

1941

R. C. Syrett v. Tropic and East Fork Irrigation Company, and John H. Johnson : Brief of Appellant

Utah Supreme Court

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IN THE

SUPREME COURT

OF THE

STATE OF UTAH

R. C. SYRETT,
Plaintiff and Respondent,
vs.
TROPIC AND EAST FORK IR-
RIGATION COMPANY, A
CORPORATION, AND JOHN
H. JOHNSON,
Defendants and Appellant.

APPELLANT'S BRIEF

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In the Supreme Court of the State of Utah

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APPELLANT'S BRIEF

STATEMENTS OF FACTS

The defendant company was incorporated on the 27th day of March, 1893. (Defendant's Exhibit originally marked 1B, later marked "Defendant's Exhibit I", which is a certified copy of the Articles of Incorporation of the Defendant Company.) (Trans. 433-434.)

The Articles of Incorporation, so far as material to this action, provide:

"The object of this Corporation is to construct a canal from the East Fork of the Sevier River to Tropic and to keep the same in repair for the conducting of the water from said stream to the Town of Tropic also to control the waters of Bryce Canyon for culinary and irrigation purposes for said Town." (Trans. 433-434)

And Article XI:

“The Directors shall have power to levy and collect assessments on all Capital of this Company for the purpose of keeping in repair all ditches and dams, and the payment of its officers and employees, and shall divide the water to each person according to his stock as a dividend.”

The Articles of Incorporation were filed for record in the Clerk's office of Garfield County, Utah, on the 27th day of March, 1893. (Trans. 433)

More than five years after the incorporation of the Defendant company, to-wit: on the 14th day of May, 1898, certain appropriators residing at the Town of Tropic, conveyed to the said corporation their water rights appropriated from the East Fork of the Sevier River, and some other water rights, by a certain deed, marked “Defendant's Exhibit H,” also marked “Defendant's Exhibit 1A”. (Trans. 429-432)

The following is a copy of the said Deed, except the names of the grantors, to-wit:

DEFENDANT'S EXHIBIT H.

“This Indenture made the 23rd day of December, 1897, between the undersigned residents of Tropic, in the County of Garfield, and State of Utah, the parties of the first part, and the Tropic and East Fork Irrigation Company, a corporation, whose principal place of business is at said Tropic, Garfield County, State of Utah, the party of the second part;—Witnesseth:—

That whereas, the said Tropic and East Fork Irrigation Company has been duly incorporated under the laws of the State of Utah, and to which said Incorporation it is intended by this Instrument to transfer all the right, title and interest of the parties of the first part, which they and each of them have or claim in and to the following described property and premises, to-wit:—

All that certain stream of water in said County, known as the East Fork of Sevier River, and all the tributaries thereof, and all canals, aqueducts, ditches, flumes, and other water courses, whatsoever, leading from said stream of water, to and upon lands owned by the said parties of the first part, or either of them, or to and upon any lands in, at or near the said town of Tropic, or in the vicinity thereof.

Also all the waters of that certain stream known as Spring Creek, which said last mentioned stream rises in the mountains west of said town of Tropic, and flows thence Easterly to and through said town of Tropic, and is used for irrigation, domestic and culinary purposes by the inhabitants thereof and vicinity, together with all main canals, ditches, flumes, aqueducts, or other water courses now used or constructed for the purpose of conveying the waters of said Spring Creek to said inhabitants or any of them for the uses and purposes aforesaid.

With all necessary waste ditches, dams, head gates,

and escape gates, and the appurtenances thereunto belonging, or in any wise appertaining; each of our interests being represented by the number of equal shares in said property set opposite our names, respectively, with the value of each of said shares estimated at the uniform sum of One Dollar each, as follows:

(Names of owners, number of shares owned, and value.)

That the parties of the first part and each of them, whose names are hereunto subscribed, in consideration of certificates of stock in said incorporated Company, hereafter to be issued to them and each of them, their heirs and assigns, in the same amounts and value to each of said first parties, as hereinbefore set out, do by these presents grant, bargain, sell, transfer, remise, release and quit claim unto the said Tropic and East Fork Irrigation Company, all their, and each of their right, title and interest, claim and demand whatsoever, in law or in equity, or, in and to all of said property, canals, ditches, flumes, water courses, head gates, dams and appurtenances described as aforesaid, and the waters of said streams and each of them, and of the tributaries thereto, and all water rights, or right to use or control any of the waters thereof.

