

FIRST DIVISION,

EDWARD J. TURNER, *Commissioner.*

COVE, IDAHO.

1903.

DECREED WATER RIGHTS

Terrel or Black Rock Creek, Bannock County

DECREE.

In the District Court of the Fifth Judicial District of the State of Idaho, in and for Bannock County.

Thos. F. Terrell, Plaintiff,

vs.

Andrew Cibulka, James Stranger, W. O. Priest and J. T. Holcomb, Defendants.

This cause came regularly on for trial on this the 22nd day of June, 1903, before the Court without a jury, a jury being expressly waived, D. W. Standrod and Thos. F. Terrell, Esqs., appearing for the plaintiff and Messrs Reeves & Boyd appearing as attorneys for the defendant Andrew Cibulka; and it appearing to the Court that the defendants James Stranger and W. O. Priest were regularly and duly served with summons in the above entitled cause, and having failed to appear, answer or demur within the time allowed by law or at all, and the time allowed by law for such appearance having expired, the default of said defendants, James Stranger and W. O. Priest was duly entered according to law; and it further appearing to the Court that the plaintiff, Thos. F. Terrell, and the defendant Andrew Cibulka, on the 16th day of June, 1903, made and entered into an agreement in writing compromising their rights and thereby settling all matters of dispute, and consenting to a decree in this

and neither shall have any preference or priority over the other.

That the plaintiff, Thos. F. Terrell, by virtue of said stipulation and agreement, is awarded and adjudged a right-of-way five feet in width upon each side of the center line of his ditch as now located and established, through the lands of said defendant, Andrew Cibulka, for the purpose of maintaining and repairing such ditch.

That the defendants James Stanger and W. O. Priest, and each of them and their agents and servants, be and they are each, perpetually enjoined and restrained from in any manner, whatsoever, molesting or interfering with the free flow of the waters of said stream, and from asserting any right or claim thereto; and the plaintiff, Thos. F. Terrell, and the defendant, Andrew Cibulka, and each of them, and their agents, servants and employees be and they are hereby each perpetually restrained and enjoined from in any manner whatsoever, molesting or interfering with the free and uninterrupted flow of the waters of said stream, except as herein decreed, fixed and adjudged to said respective parties by this decree.

That the plaintiff and the defendants, Andrew Cibulka pay and bear the costs of this suit in proportion to their respective rights in the waters of said stream.

Done in open District Court on this the 22nd day of June, 1903.

ALFRED BUDGE.

Judge of said District Court.

State of Idaho, County of Bannock, ss.

I, E. G. Gallet, Clerk of the District Court, Ex-Officio Auditor and Recorder of Bannock County, Idaho, do hereby certify that the within and foregoing is a full, true and correct copy of the original water decree as shown by the records of my office.

Witness my hand and official seal this 26th day of June, 1903.

(Seal.)

E. G. GALLET,

Clerk District Court, Ex-Officio Auditor and Recorder.

cause in conformity to such agreement, which said agreement is filed herein, and has been adopted by the Court as a part of its findings of fact, and ordered to be made a part of the judgment roll; and the evidence of the plaintiff and said defendant Andrew Cibulka having been offered, submitted and considered; and the Court having made, signed and filed its written findings of fact and conclusions of law herein; and being fully advised in the premises;

29-0494 Now, Therefore, in virtue of the law and the findings of fact and conclusions of law as aforesaid, it is ordered, adjudged and decreed, that the plaintiff, Thos. F. Terrell have the use and benefit and the continuous and uninterrupted flow of two-thirds of all the waters of Terrell Creek or Black Rock Creek, for agricultural, domestic and stock purposes; and two-thirds of any and all water that may be stored therefrom by reservoiring the same; and two-thirds of any increase in the flow of said stream by the improvement of its channel or source of supply.

29-0495 That the defendant Andrew Cibulka have the use and benefit and the continuous and uninterrupted flow of one-third of all the waters of said stream for agricultural, domestic and stock purposes; and one-third of any and all water that may be stored therefrom by reservoiring the same; and one-third of any increase in the flow of said stream by the improvement of its channel or source of supply.

That the labor and costs of reservoiring and improving said stream shall be borne by said plaintiff and said defendant in the proportion of their respective rights in said water; before any work in that respect is done by either party, it must be upon reasonable notice to the other, and if either party fails to contribute his share of the labor and expense of such reservoiring and improvement, the party so making such reservoirs and improvements shall have the individual and exclusive use of such increase until the other party shall have made a fair contribution of his part of such labor and expense so made and incurred.

That the rights of the plaintiff, Thos. F. Terrell, and the defendant, Andrew Cibulka, shall be of equal dignity,