

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

K-2

CASE # 3888.

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Provo Reservoir Co., a Corporation.  
Plaintiff.

vs

Provo City et al.  
Defendants.

\*  
\* ANSWER  
\* COUNTER CLAIM AND Cross Complaint  
\* of  
\* Provo Pressed Brick Company,  
\* Corporation.  
\*

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The defendant the Provo Pressed Brick Co., a Corporation now comes, and by consent of counsel for the plaintiff, and by leave of Court first had and obtained, for itself and not for any of the other defendants, answers the complaint of the plaintiff herein, and admits, denies, and alleges as follows.

I.

This defendant admits the allegations of paragraphs Nos. 1 to 27 both inclusive and paragraph 37 of the said complaint.

II.

Not having any knowledge, information, or belief sufficient to enable it to answer any or either of the allegations in paragraphs No. 28, 29, 29(a); 29 (b); 29 (c); 29 (d); 29 (e); 30; 31; 32; 33; 34; 35; 36; 38; and 39 of the said complaint, on that ground denies each and every allegation of the same.

III.

Further answering the said complaint and by way of counterclaim against the plaintiff and cross complaint against each and all of the other defendants in said action, this defendant alleges as follows:

1st. 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 36 both inclusive, of plaintiff's complaint herein, the same as if here set forth in full.

2nd. That this defendant is a corporation duly organized and existing under and by virtue of the laws of the State of Utah, with its principal place of business at Provo City, Utah, and by its charter it is authorized and empowered among other things, to own, operate, and control real estate, water, and water rights; to manufacture and dispose of

brick, etc. and to use ~~such~~ water and water rights as it may own or acquire, for power, irrigation, and other purposes.

3rd. That in pursuance of its said powers and authority it is now the owner of the following described real property, in Utah County, Utah, to-wit: Approximately 107 acres situate in the South  $\frac{1}{2}$  of Section 25 and the North  $\frac{1}{2}$  of section 36 in Townsh 6 South of Range 2 East of S.L.M. together with all water rights thereunto belonging.

4th. that this defendant has constructed and now maintains on said real property, or a portion thereof, a complete ~~pressed~~ <sup>tilled</sup> brick plant, at a cost of approximately \$60,000<sup>00</sup>, and is now engaged in the manufacture of pressed brick, <sup>Common Brick</sup> drain tiling etc. and disposing of the same to the general public, to individuals, contractors, builders and other consumers.

5th That a large portion of the said 107 acres, to-wit, about 100 acres are used for farming and agriculture purposes, and by the use of artificial irrigation, the said lands produce large crops of various kinds <sup>of timber and</sup> of hay, grain, and other farm products; but without artificial irrigation the said land would be barren and unproductive.

6th. That this defendant on the 28th day of February 1907 made application to appropriate One Hundred ~~second~~ cubic feet of water per second from the waters of Provo River, to be used ~~as~~ from January 1st to December 31st inclusive, of each year, to generate power for the purpose of electric lighting and propelling machinery at its said Plant, and for said purpose, two 23 in. wheels of the Sampson turbine type, operating under heads of from 15 to 16 feet of water, are used to generate 136.6 horse power; said application is known as Application No.1221, and the Certificate of Appropriation of Water, issued by the State Engineer of the State of Utah, is Certificate No.109 B, Priority No.166 B. which said certificate is recorded in Book 137 at page 145 of the records of Water in the Office of the County Recorder of Utah County, Utah.

7th. That all of the said water so appropriated is necessary to develop the required amount of power for this defendant to operate its said plant, and after the said water has been so diverted and used

*and elsewhere,*

a part of it which is required to serve the Factory Race in Provo, Utah, is returned to said Factory Race, and that part of it which is required to serve the Provo City Race and prior rights thereunder, is returned to the said Provo City Race, and the remainder is returned to the said Provo River at a point which bears S. 45 deg. 49' W. 3052.2 feet distant from the North East corner of Section 36 Tp. 6 South of Range 2 East of S.L.M.

8th. That this defendant, its grantors, and predecessors in interest all have used of the said waters of Provo River sufficient to properly irrigate 100 acres of land, for more than twenty five years prior to the commencement of this action, that the said waters have been diverted from what is know as City Creek, <sup>and Provo River, said creek.</sup> being the creek through which Provo City diverts it water from the said River, and have been used to irrigate the lands above described and mentioned, and to properly irrigate the said 100 acres of land, at least 3 second feet of water is necessary, and that amount has been appropriated and used by this defendant, its grantors, and predecessors in interest, on the said lands for more than twenty five years.

9th . That the use of the said water by this defendant as above stated both for power and irrigation purposes, is a necessary and beneficial use, and does not in any manner interfere with the old and long established rights of Provo City, to have the amount of water to which it is entitled flow into the said Factory Race and the said Provo City Race.

10th. 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 waters of the said river as hereinbefore set out, but this defendant has not sufficient knowledge or information to enable it to set forth the character or nature of said claims or interest so asserted and set up or any of them.

11th. This defendant further alleges that the several claims or interest asserted and set up by the said plaintiff and each of the other defendants in so far as such claims or interest set up and asserted would tend in any manner to interfere with or diminish the flow of the said water to the said plant of this defendant as herein set out and claimed, or to the farming

land above described and owned by this defendant, are wrongful, without right and unfounded in fact or in law, and are a cloud upon this defendant's title and right to the use, possession, ownership and enjoyment of the waters of said Provo River as herein set forth and claimed by this defendant.

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 made by them and each of them in and to the waters of said Provo River and the right to the use thereof so claimed by this defendant, to the end that their several adverse claims, pretensions and demands may be adjudicated, and declared null and void as against this defendant, and that the title, ownership, and interest in and to the said waters as claimed by this defendant and herein set out, 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 in and to the said waters as herein set forth may be adjudicated and declared 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 herein expended.

*Harvey Cluff*  
Attorney for the defendant, Provo  
Pressed Brick Co.,

State of Utah,  
County of Utah.

SS.

*Thomas Boardman* being first duly

sworn on his oath deposes and says that he is an officer of the Provo Pressed Brick Co. a Corporation, to-wit: President: That he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

*Thomas Boardman*

Subscribed and sworn to before me this 14 day of April 1915.

Notary Public's Jan. 6th 1918.



*Harvey Cluff*  
Notary Public.

H. Claff

Due and legal service of a copy of the foregoing answer of the

Provo Pressed Brick Co., is hereby acknowledged this 15th day of April  
1915.

*A. C. Hatch, A. J. Evans*  
*Jacob Evans, A. R. Book*

In behalf of the plaintiff and all  
the Attorneys for plaintiff in said  
action.

2888

Power Reservoir Co

vs

Power City et al

Answer & Counter

Claim of

Power Pressed Brick

Co; a Corporation

IN DIST. COURT

UTAH CO., UTAH.

\* FILED \*

APR 17 1915

E. J. Polhemus Clerk.

E. A. Gee Deputy.