

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, )  
V. )  
WALES ARNOLD, ET AL, )  
DEFENDANTS, )

A N S W E R.

Come now Wales Arnold, Sarah J. Arnold, S. C. Cherry, J. H. Wingfield, Charles Harbeson, William J. Davis, E. W. Monroe, John Wood, William M. Gray, E. J. Monroe, Belle Monroe and Elias Wine, Defendants herein, and answering Plaintiffs' complaint allege that said complaint is indefinite, ambiguous and uncertain in that it is impossible to determine therefrom what right, title or interest Plaintiffs, or either of them, have, or claim to have, in the waters carried through the ditches and pipeline mentioned in the complaint,

WHEREFORE, Defendants pray that Plaintiffs be directed to make their complaint definite and certain in the particulars above mentioned.

*Norris & Ross*

Attorneys for said Defendants.

Come now the above named Defendants and answering Plaintiffs' complaint demur thereto, and for ground of demurrer allege that said complaint does not state facts sufficient to constitute a cause of action against these Defendants, or either of them.

WHEREFORE, Defendants pray judgment as to the sufficiency of said complaint, that Plaintiffs take nothing thereby, and for their costs herein expended.

*Norris & Ross*

Attorneys for said Defendants.

Further answering said complaint these Defendants admit that they and Plaintiffs are residents of Yavapai County, Arizona; that Plaintiff George W. Hance is the owner of and in the actual possession of the one hundred and sixty (160) acre tract of land described in Paragraph One of said complaint; that said tract was formerly owned by Jackson Thompson.

Allege that they have no information upon which to base a belief as to the truth or falsity of the alleged ownership of Partheny H. Hance of the one hundred and twenty (120) acre tract of land described in said Paragraph, and therefore deny the same and ask that strict proof be required.

Admit that said lands <sup>are</sup> arable and irrigable and lies in the valley of the Verde River in said County.

Deny that the waters of said River have been diverted, applied to, or carried upon all of said lands for the purpose of irrigating the same.

Admit the construction of the Old Verde Ditch as alleged in Paragraph Two and that upon its completion Jackson Thompson became entitled to so much of the waters flowing therein as was necessary to irrigate the land then in cultivation upon the one hundred and sixty (160) acre tract described in Paragraph One of said complaint, not exceeding one-fifth (1/5).

Admit the construction of the New Verde Ditch and its original ownership as alleged in Paragraph Four of said complaint.

Allege that on or about the time of the construction of said new verde Ditch the head gate and a large portion of the Old Verde Ditch were destroyed by flood waters of the verde River and that the New Verde Ditch was constructed by the parties named for the purpose of diverting water from said River and conducting it to, and upon other lands than those lying under the Old Verde

Ditch, and for the further purpose of giving a new head to the Old Verde Ditch and conducting waters through the New Ditch to the Old Ditch.

Allege that the carrying capacity of the New Ditch is, and always has been approximately double that of the Old Ditch, and that at all times since the construction of the New Ditch lands lying under it have been supplied with water therefrom, and the balance of the water therein has flowed down and into the Old Ditch, from which it has been used by the owners of the Old Ditch.

✓ Admit that Plaintiffs together owned an undivided four twentieths ( $4/20$ ) interest in the New Ditch, but allege that neither of said Plaintiffs owns any land lying under the New Ditch, or which is, or ever has been, supplied with water therefrom.

Deny that Plaintiffs are entitled to have any more than One-fifth ( $1/5$ ) of the waters of the Old Ditch carried through, or by means of the New Ditch; deny that Plaintiffs now have, or have ever had a right to more than one-fifth ( $1/5$ ) of the waters carried in the Old Ditch.

Admit that Plaintiff George W. Hance has used and is entitled to use from the waters of the Old Ditch such portion thereof as has been, or may be, required to irrigate the cultivated portion of his land not exceeding one-fifth ( $1/5$ ) of said water flowing.

