

1930

## Samuel Moore and Charles Moore v. Deseret Livestock Co. : Abstract of Appellant

Utah Supreme Court

Follow this and additional works at: [https://digitalcommons.law.byu.edu/uofu\\_sc1](https://digitalcommons.law.byu.edu/uofu_sc1)

 Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.

George H. Crosby, Jr., H. Van Dam, Jr.; attorneys for appellants.

P.H. Neeley; Attorney for Respondent.

---

### Recommended Citation

Abstract of Record, *Moore v. Deseret Livestock Co.*, No. 4930 (Utah Supreme Court, 1930).

[https://digitalcommons.law.byu.edu/uofu\\_sc1/521](https://digitalcommons.law.byu.edu/uofu_sc1/521)

This Abstract of Record is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (pre-1965) by an authorized administrator of BYU Law Digital Commons. For more information, please contact [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu).

CASE NO. 4930

---

IN THE  
SUPREME COURT OF THE STATE OF UTAH

---

SAMUEL MOORE and  
CHARLES H. MOORE,  
*Plaintiffs and Appellants,*

vs.

DESERET LIVE STOCK  
COMPANY.  
*Defendant and Respondent.*

JAN 15 1911

---

APPELLANTS' ABSTRACT

---

GEORGE H. CROSBY, JR.,  
Evanston, Wyoming,  
H. VAN DAM, JR.,  
Salt Lake City, Utah,  
*Attorneys for Appellants.*

P. H. NEELEY,  
Coalville, Utah,  
*Attorney for Respondent.*

---

# INDEX

Agreement, Exhibit A .....	26—30
Amendment to Reply .....	16
Answer of Defendant .....	2—12
Assignment of Errors .....	70—77
Bill of Exceptions .....	30—70
Complaint .....	1—2
Conclusions of Law. . . . .	22—23
Decree .....	23—25
Defendant's Rests .....	65, 70
Findings of Fact. . . . .	17—21
Motion for New Trial .....	25—26
Notice of Appeal .....	26
Plaintiffs' Rests .....	45, 69, 70
Reply .....	12—16

## Plaintiffs' Witnesses.

### Fernellus, Heber

Direct .....	41
Cross .....	41
Rebuttal Direct .....	67
Rebuttal Cross .....	68

### Moore, Charles H.

Direct .....	41
Cross . . . . .	42

### Moore, Dora

Direct .....	40
Cross .....	40

### Moore, J. E.

Direct .....	44
Cross .....	45
Rebuttal Direct .....	68

### Moore, Samuel

Direct .....	33
Voir Dire .....	35
Further Direct .....	35
Cross .....	37
Re-Direct .....	40
Rebuttal Direct .....	65
Rebuttal Cross .....	66

### Moore, Thomas E.

Direct .....	44
Rebuttal Direct .....	68

Moore, William	
Direct .....	30
Cross .....	32
Re-direct .....	33
Rebuttal Direct .....	67
Rebuttal Cross .....	67
Van Dam, H. Jr.	
Rebuttal Direct .....	69
Defendant's Witnesses	
Hatch, Stearns	
Direct .....	57
Cross .....	57
Moore, Clarence F.	
Direct .....	61
Cross .....	63
Re-direct .....	63
Moore, David E.	
Direct .....	64
Cross .....	64
Moore, Thomas E.	
Direct .....	45
Cross .....	51
Re-direct .....	55
Sur-rebuttal Direct .....	69
Moss, Henry	
Direct .....	55
Cross .....	56
Moss, William	
Direct .....	58
Cross .....	60
Re-direct .....	61

IN THE  
SUPREME COURT OF THE STATE OF UTAH

---

SAMUEL MOORE and  
CHARLES H. MOORE,  
*Plaintiffs and Appellants.*

vs.

DESERET LIVE STOCK  
COMPANY,  
*Defendant and Respondent.*

---

(TITLE OF COURT AND CAUSE)

Pleading  
File

**Complaint**

1-2

Plaintiffs complain of defendant, and for cause of action allege:

1. That plaintiffs are now, and for more than seven years last past have been the owners of, and in the open, notorious, exclusive, actual, continuous, peaceable and adverse possession of an undivided two-thirds interest of, in and to the following described property in Summit County, Utah:

(Description by metes and bounds to same 393.6 acres as mentioned in Decree and (fifth) and last tract named in Findings of Fact and Conclusions of Law.)

2. That the said plaintiffs claim title in fee to the said premises, and that the said defendant claims an estate or interest therein adverse to the plaintiffs.

3. That the claim of the said defendant is

without any right whatever, and that the said defendant has not any estate, right, title or interest whatever in said land or premises, or any part thereof.

4. That plaintiffs have paid all taxes that have been assessed and levid on said premises for more than seven years.

WHEREFORE plaintiffs pray:

(a) That the defendant may be required to set forth the nature of its claims, and that all adverse claims of the defendant way be determined by a decree of this court.

(b) That by said decree it be declared and adjudged that the said defendant has no estate or interest whatever in or to said land and premises; and that the title of plaintiffs is good and valid.

(c) That the defendant be forever enjoined and debarred from asserting any claim whatever in or to said land and premises, adverse to to the plaintiffs, and for such other relief as to the court may seem just and proper, and for their costs of suit.

H. VAN DAM, JR.,  
*Attorney for Plaintiffs.*

(Duly Verified.)

Filed December 27, 1927.

---

(TITLE OF COURT AND CAUSE.)

Pleading  
File

**Answer**

6-13

Comes now the defendant in the above entitled action and answering the purported com-

plaint of plaintiffs heretofore filed herein, admits, denies and alleges as follows, to-wit:

1. The defendant denies the allegations set forth and contained in paragraph 1 of the alleged complaint.

2. Answering the allegations of paragraph 2 of the complaint the defendant admits that it claims an estate and, or interest in said land, but has no knowledge or information of the claims of the plaintiffs, and therefore denies the same.

3. The defendant denies each and every allegation set forth in paragraph 3 of the complaint.

4. Answering the allegations of paragraph 4 of the complaint, the defendant admits that the said Samuel Moore has paid taxes on said land, but that such payment has been for the use and benefit of defendant as hereinafter set forth, and defendant denies that the said Charles H. Moore has paid taxes on said land, except for the year, 1927.

5. Except as herein admitted or otherwise alleged this defendant denies each and every other allegation contained in the complaint.

For a further and separate answer to said complaint this defendant alleges as follows:

1. That at all times mentioned herein the defendant was a corporation organized and doing business under the laws of the state of Utah.

2. That on the 8th day of May, A. D., 1919, the defendant herein entered into a written agreement with David Moore and Mary

Moore, his wife, father and mother of the plaintiffs herein, whereby the said David Moore and Mary Moore agreed to convey to the defendant herein the lands described in plaintiffs' complaint together with other land and to pay defendant a sum of money to be determined, in consideration of the defendant herein conveying to the said David Moore and Mary Moore, certain lands hereafter described.

That a copy of said agreement is hereto attached and marked defendant's exhibit "A", and made a part of this answer.

3. That said agreement provides among other things as follows: "It is mutually understood and agreed that all of the above described tracts of land are to be accurately surveyed at the joint expense of both parties hereby, by a competent and reliable surveyor, to be agreed upon by said parties hereto. It is further mutually understood and agreed by the parties hereto that the deeds conveying the above tracts of land shall describe said tracts of land in an accurate manner and in accordance with said survey. It is further mutually understood and agreed by and between the parties hereto that good and sufficient lawful fences shall be erected along the dividing lines of said property owned by the parties hereto, each party hereto to pay one-half of the expense thereof; that said fencing is to be begun upon the execution of this agreement and to proceed without delay until completed."



4. That after the execution of said agreement marked defendant's exhibit "A", the said David Moore died, and on the 29th day of August, 1919, probate proceedings of his estate were commenced in the Third District Court of Summit county, Utah, and an administrator of said estate was thereupon duly appointed and qualified and entered upon the administration of said estate; that the several heirs of said decedent, including the plaintiffs, formed a corporation known as David Moore & Sons, Inc., and on the 16th day of February, 1920, duly assigned and transferred to said corporation by instrument duly executed in writing their right, title and interest in and to said estate and which embraced the land described in the complaint herein with other lands, and in pursuance of said assignments the Final Decree of Distribution in the Matter of the Estate of David Moore, deceased, distributed said property to said corporation.

5. That at the time of the execution of the agreement set forth herein and marked defendant's exhibit "A", the plaintiff, Samuel Moore, was the owner of an undivided 1-3 interest in and to the land described in the complaint, and thereafter, on the 18th day of May, 1921, the said Samuel Moore and the plaintiff, Charles H. Moore, by mesne conveyances succeeded to an additional 1-3 interest in said land. .

6. That the said Samuel Moore and Charles H. Moore, plaintiffs herein, always acquiesced in, consented to and agreed with the defendant that

their interest in and to the land described in the complaint herein should be governed by and conveyed to said defendant in pursuance of and under the terms of defendant's exhibit "A", for the consideration of certain lands to be conveyed to them separately and hereafter described.

7. That in December, 1921, to fully carry into effect the aforesaid agreement marked defendant's exhibit "A" on the part of the plaintiffs herein, the said David Moore & Sons, Incorporated, William H. Moore and Rose Moore, his wife, the plaintiff, Samuel Moore and Dora Moore, his wife, the plaintiff, Charles H. Moore, unmarried, executed a warranty deed conveying to the defendant herein the land described in the complaint, and delivered said deed to David Moore & Sons, Incorporated, to be by it delivered to the defendant herein when the terms of said agreement marked defendant's exhibit "A" were complied with; that the consideration for said deed on the part of plaintiffs was the land to be deeded as set forth in paragraph 6 of this answer.

That a copy of said deed is hereto attached, marked defendant's exhibit "B", and made a part of this answer.

8. That a survey of the lands covered in said contract of sale marked defendant's exhibit "A", having been duly made, to carry said contract into effect the defendant executed and delivered to David Moore & Sons, Incorporated, a deed conveying to said corporation the lands in-

tended to be conveyed to it under said contract of sale, and the said David Moore & Sons, Incorporated, duly executed and delivered to the defendant herein a deed conveying to it the lands intended to be so conveyed under said contract of sale.

That a copy of the deed executed by defendant to said David Moore & Sons, Incorporated, is hereto attached, marked defendant's exhibit "C" and made a part of this answer.

That a copy of the deed executed by David Moore & Sons, Incorporated to this defendant, is hereto attached, marked defendant's exhibit "D" and made a part of this answer.

9. That the terms of said agreement marked defendant's exhibit "A", having been complied with as aforesaid, the said David Moore & Sons, Incorporated, delivered to the defendant the said deed executed by the plaintiffs as aforesaid and marked defendant's exhibit "B".

10. That as a consideration for the execution of said deed marked defendant's exhibit "B", by the plaintiff, Samuel Moore, he was to receive a deed, upon compliance with said contract, defendant's exhibit "A", conveying to him the following described land in Summit county, Utah, to-wit:

(Description by metes and bounds of same 81.1 acres as first mentioned in paragraph 4, Findings of Fact and Conclusions of Law.)

(Also description of an undivided one-half interest to same 25.8 acres secondly mentioned

in Findings of Fact.)

(And an undivided one-half interest to same 158.6 acres thirdly mentioned in Findings of Fact.)

