

property through which said waters were conveyed to Beehive State Bank of Salt Lake City, Utah, which company entered into an agreement to sell said property to Lyman Grazing Association, plaintiff, on April 30, 1965, and Joe Hickey who held fee title also conveyed said property to Beehive State Bank on April 30, 1965. The conveyance to Lyman Grazing Association from Beehive State Bank contained a recital that the conveyance was subject to easements or rights of way for roads, ditches and canals.

6. That plaintiff, Lyman Grazing Association, filed application for change of point of diversion of its waters with the Office of the State Engineer of Utah and after having improperly advertised said application on a number of occasions the State Engineer of Utah approved said application which was for the same point of diversion as that granted to defendants Smiths, which application was approved conditioned upon said Lyman Grazing Association making the following installation of diversion facilities:

- (1) Measuring devises to measure the total quantity to be delivered into the ditch and the amount being passed on down to the Smith interests.
- (2) Proper headworks to allow regulation of all waters being diverted into the ditch.
- (3) Screwtype gates in each turn-out you (Lyman Grazing) intend to utilize.

said installations were to be made prior to any diversion of water under the change application. None of said installations have been made by plaintiff. Neither was an appeal taken from the ruling of the State Engineer by plaintiff and before the matter was decided by the State Engineer, plaintiff filed this action against defendants. That defendants were required to make numerous trips from Lonetree, Wyoming to Salt Lake City, Utah on hearings before the State Engineer and to consult their Attorney at a cost to defendants of \$150.00. . That defendants were required to make numerous long distant telephone calls as a result of the acts of plaintiff amounting to the sum of ^{50⁰⁰} ~~\$150.00.~~

7. That plaintiff, Lyman Grazing Association, and third party defendant, Charles Tripp, have both continually interfered with the use of the waters serving the property of defendants Smiths during the years 1966 and 1967 to such extent that it became necessary for said Smiths to obtain a restraining order from the court enjoining said parties from interfering with the rights of defendants Smiths which order is still in force and effect. That defendants