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IN THE DISTRICT COURT OF RIO ARRIBA COUNTY, NEW MEXICO

<hr/>)
JOSE G. CORDOVA,		:
)
	Plaintiff	:
)
VS.		:
)
LUIS QUINTANA, GABRIEL VALDEZ		:
and DELFIN QUINTANA,)
		:
	Defendants)
<hr/>)

NO. 8650

**HONORABLE PAUL TACKETT
JUDGE**

APPEARANCES

**J. H. BURTRAM
Santa Fe, New Mexico**

**MATIAS L. CHACON
Española, New Mexico**

For Plaintiff

For Defendants

1 stream?

2 A No, it is on top of a hill.

3 Q They are higher?

4 A You can't climb the water up, up there.

5

6 PEDRO TRUJILLO CHACON

7 The witness, being first duly sworn, testified as
8 follows:

9 (Reporter's Note:
10 Carlos Manzanares
11 interpreting)

12 DIRECT EXAMINATION

13 BY MR. BURTRAM:

14 Q State your name, please.

15 A Juan Trujillo Chacon.

16 Q What is your address?

17 A My address at the present is Los Alamos.

18 Q New Mexico?

19 A Yes, sir.

20 Q How old are you, sir?

21 A Eighty-five years.

22 Q Have you ever lived in the community known as
23 Cebolla, New Mexico?

24 A I was born there and I lived there and I still
25 call it my temporary residence there.

Q How many years ago did you move to Los Alamos?

1 A No, it hasn't been too many years, just temporary,
2 just temporary I am staying there. Most of the time I
3 stay in Cebolla.

4 Q Are you acquainted with the area around Cebolla
5 and with a creek known as El Rito de Medio?

6 A Very well.

7 Q Have you ever seen water flowing in this creek bed?

8 A Yes, sir.

9 Q For how long?

10 A I could not say right now at present but I have
11 known that and I have seen it running as long as I have
12 had any knowledge.

13 Q Are you acquainted with the property near Cebolla
14 owned by Donislano Martinez?

15 A I know it very well.

16 Q And also the property owned by his son, Estanislao
17 Martinez?

18 A Yes, sir.

19 Q Does the El Rito en Medio Creek run through this
20 property?

21 A It doesn't run right through the center but it runs
22 through part of it.

23 Q Do you know whether in the past the water of this
24 creek was used by Donislano Martinez ---

25 A Yes, sir.

1 Q --- for irrigating his land near Cebolla?

2 A Yes, sir, I know because I personally irrigated
3 those lands myself in 1895 and 1896.

4 Q Mr. Donislano Martinez owned it at that time?

5 A Yes, he was the only one that I know that he was
6 irrigating with that water.

7 Q From El Rito en Medio, the only person using it?

8 A Yes, sir, the only one using it.

9 Q Do you know of your own knowledge that his son,
10 Estanislao Martinez, irrigated his lands from El Rito en
11 Medio?

12 A Yes, because I saw him.

13 Q Do you know whether he was the only person at that
14 time irrigating his lands from this creek?

15 A Yes, after Donislano died, he continued irrigating.

16 Q Mr. Chacon, do you know about a sawmill being
17 established between the El Rito en Medio and the El Tanke
18 or Cebolla Creek?

19 A Yes, sir, yes, I know.

20 Q Do you know when that sawmill was in operation
21 there?

22 A More or less about 1923.

23 Q Do you know whether Mr. Estanislao - I beg your
24 pardon - Vincelas Martinez granted the operator of this
25 sawmill the use of some water from El Rito en Medio?

1 A I do not know whether Vincelas Martinez, but I do
2 know that Denislano Martinez gave him the right, the father
3 of Vincelas.

4 Q Now, was the water used for any other purpose at
5 that time except for the sawmill?

6 A Not before that time, no.

7 Q Do you know whether after that time that ditch was
8 used to convey water to the property of Canuto Valdez?

9 A The ditch goes through the property of Canuto
10 Valdez but it only got across the property to the middle
11 only.

12 Q Originally?

13 A I consider I knew the ditches of Canuto Valdez
14 and more or less about 1926.

15 Q Now, at the time the ditch was made to go to the
16 sawmill, did the ditch go to anybody else's property at
17 that time except the sawmill?