Admit the construction of the pipe-line connecting the new and old ditch as alleged in Paragraph 6 of the complaint, and admit that waters from the new ditch have flowed through this pipe-line into the old ditch at all times since the construction of the pipe-line.

Allege that for a period of more than ten (10) years last past said pipe-line has been used and enjoyed by all of the

owners of the Old Ditch, and their successors in interest in the proportion of their ownership in the old Ditch; that said pipe-line is appurtenant to and a part of said ditch, and has been so used and considered by all of the owners of the Old Ditch including the Plaintiffs for a period of upwards of ten (10) years prior to the filing of this action; that Plaintiffs have at all times acquiesced in such use and enjoyment and have not claimed as against the owners of the Old Ditch, or either of them, that they owned a greater portion of said pipe-line than of the Old Ditch.

Allege that Plaintiffs have no other or greater interest in said pipe-line than the right to have one-fifth ( $1/5$ ) of the waters of the Old Ditch flowing through said pipe-line from the New Ditch to the Old Ditch.

Deny that Plaintiffs, or either of them, is entitled to the use of the waters diverted from the Verde River in any other proportion than their proportionate interest in the waters of the Old Ditch.

Allege that Plaintiffs have at all times exercised the full and uninterrupted enjoyment of all of the waters of the Old Ditch to which they, or either of them, were entitled.

Deny that during the year 1905, or at any other time, these defendants, or any of them, have in any manner interfered with or violated the rights of Plaintiffs in said water, either in the manner alleged in the complaint, or otherwise; deny that these defendants, or any of them, either at the time alleged in the complaint, or at any other time, have diverted or used any of the waters of said ditches belonging to Plaintiffs, or either of them.

Allege that if Plaintiffs, or either of them, have at any time failed to use and enjoy the water to which they were entitled their failure has been due to their own neglect, and to their own

failure to take proper precautions in the way of keeping ditches and pipe-line in repair, and in economically diverting the water into and upon their lands'

Deny that these defendants, or either of them, has used water in a wasteful or prodigal manner, and allege that they have at all times used the greatest economy in the use of the water, and have at no time denied the Plaintiffs the right to use their just proportion of the water.

Deny that Plaintiffs, or either of them, has ever been prevented from raising crops upon their land by any act, conduct or interference on the part of these Defendants, or either of them, and deny that Plaintiffs have been damaged in any amount, or in any manner, either as alleged in the complaint, or otherwise, by any act or conduct of these Defendants, or either of them.

Specifically deny that Plaintiffs, or either of them, has been prevented or hindered in any manner, or to any extent whatever by any act of the defendants, or either of them, from growing crops, or using the water flowing through said ditches during the year 1907; and deny that they have suffered any damage during said year, or any year, or at all, from any acts of the defendants, or either of them, in interfering with Plaintiff's appropriation or use of the waters flowing in said ditches and pipe-lines.

Further answering said complaint, these Defendants admit that they have, and claim to have, certain rights and interests in and to the ditches and pipe-line mentioned in the complaint, and in the waters flowing therein.

Allege that each of them owns, and is in the possession of lands lying under said ditches and pipe-line and which have been irrigated therefrom by these Defendants and their grantors for many years prior to the filing of this action. Allege that such use



4772

IN THE DISTRICT COURT  
FOURTH JUDICIAL DISTRICT  
YAVAPAI COUNTY, ARIZONA.

.....

GEORGE W. HANCE, ET AL.,  
PLAINTIFFS,

V.

WALES ARNOLD, ET AL.,  
DEFENDANTS.

A N S W E R.

*Rec'd copy  
Nov 16 1907*

*Libby Anderson*

*FILED*

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

NOV 16 1907

\_\_\_\_\_  
*Clerk.*

By \_\_\_\_\_  
*Deputy.*

LAW OFFICES OF

NORRIS & ROSS,  
PRESCOTT, ARIZ.

