



That the statement and proof of claim in the above matter was prepared and submitted by Joseph H. Hill, the then owner of said land; and the dates as above mentioned as appeared in the claims were the dates when said claimant first irrigated and used said lands; that the evidence in the record herein shows that said tract was entered in the U. S. Land office in 1882 and that hay was first cut and used from the land as a result of its irrigation in the season of 1883.

That C. A. Sweek, Esquire, appeared as the attorney for said claimant in said proceedings and during the course thereof moved that said claims of the said Hill be amended to conform to the proof submitted, which motion was allowed by the Water Superintendent; that it is evident that said matter was not again brought to the attention of the water board or the circuit court and the dates stated in the claims were inserted in said decree; that at the time he purchased said lands this applicant understood and was informed by both his grantor and said attorney that said dates had been corrected, and for that reason he made no appearance when said proceeding was pending in the Circuit Court; that he first discovered said errors after the matter had been returned from the appeal to the Supreme Court of Oregon, and that he was then advised that same might be corrected on application within six months after the decree of the circuit court was entered."

The application is in the nature of one for the entry of an order nunc pro tunc. If the statement in the application is found to be true the circuit court is authorized in its discretion to make the correction and change the decree accordingly.

The Claim of George W. Greeley.

The applicant, George Greeley, is the owner of Lots 5, 6, 7 and 8 (the same being NE $\frac{1}{4}$ ) of Section 18, T. 24 S. R. 32 E. W.M., Harney County, Oregon. The application shows that said land was entered under the United States Land Laws as a preemption by Mary E. Borland, deceased, mother of this applicant, and patent issued to her under date of October 13, 1891. That said land is crossed from the northwest corner to the east center by the east fork of Silvies River; that at the time of the commencement of this adjudication proceeding said land was in the possession of and being used by Joseph H. Hill, and the said Mary E. Borland, owner, nor her heirs or legal representatives were not then or at any other time made a party to said court proceeding, no service or notice by publication, or otherwise, was ever had upon her and no judgment of default entered against her in said proceedings; that the said Mary E. Borland died in 1914, during the

pendency of this adjudication, leaving a will wherein said real property above mentioned was bequeathed by her to this applicant, and said estate has been fully probated and closed.

Applicant alleges that 10 acres of land in the southerly portion of said tract is now and has been irrigated from Silvies River each year since 1886 and has produced crops of hay and pasture as the result of such use of water thereon, and that said land is entitled to a water right with date of priority of use of 1886.

The statement of applicant that the water "rights to said land had never been passed upon in said proceeding and that said land was not included in said decree" is an error.

The decree (p. 51) provides that the SW $\frac{1}{4}$  NE $\frac{1}{4}$  and SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 18, T. 4 S. R. 32 E. W.M., be accorded a water right with a date of relative priority of 1892, and the regular amount of cubic feet per second for 80 acres, for irrigation from the Hill ditch from east fork of Silvies River; therefore, the land was awarded a water right in the name of Joseph H. Hill which no doubt caused the confusion. As the claimant's predecessor in interest the owner of the land at that time was not served with notice at the required time, the error in name as well as the error in the number of acres should be corrected and the claim adjudicated, and to that extent the circuit court on an amendment of the application would be authorized to make the correction. If corrected, Joseph H. Hill's award should be corrected accordingly.

#### The Claim of Robert Duncan.

This claimant shows by his application that he is the successor in interest of Joseph H. Hill and claims to be the owner of lands described in the application; that Joseph H. Hill submitted evidence in the proceedings establishing the fact that the water was first used on said lands from Silvies River in 1886 and has been so used continuously each and every year since that date; that C. A. Sweek was attorney for the said Joseph H. Hill in said adjudication, and during the course thereof, while same was pending before the water board, entered a motion and request that said claims so filed be amended to conform to the proof then submitted, which motion was granted by the water superintendent, and said claimant was advised by his counsel that the matter had been corrected; that said attorney removed from Harney County, during the pendency of said adjudication matter before the supreme and circuit courts and through error or negligence said matter was not again called to the attention of the court, and in making up the decree said claims were allowed as filed and were contrary to the facts and the record. This error should be corrected, if upon a showing the Circuit Court deems it proper.

The Circuit Court is authorized under the provisions of the former decree to consider and adjudicate the matter in order to make the correction. This correction is in the nature of a nunc pro tunc order and a means of making the record show an order that was actually made in the proceedings.

