

SECOND DIVISION.

W. Van Iorns, Commissioner.

HAGEMAN, IDAHO.

DECREED WATER RIGHTS,
WIMPEY CREEK, LEMHI COUNTY.

JUDGMENT.

In the District Court of the Sixth Judicial District of the State of Idaho, in and for the County of Lemhi.

Minnie M. Shenon as administratrix of the estate of Philip Shenon, deceased, Minnie M. Shenon in her own right, and Kenneth Shenon, Philip Shenon, and Frederick P. Shenon, infants, by said Minnie M. Shenon their general guardian, heirs-at-law of said deceased, Plaintiffs.

vs.

Nellie Albertson, Horace Albertson, Ira McLain, George S. Davis, James O. Swift and Leopold Schlegelmilch, substituted for the Salmon Gold Mining Company, Defendants

This cause came on regularly for trial on the 15th day of September, A. D. 1905, John H. Padgham appearing as counsel for plaintiffs, Messrs. Quarles & Quarles appearing as counsel for defendants. George S. Davis and Nellie Albertson, and H. G. Redwine appearing as counsel for defendant. Leopold Schlegelmilch, who was substituted in the place and stead of the Salmon Gold Mining Company, the defendant, James O. Swift appeared in person, and the defendant,

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Ira McLain failing to appear and answer to plaintiff's complaint his default was duly entered. The trial having taken place before the Court, and oral and documentary evidence having been introduced by the respective parties, and the evidence being closed, the case was on the 10th day of April, A. D. 1906, submitted to the Court for its consideration and decision, and the Court being fully advised in the premises, and having filed its findings of fact and conclusions of law herein, and order that judgment be entered in accordance therewith.

Wherefore, by reason of the law and the findings aforesaid, it is ordered, adjudged and decreed: That the rights of the parties to this action to the use of the waters of Wimpey Creek in Lemhi County, Idaho, be and the same is settled and quieted, and the waters of said stream are hereby allotted, in the way and manner following, to wit:-

1. That plaintiffs are entitled to have, and are hereby awarded the right to the use of twenty-three fiftieths of one cubic foot per second of the waters of Wimpey Creek, Lemhi County, for the irrigation of the west half of the south-west quarter of Section 34 in Township 21 North of Range 25 East of the Boise Meridian, their right to the use thereof to date from May 1st, 1890. Said right is the second appropriation of the waters of Wimpey Creek to the amount, and for the purpose aforesaid, and is appurtenant to said land.

2. That the defendant and cross-complainant, George S. Dewis is entitled to have, and is hereby awarded, the right to the use of one cubic foot per second of the waters of the South fork or branch of said creek for the irrigation of the west half of the south-west quarter, the south-east quarter of the south-west quarter and the south-west quarter of the south-east quarter of Section 25, and the north half of the north-west quarter, and the north-west quarter of the north-east quarter of Section 36 in said township, his right to the use thereof to date from May 1st, 1888. Said right is the first appropriation of the waters of said

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creek, to the amount, and for the purpose aforesaid, and is appurtenant to said land.

3. That said defendant and cross-complainant George S. Dewis is entitled to have, and is hereby awarded, the right to the use of three and one-half cubic feet per second of the waters of the South fork or branch, and from the main channel of said creek for the irrigation of the aforesaid land, described in paragraph two, his right to the use thereof to date from May 1st 1891. Said right is equal in time and right with the right of the defendant, Nellie Albertson hereinafter set forth, and the third appropriation of the waters of said creek, to the amount, and for the purpose aforesaid, and is appurtenant to said land.

4. That said defendant and cross-complainant George S. Dewis is entitled to have, and is hereby awarded the right to the use of eighteen-fiftieths of one cubic foot per second of the waters of said creek for the irrigation of the south-west quarter of the north-east quarter of said Section 25, and the south-east quarter of the north-east quarter, and the east half of the south-east quarter of Section 26 in said township, his right to the use thereof, to date from May 1st, 1897. Said right is equal in time and right with the right of the defendant, Leopold Schlegelmilch hereinafter set forth, and the fifth appropriation of the waters of said creek, to the amount and for the purpose aforesaid, and is appurtenant to said land.

5. That the defendant and cross-complainant, Nellie Albertson is entitled to have, and is hereby awarded, the right to the use of thirty-five-fiftieths of one cubic foot per second of the waters of said creek, for the irrigation of the south-east quarter of the south-west quarter and the south-west quarter of the south-east quarter of Section 34 in said township, her right to the use thereof to date from the first day of May, 1891. Said right is equal in time and right with the right of the defendant and cross-complainant, George S. Dewis to the use of said three and one-half cubic feet per second of the waters of said creek, above set forth, and is

in point of time the third appropriation of the waters of said creek, to the amount, and for the purpose aforesaid, and is appurtenant to her said land.

