

Cedar

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN  
AND FOR THE COUNTY OF MODOC

W. E. Hill, C. A. Smalls and E. B. Smalls, A. E. Rinehart, E. J. Beebe, Nora J. Street, and Nora J. Street as Guardian of the persons and estates of Mildred and Marie Street, minors, E. E. Rinehart, J. L. Toney, L. E. McCulley, T. B. Sizer, Jake Weber, Mada Page and Mae S. Page his wife, Melvon Miller, Administrator of the estate of Farley Street, deceased, Melvon Miller, Guardian of the person and estate of Rea Anita Street, a minor, Melvon Miller, Executor of the estate of Ella Lazetti Scammon, deceased, and Harry L. Hill,  vs.  Herman Acty, Robert O. Fink, John Doe, Richard Roe and Hiram Mos,  Plaintiffs,  Defendants.	}	
	}	No. 2343
	}	Judgment and
	}	Decree

The above entitled action came on regularly for trial this 15th day of February, 1923, before the above-entitled Court, Honorable J. O. Montar, Judge therein presiding, the plaintiffs appearing by and through their attorney A. K. Wylie, Esq., and the defendants Herman Acty and Robert O. Fink, appearing by and through their attorney D. B. Robnett, Esq., and the cause having been dismissed as to the other defendants above named; and the said plaintiffs and defendants, by and through their respective counsel, in open court duly consented to a trial of said case at this time; and thereupon said parties plaintiff and defendant acting by and through their said counsel presented to the said Court a Stipulation and agreement signed by all of the parties, wherein and whereby all of said parties consented to the entry of a decree herein in accordance with the terms of said stipulation and agreement, and said stipulation and agreement having been duly filed in said court and cause, and the parties having in open court waived findings of fact and consented to the entry of a judgment herein, and said Court having examined said stipulation and it duly appearing therefrom and from the pleadings in said case that said Court has jurisdiction of all of said parties,

and of the subject matter of said case and by reason of said stipulation and agreement said Court has jurisdiction to make and enter a decree in accordance with said stipulation and agreement, and said counsel for the respective parties having presented this decree to said Court as a proposed decree to be entered in said action and having consented to the entry of this decree in said action, now, therefore,

The Court hereby findings from said stipulation and agreement and ORDERS, ADJUDGES AND DECREES, as follows:

1. That at the time of the commencement of this action said Nora J. Street, was and is now the duly appointed, qualified, and acting Guardian of the persons and estates of Mildred and Marie Street, minors.
2. That at the time of the commencement of this action said Melvon Miller, was and now is the duly, appointed, qualified and acting Administrator of the estate of Farley Street, deceased; and was and now is the duly appointed, qualified and acting, Guardian of the person and estate of Bea Onita Street, a minor, and was and now is the duly appointed, qualified and acting Executor of the estate of Ella Lasette Scammon, deceased.
3. That at the time of the commencement of this action, the plaintiffs were and now are the respective owners of the respective lands claimed by them in their complaint on file herein which said lands are particularly described in said Complaint paragraph five thereof.
4. That plaintiff Harry L. Hill, was not an original party plaintiff in said action but subsequent to the commencement of said action, and in said written stipulation he was made a party plaintiff and signed said stipulation and agreement of settlement in this case.
5. That said Harry L. Hill is now and at the time of signing said stipulation and agreement was the owner of certain lands in the vicinity of lands of the other plaintiffs which were and are entitled to water from the creek hereinafter described. That said lands of said Harry L. Hill are more particularly described as follows, to-wit:

All those certain lots, sites and parcels of land situated in the County of Modoc, State of California, and particularly described as follows, to wit:

The southwest quarter of the Northwest quarter, and Lots two, three and four of Section 27, and lot one of Section 34, all in township 43 North, Range 16 East, M.D.M.

6. That the defendant Herman Acty and Robert O. Fink own lands near or adjoining said creek hereinafter described, which are irrigable from said creek.

7. That there is in said Modoc County a certain natural stream of water known as and called Cedar Creek, which said Creek, rises on the eastern slope of the Warner Range of mountains in said County, and west of the lands of the parties hereto, and flows thence in a well defined channel between well defined banks, near all of the lands of said plaintiffs and defendants and flows over and across some of said lands.

8. That all of the parties hereto claim rights in and to the waters of said creek, and in accordance with said stipulation and agreement, it is hereby ORDERED, ADJUDGED AND DECREED, that the waters of said Cedar Creek are owned by the parties hereto in the amounts hereinafter specified, and the parties hereto are severally entitled to divert and use water from said Cedar Creek, in the amounts, and at the times and in the manner following, to wit:

A. The plaintiff L. E. McCulley, as against all of the parties plaintiff and defendant herein, is the owner of and is entitled to divert and use as a first right two hundred and fifty inches of the waters of said Cedar Creek, measured under a four inches pressure, said right being superior to any right, title or claim of any of the other plaintiffs herein and to any right, title or claim of any of the defendants herein.

