(End orsements.)
4th Dist Court
Coconino County
Arizona Territory

David Brinkerhoff
et al
vs
Fred Slatterly

Decree

Filed October 24th
1893. at 4 oclock P.M.
Oscar Gibson
Clerk

{made and forwarded
at the request of
R. E. Sainesbury}
Encl 1.

43096 INDIAN OFFICE, Inclos. No. 1 1893

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V-6417-201

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In the District Court of the Fourth Judicial District

of the Territory of Arizona, in and for the County of Coconino.

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David Brinkerhoff, R.E. Sainesbury
J.A. Allen, Ashton Nebeker, C.W.
Farnsworth, Rial Allen, E.A. Foutz
W.J. Hunt, Reuben James, Joseph H.
Lee ans S.S. Wilson, Plaintiffs

vs

Fred Slatterly, Defendant.

This action came on regularly for hearing beforethe Court this 24th. day of October, 1893, the same being a day of the regular August Term of the above entitled Court, which was continued from day to day and from time to time to and including the said 24th. day of October 1893.

The defendant was regularly served with process herein but failed to appear in the action, and to make any answer or other defense therein.

Messrs Herndon & Norris appeared as counsel for plaintiffs, and on their motion the default of said defendant for not answering was regularly entered in open Court.

The cause was tried by the Court without a jury; Messrs Herndon & Norris appearing for the plaintiffs and no counsel appearing for the defendant. Witnesses were sworn and examined on behalf of the plaintiffs and documentary introduced in their behalf, and the evidence closed and the cause was submitted to the Court for consideration and decision.

From the evidence the Court finds that all the allegations of the complaint are fully proved. That both plaintiffs and defendant are residents of Coconino County, in the Territory of Arizona; That in February 1888, plaintiffs and their grantors possessed and occupied arable and irragable lands at and near Tuba City in said County of Coconino, which said lands were then and now are used and eversince said date were used by them for the purpose of cultivation and farming.

That in order to cultivate and farm said lands it is necessary to irragate them. That Moen Copie Wash was and is a running stream of water convenient to said lands.

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That plaintiffs and their grantors in order to obtain water to irragate said lands, did, in or about February 1888, acting together erected and constructed a dam across said stream and constructed ditches and acequias lea ding and diverting said water from said Moen Copie Wash and the dam so constructed, into and upon said lands.

That during the year 1888, and every year since that time up to the present time, plaintiffs have raised crops on said lan ds by the use of said water. That plaintiffs have from time to time improved and enlarged the capa city of their said dam, ditches and acequias and have reclaimed and reduced to cultivation and irragation as aforesaid, lands as aforesaid, until now they have under cultivation and irragation about 450 acres of land so under cultivation and irragation. That their said dam has been from time to time since February 1888 rebuilt, repaired and reconstructed and now consists, and did so consist, when the wrongs and injuries of defendant hereinafter set forth were done, of stone earth and timber across the said Moen Copie Wash, which is at the middle of the Wash about 40 feet high and about 450 feet across said Wash and of sufficient thickness to be solid and substantial and is located about 2 1/2 miles South East of the village or town of Tuba City in said County of Coconino.

That the ditches and acequias leading from said dam to and upon the lands aforesaid, are about 1 to 3 miles in length and said ditches and acequias and said dam are now and have since 1888 been used by plaintiffs in raising crops of wheat, corn, oats, cane and alfalfa upon said lands, with the water of said Moen Copie Wash, and said dam and ditches and acequias are sufficien t to use and carry and have used and carried all the water of the said Moen Copie Wash on the land of plaintiffs for the uses and purposes aforesaid.

That at the time plaintiffs and their grantors began to use the said waters the same was unapprorpiated and not used by any person whomsoever.

That the lands aforesaid are public lands of the United States.

That on the 11th. day of October 1892, the plaintiffs, David Brinkerhoff, R.E. Sainesbury and J.A. Allen, acting for and in behalf of all th e plaintiffs made a notice in writing of the appropriation and diversion of said waters and of the location of said Dam and Ditches, which notice was

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on or about the said 11th. day of October 1893, recorded in the office of the County Recorder of said Co~~xxxxxx~~o County of Coconino.

That defendant Fred Slatterly, combining, acting and conspiring with a number of Navajo Indians, has for more than one year last past interfered with plaintiffs use of the said water by unlawfully, wrongfully and against the will and consent of plaintiffs diverted a great portion of said water from its main channel before it reaches plaintiffsx dam and pretending to irragate with the same, but permitting a large part thereof to run to waste: and on or about the latter part of April 1893 the said defendant so unlawfully and wrongfully combining, conspiring and acting with said Navajo Indians, began and constructed a temporary dam across the said Moen Copie Wash, above the plaintiffsx damand in such a manner as to divert all the water in the dry season from the said Wash and to deprive plaintiffs of its use. That the dry season is during the months, April, May, June, July, August and September of each year.

That defendant has known at all times, when he interfered with plaintiffs use of said water that they had appropriated the same and were using the entire flow of said stream of water for irragating their crops.

That he knew of plaintiffs' said dam, ditches and acequias, and of their prior appropriation of said water for the uses aforesaid and he also knew his acts were against the wishes and consent of plaintiffs or any of them. That defendant thraetens and holds out that he will continue to use said water and to deprive plaintiffs of the use thereof.

That plaintiffs' lands, their dam, ditches and acequias willbe rendered valueless and useless if they are deprived of the use of said water and defendant permitted to continue the use of same and to interfere with plaintiffs use thereof as aforesaid; an d plaintiffs will suffer great and irreparable damage and injury.

WHEREFORE, by virtue of the law and by reason of the premises, it is ordered, adjudged and decreed, that the temporary injunction issued herein be and the same is hereby made perpetual; and that the defendant, his agent servants, attorneys and employees, and the Navajo Indians aforesaid be and they are hereby perpetually enjoined and restrained from in any manner erecting, constructing or maintaining any dam, ditch or obstruction into across or uponMoen Copie W ash

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above described, above the dam, ditches and acequias of plaintiffs; that he be and is hereby perpetually enjoined and restrained from, inany manner whatever interfering with the free flow of thex waters of said stream above plaintiffs said dam.

It is further adjudged adnd decreed that plaintiffs are the prior appropriators of all the water of Moen Copie Wash and are entitled to use thereof for irragation purposes and are entitled to use and enjoy the same without being interfered with by defendant, his agents, servants, attorneys and employees or by any Navajo Indians working with or for him.

It is further ordered adjudged and decreed that plaintiffs do have and recover of and from the defendant their costs in this behalf incurred and expended; taxed at the sum of Twenty Six and 20/100 Dollars ($26.20)

Done in open Court, October 24th. 1893.

Jno. J. Hawkins
District Judge.

Costs:-

Sheriffs fees to serve process	$ 3.00
Clerks fees issuing process, filing papers entering judgment	$19.20
Court Commissioners fees for issuing temporary writ of Injunction	$ 4.00
Total.	$ 26.20

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I, Oscar Gibson, Clerk of the above entitled Court, do hereby certify the above and foregoing to be a full, true and correct copy of a judgment made and entered in the above entitled cause, and Court, on the 24th. day of October, A.D. 1893, and appearing of record in Judgment Book Number 1, on pages 93-94-95-96 and 97.

In testimony whereof I have hereunto set my hand and affixed the Seal of the above name d Court this 11 th. day of November, A.D. 1893

Oscar Gibson
Clerk of the Court.