

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

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PROVO RESERVOIR COMPANY, a corporation	:	No. 2888 Civil
	:	
Plaintiff,	:	FINDINGS OF FACT
-vs-	:	
	:	AND
PROVO CITY ET AL, WASATCH IRRIGATION COMPANY, a corporation, and THOMAS MOULTON, JOHN F. OHLWILER, WADKIN	:	CONCLUSIONS OF LAW
BRIRLEY, and T.F.WENTZ, Commissioner.	:	
Defendants.	:	

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This cause came on regularly for hearing before the court, sitting without a jury before the Honorable Martin M. Larson, Judge presiding, on the 13th day of October, 1934, upon the petition and affidavit filed by the defendants Wasatch Irrigation Company, a corporation, Provo Bench Canal & Irrigation Company, a corporation, and the Timpanogas Canal Company, a corporation, for and on behalf of each and all of the defendants in this cause, and on an order to show cause issued by said court on the 9th day of October, 1934, directing the plaintiff, Provo Reservoir Company, a corporation, to appear on the 13th day of October, 1934, and show cause if any it had, why the order and judgment dated April 19, 1934, should not be vacated and set aside, and on a written stipulation and the further stipulation by counsel for both parties in open court, which said written stipulation has been filed herein, and is as follows, to-wit:-

*WHEREAS, on or about the seventeenth day of April, A. D. 1934, plaintiff herein filed a petition in the above entitled cause, and

WHEREAS, to said petition an answer was filed by the defendants, Wasatch Irrigation Company, a corporation, Thomas Moulton, John F. Ohlwiler, and Wadkin Brirley, and

WHEREAS, the defendants were ordered to appear before the Court on the eighteenth day of April, A. D. 1934, and there to show cause, if any they had, why they, and each and all of them, should not be punished for contempt of the above entitled Court for distributing waters of the Provo River to the defendants which were alleged to belong to the plaintiff, and

WHEREAS, upon motion of counsel for the plaintiff, the Court on April 19th, A. D. 1934, made an order and judgment as prayed for in said petition, and

WHEREAS, on or about the 9th day of October, A. D. 1934, the above named defendants, together with other defendants in said cause, filed an affidavit and petition for an order to show cause, citing the plaintiff to appear before the above entitled Court on the thirteenth day of October, A. D. 1934, there to show cause, if any it had, why the order hereinabove referred to, to-wit, the order dated April 19th, 1934, in said cause should not be vacated and set aside.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED between the plaintiff, Provo Reservoir Company, a corporation, and the defendants in the above entitled cause, as follows:-

1. That the order and judgment of the Court, in the above entitled cause, dated April 19th, 1934, and filed and entered in said cause on the 20th day of April, A. D. 1934, be vacated, set aside and held for naught, and that said order from henceforth shall have no force or effect whatsoever, without prejudice.
2. That the expense of maintenance of the waters of Shingle Creek to the Provo River, from year to year and each and every year, shall be paid for in the same manner as provided for the compensation of the Assistants to the Water Commissioner, in the decree in this cause as filed and entered May 2, 1921.
3. That in case of litigation, to prosecute or defend, to maintain the waters of Shingle Creek tributary to Provo River, and the right to the use thereof, as being vested, owned, and decreed to parties in said cause No. 2888, that the expense thereof will be borne by each and all of the parties on the same basis as provided for the expense of administration.

Dated this 13th day of October, A. D. 1934.

{Signed} A. L. Booth
{Signed} Watkins & Holbrook
Attorneys for Plaintiff.

{Signed} J. Robt. Robinson
{Signed} L. C. Montgomery
Attorneys for Defendants."

And the said defendants having appeared with their counsel, J. Robt. Robinson and L. C. Montgomery, and the said plaintiff having appeared by its counsel, Watkins and Holbrook and A. L. Booth, and the Court being fully advised in the premises now makes and enters its FINDINGS OF FACT.

1. That Shingle Creek is naturally a tributary of Provo River, and its drainage area of approximately thirteen square miles is all within and is part of the Provo River watershed. It has its rise in the summits of the Uintah Mountains, on the East of the divide between the Provo and Weber Rivers watersheds, it flows in a Southwesterly direction parallel to the divide for four miles, then approaches near the divide at six miles, then flows South for one mile to its confluence with the main channel of Provo River.

2. That all of the waters of Shingle Creek, now ^{flow} and always ^{have} flow naturally ^{ed} ^{into} to Provo River, and all of said waters now flow and always have flowed ⁱⁿ to Provo River except such quantity as may have been diverted by an artificial channel to the Beaver & Shingle Creek Irrigation Company, and that none of said diverted water has ever been tributary to Weber River.

3. That said waters of Shingle Creek, prior to the 20th day of April, 1934, and for more than seventy-five years, have commingled with the waters of Provo River; and that said waters have been applied to a useful and beneficial purpose by the parties to Cause No. 2888 Civil, and said waters have been distributed, ever since the filing of the decree in said Cause on May 2nd, 1921, to the said parties in the order and priority as set forth and defined in said decree, in Cause No. 2888 Civil.

4. That the rights of ownership and use of the waters of Provo River and its tributary Shingle Creek, as between the parties to this Cause, are settled and confirmed by the decree of this court in this Cause, as filed and entered on the 2nd day of May, 1921,

That said parties entered into the stipulation, ^{heretofore referred to} by and through their respective counsel and officers as is heretofore set forth, and said stipulation ^{are} by this reference made a part of these Findings.

NOW, THEREFORE, from said Findings the Court makes its CONCLUSIONS OF LAW, as follows, to-wit:-

1. An order of said Court should be made vacating, setting aside, and holding for naught the order and decree of this court made and entered herein on April 19, 1934, and which was filed on the 20th day of April, 1934.

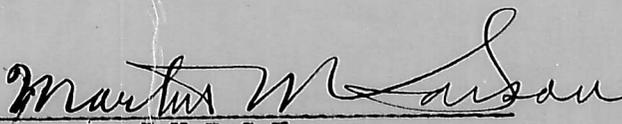
2. That an order and decree of this court should be made and entered setting forth and decreeing that Shingle Creek is naturally a tributary of Provo River, and its drainage area of approximately 13 square miles is all within and a part of the Provo River watershed; and that all of its waters flow naturally into Provo River, and all of said waters now flow and always have flowed into Provo River,

excepting such quantity of water as may have been diverted by an artificial channel to the Beaver & Shingle Creek Irrigation Company, and that none of said diverted water has ever been tributary to Weber River.

3. That said waters of Shingle Creek for more than seventy-five years prior to the 20th day of April, 1934, have been commingled with the waters of Provo River; and that said waters have been applied to a useful and beneficial purpose by the parties to Cause No. 2888 Civil, and said waters have been distributed ever since the filing of said decree in said Cause, on May 2, 1921, to the parties to said Cause in the order and priority as set forth and defined in said decree.

Dated at Provo, Utah, this 31st day of December, A. D. 1934.

BY THE COURT:


J U D G E

#2888

IN DIST. COURT
UTAH CO., UTAH
FILED

DEC 31 1934

Frank Salisbury
Francilla Christensen

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