

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. : MOTION.
 WALES ARNOLD, ET AL.,)
 DEFENDANTS. :

Come now the Defendants 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, and move the Court that Plaintiffs herein be ruled to give security for costs and for ground of their motion allege that they are informed and believe, and upon such information and belief allege the fact to be, that said Plaintiffs are not the owners of property situate in the Territory of Arizona out of which a judgment for costs herein could be collected under execution.

Norris Stoes

Attorneys for said defendants.

TERRITORY OF ARIZONA)
)SS.
 COUNTY OF YAVAPAI)

E. J. Monroe, being duly sworn according to law, deposes and says that he is one of the above named Defendants, and makes this affidavit for and on behalf of said defendants; that he has read the foregoing motion and knows the contents thereof and that he believes the allegations therein contained to be true.

E. J. Monroe

Subscribed and sworn to before me by E.J. Monroe this 18th day of November, 1907.

John M. Stoes
 Notary Public.

My commission expires March 22, 1911.

4972

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.

MOTION.

Rec'd copy nov 16
07

L. Ray Anderson

FILED. Per.

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

George W. Hance, and
Partheny H. Hance,
Plaintiffs,

-vs-

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,
John H. Scott, and Belle Monroe,
and Elias Hink.
Defendants.

- COMPLAINT -

Plaintiffs complaining of defendants allege:

I.

That plaintiffs and defendants are each and all residents of Yavapai County, Arizona, and that plaintiff George W. Hance is the owner of and in the actual possession of the following described land situate in Yavapai County, Arizona, to-wit:

The west half of the south-west quarter of Section 27; the north-east quarter of the south-east quarter of Section 28, and the north-west quarter of the north-west quarter of Section 34; all in Township 13 North, of Range 5 East, Gila and Salt River Meridian, containing one hundred and sixty (160) acres;

and that plaintiff Partheny H. Hance is the owner of and in the actual possession of the following described land situate in Yavapai County, Arizona, to-wit:

The south half of the north-west quarter, and the north-east quarter of the north-west quarter of Section 34, Township 13 North, of Range 5 East, Gila and Salt River Meridian, containing one hundred and twenty (120) acres.

That all of the aforesaid land is arable and irrigable land situate, lying and being adjacent to the Verde River in said County, which river is a natural stream of water, the waters of which have during all the times herein mentioned been diverted by the means

hereinafter stated, and applied to and carried upon the land above described for the purpose of irrigating the same.

II.

That in the year 1873 John Wood, John Davis, R. C. Campbell, Abraham M. Koontz, and Jackson Thompson, constructed what is known as the "Old Verde Ditch", by means whereof they diverted the waters of said Verde River and caused the same to flow into said ditch and through the same, and each of said parties at the time of the completion of the construction of said ditch owned a one-fifth ($1/5$) interest thereof, and by reason of the diversion of water into and through the same became and were entitled to the right to the use of one-fifth of the carrying capacity of water in and through said ditch.

III.

That from the time of the completion of said Old Verde Ditch the said Jackson Thompson used and applied upon the land above described as now being owned by George W. Hance one-fifth of the water flowing through said ditch, and applied the same thereon to the purposes of irrigation and domestic purposes in connection with said land, and all of his successors in interest including the plaintiff, George W. Hance, have continuously used and applied one-fifth of the carrying capacity of the water in said ditch and one-fifth of the water flowing through the same to the irrigation of said land, without interruption or hindrance except by reason of the wrongs herein complained of and until the commission of such wrongs;

That the above named plaintiff George W. Hance, by certain mesne conveyances has become and now is the owner of an undivided one-fifth interest in said Old Verde Ditch, and is entitled to the right to the use of one-fifth of the water carrying capacity of said ditch and the right to the use of one-fifth of the water actually flowing through said ditch.

IV.

That in the year 1891 what is known as the "New Verde Ditch" was constructed by John Davis, John Wood, and James Brown, who owned interests therein in the following proportions: John Davis, two-tenths (2/10); John Wood, six-tenths (6/10), and James Brown, two-tenths (2/10). That the said ditch was constructed by said parties for the purpose of diverting the waters of the Verde River at a point higher up on the banks of said river than the head of said Old Verde Ditch, and was so constructed as that the lower end of said New Verde Ditch emptied into the upper end of the Old Verde Ditch, and the waters of the former ditch thus flowed through the same into the Old Verde Ditch, and the headgates of the latter ditch were destroyed and not thereafter used. That the said Wood, Davis and Brown immediately upon the construction of said New Verde Ditch diverted through the same by means of a headgate the waters of the Verde River and carried the same through said ditch into said Old Verde Ditch, and all of the waters that had theretofore been diverted into said Old Verde Ditch at its original headgate were thereafter delivered to and into it by means of and through said New Verde Ditch and from no other source, and the waters thereafter taken into said Old Verde Ditch through said New Verde Ditch were the same waters that had theretofore been diverted into said Old Verde Ditch by means of its original headgate and the original appropriation through the same.