11. That in compliance with said contract marked defendant's exhibit "A" and the understanding and agreement with said plaintiff, Samuel Moore, the defendant caused the said David Moore & Sons, Inc., to duly execute and offer to the said Samuel Moore a good and sufficient deed conveying to him all the land described in paragraph 10 of this answer; that the plaintiff, Samuel Moore, has refused to accept said deed, and the defendant hereby deposits said deed with this Honorable Court for the said Samuel Moore or subject to such order as the Court shall make.

That a copy of said deed is hereto attached, marked defendant's exhibit "E", and made a part of this answer.

12. That upon the execution of the aforesaid agreement marked defendant's exhibit "A", the said Samuel Moore entered into the possession and occupancy of the land described in paragraph 10 of this answer and in the deed marked defendant's exhibit "E", and has ever since occupied and now is in the possession and occupancy of said land, and during all said time, from the 8th day of May, 1919, to and including this date, said plaintiff, has had for his own use and claimed title to said land and has had the products, rents, issues and profits therefrom.

13. That ever since the execution of said agreement marked defendant's exhibit "A", the defendant has been in the quiet and peaceable possession and occupancy of the land described in plaintiffs' said complaint under a claim of right and title thereto, with the consent, acquiescence and agreement of the plaintiffs herein; that during said time and with the knowledge of and without objection on the part of plaintiffs the defendant has made valuable improvements on said land and the other land covered in said agreement marked defendant's exhibit "A", and during all said time defendant has grazed its animals thereon and has had the products, rents, issues and profits therefrom.

14. That at the time of the execution of the aforesaid deed marked defendant's exhibit "B", it was understood and agreed between the defendant and the plaintiff, Charles H. Moore, that he would accept in lieu of his said interest in said Section 16, Tp. 5 N. R. 7 E. S. L. B. & M., certain other land to be deeded to him by said David Moore & Sons, Incorporated; that the said David Moore & Sons, Incorporated, has executed and delivered to the said Charles H. Moore a deed conveying to him the lands so agreed upon and said Charles H. Moore has accepted said deed and said lands in lieu of his said interest in said Section 16.

That a copy of said deed is hereto attached, marked defendant's exhibit "F" and made a part of this answer.

15. That to further assure the title in the defendant of the land described in plaintiff's complaint, the plaintiff, Charles H. Moore, has, for a valuable consideration, made, executed and delivered to the defendant a deed conveying to it his interest in the said land.

That a copy of said deed is hereto attached, marked defendant's exhibit "G" and made a part of this answer.

16. That until the terms of said agreement had been fully complied with as set forth in defendant's exhibit "A", the defendant has paid or caused to be paid all taxes assessed on the land so deeded or offered to be conveyed to the said plaintiffs herein, and in consideration thereof, the said plaintiff, Samuel Moore, has paid or caused to be paid the taxes assessed on the one-half interest of the land described in the complaint, but that said payment was for the use and benefit of the defendant herein; that the said plaintiff, Charles H. Moore, has never paid the taxes on the land described in the complaint, until the year, 1927, but David Moore & Sons, Incorporated, has paid said taxes for the use and benefit of the defendant herein; that payment of said taxes have been so made ever since the year, 1919, to and including the year, 1927.

17. That by reason of the said Samuel Moore and Charles H. Moore, plaintiffs herein, acquiescing in, consenting to and agreeing with the defendant that their right, title and interest

in and to the land described in the complaint should be conveyed to this defendant as heretofore set forth; that by reason of the said Samuel Moore and Charles H. Moore joining in and executing to defendant the aforesaid deed marked defendant's exhibit "B"; and authorizing the delivery of said deed to the defendant upon the fulfillment of the agreements heretofore set forth; that by reason of the plaintiffs and each of them, standing by and making no objection to defendant entering in and upon, occupying and claiming the land described in the complaint, and making substantial improvements on said land, and taking therefrom the products, rents, issues and profits as heretofore setout; that by reason of the said Samuel Moore, during all said time, entering upon and into the possession of and claiming the tracts of land described in paragraph 10 of this answer as a consideration for the execution and delivery to defendant of the deed marked defendant's exhibit "B", and claiming said land as his own and taking therefrom the products, rents, issues and profits ever since the year, 1919, to the present time; that by reason of the said Charles H. Moore, executing and delivering to this defendant the deed marked defendant's exhibit "E", and accepting as the consideration therefore a deed to the land described in defendant's exhibit "G"; that by reason of the premises as in this answer setforth, the plaintiffs and each of them are in equity barred and estopped from asserting or claiming

any right or title or interest in and to the lands described in their said complaint. That by reason of the facts heretofore alleged in this answer defendant will suffer irreparable injury if title to the land described in plaintiffs' complaint is decreed to the plaintiffs.

18. That the defendant submits to this Court and offers to do equity in the premises as this Honorable Court shall direct.

Wherefore, the defendant prays that the plaintiffs or either of them, take nothing by their said complaint; that the defendant have title to the land described in the complaint, and that the deeds executed therefore be found valid and good, and for such other and further order as shall seem just in the premises, and for costs in this behalf expended.

P. H. NEELEY,  
*Attorney for Defendant.*

(Duly Verified.)

Filed February 14, 1928.

(TITLE OF COURT AND CAUSE.)

Pleading  
File  
28-31

### Reply

Come now the plaintiffs and by way of reply to the affirmative matters set up in defendant's answer, admit, deny and allege:

1. The plaintiffs admit paragraphs 1 2 and 3 of said affirmative matters but deny that said plaintiffs or either of them were parties to said agreement, or that they have ever become parties to said agreement or otherwise bound in any



way for the carrying out of said agreement.

2. Plaintiffs admit paragraph 4, but allege that at the time of the death of said David Moore, he only owned an undivided 1-3 interest in and to said section 16 and that said corporation has never owned more than an undivided 1-3 interest in said lands.

3. Plaintiffs admit paragraph 5.

4. Plaintiffs deny each and every allegation contained in paragraph 6.

5. Replying to paragraph 7, plaintiffs admit the signing of said deed and that a copy thereof marked exhibit "B" is attached to said answer and deny each and every allegation in said paragraph contained; and affirmatively allege that these plaintiffs never at any time authorized any one else to make delivery of said deed for and in their behalf.

6. Replying to paragraph 8, plaintiffs allege that they have no knowledge or information concerning the matters therein stated and upon that ground deny each and every allegation in said paragraph contained, except that there are attached to said answer copies of purported deeds marked, exhibit "C" and exhibit "D" respectively.

7. Replying to paragraph 9, plaintiffs allege that they have no knowledge or information as to the matters therein stated and upon that ground deny the same; and affirmatively allege that if said David Moore and Sons, Incorporated, delivered said deed to the defendant that in

so doing it acted without any right or authority whatsoever from these plaintiffs.

8. Replying to paragraph 10, plaintiffs deny each and every allegation in said paragraph contained, and affirmatively allege that there never has been an agreement between the plaintiff Samuel Moore on the one hand and the defendant or David Moore & Sons, Incorporated, or any one else on the other hand, under which said plaintiff was to receive a deed for the lands in said paragraph described.

9. Replying to paragraph 11, plaintiffs admit that a deed copy of which marked exhibit "E" is attached to said answer has been offered to the said Samuel Moore and that he has refused to accept said deed and still refuses so to do; and deny each and every other allegation in said paragraph contained.

10. Replying to paragraph 12, plaintiffs deny the same and each and every allegation thereof but allege that under a separate agreement between the plaintiff Samuel Moore and the defendant, said plaintiff has had a limited use of said premises in exchange for the use of his lands by the defendant.

11. Replying to paragraph 13, plaintiffs deny each and every allegation therein contained except that plaintiffs admit that during part of the time and under the agreement mentioned in paragraph 10 hereof defendant has grazed its animals on said lands.

12. Replying to paragraph 14, plaintiffs

deny each and every allegation therein contained except that a copy of a purported deed is attached to said answer marked exhibit "F", and in this behalf plaintiffs allege that if the plaintiff Charles H. Moore agreed to accept said deed that he was induced to do so by fraud, misrepresentation, coercion and undue influence, the details and particulars of which plaintiffs are unable at this time to state.

13. Replying to paragraph 15, plaintiffs deny each and every allegation therein contained except that a copy of a purported deed is attached to said answer marked exhibit "G" and plaintiffs allege that if the plaintiff Charles H. Moore made, executed and delivered any such deed that he was induced to so do by fraud, misrepresentation, coercion and undue influence, the details and particulars of which plaintiffs are unable at this time to state in full.

14. Replying to paragraph 16, plaintiffs deny each and every allegation therein contained.

15. Replying to paragraph 17, plaintiffs deny each and every allegation therein contained.

16. Replying to paragraph 18, plaintiffs admit that the defendant offers to do equity in the premises.

WHEREFORE have fully replied, plaintiffs pray for judgment as in their original complaint.

H. VAN DAM, JR.,  
*Attorney for Plaintiffs.*

(Duly Verified.)

Filed March 30, 1928.

---

(TITLE OF COURT AND CAUSE.)

Pleading  
 File

**Amendment to Reply**

32

For a further, separate and additional reply to the matters affirmatively stated in defendant's answer, plaintiffs allege that said matters and things so alleged by defendants are barred by the provisions of sections 4874, 5811, 5813 and 5113 Compiled laws of Utah, 1917.

H. VAN DAM, JR.,

*Attorney for Plaintiffs.*

Filed April 25, 1928.

---

(TITLE OF COURT AND CAUSE.)

Pleading  
 File

**Findings of Fact and Conclusions of Law**

38-43

The above-entitled cause coming on for trial at the April, 1928, session of said court, and having been tried before the Court (a jury trial having been waived) on the 25, 26 and 27th days of April, 1928, Herbert Van Dam, Jr., appearing for the plaintiffs, and P. H. Neeley, for the defendant; and after hearing the allegations and proofs of the parties, the arguments of counsel, and being fully advised in the premises, the following findings of fact and conclusions of law in said action are by the Court hereby made and filed:

### Findings of Fact

1. That on the 8th day of May, 1919, the defendant herein entered into a written agreement with one David Moore and Mary Moore, his wife, father and mother of the plaintiffs herein, whereby the said David Moore and Mary Moore agreed to convey to the defendant herein the lands described in plaintiffs' complaint, together with other land and to pay defendant a sum of money to be determined, in consideration of the defendant herein conveying to the said David Moore and Mary Moore, certain other lands, and that at the time of entering into said agreement a part of the lands to be so exchanged were unsurveyed, and a survey thereof was to be made at the joint expense of the parties, and thereupon the parties to said agreement were to execute good and sufficient deeds conveying the land so exchanged to the parties entitled thereto, and that fences should be constructed along the dividing lines of said property, each of the parties to said agreement to bear one-half of the expense of so fencing said land.

2. That after the execution of said agreement which is marked exhibit "A" in defendant's answer, and before the survey of said land, the said David Moore died, and his estate was administered in the Third District Court of Summit county, Utah, and the several heirs of said estate, including the plaintiffs herein, formed a corporation, known as David Moore & Sons, Inc., and on the 16th day of February, 1920, assigned

and transferred to said corporation by instrument in writing their right, title and interest in and to said estate, and which right, title and interest embraced the land described in the complaint herein with other lands, and in pursuance of said assignments the property of said estate was distributed to said corporation.

3. That at the time of the execution of the said agreement marked exhibit "A", the plaintiff, Samuel Moore, was the owner of an undivided 1-3 interest in the property described in the complaint, and thereafter on the 18th day of May, 1921, the said Samuel Moore and the plaintiff, Charles H. Moore, had conveyed to them by mesne conveyances an additional 1-3 interest in said land.