The Claim of J. W. Biggs and Grover N. Jameson,  
(Gertrude G. Music and B. F. Smith, his successors in interest)

In the former decree of this court J. W. Biggs was awarded a water right for certain lands with a certain date of priority, and the decree provided that within 60 days after the filing of the mandate in the Circuit Court the claimant might apply for an order for the taking of further testimony as to the proper date of priority. Application was made by claimant for an order of the Circuit Court and an order entered permitting the taking of further testimony in support of the date of priority, but the same has not been taken. The extension of further time for taking such testimony by J. W. Biggs or his successors in interest in the land, is a matter of discretion of the Circuit Court.

The Claim of Oregon and Western Colonization Company, a corporation,  
(J. C. Clemens, successor in interest of said corporation)

This application sets forth ownership and description of the land, the award made in the former decree and avers that the Oregon and Western Colonization Company is also the owner of Section 35, T. 23 S. R. 33 E. W.M., and Section 11, T. 24 S. R. 30 E. W.M., for which no claim was filed or award made for water rights in said adjudication.

The Circuit Court properly denied the foregoing portion of the application for re-hearing.

It is further averred that all of the premises described in the application, except Section 9, T. 24 S. R. 31 E. W.M., is supplied by numerous springs, three of which are located on Section 35, T. 23 S. R. 30 E. W.M., one on Section 11, T. 24 S. R. 30 E. W.M., and other springs in the Sage Hen Watershed. That said lands and other adjacent lands are awarded water rights from Warm Springs without designating or giving the location of the spring or springs.

That all of said premises above described, except Section 9, T. 24 S. R. 31 E. W.M., are situated in the westerly portion of the Harney Valley and the principal irrigation is supplied by numerous springs, three of which are located on said Section 35, T. 23 S. R. 30 E. W.M., one on Section 11, T. 24 S. R. 30 E. W.M., and other springs in the Sage Hen Watershed. That said lands, and other adjacent lands, are awarded water rights from Warm Springs without designating or giving the location of the spring or springs, and the decree in this respect is indefinite and confusing, and already differences of opinion have arisen with the landowners and with the water master in his attempt to distribute the decreed water under said decree.

This is not an application to change the decree, but simply for the purpose of making a description of the springs definite. This portion should be granted. It is further set forth in the application as follows:

Claimant alleges that said "Section 35, T. 23 S. R. 30 E. W.M., on which are located three large springs, is entitled to a water right of 60 acres in the east half of the east half of said section, with date of priority of 1886, and that the Southeast Quarter of Section 11, T. 24 S. R. 30 E. W. M., is entitled to a water right from the spring located on said land with date of priority of use of 1886."

The latter quotation relates to the first portion of the application which was refused.

This application does not show the reason of any error in listing the lands involved, particularly said Section 35. The court does not find from the record that there was any error in denying the portion of the application referred to. If the claimant should apply to the Circuit Court, which he is allowed to do, and be granted an amendment to the application showing that on account of some clerical error or oversight (Section 35) was not listed for a water right, it may be that the matter in relation to said Section 35 could be given further consideration by the Circuit Court.

The Claim of Charles B. Ausmus, (successor in interest of F. Crowley)

This application shows in substance that at the time of the closing of the testimony of said proceedings, Gustav Rembold, an attorney appearing for numerous claimants, called the attention of the water superintendent and the attorneys of the various claimants to the fact that Crowley's claim had not been passed upon and it was then agreed and entered in the record that testimony would be submitted on the claim at a future time. Subsequently thereto the said Crowley became sick and incapacitated and died soon after, and did not attend to the matter of the proof. That the real property was sold and conveyed to Charles B. Ausmus; that it was his understanding that said land had a water right appurtenant thereto, and upon investigation and the finding of the facts, as above stated, just after said decree was originally entered in the circuit court, he proposed the commencement of proceedings whereby the same might be reopened to permit him to make proof of said water right claimed and used on said lands:

The application of Ausmus, successor in interest of Crowley, would seem to bring the matter within the provision of Section 103, Oregon Laws, which authorizes the Circuit Court to exercise its discretion in the matter, and said court is authorized so to do if it finds the facts substantially as alleged.



