

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

PROVO RESERVOIR COMPANY,
a corporation,

Plaintiff,

-vs-

PROVO CITY, et. al.,

Defendants. :

:
#2888
:SEPARATE ANSWER OF JOS-
EPH HATCH, ABRAM C. HATCH,
MINNESOTA A. DODD, JANE
:H. TURNER AND LACEY H.
FARNSWORTH, SUBSTITUTED
DEFENDANTS

Come now Joseph Hatch, Abram C. Hatch, Minnesota A. Dodds,
Jane H. Turner and Lacey H. Farnsworth, substituted defendants
herein, and answering the complaint of plaintiff, admit, deny
and allege as follows:-

1. These defendants admit all of the allegations of said
complaint set forth in paragraph 1 to 27 inclusive.

2. These defendants admit the allegations set forth
in paragraphs 31-38 and 39 of plaintiff's complaint.

3. Answering paragraphs 28, 29, 30, 32 and 33 of plaintiff's
complaint these defendants allege that they have no knowledge
or information sufficient to form a belief as to the matters
alleged in said paragraphs and therefore deny the allegations
set forth in paragraphs 28, 29, 30, 32 and 33.

4. These defendants admit that the plaintiff claims the right as set forth in paragraph 34 of plaintiff's complaint, but alleges that these defendants have no knowledge or information sufficient to form a belief as to the extent of plaintiff's rights as alleged in said paragraph 34.

5. Answering paragraph 35 these defendants deny for themselves alone the allegations thereof, except that these defendants claim and allege that the plaintiff's rights to the use of the waters flowing in the Provo river and its tributaries at and above the points of diversion by the defendants, are all subject to prior rights of these defendants, as hereinafter in their counterclaim set forth.

6. Answering paragraph 36 of plaintiff's complaint, these defendants deny that they or their predecessors in interest have used any water or waters from the Provo river or its tributaries in a wasteful manner and deny that they have diverted any water whatsoever in excess of the amount actually necessary to properly and beneficially operate the flour mill owned by them, and these defendants deny that they have in any manner interfered with, prevented or hindered the plaintiff or any of its water users from receiving and using any water to which the plaintiff or any of its water users or assigns are entitled, and these defendants allege that they have no knowledge or information sufficient to form a belief as to whether other defendants in this action use water in a wasteful manner or as to whether other defendants interfere with, prevent and hinder plaintiff and its water users from receiving and using water to which it is entitled.

7. These defendants admit that the decrees of the Fourth Judicial District Court of the State of Utah, were entered as alleged in paragraph 37 of plaintiff's complaint and allege that these defendants have no knowledge or information sufficient to form a belief as to the other allegations contained in said paragraph 37.

8. These defendants deny each and every allegation of said complaint not hereinbefore specifically admitted or denied.

FURTHER ANSWERING said complaint, and by way of counter-claim these defendants allege:-

1. That Abram Hatch died at Heber City, Wasatch County, State of Utah on the 2nd day of December, 1911, and that thereafter Ruth Hatch and Abram C. Hatch were duly and regularly appointed as executors of the last will and estate of said Abram Hatch, deceased, and that during their administration of said estate this action was commenced and said executors were made parties defendant; that on or about the 9th day of November, 1915, while this action was still pending, there was duly and regularly entered a decree of distribution in the Matter of the Estate of Abram Hatch, deceased, in the Fourth District Court of the State of Utah, sitting in and for Wasatch County, distributing all of the property of said estate, and that said Ruth Hatch and Abram C. Hatch were discharged as executors; that by virtue of said decree the defendants, Joseph Hatch, Abram C. Hatch, Minnesota A. Dodd, Jane H. Turner and Lacey H. Farnsworth, became the owners of, and now are the owners of a certain flour mill set forth and described in paragraph 9 of the counter-claim filed by Ruth Hatch and Abram C. Hatch, executors.

2. That prior to A.D. 1879 the said Abram Hatch, deceased, acquired by appropriation and use the right to divert and use approximately forty second feet of water of the said Provo river, measured at the out-flow of the water wheel, for the purpose of producing water power to run and operate a flour mill situated in the northwest quarter of section 4, in Township 4 south, Range 5 east, Salt Lake Meridian, and that sufficient of the water of said river to operate said mill was, prior to the year A.D. 1879, and during each and every year since, has been diverted from said Provo river and conveyed to said grist mill through the canal owned and operated by the Wasatch Irrigation Company, a corporation, one of the defendants herein, and the defendants, Joseph Hatch, Abram C. Hatch, Minnesota A. Dodd\$, Jane H. Turner and Lacey H. Farnsworth, as successors in interest of Abram Hatch, deceased, and that said water, after flowing through the water wheel at said flour mill was at all times and now is diverted back into one of the distributing canals of said Wasatch Irrigation Company and by said company distributed to its stockholders and other persons entitled to the use of said waters for irrigation purposes, and that said use of said water in producing power to run the said flour mill does not diminish the quantity thereof, nor divert any portion thereof so that it can not be used for irrigation purposes, and that approximately forty second feet of water have been used for the purpose of running said flour mill during all of the time each and every year since the said appropriation and diversion of said water prior to A.D. 1879, when it was possible to run water through said canal to said flour mill, that by reason of evaporation and seepage from the point of diversion with said Wasatch Canal to the grist mill above referred to, it requires about seven additional foot of water to be turned into said canal ^{at its intake} in order to have the full

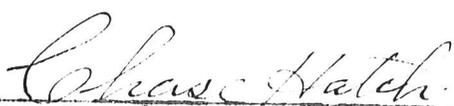
amount of forty second feet reach said grist mill and, as above stated, it requires forty second feet to operate said mill.

WHEREFORE, defendants pray:-

1. That these defendants be decreed the right to divert forty second feet of the waters of Provo river through the canal of the Wasatch Irrigation Company, to be used for the purpose of producing power to run the flour mill mentioned in this counter-claim, and after flowing through said mill to be again diverted into the lower distributing canal of the said Wasatch Irrigation Company to be distributed by said irrigation company to its stockholders and other parties entitled to use the said waters for irrigation purposes.

2. That it be decreed that any water commissioner who may be appointed by the court to distribute the waters of Provo river to the parties entitled thereto, shall be directed to distribute to these defendants larger quantities of water at regular intervals, the quantity to be aproportionate to the rights of these defendants to the use of the waters of said river, so that their mill may be properly and economically operated.

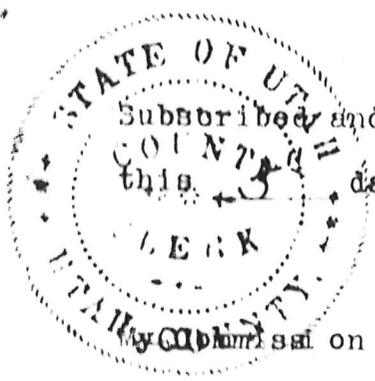
3. These defendants pray for such other and further relief as may be just and equitable, and for their costs herein expended.


Attorneys for said substituted
defendants.

State of Utah, :
County of Wasatch: ^{SS}

Al Hatch being first duly sworn, deposes and says, that he is one of the above named substituted defendants in the above entitled action; that he has read the foregoing answer and counterclaim, and knows the contents thereof, and that the same is to his personal knowledge true, except as to the matters and things therein stated on information and belief, and as to those matters he believes it to be true.

Al Hatch



Subscribed and sworn to before me
this 5th day of June, 1916.

E. Palguyman
Notary Public.
By W. H. [unclear] Clerk

One service of above admitted
this 5th day of June A.D. 1916.

Justice
one of the atty for
ref.