

ASH CANYON
KINGS CANYON

"The above entitled cause having been duly tried in said Court and submitted to the Court for its decision and the Court having on a former day rendered its decision and filed its findings of facts and conclusions of Law in said cause.

Now in consideration of the Law, the evidence and said decision and findings of facts and conclusions of Law it is Ordered, Adjudged and Decreed:

First: That the Defendants John Bath and H.P. Phillips and Joshua Robinson are the owners by prior appropriation of 63/100 of the waters of King's Cañon Creek described in the Complaint in this action and are entitled to use the same upon the lands described in their respective Answers for agricultural and domestic purposes and that said 63/100 of said waters said Defts Bath and Robinson are entitled to have and use for said purposes 32/100 and no more and said Deft Phillips is entitled to have and use for said purposes 31/100 and no more.

Second: It is further Ordered Adjudged and Decreed that the Estate of James Walsh, Deceased, is the owner of one tenth (1/10) of the waters of said King's Cañon Creek by prior appropriation and use thereof on the land described in the Complaint in this action for agricultural and domestic purposes but such appropriation and use were subsequent to the appropriation by said Defts Bath, Robinson and Phillips and prior to any use or appropriation of any of the waters of said stream by any of the other Defts and Plaintiff as the Executrix of the last will of said James Walsh, Deceased is entitled to the use of said one tenth of said waters for said purposes upon said land described in said Complaint.

Third: It is further ordered adjudged and Decreed that the Defendant Carson Water Company is the owner of and entitled to the use of *(13 5/37)/100 of the waters of said King's Cañon Creek by appropriation subsequent to that of James Walsh and his predecessors in interest and grantors.

Fourth: It is further Ordered, Adjudged and Decreed that said Deft S.F. Thorne is the owner of **(5 4/37)/100 of the waters of said King's Cañon Creek by appropriation and use subsequent to that of James Walsh and his predecessors in interest and grantors.

Fifth: It is further Ordered Adjudged and Decreed that Defts John and Catherine Quill are the owners of *** (4 14/37)/100 of the waters of King's Cañon Creek by appropriation and use subsequent to Defts James Walsh.

Sixth: It is further Ordered Adjudged and Decreed that the Estate of Mary A. Kennedy Deceased is the owner of **** (4 13/37)/100 of the waters of said King's Cañon Creek by appropriation subsequent to that of James Walsh and that the Deft C.W. Friend as Administratrix of her Estate is entitled to the use of the same upon land belonging to her said Estate.

Seventh: It is further Ordered Adjudged and Decreed that the Deft S.A. Nevers is entitled to the use of one half of the surplus of said waters of said King's Cañon Creek for the purposes of irrigating the land described in his Answer after said Pltff and said Defts Bath, Robinson, Phillips, John & Catherine Quill, Thorne, C.W. Friend Administrator of the Estate of Mary A. Kennedy Deceased and Carson Water Company have used the waters to said stream to the extent above adjudged and decreed and said Plaintiff is entitled to the other half of such surplus in addition to said one tenth above mentioned.

* (13 5/37)/100 ≈ 3.135% ** (5 4/37)/100 ≈ 5.108% *** (4 14/37)/100 ≈ 4.378% **** (4 13/37)/100 ≈ 4.351%

Eighth: It is further Ordered Adjudged and Decreed that said Defts James Authors, John and Catherine Quill, S.F. Thorne, C.W. Friend as Administrator of the Estate of Mary A. Kennedy Deceased and Carson Water Company a corporation, Joshua Robinson, U.P. Phillips, John Bath, S.A. Nevers and C.D. Sweeney and each and all of them, their and each of their Servants, Agents, Attorneys and Grantees be and they are hereby forever enjoined and restrained from preventing or obstructing the flow of one-tenth of the waters of King's Cañon Creek or any part of said 1/10 to the land described in the Complaint in this action which said land is hereby adjudged and decreed to belong to the estate of James Walsh Deceased.

It is further ordered and adjudged and Decreed that said Estate of James Walsh Deceased is the owner of the ditch from said King's Cañon Creek commencing at a point on said Creek near the dividing line between the land of said Phillips and the land of said Deft S.A. Nevers and running to the land belonging to the Estate of said James Walsh Deceased described in the Complaint in this action together with the right to divert and carry therein to the land last named said one-tenth of said waters of said King's Cañon Creek and the right to use the said waters on said land last named for the purposes of irrigation and household and domestic purposes and said Deft and each of them are hereby forever enjoined and restrained from interfering with, obstructing or impairing such rights and uses.

