

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

CALEB TANNER,  
Plaintiff,

vs

Provo Reservoir Company,  
a corporation, Provo  
Reservoir Water Users  
Company, a corporation,  
Blue Cliff Canal Company, a  
corporation, North Union  
Irrigation Company, a cor-  
poration, Provo Bench Canal  
& Irrigation Company, a cor-  
poration, T.F. Wentz as  
Commissioner of Provo River,  
Defendants,

C O M P L A I N T.

The plaintiff complains of the defendants and for a first cause of action alleges,-

1. That at all the times herein mentioned Provo Reservoir Company was, and now is, a corporation, duly organized and existing under and by virtue of the laws of the State of Utah. That ever since on or about the 22nd. day of July, 1924, Provo Reservoir Water Users Company has been, and now is, a corporation, duly organized and existing under and by virtue of the laws of the State of Utah. That each of said defendants corporation Provo Reservoir Company and Provo Reservoir Water Users Company are and were organized for the general purpose of acquiring water rights for irrigation and other purposes and for distributing and

disposing of the same and for the further purpose of acquiring, owing, using, controlling, supervising and operating water, water rights, water right projects, and also reservoirs, dams, diversion works, canals, laterals and other works used in connection with water right projects.

2. That at all the times herein mentioned the defendant Blue Cliff Canal Company was, and now is, a corporation, duly organized and existing under and by virtue of the laws of the State of Utah, and said corporation was organized for the general purpose of acquiring, owning, controlling and distributing water for irrigation and other purposes. That said defendant corporation owns or claims to own some right, title or interest in and to the particular reservoirs, canals, diverting works and irrigation system hereinafter mentioned and described.

3. That the defendant North Union Irrigation Company at all the times herein mentioned was, and now is, a corporation, duly organized and existing under and by virtue of the laws of the State of Utah, and said corporation was organized for the purpose of acquiring, owning, controlling and distributing water for irrigation and other purposes. That said corporation owns or claims to own some right, title or interest in and to the particular reservoirs, canals, diverting works and irrigation system hereinafter mentioned and described.

4. That the defendant Provo Bench Canal and Irrigation Company at all the times herein mentioned was and

is a corporation, duly organized and existing under and by virtue of the laws of the State of Utah; that said corporation was organized for the purpose of acquiring, owning, controlling and distributing water for irrigation and other purposes. That said defendant corporation owns or claims to own some right, title or interest in and to the particular reservoirs, canals, diverting works and irrigation system hereinafter mentioned and described.

5. That the defendants Provo Reservoir Company, a corporation, Provo Reservoir Water Users Company, a corporation, Blue Cliff Canal Company, a corporation, North Union Irrigation Company, a corporation, and Provo Bench Canal and Irrigation Company, a corporation, each has its office and principal place of business in Utah County, State of Utah, and all of said defendant corporations are residents of Utah County, State of Utah.

6. That the defendant T. F. Wentz now is, and for many years last past he has been, the duly appointed, qualified and acting Water Commissioner for Provo River under the appointment and orders of the above entitled Court in that civil action known and designated as - Cause No.2888 - in the above entitled court. That said defendant T.F.Wentz now is, and for many years last past he has been, under the appointment and orders of the above entitled Court, in active charge as said commissioner of the control, regulation and distribution of all the waters of said Provo River into various canals and irrigation works receiving water from said Provo River. That it now is, and for many years

last past it has been, the duty of the defendant T. F. Wentz, as said commissioner, to control, regulate and distribute the waters of said Provo River in the main channel and bed of said river and from the main channel and bed of said river into the various canals and diversion works diverting, taking and receiving water from said Provo River.

7. That on or about the 4th. day of August, 1909, one Jens C. Jensen made and entered into a certain contract and agreement with the said defendant Provo Reservoir Company, a copy of which said contract is hereby<sup>to</sup> attached and marked *a* "Exhibit A"; that said contract was duly acknowledged so as to entitle the same to be recorded, and the same was afterwards to wit: on August 16, 1909, duly recorded in the office of the County Recorder of Utah County, Utah, in Book 108 of mortgages, at page 305.

8. That subsequent to the date on which said contract was made and entered into between said Jens C. Jensen and the Provo Reservoir Company said Jens C. Jensen did perform all things required to be performed by him thereunder and on or *a* about the 29th. day of November, 1918, said defendant Provo Reservoir Company made, executed and delivered to said Jens C. Jensen a certain deed for water right, a copy of which is hereto attached and marked "Exhibit B."

9. That on or about the 22nd. day of September, 1911, said Jens C. Jensen made and entered into a certain contract and agreement with the defendant Provo Reservoir Company, a copy of which is hereto attached, marked "Exhibit C," that said contract was duly acknowledged so as to entitle the same to be recorded and the same was thereafter on September 25th, 1911, duly recorded in the office of the County Recorder of Utah County, Utah, in Book 126 of Mortgage at page 690; that subsequent to the date

the execution of  
of/said contract between said Jens C. Jensen and the defend-  
ant Provo Reservoir Company, said Jens C. Jensen did perform  
any and all things required to be performed by him thereunder  
and on or about the 29th. day of November, 1918, said defend-  
dant Provo Reservoir Company made, executed and delivered to  
said Jens C. Jensen a certain deed for water right, a copy of  
which is hereto attached and marked "Exhibit D."

9 $\frac{1}{2}$ . That on or about the 28th. day of December,  
1912, the defendant Provo Reservoir Company made, executed  
and delivered to said Jens C. Jensen one certain deed for water  
right, a copy of which is hereto attached and marked "Exhibit  
E."

10. That the particular contract hereinbefore  
set out and referred to as Exhibit A, was duly recorded in  
the office of the County Recorder of Utah County, Utah, in  
Book 108 of mortgages, at page 305 thereof on or about the  
16th. day of August, 1909. That the particular contract here-  
inbefore set out and referred to as Exhibit C, was recorded  
in the office of the County Recorder of Utah County, Utah, in  
book 126 of mortgages at page 690 thereof on or about the  
25th. day of September, 1911.

11. That said Preambles and Resolution of said  
Provo Reservoir Company for the year 1909 referred to in said  
deeds contains the following, to-wit:

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"Whereas, Provo Reservoir Company, a corporation  
is the owner of certain water rights and applications  
to appropriate waters for irrigation purposes, des-  
cribed in its articles of Incorporation, and intends  
to secure other water rights and interests in addition  
thereto; which appropriations, rights and interests it  
proposes to utilize for the purpose of furnishing a  
more adequate supply of water with which to irrigate

the lands described in the applications to appropriate water for irrigation, etc., above referred to, together with other lands that are capable of irrigation, with waters from Provo river, known as the Provo River System; and whereas, in order to hold said water rights and applications to appropriate waters, it is by law required that the waters applied for and thereby covered, be utilized for the irrigation of the lands described in the said applications therefor; and whereas in some of the applications for said appropriations, large areas of land upon which it is intended to use said waters, are described; and whereas, persons and parties, other than this corporation, own the land so described, and upon which it is intended to use said waters, it becomes necessary, in order to apply said water upon said lands, that this company as the owner and holder of said water rights, and the owners of said lands upon which it is to be used, enter into agreements and stipulations, specifying the terms and conditions upon which said land owners will purchase and utilize said waters;"

12. That said Preambles and Resolutions of said Provo Reservoir Company for the year 1909, following the part thereof hereinbefore quoted in Paragraph 11 herein further contains the following provisions, to-wit:

"Therefore be it Resolved, That this Company, by and through its President, is hereby authorized and empowered on behalf of and as the act and deed of this corporation to enter into contracts in writing with such of the owners of the lands described in said applications and the owners of such other lands as may be irrigated from said system, as will subscribe for water rights under any of the rights, or applications now owned and held by this Company and any other rights, appropriations, or interests which said Company may hereafter acquire, to waters for said system."

13. That said Preambles and Resolutions for said year 1909 contains the following further provisions, to-wit:

"In order to convey the waters from the several points of diversion named in said application, and from the points where the Company has or may acquire rights, the Company shall build a substantial canal system, consisting of reservoirs, earthen or concrete canals, concrete or other substantial flumes, tunnels, and wood or steel pipes, for the purpose of storing and conveying said waters to a point located near the center of Section 12, in Township 6 South, of Range 2

East, of Salt Lake Meridian, to be known as the point of General Delivery.

"The Company agrees, that when the said contract price for any of the said water rights and the water rates hereinbefore provided for, shall have been fully paid, and the conditions by the Consumer covenanted to be performed, have been complied with, it will execute to and in favor of said Consumer, his heirs and assigns, a deed, conveying to him, or them, the said water right, together with such pro rata interest in said system as his interest in said water rights shall represent; and thereafter, as to him, the annual rates for maintenance and repair of the system hereinbefore provided for, shall cease, and he shall become an owner in fee simple of an undivided interest in said system to the extent of the ratio which the number of acres and class of right purchased or acquired by him shall at such time or at any subsequent time bear to the entire number of acres and class supplied with water from said system."

"The Company reserves the control, management, operation and regulation of the said system until January 1st, 1920, after which time, such control, etc., shall be exercised by those interested in proportion to their respective interests."

14. That the Preambles and Resolutions of said defendant Provo Reservoir Company for the year 1911 referred to in said Exhibit "D" contains a provision identical with that part of the Preamble for the year 1909 hereinbefore set forth in Paragraph 11 hereof.

15. That the Preambles and Resolutions of said defendant Provo Reservoir Company for the year 1911 referred to in said Exhibit "D" contains the following further provision,-

"THEREFORE BE IT RESOLVED, That this Company, by and through its President or Vice-President, thereunto hereby authorized, enter into contracts in writing with such of the owners of the lands described in said applications and the owners of such other lands as may be irrigated from said system, as will subscribe for water rights under any of the rights or applications now owned and held by this Company and any other rights,

appropriations or interests which said Company may hereafter acquire, to waters for said system."

"The Company agrees, that when the said contract price for any of the said water rights and the water rates hereinbefore provided for, shall have been fully paid, and the conditions by the Consumer, covenanted to be performed, have been complied with, it will execute to and in favor of said Consumer, his heirs or assigns, a deed, conveying to him, or them, such pro rata interest in said system as his (or their) interest in said water rights shall represent; and he (or they) shall become owner (or owners) in fee simple of an undivided interest in said system to the extent of the ratio which the number of acres and class of right purchased or acquired by him (or them) shall at such time or any subsequent time bear to the entire number of acres and class supplied with water from said system. Provided; That if such payment be made and such deed be issued prior to the 1st day of January, A.D. 1920, it shall not become operative absolutely until after said date, and the annual rates for maintenance and repair of the system hereinbefore provided for shall continue until the said 1st day of January, A.D. 1920."

"The Company reserves the full and complete control, management, operation and regulation of the said system until January 1st, 1920, after which time such control, etc., shall be exercised jointly by the Company and those interested in proportion to their respective interests."

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16. That pursuant to said Preambles and Resolutions of said defendant Provo Reservoir Company for the years 1909 and 1911, said defendant Provo Reservoir Company constructed an irrigation system consisting of reservoirs, canals, flumes, tunnels, pipes and diverting works for the purpose of diverting and conveying the waters by it deeded as hereinbefore alleged to said Jens C. Jensen, and other holders of similar contracts and deeds from said defendant

Provo Reservoir Company to the point of general delivery mentioned in said Preambles and Resolutions towit:

"To a point near the center of Section 12, Township 6 South, Range 2 East of the Salt Lake Base and Meridian in Utah County, Utah."

That said defendant Provo Reservoir Company constructed a canal extending from a point in Provo Canyon known as Heiselt's in Utah County, Utah, thence down said Provo Canyon on the southerly side thereof to the mouth of said canyon, thence west across Provo River and onto the bench on the westerly side of said Provo River near the mouth of said canyon to a point approximately the center - of Section 12, Township 6 South, Range 2 East, Salt Lake Base and Meridian - said point being the point of general delivery referred to and described in said Preambles and Resolutions of said defendant Provo Reservoir Company for the years 1909 and 1911.

That said course of said canal is more particularly described as follows, towit:

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Beginning at a point South 48° 52' West 1320 feet from the quarter corner between Sections 5 and 6, Township 6 South, Range 3 East, Salt Lake Base and Meridian; thence along a course south 43° 30' West 2510 feet, the canal curving away from the course to the left reaching a maximum of 160 feet therefrom at a point 660 feet from the beginning of the course; thence continuing the canal reaches coincidence with the course at a point 1485 feet from beginning; thence continuing along said course to its termination; thence

South 34° West 3000 feet, the canal curving away from the course to the left reaching a maximum distance therefrom of 310 feet at a point 530 feet from the beginning of the course; thence reaching coincidence with the course at a point 2245 feet from its beginning; thence along said course to its termination; thence

North 80° 30' West 1000 feet; thence South 56°

30' West 900 feet; thence West 2280 feet to the head of the Iona Lateral being 630 feet West of the center of Section 12, Township 6 South, Range 2 East of Salt Lake Base and Meridian, which said point is the point of general delivery referred to in the Pre-ambles and Resolutions of the said Provo Reservoir Company for the years 1909 and 1911, hereinabove referred to, and which said point is also the point of diversion of the Iona Lateral from said canal hereinabove specifically described.

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17. That said defendant Provo Reservoir Company, subsequent to the execution of the said contracts with said Jens C. Jensen, as hereinbefore alleged and described, entered upon the duty of making delivery of the waters mentioned in and represented by said contracts and deeds, copies of which are hereto attached, - to a point near the center of said Section 12 - the point of general delivery, and to the head of said Iona Lateral, for the use and benefit of said Jens C. Jensen.

18. That on or about the 2nd. day of July, 1924, certain holders of deeds from said defendant Provo Reservoir Company identical in terms with the deeds so made and executed and delivered by said defendant Provo Reservoir Company to said Jens C. Jensen, and others, including the said defendant Provo Reservoir Company organized a corporation known as Provo Reservoir Water Users Company, which said corporation is named as a defendant herein. That said defendant Provo Reservoir Water Users Company since its organization has assumed and attempted to distribute, and now assumes and attempts to

distribute and claims the right to distribute the waters of said irrigation system; that the defendant Provo Reservoir Company and the defendant Provo Reservoir Water Users Company now assume to direct the defendant T.F. Wentz as said water commissioner of said Provo River in the distribution of all of the waters in said Provo Reservoir Company's Provo River irrigation system; that the defendant T.F. Wentz, as said commissioner now assumes that the defendant Provo Reservoir Company and the defendant Provo Reservoir Water Users Company have the right to direct the distribution by him of the waters so granted and conveyed to the said Jens C. Jensen by the defendant Provo Reservoir Company as represented in said deeds, copies of which are attached hereto.\* That neither said Jens C. Jensen nor this plaintiff, has assigned to said Provo Reservoir Water Users Company any of the said water rights represented by said deeds, copies of which are attached hereto. † Neither has said Jens C. Jensen, nor this plaintiff in any manner, or at all, authorized or directed said defendant Provo Reservoir Water Users Company to distribute said waters represented by said deeds. Plaintiff further alleges that he is informed and believes that said defendant Provo Reservoir Water Users Company has no right, title or interest in the said irrigation system of said Provo Reservoir Company, or in the said canal so constructed by said Provo Reservoir Company, and particularly described in Paragraph 16 herein, except such interest as has

been transferred to said defendant Provo Reservoir Water Users Company by the owners of water rights in said defendant Provo Reservoir Company's irrigation system, and such other interests as may have been conveyed to it by the defendant Provo Reservoir Company.

19. That on or about the 3rd. day of March, 1925, said Jens C. Jensen, by good and sufficient deeds, made, executed and delivered by him to the plaintiff, duly sold and transferred to the plaintiff all his right, title and interest in and to the water and water rights, together with all other rights represented by the said deeds so executed and delivered to the said Jens C. Jensen by the defendant Provo Reservoir Company, copies of which are attached hereto and marked Exhibits B, D and E, and that the plaintiff at all times since said 3rd. day of March, 1925, has been, and now is, the owner and entitled to the use of said water rights and all other rights and privileges represented by said deeds.

20. That the plaintiff has not conveyed to said defendant Provo Reservoir Water Users Company, or to any one else, any of the said water rights and privileges deeded and transferred to the plaintiff by said Jens C. Jensen as hereinbefore alleged. That the plaintiff now is, and at all times since the third day of March, 1925, he has been, the owner of all said water rights and privileges; that at all times since the third day of March, 1925, the plaintiff has

been, and he now is, a joint owner with the defendants herein of the said irrigation system constructed by the defendant Provo Reservoir Company, as hereinbefore alleged. That at all times since the third day of March, 1925, the plaintiff has been, and now is, a joint owner with the defendants herein of said canal constructed in Provo Canyon as hereinbefore alleged, and particularly described in Paragraph 16 herein, and plaintiff, ever since the third day of March, 1925, has been, and he now is, a tenant in common with the defendants herein in said canal and a tenant in common with the defendants herein in and to any and all interest in said irrigation system so constructed by the defendant Provo Reservoir Company, as hereinbefore alleged.

21. That under said contracts and deeds, copies of which are attached hereto and marked Exhibits A.B.C.D and E, and by virtue of the transfer of the rights and interests represented by said contracts and deeds to the plaintiff by said Jens C. Jensen, the plaintiff became and now is a tenant in common and joint owner with the defendants herein of the said canal and irrigation system. That plaintiff has the right to flow and convey therein the waters represented by said deeds from the said Provo River through said canal and irrigation system to the said point of general delivery mentioned in said Preambles and Resolutions hereinbefore referred to, to-wit:

"To a point near the center of Section 12, Township 6 South, Range 2 East, Salt Lake Base and Meridian, in Utah County, Utah,"

and to the head of said Iona Lateral, and plaintiff is the

owner of sufficient capacity in said canal and irrigation system to flow and convey said waters through the same to said point of general delivery.

22. That the above entitled Court in a certain civil action heretofore determined by said Court, to-wit: Civil action 2888, appointed one T.F. Wentz, defendant herein, as water commissioner for Provo River for the purpose of controlling, regulating and distributing the waters awarded by the Decree in said cause from said Provo River into and through the diversion works, canals and laterals taking and receiving water from said Provo River. That the said Court in said cause reserves jurisdiction of the parties and subject matter in said cause for the purpose of administering the control, regulation and distribution of the waters of said Provo River, and particularly for the purpose of controlling, regulating and distributing from said Provo River any and all waters awarded by said decree in said cause. That ever since the said cause was determined by the above entitled court the defendant T.F. Wentz has at all times been, and he now is, the duly appointed, qualified and acting water commissioner of Provo River for the purpose of controlling, regulating and distributing the waters awarded by the decree in said cause from said Provo River into and through the diversion works, canals and laterals taking and receiving water from said Provo River. That the waters and water rights represented by said deeds, copies of which are attached hereto and

marked Exhibits B, D and E, were, and at all times have been, since the entry of the decree of said Court in said cause No.2888 Civil, waters which were awarded and decreed under said Decree, and which always have been, since the entry of said Decree, waters within and under the jurisdiction and control of the defendant T. F. Wentz, as said Water Commissioner.

23. That the defendants herein wrongfully assert and claim that the plaintiff, as the successor in interest of said Jens C.Jensen in and to the water rights and privileges represented by the deeds, copies of which are hereto attached and marked "Exhibits B, D and E, owns no capacity in and no right to flow or convey the said waters represented by said deeds through the main canal of the Provo Reservoir Company's Provo River irrigation system, as hereinbefore in Paragraph 16 particularly described, and said defendants wrongfully assert and claim that the plaintiff has no right to flow or convey said waters through said canal to said point of general delivery mentioned in said Preambles and Resolutions of the defendant Provo Reservoir Company for the years 1909 and 1911, to-wit:-to the center of Section 12, Township 6 South, Range 2 East of the Salt Lake Base and Meridian,- and to and into the said Iona Lateral hereinbefore referred to; and said defendants now wrongfully assert and claim that this plaintiff has no right or interest in or to the waters which flow through said main canal of said Provo Reservoir

Company's Provo River irrigation system; that said claims of said defendants, and each of them, are adverse to and against the rights of this plaintiff as the owner of the water, water rights and privileges evidenced by said deeds and the right of the plaintiff to flow the waters evidenced by said deeds through said canal and irrigation system; and said claims of said defendants and each of them, are adverse to and against the rights of this plaintiff as the joint owner with said defendants of said canal and irrigation system and are adverse to and against the plaintiff as the owner of capacity in said canal and irrigation system for flowing the waters evidenced by said deeds through said canal and irrigation system, and said claims of said defendants, and each of them, are adverse to the rights of this plaintiff as a tenant in common and joint owner of said canal and the irrigation system of said defendant Provo Reservoir Company's Provo River Irrigation system.

24. Plaintiff further alleges that he has no accurate knowledge as to the exact number of acres of primary water right which the defendant Provo Reservoir Company has heretofore disposed of under its preambles and Resolutions for the years 1909 and 1911; that plaintiff cannot definitely state what proportion of the waters heretofore and now owned by the defendant Provo Reservoir Company and the defendant Provo Reservoir Water Users Company plaintiff is entitled to receive by reason of his ownership of 20-1/3 acres of primary water right evidenced by the deeds, copies of which

are attached hereto and marked Exhibits B, D and E. Plaintiff further alleges that he is the owner of and entitled to the use of such proportion of the said waters of Provo River heretofore or now owned by the defendant Provo Reservoir Company, or the defendant Provo Reservoir Water Users Company, as said 20-1/3 acres of primary water right bears to the total number of like units of said primary water right sold or disposed of by said Provo Reservoir Company, and that said plaintiff is the owner of the right to flow and convey his proportion of said primary water right from said Provo River through the main canal of the Provo Reservoir Company's Provo River irrigation system, which said canal is particularly described in Paragraph 16 herein, to and into said Iona Lateral near the center - of Section 12, Township 6 South, Range 2 East of the Salt Lake Base and Meridian, in Utah County, Utah.

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As and for a second cause of action the plaintiff complains of the defendants and allege,-

1. Plaintiff hereby adopts and reiterates Paragraphs numbered 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15,16,17, 18,19,20,21, and 22 of plaintiff's first cause of action herein, and each and every allegation contained in said Paragraphs as and for Paragraphs 1,2,3,4,5,6,7,8,9,10,11,12,13, 14,15,16,17,18,19,20,21, and 22 of plaintiff's second cause of action against the defendants herein, the same as if said paragraphs and each and every allegation contained therein were set forth in full herein.

23. Plaintiff further alleges that he is the owner of 2.52 cubic feet per second of flow of the waters of Provo River, which said waters were awarded, adjudged and decreed to John D. Dixon in the decree of the above entitled Court in that certain action determined by said Court, towit: Civil Action No.2888; that said 2.52 cubic feet per second of water at all times since the entry of said decree in said cause has been and now is, "transferred water," as defined in Sub-division A of Paragraph 33 of the said decree; that said paragraph of said decree provides,- that said 2.52 cubic feet per second of water is water that the owner thereof has the right to divert and flow over the Olmstead dam in Provo Canyon, Utah County, Utah, and that the owner thereof has the right to divert said waters from said Provo River at a point near the mouth of Provo Canyon.

24. Plaintiff further alleges that during the irrigation season of each and every year there has been and there now is, and plaintiff is informed and believes and on said information and belief plaintiff alleges, that there will continue to be an unused capacity in the said canal constructed by the defendant Provo Reservoir Company, as hereinbefore alleged, which said canal is particularly described in Paragraph 16 herein from the point of diversion thereof to a point near the center of Section 12, Township 6 South, Range 2 East, Salt Lake Base and Meridian; that there has been and now is, and will continue to be, unused capacity in said canal during the irrigation season of each year;

that plaintiff as a tenant in common and joint owner of said canal is entitled to the use of said unused capacity in said canal; and that plaintiff, as a tenant in common and joint owner of said canal, is entitled to the use of any unused capacity therein at any and all times; that plaintiff, as the owners of said 2.52 cubic feet per second of water of Provo River has the right to divert the same from said river at the point of diversion of the canal described in Paragraph 16 herein.

25. That plaintiff now desires to use the unused canal capacity in the said main canal constructed by said defendant Provo Reservoir Company and particularly described in Paragraph 16 herein during such portion of each and every year when said canal shall have an unused capacity, for the purpose of diverting from Provo River into said canal and for the purpose of flowing through said canal to about the center of - Section 12, Township 6 South, Range 2 East, Salt Lake Base and Meridian - and into the said Iona Lateral the said 2.52 cubic feet per second of water hereinbefore mentioned, to be used by divers persons using or capable of using waters through and from the said Iona Lateral, Plaintiff further alleges that as <sup>and</sup> said tenant in common in and to said canal that he is not obligated to any of his co-tenants in said canal, or to the defendants herein, or either of them, for any charges of any nature whatsoever, or at all, on account of his use of any unused capacity in said canal, except for any increase in the cost of the distribution of the

waters of said canal caused by his use thereof, and plaintiff alleges that his use of any unused capacity in said canal will cause no increase in the cost of the maintenance or operation of said canal.

26. Plaintiff further alleges that the defendants, and each of them, wrongfully assert and claim that the plaintiff has no right to use the unused capacity in said main canal for the purpose of flowing through said canal the said 2.52 cubic feet per second of water hereinbefore mentioned, and defendants, and each of them, wrongfully assert and claim that the plaintiff has no right to use any unused capacity of said canal of the Provo Reservoir Company's Provo River irrigation system for flowing any water through said canal, and the defendants, and each of them wrongfully assert and claim that this plaintiff must pay to the defendant Provo Reservoir Company and the defendant Provo Reservoir Water Users Company a rental for the use of any unused capacity in said main canal of said Provo Reservoir Company's Provo River irrigation system when plaintiff shall use any unused capacity of said canal for flowing water therein.

27. That the defendant T.F. Wentz, as water commissioner of said Provo River under the appointment of the above entitled Court, as hereinbefore alleged, has the active charge, supervision, control and distribution of water from said Provo River into said main canal, and said defendant T.F. Wentz has heretofore wrongfully refused, and he does now wrongfully refuse, and said defendant threatens to continue to wrongfully refuse to divert any of the said waters

owned by this plaintiff into said main canal of said Provo Reservoir Company's Provo River Irrigation system, or to permit the said waters of the plaintiff to flow through said canal. That said waters owned by the plaintiff, which plaintiff has heretofore sought and now seeks to use and flow through said main canal were and are waters which have heretofore been awarded, adjudged and decreed to plaintiff's predecessors in interest in a judgment and decree made and entered by the above entitled Court in said Cause No.2888 civil hereinbefore mentioned, and said waters are under the jurisdiction, control and supervision of the defendant T.F. Wentz as water commissioner; that said defendant T.F.Wentz as said water commissioner is amenable and subject to the orders of this Court with respect and in relation to the distribution of said water.

28. That each and all the claims and assertions of the defendants, and each of them, are wrongful and without any right and are adverse to and against the rights of plaintiff as a joint owner of and tenant in common of said main canal hereinbefore in Paragraph 16 mentioned and described.

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As and for a third cause of action against the defendants herein the plaintiff complains and alleges,-

1. Plaintiff hereby adopts and reiterates Paragraphs numbered 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15,16,17, 18,19,20,21 and 22 of plaintiff's first cause of action

herein, and each and every allegation contained in said Paragraphs as and for Paragraphs 1,2,3,4,5,6,7,8,9,10,11, 12,13,14,15,16,17,18,19,20,21 and 22, of this plaintiff's third cause of action against the defendants, the same as if each of said Paragraphs, and each and every allegation therein contained were set forth in full herein.

23. Plaintiff further alleges that the defendant Provo Reservoir Water Users Company is a corporation, formed by persons, numerous of which at the time of the formation and organization of said corporation owned and held deeds from the defendant Provo Reservoir Company for acres of water under the Preambles and Resolutions of said Provo Reservoir Company for the years 1909 and 1911.

24. The said Preambles and Resolutions herein referred to for the year 1909 provide,- that an acre of primary water right shall entitle the holder of such to irrigation water sufficient for the irrigation of one acre of land at a duty not greater than 75 acres of land to each second foot as a low water right, and as a high water right at a duty of not more than fifty acres per second foot; That the said Preambles and Resolutions for the year 1911 provide,- the same duty for water except that the duty for high water is fixed at not greater than seventy-five acres per second foot of water. The Articles of Incorporation of Provo Reservoir Water Users Company provide,- that a share of full water right stock entitles the owner to a pro rata share of the water of the company but not to exceed one-seventy-fifth (1/75th.) of a second foot per acre of water

from January 1st, to June 15th, and from July 1st. to October 1st. not to exceed <sup>one</sup> one-hundredth second foot of water per acre.

25. That on the 4th. day of August, 1909 and at all times thereafter, and to and including the 29th. day of November, 1918, said Provo Reservoir Company was the owner and holder of water rights in its Provo River irrigation system sufficient to supply the 20-1/3 acres of water represented by the deeds, copies of which are attached hereto, with the ~~minimum~~ amount of water therein provided, and with water sufficient to irrigate 20-1/3 acres of land throughout the irrigation season of each and every year with a duty of not more than seventy-five acres per second foot and to irrigate ten acres during the high water season on a duty of not to exceed fifty acres per second foot. a

26. That subsequent to the execution of the contracts, copies of which are attached hereto as Exhibits A and C, the Provo Reservoir Company issued numerous other contracts of like character, the number of which is not known to plaintiff. Plaintiff alleges on information and belief that prior to the issuance to plaintiff's assignor Jens C. Jensen of the deeds, Exhibits B.D and E, Provo Reservoir Company issued approximately 240 deeds for water rights, many of which are of like character as Exhibits B, D and E attached hereto, and that many and numerous of such deeds have been assigned and set over to Provo Reservoir Water Users Company, defendant herein, for its full water right stock. a

27. That under the said contracts and deeds

herein set forth as Exhibits A, B, C, D and E attached hereto, plaintiff has a right to the use of and is the owner of sufficient of the waters of Provo Reservoir Company's Provo River irrigation system to irrigate 20-1/3 acres of land through the irrigation season of each and every year, to wit: to the 15th. day of September on a duty not greater than seventy-five acres per second foot and ten acres thereof during high water period on a duty of not <sup>more</sup> ~~less~~ than fifty acres per second foot. 10

28. Plaintiff alleges on information and belief that numerous deeds for water rights to divers persons have been executed by Provo Reservoir Company subsequent to the recordation of contracts, Exhibits A and C attached hereto, and that the defendant Provo Reservoir Water Users Company has acquired numerous of the rights under said deeds in exchange for its fullwater right stock. Plaintiff further alleges that said 20-1/3 acres of primary water right owned by plaintiff, as evidenced by said deeds, Exhibits B, D, and E have priority over any and all deeds issued by defendant Provo Reservoir Company subsequent to the recordation of the contracts, copies of which are attached hereto and marked Exhibits A and C, and that as against any and all of said defendants and persons whomsoever who hold such deeds, or deeds of similar character, or contracts of like character issued since said deeds, copies of which are attached hereto, the plaintiff has a right to irrigation waters from Provo Reservoir Company's Provo River irrigation system to the 11

amount specified in said deeds, to wit: sufficient to irrigate 20-1/3 acres of land on a duty of not greater than seventy-five acres per second foot throughout the irrigation season of each year and up to and until September 15th, of each and every year.

29. That the Articles of Incorporation of said Provo Reservoir Water Users Company provides, among other things, - that stock in said corporation shall be issued one full water right share thereof to any person who transfers to said corporation one acre of primary water right such as is represented by deeds, copies of which are attached hereto and marked Exhibits B, D and E.

30. That said Articles of Incorporation of the defendant Provo Reservoir Water Users Company assumes to provide and the defendant herein assert that the shares of stock issued by said Provo Reservoir Water Users Company in exchange for acres of water right identical with the rights represented by the deeds, copies of which are attached hereto, are superior to and represent a greater water right than the acres of primary water right represented by said deeds. That said defendant Provo Reservoir Water Users Company assumes to issue one share of its full water right stock for and in exchange for one acre of primary water right <sup>such</sup> as represented by deeds, copies of which are attached hereto, but that the said Articles of Incorporation of Provo Reservoir Water Users Company provide a greater duty of water for full water right stock, to wit: that the quantity shall not be greater than one-

seventy-fifth second foot per acre.

31. That each and all of the defendants herein wrongfully assert and claim that the said shares of full water right stock issued by the said defendant Provo Reservoir Water Users Company are superior to and represent a greater water right than an acre of primary water right as represented by the deeds, copies of which are hereto attached. That ever since the organization of the defendant corporation Provo Reservoir Water Users Company, defendants herein have repeatedly and continuously given forth in speech and stated and asserted that a share of full water right stock issued by the said defendant Provo Reservoir Water Users Company represents a water right which is superior to and greater than the water right represented by an acre of primary water as represented by the deeds, copies of which are hereto attached, and that the water right represented by an acre of primary water right, as evidenced by said deeds, copies of which are hereto attached, is inferior to and deficient in quantity to the water right represented by a share of the full water right stock of the defendant Provo Reservoir Water Users Company. That said statements and assertions so made and given forth by the defendants are untrue and have no foundation in fact, and said statements and assertions are a slander on the plaintiff's title to the water rights represented by the deeds, copies of which are hereto attached. Plaintiff alleges on information and belief that the defendants will continue in the future, unless enjoined from so doing by the above entitled Court, to put forth and promul-

gate said wrongful and untrue statements and assertions. Plaintiff further alleges that any and all of the claims and assertions of the defendants that a share of full water right stock issued by the defendant Provo Reservoir Water Users Company is superior to and represents a greater water right than an acre of primary water as represented by the defendants deeds hereto attached, are wrongful and unlawful and have no basis in fact and are adverse to and against the rights of the plaintiff herein, to an equitable distribution to him of the said waters of said irrigation system to which he is entitled as the owner of the water right represented by the deeds, copies of which are hereto attached, and are adverse to his right to receive of the waters of said Provo River a quantity of water for each acre of said primary water right held and owned by him as in said Preambles and Resolutions of Provo Reservoir Company for the years 1909 and 1911 provided, and as hereinabove stated. 13

32. That said defendant T.F. Wentz, as said water commissioner, has heretofore wrongfully and without right, refused, and does now wrongfully and without right refuse, and he does now threaten to continue to wrongfully and without right refuse to distribute to the plaintiff a quantity of water for an acre of primary water right such as is represented by the deeds, copies of which are hereto attached, equal in amount to the quantity of water actually and in fact owned by the plaintiff as the owner and holder of the 20-1/3

acres of water right represented by the said deeds, copies of which are hereto attached and marked Exhibits B, D and E.

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As and for a fourth cause of action against the defendants herein the plaintiff complains and alleges,-

1. Plaintiff hereby adopts and reiterates Paragraphs numbered 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15,16,17,18, 19, 20, 21 and 22 of plaintiff's first cause of action herein, and each and every allegation contained in said paragraphs, as and for Paragraphs 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15,16,17,18,19,20,21 and 22 of this plaintiff's fourth cause of action against the defendants the same as if each of said paragraphs and each and every allegation therein contained were set forth in full herein.

23. That the said preambles and Resolutions of 1909 and 1911 hereinbefore referred to, each provides that a maintenance fee of \$1.50 per acre shall be paid by the owner of acres of primary water right to defendant Provo Reservoir Company for each acre of primary water right sold by the said defendant Provo Reservoir Company until the contract price of said water right shall be paid in full.

24. That the ~~predecessary~~ necessary in interest of the plaintiff in and to the 20-1/3 acres of primary water right represented by the deeds copies of which are hereto attached, paid in full to the defendant Provo Reservoir Company for any and all water rights represented by the said deeds prior to the execution and delivery to him of said deeds by the said

defendant Provo Reservoir Company.

25. That said Preambles and Resolutions for the years 1909 and 1911 contain no provision whatsoever requiring plaintiff, as the owner and holder of the water rights represented by the said deeds, to make any payment or specifying the amount of any payment to be made by the plaintiff to any one on account of his ownership of said water rights for the maintenance of said main canal in paragraph 16 hereof described, or for or on account of any cost of distribution of said waters represented by said deeds except as hereinbefore stated. u

26. That said preambles and Resolutions for 1909 and 1911 provide that the water represented by the said deeds shall be conveyed by Provo Reservoir Company to a point near the center of Section 12, Township 6 South, of Range 4 East, Salt Lake Meridian, known as the point of general delivery; that said Preambles and Resolutions specifically provide that the holders of deeds such as those copies of which are attached hereto, shall provide for themselves the means of distribution of any and all water represented by such deeds from said point of general delivery hereinbefore referred to, to the place of use of said waters by the owners thereof.

27. That notwithstanding the provisions of the said preambles and Resolutions for the said years 1909 and 1911, the said defendants herein, and each of them, wrongfully and without any right whatsoever, assert and claim

that plaintiff is required to pay and, on account of his ownership of the water rights represented by the said deeds, copies of which are hereto attached, must pay charges and costs of maintenance of the Provo Reservoir Company's Provo River irrigation system for the maintenance of canals and distribution of water therein to points <sup>far</sup> ~~for~~ beyond the said point of general delivery as fixed in the said Preambles and Resolutions under which the said deeds were issued.

28. Plaintiff further alleges that he is not obliged, under any contract or otherwise, or in any manner, or at all, as the owner of the water rights represented by the deeds, copies of which are hereto attached, or as a tenant in common in the said canal herein in Paragraph 16 specifically described, to pay any amount whatsoever for the maintenance of the said Provo Reservoir Company's Provo River irrigation system; that as a tenant in common of the said main canal, in Paragraph 16 specifically described, he should pay his proportionate share of the maintenance thereof according to his use thereof to the said point of general delivery hereinabove described. *denies*

29. Plaintiff alleges on information and belief that T.F. Wentz, as Commissioner, is charged with the duty of pro rating to users having independent rights in the said main canal, specifically described in Paragraph 16, the amount of expense of maintenance of said main canal which each user and owner of water rights flowed therein should pay toward the maintenance thereof on account of such use. *denies*

WHEREFORE, Plaintiff prays judgment against said defendants, and each of them, as follows, towit:

ON PLAINTIFF'S FIRST CAUSE OF ACTION:

1. That the Court determine the right of plaintiff to flow the said 20-1/3 acres of primary water right represented by the deeds, copies of which are hereto attached, through the said main canal of the Provo Reservoir Company's Provo River irrigation system which canal is described in Paragraph 16 of plaintiff's first cause of action herein.

2. That the Court enter herein a decree quieting plaintiff's title as against each and all of the defendants herein to a right-of-way and capacity in the said main canal in Paragraph 16 described for the conveyance of the said 20-1/3 acres of primary water right through the said canal to the said point known as the point of general delivery to-wit: to a point near the center of Section 12, Township 6 South, Range 2 East, Salt Lake Meridian.

3. That It be adjudged by the Court that plaintiff, as the owner and holder of the said 20-1/3 acres of primary water right represented by the said deeds, copies of which are hereto attached, is entitled to such proportionate share of the waters flowing in the said main canal herein in Paragraph 16 described, to supply water rights of persons holding rights of the same character in priority as represented by plaintiff's deeds as the said 20-1/3 primary acres of water right shall bear to the total number of such units in said canal.

4. That plaintiff's title to such proportionate

share of the said waters now, or hereafter flowing in said main canal, be quieted as against each and all of the defendants herein.

5. That the said T.F. Wentz, as commissioner, be, by the judgment herein rendered, required to divert from Provo River into the said main canal, herein in Paragraph 16 described, the water represented by the said 20-1/3 acres of primary right owned by the plaintiff and represented by the deeds hereto attached, and that he be further required to distribute said 20-1/3 acres of primary water right into such laterals heading in said main canal as plaintiff, his lessees or assigns, may require from time to time.

ON PLAINTIFF'S SECOND CAUSE OF ACTION:

6. That the Court determine the right of plaintiff, at his election to flow through the said main canal, herein in Paragraph 16 specifically described, the said 2.52 second feet of water owned by the plaintiff, as herein in his second cause of action stated, together with any other waters which plaintiff may have which may be flowed through said main canal for beneficial purposes at any and all times when there shall be an unused capacity in said canal, and particularly from such time as the recession of annual high water shall leave sufficient space in said canal for such waters, or a portion thereof, to the end of the irrigation season of each and every year.

