

1930

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

Utah Supreme Court

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4730

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

FEB 17 1930

SUPPLEMENTAL TO RESPONDENT'S BRIEF

David Moore & Sons, Inc. and the plaintiffs herein held said Sec. 16 jointly.

They made a partition of said Section by the terms of which the plaintiff Samuel Moore took the land between the two railroad tracks therein and south and east of the railroad tracks therein and land to a certain cross-fence. David Moore & Sons or its grantee took the land in said Sec. 16, north and west of the new railroad track. Each party entered into the possession of the land he was to and did receive and claimed it as his own from the date of said partition to the commencement of this action. (See testimony set forth at pages 5, 6 and 7 of Respondent's Brief).

Such partition is not within the statute of frauds, is valid and will be enforced.

See

Whittemore vs. Cope, 11 Ut. 344.

Allen vs. Allen, 50 Ut. 104.

“Nothing in this title contained shall be construed to abridge the powers of Courts to compel the specific performance of agreements in case of part performance thereof.”

Sec. 5824, Compiled Laws of Utah, 1917.

And a deed by one cotenant of a specific portion of the common estate, by metes and bounds, will be respected so far as it can, consistently with the rights of the others; and a Court of Equity, upon partition of the common estate, will set apart to the grantee, as, or on account of, his grantor's share, the particular tract conveyed to him, if this can be done without prejudice to the cotenants of the grantor.

See

Emeric v. Alvarado, (Cal), 27 Pac. 356.

Young vs. Edwards, (S. C.) 10 L. R. A. 55.

Camoron vs. Thurmond, 56 Tex. 22.

Hitt vs. Caney Fork Gulf Coal Co. 124
Tenn. 334.

And a fortiori, where the parties themselves partition as in the instant case, such partition will be upheld by the Court, and the deed given by David Moore & Sons, Inc. (Pliffs'. Ex. 2) is valid and will be upheld as conveying the whole estate lying north and west of the railroad track in Sec. 16.