4. That the said Samuel Moore and Charles H. Moore, plaintiffs in said action, always acquiesced in and consented to and agreed with the defendant, though they were not signers of said agreement marked defendant's exhibit "A", that their interest in and to the land described in the complaint should and would be governed by said agreement and would be by them conveyed to said defendant in pursuance of and under the terms of said agreement, for the consideration of certain lands to be conveyed to them separately, and described as follows:

(Description by metes and bounds of same 81.1 acres first mentioned in paragraph 10 of answer.)

(Also an undivided one-half interest in and to same 25.8 acres secondly mentioned in para-

graph 10 of answer.)

(Also, an undivided one-half interest in and to the same 158.6 acres thirdly mentioned in paragraph 10 of answer.)

And to the said Charles H. Moore the following described land, to-wit: The east half of the north-east quarter, and the north half of the north-east quarter of the south-east quarter of Section thirty-four, Township five North, Range seven East of the Salt Lake Base and Meridian, containing 100 acres, more or less.

5. That the defendant caused to be conveyed to the said Samuel Moore the tracts of land set opposite his name as above, and caused to be conveyed to the said Charles H. Moore the tracts of land set opposite his name as above, and in consideration thereof the said Samuel Moore and Dora Moore, his wife, and the said Charles H. Moore, unmarried and other, did, on the —— day of December, 1921, make, and execute a deed conveying to the defendant herein the land described in the complaint, and caused said deed to be placed with David Moore & Sons, Inc., to be by it delivered to the defendant herein when the terms of said agreement marked defendant's exhibit "A" were complied with; that the terms of said agreement were complied with and said deed so made and executed by the said Samuel Moore and wife and Charles H. Moore, unmarried and others was thereupon delivered to defendant by the said David Moore & Sons, Inc., and said deed is good and valid, and was not ob-

tained by defendant, except by the consent and in accordance with the agreement and direction of the plaintiffs.

6. That to further assure the title to the land described in the complaint in the defendant the said Charles H. Moore, unmarried on the 2nd day of February, 1928, made, executed and delivered to the defendant a deed conveying to it the said land described in the complaint, and that said land was so conveyed voluntarily by the said Charles H. Moore to the said defendant and was not induced by fraud, misrepresentation, coercion or undue influence.

7. That upon the execution of the afore-said agreement marked defendant's exhibit "A", the said Samuel Moore entered into the possession and occupancy of the land described and set opposite his name in paragraph 5 of these findings, and has ever since occupied and now is in possession and occupancy of said land, and during all said time, from the 8th day of May, 1919, to and including the date of the filing of the answer in this action, to-wit: the 4th day of February, 1928, said plaintiff, has had for his own use and claimed title to said land and has had the products, rents, issues and profits therefrom.

8. That ever since the execution of said agreement marked defendant's exhibit "A", the defendant has been in the quiet and peaceable possession and occupancy of the land described in plaintiffs' complaint under a claim of right and title thereto, with the consent, acquiescence



and agreement of the plaintiffs herein; that during said time and with the knowledge of and without objection on the part of the plaintiffs, or either of them, the defendant has made valuable improvements on said land and the other land covered in said agreement, and during all said time the defendant has grazed its animals thereon and has had the products, rents, issues and profits therefrom, and has paid the taxes thereon or caused to be paid thereon said taxes under an agreement with the said plaintiffs whereby the parties were to pay the taxes on the land standing in their respective names for the use and benefit of the equitable owner of said lands until the legal title thereto should pass by deed to the equitable owner, and that the defendant is and was the owner of the land described in the complaint; that the improvements so made on said land consisted of fencing the same and that the defendant has continuously during said time used said land for the grazing of its animals thereon.

9. That the court finds that each and all of the averments and allegations of defendant's answer are true, and that the averments and allegations of plaintiffs' said complaint and reply are untrue.

10. That the lands which are the subject of plaintiffs' said complaint are situated in Summit county, state of Utah, and are described as follows:

(The same 393.6 acres mentioned in para-

graph 1 of plaintiffs' complaint and in decree.)

And as conclusions of law from the foregoing facts, the Court now finds and decides:

1. That the plaintiffs and each of them are estopped from claiming any right, title or interest in and to the lands described in the complaint and in paragraph 10 of the above findings of fact.

2. That the defendant have judgment against the plaintiffs and each of them, that they have no cause of action against the defendant affecting the land described in the complaint and in paragraph 10 of the above findings.

3. That the defendant is the owner in fee simple and entitled to the possession of the land described in the Findings of Fact and complaint herein, as against the plaintiffs and each of them, and all persons claiming or to claim the same, or any part of said land, under the plaintiffs, or either of them, and that neither of said plaintiffs has any right, title or interest in or to the said land or any part thereof.

4. That the defendant is entitled to a decree, as prayed for in its answer, to quiet its title to the lands described in the complaint and in paragraph 10 of the above Findings, as against the plaintiffs and each of them, and all persons claiming or to claim the same, or any part thereof, under or through the said plaintiffs or either of them, and that the defendant's title to said land is good and valid as against the plaintiffs or either of them, or any person or persons

claiming by or through them or either of them, and that the plaintiffs and each of them are estopped from asserting any right, title or interest in or to said lands, and that the plaintiffs and each of them, have no cause of action affecting said lands against the defendant, and that costs be taxed against the plaintiffs.

5. And judgment is hereby ordered to be entered accordingly.

Dated this 28th day of December, 1928.

L. B. WIGHT,  
*Judge of said Court.*

Filed December 31, 1928.

---

(TITLE OF COURT AND CAUSE.)

Pleading  
File

**Decree**

44-45

The above entitled cause having been regularly called and heard at the April, 1928, sessions of said court, sitting without a jury, on the 25, 26 and 27th days of April, 1928, and findings of fact and conclusions of law, and the decision thereon in writing being hereby made by the Court, which are now on file in this cause, wherein judgment was awarded in favor of the defendant and against the plaintiffs and each of them, on motion of P. H. Neeley, defendant's attorney:

It is now, therefore, ordered, adjudged and decreed, that the defendant have judgment, as prayed for in its answer herein, against the plaintiffs and each of them, that the plaintiffs and each of them be and they are hereby estop-

ped from claiming or asserting any right, title or interest in and to the lands described in the complaint and paragraph 10 of the Findings of Fact herein; that the defendants have judgment against the plaintiff and each of them, that they have no cause of action against the defendant affecting the land described in the complaint and in this decree; that all adverse claims of the plaintiffs and each of them, and all persons claiming or to claim said lands, or any part thereof, through or under said plaintiffs or either of them, are hereby adjudged and decreed to be invalid and groundless, and that the defendant be and it is hereby declared and adjudged to be the true and lawful owner of the lands described in the complaint and hereafter in this decree, and every part and parcel thereof, and that its title is adjudged to be quieted against all claims, demands, or pretensions of the plaintiffs or either of them, and all persons claiming by, through or under them, and plaintiffs and each of them and all persons claiming by, through or under them, are hereby perpetually estopped from setting up any claim thereto, or to any part thereof; that the defendant is entitled to costs in the sum of \$83.00.

That the lands which are the subject of said complaint and of this decree are situated in Summit county, state of Utah, and described as follows: (Same 393.6 acres mentioned in paragraph 1 of complaint and paragraph 10 of Findings of Fact.)

Dated this 28th day of December, 1928.

Attest:

JOHN E. WRIGHT,  
Clerk.

L. B. WIGHT,

*Judge of said Court.*

Filed December 31, 1928.

---

(TITLE OF COURT AND CAUSE.)

Pleading  
File

49

### Motion For New Trial

To the above named defendant and to P. H. Neeley, its Attorney:

Please take notice that the plaintiffs herein intend to, and do hereby move the court to vacate and set aside the judgment entered in this cause, and to grant said plaintiffs a new trial thereof, upon the following grounds:

1. Irregularity in the proceedings of the court and adverse party by which plaintiffs were prevented from having a fair trial.

2. Accident or surprise which ordinary prudence could not have guarded against.

3. Newly discovered evidence on the part of the plaintiffs which they could not with reasonable diligence have discovered and produced at the trial.

4. Insufficiency of the evidence to justify the decision of the court, and that said decision was against law.

5. Error in law occurring at the trial, and excepted to by plaintiffs.

Said motion will be made upon the files and records in this cause and upon affidavits to be

hereafter served upon you.

H. VAN DAM, JR.,  
*Attorney for Plaintiffs.*

Filed January 5, 1929.

(TITLE OF COURT AND CAUSE)

Pleading  
File

54

### Notice of Appeal

TO THE ABOVE NAMED DEFENDANT AND P. H. NEELEY, ITS ATTORNEY:

You, and each of you will please take notice that the plaintiffs and each of them hereby appeal to the Supreme Court of the State of Utah, from the decree made and entered in the above named court on the 17th day of December, 1928, in favor of the defendant and against the plaintiffs, and each of them, and from the whole thereof; said decree became final on the 1st day of February, 1929.

This appeal is taken on questions of both law and fact.

Dated this 25th day of July, 1929.

H. VAN DAM, JR.,  
*Attorney for Plaintiffs.*

Filed July 26, 1929.

### Agreement

Pleading  
File

14-16

Defendant's Exhibit "A".

This agreement, made and entered into this 8th day of May, A. D. 1919, by and between the Deseret Live Stock Company, a corporation organized and existing under the laws of Utah, party of the first part and David Moore and

Mary Moore, his wife of Summit County, State of Utah, parties of the second part, whereby said parties of the second part agree to sell and convey to said first party by good and sufficient deed, the following described property:

All of Section 16, North and West of the new railroad tracks of the Union Pacific Railroad Company, with 30 acres more or less in the Northwest Quarter of the Northwest Quarter, Section 30 all in Township 5 North, Range 7 East, and in consideration therefor said first party agrees to pay said second parties the sum of \$7.00 per acre for each and every acre thereof.

The said first party further agrees to sell and convey by good and sufficient deed to said second party the following described lands now owned by said first party, lying between the two railroad tracks of the Union Pacific Railroad, and

between Section 16, running Southwest to about the center of what is known as the Big Fill, running Southwest straight across the valley to the old railroad tracks; and in consideration whereof said second party hereby agree to pay to said first party the sum of \$7.00 per acre for each and every acre thereof.

Said first party further agrees to convey to said second parties all that tract of land lying between said two railroads, lying south and east of said Big Fill and running south to the land owned by said second party, in

Section 32, in consideration whereof said second parties agree to pay to said first party

the sum of \$15.00 per acre for each and every acre thereof.

Said first party further agrees to convey to said second parties all that tract of land in

Section 28, lying South and East of the old railroad tracks of said railroad company, in consideration whereof said second parties agree to pay to said first party the sum of \$7.00 per acre.

Said first party further agrees to convey to said second party all that tract of land commencing in the East center quarter corner Section 30, and running from said point southeasterly along a line to be located by said first party, running along the ridges to the new railroad track to a point near the high hill and including all land South and West of said line, owned by said first party, in Section 29, 32 and 30; in consideration whereof said second parties agree to pay to said first party the sum of \$7.00 per acre for each and every acre thereof. All of the above described property being located in said Township 5 North, Range 7 East.

Said first party further agrees to convey to said second party the following described strip of land:

Commencing at about the West center quarter corner of Section 30, in said Township and Range, and running thence along a ridge along a line to be located by the said first party, in a Southwesterly, Southernly, and Southeasterly direction, running thence through parts of Section 25, 36 in Township 5 North, Range 6 East, to about the West center quarter corner of Section 31, in



said Township 5 North, Range 7 East; in consideration wherefor said second parties agree to pay to said first party the sum of \$7.00 per acre for each and every acre thereof.

