

1930

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

Utah Supreme Court

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P.H. Neeley; Attorney for Respondent.

Recommended Citation

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

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In the Supreme Court of the State of Utah

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

vs.

DESERET LIVE STOCK COM-
PANY,
Defendant and Respondent.

Case No.
4930

Respondent's Abstract

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RESPONDENT'S ABSTRACT

The respondent files this further abstract of the record in the above entitled cause for a full understanding of the merits of the case.

6 Mr. Van Dam : Now there is no question about the execution and agreement of that agreement between the Deseret Live Stock Company and David Moore, which is now marked Exhibit "1" and I offer it in evidence. Received.

7 Mr. Van Dam offers in evidence plaintiffs' Exhibit "2" which is received and is a deed as follows :

WARRANTY DEED

David Moore & Sons, Incorporated, a Utah corporation, William Moore and Rose Moore, his wife, Samuel Moore and Dora Moore, his wife, and Charles H. Moore, unmarried, Grantors, of Summit County, Utah, hereby convey and warrant to Deseret Live Stock Company, a corporation of the State of Utah, grantee, for the Sum of Fifteen Hundred Dollars, (\$1500.00) the following described tracts of land in Summit County, State of Utah, to-wit:

Being situated in the North half ($N\frac{1}{2}$) and the Southwest quarter ($SW\frac{1}{4}$) of Section Sixteen (16) Township Five (5) North of Range Seven (7); East of the Salt Lake Meridian and particularly described as follows: Beginning at the Southwest corner of the above described section and running thence East on the Section line Two Thousand Ten (2010) Feet to the westerly new right-of-way line of the Union Pacific Railroad Company; thence Northeasterly along said right-of-way line till it intersects the Northerly old right-of-way line of the Union Pacific Railroad Company; thence Northeasterly along said old right-of-way line till the same intersects the east Section line of the above section; thence North along said Section line Three Hundred Ninety (390) Feet, more or less, to the Northeast (NE) corner of the above section; thence West one Mile to the Northwest corner of the above section; thence South on the Section line One (1) Mile to the point of beginning and containing three hundred ninety three and $\frac{6}{10}$ (393.6) Acres, more or less.

Attest :.....
Secretary

Signed in the pres-
ence of

.....

DAVID MOORE & SONS,
INCORPORATED,
By
THOMAS E. MOORE
President
WILLIAM MOORE
ROSE MOORE
SAMUEL MOORE
DORA MOORE
CHARLES H. MOORE

STATE OF UTAH. }
COUNTY OF SUMMIT. } ss.

On this 27th day of May, 1922 A. D., personally appeared before me Samuel Moore and Dora Moore, his wife and Charles H. Moore, unmarried, the signors of the above instrument who duly acknowledged to me that they executed the same.

BEATRICE W. RIGBY,
Notary Public.

(SEAL) **Residing in Castle Rock,
Utah.**

My Commission expires Oct. 21, 1925.

STATE OF UTAH. }
COUNTY OF SUMMIT. } ss.

On this 27th day of December, 1921, personally appeared before me the undersigned, a Notary Public in and for said County in the State aforesaid, Thomas E. Moore, who being by me first duly sworn, did say that he is President of David

Moore & Sons, Incorporated, a Utah corporation, one of the Grantors named in the foregoing deed, and that said instrument was signed by him as such officer in behalf of said corporation by authority of a resolution of the Board of Directors of said corporation, and said Thomas E. Moore acknowledged that he executed the same for said company as such officer for the uses and purposes therein set forth.

Also at the same time and place personally appeared before me, the undersigned, a Notary Public in and for said County in the State aforesaid, William Moore and Rose Moore, his wife, signers of the within and foregoing instrument, who duly acknowledged to me that they executed the same.

My Commission expires on

Witness my hand and Notarial Seal.

(SEAL)

R. T. CARRUTH,
Notary Public.

Coalville, Utah.

- 9 Mr. Van Dam offers in evidence plaintiffs' Exhibit 3 and it is received, and is a deed from Deseret Live Stock Company to David Moore and Sons, Incorporated.
- 11 Mr. Van Dam offers in evidence plaintiffs' Exhibit 4. Received, and is a deed from David Moore and Sons, Incorporated to Samuel Moore.
- 12 Mr. Van Dam offers in evidence plaintiffs'

13 Exhibits 5, 6 and 7. Received. Exhibit 5 is a
14 deed from Charles H. Moore to the Deseret Live
Stock Company, and described that part of Sec-
tion 16, lying north of the railway tracks. Ex-
hibit 6 is a deed from Charles H. Moore to David
Moore and Sons, Incorporated, and describes that
portion of Section 16 lying south of the railroad
tracks. Exhibit 7 purports to be a deed from
David Moore and Sons, Incorporated to Charles
H. Moore, describing 100 acres of land in Section
34.

