in said settlement by mutual consent and pursuant to the customs of the country at that time prevailing, constructed a water ditch from said stream to said settlement a distance of about five miles, sufficiently large to contain all the water flowing in said stream, turned the water then flowing into said ditch brought it to said settlement and there appropriated it to their use dividing the water equitably and as justly as they knew how among said settlers and during the time which has since elapsed up to the unlawful and wrongful interruption hereinafter set forth these plaintiffs and these settlers have without hindrance enjoyed the entire and exclusive use and benefit of said water in a pure state.

IV.

That on the 15th day of October One thousand Eight hundred and Seventy six the said W. E. Wiser and Frank Randall unlawfully and wrongfully erected or caused to be erected, on the banks of said stream and above said settlement a machine or mill