

Brush Creek
and
Springs 298
298-1

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN
AND FOR BANNOCK COUNTY.

Wm. J. Bybee, Mark L. Johnson, Reuben
N. Kendall, Delina J. Kendall, Dunham
Van Leuven and W. H. Coffin,

Plaintiffs,

vs.

George Hancock, Charles W. Hancock,
Parley Bowman, George Bowman, O. O.
Crockett, George R. Crockett, J. A.
Bybee, Christiana Kingsford, Albert
Kingsford, Leonard Kingsford, Dora
Newbold, Willard Kingsford, Ida Kings-
ford, and Blanche Kingsford, Hazel
Kingsford, Leslie Kingsford, Emon
Kingsford, Della Kingsford, Harvey
Kingsford, Carlos Kingsford, Minors,
Defendants,

DECREE.

This cause came on regularly for trial on the 31st day of May, 1915, upon the complaint of plaintiffs and defendants' answer thereto, and the cross-complaint of defendants and the plaintiffs answer thereto, Budge & Barnard appearing as attorneys for plaintiffs, and W. H. Witty appearing as attorney for defendants and cross-complainants. The Court, having heard the evidence of the respective parties, except defendants, J. A. Bybee and George Bowman, who filed their disclaimer herein, and having heard the arguments of Counsel, and having made and filed herein findings of fact and conclusions of law, and being fully advised in the premises:

1.

29 0340 It is therefore ordered, adjudged and decreed that the plaintiffs were at the time of the commencement of this action, and now are the owners of the right to use for culinary and domestic purposes and for irrigation of lands hereinafter referred to, as a part and portion of the waters of that certain stream commonly known as Brush Creek, (otherwise known as Brush Creek ditch, or the new channel of Brush Creek), all of the waters of those

springs arising in the south-east quarter of the north-west quarter, and the south-west quarter of the north-west quarter of section twenty-three (23) township eleven (11) south range thirty-seven (37) E.B.M., and also all springs arising within the south half of the north-east quarter of the north-west quarter of said section twenty-three (23), save and except that certain spring situated near the north boundary line of the said land last described, which supplies the school-house and school grounds in School District number four (4), Bannock County, Idaho, the waters of said springs so awarded to the plaintiffs being hereby decreed to be tributaries of the said Brush Creek.

2.

It is further ordered, adjudged and decreed that the plaintiffs were at the time of the commencement of this action, and now are the owners of the right to use for culinary and domestic purposes and for the irrigation of lands hereinafter referred to, as a part and portion of the waters of Brush Creek (otherwise known as Brush Creek ditch or the new channel of Brush Creek), all of the waters of that certain spring situated upon the following described tract of land situated in Bannock County, Idaho, and belonging to and in the possession of defendant, George Hancock, to-wit: Commencing at a point four (4) ^{106'} rods north of the north-west corner of the north-east quarter of the north-west quarter of section twenty-three (23) township eleven (11) south range thirty-seven (37) E. B.M., and running thence south eleven (11) rods, ^{181.5'} thence east thirty-one (31) ^{511.5'} rods, ^{544.5'} thence south thirty-three (33) rods, ^{808.5'} thence east forth-nine (49) ^{726'} rods, ^{808.5'} thence north forty-four (44) rods, thence west eighty (80) rods to the place of beginning.

3.

It is further ordered adjudged and decreed that the plaintiffs were at the time of the commencement of this action, and now are, the owners of the right to use for culinary and domestic purposes and for the irrigation of lands hereinafter referred to as a part and portion of the waters of Brush Creek (otherwise known as Brush Creek ditch, or the new channel of Brush Creek) all the waters of that certain spring arising in the County Road which runs east and west along the north boundary line of said land of the said George Hancock, here-to-fore described, which said spring is the one located farthest south within the boundary line of the land hereinafter described in this paragraph; and that the plaintiffs were at the time of the commencement of this action, and now are, the owners of the right to use all of the waters of those certain four (4) springs situated farthest north within the land owned and occupied by the defendants, Kingsfords, to-wit: The south-east quarter of the south-west quarter of section fourteen (14) township eleven (11) south range thirty-seven (37) E.B.M., one of said springs being located within the old channel of Brush Creek near the north boundary line of said land, and the other three (3) of said springs being located in a southerly or south-easterly direction from said spring last described, and between said old channel of Brush Creek and a certain spring which arises near the east boundary line of the said Kingsford land.

4.