\_\_\_\_\_

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

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

Territory of Arizona,) : ss.  
County of Yavapai. )

George W. Hance, being first duly sworn, deposes and says:  
That he is one of the plaintiffs in the above entitled action;  
that he is in possession of all of the land belonging to said  
George W. Hance and Partheny Hance, described in the judgment  
heretofore entered in this cause. That he had personal super-  
vision of the use of the water upon the said land from the first  
day of May, 1909, to the 10th day of July, 1909. That in said  
decree it was adjudged and decreed that at least one-third of the  
waters flowing in the new Verde ditch should be diverted to and  
flow through the so-called Ryall's flume into the old Verde ditch.  
That the flow in said new Verde ditch as the same was measured on  
the 2nd day of August, 1901, by Major O. A. Turney, a Civil and  
Hydraulic Engineer, was one thousand forty-two and 4/10 (1042.4)  
inches; and on April 11th, 1908, as measured by P. W. Latimer, then  
County Surveyor, was one thousand fifty-nine and 68/100 (1059.68)  
inches; both of which measurements were made a part of the record  
in the trial of the above entitled action. That affiant was present  
when both of said measurements were made, and that for the purpose

of making said measurements appear as large as possible, the defendants had caused said new Verde ditch to be filled to its utmost carrying capacity and beyond the limit of safety. That at the time said water was measured by said Turney, affiant found it necessary, in order to keep said ditch from overflowing and breaking, to lift the head gate about eight inches so as to relieve the flow. That at the time of said measurement by County Surveyor Latimer the diversion dam whereby the waters of the Verde River were conducted into said ditch was packed with alfalfa leaves and straw so as to fill the ditch to its utmost capacity; that as a result of this overtaxing of the ditch, on the night following two flumes were washed out and destroyed, which breakage cost the water users under said ditch about five hundred dollars, including damage to crops. That in the meantime said ditch has not been increased in capacity but on the other hand has decreased as a result of the action of the Verde River cutting into the borders of said ditch. That the utmost carrying capacity of the steel flume or pipe which conducts the water from said Ryall's flume into the old Verde ditch, is three hundred fourteen and  $\frac{16}{100}$  (314.16) inches. That the ordinary flow in the new Verde ditch during the year 1909 and for several years prior thereto, was one thousand inches. That the decree of this Court in the above entitled action provided that the users of water under said ditch should take water therefrom in proportion to their interest in the ditch, and that any surplus water over and above the proper allotments to each water user was to be sold for not less than cost. That a measurement of the water in said new Verde ditch made by E. W. Monroe and relied upon and contended to be correct by defendants, showing a pretended flow of over 1300 inches has wrongfully become the basis of distribution of said water among the users on what is known as the "Camp Verde Military Reservation farms", all of which

are above the farm of affiant and above the said Ryall's flume. That an apportionment of water on that basis gives to the defendants a great advantage over affiant whose farm is at the lowest point of the old Verde ditch, in this, to wit: That a large amount of the water due to affiant and apportioned to him under said decree, is either used by said defendants or sold by them, and out of which affiant receives no benefit or proportion but is deprived of a large amount of water due and apportioned to him under said decree as hereinafter stated. That said Monroe measurement is incorrect and shows a volume of water in said new Verde ditch greatly in excess of the actual normal flow. That the defendants, as shareholders in the new Verde ditch and using water therefrom, refuse to permit the present ditch superintendent of water overseer appointed by this Court to properly superintend the distribution of water on and along the old Verde ditch, which action is for the purpose of preventing affiant from getting his proportion of the proceeds of water sold or of the water apportioned to him. That the entire length of the two ditches is fifteen miles, measuring from the head to affiant's farm. That there are more than forty tap boxes along the two ditches, in nearly all of which, under the present management, there is waste, and especially is partiality shown to certain users above affiant's place. That none of said tap boxes are locked, as ought to be the case, and that the system of measurement and distribution is not in accordance with the established rules of measuring and distributing water in any irrigated districts. That under said decree there should be diverted from said new Verde ditch through said Ryall's flume and into said old Verde ditch at least three hundred and fourteen inches each and every day. That by the division made upon

