ANSWER OF A. L. TANNER AND

ESTHER TANNER.

Come now the defendants, A. L. Tanner and Esther Tanner, appearing for themselves alone and not for the other defendants, and for their answer to plaintiff's complaint, filed herein, admit, deny and allege as follows:

1. These defendants admit all of the allegations of said complaint from the first paragraph thereof to the 32nd paragraph thereof inclusive.

2. These defendants also admit the 34th, 38th, and 39th paragraphs of said complaint and the allegations contained therein.

3. Answering the 33rd paragraph of said complaint, these defendants deny that they have any knowledge or information sufficient to form a belief as to the matters therein contained.

4. Answering paragraph 35 of said complaint, these defendants, answering for themselves alone, deny said paragraph and the allegations therein contained, but as to the matters therein alleged against and concerning the other defendants in this action, these defendants deny that they have any knowledge or information sufficient to form a belief.

5. Answering the 36th paragraph of said complaint, these defendants admit that many of the defendants, having a right prior in point of time of appropriations to the plaintiff's right to the use of said waters, have been using the water wastefully as alleged in said paragraph, but as to the extent to which said water has been wasted and the extent of the injury caused thereby, or the effect the same may have in general or in particular, these defendants have no knowledge or information sufficient to form a belief.

6. Answering the 37th paragraph of said complaint and

the allegations therein contained, these defendants admit the rendition of the decrees rendered in 1889 and 1905 as described in said paragraph. As to the remaining allegations in said paragraph, these defendants deny they have any knowledge or information sufficient to form a belief concerning the same.

7. Further answering said complaint, these defendants deny generally each and every paragraph thereof and the allegations contained therein, except such as are herein admitted or denied.

Further answering said complaint and by way of counterclaim and for affirmative relief, defendants allege:

1. That the Provo river is a natural stream of water rising in the Wasatch Mountains, flowing through Provo canyon in a southerly direction and through the lands adjacent to Provo City, Utah.

2. That these defendants, and their predecessors in interest have for more than forty years last past been the owners of lands in the vicinity of Provo City, Utah, and about five miles from the mouth of Provo canyon, which in their natural state were desert and barren, but which, when brought under irrigation and cultivation, yielded abundant agricultural crops.

3. That more than forty years ago the grantors and predecessors in interest of these defendants, for the purpose of irrigating said lands constructed a ditch connected with the Provo river about three miles below the mouth of Provo canyon and placed a dam in said Provo river for the purpose of diverting waters therefrom into said ditch and have since said date, and up to about the year 1902 maintained said dam in said river and diverted the flowing waters of said river and by means thereof irrigated the said lands above referred to, the said ditch through which said water was so diverted being at times commonly called the Carter ditch.

4. That on or about the year 1900 the waters theretofore diverted through the said Carter ditch were taken therefrom and

placed in and diverted through the West Union Canal and in about the year 1905 the said waters were again transferred from said West Union Canal to the Provo Bench Canal and have been diverted and used through said canal, except when the use of the same has been wrongfully interferred with contrary to the rights of these defendants.

7. That after the lapse of years after the commencement of the diversion of said waters through said ditch as aforesaid, the character of the lands adjacent to the lands through which the lower portion of said ditch ran, underwent a change and became impregnated with water to a greater or less extent and by reason of such impregnation springs and seeps came into existence and the waters thereof were and have since been used for the irrigation of the lands of these defendants.

That said seeps and springs have their source in higher lands and flow by reason of the irrigation of said higher lands and the water supply of these defendants is wholly dependent upon the continued irrigation of said higher lands.

8. That the defendant A. L. Tanner, is the owner of forty-eight acres of land above described of which thirty-five acres have been irrigated and the defendant, Martha Tanner, is the owner of sixty-three acres of the land above described of which sixty acres have been irrigated, and as against all the parties to this action are entitled to be irrigated by reason of the prior appropriation and use aforesaid.

That the right to irrigate said lands is a good and valid right as to each of these defendants as against all the parties to this action and the said springs and seeps are sufficient with reasonable economy to properly irrigate the same, as the same are now diverted for said use. These defendants allege that should said springs and seeps fail, that they, upon that contingency, would be entitled to receive, and are the owners of the right to the use of sufficient of the flowing waters of the said Provo river to properly irrigate eighty-five acres thereof by reason of the prior

appropriation and use as aforesaid.

WHEREFORE, these defendants pray that they may be adjudged to be the owners of the right to the use of the springs and seeps hereinbefore described and as now diverted by them, for the purpose of irrigating their said lands. The said defendant, A. L. Tanner, for the irrigation of thirty-five acres and the said defendant, Esthma Tanner, sixty acres and that such right be decreed and that it be further decreed that in case said springs and seeps should fail, that the said defendants jointly be decreed to be the owners of sufficient of the flowing waters of Provo river to properly irrigate eighty-five acres of said lands, the quantity to be determined by a pro rata distributing according to the acreage entitled to irrigation.

That these defendants' title to said waters be quieted and affirmed against each and all the parties to this action and that they and each of them, their agents, servants and employees be forever enjoined from interfering with these defendants' use of said waters or from claiming title thereto adverse to these defendants.

These defendants pray for general relief and for costs.

A. L. Tanner

Esthma Tanner

Defendants.

State of Utah }
: ss
County of Utah }

A. L. Tanner, being first duly sworn, on his oath says that he is one of the defendants in the above entitled cause, that he has read the foregoing answer, knows the contents thereof and that the same is true of his own knowledge except as to matters therein stated on information and belief and as to such matters he believes it to be true.

A. L. Tanner

Subscribed and sworn to before me this 18th day of May, 1914.

Gerald Dixon
Notary Public.

My commission expres_____

My commission expires Feby. 15th, 1915.

Due service of copy of above answer admitted this 19th day of May 1914.

Jacob Evans
One of the attys
for Plaintiff.

2888

Provo Reservoir &

vs

Provo City et al

Answer and Counter Claim

of A. L. Tanner and

Esthena Tanner

AT PROVO CITY, UTAH

FILED

MAY 19 [illegible]

A. N. Robinson CLERK

DEPUTY