

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY -STATE OF UTAH

MOUNT OLIVET CEMETERY ASSOCIATION, and
WILLIAM P. GOSWAM, RUSSELL T. TRACY,
MERRILL E. KIPPONIN, RUSSELL I. GOSWAM,
GEORGE E. BAYNE, WILLIAM W. FLEETWOOD,
J. H. H. WILLIAMS, and
ELSON WESLEY KING, UNITED STATES ARMY,
Trustees of Mount Olivet Cemetery,

Plaintiffs

-VS-

SALT LAKE CITY, a Municipal Corporation,
GARDON COMPANY, a Corporation, E. D.
WICKS and JAMES A. ROGUE,

Defendants

FILED
KENDRICK DE PAGE
COMMISSIONER
OF
LAND
REGISTRATION

The above entitled action was and is a suit to quiet the right and title of the parties thereto, to divert and use for beneficial purposes, two-thirds of the entire normal flow of Emigration Canyon Creek in Salt Lake County, State of Utah.

The action was commenced in this court by the plaintiffs on the 30th day of November, 1918 by the filing of their complaint herein against Salt Lake City, a municipal corporation, one of the defendants herein. Thereafter plaintiffs filed amendments to their said complaint for the purpose of making the Gardon Company, a corporation, E. D. WICKS and J. A. ROGUE, parties defendant herein; that summons was served on all the defendants herein except Salt Lake City, and as to it, service of summons was waived and each of the defendants herein appeared in the action and answered the complaint as amended and set forth the nature of their several adverse claims to divert and beneficially use the said waters of Emigration Canyon Creek; that thereafter on the first day of March, 1920, the said cause came regular-

ly on for trial on the pleadings of the plaintiffs herein and the answers and counter-claims of the several defendants herein, the plaintiffs being represented by Frank B. Stephens, Esq., and Honorable Morris L. Ritchie; the Defendant Salt Lake City being represented by Wm. H. Folland, Esq., and H. H. Smith, Esq., the defendants, Cardon Company, a corporation, E. B. Wicks and James A. Hogle, being represented by Franklin S. Richards and Frank S. Richards and the hearing of said cause was protracted and continued from time to time until the expiration of the term of the judge who presided at the trial of said cause whereupon it was stipulated by and between all the parties hereto that said judge, Honorable P. C. Evans might continue to act as judge pro tem for the trial and decision of the within cause, whereupon further hearings were had before said Honorable P. C. Evans, acting as judge pro tem and the case finally submitted to the court for its decision on October 1, 1922 and thereupon and thereafter on the 16th day of November, 1922, the court gave and rendered its decision concerning the rights of the several parties to this action to divert and use for beneficial purposes the waters of said Emigration Canyon Creek and directed that Findings of Fact, Conclusions of Law and a Decree be made and entered herein as follows:

FINDINGS OF FACT

The Court finds from the evidence:

I.

1. That the Plaintiffs, Wm. F. Colton, Russel L. Tracy, Morris L. Ritchie, Elmer I. Goshen, George N. Davies, William M. Fleetwood, J. H. N. Williams and Major Wesley King were at the time of the commencement of the action, and their successors

in office are the duly chosen and acting trustees of an express public trust in accordance with the acts of Congress and under the regulations of the Secretary of War of the United States of America to have the care, custody, control and management of Mount Olivet Cemetery charged with the duty of the protection thereof and of the rights, privileges, franchise and property of said cemetery conducting business under the title of Mount Olivet Cemetery Association; that the property of said cemetery is devoted to the purpose of the burial of the dead and is not used for any private purpose or interest; that on May 16, 1874, Congress set apart twenty acres of the Camp Douglas Military Reservation for said cemetery which tract was first used for such purpose about the year 1878. In January 1909 Congress made an additional grant of fifty acres, more or less, immediately adjacent to the original twenty acres and on the south side thereof and which is gradually being brought into use for burial purposes. Lots for burial purposes have been sold and the proceeds for such sales are used, first for the upkeep and maintenance of the cemetery, and any surplus, invested in bonds and securities and the income thereof used for the care and maintenance of said cemetery.

2. That the defendant Salt Lake City is a municipal corporation organized and existing under and pursuant to the laws of the State of Utah and is situated in Salt Lake County, State of Utah; that the Cardon Company is a corporation duly organized and acting as such under the laws of the State of Utah.

3. That Emigration Canyon Creek, sometimes called Emigration Creek is and from time immemorial has been a natural stream of water arising in the eastern part of Salt Lake County, Utah, and flowing thence southwesterly through Emigration Canyon across a portion of Salt Lake County and emptying into the Jordan River, excepting, however, such portions of the waters of said creek as

have been diverted, used and consumed for culinary, domestic, irrigation and other useful purposes. The flow of said creek varies considerably with the seasons and from year to year but averaging about 5.46 cubic feet per second.

4. That the irrigation season extends from the first day of April until the first day of October of each year and the non-irrigation season extends from the first day of October of each year until the first day of April following.

5. That prior to the commencement of this action an agreement was entered into between Salt Lake City and the Emigration Dam & Ditch Company wherein and whereby one-third of the waters of Emigration Canyon creek were recognized as belonging to the Emigration Dam & Ditch Company and two-thirds of the waters of said creek recognized as belonging to Salt Lake City. It is the two-thirds of said waters last mentioned that are in litigation in this action.