6. That the defendant and cross-complainant, Leopold Schlegelmilch is entitled to have, and is hereby awarded, the right to the use of forty cubic feet per second of the waters of the North and Middle forks or branches of said creek, for placer mining on the following named placer mining claims situate on Bohannon creek in said county, to wit:- The Marengo containing 80 acres, the Durango containing 40 acres, the Red Bluff containing 160 acres, the Oneida containing 160 acres, the Finnigan containing 40 acres, the Richard Paul containing 80 acres, the Fairplay containing 60 acres, the West Side containing 160 acres, Mattapan containing 160 acres, the Allston containing 160 acres, the Pemberton containing 150 acres, the Eureka containing 160 acres, the Ore Grand containing 90 acres, the Pope containing 10 acres, the Mary Ruhl containing 75 acres, the Chimney Corner containing 5 acres, the Rio Grand, containing 80 acres, the Original Ruhl & Co., containing 160 acres, the Salem containing 30 acres, the Winehandon containing 130 acres, the Beverly containing 160 acres, the High Bar containing 20 acres, the Beck containing 10 acres, the Light & Polard containing 60 acres, the Reservoir containing 40 acres, the Magnolia, containing 10 acres. The Ruhl & Co. containing 120 acres, the Dorchester containing 40 acres, the Pittsfield containing 110 acres, the Oneida containing 80 acres, the Prospector containing 15 acres, the William L. containing 120 acres, Roxburg containing 160 acres, the Louise containing 150 acres, the Shenon containing 40 acres, the Schlegelmilch containing 160 acres, the Cambridge containing 150 acres, the Crown containing 20 acres, the Georgia containing 24 acres, the Carolina containing 160 acres, the Dump No. 1 containing 5 acres, and the Clipper containing 20 acres, his right thereto to date from September 10, 1895. Said right is the fourth appropriation of the waters of said creek, to the amount, and for the purpose aforesaid.

pose aforesaid.

7. That said defendant and cross-complainant, Leopold Schlegelmilch is entitled to have, and is hereby awarded, the right to the use of four cubic feet per second of the waters of said North fork or branch of said creek for placer mining on the aforesaid mining claims, his right thereto to date from May 15th 1897. Said right is the fifth appropriation of the waters of said creek, to the amount, and for the purpose aforesaid.

8. That the defendant and cross-complainant, James O. Swift is entitled to have, and is hereby awarded, the right to the use of two cubic feet per second of the waters of said creek from the main channel thereof for the irrigation of the north half of the south-east quarter and the north half of the south-west quarter of Section 35 in said township, his right to the use thereof to date from May 1st 1900. Said right is the sixth appropriation of the waters of said creek, to the amount, and for the purpose aforesaid, and is appurtenant to said land.

9. That the defendant, Ira McLain is not entitled to the use of any waters of Wimpey Creek for the purpose of irrigation, or otherwise, in any way or manner that will interfere with or hinder the plaintiffs and the other defendants herein in their use of the waters of said creek herein awarded to them. And he and his servants, agents and employees are perpetually estopped from setting up any claim to water, the use of which is herein awarded to the parties hereto, and he and they are perpetually enjoined and restrained from in any manner interfering with any party to this action, or their heirs and assigns in his, her or their use of the waters herein awarded to them.

10. That the defendant and cross-complainant, Leopold Schlegelmilch and his heirs and assigns are hereby ordered and directed to turn and cause to flow into the channel of said North and Middle branches of Wimpey Creek the several amounts of water to which he is or they are entitled to use under and by virtue of this decree when not in use by him or them, and also immediately after the end of the mining season of each

year.

11. That the plaintiffs and defendants and cross-complainants, George S. Lewis, James O. Swift, and Nellie Albertson, and their heirs and assigns are hereby ordered and directed to turn and cause to flow into the channel of said creek the several amounts of water they are severally entitled to use under and by virtue of this decree when not in use by them or either of them for the purposes hereinbefore stated.

12. That the waters of said creek, the use of which is adjudged to the aforesaid parties shall be measured at the head of the irrigating ditch of each claimant by such device or method as prescribed or ordered by the Water Commissioner of Water District, Division No. 2 of the State of Idaho.

13. That each and every claimant, whose right to the use of the waters of said creek or any of its branches are herein decreed to be prior in time shall be supplied with the amount of water herein found to belong to him, her, or them, before any subsequent claimant shall have the use of any of the waters of said creek or any of its branches.

14. That all parties hereto and their heirs and assigns, having equal rights in point of time to the use of the aforesaid water are deemed to be tenants in common in the use of said water and entitled to the use thereof at the same time, proportionately, the right and amount herein awarded to each being the basis for such proportion.

15. That each of the parties herein to whom a right to the use of the waters of Wimpey Creek is herein awarded, be, and they are hereby perpetually enjoined from using said water in any manner different, or to any greater extent than herein found and declared, and from in any manner interfering with any other party hereto in his, her or their use of the water herein awarded to them, and a disobedience of this order is contempt of this Court, and subjects the party disobeying to punishment as for contempt upon the application of any party injured by such acts of disobedience.

A permanent injunction of this Court may issue herein to prevent interference and disobedience, prohibited as aforesaid.

All of the aforesaid land is arid agricultural land, and the flow of one cubic foot of water per second is necessary for the irrigation of each fifty acres thereof.

Each of the parties hereto, shall pay all costs incurred by him, her or them.

Done in open Court this 10th day of April, A. D. 1906. J. M. STEVENS,

District Judge.

Office of the Clerk of the District Court,

State of Idaho, } ss
County of Lemhi, }

I, W. G. Smith, Clerk of the District Court of the Sixth Judicial District of the State of Idaho, in and for Lemhi County, do hereby certify that I have compared the foregoing copy with the original judgment in the above entitled action, filed in my office on the 3rd day of April A. D., 1907, and that the same is a full, true and correct copy of such original and of the whole thereof.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court, this 17th day of May A. D. 1907.

(SEAL)

W. G. SMITH,
Clerk.