

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
TERRITORY OF ARIZONA, IN AND FOR THE COUNTY OF YAVAPAI.

GEORGE W. HANCE, et al.,)
) Plaintiffs,)
) - vs -)
) WALEs ARNOLD, et al.,)
) Defendants.)

APPLICATION OF WATER COM-
MISSIONER.

Comes now N.N.CHERRY and states to the court as follows:

1. That he is, and since the first day of May, 1910, has been the water commissioner duly elected and appointed by the parties hereto, and their successors, being the persons interested in the upper or new Verde ditch, and since said date has had charge of said ditch and performed and exercised the duties of such commissioner in the repair and up-keep of the ditch and diversion dam, as well as the distribution of water to the several water users thereunder.

That as shown by the books and accounts of the Secretary of the new Verde ditch company which owns and operates the upper or new Verde ditch, the total amount of expense for maintenance and up-keep of the ditch and dam and distribution of water therefrom, from May 1st 1910 to and including June 30, 1910, was Two Hundred and Twenty Nine Dollars and Fifteen

Cents (\$229.15); that as shown by said books the total of such expense from January 1st, 1910 until June 30, 1910 was Fifteen Hundred Forty Two Dollars and Seventeen Cents (\$1542.17)

2. That in the distribution of the water and in the performance of his duties, your commissioner has endeavored to the best of his ability to do and perform all of things required under the terms of the decree of this court herein dated March 23, 1909.

3. That in and by the terms of said decree, it was provided that each of the parties interested in the upper or new Verde ditch should contribute his pro rata of the expense of maintenance and up-keep of the ditch and dam, the distribution of water and the expense of the water commissioner, and the payment of such pro rata was made a condition precedent to the enjoyment by each of the parties of the rights specified in the decree; that on the 2nd day of March, 1909, the then Judge of this Court appointed George Reed as water commissioner, and in and by the order of appointment directed said commissioner to report to the court if any of the parties failed within ten days after demand to pay his pro rata of the expenses aforesaid. That George W. Hance, one of the plaintiffs herein has failed to pay his said pro rata of expense and is and since the first day of July 1910, has been in arrears for and on account thereof, in the sum of Seventy Three Dollars and Five Cents (\$73.05). That Exhibit "A" attached hereto shows the account between plaintiff, George W. Hance and the new Verde ditch company, for the period beginning January 1, 1910 and ending July 1, 1910.

That as shown by said books, said Hance was indebted

to the ditch company in the sum of Ninety Eight Dollars and Sixty Three Cents (\$98.63) on the first day of January, 1910. That he hasnot paid the aforesaid sum of Seventy Three Dollars and Five Cents (\$73.05) or any part thereof. That on or about the first day of June, your commissioner made demand upon said Hance for payment of one-fifth of your commissioner's wages for the month of May, being the sum of Eighteen (\$18.00) Dollars, and said Hance stated that he did not then have the money to pay that amount, but would pay it within a few days; and further stated that he would not pay any other or further part of the wages of your commissioner from or after the first day of June, 1910; that during the latter part of June, 1910, your commissioner made further demand upon said Hance for the payment of said sum of Eighteen (\$18.00) Dollars and said Hance then stated in substance that he would not pay the same until after the matter had been presented to the Court, and then he did not think he would have to pay it.

4. That at all times during your commissioner's administration of his duties, except on two occasions, when the pipe and line was broken; on another one when the diversion dam was washed out, the Ryall flume and pipe line have been filled to their capacity.

That on several occasions, plaintiff, Hance, has told your commissioner that except when the ditch or pipe line was out of order or broken he had all of the water he needed and had had more water this year than he had ever had before. That one, Mr. Halleck has been in charge of the ranch of plaintiff, Hance, as his tenant during the period your commissioner has been in office and has told your commissioner

that the ranch had had all the water they needed, and that they could not have used any more water if they had had it.

5. That considerable difficulty has arisen between plaintiff, Hance, and the other parties interested in both the old and the new ditch arising out of the fact that said Hance claims, and has attempted to exercise the right to sell water out of the upper or new ditch, and collect the proceeds therefor. That in and by the decree in this cause, it is provided" that the proceeds arising from sales of water should be by the purchasers, paid over to the ditch company, and the ditch company in turn account to the owner or owners of the interests upon whose account or accounts such sales shall be made, first charging said interest or interests with its or their share of the cost of repair and maintenance of the ditch." That your commissioner attaches hereto as Exhibits, "A", "B", "C", the affidavits and statements of various of the parties interested in said upper and lower ditch, and prays the instruction of this Court as to what he should do in relation to turning out or delivering waters so attempted to be sold by the said Hance .

WHEREFORE, your commissioner prays:

1. That an order be made and entered herein authorizing and directing your commissioner upon such terms as may appear proper to the court to deprive the said Hance of water from or through said Ryall flume and pipe line, unless the said Hance shall pay his indebtedness to said ditch company as above set forth.