said old Verde ditch, all of which is below said Ryall's flume, each user was to receive water in proportion to the share owned and used by him in said ditch. That affiant and his co-plaintiff, Partheny Hance, are entitled under said decree to the use at this time of one-fifth of the waters so to be diverted into said old Verde ditch; that according to the division that has been made by the Court between the users of said water, affiant was to receive the full head flowing in said ditch for a full day every fifth day; that affiant should have had a head of not less than 214 inches; that affiant has had personal supervision of the use of his water since the said first day of May, 1909, and until date, and that at no time has affiant had a head of as much as 200 inches of water. That most of the time the head of water had by affiant was less than 150 inches, and said ditch boss does not allow plaintiff the said flow for a full day, but cuts it off from two to three hours short of a twenty-four run. That affiant has made numerous visits to said Ryall's flume upon the days he was entitled to the use of said water, and that he says upon his oath that at no time when he so visited Ryall's flume there was one-third of the waters of said new Verde ditch flowing into and through said flume, not enough to fill said flume. That the water users of said new Verde ditch above the said Ryall's flume have so used and conducted the water as to take a greater amount than two-thirds of the waters flowing in said ditch. That the ditch Boss, has allowed all the persons using water from said new or upper Verde ditch to take more than they were entitled to under the said division of water. That the size of said steel flume and pipe is such that it will not carry more than one-third of the amount of water ordinarily flowing in said new Verde ditch; that affiant visited said flume several times during May and June of 1909, and personally observed the amount of water flowing through said flume and at no time was said flume filled with water to its capacity, but on the contrary was only about one-half full. That affiant has paid all of his proportion of the ditch expenses, which includes his proportion of the expense of the new Verde ditch, and the water users of the new Verde ditch pay no part of the expense of the old Verde ditch, but the owners of the old Verde ditch pay eleven-twentieths of the expenses of the new Verde ditch, and defendants are now and have been selling water

that rightfully belongs to affiant under said decree.

Geo W Hance

1910.

Subscribed and sworn to before me this 2<sup>d</sup> day of July,

My comission expires on the third day of September, A. D. 1913.

E. J. Clark  
Notary Public.



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.

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C I T A T I O N.

To Norval N. Cherry.

Water Commissioner,  
Camp Verde, Arizona.

You are hereby commanded to distribute the water in the Verde ditch under your supervision, and particularly the water reaching farms along the old ditch, below the flume strictly in accordance with the decrees and orders of this Court, and that you personally apportion and supervise the use of all of said water and not permit any tap boxes to be opened by any one except yourself. That you place proper locks upon all the tap boxes and retain the keys yourself. That you see to it that plaintiffs have the water for a full day every fifth day, and failing in any of these matters you will be cited to appear and show cause .

Hereof take due notice.

Witness the Honorable EDWARD M. DOE, Judge of the above entitled Court, with the seal of said Court affixed this \_\_\_\_ day of July, 1910.

\_\_\_\_\_  
Clerk.

7-2-10

No. 4777

IN THE

DISTRICT COURT

Of the Judicial District of Arizona,  
in and for the County of

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.....

*both under Aug 2, 10  
Norris Taylor Smith  
attys for Defs.*

LAW OFFICES OF

E. S. CLARK

ROOMS 23-24-25-26-27-28 BANK OF ARIZONA BUILDING  
PRESCOTT, ARIZONA

~~4772~~

J. C. O'Neil  
~~J. S. Murdoch~~

Feb. 3/18/09

Lillian Scott

3/20/09

L. L. Scott  
Jimmie

S. V. Wilson 2nd

E. F. Mahurin  
2nd

All entries