96 For the purpose of a full understanding of
the testimony of T. E. Moore, in addition to that
set forth in Appellant's abstract, Respondent sub-
mits the following.

DIRECT EXAMINATION BY MR. NEELEY:

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 Com-
pany on this exchange of land?

A. Yes, sir.

97 Objection by Mr. Van Dam and argument.
Objection overruled.

Q. What have you heard Samuel Moore say?

A. I have heard Samuel Moore say that in consideration of his ground that he was deeding to the Live Stock, Deseret Live Stock north and west of the railroad track, that he was to take and own and claim as his ground east and south of the railroad. The ground in Section 16 between the two railroads and the ground in Section 21, 5 North and 7 East, he always claimed and used them as his.

And continuing: He claimed that he had transferred to the Deseret Live Stock Company his interest in the land lying north and west of the railroad track in Section 16, and that he was getting in exchange the land lying between the railroad tracks in 16 and south and east of it, and the land lying between the railroad track in Section 21, 5 North and 7 East. I heard him say that along in 1920 and ever since the estate was settled.

98 Q. Now, during this time have you ever seen the Deseret Live Stock in possession of that ground lying north and west of the railroad track in Section 16, 5 North and 7 East.

99 A. Yes, sir.

And continuing: It has been ever since 1919, up to the filing of this action; I never have seen

them have anything else but possession, I have seen them there with their livestock, cattle and sheep on there.

Q. Now, who has had possession of the land between the tracks in Section 16?

A. Samuel and Charles Moore, Samuel mostly.

And continuing: Samuel has had possession of the land southeast of the track in Section 16 since 1924, and between the tracks in Section 21,
100 5 North, 7 East, and Sam Moore has taken the crops raised on this land, consisting of forty or fifty tons of hay, and has had that hay each year during this period.

104 Q. Was that cross fence there on December
105 first, 1921.

A. Yes, sir.

And continuing: It is the first cross fence that you come to traveling in a southerly direction, after you pass the south line of Section 16, 5 North, 7 East.

106 Calling attention to Plaintiffs' Exhibit "8", minutes of December 1, 1921.

Q. Do you recall anything about a written agreement having come up at that meeting whereby David Moore and Sons, or the David Moore Estate, was to convey to Sam or Charley Moore, or either of them, all the land lying between the tracks in Section 16, 21, 28 and 29 and 32, to a cross fence 5 North, 7 East, to a cross fence in Section 32?

A. No sir, I don't.

And continuing: I never heard of such an agreement; I have been president of David Moore & Sons, Incorporated ever since the incorporation of the company, and an heir of the estate of David Moore, deceased.

113 Q. I show you here, an agreement purport
114 ing to be between J. E. Moore and Samuel Moore to the Stockholders of David Moore and Sons Incorporated, a corporation, dated 16th day of November, 1925, and I ask you if that is your signature, the President of the Company?

A. Yes sir.

And continuing: After proving the signatures of Samuel Moore and John E. Moore to the agreement, it is offered and received in evidence as defendant's exhibit "C", over the objection of Mr. Van Dam.

114 The agreement is read into the record and
115 provides, (among other things) for the purchase
116 by said Samuel and John E. Moore of the land
117 lying between the railroad tracks in Sec. 32, Tp.
5 N. R. 7 E. S. L. M.)

118 Mr. Neeley: Now, coupled with that is a part
of the same agreement. I show you an assign-
ment to transfer, set-over to Samuel Moore for a
consideration the corporations right, title and in-
terest in the contract of David Moore and Sons'
with the Deseret Live Stock Company. The in-
strument is offered and received in evidence as
Defendant's Exhibit "D", over the objection of
Mr. Van Dam.

119 Q. Mr. Moore, does that assignment refer to
the land covered in what is commonly known as
Deseret Live Stock deal involved in this suit here?