7. That plaintiff's rights to so flow water in said canal be quieted as against each and all of the claims

of the defendants herein.

8. That the said T. F. Wentz, as commissioner under appointment of the Court, and his successors in office, be, by the judgment, directed at plaintiff's request, or the request of plaintiff's lessees or assigns, to divert any such waters which plaintiff may have a right to so flow through the said main canal, herein in Paragraph 16 specifically described, into the said canal for plaintiff's use, or for the use of plaintiff's lessees or assigns, and that said T. F. Wentz, as such commissioner, be directed by the judgment, to divert such waters from the said canal into such laterals heading in said canal as shall be designated by plaintiff herein, or by plaintiff's lessees or assigns entitled to the use of such water.

9. That the Court determine the liability of the plaintiff herein for so flowing such waters in the said main canal, specifically described in Paragraph 16 herein, and it be ordered and adjudged that plaintiff shall not be required to pay any rentals to any of the defendants herein for carrying capacity in said main canal for his said water when there shall be an otherwise unoccupied space therein, and that it be decreed that plaintiff shall pay only such additional cost of maintenance of said main canal, if any, which are occasioned by such conveyance of plaintiff's water therein.

ON PLAINTIFF'S THIRD CAUSE OF ACTION:

10. That defendants and each of them, be by the Court restrained from giving out in speech that an acre of

primary water right as evidenced by the deeds, copies of which are attached to plaintiff's complaint, is inferior to and a less water right than a share of full water right stock of Provo Reservoir Water Users Company as by it issued.

11. That it be decreed by the Court that plaintiff's rights to the irrigation waters of said main canal, as represented by his deeds, copies of which are hereto attached, are superior to and prior in right to any and all rights of defendants and each of them, by them held or claimed through conveyances or deeds from the said Provo Reservoir Company issued subsequent to the issuance of the deeds, copies of which are hereto attached.

12. That plaintiff's title be quieted as against defendants, and each of them, and against any and all rights and claims of defendants through deeds issued by the Provo Reservoir Company subsequent to the issuance of the deeds attached hereto to sufficient waters in and of the said main canal, described in paragraph 16 hereof, for the irrigation of 20-1/3 acres of land at a duty not greater than seventy-five acres per second foot and that under Exhibit "B" plaintiff is entitled to irrigate ten acres of lands throughout the high water season on a duty of not greater than fifty acres per second foot.

13. That the said T.F. Wentz, as Commissioner, and his successor in office, be required to divert from Provo River into said main canal, herein in Paragraph 16 described, and to distribute to plaintiff, or his successor in interest, from the waters of said main canal a volume sufficient for the

irrigation of 20-1/3 acres of land on a duty not greater than that hereinbefore prayed to be decreed by the Court so long as there shall be sufficient waters in said main canal to supply all of the owners and holders of deeds issued by the Provo Reservoir Company in point of time down to and including the issuance of the deeds attached, said water to be distributed from said main canal into such laterals heading therein as plaintiff or his assigns, or lessees may direct.

ON PLAINTIFF' FOURTH CAUSE OF ACTION:-

14. That the Court determine the liability of plaintiff herein for cost of maintenance of said main canal in Paragraph 16 herein described, on account of plaintiff's ownership of said 20-1/3 acres of primary water right as represented by the deeds hereto attached, and his use of said canal for the conveyance of said water therein.

15. That it be ordered and adjudged by the Court that plaintiff shall pay only such proportionate share of the costs of maintenance of the said main canal to the center of said - Section 12, Township 6 South of Range 2 East, Salt Lake Meridian,- towit: to the point of general delivery as fixed in the said Preambles and Resolutions of Provo Reservoir Company for the years 1909 and 1911, as the volume of his right therein by reason of his ownership of said 20-1/3 acres of primary right shall bear to the whole volume of said canal.

16. That it be decreed by the Court that plaintiff as the owner of the said 20-1/3 acres of primary water

right in the said main canal is not obligated to pay to any of his co-tenants, or defendants herein, any charge for maintenance or distribution other than his proportionate share of the reasonable cost of maintenance of the said main canal to the point of general delivery to-wit: to a point near the center of - Section 12, Township 6 South of Range 2 East, Salt Lake Meridian.

17. That said T. F. Wentz, as Commissioner, be required by the Court to pro rate the cost of maintenance of said main canal to the center of Section 12, Township 6 South of Range 2 East, Salt Lake Meridian, to-wit: to the point of general delivery herein mentioned and to pro rate to plaintiff such share of the cost of maintenance thereof as herein determined by the Court.

18. Plaintiff further prays for general relief, and for his costs herein expended.



Attorneys for Plaintiff.

STATE OF UTAH )

COUNTY OF UTAH) SS

Caleb Tanner, being first duly sworn, deposes and says; that he is the plaintiff named in the above and foregoing action; that he has read the above and foregoing complaint and knows the contents thereof and that the same are true of his own knowledge, except as to matters and things therein stated on information and belief, and as to such matters he believes it to be true.

Caleb Tanner

Subscribed and sworn to before me

this 26<sup>th</sup> day of March 1926.

[Signature]

Notary public.

Residing Provo, Utah.

My commission expires Mar 8 1927.

EXHIBIT A  
WATER CONTRACT NO.9

This Agreement made this 4th. day of August, 1909 by and between Provo Reservoir Company, a corporation of the State of Utah, principal place of business, Provo, Utah, (hereinafter called the company), party of the first part and Jens C. Jensen, and his wife, ..... of Provo Bench, Utah County, State of Utah, (hereinafter called the Consumer), party of the second part, WITNESSETH:

In consideration of the sum of One Dollar paid by the said Consumer to the Company, the receipt of which is hereby acknowledged by the latter, and the further sum of Seven Hundred Fifty Dollars, to be paid by the Consumer to the Company, at the times and in the manner specified in the resolution hereinafter referred to, and the further consideration of the covenants and agreements of this contract, the parties hereto mutually agree, promise and covenant with each other as follows, to-wit:--

The Company agrees to furnish to the Consumer and the Consumer agrees to purchase and take from the Company Ten acres of Primary water and no Acres of High Water, as described in the resolution hereinafter referred to, for the irrigation of the following described tract of land in Utah County, State of Utah, to-wit:--

The ..... Half of the South half of the North East Quarter of the South West quarter of Section 22, Township 6 South, Range 2 East of the Salt Lake Meridian, Area 10 acres.

and the parties hereto promise, and agree to and with each other, that they and their heirs, representatives, successors and assigns will faithfully observe and be bound by all and singular the terms, conditions and covenants hereof, and of that certain resolution of the Board of Directors of the Company, representing the sale of water rights and security payment therefor, and all matters therein stated and connected with the construction, operation and management of canal systems, reservoirs, and other matters, of whatever nature therein set forth, passed on July 28th, 1909, and recorded August 4th, 1909, in Book "114" at Page 23 of the Utah County Records of said Utah County, Utah; which resolution and the said record thereof are hereby referred to, and in all respects made a part of this contract, and accepted by, and is binding upon, the parties hereto.

And this contract shall be construed to be and is a Mortgage Lien upon the above described tract of land, and the said land is and shall be and remain charged with all the conditions of this contract, including all, the conditions, terms, and stipulation set forth in the resolution hereinafter referred to.

IN WITNESS WHEREOF, the said corporation has caused this contract and mortgage be signed by its president and its corporate seal to be hereunto affixed, and the said Consumers and Mortgagors have hereunto set their hands this 4th day of August 1909.

PROVO RESERVOIR COMPANY, a  
Corporation,

Attest:

Earl J. Glade,  
Secretary

By Joseph R. Murdock, its President

Jens C. Jensen  
Maren Jensen

(Corporate Seal)

"EXHIBIT B."

DEED FOR WATER RIGHT

PROVO RESERVOIR COMPANY, a corporation of the State of Utah, having its principal office at Provo City, Utah County, State of Utah, grantor, hereby conveys and warrants to Jens C. Jensen of Provo Bench, Utah County, State of Utah, for the sum of One Dollar and other valuable considerations, the receipt of which is hereby acknowledged, Ten (10) Acres of Primary Water Right in the grantor's Provo River Irrigation System, as defined in that certain Preamble and Resolutions adopted by the grantor corporation on July 28, 1909 a copy of which Preamble and Resolutions is recorded in the office of the County Recorder of Utah County, State of Utah, in Book 114 of Mortgages, at Page 23, which record with the Preamble and resolutions is hereby referred to and made a part hereof.

Subject to the water rights heretofore conveyed to the Blue Cliffs Canal Company corporation, by deed dated February 16, 1910, and recorded in said recorder's office in Book 115 of Deeds, at page 347, reference to all of which is made as a part hereof.

IN WITNESS WHEREOF, said corporation has caused this deed to be signed by its President and its Secretary, and its corporate seal to be hereunto affixed at its office at Provo City, Utah, this 29th. day of November, A.D. 1918.

PROVO RESERVOIR COMPANY,  
a corporation

By Joseph R. Murdock (Signed)  
Its President

Attest: R.J. Murdock (Signed)  
Secretary

STATE OF UTAH: )  
County of Utah: ) SS.

On the 29th. day of November, 1918, personally appeared before me, Joseph R. Murdock, who being by me first duly sworn, on his oath says, that he is the President of the Provo Reservoir Company, a Utah Corporation, and the foregoing instrument was signed by him on behalf of said corporation by authority of resolutions of its Board of Directors, and the said Joseph R. Murdock duly acknowledged to me that said corporation executed the same.

Alfred L. Booth,  
Notary Public

My commission expires April 15, 1919.

WATER CONTRACT NO.156

THIS AGREEMENT, Made this 22nd day of September, 1911, by and between Provo Reservoir Company, a corporation of the State of Utah, principal place of business, Provo, Utah, (hereinafter called the Company), party of the first part, and Jens C. Jensen, and his wife Maren Jensen, of Provo Bench, Utah County, State of Utah, (hereinafter called the Consumer) party of the second part, Witnesseth:

In consideration of the sum of One Dollar paid by the said consumer to the Company the receipt of which is hereby acknowledged by the latter, and the further sum of Four Hundred Dollars, to be paid by the Consumer to the Company, at the times and in the manner specified in the resolution hereinafter referred to and the further consideration of the covenants and agreements of this contract, the parties hereto mutually agree, promise and covenant with each other as follows, to-wit:-

The Company agrees to furnish to the Consumer and the Consumer agrees to purchase and take from the Company Five (5) acres of primary water and No Acres of high water, as described in the resolution hereinafter referred to, for the irrigation of the following described tract of land situated in Utah County, State of Utah, to-wit:

South Quarter of the North half of the North East quarter of the South West Quarter of Section 22, Township 6 South of Range 2 East of the Salt Lake Meridian, Area 5 Acres.

And the parties hereto promise and agree to and with each other, that they and their heirs, representatives, successors and assigns will faithfully observe and be bound by all and singular the terms, conditions and covenants hereof and of that certain resolution of the Board of Directors of the Company, respecting the sale of water rights and security of payment therefor, and all matters therein stated and connected with the construction, operation and management of canal systems, reservoirs, and other matters, of whatever nature therein set forth, passed on Feby 15th. 1911, and recorded March 25th. 1911, in Book "126" at page 358 of Utah County records of said Utah County, Utah, which resolution and the said record thereof are hereby referred to, and in all respects made a part of this contract, and accepted by and is binding upon the parties hereto.

And this contract shall be construed to be and is a mortgage lien upon the above described tract of land, and the said land is and shall be and remain charged with all the conditions of this contract, including all the conditions, terms and stipulations set forth in the resolution hereinbefore referred to.

IN WITNESS WHEREOF, the said corporation has caused this contract and mortgage to be signed by its president, and its corporate seal to be hereunto affixed, and the said consumer and mortgagors have hereunto set their hands this 22d day of September, 1911.

PROVO RESERVOIR COMPANY,  
a corporation

By Joseph R. Murdock, its  
President

Jens C. Jensen  
Maren Jensen

Attest:

R. J. Murdock  
SECRETARY

(CORP. SEAL)

"EXHIBIT D"

DEED FOR WATER RIGHT

PROVO RESERVOIR COMPANY, a corporation of the State of Utah, having its principal office at Provo City, Utah County, State of Utah, grantor, hereby conveys and warrants to Jens C. Jensen of Provo Bench, Utah County, State of Utah, for the sum of One Dollar and other valuable considerations, the receipt of which is hereby acknowledged, Five (5) Acres of Primary Water Right in the grantor's Provo River Irrigation System, as defined in that certain Preamble and Resolutions adopted by the grantor corporation on February 15, 1911 a copy of which Preamble and Resolutions is recorded in the office of the County Recorder of Utah County, State of Utah, in Book 126 of Mortgages, at page 358, which record with the Preamble and Resolutions is hereby referred to and made a part hereof.

Subject to the water rights heretofore conveyed to the Blue Cliffs Canal Company corporation, by deed dated February 15, 1910, and recorded in said recorder's office in Book 115 of Deeds, at page 347, reference to all of which is made a part hereof.

IN WITNESS WHEREOF, said corporation has caused this deed to be signed by its President and its Secretary, and its corporate seal to be hereunto affixed at its office at Provo City, Utah, this 29th. day of November, A. D. 1918.

PROVO RESERVOIR COMPANY  
a corporation,

By Joseph R. Murdock (Signed)  
Its President

Attest R. J. Murdock  
Secretary

State of Utah: )  
County of Utah: ) SS

On the 29th day of November, 1918, personally appeared before me, Joseph R. Murdock, who being by me first duly sworn, on his oath says, that he is the President of the Provo Reservoir Company, a Utah corporation by authority of resolutions of its Board of Directors, and the said Joseph R. Murdock duly acknowledged to me that said corporation executed the same.

Alfred L. Booth  
Notary Public

My commission expires  
April 15, 1919

"EXHIBIT E"

DEED FOR WATER RIGHT

PROVO RESERVOIR COMPANY, a corporation of the State of Utah, having its principal office at Provo City, Utah County, State of Utah, grantor hereby conveys and warrants to Jens C. Jensen, Provo Bench, grantee, of Utah County, State of Utah, for the sum of One Dollar, and other valuable consideration hereby acknowledged, five and one-third ( 5 1-3 ) Acres of Primary Water Right in the grantor's Irrigation System, as defined in ~~that~~ certain Preamble and Resolutions adopted by the grantor corporation, on February 15, 1911, a copy of which Preamble and Resolutions is recorded in the office of the County Recorder of Utah County, State of Utah, in book 126, at page 358, which record is hereby referred to and made a part hereof.

This deed is intended to convey, and there is hereby conveyed to the said grantee, such undivided interest in common, in and to the whole of the water rights, easements and rights of way and franchises for canals and diversion works, as are now owned by, and that may hereafter be acquired by, the company for use in connection with the said grantor company's Provo river system, as the interest of the said grantee, represented by the number of Acres of water right hereby conveyed, shall at this or at any time hereafter bear pro-rata to the total number of Acres of water right sold or contracted for sale by said grantor company.

This deed is however subject to those certain interests and rights in said Provo River Irrigation system which the grantor has heretofore conveyed to the Blue Cliffs Canal Company, a corporation.

Grantee accepts obligation for maintenance as set forth in said Preamble and Resolutions; and also waives all participation of control, management, operation and regulation of the said system, until Jan. 1, 1920.

IN WITNESS WHEREOF, said corporation has caused this deed to be signed by its President and its Secretary, and its corporate seal to be hereunto affixed at its office at Provo City, Utah, 28th. day of December, A.D. 1912.

PROVO RESERVOIR COMPANY,  
A corporation

By Joseph R. Murdock,  
its President (Signed)

Attest: Royal J. Murdock, Secretary  
(Signed)

STATE OF UTAH )  
                  ) SS.  
COUNTY OF UTAH )

On 28th day of December, 1912, personally appeared before me Joseph R. Murdock and Royal J. Murdock, who being first duly sworn, each on his oath says that they are respectively the President and **Secretary** of Provo Reservoir Company, a Utah corporation, and the foregoing instrument was signed by them on behalf of said corporation by authority of resolutions of its Board of Directors, and the said Joseph R. Murdock and Royal J. Murdock duly acknowledged to me that said corporation executed the same.

Alfred L. Booth  
Notary Public

My commission Expires  
April 25th, 1915



In the District Court of Utah County  
State of Utah

Caleb Tanner

Plaintiff

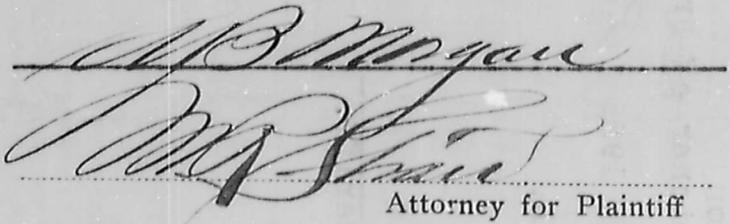
vs.

SUMMONS

Provo Reservoir Company, a corporation  
~~Provo Reservoir Water Users Company,~~  
a corporation, Blue Cliff Canal Company,  
a corporation, North Union Irrigation  
Company, a corporation, ~~Defendants~~  
Provo Bench Canal & Irrigation Company,  
a corporation, and T.F. Wentz as Commissioner  
of Provo River, Defendants

THE STATE OF UTAH TO SAID DEFENDANT:

You are hereby summoned to appear within twenty days after service of this summons upon you, if served within the county in which this action is brought, otherwise within thirty days after such service, and defend the above entitled action; and in case of your failure so to do, judgment will be rendered against you according to the demands of the complaint ~~which has been filed with the Clerk of the Court~~ ~~which~~ which within ten days will be filed with the Clerk of said Court.

  
\_\_\_\_\_  
Attorney for Plaintiff

P. O. Address:

Provo, Utah

No 4575

Served this Summons on  
T.F.Wentz as Commissioner of Provo River

*P.P.*

this 10 day of March 1926

At Provo City, Utah.

J.D.Boyd Sheriff

By Elin A. Gue  
Deputy Sheriff.

No. 4575

Served this Summons on  
Provo Reservoir Company a Corporation

By J. J. Murdoch  
Defendants

This 17 day of March 1926

At Provo City, Utah. J.D.Boyd Sheriff

On Provo Reservoir Water Users Company a corporation

By J. J. Murdoch  
This 17 day of March 1926

At Provo

Blue Cliff Canal Company a Corporation

By J. J. Murdoch  
At

this 17 day of March 1926

At Provo

North Union Irrigation Company a Corporation

By David W. Thomas  
At

This 17 day of March 1926

At Provo

Provo Bench Canal & Irrigation Company a corporation

By John A. Stratton  
At

This 20 day of March 1926

At Provo Bench

RECEIVED AT  
SHERIFF'S OFFICE,

MAR 19 1926

AT O'Clock 12  
J. D. BOYD, Sheriff,  
Utah County, Utah.

Utah Sheriff of Utah County.  
By J. J. Murdoch  
Deputy Sheriff.

SHERIFF'S OFFICE.

STATE OF UTAH, }  
COUNTY OF UTAH, } ss.

I hereby certify and return that I received the within and hereto annex Summons on the 19th. day of March 1926 and served same upon Provo Reservoir Company a corporation, Provo Reservoir Water Users Company, a corporation, and the Blue Cliff Canal Company a Corporation,

the within named Defendants , personally, by delivering to and leaving with ~~xxxxxx~~ R. J. Murdock Secretary of said corporations, in Provo City, Utah County, State of Utah, a true copy of said Summons on the 19th. day of March 1926

Further certify that on the copy of the Summons so served, I endorsed the date and place of service and added my name and official title thereto.

Dated at Provo City, Utah, this 20th. day of March 1926.

J. D. BOYD,  
Sheriff of Utah County, State of Utah,

By Ralph J. Nielsen  
Deputy Sheriff.

Sheriff's Fees:

Service \$ 3.00  
Mileage \$ 20  
Total \$ 3.20

# SHERIFF'S OFFICE.

STATE OF UTAH, }  
COUNTY OF UTAH, } ss.

I hereby certify and return that I received the within and hereto annex Summons on the 19th. day of March 1926 and served same upon North Union Irrigation Company a corporation

the within named Defendant , personally, by delivering to and leaving with ~~xxxxx Defendant xxxxxx~~ David B. Thorne Secretary of said corporation, in Lindon, Utah County, State of Utah, a true copy of said Summons on the 19th. day of March 1926

Further certify that on the copy of the Summons so served, I endorsed the date and place of service and added my name and official title thereto.

Dated at Provo City, Utah, this 20th. day of March 1926

J. D. BOYD,

Sheriff of Utah County, State of Utah,

By

*Ralph J. Nielsen*  
Deputy Sheriff.

## Sheriff's Fees:

Service	\$ 1.00
Mileage	\$ 1.80
Total	\$ 2.80

SHERIFF'S OFFICE.

STATE OF UTAH, }  
COUNTY OF UTAH, } ss.

I hereby certify and return that I received the within and hereto annex Summons on the 19th. day of March 1926 and served same upon Provo Bench Canal & Irrigation Company a corporation

the within named Defendant , personally, by delivering to and leaving with ~~said Defendant~~ John Stratton President of said corporation. in Provo Bench. Utah County, State of Utah, a true copy of said Summons on the 20th. day of March 1926.

Further certify that on the copy of the Summons so served, I endorsed the date and place of service and added my name and official title thereto.

Dated at Provo City, Utah, this 20th. day of March 1926

J. D. BOYD,  
Sheriff of Utah County, State of Utah,

By Ralph J. Nielsen  
Deputy Sheriff.

Sheriff's Fees:

Service \$ 1.00  
Mileage \$ 60  
Total \$ 1.60

# SHERIFF'S OFFICE.

STATE OF UTAH,            }  
COUNTY OF UTAH,        } ss.

I hereby certify and return that I received the within  
and hereto annex Summons on the 19th.        day of March 1926  
and served same upon Frank Wentz as Commissioner of Provo River.

the within named Defendant , personally, by delivering to and  
leaving with said Defendant in Provo City,  
Utah County, State of Utah, a true copy of said Summons 20th.  
March 1926.

Further certify that on the copy of the Summons so served,  
I endorsed the date and place of service and added my name and  
official title thereto.

Dated at Provo City, Utah, this 20th.        day of  
March 1926.

J. D. BOYD,

Sheriff of Utah County, State of Utah,

By Elias A. Gee  
Deputy Sheriff.

## Sheriff's Fees:

Service	\$ 1.00
Mileage	\$ 20.
Total	\$ 1.20

6346

IN DIST. COURT  
UTAH CO. UTAH.

\* FILED \*

MAR 26 1928

*Melba Bachman*

SHERIFF'S OFFICE

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

- - - - -

Caleb Tanner,

Plaintiff,

vs.

Provo Reservoir Company, a corporation,  
Provo Reservoir Water Users Company,  
a corporation, Blue Cliff Canal Company,  
a corporation, North Union Irrigation  
Company, a corporation, Provo Bench Canal and Irrigation  
Company, a corporation, and T. F. Wentz,  
as Commissioner of Provo River,

Defendants.

- - - - -

DEMURRER OF NORTH UNION  
IRRIGATION COMPANY, a  
corporation, and PROVO  
BENCH CANAL AND IRRIGA-  
TION COMPANY, a corporation.

-----

Come now the defendants North Union Irrigation Com-  
pany, a corporation, and Provo Bench Canal ~~Company~~ and Irriga-  
tion Company, a corporation, and demur to the complaint of  
the plaintiff filed herein upon the ground that said complaint  
does not state facts sufficient to constitute a cause of action  
against said defendants and in favor of said plaintiff.

2nd. These defendants demur to the first cause of  
action contained in said complaint upon the ground that said  
first cause of action does not state facts sufficient to  
constitute a cause of action against these defendants and  
in favor of said plaintiff.

3rd. These defendants demur to the second cause of  
action contained in said complaint upon the ground that said  
second cause of action does not state facts sufficient to  
constitute a cause of action against these defendants and  
in favor of said plaintiff.

4th. These defendants demur to the third cause  
of action contained in said complaint upon the ground that

said third cause of action does not state facts sufficient to constitute a cause of action against these defendants and in favor of said plaintiff.

5th. These defendants demur to the fourth cause of action contained in said complaint upon the ground that said fourth cause of action does not state facts sufficient to constitute a cause of action against these defendants and in favor of said plaintiff.

Ray & Rawlins

Attorneys for the defendants  
North Union Irrigation Com-  
pany and Prove Bench Canal  
and Irrigation Company.

Received copy of the above demurrer this 6<sup>th</sup> day of April,  
1926.

M. R. Straw and  
A. B. Morgan

Attorneys for Plaintiff.

#6347

IN DIST. COURT  
UTAH CO., UTAH.  
\* FILED \*

APR 7 1926  
*D. M. Hall* Clerk

Deputy

Attorneys for Plaintiff

1888

Received copy of the above mentioned writ of habeas corpus

and the defendant company  
and the above named  
John W. Winton Plaintiff  
Attorneys for the defendant

*John W. Winton*

In view of said writ of habeas corpus  
and the fact that the defendant  
company is a corporation organized  
under the laws of the State of Utah  
and that the writ of habeas corpus  
is a writ of right and is not  
subject to the discretion of the  
court.

In view of said writ of habeas corpus  
and the fact that the defendant  
company is a corporation organized  
under the laws of the State of Utah  
and that the writ of habeas corpus  
is a writ of right and is not  
subject to the discretion of the  
court.

*7/13*

1926

*0*

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

Caleb Tanner, Plaintiff,  
vs.

Provo Reservoir Company, a corporation,  
Provo Reservoir Water Users Company,  
a Corporation, Blue Cliff Canal Company,  
a corporation, North Union Irrigation  
Company, a Corporation, Provo Bench Canal  
and Irrigation Company, a corporation,  
and T.F. Wentz, as Commissioner of Provo  
River,

NOTICE.

Defendants.

To North Union Irrigation Company, a corporation, and  
To Provo Bench Canal and Irrigation Company, a corporation,  
and  
To Ray and Rawlins, Attorneys for said Corporations;

Take Notice that on the 23rd day of April, 1926, the  
above entitled Court made and entered an order in the above  
entitled action overruling the demurrer of North Union  
Irrigation Company, a corporation, and overruling the demurrer  
of Provo Bench Canal and Irrigation Company, a corporation,  
to plaintiff's complaint and said defendant corporations  
were granted 20 days in which to file an answer or answers  
herein.

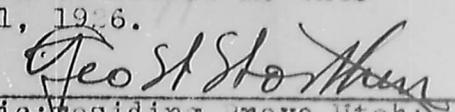
Dated Provo, Utah, this 23rd day of April, 1926.

  
Attorneys for Plaintiff.

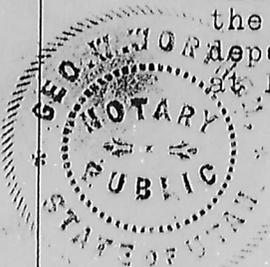
STATE OF UTAH )  
COUNTY OF UTAH) SS

M.R. STRAW being first duly sworn, deposes and says; that he  
is one of the attorneys for plaintiff in the above entitled  
action and has his office at Provo, Utah; that Ray and Rawlins  
are attorneys for defendants in above entitled action, the  
North Union Irrigation Company and Provo Bench Canal and  
Irrigation Company, and said attorneys have their office at  
Salt Lake City, Utah; that there is a regular communication  
by mail between said points daily; that on the 23rd day of  
April, 1926, he placed a full, true and correct copy of the  
above and foregoing notice in an envelope addressed to Ray  
and Rawlins, Attorneys at Law, Salt Lake City, Utah, prepaid  
the postage thereon to Salt Lake City Utah in full, and  
deposited the same on said day in the United States Post Office  
at Provo, Utah.

  
Subscribed and sworn to before me this  
23rd day of April, 1926.

  
Notary public; residing Provo, Utah;

My commission expires December 29 1928.



6346

IN DIST. COURT  
UTAH CO., UTAH

FILED

APR 24 1926

*J. M. Hales* Clerk  
*Melba Bachman* Deputy

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

-----oOo-----  
:  
:  
CALEB TANNER, :  
:  
:  
Plaintiff, :  
:  
:  
-vs- :  
:  
:  
Provo Reservoir Company, a :  
corporation, Provo Reservoir :  
Water Users Company, a corpo- :  
ration, Blue Cliffs Canal Com- :  
pany, a corporation, North :  
Union Irrigation Company, a :  
corporation, Provo Bench Canal :  
& Irrigation Company, a corpo- :  
ration, T. F. Wentz as Commis- :  
sioner of Provo River :  
:  
-----eOo-----

DEMURRER TO COMPLAINT

The said defendant, the Blue Cliffs Canal Company, now comes, and appearing for itself alone and not for either of its co-defendants, demurs to the complaint of the plaintiff on file herein, and to each and every alleged cause of action of said Complaint separately, and for grounds of demurrer states:-

I. That there is a misjoinder of parties defendant in the plaintiff's alleged first cause of action for the reason that there is no showing in the said First alleged cause of action of any community of interest or joinder of interest of this defendant, the Blue Cliffs Canal Company, a corporation, with any other of the defendants, or with all of the defendants combined, nor is there shown to be any action by any of the other defendants joining with this defendant in any of the matters alleged or set forth in the said first alleged cause of action of said complaint.

II. That there is a misjoinder of parties defendant in the plaintiff's alleged second cause of action for the reason that there is no showing in the said second alleged cause of action of any community of interest or joinder of interest of this defendant, the Blue Cliffs Canal Company, a corporation, with any other of the defendants, or with all of the defendants combined, nor is there shown to be any action by any of the other defendants joining with the defendant in

any of the matters alleged or set forth in the said second alleged cause of action of said complaint.

III. That there is a misjoinder of parties defendant in the plaintiff's alleged third cause of action for the reason that there is no showing in the said third alleged cause of action of any community of interest or joinder of interest of this defendant, the Blue Cliffs Canal Company, a corporation, with any other of the defendants, or with all of the defendants combined, nor is there shown to be any action by any of the other defendants joining with the defendant in any of the matters alleged or set forth in the third alleged cause of action of said complaint.

IV. That there is a misjoinder of parties defendant in the plaintiff's alleged fourth cause of action for the reason that there is no showing in the said fourth alleged cause of action of any community of interest or joinder of interest of this defendant, the Blue Cliffs Canal Company, a corporation, with any other of the defendants, or with all of the defendants combined, nor is there shown to be any action by any of the other defendants joining with this defendant in any of the matters alleged or set forth in the said fourth alleged cause of action of said complaint.

V. That there is a misjoinder of alleged causes of action in the said Complaint in this:

A.

(1) That the first alleged cause of action is an attempt to determine the right of the plaintiff to flow certain water rights represented by deeds given by one of the defendants, the Provo Reservoir Company, <sup>through the main canal of</sup> ~~for certain water rights in~~ the Provo Reservoir Company's irrigation system.

(2) There is an attempt to obtain a decree quieting plaintiff's title against the defendant for right of way and capacity in the main canal of the Provo Reservoir Company's irrigation system, for the conveyance of 20-1/3 acres of Primary water through said canal.

(3) That there is an attempt to obtain a judgment of the Court, decreeing that the plaintiff is entitled to such proportionate share of the water flowing in the main canal of the Provo Reservoir Company's irrigation system, as the plaintiff's alleged 20-1/3 acres of Primary water right shall bear to the total number of like units in said canal.

(4) There is an attempt to quiet plaintiff's title to such proportionate share of said water as against each and all of the defendants in said cause.

(5) There is an attempt to require the defendant, T. F. Wentz, as Commissioner, to divert from the Provo River into the main canal of the Provo Reservoir Company's irrigation system, 20-1/3 acres of Primary water claimed to be owned by the plaintiff as set forth in said first alleged cause of action.

B.

(1) In the plaintiff's alleged second cause of action there is an attempt to determine the right of the plaintiff to flow 2.52 second feet of water claimed by the plaintiff, together with any other water which plaintiff may have which may be flowed through said main canal, and at all times when there shall be an unused capacity in said canal; said 2.52 second feet of water is not water that has ever belonged to the Provo Reservoir Company's irrigation system, but is water that the plaintiff has acquired from a source entirely independent from the water rights of the Provo Reservoir Company's irrigation system.

(2) There is an attempt to quiet plaintiff's title to the right to flow in said canal the said 2.52 second feet of water claimed by the plaintiff.

(3) There is an attempt to require and direct the defendant, T. F. Wentz, to turn said 2.52 second feet of water out of the Provo River system into the main canal of the Provo Reservoir Company's irrigation system, and to direct said T. F. Wentz, as Commissioner to divert such water from said canal into such laterals heading into such canal as shall be designated by the plaintiff or by the plaintiff's lessees or assigns claiming to be entitled to said 2.52 second feet of water.

(4) There is an attempt to have the Court determine the liability of the plaintiff herein for flowing such water in said canal, and that it be adjudged that the plaintiff shall not be required to pay any rentals to any of the defendants herein for carrying capacity in said main canal, when there shall be any other unoccupied space therein. In other words, it is an attempt to take property belonging to some of the plaintiffs without just compensation.

C.

(1) The plaintiff's third cause of action is an attempt to restrain the defendants from giving out in speech that an acre of Primary water right as evidenced by the deeds, copies of which are attached to the plaintiff's complaint, is inferior to and less than a share of full water right stock of the Provo Reservoir Water Users Company as by it issued.

(2) In his third cause of action plaintiff attempts to obtain a decree that the plaintiff's rights for the irrigation water for the main canal for the Provo Reservoir Company's irrigation system as represented by his deeds are superior and prior in right to any and all rights of the defendants and each of them by them held or claimed through conveyances or deeds from the said Provo Reservoir Company issued subsequent to the issue of the said deeds of the plaintiff.

(3) There is an attempt to quiet plaintiff's title as against the defendants and against any and all rights and claims of the defendants through deeds issued by the Provo Reservoir Company subsequent to the issuance of the deeds of the plaintiff set out in said complaint for the irrigation of said 20-1/3 acres of land at a duty not greater than 75 acres per second foot, and that under Exhibit B plaintiff is entitled to irrigate 10 acres of land throughout the High water season on a duty of not greater than 50 acres per second foot.

(4) There is an attempt to obtain a decree requiring T. F. Wentz to divert from Provo River into the said main canal and distri-

bute to the plaintiff or his successors in interest from the waters of said main canal a volume sufficient for the irrigation of 20-1/3 acres of land or a duty not greater than that before prayed for in said complaint, so long as there shall be sufficient water in said main canal to supply all of the owners and holders of deeds issued by the Provo Reservoir Company from point of line down to and including the issuance of deeds attached to said complaint, such water to be distributed into such laterals as the plaintiff or his assigns or lessees may direct.

D.

(1) There is an attempt in plaintiff's alleged fourth cause of action to obtain a decree of the Court to determine the liability of the plaintiff for the cost of maintenance of said canal in paragraph 16~~0~~ of said complaint described on account of the plaintiff's ownership of the 20-1/3 acres of Primary water right represented by said deeds, and his use of said canal for the conveyance of said waters therein.

(2) There is an attempt to obtain an order and judgment of the Court that plaintiff pay only such proportionate share of the costs of maintenance of said main canal to the alleged point of general delivery as mentioned in said complaint as the volume of his right therein, by reason of his alleged ownership of said 20-1/3 acres of Primary water right shall bear to the whole volume of said canal.

(3) There is an attempt to obtain a decree by the Court that the plaintiff as the owner of said 20-1/3 acres of Primary water right in the said main canal is not obligated to pay any of his co-tenants or the defendants herein, any charge for maintenance and distribution other than his proportionate share of the reasonable cost of maintenance of the said main canal to the said point of general delivery mentioned in said complaint.

VI. That the said first alleged cause of action of said Complaint does not state facts sufficient to constitute a cause of action against this defendant, the Blue Cliffs Canal Company.

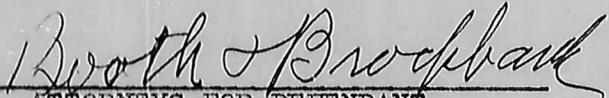
VII. That the said second alleged cause of action of said Complaint does not state facts sufficient to constitute a cause of action against this defendant, the Blue Cliffs Canal Company.

VIII. That the said third alleged cause of action of said Complaint does not state facts sufficient to constitute a cause of action against this defendant, the Blue Cliffs Canal Company.

IX. That the said alleged fourth cause of action of said Complaint does not state facts sufficient to constitute a cause of action against this defendant, the Blue Cliffs Canal Company.

X. That the said Complaint as a whole or any one or more of the alleged causes of action therein set forth, does not state facts sufficient to constitute a cause of action against this defendant, Blue Cliffs Canal Company.

WHEREFORE, this defendant, Blue Cliffs Canal Company, prays that it be hence dismissed with its costs of suit herein expended.

  
ATTORNEYS FOR DEFENDANT  
BLUE CLIFFS CANAL COMPANY.

Copy of the foregoing Demurrer to Complaint received this 6th day of May, A. D. 1926.

  
ATTORNEYS FOR PLAINTIFF.

# 6346

IN DISTRICT COURT  
UTAH COUNTY, UTAH

Wm. Hales

Clk

Deputy

WILSON'S SON LUMBER CO.

Case No. 1000

Order of the Court

WILSON'S SON LUMBER CO.

That the undersigned...

...of the State of Utah...

...do hereby certify...

...that the same...

...is true and correct...

...at this date...

...in presence of...

...the undersigned...

...do hereby certify...

...that the same...

...is true and correct...

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

-----oOo-----  
 :  
 :  
 CALEB TANNER, :  
 :  
 Plaintiff, :  
 :  
 -vs- :  
 :  
 Provo Reservoir Company, a : DEMURRER TO COMPLAINT  
 corporation, Provo Reservoir :  
 Water Users Company, a corpo- :  
 ration, Blue Cliffs Canal Com- :  
 pany, a corporation, North :  
 Union Irrigation Company, a :  
 corporation, Provo Bench Canal :  
 & Irrigation Company, a corpo- :  
 ration, T. F. Wentz as Com- :  
 missioner of Provo River. :  
 :  
 -----eOo-----

The said defendant, the Provo Reservoir Water Users Company now comes, and appearing for itself alone and not for either of its co-defendants, demurs to the complaint of the plaintiff on file herein, and to each and every alleged cause of action of said Complaint separately, and for grounds of demurrer states:-

I. That there is a misjoinder of parties defendant in the plaintiff's alleged first cause of action for the reason that there is no showing in the said first alleged cause of action of any community of interest or joinder of interest of this defendant, the Provo Reservoir Water Users Company, a corporation, with any other of the defendants, or with all of the defendants combined, nor is there shown to be any action by any of the other defendants joining with this defendant in any of the matters alleged or set forth in the said first alleged cause of action of said complaint.

II. That there is a misjoinder of parties defendant in the plaintiff's alleged second cause of action for the reason that there is no showing in the said second alleged cause of action of any community of interest or joinder of interest of this defendant, the Provo Reservoir Water Users Company, a corporation, with any other of the defendants, or with all of the defendants combined, nor is there shown to be any action by any of the other defendants joining with the defendant in ~~any~~

any of the matters alleged or set forth in the said second alleged cause of action of said complaint.

III. That there is a misjoinder of parties defendant in the plaintiff's alleged third cause of action for the reason that there is no showing in the said third alleged cause of action of any community of interest or joinder of interest of this defendant, the Provo Reservoir Water Users Company, a corporation, with any other of the defendants, or with all of the defendants combined, nor is there shown to be any action by any of the other defendants joining with the defendant in any of the matters alleged or set forth in the third alleged cause of action of said complaint.

IV. That there is a misjoinder of parties defendant in the plaintiff's alleged fourth cause of action for the reason that there is no showing in the said fourth alleged cause of action of any community of interest or joinder of interest of this defendant, the Provo Reservoir Water Users Company, a corporation, with any other of the defendants, or with all of the defendants combined, nor is there shown to be any action by any of the other defendants joining with this defendant in any of the matters alleged or set forth in the said fourth alleged cause of action of said complaint.