NOW, THEREFORE, Based on said mandate and in accordance therewith, and in consideration of the further proceedings had in pursuance of said mandate, it is

ORDERED, ADJUDGED, AND DECREED, as follows:

That the former decree in the matter of the determination of the relative rights of the various claimants to the use of the waters of Silvies River and its tributaries, as made and entered in the office of the Clerk of Harney County, Oregon, on February 23, 1926, be and the same is hereby modified and amended by this supplemental decree as follows:

That the claim of Joseph H. Hill, appearing in said original decree as recorded on page 548 of Volume G, Circuit Court Journal, shall be amended by substituting for said claim the following:

John P. Fay, Burns, Ore., Successor of Joseph H. Hill, priority 1884: 2.02 cubic-feet per second; for irrigation of 160.87 acres; Marrs Ditch; Main Stream; description of place of use; 40 acres in SW $\frac{1}{4}$  NE $\frac{1}{4}$ ; 40 acres in SE $\frac{1}{4}$  NW $\frac{1}{4}$ ; 55 acres in NE $\frac{1}{4}$  SW $\frac{1}{4}$ ; 38.47 acres in SE $\frac{1}{4}$  SW $\frac{1}{4}$ , (Lot 3) Sec. 1; 7.40 acres in NE $\frac{1}{4}$  NW $\frac{1}{4}$  (Lot 4) Sec. 12, Tp. 24 S., R. 31 E., W.M.

Robert M. Duncan, Burns, Ore., Successor of Joseph H. Hill, priority 1887: 5 cubic-feet per second; for irrigation of 400 acres; Hill Ditch; Main Stream; description of place of use; 40 acres in SW $\frac{1}{4}$  SE $\frac{1}{4}$ ; 40 acres in SE $\frac{1}{4}$  SW $\frac{1}{4}$ ; 40 acres in NE $\frac{1}{4}$  NW $\frac{1}{4}$ ; 40 acres in NW $\frac{1}{4}$  NW $\frac{1}{4}$ ; 40 acres in SW $\frac{1}{4}$  NW $\frac{1}{4}$ ; 40 acres in SE $\frac{1}{4}$  NW $\frac{1}{4}$ ; 40 acres in NE $\frac{1}{4}$  SW $\frac{1}{4}$ ; 40 acres in NE $\frac{1}{4}$  SE $\frac{1}{4}$ ; 40 acres in NW $\frac{1}{4}$  SE $\frac{1}{4}$ ; 40 acres in SE $\frac{1}{4}$  SE $\frac{1}{4}$ , Sec. 18, Tp. 24 S., R. 32 E., W.M.

(Note: 30 acres in NE $\frac{1}{4}$  NW $\frac{1}{4}$  also irrigated from Marrs ditch)

That the claim of J. W. Biggs, appearing in said original decree as recorded on Page 533, Volume G, Circuit Court Journal, shall be amended by substituting therefor the following:

J. W. Biggs and Grover N. Jameson, Gertrude G. Music and B. F. Smith, his successors, priority 1886: 1.50 cubic-feet per second; for irrigation of 120.49 acres; Sweek Dam and Pumping Plant; Main Stream; description of place of use; 26.67 acres in NW $\frac{1}{4}$  NW $\frac{1}{4}$  (Lot 8); 66.55 acres in SW $\frac{1}{4}$  NW $\frac{1}{4}$  and NW $\frac{1}{4}$  NW $\frac{1}{4}$  (Lot 1); 27.17 acres in SE $\frac{1}{4}$  NW $\frac{1}{4}$  (Lot 7), Sec. 6, Tp. 23 S., R. 31 E., W.M.

That the right of the Oregon and Western Colonization Company be amended and corrected by changing the area of irrigated land in the SE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 1, Township 24 South, Range 30 East, W.M., as the same appears in said recorded decree on page 556, Volume G, Records of the Circuit Court, Harney County, Oregon, to 22 acres as irrigated in said subdivision instead of 12 acres as set forth in said original decree.

That the right of Charles B. Ausmus, appearing in said original decree on page 532, Volume G, Circuit Court Journal, Harney County, Oregon, be modified and amended by the additional award to-wit:

Charles B. Ausmus, Successor of F. Crowley, Iawen, Oregon, priority 1892: 2.35 cubic-feet per second; for irrigation of 188 acres; Crowley Dam; Main Stream; description of place of use; 15 acres in NE $\frac{1}{4}$  NW $\frac{1}{4}$ ; 30 acres in NW $\frac{1}{4}$  NW $\frac{1}{4}$ ; 30 acres in SW $\frac{1}{4}$  NW $\frac{1}{4}$ ; 35 acres in SE $\frac{1}{4}$  NW $\frac{1}{4}$ , Sec. 25; 20 acres in SE $\frac{1}{4}$  NE $\frac{1}{4}$ ; 5 acres in Lot 2; 15 acres in Lot 7, 8 acres in Lot 8; 30 acres in Lot 9, Sec. 26, Tp. 25 S., R. 32 E., W.M.