B. That subject to the said first right of said L. E. McCulley to the first two hundred and fifty inches, of the waters of said Cedar Creek,

measured under a four inch pressure, all the other plaintiffs are jointly the owners of and entitled to divert and use, as against all of the defendants, the next Seven hundred and fifty inches of the waters of said creek, measured under a four inch pressure, said seven hundred and fifty inches of the waters of said creek being owned by said plaintiffs in the several amounts hereinafter specified, to wit:

1. Mada Page and Mae S. Page his wife, are the owners of Fifteen inches of the said Seven hundred and fifty inches of the waters of said creek, measured under a four inch pressure, for the irrigation of the lands described in said complaint.

2. T. B. Sizer is the owner of Forty inches of the said Seven hundred and fifty inches, of the waters of said creek, measured under a four inch pressure, for the irrigation of his lands described in said complaint.

3. Jake Weber is the owner of fifty-five inches of said Seven hundred and fifty inches of the waters of said creek, measured under a four inch pressure, for the irrigation of his lands described in said complaint.

4. J. L. Toney is the owner of Fifty inches of the said Seven hundred and fifty inches of the waters of said creek, measured under a four inch pressure, for the irrigation of his lands described in said complaint.

5. Nora W. Street, and Nora J. Street as Guardian of the persons and estates of Mildred and Marie Street, minors, is the owner of One Hundred and fifteen inches of the said Seven hundred and fifty inches of the waters of said creek, measured under a four inch pressure, for the irrigation of the lands owned by her and described in said complaint.

6. H. E. Blashart is the owner of forty inches of the said Seven hundred and fifty inches of the waters of said Creek, measured under a four inch pressure, for the irrigation of his lands described in said complaint.

7. Melvon Miller, as Guardian of the person and Estate of Mera Anita Street, a minor, and as Administrator of the Estate of Farley Street, deceased, and as Executor of the Estate of Ella Lazetti Scammon, deceased,

is the owner of Seventy inches of the said Seven Hundred and fifty inches of the waters of said creek, measured under a four inch pressure, for the irrigation of his lands described in said complaint.

8. E. J. Beebe is the owner of One hundred and thirty inches, of the said Seven Hundred and Fifty inches of the waters of said creek, measured under a four inch pressure, for the irrigation of his lands described in said complaint.

9. A. E. Rinsart is the owner of One hundred and twenty-five inches of the said Seven Hundred and fifty inches of the waters of said creek, measured under a four inch pressure for the irrigation of his lands described in said complaint.

10. W. E. Hill is the owner of Ten inches of the said Seven hundred and fifty inches of the waters of said creek, measured under a four inch pressure, for the irrigation of his lands described in said complaint.

11. C. A. Smalls and E. B. Smalls are the owners of Fifty-five inches of the said Seven hundred and fifty inches of the waters of said creek, measured under a four inch pressure, for the irrigation of their lands described in said complaint.

12. Harry L. Hill is the owner of Forty-five inches of the said Seven hundred and fifty inches of the waters of said creek, measured under a four inch pressure for the irrigation of his lands in this decree described.

C. That whenever the amount of water flowing in said creek, after supplying and deducting the said Two hundred and fifty inches owned by said L. E. McCulley, is less than Seven hundred and Fifty inches, measured under a four inch pressure, the said plaintiffs in subdivisions one to twelve inclusive, of paragraph B, of this decree, shall share in the ownership and use of the water flowing in said creek in excess of said first right of said L. E. McCulley, pro rata according to the several amounts in said subdivisions specified, and each of said plaintiffs in said subdivisions described shall suffer a proportionate deduction on the several amounts in said subdivisions specified, it being hereby decreed that there is no priority

or superiority among or between the rights of said plaintiffs in said subdivisions described.

D. It is further ordered, adjudged and decreed, that whenever the amount of water flowing in said stream does not exceed two hundred and fifty inches measured under a four inch pressure, that at such times said plaintiff L. E. McCulley, shall be entitled, as against all the other plaintiffs and defendants, to divert and use all of the water so flowing in said stream, and the said defendants and the other plaintiffs, shall not be entitled to divert or use any water from said stream.

E. That all of the foregoing rights of all of the plaintiffs, aggregating One thousand inches of water measured under a four inch pressure, are superior to any right, title or claim of any of the defendants in and to the waters of said creek, and whenever the amount of water flowing in said stream does not exceed One thousand inches, measured under a four inch pressure, the said defendants shall not have the right to divert or use any of the waters of said creek, but subject to the first rights of the plaintiffs herein to the first One thousand inches of the waters of said creek, said defendants, Herman Acty and Robert O. Fink, and wife, are the owners of and entitled to divert and use the next One hundred and ninety-five inches of the waters of said stream measured under a four inch pressure, upon the lands now owned or occupied by them, as follows: Herman Acty is the owner and entitled to divert and use One hundred and fifty inches of said One hundred and ninety-five inches, measured under a four inch pressure, and said Robert O. Fink and wife are entitled to divert and use and are the owners of Forty-five inches of said One hundred and Ninety-five inches, measured under a four inch pressure, and whenever the amount of water flowing in said stream in excess of the said One thousand inches, measured under a four inch pressure, is less than One hundred and Ninety-five inches, measured under a four inch pressure, said defendants Herman Acty and Robert O. Fink and wife shall share proportionately in the excess over said One thousand inches, according to the amounts herein decreed to be owned by them, it being hereby decreed that

there is no priority of right between said last named defendants.