V. That there is a misjoinder of alleged causes of action in the said Complaint in this:

A.

(1) That the first alleged cause of action is an attempt to determine the right of the plaintiff to flow certain water rights represented by deeds given by one of the defendants, the Provo Reservoir Company, ~~through the main canal of the Provo Reservoir Company, / ~~xxxxxxx~~ water rights ~~xxxx~~~~ through the main canal of the Provo Reservoir Company's irrigation system.

(2) There is an attempt to obtain a decree quieting plaintiff's title against the defendant for right of way and capacity in the main canal of the Provo Reservoir Company's irrigation system, for the conveyance of 20-1/3 acres of Primary water through said canal.

(3) That there is an attempt to obtain a judgment of the Court, decreeing that the plaintiff is entitled to such proportionate share of the water flowing in the main canal of the Provo Reservoir Company's irrigation system, as the plaintiff's alleged 20-1/3 acres of Primary waterright shall bear to the total number of like units in said canal.

(4) There is an attempt to quiet plaintiff's title to such proportionate share of said water as against each and all of the defendants in said cause.

(5) There is an attempt to require the defendant, T. F. Wentz, as Commissioner, to divert from the Provo River into the main canal of the Provo Reservoir Company's irrigation system, 20-1/3 acres of Primary water claimed to be owned by the plaintiff as set forth in said first alleged cause of action.

B.

(1) In the plaintiff's alleged second cause of action there is an attempt to determine the right of the plaintiff to flow 2.52 second feet of water claimed by the plaintiff, together with any other water which plaintiff may have which may be flowed through said main canal, and at all times when there shall be an unused capacity in said canal; said 2.52 second feet of water is not water that has ever belonged to the Provo Reservoir Company's irrigation system, but is water that the plaintiff has acquired from a source entirely independent from the water rights of the Provo Reservoir Company's irrigation system.

(2) There is an attempt to quiet plaintiff's title to the right to flow in said canal the said 2.52 second feet of water claimed by the plaintiff.

(3) There is an attempt to require and direct the defendant, T. F. Wentz to turn said 2.52 second feet of water out of the Provo River system into the main canal of the Provo Reservoir Company's irrigation system, and to direct said T. F. Wentz, as Commissioner to divert such water from said canal into such laterals heading into such canal as shall be designated by the plaintiff or by the plaintiff's lessees or assigns claiming to be entitled to said 2.52 second feet of water.

(4) There is an attempt to have the Court determine the liability of the plaintiff herein for flowing such water in said canal, and that it be adjudged that the plaintiff shall not be required to pay any rentals to any of the defendants herein for carrying capacity in said main canal, when there shall be any other unoccupied space therein. In other words, it is an attempt to take property belonging to some of the plaintiffs without just compensation.

C.

(1) The plaintiff's third cause of action is an attempt to restrain the defendants from giving out in speech that an acre of Primary water right as evidenced by the deeds, copies of which are attached to the plaintiff's complaint, is inferior to and less than a share of full water right stock of the Provo Reservoir Water Users Company as by it issued.

(2) In his third cause of action plaintiff attempts to obtain a decree that the plaintiff's rights for the irrigation water for the main canal for the Provo Reservoir Company's irrigation system as represented by his deeds are superior and prior in right to any and all rights of the defendants and each of them by them held or claimed through conveyances or deeds from the said Provo Reservoir Company issued subsequent to the issue of the said deeds of the plaintiff.

(3) There is an attempt to quiet plaintiff's title as against the defendants and against any and all rights and claims of the defendants through deeds issued by the Provo Reservoir Company subsequent to the issuance of the deeds of the plaintiff set out in said complaint for the irrigation of said 20-1/3 acres of land at a duty not greater than 75 acres per second foot, and that under Exhibit B plaintiff is entitled to irrigate 10 acres of land throughout the High water season on a duty of not greater than 50 acres per second foot.

(4) There is an attempt to obtain a decree requiring T. F. Wentz to divert from Provo River into the said main canal and distribute to the plaintiff or his successors in interest from the waters of said main canal a volume sufficient for the irrigation of 20-1/3 acres of land or a duty not greater than that before prayed for in said

complaint, so long as there shall be sufficient water in said main canal to supply all of the owners and holders of deeds issued by the Provo Reservoir Company from point of line down to and including the issuance of deeds attached to said complaint, such water to be distributed into such laterals as the plaintiff or his assigns or lessees may direct.

D.

(1) There is an attempt in plaintiff's alleged fourth cause of action to obtain a decree of the Court to determine the liability of the plaintiff for the cost of maintenance of said canal in paragraph 160 of said complaint described on account of the plaintiff's ownership of the 20-1/3 acres of Primary water right represented by said deeds, and his use of said canal for the conveyance of said waters therein.

(2) There is an attempt to obtain an order and judgment of the Court that plaintiff pay only such proportionate share of the costs of maintenance of said main canal to the alleged point of general delivery as mentioned in said complaint as the volume of his right therein, by reason of his alleged ownership of said 20-1/3 acres of Primary water right shall bear to the whole volume of said canal.

(3) There is an attempt to obtain a decree by the Court that the plaintiff as the owner of said 20-1/3 acres of Primary water right in the said main canal is not obligated to pay any of his co-tenants or the defendants herein, any charge for maintenance and distribution other than his proportionate share of the reasonable cost of maintenance of the said main canal to the said point of general delivery mentioned in said complaint,

(4) There is an attempt to require T. F. Wentz, as Commissioner, to pro-rate the cost of maintenance of said canal to the point of general delivery mentioned in said complaint.

VI. That the said first alleged cause of action of said Complaint does not state facts sufficient to constitute a cause of action against this defendant, the Provo Reservoir Water Users Company.

VII. That the said second alleged cause of action of said Complaint does not state facts sufficient to constitute a cause of action against this defendant, the Provo Reservoir Water Users Company.

VIII. That the said third alleged cause of action of said Complaint does not state facts sufficient to constitute a cause of action against this defendant, the Provo Reservoir Water Users Company.

IX. That the said alleged fourth cause of action of said Complaint does not state facts sufficient to constitute a cause of action against this defendant, the Provo Reservoir Water Users Company.

X. That the said Complaint as a whole or any one or more of the alleged causes of action therein set forth, does not state facts sufficient to constitute a cause of action against this defendant,  
Water Users  
Provo Reservoir/Company.

WHEREFORE, this defendant, Provo Reservoir/Company, prays  
Water Users  
that it be hence dismissed with its costs of suit herein expended.

*Berth J. Brockbank*  
ATTORNEYS FOR DEFENDANT PROVO  
RESERVOIR WATER USERS COMPANY.

Copy of the foregoing Demurrer to Complaint received this  
6th day of May, A. D. 1926.

*Wm. H. ...*  
ATTORNEY FOR PLAINTIFF.



III. That there is a misjoinder of parties defendant in the plaintiff's alleged third cause of action for the reason that there is no showing in the said third alleged cause of action of any community of interest or joinder of interest of this defendant, the Provo Reservoir Company, a corporation, with any other of the defendants, or with all of the defendants combined, nor is there shown to be any action by any of the other defendants joining with the defendant in any of the matters alleged or set forth in the third alleged cause of action of said complaint.

IV. That there is a misjoinder of parties defendant in the plaintiff's alleged fourth cause of action for the reason that there is no showing in the said fourth alleged cause of action of any community of interest or joinder of interest of this defendant, the Provo Reservoir Company, a corporation, with any other of the defendants, or with all of the defendants combined, nor is there shown to be any action by any of the other defendants joining with this defendant in any of the matters alleged or set forth in the said fourth alleged cause of action of said complaint.

V. That there is a misjoinder of alleged causes of action in the said Complaint in this:

A. (1) That the first alleged cause of action is an attempt to determine the right of the plaintiff to flow certain water rights represented by deeds given by the defendant, the Provo Reservoir Company, ~~through the main canal of the Provo Reservoir Company, through the main canal of the Provo Reservoir Company,~~ through the main canal of the Provo Reservoir Company's irrigation system.

(2) There is an attempt to obtain a decree quieting plaintiff's title against the defendant for right of way and capacity in the main canal of the Provo Reservoir Company's irrigation system, for the conveyance of 20-1/3 acres of Primary water through said canal.

(3) That there is an attempt to obtain a judgment of the Court, decreeing that the plaintiff is entitled to such proportionate share of the water flowing in the main canal of the Provo Reservoir Company's irrigation system, as the plaintiff's alleged

20-1/3 acres of Primary water right shall bear to the total number of like units in said canal.

(4) There is an attempt to quiet plaintiff's title to such proportionate share of said water as against each and all of the defendants in said cause.

(5) There is an attempt to require the defendant, T.F. Wentz, as Commissioner, to divert from the Provo River into the main canal of the Provo Reservoir Company's irrigation system, 20-1/3 acres of Primary water claimed to be owned by the plaintiff as set forth in said first alleged cause of action.

B.

(1) In the plaintiff's alleged second cause of action there is an attempt to determine the right of the plaintiff to flow 2.52 second feet of water claimed by the plaintiff, together with any other water which plaintiff may have which may be flowed through said Main canal, and at all times when there shall be an unused capacity in said canal; said 2.52 second feet of water is not water that has ever belonged to the Provo Reservoir Company's irrigation system, but is water that the plaintiff has acquired from a source entirely independent from the water rights of the Provo Reservoir Company's irrigation system.

(2). There is an attempt to quiet plaintiff's title to the right to flow in said canal the said 2.52 second feet of water claimed by the plaintiff.

(3) There is an attempt to require and direct the defendant, T. F. Wentz to turn said 2.52 second feet of water out of the Provo River system into the main canal of the Provo Reservoir Company's irrigation system, and to direct said T. F. Wentz, as Commissioner to divert such water from said canal into such laterals heading into such canal as shall be designated by the plaintiff or by the plaintiff's lessees or assigns claiming to be entitled to said 2.52 second feet of water.

(4) There is an attempt to have the Court determine the liability of the plaintiff herein for flowing such water in said

canal, and that it be adjudged that the plaintiff shall not be required to pay any rentals to any of the defendants herein for carrying capacity in said main canal, when there shall be any other unoccupied space therein. In other words, it is an attempt to take property belonging to some of the plaintiffs without just compensation.

C.

(1) The plaintiff's third cause of action is an attempt to restrain the defendants from giving out in speech that an acre of Primary water right as evidenced by the deeds, copies of which are attached to the plaintiff's complaint, is inferior to and less than a share of full water right stock of the Provo Reservoir Water Users Company as by it issued.

(2) In his third cause of action plaintiff attempts to obtain a decree that the plaintiff's rights for the irrigation water for the main canal for the Provo Reservoir Company's irrigation system as represented by his deeds are superior and prior in right to any and all rights of the defendants and each of them by them held or claimed through conveyances or deeds from the said Provo Reservoir Company issued subsequent to the issue of the said deeds of the plaintiff

(3) There is an attempt to quiet plaintiff's title as against the defendants and against any and all rights and claims of the defendants through deeds issued by the Provo Reservoir Company subsequent to the issuance of the deeds of the plaintiff set out in said complaint for the irrigation of said 20-1/3 acres of land at a duty not greater than 75 acres per second foot, and that under Exhibit B plaintiff is entitled to irrigate 10 acres of land throughout the High water season on a duty of not greater than 50 acres per second foot.

(4) There is an attempt to obtain a decree requiring T. F. Wentz to divert from Provo River into the said main canal and distribute to the plaintiff or his successors in interest from the waters of said main canal a volume sufficient for the irrigation of 20-1/3 acres of land or a duty not greater than that before prayed for in said complaint, so long as there shall be sufficient water in

said main canal to supply all of the owners and holders of deeds issued by the Provo Reservoir Company from point of line down to and including the issuance of deeds attached to said complaint, such water to be distributed into such laterals as the plaintiff or his assigns or lessees may direct.

D.

(1) There is an attempt in plaintiff's alleged fourth cause of action to obtain a decree of the Court to determine the liability of the plaintiff for the cost of maintenance of said canal in paragraph 160 of said complaint described on account of the plaintiff's ownership of the 20-1/3 acres of Primary water right represented by said deeds, and his use of said canal for the conveyance of said water therein.

(2) There is an attempt to obtain an order and judgment of the Court that plaintiff pay only such proportionate share of the costs of maintenance of said main canal to the alleged point of general delivery as mentioned in said complaint as the volume of his right therein, by reason of his alleged ownership of said 20-1/3 acres of Primary water right shall bear to the whole volume of said canal.

(3) There is an attempt to obtain a decree by the Court that the plaintiff as the owner of said 20-1/3 acres of Primary water right in the said main canal is not obligated to pay any of his co-tenants or the defendants herein, any charge for maintenance and distribution other than his proportionate share of the reasonable cost of maintenance of the said main canal to the said point of general delivery mentioned in said complaint.

(4) There is an attempt to require T. F. Wentz, as Commissioner, to pro-rate the cost of maintenance of said canal to the point of general delivery mentioned in said complaint.

VI. That the said first alleged cause of action of said Complaint does not state facts sufficient to constitute a cause of action against this defendant, the Provo Reservoir Company.

VII. That the said second alleged cause of action of said complaint does not state facts sufficient to constitute a cause of action against this defendant, the Provo Reservoir Company.

VIII. That the said third alleged cause of action of said Complaint does not state facts sufficient to constitute a cause of action against this defendant, the Provo Reservoir Company.

IX. That the said alleged fourth cause of action does not state facts sufficient to constitute a cause of action against this defendant, the Provo Reservoir Company.

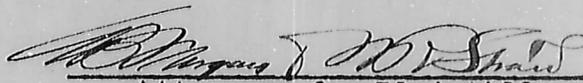
X. That the said Complaint as a whole, or any one of more of the alleged causes of action therein set forth, does not state facts sufficient to constitute a cause of action against this defendant, Provo Reservoir Company.

WHEREFORE, this defendant, Provo Reservoir Company, prays that it be hence dismissed with its costs of suit herein expended.



Attorneys for Defendant Provo Reservoir Company.

Copy of the foregoing Demurrer to Complaint received this 6th day of May, A. D. 1926.

  
Attorneys for Plaintiff.

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

-----oO-----  
Caleb Tanner, :  
 :  
 Plaintiff, :  
 :  
 -vs- :  
 :  
 Provo Reservoir Company, a cor- : ORDER EXTENDING TIME  
 poration, Provo Reservoir Water :  
 Users Company, a corporation, :  
 Blue Cliffs Canal Company, a cor- :  
 poration, North Union Irrigation :  
 Company, a corporation, Provo :  
 Bench Canal & Irrigation Company :  
 a corporation, T. F. Wentz as :  
 Commissioner of Provo River, :  
 :  
 Defendants. :  
 :  
-----oO-----

In the above entitled matter, application having been made to the Court, and good cause being shown therefor, it is ordered that the defendants, Provo Reservoir Company, a corporation, Provo Reservoir Water Users Company, a corporation, Blue Cliffs Canal Company, a corporation, and each of them, be, and they are hereby given until and including the 6th of May, 1926 in which to answer or otherwise plead to the Complaint on file herein.

Dated this 1st day of May, A. D. 1926.

Elias Hansen  
J U D G E.



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

-----oOo-----  
Caleb Tanner, :  
 :  
 :  
 Plaintiff, :  
 :  
 :  
 -vs- :  
 :  
 :  
 Provo Reservoir Company, a corpo- :  
 ration, Provo Reservoir Water :  
 Users Company, a corporation, Blue : ORDER EXTENDING TIME  
 Cliffs Canal Company, a corpora- :  
 tion, North Union Irrigation Com- :  
 pany, a corporation, Provo Bench :  
 Canal & Irrigation Company, a :  
 corporation, T. F. Wentz as Com- :  
 missioner of Provo River, :  
 :  
 Defendants. :  
 :  
 :  
 -----eOo-----

In the above entitled matter, application having been made to the Court, and good cause being shown therefor, it is ordered that the defendants, Provo Reservoir Company, a corporation, Provo Reservoir Water Users Company, a corporation, Blue Cliffs Canal Company, a corporation, and each of them, be, and they are hereby given until and including the 1st of May, 1926 in which to answer or otherwise plead to the Complaint on file herein.

Dated this 6th day of April, A. D. 1926.

George P. Parker  
J U D G E.

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

-----X  
Caleb Tanner, :  
 :  
 Plaintiff, :  
 :  
 vs. : ORDER OVERRULING DEMURRERS.  
 :  
 Provo Reservoir Company, :  
 :  
 et al., :  
 :  
 Defendants. :  
 :  
-----X

In this action the defendants, Blue Cliffs Canal Company, Provo Reservoir Waterusers Company, Provo Reservoir Company, have each filed separate demurrers, which said demurrers are both special and general. The plaintiff in his complaint has set forth four alleged causes of action, the first being for the purpose of fixing the rights, if any, of the plaintiff in and to the use of 20-1/3 acres of primary water right evidenced by a deed which is attached to the complaint, the second being for the purpose of determining the right, if any, which the plaintiff claims to flow 2.52 cubic feet per second of water in a canal specifically mentioned and described in plaintiff's complaint, the third being an action for the purpose, as would appear, of fixing the relative rights of the plaintiff's water as represented by the 20-1/3 acres of primary water right with respect to shares of water in the Provo Reservoir Waterusers Company, and the fourth being for the purpose of determining the plaintiff's right to use a certain canal for the conveyance of the 20-1/3 acres of primary water right and to determine the amount of maintenance costs of said canal, if any, which shall be paid by the plaintiff herein.

Each of the said defendants has demurred to each of the alleged causes of action, upon the ground that there is no community of interest with the other defendants and that therefore there is a misjoinder of parties defendants.

Section 3485, Compiled Laws of Utah, 1917, provides as follows:

"In any action hereafter commenced for the protection of rights acquired of water under the laws of this state the plaintiff may make any or all persons who have diverted water from the same stream or source, parties to such action, and the Court may in one judgment settle the relative priorities of all the parties to such action."

The complaint filed in this action is very lengthy and has a number of repetitions, and the Court is of the opinion that the matters set forth in the four causes of action in plaintiff's complaint might well have been stated in three causes of action, one to determine the right to the 20-1/3 acres of primary water, which might well have included the amount of assessment, if any, that should be levied against this alleged water right, to pay for the expenses of the distribution thereof, one for the alleged right to flow the 2.52 second feet of water in the canal system described in plaintiff's complaint, and one to flow the 20-1/3 acres of primary water right in the canal system described in plaintiff's complaint, but at the same time there is of course no objection to stating a cause of action in two separate and distinct causes of action, provided, of course, the causes of action are such that they may be properly joined in the same action.

A reading of each of the four causes of action in substance alleges that each of the parties defendant claims some interest in the waters in controversy, and therefore the Court is of the opinion, and so holds, that the plaintiff has a right and it is the better practice to join all of the defendants in one cause of action and thus avoid a multiplicity

of suits.

The said defendants also demur specially upon the ground that there is a misjoinder of causes of action in that there is an attempt to have the Court determine the right, if any, of the plaintiff to a water right in one cause of action and in another cause of action to determine the right, if any, of the plaintiff to flow water through the irrigation canal described in plaintiff's complaint. This phase of the case is discussed in Vol. III, Sec. 1543, at p. 2772, of Kinney on Irrigation, where the author uses the following language, and in the note cites cases to support the text:

"Again, in the same action, the title to both the water right and to the ditch or canal through which it flows may be adjudicated, and a decree made by the Court quieting the title in the respective owners of both. As was held by the Colorado court, where the trial court only decided the rights as to the water, the trial court should have retained jurisdiction to settle all the rights of the parties in one action, and it ought not to require the plaintiff to bring another trial to have determined the relative rights of the parties in and to this strip of land." In the pleadings, however, the separate causes of action must be separately stated."

The law is likewise well settled that in a suit to quiet the right to use a canal system, two causes of action are properly joined even though two separate water rights are claimed and a right-of-way is claimed in the same canal for the flowing of both of the water rights. In fact the law could not well be otherwise, because if one claims two separate easements for two separate water rights, from the very nature of the case it is necessary to have both of the claims before the court in order that the court may make a complete determination of all of the rights of the parties before the court in and to the use of the canal system.

From what has been said it follows that defendants' demurrers to plaintiff's complaint, upon both the grounds that there is a misjoinder of parties defendant and a misjoinder of

causes of action, should be and the same and each of them are overruled.

The defendants above mentioned have also demurred to each of the causes of action upon the ground that they and each of them do not state facts sufficient to constitute a cause of action. In actions to determine and fix water rights the law is of course well settled, as stated on page 2764 of Vol. III of Kinney on Irrigation, that there need not be an actual interference with plaintiff's right before an action may be brought. The assertion of an adverse claim is sufficient. In each of the causes of action set out in plaintiff's complaint there are allegations to the effect that each and all of the defendants in said action have asserted some claim adverse to the claims made by the plaintiff herein, and therefore it follows that the general demurrers and each of the general demurrers of the defendants above named should be and they are hereby overruled.

The defendants above named and each of them are given fifteen days in which to prepare, serve, and file answer in this action.

Dated this 15th day of November, 1926.

By the Court,

*Elias Hansen*

J U D G E .

6346

CLERK OF DISTRICT COURT  
SALT LAKE COUNTY, UTAH  
NOV 15 1928  
Wm. Hales Clerk  
E. B. Dastrop Deputy

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

\*\*\*\*\*

CALEB TANNER,

Plaintiff,

vs.

Provo Reservoir Company,  
a corporation, Provo  
Reservoir Water Users  
Company, a corporation,  
Blue Cliff Canal Company,  
a corporation, North Union  
Irrigation Company, a cor-  
poration, Provo Bench Canal  
& Irrigation Company, a cor-  
poration, T. F. Webtz as  
Commissioner of Provo River,

Defendants.

6346

A N S W E R

\*\*\*\*\*

Come now Provo Bench Canal & Irrigation  
Company, a corporation, and North Union Irrigation Company,  
a corporation, defendants in the above entitled action and  
for answer to plaintiff's complaint admit, deny and allege  
as follows:

These defendants claim no right to the  
canal of the Provo Reservoir Company, defendant herein, or of  
the Provo Reservoir Water Usuers Company, as said canal is  
described in Paragraph 16 of the first cause of action of said  
complaint.

Further answering said complaint these  
defendants allege that they claim no right, title or interest  
whatsoever under the contract of Jens C. Jensen with the Provo  
Reservoir Company, or to the water rights referred to in  
Paragraph 23 of the second cause of action of said complaint,  
except as set forth in the decree in Civil action No. 2888 on  
file in this court.

WHEREFORE defendants pray that they be



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

Caleb Tanner, Plaintiff,

VS

6346

NOTICE.

Provo Reservoir Company, a Corporation; Provo Reservoir Water Users Company, a corporation; Blue Cliff Canal Company, a corporation; North Union Irrigation Company, a corporation; Provo Bench Canal and Irrigation Company, a corporation, and T.W. Wentz as Commissioner of Provo River.

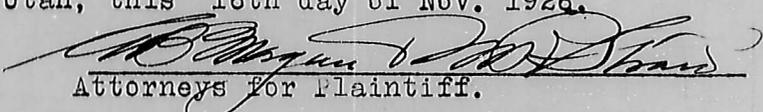
Defendants.

To Blue Cliff Canal Company, a corporation;  
To Provo Reservoir Water Users Company, a corporation;  
To Provo Reservoir Company, a corporation and  
To Booth and Brockbank, Attorneys for said Blue Cliff Canal Company, Provo Reservoir Water Users Company and Provo Reservoir Company, defendants;

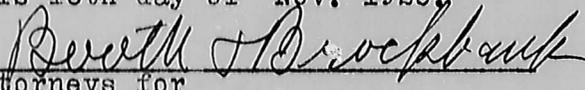
Take Notice;

That on the 15th day of November, 1926, the above entitled Court made and entered an order herein overruling each and all of the several demurrers herein interposed by the said Blue Cliff Canal Company a corporation; Provo Reservoir Water Users Company, a corporation, and Provo Reservoir Company, a corporation, and the said named defendant corporations and each of them were granted 15 days in which to prepare serve and file their several answers herein.

Dated Provo, Utah, this 16th day of Nov. 1926.

  
Attorneys for Plaintiff.

Received copy of above Notice  
this 16th day of Nov. 1926.

  
Attorneys for

Blue Cliff Canal Company, a corporation;  
Provo Reservoir Water Users Company, a corporation, and  
Provo Reservoir Company, a corporation.

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

-----oOo-----

CALEB TANNER,	:	
	:	
Plaintiff,	:	No 6346 Civil
	:	
-vs-	:	<u>ORDER EXTENDING TIME TO ANSWER</u>
	:	
PROVO RESERVOIR COMPANY,	:	
a corporation, PROVO	:	
RESERVOIR WATER USERS COM-	:	
pany, a corporation, and	:	
T. F. WENTZ, as Commissioner	:	
for Provo River	:	
	:	
Defendants.	:	

-----oOo-----

In the above entitled action, good cause being shown herefor, it is hereby ordered that the defendants be granted, and that they are hereby granted ~~to~~ and (including December 15th, 1926) in which to prepare, serve and file Answer to the Complaint of the plaintiff in said action.

Dated this 22nd day of November, A. D. 1926.

Elias Hansen  
JUDGE.

6346

IN DISTRICT COURT  
UTAH CO. UTAH

\* FILED \*

NOV 28 1928

*Wm Hales*  
*E B Dastur*

RECORD 2

PAGE 503

NOV 28 1928

DECEASED THE SSUP OFA OF HOASNDOL' W' D' 1928  
THE DISTRICT IN THIS MATTER  
IN ORDER TO PREVENT THE LOSS OF THE PROPERTY OF THE DECEASED OF  
THE FIRST PART AND THE PERSONS WHOSE INTERESTS IN THE DECEASED  
PROPERTY IF IT WERE TO BE SOLD FOR THE DECEASED OR CLAIMED  
IN THE ABOVE MENTIONED MATTER SUCH AS THE PERSONS

DEFENDANTS:

FOR THE STATE  
L. E. KELLY, BE COMMISSIONER  
BEHALF OF COLLECTOR AND  
MORNING NEWS BEING CON-  
A COLLECTOR, BEING  
BEING MORGAN'S COMPANY

OTHER EXHIBITING LINE TO WHICH

DISTRICT

BE THE STATE

OTHER PARTIES

STATE OF UTAH IN AND FOR THE COUNTY

IN THE DISTRICT COURT OF THE MORGAN JUDICIAL DISTRICT OF THE

IN THE DISTRICT COURT OF UTAH COUNTY,  
STATE OF UTAH.

-----oOo-----

CALEB TANNER,	:	
	:	
Plaintiff.	:	No. 6346 CIVIL.
	:	
vs.	:	
	:	ANSWER OF PROVO RESERVOIR
Provo Reservoir Company, a	:	WATER USERS COMPANY AND
corporation, Provo Reservoir	:	
Water Users Company, a corpo-	:	
ration, Blue Cliff Canal Com-	:	
pany, a corporation, North	:	
Union Irrigation Company, a	:	
corporation, Provo Bench Canal	:	
and Irrigation Company, a cor-	:	
poration, T. F. Wentz, as Com-	:	
missioner of Provo River.	:	
	:	
Defendants.	:	
	:	

Now comes the defendant, Provo Reservoir Water Users Company, a corporation, and for itself alone and not for any of the other defendants, answers the Complaint filed herein:-

As to the first cause of action in said Complaint the defendant admits, denies and alleges as follows:-

1. Admits all of the allegations of paragraphs 1 to 5 thereof inclusive.

2. The defendant admits that the defendant T. F. Wentz now is, and for many years last past he has been, the duly appointed, qualified and acting Water Commissioner for Provo River under the appointment and orders of the above entitled Court in that civil action known and designated as Case No. 2888- in the above entitled court. That said defendant, T. F. Wentz, now is, and for many years last past he has been, under the appointment and orders of the above entitled court, in active charge as said commissioner of the control, regulation and distribution of waters of said Provo

River into various canals and irrigation works receiving water from said Provo River. That it now is, and for many years last past it has been, the duty of the defendant, T. F. Wentz, as said commissioner, to control, regulate and distribute waters of said Provo River in the main channel and bed of said river, and from the main channel and bed of said river into various canals and diversion works diverting, taking and receiving water from said Provo River. But the defendant denies that the said T. F. Wentz as said commissioner has any duty or right to control, regulate or distribute the waters of the said Provo River except as provided by the Decree in Case -No. 2888 Civil- in this Court, and denies that this court has any right or power to direct the said T. F. Wentz, as commissioner or otherwise, to control, regulate or distribute any of the waters of said Provo River, except the waters adjudicated by said decree and to the parties thereto or their successors in interest.

3. The defendant admits the allegations of paragraphs 7, 8, 9, 9½, 10, 11, 12, 13, 14, 15, 16, and 17.

4. As to paragraph 18, the defendant admits the first sentence thereof ending with the word "herein." And admits that neither Jens C. Jensen nor the plaintiff herein has assigned to the defendant, Provo Reservoir Water Users Company, any of the water-rights represented by the Deeds, copies of which are attached to the complaint, and admits that neither said Jensen nor the plaintiff have at any time or at all authorized or directed said defendant to distribute water represented by said Deeds, and <sup>denies</sup> admits that the whole of the interest of the Provo Reservoir Water Users Company in the Irrigation System of the said Provo Reservoir Company or in the canal described in paragraph 16 of the Complaint has been acquired by transfers thereof to said Provo Reservoir Water Users Company by owners of water-rights in the Provo Reservoir Company's Irrigation System.

Defendant denies all of the allegations of said paragraph

18, not herein above admitted.

5. The defendant denies the allegations of paragraph 19.

6. As to paragraph 20, the defendant believes the allegations therein to be a reiteration of some of the allegations in paragraph 18 except that in paragraph 20, the plaintiff claims to be a "joint-owner" and a "tenant-in-common" with the defendants herein, and as to these allegations the defendant denies that the plaintiff is a "joint-owner" or a "tenant-in-common" in and to all interests of said irrigation system or in and to any interest in any Canal constructed by the Provo Reservoir Company except such interest as Provo Reservoir Company may have acquired by reason of its enlargement of the Canal known as the "Provo Bench Canal and Irrigation Company's Canal," as hereinafter in paragraphs 15 and 16 set forth.

7. The defendant denies each and every allegation of paragraph 21 of said first cause of action.

8. The defendant admits the allegations of paragraph 22 of said first cause of action.

9. The defendant admits that it asserts and claims that the plaintiff owns no capacity in and no right to flow or convey the water represented by the Deeds exhibits "B", "D" and "E" through the main canal of Provo Reservoir Company's, Provo River Irrigation System for the reason hereinafter in this answer to the first cause of action in this complaint set forth, but denies that such assertions and claims are wrongful or in violation of any right of the plaintiff.

10. The defendant denies that the plaintiff is entitled to the use of such proportions of the waters of the Provo River heretofore or now owned by the defendants Provo Reservoir Company or Provo Reservoir Water Users Company, as  $20\frac{1}{3}$  acres of Primary water-right bears to the total number of like units of Primary water-right so disposed of by said Provo Reservoir Company, for the reason that at the time of and since the or-

ganization of the Provo Reservoir Water Users Company of the Provo Reservoir Company has conveyed to all of the Users of Consumers of water under its Deeds who have joined and became members and stock-holders of Provo Reservoir Water Users Company, water-right sufficient to give to such users a different rate of duty of water thereby enlarging the water-rights of the Stock-holders of said Corporation over and above what they were entitled to under their Deeds which were identical with those issued to Jens C. Jensen under whom the plaintiff herein claims title.

11. Further answering said first cause of action, the defendant alleges that the plaintiff, Caleb Tanner, was prior to the year 1913, the state engineer of the State of Utah and that he was at all of the times hereinafter mentioned an irrigation engineer of great ability and of good repute and had knowledge of the rivers matters pertaining to the flow of the water of the Provo River mentioned in the Complaint herein, and that he had been for many years prior to the organization of the Provo Reservoir Company interested in said River and its irrigation system as then in use.

12. That defendant, Provo Reservoir Company knowing of the ability of said Caleb Tanner as an irrigation engineer and knowing of his study and knowledge of the said Provo River System and rights of individuals to the use of water of said river for all purposes, in the year 1913 said defendant engaged and employed the said Tanner as its agent and engineer for the purpose of securing for said Provo Reservoir Company water-rights by appropriation and otherwise in and to the water of said Provo River and to secure rights-of-way for said Provo Reservoir Company for ditches, canals and diverting channels, and to give said Provo Reservoir Company advice, counsel and information for its benefit in the appropriation, diversion, application, distribution, and use of water by the said Provo Reservoir Company

and those with whom it might contract with for the sale of rights owned by it for the use of waters of the said Provo River and its tributaries and that the said plaintiff, Caleb Tanner, during all of the time from the year A.D. 1913 until the 31 day of December, A.D., 1921, was employed by the said Provo Reservoir Company and paid by it for services rendered by him under the said employment.

13. That during the year A.D. 1915 the said Provo Reservoir Company had made contracts with divers persons for rights to the use of waters of the said Provo River for irrigation purposes to the amount of approximately 40 second feet, among whom was the grantor of the plaintiff for the 20-1/3 second feet referred to in the plaintiffs first cause of action, said water to be delivered to the said Provo Reservoir Company's grantees through the Iona Canal, the intake of which is from the said Provo Reservoir Company's main canal at a point near the center of Sec. 12, Tp. 6 South, of range 2 East, Salt Lake Base Meridian in Utah County, Utah.

14. That by reason of the great length, cost of construction and maintenance of the said Iona Canal and the extra loss by evaporation and seepage of the water in said Iona Canal many of the users thereof and as the said Provo Reservoir Company then believed all of the users thereof asked the said Provo Reservoir Company to make arrangements to deliver the water contracted for by them through the Provo Bench Canal and Irrigation Company's Canal, which said canals diverts water from the said Provo River at a point on the right bank of said Provo River about two miles below the intake of said Provo Reservoir Company's main canal as described in the complaint herein.

15. That on or about the \_\_\_\_\_ day of \_\_\_\_\_ A.D. 1915, after the said Provo Reservoir Company had conferred with the plaintiff herein then acting as its counselor and advisor in all matters relating to the diversion and distribution of waters con-

tracted for by it to the users thereof, and after being advised by the plaintiff so to do entered into an agreement with the Provo Bench Canal and Irrigation Company to convey the quantity of water theretofore used and thereafter to be used by said Provo Reservoir Company's vendees through the said Iona Canal, to be carried through and delivered to the said vendees through the said Provo Bench and Irrigation Company's Canal. And that thereafter and so long as the water contracted for by Jens C. Jensen, Plaintiffs grantor, was used by the said Jens C. Jensen, it was delivered to him through the said Provo Bench Canal and Irrigation Company's Canal with his acquiescence and consent and as this defendant is informed and verily believes at his instance and request, and this defendant alleges that the 20-1/3 acres of water-right to which the said Jens C. Jensen was entitled was delivered into the said Provo Bench Canal and Irrigation Company's Canal under the arrangements made by Provo Reservoir Company with Provo Bench Canal and Irrigation Company until the year A.D. 1916.

16. That in the year A.D. 1916 the said Provo Reservoir Company for the sole purpose of supplying the persons who had originally had their water delivered to them through the Iona Canal with water delivered to them through the Provo Bench Canal and Irrigation Company's Canal, with the plaintiff herein, entered into an agreement with the said Provo Bench Canal and Irrigation Company's Canal to enlarge its canal so that said Provo Reservoir Company would have carrying capacity therein to supply water to those with whom it had contracted and who had originally had their water delivered to them through the Iona Canal, and that Provo Reservoir Company on its part expended in said enlargement approximately \$30,000.00 and thereby acquired a right to flow the said waters through the said canal, the said users having each and all made arrangements with the said Provo Bench Canal and Irrigation Company and North Union Canal Company to deliver and distribute to them at their several private laterals the quantity of

water to which they were severally entitled, and that during each and every year since A.D. 1916 the 20-1/3 second feet of water to which the said Jens C. Jensen was entitled and to which the plaintiff claims he is now entitled has been delivered by the Provo Reservoir Company, the Board of Control, and the Provo Reservoir Water Users Company into the Provo Bench Canal Company's Canal for the use and benefit of the said Jens C. Jensen ~~or~~ his successor or successors in interest.

17. That the Iona Canal was a lateral from the Provo Reservoir Company's main canal and was constructed, owned and regulated by the persons, including Jens C. Jensen, who held contracts with the Provo Reservoir Company, defendant, for the sale and purchase of water-right, to be delivered through its irrigation system.

18. That immediately after the Provo Reservoir Company arranged with Provo Bench Canal and Irrigation Company to convey and deliver through its canal the water formerly delivered at the intake of the Iona Canal, the owners including Jens C. Jensen, the plaintiffs grantor, of the 20-1/3 acres water-right claimed for herein by plaintiff, abandoned said Iona lateral and it was soon filled in, its flumes and gates became broken, decayed, and destroyed and it has never since been used by any of its owners whose lands lie below the Provo Bench Canal and Irrigation Company's Canal and laterals.

19. That the 20-1/3 acres of Primary water-right claimed by plaintiff in the first cause of action herein, were awarded to Provo Reservoir Company by reason of the application thereof in irrigation of the lands of said Jens C. Jensen, plaintiffs grantor, upon the lands of said Jens C. Jensen, situated in Sec. 22, Tp. 6 South, Range 2 East, of the Salt Lake Meridian, all of which lands lie to the South of the Provo Bench Canal and its laterals, and said water was continuously used upon said lands from the date of the contracts for the purchase thereof between the said Jens C.

Jensen and Provo Reservoir Company, as shown by plaintiffs exhibits "A" and "C" and the date of the Deed plaintiffs exhibit "E" until the sale thereof by the said Jens C. Jensen to the plaintiff, and all thereof were distributed to him through the Provo Bench Canal each and every year during his use thereof, as aforesaid since A.D. 1916, and that 5 acres thereof were distributed to him through said canal from the time of his purchase thereof, November 29th, 1918 until his sale to plaintiff as alleged in plaintiff's complaint herein on the 3rd day of March, A.D. 1925, and that ever since said date the said water-right has been turned into the said Provo Bench Canal each and every year) except 1926 for the use of plaintiff. <sup>^ and 1925</sup>

20. That by reason of the acts of said Jens C. Jensen, and others to whom water was distributed through the Iona Canal lateral aforesaid, as herein above set forth, and by reason of the large expenditures of money by the Provo Reservoir Company in order to obtain for themselves a right to flow said water through the Provo Bench Canal, and North Union Canal and their laterals as above set forth all of said expenditures having been made under the direction, control, and advice of the plaintiff herein and all of which was well known to the plaintiff at the time he purchased from the said Jens C. Jensen, the said water-right, the said Jens C. Jensen, plaintiff, and their grantees and successors in interest are barred and estopped from claiming any right to have delivered to them any of the said water through any other source or from any other point than the Provo Bench Canal, and North Union Canal and their laterals.

21. That in the Decree in Case No. 2888 Civil- filed in this Court on the 2<sup>nd</sup> day of May A.D. 1921, paragraph 116 is as follows:-

"It is further ordered, adjudged and decreed, that for the purpose of maintaining the volume of flow of Provo River available for use of the parties, and to maintain to the parties hereto the respective rights herein awarded and decreed, none of the parties shall change the place of use of said water so as to cause

the seepage or drainage therefrom to be diverted away from the channel of said river; or canals, or from the lands heretofore irrigated thereby."