It is mutually understood and agreed that all of the above described tracts of land are to be accurately surveyed at the joint expense of both parties hereby, by a competent and reliable surveyor, to be agreed upon by said parties hereto. It is further mutually understood and agreed by the parties hereto that the deeds conveying the above described tracts of land shall describe said tracts of land in an accurate manner and in accordance with said survey. It is further mutually understood and agreed by and between the parties hereto that good and sufficient lawful fences shall be erected along the dividing lines of said property owned by the parties hereto each party hereto to pay one-half of the expenses thereof; that said fencing is to be begun upon the execution of this agreement and to proceed without delay until completed.

It is expressly and mutually understood that all land conveyed hereby by said party of the first part to said party of the second part is conveyed without any water rights whatsoever except only the drainage water which flows through the tunnel, and such water as rises on the land herein conveyed. It is further agreed that an Abstract shall be furnished by the grantors to the grantees covering each of the tracts of land herein conveyed.

IN WITNESS WHEREOF the parties hereto have executed this agreement in duplicate, the date first herein mentioned.

DESERET LIVE STOCK COMPANY,

By Stearns Hatch, *President.*

Party of the first part.

DAVID MOORE,

MARY MOORE,

Parties of the second part.

Duly acknowledged.

Filed as Exhibit "A" to answer February 14, 1928.

---

(TITLE OF COURT AND CAUSE.)

Transcript  
Page

### Bill of Exceptions

1       The above entitled cause coming on regularly for trial before the Honorable L. B. Wight, one of the Judges of the Third Judicial District, State of Utah, on the 25th day of April, A. D. 1928, at Coalville, Summit County, Utah, sitting without a jury, whereupon the following proceedings were had: The plaintiff was represented by H. Van Dam, Jr. and the defendant by P. H. Neeley.

Direct Examination, William Moore, by Mr. Van Dam.

17       William Moore testified on behalf of the plaintiff: My name is William Moore; I reside at Juab, Utah; I am a son of David Moore. At  
18 the time father died I was familiar with the land near Castle Rock owned by David Moore and the Live Stock Company. I was father's ad-

19 ministrator and the corpus of his estate was distributed to the corporation. Nine of the children and two of the grandchildren of David Moore were stockholders, I secretary-treasurer.

20 I drew up an agreement with Sam and Charley about the Live Stock land trade and mother, Mary Moore, and I signed it. It was made about February, 1921, and there were two carbon copies of it. I do not have a copy. Samuel Moore had the agreement the last time I saw it. (Mr. 21- Neeley excepts to testimony regarding agreement.)

22- The agreement was drawn up because Samuel Moore and his wife did not want to turn their interest in the Moore Estate unless they get the meadow tracts between the tracks. I had a carbon copy of it but do not know where it is now. I attended a meeting of the Moore corporation in 1921 when the agreement was considered. There were minutes made of that meeting in my hand writing (Plaintiffs' Exhibit 23 8) signed by T. E., J. E., D. E., and Samuel Moore and reading:

Minutes of a meeting held at Castle Rock, Utah, Dec. 1st, 1921 \* \* The Deseret Live Stock Trade was taken in consideration and that Sam and Charley take the ground between the track from cross-fence to tunnel for consideration of their interest in Sec. 16, etc."

24 The cross-fence referred to was the one on section 32 and a little north-west of the ranch house, running in a westerly direction. After

that meeting I had a conference with the Live  
 25 Stock Co. officials at the Moyle law offices, either  
 26 in the spring of the year or in June. The deed  
 (Defendant's Exhibit No. 2 from corporation,  
 Samuel Moore, et. al.) was turned over to Sam-  
 uel Moore and he had it when he and I had that  
 27 conference. Moyle objected to the trade going  
 through, Sam produced the deed to Mr. Moyle.  
 28 Sam Moore still kept the deed and I have not  
 seen it since until I saw it here in Court.

Cross-Examination, William Moore, by Mr.  
 Neeley.

29 There was a cross fence in Section 32.  
 There was another not entirely a cross fence,  
 near the line of section 21, which went round a  
 field and to the right of way fence on the east  
 side, but not on the west. There are two, one  
 on the south line of 16 and there is a cross fence  
 built across the meadow. It was not running or  
 meaning a cross-fence from one right of way to  
 30 the other. There was a fence that I think was  
 probably a quarter mile from the south line of  
 section 21. It was, as near as I could tell, a  
 mile or three-quarters of a mile below the tun-  
 nel fence.

At the conference with Mr. Moyle and with  
 Mr. Moss at Bountiful, I was there as an officer  
 of the company and some of the directors told  
 31 me to go. The deal was not called off. Mr.  
 Moyle found fault with the title and Mr. Moss  
 said the fence was not up to contract.

33 I was born and raised on the Moore Ranch,

33 moved away five years ago, but have been there each year since. I have heard no objection to this land trade going through except what was said at the Live Stock office. The last time I saw the deed (Exhibit 2) it was in Sam Moore's possession at Castle Rock in 1921. Sam produced what I presumed was that deed in Moyle's office.

34 Re-Direct Examination, William Moore, by Mr. Van Dam.

To best of my recollection it was this deed I saw in Moyle's office. I did not read it. I am satisfied it was that deed Sam had. Mr. Moyle read it and objected.

Re-Cross Examination, William Moore, by Mr. Neeley.

Q. Didn't you say it was the abstract he objected to?

A. I said he objected to making a trade on the abstract of title, but I didn't say before the trade in June.

Direct Examination, Samuel Moore, by Mr. Van Dam.

35 Samuel Moore testified as follows on behalf of the plaintiffs: I am Samuel Moore, of Castle Rock, Utah, one of the plaintiffs. I represent Charles H. Moore by Power of Attorney (Plaintiff's Exhibit 9.)

36 I have a written lease on Charles' lands in  
37 Section 16 (Plts. Ex. 10). I exhibited both to  
38 William Moss, of the Live Stock Company, when I went to see him about the exchange of land,

and I asked him if it was satisfactory with him to use my land on the North side of the track and let me use the Live Stock Company land between the tracks and he said yes. I have been paying taxes on my portion of Section 16 and this is a tax receipt for my interest in Section 16 for 1927 (Pltfs. Ex. 11). I am not aware of anyone else paying taxes on it since 1919.

39 I corresponded with Henry Moss, secretary, in 1921-2. I received letter Exhibit 12, but I broke my leg and could not go then, so I went  
40 about June 1st, 1922. I then had the deed by the Moore Company, and me, and others with me, and showed it to the Live Stock officials and  
41 Attorney Moyle at Woods Cross and Salt Lake. Mr. Moyle asked for an abstract of title. I said  
42 I only had the deed. I took that deed home and put it in my little safe. I never turned the deed over to Thomas E. Moore or authorized him to deliver it to the Live Stock Company, and it was not taken out of my safe with my knowledge and consent. I do not know when or by whom it was taken.

43 I wrote the first of three letters marked Exhibit 14 telling the Live Stock Company that I wanted the deed about July 20, 1922 and Stearns Hatch, president, answered stating they were forwarding their abstract to me and they wrote on August 9, 1922, saying they enclosed Live Stock Company abstract but I didn't get it and I had correspondence with them about the trade  
44 until latter part of 1927 and these are copies of

my letters and their answers (Pltfs. Ex. 15-A to 15-J, inclusive).

45       Voir Dire Examination, Samuel Moore, by Mr. Neeley.

      The letter dated April 6, 1927, (Pltfs. Ex. 15-A) is exact copy of one I wrote Henry Moss, Woods Cross, Utah; and the one not addressed to any one (Pltfs. Ex. 15-C) was to Henry Moss;  
46   my letter dated September 28, 1927, to James H. Moyle (Pltfs. Ex. 15-I) is a correct copy of one  
48   I sent to him, except the part I tore off and I do not recollect why I tore that off (see Pltfs. Exhibit 16).

49       Mr. Neeley objected to Plaintiffs' Exhibit 15-C and objection was overruled.

      Further Direct Examination, Samuel Moore, by Mr. Van Dam.

      Since 1919 Charles and I have occupied the land between the tracks, from the cross fence near the ranch house on Section 32 up to the South line of Section 16 by grazing my cattle and putting up hay on it. Live Stock Company has occupied that part of Section 16 north of  
50   the tracks. Charles and I paid all taxes on our portion of it. The Live Stock Company paid taxes on the land between the cross fence and Section 16 between the tracks as far as I know.

      I have constantly asked the Live Stock Company for a deed made direct to me and Charles H. Moore but not through T. E. Moore.  
51   I have claimed my half interest to the exclusive title to the land in Section 16 south of the

tracks and between the tracks.

I received a letter from Live Stock Company last July forbidding me to cut hay on ground standing in its name, after most of the hay was up. (Pltfs. Ex. 15-E). Because of this letter I went to see Mr (William) Moss.

It is my signature on Exhibit '8' (Minutes).  
 52 I was at that meeting. There a memorandum agreement with the administrator was read and considered. I lost my copy of it after 1922 and have not found it. I kept it in the safe with the deed (Pltfs. Ex. 2). They were both there  
 53 in July, 1922 in my possession, when I saw the safe last. August 1st I was taken from the ranch with my children and things including the safe, deed and agreement. I never saw the deed (Pltfs. Ex. 2) since until I saw it in Court. I searched for it and couldn't find it.

The deed from the Moore Company to me  
 54 (Pltfs. Ex. 4 and Dfts. Ex. E) was tendered after this suit was filed. It describes half interest in Sections 21 and 16 between and south of the tracks. I never had any agreement with the Moore Company to accept the land described for my land in Section 16. I first knew that the Moore Company wanted to transfer this land to me when Tom called me up by telephone about a year ago. I refused to accept any such deal.

I attended a stockholders' meeting of the  
 55 Moore corporation at Castle Rock, November 21, 1927, and discussed the Live Stock deal. I asked to have plaintiffs' Exhibit 17, objecting to it



put in the minutes. I had and heard discussion with T. E. Moore. He refused to give me all  
 56 the land between the tracks. As I remember he said I could have the land on Section 21 and he said mine would be bounded and they would find it in the spring some time. I objected to that. I asked how much money they owed me. He admitted he owed me something; never said how much. No part of the land was discussed; Tom said he would not give me the land between the tracks.

Cross Examination, Samuel Moore, by Mr. Neeley.

I was away when father arranged the exchange with the Live Stock Company in May, 1919. I helped arrange the lines for exchange; we had been trying to arrange it for several  
 57 years. They arranged the lines with Mr. Moss  
 58 and Mr. Hatch when there. After that I rode over the lines several times with William Moss. We never adjusted fences on 16. They were to  
 59 get everything north of the high line tracks, and my interest when we got clear title to the land between the tracks. I had nothing to do with another contract for Stearns Hatch was to get the land south and east of the tracks as I was away to the 'Uintah' reservation. (Witness here pointed out some fences and there is nothing in the record to show many of them.)

60 Mr. Moss told me several times and I told him that he could have my land north and west of the tracks in 16 if he deeded Charley and me

all this ground in Section 21 down to the cross section fence in section 32. I built many of the partition fences for the Live Stock Company between 1919 and 1925. It used all the land in section 16 north and west of the tracks since  
 61 1919. There was no dispute about their using my land as long as I used theirs between tracks.