It is ordered adjudged and decreed that the right and title of the plaintiffs to the waters hereinbefore described for irrigation purposes are appurtenant to the lands of the said plaintiffs and their predecessors in interest, particularly described in that certain decree rendered on the 11th day of May, 1909, and filed and entered in this Court on the 12th day of May, 1909, in that

certain action wherein C. B. Hancock and J. A. Bybee were plaintiffs and Heber Bloxham and T. J. Bloxham as executors of the estate of John Bloxham, deceased, and W. H. Coffin and Fred Aldous were defendants, which said decree is recorded in Judgment Book 2 Page 399 records of this Court in Bannock County, State of Idaho, to which said Decree reference is hereby made for description of said lands.

5.

It is further adjudged and decreed that the defendants and each of them and all persons claiming or to claim by, through or under them be and they are hereby forever barred from any and all claim of right or title to the waters of said springs hereinbefore awarded to the plaintiffs, (all of which said springs are situated in Township eleven (11) south, Range thirty-seven (37) east of Boise Meridian, in Bannock County, Idaho), and the right and title of the plaintiffs as hereinbefore adjudged and decreed are hereby established and quieted as against the said defendants and all persons claiming or to claim by, through or under them. It is further adjudged and decreed that the plaintiffs may at any time enter upon the lands and premises whereon said springs arise and are located for the purpose of removing obstructions from said springs and from the channels thereof in order to obtain the full and free flow of all water from said springs and through said channels and the said defendants and each of them, their agents, servants and employees are hereby perpetually restrained and enjoined from in any manner interfering with the plaintiffs' right to all of the waters of said springs, and from in any manner obstructing or interfering with the free flow of said waters down the natural channels of said springs to what is commonly known as Brush Creek (otherwise known as Brush Creek ditch or the new channel of Brush Creek), and from doing any act to prevent the plaintiff's ingress and egress upon and from said premises for the purpose of removing

obstructions from said springs and the channels thereof; provided, however, that the plaintiffs shall perform upon such premises only such acts as are essential to the preservation and enjoyment of their rights to said waters, as in this decree determined and specified.

6.

29 634) It is further ordered, adjudged and decreed that the defendants and cross-complainants Christiana Kingsford, Albert Kingsford, Leonard Kingsford, Dora Newbold, Willard Kingsford, Ida Kingsford, Blanche Kingsford, Hazel Kingsford, Leslie Kingsford, Emon Kingsford, Della Kingsford, Harvey Kingsford, Carlos Kingsford, were at the time of the commencement of this action and now are the owners of the right to use for irrigation of their lands, described in this decree, and for culinary and domestic purposes, all of the waters of that certain springs which arises upon and near the east boundary line of, said south-east quarter of the south-west quarter of Section fourteen (14) township eleven (11) south, range thirty-seven (37) E.B.M., and of all of the waters of that certain spring which is located in a south-westerly direction from the spring above described in this paragraph, and between said spring and County Road which runs east and west along the north boundary line of the land of George Hancock, hereinbefore described, and the right and title of said defendants, Christiana Kingsford, Dora Newbold, Willard Kingsford, Ida Kingsford, and Blanche Kingsford, Hazel Kingsford, Leslie Kingsford, Emon Kingsford, Della Kingsford, Harvey Kingsford, Carlos Kingsford, in and to the waters of said two (2) springs in this paragraph described, is hereby established and quieted against all claims of the plaintiffs or any or either of them and all persons claiming or to claim by, through or under them, and the said plaintiffs and each of them are hereby forever barred from any and all claim of right or title to the waters of said springs or either of them, and the said plaintiffs, their

agents, servants or employees are and each of them is perpetually restrained and enjoined from in any manner interfering with said defendants' use of all of the waters thereof.

7.

It is further ordered, adjudged and decreed that the plaintiffs do have and recover all and from the defendants their costs herein decreed taxed at _____ dollars.

Dated this 9th day of June, 1915.

F. J. Cowen,
District Judge.

Book 3 of Judgments, page 166.

STATE OF IDAHO,)
) ss/
County of Bannock,)

I, R. C. FARLEY, Clerk of the District Court, Ex-Officio Auditor and Recorder in and for said County and State, hereby certify that the above and foregoing is a full, true and correct copy of the original Decree in the case of Wm. J. Bybee, et al, vs. George Hancock, et al., recorded in Book 3 of Judgments, at page 166, as the same appears of record or on file in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at Pocatello, Idaho, this 5th day of August, 1920.

R. C. FARLEY,
Clerk District Court,
Ex-Officio Auditor and Recorder.

By Lillian Spaulding
Deputy.