

IN THE DISTRICT COURT OF SANPETE COUNTY, STATE OF UTAH.

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WATER RIGHTS  
SALT LAKE

INDIANOLA IRRIGATION COMPANY,  
a corporation,

Plaintiff,

vs.

JUSTUS O. SELLY,

Defendant.

Civil No. 4023

J U D G M E N T

Judgment  
13 PAGE 204

G. L. Fitzgerald  
Anna S. Nielson

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This case having been tried to the court, 2 200244 sitting

without a jury, on June 6, 7 and 8, 1950, upon the complaint of the plaintiff, the amended answer and counterclaim of the defendant, and the reply of the plaintiff, and on said last mentioned date having been submitted to the court for its decision upon the merits; and the court being fully advised in the premises, and having made in writing and filed herein its decision and findings of fact and conclusions of law, it is now, on motion of Dilworth Woolley, attorney for the defendant, by the court -

ORDERED, ADJUDGED AND DECREED:

1. That the plaintiff has no cause of action against the defendant.
2. That with respect to the distribution and use by the defendant of the waters of Rock Creek and Clear Creek upon the lands of the defendant situated in Sanpete and Utah counties, described as The N 1/2 of the NE 1/4, the S W 1/4 of the N E 1/4, the N 1/2 of the SE 1/4 and the N E 1/4 of the S W 1/4 of Section 3, Township 12 South, Range 4 East, Salt Lake Meridian, containing 560 acres, more or less; and lands adjoining the same in Utah county, the parties to this action shall be governed hereafter by the terms of the following stipulation which was made by the parties in open court and taken down by the court reporter:

" That the use of the waters have been and shall continue to be as follows in that area.

"In the season, which in the majority of the years, or the average year is from March 1 until the water has

decreased until it is required to go on turns, the use of the water will be according to the owner of the property as he wishes, When the water has fallen in quantity to a place where it is low and has to be put on turns, that the Indianola Irrigation Company has in the past and will in the future distribute the water in turns. That varies in the dry years from April down to June 15th. Sometimes as early as April 1st and some times no turns are put on until June 15th or after. When the water has fallen low enough so that the irrigation company has to put the water in turns, 80 shares of Class B water has been charged against that ground or that place that Justus Seely is operating.

"And after June 15th all the waters of Rock Creek and Clear Creek are permitted to comingle with the waters of Thistle Creek and are then run to Indianola valley and allocated to the stockholders in turns according to their shares from the period of June 25 to June 30, inclusive, all of the waters to which Indianola Irrigation Company has rights, to-wit, 3/4ths of the flow of Rock Creek and Clear Creek, will be used (by the defendant) on said lands in Section 3, Township 12 South, Range 4 East, Salt Lake Meridian, and his adjoining lands in Utah county; and there has been charged against it (such use) in the past and there will continue to be charged against such use 55 shares of the Class A rights of Justus O. Seely.

"During the period of 10 days from 6 a. m. June 30th until 6 a. m. on the 10th day of July all of the waters of Clear Creek and Rock Creek are permitted to flow down the channel and comingle with the waters of Thistle Creek to be distributed to the users of water as allocated to them to their shares in the Indianola Irrigation Company.

"During the period above stated the same situation will prevail as from June 5th to June 25th, to-wit, all the water the irrigation company has a right to distribute on Rock Creek and Clear Creek, to-wit, 3/4ths of their flow, will be used by the owner, Justus O. Seely, of that property, and will be charged to or against 55 shares of Class A right.

"The Indianola Irrigation Company and the water masters in the years past have permitted the waters of Clear Creek and Rock Creek to flow over a meadow (on said lands) containing between 5 and 12 acres, which meadow is adjacent to Thistle Creek, and will continue to permit the same to flow, except that in very dry years when they have required such waters to flow down the channels into Thistle Creek without running over the meadow."

That except as stated in the stipulation above set forth, the defendant Justus O. Seely has no right to use the waters of Clear Creek or Rock Creek on his said lands in Section 3 and his adjacent lands in Utah county.

3. That so far as the plaintiff is concerned, the defendant is the owner of the right to the use of the waters of Thistle Creek, Clear Creek and Rock Creek, for irrigation purposes, which are awarded to the plaintiffs in Case No. 3217, entitled Edward Simmons, and others, plaintiffs, against William H. Seeley, and others, defendants, in the First Judicial District Court of Utah Territory sitting in and for Utah County, in which a decree adjudicating the waters of said streams was made and entered on

September 28, A. D. 1894, which rights are hereinafter referred to as Canyon rights or Canyon waters; said Canyon waters to be permitted to flow over the defendant's lands described as the south half of the south half of Section 5, Township 12 South, Range 4 East, Salt Lake Meridian, for the irrigation of the meadows and pastures thereof, as they have been permitted to flow each year since the year 1878, as follows:

During the irrigation season of each year, which begins about the first day of March, and during the periods from June 25th at 6 a. m. to June 30th at 6 a. m., and from July 10th at 6 a. m. to July 15th at 6 a. m., when the combined flow of the waters of Panawats slough and Gardner's dam and 7 acres in the Panawats ditch and 5 acres in the Myrum Seely ditch equals or exceeds  $\frac{1}{2}$  the flow of Thistle Creek plus  $\frac{1}{4}$  the flow of Clear Creek and Rock Creek, the Canyon waters are to be diverted from Thistle Creek through three certain ditches, known as the Meeting House ditch, the Middle ditch and the South ditch, about one-third of the Canyon waters being permitted to flow through each of said ditches; the Canyon waters of the Meeting House ditch and the Middle ditch are to be permitted to flow over the defendant's said lands; when the flow of said streams recedes to a point where the waters thereof and of Panawats slough, measured at the lower end of said slough through a weir, are insufficient to supply the rights of the Canyon users, as set forth in the decree of 1894, above mentioned, so that it becomes necessary to turn the Canyon waters of Thistle Creek down the main channel to supply said rights, the said Canyon waters shall first be turned out of the South ditch, then out of the Middle ditch, and lastly out of the Meeting house ditch.

That the use by the defendant of the Canyon waters at the times and in the manner above set forth shall not be charged by the plaintiff against the rights which the defendant

has to the use of the waters of Thistle Creek, Clear Creek and Rock Creek which are represented by shares of stock in the plaintiff corporation.

That the plaintiff Indianola Irrigation Company, a corporation, is, and its servants, agents, officers and employees are, enjoined from denying to the defendant the right to the use of the Canyon Waters of Thistle Creek, Clear Creek and Rock Creek at the times and in the manner aforesaid, and from charging the use thereof by this defendant against the rights which he has to the use of the waters of the said streams which are represented by his shares of stock in the plaintiff corporation.

4. No costs are allowed to either party.

Done at Manti City, Sanpete County, State of Utah,  
this 21<sup>st</sup> day of February, A. D. 1951.

BY THE COURT:

  
Judge.