To have and to hold the said premises and property unto the said Tropic and East Fork Irrigation Company, its successors and assigns forever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals this 14th day of May, 1898.”

(Names of Parties of the First Part.)

Two certificates of acknowledgment—each dated the 14th day of May, 1898.

The defendant's predecessors in interest appropriated the waters in question about 1892, and built a canal from the point of diversion on the east fork of the Sevier River in the Great Basin, over the mountain and across the top of the Continental Divide, dividing the Great Basin water shed from the Colorado water shed, and took this water down through a steep canyon, (Water Canyon) to the town of Tropic, in the valley below the Continental Divide, where they have used this water ever since.

It is stipuated that any water from defendant's canal, used in the Great Basin, will drain out through the Great Basin, and that any water used on the other side of the mountain, where defendant's irrigation system is, will drain out through the Colorado water shed. (Trans. 166-167)

MR. LOWRY: “We will stipulate the water used on Mr. Syrett's land, the Ruby Inn, cannot drain down to the Town of Tropic.”

MR. LARSON: “All right, that will be fine.” (Trans. 166-167)

The Tropic irrigation system is fully described by

plaintiff's witness, J. Austin Cope. (Trans. 323-326)

The age of J. Austin Cope is 44 years. He has lived in Tropic for 37 years. (Trans. 319)

The plaintiff says that Ruby's Inn is six miles from the town of Tropic, the way the water runs, and about nine miles by the road, and that Ruby's Inn is 11½ miles west from the east line of the Great Basin, by airline. (Trans. 164)

(Trans. 197) Plaintiff testified as follows:

Q "Well, they have never refused to let you use the water on the farm?" (Meaning the Tillie Shakespear farm which plaintiff purchased on foreclosure.)

A. "I haven't asked."

Q. "You never asked?"

A. "No, sir."

Q. "You do not want to farm in the Tropic Valley?"

A. "No. That is, not if I can get out of it."

Q. "The company never refused to let you use any of this water in the Tropic Valley, did they?"

A. "No, sir."

Q. "You have always been free to use it there,"

A. "I never asked."

Q. "But you have always known you had the right to the use of it?"

A. "Yes, sir." (Trans. 197)

Q. (Trans. 197-198) "What you were trying to get them to consede was the right to the use of that water in the Great Basin, away from

their irrigation system?"

A. "Not away from their irrigation system, no, sir."

Q. "Away from where they have used water, and away from where you knew water had been used at Tropic before you bought it?"

A. "Yes, sir." (Trans. 198)

Q. "You knew in each instance, when you got this water, it had been used down in the Tropic system, down in the valley, didn't you?"

A. "Yes, sir."

Q. "But you have never wanted to use it there, or any of it, have you?"

A. "No, sir."

Q. "You do not want to use it there now?"

A. "No, sir."

Q. (Trans. 203) "You have no purpose other than to try to get the privilege of using this water up by Ruby's Inn, in the Great Basin, do you?"

A. "No, sir."

The original Complaint was filed April 10, 1937. It was not claimed in said Complaint that the plaintiff had ever used any water from the Tropic Irrigation system on his land. The burden of the Complaint seems to be to get \$5,000.00 damages because of the loss of patronage of a great number of tourists because plaintiff has been unable to supply them with water in their rooms, and the principal object, from the face of the Com-

plaint, appears to be to get water to sink in the ground to fill a well with which to supply the tourists.

When the action was commenced, plaintiff claimed 320 shares in defendant company. At the time of the commencement of the trial, on April 6, 1938, the plaintiff asked leave to make several amendments to the Complaint, by interlineation. (Trans. 80-81)

STATEMENT OF ERRORS

Relied on for Reversal.

1. The Court erred in overruling Defendant's Demurrer to Plaintiff's Complaint.

2. The Court erred in making no findings of fact on the issue of estoppel and amendment to Articles of Incorporation, raised in Plaintiff's Reply, (Trans. 45) where it is said:

"In reply to Defendant's Second Further and Separate Defense, said Defendant is *estopped to claim that it is controlled by its object*, as set forth in its Articles of Incorporation, and Plaintiff alleges that by virtue of the acts of Defendant in *allowing* the use of water under its irrigation system at the various points and times enumerated hereofore, *that said Defendant has made an effective amendment to its Articles of Incorporation, which this plaintiff has relied on*, and to allow said Defendant to deny said amendment will result in great injury to this Plaintiff."