F. It is further ordered, adjudged and decreed, that the several amounts of water hereinbefore decreed to be owned by the various and respective plaintiffs are to be measured at their several points of diversion from said creek, and for the purpose of determining whether or not there is at any time flowing in said stream any water in excess of the aggregate amounts owned by the plaintiffs, namely, One thousand inches, measured under a four inch pressure, that a concrete measuring device or wier is to be constructed and placed in the channel of said creek, at or near the point of diversion of plaintiff L. E. McCulley, which said measuring device is to be so constructed and so marked that any of the parties hereto can determine therefrom whether or not there is any water in excess of said One thousand inches flowing in said stream, and if so what amount of excess there is so flowing. Said measuring device is to be constructed at the joint expense of all of the parties hereto, said cost to be borne and paid by the parties hereto pro rata according to the amounts of water owned by them and is to be constructed under the supervision of some competent irrigation engineer to be selected by the parties hereto and the expense of such engineer to be a part of the cost of said device.

G. It is further ordered, adjudged and decreed, that the points of diversion of some of the plaintiffs herein are located at a considerable distance below the point of diversion of said L. E. McCulley, where said measuring device is to be placed, and that there is an appreciable loss of water by seepage and evaporation between said points, and the points of diversion of said defendants are above the points of diversion of some of said plaintiffs, and therefore for the purpose of determining what amount of water must be flowing in said stream at the point where said measuring device is placed to allow each and all of the plaintiffs to receive at their respective points of diversion the amounts herein decreed to them, and at the same time for the defendants to be able to determine whether or not there was flowing in said stream any water to which they are entitled, in accordance with said stipulation and agreement it is hereby ordered,

adjudged and decreed, that such loss of water between said measuring device and said lower points of diversion shall be estimated and determined during the spring of 1923, by the State Water Commission of the State of California, or by its representative or engineer, upon the visit of said engineer to said Cedar Creek, during said spring of 1923, and that such determination shall be filed in this action and shall be conclusive upon all of the parties hereto on said question of loss, and said lower divertors rights shall be increased at the point of said measuring device the amount found by said engineer to be necessary to deliver to their respective points of diversion the several amounts herein before decreed to be owned by them, and the rights of said defendants shall not attach to any water in said stream unless there is flowing therein at the said measuring device, the full amounts to which said plaintiffs are entitled, plus the amounts so found by said engineer to be necessary to cover said loss, and an excess over these amounts, and then said defendants shall be entitled to the said excess.

H. It is further ordered, adjudged and decreed, that whenever there is flowing in said stream any water in excess of the aggregate amounts hereinbefore decreed to said plaintiffs and said defendants, that such excess water over and above the necessary amount to supply all of said plaintiffs and defendants the rights hereinbefore decreed to be owned by them, shall be owned and diverted and used, by the said plaintiffs and defendants jointly, pro rata according to their several rights hereinbefore set forth.

I. It is further ordered, adjudged and decreed, between the plaintiffs T. B. Sizer and Jake Weber, and the defendants Robert O. Fink and wife, that said defendant shall have the right to divert any water that he may be entitled to hereunder through the same ditch now used by him to divert from the channel of said Cedar Creek, water heretofore conveyed from Toms Creek into Cedar Creek, and carried down the channel of said Cedar Creek, to the point of diversion of said ditch, which is located in the southeast corner of the northeast quarter of the northeast quarter of Section 8, township 42 North, Range 16 East, E.D.M., and said last named plaintiffs shall not in any way obstruct, impede or interfere with



said last named defendants in the use of said ditch, and shall not obstruct or interfere with the free flow of any water which said defendants may be entitled to under this decree, through said ditch, to the said defendants.

J. It is further ordered, adjudged and decreed, that some of the parties plaintiff and defendant herein have heretofore been diverting water from Toms Creek into the channel of Cedar Creek, and conveying such water down the natural channel of Cedar Creek to their points of diversion from said Cedar Creek and there reclaiming said Toms Creek water and diverting the same from said Cedar Creek, under a claim of right, and said parties still claim the right to so divert the waters of said Toms Creek, into said Cedar Creek and convey the same down the channel of said Cedar Creek to their points of diversion and there to divert said water, and it is hereby ordered, adjudged and decreed that this decree shall in no way change or alter the said rights of said parties so claiming said Toms Creek water, and this decree is not intended to embrace or have any effect on the waters of said Toms Creek so turned into said Cedar Creek, but is only intended to deal with and decree the respective rights of the parties hereto in and to the water of Cedar Creek and the natural flow thereof, and said parties so claiming rights to the waters of said Toms Creek shall not be restricted or restrained in any manner from turning said Toms Creek water into the channel of Cedar Creek, and reclaiming said Toms Creek water at their several points of diversion from Cedar Creek.

