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Oct 8, 1974

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IN THE DISTRICT COURT OF THE NINTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CLARK.

W. LEE HILL and GRANVILLE GAUCHAY,
a co-partnership doing business
under the firm name and style of
Hill & Gauohay,

Plaintiffs,

vs.

STEPHEN GREEN and JANE DOE GREEN,
his wife; C. A. DOSCHADES and JANE
DOE DOSCHADES, his wife; JOHN FAYLE;
ELIZABETH FAYLE; The heirs of Dennis
Small, deceased, as follows: Hervey
Small, and Jane Doe Small, his wife,
Dennis Small, Fred Small, Hugh Small,
and Jane Doe Small, his wife, Sarah
Small; James Webster and Nellie
Webster, his wife; A. A. Colson and
Jane Doe Colson, his wife; J. D. Ellis
and Jane Doe Ellis, his wife; Phillip
D. Ellis and Jane Doe Ellis, his wife;
Matilda Thomas; Thomas E. Wood; D. W.
Thomas and Jane Doe Thomas, his wife;
Colson Brothers, a partnership, composed
of A. A. Colson and W. A. Colson,
George Edie and Jane Doe Edie, his
wife; W. A. Colson and Jane Doe Colson,
his wife; Ida M. Leonardson; Leonard-
son Ranch Company, a co-partnership, con-
sisting of Arthur J. Leonardson and Mary
Leonardson, his wife, and Carl Leonard-
son and Lea Leonardson, his wife, Ida M.
Leonardson; DENNING CLARK LIVESTOCK
COMPANY, a corporation; Lewis Ellis,
Ellis & Company, a partnership, com-
posed of J. D. Ellis and Frank Pyke;
William G. Noyes and Maggie Noyes, his
wife; John Doe Erinson and Jane Doe
Erinson, his wife,

Defendants.

FINDINGS

OF FACT

and

CONCLUSIONS

OF LAW.

The above entitled matter having come on
regularly for trial before the Court, sitting without a jury,
a hearing having been had by stipulation of the parties at
Idaho Falls, Idaho, and the testimony therein having been
transcribed, and a subsequent hearing having been had before
the Court at Dubois, Idaho, and the testimony therein taken

1 transcribed; and the matter having been submitted to the Court,
2 and briefs of all parties having been filed with the Court, and
3 The Court having duly considered the evidence and the law, and
4 being fully advised in the premises, now makes the following
5

6 FINDINGS OF FACT.

7 (1) That plaintiffs herein are and at the times
8 herein mentioned have been a co-partnership composed of W. Lee
9 Hill and Granville Gauchay and doing business under the firm
10 name and style of Hill & Gauchay, and said co-partnership
11 has heretofore filed a certificate setting forth the desig-
12 nation, name and style under which said business is to be con-
13 ducted and transacted, and the true and real full name of the
14 parties conducting and transacting the same and having an
15 interest therein, together with the postoffice addresses of
16 such persons, such certificate being duly acknowledged and
17 filed in the office of the Recorder of Clark County, Idaho, in
18 which county said business of said co-partnership is being
19 conducted and transacted, and said co-partnership has fully
20 complied with the provisions of Chapter 212 of the Session
21 Laws of the State of Idaho 1921;

22 (2) That at all times herein mentioned defendants
23 Colson Brothers was and now is a partnership composed of A. A.
24 Colson and W. A. Colson; that at and during all said times
25 Denning Clark Live Stock Company has been and now is a cor-
26 poration organized and existing under and by virtue of the
27 laws of the State of Idaho; that during all said times Ellis
28 & Company were and now are a partnership, composed of J. D.
29 Ellis and Frank Pyke; that at all said times Leonardson Ranch
30 Company, defendants, were and now are a co-partnership con-
31 sisting of Arthur J. Leonardson, Mary Leonardson, Carl Leo-
32 nardson and Lea Leonardson;

(2)

1 (3) That Medicine Lodge Creek is a stream which
2 finds its source in the Beaverhead Mountains in the northwest
3 portion of Clark County, Idaho, and flows in a southeasterly
4 direction approximately 25 miles where it sinks and becomes
5 lost in the bed of said stream, and never at any season of the
6 year or at any time is said Medicine Lodge Creek a tributary
7 of any other stream;

8 (4) That subject to the limitations herein
9 stated one of the tributaries of said Medicine Lodge Creek is
10 Indian Creek, a stream which finds its source likewise in the
11 Beaverhead Mountains, flowing in a southerly direction to where
12 it joins Medicine Lodge Creek at about twenty-two miles from
13 the head of said Medicine Lodge Creek, said Indian Creek coming
14 into said Medicine Lodge Creek from the east; that the said
15 Indian Creek, in its natural state, at a point immediately
16 above the works herein described, flows through a porous bed
17 and channel, and except during extreme high water and flood
18 season a great part of Indian Creek becomes wholly lost by
19 percolation into its bed before its juncture with said Medicine
20 Lodge Creek as aforesaid, and that the water table^{in said vicinity}/is such
21 that no water lost by percolation ever finds its way back into
22 the bed of the said Indian Creek or into said Medicine Lodge
23 Creek, nor is there any subterranean flow supporting the sur-
24 face flow, and during the irrigation season of each and every
25 year the said Indian Creek, prior to the construction of the
26 works of the plaintiffs hereinafter described, contributed very
27 little, if any, water to Medicine Lodge Creek; that the
28 natural channel of said Indian Creek passes through Sections
29 1 and 12, Township 11 North, Range 34 East Boise Meridian,
30 which said section of the country is particularly porous, and
31 through which said section great losses in the flow of Indian
32 Creek have occurred by reason of percolation as aforesaid;