22. That as this defendant is informed and believes and therefore alleges that the sole purpose of the plaintiff in purchasing the said 20-1/3 acres of water-right was that he might change the place of use thereof and divert the same through plaintiffs Main Canal and thereby seek to acquire rights that had been forfeited and abandoned by his predecessor, Jens C. Jensen, and at the same time seek to acquire other interests that were never owned or claimed by his said grantor, such as a "tenancy-in-common" with this defendant, and Provo Reservoir Water Users Company in the Main Canal of the Provo Reservoir Company's Irrigation System, and particularly to acquire such "tenancy-in-common" in its head-gate, canal, tunnels, and pipe-line from the so called Heiselt Dam referred to in paragraph 16 of the first cause of action herein, but such rights can only be obtained by change of the place of use of the said 20-1/3 acres water-right, and an abandonment of the right acquired by plaintiff at great expense to the Provo Reservoir Company to flow the said 20-1/3 acres of water-right through the Provo Bench Canal and that by provisions of paragraph 116 in the Decree in Case No. 2888 Civil- the said Jens C. Jensen and the plaintiff, as his successor, are prohibited from changing the place of use of said water.

This defendant generally denies each and every allegation of said first cause of action not hereinabove admitted or denied.

ANSWER TO SECOND CAUSE OF ACTION

In answer to the second cause of action herein this defendant admits, denies, and alleges as follows:-

1. It admits all of the allegations of paragraphs 1 to 5 thereof and inclusive, and admits all of the allegations of paragraphs 7, 8, 9, 9½, 10, 11, 12, 13, 14, 15, 16, and 17.

2. As to paragraph 6 this defendant admits that the de-

defendant, T. F. Wentz now is, and for many years last past he has been the duly appointed, qualified and acting Water Commissioner for Provo River under the appointment and orders of the above entitled Court in the civil action known and designated as -Case No. 2888- in the above entitled Court. That said defendant, T. F. Wentz, now is, and for many years last past he has been, under the appointment and orders of the above entitled Court, in active charge as said commissioner, of the control, regulation and distribution of waters of said Provo River into various canals and irrigation works receiving water from said Provo River. That it now is, and for many years last past it has been, the duty of the defendant, T. F. Wentz, as said commissioner, to control, regulate and distribute waters of said Provo River in the main channel and bed of said river and from the main channel and bed of said river into various canals and diversion works diverting, taking and receiving water from said Provo River. But this defendant denies that the said T. F. Wentz as said commissioner has any right ~~to~~ or duty to control, regulate or distribute the waters of the said Provo River except as provided by the Decree in -Cast No. 2888 Civil- in this Court, and denies that this court has any right or power to direct the said T. F. Wentz as commissioner or otherwise to control, regulate or distribute any of the waters of said Provo River except the waters adjudicated by said decree and to the parties thereto or their successors in interest.

3. Answering paragraph 18 this defendant admits the first sentence thereof, ending with the work "herein." And admits that neither Jens C. Jensen nor the plaintiff herein has assigned to the defendant, Provo Reservoir Water Users Company any of the water-rights represented by the Deeds, copies of which are attached to the complaint, and admits that neither said Jens C. Jensen nor the plaintiff have at any time or at all authorized or directed said defendant to distribute water represented by said Deeds, and <sup>admits</sup> admits that the whole of the interest of the Provo

Reservoir Water Users Company in the irrigation System of the said Provo Reservoir Company or in the Canal described in paragraph 16 of the complaint has been acquired by transfers thereof to said Provo Reservoir Water Users Company by owners of water-rights in the Provo Reservoir Company's Irrigation System.

Defendant denies all of the allegations of said paragraph 18 not herein admitted.

4. This defendant denies all the allegations of paragraph 19.

5. As to paragraph 20 this defendant believes the allegations therein to be a reiteration of some of the allegations in paragraph 18 except that in paragraph 20 the plaintiff claims to be a "joint-owner" and a "tenant-in-common" with the defendants herein, and as to these allegations, this defendant denies that the plaintiff is a "joint-owner" or a "tenant-in-common" in and to all interests of said irrigation system or in and to any interest in any Canal constructed by the Provo Reservoir Company except such interest as Provo Reservoir Company may have acquired by reason of its enlargement of the Canal known as the "Provo Bench Canal and Irrigation Company's Canal."

6. This defendant denies each and every allegation of paragraph 21.

7. This defendant admits the allegations of paragraph 22.

8. This defendant admits the allegations of paragraph 23.

9. As to paragraph 24, this defendant denies each and every allegation therein and specifically denies that the plaintiff is a "joint-owner" or a "tenant-in-common" with this defendant in the canal described in paragraph 16, or in any part thereof.

10. Answering paragraph 25, this defendant admits that the plaintiff desires to use the main canal constructed by Provo Reservoir Company as described in paragraph 16, to carry his 2.52 second feet of water to the intake of the Iona Canal, to be used by divers persons, and this defendant denies each and every allegation

of said paragraph 25 not in this paragraph admitted.

11. Answering paragraph 26, this defendant admits that it asserts and claims, and it now alleges that plaintiff owns no capacity in and no right to convey the 2.52 second feet of water or any part thereof through the main canal of Provo Reservoir Company's Provo River Irrigation System, and denies that plaintiff has any right or interest in or to the canal described in paragraph 16, and this defendant denies each and every allegation of said paragraph 26 not in this paragraph admitted.

12. Answering paragraph 27, this defendant admits that T. F. Wentz, as Water Commissioner, appointed by this Court has supervision and control of the distribution of water from the Provo River into the Main Canal of Provo Reservoir Irrigation System as described in paragraph 16, and that he refuses and threatens to continue to refuse to divert any of the waters owned by the plaintiff into said canal, and admits that the said 2.52 second feet of water has been awarded to plaintiff by the decree in -Case No. 2888 Civil- in this Court, and that said T. F. Wentz, as water Commissioner, has the right to divert said water from the Provo River for the use of plaintiff, But this defendant alleges that the said refusal of T. F. Wentz was not wrongful; that the said T. F. Wentz has no right to divert the said waters into a private canal or pipe-line owned and controlled by others than the plaintiff without first being authorized so to do by the owners of such canal or pipe-line.

13. This defendant admits that its claims are adverse to plaintiff, and denies each and every <sup>other</sup> allegation of paragraph 28.

14. Further answering said second cause of action, this defendant alleges that the plaintiff is the owner in his own right of \_\_\_\_\_ capacity in the Provo Bench Canal, which canal has its intake on the right bank of the said Provo River at a point near the Olmstead plant of the Utah Power and Light Company. Said capacity and said canal was acquired by the plaintiff

after long litigation for a right to enlarge and great expense in enlarging said canal for the purpose of conveying through said canal 10 second feet of water of which 10 second feet of water the 2.52 second feet mentioned in this cause of action were a part, and that for many years last past the said 2.52 second feet of water has been diverted from the Provo River into the said canal and has been used upon lands lying below said canal and its laterals.

15. That in the Decree in -Case No. 2888 Civil- by which said 2.52 second feet of water was awarded and decreed to plaintiff, paragraph 116 is as follows:-

"It is further ordered, adjudged and decreed, that for the purpose of maintaining the volume of flow of Provo River available for use of the parties, and maintain to the parties hereto the respective rights herein awarded and decreed, none of the parties shall change the place of use of said water so as to cause the seepage or drainage therefrom to be diverted away from the channel of said river or canals, or from the lands heretofore irrigated thereby."

16. That by this cause of action, plaintiff seeks the right to change the point of diversion of the said 2.52 second feet of water from the Provo River and to change the place of use thereof and to use the same for irrigation upon lands where it heretofore has not been used, in violation of the provisions of said decree as set forth in paragraph 116 thereof.

17. That this defendant is informed and believes and therefore alleges that the sole purpose of plaintiff in purchasing the 20-1/3 acres of water-right in which he is, in his first cause of action herein, seeking the right to flow through the Provo Reservoir Company's Main Canal was to enable him to claim a right as "tenant-in-common" with the defendant herein in said canal, that he might bring an action to determine that he was a "tenant-in-common", hoping to establish a rule in this cause whereby he might flow water through any canal already built without any cost or expense to himself in any way. And that plaintiff has another action now at issue against the defendants herein Provo Reservoir Company, and Provo Reservoir Water Users Company, and T. F. Wentz, in this

court for other and additional claims to flow water through said Provo Reservoir Company's Main Canal, at issue and untried wherein he claims a right to flow 5 second feet of water through said canal, said 5 second feet of water which heretofore if applied to any beneficial use whatever, has been diverted through the said Provo Bench Canal, and in the application to the State Engineer for the 5 second feet of water the plaintiff asserts that the said water is to be diverted through the said Provo Bench Canal. Said action being file No. 6449 Civil in this Court.

This defendant generally denies each and every <sup>other</sup> allegation of said second cause of action not herein admitted or denied.

ANSWER TO THIRD CAUSE OF ACTION

In answer to the third cause of action herein, this defendant admits, denies and alleges as follows:-

1. It admits all of the allegations of paragraphs 1 to 5 thereof inclusive and admits all of the allegations of paragraphs 7 to 17 thereof inclusive.

2. As to paragraph 6, this defendant admits that the defendant, T. F. Wentz, now is, and for many years last past he has been, the duly appointed, qualified and acting Water Commissioner for Provo River under the appointment and order of the above entitled Court in that civil action known and designated as Case No. 2888 in the above entitled Court. That said defendant, T. F. Wentz, now is, and for many years last past he has been, under the appointment and orders of the above entitled court, in active charge, as said Commissioner, of the control, regulation and distribution of waters of said Provo River into various canals and irrigation works receiving water from said Provo River. That it now is, and for many years last past it has been, the duty of the defendant, T. F. Wentz, as said Commissioner, to control, regulate and distribute waters of said Provo River in the Main Channel and bed of said river and from the Main Channel and bed of said river into various canals and diversion works diverting, taking and re-

ceiving water from said Provo River. But this defendant denies that the said T. F. Wentz as said commissioner has any duty or right to control, regulate or distribute the waters of the said Provo River except as provided by the Decree in case No. 2888 Civil, in this court, and denies that this Court has any right or power to direct ~~ex~~ the said T. F. Wentz as commissioner or otherwise to control, regulate or distribute any of the waters of said Provo River except the waters adjudicated by said decree and to the parties thereto or their successors in interest.

3. As to paragraph 18, this defendant admits the first sentence thereof, ending with the work "herein." And admits that neither Jens C. Jensen nor the plaintiff herein has assigned to the defendant, Provo Reservoir Water Users Company any of the water-rights represented by the Deeds, copies of which are attached to the complaint, and admits that neither said Jensen nor the plaintiff have at any time or at all authorized or directed said defendant to distribute water represented by said Deeds, and <sup>denies</sup> ~~admits~~ that the whole of the interest of the Provo Reservoir Water Users Company in the Irrigation System of the said Provo Reservoir Company or in the Canal described in paragraph 16 of the complaint has been acquired by transfers thereof to said Provo Reservoir Water Users Company by owners of water-right in the Provo Reservoir Company's Irrigation System.

Defendant denies all of the allegations of said paragraph 18 not herein above admitted.

4. This defendant denies all of the allegations of paragraph 19.

5. As to paragraph 20, this defendant believes the allegations therein to be a reiteration of some of the allegations in paragraph 18 except that in paragraph 20, the plaintiff claims to be a "joint-owner" and a "tenant-in-common" with the defendant herein, and as to these allegations, this defendant denies that the plaintiff is a "joint-owner" or a "tenant-in-common" in and to

all interests of said irrigation system or in and to any interest in any Canal constructed by the Provo Reservoir Company except such interest as Provo Reservoir Company may have acquired by reason of its enlargement of the Canal known as the "Provo Bench Canal and Irrigation Company's Canal," as hereinbefore in paragraphs 15 and 16 of the answer to the First Cause of Action set forth.

6. As to paragraphs 21, 22, 23:-

This defendant denies each and every allegation of paragraph 21 of said third cause of action.

This defendant admits the allegations of paragraph 22 of said third cause of action.

This defendant admits that it asserts and claims that the plaintiff owns no capacity in and no right to flow or convey the water represented by the Deeds exhibits "B" and "E" through the Main Canal of Provo Reservoir Company's, Provo Reservoir Irrigation System for the reasons hereinafter in this answer to the third cause of action in this complaint set forth, but denies that such assertions and claims are wrongful or in violation of any right of the plaintiff.

6. Answering paragraph 24, this defendant alleges that under the Preambles and Resolutions of Provo Reservoir Company, for the years 1909 and 1911 the holder of a share of Primary water-right is entitled to not more than 1/75 of a second foot per acre at any time, pro rata with all other owners of such right, and that as to such owners the water may be reduced to 1/150 second foot per acre pro rata during the low water season. The resolutions and articles of agreement of the Provo Reservoir Water Users Company provide for several classes of stock, and that share of full water-right therein is entitled to not more than 1/75 of a second foot per acre at any time but ~~that~~ the holder of a full share of stock, which may be reduced to not less than 1/100 of a second foot per acre at any time thereby making a share of full water-right in the said corporation of more value

as an irrigation right than is one ~~share~~<sup>acre</sup> of Primary water-right under the Deeds issued by the Provo Reservoir Company, to Jens C. Jensen.

This defendant denies the allegations of paragraph 24 not herein admitted.

8. This defendant admits the allegations of paragraph 25.

9. This defendant admits the allegations of paragraph 26.

10. Answering paragraph 27, this defendant admits that the plaintiff, under the contracts and Deeds set forth as exhibits attached to the complaint, has a right to the use of sufficient water of Provo Reservoir Irrigation System to irrigate 20-1/3 acres of land, on a duty at any time, not greater than 75 acres per second foot pro rata with all other owners, under Deeds to Primary water-right from the Provo Reservoir Company, which may be reduced during low water season to 150 acres per second foot.

This defendant denies all of the allegations of paragraph 27 not herein admitted.

11. Answering paragraph 28, this defendant admits that Provo Reservoir Company subsequent to the recording of exhibits "A" and "C" issued many Deeds for water-right and that Provo Reservoir Water Users Company have acquired and owns practically all of the rights under said Deeds so issued. This defendant denies every allegation of said paragraph 28 not in this paragraph admitted.

12. This defendant admits the allegations of paragraphs 29 and 30.

13. Answering paragraph 31, this defendant admits that it asserts and claims that the shares of full water-right stock issued by Provo Reservoir Water Users Company are superior to and represent a better water-right than the Primary water-right claimed by plaintiff under the Deeds attached to the complaint for the reason that at all time of and since the organization of the Provo Reservoir Water Users Company, the Provo Reservoir Company

has conveyed to all of the users or consumers of water under its Deeds who have joined and became members and stock holders of Provo Reservoir Water Users Company, water-rights sufficient to give to such users a different rate of duty of water thereby enlarging the water thereby enlarging the water-rights of the stock holders of said Corporation over and above what they were entitled to under their Deeds which were identical with those issued to Jens C. Jensen under whom the plaintiff herein claims title.

This defendant denies each and every allegation of said paragraph 31 not in this paragraph admitted.

14. This defendant denies all allegations of paragraph 32.

This defendant generally denies each and every allegation of said third cause of action not herein above admitted or denied.

#### ANSWER TO FOURTH CAUSE OF ACTION

In answer to the fourth cause of action herein, this defendant admits, denies and alleges as follows:-

1. It admits all of the allegations of paragraphs 1 to 5 thereof inclusive and admits all of the allegations of paragraphs 7 to 17 thereof inclusive.

2. Answering paragraph 6, this defendant admits that the defendant T. F. Wentz now is, and for many years last past he has been, the duly appointed, qualified and acting Water Commissioner for Provo River under the appointment and orders of the above entitled Court in that civil action known and designated as case No. 2888 Civil in this court. That said defendant, T. F. Wentz now is, and for many years last past he has been, under the appointment and orders of the above entitled court, in active charge as said Commissioner of the control, regulation and distribution of waters of said Provo River into various canals and irrigation works receiving water from said Provo River, That it now is, and for many years last past it has been, the duty of the ~~defendant~~ defendant, T. F. Wentz, as said Commissioner, to control, regulate and distribute

waters of said Provo River in the Main Channel and bed of said river from the Main Channel and bed of said river into various canals and diversion works diverting, taking and receiving water from said Provo River. But this defendant denies that the said T. F. Wentz as said commissioner has any duty of right to control, regulate or distribute the waters of the said Provo River except as provided by the Decree in case No. 2888 Civil- in this court, and denies that this Court has any right or power to direct the said T. F. Wentz as commissioner or otherwise to control, regulate or distribute any of the waters of the said Provo River except the waters adjudicated by said decree and to the parties thereto or their successors in interest.

3. Answering paragraph 18, this defendant admits the first sentence thereof ending with the word "herein." And admits that neither Jens C. Jensen nor the plaintiff herein has assigned to the defendant, Provo Reservoir Water Users Company, any of the water-rights represented by the Deeds, copies of which are attached to the complaint, and admits that neither said Jensen nor the plaintiff have at any time or at all authorized or directed said defendant to distribute water represented by said Deeds, and ~~admits~~ <sup>denies</sup> that the whole of the interest of the Provo Water Users Company in the Irrigation System of the said Provo Reservoir Company or in the Canal described in Paragraph 16 of the complaint has been acquired by transfers thereof to said Provo Reservoir Water Users Company by owners of water-rights in the Provo Reservoir Company's Irrigation System, Defendant denies all of the allegations of said paragraph 18 not hereinabove admitted.

4. This defendant denies each and every allegation of paragraph 19.

5. Answering paragraph 20, this defendant believes the allegations therein to be a reiteration of some of the allegations of paragraph 18, except that in paragraph 20 the plaintiff claims to be a "joint-owner" and a "tenant-in-common" with this defend-

ant herein, and as to such allegations, this defendant denies that the plaintiff is a "joint-owner" or a tenant-in-common in or to all interests of said irrigation system, or in or to any interest in any canal constructed by the Provo Reservoir Company, except such interest as the Provo Reservoir Company may have acquired by reason of its enlargement of the Canal known as the Provo Bench Canal and Irrigation Compsny's Canal, as hereinbefore in paragraphs 15 and 16 of the answer to the first cause of action set forth.

6. This defendant denies each and every allegation of paragraph 21.

7. This defendant admits the allegations of paragraphs 22, 23, 24, 25 and 26 of the fourth cause of action.

8. This defendant denies each and every allegation of paragraphs 27, 28, and 29 of the fourth cause of action.

9. This defendant denies each and every allegation of said fourth cause of action not herein admitted.

And as a further defense to the complaint of the plaintiff, this defendant alleges:

1. That from the \_\_\_\_\_ day of \_\_\_\_\_, 1910, until the 3rd day of March, 1920, the defendant, Provo Reservoir Company had exercised control and regulation of the waters of the Provo Reservoir Company's Provo River Irrigation System and controlled and distributed said waters to the persons entitled to receive waters from said system for irrigation purposes including the said Jens C. Jensen; and said Jens C. Jensen paid the Provo Reservoir Company the maintenance charges of \$1.50 per acre for each and every one of said years.

2. That from the 3rd day of March, A.D. 1920, until the 2nd day of July, 1924, the management, control, regulation and operation of said Provo Reservoir Company's Irrigation System and the regulation and distribution of the waters flowing therein was under the control of the owners of water-rights in said

system including the said Jens C. Jensen in proportion to the interests that they respectively held in said system, said owners of such water-rights, including the said Jens C. Jensen, being represented by certain persons known as the Temporary Board of Control of the Provo Reservoir Company's Irrigation System, appointed by said owners of said water-rights at a meeting duly called and held for that purpose.

3. That this defendant, the Provo Reservoir Water Users Company, was duly organized as a corporation on the 2nd day of July, 1924, for the general purpose of acquiring water rights for irrigation and other purposes and for distributing and disposing of the same; and for the further purpose of acquiring, owning, using, controlling, supervising and operating water, water rights, water right projects, and also reservoirs, dams, diversion works, canals, laterals and other works used in connection with water right projects, and particularly for the purpose of managing, controlling, regulating, operating and distributing to the stockholders in said company and its stockholders as members thereof and of acquiring, for the benefit of its stockholders the waters of such stockholders purchased from the Provo Reservoir Company such further and additional water and water rights as might be necessary or beneficial; and on said 2nd day of July, 1924, the said Temporary Board of Control surrendered and relinquished to this defendant the control, regulation, and distribution of the waters of the Provo Reservoir Company's Provo River Irrigation System belonging to the stockholders of said Provo Reservoir Water Users Company, and since said 2nd day of July, 1924, this defendant has had and exercised the management, control, regulation and operation and the distribution of the water from the Provo Reservoir Company's Irrigation System which had been acquired and owned by the stockholders of said Provo Reservoir Water Users Company.

4. That on or about the \_\_\_\_\_ day of \_\_\_\_\_ 1916,

the said Jens C. Jensen, predecessor in interest of the plaintiff, requested the defendant, Provo Reservoir Company, to deliver the waters to which he was entitled under and by virtue of his contracts with said defendant and set out in plaintiff's complaint, into the canal of the Provo Bench Canal and Irrigation Company and that from said date until the 18th day of February, 1920, the said Jens C. Jensen continually had taken, received and had distributed and delivered to him his said water rights through the canal of the Provo Bench Canal and Irrigation Company.

5. That on or about the 18th day of February, 1920, the said Jens C. Jensen and a large number of other people, in writing requested the defendant, Provo Reservoir Company, to permanently continue the change in delivery of water represented by the said deeds referred to in plaintiff's complaint from the canal of the Provo Reservoir Company into the canal of the Provo Bench Canal and Irrigation Company on Provo Bench in Utah County, Utah.

6. That the defendant, Provo Reservoir Company, pursuant to the said Petition of said Jens C. Jensen and other people, by the expenditure of a large amount of money, obtained carrying capacity in the canal of the Provo Bench Canal and Irrigation Company, and thereafter until January 1st, 1920, delivered the said water of Jens C. Jensen, represented by said deeds, into the said canal of the Provo Bench Canal and Irrigation Company, and that thereafter, to-wit, on or about the 3rd day of March, 1920, the said Board of Control of the water users of the said Provo Reservoir Company's Irrigation System, took control of the distribution and regulation of the water of said Provo Reservoir Company's Irrigation system, including the water thus turned and distributed through the canal of the said Provo Bench Canal and Irrigation Company, and ever since the 3rd day of March, 1920, until the organization of this defendant company, the said Board of Control,

representing the water users of the Provo Reservoir Company's Irrigation System, continued to deliver to the said Jens C. Jensen, and his successor, the water represented by the said deeds referred to in plaintiff's complaint, and that the distribution of said water to said Jens C. Jensen was made by the said Board of Control for the years of 1920, 1921, 1922, 1923, and 1924, and the said Jens C. Jensen paid the said Board of Control his pro-rata share of the expenses of regulating, managing, and controlling the said irrigation system, and the distribution of the water thereof for the years 1920, 1921, 1922, 1923, and 1924, and until the year 1925; that during the years 1925 and 1926 said waters have been distributed to the said plaintiff, as successor in interest of the said Jens C. Jensen, through the main canal of the Provo Reservoir Company under and pursuant to a temporary order made and entered by this Court with the understanding, and providing, that it should be, and was, without any prejudice to the rights of any of the parties defendant herein.

7. This defendant states that if this defendant shall now be compelled to change the place of delivery of said water represented by the said deeds given to Jens C. Jensen from the Provo Bench Canal and Irrigation Company's canal where it now is, pursuant to the request of the plaintiff, and shall be compelled to provide capacity for the conveyance of said water through the canal of the Provo Reservoir Company, it will require the expenditure of additional amounts of money to be paid by this defendant for which it has received and will receive no compensation whatsoever, and will be unequitable, unjust, and against the rights of this defendant, Provo Reservoir Water Users Company.

8. That at the time of the organization of this defendant corporation and for many years prior thereto, as above set forth and continuously after the organization of this corporation until the year 1925, the plaintiff and his predecessor

did receive and had received said waters through the canal of the Provo Bench Canal and Irrigation Company; that this defendant at the time of its organization and continuously thereafter until 1925, relied upon the facts and the situation as they existed at the time of its organization and believed and does now believe that plaintiff and his predecessor had permanently and deliberately abandoned and surrendered any and all claims they, or either of them, had or might have to receive his water or to have the same delivered or distributed to him, in any way or in any manner or place except through the canal of the Provo Bench Canal and Irrigation Company; that at the time of the organization of this defendant company, the plaintiff and his predecessor in interest, the said Jens C. Jensen, refused to join this corporation or to become a member thereof or subscribe for stock therein; and never has been and is not now a member of, or stockholder in, this defendant corporation; that this defendant believed from the aforesaid facts that the plaintiff and his predecessor in interest had permanently abandoned and surrendered any and all claims or interest in or to any canals, ditches or laterals of the Provo Reservoir Company or of this defendant, which belief was induced and caused by the aforesaid acts of the plaintiff and his predecessor in interest, in requesting said change in the place of delivery; in receiving his said waters through the canal of the Provo Bench Canal and Irrigation Company; in paying therefor; in refusing to join or subscribe for stock in this defendant corporation, and relying upon such belief and such acts and conduct on the part of the plaintiff and his predecessor in interest, this defendant made no provision for, and acquired no capacity for, plaintiffs water in the canal of the Provo Reservoir Company or in its canal at the time of its organization or since, and this defendant acquired and owns and controls only such capacity in said ditch and canal as is necessary to carry the waters of the members of, and stockholders in, this

defendant corporation; and the plaintiff, by reason of the acts and conduct as aforesaid in so requesting the change in the place of delivery of his water; and in causing the expenditure of the said large sum of money to provide capacity and facilities for delivering the waters to him through the canal of the Provo Bench Canal and Irrigation Company; and in so taking and receiving his water through such canal of the Provo Bench Canal and Irrigation Company; and in paying for the distribution through said canal pro rata with the users in the Provo Reservoir Canal ; and in refusing to join, or subscribe for stock in this defendant corporation, is estopped as against this defendant from asserting any rights in said canal or from requiring this defendant to change, or permit him to change his place of diversion.

9. That this defendant corporation for and on behalf of its stockholders has purchased more water and water rights than were owned at the time of its organization and that such additional water and water rights so purchased by this defendant for the benefit of its stockholders are more than sufficient to use any and all capacity in said canal owned, controlled or available to this defendant and that this defendant therefore has no unused capacity in said canal.

WHEREFORE, this defendant prays that plaintiff take nothing by his complaint, herein. That judgment be entered in favor of this defendant and against plaintiff. "No cause of Action" as to each of plaintiff's four alleged causes of action,-

This defendant further prays for judgment against the plaintiff, that plaintiff, his successors in interest, and their agents, servants, employees and attorneys, and any and all persons claiming or to claim, by, through or under them or any of them, be enjoined and restrained forever from setting up or claiming any right or interest whatsoever of, in or to any part or portion of the canals of this defendant or to the right in or

to the canals, or the use thereof, of the Provo Reservoir  
Company canal as owned, controlled or operated by or available  
for use, or used by, this defendant.

This defendant prays for such other and further relief as  
to the court may seem meet and equitable.

A. J. Evans.

Martin M. Larson

attorney for Defendant  
Provo Reservoir District  
Users Association.

STATE OF UTAH, :  
: SS.  
COUNTY OF UTAH. :

R. J. Murdock being first duly sworn says  
he is an officer of Provo Reservoir Company, a corporation,  
one of the defendants in the foregoing answer, to-wit:

Secretary thereof, and that he makes  
this verification for and in behalf of the said defendant ;  
that he has read the said answer and knows the contents  
thereof, and that it is true of his own knowledge except as  
to matters therein stated on information and belief, and  
that as to those matters he verily believes it to be true.



R. J. Murdock

Subscribed and sworn to before  
me this 4<sup>th</sup> day of January  
A.D. 1927.

Martin M. Aspinwall  
Notary Public.  
Residing at:

Received copy this 5th day of January, 1927.

M. P. Straw  
A. B. Morgan  
Attorneys for plaintiff

6346

IN DIST. COURT  
UTAH CO., UTAH

\* FILED \*

JAN 5 - 1927

E. B. Rustup  
Deputy

RECORDED FOR

*Handwritten notes and signatures*

1927 JAN 5 11 58 AM

RECORDED

JAN 5 1927

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ORDER OF

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

-----  
CALEB TANNER,

Plaintiff,

No. 6346 CIVIL.

-vs-

Provo Reservoir Company, a  
corporation, Provo Reservoir  
Water Users Company, a corpo-  
ration, Blue Cliff Canal Com-  
pany, a corporation, North  
Union Irrigation Company, a  
corporation, Provo Bench Canal  
and Irrigation Company, a cor-  
poration, T.F.Wentz, as Commiss-  
ioner of Provo River,

Defendants:

ANSWER OF PROVO RESERVOIR  
COMPANY AND BLUE CLIFF  
CANAL COMPANY.

-----  
Now comes the defendants, Provo Reservoir Company, a cor-  
poration, and the Blue Cliff Canal Company, a corporation, and  
for themselves and not for any of the other defendants, answer the  
Complaint filed herein:-

As to the first cause of action in said Complaint these  
defendants admit, deny and allege as follows:-

1. Admit all of the allegations of paragraphs 1 to 5 thereof  
inclusive.

2. These defendants admit that the defendant T.F.Wentz now is,  
and for many years last past he has been, the duly appointed,  
qualified and acting Water Commissioner for Provo River under the  
appointment and orders of the above entitled Court in that civil  
action known and designated as -Case No. 2888- in the above entitled  
court. That said defendant T.F.Wentz now is, and for many years  
last past he has been, under the appointment and orders of the above  
entitled court, in active charge as said commissioner of the control,  
regulation and distribution of waters of said Provo River into various  
canals and irrigation works receiving water from said Provo River.  
That it now is, and for many years last past it has been, the duty  
of the defendant T.F.Wentz, as said commissioner, to control, re-  
gulate and distribute waters of said Provo River in the main channel  
and bed of said river, and from the main channel and bed of said  
river into various canals and diversion works diverting, taking and  
receiving water from said Provo River. But these defendants deny  
that the said T. F. Wentz as said commissioner has any duty or  
right to control, regulate or distribute the waters of the said Provo  
River except as provided by the Decree in Case -No. 2888 Civil- in  
this court, and denies that this court has any right or power to  
direct the said T.F.Wentz, as commissioner or otherwise, to control,  
regulate or distribute any of the waters of said Provo River, except  
the waters adjudicated by said decree and to the parties thereto or  
their successors in interest.

3. These defendants admit the allegations of paragraphs 7, 8,  
9, 9½, 10, 11, 12, 13, 14, 15, 16, and 17.

4. As to paragraph 18, these defendants admit the first sentence  
thereof ending with the word herein. And admit that neither Jens C.  
Jensen nor the plaintiff herein has assigned to the defendant Provo

Reservoir Water Users Company any of the water-rights represented by the Deeds, copies of which are attached to the complaint, and admits that neither said Jensen nor the plaintiff have at any time or at all authorized or directed said defendant to distribute water represented by said Deeds, and admits that the whole of the interest of the Provo Reservoir Water Users Company in the Irrigation System of the said Provo Reservoir Company or in the canal described in paragraph 16 of the Complaint, has been acquired by transfers thereof to said Provo Reservoir Water Users Company by owners of water-rights in the Provo Reservoir Company's Irrigation System.

Defendants deny all of the allegations of said paragraph 18 not herein above admitted.

5. These defendants deny the allegations of paragraph 19.

6. As to paragraph 20 these defendants believe the allegations therein to be a reiteration of some of the allegations in paragraph 18 except that in paragraph 20 the plaintiff claims to be a "joint-owner" and a "tenant-in-common" with the defendants herein, and as to these allegations these defendants deny that the plaintiff is a "joint-owner" or a "tenant-in-common" in and to all interests of said irrigation system or in and to any interest in any Canal constructed by the Provo Reservoir Company except such interest as Provo Reservoir Company may have acquired by reason of its enlargement of the Canal known as the "Provo Bench Canal and Irrigation Company's Canal", as hereinafter in paragraphs 15 and 16 setforth.

7. These defendants deny each and every allegation of paragraph 21 of said first cause of action.

8. These defendants admit the allegations of paragraph 22 of said first cause of action.

9. These defendants admit that they ~~asset~~ and claim that the plaintiff owns no capacity in and no right to flow or convey the water represented by the Deeds exhibits "B" "D" and "E" through the main canal of Provo Reservoir Company's, Provo River Irrigation System for the reason herein after in this answer to the first cause of action in this complaint setforth, but deny that such assertions and claims are wrongful or in violation of any right of the plaintiff.

10. These defendants deny that the plaintiff is entitled to the use of such proportions of the waters of the Provo River heretofore or now owned by the defendants Provo Reservoir Company, or Provo Reservoir Water Users Company, as 20-1/3 acres of Primary water-right bears to the total number of like units of Primary water-right so disposed of by said Provo Reservoir Company, for the reason that at the time of and since the organization of the Provo Reservoir Water Users Company the Provo Reservoir Company has conveyed to all of the Users or Consumers of water under its Deeds who have joined and became members and stock-holders of Provo Reservoir Water Users Company, water-right sufficient to give to such users a different rate of duty of water thereby enlarging the water-rights of the Stock-holders of said Corporation over and above what they were entitled to under their Deeds which were identical with those issued to Jens C. Jensen under whom the plaintiff herein claims title.

11. Further answering said first cause of action these defendants allege that the plaintiff, Caleb Tanner, was prior to the year 1913 the state engineer of the State of Utah and that he was at all of the times hereinafter mentioned an irrigation engineer of great ability

and of good repute and had knowledge of the divers matters pertaining to the flow of the water of the Provo River mentioned in the Complaint herein, and that he had been for many years prior to the organization of the Provo Reservoir Company interested in said River and its irrigation system as then in use. Reply  
admitted

12. That defendant, Provo Reservoir Company knowing of the ability of said Caleb Tanner as an irrigation engineer and knowing of his study and knowledge of the said Provo River System and rights of individuals to the use of water of said river for all purposes, in the year 1913 said defendant engaged and employed the said Tanner as its agent and engineer for the purpose of securing for said Provo Reservoir Company water-rights by appropriation ~~and~~ and otherwise in and to the water of said Provo River and to secure rights-of-way for said Provo Reservoir Company for ditches, canals and diverting channels, and to give said Provo Reservoir Company advice, counsel and information for its benefit in the appropriation, diversion, application, distribution, and use of water by the said Provo Reservoir Company and those with whom it might contract with for the sale of rights owned by it for the use of waters of the said Provo River and its tributaries and that the said plaintiff, Caleb Tanner, during all of the time from the year A.D. 1913 until the 31 day of December A.D. 1921 was employed by the said Provo Reservoir Company and paid by it for services rendered by him under the said employment. Tanner

13. That during the year A.D. 1915 the said Provo Reservoir Company had made contracts with divers persons for rights to the use of waters of the said Provo River for irrigation purposes to the amount of approximately 40 second feet, among whom was the grantor of the plaintiff for the 20-1/3 ~~second feet~~ <sup>acres</sup> referred to in the plaintiffs first cause of action, said water to be delivered to the said Provo Reservoir Company's grantees through the Iona Canal, the intake of which is from the said Provo Reservoir Company's main canal at a point near the center of Sec. 12, Tp. 6 South, of range 2 East, Salt Lake Base Meridian in Utah County, Utah. Tanner

14. That by reason of the great length, cost of construction and maintenance of the said Iona Canal and the extra loss by evaporation and seepage of the water in said Iona Canal many of the users thereof and as the said Provo Reservoir Company then believed all of the users thereof asked the said Provo Reservoir Company to make arrangements to deliver the water contracted for by them through the Provo Bench Canal and Irrigation Company's Canal, which said canals diverts water from the said Provo River at a point on the right bank of said Provo River about two miles below the intake of said Provo Reservoir Company's main canal as described in the complaint herein. Tanner

15. That on or about the \_\_\_\_\_ day of \_\_\_\_\_ A.D. 1915. after the said Provo Reservoir Company had conferred with the plaintiff herein then acting as its counselor and advisor in all matters relating to the diversion and distribution of waters contracted for by it to the users thereof, and after being advised by the plaintiff so to do, entered into an agreement with the Provo Bench Canal and Irrigation Company to convey the quantity of water theretofore used and thereafter to be used by said Provo Reservoir Company's vendees through the said Iona Canal, to be carried through and delivered to the said vendees through the said Provo Bench <sup>Canal</sup> and Irrigation Company's Canal. And that thereafter and so long as the water contracted for by Jens C. Jensen, Plaintiffs grantor, was used by the said Jens C. Jensen, it was delivered to him through the said Provo Bench Canal and Irrigation Company's Canal with his acquiescence and consent and as these defendants are informed and verily believe at his instance and request, and these defendants allege that the 20-1/3 acres of water-right to which the said Jens C. Jensen was entitled was delivered into the said Provo Bench Canal and Irrigation Company's Canal under the arrangements made by Provo Reservoir Company with Provo Bench Canal and Irrigation Tanner

That in 1925 and 1926 temporary orders were made by this Court in Case No. 2888 Civil, directing T. F. Wentz to divert the said water through the Provo Reservoir Company's main canal. Said order being qualified by the Court by providing that it should not in any manner prejudice any of the rights of the parties interested in the action.

the persons, including Jens C. Jensen, who held contracts with Provo Reservoir Company, defendant, for the sale and purchase of water-right, to be delivered through its irrigation system.

18. That immediately after the Provo Reservoir Company arranged with Provo Bench Canal and Irrigation Company to convey and deliver through its canal the water formerly delivered at the intake of the Iona Canal, the owners including Jens C. Jensen, the plaintiffs grantor, of the 20-1/3 acres water-right claimed for herein by plaintiff, abandoned said Iona lateral and it was soon filled in, its flumes and gates became broken, decayed, and destroyed and it has never since been used by any of its owners whose lands lie below the Provo Bench Canal and Irrigation Company's Canal and laterals.

19. That the 20-1/3 acres of Primary water-right claimed by plaintiff in the first cause of action herein, were awarded to Provo Reservoir Company by reason of the application thereof in irrigation of the lands of said Jens C. Jensen, plaintiffs grantor, upon the lands of said Jens C. Jensen, situated in Sec. 22, Tp. 6 South, Range 2 East, of the Salt Lake Meridian, all of which lands lie to the South of the Provo Bench Canal and its laterals, and said water was continuously used upon said lands from the date of the contracts for the purchase thereof between the said Jens C. Jensen and Provo Reservoir Company, as shown by plaintiffs exhibits "A" and "C" and the date of the Deed, plaintiffs exhibit "E" (until the sale thereof by the said Jens C. Jensen to the plaintiff, and all thereof were distributed to him through the Provo Bench Canal each and every year ~~in~~ during his use thereof, as aforesaid since A.D. 1916<sup>1916-1925</sup> and that 5 acres thereof were distributed to him through said canal from the time of his purchase thereof, November 29th, 1918 until his sale to plaintiff as alleged in plaintiffs complaint herein on the 3rd, day of March A.D. 1925, and that <sup>since</sup> ~~since~~ <sup>date</sup> the said water-right has been turned into the said Provo Bench Canal <sup>each and every year except</sup> 1926 for the use of plaintiff. <sup>1925 and</sup>

20. That by reason of the acts of said Jens C. Jensen, and others to whom water was distributed through the Iona Canal lateral aforesaid, as herein above set forth, and by reason of the large expenditures of

Company until the year A.D. 1916.

16. That in the year A.D. 1916 the said Provo Reservoir Company for the sole purpose of supplying the persons who had originally had their water delivered to them through the Iona Canal with water delivered to them through the Provo Bench Canal and Irrigation Company's Canal, with the plaintiff herein, entered into an agreement with the said Provo Bench Canal and Irrigation Company ~~to~~ to enlarge its canal so that said Provo Reservoir Company would have carrying capacity therein to supply water to those with whom it had contracted and who had originally had their water delivered to them through the Iona Canal, and that Provo Reservoir Company on its part expended in said enlargement approximately \$30,000.00 and thereby acquired a right to flow the said waters through the said canal, the said users having each and all made arrangements with the said Provo Bench Canal and Irrigation Company and North Union Canal Company to deliver and distribute to them at their several private laterals the quantity of water to which they were severally entitled, and that during each and every year since A.D. 1916 the 20-1/3 ~~acres~~<sup>acres</sup> of water to which the said Jens C. Jensen was entitled and to which the plaintiff claims he is now entitled has been delivered by the Provo Reservoir Company, the Board of Control, and the Provo Reservoir Water Users Company into the Provo Bench Canal Company's Canal for the use and benefit of the said Jens C. Jensen or his successor or successors in interest.