V.

That the said waters have been continuously and uninterruptedly used and appropriated since the first diversion thereof by the persons entitled to use the same by reason of the diversion aforesaid; that the said George W. Hance by mesne conveyances from the original owners of said New Verde Ditch is now the owner of an undivided three-twentieths (3/20) interest therein, and the said Partheny H.

Hance by certain mesne conveyances from the original owners of said New Verde Ditch is the owner of an undivided one-twentieth ($1/20$) interest, and that said plaintiffs are entitled to the right to the use of the water flowing through said New Verde Ditch in the proportions to each of them respectively that they own and hold said ditch, and in the proportions which they own the right to the use of the water flowing through the same and are entitled to have the same flow through said New Verde Ditch and into said Old Verde Ditch undiminished in quantity and without interference or hindrance by any person.

That ever since the said plaintiffs and their predecessors in interest acquired the right to the use of the waters flowing through both of said ditches they and their said predecessors have continuously used and appropriated the same to irrigation, domestic and stock purposes upon the land hereinabove described, until the commission of the wrongs hereinafter complained of.

VI.

That after the completion of the said New Verde Ditch it became necessary, by reason of physical conditions, to construct a pipe line 700 feet long through which the waters could be carried and flow from the New Verde Ditch to the Old Verde Ditch; such a pipe line was constructed and ever since the construction thereof the waters flowing through said New Verde Ditch have been carried through said pipe line into said Old Verde Ditch. That the above named plaintiff, George W. Hance, is the owner of an undivided five-twentieths ($5/20$) and the plaintiff, Partheny H. Hance, is the owner of an undivided one-twentieth ($1/20$) of, in and to the said pipe line, and are entitled to use the same for the carrying of said waters to the use of which they are entitled for the purposes aforesaid.

VII.

That by reason of the premises the above named plaintiffs, George W. Hance and Partheny H. Hance, are entitled to the use of the waters diverted from said Verde River into and through said ditches and pipe line to the extent of their interest therein as hereinabove alleged, and are entitled to have the same to the extent of their said interests flow through said ditches and pipe line into and upon their said premises for use as aforesaid, undiminished in quantity and free from disturbance and interruption by any of the defendants herein named.

VIII.

That until about the year 1905 plaintiffs and their predecessors in interest were permitted the full and uninterrupted use of all of the waters to which they are entitled as aforesaid, and used and applied the same for the purposes above mentioned and by means thereof were enabled to raise upon said premises and land large and valuable crops of grain, hay, alfalfa and fruit and other farm products, and did also use and apply said waters for domestic and stock purposes in connection with said premises; that about the year 1905 defendants, in violation of the rights of plaintiffs, by means of tap boxes opening into said ditches whereby they diverted the waters flowing through said ditches, instituted and began a system of using and appropriating said waters which violated the rights of plaintiffs in that the said defendants, and each and all of them, used and appropriated more of said waters than they were respectively entitled to and diverted and applied the same upon their respective premises, and thereby decreased the amount of water which would naturally have flowed through said ditches to the premises of the above named plaintiffs, and by reason thereof said plaintiffs were not permitted to and could not and did not receive the amount of water upon their said premises to which they were entitled; that this has been and is possi-

ble because all of the defendants herein named reside at places, and take the waters of said ditch and ditches, at points which are above plaintiffs' said land and premises above described, plaintiffs' land being below that of the defendants' and the last that is irrigated through and by means of the water flowing through said ditches and pipe line. That defendants, and all of them, against the protests of plaintiffs have persistently and in violation of the rights of plaintiffs continued to take and appropriate more water than they or any of them have been entitled to, and in using the same have done so in a wasteful and prodigal manner and have not in any way endeavored or tried to conserve the said waters or apply the same to their use in an economical way so that each and all of the parties having a right to the use of the same could receive his just and proper proportion thereof; that in the use and diversion of the waters of said ditches no system or rule of appropriation is followed, and by reason of the lack of co-operation in the use and appropriation of said waters ~~the same~~ is wasted to an unnecessary degree; that it is possible by a proper system of supervision to so regulate the diversion and appropriation of said waters as that no appropriator will receive more than he is justly entitled to.

