

John Swank,
plaintiff,
vs.
Lars Hansen, A.B. Hansen,
G.E. McPherson and L.C.
Poni, Chas. Burton, and
G.B. Hansen,
defendants.

JUDGMENT

27-E

Printed

This cause having come on regularly for trial on this the 9th day of June, 1904, upon the complaint of the plaintiff and upon the answers and cross complaints of the respective defendants, C.C. Winters appearing as attorney for the plaintiff, C.A. Boyd appearing as attorney for Elizabeth P. Hansen, administratrix of the estate of G.B. Hansen, deceased, and Stanford & Terrell appearing as attorneys for Lars Hansen, G.E. McPherson, L.C. Poni and Chas. Burton; and the plaintiff having failed to offer any testimony on behalf of his complaint and no testimony being offered on behalf of said plaintiff, counsel for said plaintiff stating that he had no witnesses present to testify on behalf of said plaintiff, the plaintiff himself being absent, and no cause being shown to the court why the cause could not proceed to trial, counsel for the respective defendants moved the court for a judgment of dismissal of the plaintiff's complaint, which said motion was thereupon granted, and the plaintiff's said cause of action dismissed, the court proceeded to the hearing of the testimony upon the cross complaint of the respective defendants who have appeared in said cause and pleaded therein, and witnesses being called on behalf of said defendants and cross-complainants, and the documentary evidence having been submitted, and counsel said cross-complainants and defendants having waived findings of fact and conclusions of law in open court, and the court having duly considered all the testimony and being fully advised of the law in the premises; now renders its decree, and adjudges as follows, to-wit:

That the plaintiff take nothing by reason of his complaint herein, and that his said cause of action be dismissed absolutely;

That the defendant and cross-complainant Lars Hansen is entitled to the continuous flow of three and one-fifth cubic feet per second of time of the waters of Meadow Creek, for domestic and agricultural purposes, his right to the use thereof to date from July 1st, 1893, and to be used upon the following described land, to-wit: Lots numbered one and two section 26, and lots one and two and the north-east quarter of the south-east quarter section 27, township five south, Range 42 East of Boise Meridian, containing 160 acres more or less, situate in Blaine County, State of Idaho;

That said defendant Lars Hansen is also entitled to the continuous flow of three and one-fifth cubic feet per second of time, of the waters of Grange Creek and Sheep Creek, tributaries of Meadow Creek, for domestic and agricultural purposes his right to the use thereof to date from the 13th day of May, 1890, and to be used upon the following described lands, to-wit: South-east quarter of the north-east quarter, the North half of the south-east quarter, and the north-east quarter of the south-west quarter, section four, township five south, Range 42 East of Boise Meridian, containing 160 acres, in Blaine County, State of Idaho.

That said defendant Lars Hansen is also entitled to the continuous flow of four cubic feet per second of time, of the waters of Meadow Creek, for domestic and agricultural purposes, his right to the use thereof to date from the 1st day of May, 1890, and to be used upon the following described lands, to-wit: The North half of the south-west quarter and the north half of the south-east quarter of section five, and the north-west quarter of the south-west quarter and the south half of the north-west quarter, and the south-west quarter of the north-east quarter, of

N 1/2 SW

Section 5.

N 1/2 SE

27-0104 section four, all in township five, south, range 42 East Boise Meridian, Bannock County, State of Idaho, and containing 520 acres;
That the defendant and cross complainant C. E. McPherson, sometimes known as Evan McPherson, is entitled to the continuous flow of one cubic foot per second of time of the waters of Meadow Creek, for domestic and agricultural purposes, his right to the use thereof to date from the 15th day of May, 1890; also to the continuous flow of one cubic foot per second of time, of the waters of Sheep Creek, a tributary of said Meadow Creek, for domestic and agricultural purposes, his right to the use thereof to date from the 15th day of May, 1890; also to the continuous flow of one-half cubic foot per second of time, of the waters of those certain small springs located and rising upon the lands of said defendant herein after described, for domestic and agricultural purposes, his right to the use thereof to date from the 15th day of May, 1890; all of said water to be used upon the following described lands, to-wit: The west half of the south-west quarter, section three and the north half of the north-west quarter of section ten, township five south, range 42 East of Boise Meridian, Bannock County, State of Idaho, containing 160 acres;

27-0107 That the defendant and cross-complainant, Chas. Burton, is entitled to the continuous flow of eight cubic feet per second of time, of the waters of Meadow Creek, for domestic and agricultural purposes, right to the use thereof to date from the 1st day of January, 1891, to be used upon the following described lands, to-wit: East half of the south-east quarter, section ten, east half of the north-east quarter, section eleven, west half of south-west quarter, section eleven, west half of north-west quarter, section fourteen, township 3, south of range 42 East of Boise Meridian; and the east half of north-west quarter, and north half of south-west quarter, section fourteen, township five south, of range 42 East of Boise Meridian, containing 480 acres, and being in Bannock County, State of Idaho;

27-0108 That the defendant and cross-complainant L. S. Pond, sometimes known as Louis S. Pond, is entitled to the continuous flow of three and one-fifth cubic feet per second of time of the waters of Meadow Creek, for domestic and agricultural purposes, his right to the use thereof to date from the 1st day of April, 1891, and to be used upon the following described lands, to-wit: Lot three, and the south half of the north-west quarter, and the north-east quarter of the south-west quarter, section five, township six south, range 42 East of Boise Meridian, Bannock County, State of Idaho, and containing 160.12 acres;

27-0109 That the defendant and cross-complainant, Elizabeth P. Hansen, as the administratrix of the estate of O. B. Hansen, deceased, is entitled to the continuous flow of three and one-fifth cubic feet per second of time, of the waters of Meadow Creek, for agricultural purposes said right to the use thereof to date from the 1st day of April, 1891, and to be used upon the following described lands, to-wit: South half of the north-east quarter, the north-west quarter of the south-east quarter, section five, and south-west quarter of north-west quarter, section four, township six south, range 42 East of Boise Meridian, in Bannock County, Idaho, containing 160 acres;

All water to be measured at the point of diversion.

It is further ordered, adjudged and decreed that the plaintiff and the several defendants and cross-complainants herein and each of them, jointly and severally, their agents, attorneys and assigns, be and they are, forever and permanently enjoined and restrained from in any manner molesting or interfering with the rights of any of the parties as herein decreed, and the several and individual rights of the several defendants and cross-complainants as herein decreed shall be protected by said injunction from any intrusion or interference by each and every of the other defendants herein and the said plaintiff; herein pay the costs incurred by him; and that the defendants and cross-complainants herein to whom rights are herein decreed, shall each pay an equal share of the costs incurred by all.

Done in open District Court on this the 10th day of June, 1904.

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 10th day of June, 1904.

E. G. Gallet
Clerk District Court, Ex-Officio Auditor and Recorder.

By _____, Deputy.