

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

P. 8

* * * * *	*	
Provo Reservoir Company,	*	ANSWER
a corporation,	*	
	*	Counterclaim and Cross Complaint
Plaintiff	*	v of v
VS	*	Upton Hoover, W. E. Hoover, Webster
	*	Hoover and Frank Hoover, partners,
Provo City, et al.	*	doing business under the firm name
Defendants.	*	of Excelsior Roller Mills.
* * * * *	*	

Now comes the said defendants Upton Hoover, W. E. Hoover, Webster Hoover and Frank Hoover, partners, doing business under the firm name of Excelsior Roller Mills, and by stipulation of counsel and by leave of court, first had and obtained, answers the complaint of the plaintiff herein, and admit, deny and allege as follows:

1. These defendants admit the allegations in complaint of plaintiff contained in paragraphs Nos. 1 to 27, both inclusive, and paragraph No. 37.

2. That these defendants have no knowledge, information or belief sufficient to enable them to answer any or either of the allegations in paragraph 28, 29, 29 (A), 29 (B), 29 (C), 29 (D), 29 (E), 30, 31, 32, 33³⁸, and 39 of plaintiff's complaint, and therefore they deny each and every allegation of the same.

Further answering the complaint of the plaintiff and by way of counterclaim *against the plaintiff and cross-complaint* against each and all of the defendants, these defendants allege and show to the court.

1. These defendants adopt and allege as a part of their 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 these defendants are a co-partnership doing a milling business at Provo City, Utah, under the firm name and style of Excelsior Roller Mills.

3. That these defendants, as co-partners, as aforesaid, have acquired and are now the owners of the following described real-estate, situate, lying and being in Provo City, Utah County, State of Utah, to-wit: Commencing 11.82 chains west of the S.E. corner of Lot One (1) in Block 41, Provo City Survey of Farm Lands, being in Section One (1), Tp. 7 south, Range 2 East, Salt Lake Meridian, thence west 4.85 chains, thence north 3.02 chains, thence east 4.87 chains, thence south 2.98 chains to the place of beginning, and that there is now situated on said real property a flouring mill, fully equipped, constructed and installed by these defendants and their predecessors in interest, at a cost of approximately Twenty Thousand (\$20,000.00) Dollars, and that these defendants are now engaged in the operation of said flouring mills in the manufacture of flour and other products of wheat and other cereals and in selling and disposing of the same to wholesale and retail merchants and to the general public.

4. That in or about the year 1850 the predecessors in interest of these defendants, at great expense, constructed a canal from Provo River near the mouth of Provo Canyon in Utah County, State of Utah, to its said real property in Provo City, Utah and then appropriated of the unappropriated waters of Provo River, seventy five second feet thereof by diverting the same into said canal, and ever since their said predecessors in interest and these defendants have used said water on said real property for the purpose of developing hydraulic power for its said mill in the manufacturing of flouring and other products from wheat and other cereals, and that the use of said water is a necessary and beneficial use.

5. That in making said appropriation of the water of said river as aforesaid, these defendants and their 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 these defendants, to the use of said water for the beneficial purposes aforesaid.

7. That the plaintiff and each of the other defendants herein, as these defendants are informed and believe, and therefore allege the fact to be assert and set up some claim or interest adverse to the ownership, right, title and interest of these defendants to the use of the said water of said river in canals aforesaid and as claimed by these defendants herein, but these defendants have 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. These defendants further allege 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 these defendant's title and right to the use, possession, ownership and enjoyment to the water of said Provo River as herein set forth.

Wherefore, these defendants pray 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 these defendants to the fact that their several adverse claims, pretensions and demands may be adjudicated and declared null and void as against these defendants, and that the title, ownership and interest thereto of these defendants in and to the water of said river, so claimed by them 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 these defendants thereto as herein set forth may be adjudicated and decreed to be good and valid.

These defendants pray 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.



Atty. for defendants, Upton Hoover,
W. E. Hoover, Webster Hoover and
Frank Hoover, partners, doing business
under the firm name of Excelsior
Roller Mills.

State of Utah :
 : SS.
County of Utah :

Walter Hoover, being first duly sworn on oath

says: I am one of the members of the co-partnership doing
business under the firm name and style of Excelsior Roller Mills,
one of the defendants herein; that I have read the above and
foregoing answer, counterclaim and cross complaint and know the
contents thereof; that the same are true of my own knowledge,
except as to the matters therein stated on information and
belief and as to those matters, I believe them to be true.

Walter Hoover

~~October~~ Subscribed and sworn to before me this 24 day of
~~August~~, A. D. 1914.

Ed Jensen
Notary Public



My commission expires April 13, 1915.

Due service admitted this 23rd day
of October 1914.

Jacob Brown,
one of the attorneys
Plaintiff.

2888

counter claim
Excelsior Roller
mills

IN DIST. COURT
UTAH CO., UTAH.

* FILED *

OCT 26 1914

A. Robinson Clerk.

Ch. R. Lawrence Deputy.