

predecessors in interest entered upon said land and by means of dams and ditches by them constructed, appropriated the unappropriated waters of said Pack Creek seven tenths of all the waters thereof and have ever since said time continued to use the same for irrigation and domestic uses during the whole of each and every year except from the first day of May till the 30th day of June, inclusive each and every year.

4. That the defendants in like manner in or about the year 1884 appropriated the remaining three tenths of all the waters of said Pack Creek except during said months of May and June, as aforesaid, and have ever since continued to use the same for the purpose of irrigating agricultural crops and for domestic purposes during each and every year except the said two months of May and June of each year as above set forth, and that such use has been necessary.

5. That the said stream cannot be economically divided between the plaintiffs and the defendants at the same time owing to the great distance, to-wit, about five miles, between the two settlements, so that in order that the water may be used to the best advantage, it is better for all parties that the division of said stream be made by time, and that the plaintiffs can get their portion of said water by having the whole of said stream for seven days and the defendants the whole thereof for three days together.

6. That the soil of the locality is such as to require irrigation every ten days.

7. That the premises owned and occupied by the defendant, J.W.Smith, requires a stream of water to run to the house at all times for domestic use.

8. That during the years 1883 to 1887