K. It is further ordered, adjudged and decreed, that this decree covers all the rights, of every kind and character of each and all of the parties hereto, and said parties hereto have no other, further or different rights in the waters of said Cedar Creek and no other further or different rights belonging to the lands of the parties hereto, than the rights hereinbefore adjudged and decreed to them.

L. It is further ordered, adjudged and decreed, that each and all of the parties plaintiff and defendant herein, their and each of their agents, attorneys, employees, successors, and assigns, are hereby perpetually enjoined and restrained from in any manner violating this decree, or from interfering with, obstructing or impeding any or all of the other parties herein in their diversion and use of the respective quantities of the waters of said Cedar Creek, in the manner and at the times herein decreed.

M. It is further ordered, adjudged and decreed that each of the parties hereto pay his or her own costs herein incurred.

Done in open Court this 15th day of February, 1923.

J. O. MONTGOMERY  
Judge Presiding.

Thoms Cr.  
water to  
Cedar Cr.

In the Superior Court in and for the County of Modoc, State of  
California

D. H. Lighty,	Plaintiff,	}
vs.		}
John R. Cook, Isabelle Cook, James		
Wylie, Helen A. Cambridge, and		
Alice Hironymous as Administratrix		
of the Estate of Jesse Hironymous,		
Deceased,	Defendants.	

Judgment. 1206

This cause came on to be heard in open court this 22nd day of May A. D. 1901; Spencer & Raker appearing as attorneys for Plaintiff, and C. F. Harris as attorney for the defendants John R. Cook and Isabelle Cook; H. L. Spargur for the defendants James Wylie and Alice Hironymous as Administratrix of the Estate of Jesse Hironymous, deceased, and E. C. Bonner as Attorney for Helen A. Cambridge; and it appearing to the satisfaction of the Court that the respective parties, through their respective attorneys above named, have stipulated and agreed that a compromise be entered into and a Judgment be made and entered in said court and cause, on the following terms and conditions, to wit:-

-I-

That it be adjudged and decreed that the plaintiff and defendants are the owners of the waters of Thoms Creek as described in the Amended Complaint herein, to the amount of 250 inches of said water measured under a 4-inch pressure, to be diverted, owned and used respectively by the parties as herein stipulated and agreed; and that the plaintiff and defendants and their grantors respectively, entered upon said Thoms Creek at a point as alleged in the complaint, and made a ditch and dam and flumes, as described in the Complaint herein ~~and~~ conducted the waters thereof from Thoms Creek over Cedar Pass, into Cedar Creek, and used Cedar Creek as a water way down to the point described in the Amended Complaint herein, and diverted and appropriated the waters of Thoms Creek by and through said means therein alleged.

-II-

That the defendants John R. Cook and Isabelle Cook are the joint owners of the ditch to be designated herein as "Ditch No. 1", which is above the ditch described in the Amended Complaint. The ditch described herein in Paragraph No. V of the Amended Complaint will be designated as "Ditch No. 2". And there is another ditch further down the stream and below Ditch No. 2, taking water from Cedar Creek, which will be designated as Ditch No. 3.

-III-

That said Judgment shall be entered decreeing that the waters of Thoms Creek diverted and appropriated as aforesaid by and through the means hereinbefore alleged, and by and through the dam, ditch

and flumes taking the water from Thoms Creek over Cedar Pass, dumping it into Cedar Creek, and down Cedar Creek until it reaches the SW $\frac{1}{4}$  of SE $\frac{1}{4}$  of Sec. 6, N, R 16 E. M.D.M., Township 42, shall be diverted from Thoms Creek by said dam, through said ditch leading from Thoms Creek and the flume connected therewith, to where it conveys the water over Cedar Pass into Cedar Creek, then down Cedar Creek to where it is diverted as hereinafter stipulated and adjudged shall be the means and ways of diverting and appropriating the said 250<sup>0</sup> inches of water measured under a four inch pressure, from the waters of Thoms Creek, by the parties thereto, and their successors in interest.

IV.

That said Judgment shall be entered decreeing that the waters of Thoms Creek shall be divided into sixty-fourths as follows.

1. That said John R. Cook and Isabelle Cook shall have, own and use twenty-four sixty-fourths of said waters.
2. That said D. H. Lighty shall have, own and use nine sixty-fourths of said waters.
3. That said Helen A. Cambridge shall have, own and use seven sixty-fourths of said waters.
4. That said Alice Hironymous as Administratrix of the Estate of Jesse Hironymous, deceased, shall have, own and use eight sixty-fourths of said waters.
5. That said James Wylie shall have, own and use sixteen sixty-fourths of said waters.