There was a suit between me and the Moore Company in 1923 about hay taken off on the contract. Hatch Brothers used the land lying to the east and south from 1919 to 1924 when I started using my portion and Charley's. The last two years the Rigby Ranch Company has. I did not consent to it. Charley and I have used the land between the tracks on Section 21  
 62 exclusively since 1919. I always disputed the right of the Live Stock Company to have title to that ground on Section 16 until they gave Charley and me a good title to the land between the tracks and I so told both Mosses and Hatch and Moyle. I wanted all between the tracks down to the cross road fence; they constantly stalled and I could not get anywhere with it. I asked for a deed from the Live Stock Company.  
 63 I helped execute pl'tfs. Ex. 2. I don't think the three top lines were on it when I signed it—I am positive they were not. It was made to be ready to do business with the Live Stock Company. I put the deed in my little safe, with a lock on  
 64 it. The safe was moved from my place in 1922 when T. E. Moore appeared before me as a deputy sheriff on August 1st and asked me and my

children to get in his car with all my valuable papers. The safe was in his possession until  
 65 1923. I kept the key around my neck. I was not sick when he came—I was out repairing the hay rack.

When I got the safe back it was not locked; am sure I got it from T. E. Moore and not my wife. When I got it the deed and agreement with administrator and another were gone. It is up to the Court to decide whether T. E. Moore  
 66 did or did not purloin them. I don't know whether or not I told Mr. Moss and Mr. Hatch that there was a deed out that had never been delivered. I told the county recorder to watch out for it and tell me if it came in. I told the Live Stock people repeatedly that I would not have T. E. Moore and P. H. Neeley transact any business for me. I first heard the deed had been delivered to the Live Stock Company after it had been recorded November 16, 1927. I never offered to buy the land between the tracks in section 32 and up to the south side of Section 21 from the Moore Company. (Mr. Van Dam ex-  
 67 cepts to testimony regarding agreement.) My brother, John, and I never entered into a written agreement to take this land over from the Moore Company. After Tom took me from the ranch they did not take me to a sanitarium or to a hospital, but to a residence in Salt Lake  
 68 where T. E. Moore took me and left me. I am ready to deal with the Live Stock Company direct in this exchange. I would not deal with

the Moore Company even if I could get the same thing.

Re-Direct Examination, Samuel Moore, by Mr. Van Dam.

Neither Company has ever offered me a deed to the ground between tracks west of Section 21 and down to the cross-fence.

69 Direct Examination, Dora Moore, by Mr. Van Dam.

Mrs. Dora Moore testified on behalf of plaintiff as follows: I am Dora Moore, wife of Samuel; I live in Castle Rock. I have seen the deed (Pltfs. Ex. 2); it was in my husband's possession up to about August 1st, 1922. He kept it in his safe with other valuable papers. I understood Tom Moore took the safe but I was  
70 away then. My children and I went to his house and got it after it had been away two and a half months. T. E. Moore once told me he had that deed and he was going to try to get it fixed up before Sam returned so Sam wouldn't have that to worry about.

Cross-Examination, Dora Moore, by Mr. Neeley.

I recognize the deed because I signed it and  
71 it was signed by a notary. T. E. Moore did not say how he got it. I don't think it was locked at T. E. Moore's. I never told the Live Stock people Mr. Moore had taken the deed and not to accept it. I didn't look through the safe for the deed because T. E. said he had it. I am sure  
72 he said he had the Live Stock deed and not the

Hatch deed.

Direct Examination, Heber Fernelius, by Mr. Van Dam

Mr. Fernelius testified in behalf the plaintiffs: My name is Heber Fernelius; foreman for the railroad at Castle Rock 5½ years. I have observed who was in possession of the land from the cross-fence by the ranch house up to Section 16 all of that time. Samuel Moore has been taking hay out and running stock on there.

73 Cross Examination, Heber Fernelius, by Mr. Neeley.

I cannot say he had exclusive control. At times there was other stock there. I saw Clarence Moore of the Moore Corporation cutting hay there in 1923, but since then Sam has taken care of it and cut the hay every year.

74 Direct Examination, Charles H. Moore, by Mr. Van Dam.

Charles H. Moore, one of the plaintiffs, testified in behalf of the plaintiffs: I am Charles H. Moore. I live in Evanston, Wyoming. That is my signature to a Power of Attorney (Pltfs. Ex. 9) for Samuel Moore to handle my business. It is still in force. Plaintiffs' Exhibit 10 was given by me to Sam to run my land.

75 I saw T. E. Moore February 2nd, 1928. He came to ranch with D. E. Moore with a paper to break the Power of Attorney and two papers to make an exchange on some ground in Section 16 for some land I think was Section 32. They  
76 kept after me to sign those papers and I did not

want to sign them. I went to Evanston and there signed the one to the Live Stock Company. I don't like to sign papers. They sent the papers to me by mail and I didn't take them out of the post office because I did not think they would do me any good. They were returned to T. E. Moore from the postmaster in Evanston. I think I was to get a piece of ground and fifty dollars for signing them. I did not get the fifty dollars or the papers either because I refused  
 77 the papers. I think the deed I was to get describes land in the Little Field. I don't know how much as I have not been on the ranch for a year and I don't care whether I go back to it or  
 78 not. When they came down to see me it seemed they did not want me to talk to Sam about these papers and wanted to break up Sam's Power of Attorney on these papers.

Cross Examination, Charles H. Moore, by Mr. Neeley.

I am one of the heirs of the Moore Estate and ought to be a stockholder in the Company. When my brothers Thomas and Dick (D. E.)  
 79 came they explained the deal very fully. They got the deeds drawn up and took them back to me. I fully understood what they were. They  
 80 read the deed over to me and the lady where I boarded read it over to me.

Q. I read (Mr. Neeley) the whole deed over to you, did I not?

A. Yes sir.

I then wanted the deed so the Live Stock

could get the land north and west of the tracks in 16. After I signed I decided I did not want it for a certain reason. That deed was read over to me fully and by the lady who took the acknowledgment also. I did not go any further because I wanted to drop it and refused to take it out of the postoffice. The lady who took the  
 81 acknowledgment said if I wanted the deed delivered to give it to Mr. Moore and I gave it to him. It was the same as the deed of the Moore Corporation and I got a dollar for each deed.  
 82 Tom Moore told me I would get one hundred acres of land in section 34 for it. He took my deed back after it was delivered to me and brought it down to Coalville for recording and I refused it after it came back. I did not take the  
 83 deed because there was a mortgage on it that was not released. I took the two one dollar checks but will give back the two dollars any time.

Samuel and I have been putting up the hay on the land north and west of track since 1919.  
 84 No, I mean across the cross-fence, north of the hay land. Sam and I claim our interests in the land between the tracks in section 16.

The ground deeded to me in Section 34 is pretty good—would be all right for stockraising and put up around 30 tons of hay. I don't think it is as good as the land in Section 16 south and  
 85 east of the tracks. The land south and east of the tracks is sage brush. I think the hundred acres is about the same quality. I would like

to have that release on a trade from the company if I could get it.

86 Direct Examination, Thomas E. Moore, by Mr. Van Dam.

Thomas E. Moore testified on behalf of the plaintiffs: I do not recollect an item in 1919 taxes that appears in the company books because William Moore was then secretary and keeping books. I cannot say as to the items of \$11.28 for 1922, or \$16.39 as Charley had other land besides that in Section 16, as a homestead in Section 8, and the company has paid the taxes several times and charged it back to him.

87 I don't think this is my signature (to incompetency petition, Pltfs. Ex. 19). That is not my signature. I don't remember making a capital 'T' like that. My memory does not serve me. I did sign it. Charles Moore came to me and asked me to do this. I don't remember whether I signed it or not. I had it prepared for signature. That is my signature. (Mr. Neeley excepted to Pltfs. Ex. 18 being introduced.)

89-90 Direct Examination, J. E. Moore, by Mr. Van Dam.

J. E. Moore testified on behalf of the plaintiffs: My name is J. E. Moore, a brother of Samuel Moore and the others. That is my signature to the minutes of the meeting (Pltfs. Ex. 8).

91 I recollect an agreement being exhibited and read at this meeting of December, 1921. In substance, as I remember, it was that Samuel Moore and Charles Moore were to receive the



land between the tracks from what was termed the cross fence, by the ranch house, up to the tunnel in consideration for their interest in Section 16. I have not seen the agreement since then.

Cross-Examination, J. E. Moore, by Mr. Neeley.

I remember that agreement. It was by mother and William to Charles and Samuel. I don't know what capacity William signed in. He was administrator. At the time these minutes were taken he was secretary and treasurer. I think the property of the estate had then been distributed to the corporation. I do not know whether there was a court order authorizing the administrator to make the agreement but that agreement was signed by William and Mary Moore. It was turned over after the corporation was made and was read December 1, 1921.

Plaintiff Rests.

### Evidence on Behalf of Defendant.

Direct Examination, T. E. Moore, by Mr. Neeley.

T. E. Moore testified on behalf the defendant: My name is T. E. Moore of Coalville, Utah, a son of David E. Moore and wife, owners of the ranch near Castle Rock. I am familiar with the Moore Ranch and neighboring land. I knew of that exchange which involved land in Sections 16, 21, 28 and 32. The Big Fill is where the right-of-way widens. (much here is not intelligible because the witness says "here" and "there")

as to points on the map.) That is the line near the center of the Northwest quarter of Section 28. When the Live Stock agreement was made, as I remember, Samuel owned half and Charles one-sixth of Section 16. At the time it was made I heard Samuel Moore say: (Exception, Mr. Van Dam, to what Samuel Moore said) that for his land north and west of the track he was to take grounds on Section 16 east and south of the railroad. He claimed and used the ground in Section 16 and 21 between the tracks. During the last three or four years Samuel claimed the land east and south of the track, but prior to that it was supposed to go to Hatch Brothers. Sam told me he took it over from them. In May, 1924 I think he had a herd of sheep on it. He said that with other ground he expected to buy it from the Hatches. I have seen the Live Stock Company in possession of that part of Section 16 north and west of the tracks ever since 1919, and up to the time this suit started Sam and Charley had possession of that part of Section 16 south and east of the track—Sam alone since 1924. Sam was in possession of the land between the tracks in Section 21 and took the crops off it. It raises between 40 and 50 tons of hay. No hay is raised between the tracks in Section 21. In 1919 a fence running north was built on the Southwest quarter of Section 16 by the Live Stock Company; also a fence rebuilt along the south line, running west. The fence was rebuilt on the Southwest quarter of the

Northeast quarter. It was a half mile of good fence with cedar posts a rod apart, 32-inch wire at bottom and three galvanized wires at top; about two miles in all. It was built for the Live Stock Company. Sam had no improvements between tracks in Section 21. There is a stack yard built in Section 16 under the agreement to exchange lands (exception by Mr. Van Dam to all this line of testimony). A fence was run through from the hillside and a main fence across Section 29 to the center of Section 30 and thence running north a mile, over an addition we bought of the Live Stock Company, thence westerly around the north of sections 30 and 31 and around 35 and 36 back easterly along the south side of 31 about half a mile—about 5 miles of fence with good cedar posts a rod apart with galvanized wire in three-strand barbs. This is in addition to the mile testified to. It was built by cooperative action of the two companies. The Moore Company did nothing toward building the fence on Section 16.

The cross fence referred to in the minutes of December 21, 1921 was the cross fence a little west of the west line of Section 21. It is a 4-wire fence with cedar posts run from one right of way fence to the other about one-quarter of a mile. It is the first fence south from Section 16. There is one other cross fence in section 32 opposite the home ranch. It is about a mile below the other cross fence.

I do not recall that a written agreement

came up at that meeting. I never heard of that agreement. I have been president of the company ever since its incorporation.

