Clark Newell are officers, agents, servants and employees of said Provo City.

2. That on the 2nd. day of May, A.D. 1921, in cause No.2888 Civil in the District Court of the Fourth Judicial District of the State of Utah, in and for Utah County, in which said cause said Provo Reservoir Company, a corporation, was plaintiff, and said Provo City was one of the defendants, said Provo City was awarded, adjudged and decreed the right to use and enjoy certain of the waters of Provo River in Utah County, State of Utah; that the portion of said Decree of said Court awarding, adjudging and decreeing to said Provo City the right to use and enjoy a certain portion of the waters of said Provo River, so far as the provisions of said decree are material to any of the allegations or statements made in said affidavit of said R.J.Murdock herein, the same being subdivision (e) of Paragraph 4 of said Decree is as follows:

"(e) Said defendant, Provo City, is the owner of, and has the right to collect by its pipe line and Waterworks System as now located and constructed in Provo Canyon, Utah County, Utah, and is entitled to divert into its said Waterworks System and to convey and use for domestic and municipal purposes at Provo City, Utah, and adjacent thereto, all of the waters of "South Guard Quarters Spring", which arises in a ravine above the flume line of the Utah Power & Light Company and below the ditch known as the Johnson ditch, situate in the southwest quarter Section 33, in Township 5 South of Range 3 East of the Salt Lake Base and Meridian. Also all of the waters of all springs arising between the County Road as now located and used and the flume line of the Utah Power & Light Company and down

from the County highway bridge crossing said river near the mouth of Bridal Veil Falls to the west line of the northeast quarter of Section 5 in Township 6 South of range 3 East of the Salt Lake Base and Meridian; excepting therefrom, however, all of the waters of all springs which flow into or rise in the Blue Cliff Canal and all of the waters of Maple or commonly called Yellow Jacket Spring."

X

3. That the provisions of said Sub-division (e) of Paragraph 4 of said decree, which adjudged, decreed and awarded to said Provo City the right to use and enjoy certain of the waters of said Provo River, was based upon a certain stipulation and agreement made and entered into by and between said Provo Reservoir Company, a corporation, the plaintiff in said Cause No.2888 Civil, and said Provo City, one of the defendants in said cause, before the decree in said cause was made and entered by the Court therein, which said stipulation was duly assented to and approved by all the parties, both plaintiff and defendants in said cause No.2888 Civil; that said stipulation was and is in words and figures as follows, to-wit:

"First. The Court shall make and enter its findings and decree awarding to Provo City all the waters arising and flowing from the springs in Provo Canyon claimed by the defendant Provo City, and flowing into its pipe line and waterworks system, except the waters of the spring referred to as Maple or Yellow Jacket Spring, which was taken into the Provo pipe line and water system in the year 1914, or thereabouts, and which has an approximate flow of one-fourth of a second foot.

"Second. The court shall find and decree to Provo City 16.5 second feet constant flow of the waters of Provo River flowing in and through the Factory Race.

"Third. The defendant Provo City, withdraws and waives its objections to classification of waters of

Blue Cliff right in the proposed decision of the Court."

4. That at the time said stipulation and agreement was entered into by and between said Provo Reservoir Company, a corporation, and said Provo City, and assented to by all the parties to said Cause No.2888 Civil, and at the time the above entitled Court made and entered its decree in said Cause No.2888 Civil, said Provo City was then collecting and diverting the waters of certain springs tributary to said Provo River located within the area described in said sub-division (e) of paragraph 4 of said decree, together with other springs, into pipe lines and waterworks system, and said waters of said springs were then and there being flowed and conveyed through said pipe lines and waterworks system by said Provo City to Provo City and the vicinity thereof, and said waters were then and there being used by said Provo City in Provo City and adjacent thereto for culinary, domestic and municipal purposes;

5. Said defendants further allege that none of said defendants since the said decree in Cause No.2888 Civil was made and entered by the above entitled Court have ever at any time collected or diverted into its said pipe lines and waterworks system any of the waters of any springs tributary to said Provo River, except the waters of those springs which were at the time of the entry of said decree being then collected and diverted by said Provo City into its said pipe lines and waterworks system, and which were then being conveyed by said Provo City through its said pipe lines and

waterworks system to said Provo City and the vicinity thereof and used by said Provo City in Provo City and adjacent thereto for culinary, domestic and municipal purposes, except the waters of such other springs as since the entry of said decree have been acquired by said Provo City by the purchase thereof, and except the waters of such other springs as, since the entry of said decree, have been granted, upon due application made, by the State Engineer of the State of Utah.

WHEREFORE, said defendants pray that they, and each of them, having fully answered all the allegations contained in said affidavit of said R.J.Murdock herein charging them with being guilty of contempt of certain of the provisions of said decree in said Cause No.2888 Civil, be discharged from this contempt proceeding and be exonerated from any and all of said charges of the contempt of said decree made by said R.J.Murdock; that the said affidavit of said R.J.Murdock herein be dismissed; that the writ and order to show cause issued by the above entitled Court against these defendants based upon said affidavit of said R.J.Murdock, be dismissed and vacated, and that the defendants recover their costs herein expended.

Morgan & Coleman
Attorneys for Defendants

STATE OF UTAH)
) SS.
COUNTY OF UTAH)

O.K.Hansen, being first duly sworn, upon his oath, deposes and says; that he is the Mayor of Provo City, a municipal corporation of the State of Utah, one of the defendants named in the above entitled ^{Amended} Answer; that he makes this verification of said Amended Answer both for himself individually and also for said Municipal corporation; and Charles Hopkins and J.Elmer Jacobsen being first duly sworn, depose and say; that they are two of the city commissioners of said Provo City and Frank Deming and Clark Newell, being first duly sworn, depose and say; that they are respectively the City Engineer and Superintendent of Waterworks of said Provo City, and each of said affiants depose and say; that they are the defendants named in the affidavit in contempt proceedings made and filed by R.J.Murdock in the above entitled cause; that they, and each of them, have read the above and foregoing Amended Answer to the allegations contained in said affidavit and know the contents thereof; that the same is true of their own knowledge, except as to matters therein stated upon information and belief, and as to those matters they believe it to be true.

O.K.Hansen
Charles Hopkins
Elmer Jacobsen
Frank Deming
Clark Newell

Subscribed and sworn to before me this 11 day of July, 1927.

Fred Evans
Notary Public

Residing at: Provo City, Utah.

My commission expires _____