18 A It went to the mill.

19 Q I don't believe he quite answered. Did the ditch
20 go to anyone else's property or was anyone else except
21 the sawmill using the property?

22 A It went to the sawmill only that it went through
23 the property of Canuto Valdez.

24 Q Do you know whether Canuto Valdez was using this
25 water for irrigation?

1 A No, I never saw him use it, I didn't see it.

2 Q Do you know when the ditch was first constructed?

3 A More or less.

4 Q Will you state when that was?

5 A I can say it was between 1923 or 1924 when Mr.

6 Hall constructed that ditch to the mill.

7 Q Who was Mr. Hall?

8 A I don't know his first name but Hall was the man
9 who had the mill.

10 Q And he constructed the ditch to his mill, is that
11 correct?

12 A Yes, sir.

13 CROSS EXAMINATION

14 BY MR. CHACON:

15 Q Mr. Chacon, I would like to refresh your memory a
16 little bit. I think that possibly you don't remember some
17 of the facts, and you and I have been friends for a long
18 time ---

19 THE COURT: Let's strike all
20 of that and ask the question.

21 Q Isn't it a fact, Mr. Chacon, that this sawmill
22 was established at two different times?

23 A Yes, sir.

24 Q Yes. It was first started in 1905 or 1906, right?

25 A Yes, sir.

1 Q And that is when that ditch was built, is that
2 right?

3 A No. That mill, when it first started, was put up
4 over on the property of Jose Valdez?

5 Q Did you know Mr. Jose D. Chacon?

6 A Yes.

7 Q Was he related to you?

8 A He was my uncle.

9 Q What was your father's name?

10 A My dad, my father's name was Jose Trujillo.

11 Q Let me ask you. Do you know if Mr. Canuto Valdez
12 was using the water to irrigate his land from the El Rito
13 del Medio as far back as 1906?

14 A 1906, no, no.

15 Q I refer you to what has been marked Plaintiff's
16 Exhibit #7, where it is signed by Jose D. Chacon and by
17 Jose Trujillo, and they have made a declaration that
18 Canuto Valdez has been continuously using the waters of
19 El Rito del Medio for the past twenty years, and which
20 declaration was made in 1926.

21 MR. BURTRAM: If the Court
22 please, may I approach the bench?

23 THE COURT: Yes.

24 (Reporter's Note:
25 Consultation of Court and
Counsel)

1 Q Mr. Chacon, if your father made that declaration
2 under oath, then you say he is wrong?

3 A No, because I don't know any kind of those busi-
4 ness of my dad.

5 Q Then you cannot testify before this Court that Canuto
6 Valdez didn't use the water through a ditch to irrigate his
7 land in 1906?

8 A He didn't use it because he didn't have any ditch.

9 Q You say that you say this ditch constructed in
10 1926?

11 A I didn't see it when they built it; I didn't see
12 it when they built it.

13 Q You are pretty well acquainted with the ditch of
14 Canuto Valdez, are you not?

15 A Yes, I know it now, I have known it afterwards.

16 Q How long have you known the ditch, sir, more or
17 less?

18 A I can't say definitely the exact date but after the
19 mill moved away, he started using the water.

20 Q And the only water that the plaintiff, Jose Cor-
21 dova, uses in his ranch is the water that is left over
22 after the water goes into the ditch of Canuto Valdez, is
23 that right?

24 A Yes, when it runs, sure.

25 Q And, Mr. Chacon, you have had a very acute drouth

1 here in Cebolla in the last twenty years actually, haven't
2 you?

3 A In town or where?

4 Q This water from El Rito Medio?

5 A Yes, there has been a drouth.

6 Q Did that start about 1950, or when did it start?

7 A Yes, more or less about 1950.

8 Q And since that drouth, there hasn't been too much
9 water in that El Rito Medio?

10 A No, I haven't seen very much of it.

11 Q The only time that Mr. Cordova gets any water
12 is during the runoff period, isn't it?

13 A Yes, sir, in abundance.

14 Q When there is no runoff or abundant amount of
15 water, then all of the water goes to the ditch of the
16 defendants, Gabriel Valdez and Delfin Quintana?