17. That the Iona Canal was a lateral from the Provo Reservoir Company's main canal and was constructed, owned and regulated by the persons, including Jens C. Jensen, who held contracts with the Provo Reservoir Company, defendant, for the sale and purchase of water-right, to be delivered through its irrigation system.

18. That immediately after the Provo Reservoir Company arranged with Provo Bench Canal and Irrigation Company to convey and deliver through its canal the water formerly delivered at the intake of the Iona Canal, the owners including Jens C. Jensen, the plaintiffs grantor, of the 20-1/3 acres water-right claimed for herein by plaintiff, abandoned said Iona lateral and it was soon filled in, its flumes and gates became broken, decayed, and destroyed and it has never since been used by any of its owners whose lands lie below the Provo Bench Canal and Irrigation Company's Canal and laterals.

19. That the 20-1/3 acres of Primary water-right claimed by plaintiff in the first cause of action herein, were awarded to Provo Reservoir Company by reason of the application thereof in irrigation of the lands of said Jens C. Jensen, plaintiffs grantor, upon the lands of said Jens C. Jensen, situated in Sec. 22, Tp. 6 South, Range 2 East, of the Salt Lake Meridian, All of which lands lie to the South of the Provo Bench Canal and its laterals, and said water was continuously used upon said lands from the date of the contracts for the purchase thereof between the said Jens C. Jensen and Provo Reservoir Company, as shown by plaintiffs exhibits "A" and "C" and the date of the Deed, plaintiffs exhibit "E" (until the sale thereof by the said Jens C. Jensen to the plaintiff, and all thereof were distributed to him through the Provo Bench Canal each and every year ~~in~~ during his use thereof, as aforesaid since A.D. 1916 <sup>and that 5 acres</sup> thereof were distributed to him through said canal from the time of his purchase thereof, November 29th, 1918 until his sale to plaintiff as alleged in plaintiffs complaint herein on the 3rd, day of March A.D. 1925, and that <sup>since</sup> ~~since~~ the said water-right has been turned into the said Provo Bench Canal ~~each and every year except~~ <sup>1925 and</sup> for the use of plaintiff.

20. That by reason of the acts of said Jens C. Jensen, and others to whom water was distributed through the Iona Canal lateral aforesaid, as herein above setforth, and by reason of the large expenditures of

money by the Provo Reservoir Company in order to obtain for themselves a right to flow said water through the Provo Bench Canal, and North Union Canal and their laterals as above set forth all of said expenditures having been made under the direction, control, and advice of the plaintiff herein and all of which was well known to the plaintiff at the time he purchased from the said Jens C. Jensen, the said water-right, the said Jens C. Jensen, plaintiff, and their grantees and successors in interest are barred and estopped from claiming any right to have delivered to them any of the said water through any other source or from any other point than the Provo Bench Canal, and North Union Canal, and their laterals.

21. That in the Decree in Case No. 2888 Civil- filed in this Court on the 2nd day of May A.D. 1921, paragraph 116 is as follows:-

"It is further ordered, adjudged and decreed, that for the purpose of maintaining the volume of flow of Provo River available for use of the parties, and to maintain to the parties hereto the respective rights herein awarded and decreed, none of the parties shall change the place of use of said water so as to cause the seepage or drainage therefrom to be diverted away from the channel of said river; or canals, or from the lands heretofore irrigated thereby."

22. That as these defendants are informed and believe and therefore allege that the sole purpose of the plaintiff in purchasing the said 20-1/3 acres of water-right was that he might change the place of use thereof and divert the same through plaintiffs Main Canal and thereby seek to acquire rights that had been forfeited and abandoned by his predecessor, Jens C. Jensen, and at the same time seek to acquire other interests that were never owned or claimed by his said grantor, such as a "tenancy-in-common" with these defendants, and Provo Reservoir Water Users Company in the Main Canal of the Provo Reservoir Company's Irrigation System, and particularly to acquire such "tenancy-in-common" in its head-gate, canal, tunnels, and pipe-line from the so called Heiselt Dam referred to in paragraph 16 of the first cause of action herein, but such rights can only be obtained by change of the place of use of the said 20-1/3 acres water-right, and an abandonment of the right acquired by plaintiff at great expense to the Provo Reservoir Company to flow the said 20-1/3 acres of water-right through the Provo Bench Canal and that by provisions of paragraph 116 in the Decree in Case No. 2888 Civil-the said Jens C. Jensen and the plaintiff, as his successor, are prohibited from changing the place of use of said water.

These defendants generally deny each and every allegation of said first cause of action not herein-above admitted or denied.

#### ANSWER TO SECOND CAUSE OF ACTION

In answer to the second cause of action herein these defendants admit, deny, and allege as follows:-

1. They admit all of the allegations of paragraphs 1 to 5 thereof and inclusive, and admit all of the allegations of paragraphs 7, 8, 9, 9½, 10, 11, 12, 13, 14, 15, 16 and 17.

2. As to paragraph 6 these defendants admit that the defendant, T. F. Wentz now is, and for many years last past he has been the duly appointed, qualified and acting Water Commissioner for Provo River under the appointment and orders of the above entitled Court in that civil action known and designated as -Case No. 2888- in the above entitled Court. That said defendant T.F. Wentz now is, and for many years last past he has been, under the appointment and orders of the above entitled Court, in active charge as said commissioner, of the control, regulation and distribution of waters of said Provo River into various canals and irrigation works receiving water from said Provo River. That it now is, and for many years last past it

has been, the duty of the defendant T. F. Wentz, as said commissioner, to control, regulate and distribute waters of said Provo River in the main channel and bed of said river and from the main channel and bed of said river into various canals and diversion works diverting, taking and receiving water from said Provo River. But these defendants deny that the said T. F. Wentz as said commissioner has any right or duty to control, regulate or distribute the waters of the said Provo River except as provided by the Decree in -Case No. 2888 Civil- in this Court, and denies that this court has any right or power to direct the said T. F. Wentz as commissioner or other-wise to control, regulate or distribute any of the waters of said Provo River except the waters adjudicated by said decree and to the parties thereto or their successors in interest.

3. Answering paragraph 18 these defendants admit the first sentence thereof, ending with the word herein. And admit that neither Jens C. Jensen nor the plaintiff herein has assigned to the defendant, Provo Reservoir Water Users Company any of the water-rights represented by the Deeds, copies of which are attached to the complaint, and admit that neither said Jens C. Jensen nor the plaintiff have at any time or at all authorized or directed said defendant to distribute water represented by said Deeds, and admit that the whole of the interest of the Provo Reservoir Water Users Company in the irrigation System of the said Provo Reservoir Company or in the Canal described in paragraph 16 of the complaint has been acquired by transfers thereof to said Provo Reservoir Water Users Company by owners of water-rights in the Provo Reservoir Company's Irrigation System.

Defendants deny all of the allegations of said paragraph 18 not herein admitted.

4. These defendants deny all the allegation of paragraph 19.

5. As to paragraph 20 these defendants believe the allegations therein to be a reiteration of some of the allegations in paragraph 18 except that in paragraph 20 the plaintiff claims to be a "joint-owner" and a "tenant-in-common" with the defendants herein, and as to these allegations these defendants deny that the plaintiff is a "joint-owner" or a "tenant-in-common" in and to all interests of said irrigation system or in and to any interest in any Canal constructed by the Provo Reservoir Company except such interest as Provo Reservoir Company may have acquired by reason of its enlargement of the Canal known as the "Provo Bench Canal and Irrigation Company's Canal".

6. These defendants deny each and every allegation of paragraph 21.

7. These defendants admit the allegations of paragraph 22.

8. These defendants admit the allegations of paragraph 23.

9. As to paragraph 24 these defendants deny each and every allegation therein and specifically deny that the plaintiff is a "joint-owner" or a "tenant-in-common" with these defendants or either of them, in the canal described in paragraph 16, or in any part thereof.

10. Answering paragraph 25 these defendants admit that the plaintiff desires to use the main canal constructed by Provo Reservoir Company as described in paragraph 16, to carry his 2.52 second feet of water to the intake of the Iona Canal, to be used by divers persons, and these defendants deny each and every allegation of said paragraph 25 not in this paragraph admitted.

11. Answering paragraph 26 these defendants admit that they assert and claim, and they now allege that plaintiff owns no capacity in and no right to convey the 2.52 second feet of water or any part thereof through the main canal of Provo Reservoir Company's Provo River Irrigation System, and deny that plaintiff has any right

or interest in or to the canal described in paragraph 16, and these defendants deny each and every allegation of said paragraph 26 not in this paragraph admitted.

12. Answering paragraph 27 these defendants admit that T.F.Wentz, as Water Commissioner, appointed by this court has supervision and control of the distribution of water from the Provo River into the Main Canal of Provo Reservoir Irrigation System as described in paragraph 16, and that he refuses and threatens to continue to refuse to divert any of the waters owned by the plaintiff into said canal, and admits that the said 2.52 second feet of water has been awarded to plaintiff by the decree in -Case No. 2888 Civil- in this Court, and that said T.F.Wentz, as water Commissioner, has the right to divert said water from the Provo River for the use of plaintiff. But these defendants allege that the said refusal of T.F.Wentz was not wrongful; that the said T.F.Wentz has no right to divert the said waters into a private canal or pipe-line owned and controlled by others than the plaintiff without first being authorized so to do by the owners of such canal or pipe-line.

*Plaintiff*, 13. These defendants admit that their claims are adverse to and deny each and every other allegation of paragraph 28.

14. Further answering said second cause of action these defendants allege that the plaintiff is the owner on his own right of approximately 6 second feet capacity in the Provo Bench Canal, which canal has its intake on the right bank of the said Provo River at a point near the Olmstead plant of the Utah Power and Light Company. Said capacity ~~and~~ said canal was acquired by the plaintiff after long litigation for a right to enlarge and great expense in enlarging said canal for the purpose of conveying through said canal 10 second feet of water of which 10 second feet of water the 2.52 second feet mentioned in this cause of action were a part, and that for many years last past the said 2.52 second feet of water has been diverted from the Provo River into the said canal and has been used upon lands lying below said canal and its laterals.

15. That in the Decree in -Case No. 2888 Civil- by which said 2.52 second feet of water was awarded and decreed to plaintiff, paragraph 116 is as follows:-

"It is further ordered, adjudged and decreed, that for the purpose of maintaining the volume of flow of Provo River available for use of the parties, and to maintain to the parties hereto the respective rights herein awarded and decreed, none of the parties shall change the place of use of said water so as to cause the seepage or drainage therefrom to be diverted away from the channel of said river, or canals, or from the lands heretofore irrigated thereby."

16. That by this cause of action plaintiff seeks the right to change the point of diversion of the said 2.52 second feet of water from the Provo River and to change the place of use thereof and to use the same for irrigation upon lands where it heretofore has not been used, in violation of the provisions of said decree as set forth in paragraph 116 thereof.

17. That these defendants are informed and believe and therefore allege that the sole purpose of plaintiff in purchasing the 20-1/3 acres of water-right in which he is, in his first cause of action herein, seeking the right to flow through the Provo Reservoir Company's Main Canal was to enable him to claim a right as "tenant-in-common" with the defendant herein in said canal, that he might bring an action to determine that he was a "tenant-in-common", hoping to establish a rule in this cause whereby he might flow water through any canal already built without any cost or expense to himself in any way. And that plaintiff has another action now at issue against the defendants herein Provo Reservoir Company, and Provo

Reservoir Water Users Company, and T. F. Wentz, in this court for other and additional claims to flow water through said Provo Reservoir Company's Main Canal, at issue and untried wherein he claims a right to flow 5 second feet of water through said canal, said 5 second feet of water which ~~has~~ heretofore if applied to any beneficial use whatever, has been diverted through the said Provo Bench Canal, and in the application to the State Engineer for the 5 second feet of water the plaintiff asserts that the said water is to be diverted through the said Provo Bench Canal. Said action being file No. 6449 Civil in this court.

These defendants generally deny each and every allegation of said second cause of action not herein admitted or denied.

#### ANSWER TO THIRD CAUSE OF ACTION

In answer to the third cause of action herein these defendants admit, deny and allege as follows:-

1. They admit all of the allegations of paragraphs 1 to 5 thereof inclusive and admit all of the allegations of paragraphs 7 to 17 thereof inclusive.

2. As to paragraph 6 these defendants admit that the defendant, T.F.Wentz now is, and for many years last past he has been, the duly appointed, qualified and acting Water Commissioner for Provo River under the appointment and order of the above entitled Court in that civil action known and designated as Case No. 2888 in the above entitled Court. That said defendant, T.F.Wentz now is, and for many years last past he has been, under the appointment and orders of the above entitled court, in active charge, as said Commissioner, of the control, regulation and distribution of waters of said Provo River into various canals and irrigation works receiving water from said Provo River. That it now is, and for many years last past it has been, the duty of the defendant, T.F.Wentz, as said Commissioner, to control, regulate and distribute waters of said Provo River in the Main Channel and bed of said river and from the Main Channel and bed of said river into various canals and diversion works diverting, taking and receiving water from said Provo River. But these defendants deny that the said T. F. Wentz as said commissioner has any duty or right to control, regulate or distribute the waters of the said Provo River except as provided by the Decree in case No. 2888 Civil, in this court, and denies that this court has any right or power to direct the said T.F.Wentz as commissioner or otherwise to control, regulate or distribute any of the waters of said Provo River except the waters adjudicated by said decree and to the parties thereto or their successors in interest.

3. As to paragraph 18 these defendants admit the first sentence thereof, ending with the word herein. And admit that neither Jens C. Jensen nor the plaintiff herein has assigned to the defendant, Provo Reservoir Water Users Company any of the water-rights represented by the Deeds, copies of which are attached to the complaint, and admit that neither said Jensen nor the plaintiff have at any time or at all authorized or directed said defendant to distribute water represented by said Deeds, and admit that the whole of the interest of the Provo Reservoir Water Users Company in the Irrigation System of the said Provo Reservoir Company or in the Canal described in paragraph 16 of the complaint has been acquired by transfers thereof to said Provo Reservoir Water Users Company by owners of water-right in the Provo Reservoir Company's Irrigation System.

Defendants deny all of the allegations of said paragraph 18 not herein above admitted.

4. These defendants deny all of the allegations of paragraph 19.

5. As to paragraph 20 these defendants believe the allegations

therein to be a reiteration of some of the allegations in paragraph 18 except that in paragraph 20 the plaintiff claims to be a "joint-owner" and a "tenant-in-common" with the defendants herein, and as to these allegations these defendants deny that the plaintiff is a "joint-owner" or a "tenant-in-common" in and to all interests of said irrigation system or in and to any interest in any Canal constructed by the Provo Reservoir Company except such interest as Provo Reservoir Company may have acquired by reason of its enlargement of the Canal known as the "Provo Bench Canal and Irrigation Company's Canal," as hereinafter in paragraphs 15 and 16 ~~set forth of the answer to the First Cause of action set forth.~~

6. As to paragraphs 21, 22, 23:-

These defendants deny each and every allegation of paragraph 21 of said third cause of action.

These defendants admit the allegations of paragraph 22 of said third cause of action.

These defendants admit that they assert and claim that the plaintiff owns no capacity in and no right to flow or convey the water represented by the Deeds exhibits "B" and "E" through the Main Canal of Provo Reservoir Company's, Provo Reservoir Irrigation System for the reasons that hereinafter in this answer to the third cause of action in this complaint set forth, but deny that such assertions and claims are wrongful or in violation of any right of the plaintiff.

7. Answering paragraph 24 these defendants allege that under the Preambles and Resolutions of Provo Reservoir Company, for the years 1909 and 1911 the holder of a share of Primary water-right is entitled to not more than 1/75 of a second foot per acre at any time, pro rata with all other owners of such right, and that as to such owners the water may be reduced to 1/150 second foot per acre pro rata during the low water season. The resolutions and articles of agreement of the Provo Reservoir Water Users Company provide for several classes of stock, and that share of full water-right therein is entitled to not more than 1/75 of a second foot per acre at any time but that the holder of a full share of stock, which may be reduced to not less than 1/100 of a second foot per acre at any time thereby making a share of full water-right in the said corporation of more value as an irrigation right than is one share of Primary water-right under the Deeds issued by the Provo Reservoir Company, to Jens C. Jensen.)

These defendants deny the allegations of paragraph 24 not herein admitted.

8. These defendants admit the allegations of paragraph 25.

9. These defendants admit the allegations of paragraph 26.

10. Answering paragraph 27 these defendants admit that the plaintiff under the contracts and Deeds set forth as exhibits attached to the complaint, plaintiff has a right to the use of sufficient water of Provo Reservoir Irrigation System to irrigate 20-1/3 acres of land, on a duty at any time, not greater than 75 acres per second foot pro rata with all other owners, under Deeds to Primary water-right from the Provo Reservoir Company, which may be reduced during low water season to 150 acres per second foot.

These defendants deny all of the allegations of paragraph 27 not herein admitted.

11. Answering paragraph 28 these defendants admit that Provo Reservoir Company subsequent to the recording of exhibits "A" and "C" issued many Deeds for water-right and that Provo Reservoir Water Users Company have acquired and owns practically all of the rights under said Deeds so issued. These defendants deny every allegation of said paragraph 28 not in this paragraph admitted.

12. These defendants admit the allegations of paragraphs 29 & 30.

13. Answering paragraph 31 these defendants admit that they assert and claim that the shares of full water-right stock issued by Provo Reservoir Water Users Company are superior to and represent a better water-right than the Primary water-right claimed by plaintiff under the Deeds attached to the complaint for the reason that at all time of and since the organization of the Provo Reservoir Water Users Company the Provo Reservoir Company has conveyed to all of the users or consumers of water under its Deeds who have joined and became members and stock holders of Provo Reservoir Water Users Company, water-rights sufficient to give to such users a different rate of duty of water, ~~thereby enlarging the water~~ thereby enlarging the water-rights of the stock holders of said Corporation over and above what they were entitled to under their Deeds which were identical with those issued to Jens C. Jensen under whom the plaintiff herein claims title.

These defendants deny each and every allegation of said paragraph 31 not in this paragraph admitted.

14. These defendants deny all allegations of paragraph 32.

These defendants generally deny each and every allegation of said third cause of action not herein above admitted or denied.

#### ANSWER TO FOURTH CAUSE OF ACTION.

In answer to the fourth cause of action herein these defendants admit, deny and allege as follows:-

1. They admit all of the allegations of paragraphs 1 to 5 thereof inclusive and admit all of the allegations of paragraphs 7 to 17 thereof inclusive.

2. Answering paragraph 6 these defendants admit that the defendant T.F.Wentz now is and for many years last past he has been, the duly appointed, qualified and acting Water Commissioner for Provo River under the appointment and orders of the above entitled Court in that civil action known and designated as case No. 2888 Civil in this court. That said defendant, T. F. Wentz now is, and for many years last past he has been, under the appointment and orders of the above entitled court, in active charge as said Commissioner of the control, regulation and distribution of waters of said Provo River into various canals and irrigation works receiving water from said Provo River. That it now is, and for many years last past it has been, the duty of the defendant, T. F. Wentz, as said Commissioner, to control, regulate and distribute waters of said Provo River in the Main Channel and bed of said river and from the Main Channel and bed of said river into various canals and diversion works diverting, taking and receiving water from said Provo River, But these defendants deny that the said T. F. Wentz as said commissioner has any duty or right to control, regulate or distribute the waters of the said Provo River except as provided by the Decree in case No. 2888 Civil- in this court, and deny that this court has any right or power to direct the said T.F.Wentz as commissioner or otherwise to control, regulate or distribute any of the waters of the said Provo River except the waters adjudicated by said decree and to the parties thereto or their successors in interest.

3. Answering paragraph 18 these defendants admit the first sentence thereof ending with the word herein. And admit that neither Jens C. Jensen nor the plaintiff herein has assigned to the defendant Provo Reservoir Water Users Company any of the water-rights represented by the Deeds, copies of which are attached to the complaint, and admits that neither said Jensen nor the plaintiff have at any time or at all authorized or directed said defendant to distribute water represented by said Deeds, and admits that the whole of the interest of the Provo Water Users Company in the Irrigation System of the said Provo Reservoir

Company or in the Canal described in Paragraph 16 of the complaint has been acquired by transfers thereof to said Provo Reservoir Water Users Company by owners of water-rights in the Provo Reservoir Company's Irrigation System. Defendants deny all of the allegations of said paragraph 18 not hereinabove admitted.

4. These defendants deny each and every allegation of paragraph 19.

5. Answering paragraph 20 these defendants believe the allegations therein to be a reiteration of some of the allegations of paragraph 18, except that in paragraph 20 the plaintiff claims to be a "joint-owner" and a "tenant-in-common" with these defendants herein, and as to such allegations these defendants deny that the plaintiff is a "joint-owner" or a "tenant-in-common" in or to all interests of said irrigation system, or in or to any interest in any canal constructed by the Provo Reservoir Company, except such interest as the Provo Reservoir Company may have acquired by reason of its enlargement of the Canal known as the Provo Bench Canal and Irrigation Company's Canal, as hereinbefore in paragraphs 15 and 16 of the answer to the First Cause of action set forth

6. These defendants deny each and every allegation of paragraph 21.

7. These defendants admit the allegations of paragraph 22, 23, 24, 25 and 26 of the fourth cause of action.

~~8x~~

8. These defendants deny each and every allegation of paragraphs 27, 28 and 29 of the fourth cause of action.

9. These defendants deny each and every allegation of said fourth cause of action not herein admitted.

-----  
Further answering as to the Second Cause of Action these defendants allege that the plaintiff, even though it shall be determined that he is a tenant in common in the Main Canal of the Provo Reservoir Company's Provo River System, has no right to use any portion thereof in excess of such portion as his interest therein shall bear to the whole thereof, without accounting for and paying to his co-tenants a reasonable rental for such use.

-----  
Further answering as to all four causes of action these defendants allege: That as to Provo Reservoir Company, a corporation, it is adjudicated and determined in case No. 5726 Civil, in this court, after trial had on the merits, by the Decree made and entered on the 21st day of April, 1925, that said defendant was and is under no duty or obligation under the Contracts and Deeds executed by it, viz: "A", "B" and "C" being the Deeds in said action No. 5726, Civil, and the same deeds being Exhibits "B", "D" and "E" in this action, to do anything whatsoever for the plaintiff herein, in the diversion or distribution of any of the water of Provo River.

Wherefore these defendants pray for judgment of "No cause of Action" as to each of the said four causes of action, -

Defendants further pray for judgment against the plaintiff, that plaintiff, his successors in interests, and their agents, servants, employees and attorneys, and any and all persons claiming or to claim, by through or under them or any of them, be enjoined and restrained forever from setting up or claiming any right or interest whatsoever of, in or to that portion of the Provo Reservoir Company's Irrigation System beginning at its dam known as the "Heiselt Dam" and extending down to that point known as "Distributing Point", of said system, situated near to the center section 12, Tp. 6 South, Range 2 East, Salt Lake Meridian.

These defendants pray for such other and further relief as to the court may seem meet and equitable.

PROPOSED AMENDMENT to Answer of the Provo Reservoir Company in case No. 6346, Caleb Tanner, plaintiff, vs. Provo Reservoir Company, et al., defendants:

That the results sought by the Complaint of the plaintiff herein, and each and all of the alleged causes of action therein are in contravention and violation of the provisions of the Fifth Amendment and also of the Fourteenth Amendment to the Constitution of the United States in this:

That the said Complaint attempts to deprive the defendants herein and each of them of property without due process of law; and further attempts to take private property from the defendants and each of them for public use without just or any compensation.

That the results sought by the Complaint of the plaintiff herein, and each and all of the alleged causes of action therein are also in contravention and violation of the provisions of each and both of Sections 7 and 22 of Article I of the Constitution of the State of Utah in this:

That the plaintiff is seeking to deprive the defendants and each of them of property without due process of law and that the plaintiff is seeking to take and damage the property of the defendants for public use without just compensation.

ning at its dam known as the "Hershey Dam" situated near to point known as "Distributing Point", of said system, situated near to the center section 12, Tp.6 South, Range 2 East, Salt Lake Meridian.

These defendants pray for such other and further relief as to the court may seem meet and equitable.

*Alb. Hatch and  
Booth & Brookbank  
Attorneys for Defendants  
Provo Reservoir Co. & R.C.C.*

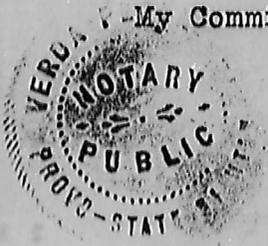
State of Utah,  
County of Utah.ss.

R. J. Murdock being first duly sworn says he is an officer of Provo Reservoir Company, a corporation, one of the defendants in the foregoing answer to-wit: the Secretary thereof, and that he makes this verification for and in behalf of the said defendants: that he has read the said answer and knows the contents thereof, and that it is true of his own knowledge except as to matters therein stated on information and belief, and that as to those matters he verily believes it to be true.

R. J. Murdock

Suscribed and sworn to before me this 13th day of December A.D.1926.

My Commission expires on the 15th day of January A.D. 1930.



Verda Peterson  
Notary Public

Residing at Provo Utah.

Copy of the foregoing Answer of Provo Reservoir Company and Blue Cliffs Canal Company received this 15th day of December, A. D. 1926.

M. R. Shaw  
Attorney for Plaintiff.

6346

IN DISTRICT  
OF UTAH COUNTY OF  
\* FILLMORE \*

Wm Hales  
E B Dastrop

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

---

CALEB TANNER, Plaintiff,

vs.

Provo Reservoir Company, a corporation, Provo Reservoir Water Users Company, a corporation, Blue Cliff Canal Company, a corporation, North Union Irrigation Company, a corporation, Provo Bench Canal and Irrigation Company, a corporation, T.F.Wentz, as Commissioner of Provo River,

Defendants,

No. 6346 Civil.

REPLY TO ANSWER OF DEFENDANT PROVO RESERVOIR WATER USERS COMPANY, A CORPORATION.

---

Comes now plaintiff herein and reply to the answer of the defendant Provo Reservoir Water Users Company, a corporation, and admits, denies and alleges as follows, to-wit:

As to the allegations contained in said answer of said defendant to plaintiff's first cause of action,

1. Plaintiff admits the allegations contained in Paragraph Numbered 11 of said answer.

2. Plaintiff admits that at times between the years 1913 and 1921, he was intermittently in the employ of defendant Provo Reservoir Company, a corporation, but denies each and every other allegation contained in Paragraph No. 12 of said answer.

3. Not having sufficient information which to form a belief plaintiff denies the allegations contained in Paragraphs numbered 13 to 22 inclusive of said answer.

Replying to said defendant's said answer to plaintiff's second cause of action, plaintiff admits, denies and alleges as follows,-

4. Plaintiff admits that he owns certain capacity in the Provo Bench canal.

5. Plaintiff denies each and all of the allegations contained in Paragraphs numbered 14, 15, 16, and 17 of said answer to the second cause of action stated in plaintiff's complaint, except as the same is herein specifically admitted.

6. Except as hereinabove specifically admitted or alleged, and except as hereinafter specifically alleged, plaintiff denies generally and specifically each and all of the allegations in said defendant's answer contained.

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Further replying to the affirmative matters stated in the said answer of the defendant Provo Reservoir Water Users Company, a corporation, plaintiff admits,-

1. That neither Jens C. Jensen or the plaintiff joined the said corporation Provo Reservoir Water Users Company, a corporation, a defendant herein, and in connection therewith plaintiff alleges that Provo Reservoir Water Users Company, and all of its officers and agents and its board of directors, together with its stockholders had actual and constructive notice and knowledge of the execution of the contracts, copies of which are set out as Exhibits A, B, C, D, and E, and attached to plaintiff's said complaint, and had actual notice and knowledge of each

and all of the rights and claims of the said Jens C. Jensen and this plaintiff thereunder.

2. Plaintiff further alleges that at the time he purchased and became the owner of the water right represented by the deeds, copies of which are attached to plaintiff's complaint marked Exhibits B, D, and E, he had no notice or knowledge of any alleged or purported agreement between the said Jens C. Jensen, his grantor, and Provo Reservoir Company, a corporation, with reference to the delivery of the water rights represented by the said deeds through the main canal of Provo Bench Canal & Irrigation Company and had no notice or knowledge of any alleged or purported agreement between the said Jens C. Jensen and the Provo Reservoir Company by or through which waters represented by said deeds should be delivered at any point other than the center of Section 12, as specified in the Preamble and Resolutions under which said deeds were issued, as in plaintiff's said complaint therein set forth.

3. Further replying to said defendant's said answer plaintiff alleges that the delivery of the  $\frac{7}{8}$  ~~21~~- $\frac{1}{3}$  acres of primary water right represented by the deeds, copies of which are attached to plaintiff's said complaint, to the center of Section 12, Township 6 South, Range 2 East, Salt Lake Base and Meridian, as provided in the said Preamble and Resolutions of the Provo Reservoir Company for the years 1909 and 1911, and the distribution of the said waters from said point of delivery and there used upon adjacent and surrounding lands, will not be a violation of any decree whatsoever, or at all.

4. Plaintiff further alleges that it is not plaintiff's intention to use the said waters represented by said deeds on any lands whatsoever other than lands mentioned and described in the applications of the said Provo Reservoir Company to appropriate the waters represented by said deeds, which applications for an appropriation are on file in the office of the State Engineer of the State of Utah.

WHEREFORE, plaintiff prays judgment as prayed in his complaint on file herein.

*W. B. Morgan*  
*W. B. Shaw*  
Attorneys for Plaintiff.

STATE OF UTAH )  
COUNTY OF UTAH ) SS.

Caleb Tanner, being first duly sworn, deposes and says; that he is the plaintiff named in the above and foregoing Reply; that he has read said Reply and knows the contents thereof; that the same is true of his own knowledge, except as to matters therein stated on information and belief, and as to those matters he believes it to be true.

*Caleb Tanner*

Subscribed and sworn to before me this 19th day of January, 1927.

*W. B. Shaw*  
Notary Public

Residing at: Provo City, Utah.

My commission expires

*Mar 8, 1929*  
124

*Forward copy in  
Provo City for  
Provo Res. water  
rights. See  
copy same in  
file with  
copy on  
20-1-1927  
W. B. Shaw*



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

-----  
 CALEB TANNER,

Plaintiff,

vs.

Provo Reservoir Company, a corporation, Provo Reservoir Water Users Company, a corporation, Blue Cliff Canal Company, a corporation, North Union Irrigation Company, a corporation, Provo Bench Canal and Irrigation Company, a corporation, T.F.Wentz, as Commissioner of Provo River,

Defendants,

)  
 No. 6346 Civil.

)  
 REPLY TO ANSWER OF  
 DEFENDANTS PROVO RESER-  
 VOIR COMPANY, A CORPOR-  
 ATION AND BLUE CLIFF  
 CANAL COMPANY, A CORPOR-  
 ATION.

-----  
 Comes now plaintiff herein and replying to the answer of the defendants Provo Reservoir Company, a corporation, and Blue Cliff Canal Company, a corporation, and admits, denies and alleges as follows,-

As to the allegations contained in said answer of said defendants to plaintiff's first cause of action,-

1. Plaintiff admits the allegations contained in Paragraph No.11 of said answer.

2. Plaintiff admits that at times between the years 1913 and 1921, he was intermittently in the employ of defendant Provo Reservoir Company, a corporation, but denies each and every other allegation contained in Paragraph No.12 of said answer.

3. Not having sufficient information upon which to form a belief plaintiff denies the allegations contained in Paragraphs numbered 13 to 22 inclusive of said answer.



Replying to said defendants' said answer to plaintiff's second cause of action, plaintiff admits, denies and alleges as follows,-

4. Plaintiff admits that he owns certain capacity in the Provo Bench canal.

5. Plaintiff denies each and all of the allegations contained in Paragraphs numbered 14, 15, 16, and 17 of said answer to the second cause of action stated in plaintiff's complaint, except as the same is herein specifically admitted.

6. Except as hereinabove specifically admitted or alleged, and except as hereinafter specifically alleged, plaintiff denies generally and specifically each and all of the allegations in said defendants' answer contained.

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Further replying to said answer of said defendants, this plaintiff alleges,-

1. That this plaintiff, on or about April 8, 1924, filed a certain action in the above entitled court known as No. 5726 Civil; that Provo Reservoir Company, a corporation a defendant herein, was the defendant in said action No. 5726 Civil; that in the pleadings in said action it was alleged by the defendant Provo Reservoir Company and denied by plaintiff herein that Jens C. Jensen, plaintiff's grantor and the grantee of said Provo Reservoir Company in the deeds set forth as plaintiff's Exhibits B, D, and E attached to plaintiff's complaint, made and entered into a contract and

agreement with Provo Reservoir Company, a defendant herein whereby it was agreed between said Jens C. Jensen and Provo Reservoir Company, a defendant herein, that the said Jens C. Jensen would receive and Provo Reservoir Company would deliver the waters to which the said Jens C. Jensen was entitled as the owner of the deeds, copies of which are attached to plaintiff's said complaint, through the main canal of Provo Bench Canal & Irrigation Company and not to or through the Iona Lateral.

2. That the said issue was litigated and determined in said action and the said above entitled Court on or about the 21st. day of April, 1925, made and entered a judgment in said action, which said judgment was never modified or appealed from and is now in full force and effect, and that by said judgment the Court determined as follows,-

"The Court further finds that no contract was ever made, and that no contract or agreement exists, or has existed between the Provo Reservoir Company, defendant herein, and said Jens C. Jensen, plaintiff's predecessor in interest, in and to the water represented by the deeds herein set forth in these findings, whereby the said Jens C. Jensen agreed to receive the water represented by said deeds at a point other than the center of Section 12, Township 6 South, Range 2 East of the Salt Lake Meridian, in Utah County, Utah, and that no contract has at any time been made by Jens C. Jensen, plaintiff's predecessor in interest with the defendant Provo Reservoir Company, whereby the said Jens C. Jensen agreed to relinquish the right to the delivery of such waters, or any part thereof, at a point near the center of Section 12, referred to in the Preamble and Resolutions as the point of general delivery."

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3. Further replying to the said answer of said defendants Provo Reservoir Company, a corporation, and Blud Cliff Canal Company, a corporation, this plaintiff alleges,-  
That the Preamble and Resolutions for 1909 referred to in

"Exhibit B" attached to plaintiff's said complaint, provide that the waters represented by said deed should be appurtenant to the lands mentioned in the contract, under which said deed was ~~not~~ executed until said contract has been paid in full, and plaintiff alleges that said Jens C. Jensen paid in full for the waters represented by said deed "Exhibit B" prior to the execution thereof.

4. That the said Preamble and Resolutions of 1911 mentioned in the deed, a copy of which is attached to plaintiff's complaint, marked "Exhibit D", provides that the water rights under deeds and contracts executed pursuant thereto should ~~not~~ be appurtenant to the lands described in the contract, under which said deed was issued, until the purchase price thereof was paid in full and until the State Engineer of the State of Utah should have issued to defendant corporation Provo Reservoir Company a certificate of appropriation as required by law. Plaintiff further alleges that said Jens C. Jensen, prior to the execution of said deed, a copy of which is attached to plaintiff's complaint and marked "Exhibit D", paid for the same in full prior to the execution thereof and made such use of the waters represented by said deed as to enable the said defendant corporation to prove up on said water right and obtain a certificate of the State Engineer in the year 1912, and further alleges that since the year 1912 said defendant Provo Reservoir Company, a corporation, has wilfully, wrongfully and voluntarily failed to prove up on the said water right and obtain said certificate from said State Engineer, all without the con-

sent of and contrary to the will of the said Jens C. Jensen and contrary to and against his interest in the premises; that such failure of Provo Reservoir Company to make such proof and obtain such certificate has been wilful and voluntary upon the defendant's part and for its own purposes and in violation of the rights of the said Jens C. Jensen, plaintiff's grantor, and of this plaintiff, to have the said certificate issued ~~and~~ at any and all times since 1912 and that said defendant is estopped by reason of its ~~conduct~~<sup>deed</sup> in the premises from asserting that said water rights represented by said deed, a copy of which is attached to plaintiff's complaint marked "Exhibit D" are appurtenant to any lands whatsoever, or at all, and further alleges that Jens C. Jensen paid in full for the said deed prior to the 29th. day of November, 1918; and further alleges that thirty days after the 29th. day of November, 1918 was a reasonable time for making proof of the applications of the waters mentioned in said deed for beneficial use upon the lands described, and for obtaining the certificate of appropriation from the State Engineer of the State of Utah.

5. Plaintiff further alleges that the 5-1/3 acres of water right mentioned in the deed, a copy of which is attached to plaintiff's said complaint and marked "Exhibit E" was not appurtenant at any time to any lands whatsoever.

6. Plaintiff further alleges that at the time he purchased and became the owner of the water right represented by the deeds, copies of which are attached to plaintiff's complaint, marked "Exhibits B, D, and E, he had no notice or knowledge of any alleged or purported agreement

between the said Jens C. Jensen, his grantor, and Provo Reservoir Company, a corporation, with reference to the delivery of the water rights represented by the said deeds through the main canal of Provo Bench Canal & Irrigation Company and had no notice or knowledge of any alleged or purported agreement between the said Jens C. Jensen and the Provo Reservoir Company by or through which waters represented by said deeds should be delivered at any point other than the center of Section 12, as specified in the Preamble and Resolutions under which said deeds were issued, as in plaintiff's said complaint therein set forth.

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7. Further replying to said defendants' said answer plaintiff alleges, that the delivery of the <sup>70</sup>~~21~~-1/3 acres of primary water right represented by the deeds, copies of which are attached to plaintiff's said complaint, to the center of Section 12, Township 6 South, Range 2 East, Salt Lake Base and Meridian, as provided in the said Preamble and Resolutions of the Provo Reservoir Company for the years 1909 and 1911, and the distribution of the said waters from said point of delivery and there~~is~~ used upon adjacent and surrounding lands, will not be a violation of any decree whatsoever, or at all.

8. Plaintiff further alleges that it is not plaintiff's intention to use the said waters represented by said deeds on any lands whatsoever other than lands mentioned and described in the applications of the said Provo Reservoir Company to appropriate the waters represented by said deeds, which applications for an appropriation are on file in the

office of the State Engineer of the State of Utah.

WHEREFORE, plaintiff prays judgment as prayed in his complaint on file herein.

[Handwritten Signature]  
[Handwritten Signature]  
Attorneys for Plaintiff.

STATE OF UTAH )  
                  ) SS.  
COUNTY OF UTAH )

Caleb Tanner, being first duly sworn, deposes and says; that he is the plaintiff named in the above and foregoing Reply; that he has read said Reply and knows the contents thereof; that the same is true of his own knowledge, except as to matters therein stated on information and belief, and as to those matters he believes it to be true.

Caleb Tanner

Subscribed and sworn to before me this 19<sup>th</sup> day of January, 1927.

[Handwritten Signature]  
Notary Public

Residing at: Provo City, Utah

My commission expires May 8, 1929

Received copy of the above Reply this 20th day of January, A. D., 1927.

[Handwritten Signature]  
ATTORNEYS FOR DEFENDANTS.