(3)

1 (5) That in order to save said excessive losses
2 in said Indian Creek and prevent loss of said water by perco-
3 lation into the bed of said stream and in order to put to
4 beneficial use waters which theretofore had always lost them-
5 selves into the bed of said stream by percolation and seepage as
6 aforesaid, and on or about June, 1918, this plaintiff and its
7 predecessor in interest, at a point near the north line of said
8 Section 1, constructed certain works in and upon said Indian
9 Creek consisting of headgates, diversion works, flumes, conduits,
10 and other structures by which said plaintiffs diverted from
11 said Indian Creek for use upon their lands located in Section
12 12 aforesaid, 3 cubic feet per second of time of the waters of
13 said Indian Creek, all of which waters, to-wit: all of said 3
14 cubic feet of water per second of time, had from time immemor-
15 ial lost itself in the bed and channel of said Indian Creek
16 and by the construction of said dam and said diversion works
17 said plaintiffs and their predecessors in interest did have
18 and recover 3 cubic feet per second of time of the waters of
19 said Indian Creek; that said waters so saved were diverted
20 at said point through said works a distance of approximately two
21 miles where the same is and ever since on or about the 9th day
22 of August, 1922, the same has been applied to a beneficial use,
23 to-wit: to the irrigation of domestic crops upon the following
24 described lands, to-wit:

25 The Northeast Quarter, the East Half of the Northwest
26 Quarter, the East Half of the Southwest Quarter and
27 the Southeast Quarter of Section 12, Township 11
North, Range 34 East Boise Meridian;

28 (6) That on or about the 26th day of July,
29 1917, this plaintiff and its predecessor in interest filed
30 with the State Engineer of the State of Idaho application for
31 permit No. 18724; that all things required thereby and by the
32 laws of the State of Idaho and by the regulations of the State

1 Engineer of the State of Idaho were duly and regularly com-
2 plied with so that on the 10th day of August, 1917, the same
3 received the approval of the State Engineer of the State of
4 Idaho who issued his permit thereon numbered 13080; that such
5 construction was had, such diversion accomplished and due proof
6 thereof made that on the 9th day of September, 1921, the
7 Commissioner of Reclamation of the State of Idaho, successor to
8 said State Engineer, issued certificate of completion of works
9 covering said construction work hereinbefore referred to and
10 subsequent thereto and on or about the 18th day of October,
11 1922, said Department of Reclamation issued to plaintiffs here-
12 in and to their successor in interest water license No. 13080;

13 (7) That the plaintiff herein directly and
14 through its grantors and predecessors in interest has acquired
15 by location, appropriation, prescription, continuous diversion,
16 and application to beneficial use, and by each and all of said
17 methods, the right to divert from said Indian Creek 3 cubic
18 feet per second of time of the waters of said Indian Creek to
19 be used upon lands hereinbefore described and plaintiff is the
20 owner of the appropriations hereinbefore in this complaint
21 referred to;

22 (8) That the defendants in this action divert
23 water from various points on Medicine Dodge Creek and Indian
24 Creek, but prior to the time of the construction of the works
25 of the plaintiff as hereinbefore described, none of the de-
26 fendants ever diverted any of the water to the extent of 3
27 cubic feet per second of time which the Court finds were saved
28 as hereinbefore set forth by the plaintiff, such water prior to
29 the building and use of the works of the plaintiff herein hav-
30 ing been entirely lost and made available to no one whatever;

31 (9) That no part of Indian Creek has ever been
32 dependent upon any subterranean flow whatever, and that no

1 water percolating the bed of Indian Creek finds its way back
2 into the said Indian Creek or supports the surface flow of
3 Indian Creek;

4 (10) That the waters to the extent of 3 cubic
5 feet per second of time saved by the action of the plaintiffs
6 as hereinbefore set forth, prior to the building of said works
7 of the plaintiffs did not form a part of the supply of Medicine
8 Lodge Creek, and would not, and did not, eventually flow into
9 Medicine Lodge;

