

①

5-3 136

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF IDAHO
TERRITORY IN AND FOR BINGHAM COUNTY.

IRA K. HILLMAN,

PLAINTIFF,

VS.

J. H. Hardwick, Henry Denny,

Benj. Croshaw, L. Cox,

J. Croshaw, Alexander Beckstead,

DEFENDANTS.

The lands affected by this case are in Bingham County, Idaho, and are all in Township No. 13 South of Range No. 38 East of the Boise Meridian, and no further reference to said Township and Range will be made in these findings.

The stream known as Gooseberry Creek rises in ravines at the west of all the lands in question herein, runs easterly and empties into Swan lake, a shallow and marshy lake or lagoon from the margin of which flags, tulies and swamp grass extend westward up the creek and upon the eastern portions of the lands of the plaintiff.

The creek from above all the lands of the parties hereto, descends rapidly until it reaches the western boundary of the plaintiffs lands, and from that to the lake, the stream is sluggish, as passing over nearly level ground.

The soil from the mouth of the main canyon to the plaintiffs lands is mostly wash from the hills, and slopes on either side to the bed of the creek, and discharges its surplus waters into the creek.

From the west line of the plaintiffs land to the lake, constituting most of the cultivated and hay lands of the plaintiff, the lands are nearly level, and excepting high banks on either side, the lands do not slope to the creek.

That the main ditch hereinafter mentioned by which these lands have been and are irrigated serves a double purpose, one to conduct on to the land, and another to drain it, when too wet for mowing.

That such was the purpose of its construction.

Questions of ownership of the plaintiffs lands, and divisions and use of the water upon the N. $\frac{1}{2}$ of the N.E. $\frac{1}{4}$ of Sec. 16 and the N. $\frac{1}{2}$ of the N.W. $\frac{1}{4}$ of Sec. 15 and the S. $\frac{1}{2}$ of the S.W. $\frac{1}{4}$ of Sec. 10, prior to the 8 of February 1878, and as to those, the proof being somewhat unsatisfactory and conflicting,

memorandum

1890

Bannock

REPRODUCED

MAY 14 1996

7. That the defendant A. Beckstead, is the owner and lawful claimant of the W. $\frac{1}{2}$ of the S. E. $\frac{1}{4}$ and the S. E. $\frac{1}{4}$ of the S. E. $\frac{1}{4}$ of Sec. 5; and the N. E. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$ of Sec. 8, that to irrigate said lands, said Beckstead has diverted thereon, and is using waters flowing through a certain stream from Pine canyon, which at ordinary stages of water, in the irrigating seasons do not, nor at any stage except in high water ever flow to, or has been tributary to Gooseberry creek; that said Beckstead has used, and is using for said purpose water as follows; to June 15, forty inches; from June 15 to July 15, twenty five inches and after July 15, fifteen inches.

8. That each of the foregoing appropriations is for ordinary years, and upon the assumption that during the several seasons, said Gooseberry creek carries water above the lands of the plaintiff, which together with the amounts returned from each place of the defendants to said stream, will be sufficient to furnish said amounts; but in case said stream shall furnish more than sufficient, then the amounts to each should be proportionally increased; and in case of a deficiency, then the amounts to each should be proportionally decreased, all measurements to be made at the points of diversion; that each party is entitled to continue to use for irrigation of said lands, the amount herein awarded to him; and that the evidence taken on the trial shall be filed in the case; and these findings and the decree herein should and shall be subject to revision and modification.

9. That the times from which the several appropriations date; the amounts of water to which each is entitled, and the times of the year he is entitled thereto are as follows; viz:

Date	June 15.	July 15.	After July 15.
~~13 0126~~ Ira K. Hillman. <i>See 1892 Decree</i>			
Feb. 8, 1878	75 inches	40 inches	25 inches
13 0127 J. H. Hardwick.			
April 1878	^{1.2} 60 inches	30 inches	25 inches
13 0128 H. Denney			
May 1880	^{1.2} 60 inches	30 inches	25 inches
13 0129 L. Cox			
April 1882	^{0.8} 40 inches	20 inches	15 inches.

Date	June 15	July 15	After July 15.
------	---------	---------	----------------

3 0130 Benjamin Croshaw

May 1880, South Fork,	20 inches	10 inches	8 inches
Main Creek	30 inches	20 inches	15 inches

3 0131 J. Croshaw

Nov. 8, 1882,	45 inches	30 inches	20 inches
---------------	-----------	-----------	-----------

3 0132 Alexander Beckstead

Pine Canyon	40 inches	25 inches	15 inches
-------------	-----------	-----------	-----------

10. That a Commissioner of this Court should be appointed to act as Watermaster so long as necessary to carry into effect the decree herein, to be paid by the parties hereto or their successors in interest in proportion to the amount of water adjudged to each.

And as conclusions of law:

1. That judgment or decree herein should be entered pursuant to the foregoing findings.

2. That the costs hereof should be paid by the respective parties herein, plaintiff and defendant, in proportion to the amount of water, each party is adjudged to be entitled to receive.

Dated this 22 January, 1890.

C. H. Berry
Judge of said Court.