V.

That said Judgment shall be entered decreeing that said John R. Cook and Isabelle Cook may divert and use through Ditch No. 1, or through Ditch No. 2, which is the ditch described in the Amended Complaint herein, or Ditch No. 3, at their option their portions of said waters.

VI.

That said Judgment shall be entered decreeing that said David H. Lighty may divert and use his waters through Ditch No. 2, being the ditch described in the complaint, and through said ditch where it crosses the SW $\frac{1}{4}$  of SE $\frac{1}{4}$ , NW $\frac{1}{4}$  of SE $\frac{1}{4}$ , and the NE $\frac{1}{4}$  of the SE $\frac{1}{4}$ , and the SE $\frac{1}{4}$  of the NE $\frac{1}{4}$ , all in Section 6, Twp., 42 N, R 16 E. M.D.M., to where it leaves the Northeast corner of the SE $\frac{1}{4}$  of NE $\frac{1}{4}$  of said Section 6, at which point the said D. H. Lighty is to place a box, and use his waters at said point.

VII.

That said Judgment shall be entered decreeing that the defendant James Wylie shall divert and use his waters at Ditch No. 3, which is taken out of Cedar Creek where ~~xxx~~ said Cedar Creek enters the west side of the SE $\frac{1}{4}$  of SE $\frac{1}{4}$  of said Sec. 6, Twp. 42 N, R 16 E. M.D.M.

VIII.

That said judgment shall be entered decreeing that the Defendant, Alice Hironymous as Administratrix of the estate of Jesse Hironymous, deceased, shall divert and use her share of said waters through Ditch No. 3, which is the ditch through which said Wylie is to use his waters, or at any other point on Cedar Creek below Ditch I No. 2 that the same may be desired to be used or taken from Cedar Creek.

IX.

That said Judgment shall be entered decreeing that the defendant Helen A. Cambridge may divert and use her share of the said waters from Cedar Creek at any point on Cedar Creek.

XI.

That said Judgment shall be entered decreeing that all matters shall be and are adjudged and settled between the Plaintiff and Defendants growing out of the matters and things alleged in the complaint herein, and are settled and forever ended.

XII.

That said Judgment by its terms shall direct and decree that each of the parties to this stipulation shall assist in keeping the dam or weirs in Thoms Creek, and ditches and flumes leading therefrom, and Cedar Creek as a water way, in repair and condition, each putting in his labor and materials and expense therein and thereto, to the proportion of the amount of water owned by each therein, to wit: John R. Cook and Isabelle Cook twenty-four sixty-fourths; (b) David H. Lighty nine sixty-fourths; (c) Helen A. Cambridge seven sixty-fourths; (d) Alice Hironymous as Administratrix of the Estate of Jesse Hironymous, deceased, eight sixty-fourths; and (e) James Wylie sixteen sixty-fourths thereof.

XIII.

That said judgment by its terms shall direct and decree that the Plaintiff D. H. Lighty shall have the right to run the water diverted by him through the Ditch No. 2, over the lands where said ditch crosses as it is now constructed, and to take the same from said ditch where it leaves the northeast corner of the SE $\frac{1}{4}$  of NE $\frac{1}{4}$  of said Section 6 so that he may convey the same from there on onto his (said Lighty's) premises described in the Complaint herein; and that he shall keep said ditch in repair over the lands owned by J. R. Cook and Isabelle Cook being the NE $\frac{1}{4}$  of SE $\frac{1}{4}$ , and E $\frac{1}{2}$  of NE $\frac{1}{4}$  and NW $\frac{1}{4}$  of NE $\frac{1}{4}$  of Sec. 6, in Twp. 42 N., R. 16 E., M.D.M. at his own cost and expense, to the proportion owned by him as compared to the proportion of the waters owned by J. R. Cook and Isabelle Cook.

XIV.

That said judgement by its terms shall direct, adjudge and decree That the defendant James Wylie shall take his water allowed to him by said decree, out of said creek through Ditch No. 3, and then out of the continuation of said ditch near the northeast corner of the SE $\frac{1}{4}$  of the NE $\frac{1}{4}$  of said Section 6, where he now diverts his water from said ditch.

XV.

That said Judgment by its terms shall direct, adjudge and decree, that whenever there is a surplus of the waters owned by the defendants John R. Cook and Isabelle Cook, then and in that event the said surplus thereof may be used by said Plaintiff D. H. Lighty, through the same means as the waters owned by him provided for in this stipulation and decree; provided that water reasonably and properly used upon any crops growing upon the lands owned by J. R. Cook and Isabelle Cook as above-described, shall not be deemed surplus or waste water; while the portion of their water not thus used shall be considered as surplus or waste water.

