

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

Spanish Fork City, a municipal Corporation, Spanish Fork West Field Irrigation Company, a corporation, Spanish Fork South Irrigation Company, a corporation, Spanish Fork Southeast Irrigation Company, a corporation, and Salem Irrigation and Canal Company, a corporation,

Plaintiffs,

vs.

Spanish Fork East Bench Irrigation & Manufacturing Company, a corporation, Lake Shore Irrigation Company, a corporation, H. B. Hicks, Samuel Frankum, H.F. Johnson, D. A. Mitchell, G.S. Pickering, Henry Elmer, S.J. Courdin, Louis Nielson, Jas. A. Mitchell, Lorense Gardner, John J. Loveless, Leven Simmons, Robt. Henderson, Jas. Francum, John Partridge, Myrum Overhansely, Utah Land & Live Stock Company, a corporation, John Drollinger, John D. Moore, Henry E Gardner, Geo. Gardner, Myrum Siler, F.A. Jones, Wm. Brock, S.C. Powell, A. Gardner, Bert Jones, J.S. Lewis, H.D. Warner, John Warner, Mrs. M. Roger, T.J. Schofield, John Bigly, Wm. Rawlings, Ed Sackett, W.T. Williams, Geo. Killian, Bernard Snow, Aaron Chadwick, J.S. Lee, J.W. Coburn, Jas. Ballard, Henry Mc Kell, Wm. Mc Kell, Frankin. Pace, Samuel Cornaby, Mrs. Enoch Daniels & Mrs. D.C. Searles,

Defendants.

This cause came for hearing on the 17th day of April, 1899, before the Court, upon Plaintiff's complaint, and the answers and counter-claims of the several defendants, the default of the defendants Jesse Barker, sued as Mrs. E. Daniels, the Utah Land and live stock Co. a corporation, Mrs. D.C. Searles, and Mrs. Enoch Daniels, having been duly entered, Messers Samuel R. Thurman, Wm. Greer, and E.E. Corfman, appearing as Counsel for the Plaintiffs, Messers Brown & Henderson, appearing for the Spanish Fork East bench irrigation and Manufacturing Co., and Messers Warner & Houts appearing as counsels for the Lake Shore Irrigation Co., and King Burton & King, appearing as Counsel for the other Defendants answering in said cause. The Court heard the testimony of the witnesses in part, whereupon, all of the parties appearing in said cause, made and filed their stipulations distributing and dividing among themselves the waters of Spanish Fork river, and its tributaries mentioned and described in the pleadings of said cause, said stipulations having duly provided that this decree should be made in accordance with the terms thereof, dividing and distributing said water among the parties thereto; and all findings and of facts and conclusions of law relating to the use and appropriation of said waters having been expressly waived, the Court now finds the following facts:

1. That all of the parties mentioned in the pleadings and described as Corporations are Corporations existing under the Laws of the State of Utah.
2. That the Spanish Fork river is a large stream of water arising in the mountains in the Southeast part of Utah County, State of Utah, and is fed along its course by divers tributaries, and flows thence down what is known as Spanish Fork Canyon, thence what is known as Utah Valley, and empties into Utah lake.

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That the Plaintiffs in this action, and the defendants, the Spanish Fork East bench Irrigation and manufacturing Co., and the Lake Shore Irrigation Co., take and divert water from said Spanish Fork river below the mouth of said Canyon, in the said Utah Valley, and measure it the same whenever necessary by means of a measuring gate at or near the points where the said waters are diverted from said river respectively. That all of the other defendants answering in this cause take and divert water from said river above the mouth of said Spanish Fork Canyon, by means of dams and ditches constructed by them for said purpose.

4. That all of the lands which have been irrigated by any of the parties of this action are barren without artificial irrigation, and said water so used upon said lands is necessary and essential.

wherefore, by virtue of said stipulations, and of said facts, and of the express waiving of all facts relating to the use and appropriation of said water,

It is hereby ordered, adjudged and decreed, that the waters of the said Spanish Fork river be distributed among, awarded to, and is hereby distributed among and awarded to the parties appearing in this action, as follows, to wit:

That the Defendants taking and using water above the mouth of the said Spanish Fork Canyon, hereinafter specifically named, are entitled to have of the water of the said river and its tributaries, such a portion of the waters of the said river as their necessities require, untill the water of said river recedes in volume to a quantity not exceeding Twenty-two inches in depth by Forty-one (41) feet in width, weir measurement, measured at the said measuring gates of the parties, below the mouth of said Canyon, hereinbefore stated.