107 I recall the instance of bringing Sam down  
in 1922. Two men came from Castle Rock and  
phoned me that Sam was sick. I drove up and  
got him and his children into the car. He got  
his safety deposit box. I took him to my home  
in Coalville and got a doctor and his wife. The  
safety deposit box had a padlock on it. I never  
108 had the key and never unlocked the box and  
never knew the contents. It was at my house  
about two months. I believe I returned it to  
his wife. As I remember it was locked. I never  
touched it. I told Mrs. Moore I had that  
deed (Pltfs. Ex. 2). Samuel delivered it to me  
some time in the early part of Summer, 1922  
109 Samuel and his brother tried to close that deal  
and met some difficulty. Sam handed me the  
deed and said: "Fix this up as soon as you can;  
the Deseret Live Stock Company said they  
couldn't deal with Will and he is no brother of  
mine." Apparently they had had a disagreement.  
Sam said to take it and to deliver it to  
the Live Stock Company. He delivered it to  
me at the front door of my garage as I was coming  
out of the door. He never afterwards complained,  
as I remember, about delivering it, nor asked  
me to return it.

110 Sam owned approximately 296 acres in Section 16. We have deeded him approximately the same amount in Section 16 and between the

tracks in 21. He got one hundred acres at five dollars; the ranch ground was seven dollars. Sam is claiming 150 acres at fifteen dollars and 130.9 acres at seven dollars, between the tracks worth \$3644 10. That between the tracks in 16  
 111 and 21 is worth \$2128.55. He gets approximately the same acreage when he is given the interest in Sections 16 and 21 between the tracks. He gets much more in value if he also gets the other acreage. I heard Sam testify he had had the use of the land between the tracks from section 16 to the cross fence in section 32. Up to 1924 the Moore Company cut the hay with its outfits. Sam worked for us. In the winter it was fed to our cattle and Sam's cattle in proportion to the number each had. Our hay came from sections 32, 28 and 29—Sam's from  
 112 section 16. When Sam was on sections 32, 28 and 29 in 1924 he was not living on the land and was there as our employee and under our instructions. We fed our cattle together and that accounts for Sam's cattle being on the tracts below the south line of section 21.

In 1925 the Moore Company and Sam and  
 113 J. E. Moore made another written agreement (Witness identifies Defendant's Exhibit C).

114-115-116-117 (Agreement admitted. Mr. Van Dam excepts. Read into the record.)

118 (Mr. Neeley here offers Exhibit 'D', which is read into the record. Mr. Van Dam excepts.)

119 The assignment refers to the land covered by the Live Stock deal. Part of the land involv-

ed lies between the tracks in 32. Under this last assignment Sam went into possession of the land in section 32 in either 1925 or 1926. He still has hay stacked on it. Sam and John E. 120 abandoned their agreement. They never placed their stock in the bank or gave the bond to care for mother. I wrote them several times and they refused to carry it out. The company has de- 121 posited a deed here in court for Sam. He refuses to take it. I first learned yesterday (first day of trial) that they claimed the cross fence meant was away down in section 32. The oldest cross fence round there is up around in sections 28 or 29 near the line of 21. The Live Stock Company started putting their improvements on the grounds covered by the agreement in 1920.

I received the deeds I got from Charley 122 Moore at Evanston, Wyoming. I began negotiating with him near Almy, Wyoming. D. E. and I went there to take him some life insurance papers. We talked a while and I asked him if he didn't want to take the land in 34. I asked if we prepared a deed if he would deed his property to the Live Stock Company and he said, "Yes, I will." We came back to Coalville and drew the papers and asked him to sign them. He consulted Mr. Mills. One of us did his work while he went to town and signed the deed before a notary and delivered it. The notary and Lee Smith were present when it was delivered. 123 I delivered and he accepted a deed from the Moore Corporation to one hundred acres in sec-

tion 34. He asked me to record it in Coalville. I did so and registered it back to him. I paid him one dollar and one hundred acres of land.

124 Cross-Examination, T. E. Moore, by Mr. Van Dam.

The relations between Sam and me are strained and unfriendly; have been ever since I brought him from the sanitarium in 1923. We have constantly had trouble. About a year later, in corporate matters, we divided into two fac-  
 125 tions, four of the eight on each side. Charley  
 126 voted with us till this year. D. E., Clarence and the two in Los Angeles are with us. They are H. L. Moore and Margaret Twombly. We keep in touch with them but they know nothing of corporate affairs. I have been president all the time. Clarence, D. E. and I run the company. When we held the directors' meeting we called Charley and notified other directors; if they did not come we could not help it. It has to be run.  
 127 The directors have agreed all along but we cannot agree with the other faction. Sam has objected to certain things but not to my management as a whole. Relations have not been smooth personally, but he has not made any objection as to the corporate business. I never had any objection from him about the land deal though I heard he objected. I heard he was willing to take the land we offered, but wanted the Live Stock Company to deed it direct. I  
 128 heard this through Live Stock officials just recently. William Moss told me. Nobody told

me before November 12, 1927. We then gave a  
129 mortgage for what we owed them. Prior to that  
Sam was to take the land east and south of the  
track in 16 and the land between the tracks in  
sections 16 and 21. We had no memorandum  
with Sam to that effect. The understanding  
was arrived at just shortly after incorporation  
from a conversation that came up in a stock-  
holders meeting and Sam and I may have had a  
130 private conversation. There is one memorandum  
in the minutes of December 21, 1921. The con-  
versation and the minutes referred to the land  
between section 16 and the cross fence near 21,  
was the understanding I had of it. I had for-  
gotten the minutes till yesterday, but it was the  
understanding I had the time we drew the  
131 deeds. I was relying entirely on my memory  
and that of others of the company. I consulted  
Sam at our annual meeting on December 21,  
132 1927—you (Mr. Van Dam) was there. I do not  
remember you asking what land Sam had com-  
ing; I will say you did not ask. You asked  
what equity Sam had in the ground and I an-  
swered around six or seven hundred dollars out-  
side the ground in section 16. You did not ask  
me if we were going to pay him that. I told  
him we owed him land or money. You did not  
ask me what land and I did not reply, "I don't  
133 know what land he is to get." I don't remem-  
your asking me if we would deed him the land  
between the tracks. You said Sam asked us if  
we would sell him the land between the tracks,



not deed it below 21. I said we would lease it to him. I did not say "I don't know what land Sam is to get," but said the land he was to have was in 21; he wanted to buy the other. I said we had to make adjustment with Sam as he had something coming and he could have had it either in money or land in 21. The corporation records have minutes of that meeting and they refresh my memory and Sam was to get the land in 16 and in 21. The record says the land above the fence which is the land in 21. The deed we tendered Sam describes the land south of the tracks in 16. That does not refer to the Live Stock deal. The land is not in the Live Stock deal. The corporation record doesn't say a word about any land in section 16. The deed was made in exact accordance with my recollection and this part of the record. After examining the records I find the deed tendered Sam is in accordance with these minutes. The deal, as I now outline it, and put into Sam's deed, is not the same as called for in the minutes, but that was an understanding. This was Live Stock ground and it says the Deseret Live Stock trade was taken into consideration. There was no discussion when we made these minutes. He was to get this in 16; it was understood that the land in 21 was the land he was to get from the Live Stock Company. There is a little spring and the cross fence goes across it to let the stock get water. That is all Sam gets from the Live Stock. It is right good pasture. There are

some borrow pits on it but that was the arrangement suggested in the minute. Some time prior to the proposed trade Will, David and I had an  
 139 interest in 16. 16 was all fenced before this deal was thought of. David Moore and Sam had a contract to put up some of that five miles of fence previously testified to. I finished the David  
 140 Moore part. Sam did the actual construction work for the Live Stock Company. Sam gets land valued at \$2128.55 as I have figured it out. Exhibit 4 is the deal we are talking about. The figures I used in computing I took off the map.  
 141 I made the computation by taking the acreage in section 16 figured at seven dollars per acre for range land and fifteen dollars for meadow land and divided it by two, and that makes this  
 142 amount. I compute 559 acres at seven dollars. There is 81.1 acres of seven dollar land in section 21; 25.8 acres of fifteen dollar land and 158.6 acres of seven dollar land. This is the land we  
 143 are deeding to Sam. There is a little difference between the deed and the map, but it is substantially the same.

144 The 551 acres is the seven dollar range land in section 16, both the Live Stock land and what Sam is claiming, then there is 25.8 acres of meadow land, 576 acres and a fraction, and the  
 145 railroad takes out 4 acres. Sam is getting our equity in section 16 and we own one-half if our deeds from Charley are good; if not we own one-third. The provision in the deed from Charley to the Live Stock recites that it is for

the purpose of further assuring title to the land set forth in the deed of December, 1921. The attorney, Mr. Moyle, asked to have it put in. The request was made about the 12th of November, 1927 and I waited till February, the first time I saw Charley. I went up where Charley worked and took some other papers to him. We got into a conversation and I asked for this deed. He gave it to me. I rate Charley all right mentally. I never had much experience in doing business with him. He was perfectly normal. Neither Mr. Moyle nor Mr. Stearns Hatch raised any question about the sufficiency of this deed, nor did Henry Moss. Nothing was said about the deed being executed six years without delivery. No one said that Sam had said that neither I nor Mr. Neeley had authority to do business for him. I say that Sam gave me the deed in 1922 with explicit direction to close the trade, deliver the deed and that the directions were never changed, modified or refuted.

Re-Direct Examination, T. E. Moore, by Mr. Neeley.

Exhibit number 8, minutes of December, 1921, is not with the books of the company. We never had it and I do not know where it has been.

(An exhibit was offered and withdrawn.)

Direct Examination, Henry Moss, by Mr. Neeley.

Henry Moss testified on behalf of the defendant: I am Henry Moss of Woods Cross and for about 15 years have been secretary of de-

152 fendant company. I knew of this deal and it  
 effected section 16, Tp. 5 North, Range 7 East,  
 153 and we were to get the land on the left of the  
 track going east. I had some minor talks with  
 Sam Moore; I think it was he who asked how  
 about the taxes and I told him that the record  
 title holder would pay taxes until the transfer.  
 That was along in the summer of 1919. We  
 154 paid our taxes unless some error has been made  
 from 1919 to 1927 in accordance with the un-  
 derstanding with Sam Moore. I don't recall  
 hearing any complaint about this deal until 1927.  
 I understand our company has relied on the deal  
 and kept and improved the ground they were  
 trading for.

155 Cross Examination, Henry Moss, by Mr.  
 Van Dam.

I knew there was some friction about the  
 deal in 1927 from Sam's letters and different  
 sources, but I knew no details. I understood  
 Tom Moore and Mr. Neeley were not to do busi-  
 ness for Sam. Plaintiff's Exhibit '15-D' is my  
 letter. I do not know whether I have Sam's  
 156 letter which it answered or not. My brother  
 Will and Mr. Hatch went over the ground and  
 I referred matters to my brother as we thought  
 better to have one do the talking. Sam's letter  
 of May 20, 1927 (Pltfs Ex. 15-C) saying: "We  
 certainly object to him (T. E. Moore) trading  
 or (our) property off for property under the name  
 of David Moore & Sons Inc. or any other Co. or  
 persons name. . . . When the proper deeds made

out from your Co direct to Charlie H. Moore and Samuel Moore for certain lands north of the old U P R R Co right way then we can no dout get together on this. What I have done on the north side of the U P R R, I have done for the best, all concerned, and have done nor attempted to do without the proper affority (authority) or permission from Wm. Moss or others." may have been received.

