

A-12

C I V I L A C T I O N

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A N S W E R O F J . D . D I X O N .

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

Provo Reservoir Company
A CORPORATION -- Plaintiff.

VS.

Provo City,
Lincoln School District ,
Provo Bench Canal and Irrigation Company,
West Union Canal Company,
James L. Meldrum, .
John D. Dixon, et. al.

}
} Separate Answer
} of John D. Dixon.
}

Now comes John D. Dixon, one of the defendants, after leave of Court first having obtained, and makes his separate answer for himself alone, and not for any others of the defendants, in answer to the complaint of the plaintiff filed herein admits, denies, and alleges as follows:

1. This defendant admits all of the allegations of said complaint from the first paragraph thereof to the thirty-second paragraph thereof inclusive.

2. This defendant also admits the 34, 38, and 39 paragraphs of said complaint and the allegations contained therein.

3. Answering the 33 paragraph of said complaint, this defendant states that he has no knowledge or information sufficient to form a belief as to the matters therein contained and therefore denies it.

4. Answering paragraph 35 of said complaint, this defendant denies said paragraph and the allegations contained therein, but as to the matters therein alleged against and concerning the other defendants in this action, this defendant alleges that he has no knowledge or information sufficient to form a belief.

5. Answering the 36th paragraph of said complaint, this defendant admits that many of the defendants having a right prior in point of time of appropriation 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, this defendant has no knowledge or information sufficient to form a belief.

6. Answering the 37th paragraph of said complaint and the allegations contained therein, this defendant admits the rendition of the decrees rendered in 1899 and 1905 as described in said paragraph. As to the remaining allegations in said paragraph, this defendant alleges that he has no knowledge or information sufficient to form a belief concerning same.

7. Further answering said complaint, this defendant denies 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 counter claim and for affirmative relief, this defendant alleges:

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 of John W. Hoover, which lie in Wasatch County, approximately four miles southwest of the town of Charleston in said county; thence westward through the lands of Hyrum Hieselt near the mouth of Provo Canyon in Utah County, Utah; thence southwesterly through the lands adjacent to Provo City, Utah County, Utah, into Utah Lake, and by one of the tributaries of said Provo River, namely; the South Fork of said stream, flowing through certain lands which were in the ownership of Joshua Mecham and James H. Snyder in January, 1907; said lands being located in said South Fork of Provo Canyon, about two miles above the confluence of said South Fork tributary with Provo River.

2. That this defendant and his predecessors in interest, John W. Hoover, James H. Snyder, Joshua Mecham and Hyrum Hieselt and their predecessors in interest, have for more than twenty years last past, been the owners of lands in the South Fork of Provo Canyon, near the mouth of Provo Canyon, Utah County, and also on the Provo River about four miles southwesterly of Charleston, Wasatch County, 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 twenty years ago the grantors and predecessors in interest of this defendant for the purpose of irrigating their said lands, constructed ditches connected with the South Fork tributary to

serve said lands lying contiguous to said tributary, and placed dams in said Provo River and said South Fork tributary for the purpose of diverting waters from said river and from said tributary into said ditches, and have since said date aforesaid and up to and until about the year 1909, maintained said dams and diverted the waters of said Provo River and said South Fork tributary, and by means thereof irrigated the said lands above referred to.

4. That in the year 1908, this defendant in compliance with the statutes, Compiled Laws of Utah, 1907, Section 1288x24, changed the point of diversion and place of use of said waters; the new point of diversion being at the mouth of Provo canyon and the new place of use being lands in the area commonly known as the Provo Bench. Said changes were reported as the statute provides to the State Engineer of Utah, on a map which clearly represented such changes and showed the places from and to which said changes were made.

5. Beginning with the year 1909, this defendant has diverted the said waters from the Provo River at a point located South 48 deg. 52' W., 1320 feet from the quarter section corner, between Sections 5 and 6, Township 6 South, Range 3 East, Salt Lake Meridian, for the irrigation of approximately 250 acres of land, located under the line of the canal of the Provo Reservoir Company in Utah County, and has ever since 1909 continued to divert and use said water as described in this paragraph.

6. This defendant asserts it to be a well known physical fact that the Provo River and its tributary, the said South Fork Stream, between the points of original appropriation described herein and the new point of diversion described above, are channels of accumulation by seepage and percolation into said natural channels, and that said channels are relatively narrow, well defined and for nearly the whole distance have verticle or very steep banks. Since the volume of flow to which this defendant is entitled, namely, 168 cubic feet per minute, constitutes only 1% of the volume of Provo River between said points, under the existing conditions of said channels and the banks thereof, the surface of said stream between said points is not enlarged by reason of the addition of said 168 cubic feet per minute to the flow thereof, and no additional losses to the stream are caused thereby.

7. That this defendant in addition to the rights set forth in

the preceding paragraphs, did during the year A. D. 1908, make application to the State Engineer of the State of Utah, for 10 second feet of the natural flow of the waters of said Provo River for irrigation purposes, to be diverted from said river at a point South 9 deg. 57' East, 2155 feet distant from the Northeast corner of Section 12, Township 6 South, Range 2 East, Salt Lake Meridian. Which said application No. 2134 was approved by said Engineer on the 10th day of April, 1910.

8. This defendant, John D. Dixon, for a further and affirmative defense alleges;

That on the 26th day of January, 1907, in a case then pending, the District Court of the Fourth Judicial District of the State of Utah, in and for Utah County, wherein Provo City and others were the plaintiffs, the Telluride Power and Transmission Company and others were defendants, a certain decree was rendered known as the Chidester Decree, wherein John W. Hoover was awarded the use of 114 minute feet Class "A" waters; James H. Snyder was awarded 40 minute feet of said Class "A" water; Joshua Mecham was awarded 20 minute feet Class "A" water; Hyrum Heiselt was awarded 9 minute feet Class "A" water.

9. That the said defendant has purchased, for a valuable consideration, sufficient of the waters awarded to the said Hoover, Snyder, Mecham, and Heiselt, to make him owner of 168 minute feet Class "A" water.

10. That by mutual agreement, a stipulation by and between said plaintiff and this defendant, this defendant is accorded the rights claimed herein as set forth in the said Chidester Decree, and the said Chidester Decree is hereby referred to in as far as it affects the rights of this plaintiff and defendant, John D. Dixon, and is hereby made a part of this answer.

Wherefore, this defendant prays that he may be adjudged to be the owner of the right to the use of 168 cubic feet per minute of the waters of Provo River aforesaid, to be measured to him at the point described in paragraph 5, and for 10 cubic feet per second of the natural flow of Provo River as described in application No. 2134. That this defendant's 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 this defendant's use of said waters or

from claiming title thereto adverse to this defendant.

This defendant prays for general relief and costs.

John D. Dixon

Defendant.

State of Utah)
County of Utah.) SS.

John D. Dixon, 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 and 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.

Joseph Dixon

Subscribed and sworn to before me this 9th day

February 1916. My commission expires Jan. 27th, 1916.

My Commission Expires:



No 2888,
Dist Court
Utah Co,
Prors Reservoir Co
vs
Prors City et al
Separate Owners of
John D. Dixon

Recd Copy
this 17. Day of Feb 1916
Just Evans.
atty for Plaintiff

IN DIST. COURT
UTAH CO., UTAH.
* FILED *
FEB 18 1916
W. J. [Signature] Clerk.
M. R. [Signature] Deputy.