That whenever the water of said river recedes in volume <sup>to a quantity</sup> not exceeding Twenty-two (22) inches in depth, by Forty-one (41) feet in width, measured as above stated, the said Defendants above the mouth of said Spanish Fork Canyon, as aforesaid, are entitled, to have of the water of said river not exceeding Two (2) Per Centum thereof, untill the water of said river recedes in volume to a quantity not exceeding Eighteen (18) inches in depth, by Forty-one feet in width, measured as aforesaid.

That whenever the water of said river recedes to volume to a quantity not exceeding Eighteen (18) inches in depth, by Forty-one (41) feet in width, measured as aforesaid, the said Defendants above the mouth of said Spanish Fork Canyon, as aforesaid, are entitled to have of the water of said river not exceeding One Per Centum thereof, untill the water of said river recedes in volume to a quantity not exceeding Fifteen and One-half (15 1/2) inches in depth, by Twenty-four (24) feet in width, measured as aforesaid, and thereafter said Defendants above the mouth of said Canyon, are not entitled to any of the water of said river, except for the irrigation of Thirty (30) Acres of land and so long as the volume thereof continues at or below the said Fifteen and one-half inches in depth, by Twenty-four feet in width, and for the purpose of irrigating said Thirty Acres of land, said Defendants above the mouth of said canyon are entitled to have such a quantity of water as the Plaintiffs have and use for irrigation of the same number of acres of land, at the same season, of the year, said Thirty acres of water right to be known and designated in this decree as a "primary right".

That it is expressly stipulated and agreed by and among the said defendants above the mouth of said canyon that the water of said river hereby awarded to them, shall be distributed among the said defendants and the same be decreed to them as follows: It is therefore ordered, adjudged, and decreed,

That for the purpose of determining the rights of the parties

taking their water above the mouth of Spanish Fork canyon, and distributing and dividing the same among them, the said parties are divided into three classes, which shall be known in this decree as the First class, The Second class, and the Third class:

That the First class embraces those persons who by this decree are entitled to the use of thirty acres of water, heretofore provided for and designated as "primary" water, and said thirty acres of "primary" water is hereby decreed to be the property and to belong to the persons hereinafter named in the schedule made a part of this decree as being in the First class:

The Second class embraces those persons who are entitled to the use of that portion of the water of Spanish Fork river and its tributaries heretofore provided for, and classified as Two Percentum and One Per Centum of the waters of Spanish Fork river, the said Two Per Centum being Two Percent of the waters of the said river, when the same measured at the measuring gate of the Corporations, parties hereto below the mouth of said canyon, as aforesaid, shall have receded to a volume to a point less than Twenty-two inches in depth for Forty-one feet in width, and not less than Eighteen inches in depth *in* *and* Forty-one feet in width, weir measurement; and the said One Per Centum being One Percent of the water of the said river when the same, measured as aforesaid, shall have receded in volume to a point below the point last aforesaid, and not exceeding Fifteen and One-half inches in depth by Twenty Four feet in width, weir measurement; and the said One Per Centum and Two Per Centum of the water of the said river and its tributaries are hereby decreed to be the property of, and shall be distributed to the persons named in said schedule as being in said First and Second Classes.

The Third class embraces those who are entitled to the use of the water of said river and its tributaries when the same shall exceed in volume twenty-two inches in depth by forty-one feet in width measured in the manner and places aforesaid;

That so long as the waters of Spanish Fork river and its tributaries exceed in volume said twenty-two inches in depth ~~by~~ forty-one feet in width, measured as aforesaid, all said defendants who take their water above Spanish Fork canyon, the same being hereinafter specifically enumerated in the schedule which is made a part hereof, shall be entitled to a sufficient portion of said waters for their necessities according to their respective rights as set forth in said schedule.

That when the waters of the said Spanish Fork river and its tributaries measured as aforesaid, shall exceed to a point not exceeding twenty-two inches in depth by forty-one feet in width, measured as aforesaid, then the rights of the parties hereto who are embraced in the third class shall be terminated, and the Two Per Centum of the waters and the One Per Centum of the water of said river and its tributaries, provided for as aforesaid, shall be distributed to the parties hereto, who have rights in the First and Second classes, in proportion to their respective rights, as shown in the schedule contained herein.