- 157 I am not sure I have all Mr. Moore's letters. Some I showed to my brother and he said he would attend to them and some we didn't answer. The letter of October 13 was not signed and just sent as a copy and a personal attack on me.

Direct Examination, Stearns Hatch, by Mr. Neeley.

- 159 My name is Stearns Hatch of Woods Cross, president of defendant company for 12 or 15 years. Mr. Moss told me of this trade and I went round part of the land. I have not seen the improvements. Sam and Charlie never repudiated the contract. I understood then, and ever since, that we were to have the land north and west of the track in 16. I have never heard at any time, officially or otherwise, that Sam and Charlie Moore, or either of them, repudiated this deal or any part of it.

Cross Examination, Stearns Hatch, by Mr. Van Dam.

I always understood they wanted to go through with the deal. On several occasions I

heard of some difficulty in obtaining abstracts of title; the old gentleman died and delayed its consumation. I heard of the family friction, but my business with Thomas and Sam has been pleasant. I head that Sam did not want T. E. to do business for them. I am not positive that I knew that Sam and Charley expected deeds direct from our company. I don't think such deeds could have been made. In a general way I recall receiving Sam's letter of July 20, 1922, saying in part: ". . . . As to mine and Charlie's part we are ready at any time. But we will expect deeds from the Deseret Live Stock Co. for the lands between the two tracks also the water that goes with the land as to the contract." I think I also replied July 22, 1922, saying in part: ". . . . Henry Moss is forwarding our abstract up to you. I see no reason why this matter could not be settled up at an early date. . . ."

Direct Examination, William Moss, by Mr. Neeley.

William Moss testified on behalf of the defendant: I am William Moss of Woods Cross, general manager of defendant for nearly 38 years. We have holdings in and around this section 16. I went over the boundary lines with either David or Samuel Moore when the contract was made; later Mr. Hatch went over the land with Sam and some of the other boys. Sam and I agreed where to build the fences. We hired Sam and he built our portion of the fence. We put the fences on the ridges so the snow could not knock

166 them down. They were of 36-inch woven wire,  
 cedar posts, and three barbed wires above. We  
 built about five miles. It cost me sixty dollars  
 for the work, thirty-five cents for the posts, I  
 don't know what the wire cost. It would cost  
 167 several hundred dollars to put them on the old  
 lines. It would be impossible to keep them on  
 the old lines on account of snow. We built no  
 fence on section 16, but passed one part of 16 on  
 168 the south side. We also built a fence over near  
 the north side and a little west of 16. Three  
 years ago I did some more building, starting at  
 the tunnel and running north to the Northeast  
 corner of 16 and down to the main fence. Sam  
 did not do any of the work around section 16.  
 We have used the land on 16, north and west of  
 169 the track every year for grazing. Neither Sam  
 nor Charlie intimated until recently that they  
 owned the land northwest of the track in section  
 16. Late last fall I heard them say something  
 about putting up the hay. Samuel came to the  
 ranch and said somebody wrote him a letter for-  
 bidding him to put up or have the hay; I said,  
 that land was traded . . . . . go ahead and feed  
 that hay or cut it as he wanted to do, simply be-  
 cause the trade was made, fences put up, and  
 had Mr. Moore lived the deeds would have been  
 secured long ago. I don't know what caused the  
 delay, as we have an attorney and secretary of  
 the company; I have heard of their being there  
 several times, coming down with papers and  
 meeting the lawyer. There was some difficulty

- in the survey and we could not get the lines and had to send them back to connect up the work. I do not know that this was about section 16.
- 170 When Sam came over and talked about putting up hay he talked favorable about going on with the deal. I believe he said Henry had written for him to stop putting it up or about feeding the hay. The matter of what lands Sam and
- 171 Charley were to have was their deal. I know about the cross fence that comes down to Twistum Meadows. I don't know whether it was destroyed or partly destroyed when the new railroad tracks were built; it was there before. It was near the south line (of section 21). Sam and I have always been friendly. We have talked about getting the deed fixed up then, and again when he was over to see me he said if we would deed him the land he would pay for
- 172 all on the north side of the ditch—making a contract with him, which we could not, he would buy it on time. That was the one time he came over to the ranch and talked to me. If the deal could not go through we would have to put the fences back on the line and take the strip down between the two railroads. It would not work any hardship on us to take the land back. Part of the fences we could not keep up.
- 173 Cross Examination, William Moss, by Mr. Van Dam.

All of the division fences were done by the Moores. Sam took our part to build. We just repaired the broken down fences on 16. We



- just repaired the buck pasture on the southwest  
 174 corner of 16. There is one cross fence on the  
 west of 16 and another on the west of 21, or  
 175 near the line. This cross fence below section 21  
 is erected in contour and was put there to fence  
 a certain meadow I suppose. The land south of  
 16 down to Twistum's Hollow has many borrow  
 pits and is not anywhere near as good a piece of  
 land as that below it because of a ledge of rocks.  
 176 When Sam saw me, he spoke of, and maybe  
 showed me, his power of attorney and lease.  
 Sam told me that time that he wanted to trade  
 direct with us. I don't know of any other time.  
 I had to answer the deal was made with David  
 Moore and inasmuch as it was an estate we could  
 not deed land to an individual without the con-  
 sent of the heirs. I don't recollect his telling  
 me he didn't want Tom to represent him, but he  
 asked if we couldn't make the deed direct to him.  
 177 I only know the Moore family was using the  
 land from the cross fence by the ranch house up  
 to section 16, I didn't know which of the family.

Re-Direct Examination, William Moss, by  
 Mr. Neeley.

- 178 The Moores owned most of 32. When I  
 speak of down the canyon and call it west as a  
 matter of fact it is south.

Direct Examination, Clarence F. Moore, by  
 Mr. Neeley.

Clarence F. Moore testified on behalf of the  
 defendant: I am a grand-child of David Moore  
 and a stockholder in the Moore corporation, and

have been living at Castle Rock on Moore's ranch since 1926 steadily; I came there first in 1923. I know most of the land involved in this deal. I had a conversation with Sam Moore regarding the land south and east of the track in section 16, I think the spring of 1924. He claimed he owned that and was running sheep on it. He said he had deeded the land north and west of the track in 16 to the Live Stock. He said in August, 1923, the ground between the track in 16 and 21 was his. He said he was going to buy the hay land between the tracks for \$15.00 per acre. He said since then that he owns the ground in 16 south and east of the tracks. He has since claimed that between the tracks in 16. Since 1924 he has used the land south and east of the track to pasture his sheep and cattle and has repaired the fence where it was down. In the summer of 1923 the Moore Company paid for putting up the hay. In 1925 we had a suit with Sam and we charged him for the use of that hay. Since the spring of 1926 when Jack and Sam made the contract to take that ground, Sam has used all the ground between the tracks.

(This page devoted to argument.)

Sam and John did not carry out the contract but Sam remained in possession of the ground. Last fall at our annual meeting Sam said he would like to buy the ground right below section 21 and run to that cross fence at the ranch house in section 32.

184           Cross Examination, Clarence F. Moore, by  
Van Dam.

          In 1923 we put up the hay for Sam Moore  
from this cross fence up to the cross fence on 21  
and on to 16 between the tracks. I had a con-  
185    versation in 1924 with Sam and he told me he  
owned the land in 16 south and east of the  
tracks. I don't remember he told me how he  
186    got it. I don't just remember how this matter  
came up. In 1927 at the stockholders meeting  
Sam in person offered to buy the land between  
the tracks in section 21. I remember you (Mr.  
Van Dam) was there and that you read a slip of  
paper and asked that it be made a part of the  
187    minutes. I remember that Tom Moore replied,  
we won't sell it to you, we might lease it to you.  
I don't remember what was said about what they  
188    proposed to do about settling with Sam. I don't  
remember for sure whether he refused to give  
Sam the land between the tracks because it  
would cut the ranch in two. I remember Tom  
Moore said he was ready to deed sections 16 and  
189    21 between the tracks. Tom then said an ad-  
justment would be made with Sam, but he did  
not know whether in land or money and he de-  
scribed the land.

          Re-Direct Examination, Clarence F. Moore,  
by Mr. Neeley.

          I did not mean to say in cross-examination  
that we put that hay up in 1923 for Sam. We  
put it up for the company and he was working  
190    for wages.

Direct Examination, David E. Moore, by Mr. Neeley.

David E. Moore testified on behalf of the defendant: I am David E. Moore of Upton and a son of David and Mary Moore. I know regarding the Live Stock deal and the signature on the minutes (Plaintiffs' Ex. 8) looks like mine. I don't remember being at that meeting. I knew of the agreement for John and Sam to take the ground between the tracks, but I did not of the one, alleged to be lost, for Sam to get all the ground between the tracks on all those sections. I am not familiarized with this map. There was in 1919 and now is one cross fence near the south line of 21. It is probably as old as I am. I saw it years and years ago. It has been repaired and re-built. It is the first cross fence south of section 16 and the next is down by the corner of 29 and 32. A number of years ago I had a conversation with Sam about the land he was to get. I don't recollect that he said what it was. I haven't had any conversation with Sam about the ground since then. I heard him say at the meeting last fall that he would buy the ground of the lower land, Twistum Meadow, south of 21 between the tracks. Sam was an employee of the Moore Company up to about 1924.

Cross Examination, David E. Moore, by Mr. Van Dam.

Sam did not say how much he was paying for the ground and no offer was made him. He said he would buy the ground but not lease it.

196 You (Mr. Van Dam) did not do all the talking.  
Sam talked at times.

(Mr. Neeley offers an abstract of title as  
defts. Ex. 'F', and a certificate regarding taxes,  
defts. Ex. 'G'. They are admitted by agree-  
ment.)

197 (Mr. Neeley allowed to amend paragraph 17  
of answer by interlineation.)

198 (The parties stipulate that the Power of At-  
torney from Charles H. Moore to Samuel Moore  
(Pltfs. Ex. 9) was recorded, but not indexed,  
records of Summit County.)

The defendant also tenders Samuel Moore  
the deed (Pltfs. Ex. 4).

Defendant rests.

### Plaintiffs' Rebuttal.

Direct Rebuttal, Samuel Moore, by Mr.  
Van Dam.

199 The strip of land from section 16 down to  
the south of section 21 has all been cut up with  
borrow pits from steam shovels. Besides that  
there is very little grazing on it. I am familiar  
with land values and it is worth about \$2 to  
\$2.50 per acre, a big price for it. That in 28  
would be worth about seven dollars per acre.  
200 Section 29, where it can be irrigated from the  
Big Fill to the line of section 32 is worth fifteen  
dollars an acre—39.8 acres. While I was on it  
I irrigated it. I repaired dams and ditches to  
201 the amount of \$25.00. I never left that deed  
(Pltfs. Ex. 2) in T. E. Moore's possession. I al-  
ways kept it in mine. I have always objected

to his representing me in business transactions. I recall one time in May, 1925 he wanted the  
 202 map and I would not let him have it, but he took it anyway to Coalville. I told him I did not want him to handle or to attempt to handle any matter of my business in any shape, matter or form. The cross fence by the ranch house is made of cedar posts 40 feet apart, with stay wires between, and has been an established fence for a number of years, even before the Live Stock contract was drawn. It runs from one right of way fence to the other and at one time it ran across where the high line track is up to the line between sections 31 and 32. Since the  
 203 high line track is in the fence above is taken out. The cross fence near the section line of 21 was made by the Live Stock people to separate the hay field and ranch before the high line road was built in 1916. During that time (building) that fence was all torn up and since drawing the Live Stock contract there has been a new fence made from the pasture and borrow pit land in 21. That fence was not there in 1919. The only cross fence mentioned in 1921 was the one on 32. I did not discuss buying any lands at the stockholders' meeting in November, 1927. T. E. Moore mentioned it several times; he and Mr. Van Dam had all the discussion.

