

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

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Provo Reservoir Company,
a Corporation,

vs.

Provo City, et al,
and Nels J. Johnson.

Plaintiff,

Defendants.

No. 2883 Civil.

Separate Answer
and
Counterclaim,
of
Nels J. Johnson.

Comes now Nels J. Johnson and, by consent of counsel for plaintiff, and by leave of the Court first had and obtained, files his separate answer and Counter-claim herein, and admits, denies, and alleges as follows:-

1. This defendant admits all of paragraphs 1 to 23 inclusive of the complaint filed herein;

2. This defendant denies that he has any knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraphs 24 to 39 inclusive and denies the same generally for the want of such knowledge, information, and belief.

Defendant alleges by way of, and as and for a Counter-claim in this action :-

1. That this defendant now is, and that for more than twenty years prior to the commencement of this action, this defendant and his predecessors in interest have been the owners of and have operated a roller mill known as " The People's Roller Mill", and have conducted and this defendant is now conducting a general Mill and Elevator business at Midway, Wasatch county, Utah, said Mill and the adjacent mill-dam being situated upon the following described tract of land.

Description of land occupied by Mill and Mill-pond.

Beginning at a point 31.45 chains North of the SE. corner of Section 35, Tp. 3 S., Range 4 East. S.L.M., and running thence N.67 30'W. 1.40 ch.; thence West 3.32 ch.; thence N.3 00'W. 1.22 ch.; thence West 0.63 ch.; thence N.3 00'W. 3.60 ch.; thence N.36 00'W. 3.17 ch.; thence N.71 30'W. 2.03 ch.; thence North 2.60 ch.; thence N.85 00'E. 3.00 ch.; thence N.42 30'E. 2.28 ch.; thence East 0.62 ch.; thence South 13 15'E. 7.00 ch.; thence S.14 15'E. 2.28 ch.; thence East 7.26 ch.; thence South 4.08 ch.; thence West 5.29 ch. to place of beginning. Together with a permanent right of way for a mill-race from the point of diversion in the channel of Provo River to said tract of land, and a permanent right of way for a tail-race from said mill back to the channel of Provo River.

2. That from the first day of January to the 31st day of December of each and every year during said period, except at such short intervals as said mill may have been closed down for repairs, this defendant and his predecessors in interest have diverted from the Provo River, and from certain springs tributary thereto, through ~~the~~ ^{his} canal to the reservoir or "Mill-pond", a sufficient quantity of water to furnish a constant supply of water sufficient to propell the machinery of said mill when running to its full capacity.

3. That defendant's mill, and mill-pond are so constructed that the surplus water flows over a spill-way in a constant stream and mixes with the tail-water from the turbine at a point immediately below the mill and the whole volume of water is directly returned to the main channel of the Provo river through the tail-race provided therefore.

4. That the actual volume of water used by defendant for propelling the machinery of his mill is twelve cubic feet per second, and that the amount diverted from and returned to the provo river is approximately fifteen cubic feet per second. That by diverting a larger quantity of water than the actual capacity of the turbine used, and thereby keeping a constant flow through the said mill dam and a small overflow over the spill-way the loss of water by evaporation is reduced to a minimum, and, and there allways being a sufficient volume of water to fill the penstock of the mill to its full capacity and run defendant's mill without interrupting the flow of the water by empounding the same for any length of time, there is never any interference with the water for irrigation purposes, but the flow of the water in said Provo river is just as constant below ~~the~~ defendant's tailrace as it would be if the water had not been diverted and used for turning defendant's mill.

5. That defendant's use of the water during the time stated as afore said has been peaceable, open, notorious, uninterrupted and continuous, adverse to this plaintiff and to all the world, and under a claim of right.

Wherefore the defendant prays the judgment of this Court;

That he be adjudged, and decreed, to be the owner of the perpetual right to divert of the waters of Provo river, and the springs tributary thereto, through his canal and mill-race, fifteen cubic feet of water per second, and use the same for the purpose of propelling machinery, ■

in the mill he now owns, or in any other building that he or his successors in interest may hereafter erect on the herein described tract of land.

Defendant prays for such further relief as to the Court may seem meet.

Chas. J. Wahlquist

Attorney for defendant Nels J. Johnson.

State of Utah,)
(ss.
County of Wasatch.)

Nels J. Johnson, being first duly sworn, on his oath says: that he is the person named in the foregoing Answer and Counter-claim, and who has asked to be made a defendant in the action entitled Provo Reservoir Company, a corporation vs. Provo City, et al. that he has read the foregoing ~~xxxxxxx~~ answer and counterclaim and knows the contents thereof; that he knows that the affirmative allegations in said counterclaim are true of his own knowledge, and that as to matters alleged on information and belief he verily believes them to be true.

Nels J. Johnson

Subscribed and sworn to before me this 2nd day of July, 1914.

Chas. J. Wahlquist
Notary Public.

My commission expires
May 31 1918.
CHAS. J. WAHLQUIST
NOTARY PUBLIC
WASATCH COUNTY, UTAH