That when the water of said river recedes to a point not exceeding Fifteen and One-half inches in depth ~~by~~ Twenty Four feet in width measured as aforesaid, then the parties in the said First Class shall be entitled to all of the waters decreed herein to belong to the parties herein taking water above the mouth of Spanish Fork Canyon, the said water being the said thirty acres of primary right/ and the same is awarded, and divided as provided in said schedule, to the said parties named in the said First class, according to their respective rights.

That the following is the said schedule and contains the names of the parties hereto entitled to water from said Spanish Fork River and

shall require the water according to their rights as ascertained in said schedule and when the water of said river shall have diminished so that the easement provided for as aforesaid, is cut off from the said defendants, taking their water from above the mouth of Spanish Fork canyon, then the said primary water, being thirty acres, as aforesaid, shall be distributed to the said persons having first class rights only, as provided for in said schedule, and according to the rights of each respectively.

That for the purpose of carrying into effect the provisions of this decree relating to the division and distribution of the rights to the water as set forth in said schedule, to and among said defendants taking their water above the mouth of Spanish Fork canyon, said persons stipulate and agree *with* themselves, and each one with the other, that three watermasters shall be selected, one from what is known as Thistle Fork, one from what is known as Soldier Fork, and one from what is known as Diamond Fork of said river, who may select either from their own number or otherwise, a person who shall be known as Head Watermaster, and they, together, shall prescribe such rules and regulations in respect to the division and the distribution of said water as will secure the economical use thereof, and best observe the interests of all parties in this suit; the said Head Watermaster shall see that said rules and regulations so prescribed for the division and distribution of said water are enforced.

It is further ordered, adjudged and decreed, that all of the water of said river not hereinbefore decreed to the defendants above the said mouth of said canyon, is hereby awarded to the parties herein below the mouth of said canyon, to-wit, The Spanish Fork East bench Irrigation ~~Sax~~ and Manufacturing Co., The Salem Irrigation and Canal Co., The Spanish Fork South Irrigation Co., Spanish Fork City, Spanish Fork West Field Irrigation Co., Spanish Fork Southeast Irrigation Co., and The Lake Shore Irrigation Co.

It appearing to the Court that the parties herein below the mouth of said canyon last above named, have stipulated in writing among themselves, and filed the same in court, by which said parties have agreed among themselves that the water herein decreed to them shall be apportioned to them by this decree; and it appearing from said stipulation that the defendant Spanish Fork East bench Irrigation ~~Sax~~ and Manufacturing Co. diverts its water from Spanish Fork river, at or near the mouth of Spanish Fork canyon, by a separate ditch constructed for its purpose alone, and known as the Spanish Fork East bench Canal; and that next below said East Bench Irrigation Canal, the Salem Irrigation and Canal Co. diverts its water from said river, by a canal known as the Salem Irrigation Canal, and for its separate and independent use; and that next below the Salem irrigation canal, the Spanish Fork south Irrigation Co. diverts its water from said river by a canal known as the Spanish Fork South Irrigation Canal, and for its separate and independent use; and that next below the last mentioned canal, Spanish Fork City, The Spanish Fork West Field Irrigation Co., and Spanish Fork Southeast Irrigation Company divert their water from said river by a canal used in common between them, and known as the Mill Race, for their joint use; and that next below the last mentioned canal or Mill race, the defendant, The Lake Shore Irrigation Co. diverts its water from said river by a canal known as the Lake Shore Canal, and for its separate and independent use; and that said canals, being five in number, are all of the canals, and all of the dividers of water from Spanish Fork river, in Utah Valley below the mouth of said Spanish Fork Canyon; and that the said parties to said stipulations are the only appropriators of any of the said waters of said river below said canyon.

And it further appearing from said stipulation that this decree as

to the distribution of said water among said parties may be made, it is therefore ordered, adjudged and decreed, that the waters of said Spanish Fork river herein decreed to said parties below the mouth of said canyon, be awarded to and divided among them as follows, to-wit:

That whenever the water of said river recedes in volume to a quantity not exceeding twenty-five (25) inches in depth, and twenty-four (24) feet in width, measured as aforesaid, and until the same receding in volume to a quantity not exceeding eighteen (18) inches in depth. By twenty four (24) feet in width, measured as aforesaid, the defendant, The Spanish Fork East Bench Irrigation and Manufacturing Co. shall have Seven-Forty-firsts (7/41) thereof, the plaintiff the Salom Irrigation and Canal Co. Seven and one half forty firsts (7 1/2/41) thereof, the plaintiff, the Spanish Fork South Irrigation Co. Eight and one-half-forty firsts (8-1/2/41) thereof, the plaintiffs, Spanish Fork City, Spanish Fork West Field Irrigation Co., and Spanish Fork Southeast Irrigation Co. through their common canal, known as the Mill Race, Eleven-Forty-firsts (11/41) thereof, and the defendant, The Lake Shore Irrigation Co. Seven-Forty-firsts, (7/41) thereof.