204 Cross Examination, Samuel Moore, by Mr. Neeley.

I am acquainted with land values around  
 205 Castle Rock and was in 1919. The new railroad

went through in 1916. I have heard of some land being sold for two and one-half dollars an acre back away from the railroad. It was bought by different parties. I don't know personally by whom. It was agreed that the land named in the contract, Exhibit 'A', should be seven dollars in consideration with other lands. None was valued less than seven dollars taken as a whole.

Direct Rebuttal, William Moore, by Mr. Van Dam.

The cross fence meant in the minutes of December 1st, 1921, is the cross fence by Lewis Canyon in section 32. My mother and the rest of the family at the time I drew the lost agreement told me it was the cross fence below the Twistum Ranch below Lewis Canyon. It was the only cross fence then there. It was my understanding that was the land Sam and Charles were to receive. The land in section 21 is a gullied canyon, with borrow pits in many places. It is much less valuable on account of being pitted by washing and being destroyed.

Cross Examination, William Moore, by Mr. Neeley.

I don't know whether the Live Stock Company knew of the agreement drawn up between mother, me, Sam and Charles.

Direct Rebuttal, Heber Fernelius, by Mr. Van Dam.

I am familiar with the land in 21 between the tracks. There are little spots at the south

and the north with some feed, but about three-quarters of the way between the entire strip is borrowed out with steam shovels to build the Big Fill. There is not much feed in 21, but I am not familiar enough with land values to set  
 210 them. I should think it is worth about one-fourth as much as the land in 28.

Cross Examination, Heber Fernelius, by Mr. Neeley.

There are some borrow pits in 28, on the side. There is a strip on the north of 21 and another on the south, where it is not borrowed,  
 211 where the feed is pretty good. The land in 21 is less than one-fourth of a mile wide. The borrow pits take up five or six hundred feet. That in between just seems bare. There has always  
 212 been a wash there. There would be about one-fourth of the land in borrow pits and no grass growing on it.

Direct Rebuttal, J. E. Moore, by Mr. Van Dam.

My understanding of the minutes of December 21, 1921 was that the cross fence by the ranch house was the one meant. I am familiar  
 213 with land values. The land in section 16 is worth about seven dollars an acre and I think that is a fair valuation from what I can learn of land around Evanston. I would not give over two and one-half dollars for the land between the tracks in section 21.

Direct Rebuttal, T. E. Moore, by Mr. Van Dam.



214       The corporation books show that we paid taxes for Charlie every year except this year and last, and then charged them against him.

Direct Rebuttal, H. Van Dam, Jr.

215       H. Van Dam, Jr. testified on behalf of the plaintiff. With Sam Moore I attended the annual meeting of the Moore Company stockholders in November, 1927; I had some discussion with Thomas E. Moore about the Live Stock trade. Samuel did not participate in the discussion; did not offer to buy any land from the corporation. I asked Thomas E. Moore, after he reported the Live Stock deal closed, what he proposed to give Samuel Moore. He said, we owe Sam something, I don't know how much, and an adjustment has got to be made. I asked what land he proposed to give Sam. He said I don't know, but we will give him some land equal in value to what the defendant is giving us.

Plaintiffs rest.

### Defendant's Sur-Rebuttal.

Direct Sur-Rebuttal, T. E. Moore, by Mr. Neeley.

216       It was right after we came back from eating that Sam asked if he could buy the land. Mr. Van Dam was present then. When he asked me I did not make an proposition to him. I just told Mr. Van Dam we were ready to deed Sam the land in 21 and 16. I said, "Are you ready to accept your deed. You are his attorney, what do you say?" He said, "We will take it under advisement."

Defendant rests.

Plaintiffs rest.

217 By stipulation the case was argued in Salt  
220 Lake City, May 26, 1928, at which time, by permission of the court, counsel for plaintiff amended his reply over the objection of counsel for defendant.

(Mr. Neeley excepted.)

(TITLE OF COURT AND CAUSE.)

### Assignment of Errors.

Come now the plaintiffs and appellants and make the following assignment of errors, upon which they will rely for a reversal of the judgment in the above entitled action:

#### I.

The Court erred in making that part of its decision known as its Finding of Fact herein, for the reasons:

1. That the fourth finding of fact is not supported by the greater weight of the evidence in that it does not prove that the plaintiffs acquiesced in and consented to, and agreed with the defendant that they should and would be governed by the agreement to exchange lands as set forth in said finding numbered four (4).

2. That the fifth finding of fact is not supported by the greater weight and preponderance of the evidence in that the evidence shows that defendant did not cause the tract of land agreed upon to be conveyed to the plaintiffs.

3. That to give effect to the greater weight

and preponderance of the evidence, the Court should have found that the defendant was not authorized to convey any land title to David Moore & Sons, Inc., and had been properly notified that David Moore & Sons, Inc., had no authority to receive and reconvey title for plaintiffs or either of them.

4. That the greater weight and preponderance of the evidence does not support that part of the court's fifth finding of fact saying that plaintiffs caused their deed executed in December, 1921 to be placed with David Moore and Sons, Inc. to be at any time delivered to the defendant herein.

5. That to give effect to the greater weight and predonderance of the evidence the court should have found that the plaintiffs had not authorized nor empowered David Moore and Sons, Inc. to act for them, or if plaintiffs had so authorized it, the authority had been withdrawn and the defendant had been so notified.

6. That the fifth finding of fact is not supported by the preponderance and greater weight of the evidence wherein it says that the terms of the agreement marked herein Exhibit "A" had been complied with by defendant, when defendant conveyed any land whatsoever intended for plaintiffs or either of them to David Moore and Sons, Inc.

7. That the fifth finding of fact is not supported by the preponderance and greater weight of the evidence wherein it says that the deed

executed in December, 1921 in part by plaintiffs was, when delivered to defendant, a good and valid deed.

8. That the sixth finding of fact is not supported by the preponderance and greater weight of the evidence because it shows that for one of the mentality of Charles H. Moore, fraud, misrepresentation, coercion and undue influence were used in obtaining the deed mentioned therein.

9. That the seventh finding of fact is not supported by the preponderance and greater weight of the evidence, in that it does not show any such possession and occupancy as therein set forth or required to constitute possession or adverse possession.

10. That to give effect to the greater weight and preponderance of the evidence, the court should have found that the use of certain pieces of defendant's land by plaintiff Samuel Moore was temporary and did not constitute possession or adverse possession.

11. That the eighth finding of fact is not supported by the preponderance and greater weight of the evidence in that it shows that the defendant had full knowledge of conditions concerning the title to lands set forth in the complaint, and that any improvements it made were made and done at its peril.

12. That the ninth finding of fact is not supported by the preponderance and greater weight of the evidence, in that it shows that the

allegations of defendant's answer are not true and that the allegations of plaintiffs' complaint and reply are true.

## II.

That the court erred in making that part of its decision known as its Conclusions of Law in that:

1. The plaintiffs and neither of them should be estopped, as provided in the first conclusion of law, from claiming any right, title or interest in and to the lands described in the complaint, because the evidence and the general law, and particularly that law known as the Statute of Frauds does not support the estoppel.

2. That the defendant should not have judgement against the plaintiffs or either of them for each of the twelve reasons set forth in plaintiffs' assignment of error numbered one (I), reference to which is hereby made.

3. That the defendant should not be held the owner in fee simple and entitled to the possession of the land named in the Findings of Fact and Complaint herein as stated in the third conclusion of law for the twelve reasons set forth in the plaintiffs' first assignment of error, reference to which is hereby made, and because said ownership is not supported by a rightful claim of title, because plaintiffs never agreed in writing to any contract to sell said lands and because defendant's claim of ownership and adverse possession by both parties hereto, to avoid the Statute of Frauds, has not been supported

by the law, the rules of Equity, nor the evidence herein.

4. That the defendant is not entitled to a decree such as is set out in the fourth conclusion of Law, or any decree whatever, for all the twelve reasons set forth in the first assignment of error herein, and for all the reasons set forth in paragraphs 1, 2 and 3 of the second assignment of error, and because giving any decision in favor of the defendant is not justified by the preponderance of the evidence herein, nor the law, nor the rules of equity.

### III.

That the court erred in rendering the decree in favor of the defendant and against the plaintiffs or either of them, for the reasons set forth in all twelve paragraphs of Assignment of Error Number I, for the reasons set forth in all four paragraphs of Assignment of Error Number II, and because said decree is not justified by the preponderance of the evidence herein, nor the law, nor the rules of and maxims of equity.

### IV.

That the court erred in permitting counsel for defendant to ask and Thos. E. Moore to answer as follows:

Q. "Now, do you know whether or not, they said anything, or either of them, about joining in this agreement with the Deseret Live Stock Company on this exchange of land?"

A. "Yes sir." (Transcript p. 96)

and for the witness Thos. E. Moore to then relate the said purported conversation, because of the effect of the Statute of Frauds.

## V.

That the court erred in permitting counsel for defendant to ask and Thomas E. Moore to answer the question as follows:

Q. "Do you know whether or not in pursuance of this agreement, marked Plaintiffs' Exhibit "1" that there have been any other fences built around any of the land covered in the agreement of the Deseret Live Stock Company?"

A. "Yes sir. There has been."  
and then to allow the witness to detail what fences had been built, for the reasons that neither of the plaintiffs was a party to, nor bound by, the said contract.

## VI.

That the court erred in admitting and giving consideration to the contract set fourth in pages 114 to 117 of the transcript, for the reason that it was immaterial and irrelevant, and was by the defendant's counsel avowedly made for the purpose of affecting a compromise between the parties to it.

## VII.

That the court erred in admitting and being governed by the assignment set forth on page 118 of the transcript, for the reason that it purports to be and is shown by the evidence to be part of a compromise agreement and made to settle difficulties without litigation.

## VIII.

That the court erred in that the deed of plaintiffs and David Moore and Sons, Inc. was, because of its age and because of what had been happening between the parties hereto, when delivered, notice of the repudiation of the deed by the plaintiffs.

## IX.

That the court erred in not holding that any contract, express or implied, between the parties hereto was barred and void under the provisions of paragraphs 4874, 5113, 5811, 5812 and 5813 of the Compiled Laws of Utah, 1917, and ordinarily known as the Statute of Frauds.

## X.

That the court erred in not decreeing as prayed for in plaintiffs' complaint, that defendant has no estate or interest whatever in or to the premises set forth in the complaint, and that the title of plaintiffs thereto is good and valid.

## XI.

That the court erred in not forever enjoining and debarring defendant from asserting any claim whatever unto the land and premises set forth in the complaint as prayed for in the complaint.

## XII.

That the court erred in not granting plaintiffs a new trial herein for the reason that the greater weight and preponderance of the evidence, and the law, and the rules and maxims of equity, entitled the plaintiffs to a new and



other trial.

WHEREFORE, because of the aforesaid manifest and prejudicial errors, plaintiffs and appellants pray that the judgment appealed from be reversed with directions to the trial court to grant a new trial herein, and for costs and for such other and further relief as to this court may seem meet.

GEORGE H. CROSBY, JR.,

and

H. VAN DAM, JR.,

*Attorneys for Plaintiffs  
and Appellants.*