

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
Parthy H. Hance,

Plaintiffs,

vs.

Wales Arnold, Sarah J. Arnold,
S. C. Cherry, J. H. Wingfield,
Charles Harbeson, William J.
Davis, E. W. Monroe, William
M. Gray, E. J. Monroe, John H.
Scott, Belle Monroe, Elias Wyne,
The Verde Ditch Company, a vol-
untary association, and William
Stevens and William Lane, as
executors of the estate of
John Wood, deceased,

Defendants.

AMENDED AND SUPPLEMENTAL
COMPLAINT.

Now come the above named plaintiffs, having first obtained leave of the Court, and file this their amended and supplemental complaint, and allege:

I.

That at all the times hereinafter alleged, the plaintiffs, George W. Hance and Parthy H. Hance, have been and are now husband and wife.

II.

That since the 26th day of September, 1907, and before the filing of this supplemental complaint, the defendant John Wood died; that the defendants William Stevens and William Lane have duly qualified as the executors of the estate of the said John Wood, deceased, and that the death of the said John Wood being duly suggested to this court, an order of the court was duly made and entered directing that the said William Stevens and William Lane, as the executors of the

estate of John Wood, deceased, be made parties defendant herein.

III.

That The Verde Ditch Company is a voluntary association; that the plaintiffs and the defendants, Wales Arnold, Sarah J. Arnold, S. C. Cherry, J. H. Wingfield, Charles Harbeson, William J. Davis, E. W. Monroe, the estate of John Wood, William M. Gray, E. J. Monroe, John H. Scott and Belle Monroe, own all of the stock that has been issued or is now outstanding in said association.

IV.

That the plaintiffs and the defendants are each and all residents of Yavapai County, Territory of Arizona.

V.

That the plaintiff, George W. Hance, is the owner of and in actual possession of the following described land situate in Yavapai County, Arizona, to-wit:

West half of Southwest quarter of Section 27; Northeast quarter of Southeast quarter of Section 28; Northwest quarter of Northwest quarter of Section 34; Northwest quarter of Southeast quarter of Section 28; Northeast quarter of Southwest quarter of Section 28; East half of Northwest quarter of Section 28; all in Township 13 North, of Range 5 East, Gila and Salt River Meridian, consisting of 320 acres.

VI.

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

South half of Northwest quarter and Northeast quarter of Northwest quarter of Section 34, Township 13 North, of Range 5 East, G. & S. R. Meridian, consisting of 120 acres.

VII.

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 an actual stream of water, the water of which having been during all of the times herein mentioned diverted by means hereinafter described and applied to and carried upon the land above described for the purpose of irrigating the same.

VIII.

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 water of the said Verde River and caused the same to flow into the said ditch and through the same, and each of the parties, at the time of the completion of the construction of said ditch, owned a one-fifth interest therein, and by reason of the diversion into and through the same, became and were entitled to the right to the use of one-fifth of the water said ditch was and is capable of carrying. That the said hereinbefore named persons were tenants in common in the said ditch and co-appropriators of said water.

IX.

That from the time of the completion of the Old Verde Ditch the said Jackson Thompson used and applied upon the land above described as being now owned by George W. Hance, one-fifth of the water flowing through the said ditch, and applied the same thereon for the purposes of irrigation and domestic purposes in connection with the said land; and he, and 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 the said ditch and one-fifth of the water flowing through the same, in the irrigation

of said land, without interruption or hindrance, except as to the wrongs herein complained of and until the commission of such wrongs. That the above named plaintiff, George W. Hance, through 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 use of the water-carrying capacity of said ditch, and the right to the use of one-fifth of the water actually flowing through the same.

X.

That in the year 1891, what is known as the New Verde Ditch was constructed by John Davis, John Wood and James Brown, who were tenants in common thereof and owned interests therein in the following proportions: John Davis, two-tenths; John Wood, six-tenths, and James Brown, two-tenths. That said ditch was constructed by said parties for the purpose of diverting said 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 that the lower end of the 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. That the head gates of the old ditch were destroyed and not thereafter used; that the said Wood, Davis and Brown, immediately upon the construction of the New Verde Ditch, diverted through the same, by means of head gates, the waters of the Verde River, and carried the same through the said ditch into said Old Verde Ditch; and all of the waters that theretofore had been diverted into said Old Verde Ditch at its original head gate 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 from said Old Verde Ditch through said New Verde Ditch were the same waters that had theretofore been diverted into said Old Verde Ditch under the aforesaid original appropriations and by means of its original head gates.

XI.