That D. H. Lighty shall not at any time enter upon the lands of J. R. Cook and Isabelle Cook without their, or their legal representatives' consent, but the repair of the ditch and the measurement of the water shall only be done as in this stipulation provided; provided that at all times a representative, or employee, or assigns of D. H. Lighty may enter upon said lands of said last named defendants, for the purpose of repairing said ditch and measurement of water. That no damages shall be awarded for any accidental breaking of Ditch No. 1.

XVI.

That said Judgment by its terms shall direct that the waters shall not be run to waste by any of the parties hereto; and when there is not sufficient water of Thoms Creek to which the said parties are entitled, flowing in Cedar Creek, at the head of the ditches hereinbefore named to reach the lands of the parties hereto, by reason of evaporation or absorption, then the defendants John R. Cook and Isabelle Cook shall be entitled to use all of the said minimum quantity of water.

-XVII-

That said Judgment by its terms shall direct and decree that D. J. Benner, of the town of Cedarville, Modoc County, shall be and is hereby appointed to see that the water owned by said D. H. Lighty is properly conducted through Ditch No. 2, and over the lands through which Ditch No. 2 crosses, to where it discharges the waters thereof at the northeast corner of the SE $\frac{1}{4}$  of the NE $\frac{1}{4}$  of said Section 6, if the said waters turned in at the head of said ditch No. 2 is not discharged at the point and place where it enters the southwest corner of the NW $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 5, said Township and Range; or such other good responsible man to be selected by the parties, provided said D. J. Benner fails to act; and if the parties cannot agree upon a person for such purpose, then such person to be appointed by the court upon five days' notice to the other party. Provided nevertheless, that if said John R. Cook and Belle Cook, or either of them, are unable or fail from any cause to keep said water in said ditch, then it is the duty of said D. H. Lighty to keep the said ditch in repair as in this stipulation elsewhere provided, so that the water may be delivered at the point above specified, at his own costs and expense.

XIX.

That said Judgment by its terms shall direct that a certified copy thereof shall be filed and recorded in the office of the County Recorder as a Deed and indexed, each of the parties hereto paying his proportion of the costs thereof, to the amount of the water owned by each per this decree.

XX.

That said Judgment shall be entered without costs to either of the parties, and that each party pay his own costs and disbursements.

NOW, THEREFORE, fully considering the foregoing stipulations, admissions, compromise and statements so made and understood in open Court as above, and in view of the allegations of the pleadings on file and of the premises it is by the Court,

ORDERED, ADJUDGED AND DECREED,

FIRST: That plaintiff and defendants are the owners of the waters of Thoms Creek as described in the Amended Complaint herein, to the amount of 250 inches of said waters measured under a 4-inch pressure, to be diverted

and owned and used respectively by the parties as herein stipulated and agreed, and that the plaintiff and defendants, and their grantors respectively, entered upon said Thoms Creek at the point alleged in said Complaint, and made a ditch and dam and flume therein as described in said complaint and conducted the waters thereof from Thoms Creek over Cedar Pass into Cedar Creek, and used Cedar Creek as a water way down to the point described in the Amended Complaint herein, and diverted and appropriated the waters of Thoms Creek by and through the means alleged therein.

Second: That the defendant John R. Cook and Isabelle Cook are the joint owners of the ditch to be designated herein as Ditch No. 1, which is above the ditch described in the Amended Complaint. The ditch described in Paragraph V of the Amended Complaint will be designated as Ditch No. 2, herein. And there is another ditch further down the stream and below Ditch No. 2, taking water from Cedar Creek which will be designated as Ditch No. 3 herein.

THIRD: That the waters of Thoms Creek diverted and appropriated as aforesaid, by and through the means herein before alleged, and as alleged in the Amended Complaint, and by and through the dam, ditch and flumes taking the water from Thoms Creek over Cedar Pass, dumping it into Cedar Creek, and down Cedar Creek until it reaches the SW $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Sec. 6, Twp. 42 N, R 16 E. M.D.M., shall be diverted from said Thoms Creek by said dam through said ditch leading from Thoms Creek and the flume connected therewith, to where it conveys the water over Cedar Pass into Cedar Creek, then down Cedar Creek to where it is diverted as hereinbefore stipulated shall be and is the way and means of diverting and appropriating the said 250 inches of water measured under a 4 inch pressure or and from the waters of Thoms Creek, by the parties hereto and their successors in interest.

FOURTH: That the waters of Thoms Creek so diverted shall be and hereby are divided into sixty-fourths, as follows:

1. The said John R. Cook and Isabelle Cook shall own and hereby are decreed to own and have the right to use twenty-four sixty-fourths of said waters.
2. The said D. H. Lighty shall own and hereby is decreed to own and have the right to use nine sixty-fourths of said waters.
3. The said Helen A. Cambridge shall own and is hereby decreed to own and have the right to use seven sixty-fourths of said waters.
4. The said Alice Hironymous as administratrix of the estate of Jesse Hironymous, deceased, shall own and hereby is decreed to own and have the right to use eight sixty-fourths of said waters.
5. The said James Wylie shall own, and hereby is decreed to own and have the right to use sixteen sixty-fourths of said waters.

