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Spanish Fork West Field Irrigation Co. et al v. USA : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT
of the
STATE OF UTAH

FILED

JUL 1 5 1959

Clerk, Supreme Court, Utah

Case No. 8994

SPANISH FORK WEST FIELD
IRRIGATION COMPANY, a
corporation, et al.,

Plaintiffs and Respondents,

vs.

UNITED STATES, a Nation,
et al.,

Defendants and Appellants.

BRIEF OF APPELLANT STATE ENGINEER
OF UTAH

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INDEX

	Page
STATEMENT OF FACTS	1
STATEMENT OF POINTS	2
ARGUMENT	2
POINT I. THAT IT WAS ERROR FOR THE TRIAL COURT TO ENTER A JUDGMENT AS TO THE WATER RIGHTS OF EACH OF THE PLAIN- TIF COMPANIES FOR THE REASONS:	
(1) THAT THERE WAS NO ISSUE AS TO SUCH RIGHTS;	
(2) THAT SUCH A JUDGMENT HAS NO BINDING EFFECT BECAUSE THE NECES- SARY PARTIES WERE NOT BEFORE THE COURT;	
(3) THAT A GENERAL DETERMINA- TION PROCEEDING IS NOW PENDING IN WHICH THE WATER RIGHTS ON THE SPAN- ISH FORK RIVER CAN PROPERLY BE DE- TERMINED.	
(4) THAT THERE WAS NO COMPETENT EVIDENCE ON WHICH SUCH A JUDGMENT AS TO WATER RIGHTS COULD BE BASED.....	2-3
CONCLUSION	7

CASES CITED

Mitchell v. Spanish Fork West Field Irrigation Com- pany, 1 Utah 2d. 313, 265 P.2d. 1016	4
Salt Lake City v. Anderson, et al., Civil No. 57298	4

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BRIEF OF APPELLANT STATE ENGINEER
OF UTAH

STATEMENT OF FACTS

The State Engineer of Utah was joined as a party defendant in this cause for the express reason that he is charged with the responsibility of distributing the waters of this state to those users entitled thereto. He has filed responsive pleadings herein and has participated in all of the proceedings and has taken an appeal from the final judgment entered by the trial court in this cause.

We are, however, now concerned with only one

phase of it. The brief filed herein on behalf of the United States contains a sufficient statement of the facts and we accept such statement and see no reason to duplicate it. Specific facts supporting our contentions can best be brought to the Court's attention in connection with our argument.

STATEMENT OF POINTS

POINT I.

THAT IT WAS ERROR FOR THE TRIAL COURT TO ENTER A JUDGMENT AS TO THE WATER RIGHTS OF EACH OF THE PLAINTIFF COMPANIES FOR THE REASONS:

(1) THAT THERE WAS NO ISSUE AS TO SUCH RIGHTS;

(2) THAT SUCH A JUDGMENT HAS NO BINDING EFFECT BECAUSE THE NECESSARY PARTIES WERE NOT BEFORE THE COURT;

(3) THAT A GENERAL DETERMINATION PROCEEDING IS NOW PENDING IN WHICH THE WATER RIGHTS ON THE SPANISH FORK RIVER CAN PROPERLY BE DETERMINED.

(4) THAT THERE WAS NO COMPETENT EVIDENCE ON WHICH SUCH A JUDGMENT AS TO WATER RIGHTS COULD BE BASED.

ARGUMENT

POINT I.

THAT IT WAS ERROR FOR THE TRIAL COURT TO ENTER A JUDGMENT AS TO THE WATER RIGHTS OF EACH OF THE PLAINTIFF COMPANIES FOR THE REASONS:

(1) THAT THERE WAS NO ISSUE AS TO SUCH RIGHTS;

(2) THAT SUCH A JUDGMENT HAS NO BINDING EFFECT BECAUSE THE NECESSARY PARTIES WERE NOT BEFORE THE COURT;

(3) THAT A GENERAL DETERMINATION PROCEEDING IS NOW PENDING IN WHICH THE WATER RIGHTS ON THE SPANISH FORK RIVER CAN PROPERLY BE DETERMINED.

(4) THAT THERE WAS NO COMPETENT EVIDENCE ON WHICH SUCH A JUDGMENT AS TO WATER RIGHTS COULD BE BASED.

We believe that duplication and repetition will be avoided by combining our argument as to each of the four subdivisions of the point we make.

We would commence by pointing out that the complaint of the plaintiffs (R. 4-24) contained no prayer asking that their water rights be determined and adjudicated and no issue was joined with respect to the matter. We would also join with the query raised by the United States by the footnote contained on Page 20 of its brief as to why these plaintiff canal companies are even in the case at all.

