

per Clear Creek files

Case 1020

STATE OF NEVADA, IN DISTRICT COURT, SECOND JUDICIAL DISTRICT
COUNTY OF ORMSBY.

*Clear
Creek*

FREDERICK DANGBERG, AND CHARLES SCHULTZ,
PLAINTIFFS,

VS.

HENRY ROSS, JAMES CUTHBERT, SAMUEL SMALL,
BENJ. F. SMALL, HENRY H. BENCE, PUB. ADM.
AND ADMINISTRATOR OF THE ESTATE OF WILL-
IAM WILFORD, DECEASED, MILTON MIFFORD,
JOHN NEILL, WILLIAM WINTERS, ALEXANDER
LUNAN A. B. DRIESBACH, AND D. K. WINTERS,
PARTNERS CONSTRUCTING A FLUME, JOHN P. ELL-
IOT, THOMAS ELLIOT, SIMAN DUBOIS, JOHN LOCK-
EY, WILLIAM FAIRBAIRN, AND M. C. SPOONER,
COMPOSING THE CLEAR CREEK FLUME COMPANY,
JAMES RIGBY, E. H. CANON, ROLAND VARNUM,
JOHN DOE (WHOSE REAL NAME IS JOHN WOOD) AND
RICHARD ROE.

DEFENDANTS.

A. C. Johnson

DECREE OF THE COURT.

Upon filing the several findings of fact and conclusions
of law, and the order of the Judge that a decree be entered in
accordance therewith: Now, all and singular the fact and the law
herein having been seen, heard and considered, pursuant to said
findings of fact and conclusions of law, and the various recit-
als therewith premised. It is ordered, adjudged and decreed by
the Court, That the Plaintiffs, Danberg and Schultz, are entit-
led during the irrigating season of each year, to-wit: from the
1st day of May, to and including the fifteenth day of September,
to a continual flow of the waters of the stream known and des-
cribed in the pleadings herein, as Clear Creek, to-wit: to the
extent of twenty eight one hundredths of the same, as a constant
fractional proportional part of the aggregate though varying
of said stream, down to, and upon the land and premises des-
cribed in the amended complaint of the said plaintiffs, - such
fractional part of said water to be allowed to flow or deli-

*Prison term
(S + Dangberg)*

ered that a sufficient amount thereof for the use of said plaintiffs for stock and domestic purposes shall not by any act of the parties defendant in this action be rendered unfit, or materially injured for such uses, -and the residue of said fractional part of said stream to be so allowed to flow or be delivered as not to be materially injured by act of any party defendant, irrigating purposes.

It is also decreed that as to said plaintiffs, they are during the remaining part of each year other than the above named irrigating season, entitled to a constant flow down to and upon their said premises of a sufficient flow of the waters of said stream for their use for stock and domestic purposes, -such water not to be by act of any party defendant rendered unfit or materially injured for said last named purposes.

In view of

2nd. In like manner it is decreed that as to the defendant, Henry Ross, he is entitled to the flow down to and upon the land and premises described in his answer herein, of that constant fractional proportion of that said stream, during said above named irrigating season, equal to nineteen one hundredths thereof, which amount of water must be allowed to flow or so ~~in~~ be delivered to him precisely as decreed in the case of the plaintiffs, to-wit; a sufficient part of the water not to be materially injured for stock and domestic purposes, and the residue not materially injured for the purpose of irrigation so far the act of any other party to this record is concerned. And also, in like manner as concerns the said defendant Ross, it is decreed that during the remainder of the year, other than said irrigating season, a sufficient amount of said nineteen hundredths of the stream shall be permitted to flow or be delivered to him not materially injured by act of any party to this record, for his stock and domestic purposes.

*Prison Farm
changed withal 1911*

3rd. In like manner, in all respects, without entering into further detail as in the decree concerning the defendant Ross, the defendant James Cuthbert, is entitled to three one hun-

dredths of the waters of said stream, for irrigation, stock and domestic purposes.

Some have markers

4th. In like manner, in all respects, the defendant Samuel Small, is entitled for said purposes to seven one hundredths of said stream.

Pro. Farm. county Hospital

5th. In like manner, in all respects, the defendant, the Administrator of the Estate of William Wilford, deceased, is entitled to seven one hundredths of said stream.

W. L. Smith

6th. In like manner, in all respects, the Defendant, A. W. Burrill, is entitled to sixteen one hundredths of said stream.

Schulz Bros. Wood

7th. In like manner, in all respects the defendant, John Neal is entitled to six one hundredths of the said stream.

Pro. W. L.

8th. In like manner, in all respects, the defendant, John Wood, is entitled to twenty-two one thousandths of said stream.

White Horse

9th. In like manner, in all respects, the defendant, Roland Varnum, is entitled to twenty-five one thousandths of said stream.

Chas. Fullstone

10th. In like manner, in all respects, the defendant, E. H. Canon, is entitled to twenty eight one thousandths of said stream.

11th. In like manner, in all respects, the defendant, William H. Winters, is entitled to sixty five one thousandths of said stream.

