J-11

In the District Court of the Fourth Judicial District,
County of Utah, State of Utah.

Provo Reservoir Company,
a corporation,
Plaintiff,

vs

Provo City et,al
Defendant,

Comes now Henry V. Smith and W. J. Smith of the defendants in the above entitled action and answering for themselves and not the other defendants herein,admits,denies, and alleges as follows:

1. This defendant has no information or belief sufficient to enable him to otherwise answer and upon that ground denies paragraphs 28,29,29a,29b,29c,29c,30,31,32,33,35,36,38,39,of said complaint.

2. This defendant denies generally each and every allegation in the plaintiff's complaint not herein specifically admitted.

3. These defendants admit paragraphs two to twenty-eight inclusive, and admits paragraphs 34 and 37 of said complaint.

Further answering said complaint,as a defense thereto and as grounds for affirmative relief these defendants alleges as follows;

1. That these defendants are the owners in fee of five and one half acres of land in Utah county, State of Utah, and adjacent to Provo River,which land was and still is barren and unproductive of agricultural crops without artificial irrigation,but when irrigated said land produces abundantly all kinds of agricultural crops.

2. That more than forty years ago these defendants,their grantors and predecessors in interest,for the purpose of reclaiming said land from its then barren condition and rendering it productive and valuable,by means of dams and ditches diverted and appropriated a large quantity of the theretofore unappropriated waters of the said Provo River and its tributaries to and upon said lands for irrigation and domestic uses and purposes,and thereby caused said lands to produce vast quantities of agricultural crops and to become of great value; that at the time said water was diverted as aforesaid from said river by these defendants and their predecessor the same had not been appropriated by any other person or persons whomsoever.

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3. That these defendants their grantors and predecessors in interest have continued from year to year during the irrigation season of each and every year from the time of the first diversion of said water to use and apply the same for domestic and irrigation purposes upon said land and that the irrigation season commences about the 15th day of March and ends about the first day of November of each and every year.

4. That the quantity of water of said river and its tributaries to which these defendants are entitled and which has been and is necessarily and benificially used by these defendants their grantors and predecessors in interest upon said land, since the first appropriation thereof as above set forth is a volume of water flowing five and seven tenths cubic feet per second for a period of ten hours every eight days during the irrigation season.

5. That these defendants, their grantors and predecessors in interest have for more than forty years last past used all of of said water so appropriated as aforesaid, openly, peaceably, notoriously, uninterruptedly and adversely as against all the world and particularly the plaintiff herein, and said use has been and is reasonably necessary for the purposes herein set forth.

6. That the plaintiff claims and asserts some right to the use of said water, but said claims is without foundation of right and the plaintiff has no right to the use of the same.

Therefore this defendant prays judgment:

That this defendant be adjudged and decreed to be the owner and entitled to the use of a volume and quantity of the waters of said river flowing five and seven tenths cubic feet per second in their ditches for a period of ten hours every eight days during the irrigation season and that the plaintiff and all other persons to this action be for ever restrained and enjoined from asserting any claim whatsoever of, in or to said water and from diverting or obstructing the same.

These defendants prays for their costs herein and for general relief.

J. H. McDonald
Attorney for defendant.

State of Utah
County of Utah

Henry V. Smith, being duly sworn, on oath deposes and says that he is one of the defendants above named, that he has read the foregoing answer and knows the contents thereof, that the same is true of his own knowledge, except as to matters therein set forth upon information and belief and as to those matters hex verily believes the same to be true.

Henry V. Smith Jr.

Subscribed and sworn to before me this day of July 1916.

J. H. McDonald

Notary Public

J. H. McDONALD NOTARY PUBLIC COMMISSION EXPIRES April 27, 1917 UTAH COUNTY, UTAH

2885

Provo Reservoir Co.

vs

Provo City et al

~~Henry V.~~

Answer of Henry V. and W. J. Smith

IN DIST. COURT
UTAH CO., UTAH,
FILED
AUG 12 1916
E. T. Palfrey Mary Clerk.
M R Shaw Deputy.

Received a copy this 12 day of August, 1916,
Hatch, Evans, Evans & Boyle
Atty. for the Pltff.