It is further ordered and adjudged that said Plaintiff have and receive of said Deft *Authors*, John & Catherine Quill, S.F. Thorne, C.W. Friend as Administrator of the Estate of Mary A. Kennedy Deceased and Carson Water Company and C. D. Sweeney the costs herein taxed at.

Ninth: it is further ordered adjudged and Decreed that as between the Plaintiff and Defendant James Savage the Deft James Savage owns and is entitled to use and enjoy a portion of the water right ,water _____ and water ditch decreed herein to the Plaintiff to wit: that portion mentioned and expressed and decreed to him in the Case of James S. Savage is William Welch by the Judgment of this Hon. Court made and entered April 26, 1869. Said Judgment is in the _____ and figures following to wit: In the District Court 2nd Judicial District _____ and for the County of Ormsby State of Nevada

James S. Savage, Plaintiff

Vs

William Welch, Defendant

Now on this 26th day of April AD 1869 being a regular term day of said Court and by and with the consent and agreement of the said parties Plaintiff and Defendant the following stipulation is hereby ordered adjudged and decreed to be entered as the judgment of this court in the above ____ case.

1st The new ditch in process of completion by Savage (being the ditch in controversy) shall be filled up by him without unreasonable delay at his own expense.

2nd The old ditch that is today the main ditch now in use by Welch and connecting with the main stream shall be cleaned and also put in good repair without unreasonable delay Welch to pay two thirds of all expenses and Savage one third and to be kept in good repair Welch paying two thirds and Savage one third of all expenses. Either party shall have the right to enlarge or repair the ditch upon five days notice in which case the party noticed shall be liable to the payment of his just proportion of all reasonable expenses.

3rd Welch shall have the right to the use of all the water flowing in the ditch from Wednesday morning at 6 o'clock A.M. until Sunday evening at 6 o'clock P.M. of each and every week and Savage shall have the use of all the water flowing in the ditch from Sunday at 6 o'clock P.M. until Wednesday 6 o'clock A.M. of each week.

4th During the time which either party is entitled to the use of that water as above stipulated the party as entitled shall have the exclusive control of the Ditch and water and shall have the right to use the same on or off at the head at his pleasure.

5th When the party who has the right to use the water is not using and does not desire to use the same or any part thereof the other party herein may use the same until such time as the party entitled shall desire to use it.

6th That the costs of this suit and all proceedings herein shall be paid one half by each part.

Carson April 26 1869

HH Wright

Dist Judge"

Tenth

It is further ordered adjudged and Decreed that the Estate of James Walsh is the owner of the land described in the Complaint and that the Deft and the owners respectively of the land described in their perspective separate answers are on file herein.

Eleventh It is further ordered adjudged and Decreed that said Deft Phillips is the owner of a portion of the waters of Gregory Canon Creek to wit: sixteen one hundredths (16/100) thereof and of a usufruct in said water to the extent of Sixteen (16/100) one hundredths thereof and has the right to use said 16/100 of the water of Gregory's Cañon Creek for irrigation and domestic purposes and for any other purpose not prejudicial to the rights of the other parties herein decreed.

And the other Deft and each of them their agents servants and employees are hereby perpetually enjoined from using obstructing or diminishing or diverting the water of said Gregory Cañon Creek in any manner of way that will deprive Deft H.P.

Phillips of said 16/100 of the water of Gregory Cañon Creek or prevent his full free and perfect use of said water for the purposes herein specified.

Note: after deducting from the stream the amount of water hereinafter decreed to the defendant this Virginia & Truckee Railroad Company.

Twelfth. It is further ordered adjudged and decreed that the Deft Joshua Robinson and John Bath as tenants in common are the owners of a portion of the waters of Gregory's Cañon Creek to wit: sixteen one hundredths (16/100) thereof, after deducting from the stream the amount hereinafter decreed to the defendant this Virginia & Truckee Railroad Company, and of a usufruct in said water to the extent of said 16/100 thereof. And of the right to use the said 16/100 of the water of Gregory Cañon Creek for irrigation and domestic purposes and in any other purpose not prejudicial to the rights of other parties to this action herein decreed and the other Defts and each of their agents servants and employees are hereby perpetually enjoined from using obstructing diverting or diminishing the water of said Gregory's Cañon Creek in any manner or way that will deprive Deft Robinson and Bath of said 16/100 of the water of Gregory's Cañon Creek or prevent the full use and perfect use of said water for the purposes heretofore specified.

