

Original

M-6.

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

 Provo Reservoir Company, a *
 corporation, *
 *
 Plaintiff, *
 *
 vs. *
 *
 Provo City, et al (including *
 the defendants answering *
 herein,) *
 *
 Defendants. *
 *

No. 2888 Civil.

ANSWER.

Come now the defendants, Wasatch Irrigation Company, Northfield Irrigation Company, Charleston Irrigation Company, Sage Brush Irrigation Company and Spring Creek Irrigation Company, appearing for themselves and not for the other defendants, and answering the complaint of plaintiff, 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 twenty-seventh paragraph inclusive.
2. These defendants also admit the thirty-first, thirty-eighth and thirty-ninth paragraphs of said complaint and the allegations therein contained.
3. Answering said complaint from the twenty-eighth paragraph thereof to the thirtieth paragraph inclusive, also the thirty-second and thirty-third paragraphs of said complaint, these defendants deny that they have any knowledge or information sufficient to form a belief as to the matter therein stated.
4. Answering paragraph thirty-four of said complaint,

these defendants admit that plaintiff claims a right to store the flood waters of said Provo river in its several reservoirs mentioned in its complaint and to release the water so stored at such times and in such quantities as will best serve its interests and the interests of its stockholders and lessees, but as to the right of any right said plaintiff may have in respect thereto, these defendants deny they have any knowledge or information sufficient to form a belief.

5. Answering paragraph thirty-five of said complaint these defendants, answering for themselves only, 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.

6. Answering the thirty-sixth 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 ~~water~~ 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.

7. Answering the thirty-seventh paragraph of said complaint and the allegations therein contained, these defendants admit the rendition of the decrees rendered in 1899 and 1905 as described in said paragraph. As to the remaining allegations in said paragraph, these defendants deny that they have any knowledge or information sufficient to form a belief concerning the same.

8. 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.

Original

For a further defense and by way of counter-claim for affirmative relief, these defendants allege:

1. That they and each of them are corporations doing business in Wasatch County, Utah, as irrigation companies, managing, controlling and distributing a portion of the waters of Provo river and its tributaries among their stockholders according to their respective rights.

2. That all of these defendants, more than twenty years ago, for the purpose of supplying their stockholders with the water necessary to irrigate their lands by means of ditches constructed by them, made appropriations of water which had theretofore been unappropriated, of the waters of said Provo river and its tributaries, described in plaintiff's complaint. That the quantity of water appropriated by them and the means by which the same was appropriated and the number of acres upon which said water has been applied, are respectively as follows:

(a) That the defendants, Wasatch Irrigation Company, Northfield Irrigation Company and the Charleston Irrigation Company, doing business as irrigation companies in Wasatch County, Utah, by means of a canal known as the "Wasatch Canal" more than twenty-five years ago, for the purpose of irrigating the lands of their stockholders and for other beneficial purposes, diverted from Provo river, as a primary right, to be used at any and all seasons of the year when the water was available, ~~variously~~ ^{variously} cubic feet of water per second of time. That ~~of~~ this quantity of water, during each and every year when available, has been used for the irrigation of ⁵⁸²⁰ ~~5305~~ acres of land.

(b) That the defendants, Sage Brush Irrigation Company and Spring Creek Irrigation Company, also doing business as irrigation companies in Wasatch County, Utah, by means of ditches constructed by them more than twenty years ago, for the purpose of irrigating the lands of their stockholders and for other beneficial

purposes, diverted of the waters of Spring Creek, a tributary of Provo river, as a primary right to be used at any and all seasons of the year when available, ^{two} ~~twenty~~ cubic feet per second of time, for the irrigation of 1220 acres of land.

2. That said quantities of water, during all of said times have been used economically and prudently and have not been sufficient to properly and successfully irrigate said land so as to fully mature the crops thereon and supply these defendants with water for culinary and other beneficial purposes, and in order to fully mature their said crops each of said defendants, during what is known as the high water season and approximately during the first and second irrigation of their crops in each and every year, has taken and diverted from said Provo river sufficient of the waters thereof to supply its necessities for the purposes above set forth.

That the quantity so taken and used by said defendants during said high water period, including their primary rights, has been approximately as follows:

The defendants, Wasatch Irrigation Company, Northfield Irrigation Company and the Charleston Irrigation Company, 235 second feet, the Spring Creek Irrigation Company and the Sage Brush Irrigation Company, fifty-nine second feet.

3. That said quantities of water during both the high and low water seasons, while crops are being irrigated, has been and is necessary when economically used to supply these defendants with the water necessary for the purposes aforesaid and these defendants further allege that during said period of high water when there is not sufficient to supply all of these defendants with the said quantities they have taken and used the same pro rata according to their respective rights, as above set forth, until said period of high water has ceased. Said defendants further allege that the defendants, Sage Brush Irrigation Company and Spring Creek Irrigation Company are not entitled to divert or use any of

the waters of said Provo river other than Spring creek after the waters of said river have receded to a point where there is not more than sufficient to supply the other defendants answering herein with their primary rights as above defined.

4. That in addition to the rights above set forth to the waters of said Provo river the Wasatch Irrigation Company is the owner of a quarter interest in and to all rights that have been or may be acquired by means of the reservoirs and reservoir rights described and referred to in the thirty-first paragraph of plaintiff's complaint.

5. As a further defense, these defendants allege that prior to their respective appropriations, as above set forth, the waters appropriated by them were surplus and unappropriated and that by said appropriations they did not interfere with or infringe upon the prior rights of any other person or corporation to the waters of said river.

6. Defendants further allege that the claim of the plaintiff in this action, as against these defendants, is without foundation of right and is a cloud upon the title of these defendants.

WHEREFORE, these defendants pray that their rights to the quantity of water claimed by them as above set forth may be adjudicated and determined and that the same be affirmed and that the plain-