3. The Court erred in overruling Defendant's motion for a new trial, that is, the motion addressed to the

“Amended Findings of Fact, Amended Conclusions of Law and Amended Judgment.”

Notice of Motion, (Trans. 410) Order Denying Motion for New Trial, (Trans. 418)

4. The Court erred in its Finding of Fact No. 6, (Trans. 400) wherein it finds, in the last three lines of said paragraph, that:

“Defendant has wholly failed and refused to allow plaintiff to use said water in defendant’s canal and under its control on plaintiff’s farm.” (Assuming the Court refers to plaintiff’s farm in the Great Basin and not plaintiff’s farm on the Colorado Water Shed.)

5. The Court erred in its Finding of Fact No. 10, in that particular part thereof embodied in lines No. 14 and 15 of said Finding, where it is said, relative to the use of the water of defendant company, that it has been used:

“Upon and near the land and owned by the plaintiff described in paragraph 3 hereof.”

6. The Court erred in its Finding of Fact No. 12, particularly in that part thereof embodied in the ninth line, where it is said:

“Over 25 years last past in the neighborhood of Ruby’s Inn.”

7. The Court erred in its Findings of Fact No. 14, and particularly in that part thereof where it is said:

“The waters have been beneficially applied to and used upon the lands within the company’s irri-

gation system, in the neighborhood of Ruby's Inn."

8. The Court erred in its Finding of Fact No. 16, (Trans. 403) where the Court finds:

"That any water taken from the said canal in the Great Basin by the plaintiff or by anyone else, will not injure the water rights, the lands and the property rights of this defendant and its stockholders, and it will not do this defendant or its stockholders injury and damage."

9. The Court erred in its Finding of Fact No. 17, and the whole thereof.

10. The Court erred in its Finding of Fact No. 20, and in the whole thereof, wherein he finds that the use of the water at Ruby's Inn in the Great Basin, will not impair the vested rights of defendant or its stockholders. (Trans. 403-405.)

11. The Court erred in its Finding of Fact No. 22, and in the whole thereof.

12. The Court erred in the Finding of Fact No. 23, in that particular part thereof wherein the Court finds:

"And the cost to defendant and its stockholders of delivering water to the plaintiff on his farm, corresponding to his ownership of shares of stock in the defendant company, will not exceed the cost to said defendant company of delivering water to other of defendant's stockholders owning a corresponding amount of stock to that owned by the plaintiff, and the delivery of water to plaintiff on his farm, (assuming that the farm in the Great Basin is intended) will not result in detriment and annoyance, and will not cost this defendant out of proportion or in

excess of the detriment or loss corresponding to plaintiff's ownership of stock."

13. Conclusions of Law. (Trans. 405-406)

The Court erred in its fourth Conclusions of Law, and the whole thereof, (assuming that the land therein referred to, being in defendant's irrigation system, is meant to include the land owned by the plaintiff in the Great Basin.)

14. The Court erred in its Conclusions of Law No. 6, in that part thereof wherein it is said in the first line:

"This controversy is one relating to internal management."

15. The Court erred in its Conclusions of Law No. 7, wherein it concludes: (Trans. 406)

"Defendant is estopped to deny that it does not have the power under its Articles of Incorporation, to deliver water to the plaintiff on his farm in the Great Basin."

16. The Court erred in its Conclusion of Law No. 9, and the whole thereof.

17. The Court erred in entering its Amended Judgment for the plaintiff against the defendant. (Trans. 407-408)

STATEMENT AND ARGUMENT

Upon the Particular Questions Involved for Determination.

The fundamental questions to be determined here, as the writer sees them, are:

1. Whether the Ruby's Inn and lands there located, in the Great Basin, 10 miles away from the Tropic system, are within the Tropic and East Fork Irrigation Company's system on the Colorado Water Shed, because water will run *by gravity* from the diverting canal of the company to plaintiff's lands below it.

2. Whether the land at Ruby's Inn in the Great Basin, is in the irrigation system of the Tropic and East Fork Irrigation Company, as fixed by its Articles of Incorporation, which is a contract binding on the stockholders of the company as among themselves, and binding on the corporation, and on the corporation in its relations with its stockholders.

16 C. J. S., page 804,

"Constitutional Law," No. 365.

3. Has the Court the right, under the Constitution of this State and the Constitution of the United States, to interfere with the vested rights of the stockholders, as fixed by the Articles of Incorporation and Deed of Trust.