13th It is further ordered, adjudged and Decreed that the Deft S.A. Nevers is the owner of a portion of the water of Gregory Cañon Creek to wit: 16/100 thereof after deducting from the stream the amount hereinafter decreed to the defendant this Virginia & Truckee Railroad Company, and of a usufruct in said water to the extent of 16/100 thereof. And of the right to use said 16/100 of the water of said Gregory's Cañon Creek. In irrigation and domestic purposes and in any other purpose not prejudicial to the rights of the other parties to this action herein decreed. And the other Deft and each of them their and each of their agents, servants, and employees are hereby perpetually enjoined from 42 $\frac{2}{3}$ /100 of all the water flowing therein and to use the said 42 $\frac{2}{3}$ /100 of the water of said Gregory's Cañon Creek for the irrigation of the land described in the separate answer of said Deft Bath or any part or portion of said land and in domestic purposes and in any other purposes not prejudicial to the right of the other parties in this action herein specifically described.

And the other Defts, and each of them then their and each of their agents servants and employees are hereby perpetually enjoined from using, obstructing, diverting or diminishing the water of said Gregory Cañon Creek in any manner or way that will deprive the said Deft John Bath of said Forty two and two thirds hundredths (42 $\frac{2}{3}$ /100) of the water of Gregory's Cañon Creek (subject to the limitations before mentioned) or prevent his full free and perfect use and enjoyment thereof in the manner and using obstructing diverting or diminishing the water of said Gregory Cañon Creek in any manner or way that will deprive Deft Nevers of said 16/100 of the water of said Gregory's Cañon Creek.

14th It is further ordered adjudged and Decreed that the Deft John Bath is the owner of Forty two and two thirds hundredths *(42 $\frac{2}{3}$ /100) of the waters of Gregory's Cañon Creek and of a usufruct in said water to the extent of 42 $\frac{2}{3}$ /100 thereof measured at the point where said Deft Bath's ditches divert the water from said Gregory's Cañon Creek (said quantity and measurement to be made after withdrawing from said stream the quantity of water and are hereafter decreed to the Virginia and Truckee Railroad Company a corporation Deft herewith and subject to the right of said company)

*42 $\frac{2}{3}$ /100 \approx 42.667%

and is entitled to divert from the natural bed and channel of said Gregory's Cañon Creek (subject to the limitations aforesaid) for the purposes heretofore specified.

15th It is further ordered adjudged and decreed that the Deft John Gillson is the owner and is seized of the land described in the separate answer is the owner of a portion of the water of said Gregory's Cañon Creek to wit: four one hundredths ($4/100$) thereof (after withdrawing from said stream the quantity of water and are hereafter decreed to the Virginia and Truckee Rail Road Company) and is entitled to divert from the natural bed and channel of said Gregory's Cañon Creek (subject to the limitations aforesaid) $4/100$ of all the water flowing therein and to use the said quantity of water to wit: four one hundredths ($4/100$) of all the water naturally flowing in said Gregory's Cañon Creek (subject to the limitations before mentioned) for irrigation and domestic purposes and for any other purposes not prejudicial to the right of the other parties to this action herein specifically decreed.

And the other Deft and each of them their and each of their agents, servants, and employees are hereby perpetually enjoined from using, obstructing, diverting or diminishing the water of Gregory Cañon Creek in any manner or way that will deprive the Deft John Gillson of said $4/100$ of the water of Gregory's Cañon Creek (subject to the limitations aforesaid) or prevent his full free and perfect use and enjoyment thereof in the purposes herein decreed

