

1961

Spanish Fork West Field Irrigation Co. et al v.
United States et al : Brief of Spanish Fork West Field
Irrigation Co.

Utah Supreme Court

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Elias Hansen; Attorney for Plaintiffs and Respondents;

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IN THE SUPREME COURT
of the
STATE OF UTAH

— FILED

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SPANISH FORK WEST FIELD-IRRIGATION COMPANY, a Corporation,
et al.,

Plaintiffs and Respondents,

vs.

THE UNITED STATES, a Nation, et al.,

Defendants and Appellants.

Clerk, Supreme Court, Utah

Case No.
9314

BRIEF OF SPANISH FORK WEST FIELD IRRIGATION
COMPANY, et al., Plaintiffs and Respondents.

ELIAS HANSEN
*Attorney for Plaintiffs
and Respondents.*

INDEX

| | Page |
|----------------|------|
| ARGUMENT | 4 |

CASES CITED

| | |
|--|---|
| Dalton v. Stout, 87 U. 39, 48 Pac. (2d) 425 | 5 |
| Hardy v. Beaver County Irrigation Co., 65 Utah 28, 234 Pac. 524 | 5 |
| Holman v. Pleasant Grove, 8 Utah 78 | 5 |
| Lost Creek Irrigation Co. v. Rex, 36 Utah 485, 73 Pac. 660 | 5 |
| Sharp v. Whitmore, 51 Utah 14, 168 Pac. 273 | 5 |
| Smith v. Phillips, 6 Utah 376 | 5 |
| Tanner v. Roberts, 73 Utah 98, 272 Pac. 633 | 5 |

TEXTBOOKS

| | |
|---------------------------------------|---|
| 19 Am. Jur., Sec. 127, page 126 | 5 |
| Sec. 409, page 281 | 5 |

RULES

| | |
|---|---|
| Rule 75(d) and (p), Utah Rules of Civil Procedure | 5 |
|---|---|

IN THE SUPREME COURT of the STATE OF UTAH

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

Plaintiffs and Respondents,

vs.

THE UNITED STATES, a Nation, et al.,

Defendants and Appellants.

Case No.
9314

BRIEF OF SPANISH FORK WEST FIELD IRRIGATION
COMPANY, et al., Plaintiffs and Respondents.

In its Statement of Points upon which it relies Appellant,
United States, et al., alleges that:

- "1. Paragraphs 13 through 16 of the Amended Decree
are not in accord with the mandate of this Court
and exceed the jurisdiction of the trial court.

"2. Paragraph 13 of the Amended Conclusions of Law is not in accord with the mandate of this Court and exceeds the jurisdiction of the trial court."

ARGUMENT

It is argued on pages 4 and 5 of the Brief of Appellants that:

"circumstances may change in the future. There could be occasions of very high flood when storage water was being released and charges should be reduced. Situations might arise when a factor other than 'value of use of the water * * * conservation of stored water * * * (and) the rights of all other owners of approved applications * * *' might become important (paragraph 15). There is nothing in the findings to suggest that the management was threatening to reduce charges for other than the reasons given. Also the 'project' might be expanded or supplemented."

We are not certain that we understand what is meant by the language just quoted, but apparently the writer of the Brief takes the position that the Court should not make a complete determination of the case at this time because perchance the conditions might change at some future time. If that be Appellant's position, then the same is contrary to the established law in this jurisdiction.

The provisions of the original Decree with respect to the making of a full charge for all river water available for use when stored water is being released from the reservoir is the same as the language in the Decree which is now being attacked. Obviously it would be a waste of water to release water from

the reservoir when there is sufficient river water to supply the needs of those who are entitled to use the water that is available under the project. Moreover, no one in the former appeal made any attack on the provisions of the original Decree which is being questioned on this appeal. The purpose of an appeal is to correct errors which it is claimed were committed by the lower court. In the absence of an attack the provisions of the lower court not so attacked are deemed affirmed. *Rule 75(d) and (p) of Utah Rules of Civil Procedure; Dalton v. Civil Procedure; Dalton v. Stout*, 87 U. 39, 48 Pac. (2d) 425, and other cases there cited.

It is likewise the established law in this jurisdiction that in order to be valid a decree in an action fixing water rights must be definite and certain. *Smith v. Phillips*, 6 Utah 376; *Holman v. Pleasant Grove*, 8 Utah 78; *Lost Creek Irrigation Co. v. Rex*, 36 Utah 485, 73 Pac. 660; *Hardy v. Beaver County Irrigation Co.*, 65 Utah 28, 234 Pac. 524; *Sharp v. Whitmore*, 51 Utah 14, 168 Pac. 273; *Tanner v. Roberts*, 73 Utah 98, 272 Pac. 633.

It is also the established law in this and other jurisdictions that in a suit in equity, such as the instant suit, the courts will dispose of the entire controversy. 19 *Am. Jur.*, Sec. 127, page 126, and Sec.. 409, page 281, where numerous cases are cited in footnotes to the text which support the same.

If the Court should leave the question to the management of the project as to whether water should be released when there is unused river water available for use, then and under such circumstances this Court would announce a doctrine con-

trary to its repeated statements to the effect that water in this state is its life blood, and the wasting thereof will not be tolerated by the courts.

We submit that the relief sought by the Appellant should be denied.

Respectfully submitted,

ELIAS HANSEN

Attorney for Respondents,

Spanish Fork West Field Irrigation Co.;
Lake Shore Irrigation Company;
East Bench Irrigation Company, and
Spanish Fork South Irrigation Co.