A. Yes, sir.

And continuing: And covers the land lying
between the tracks in Sec. 32, 5 North, 7 East,
and in pursuance of that agreement and assign-
ment Samuel Moore went into the possession of
the land between the tracks down to the cross
fence in Section 32, in the year 1925, and kept
it until 1927, but he nor John E. Moore never car-
120 ried the agreement into effect, they never placed

their stock in the bank, they did not execute the bond to take care of their mother, and they have since refused to carry the agreement out.

CROSS-EXAMINATION BY MR. VAN DAM:

128 Q. You aren't aware on the 12th of November, 1927, then that Sam had any objection? (To the land deal)

A. No sir.

Q. On the 12th of November, 1927, then what was the deal?

A. Why, we, David Moore and Son's Incorporated, passed their deeds to the Deseret Live Stock Company and received their's of the land we were taking from them. We also drew up a mortgage, we owed them some money and the note covered the difference we owed them.

129 And continuing: Sam was to take the land east and south of the track, 16, and the land between the track in Section 16 and the land in 21 between the tracks, 5 N. 7 E.

For the purpose of a full understanding of the testimony of Henry Moss, in addition to that set forth in Appellant's abstract, Respondent submits the following:

DIRECT EXAMINATION BY MR. NEELEY:

152 Q. Now, did you ever have a conversation with Samuel Moore concerning this transaction?

A. A number of minor talks, yes.

Q. Did you ever have a conversation with him regarding taxes on the land involved?

A. Yes, sir.

153 Q. Do you recall about when that was?

A. Well, soon after the deal began.

Q. Do you recall what that conversation was?

A. I think it was Mr. Sam Moore that said, How about the taxes, will they be paid on the land that you are to convey to us and also spoke about the land the Moore people was to convey to the Deseret Live Stock. I told him my understanding was that our Company would pay taxes on the land as long as it was in their name and the David Moore people was to pay the taxes on their land, theirs until the conveyance was made.

Q. That is, that the taxes was to be paid on the land as stood in the name of the record title

until the conveyances were made, and then of course it would be as the record title stood then?

A. Yes, sir.

Q. And in the exchange you pay the taxes on the land standing in your name?

A. Yes, sir.

Q. In lieu of the taxes standing in their name?

A. Yes, sir.

Q. And Vice versa?

A. Yes, sir.

154 And continuing the witness testifies in effect:
We have paid the taxes in accordance with that understanding with Sam Moore for the years, 1919, 1920, 1921, 1922, 1923, 1924, 1925, 1926 and 1927.

For the purpose of correcting an apparent error in Appellants' abstract at page 58 thereof, and for the further purpose of a full understanding of the testimony of William Moss, in addition to the testimony set forth in Appellants' abstract, Respondent submits the following:

DIRECT EXAMINATION BY MR. NEELEY:

163 Beginning with the question, "You had a trade there then?"

A. Yes.

Q. And is that the trade that is referred to in the contract between yourself and David Moore and Mary Moore, marked plaintiffs' Exhibit One, I believe?

A. Yes.

(Correction)

164 The following: Mr. Hatch, the president of the company and myself went over the land with *Mr. Sam Moore* and some of the boys were along, I cannot say who they were, and we decided on the lines of the fence what lands they were to have, what we would have and later on *Samuel Moore* and others went over the conditions and said right away where would be the fences and I arranged with Mr. Samuel Moore and agreed where to build the fences. He built our proportion of the fence,
165 he was somewhat delayed a year or two in doing it on account of his health. We paid for the posts and wire and paid him to put up the fences. The fencing extended over a period of several years before we got it completed. It began about the year, 1920. We had fences on the section lines

previous to that time and they ran through brush, rocks and timber, so that the snow would knock them down, we couldn't keep them up. So we took the ridges and built the fences so the snow wouldn't knock them down, and left some of the lands we owned on their side, which they were to pay us for.

167 Q. Now, suppose this fence were to be moved and put back on the old line, would that work any injury to you?

A. It would cost several hundred dollars, yes.

Q. What would be the effect, if any?

A. Well if the fence were put back into the old line where it would be impossible to keep it up on account of the snow.

Q. That was one of the purposes in making the deal in the beginning was it not?

A. Yes sir.

168 Q. Since this contract, marked plaintiffs' Exhibit 1, was entered into has your company occupied or used the land to the north and west of the railroad track in Section 16?