4. Is the defendant company "Estopped to claim that it is controlled by its object as set forth in its Articles of Incorporation," as alleged by plaintiff's Reply (Trans. 45) and concluded by the Court in its Conclusion of Law No. 7? (Trans. 406.)

5. Are the questions involved in this case, questions of or relating to "Internal Management" of a cor-

poration, as the Court concludes in its 6th Conclusion of Law? (Trans. 406.)

6. That by argument and discussion of the foregoing proposition, all of the foregoing seventeen assigned errors are necessarily discussed, though not argued seriatim.

ARGUMENT.

We will first discuss fundamental question Number 1.

The writer knows of no rule of law that will prevent men from contracting, as the stockholders did in this case with the corporation, to fix and limit the system where the water conveyed to the corporation is to be used. This water taken from the very head of the Sevier River could be used on any of the irrigation systems, and there are many of them, between the intake of defendant's canal and Hinkley, Oasis or Delta, at or near the mouth of the Sevier River. These and many other places along the Sevier River for a distance of 150 miles, have separate and independent irrigation systems. To say that the water, because it will run by gravity to places hundreds of miles, does not seem to be reasonable and it is not law. If so, a man could go to the little town of Tropic and buy shares of stock for a dollar or two each, and take them down the river away from the Tropic system to Marysvale or Richfield or Salina, Fayette, Delta, or Hinkley, where the water is much more expensive

and deprive this little company of the benefit of its labor in building a long canal found by the Court to be 20 miles long, and utterly ruin the remaining stockholders, because if one person can take water entirely out of the system contrary to agreement in the Articles of Incorporation and on to another water shed, either 620 shares, or any other number of shares, then another person can do the same thing. And if a considerable portion of the water is diverted in the Great Basin, it goes without saying that the stockholders located in the little system of Tropic, will be injured, by loss of seepage and evaporation, even though the Company may not be required to supervise distribution of such water in the Great Basin or in Millard County or Sevier County or Piute County.

In Kinney on Irrigation, Second Edition. Par. 1484, the author says*

“It has been held in a late case in California that the contract as embodied in the Articles of Incorporation, may restrict the use of water in a mutual irrigation company, to the land devoted exclusively to the use of each stockholder. (Note 10.)”

Citing Miller vs. Imperial Water Company, 156 Cal. 27; 103 Pac. 227.

In Consolidated People's Ditch Company, et al., vs. Foothill Ditch Company, et al., 269 Pac. 19, it is held:

Syllabus 10:

“Stockholder in ordinary corporation owning water right has no right to receive water in any other

manner or place than provided by corporation for distribution.”

In the foregoing case the question is very fully and ably discussed.

In Kinney on Irrigation, Second Edition, par. 1480, it is said; that mutual corporations

“Are not organized for the purpose of either furnishing or carrying water to all whose lands are so situated that they may be irrigated from the system of works of the corporation. (Note 3.)”

Citing cases.

Re: Fundamental question Number 2. Whether the land at Ruby's Inn in the Great Basin is in the irrigation system of the Tropic and East Fork Irrigation Company, et al., as fixed by its Articles of Incorporation.

It is perfectly clear from the purpose clause of the Articles of Incorporation of this company, hereinbefore set out and embodied in Defendant's Exhibit I, that it was the intention of the incorporators at the time of the incorporation of the company, to fix their irrigation system at and in the immediate vicinity of the town of Tropic, where they lived. It was not until more than thirty years thereafter that the plaintiff sought to divert water elsewhere than at Tropic. The incorporators never contemplated such a thing, nor did the persons who conveyed their water rights to the corporation in 1898, which is apparent from the purpose clause of the

corporation and from the Deed of Conveyance to the corporation, which contracts are binding on the parties thereto, and binding as between the stockholders, inter se.

In 16 C. J. S. title Constitutional Law, par. 365, the black letter heading is:

“The Constitutional prohibition against impairment applies to contracts between stockholders and members of private corporations, and the corporation and among those individuals themselves.”

Cases cited.

It may be said that the constitutional prohibition against impairment applies only to legislative acts, but that is not the law. It applies to judicial decisions as well.

16 C. J. S., par. 280, title Judicial Decisions, treats this phase of constitutional law.

I note that the cases cited under Note 52 in said paragraph, *Fleming vs. Fleming*, 68 Law Ed. 547, and other cases are cited in a recent Utah case, to-wit: *Fuller-Tompence Truck Co. v. Public Service Commission, et al.*, at page 726, 96 Pac. Rep. Second Series.