FIFTH: That said John R. Cook and Isabelle Cook may divert and use through Ditch No. 1, or through Ditch No. 2 or No. 3, which is described in the amended complaint and stipulation, at their option their portion of said waters thus owned by them.

SIXTH: That said D. H. Lighty may divert and hereby is decreed to have the right to divert and use his waters, thus owned by him, through Ditch No. 2, being the ditch described in said Complaint, and through said ditch where it crosses the S W $\frac{1}{4}$  of S E $\frac{1}{4}$  and N W $\frac{1}{4}$  of the S E $\frac{1}{4}$  and the N E $\frac{1}{4}$  or the S E $\frac{1}{4}$  and the S E $\frac{1}{4}$  or N E $\frac{1}{4}$  all of Sec. 6, Twp. 42 N, R 16 E. M.D.M., to where it leaves the northeast corner of the S E $\frac{1}{4}$  or N E $\frac{1}{4}$  of said Section 6, at which point said D. H. Lighty is to place a box and use his waters from said point.

SEVENTH: That said defendant James Wylie shall divert and hereby is decreed to have the right to divert and use his waters at and through Ditch No. 3, which is taken out of Cedar Creek where said Cedar Creek enters the west line and side of the SE $\frac{1}{4}$  of the SE $\frac{1}{4}$  of said Sec. 6, Twp. 42 N., R 16 E. M.D.M., and thence north and northeasterly to and onto the lands owned by him.

EIGHTH: That the defendant Alice Hironymous as Administratrix of the estate of Jesse Hironymous, deceased, shall divert and is hereby decreed to have the right to divert and use her share of said waters through said Ditch No. 3 which is the ditch through which said Wylie is to use his waters, or at any other point on Cedar Creek below ditch No. 2, where the same may be desired to be taken from Cedar Creek by said Hironymous or her successors in interest.

NINTH: That the defendant Helen A. Cambridge may divert, and hereby is decreed to have the right to divert and use her share of said waters from Cedar Creek at any point on Cedar Creek.

TENTH: That all matters and things shall be and hereby are adjudged to be, and are settled by and between the plaintiff and the defendants, and by and between the defendants, growing out of the matters and things alleged in the complaint herein and are forever ended and determined.

ELEVENTH: That each of the parties shall assist and are hereby directed to assist in keeping the dam or dams in Thoms Creek, and ditch and flume leading therefrom, and Cedar Creek as a water way, in repair and condition, so that the waters of Thoms Creek may be diverted from Thoms Creek through the means as aforesaid, to and down Cedar Creek to the heads or the ditches hereinbefore respectively described, each putting in his or her labor and material and expense therein, thereto and therefor to the proportion of the amount of water owned by each therein, to wit:-

(a) John R. Cook and Isabelle Cook twenty-four sixty-fourths thereof; (b) David H. Lighty nine sixty-fourths thereof; (c) Helen A. Cambridge seven sixty-fourths thereof; (d) Alice Hironymous as Administratrix of the estate of Jesse Hironymous, deceased, eight sixty-fourths thereof; and (e) James Wylie sixteen sixty-fourths thereof.

TWELFTH: That it be and hereby is, directed and decreed that the Plaintiff D. H. Lighty, shall have the right to run the water diverted and owned by him over the lands crossed by said Ditch No. 2 as hereinbefore described, and to take the water from said ditch where it leaves the northeast corner of the SE $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Sec. 6, Twp. 42 N., R 16 E. M.D.M., so that he may convey the same from there on onto his (said Lighty's) premises described in the said Complaint herein; and that he shall keep said ditch in repair over said lands at his own costs and expense, to the proportion owned by him as compared to the portion of the waters owned by said John R. Cook and Isabelle Cook.

THIRTEENTH: That the defendant James Wylie shall take his portion of the said waters decreed to him by this Decree, out of said Cedar Creek through Ditch No. 3, and then out of the continuation of said ditch at the northeast corner of the SE $\frac{1}{4}$  of the NE $\frac{1}{4}$  of said Sec. 6, Being the place now used by him.

FOURTEENTH: That it is further directed and decreed that D. J. Benner of the town of Cedarville, Meadoc County, shall be and is hereby appointed to see that the water decreed to be owned by the said D. H. Lighty, by this Judgment and Decree, is properly conducted through Ditch No. 2 over the lands crossed by said Ditch No. 2, to where said Ditch No. 2 discharges the waters thereof at the northeast corner of the SE $\frac{1}{4}$  of the NE $\frac{1}{4}$  of said Sec. 6, if the said water turned in at the head of said Ditch No. 2 from Cedar



Creek is not discharged at the point and place last above named, where it enters through said ditch the Southwest corner of the NW $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Sec. 5, in said Twp., and Range aforesaid; or such other good responsible man to be selected by the parties, provided that D. J. Bonner fails to act; and if the parties cannot agree upon a person for such purpose, then such person to be appointed by the Court upon five days' notice, given by Lighty to said John R. Cook and Isabelle Cook, or by said Cooks to said Lighty. Provided, nevertheless, that if said John R. Cook and Isabelle Cook, or either of them, are unable or fail, from any cause, to keep said water in said ditch, and keep said ditch in repair, then and in that event, it is hereby made the duty of said D. H. Lighty as in the foregoing stipulation provided to keep said ditch in repair at his own costs and expense, so that the water may be diverted at the point and place above specified herein.

