

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE
OF NEVADA, IN AND FOR THE COUNTY OF DOUGLAS.

IN THE MATTER OF THE DETERMINATION)
OF THE RELATIVE RIGHTS TO THE WATERS :
OF BARBER CREEK AND ITS TRIBUTARIES)
IN DOUGLAS COUNTY, NEVADA)

EUGENE SCOSSA, CONTESTANT)

VS.)

CLARISSA CHURCH AND BARBER ESTATE)

CONTESTEES.)

D E C R E E

*See order of
deter. in
01349-01350*

This cause was instituted upon the petition of Clarissa Church acting for herself, and as guardian of Benjamin Barber, an insane person, and George G. Russell as executor of the estate of Lyman Barber, deceased, filed in the office of the State Engineer of the State of Nevada, on September 21, 1914, for the determination of the relative rights to the waters of Barber Creek and its tributaries.

On September 24, 1914, an order was duly issued by the State Engineer for the determination of the relative rights to the waters of said Barber Creek and its tributaries, and upon the submission of the abstract of proofs to the claimants, contests were entered, as follows:

1st. Clarissa Church, Benjamin Barber, an insane person by Clarissa Church, Guardian, and the Estate of Lyman Barber, deceased by George G. Russell, Administrator, Contestants, vs: Eugene Scossa, Contestee; and

2nd. Eugene Scossa, Contestant, vs. Clarissa Church, Benjamin Barber, an insane person, and estate of Lyman Barber, deceased, contestees.

By stipulation of counsel for the respective parties, both cases were tried and submitted as one, and on the same evidence.

For convenience the State Engineer referred to Eugene Scossa as contenstant, and Clarissa Church, Benjamin Barber, an insane

person, and the Estate of Lyman Barber, deceased, as contestees, and the same rule will follow here.

Alfred Chartz appeared as attorney for contestant, and George Springmeyer as attorney for contestees.

The cases were duly brought up for trial before the State Engineer, on February 17, 1915, and continued from day to day, excepting frequent recesses, to April 3rd 1915.

Witnesses testified, and maps, plats and other documentary evidence introduced, and all duly certified by the State Engineer, to the District Court of the First Judicial District of the State of Nevada, in and for the County of Douglas, as provided by law, on or about the 6th day of November 1915.

Within the time allowed by law after the filing of the order of determination by the State Engineer, and on the 29th day of November, 1915, contestant filed his exceptions thereto, and the same heard by the Court on April 22, 1916, and an order made and entered referring the matter back to the State Engineer to take further testimony and on May 20, 1916, additional evidence was taken, as shown by the supplemental order of determination, and the matter was again argued by counsel for the respective parties, and submitted, and on or about June 1st. 1916, the State Engineer filed in said Court his supplemental order of determination, and subsequently said matter again came on for hearing before said Court, and duly argued by counsel for the respective parties and submitted to the Court for its decision, and on the 29th day of January 1919, the said Court rendered its decision in writing, confirming, approving and affirming the determination of the State Engineer as amended and modified by the supplemental order of determination and ordering that each party pay his own costs, in said matter.

On the 12 day of March, 1919, and within the time allowed by law, contestant filed and served his notice of appeal to the

supreme Court of the State of Nevada, and perfected his said appeal in accordance with law, and contestees moved to dismiss said appeal on various grounds, which said motion was overruled, and the matter being finally submitted, said Supreme Court on March 4th 1920, made and entered its order therein, as follows:

"The order of this Court will be that the record in this case be sent back to the Clerk of the District Court of Douglas County, and the Court directed to reopen the case for the purpose only of making findings and entering a decree."

The Court having entered its Findings of Fact and Conclusions of law, in writing herein, in pursuance of said Findings of Fact and Conclusions of Law, and the evidence submitted and in conformity therewith, it is Ordered, Adjudged and Decreed, as follows, to wit:

That contestees herein, Clarissa Church, Benjamin Barber, an insane person, and the Estate of Lyman Barber, deceased, their predecessors in interest and grantors, did in the year 1852, appropriate the waters of Barber Creek and its tributaries, namely: Spring "A", Spring "Bench" and Jobs Canyon Creek, as described in the findings herein, and ever since said time have and still are using said water for domestic, stock watering, power, and irrigation purposes, irrigating the lands hereinafter described; and that the contestant herein, Eugene Scossa, his predecessors, in interest and grantors, did in the year 1886 locate and appropriate certain of the waters of Jobs Canyon Creek, a tributary of said Barber Creek, subject to the prior appropriation and rights of the contestees herein, for the irrigation of the lands hereinafter described; and the amount of water so appropriated as aforesaid, the date of appropriation, fixing priorities of the lands irrigated by each of them, and for the irrigation of which lands the said waters were appropriated, are set forth in this decree as follows to-wit:

Estate of Lyman Barber, Deceased, Benjamin Barber, an insane person, and Clarissa Church; Priority 1852; 3.0436 cubic feet of water per second or 1102.81 acre feet of water per irrigation season of six months from April 1st. to October 1st. of each year, for the irrigation of 202.89 acres, for the following described lands, situate in Township 12 North, Range 19 East, M. D. M., in Douglas County, Nevada, to wit:

X 5. acres in the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 14
15.92 acres in the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 14;
X .50 acres in the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 14;
29.35 acres in the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 14;
> 29.24 acres in the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 14;
> 12.98 acres in the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 14;
5. acres in the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 23;
38.50 acres in the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 23;
8.80 acres in the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 23;
38. acres in the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 23;
2.20 acres in the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 23;
2.20 acres in the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 23;
4.27 acres in the E $\frac{1}{2}$ of the NE $\frac{1}{4}$ of Section 23;
9.30 acres in the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 23;
1.63 acres in the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 23;

202.89 +

Provided that 62.37 acres of swampy land described as: .67

acres in the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$, .08 acres in the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 14; 27.81 acres in the N.W $\frac{1}{4}$ of the NE $\frac{1}{4}$, and 21.83 acres in the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$, 1.05 acres in the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$, 9.30 acres in the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$, 1.63 acres in the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 23. TP. 12 N., R. 19 E. M. D. M., shall have water only when necessary. And this Court hereby adjudges and Decrees the said water and waters with all use thereof to the said Clarissa Church, Benjamin Barber, an insane person, and the Estate of Lyman Barber, Deceased, with a priority of use dated 1852, and the right to use the same at all times as herein stated.

Eugene Scossa; Priority, 1886, 0.5 cubic feet of water per second or 181.17 acre feet per irrigating season of six months, from April 1st. to October 1st. of each year, for the irrigation of 33.04 acres of land situate in Township 12 N., R. 19 E., M. D. M.

0.015 c.f.s per acre

in the County of Douglas, State of Nevada, and described as follows, to-wit:

12.94 acres in the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ and
14.10 acres in the SE $\frac{1}{4}$ of SW $\frac{1}{4}$ and
6. acres in the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 23

Provided however that the 6 acres of swampy land in the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 23, T. 12nN. R. 19 E. M. D. M. shall have water only when necessary.

And this court hereby adjudges and Decrees the said amount of water and waters with all use thereof to said Eugene Scossa, subject to prior appropriations and uses as herein decreed; said Scossa right has a priority of use dated 1886. Said Scossa to have the right of use of said water subject to prior rights and uses as herein set forth.

11.

That the estate of Lyman Barber, deceased, Benjamin Barber, an insane person, and Clarissa Church, are further decreed 2 cubic feet of water per second in said Barber Creek and its tributaries, throughout the entire year, when actually needed, for domestic stock watering and power purposes.

111.

Each and every party to this suit, and their and each of their servants, agents and attorneys, and all persons claiming by through or under them, and their successors and assigns in and to the water rights ~~and~~ and lands herein described, be and each of them hereby is forever enjoined and restrained from claiming any rights in or to the waters of Barber Creek or/and its branches, its channels and tributaries, except the rights set up and specified in this decree, and each of the said parties is hereby enjoined and restrained from taking, diverting or interfering in any way with the waters of the said Barber Creek or its branches or tributaries so as to in any way, shape or manner interfere with the diversion, enjoyment and use of the waters of any of the other

parties to this suit as set forth in this decree, having due regard to the relative priorities therein set forth, and each of the said parties is hereby enjoined and restrained from ever taking diverting, flowing, carrying away or otherwise using or claiming any of the waters so allotted to them and either of them, in any manner or at any time so as to in any way interfere with the prior rights of other parties to this suit as the same are herein set forth, or until such parties having prior rights as herein specified have received upon their several lands the water so adjudged to them.

1V

That each party pay his own costs, herein incurred.

Dated this 27th day of May, 1921

Frank P. Langan, District Judge.

ENDORSEMENT: Reg. No. 255. In the First Judicial District Court of the State of Nevada, in and for the County of Douglas, in the Matter

of the Decree

Booklet no. 255

STATE OF NEVADA, }
County of Douglas } ss.

I, H. R. Jepsen County Clerk of Douglas County, State of Nevada and ex-officio Clerk of the District Court, First Judicial District of the State of Nevada, in and for said County of Douglas; said Court being a Court of Record, having a common law jurisdiction, and a Clerk and a Seal, do hereby certify that the foregoing is a full, true, and correct copy of the original Decree, In the Matter of the Determination of the Relative Rights etc. of Barber Creek and its tributaries, Eugene Scossa, Contentant vs. Clarissa Church and Barber Estate, Contestees which now remains on file in my office in Minden, in said county.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal at Minden, in said County and State, this 17 day of January, A. D., 19 29
H. R. Jepsen County Clerk.