A. Every year.

Q. What use have you made of this land?

A. Cattle, sheep and horses; just let them pasture there.

169 Q. Now, has Samuel Moore or Charles H. Hoore, during any of this period of time made any claim to you that they owned that part of the ground lying northwest of the railroad track in Section 16?

A. Never heard it intimated until recently.

And continuing: I think it was late last fall I heard them say something. Sam came over to the ranch and said somebody had written him a letter forbidding him to put up or have the hay, I don't know which. I said that land was traded and understood, and that they used it all the time and you have used the other and I said go ahead and feed that hay or cut it as he ought to do simply because the trade was made the fences put up and had Mr. Moore lived the deed would have been effected long ago.

170 There was some difficulty with the survey and part of the lines and these had to be connected up and caused some delay.

When Sam came over and talked about putting up the hay he talked favorable about going ahead with the deal, didn't dispute anything at all.

170 Q. Now, Mr. Moss, did you know of Sam or Charley Moore having any of the other ground in between the tracks there, was it entered into this agreement in any way shape or form below the south line of Section 21?

A. That is a deal between them people, I never knew any of their dealings down that valley.

CROSS-EXAMINATION OF WILLIAM MOSS BY
MR. VAN DAM

Q. Now, Mr. Moss, just what do you mean by the cross fence?

174 The witness: There is another cross fence on the west of (21), or near the line, I know it is there because I cut hay around it, then there is another fence close to the railroad, crossing with the railroad near there. It don't cross the railroad right of way, it goes up to the right of way. They don't permit you to fence the right-of-way, they will only let you fence up to their right of way.

175 Q. What is the character of this fence (land) from the south line of Section 16 down to what you call Christians Hollow?

A. It is valley, nice shady valley across both sides.

Q. As a matter of fact, there, that stretch of ground there are deep burrow pits?

A. There is one long burrow pit there.

177 Q. Have you had any understanding about who actually was using this land from the cross fence down by the ranch house up to Section 16, during this time?

A. Not any more than the Moore family.

For the purpose of correcting an apparent error in Appellants' abstract at Page 63 thereof, and for the further purpose of a full understanding of the testimony of Clarence F. Moore, in addition to the testimony set forth in Appellants' abstract, Respondent submits the following:

DIRECT EXAMINATION BY MR. NEELEY:

178 Q. Beginning with the question: "You are familiar with the land involved in this transaction?"

A. Why most of it.

Q. That is as set forth in plaintiffs' Exhibit One?

A. Yes sir.

179 And continuing: I had a conversation with Sam Moore regarding the land lying south and east of the track in Section 16. Township 5 North, Range 7 East, Salt Lake Base and Meridian, in the spring of 1924. He claimed then that he owned that ground and was running his sheep on it. At that time he told me that he had deeded the ground lying to the north and west of the railroad track in Section 16 to the Deseret Live Stock Company. At that time he claimed the ground lying between the tracks in Section 16, and also the ground lying between the tracks in Section 21, Township 5 North, Range 7 East, Salt Lake Base and Meridian. He has since claimed he owned the ground
180 South and east of the track and between the track in Sec. 16, and has made use of the land between the tracks in Sec. 21, 5 N. 7. E.

In the early spring '26, there was a contract made between David Moore and Sons and Samuel Moore, him and Jack, they were to take that
181 ground and the rest of the ground north of the track involved in this deal and Samuel Moore used the ground between the tracks since. (Referring to Defendant's exhibit "C"). That is why he was in possession of the land.

183 Q. Did he every carry out that agreement.

A. Not to my knowledge.

Q. Did he remain in possession of the ground?

A. Yes sir.

Continuing: They (Sam and John) did not carry out this agreement, they didn't put their stock certificates in the bank with our deeds. Last fall (1927) at our annual meeting of David Moore and Sons, Samuel Moore was there and he made a statement that he would like to buy the ground lying below 21 and running to that cross fence at the ranch house in Sec. 32.

186

(Correction)

CROSS-EXAMINATION BY MR. VAN DAM

Q. Now, you say at the stockholder's meeting, November 27, Mr. Moore offered to buy from the Moore corporation that land between the tracks and below Section 21?

A. Yes, sir, he did.

Q. Did Mr. Samuel Moore make the offer in person?

A. He made the offer in person, himself.

Q. That is what he said?

A. He said I would like to buy that land between the tracks.

Respectfully submitted,

P. H. NEELEY,

Attorney for Respondent.