Continuing in paragraph 280, 16 C. J. S., Judicial Decisions, Constitutional Law, at page 700, it is said:

“However, even though such constitutional inhibitions do not apply to judicial decisions, the Courts are not authorized to violate or impair contract obligations. (Note 57.)”

And cases cited.

Re: Fundamental question number 3, has the court the right under the Constitution of the State and the Constitution of the United States, to interfere with the vested rights of stockholders as fixed by the Articles of Incorporation and deed of trust.

See authorities last above cited.

“The obligation of a contract valid when made under the laws of the state as then expounded, cannot be impaired by any subsequent decision of the courts altering the construction of the law.”

Oliver Company vs. Louisville Realty
Company, (Ky.)

161 S. W. 570.

51 L. R. A. NS. 293.

Ann. Cas. 1915C 565.

There is absolutely nothing in the evidence to the effect that the company ever consented to let plaintiff use any water in the Great Basin. The only evidence in the case relative to any action on the part of the Company in regard to the use of water in the Great Basin, is the minute entry dated March 28, 1924, and is identified as Defendant's "Exhibit J," (Trans. 512) a copy of which is as follows:

“March 28, 1924. The Board of the East Fork Irrigation Company met at 8 p. m. W. V. Rappley, President.

J. A. Cope asked for the right to take the water

out on the mountain for a desert entry. We decided the Board had no right to grant it.

The bids for Watermaster were opened. Thomas Richards bid was accepted. \$65.00 for East Fork and \$12.50 Spring Creek.” (Trans. 513.)

Fifth. Are the questions involved in this case questions of or relating to internal management of a corporation, as the Court concludes in its 6th Conclusion of Law? (Trans. 406.)

In 18 C. J. S. title Corporations, paragraph 496, at page 1174 it is said:

“A radical and fundamental change in the objects, purposes, or business of the corporation interferes with the contract rights of each stockholder with the corporation and cannot be made without the consent of all stockholders. (Note 94.)”

In 19 C. J. S. title Corporations, page 447, paragraph 984, *Judicial Supervision*, in the black headlines it is said:

“A court of equity has the same jurisdiction over acts or omissions of corporations as over those of individuals. However, courts will not control or interfere in the internal management of corporations except in cases of fraud, bad faith, gross mismanagement, or ultra vires acts; and a court’s jurisdiction over internal affairs will not be exercised of its own accord.”

In said paragraph, the question of internal management of a corporation is fully discussed, and cases cited.

Discussing the assigned errors relied on for reversal,

1. The Court erred in overruling Defendant's Demurrer to Plaintiff's Complaint, because the said Complaint does not state a cause of action. It does not show that the Defendant Company was under any obligation contrary to the Articles of Incorporation, or otherwise, to deliver any water to the Plaintiff outside of the system of the company, as fixed by the Articles of Incorporation.

2d The Court erred in making no finding on the issue of estoppel and amendment to Articles of Incorporation. If the allegation in the Reply of Plaintiff raises a material issue, and the Court should have made a Finding upon it.

Piper v. Eakle, 78 Utah, 342, 2 Pac. 2d. 909-910.

3d The Court erred in overruling Defendant's Motion for a New Trial, because the Complaint did not state a cause of action, for the reasons hereinbefore stated.

4th The Court erred in its Finding of Fact No. 6, (Trans. 400) for the reason that the Finding that Defendant wholly failed and refused to allow plaintiff to use said water from defendant's canal is inconsistent with the Court's Finding No. 12, wherein the Court finds that Plaintiff has used the water for 25 years last past in the neighborhood of Ruby's Inn. It is incon-

sistent with the Court's Finding No. 10, where the Court finds the water has been used upon and near the land owned by the plaintiff, described in paragraph 3 thereof, which is wholly inconsistent with the Finding of Fact in paragraph 6 to the effect that Defendant has wholly failed and refused to allow plaintiff to use said water.

6. The Court erred in its Finding of Fact No. 12, in that part thereof where he finds that Plaintiff has used the water over twenty-five years last past in the neighborhood of Ruby's Inn, for the reason that it is wholly and utterly inconsistent with the Court's Finding No. 6, and it is not supported by any testimony.

7. The Court erred in finding 14, wherein it finds that the waters have been beneficially applied to and used upon the lands within the company's irrigation system "in the neighborhood of Ruby's Inn," for the reason that there is no testimony whatever to support such Finding or to support the assumption that land at Ruby's Inn is within the irrigation system which it fixed at Tropic by the articles of incorporation.

