

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

MOTION TO DISMISS AND DIS-
CHARGE THE DEFENDANTS.

Come now the defendant, and each of them, in the above entitled cause and proceeding and hereby move the Court to dismiss the citation charging said defendants with contempt of the above entitled Court, and with the contempt of the decree made and entered by the above entitled Court in Cause No. 2888 Civil on the affidavit of R.J.Murdock dated the 11th. day of September, 1926, and move that they, said defendants, and each of them, be discharged from said citation and that said defendants, and each of them, have and recover against the plaintiff Provo Reservoir Company, a corporation, judgment on the pleadings now before the Court in this proceeding, and that said defendants, and each of them, have and recover judgment against the plaintiff Provo Reservoir Company, a corporation, their costs incurred in this proceeding, upon the following grounds, and for the following reasons, to-wit:

1. That said plaintiff in the said affidavit of said R.J.Murdock on file herein have pleaded, and the same is

now before this Court, the provisions of the decree in said Cause No. 2888 Civil, attempting to decree an award to the plaintiff the right to use certain waters, the said provisions of said decree being as follows, to-wit:

"That under this decree, the Provo River System is subdivided 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 subdivisions are designated Classes, A, B, C, D, E, F, G, H, I, and J," and that in paragraph 35 of said decree the plaintiff herein has awarded and decreed to it, as a class "A" water-right, certain springs tributary to the said Provo River, situated in Utah County, State of Utah, to-wit:- "As 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 50 Sec. feet from January 1st, to December 31st, of each year, which said 50 Sec. 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 rising in, or discharging their waters into Blue Cliff Canal, and sufficient water from Provo River, which when added to the Spring water will aggregate the said 50 sec. Feet".

"~~That~~ 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 tail race of the Utah Power and 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 and Light Company through its said Olmstead plant as at present located."

That the said provision of said decree is uncertain, indefinite and void in that no where in it does the Court mention or describe any springs originally arising in or discharging their waters into the Blue Cliff Canal, and it is

impossible for this Court now in this proceeding to determine what springs the Court referred to in the expression, - "all other springs originally rising in or discharging their waters into the Blue Cliff Canal."

2. That the defendants have pleaded in their answer to said affidavit of R.J.Murdock the terms of said decree attempting to award and decree to the defendant Provo City the use of certain waters, which said provision is as follows, to-wit:

"(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."

That the plaintiff does not contend in this proceeding that said provision of said decree is not the provision of said decree attempting to award and decree the use of certain waters to the defendant Provo City, and the plaintiff admits

that said provision of said decree is the provision contained in said decree in which the presiding Judge at the trial of said cause attempted to award and decree the use of certain waters to the defendant Provo City.

That said last mentioned provision of said decree is uncertain and indefinite in this that the exception contained therein of "all of the waters of all springs which flow into or rise in the Blue Cliff Canal," is so indefinite and uncertain that it is impossible for the Court in this proceeding to determine what waters are referred to in the clause, - "all of the waters of all springs which flow into or rise in the Blue Cliff Canal."

That said provision is indefinite and uncertain and filled with confusion in this that in said provision the defendant Provo City is decreed to be the owner of and has the right to collect in 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 situated in the Southwest quarter of 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 within a certain area particularly bounded and des-

cribed in said provision, excepting therefrom, however, all of the waters of all springs which flow into or rise in the Blue Cliff Canal, and all the waters of Maple or commonly called Yellow Jacket Spring; and it is now conceded by the parties to this proceeding that the Maple or commonly called Yellow Jacket Spring is not situated within the area particularly bounded and described in said provision of the decree.

3. That said decree in said cause No.2888 Civil is void for uncertainty and for the reason that the same is contradictory, and it is impossible for this Court in this proceeding to definitely determine what springs are referred to by the Court in the provisions of the said decree hereinbefore set forth in this, that in the provision of said decree wherein the Court has attempted to decree and award the use of certain waters to the plaintiff Provo Reservoir Company, a corporation, the Court mentions and designates "all other springs originally arising in or discharging their waters in the Blue Cliff Canal;" That it appears from the evidence now before the Court that said Blue Cliff Canal was constructed so as to receive water from Provo River through its intake at least as early as the year 1897, so that the original construction of said decree, so far as the same relates to the course of said canal through what has been mentioned and described in the evidence in this cause. as the Spring Dell Area, was at least as early in time as the year 1897; that in the provision of said decree wherein the Court attempts to award and decree the use of certain waters to defendant Provo City, said provision

provides that the 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 and Light Company and below the ditch known as the Johnson ditch situate in the southwest quarter of 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 located and situated within a certain area particularly bounded and described in said provision of said decree, 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. That the said provision of said decree, to-wit: "excepting therefrom, however, all of the waters of all springs which flow into or rise in the Blue Cliff Canal," refer to the waters of springs which at the time of the signing of the decree, to-wit: the 2nd. day of May, 1921, were then flowing into or rising in the Blue Cliff Canal. That said provision of said decree is contradictory and irreconcilable with the provision of said decree wherein the Court attempted to award and decree to the plaintiff Provo Reservoir Company, a corporation, all springs originally arising in or discharging their waters into the Blue Cliff Canal.

Morgan + Coleman

6

Due service of the above and foregoing Motion is hereby admitted by the receipt of a full, true and correct copy thereof on this 6th day of August, A.D. 1927.

Alb. Hatch
Brewster & Brookbank

Attorneys for Plaintiff Provo
Reservoir Company, a Cor-
poration

