

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF UTAH, IN AND FOR UTAH COUNTY.  
CASE NO. 2888.

P- 3

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Provo Reservoir Company, *	ANSWER
a corporation, *	
Plaintiff *	Counterclaim and Cross Complaint
	of
VS	
Provo City, et al, *	E. J. Ward & Sons Company,
Defendants*	a corporation.
*****	

Now comes the said defendant E. J. Ward & Sons Company, a corporation, and by stipulation of counsel and by leave of court, first had and obtained, answers the complaint of the plaintiff herein, and admits, denies and alleges as follows:

1. This defendant admits the allegations in complaint of plaintiff contained in paragraphs Nos. 1 to 27, both inclusive, and paragraph No. 37.

2. That this defendant has no knowledge, information or belief sufficient to enable it to answer any or either of the allegations in paragraphs 28, 29, 29 (A), 29 (B), 29 (C), 29 (D), 29 (E), 30, 31, 32, 33, 38 and 39 of plaintiff's complaint, and therefore it denies each and every allegation of the same.

Further answering the complaint of the plaintiff and by way of counterclaim <sup>against the plaintiff and cross-complaint</sup> against each and all of the defendants, this defendant alleges and shows to the court.

1. This defendant adopts and alleges as a part of its counterclaim against the plaintiff and as a cross complaint as to each and all of the other defendants herein, each and every allegation contained within paragraphs Nos. 1 to 26 both inclusive, of plaintiff's complaint herein, the same as if here set forth in full.

2. That this defendant is a corporation duly organized, created and existing under the laws of the State of Utah, and by its charter and by full compliance with the laws of the State

of Utah, is authorized and empowered among other things, to own and operate planing mills; to make, manufacture and work wood into sashes, doors, frames, cornices, columns, balusters and all kinds of planing and finished lumber for others and to sell the same; to acquire and dispose of all and every kind of property and to manufacture and sell all kinds of building material and supplies.

3. That in pursuance of its said powers and authority, it has acquired and is now the owner of Lot 4, the  $W\frac{1}{2}$  of Lot 3 in Block 24, Plat A, Provo City Survey of Building Lots in Provo City, Utah, and has constructed and installed and now maintains thereon a planing mill, fully equipped, at a cost of approximately Fifteen Thousand (\$15,000.00) Dollars, and is now engaged in the operation of said planing mill in the manufacture of building materials, finished lumber and general builder's supplies of various kinds and descriptions and in selling and disposing of the same to contractors, builders and the general public.

4. That in or about the year 1850 the predecessors in interest of this defendant, at great expense constructed a canal from Provo River near the mouth of Provo Canyon in said Utah County, to its said real property and then appropriated of the unappropriated waters of Provo River, seventy-five second feet, by diverting the same into said canal, and its predecessors in interest and this defendant have ever since used said water on its said real property in Provo City, for the purpose of developing hydraulic power for the manufacturing of finished lumber and general building materials and supplies, and that the said use of said water has been and is now a necessary and beneficial use.

5. That in making said appropriation of the water of said river as aforesaid, this defendant and its predecessors in interest fully complied with all the requirements of the

laws of the State of Utah, relative to the appropriation of water and ever since said appropriation, have continuously used the same for the beneficial purposes aforesaid economically and without waste.

6. That the right to distribute, manage and control said water and to supervise said canal used as aforesaid for diverting the water of said river, has been for many years and is now with Provo City, a municipal corporation, one of the defendants herein, subject to the right, however, of this defendant, to the use of said water for the beneficial purposes aforesaid.

7. That the plaintiff and each of the other defendants herein as this defendant is informed and believes, and therefore alleges the fact to be assert and set up some claim or interest adverse to the ownership, right, title and interest of this defendant to the use of the said water of said river in canals aforesaid and as claimed by this defendant herein, but this defendant has not sufficient knowledge or information to enable it to set forth herein the character or nature of said claims or interest so asserted and set up or any of them.

8. This defendant further alleges that the several claims or interest asserted and set up by the plaintiff and each of the other defendants, are wrongful, without right and unfounded in fact or law, and are a cloud upon this defendant's title and right to the use, possession, ownership and enjoyment to the water of said Provo River as herein set forth.

Wherefore, this defendant prays judgment that the plaintiff and each of the other defendants herein, may be required to set forth any and every adverse claim, interest or demand by them and each of them in and to the water of said Provo River and the right to the use thereof so claimed by this defendant to the fact that their several adverse claims, pretensions and demands may be adjudicated and de-

clared null and void as against this defendant, and that the title, ownership and interest thereto of this defendant in and to the water of said river, so claimed by it as herein set forth, may be quieted and confirmed as against the plaintiff and each and all of the other defendants herein, and that the interest, title and ownership of this defendant thereto as herein set forth may be adjudicated and decreed to be good and valid.

This defendant prays for such other and further relief in the premises as to the court may seem just and equitable and for its costs in this behalf expended.

  
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Atty. for defendant, H. J. Ward  
& Sons Company, a corporation.



2880

counterclaim

E. J. Ward + Sons.

IN DIST. COURT  
UTAH CO., UTAH.

\* FILED \*

OCT 26 1914

Ar. Robinson Clerk.

Ans. Roulance Deputy.