That whenever the water of the said river recedes in volume to a quantity not exceeding ~~eighteen~~ (18) inches in depth by Twenty ~~four~~ (24) feet in width, measured as aforesaid, and until the same recedes in volume to a quantity not exceeding Fifteen and one-half (15-1/2) inches in depth by Twenty-four feet in width, the defendant, Spanish Fork East bench Irrigation and Manufacturing Co. shall have Two-Twenty-fourths (2/24) thereof, the plaintiff, Salom Irrigation and Canal Co., Four-Twenty-fourths (4/24) thereof, the plaintiff, Spanish Fork South Irrigation Co., shall have six twenty-fourths (6/24) thereof the Plaintiffs, Spanish Fork City, The Spanish Fork West Field Irrigation Co., and the Spanish Fork South-east Irrigation Co., to be taken thro their common canal known as the Mill Race, shall have, Eleven-Twenty-fourths (11/24) thereof, and the Defendant, the Lake Shore Irrigation Co., shall have One-Twenty-fourth (1/24) thereof, measured as aforesaid, at the City and Mill Race dam; and that thereafter, so long as the waters of said river continue at or below said fifteen and one half inches in depth, by twenty four feet in width, measured as aforesaid, the said defendant, the Lake Shore Irrigation Co., shall not be entitled to any of the water, of said river, except such as may be called seepage water, arising below said City dam.

That whenever the said water of said river recedes in volume to a quantity not exceeding Fifteen and one-half inches in depth, by Twenty three feet in width, measured as aforesaid, and until the same recedes in volume to a quantity not exceeding Ten inches in depth, by Twenty three feet in width, measured as aforesaid, the Defendant, the Spanish Fork East Bench and Manufacturing Co. shall have Two-Twenty-thirds thereof, the Plaintiff, the Salom Irrigation and Canal Co. shall have Four-Twenty-thirds thereof, the Plaintiff The Spanish Fork South Irrigation Co. shall have Nine-Twenty-thirds (9/23) thereof, the Plaintiffs, Spanish Fork City, the Spanish Fork West Field Irrigation Co., and the Spanish Fork South-east Irrigation Co. to be taken thro their common canal, known as the Mill Race, Eleven-Twenty-thirds (11/23) thereof.

That whenever the water of said river recedes in volume to a quantity not exceeding Ten (10) inches in Depth, by Twenty-three (23) feet in width, the Defendant, The East Bench Irrigation and Manufacturing Co. shall have a quantity of water not exceeding Six (6) inches in depth by Two (2) feet in width, measured as aforesaid, and the remainder of the waters of said river shall be distributed as follows: The Plaintiff, the Salom Irrigation and Canal Co. shall have Four-Twenty firsts (4/21) thereof, the Plaintiff, the Spanish Fork South Irrigation Co., shall have Six Twenty-firsts (6/21) thereof; the Plaintiffs, Spanish Fork City, the Spanish Fork West Field Irrigation Co., and Spanish Fork South east Irrigation Co.

and Spanish Fork Southeast Irrigation Co., to be taken thro their common Canal, known as the Mill Race, shall have Eleven Twenty-firsts ( $\frac{11}{21}$ ) thereof; and this last measurement shall continue in relative proportions as the water recedes, so long as the quantity in said river does not exceed ten (10) inches in depth, by Twenty-three (23) feet in width, measured as aforesaid.

It is further ordered, adjudged, and decreed, that notwithstanding any of the provisions of this decree, none of the parties hereto shall divert water from the said Spanish Fork River at any time, except if be needed for, and actually used, for beneficial and useful purposes, and none of the parties hereto, that take their water from said river below the mouth of Spanish Fork Canyon, as hereinbefore designated, shall divert from said stream more water than will fill their ditches as at present constructed, and this provision shall in no wise interfere with the right of any of the parties to clean out or improve their ditched at their present size, or to change the course or place of use, without increasing their size.