16th It is further ordered adjudged and decreed that the Deft A.D. Treadway is the owner of $*(5\frac{1}{3}/100)$ five and one third one hundredths of the water of Gregory's Cañon Creek. (After withdrawing from said stream the quantity of water and use hereafter decreed to the Virginia and Truckee Rail Road Company) and is entitled to divert from the natural bed and channel of said Gregory's Cañon Creek (subject to the limitations aforesaid) $*5\frac{1}{3}/100$ of all the water therein flowing and to use said $5\frac{1}{3}/100$ of said Gregory's Cañon Creek (subject to the limitations aforesaid) for irrigation and domestic purposes and for any other purpose not prejudicial to the rights of the other parties to this action herein specifically decreed and the other Deft and each of them and their and each of their agents servants and employees are hereby perpetually enjoined from using obstructing, diverting or diminishing the water of said Gregory's Cañon Creek in any manner or way that will deprive the Deft A.D. Treadway of $5\frac{1}{3}/100$ of the water of said Gregory's Cañon Creek (subject to the limitations before mentioned) or prevent his full free and perfect use enjoyment thereof for the purposes herein aforesaid.

17th It is further Ordered Adjudged and Decreed that the Deft H.K. Clapp is the owner, subject to the rights of H.P. Phillips, Robinson and Bath, John Bath, S.A. Nevers, John Gillson and A.D. Treadway, and the right of the Virginia and Truckee Rail Road Company hereafter to be decreed and is entitled to have and use for the land described in her separate answer for irrigation and domestic purposes and for any other purposes not inconsistent with the rights of the other parties to this action as fixed in this Decree so much of the ___ waters of Gregory's Cañon Creek after use by the said named parties in the surplus waters remaining in said stream after their rights herein decreed

* $5\frac{1}{3}/100 \approx 5.333\%$

have been exhausted and their necessities supplied as will properly irrigate said land of Deft H.K. Clapp described in his answer and supply his domestic uses. And the Other Deft, and each of them, and their and each of their agents servants and employees are hereby perpetually enjoined from in any manner depriving the Deft H.K. Clapp of so much of the water or surplus water remaining in said Gregory's Cañon Creek as is required or may be necessary to properly irrigate said H.K. Clapp's said land and supply her with water for domestic purposes.

18th It is further ordered adjudged and Decreed that the Deft the Virginia and Truckee Railroad Company a corporation is the owner of the Rail Road and appurtenances mentioned in its separate answer and of the iron pipe and connections in said diverted near or commencing with said Railroad and the operation of the same, and to carry on the business in which it is engaged, is the owner of a portion of the water of said Gregory's Cañon Creek to wit: as much thereof as will flow into and through said iron pipe five inches in diameter at the upper end and three and a half inches in diameter at the lower end and as is necessary or required in the uses and purposes of said Company in its said business and has a _____ in said water of said stream to the extent and in the purpose aforesaid and is entitled to divert from the natural bed and channel of said Gregory's Cañon Creek at the point where its pipe now intersects the same a portion of the water to wit: as much thereof as will flow into and through its said iron pipe and as is required for each and all of the uses and purposes to which the water is present applied through and to means of said iron pipe and commencing and is entitled to use the said water as aforesaid each and all the parties to this action and whenever necessary for the use and purposes aforesaid .

19th Had all the other Defts and each of them their and each of their agents, servants and employees are hereby perpetually enjoined from using, obstructing diverting or diminishing the water of said Gregory's Cañon Creek in any manner or way that will deprive the Deft Virginia & Truckee RailRoad Company of so much thereof as will flow through its said iron pipe and as is required for its business and the uses aforesaid.

20th It is further ordered adjudged and Decreed that the Deft Authors, Catherine Quill, and E.D. Sweeney, are not the owners of any part or portion of the waters of said Kings Cañon Creek and said Gregory's Cañon Creek.

21st And said Defts and each of them their and each of their agents servants and employees are hereby perpetually enjoined from using, obstructing diverting or diminishing the waters of said streams or either of them in any manner or way that will deprive the other parties to this action or either of them of the waters _____ decreed to them herein or prevent their full free and perfect use of said waters.

21st It is further ordered adjudged and Decreed that the rights of all the parties to this action to the waters of Gregory's Cañon Creek and subject and _____ to the rights of the Defendants and Virginia & Truckee Railroad Company. It is further ordered adjudged that the defendants Phillips, Robinson, Bath, Nevers, Gillson, Treadway, Clapp and Virginia & Truckee RailRoad Company do have and recover from the plaintiffs their and each of their costs and disbursements their herein expended and taxed at \$

November 14, 1885

R.R.. Bigelow

District Judge of the Fourth Judicial District of Nevada, presiding in the District
Court of the Second Judicial District of said state.