2. For instructions as to the course to be pursued by your commissioner in relation to water sold or attempted

to be sold by said rance directly and not through the ditch company, and as to whether or not your commissioner will be authorized under the circumstances hereinbefore set forth to turn out or deliver water to vendees of said rance upon his order.

N. H. Cherry

TERRITORY OF ARIZONA,)
COUNTY OF YAVAPAI.) SS.

N.H.CHERRY, being duly sworn, deposes and says, that he has read the foregoing application, and knows the contents thereof; that the statements therein contained are true in substance and in fact.

N. H. Cherry

Subscribed and sworn to before me this 13th day of July A.D., 1910.

John M. Roe
Notary Public.

My commission expires 3/22, 1911.

Geo W. Vance acct Verde Detach 1910
 Jan'y 1st to July 1st

Jan'y 1 st	To	Balance 1909 acct	9863
Mar 28	"	1/5 Expense Jan'y 1 st to Mar 28	24714
June 30	"	1/5 Expense Mar 28 to June 30	6128
" 30	"	33 1/3 in water Tom Logan Car.	10000
Mar 28	By	Teams	4375
"	"	Labor Huskins	1875
"	"	Team Stallett	2975
"	"	Labor G. Speer	900
"	"	Labor Cassanova	375
June 30	"	1 share water sold	30000
"	"	1/5 of 48 1/3 in water sold	2900
		Balance	7305
1910			50705
June 30	To	Balance	50705
			7305

Exhibit A.

EXHIBIT "B".

TERRITORY OF ARIZONA,)
COUNTY OF YAVAPAI.) SS.

F.W.MONROE, being duly sworn according to law, deposes and says, that from the first day of May, 1909 until the first day of ^{January} 1910, he was the regularly elected and appointed water commissioner, having charge of the upper or new Verde ditch, under the decree of the Court in the above entitled cause of Hance et al. vs. Arnold, et al. That as such commissioner he had charge of the up-keep, maintenance and repair of said ditch and the diversion dam at the head thereof, and of the distribution of water therefrom. That at and before deponent's election and appointment of such water commissioner, plaintiff Hance, stated that he would pay his pro rata of expense of the commissionership and of the up-keep of the ditch promptly on the first of each month; that he made no payment from the first day of May, 1909 until after the first of July, 1909, at which time deponent succeeded in collecting the arrears of said Hance, although the same were not voluntarily paid by him and were collected as the result of a great deal of trouble. That during the period last mentioned, said Hance repeatedly postponed the payment of his bill and promised to pay it until on or about the 29th day of June, 1909, when deponent exercising his rights as he understood them under the decree of this court, informed said Hance that if his arrears were not paid at once, deponent acting as such commissioner would turn off said Hance's water; that thereupon, said Hance drew a six shooter and told deponent that he would follow deponent up to the flume

and would shoot or kill deponent or any other person who tried to turn out his water. That he rode along with deponent for about half a mile repeating his threats in a violent manner, and deponent told him that under those conditions he would not turn out the water until he was directed by the ditch company in the premises. That from the time when deponent succeeded in collecting said Hance's account as above stated, until the first day of January, 1910 at which time deponent resigned his duties, said Hance wholly failed and refused to pay any part of his share of the expense of said commissionership, or of the maintenance or up-keep of the upper ditch and diversion dam. That the balance then remaining and owing from said Hance to the ditch company as shown by the books of the secretary of said company was Ninety Eight Dollars and sixty Three cents (\$98.63).

That during the deponent's term of office, as had been done for a number of years prior thereto, the ditch company sold one hundred inches of water for \$300 which was applied and credited to the account of said Hance with the ditch company; an additional fifteen inches of water were sold during said period, and said Hance credited with one-fifth of the proceeds thereof, all of which was in accordance with the custom which had been in force among the owners in said ditch for a number of years.

That in the latter part of 1909, said Hance told deponent in substance that he would not permit the ditch company to continue to sell water for his account, for the reason that he claimed the ditch company would not give him the proceeds, and that thereafter he would handle and sell the water himself and collect the proceeds. That during all

of the time since the entry of the decree in this case, plaintiff Hance has been the only person interested in the upper or new Verde ditch, or in the old or lower ditch who has made any complaint or expressed any dissatisfaction with the manner in which said ditches have been operated and administered. That deponent has been closely acquainted with said ditches for the period of seven years last past, during the greater part of which time he has had some official connection with the operation and management thereof. That in his judgment, at all times since the entry of the decree therein, there has been ample water for the use of all the persons entitled to take water from either of said ditches, and in deponent's judgment, the said water has at all times been distributed between said ditches in accordance with the terms of said decree. That during deponent's term of office, except when the pipe line or ditch might have been out of order or incapacitated to carry water, the pipe line was kept up to its carrying capacity, and has carried one third of the water flowing in the upper ditch. That particularly during the months of May and June, 1909, this deponent, in the course of his duties visited said pipe line almost every day, and at all of the times when he saw said pipe line during that period, the pipe line was not only getting all the water it could carry, but water was actually running to waste at the head of the pipe line. That it was no part of the duties of deponent, and is not a part of the duties of the present commissioner to oversee the distribution or handling of the water in the old or lower ditch. That deponent attaches to his affidavit as Exhibit "1" a written statement signed by all of the parties interested in, and

entitled to receive water under the upper and lower ditches ,
excepting plaintiff, G.W.Hance, which he offers for the
consideration of the Court upon this matter.