FIFTEENTH: That it is hereby directed and decreed, that the waters shall not be run to waste by any of the parties hereto; and when there is not sufficient water of Thoms Creek to which these parties are entitled, flowing in Cedar Creek at the head of the ditches herein named, to reach the lands of the other parties hereto, by reason of evaporation or absorption, then the defendant J. R. Cook and Isabelle Cook shall be entitled to use all of said minimum quantity of water; and that whenever there is any surplus or waste water of the waters decreed to the defendants J. R. Cook and Isabelle Cook, then and in that event the said surplus and waste water thereof may be used by the said Plaintiff D. H. Lighty, through the same means as the waters decreed to be owned by him as provided for in this Judgment. Provided that water reasonably and properly used upon any crops growing upon said lands owned by John R. Cook and Isabelle Cook (~~including~~ being the NW $\frac{1}{4}$  of SE $\frac{1}{4}$ , the E $\frac{1}{2}$  of NW $\frac{1}{4}$ , and NW $\frac{1}{4}$  or NE $\frac{1}{4}$  of Sec. 6, Twp. 42 N., R 16 E. M.D.M.) shall not be deemed surplus or waste water; while the portion of their water not thus used shall be considered as surplus or waste water.

It is further directed and decreed, that D. H. Lighty shall not at any time enter upon the lands of J. R. Cook and Isabelle Cook, without their or their legal representatives' consent, but the repair of the ditch and the measurement of the water shall only be done as in this stipulation and Judgment provided; provided that at all times a representative, employee or assigns of D. H. Lighty may enter upon said lands of last named defendants for the purpose of repairing said ditch and measurement ~~in~~ of water. It is further directed that no damage shall be awarded for the accidental breaking of Ditch No. 1.

SIXTEENTH: That a certified copy of this decree shall be filed in the office of the County Recorder of Modoc County as a Deed, in the record of Deeds, and indexed in the name of each of the parties hereto and each of the parties hereto paying his proportion of the costs thereof to the amount of water owned and decreed to each per the terms hereof.

SEVENTEENTH: It is hereby further Ordered, Adjudged and Decreed, that this Judgment and Decree shall bind the grantee or grantees, heir or heirs, administrators or assigns of the said Plaintiff and of the said Defendants, and each of the defendants in and to the subject matter by this decree dealt with.

EIGHTEENTH: It is hereby further ordered, adjudged and decreed, that each party in said action pay his own costs and disbursements, and that neither party recover any costs or disbursements from any of the others.

Dated and done in open Superior Court this 22d day of May A. D. 1901.

(signed) J. W. Harrington,  
Judge of the Superior Court.

The above and foregoing stipulation for Judgment, by and on behalf of the respective parties herein, and by and through their respective attorneys of record, is made with their consent and agreement, and by reason of the said facts and law the above and foregoing stipulation of facts and Judgment and Decree is consented to, and the same be signed by the Judge and thereafter duly filed and entered as a Judgment and Decree of said Court in said cause.

Witness our hands this 18th day of May, A. D. 1901.

Clarence A. Baker, and Spencer & Baker, Attorneys for Plaintiff. G. F. Harris, Attorney for Defendants, John R. Cook and Isabelle Cook, E. C. Bommer, Attorney for Defendant, Helen A. Cambridge, H. L. Spargur, Attorney for Defendants, James Wylie and Alice Hironymous as Administratrix of the estate of Jesse Hironymous, deceased.

Endorsed: "Filed May 22nd, 1901, L. S. Smith, Clerk, Entered May 25th, 1901, Book 3 of Judgments, Page 256 and following."

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Office of the County Clerk ( )  
County of Modoc,            ) SS:  
State of California        ) )

I, L. S. Smith, County Clerk of the County of Modoc, State of California, and ex-officio Clerk of the Superior Court of said Modoc County, do hereby certify the foregoing to be a full, true and correct copy of original Judgment and Decree in the above-entitled court and cause, filed in my office on the 22nd day of May, 1901, and that the same was entered of record May 25th 1901 in Book 3 of Judgments, records of said Court, at pages 256 et. seq.,

Witness my hand and the seal of said Court affixed this 31st day of May, A. D. 1901.

L. S. SMITH  
County Clerk and Ex-officio Clerk of the  
Superior Court in and for the County of Modoc,  
State of California.