of the defendants, could not bar their rights.

But in 1880 a circumstance took place which indicates the amount of these waters that the plaintiffs did claim. A statute had been passed before that time creating the selectmen of the county water-commissioners in and for their various counties, and gave them jurisdiction to apportion water rights and to regulate them. The statute has since been declared unconstitutional; but in 1880 the plaintiffs made a written petition to this court in respect to their water rights in these two streams, and in that petition they set forth that they are the owners of the land described in the complaint and that they were the owners to a primary right to thirty one-hundred and sixteenths of the waters of these two creeks for the purpose of irrigating the same. This then at that time was the claim that they were asserting. This petition was signed by the parties who preceded the plaintiffs in interest; and it was sworn to. In pursuance of that petition the water commissioners adjudged them to be the owners of that amount of water and issued a certificate accordingly, and in 1882 this certificate was taken and filed and recorded. Of course this judgment is not *Res Adjudicata*; but it indicates that at that time the plaintiffs or their predecessors in interest were only openly claiming to own thirty one-hundred and sixteenths of this water to which they now claim to have a title to one-half of one creek and the whole of the other.

I think it is but reasonable to suppose that this is the only claim they were making to the defendants and that was the only claim the defendants supposed they were consenting to when they admitted them to an equal ownership with themselves in point of time. Therefore I think that during the irrigating season the amount of claim or right to which the plaintiffs are entitled by reason of their adverse use is one hundred and thirty-sixteenths of the waters of those streams.

As to the change of use by the plaintiff I do not think that it is a matter of which the defendants can complain. If the defendants have become the owners of that amount of water they can use it during the time that they own it as they see fit. While it is undoubtedly true that while they took the waters and distributed them upon their lands it thereby caused springs to flow down upon the defendant's lands yet they did not acquire such a right in these springs as would preclude the plaintiffs from changing the use of the water. They were merely percolating waters, and being such they belong to the owners of the soil, and they could divert them and make such use of them as they saw fit.

As to the appropriation of one-half of the waters of Strong's Canyon creek and all the waters of Waterfall Canyon creek during that portion of the season when they are not wanted for irrigation, and during the time that they were conveyed to the city through their pipes, I am inclined to regard this as an original appropriation. The waters of these streams up to 1882, when the city pipes were put in, had only been appropriated for agricultural purposes, that is, for irrigation, and consequently only for the irrigating season. It is true that the settlers along Canfield Creek, used water for domestic purposes during the winter, but the appropriation which has been made of one-half of the water of Strong's Canyon creek leaves sufficient in Strong's Canyon creek to furnish water for this purpose, and the fact that they had made an appropriation during the summer time while it was wanted on the land does not prove an appropriation for any other part of the year. If water is appropriated by a party only for a portion of the time it remains unappropriated for the balance of the time, other persons can appropriate it as they see fit.

Therefore, I think that the appropriation in the winter season, that is, after the irrigating season is over, of one-half of all the waters of Strong's canyon creek and all of the waters of Waterfall canyon creek, is a new and independent appropriation of waters that had not before that time been appropriated.

I therefore think that a decree should be entered in this case awarding to the plaintiffs thirty one-hundred and sixteenth, of the waters of Waterfall and Strong's canyon creeks during the irrigation season, and only then, and that which they had appropriated after the irrigating season is over in each year and until it commences again the next half year one half of Strong's canyon creek, all of Waterfall canyon creek; and that the balance belongs to the defendants.

H. P. HENDERSON, Judge.

THE SCHOOL DISTRICTS.

Four o'clock Wednesday, Nov. 4, was the hour set for the trustees of the twenty-one school districts of this city to meet at the County Court House and consider the proposition to consolidate the city into four school districts, but the action of the Third District Court dispenses with the necessity of the meeting, for the present at least, the county court having been prohibited from taking any further action till the question of its jurisdiction shall be heard and determined by the district court. The date set for the hearing is Nov. 21. The following proceedings were had before Judge Zane today, who granted the writ asked for upon the following petition, presented by Baskin and Van Horne, attorneys for the petitioners:

APPLICATION FOR THE WRIT.

TERRITORY OF UTAH, }
County of Salt Lake. }

Francis M. Bishop, Rudolph Alff, Jesse F. Millspaugh, J. B. Walden and Wm. Nelson, all of lawful age and residents of Salt Lake City, Salt Lake County, Territory of Utah, being first duly sworn, each for himself and not for the other, upon oath says:

That on the 5th day of October, 1889, Wm. M. Stewart, Superintendent of District Schools of Salt Lake County, Utah Territory, filed in the County Court of said Salt Lake County, a petition for the re-districting of the school districts of Salt Lake City, and the uniting of several of the districts into one.

That thereafter, to-wit, on the 7th day of October aforesaid, the County Court made and entered upon the minutes of said court an order, setting the time and place of hearing said petition, and ordering notice to be given of such time and place of hearing said petition to the trustees of all the school districts of Salt Lake City interested in the matter of such petition.

That said petition and said order thereon are more fully set forth by certified copy of such petition and order attached to this affidavit and made a part hereof, marked Exhibit "A."

That said County Court is composed of George W. Bartch, Probate Judge, and Elias A. Smith, Richard Howe and O. P. Miller, selectmen.

That the hereinafter named trustees of school districts in said Salt Lake City have been, pursuant to the order of said County Court, notified of the time and place set for hearing the petition aforesaid, and affiants further say that said County Court is proceeding to hear and determine the said petition.

That Francis M. Bishop and Jas. Anderson are duly qualified trustees of the Seventh School District in Salt Lake City, and said Bishop is chairman of the board of trustees of said district; that Rudolph Alff, H. T. Duke and C. O. Whittemore are duly qualified trustees of the Eighth School District of Salt Lake City, and said Alff is chairman of the board of trustees of that district; that A. J. Pendleton is a duly qualified trustee of the Ninth School District in Salt Lake City; that Jesse F. Millspaugh, Lemuel U. Colbath and George A. Lowe, are duly qualified trustees of the Twelfth school district, and said Millspaugh is chairman of the board of trustees of that district; that E. B. Critchlow, W. H. Remington and J. B. Walden are duly qualified trustees of the Thirteenth school district of said Salt Lake City, and said Critchlow is chairman of the board of trustees of said district; that E. R. Clute, G. S. Erb and Wm. Nelson are duly qualified trustees of the Fourteenth school district of Salt Lake City, and said Nelson is chairman of the board of trustees of that district; that John B. Wiscomb and E. A. Hartenstein are duly qualified trustees of the Twentieth school district in Salt Lake City.

That if the prayer of the aforesaid petition to the County Court be granted, the northern two-thirds of the area now embraced in said twelfth, thirteenth and fourteenth school districts would be attached to and united with other existing districts situate north of them, in said Salt Lake City, to form new school districts, and the southern one-third of the area now embraced in the said above named districts