8. The Court erred in its Finding of Fact No. 16, where the Court finds:

"That any water taken from the said canal in the Great Basin by the plaintiff or by anyone else, will not injure the water rights, the lands and the property rights of this defendant and its stockholders, and it will not do this defendant or its stockholders injury and damage."

For the reason that same is contrary to all of the testimony in the case, which testimony clearly shows on the part of the Defendant, and it was not denied, that the Defendant company will have to send watermasters or supervisors a distance of approximately ten miles to supervise the work, and each trip will cost approximately \$2.50 etc.

For the further reason that none of the seepage or drainage water will go into the system of the Tropic and East Fork Irrigation company at Tropic, if diverted in the Great Basin, which fact is stipulated. Same will be lost to the detriment of the company and its stockholders.

Said Finding is contrary to all of the evidence in the case.

9. The Court erred in its Finding of Fact No. 17, and the whole thereof, because it is self-evident and all of the testimony so shows, that if the plaintiff is to divert water in the Great Basin it will necessitate gates and diverting works and supervision on the part of the Defendant, and it would cost the Defendant and its stockholders trouble and annoyance and expense, all of which is shown by all and each of the witnesses testifying on the subject. The testimony further shows that such diversion would constitute a detriment and constant annoyance to the defendant and its stockholders, and depreciate the value of their property, and there

is no testimony to the contrary.

10. The Court erred in its Finding of Fact No. 20, wherein it finds that the use of water at Ruby's Inn in the Great Basin will not impair the vested rights of Defendant or its stockholders, because such Finding is contrary to all of the evidence in the case, and is supported by no testimony in the case.

11. The Court erred in its Finding of Fact No. 23, because all of the testimony shows that the Defendant will necessarily have to incur expense in delivering water to the plaintiff, which are separate and distinct and apart from ordinary expense for the distribution of the water in the system at Tropic. The testimony shows that it will require trips by watermasters or other agents, on horesback or by automobile, and that it will require separate and distinct measuring devices and supervision thereof.

12. The Court erred in its Fourth Conclusion of Law and the whole thereof, in assuming that the land in the Great Basin is in the Defendant's irrigation system. It is contrary to all of the testimony in the case, it is contrary to the purpose clause of the Articles of Incorporation and contrary to law.

13. The Court erred in its Conclusion of Law No. 6, wherein the Court concludes that the controversy is one relating to internal management, for the reason that there is no question of internal management involved

in this case. It was not raised by the pleadings in any way, shape, form or manner. No fraud is pleaded. No bad faith is pleaded. No gross mismanagement or ultra vires acts are pleaded by the Plaintiff. And the Court's jurisdiction over internal affairs will not be exercised of its own accord.

19 C.J.S. 447, par. 984, Judicial Supervision.

14. The Court erred in its Conclusion of Law No. 7, wherein it concludes that the Defendant is estopped to deny that it does not have the power under its Articles of Incorporation to deliver water to the plaintiff on his farm in the Great Basin, because same is contrary to all of the evidence, it is contrary to the provisions of the deed, Defendant's "Exhibit I", made by the appropriators to the corporation.

15. The Court erred in its Conclusion No. 7, wherein it concludes that defendant is estopped to deny that it does not have power under its Articles of Incorporation to deliver water in the Great Basin. The Articles govern the defendant company.

16. The Court erred in its Conclusion No. 9, wherein it concludes that plaintiff is entitled to a judgment and decree against the defendant, etc., for the reason that said Conclusion is contrary to the testimony and all of the testimony in the case, and it is contrary to law, contrary to the Articles of Incorporation, and contrary to the provisions made in the deed of trust.

17. The Court erred in rendering its Amended Judgment for the plaintiff and against the defendant, for the reason that said judgment is contrary to the facts in the case, it is contrary to law, contrary to the provisions of the purpose clause in the Articles of Incorporation, and it is contrary to the provisions of the deed of trust from the appropriators to the corporation.

WHEREFORE, the defendant prays that the said judgment in said entitled cause, be reversed, and that defendant have its costs herein incurred.

Defendant prays for such other and further relief as may be met in the premises.

Respectfully submitted,

LARSON & LARSON,

By LEWIS LARSON,

Attorneys for the Defendant,
Tropic and East Fork Irrigation
Company.