Paragraph 27 of the Findings of Fact makes a specific finding as to these water rights. Paragraphs 6 through 11 of the Conclusions of Law refer to them, and numbered paragraphs 5 through 11 of the Decree would appear to quiet the title of these water rights in the plaintiff companies.

We are, of course, familiar with a long line of cases that hold that findings on matters not in issue will not be considered to be error if those same findings will support the judgment entered on other grounds; but we submit that it is error to make findings and conclusions and enter a decree upon a matter not covered by any pleading and upon which no issue was raised.

This Court will take judicial notice that the Spanish Fork River is one division within a drainage area commonly called Utah Lake and Jordan River and that all rights to the use of water within that area must be and are interdependent, either directly or indirectly. The parties involved in the subject litigation are only some of the users of water from the Spanish Fork River. In addition, this entire water system is presently the subject of a pending general determination proceeding, namely *Salt Lake City v. Anderson, et al.*, Civil No. 57298, before the District Court of Salt Lake County.

Again we recognize that this Court, in the case of *Mitchell v. Spanish Fork West Field Irrigation Company*, 1 Utah 2d. 313, 265 P. 2d 1016, held that it was within the discretion of the trial court as to whether it would proceed with a private suit involving the water rights of the parties or whether it would defer to the general adjudication proceeding. The Court said:

“It is true that the decree in the instant case would only be binding on the parties to this litigation and could not enlarge their rights against anyone else; it would necessarily be subject to the determination made in the general adjudication suit which would also be binding upon these litigants who are parties to it.”

However, we most earnestly contend that it was error to make findings and enter a decree as to these rights when only a small portion of the necessary parties were before the Court, when a general determination proceeding is pending and can more properly accomplish such a determination of rights, and when such a determination of rights is not only unnecessary but not an issue in the present controversy.

A general adjudication proceeding is itself in the nature of a suit for declaratory relief and we urge that it was error for the trial court to permit the water right to be here determined and adjudicated under the guise of a suit seeking only a declaratory ruling as to certain contracts.

The Spanish Fork River Water Commissioner, Wayne Francis, was called as a witness in this matter and testified as to the decrees entered with respect to the Spanish Fork River. These decrees are identified as the McCarty Decree dated April 20, 1899, the Booth decree dated January 21, 1901, and the Dunford decree entered in 1945. Only this

latter decree gives support to the findings and conclusions here complained of and that decree was entered pursuant to stipulation between the canal companies, plaintiffs here and the only parties involved in the action culminating in the Dunford Decree.

In addition, Article 9 of the carrier contracts, of which Exhibit 44, being the contract between Spanish Fork West Field Irrigation Company and the United States, is a good illustration, contains the following language:

“The Company may divert from the flow of Spanish Fork River such an amount of water as it is entitled to under (a) the decree of the Fourth Judicial District Court of Utah, dated April 20, 1899, rendered by Judge W. M. McCarty, and (b) the decree of the same court, dated January 21, 1901, and rendered by Judge J. E. Booth, and subsequent appropriations through prescriptive rights, the total of said amount of water diverted at any one time not to exceed 95 second feet, and the Company, so far as its rights and interests are concerned, will permit the United States to take all other water in Spanish Fork River without interference.”

We respectfully submit that the foregoing is the only evidence adduced in the trial as to water rights and that it will not support Finding No. 27, Conclusions Nos. 6 through 11 and paragraphs 5 through 11 of the decree. As a final comment there

is no evidence whatever as to the extent of the right and we urge as an absolute necessity that there must be evidence of use to support the decree of a water right.

Timely objections were filed by the State Engineer to the proposed findings and conclusions (R. 366-367) and the above matters then raised as well as upon the argument in connection with the motion for new trial (R. 452).

CONCLUSION

The State Engineer, as the representative of all water users in the state, believes it to be improper to adjudicate water rights without the presence before the Court of all water users on the system involved. To do otherwise invites conflict, and it is difficult to convince any water user that a decree as to his water right is only binding on those involved in the particular action. Our primary concern is that the parties to this action will not be heard to say that, as the State Engineer was a party to this proceeding, he is bound to recognize the rights as here adjudicated in all other proceedings and particularly in the pending general determination proceeding.

We respectfully urge that the paragraphs complained of be ordered stricken from the findings,

conclusions and decree. They afford no support to the issues that divide the parties and they only make more difficult the problems with which the State Engineer is faced in the adjudication of the water rights for Utah Lake and Jordan River and all tributaries.

Respectfully submitted,

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