IX.

That the defendants have persisted in the course aforesaid and have deprived plaintiffs of the use of said waters ever since the year 1905, and by reason thereof the plaintiffs have been unable to raise upon their said land the crops which theretofore it had produced in great abundance and to great profit to plaintiffs, and that it is impossible to cultivate said land and raise crops thereon without it is irrigated, and there is no means of irrigating the same except by means of the waters flowing through said ditch and ditches and pipe line to which plaintiffs are entitled as aforesaid.

That during the year 1907 plaintiffs were unable to raise any crops upon their said land because of the unlawful use and appropriation by defendants of more than their just share of said waters and the appropriation and use by defendants of the portion of said waters which plaintiffs were entitled to use and appropriate; that the reasonable and yearly value of the crops raised upon the lands which are subject to irrigation by plaintiffs, as aforesaid, is at least the ~~sum~~ sum of One thousand dollars (\$1000.00) and that the loss and damage to plaintiffs is the said sum of \$1000.00 for the loss of their crops during the year 1907.

X.

That the plaintiffs are informed and believe that the above named defendants, and each of them, have or claim some right, title or interest in and to said ditches and pipe line, and also claim some rights to the use of the waters flowing through the same, but plaintiffs allege that the right, title and interest of defendants in and to said ditches and the use of said waters, whatever it may be, is not and cannot be or extend to an amount of interest or use which if asserted would diminish the right, title, interest and use of plaintiffs below what is herein claimed by and for them, and that the right, title, interest and use of plaintiffs, and each of them, in and to said ditches and pipe line and their rights to the use of the water flowing through the same, are, to the extent hereinabove claimed and asserted, prior and superior to the rights and interests of the defendants and each of them.

WHEREFORE, plaintiffs pray the judgment and decree of this Honorable Court:

(1) That the plaintiffs are entitled to the interests in said ditches and pipe line and the use of the waters flowing through the same to the extent hereinabove alleged, and that the rights and

and interests of the defendants, and each of them, therein, are inferior and subordinate to that of the plaintiffs, to the extent claimed and asserted by plaintiffs as hereinabove alleged; and that the right and title of said plaintiffs as aforesaid be forever quieted and established in them, and each of them, as herein claimed and asserted, and against the said defendants and each of them; and that the extent and amount of rights and interests of said plaintiffs and said defendants, and each of them, in and to said ditches and pipe line and the right to the use of said waters be fixed, established and determined by the decree of this Court.

(2) That the defendants, and each of them, be forever enjoined and restrained from in any manner interfering with the appropriation, use and enjoyment by plaintiffs of the waters of said Verde River flowing through said ditches and said pipe line to the extent to which the said plaintiffs are entitled to appropriate, use and enjoy the same, or from using, appropriating or **divesting** any of the waters flowing through the same which plaintiffs are entitled to use and appropriate.

(3) That the Court establish a proper and suitable method for the measurement of the waters flowing through said ditches and pipe line, and the apportionment of the same among the appropriators who are entitled thereto in the proportions to which each of said appropriators is entitled, and that the Court appoint some suitable superintendent who shall supervise and superintend under the authority and direction of the Court the proper appropriation and distribution of said waters, with power, conferred by the decree of this Honorable Court, to enforce the same; and that the Court determine in what proportion each of said appropriators shall contribute to the expenses of the care and maintenance of said ditches and pipe line.

(4) That plaintiffs have judgment against defendants for the sum of \$1000.00, damages as aforesaid.

(5) For costs of this action, and for such other further and equitable relief as to the Court may seem just and proper.

LeRoy Anderson

Thomas C. Job
Attorneys for Plaintiffs.

TERRITORY OF ARIZONA,)
County of Yavapai.) ss.

GEORGE W. HANCE, being duly sworn, on his oath says that he is one of the plaintiffs in the above entitled action, and that he has read the foregoing complaint and knows the contents thereof, and that the allegations of the complaint are true in substance and in fact.

George W. Hance

Subscribed and sworn to before me this 26th day of
September, A.D. 1907.

My commission expires Nov 10 1911

L. Ray Anderson
Notary Public.

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

GEORGE W. HANCE and
PARTHENY H. HANCE,
Plaintiffs,
vs.
WALES ARNOLD, ET AL.,
Defendants.

C O M P L A I N T.

FILED.

at 3 o'clock P. M.

OCT 3 1907

J. M. Watts Clerk.

(By Mrs. W. T. Trego Deputy.