-----X  
 CALEB TANNER,  
 :  
 :  
 Plaintiff,  
 :  
 :  
 vs.  
 :  
 PROVO RESERVOIR COMPANY,  
 :  
 a corporation, PROVO  
 :  
 RESERVOIR WATER USERS  
 :  
 COMPANY, a corporation,  
 :  
 BLUE CLIFF CANAL COMPANY, a  
 :  
 corporation, NORTH UNION  
 :  
 IRRIGATION COMPANY, a cor-  
 :  
 poration, PROVO BENCH CANAL  
 :  
 & IRRIGATION COMPANY, a cor-  
 :  
 poration, T. F. WENTZ as  
 :  
 Commissioner of Provo River,  
 :  
 Defendants.  
 :  
 :  
 -----X

MEMORANDUM of DECISION

The plaintiff in this case declares upon four causes of action. In the first cause of action he seeks to have it established that he is the owner of 20-1/3 acres of primary water right in the defendant Provo Reservoir Company's Provo River irrigation system and that he is entitled to have this water delivered to him through the company's main canal to a point near the center of section 12, township 6 south, of range 2 east, of the Salt Lake meridian, referred to and known as the point of general delivery. The documents in evidence which seem to define the nature of plaintiff's right consist of the preamble and resolutions of 1909, as to part of said right, and the preamble and resolutions of 1911. These documents were issued by the defendant Provo Reservoir Company in connection with their contracts of sale of water right. It appears undisputed in the case that in accordance with these preambles and resolutions deeds have been issued, as provided in said preamble and resolutions.

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

-----X  
CALEB TANNER,

Plaintiff,

vs.

PROVO RESERVOIR COMPANY,  
a corporation, PROVO  
RESERVOIR WATER USERS  
COMPANY, a corporation,  
BLUE CLIFF CANAL COMPANY, a  
corporation, NORTH UNION  
IRRIGATION COMPANY, a cor-  
poration, PROVO BENCH CANAL  
& IRRIGATION COMPANY, a cor-  
poration, T. F. WENTZ as  
Commissioner of Provo River,

Defendants.  
-----X

MEMORANDUM of DECISION

The plaintiff in this case declares upon four causes of action. In the first cause of action he seeks to have it established that he is the owner of 20-1/3 acres of primary water right in the defendant Provo Reservoir Company's Provo River irrigation system and that he is entitled to have this water delivered to him through the company's main canal to a point near the center of section 12, township 6 south, of range 2 east, of the Salt Lake meridian, referred to and known as the point of general delivery. The documents in evidence which seem to define the nature of plaintiff's right consist of the preamble and resolutions of 1909, as to part of said right, and the preamble and resolutions of 1911. These documents were issued by the defendant Provo Reservoir Company in connection with their contracts of sale of water right. It appears undisputed in the case that in accordance with these preambles and resolutions deeds have been issued, as provided in said preamble and resolutions.

It is also undisputed that according to the deeds and preamble and resolutions, that they call for delivery of the water at a point near the center of section 12. However, in connection with this admission, the defendants have pleaded, by way of estoppel, certain facts which they claim estop plaintiff from claiming delivery of said water through the company's main canal at the point near the center of section 12. These facts are, in substance, that about the year 1916 the defendant, Provo Reservoir Company, commenced an enlargement of the Provo Bench and North Union Canals for the purpose of serving the predecessor in interest of the plaintiff and other contract holders and deed holders of the defendant reservoir company so that they could receive water below the Provo Bench and North Union canals; in other words, that in order to serve these contract holders more efficiently, and possibly to serve other interests of the defendant company, they spent in excess of \$25,000 in acquiring a right to flow water through these canals and also to enlarge the capacity thereof to carry said waters; that they made this enlargement and expended this money on the implied understanding that the plaintiff's predecessor in interest, and others similarly situated, desired to and would receive their water through these canals and thereby enable the defendants to use the space through the main canal for other purposes. In other words, it is claimed that due to the acquiescence of plaintiff's predecessor in interest in this change and these expenditures, that he is now estopped to claim the right to have his water delivered to the point near the center of section 12 as provided for in the preamble and resolutions under which he purchased his water right.

As we understand it, the first cause of action presents two questions: (1) Just what is the nature of the

water right owned by the plaintiff? and (2) has the plaintiff the right to have said water right delivered to him through the company's main canal at a point near the center of section 12 as defined in the preamble and resolutions?

In determining the first point, it becomes necessary to refer to the preamble and resolutions to see just what was the nature of the water right sold to the plaintiff or his predecessor in interest by the defendant, the Provo Reservoir Company. It is admitted that the plaintiff owns 20-1/3 acres of primary water right. Paragraph 3 of the preambles and resolutions defines what is a primary water right, and is in words and figures as follows:

"The water rights of said system to be covered by said contract shall consist of two classes, which shall be designated as 'Primary' right and 'High Water' right. "The 'primary' right shall entitle the purchaser thereof to both high (or early) water, and the late (or low) water under said rights. The high or early water belonging to this class shall entitle the purchaser thereof to so much of the high waters accruing from said rights as will supply, during such early part of each season, as there shall be sufficient water under said rights to irrigate all the lands for which 'primary' rights shall have been contracted, an amount of water, the duty of which shall not be greater than seventy-five acres of land to each second foot of water; and whenever, in any season, the water shall diminish to such extent that said ratio can no longer be maintained from high waters, the waters impounded in reservoirs at the head of Provo River described in said applications, or other low water which may be acquired by the Company for the purpose of supplying low or late water to parties who may have contracted with it for 'primary' rights, shall be liberated from said reservoir or other reservoirs that may be constructed, or diverted from other sources, and conveyed into the said system in such quantity as will continue the supply in said system as a low water right, until the fifteenth day of September in each year, to at least one-half the minimum supply of the high water, or in such quantity as will not require a greater duty of water than one second foot for each 150 acres of land."

Paragraph 5 defines the duty of water in the primary class of water right, as well as the high water right, and is as follows:

"The 'high water' right shall entitle the owner thereof to the use of so much of the high waters accrued under or that may accrue under said applications, as may be necessary to irrigate, during such early part of each season as there shall be sufficient high water for that purpose, all of the lands for which water of this class shall be contracted, at the rate or ratio of one second foot of water for each 75 acres of land; but it is and shall be understood that this class of right is subject to the prior right of the owners of and contractors for 'primary' right, to the use of one second foot for each 75 acres of their lands, and that whenever the high water shall become insufficient to supply first the said primary water rights at the said ratio of one second foot for each 75 acres of said primary right owned or contracted for, and also to supply the holders of 'high' water' right, the amount of water above stated, then the holders of contracts for, and owners of 'high water' rights shall take pro rata the amount over and above the volume necessary to first supply the 'primary' water rights; and whenever the high water shall be insufficient to supply the owners of and contractors for 'primary' rights one second foot for each 75 acres of land contracted for by them as 'primary rights,' then the 'high water' rights shall cease, until such time as there shall again be water in excess of the amount required to supply the 'primary' water rights at the ratio stated; and it is expressly stated and understood, that 'high water' rights shall not participate in nor have any claim upon the waters from reservoirs or other sources of so-called low water, now owned or hereafter acquired by the Company for the use and benefit of the holders of contracts for 'primary' rights."

Paragraph 6 also refers to the extent of the water right designated in acres, and is as follows:

"It is understood that the rights to be contracted for under said applications shall be designated as 'acres' of either 'primary' or 'high water' rights; one acre of such rights entitling the holder to water for one acre of land to such extent as the rights in the respective classes above described shall be sufficient for that purpose, based upon the duty of water stipulated for each of said classes."

Section 23 of the Preamble and Resolutions of 1909, the same section being section 22 of the Preamble and Resolutions of 1911, also bears on the question:

"The Company shall not be held liable for any damage caused by shortage of water through accident, or scarcity caused by extraordinary seasons of drouth, or by reason of improper use or misappropriation by any person; or for damages arising from any cause beyond its control, nor shall there be by reason thereof, any deduction from any sum agreed to be paid by the Consumer, except to the extent hereinbefore set forth."

We think that a careful reading of the aforesaid paragraphs of the preamble and resolutions will show that it was not the intention of the defendant, Provo Reservoir Company, to guarantee the delivery at any one time of any actual amount of water. In other words, the evidence in the case shows that the rights of the Provo Reservoir Company, which are referred to in the preamble and resolutions, consist of certain rights in second feet in the Provo River system, as well as certain rights in acre feet stored in certain reservoirs at the head of Provo River system. The evidence further shows that these rights

do not contemplate the existence, in any particular season, of the actual amount of water in second feet or acre feet, but rather that said rights are based upon the existence of said water in second feet and acre feet during what was termed in the evidence as a normal season; in other words, that measurements have been made from time to time over a period of years and a determination made of the actual quantity of water during the average, or normal, season. It appears that these determinations, on this theory and basis, were made in the decree in what is referred to often in this court as case number 2888 civil; that, based on these average, or normal rights, the defendant has made sales and deeds of water right, and that the only guarantee made by the defendant, Provo Reservoir Company, in its preamble and resolutions, is to furnish said water at a duty of not less than 150 acre feet out of its waters of Provo river proper, or to turn down from its reservoir rights sufficient water for that purpose. In other words, as we read the documents out of which plaintiff's right grows, we cannot see any warranty or guaranty to deliver any specific amount of water other than that the Provo Reservoir Company has no right to sell beyond its aggregate amount of second-foot and acre-foot rights as defined in what is above referred to as the quantity of water in a normal season particularly defined in the decree in case number 2888 civil; in other words, that plaintiff is entitled to his proportionate amount of the available water under said rights as his number of acres bears to the total quantity of said rights as above defined.

We now come to a consideration of the question of estoppel. It appears to us that it is undisputed that not only the plaintiff but his predecessor in interest knew of the change being made by the defendant, Provo Reservoir Company, to-wit, providing a new means and place of delivery of the water sold to owners lying below the Provo Bench and North Union canals.

That Jens C. Jensen, the plaintiff's predecessor in interest, knew this, is apparent from the fact that the portion of the Iona Lateral leading from the point near the center of section 12 down to the North Union canal was abandoned by him and his associated. From this fact it seems conclusive that he either knew or should have known that his water was coming through the Provo Bench and North Union canals. He testified that he knew of the cementing being done. Of course the question of knowledge and notice comes home more clearly to the plaintiff possibly than to his predecessor in interest, because the evidence shows without dispute that the actual enlargement of the canal was done by the plaintiff or under his direction. It was argued by defendants' counsel that had Jens C. Jensen and those similarly situated desired a delivery through the main canal, that it might just as well have spent the money in excess of \$25,000 in enlarging the main canal as well as enlarging the Provo Bench canal.

Certain documents introduced in evidence show that Jens C. Jensen and his associates in interest petitioned the Provo Reservoir Company to deliver their water through the laterals of the Provo Bench canal, and while we are aware that the Provo Reservoir Company had no control over the laterals used below the North Union or below the dividing gate of the Provo Bench and North Union canal, still why should they petition the Provo Reservoir Company, if it were not for the purpose of having their water delivered through the Provo Bench and North Union canal? In addition to these facts, the evidence shows that a good many of these waterusers are the owners of Provo Bench Canal Company stock and that they desire to use this water in conjunction with their rights by reason of said stock; Jensen freely stated that he was of this class. In other words, the evidence seems to clearly show that the enlargement of the Provo Bench canal and the distribution of the waters to the said

Jens C. Jensen and others similarly situated, conformed to the best interests of the said Jens C. Jensen while he continued to irrigate the lands for which he purchased this water; and the point raised is, Can the defendant, after having made this enlargement and expended this money to provide a more efficient method of delivery of the water to the said Jens C. Jensen, for his lands, be compelled to now abandon this enlargement, so far as he is concerned, and provide space through its main canal, possibly making another enlargement thereof and make delivery at the center of section 12, as technically called for by the preamble and resolutions? In other words, of course, what would apply to Jens C. Jensen would apply to all other users receiving water from the defendants, and while the amount of water involved in this particular case is somewhat small, the same principle would apply to all of these users, and if carried out to its logical conclusion, might work a great hardship upon the defendant companies, in this, that the enlargement already provided for and built would not only be wasted but it would in turn required that the defendants expend another and additional sum of money to provide the space in its main canal which, as the evidence shows, consists of clumes and other forms of very expensive construction. In other words, should Jens C. Jensen, after having stood by while the defendants have made this enlargement, and by his act and conduct led them to believe that he would receive his water through the Provo Bench canal and that he desired always to so receive it, now be permitted to sell his water right away from the land for which the water was sold to irrigate and permit the plaintiff to change the place of use to other lands, and then, under the technical provisions of the preamble and resolutions, require the delivery at a different point through the main canal? We do not believe

that the evidence shows that Jens C. Jensen is guilty of any fraud or active misrepresentation, but we are inclined to believe that he is estopped, under the principles laid down in the case of Hilton vs. Sloan et al, 37 Utah, 359. On page 373 the Court, quoting from section 755 of 2 Herman on Estoppel, states the principle of equitable estoppel, or estoppel in pais, as follows:

"All that is essential is that there should be such conduct on the part of the person against whom the estoppel is alleged as would make it a fraud for him to gainsay what he had expressly admitted by his words or tacitly confessed by his silence, but there need not be in the precedent acts actual fraud or evil design. All that is meant in the expression that an estoppel must possess an element of fraud is that the case must be one in which the circumstances and conduct would render it a fraud for the party to deny what he had previously induced or suffered another to believe and take action upon. The door is shut against asserting a right then (when) that would result in doing an injury by the party asserting it to some other person, or when in good conscience and honest dealing he ought not to be permitted to gainsay his previous conduct.'

"The right to assert an estoppel by appellants against respondent, in view of the facts and circumstances of the cases at bar, rests upon purely equitable grounds. An estoppel in pais is entirely a creature of courts of equity, and the equities of the particular case must control the result of that case. The reasons why such estoppels were called into existence, and when and to what extent they should be enforced, are well stated by the author in section 739 of 2 Herman on Estoppel and Res Judicata, in the following language":

"This doctrine is properly and peculiarly a doctrine of equity, originally introduced there to prevent a party from taking a dishonest and unconscientious advantage of his strict legal rights, though, like many other equitable doctrines, constantly administered at law. The ancient practice differed from the modern, and in actions at law, the courts, being unable of giving effect to this equity, were often enjoined where the party insisted on his rights at law contrary to the equitable doctrine. The office of equitable estoppels at law is therefore like that of injunctions in equity, to preclude rights that cannot be asserted consistently with good faith and practice, to prevent wrongs for which there might be no adequate remedy. And they should consequently, when the circumstances will permit, be so construed and moulded as not to deviate from their object; and those cases where estoppels are said to be odious or not favored should be only where the technicality of the estoppel cannot be subservient to its equity.'"

We, therefore, hold that the plaintiff is estopped to now claim delivery of this water through the main canal of

the Provo Reservoir Company. Counsel for the defendants also contend that the conduct of Jens C. Jensen, in receiving his water through Provo Bench canal and his disuse of the Iona lateral clearly indicate on his part an intention to abandon his right through the main canal of the Provo Reservoir Company and his right to receive the water at a point near the center of section 12. We are inclined to the view that the great preponderance of the evidence does show such an intention, and it occurs to the Court that the reciprocal rights of the parties in this case on this question might be illustrated by the suggestion that should the objects of this suit be reversed and had the suit originally been brought by the defendants for the purpose of requiring Jens C. Jensen to receive his water at the point of general delivery and reestablished the Iona lateral, we are rather inclined to the view that it would be very doubtful whether such a contention on the part of the defendants could be sustained for a moment.

The deed to the plaintiff's predecessor in interest, in connection with his water right, conveys an undivided interest in the canals, ditches, and flumes of the defendant company, sufficient to carry said water, and by reason of the plaintiff thus becoming a tenant in common, or joint owner, in said canals and diverting works, he now claims, as a matter of law, to have the right to use any unused space in said canals and ditches for his own private purpose or for the purpose of diverting other water through the same not purchased from the defendant company. In other words, as we understand the position of the plaintiff, it is this: That he is a tenant in common at the common law of the canals, ditches, flumes, and diverting works of the defendant company, and that by reason of such tenancy in common he has a right, as a matter of law, to the use of the unused space in said canals. On the other hand, the defendant companies claim that the principles of tenancy in common at common law do not apply for the reason that plaintiff's rights are not based upon the principles of tenancy in common at common law, but are rather defined by contract, and that a fair interpretation of the documents, deeds, contracts, preamble and resolutions defining the plaintiff's right, confer upon the plaintiff merely the right to his water right as well as sufficient space to carry the same. The evidence shows that the irrigation system of the defendant companies has been of an evolutionary nature; in other words, it has been rebuilt, added to, and enlarged from time to time as the defendant, Provo Reservoir Company, has acquired other and additional water rights; that the expense of such additions and enlargements have been paid for out of the funds of the Provo Reservoir Company, and that such enlargements, which of course include any unused space now in said flumes and canals, were paid for entirely out of the funds

of the Provo Reservoir Company, and that the plaintiff contributed in no way to their construction. The plaintiff has cited no case which seems to cover the situation at hand, and it would seem that the contention now made by plaintiff, that he should have the right to use this space without having contributed in any way to its upbuilding or construction, rather goes counter to the ordinary principles of justice and fairness. The plaintiff makes no claim that he seeks this right upon any theory of eminent domain or condemnation, but merely as a right incident to an ownership of space in the canal, as a tenant in common. We are, therefore, inclined to the opinion, and so hold, that the principles of the common law with reference to the tenancy in common have no application in this case, and that the plaintiff has not a right to enter into the canal of the defendants and put water therein from outside sources and make personal use of such unused space.

In the third cause of action the plaintiff says that the defendants have, by words and speech, slandered his title to his 20-1/3 acres of water right, in this, that the defendants and their agents have asserted that his right under his deed from the defendant, the Provo Reservoir Company, is not equal to or of the same tenure as shares of stock in the defendant, Provo Reservoir Waterusers Association. This brings us back to the question which has been heretofore referred to in discussing the exact nature of the plaintiff's right or in determining just what an acre of primary water right is. We have heretofore said that such right is based upon certain second-foot and acre-foot rights of water during a normal year and do not contemplate the delivery of an actual quantity of water. In this case the evidence shows that the defendant, Provo Reservoir Company, by deed conveyed to the Provo Reservoir Waterusers Association certain additional water rights in addition to those con-

veyed by the respective owners of primary acre water rights to the Provo Reservoir Waterusers Association. We are unable to see why these additional rights conveyed are not of the same water as those conveyed to individuals, and if they are, we cannot see why the stock in the Provo Reservoir Waterusers Association to that extent are not better than acres of primary water right as defined by the deeds conveyed to individuals. We are therefore of the opinion that the plea of truth filed by the defendants to the third cause of action of the plaintiff is supported by the great preponderance of the evidence.

The fourth cause of action raises the question as to just what maintenance charges should be paid by the plaintiff as an owner of 20-1/3 acres of primary water right, the plaintiff on the one hand contending that he should only pay his proportion or pro rata share of the necessary maintenance charges incident to the bringing of his water to the point near the center of section 12, while on the other hand the defendants claim that the plaintiff should pay his pro rata share of said maintenance charges not only to the point near the center of section 12, but over the entire system. Sections 16 of the preamble and resolutions of 1909 as well as of 1911 reads as follows:

"And whereas, it will be necessary and desirable to construct from the said point to General Delivery, to or past the places where said waters will be required to be used by the persons or parties who have purchased or who may purchase from, or contract for water with, the said Company, such canals as will most conveniently supply such persons owning lands in certain localities along, or contiguous to, the course of certain canal lines to be hereafter determined upon by the parties interested, the said Consumers in entering into contracts with this Company as hereinbefore stated, agree that they will unite with such other holders of said water rights as may agree to form or organize a company or corporation for the construction and operation of such connecting canal; and the said Consumer shall bear pro rata with all users of water from such connecting canal, according to the number of acres of rights to said water owned by him as related to all the number of acres of said water right to be carried in said canal, the expense of constructing and maintaining said canal, and the use and regulation of said canal and the water therein, shall be

governed by a majority of the interests therein."

On the first reading of the above paragraph we were rather inclined to the view that section 16 aforesaid had reference to the main canal extending from the point of general delivery. However, after having given the same more careful reading and consideration, it seems to the Court that this section pertains wholly to laterals running from the main canal and which, of course, are to be constructed and maintained by those persons receiving water under the particular lateral. In other words, we are of the opinion that the situation above referred to refers to laterals such as was originally the Iona lateral; that is to say, only those persons drawing water from that particular lateral are interested in its construction and maintenance. After carefully reading the preambles and resolutions, we have been unable to find any provision therein, nor are we able to hold, as a matter of law, that contract holders such as the plaintiff and his predecessor in interest are obligated to pay maintenance charges beyond the point where the lateral from which they receive their water takes out from the main canal. In other words, had the plaintiff been receiving his water through the main canal, we feel that he would only be liable for his proportion of the maintenance charges down to the point of general delivery in section 12, and inasmuch as his right to receive the water at the point of general delivery has been changed or exchanged for a right to receive his water through the Provo Bench canal, it seems to the Court, and we so hold, that the plaintiff is only liable to be charged for his pro rata of the expenses of maintenance down to the point in the Provo Bench canal where he receives his water into the laterals of the Provo Bench canal, which we understand is referred to in the evidence as the dividing gate between the Provo Bench canal and the North Union canal.

Counsel for the defendants will prepare findings-of-facts, conclusions-of-law, and decree in accordance with the suggestions herein made, and submit them to the Court and opposing counsel.

Dated this 8<sup>th</sup> day of April, A. D. 1927.

George Parker

J U D G E .

6346

IN DIST. COURT  
UTAH CO., UTAH.  
\* FILED \*

APR 8 1927

E. B. Dastrop Clerk  
Deputy

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

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CALEB TANNER, :  
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 :  
 Plaintiff, :  
 :  
 NO. 6346 Civil. :  
 -vs- :  
 :  
 :  
 PROVO RESERVOIR COMPANY, a :  
 corporation, PROVO RESERVOIR :  
 WATER USERS COMPANY, a corpo- :  
 ration, BLUE CLIFFS CANAL :  
 COMPANY, a corporation, :  
 NORTH UNION IRRIGATION COM- :  
 PANY, a corporation, PROVO :  
 BENCH CANAL & IRRIGATION COM- :  
 PANY, a corporation, T. F. :  
 WENTZ, as Commissioner of :  
 Provo River, :  
 :  
 Defendants. :  
-----oOo-----

N O T I C E

TO CALEB TANNER, the above named plaintiff, and to Messrs.  
A. B. Morgan and M. R. Straw;- his attorneys:-

You and each of you will please take notice  
that on Saturday, the tenth day of December, A. D. 1927,  
the Findings of Fact, Conclusions of Law, and Decree in the  
above entitled action were signed by the Judge who tried the  
said cause, and are now on file in the office of the Clerk of  
said Court.

A. C. Hatch and  
Booth & Brockbank  
ATTORNEYS FOR DEFENDANTS.

Copy of the above Notice received this 10th  
day of December, 1927.

M. R. Straw  
A. B. Morgan  
ATTORNEYS FOR PLAINTIFF.



2. That at all the times herein mentioned the defendant Blue Cliff Canal Company was, and now is, a corporation, duly organized and existing under and by virtue of the laws of the State of Utah, and said corporation was organized for the general purpose of acquiring, owning, controlling and distributing water for irrigation and other purposes. That said defendant corporation owns or claims to own some right, title or interest in and to the particular reservoirs, canals, diverting works and irrigation system hereinafter mentioned and described.

3. That the defendant North Union Irrigation Company at all the times herein mentioned was, and now is, a corporation, duly organized and existing under and by virtue of the laws of the State of Utah, and said corporation was organized for the purpose of acquiring, owning, controlling and distributing water for irrigation and other purposes. That said corporation owns or claims to own some right, title or interest in and to the particular reservoirs, canals, diverting works and irrigation system hereinafter mentioned and described.

4. That the defendant Provo Bench Canal and Irrigation Company at all the times herein mentioned was and is a corporation, duly organized and existing under and by virtue of the laws of the State of Utah; that said corporation was organized for the purpose of acquiring, owning, controlling and distributing water for irrigation and other purposes. That said defendant corporation owns or claims to own some right, title or interest in and to the particular reservoirs, canals, diverting works and irrigation system hereinafter mentioned and described.

5. That the defendants Provo Reservoir Company, a corporation, Provo Reservoir Water Users Company, a corporation, Blue Cliff Canal Company, a corporation, North Union Irrigation Company, a corporation, and Provo Bench Canal and Irrigation Company, a corporation, each has its office and principal place of business in Utah County, State of Utah, and all of said defendant corporations are residents of Utah County, State of Utah.

7. That on or about the 4th day of August, 1909, one Jens C. Jensen made and entered into a certain contract and agreement with the said defendant Provo Reservoir Company, a copy of which said contract is hereto attached and marked "Exhibit A"; that said contract was duly acknowledged so as to entitle the same to be recorded, and the same was afterwards towit: on August 16, 1909, duly recorded in the office of the County Recorder of Utah County, Utah, in Book 108 of Mortgages at page 305.

8. That subsequent to the date on which said contract was made and entered into between said Jens C. Jensen and the Provo Reservoir Company said Jens C. Jensen did perform all things required to be performed by him thereunder and on or about the 29th day of November, 1918, said defendant Provo Reservoir Company made, executed and delivered to said Jens C. Jensen a certain deed for water right, a copy of which is hereto attached and marked "Exhibit B."

9. That on or about the 22nd day of September, 1911, said Jens C. Jensen made and entered into a certain contract and agreement with the defendant Provo Reservoir Company, a copy of which is hereto attached, marked "Exhibit C," that said contract was duly acknowledged so as to entitle the same to be recorded and the same was thereafter on September 25th, 1911 duly recorded in the office of the County Recorder of Utah County, Utah, in Book 126 of Mortgages at Page 690; that subsequent to the date of the execution of said contract between said Jens C. Jensen and the defendant Provo Reservoir Company, said Jens C. Jensen did perform any and all things required to be performed by him thereunder and on or about the 29th day of

November, 1918, said defendant Provo Reservoir Company made, executed and delivered to said Jens C. Jensen a certain deed for water right, a copy of which is hereto attached and marked "Exhibit D".

9½. That on or about the 28th day of December, 1912, the defendant Provo Reservoir Company made, executed and delivered to said Jens C. Jensen one certain deed for water right, a copy of which is hereto attached and marked "Exhibit E."

10. That the particular contract hereinbefore set out and referred to as Exhibit A, was duly recorded in the office of the County Recorder of Utah County, Utah, in Book 108 of Mortgages, at Page 305 thereof on or about the 16th day of August, 1909. That the particular contract hereinbefore set out and referred to as Exhibit C, was recorded in the office of the County Recorder of Utah County, Utah, in Book 126 of Mortgages at page 690 thereof on or about the 25th day of September, 1911.

11. That said Preambles and Resolutions of said Provo Reservoir Company for the year 1909 referred to in said deeds contains the following, to-wit:-

"Whereas, Provo Reservoir Company, a corporation is the owner of certain water rights and applications to appropriate waters for irrigation purposes, described in its articles of Incorporation, and intends to secure other water rights and interests in addition thereto; which appropriations, rights and interests it proposes to utilize for the purpose of furnishing a more adequate supply of water with which to irrigate the lands described in the applications to appropriate water for irrigation, etc. above referred to, together with other lands that are capable of irrigation, with waters from Provo river, known as the Provo River system; and whereas, in order to hold said water rights and applications to appropriate waters, it is by law required that the waters applied for and thereby covered, be utilized for the irrigation of the lands described in the said applications therefor; and whereas in some of the applications for said appropriations, large areas of land upon which it is intended to use said waters, are described; and whereas, persons and parties, other than this corporation, own the land so described, and upon which it is intended to use said waters, it becomes necessary, in order to apply said water upon said lands, that this company as the owner and holder of said water rights, and the owners of said lands upon which it is to be used, enter into agreements and stipulations, specifying the terms and conditions upon which said land owners will purchase and utilize said waters;"

12. That said Preambles and Resolutions of said Provo Reservoir Company for the year 1909, following the part thereof hereinbefore quoted in Paragraph 11 herein further contains the following provisions, to-wit:-

"Therefore be it Resolved, That this Company, by and through its President, is hereby authorized and empowered on behalf of and as the act and deed of this corporation to enter into contracts in writing with such of the owners of the lands described in said applications and the owners of such other lands as may be irrigated from said system, as will subscribe for water rights under any of the rights, or applications now owned and held by this Company and any other rights, appropriations, or interests which said Company may hereafter acquire, to waters for said system."

13.

13. That said Preambles and Resolutions for said year 1909 contains the following further provisions, to-wit:-

"In order to convey the waters from the several points of diversion named in said application, and from the points where the Company has or may acquire rights, the Company shall build a substantial canal system, consisting of reservoirs, earthen or concrete canals, concrete or other substantial flumes, tunnels, and wood or steel pipes, for the purpose of storing and conveying said waters to a point located near the center of Section 12, in Township 6 South, of Range 2 East, of Salt Lake Meridian, to be known as the point of General Delivery."

"The Company agrees, that when the said contract price for any of the said water rights and the water rates hereinbefore provided for, shall have been fully paid, and the conditions by the Consumer covenanted to be performed, have been complied with, it will execute to and in favor of said Consumer, his heirs and assigns, a deed, conveying to him, or them, the said water right, together with such pro rata interest in said system as his interest in said water rights shall represent; and thereafter, as to him, the annual rates for maintenance and repair of the system hereinbefore provided for, shall cease, and he shall become an owner in fee simple of an undivided interest in said system to the extent of the ratio which the number of acres and class of right purchased or acquired by him shall at such time or at any subsequent time bear to the entire number of acres and class supplied with water from said system."

"The Company reserves the control, management, operation and regulation of the said system until January 1st, 1920, after which time, such control, etc. shall be exercised by those interested in proportion to their respective interests."

14. That the Preambles and Resolutions of said defendant Provo Reservoir Company for the year 1911 referred to in said Exhibit "D" contains a provision identical with that part of the Preamble for the year 1909 hereinbefore set forth in Paragraph 11 hereof,

15. That the Preambles and Resolutions of said defendant Provo Reservoir Company for the year 1911 referred to in said Exhibit "D" contains the following further provision,-

"THEREFORE BE IT RESOLVED, That this Company, by and through its President or Vice-President, thereunto hereby authorized, enter into contracts in writing with such of the owners of the lands described in said applications and the owners of such other lands as may be irrigated from said system, as will subscribe for water rights under any of the rights or applications now owned and held by this Company and any other rights, appropriations or interests which said Company may hereafter acquire, to waters for said system."

"The Company agrees, that when the said contract price for any of the said water rights and the water rates hereinbefore provided for, shall have been fully paid, and the conditions by the Consumer, covenanted to be performed, have been complied with, it will execute to and in favor of said Consumer, his heirs or assigns, a deed, conveying to him, or them, such pro rata interest in said system as his (or their) interest in said water rights shall represent; and he (or they) shall become owner (or owners) in fee simple of an undivided interest in said system to the extent of the ratio which the number of acres and class of right purchased or acquired by him (or them) shall at such time or any subsequent time bear to the entire number of acres and class supplied with water from said system,

Provided; that if such payment be made and such deed be issued prior to the 1st day of January, A. D. 1920, it shall not become operative absolutely until after said date, and the annual rates for maintenance and repair of the system hereinbefore provided for shall continue until the said 1st day of January, A. D. 1920."

"The Company reserves the full and complete control, management, operation and regulation of the said system until January 1st, 1920, after which time such control, etc. shall be exercised jointly by the Company and those interested in proportion to their respective interests."

16. That pursuant to said Preambles and Resolutions of said defendant, Provo Reservoir Company for the years 1909 and 1911, said defendant, Provo Reservoir Company constructed an irrigation system consisting of reservoirs, canals, flumes, tunnels, pipes and diverting works for the purpose of diverting and conveying the waters by it deeded as hereinbefore alleged to said Jens C. Jensen, and other holders of similar contracts and deeds from said defendant Provo Reservoir Company to the point of general delivery mentioned in said Preambles and Resolutions towit:-

"To a point near the center of Section 12, Township 6 South, Range 2 East of the Salt Lake Base and Meridian, in Utah County, Utah."

That said defendant Provo Reservoir Company constructed a canal extending from a point in Provo Canyon known as Heiselt's in Utah County, Utah, thence down said Provo Canyon on the southerly side thereof to the mouth of said canyon, thence west across Provo River and onto the bench on the westerly side of said Provo River near the mouth of said canyon to a point approximately the center - of Section 12, Township 6 South, Range 2 East, Salt Lake Base and Meridian - said point being the point of general delivery referred to and described in said Preambles and Resolutions of said defendant Provo Reservoir Company for the years 1909 and 1911.

That said course of said canal is more particularly described as follows, to-wit:

Beginning at a point South  $48^{\circ}52'$  West ~~1320~~ 1320 feet from the quarter corner between Sections 5 and 6, Township 6 South, Range 3 East, Salt Lake Base and Meridian; thence along a course south  $43^{\circ}30'$  West 2510 feet, the canal curving away from the course to the left reaching a maximum of 160 feet therefrom at a point 660 feet from the beginning of the course; thence continuing the canal reaches coincidence with the course at a point 1485 feet from beginning; thence continuing along said course to its termination; thence

South  $34^{\circ}$  West 3000 feet, the canal curving away from the course to the left reaching a maximum distance therefrom of 310 feet at a point 530 feet from the beginning of the course; thence reaching coincidence with the course at a point 2245 feet from its beginning; thence along said course to its termination; thence

North  $80^{\circ}30'$  West 1000 feet; thence South  $56^{\circ}30'$  West 900 feet; thence West 2280 feet to the head of the Iona Lateral being 630 feet West of the center of Section 12, Township 6 South, Range 2 East of Salt Lake Base and Meridian, which said point is the point of general delivery referred to in the Preambles and Resolutions of the said Provo Reservoir Company for the years 1909 and 1911, hereinabove referred to, and which said point is also the point of diversion of the Iona Lateral from said canal hereinabove specifically described.

"17. That said defendant Provo Reservoir Company, subsequent to the execution of the said contracts with said Jens C. Jensen, as hereinbefore alleged and described, entered upon the duty of making delivery of the waters mentioned in and represented by said contracts and deeds, copies of which are hereto attached, - to a point near the center of said section 12 - the point of general delivery, and to the head of said Iona Lateral for the use and benefit of said Jens C. Jensen.

2. The defendant T. F. Wentz now is and for many years last past has been the duly qualified and acting Commissioner for the distribution of the waters of the Provo River, distributed under the decree awarding the rights to the use thereof, in case No. 2888 Civil in this Court; that he is acting under an order of appointment of this Court, and has active charge of the regulation and distribution of the waters of the said Provo River awarded by the said Decree; that it is the duty of the said defendant, as such Commissioner, to control, regulate and distribute waters of said Provo River, and to cause to be diverted from the main channel and bed of the river the waters awarded by the said decree and to distribute the same to the various canals and diversion works of the parties included within the awards made by the said decree according to their respective rights as so awarded in and by the said decree.

That the said Defendant T. F. Wentz, as such Commissioner, has no duty or right to control, regulate or distribute any of the waters of the said Provo River, except the waters adjudicated by the said decree, and to the parties thereto or their successors in interest.

3. That on or about the 2nd day of July, 1924, certain holders of deeds from the defendant Provo Reservoir Company, identical with the deeds made and delivered to the said Jens C. Jensen (in terms) and others, including the defendant Provo Reservoir Company, organized, a corporation known as the "Provo Reservoir Water Users Company, " which said corporation is one of the defendants, appearing herein.

That neither the said Jens C. Jensen, nor the plaintiff, Caleb Tanner has assigned to said Provo Reservoir Water Users Company, any of the water rights represented by the deeds, copies of which are attached to the complaint herein, and that neither the said Jens C. Jensen, nor the plaintiff has authorized or directed the said defendant Provo Reservoir Water Users Company to distribute the waters represented by the said deeds.

That the Provo Reservoir Water Users Company, has no right, title or interest in the irrigation system of the Provo Reservoir Company, except such interest as has been transferred to it by the owners of rights in said defendant Provo Reservoir Company's irrigation system, and such other interests as may have been conveyed to it by the defendant Provo Reservoir Company.

That neither of the defendants Provo Reservoir Company, nor the Provo Reservoir Water Users Company, has assumed nor attempted to distribute or claimed the right to distribute, nor assumed the right to direct the defendant T. F. Wentz in the distribution of any of the waters conveyed to Jens C. Jensen, by Provo Reservoir Company; neither has the defendant T. F. Wentz, assumed that the said defendants had or have a right to direct him as to the distribution of the said waters, except as hereinafter set forth.-

4. That on or about the 3rd day of March, 1925, said Jens C. Jensen, by what appears on the face thereof, made good and sufficient deeds, and delivered the same to the plaintiff, whereby he sold and transferred to plaintiff all his right, title and interest in and to the water and water rights, together with all other rights represented by the said deeds so executed and delivered to the said Jens C. Jensen by the Provo Reservoir Company, copies of which are attached to the complaint and marked Exhibits B, D and E, and that the

plaintiff has been claiming to be the real and actual owner of the same ever since the said 3rd day of March, 1925,-

But the facts are that the said deeds are controlled by a contract made and entered into by and between the said Jens C. Jensen and Maren Jensen his wife as first parties and the plaintiff, Caleb Tanner, second party, whereby the said deeds are to be final only upon the condition that the said Caleb Tanner "shall succeed in establishing the delivery of said water by first parties conveyed to second party hereto at the place provided in the said deeds of the Provo Reservoir Company to the said Jens C. Jensen for the said 15 acres of Primary water right, to-wit,- at the point known as the point of general delivery which is a point located near the center of Section 12, Township 6 South of Range 2 East of the Salt Lake Base and Meridian."

That no consideration passed from the said Caleb Tanner to the said Jens C. Jensen for the deed to the 15 acres of Primary water right, except an exchange by said Tanner of the use by the said Jensen of a like quantity of water to be delivered to said Jensen for his use through the Provo Bench Canal, pending litigation by the said Tanner to establish a right to have the said 15 acres of Primary Water Right delivered at a point near the center of Section 12, as above mentioned,-

That the said contract between the said Jens C. Jensen and Maren Jensen, first parties and the said Caleb Tanner further provides that "Second party hereto, (Caleb Tanner) may at any time convey to Jens C. Jensen, (one of the first parties) water rights identical with the rights conveyed by first parties to second party or the equivalent thereof as herein provided if second party shall establish such right of delivery and on such conveyance said second party shall be released from any and all obligations hereunder" and,-

That by the terms of said contract. the sale and transfer of the said 15 acres of Primary water right, by the said Jens C. Jensen and his wife, Maren Jensen, to plaintiff. was, on the part of plaintiff, only for the purpose of obtaining a right to bring an action against the defendants to have said water right delivered at the point of "General Delivery", and this being accomplished, to return to said Jens C. Jensen the water right originally conveyed to him Tanner, a subterfuge, and that as to said Jens C. Jensen, if he understood the terms of said contract, he was a party to the said subterfuge, and,-

5. That the plaintiff has not conveyed to anyone any of the water rights and privileges deeded and transferred to the plaintiff by Jens C. Jensen, hereinbefore mentioned; and that the plaintiff at all of the times since the 3d day of March, 1925, has been the conditional owner of said water rights, as hereinabove set forth; and that said Jens C. Jensen was, by the said deeds issued to him by the defendant, Provo Reservoir Company, a joint owner with said Provo Reservoir Company in the irrigation system of defendant, Provo Reservoir Company, from its upper sources to the points near the center of Section 12, Township 6 South, Range 2 East, Salt Lake Meridian, at the time of the execution of the deeds for the twenty and one-third acres of water right, conveyed by said Jens C. Jensen to the plaintiff herein, but that said interest of said Jens C. Jensen ~~is~~ was specifically limited to capacity in the canals and pipe lines of the said Provo Reservoir Company, sufficient to convey and deliver the said twenty and one-third acres of water right to the point of "General Delivery" hereinabove mentioned; and that said water was delivered to said Jens C. Jensen at said point in the Iona Lateral, which said Lateral was owned and controlled by the said Jens C. Jensen and others receiving water from the defendant Provo Reservoir Company, and owning land lying below the North

Union Canal and in the district irrigated by water diverted from the Provo River through the Provo Bench Canal,-

6. That by reason of the great length, cost of construction and maintenance of the said Iona Lateral, and the great loss by seepage and evaporation of the water in said lateral, the owners and users thereof asked the Provo Reservoir Company to make arrangements to deliver the water contracted for by them through the Provo Bench Canal and Irrigation Company's canal, which said canal diverts water from the said Provo River at a point on the right bank of said river about two miles below the intake of the said Provo Reservoir Company's main canal, through which the plaintiff now claims the right to flow. the said twenty and one-third acres of primary water right.

