

MR. ROBINSON: In paragraph 21 the rights of J. W. Hoover as to his primary water right the court will likely remember that the stipulation that was entered into between Mr. Hoover and the plaintiff also included an 80 acre highwater right, which water right was acquired under an application to appropriate water by John H. McEwan which was filed August 7, 1909, and is designated here as a Class "F" water right. We in support of our stipulation also put Mr. Hoover on the witness stand and he testified as to his primary ^{water} right and also that he was watering 80 acres of his land during the high water season and that he and Mr. McEwan were together on this application when it was applied for on behalf of him and McEwan. There is nothing in the record to show Mr. Hoover has any high water right.

MR. JACOB EVANS: Isn't that covered in paragraph 37 of the findings, the high water right?

MR. ROBINSON: That is as we understand it, but Mr. Hoover is not mentioned. That is only as to Samuel Rieske and Mr. Hoover as the evidence shows, they were jointly interested in this water.

MR. JACOB EVANS: The award is made to Samuel Rieske?

THE COURT: You own part of that?

MR. ROBINSON: We want part of it and the evidence shows we owned a part of it and it was stipulated we did. I think there is no question as to that.

MR. A. C. HATCH: You don't ask for water additional to this award?

MR. ROBINSON: No, the award is just as stipulated except the high water right which we acquired under this filing.

MR. JACOB EVANS: Do you know what proportion Mr. Hoover should have and what proportion Mr. Rieske ~~should~~ should have?

MR. ROBINSON: I think it was understood and the testimony showed they just filed it and agreed to take half interest in it.

MR. JACOB EVANS: Isn't that a matter that can be adjusted between them?

MR. ROBINSON: I prefer to have it adjusted under the decree. They may be able to adjust it, I don't know.

THE COURT: Who represents Mr. Rieske?

MR. ROBINSON: I don't know who represented Mr. Rieske.

We represented Mr. Hoover and put him on the stand and he testified to the facts as I have given them.

THE COURT: Is there anyone here representing Mr. Rieske? If the attorney representing Mr. Rieske is present he may consent to this matter and I will make the amendment.

MR. JACOB EVANS: I am inclined to the view the whole evidence showed Mr. Rieske was the owner of this water.

MR. JOHN E. BOOTH: I represented Mr. Rieske.

THE COURT: What do you say as to Mr. Hoover' owning a half interest of the water right decreed to Mr. Rieske?

MR. JOHN E. BOOTH: I suppose that is satisfactory.

THE COURT: Does he own half of it?

MR. JOHN E. BOOTH: I think so.

THE COURT: Is there any objection to the change being made and awarding it to him and Mr. Rieske instead of Mr. Rieske alone?

MR. JOHN E. BOOTH: I am not aware of that at all. I submitted the matter to Mr. Rieske and it was satisfactory to him so I paid no more attention to it.

MR. ROBINSON: If the judge will remember when Mr. Hoover was put on the witness stand we referred to this application that had been made and Mr. Hoover testified at that time that he was watering 80 acres of land with a high water right and had been for a number of years, ten or fifteen years, but that later he and Mr. Rieske McEwan had agreed to go in together and make ~~and~~ an application for high water to the State Engineer, he paying some of the costs and Mr. McEwan paying some, and that the water that would be acquired under this application would be for his benefit and Mr. McEwan's benefit. That was the testimony, as I remember it.

MR. JOHN E. BOOTH: That might have been, we had no notice of that. We filed our application and I am not aware of anything of that kind.

THE COURT: I will examine the pleadings and evidence in relation to it, and if it is supported by the pleadings and evidence the court will change this.

MR. ROBINSON: If there is any question in regard to that we would like to ask leave of court to introduce evidence.

THE COURT: If the situation is as I imagine it was from the suggestion made by Judge Booth, there is no contention made in your pleadings, is there, Mr. Rieske holds this as trustee, the title to this water?

MR. JOHN E. BOOTH: I think not.

MR. ROBINSON: There was no suggestion of that.

THE COURT: That is what you now claim?

MR. ROBINSON: Those were the facts as they existed, but our evidence only went to this, that Mr. Hoover acquired a high water right for eighty acres of land and it was so stipulated.

THE COURT: Did Mr. Rieske make the stipulation? You are asking now that the court shall change the award made to Mr. Rieske and give you half of it.

MR. ROBINSON: Either that or else we be decreed. It would reach the same point, we be decreed some high water.

THE COURT: I don't understand you introduced evidence of appropriation of high water except the appropriation here. You didn't introduce evidence of appropriation any high water, did you?

MR. ROBINSON: Yes, under this application of Mr. Rieske!

THE COURT: That is what I mean.

MR. ROBINSON: I think the evidence will show that.

MR. JOHN E. BOOTH: That may be the fact but we have no notice of it.

THE COURT: If you consent to it I will make the change without examining. If you do not, I will examine the records.