12th. That the defendants John Elliot, Thomas Elliot, Simon Dubois, John Lockey, William Fairbairn, and M. C. Spooner, and subordinately to them, the defendants A. B. Driesbach and D. K. Winters, are at all seasons of the year entitled to divert and use the waters of said stream, Clear Creek, and its tributaries for motive power in their flumes, as named in said pleadings, and the findings of fact herein, in such manner, and to such extent as shall, during the said irrigating season, to-wit, from the first day of May to and including the fifteenth day of September in each year, deprive neither the plaintiffs, Schulz and Danberg, or the defendants, Ross, Guthbert, Samuel Small

The Estate of William Wilford, deceased, A. W. Burrill, John Neal, Roland Varnum, E. H. Canon, John Wood, and W. H. Winters, of the constant flow to their several lands and premises as described in the pleadings of the full and respective fractional parts of said stream as herein decreed in their favor, (whatever may be the varying aggregate flow of said stream), a sufficient portion of which several fractional parts of said stream must not be wanted or otherwise necessary and proper act, in the use of the water for such motive power be materially injured for stock and domestic purposes, and the residue not so materially injured for irrigating purposes. And as to said defendants, Elliot, (John and James) Dubois, Lockey, Fairbairn and Spooner, and Driesbach and D. K. Winters, it is further decreed, that during the remainder of each year, otherwise than during said irrigating season, they are entitled to use in like manner as above decreed, the water of said Clear Creek and its tributaries and so divert the same, as that by no act of theirs a sufficient part of each said fractional part of said stream, not materially injured for stock and domestic purposes, shall be in any wise prevented from flowing to and upon the said premises of its owner as named in this decree. And as to said last named defendants it is further decreed that they are entitled to divide each said fractional part of said Creek as named in this decree, and so cause a sufficient part thereof to reach its owner, in its natural purity for stock and domestic purposes, and the residue kept separately, in a condition not changed from its natural condition to the extent of material injury for irrigating purposes, so to reach its owner during the said irrigating season.

15th. It is further adjudged and decreed that with reference to the convenience of access ^{of} all the parties to this action, that point in said stream called "Clear Creek" where the stream makes its way out of the mouth of the rocky Canon immediately above the premises of the defendant, A. W. Burrill, near to or at the place where the structure known as the measuring box now is, is the true

and equitable point for the measurement of the entire volume of said Clear Creek, whenever all the waters of said stream and its several tributaries shall be permitted to flow unobstructed and undiverted from the natural channel, and that a measurement and partition of the water of the aggregate stream at this point must serve to designate to the plaintiffs and each defendant who is designated in the body of this decree as entitled to the use of water for stock, domestic and irrigating purposes, the particular amount which they are respectively entitled to divert from the stream or its tributaries, the partition of the water, of course, to conform to this decree as to the several fractional parts.

14th: It is further decreed that to the extent named in this decree, and no further, all the parties to this action whose names have thus far been written within the body of this decree, are entitled to divert and use the waters of Clear Creek and its tributaries for the purposes indicated on the part of each.

15. It is further decreed that all the parties referred to in paragraph 14th above (except the plaintiffs) be and they are each, hereby, together with each and every their agents, servants, employees, and any and all persons acting under or through them, or in privity with them, or either of them perpetually enjoined and restrained from interfering with or obstructing the plaintiffs, Danberg and Schultz, in the use, appropriation or diversion upon their said premises of the full twenty eight one hundredths of the waters of said stream, otherwise than at the times and in the manner in this decree above pointed out.

And as to each of said defendants, the plaintiffs, and each of his co-defendants, their agents, employees, and attorneys, and all persons acting through or under them, or either of them, and all persons in privity with them of either of them, are hereby perpetually enjoined and restrained, in like manner from in any wise directly or indirectly interfering with, or

abstracting him in the use and appropriation for the purpose indicated, of that proportional part of the aggregate varying flow of said stream, to which, by the terms of this decree he is so entitled, otherwise than to the extent, at the times and in the manner in this decree above pointed out and limited.

And it is further ordered and adjudged that a copy of this decree be served upon each the plaintiffs and defendants who have been served with process in this action, at his own cost. It is further adjudged, the premises considered that the plaintiffs do have and recover of and from said last named defendants, to-wit: those who have been served with process herein, namely, Henry Ross, James Cuthbert, Samuel Small, Benj. F. Small, H. H. Bence, Administrator, &c, John Neill, William Winters, John Wood, A. B. Driesbach, D. K. Winters, John Elliot, Thomas Elliot, James Dubois, John Lockey, William Fairbairn, M. C. Spooner, E. A. Canon, and Roland Varum, the sum of one cent damages, and that said plaintiffs have judgment hereby against said last named defendants for their costs herein expended and incurred, to-wit. Seven hundred & seventy nine 35/100 dollars, gold coin.

C. N. Harris,

District Judge.

Received Carson City, July 22d, 1872, from T. J. Edwards, Clerk, the sum of four hundred and four dollars, in full satisfaction of the above judgment, exclusive of sheriffs and Clerk's fees, and including twenty dollars advanced to Clerk in said cause.

Robt. M. Clarke,

Atty. for Pliffs.

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STATE OF NEVADA, } ss.
County of Ormsby. }

I, E. O. Patterson, County Clerk of Ormsby County, State of Nevada, and ex officio Clerk of the District Court, in and for the County of Ormsby, do hereby certify that the foregoing is a full, true and correct copy of the original DECREE in the cause entitled "FREDERICK DANGBERG AND CHARLES SCHULTZ, Plaintiff -vs- Henry Ross, et al, -Defendants,

which now remains on file and of record in Carson City, in said county.

In testimony whereof, I have hereunto set my hand and affixed my official Seal, at Carson City, in said County and State this 3rd day of AUGUST A. D. 1910

E. O. Patterson Clerk