That during the year A. D. 1915, the said Provo Reservoir Company had made contracts with divers persons for rights to the use of the water of Provo River for irrigation purposes, amounting to approximately forty second feet, among whom was the said Jens C. Jensen, grantor of plaintiff, for the twenty and one-third acres of water right mentioned in plaintiff's first cause of action, said water right to be delivered to the said Provo Reservoir Company's grantees through the Iona Lateral aforesaid, or through the Provo Bench Canal.

7. That on or about the 20th day of December, A. D. 1915, the plaintiff herein having, by court action in this court being Civil Action No. 1117, obtained a final decree authorizing him to enlarge the canal of the Provo Bench Canal and Irrigation Company to the extent of ten second feet capacity; the said Provo Reservoir Company, after having counselled with the plaintiff herein who was then acting as its counselor and adviser in all matters relating to the diversion and distribution of waters contracted for by it to the users thereof; and after being advised by the plaintiff so to do, entered into an agreement with the Provo Bench Canal and Irrigation Company, to convey the quantity of water theretofore used and thereafter to be used by said Provo Reservoir Company's vendees, through the aforesaid Iona Lateral, to be carried through and delivered to the said vendees through said Provo Bench Canal and Irrigation Company's canal. And that thereafter, and so long as the water contracted for by said Jens C. Jensen was used by the said Jens C. Jensen, it was delivered to him through the said Provo Bench Canal with his acquiescence and consent and at his instance and request; and that said twenty and one-third acres of water right to which the said Jens C. Jensen was entitled was delivered into the said Provo Bench Canal and Irrigation Company Canal under the arrangements made by Provo Reservoir Company with the Provo Bench Canal and Irrigation Company,-

8. That in the year A. D. 1916 the said Provo Reservoir Company, by reason of its vendees as aforesaid, having requested it to deliver the water to which they were entitled, through the said Provo Bench Canal and Irrigation Company's canal, joined with the plaintiff herein and entered into an agreement with the said Provo Bench Canal and Irrigation Company to enlarge its canals, so that said Provo Reservoir Company would have a carrying capacity therein sufficient to supply water to those with whom it had contracted and who had originally had their water delivered to them through said Iona Lateral; and that on its part the said Provo Reservoir Company made said enlargement and in so doing expended approximately \$25,000.00, and thereby acquired a right to flow the said water through the said canal; the said users including the said Jens C. Jensen having each and all made arrangements with the said Provo Bench Canal and Irrigation Company and North Union Irrigation Company to deliver and distribute to them at their several private laterals, the quantity of water to which they were severally entitled; and that during each and every year since A.D. 1916 the 15-1/3, and ever since the year 1918, the remaining 5 acres of water right, to which the said Jens C. Jensen was entitled and to which the plaintiff claims he is now entitled, has been delivered by the Provo Reservoir Company, the Board of Control, and the Provo Res-

ervoir Water Users Company into the Provo Bench Canal Company's canal for the use and benefit of the said Jens C. Jensen or his successor or successors in interest. Except, that during the year A. D. 1926, the said water was delivered to the plaintiff herein into the Iona Canal through a special order of this court to the said T. F. Wentz Commissioner, said order being qualified by the court, providing that it should not in any manner prejudice any of the rights of the parties interested in this action,-

9. That the said Iona Canal Lateral was a lateral from the Provo Reservoir Company's main canal, and was constructed, owned and regulated by the persons, including the said Jens C. Jensen, who held contracts with the Provo Reservoir Company for the sale and purchase of water rights to be delivered through its irrigation system,-

10. That immediately after the Provo Reservoir Company arranged with Provo Bench Canal and Irrigation Company to convey and deliver through its canal the water formerly delivered at the intake of the Iona Canal Lateral, as above mentioned, the owners of said lateral including the said Jens C. Jensen, the plaintiff's grantor of the twenty and one-third acres of water right claimed for him by plaintiff, abandoned said Iona Lateral and it was soon filled in, its flumes and gates removed and destroyed, and it has not been used by the said Jens C. Jensen at any point above the Provo Bench Canal and its laterals at any time since,- its abandonment as aforesaid.

11. That the twenty and one-third acres of primary water right, claimed by plaintiff in the first cause of action herein, was applied upon and for the irrigation of the lands of the said Jens C. Jensen, situated in Section 22, Township 6 South, Range 2 East, Salt Lake Base and Meridian, all of which lie to the south of the Provo Bench Canal and its laterals, and said water was continuously used upon said lands from the date of the contracts for the purchase thereof, between the said Jens C. Jensen and the Provo Reservoir Company, as shown by plaintiff's exhibits "A" "C" and "E", attached to the complaint, until the sale thereof by the said Jens C. Jensen to the plaintiff, and all thereof were distributed to said Jens C. Jensen through Provo Bench Canal, each and every year and were delivered for his use, as aforesaid, since A. D. 1916, except in 1925 and 1926. And that five acres thereof were distributed to him through said Canal from the time of his purchase thereof, November 29th, 1918, until his sale to the plaintiff on the 3d day of March, 1925, and that in 1925 and 1926 under the order of the court, hereinabove mentioned, the whole of said water was distributed to the plaintiff through Provo Reservoir Company's main canal; and during 1925, the order of the Court having been made, after the tickets for the distribution of the said water had been issued, the quantity of twenty and one-third acres of water right was delivered to both plaintiff and to the said Jens C. Jensen, through the Provo ~~Bench Canal~~ Reservoir Company's main canal to plaintiff, and through the Provo Bench Canal to said Jens C. Jensen,-

12. That the said Jens C. Jensen, plaintiff's grantor, and the plaintiff, at the time Provo Reservoir Company entered into agreement with the Provo Bench Canal and Irrigation Company, to enlarge the Provo Bench Canal, knew the purpose and reasons of the defendant, Provo Reservoir Company, for making such enlargement, and that said Provo Reservoir Company was expending large sums of money for the purpose of enlarging said canal for the use and benefit of the said Jens C. Jensen and others, and that the plaintiff was from the year 1915 until the 31st day of December, 1920 in the employ of the said Provo Reservoir Company, and that all the enlargement of the said Provo Bench Canal was made under the direction, control and advise of the plaintiff herein, and that the purposes and objects of said enlargement by said Provo Reservoir Company were well known to the plaintiff from the year A. D. 1916 until the present time,-

13. That in case No. 2888 Civil, filed in this court on the 2nd day of May, A. D. 1921, wherein the water rights of the defendant, Provo Reservoir Company, and those holding or claiming by, through or under the said Provo Reservoir Company, were adjudicated, determined and awarded to the persons entitled thereto, paragraph 116 is as follows:-

"It is further ordered, adjudged and decreed, that for the purpose of maintaining the volume of flow of Provo River available for use of the parties, and to maintain to the parties hereto the respective rights herein awarded and decreed, none of the parties shall change the place of use of said water so as to cause the seepage or drainage therefrom to be diverted away from the channel of said river; or canals, or from the lands heretofore irrigated thereby."

14. That the sole purpose of the plaintiff in purchasing the twenty and one-third acres of water right from the said Jens C. Jensen was that he might attempt to acquire the right to change the place of use thereof, and divert the same through the plaintiff's main canal and thereby acquire rights that had been forfeited and abandoned by his predecessor, Jens C. Jensen, and at the same time seek to acquire other interests in said main canal of Provo Reservoir Company, never owned or claimed by the said Jens C. Jensen, and to seek to obtain a tenancy in common with the defendants, Provo Reservoir Company and Provo Reservoir Water Users Company, in the main canal of the Provo Reservoir Company's irrigation system, and particularly to acquire such tenancy in common in its headgates, canals, tunnels and pipe line, from what is known as the Heiselt Dam, referred to in paragraph 16 in the first cause of action in the complaint herein; that such rights can only be obtained by change of the place of use of the said twenty and one-third acre water right, and an abandonment of the right acquired by defendant, Provo Reservoir Company, to flow said twenty and one-third acres of water right through the Provo Bench Canal, and that by the provision of said paragraph 116 in the decree in case No. 2888 Civil, the said Jens C. Jensen and the plaintiff as his successor are prohibited from changing the place of use of said water,-

15. The court further finds: That by the said preambles, resolutions and conveyances of the Provo Reservoir Company, that it was not the intention of the defendant, Provo Reservoir Company, to guarantee to purchasers from it the delivery at any one time of any actual amount of water; that the evidence in the case shows that the rights of Provo Reservoir Company, which are referred to in the preambles and resolutions consist of certain rights in second feet in the Provo River System as well as certain rights in acre feet stored in certain reservoirs at the head of the Provo River System; that these rights do not contemplate the existence, in any particular season, of the actual amount of water in second feet or acre feet, but rather that said rights are based upon the existence of said water in second feet and acre feet during what was termed in the evidence as the normal season. That measurements have been made from time to time over a period of years, and a determination made of the actual quantity of water during the average or normal season. That on these determinations, theory and basis the decree in what is referred to often in this court as Case No. 2888 Civil was made, and the water rights awarded thereby are based on these average or normal rights, and that the sales of the defendant, Provo Reservoir Company, will furnish said water to purchasers of primary rights at a duty of not more than 150 acres per second foot out of its waters of Provo River proper, or to turn down from its reservoirs rights sufficient water for that purpose. That the Provo Reservoir Company has no right to sell beyond its aggregate amount of second feet and acre foot rights, as defined in what is referred to as the quantity of water in a normal season, particularly defined in the decree in case No. 2888 Civil, and that plaintiff's proportion of the available water under said rights would be as his numbers of acres is to the total quantity of the rights as above defined. That whenever the waters in said system shall not be sufficient to furnish the owners of the rights of primary water under said system with a duty of 75 acres to the second foot, which is the least duty

of water permitted under and by the preambles and resolutions of said Provo Reservoir Company, the owners of high water rights under said system will be entitled to no water, and that thereafter the remaining water in said system is to be distributed pro-rata among the owners of primary water right until the duty reaches 150 acres per second foot, which is the maximum when the water is in said system to supply them at that rate,-

further

16. The court finds that the irrigation system of the defendant companies has been of an evolutionary nature; in other words that it has been rebuilt, added to, and enlarged from time to time as the defendant, Provo Reservoir Company, has acquired other and additional water rights; that the expenses of such additions and enlargements have been paid for out of the funds of the said Provo Reservoir Company, and that such enlargements (which of course include any unused capacity now in said flumes and canals) were paid for entirely out of the funds of the Provo Reservoir Company, and that neither the plaintiff nor his grantor contributed in any way to its up-building or construction, and it appears from the evidence, that before the said irrigation system is completed that it will be necessary to further enlarge the canals and increase the carrying capacity of the pipe lines of the defendants in order to provide sufficient carrying capacity for the water now in the process of development, and the completion of the appropriations of water already applied for by said defendants.

17. That the foregoing findings apply to each of the causes of action set forth in the complaint in so far as the same can be made applicable thereto,-

18. As to the second cause of action, in addition to the foregoing findings applicable to said second cause of action, the court finds that the plaintiff is the owner of 2.52 second feet of water of the Provo river which said waters were decreed to John DeGrey Dixon in the decree in the above entitled court in that certain action No. 2888 Civil; that said 2.52 second feet of water at all times since the entry of said decree has been and now is "Transferred Water" as defined in Subdivision "A" of paragraph 13; and that the said decree provides that said 2.52 second feet of water is water that the owner thereof has the right to divert and flow over the Olmstead Dam in Provo Canyon, Utah County, Utah, and that the owner thereof has the right to divert the same from Provo River at a point near the mouth of Provo Canyon,-

19. But as to the said 2.52 second feet of water the plaintiff has no right or interest in the canal of the Provo Reservoir Company into which water is diverted at a point in Provo Canyon known as the Heiselt Dam, and that said water has never been diverted at said point and through said canal, except during such times as the same was by the plaintiff leased to the Provo Reservoir Company from year to year for irrigation purposes, at which times the defendant, Provo Reservoir Company, did divert the said 2.52 second feet of water into its main canal, and distributed the same to its grantees of water right using water upon land lying above the Provo Bench Canal and its laterals,-

20. That the plaintiff in connection with the defendant, Provo Reservoir Company, made an enlargement of the Provo Bench Canal and Irrigation Company's canal, the capacity of said enlargement being approximately 150 second feet; that said enlargement was made for the purpose of conveying all of the water belonging to the plaintiff and the said John DeGrey Dixon from the Provo River through said canal and for use upon lands lying below the said Provo Bench Canal, and that could be irrigated from water diverted from the said Provo River by and through said Provo Bench Canal; that the interests of the several parties in the said enlargement were, at the time it was made,  $\frac{4}{5}$  to the Provo Reservoir Company and  $\frac{1}{5}$  to the plaintiff and the said John DeGrey Dixon; that said enlargement was sufficiently

completed in the year A. D. 1916 to have a capacity sufficient so that the interests therein of the plaintiff would convey all of the water rights of the said plaintiff to the waters of Provo River to the lands to be irrigated thereby; and that the plaintiff in constructing the enlargement of the said Provo Bench Canal did so in order to obtain a right therein, through which to convey waters of the Provo River to the use of which he had a right, including the said 2.52 second feet mentioned in said second cause of action; and that if he should acquire a right to, and flow the said 2.52 second feet of water through the main canal of the Provo Reservoir Company, diverting the same at a point on the Provo river known as the Heiselt Dam, he would necessarily abandon the right already held by him to divert said water from the said River into the Provo Bench Canal at a point some two miles below the said Heiselt Dam,-

21. That the defendants and each of them assert and claim that the plaintiff has no right to any unused capacity in the main canal of the Provo Reservoir Company for the purpose of flowing through the said canal the said 2.52 second feet of water, and also assert and claim that the plaintiff has no right to use any unused capacity of said main canal of the Provo Reservoir Company's Provo River Irrigation System, for flowing any water through said canal without the consent of the defendants and upon such terms as may be fixed by the defendant, Provo Reservoir Company; and that the defendant T. F. Wentz, as water commissioner, has refused and now refuses and will continue to refuse to divert any of the said 2.52 second feet of water into the main canal of said Provo Reservoir Company's Provo River Irrigation System, until such a time as the plaintiff shall acquire a right in the said main canal by which to flow the said waters through the said canal,-

The court further finds that as to said 2.52 second feet of water the said T. F. Wentz, as water commissioner, has control and supervision thereof, but that such control and supervision does not extend to or vest in T. F. Wentz the right of eminent domain nor the right to quiet title as between the claimants of ditches, canals, pipe lines, etc. and to then appropriate to the use of the party in whom he may determine the right to be the use of the same, and that under the facts and circumstances, as they appear to be from the evidence in this action, the said T. F. Wentz did not wrongfully refuse to conform to the requirements and demands of the plaintiff when he refused to divert said 2.52 second feet of water into the main canal of the Provo Reservoir Company's Provo River Irrigation system.

AS TO THE THIRD CAUSE OF ACTION THE COURT FINDS:-

1. That the defendant Provo Reservoir Water Users Company is a corporation formed by persons many or practically all of which, at the time of the formation and organization of said corporation were owners of water or water right under deeds from the Provo Reservoir Company for acres of water right, under deeds conditioned by the Preambles and Resolutions of said Provo Reservoir Company for the years 1909 and 1911, and that said Preambles and Resolutions are as set forth in the findings heretofore herein set forth, and that the said Provo Reservoir Company was the owner and holder of sufficient water-rights to supply the 20-1/3 acres of water represented by the deeds it issued to the said Jens C. Jensen, including the deed issued and delivered to him on the 29th day of November, 1918,-

And that said Provo Reservoir Company at all of said times owned sufficient water to supply the said Jens C. Jensen with a quantity of water to irrigate the said 20-1/3 acres with a duty, during the high water season of 75 acres per second foot of water,-

But the Court further finds that the said Jens C. Jensen, under the said deeds and Preambles and Resolutions was not entitled to any other or less duty during the high water than that of 75 acres to the second foot of water; that he was entitled only to the duty set forth in said Preambles and Resolution for Primary Water Right, which should not at time be entitled to more water than one second foot for 75 acres, which was increased to 150 acres for each second

foot of water, after the high water users were cut off and received no water whatever;- and that under the said Preambles and Resolutions the said Jens C. Jensen, was at no time entitled to more water than a 75 acre duty per second foot of water.

2. That said Provo Reservoir Company after the issuance of the deeds to said Jens C. Jensen, issued many deeds and contracts of like character to Exhibits A and C, attached to the complaint, the number approximating 750, and that practically all of the deeds so issued by the said Provo Reservoir Company as aforesaid, have been assigned to the defendant Provo Reservoir Water Users Company, in exchange for one share of the paid up capital stock of the said Provo Reservoir Water Users Company, of the same class, as the deeds conveyed, that is for Primary Acres of water right represented by said deeds, one share of Full water right for one acre of Primary Water as conveyed by said deeds, and one share of Early water right for one acre of High Water right as conveyed by said deeds, and other water rights as conveyed by such deeds as were issued by said Provo Reservoir Company, according to kind of water right specified therein -

That in order to induce the purchasers of water right from the said Provo Reservoir Company to become members and stockholders of the said Provo Reservoir Water Users Company, and thereby to avoid disputes and controversies and to place the whole of the water sold by it under one management and control, the Provo Reservoir Company has conveyed to all of the users and consumers of water under its deeds who have joined and become members of the said Provo Reservoir Water Users Company and stockholders thereof, water sufficient to give to said users a different rate of duty of water, thereby enlarging their water right to a minimum rate of 100 acres to one second foot of water, in lieu of 150 acres for primary acres to one second foot of water as provided in said deeds,-

And that therefore the one share of capital stock of the said Provo Reservoir Water Users Company, which represents one acre of water right, is of greater value as an irrigation right than is one acre of primary water right under the said deeds;-

And that the title and rights of the plaintiff under the said deeds has not been slandered wrongfully or in any manner.

As to the maintenance charges to be paid by the plaintiff on the 20-1/3 acres of Primary water right, the Court finds, that under the contracts with Provo Reservoir Company by and through which the plaintiff claims said water right, the plaintiff should pay the pro-rata cost of the maintenance of the entire irrigation system of the defendants down to the Heiselt Dam in proportion to the entire amount of water distributed through the said Provo River irrigation system; and in addition thereto, that the plaintiff, his heirs, assigns, and successors in interest, should pay the pro-rata cost of maintaining the Provo Bench Canal and of diverting into and conveying through and distributing therefrom the water represented by the said 20-1/3 acres of Primary water right, in proportion to the cost of maintaining said canal and of diverting, conveying, and distributing all of the waters distributed by the defendant through the said canal of the Provo Bench Canal and Irrigation Company. But the Court finds that neither the plaintiff nor any of his heirs, assigns, or successors in interest should be required to pay any portion of the costs connected with the maintenance or operation of, or distribution of water from what is sometimes called the main canal of the defendants, beginning at the Heiselt Dam, and extending down Provo Canyon, and on to and across Provo Beach, and therefrom into Salt Lake County.

As conclusions of law from the foregoing facts, the court finds:-

1. That the defendants Provo Reservoir Company, Provo Reservoir Water Users Company, and Blue Cliffs Canal Company, all corporations, are entitled to judgment and decree herein, declaring and determining, that the plaintiff has no right, title, interest, claim or demand of, in or to that portion of the Provo Reservoir Company's Provo River Irrigation System, designated in the pleadings and known as its "Main Canal" from the point of its intake at what is known as the "Heiselt Dam" in Provo Canyon, Utah County, Utah, to its termination at what is designated in the pleadings and known as the "Point of General Delivery," which is a point on said Main Canal situated near the center of Section 12, in Township 6 South, of Range 2 East, Salt Lake Base and Meridian, and that plaintiff has no right to flow any water in or through said Main Canal, except by and with the consent of the defendant Provo Reservoir Company first had and obtained;-

2. That by said decree the plaintiff, his heirs, successors, agents, employees, and assigns, should be enjoined and restrained forever, from setting up or claiming the right to flow water in or through the said main canal by reason of ownership of the 20-1/3 acres of Primary water-right, conveyed by Provo Reservoir Company to Jens C. Jensen, or by reason of being the owner of the 2.52 second feet of water awarded to plaintiff's predecessor in interest, John DeGrey Dixon, in case No. 2888, in this court, made and entered on the 2nd day of May, A. D. 1921.

3. That by said decree it should be adjudged that plaintiff has no cause of action against the defendants or either of them, on his third cause of action; and that plaintiff is not entitled to a duty of water at any time, by reason of the Preambles and Resolutions of defendant Provo Reservoir Company, and the deeds executed by the said defendant to Jens C. Jensen of less than 75 acres to a second foot of water, which may be increased as provided in said Preambles and Resolutions to 150 acres to a second foot of water.

4. That by said decree it should be adjudged that one share of the Full Water Right stock of the defendant Provo Reservoir Water Users Company, is of greater value as a water right, than is one acre of Primary water right, conveyed to the plaintiff's predecessor Jens C. Jensen, by the defendant Provo Reservoir Company, and that there has been no slander of the plaintiff's title by either of the defendants, as alleged in the complaint or otherwise,-

5. That by said decree, it should be adjudged that as to the 20-1/3 acres of Primary water right, the plaintiff should pay the pro-rata cost of the maintenance of the entire irrigation system of the defendants down to the Heiselt Dam in proportion to the entire amount of water distributed through the said Provo River Irrigation System, and in addition thereto, that the plaintiff, his heirs, assigns, and successors in interest, should pay the pro-rata cost of maintaining the Provo Bench Canal and of diverting into and conveying through and distributing therefrom the waters represented by the said 20-1/3 acres of Primary water right, in proportion to the cost of maintaining said canal, and of diverting, conveying, and distributing all of the waters distributed by the defendant through the said canal of the Provo Bench Canal and Irrigation Company. But the said decree should provide that neither the plaintiff nor any of his heirs, assigns, or successors in interest should be required to pay any portion of the costs connected with the maintenance or operation of, or distribution of water from what is sometimes called the main canal of the defendants, beginning at the Heiselt Dam, and extending down Provo Canyon, and on to and across Provo Bench, and therefrom into Salt Lake County,

6. That by said decree it should be determined and adjudged that the Water Commissioner of this Court, appointed under the provisions of the Decree in Case Civil No. 2888, in this court, made and entered on the 2nd day of May, 1921, is under no duty to, nor is it his right to, adjudicate the questions arising between the several claimants of water by and under said decree, as to their respective costs of maintenance of their respective canals and distributing channels, and the proportion that each shall pay therefor, or the person to whom payment therefor shall be made:

7. That the defendants, Provo Reservoir Company, Provo Reservoir Water Users Company, and Blue Cliffs Canal Company, should be by said decree awarded their respective costs incurred in defending this action, to be paid by plaintiff herein, and execution therefor against the plaintiff,-

Dated this the 10th day of December, A. D. 1927.

George P. Parker  
Judge Presiding.

6346

IN DIST. COURT  
UTAH CO., UTAH

\* FILED \*

DEC 10 1927

*E. B. Dastrup* Clerk

Deputy

1927

1927

1927

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

-----oOo-----

CALEB TANNER,	)	
	:	
Plaintiff,	)	NO. 6346 Civil.
	:	
-vs-	)	
	:	
PROVO RESERVOIR COMPANY, a cor-	)	
poration, PROVO RESERVOIR WATER	:	
USERS COMPANY, a corporation,	)	<u>D E C R E E</u> .
BLUE CLIFF CANAL COMPANY, a cor-	:	
poration, NORTH UNION IRRIGATION	)	
COMPANY, a corporation, PROVO BENCH	:	
CANAL AND IRRIGATION COMPANY, a cor-	)	
poration, and T. F. WENTZ, as Com-	:	
missioner of Provo River,	)	
	:	
Defendants.	)	

-----oOo-----

This cause came on regularly for trial on the 30th day of January, 1927, and was continued from time to time, until the final hearing was concluded on the 24th day of February, 1927, the hearing was had before the Court sitting without a jury, the Honorable George P. Parker, Judge presiding; the Plaintiff was represented by A. B. Morgan and M. R. Straw, Esquires, the defendants Provo Reservoir Company and Blue Cliffs Canal Company, corporations, were represented by A. C. Hatch, Esquire, and Booth and Brockbank, the defendant Provo Reservoir Water Users Company, was represented by A. J. Evans and Martin M. Larson, Esquires, the defendants, North Union Irrigation Company, Provo Bench Canal and Irrigation Company, corporations and T. F. Wentz, as Provo River Commissioner, not being represented, they each having defaulted and disclaimed interest in the matters claimed by the complaint herein, - and the court having taken the matter under advisement, and on the 8th day of April, having filed its written opinion on the merits of <sup>the</sup> several matters submitted by the pleadings, and after being fully advised in the premises, having made and filed herein its findings of fact and conclusions thereon, in writing, -

NOW THEREFORE, in conformity with such findings of fact and conclusions of law,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, as follows, to-wit: -

1. That the plaintiff Caleb Tanner, has no right, title, interest, claim or demand, of in or to that certain canal, known as and designated in the pleadings herein as, "Provo Reservoir Company's Main Canal," from the point of its intake, at what is known as the "Heiselt Dam" in Provo Canyon, Utah County, Utah, to its termination at what is known as the "Point of General Delivery," which is a point on said canal situated near the center of Section 12, Township 6 South of Range 2 East, Salt Lake Base and Meridian; and that said plaintiff has no right to flow any water into or through said Main Canal, except by and with the consent of the defendant, Provo Reservoir Company first had and obtained, -

2. That the plaintiff, Caleb Tanner, his heirs, successors and assigns, and their agents, attorneys, and employees, be and they and each of them are hereby enjoined and restrained forever, from setting up or claiming the right to flow water in or through the said Main Canal, by reason of the ownership of the 20-1/3 acres of Primary water Right, conveyed by the said Provo Reservoir Company,

to Jens C. Jensen, or by reason of the 2.52 second feet of water awarded to the plaintiff's predecessor in interest, John DeGrey Dixon, by the Decree of this Court made and entered in Case No. 2888 Civil, on the 2nd day of May, A. D. 1921,-

3. It is further ordered, adjudged and decreed that the plaintiff, on his third alleged cause of action, has no cause of action against the defendants or either of them; that the plaintiff is not entitled under the deeds for the 20-1/3 acres of Primary water right, conveyed by defendant, Provo Reservoir Company to Jens C. Jensen, plaintiff's predecessor in interest therein, to a duty of less than 75 acres to one second foot of water, at any time, which may be increased to 150 acres to one second foot of water, as provided in the Preambles and Resolutions of the said Provo Reservoir Company, referred to in the said deeds:-

That one share of Full Water Right of the defendant, Provo Reservoir Water Users Company is of greater value as a water right than is one acre of Primary water right conveyed to plaintiff's predecessor Jens C. Jensen by Provo Reservoir Company, as the share of Full Water Right entitles the owner to a minimum of a 75 acre duty per second foot, and a maximum of 100 acre duty per second foot, while the acres of Primary water right under the deed from the Provo Reservoir Company to Jens C. Jensen entitle the owner thereof to no less duty than 75 acres per second foot, which may be increased during any part of the irrigation season to a maximum of 150 acres per second foot.

That there has been no slander of the plaintiff's title to the 20-1/3 acres of Primary Water Right by either of the defendants, as alleged in the Complaint or otherwise,-

4. IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that as to the said 20-1/3 acres of Primary water right, hereinabove in Paragraph 3 mentioned, the plaintiff, his heirs, assigns, and successors in interest, shall pay the pro-rata cost of the maintenance of the entire irrigation system of the defendants down to the Heiselt Dam in proportion to the entire amount of water distributed through the said Provo River Irrigation System, and in addition thereto, that the plaintiff, his heirs, assigns, and successors in interest shall pay the pro-rata cost of maintaining the Provo Bench Canal, and of diverting into and conveying through and distributing therefrom the waters represented by the said 20-1/3 acres of Primary water right in proportion to the cost of maintaining said canal and of diverting, conveying and distributing all of the waters distributed by the defendants through the said canal of the Provo Bench Canal and Irrigation Company, but it is specifically provided herein that neither the plaintiff nor any of his heirs, assigns, or successors in interest shall be required to pay any portion of the costs connected with the maintenance or operation of, or distribution of water from what is sometimes called the main canal of the defendants, beginning at the Heiselt Dam, and extending down Provo Canyon and on to and across Provo Bench, and therefrom into Salt Lake County.

5. IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the Commissioner of this Court, appointed under the provisions of the Decree of this Court, in Case No. 2888 Civil, made and entered on the 2nd day of May, A. D. 1921, is under no duty, nor is it his right, to estimate or determine the costs of the several claimants of water right under said Decree in Case No. 2888 Civil, in the maintenance of the several water systems, or to determine as to whom any payments shall be made therefor.

6. IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the defendants Provo Reservoir Company, Provo Reservoir Water Users Company, and Blue Cliff Canal Company shall have and recover from the plaintiff their respective costs and disbursements herein expended, hereby taxed at \$ \_\_\_\_\_, and that execution may issue therefor.

Dated this the 10th day of December, A. D. 1927.

*George D. Arthur*  
\_\_\_\_\_  
J U D G E.

*In the District Court of the Fourth Judicial District*

*of the*

*State of Utah, County of Utah*

*Caleb Tanner*

Plaintiff

vs.

*Provo Reservoir Company*  
*a corporation et al*

Defendants

*Judgment Roll Certificate*

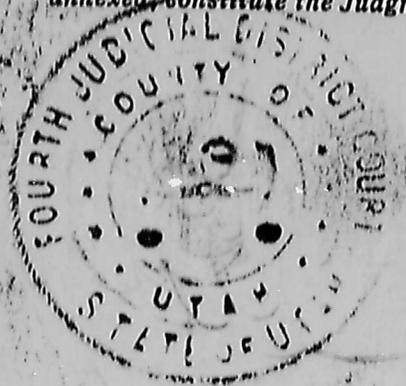
*I, the undersigned Clerk of the District Court of the Fourth Judicial District of the State of Utah, in and for Utah County, do hereby certify the foregoing to be a true copy of the Judgment entered in the above entitled action, and I further certify that the foregoing papers, hereto annexed, constitute the Judgment Roll in said action.*

*Witness my hand and the seal of said Court*

this *10* day of *December* 192*7*

*E. B. Dastuep*  
Clerk

By \_\_\_\_\_  
Deputy Clerk



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

Caleb Tanner, Plaintiff.

VS

Provo Reservoir Company, a corporation;  
Provo Reservoir Water Users Company,  
a corporation; Blue Cliff Canal  
Company, a corporation; North Union  
Irrigation Company a corporation  
Provo Bench Canal & Irrigation Company  
a corporation and T.F. Wentz as  
Commissioner of Provo River,  
Defendants.

Motion to amend  
Judgment.

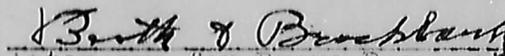
Comes now the plaintiff in the above entitled action and moves the above entitled Court to make and enter an order in the above entitled cause amending the judgment herein entered by striking therefrom that part thereof which awards costs to the defendants the Provo Reservoir Company, Blue Cliff Canal Company and Provo Reservoir Water Users Company, corporations, defendants herein, and that such judgment be amended to award costs to the plaintiff herein against said defendants; and for cause alleges that the said defendants are not entitled to any recovery of costs in said action;

his motion is based upon the files and records in the above entitled cause.

Plaintiff further moves the Court to strike from the records herein the cost bill of said defendants and award costs to the plaintiff according to his cost bill filed herewith and hereto attached, for the reason that the said defendants are not entitled to costs, said cost to be awarded against the said defendants Provo Reservoir Company, Provo Reservoir Water Users Company and Blue Cliff Canal Company, defendants herein.

  
Attorneys for Plaintiff

Received copy of above motion and of  
cost bill attached this 15th day of Dec. 1927.

  
Attorneys for Provo Reservoir Company, a corporation  
and Blue Cliff Canal Company, a corporation;

634  
IN DIST. COURT  
UTAH CO., UTAH  
\*FILED\*

DEC 15 1927

E. B. Dastump Clerk

Frank Salisbury Deputy



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

CALEB TANNER, Plaintiff,

Civil 6346

VS

Proof of service

Provo Reservoir Company  
a corporation, et al

STATE OF UTAH )  
COUNTY OF UTAH) SS

M.R.Straw being first duly sworn, deposes and says; that he is one of the attorneys for the plaintiff herein and has his office and place of business at Provo, Utah; that A.J.Evans is one of the attorneys of Record for the defendant, Provo Reservoir Water Users Company, and has his office and place of business at Lehi, Utah; that there is a regular communication by United States mail between the said points; that on the 15th day of Dec. 1927, he placed a full true and correct copy of the hereunto annexed motion and of the hereunto annexed cost bill in an envelop ad dressed to the said A.J.Evans attorney at law, Lehi, Utah, prepaid the postage thereon to the said address, and deposited the same in the United States Postoffice at Provo, Utah.

*M.R. Straw*

Subscribed and sworn to before me  
this 15th day of Dec. 1927.

*Geo J. Worthen*

Notary public; residing Provo, Ut.  
My commission expires Dec. 29, 1928.



6346  
IN DIST. COURT  
UTAH CO., UTAH  
\* FILED \*

DEC 15 1927

E. B. Daalup Clerk

Frank Salstrom Deputy



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

Caleb Tanner, Plaintiff,

VS

Civil  
6346

Provo Reservoir Company, a corporation;  
Provo Reservoir Water Users Company  
a corporation; Blue Cliff Canal Company,  
a corporation; North Union Irrigation Company  
a corporation; Provo Bench Canal &  
Irrigation Company, a corporation; and  
T.F. Wentz as Commissioner of Provo River,  
Defendants.

Notice of motion  
for new trial.

To North Union Irrigation Company, a corporation, and Provo Bench  
Canal & Irrigation Company, a corporation, defendants, and to  
Ray and Rawlins, their attorneys;  
To Provo Reservoir Water Users Company, a corporation and to  
A.J. Evans, it's attorney;  
To Provo Reservoir Company, a corporation, and Blue Cliff Canal  
Company, a corporation, defendants, and to Booth & Brockbank  
their attorneys; and  
To T. F. Wentz, defendant;

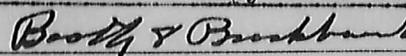
Take Notice; That Caleb Tanner, Plaintiff herein, intends to  
move and does hereby move the above entitled Court to vacate and  
set aside the judgment herein rendered on the 10th day of Dec.  
1927, and to grant plaintiff a new trial in the above entitled  
cause, upon the following grounds, to wit:

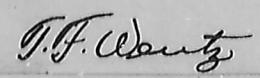
1. Irregularity in the proceedings of the Court by which plaintiff  
was prevented from having a fair trial.
2. Surprise which ordinary prudence could not have guarded against;
3. Newly discovered evidence material to the plaintiff which  
he could not with reasonable diligence have discovered and produced  
at the trial.
4. Insufficiency of the evidence to justify the Findings of  
Fact made by the Court herein;
5. Insufficiency of the Findings of Fact made and entered herein  
to justify the Conclusions of Law made and entered herein by the  
Court;
6. Insufficiency of the evidence to justify the Judgment made and  
entered herein;
7. Insufficiency of the Findings of Fact and Conclusions of law  
herein entered to support and justify the Judgment rendered herein;
8. That the judgment herein entered by the Court is against law;
9. Error in law occurring at the trial and excepted to by plaintiff.

Said motion is based on the record and files herein.

  
Attorney for plaintiff.

Received a copy this 15th day of Dec. 1927

 Attorneys for Provo Reservoir Company and



167 M. R. STRAW Blue Cliff Canal Company  
COMMERCIAL BANK BUILDING  
PROVO, UTAH

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

CALEB TANNER, Plaintiff,

VS

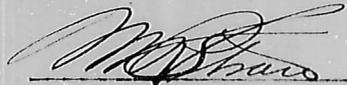
Civil number 6346

Provo Reservoir Company, a  
corporation, et al.

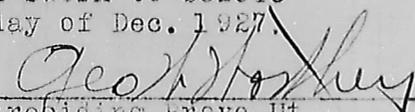
Proof of Service.

STATE OF UTAH )  
COUNTY OF UTAH) SS

M.R.Straw, being first duly sworn, deposes and says;  
that he is one of the attorneys for the plaintiff in the  
above entitled action; that he has his office and place of  
business at Provo, Utah; that Ray and Rawlins are attorneys of  
record here for defendant's North Union Irrigation Company,  
a corporation and Provo Bench Canal & Irrigation Company  
a corporation and that said attorneys have their office and  
place of business at Continental National Bank Bldg.,  
Salt Lake City, Utah; that A.J.Evans is attorney of record  
herein for Provo Reservoir Water Users Company a corporation  
a defendant herein and has his office and place of business  
at Lehi, Utah; that there is regular communication by  
United States mail between Provo Utah and Salt Lake City  
Utah and between Provo, Utah and Lehi, Utah; that on the 15th  
day of Dec. 1927, he placed a full true and correct copy  
of the hereto attached Notice of Motion for New Trial  
in an envelope addressed to Ray and Rawlins, Attorneys  
at law, Continental Natl. Bank Bldg., Salt Lake City,  
Utah, prepaid the postage thereon and deposited same in  
the United States Post Office at Provo, Utah; that on the  
said 15th day of Dec. 1927 he placed a full true and  
correct copy of the hereto attached Notice of Motion for  
New Trial in an envelope addressed to A.J.Evans, Attorney  
at law, Lehi, Utah, prepaid the postage thereon to said  
address and deposited the same in the United States Post  
Office at Provo, Utah;



Subscribed and sworn to before  
me this 15th day of Dec. 1927.



Notary public; residing Provo, Ut.

My commission expires Dec. 29, 1928.



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

Caleb Tanner, Plaintiff,

VS.

Provo Reservoir Company, a  
corporation; Provo Reservoir  
Water Users Company, a corp-  
oration; Blue Cliff Canal Company,  
a corporation; North Union Irrig-  
ation Company, a corporation;  
Provo Bench Canal & Irrigation  
Company, a corporation, and T.F.  
Wentz as Commissioner of Provo  
River, Defendants.

Order Extending Time  
for Filing Bill of  
Exceptions.

A motion for a new trial in the above entitled cause  
having been made herein and said motion having been denied  
by the Court on the 31<sup>st</sup> day of Dec. 1927, and counsel for  
plaintiff at such time having moved the Court for an order  
extending time in which plaintiff herein may prepare, serve  
and file a bill of exceptions, and the Court having granted  
such motion and made an order granting plaintiff an extension  
of time as requested for ninety days in addition to the statutory  
time, counsel for all appearing defendants having been in  
Court at the time such motion was granted;

It is now by the Court ORDERED:

That plaintiff herein, for due cause shown, do have to and  
including the 31<sup>st</sup> day of April, 1928, in which to prepare  
serve and file herewith, a bill of exceptions.

Dated Jan. 13, 1928, at Provo, Utah.

BY THE COURT,

Georgie Parker

JUDGE.

6346

IN DIST. COURT  
UTAH CO., UTAH

\* FILED \*

JAN 13 1928  
*E. B. Sashuf* Clerk

Deputy

RECORD *m*

PAGE 326

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

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Caleb Tanner, Plaintiff,

VS.

Provo Reservoir Company, a  
corporation; Provo Reservoir  
Water Users Company, a cor-  
poration; Blue Cliff Canal Company,  
a corporation; North Union Irrigation  
Company, a corporation; Provo Bench  
Canal & Irrigation Company, a  
corporation, and T.F. Wentz as  
Commissioner for Provo River,  
Defendants.