17 A Yes, sir.

18 Q Approximately how long have you had this drouth?

19 A More or less since 1950.

20 Q And since 1950, have you seen that El Rito Medio
21 at any time with lots of water in the spring?

22 A No, very few times I have seen it in the spring when
23 there is an abundance of water.

24 Q When did you go there the last time, sir?

25 A Where?

1 Q El Rito Medio.

2 A It hasn't been a month since I went there.

3 Q Do you remember when the wooden troughs in the
4 defendants' ditch were burned?

5 A I remember that I saw a burnt log there, they
6 claimed somebody had burned it but I didn't know who did
7 it.

8 Q Your testimony, Mr. Chacon, is to the effect that
9 unless there is lots of water that all of the water from
10 the El Rito Medio goes to the ditch of the defendants?

11 MR. BURTRAM: Your Honor,
12 I am going to object to that, that is not the way I under-
13 stand his testimony. He is trying to lead this witness
14 into a wrong conclusion here, that all of it goes there
15 actually, or has gone. It all goes there now, we concede
16 that because they blocked it up so it can't go anywhere
17 else.

18 MR. CHACON: I will with-
19 draw my question and rephrase it.

20 THE COURT: Rephrase your
21 question.

22 Q Since 1950, Mr. Chacon, when you had this drouth,
23 when you don't have enough water in the El Rito Medio, all
24 of the water goes to the ditch of the defendants?

25 A Yes, sir, I have seen it.

1 Q Then, since 1950, the only time that the plaintiff,
2 Jose Cordova, had any water ---

3 A Yes, when there is an abundance of water.

4 REDIRECT EXAMINATION

5 BY MR. BURTRAM:

6 Q Mr. Chacon, this ditch and the stream bed, you saw
7 them about a month ago, is that correct?

8 A More or less, yes, about a month, maybe a little
9 more.

10 Q Do you recall the exact date?

11 A Not perfect, no, I didn't put it down.

12 Q At that time, was a dam built across the stream
13 bed of the El Rito de Medio?

14 A Yes, sir.

15 Q And was there any water running in the ditch?

16 A Yes, sir.

17 MR. CHACON: If the Court
18 please, we admit this dam was built there.

19 THE COURT: Very well.

20 A Yes, there was water in that ditch.

21 Q Was there any water in the stream bed?

22 A No, sir, in the little creek running below, no,
23 there wasn't any water at all.

24 Q Do you know whether this Plaintiff's Exhibit #8
25 shows the ditch the way it was bulldozed out as you saw it?

1 A Yes, sir, yes, sir.

2 Q Was there any little wooden trough?

3 A No, there was just a log across there.

4 Q And the stream bed was blocked off entirely?

5 A Not a drop, nothing down the river.

6 Q Now, Mr. Chacon, isn't it true that in the years
7 around the winter of 1948 and 1949 and 1950 are about
8 the only years when there has been much snow in Cebolla?

9 A Yes, sir.

10 Q And those are about the only years where there has
11 been a tremendous amount of water?

12 A Yes, sir, because there was lots of snow, yes.

13 Q Before 1948, like since 1950, there has been very
14 little water ---

15 MR. CHACON: I object to the
16 question, if the Court please, it is leading.

17 THE COURT: I will sustain
18 the objection. Rephrase your question if you so desire.

19 Q How much water was available prior to 1948 as
20 compared with since 1950?

21 A There was lots of water in those years back, prior
22 to 1948, there was lots of water.

23 Q When you saw the ditch, did it have approximately
24 as much water as shown in these photographs?

25 A This is this year?

1 Q Yes.

2 A Yes, sir.

3 MR. CHACON: If the Court
4 please, I object to the question, I think we are going
5 into something that wasn't gone into on direct. We will
6 admit that we made this diversion dam in 1954, there is no
7 dispute of that. I think counsel is going into matters that
8 were not brought out on direct examination.

9 MR. BURTRAM: I asked him if
10 the pictures correctly show ----

11 A As I saw it, yes.

12 RE CROSS EXAMINATION

13 BY MR. CHACON:

14 Q When did you see this ditch?

15 A More or less about a month.

16 Q But before 1950 and all prior years, the water that
17 Jose Cordova used was only the overflow of this defendants'
18 ditch?

19 A Yes.

20 MR. BURTRAM: If the Court
21 please, I object and move to strike the question on the
22 basis it is repetitious.

23 THE COURT: Sustained. The
24 question and answer will be stricken from the record as be-
25 ing repetitious. At this time we will be in recess until