E. W. Monroe

Subscribed and sworn to before me this 13th day
of July A.D., 1910.

John M. Ross
Notary Public.

My commission expires. *May 22, 1911.*

Exhibit 1

Camp Verde July 11 1910

To the court and Honorable Judge
We the undersigned share holders in the
New and Old Verde ditch after a careful
reading of the complaint made to the
court by Geo W Hance concerning the division
of said waters of New and Old Verde ditches,
under the decree of the court find that said
statement is in most part incorrect -
that being the case we make this statement
for your consideration

~~first~~ that Mr Hance has violated the decree
on his part in our judgment -

First by failing to pay his part of
ditch expenses when due and demanded by
the water commissioner

Second by selling water from said
ditches and collecting the money for his
own use

Which is not in accordance with the decree
as we understand it

Therefore we the undersigned do pray
Your honorable court and Judge
that after a careful interview and statement
from the water commissioners for 1909 and
also water commissioners now employed you
find sufficient grounds for such actions
that you instruct commissioners now in
charge after 10 days notice from date of order
to shut off Mr Hanes water till his part
of expenses are paid

Or some other instruction that will enforce
said decree to the best advantage to all
parties in your judgement-

Signature

E. W. ...

John Bristow

Charles H. Harlow

E. J. Monroe

J. I. Markshing

J. W. Kingfield

W. A. Kingfield

O. A. Benedict

J. H. Scott

P. B. ...

EXHIBIT "C".

TERRITORY OF ARIZONA,)
COUNTY OF YAVAPAI.) SS.

ELIAS WINE, being duly sworn according to law, deposes and says that he is one of the defendants in the above entitled action, and under the decree of this Court is entitled to one-fifth of the waters flowing in the lower or old Verde ditch, being the owner of the John Wood's ranch mentioned in the decree herein.

That in the administration of the lower ditch there has been no commissioner elected or appointed by the water users from said ditch; that the waters therefrom are distributed by rotation from day to day among five ranches mentioned in the decree, and entitled to water therefrom, each of which ranches is entitled to receive the full flow of water during one day in every five.

That the expenses of maintaining said ditch are divided equally among said five interests. That for a period of more than one year last past, said Honce has contributed nothing toward the amintenance or up-keep of said ditch, or the expenses thereof, excepting the labor of one man and a team for seven days, for which he is entitled to a credit of Thirty Eight Dollars and Fifty Cents (\$38.50). That he is now indebted to the other owners under said ditch in the sum of upwards of One Hundred (\$100) Dollars, an accurate account of which will be prepared and submitted to the Court. That during said

period, all of the expenses incident to keeping up and maintaining said ditch have been borne by the other owners thereunder.

That deponent has been closely familiar with said ditch and pipe line at the head thereof since the entry of the decree herein. That his familiarity has been such that he would have known if there had been any shortage of water coming from said pipe line. That as a matter of fact, the pipe line has been kept filled to its full capacity, and during a great portion of the time, water has been going to waste at the head of the pipe line, for the reason that the pipe line did not have sufficient capacity to carry the same. That at all times except when the pipe line was broken, or the upper ditch incapacitated, there has been ample water flowing in the lower ditch.

That since the entry of the decree in this case, to the best of deponent's knowledge, there has been no dissatisfaction or complaint made by any of the water users under either of said ditches in relation to the operation or administration thereof, excepting on the part of George W. Hance. That in deponent's judgment, the greatest effort has been made by all parties interested in said ditches to administer the same in accordance with the decree of this Court, and in accordance with right and equity, and there has been no attempt on the part of any one, to the best of deponent's knowledge, to wrong or injure said Hance, or to deprive him of any water to which he is entitled.

Elias Wine

Subscribed and sworn to before me this 13th day
of July, A.D., 1910.


Notary Public.

My commission expires

Mar. 22. 1911.

No. 4477

IN THE
DISTRICT COURT
OF THE FOURTH JUDICIAL DISTRICT OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI.

GEO. W. HANCE, et al. PLAINTIFF

VS

WALES ARNOLD, et al.,

DEFENDANT

APPLICATION OF WATER COMMISSIONER
SLOVER.

DUE SERVICE BY COPY OF WITHIN ADMITTED THIS

13 DAY OF July 1910

Ed. Slover per T.D.H.
Plaintiff

ATTORNEY FOR

FILED AT 4:30 O'CLOCK P.M. THIS
13 DAY OF July A. D. 1910

By Anna W. Grege
J. M. Wittke
CLERK

NORRIS, ROSS & SMITH
PRESCOTT, ARIZONA.

ATTORNEYS FOR