6. That all of the lands irrigated by the parties to this suit and described in the pleadings were originally arid lands and will not produce agricultural crops without irrigation but with irrigation said lands are productive; that the land owned and controlled by Mount Olivet Cemetery is used or held for burial lots and is improved by lawns, shrubs and trees.

7. That Salt Lake City has a population of approximately 118,110 which is gradually increasing from year to year and that said city owns and controls a water system by and through which culinary and domestic water is furnished to the inhabitants thereof and in addition thereto said city controls the irrigation waters flowing in ditches within its limits and leading from Emigration Canyon to said city limits.

8. That the following persons, corporations and association, or their predecessors at the times stated herein, appropriated and diverted of the unappropriated waters of Emigration Canyon

creek, the amount stated after their respective names and ever since have continuously, openly, notoriously, without interruption and under claim of right used said amount of water for culinary, domestic and irrigation purposes.

a. That the predecessors in interest of the defendant J. A. Hogle long prior to 1878 appropriated and used of the waters of Emigration Canyon Creek for the purpose of irrigating the tract of land known as the Hogle tract and described in the complaint herein 0.66 of a second foot for thirty-six hours each week commencing at 6 o'clock P. M. on Saturday and continuing until 6 o'clock A. M. of the Monday following during the irrigation season and in addition thereto appropriated and used for domestic, culinary and stock purposes a quantity of water taken directly from the open ditch which passes through said tract equivalent to one-fifteenth of a second foot of water flowing continuously. The court further finds that if the water of Emigration Canyon creek should in the future be carried in conduit or pipe instead of the open ditch that the equivalent amount of water to that mentioned above would be 4,000 gallons per day during the non-irrigation season and 6,500 gallons per day during the irrigation season delivered at the house located upon said tract.

b. That the predecessors in interest of the Carlon Company long prior to 1878 appropriated and used of the waters of Emigration Canyon creek for the purpose of irrigation of the tract of land known as the Carlon tract and described in the complaint herein 1.58 of a second foot of water for thirty-six hours each week, or the equivalent thereof, during the irrigation season, and in addition thereto appropriated and used for culinary and domestic purposes a stream of water flowing continuously in open ditch

equivalent to one-fifteenth of a second foot. The court further finds that if the waters of Emigration Canyon creek should, in the future, be carried in conduit or pipe that the equivalent amount of water for culinary and domestic purposes to that stated above would be 10,000 gallons per day during the non-irrigation season and 17,500 gallons during the irrigation season flowing constantly in pipe delivered at the house now upon said tract of land.

c. That the Mount Olivet Cemetery Association in about the year 1878 appropriated and used for the purposes of irrigation of its cemetery tract, fully described in the complaint herein, four miner's inches or one-tenth of a second foot, the waters of Emigration Canyon creek flowing continuously.

d. That the predecessors in interest of Salt Lake City, a municipal corporation, long prior to 1878 appropriated and used for irrigation and also domestic and culinary purposes for use upon the lands and in the homes of the inhabitants of Salt Lake City residing in the First, Second and Tenth Wards of said city, all of the remainder of two-thirds of the entire flow of Emigration Canyon creek.

9. The court finds that there has been no relinquishment or abandonment of water or water rights in Emigration Canyon creek by any of the appropriators thereof.

CONCLUSIONS OF LAW

As conclusions of law from the foregoing facts the court finds and hereby decides:

1. That the following named parties are entitled to a decree quieting and confirming their right to culinary, domestic and irrigation water from Emigration Canyon creek as follows:

a. J. A. Hogle, 0.06 of a second foot of water thirty-six hours each week commencing at 6 P. M. on Saturday and continuing until 6 A. M. the Monday following during the irrigation season for the irrigation of the Hogle tract of land and also a stream flowing continuously for culinary and domestic purposes of one-fifteenth of a second foot, and if the waters of Emigration Canyon creek are carried in conduit or pipe then said Hogle shall be entitled to have delivered in a pipe at the house upon the Hogle tract 4,000 gallons of water per day during the non-irrigation season and 6,500 gallons of water per day during the irrigation season.

b. The Cardon Company, 1.39 of a second foot of water thirty-six hours each week, or the equivalent thereof, during the irrigation season for the irrigation of the Cardon tract of land and also a stream flowing continuously for culinary and domestic purposes of one-fifteenth of a second foot, and if the waters of Emigration Canyon creek are carried in conduit or pipe then said Cardon Company shall be entitled to have delivered in a pipe at the house on the Cardon tract 10,000 gallons of water per day during the non-irrigation season and 17,500 gallons of water per day during the irrigation season.

c. That Mount Olivet Cemetery Association is entitled to divert and use for all purposes of its cemetery four-tenths inches or one-tenth of a second foot of water of Emigration Canyon creek flowing continuously.

d. That Salt Lake City, a municipal corporation, is entitled to divert and use all of the remainder of two-thirds of the entire flow of Emigration Canyon creek after J. A. Hogle, Cardon Company and Mount Olivet Cemetery Association have had diverted to them the amounts of the water herein specified, flowing continuously during all seasons of the year for domestic, culinary,

irrigation and other purposes incident to its ownership and control of irrigation and domestic water systems for the use and bene fit of the inhabitants of said city.

Dated at Salt Lake City, this 11th day of August.

A. D., 1923.

P. B. Evans.

Judge Pro Tem

J. H. Morgan