10 (11) That by decree of the District Court of
11 the Fifth Judicial District of the State of Idaho, in and for
12 the County of Fremont, dated June 13th, 1901, and appearing
13 of record in Book "A", Page 521 of the records of Fremont
14 County, Idaho, all of the waters of Indian Creek and Medicine
15 Lodge Creek were decreed to the defendants in this action, to
16 the plaintiffs in this action, and to their predecessors in
17 interest in accordance with respective rights and priorities,
18 but that the three cubic feet of water per second of time saved
19 by the plaintiffs as hereinbefore in these Findings set forth,
20 were not, and could not have been included as a part of the
21 waters set forth in said decree, and that the saving of water
22 effectuated by the plaintiffs herein is not subject to any
23 prior rights whatever, save and except as in these Findings
24 hereinafter set forth. That none of the defendants or their
25 predecessors in interest have abandoned or lost their rights
26 to the use of the waters decreed to them; that no injury will
27 result to the said defendants, or any of them, by reason of the
28 saving of water herein set forth as effectuated by the plain-
29 tiffs;

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facts*

30 *PARASOL* → (12) That the flow of Indian Creek even in
31 low water season and in the driest seasons has probably been
32 sufficient to supply entirely the right of 160 inches belong-

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1 ing to the heirs of Dennis Small, which right is supplied by
2 taking water from Indian Creek near its confluence with
3 Medicine Lodge Creek, but that it has not been sufficient to
4 supply said right and permit the turning of any water whatever
5 into Medicine Lodge Creek, and that in so far as Indian Creek
6 is concerned the rights of the parties hereto are as follows;

7 (1) To the heirs of Dennis Small, 160 inches; 32-0006

8 (2) To the ^{Edwards} plaintiffs herein 91 inches, both of { 32-00014
32-00015
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9 said rights being as decreed in the decree hereinbefore in
10 these Findings of Fact described;

11 (3) To the plaintiffs herein 150 inches of the
12 waters of Indian Creek to be applied upon lands in Section 12,
13 Township 11 North, Range 34 East Boise Meridian, described as
14 in these Findings of Fact set forth, and that the three rights
15 above described are entitled to be supplied in full irrespective
16 of any and all rights of all other parties to this action;

17 (13) That the flume and the works of the plain-
18 tiffs herein were constructed solely as a water saving pro-
19 position and have accomplished said purpose but that the same
20 are not sufficient to carry all of the waters of Indian Creek
21 in the high water season and that some expense will be occas-
22 ioned each year in the maintaining and operating of the said
23 flume, which said expense ought to be borne by the plaintiffs
24 herein, and that the rights of the plaintiffs herein should be
25 dependent upon the maintenance by the said plaintiffs of the
26 said saving works, and for said reason the Court finds that
27 since the responsibility of maintaining the said flume and
28 saving works rests upon the plaintiffs, they should also be
29 charged with control of the same, and the plaintiffs ought to
30 be required to manage, regulate and control the flow of
31 Indian Creek at all times into and through the said works con-
32 structed by them as aforesaid, at their own expense and without

*Stipulated
Rights
to
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1 any obligation whatever upon the other parties to this action;

2 (14) That the costs of transcribing the testi-
3 mony for the use of the Court herein were paid ~~equally~~ by the
4 parties hereto upon the stipulation entered into in open Court
5 that the same should be taxed as costs against the losing party
6 herein, and in this connection the Court finds that the plain^o
7 tiffs herein have paid \$ 82.40, costs for the taking and
8 transcribing of testimony which said item shall be included
9 as a part of the cost bill of the plaintiffs herein.

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11 From the foregoing FINDINGS OF FACT, the Court
12 makes the following

13 CONCLUSIONS OF LAW.

14 (1) That the plaintiffs are entitled to a
15 decree for three cubic feet of water per second of time from
16 Indian Creek, subject only to the prior right of the heirs of
17 Dennis Small to divert 160 inches of the water of Indian Creek
18 and the right of the plaintiffs to divert 91 inches of the
19 waters of Indian Creek, and subject to nothing else; 000110

20 (2) That the plaintiffs should be charged with
21 the duty and obligation of maintaining their saving works at
22 their own expense and should be granted complete authority
23 over the flow of Indian Creek from a point immediately above
24 the flume constructed by them and entirely through the said
25 flume, and that the watermaster of Medicine Lodge Creek ought
26 to be given no authority whatever over the flow of Indian
27 Creek at any time into and through the works constructed by
28 the plaintiffs herein, and so long as the water rights of the
29 heirs of Dennis Small for 160 inches of water are supplied in
30 full and the total flow of Indian Creek immediately below the
31 said flume constructed by the plaintiffs herein is less than
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1 401 inches, or 8.02 cubic feet per second of time, the control
2 and distribution of the waters of said Indian Creek should
3 rest exclusively in the plaintiffs herein to the end and for
4 the purpose that the said saving devices built by the plain-
5 tiffs as aforesaid, and to be maintained by them, will
6 adequately serve their purpose.

7 Done in chambers in Idaho Falls, Idaho, this
8 ~~day of March~~ ^{27th} 1926. **MAR 27 1926**

9 ~~day of March~~
10 *W.C.*

11
12 *George W. Edgington*
13 _____
14 DISTRICT JUDGE.

15 *George W. Edgington*

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28 *PLAINTIFFS*