It is further ordered, adjudged, and decreed, that each of the parties hereto diverting water from said river below the mouth of Spanish Fork Canyon, shall, or at or near the point where it respectively divert said water, maintain good measuring gates, so as to accurately measure by Weir Measurement, the amount of water diverted by said canal respectively.

That for the purpose of carrying into effect the provisions of this decree, and in order to distribute the water of said river, and its tributaries to the parties severally entitled thereto, pursuant to the terms of this decree, the watermasters of the Spanish Fork South Irrigation Co., the Salem Irrigation and Canal Co., Spanish Fork East Bench Irrigation and Manufacturing Co., the Lake Shore Irrigation Co., the watermaster of the Mill Race, and the Weir Water Master selected by the parties hereto taking water from said river above the mouth of Spanish Fork canyon, shall constitute a commission, and it shall be the duty of said commission to distribute and divide the waters of said river and its tributaries to the parties entitled thereto, pursuant to the terms of this Decree. When any party hereto may feel aggrieved by any division or distribution made by said commission, it shall be the duty of said commission to select some disinterested, suitable, and competent person to make proper measurements, divisions and distributions according to, to the terms of this decree, and if said commission is unable to agree on any such person, then such person so aggrieved may call upon the County Surveyor of Utah County to make such measurements, division and distribution, and his determination shall be final; and if upon such determination being made, it shall be found that such complaint of the aggrieved party is groundless, whatever costs may be incurred in making in making such measurement, division, and distribution shall be paid by such party demanding the same, but if it is found to be right, or made in good faith, then the costs so incurred shall be born in six equal parts, one part by the parties who take water above the mouth of Spanish Fork Canyon, and the balance by the parties representing the five different ditches below the mouth of of the canyon; but in case said dispute has no relation to the use of the water up the canyon, then it is to be paid <sup>in equal parts</sup> by the parties represented by the five different ditches below the mouth of the canyon, one-fifth to each of said ditches.

That the parties hereto diverting water from said Spanish Fork ~~river~~ river or its tributaries above the mouth of Spanish Fork canyon, in order that said commission may properly determine the quantity of water to which each is entitled, and which each may receive, shall devise and put in such dams and headgates, at their expense, as may enable such measurements to be accurately made.

It is further ordered, adjudged, and decreed, that the defendants ~~Jesse Barker~~, sued as Mrs. J. Daniels, the Utah Live Stock Co., a corporation, Mrs. D. I. Charles, and Mr. Joseph Daniels, not having answered this cause, and their default having been duly entered herein, have no rights whatever to the waters of Spanish Fork River, and are forever debarred and prohibited from taking or appropriating any of the waters thereof.

It is further ordered, adjudged, and decreed, that the rights awarded by this decree to any of the parties to this action, and their title respectively thereto, is hereby quieted and confirmed to them respectively.

It is further ordered, adjudged, and decreed, that none of the parties hereto have any further, other or greater rights in the waters of Spanish Fork River, or its tributaries, than those herein awarded to them, and that each and every party thereto, their agents, servants and attorneys, are prohibited and permanently enjoined from diverting from said river any portion thereof in excess of the amount herein awarded to them respectively; and that the defendants hereinbefore named, whose default has been entered herein, are each and all, their agents, servants, and attorneys prohibited and enjoined from diverting any of the water from said river.

It is further ordered, adjudged, and decreed, that neither of the parties to this action shall tax or recover any attorneys fees against any other party or parties hereto; that the costs of the Court including the Stenographer's fees, officers' fees for serving writs, shall be borne by the parties hereto as follows: one sixth thereof shall be paid by the defendants who take and divert water awarded hereto to them, above Spanish Fork canyon; one sixth thereof by the Spanish Fork East bench Irrigation and manufacturing Co.; one sixth thereof by the Salem Irrigation and canal Co.; one sixth thereof by the Spanish Fork South Irrigation Co.; one sixth thereof by the Spanish Fork City, the Spanish Fork East field Irrigation Co., and Spanish Fork South-east Irrigation Co., and one sixth by the defendant, the Lake Shore Irrigation Co., the amount of said costs in the aggregate being \$105.50; and any party who has paid more than the proportion hereby assessed against them, shall have credit first for the amount that they have paid, and if it exceeds that amount, then they shall have judgment in accordance herewith for any excess.

Dated April 20th. 1899.

Public Party,

Judge.