

said corporation. The use of the said water has not been continuous and has been interrupted from year to year; it has not been adverse to the said Hyrum Irrigation Company, but has been permissive and the taking of the said water has been directly from the said Hyrum Irrigation Company's canal and only indirectly from the Little Bear River, and has continued from year to year, only as the officers and agents of the said corporation permitted. The use of said water has been without claim of right made known to the Hyrum Irrigation Company or at all.

X

The defendant, Samuel Bankhead, was employed by the Hyrum Irrigation Company to assist in the operation of its canal system and at times rented the right to divert water from the Hyrum Irrigation Canal for the irrigation of his land and at times the said Hyrum Irrigation Company permitted him to draw water from its canal in excess of water so rented. The withdrawal and use of water has, at all times, been as a lessee or as a permittee and the use of water by him has not been adverse or interrupted, but has been permissive and interrupted. The officers of the said Hyrum Irrigation Company stopped the said permissive use of water whenever the water was needed by its stockholders.

XI

The predecessor in interest of the defendant, William Richmond, was permitted by the Hyrum Irrigation Company to discharge water from the Paradise Canal into the Hyrum Irrigation Company's canal and at a lower point to divert the said water from the Hyrum Irrigation Company's canal for the irrigation of one and one-half acres of land and at times unknown to the officers and agents of the Hyrum Irrigation Company, the said William Richmond diverted water from the Hyrum Irrigation Company's canal without having caused water to be discharged into the canal in equal or in any amount; that the diversions of water from the said canal by the said William Richmond was not open, notorious, or uninterrupted, and was not under claim of right, but was surreptitious and wrongful and as and when discovered by the officers of the said Hyrum Irrigation Company the diversion of said water was stopped. The said defendant has the