FILED

IN THE DISTRICT COURT OF MCPHERSON COUNTY, KANSAS
1975 APR 18 PM 4:29

BEN HANDLIN AND C. DARLENE HANDLIN,

-VS-

WAYNE LINDH AND LUCILLE LINDH, Plaintiffs,)
Case No. 15,354

Defendants.)

FINDINGS OF FACT

- 1. Plaintiffs are the record owners of the East Half (E/2) Northeast Quarter (NE/4) of Section Ten (10), Township Seventeen (17), Range Five (5), McPherson County, Kansas, and defendants are the record owners of the West Half (W/2) Northeast Quarter (NE/4) of Section Ten (10), Township Seventeen (17), Range Five (5), McPherson County, Kansas.
- 2. About 1891 a public road with a 60-foot right of way was established by the County Commissioners of McPherson County, Kansas, on the dividing line between the two tracts which road was maintained until about 1936 or 1937 when it was abandoned by the County.
- 3. A large hedge had been planted along the west line of said road and the west ditch of said road was used as a drainage of a low area in the west half of said quarter.
- 4. Because of the strip of land lying to the east of the hedge and ditch was so narrow it was inconvenient for the owners of the west half to farm such land and by agreement of the then adjoining owners, the owners of the east half farmed the land up to the hedge and ditch principally to keep down the weeds.
- 5. At all times Olaf Thompson, James Loder and the family of James Loder, deceased, recognized the center of the old abandoned road as being the true dividing line between the properties and none of them ever claimed or asserted otherwise. These persons

owned the East Half of the Northeast Quarter of Section 10 for a period of more than 50 years prior to 1969.

- 6. In 1969 plaintiffs purchased the East Half of the Northeast Quarter of Section 10 at a partition sale. They made no inquiry of the sellers or the defendants about where the dividing line was between the east and west halves of said quarter section and proceeded to farm the land to the said hedge and filled and leveled the ditch that extended north from said hedge. They also leveled and raised the land in places so that it could be irrigated. After doing so plaintiffs thereafter farmed on a line which extended north from the hedge and took over about three-fourths of an acre formerly farmed by the owners of the West Half of the Northeast Quarter.
- 7. The principal expenditure made by plaintiffs on the West Half of the Northeast Quarter was the digging of an irrigation well at a cost of \$841.59. This does not in any way enhance the value of the West Half of the Northeast Quarter because it cannot be used by the owners thereof.
- 8. The Lindhs were aware of activity by the plaintiffs in the general area, but were not aware of what all plaintiffs were doing until after plaintiffs had completed their work and placed the land under irrigation. Mr. Lindh was undergoing open heart surgeryand was incapacitated for many months at that time; also, there was other illness in the family at that time.
- 9. The value of crops have increased in value so that the Lindhs are now economically justified in removing the large hedge and they now desire to farm all of their property to the boundary line.
- 10. The survey of the northeast quarter of the section and the establishment of the boundary lines by Melvin Ferguson,

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County Engineer of McPherson County, Kansas, on May 20, 1974, as placed in evidence sets forth the true boundary line between the east and west halves of said northeast portion of said Section 10.

CONCLUSIONS OF LAW

- 1. The true dividing line between the East Half and the West Half of Section 10, Township 17, Range 5, McPherson County, Kansas, is the survey line fixed by said Melvin Ferguson.
 - 2. Plaintiffs' prayer for an injunction is denied.
- 3. Defendants are not entitled to recover damages for crops lost by flooding and for encroachment upon their land by the plaintiffs, because of present and past factual circumstances and past and prior agreements of adjoining owners of the farms in question.
- 4. The equipment in the well belongs to the plaintiffs and may be removed by them.
- 5. Title is quieted in the respective parties as to the land found by the Court to belong to each.

District Judge