

R-3

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

PROVO RESERVOIR COMPANY,
a corporation,

Plaintiff,

-vs-

PROVO CITY, et al,

Defendants.

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Civil

2888.

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Now comes Wilford D. Wright, one of the defendants in the above entitled action, and answering plaintiff's complaint filed herein, admits, alleges and denies, as follow, to-wit:-

1. Defendant admits the allegations contained in the second and sixth paragraphs of said complaint.

2. Defendant denies that he has any knowledge, or information thereon sufficient to form a belief as to the allegations contained in paragraphs: 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 26, 29, 29a, 29b, 29c, 29d, 30, 31, and 34, and therefore denies the same.

3. Defendant admits that he claims an interest in and a right to the use of the water of Provo River as set forth and stated in a further pleading on file herein. Defendant denies that the spring hereafter referred to is a part of or tributary to Provo River; admits that Provo River is a natural stream of water having its principal sources in Wasatch and Summit Counties and that said stream is increased by tributaries having their sources in Utah County, and that if the water were not diverted by dams and canals the same would reach Utah Lake.

4. Defendant admits the allegations contained in the 25th and 26th paragraphs of said complaint.

5. Answering the 33rd paragraph of said complaint, defendant admits that plaintiff has in part constructed several reservoirs at the head of Provo River.

6. Defendant admits that he ~~denies~~ plaintiff's right to store water unless there should be any surplus, and in this connection, defendant avers that if there is any surplus plaintiff would have the right, under proper rules and regulations, to comingle the same with the waters of Provo River, and to divert the same upon any lands that it might own, but defendant avers that the plaintiff would have no right to comingle waters or divert them to the damage or injury of these defendants, or other prior appropriators of the waters of said Provo River, and its tributaries.

7. Defendant admits that a decree was entered in the Fourth Judicial District Court in and for Wasatch County, State of Utah, in the suit of Wasatch Irrigation Company, et al, vs. Edward Fulton, et al., but the exact terms and nature of said decree to this defendant ~~are~~ is unknown. Defendant admits that in September, 1905, a decree was entered in the suit of Provo City et al., vs. Telluride Power Transmission Company et al, but defendant avers that he has no knowledge as to the contents of said decree, and leaves plaintiff to make such proof as it may desire.

8. Defendant denies each and every allegation of said complaint except such as are herein specifically admitted.

9. Further answering said complaint and as a defense thereto and as ground for affirmative relief, and as counter-claim against plaintiff, this defendant affirmatively alleges that he is the owner of a piece or parcel of land situate in Section 33, Township 4 South, Range 4 East, Wasatch County, Utah, located on the east side of Provo River, consisting of approximately 25 acres of land; that near said land and upon a piece or parcel of land owned by one J. W. Allen, situate in the same section, a spring or springs rise, known as McAfee Springs, that said springs flow in a general southwesterly direction to and upon said land of this defendant. That more than fifty years ago, defendant's grantors and predecessors in interest

acquired the said land now owned by said defendant and appropriated and ^{of} used/the waters of said spring 5/3ths thereof; that said defendant J. W. Allen, used and owned the parcel of land upon which said springs arise and more than fifty years ago ~~their~~ the predecessors in interest of said Allen appropriated and used 1/6th of the water of said stream, and used the same for culinary, domestic, stock and irrigation purposes on lands adjoining said springs. That at a point about 20 rods below the head or source of said springs, more than fifty years, the grantors and predecessors of said Allen and this defendant placed a ¹/₂ ft dam in the channel of said spring and by means of ditches leading from said dam, appropriated all of the waters rising in said springs and above said dam, for domestic culinary and stock purposes and also for irrigation purposes, and during each and every year since that time, ^{said} grantors and predecessors of said Allen and this defendant have, ^{used} and said Allen and this defendant do, use said waters for said purposes. That the character of said land is such as to require a large quantity of water during the irrigation season for the purpose of maturing crops thereon. That said land consists of river bottom and is rocky and porous and by reason thereof requires frequent irrigation for the purpose of producing and yielding hay, grain and other agricultural crops for which said land is adapted.

10. That the water of said springs were unappropriated when the grantors and predecessors of said Allen and this defendant more than fifty years ago constructed said dam at the point aforesaid. That since the construction of said dam, said waters flowing down to said dam have been used during the irrigation season of each and every year and during each and every year by said grantors and predecessors in interest of said defendant and said Allen, and by said Allen and by said defendant, and the use of said water has been necessary and has been for a beneficial purpose.

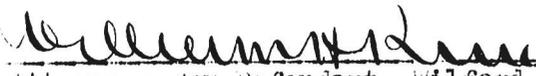
11. Defendant further avers that below said dam, water rises in the channel ~~of said stream~~ and flows into Grovo River. That said waters ^{ing} so find/their way into said channel are such as percolate from adjoining land and are caused in part by the irrigation of the land of this defendant and of said Allen. That as to such waters this defendant makes no claim.

12. Defendant further avers that ~~most of~~ the water rising in said McAfee springs above said tight dam, is substantially uniform in flow and it has been diverted and used by said defendant and said Allen in the following manner: that is to say, that said Allen used all of said stream for 48 hours out of twelve days and nights, and said defendant uses all of said stream for ten days and nights out of each twelve days and nights, but the said Allen during the period that said waters were used by defendant, used a portion thereof for household and stock watering purposes by means of pumping the same to his house and corrals.

WHEREFORE, the premises considered, defendant prays that said plaintiff be adjudged to have no interest in said springs, and the waters thereof arising above said dam, and that said defendant and said Allen be adjudged and decreed to be the owners of all of said waters of said McAfee springs rising above said tight dam and that they be adjudged to have the right to use the same upon the said lands owned by said Allen and said defendant being approximately 30 acres.

This defendant further prays that an injunction issue enjoining and restraining plaintiff from diverting any of the waters of said spring arising above said dam, or in any manner interfering with the use of the same by said defendant and said Allen, and that the title of said defendant and said Allen be quieted and confirmed in and to the waters of said spring.

Defendant prays for such other and further relief as to this court may seem just, including his costs herein expended.



Attorneys for Defendant, Wilford J. Wright.

Verification Waived.

IN DIST. COURT
DEAN CO., UTAH,

* FILED *

FEB 5 1917

L. E. Erickson Clerk.

B. W. ... Deputy.