6346  
Order Extending Time  
for Filing Bill of  
Exceptions.

---

On motion of M.R. Straw, Attorney for Plaintiff  
herein, and for good cause shown to the Court why such order should  
be made:

It is now by the Court ORDERED:

That the time within which plaintiff may prepare  
serve and file a Bill of Exceptions in the above entitled  
cause be and the same is hereby extended to and including  
the 30th day of June, 1928.

Dated April 21, 1928, at Provo City, Utah.

BY THE COURT,

George P. Parker

Judge.

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

Caleb Tanner, Plaintiff,

VS.

6346

Provo Reservoir Company, a  
corporation; Provo Reservoir  
Water Users Company, a corporation;  
Blue Cliffs Canal Company, a  
corporation; North Union Irrigation  
Company, a corporation; Provo Bench  
Canal & Irrigation Company, a  
corporation, T.F. Wentz as Commissioner  
of Provo River, Defendants.

ORDER.

On motion of M.R. Straw, Attorney for the plaintiff herein,  
and good cause appearing to the Court why such order should be  
made:

It is now by the Court hereby ORDERED:

That the time within which plaintiff herein may prepare,  
serve and file a Bill of Exceptions in the above entitled  
cause be and the same is hereby extended to and including  
the 30 day of July, 1928.

Dated Provo, Utah, this 2 day of June, 1928.

BY THE COURT,

*George Parker*

JUDGE

6346

IN DIST. COURT  
UTAH CO., UTAH  
\* FILED \*

JUN 2 - 1922

E. B. Daalry Clerk  
Metab Robinson Deputy

RECORD. M

PAGE 484

COPY OF COURT MINUTE

December 31, 1927.

No. 6346 Civil.

Caleb Tanner

vs

Provo Reservoir Co. et-al

:  
:  
:

MOTION FOR NEW TRIAL AND  
MOTION TO AMEND JUDGMENT

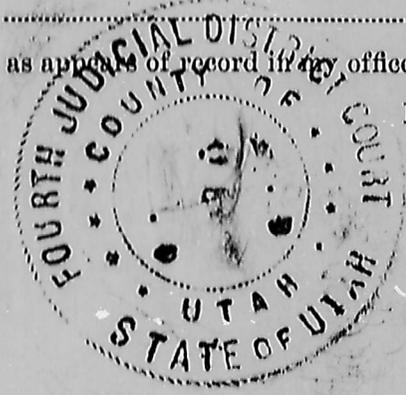
This cause came on duly and regularly for hearing before the Court upon the plaintiff's motion for a new trial and motion to amend the judgment herein; M. R. Straw, Esq., appearing as counsel for the plaintiff and Messrs. A. L. Booth and A. C. Hatch appearing as counsel for the defendants. The Court after having heard the arguments of counsel and being fully advised in the premises orders that the judgment heretofore made be amended to require each party to pay their own costs; that the motion for a new trial be, and the same is hereby denied and that the plaintiff be, and he is given 90 days in addition to the statutory time in which to prepare and file his bill of exceptions.

# Clerk's Certificate

STATE OF UTAH, }  
County of Utah, } ss.

I, E. B. DASTRUP, County Clerk and Ex-Officio Clerk of the Fourth Judicial District Court, in and for the County of Utah, State of Utah, do hereby certify that the foregoing is a full, true and correct copy of the original..... <sup>Dec. 31, 1927</sup> COPY OF COURT MINUTE in the Case.....  
.....of CALEB TANNER vs. PROVO RESERVOIR CO. et-al.....  
.....No. 6346 Civil.....

as appears of record in my office.



IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at Provo City, Utah, this...26th day of .....June..... A. D. 192...8.

.....E. B. DASTRUP.....

Clerk

By Frank [Signature]  
Deputy Clerk

*In the District Court of the Fourth Judicial District*

*of the*

*State of Utah, County of Utah*

CALEB TANNER

Plaintiff

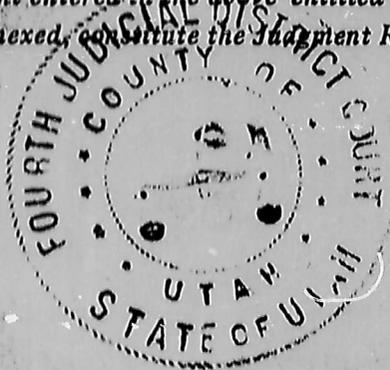
vs.

PROVO RESERVOIR CO., et-al

Defendant

*Judgment Roll Certificate*

I, the undersigned Clerk of the District Court of the Fourth Judicial District of the State of Utah, in and for Utah County, do hereby certify the foregoing to be a true copy of the Judgment entered in the above entitled action, and I further certify that the foregoing papers, hereto annexed, constitute the Judgment Roll in said action, as of June 2, 1928.



Witness my hand and the seal of said Court

this 28th day of June 1928.

E. B. DASTRUP,

Clerk

By

*Frank S. [Signature]*

Deputy Clerk

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

Caleb Tanner, Plaintiff,

No. 6346

VS.

NOTICE OF APPEAL.

Provo Reservoir Company, a corporation;  
Provo Reservoir Water Users Company,  
a corporation; Blue Cliff Canal Company,  
a corporation; North Union Irrigation Company,  
a corporation; Provo Bench Canal  
& Irrigation Company, a corporation,  
T.F. Wentz as Commissioner of Provo River.  
Defendants.

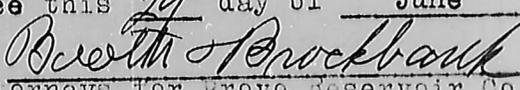
To North Union Irrigation Company, a corporation; Provo Bench  
Canal & Irrigation Company, a corporation, defendants, and  
to Ray and Rawlins, their attorneys:  
To Provo Reservoir Water Users Company a corporation and to  
A. J. Evans, It's Attorney:  
To Provo Reservoir Company, a corporation; Blue Cliff Canal  
Company a corporation, defendants, and to Booth and  
Brockbank and A.C. Hatch, their attorneys; and  
To T.F. Wentz; defendant;

You and each of you will please take notice that Plaintiff,  
Caleb Tanner, hereby appeals to the Supreme Court of the  
State of Utah from the judgment made and entered in the above  
entitled cause on the 10th day of December, 1927, and from the  
whole thereof, and from such judgment on each of the four  
causes of action as set out in plaintiff's complaint filed herein  
and the whole thereof, and from the order of the above entitled  
Court made in the above entitled cause on the 31st day of  
December, 1927, denying plaintiff's motion for a new trial.

This appeal is taken upon questions of both law and fact.

  
Attorney for Plaintiff Caleb  
Tanner.

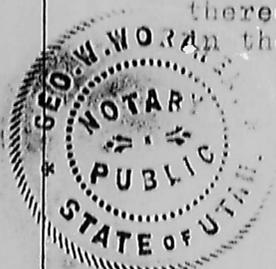
Received copy of the above notice this 20<sup>th</sup> day of June  
1928.

  
Attorneys for Provo Reservoir Co.  
and Blue Cliff Canal Company,  
defendants.

STATE OF UTAH )

COUNTY OF UTAH) SS

M.R.Straw, being first duly sworn, deposes and says: that he is an attorney for the plaintiff in the above entitled action; that he has his office and place of business at Provo, Utah; that Ray and Rawlins are attorneys of record herein for North Union Irrigation Company and for Provo Bench Canal & Irrigation Company, corporations, and that said Ray and Rawlins have their office and place of business at Continental National Bank Building, Salt Lake City, Utah; that A.J.Evans is an attorney of record herein for defendant Provo Reservoir Water Users Company, a corporation and has his office and place of business at Lehi, Utah; that there is regular communication by United States Mail between Provo, Utah, and Salt Lake City, Utah, and between Provo, Utah, and Lehi, Utah; that on the 29th day of June, 1928, he placed a full, true and correct copy of the hereunto annexed NOTICE OF APPEAL in an envelope addressed to Ray and Rawlins, Attorneys at Law, Continental National Bank Building, Salt Lake City, Utah, prepaid the postage thereon in full from Provo, Utah to Salt Lake City, Utah, and deposited such copy enclosed in such envelope in the United States Post Office at Provo, Utah; that on the said 29th day of June, 1928, he placed a full, true and correct copy of the hereunto attached NOTICE OF APPEAL in an envelope addressed to A.J.Evans, Attorney at Law, Lehi, Utah, prepaid the postage thereon in full from Provo Utah to Lehi, Utah, and deposited such copy enclosed in such envelope in the United States Post Office at Provo, Utah; That T.F.Wentz, Commissioner of Provo River, a party defendant in the above entitled action, did not appear by attorney in the above entitled cause; that said T.F.Wentz has his residence and resides at Crem, Utah County, State of Utah; that there is regular communication by United States Mail between Provo, Utah, and Crem, Utah; that on the 29th day of June, 1928, he placed a full, true and correct copy of the hereunto annexed Notice of Appeal in an envelope addressed to said T.F.Wentz, Crem, Utah County, Utah, prepaid the postage thereon from Provo, Utah to Crem, Utah, and deposited the same in the United States Post Office at Provo, Utah.



*M.R. Straw*  
Subscribed and sworn to before me  
this 29th day of June, 1928.

*Geo. W. Worley*  
Notary public; residing Provo, Utah;  
My commission expires Dec. 29, 1928.

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

Caleb Tanner, Plaintiff,

VS.

Notice.

Provo Reservoir Company, a corporation;  
Provo Reservoir Water Users Company,  
a corporation; Blue Cliff Canal Company,  
a corporation; North Union Irrigation Company  
a corporation; Provo Bench Canal & Irrigation  
Company, a corporation, T.F.Wentz as  
Commissioner of Provo River,  
Defendants.

To North Union Irrigation Company, a corporation; Provo Bench  
Canal & Irrigation Company, a corporation, defendants and  
to Ray and Rawling, their attorneys:  
To Provo Reservoir Water Users Company a corporation and to  
A.J.Evans, It's attorney;  
To Provo Reservoir Company, a corporation and Blue Cliff Canal  
Company, a corporation, defendants, and to Booth and  
Brockbank and A.C.Hatch, their attorneys; and to  
T.F.Wentz, defendant:

Take Notice:

That the above entitled Court has made and entered an order  
herein fixing Tuesday the 17th day of July, 1928, at the hour of  
2 o'clock P.M. as the time for settling and approving  
plaintiff's Bill of Exceptions herein, and directing notice  
to you that at such time such Bill of Exceptions will be  
considered by the above entitled Court at the Court room thereof  
in Provo City, Utah County, Utah, and if approved the same will  
be allowed and settled at such time.

Dated this 11th day of July, 1928.

*E. B. Dastus*  
Clerk of the above entitled Court.

Received copy of foregoing notice  
this 11th day of July, 1928.

*Booth & Brockbank*  
Attorneys for Provo Reservoir Company  
and Blue Cliff Canal Company, defendants.

STATE OF UTAH )  
COUNTY OF UTAH) SS

E. B. Dastrup, being first duly sworn, deposes and says; that he is Clerk of Utah County, State of Utah and Ex officio Clerk of the District Court of the Fourth Judicial District in and for Utah County State of Utah; that Ray and Rawlins are Attorneys of Record in the cause entitled on the hereunto attached notice and have their office and place of business at Continental National Bank Building Salt Lake City, Utah; that there is regular communication by United States mail between Provo, Utah, and Salt Lake City, Utah; that on the 11th day of July 1928, he placed a full true and correct copy of the hereunto attached notice in an envelope addressed to Ray and Rawlins, Attorneys at Law, Continental National Bank Building, Salt Lake City, Utah, prepaid the postage thereon in full to said address and deposited said envelope in the United States post office at Provo, Utah; that on the said 11th day of July he placed a full true and correct copy of the hereto annexed notice in an envelope addressed to T. F. Wentz, Orem, Utah County, Utah, prepaid the postage thereon in full to such address and deposited the same in the United States Post office; at Provo, Utah; that the said T. F. Wentz is a party defendant in the action entitled on the attached notice and has his residence at Orem, Utah County, Utah, and did not appear herein by attorney; that there is regular communication by United States mail between Provo, Utah and Orem, Utah County Utah; that A. J. Evans is attorney for the defendant Provo Reservoir Water Users Company, a corporation, defendant in the action entitled on the attached notice as appears of record in said cause, and that he has his place of business at Lehi, Utah, and his office is at Lehi, Utah; that there is regular communication by United States Mail between Provo, Utah and Lehi, Utah; that on the 11th day of July, 1928, he placed a full, true and correct copy of the hereunto attached notice in an envelope addressed to the said A. J. Evans, attorney at law, Lehi, Utah, prepaid the postage thereon in full to the said address and deposited the same in the United States Post Office at Provo, Utah.; that Ray and Rawlins attorneys above herein mentioned are attorneys of record in said cause referred to for North Union Irrigation Company and for Provo Bench Canal & Irrigation Company, defendants.

*E. B. Dastrup*

Subscribed and sworn to before me  
this 11th day of July, 1928.

*[Signature]*  
Notary public; residing Provo, Utah.  
My commission expires Mar. 8, 1929.



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

Caleb Tanner, Plaintiff,

VS.

ORDER

Provo Reservoir Company, a corporation;  
Provo Reservoir Water Users Company,  
a corporation; Blue Cliff Canal Company,  
a corporation; North Union Irrigation Company,  
a corporation; Provo Bench Canal & Irrigation  
Company, a corporation, T.F. Wentz as  
Commissioner of Provo River,  
Defendants.

Counsel for the Plaintiff in the above entitled action having heretofore prepared and served upon the defendants herein his proposed Bill of Exceptions and having on the 11th day of July, 1928, presented such proposed bill of exceptions to the Clerk of the above entitled Court, and such Clerk having immediately delivered the same to the Court and the undersigned Judge thereof:

It is now ordered that Tuesday, the 17th day of July, 1928, <sup>at the Court room, 2 o'clock P.M.</sup> at the Court room of the above entitled Court in Provo City, Utah, be and the same is hereby fixed as the time and place at which the Court will allow, approve and settle said Bill of Exceptions:

And the Clerk of the above entitled Court is hereby directed to serve notice on the defendants herein of the time and place when the Court will settle such bill of exceptions, either by personal service of such notice or by mailing the same to attorneys or an attorney of each party of record and to any defendant not having appeared by attorney.

Dated this 11th day of July, 1928.

*George Parker*  
Judge

6346  
IN DIST. COURT  
UTAH CO., UTAH  
\*FILED\*

JUL 11 1928

*E. B. Dastine* Clerk

*Frank Saltsky* Deputy

Received in

Page 501

COPY OF COURT MINUTES

April 17, 1926.

No. 6346 Civil.  
Caleb Tanner :  
vs : DEMURRER - TAKEN UNDER ADVISEMENT  
Provo Reservoir Co., et-al :

This cause came on duly and regularly for hearing before the Court upon the demurrer of the North Union Canal Co., and the Provo Bench Canal and Irrigation Company, to plaintiff's complaint, M. R. Straw, Esq., appearing as counsel for plaintiff and counsel for defendants not being present in court. The Court after hearing the arguments of counsel for plaintiff, takes said matter under advisement, and defendants are given to and including April 24, 1926 in which to file brief if they so desire.

GEORGE P. PARKER, JUDGE.

April 23, 1926.

No. 6346 Civil.  
Caleb Tanner :  
vs : DEMURRER OVERRULED  
Provo Reservoir Co., et-al :

Ordered that the demurrer of the North Union Canal Co. and the Provo Bench Canal and Irrigation Company, to plaintiff's complaint herein, be, and the same is hereby overruled and the defendants are given 20 days after notice, in which to prepare, serve and file answer.

GEORGE P. PARKER, JUDGE.

May 22, 1926.

No. 6346 Civil.  
Caleb Tanner :  
vs : HEARING CONTINUED  
Provo Reservoir Co., et-al :

Hearing on the demurrers pending herein is hereby continued until May 29, 1926.

ELIAS HANSEN, JUDGE.

June 5, 1926/

No. 6346 Civil.  
Caleb Tanner :  
vs :  
Provo Reservoir Co., et-al : TAKEN UNDER ADVISEMENT

This cause came on duly and regularly for hearing before the Court upon defendants demurrers to plaintiff's complaint; Messrs. M. R. Straw and A. B. Morgan appearing as counsel for plaintiff and A. L. Booth and A. C. Hatch appearing as counsel for defendants. Said matters were argued by counsel and same was taken under advise-ment by the Court.

ELIAS HANSEN, JUDGE.

January 31, 1927.

No. 6346 Civil.  
Caleb Tanner :  
vs : TRIAL  
Provo Reservoir Co., et-al :

This cause came on duly and regularly for trial before the Court sitting without a jury; Messrs. M. R. Straw and A. B. Morgan appearing as counsel for the plaintiff and Messrs. A. L. Booth, A. C. Hatch, A. J. Evans and M. M. Larson appearing as counsel for the def-endants. The default of Frank Wentz, one of the defendants for his failure to answer or to otherwise plead to the plaintiff's complaint having been duly and regularly entered by the Clerk of this Court. Mr. M. R. Straw counsel for the plaintiff read the complaint and ans-wers and made a statement of the issues. Further hearing of this case continued until February 1, 1927 at 10 A. M.

GEORGE P. PARKER, JUDGE.

February 1, 1927.

No. 6346 Civil.  
Caleb Tanner :  
vs : TRIAL CONTINUED  
Provo Reservoir Co., et-al :

This cause came on duly and regularly for further hearing before the Court sitting without a jury; Messrs. M. R. Straw and A. B. Morgan appearing as counsel for the plaintiff and Messrs. A. L. Booth, A. C. Hatch, A. J. Evans and M. M. Larson appearing as counsel for the defendants. Caleb Tanner, T. F. Wentz and Frank Salisbury were sworn and examined and testified in behalf of the plaintiff. Plaintiff exhibits 1 to 8 were admitted as evidence. Further hearing of this case will be and is hereby continued until February 2, 1927 at 10 A. M.

GEORGE P. PARKER, JUDGE.

February 2, 1927.

No. 6346 Civil.  
Caleb Tanner :  
vs : TRIAL CONTINUED  
Provo Reservoir Co., et-al :

This cause came on duly and regularly for further hearing before the Court sitting without a jury; Messrs. M. R. Straw and A. B. Morgan appearing as counsel for the plaintiff and Messrs. A. L. Booth, A. C. Hatch, A. J. Evans and M. M. Larson appearing as counsel for the defendants. R. J. Murdock was sworn and examined in behalf of the plaintiff. Further hearing of this case is hereby continued until February 3, 1927 at 10 A. M.

GEORGE P. PARKER, JUDGE.

February 3, 1927.

No. 6346 Civil.  
Caleb Tanner :  
vs : TRIAL CONTINUED  
Provo Reservoir Co., et-al :

This cause came on duly and regularly for hearing before the Court sitting without a jury; Messrs. M. R. Straw and A. B. Morgan appearing as counsel for the plaintiff and Messrs. A. L. Booth, A. C. Hatch, A. J. Evans and M. M. Larson appearing as counsel for the defendants. Caleb Tanner and T. F. Wentz were re-called and further testified in behalf of the plaintiff. Plaintiff rests. Further hearing of this case is hereby continued until February 4, 1927 at 10 A. M.

GEORGE P. PARKER, JUDGE.

February 4, 1927.

No. 6346 Civil.  
Caleb Tanner :  
vs : TRIAL CONTINUED  
Provo Reservoir Co., et-al :

This cause came on duly and regularly for further hearing before the Court sitting without a jury; Messrs. A. B. Morgan and M. R. Straw appearing as counsel for the plaintiff and Messrs. A. L. Booth, A. C. Hatch, A. J. Evans and M. M. Larson appearing as counsel for the defendants. R. J. Murdock was re-called and examined further in behalf of the plaintiff and was later examined in behalf of the defendants. Exhibits C to U were admitted in evidence and S, T and U were withdrawn. Further hearing on this case is hereby continued until February 7, 1927 at 10 A. M.

GEORGE P. PARKER, JUDGE.

- - - - -

February 7, 1927.

No. 6346 Civil.  
Caleb Tanner :  
vs : TRIAL CONTINUED  
Provo Reservoir Co, et-al :

This cause came on duly and regularly for further hearing before the Court sitting without a jury; Messrs. M. R. Straw and A. B. Morgan appearing as counsel for the plaintiff and Messrs. A. L. Booth A. C. Hatch, A. J. Evans and M. M. Larson appearing as counsel for the defendants. Defendants offered exhibits V to A12 inclusive. T. F. Wentz heretofore sworn was examined in behalf of the defendants. Further hearing of this case is hereby continued until February 8, 1927 at 10 A. M.

GEORGE P. PARKER, JUDGE

February 8, 1927.

No. 6346 Civil.  
Caleb Tanner :  
vs : TRIAL CONTINUED  
Provo Reservoir Co., et-al :

This cause came on duly and regularly for further hearing before the Court sitting without a jury; Messrs. M. R. Straw and A. B. Morgan appearing as counsel for the plaintiff and Messrs. A. L. Booth, A. C. Hatch, A. J. Evans and M. M. Larson appearing as counsel for the defendants. R. J. Murdock, heretofore sworn was examined in behalf of the defendants, and Norman B. Salomon, Elmer A. Jacobs, Ray Wentz and W. J. Cordner were duly sworn and examined in behalf of the defendants. Defendants exhibits A13 to A 14 were admitted in evidence. Further hearing of this case is hereby continued until February 9, 1927 at 10 A.M.

GEORGE P. PARKER, JUDGE.

February 9, 1927.

No. 6346 Civil.  
Caleb Tanner :  
vs : TRIAL CONTINUED  
Provo Reservoir Co., et-al :

This cause came on duly and regularly for further hearing before the Court sitting without a jury; Messrs. M. R. Straw and A. B. Morgan appearing as counsel for the plaintiff and Messrs. A. L. Booth, A. C. Hatch, A. J. Evans and M. M. Larson appearing as counsel for the defendants. W. J. Cordner was further examined by counsel for the defendants, and J. W. Gillman, L. J. Salisbury and Elmer A. Jacobs were duly sworn and examined in behalf of the defendants. Further hearing of this case is hereby continued until February 10, 1927 at 10 A. M.

GEORGE P. PARKER, JUDGE.

February 10, 1927.

No. 6346 Civil.  
Caleb Tanner :  
vs : TRIAL CONTINUED  
Provo Reservoir Co., et-al :

This cause came on duly and regularly for further hearing before the Court sitting without a jury; Messrs. A. B. Morgan and M. R. Straw appearing as counsel for the plaintiff and Messrs. A. C. Hatch, A. L. Booth, A. J. Evans and M. M. Larson appearing as counsel for the defendants. E. A. Jacobs and R. J. Murdock were re-called and further testified in behalf of the defendants. Defendants exhibits A15 and A16 were admitted in evidence. Further hearing of this case is hereby continued until February 11, 1927 at 10 A. M.

GEORGE P. PARKER, JUDGE.

February 11, 1927.

No. 6346 Civil.  
Caleb Tanner :  
vs : TRIAL CONTINUED  
Provo Reservoir Co., et-al :

This cause came on duly and regularly for further hearing before the Court sitting without a jury; Messrs. M. R. Straw and A. B. Morgan appearing as counsel for the plaintiff and Messrs. A. L. Booth, A. J. Evans, A. C. Hatch and M. M. Larson appearing as counsel for the defendants. R. J. Murdock further testified in behalf of the defendants and J. C. Straton was duly sworn and examined in behalf of the defendants. Defendants exhibit A17 and plaintiff's exhibit 12 were admitted in evidence. Further hearing of this case is hereby continued until February 23, 1927 at 10 A. M.

GEORGE P. PARKER, JUDGE.

February 23, 1927.

No. 6346 Civil.  
Caleb Tanner :  
vs : TRIAL CONTINUED  
Provo Reservoir Co, et-al :

This cause came on duly and regularly for further hearing before the Court sitting without a jury; Messrs. M. R. Straw and A. B. Morgan appearing as counsel for plaintiff and Messrs. A. L. Booth, A. C. Hatch, A. J. Evans and M. M. Larson appearing as counsel for the defendants. E. A. Jacob was re-called and testified further in behalf of the defendants and R. J. Murdock was duly sworn and testified in behalf of the defendants. Exhibits A18 to A22 were admitted in evidence by the defendants and Exhibits 14-15 and 16 were admitted in evidence by the plaintiff. Jens C. Jensen was duly sworn and examined in behalf of the plaintiff in rebuttal. Further hearing of this cause is hereby continued until February 24, 1927 at 10 A. M.

GEORGE P. PARKER, JUDGE.

February 24, 1927.

No. 6346 Civil.  
Caleb Tanner :  
vs : TRIAL CONTINUED  
Provo Reservoir Co, et-al :

This cause came on duly and regularly for further hearing before the Court sitting without a jury; Messrs. A. B. Morgan and M. R. Straw appearing as counsel for the plaintiff and Messrs. A. L. Booth, A. C. Hatch, A. J. Evans and M. M. Larson appearing as counsel for the defendants. Jens C. Jensen, Caleb Tanner and R. J. Murdock were recalled and further testified in behalf of the plaintiff in re-buttal and R. J. Murdock and Frank Wentz were examined in behalf of the defendants in re-buttal. Further hearing of this cause will be and is hereby continued until February 25, 1927 at 10 A. M.

GEORGE P. PARKER, JUDGE.

February 25, 1927.

No. 6346 Civil.  
Caleb Tanner :  
vs : TRAIL - TAKEN UNDER ADVISEMENT  
Provo Reservoir Co., et-al :

This cause came on duly and regularly for further hearing before the Court sitting without a jury; Messrs. M. R. Straw and A. B. Morgan appearing as counsel for the plaintiff, and Messrs. A. L. Booth, A. C. Hatch A. J. Evans and M. M. Larson appearing as counsel for the defendants. After hearing the arguments of counsel this matter was taken under advisement by the Court.

GEORGE P. PARKER, JUDGE.

September 24, 1927.

No. 6346 Civil.  
Caleb Tanner :  
vs : HEARING CONTINUED  
Provo Reservoir Co., et-al :

Hearing on the settlement of findings is hereby continued until October 1, 1927 at 10 A. M. on stipulation of counsel.

GEORGE P. PARKER, JUDGE.

October 1, 1927.

No. 6346 Civil.  
Caleb Tanner :  
vs : HEARING CONTINUED  
Provo Reservoir Co., et-al :

It is ordered that yhe hearing on the settlement of the findings be continued to Saturday, October 8, 1927 at 10 A. M. unless same can be heard before that time at a time convenient to the Court and counsel.

GEORGE P. PARKER, JUDGE.

October 8, 1927.

No. 6346 Civil.  
Caleb Tanner :  
vs : HEARING CONTINUED  
Provo Reservoir Co., et-al :

Hearing of the arguments of counsel on the settlement of the findings of fact filed herein is hereby continued until November 13, 1927 at 10 A. M. on stipulation of counsel.

GEORGE P. PARKER, JUDGE

October 13, 1927.

No. 6346 Civil.  
Caleb Tanner :  
vs : SETTLEMENT OF FINDINGS - TAKEN UNDER  
Provo Reservoir Co., et-al : ADVISEMENT

This cause came on duly and regularly for hearing before the Court upon the settlement of the findings of fact filed herein; Messrs. A. B. Morgan and M. R. Straw appearing as counsel for the plaintiff and A. L. Booth, Esq., appearing as counsel for the defendants. After hearing the arguments of counsel on said matter said findings were taken under advisement by the Court.

GEORGE P. PARKER, JUDGE.

December 31, 1927.

No. 6346 Civil.  
Caleb Tanner : MOTION FOR NEW TRIAL AND  
vs :  
Provo Reservoir Co., et-al : MOTION TO AMEND JUDGMENT

This cause came on duly and regularly for hearing before the Court upon the plaintiff's motion for a new trial and motion to amend the judgment herein; M. B. Straw, Esq., appearing as counsel for the plaintiff and Messrs. A. L. Booth and A. C. Hatch appearing as counsel for

the defendants. The Court after having heard the arguments of counsel and being fully advised in the premises orders that the judgment heretofore made be amended to require each party to pay their own costs; that the motion for a new trial be and the same is hereby denied and that the plaintiff be, and he is given 90 days in addition to the statutory time in which to prepare and file his bill of exceptions.

GEORGE P. PARKER, JUDGE

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July 11, 1928.

No. 6346 Civil.  
Caleb Tanner :  
vs : ORDER SETTING TIME  
Provo Reservoir Co., et-al :

The plaintiff in the said cause having filed with the Clerk of this Court his proposed Bill of Exceptions and said Clerk having delivered the same to the Judge of the Court, it is ordered that Tuesday the 17th day of July 1928 at 2 o'clock P. M. of said day at the Court room of the above entitled Court in Provo City, Utah be fixed as the time and place for settling the said Bill of exceptions and it is ordered that the Clerk of the Court give notice thereof to the attorneys of record for the parties, or one of them, herein, and to any defendant who has not appeared herein by attorney, said notice to be given by mailing to such attorneys or parties or personally.

GEORGE P. PARKER, JUDGE.

July 17, 1928.

No. 6346 Civil.  
Caleb Tanner :  
vs : BILL OF EXCEPTIONS SETTLED  
Provo Reservoir Co., et-al :

This cause came on duly and regularly for hearing before the Court this being the time set for the settlement of the bill of exceptions herein; M. R. Straw, Esq., appearing as counsel for the plaintiff and Messrs. A. C. Hatch, A. L. Booth and A. J. Evans appearing as counsel for the defendants. It is stipulated by counsel that the proposed bill of exceptions as presented by counsel for the plaintiff be accepted by the Court and on said stipulation it is ordered that the proposed bill of exceptions be, and the same are hereby approved.

GEORGE P. PARKER, JUDGE.

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

CALEB TANNER,

Plaintiff.

-vs-

PROVO RESERVOIR COMPANY,  
a corporation, PROVO  
RESERVOIR WATER USERS  
COMPANY, a corporation,  
BLUE CLIFF CANAL COMPANY, a  
corporation, NORTH UNION  
IRRIGATION COMPANY, a cor-  
poration, PROVO BENCH CANAL  
& IRRIGATION COMPANY, a cor-  
poration, T. F. WENTZ as  
Commissioner of Provo River,  
Defendants.

CLERK'S CERTIFICATE

STATE OF UTAH            )  
                              :        SS  
COUNTY OF UTAH        )

I, E. B. DASTRUP, County Clerk and Ex-Officio Clerk of  
the District Court of the Fourth Judicial District of the State  
of Utah, in and for Utah County, do hereby certify that the above  
and foregoing is a full, true and correct copy of the original:

COMPLAINT,

SUMMONS AND SHERRIF'S RETURN

DEMURRER OF NORTH UNION IRRIGATION COMPANY AND

PROVO BENCH CANAL AND IRRIGATION COMPANY

NOTICE

DEMURRER TO COMPLAINT

DEMURRER TO COMPLAINT

DEMURRER TO COMPLAINT

ORDER EXTENDING TIME

ORDER EXTENDING TIME

ORDER OVERRULING DEMURRERS

ANSWER  
NOTICE  
ORDER EXTENDING TIME TO ANSWER  
ANSWER OF PROVO RESERVOIR WATER USERS COMPANY  
ANSWER OF PROVO RESERVOIR COMPANY AND BLUE CLIFF  
CANAL COMPANY  
REPLY TO ANSWER OF DEFENDANT PROVO RESERVOIR WATER  
USERS COMPANY  
REPLY TO ANSWER OF PROVO RESERVOIR COMPANY AND  
BLUE CLIFF CANAL COMPANY  
MEMORANDUM OF DECISION  
NOTICE  
FINDINGS OF FACT AND CONCLUSIONS OF LAW  
DECREE  
JUDGMENT ROLL CERTIFICATE  
MOTION TO AMEND JUDGMENT  
MEMORANDUM OF COSTS AND DISBURSEMENTS  
PROOF OF SERVICE  
NOTICE OF MOTION FOR NEW TRIAL  
PROOF OF SERVICE  
ORDER EXTENDING TIME FOR FILING BILL OF EXCEPTIONS  
ORDER EXTENDING TIME FOR FILING BILL OF EXCEPTIONS  
ORDER  
COPY OF COURT MINUTE WITH CLERK'S CERTIFICATE  
JUDGMENT ROLL CERTIFICATE  
NOTICE OF APPEAL  
NOTICE  
ORDER  
COPY OF COURT MINUTES  
EXHIBITS, and  
TRANSCRIPT, in the above entitled action, and that they

constitute the transcript and record on appeal and are transmitted to the Supreme Court of the State of Utah, pursuant to such appeal and the order of this Court.

I further certify that a good and sufficient undertaking on appeal in the sum of THREE HUNDRED DOLLARS has been duly filed in my office in said matter.

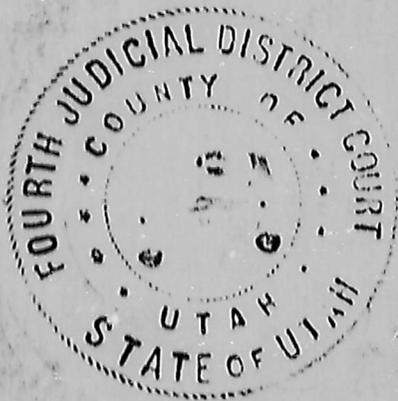
IN WITNESS WHEREOF, I have heteunto set my hand and affixed the official seal of said Court at my office in Provo

Utah County, Utah this 19th day of

July A. D. 1928.

E. B. DASTRUP, CLERK.

By *Mark Salisbury*  
Deputy Clerk.





IN THE SUPREME COURT OF THE STATE OF UTAH

---

Regular February Term.

March 6, 1930.

---

Caleb Tanner,

Appellant,

v.

Provo Reservoir  
Company, et al.,

Respondents.

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REMITTITUR

This cause having been heretofore argued and submitted and the court being sufficiently advised in the premises, it is now ordered, adjudged, and decreed, that the judgment of the district court herein be, and the same is, affirmed with costs.

---

Respondent's Costs.

Remittitur     \$1.50

United States of America



State of Utah } ss.  
County of Salt Lake.

L. M. CUMMINGS,

I, ~~XXXXXXXXXXXX~~ Clerk of the Supreme Court of the State of Utah, do hereby certify that

the foregoing is a full, true and correct copy of the judgment rendered.....

.....  
.....  
.....  
in the foregoing entitled action, now of record and on file in my office.

In Testimony Whereof, I have hereto set my hand and affixed the seal of

said Supreme Court, this the 27th.....

day of June..... 1930.....

*L. M. Cummings*  
Clerk, Supreme Court.

By.....  
Deputy Clerk.



6346

IN DIST. COURT  
UTAH CO., UTAH

\*FILED\*

JUL 17 1930

*J. E. Gustafson*  
*Frank Salisbury*

RECORD 12

PAGE 583

# IN THE DISTRICT COURT

## in and for Utah County, State of Utah

CALEB TANNER,

NO. 6346 Civil.

Plaintiff

Memorandum of Costs and  
Disbursements

vs.

PROVO RESERVOIR COMPANY, a corporation, et. al.

Defendant

**SHERIFF'S FEES**

**DISBURSEMENTS**

Paper Served	Person Served	Where Served	Miles actually traveled in making service	\$	Cts.

**CLERKS FEES**

Filing Pleadings

Reporter's Fee

Jury Fee

**WITNESS FEES**

Name of Witness	Place of Residence	Where Subpoenaed or requested	Distance from residence to place of trial	No. of Miles actually traveled in obedience to subpoena or Request	No. of Days actually attending court	\$	Cts.
R. J. Murdock	Provo, Utah	Provo, Utah.	1 mi.	1 mi.	4	\$	12.20
T. F. Wentz	Provo, Utah	Provo.	1 mi.	1 mi.	2		6.20
Mormon V. Selman	Provo, Utah	Provo.	1 mi.	1 mi.	1		3.80
Ray V. Wentz	Orem, Utah	Orem, Utah	4 mi.	4 mi.	1		3.80
W. J. Cordner	Orem, Utah	Orem, Utah	5 mi.	5 mi.	2		7.00
J. W. Gillman	Orem, Utah	Orem, Utah	8 mi.	8 mi.	1		4.60
L. J. Salisbury	Orem, Utah	Orem, Utah	5 mi.	5 mi.	1		4.00
E. A. Jacob	Provo, Utah	Provo.	1 mi.	1 mi.	3		9.20
John H. Stratton	Provo Bench	Provo Bench	3 mi.	3 mi.	1		3.60
J. R. Murdock	Salt Lake City	Salt Lake City	45 mi.	45 mi.	1		12.00
<b>TOTAL</b>						\$	65.80

STATE OF UTAH,  
County of Utah,

ss.

R. J. Murdock

being duly sworn, says that he is is the ~~Secretary~~ Secretary for the Provo Reservoir Co., the plaintiff in the above-entitled action, and, as such, is better informed relative to the above costs and disbursements than the said Provo Reservoir Company, the plaintiff. That the items in the memorandum contained are correct to the best of affiant's knowledge and belief, and that the said disbursements have been necessarily incurred in said action.

Subscribed and sworn to before me this 9th day of December A. D. 1927

My Com. Exp. 1-15-30.  
Res. Provo, Utah.

Notary Public.

IN THE DISTRICT COURT  
in and for Utah County, State of Utah

Copy of the foregoing Memorandum of Costs and  
Disbursements received this 10<sup>th</sup> day of Dec.  
A. D. 1927.

  
\_\_\_\_\_  
Attorneys for Plaintiff.

Deputy

Clerk

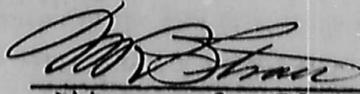
DEC 10 1927

IN DIST. COURT  
UTAH CO., UTAH  
\* F. H. D. \*

11326



Copy of the foregoing Memorandum of Costs and  
Disbursements received this 17th day of July,  
A. D. 1930.



Attorney for Plaintiff.

6346  
IN DIST. COURT  
UTAH CO., UTAH  
\*FILED\*

JUL 17 1930

*E. B. [unclear]*  
*Frank [unclear]*

IN THE DISTRICT COURT

# IN THE DISTRICT COURT

in and for Utah County, State of Utah

No. 4765 Supreme Court  
No. 6346 District Court

CALEB TANNER,

Plaintiff

vs.

PROVO RESERVOIR COMPANY,

PROVO RESERVOIR WATER USERS CO.,  
ET AL

Defendants

## Memorandum of Costs and Disbursements ON APPEAL

Provo Reservoir Water Users Co.

### DISBURSEMENTS

#### SHERIFF'S FEES

Paper Served	Person Served	Where Served	Miles actually traveled in making service	\$	Cts.

#### CLERK'S FEES

Filing Pleadings	
Reporter's Fee	
Jury Fee	
Printing Brief, 35 pages \$1.00	35 00

#### WITNESS FEES

Name of Witness	Place of Residence	Where Subpoenaed	Distance from residence to place of trial	No. of miles actually traveled in obedience to Subpoena	No. of days actually attending court

STATE OF UTAH,

County of Utah

TOTAL

\$ 35 00

R. J. Murdock

being duly sworn, says that he is ~~secretary~~ <sup>secretary</sup> for the

Provo Reservoir Co., one of the defend- ~~ants~~ <sup>dants</sup> in the above-entitled action, and, as such, is better informed relative to the costs and disbursements than the said Provo Reservoir Co., one of the defendants.

That the contents in the memorandum contained are correct to the best of affiant's knowledge and belief, and that the said disbursements have been necessarily incurred in said action.



Subscribed and sworn to before me this 17th day of July, A. D. 1930

My Commission Expires April 26, 1931

Residing at Provo, Utah

*R. J. Murdock*  
*Alfred Powell*

Notary Public

IN THE DISTRICT COURT  
OF THE STATE OF UTAH  
In and for Utah County, State of Utah

Copy of the foregoing Memorandum of Costs and  
Disbursements received this 17th day of July,  
A. D. 1930.

  
Attorney for plaintiff.

*Frank Johnson*  
*E. B. Johnson*  
JUL 17 1930  
\*FBI, FBI\*  
UTAH CO., UTAH  
IN DIST COURT  
6346