That said waters have been continuously and uninterruptedly used and appropriated since the first diversion thereof, by the persons entitled to use the same, as tenants in common. That the said George W. Hance, by mesne conveyances from the original owners of the said New Verde Ditch, is now the owner of an undivided three-twentieths interest therein; and the said Partheny H. Hance, by certain mesne conveyances from the original owners of the said New Verde Ditch, is the owner of an undivided one-twentieth interest; and the said plaintiffs are entitled to the right to the use of the water flowing through said New Verde Ditch in the proportion to each of them respectively that they own and hold in said ditch, and are entitled to have the same flow through said New Verde Ditch and into the said Old Verde Ditch undiminished in quantity and without interference or hindrance from any person. That ever since 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 predecessors have continuously used and appropriated the same for irrigation, domestic and stock purposes upon the land hereinabove described, and until the commission of the wrongs hereinafter complained of.

XII.

That after the completion of the said New Verde Ditch, it became necessary, by reason of the physical conditions, to construct a pipe line 700 feet long through which the waters could be carried from the New Verde Ditch to the Old Verde Ditch. Such 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 the said Old Verde Ditch. That the above named plaintiff, George W. Hance, is the owner of an undivided seven-twentieths in and

to the said pipe line; and Partheny H. Hance, one of the above named plaintiffs, is the owner of an undivided one-twentieth in and to the said pipe line, and both are entitled to use the same for the carrying of said waters to the use of which they are entitled as aforesaid.

XIII.

That the average flow of the New Verde Ditch was and is 750 inches; that the capacity of the said pipe line was and is 250 inches.

XIV.

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 interference or interruption by defendants or any other persons whomsoever.

XV.

That until about the year 1905, plaintiffs and their predecessors in interest enjoyed the full and uninterrupted use of all the waters to which they were entitled as aforesaid, and used and applied the same for the purposes above mentioned, and by means thereof were able to raise upon said premises and land large and valuable crops of grain, hay, alfalfa, 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, by means of tap boxes opening into said ditches, diverted the waters flowing through said ditches, and began a system of wrongfully using and appropriating said waters, which violated the rights of plaintiffs

in that 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 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; and that this has been done and is possible 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 the defendants and all and each 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 all and each 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 the said ditches, no system or rule of apportionment is followed by defendants, and by reason of the lack of co-operation in the use and appropriation of said waters by defendants, the same is wasted to an unnecessary extent; that it is possible, by a proper system of supervision, to so regulate the division and apportionment of said waters that no appropriator will receive more than he is justly entitled to, and so that all of the appropriators will receive the amount of water that they are entitled to. *Wm. H. Jones*

XVI.

That the defendants have persisted in the course aforesaid, and have deprived plaintiffs of the use of said water 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 the great profit of the plaintiffs; that it is impossible to cultivate the said lands and raise crops thereon unless it is irrigated, and there is no way of irrigating the same except by means of the waters flowing through said ditches and pipe line; that during the year 1907, the plaintiffs were unable to raise any crops upon their said land because of the said unlawful use and appropriation of said waters by defendants; that the reasonable and usual yearly value of the crops raised upon the lands which were subject to irrigation by plaintiffs, as aforesaid, is at least the sum of \$1,000.00, and that the damage to plaintiffs is the sum of \$1,000.00 for the loss of their crops during the year 1907.

XVII.

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 right to the use of the waters flowing through the same, as shareholders, but the plaintiffs allege that the right, title and interest of the 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 the plaintiffs below what is herein claimed by and for them, and each of them, in and to said ditches and pipe line, and that the right, title and use of plaintiffs and each of them, to the use of the waters 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 same to the extent hereinabove alleged, and that the rights 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 the plaintiffs, and that the right and title of plaintiffs, as aforesaid, be forever quieted and established in them, and each of them, as hereinabove claimed and asserted, and against the said defendants, and each of them; and that the extent and amount of the 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 the said waters, be fixed, established and determined by a 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 the plaintiffs of the waters of the 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 diverting any of the waters flowing through the same which plaintiffs are entitled to use and appropriate.

3. That the court establish a proper and equitable method for the measurement of the waters flowing through the 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; that the court appoint some suitable superintendent, who shall supervise and superintend, under the authority and direction of the court, the proper appropriation and distribu-

tion 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 expense of the care and maintenance of said ditches and pipe line.

4. That the plaintiffs have judgment against the defendants for the sum of \$1,000.00 damages, as aforesaid.

5. For costs of this action, and for such other further relief as to this court seems just and equitable.

Clark & Pillsbury

Attorneys for Plaintiffs.

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

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 contained in said complaint are true in substance and in fact.

X George W. Hance

Subscribed and sworn to before me this 24th day of February, 1908.

My commission expires Oct. 30, 1909.

G. J. Mack

Notary Public.

No. 4772

IN THE
DISTRICT COURT

Of the 4th Judicial District of Arizona, in and
for the County of Yavapai.

George W. Hance et al.

Plaintiffs,

v.

Wales Arnold et al.

Defendants.

AMENDED AND SUPPLEMENTAL
COMPLAINT.

Received Copy 7/2/08

Filed

at 2:30 o'clock P. M.

FEB 24 1908

J. M. Watts Clerk.

By _____ Deputy.

E. S. CLARK

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

PRESCOTT, ARIZONA