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IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

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JOSEPH F. MERRILL,
Plaintiff,

-vs-

BAILLY & SONS COLPANY, a corporation;
SEYMOUR N. BAILLY and EMMA Z. BAILLY, :
his wife; J. W. SUMMERHAYS & SONS :
COMPANY, a corporation; COLORADO :
ANIMAL BY-PRODUCTS COMPANY, a corpora- :
tion; LEONA B. WHITEHILL, administra- :
trix of the Estate of Bert N. Bailey, :
deceased; ROBERT BAILLY WHITEHILL, :
C. E. SUMMERHAYS and J. J. SUMMERHAYS, :
JOHN SCOWCROFT & SONS COMPANY, a :
corporation, :
Defendants.

ORDER AMENDING FINDINGS
OF FACT, CONCLUSIONS
OF LAW AND DECREE

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This cause having come on regularly for trial before the Honorable P. C. Evans, one of the Judges of the above entitled court, and Findings of Fact and Conclusions of Law and decree having been made and entered by this court and filed on August 14, 1939, the defendants, Bailly & Sons Company, a corporation; Seymour N. Bailey and Emma Z. Bailey, his wife; J. W. Summerhays & Sons Company, a corporation; Colorado Animal By-Products Company, a corporation; Leona B. Whitehill, administratrix of the Estate of Bert N. Bailey, Deceased; Robert Bailey Whitehill, C. E. Summerhays and J. J. Summerhays having appealed to the Supreme Court of the State of Utah, the Supreme Court having ordered modification of the Findings of Fact, Conclusions of Law and the Decree, the court having further considered the said cause, and pursuant to the opinion and order of the Supreme Court of the State of Utah

IT IS ORDERED that as to the appealing defendants above named only, Finding of Fact No. 16 may be, and it is hereby modified to read as follows:

16.

That the defendants, Bailly & Sons, a corporation; Seymour

-2-

N. Bailey and Emma Z. (C.) Bailey, his wife, J. W. Summerhays & Sons Company, a corporation, Colorado Animal By-Products Company, a corporation, Robert Bailey Whitehill; C. E. Summerhays, and J. J. Summerhays are the owners of the perpetual right to use a platform and a roof over plaintiff's land particularly described as follows, to-wit:

Beginning at a point 29 feet East of the Southwest corner of Lot 3, Block 43, Plat "A", Salt Lake City Survey; thence North 11.5 feet; thence East 57 feet; thence South approximately 78 degrees East 13 feet; thence South approximately 6.6 feet to the South line of said Lot 3; thence West 69 feet to point of beginning.

with full right to repair, reconstruct or rebuilding said platform and roof within the location described above; that the defendants are also the owners of the perpetual right in common with the plaintiff to use the spur track over and across the Southwest corner of plaintiff's said land; and to use the West 99 feet of the plaintiff's said land for loading and unloading cars, wagons, trucks and other vehicles in connection with and for the convenience of those parts of Lot 2 of said Block 43, Plat "A", Salt Lake City Survey, which are owned by the said defendants, except the defendant, John Scowcroft & Sons Company, a corporation.

IT IS FURTHER ORDERED that as to the appealing defendants, Conclusion of Law No. 2 may be and it is hereby modified to read as follows, to-wit:

2.

That the defendants, Seymour N. Bailey and Emma Z. (C.) J. W. Summerhays & Sons Company, a corporation, Bailey, his wife, C. E. Summerhays, J. J. Summerhays, Colorado Animal By-Products Company, a corporation, Bailey & Sons Company, a corporation and Robert Bailey Whitehill, are entitled to use, maintain, repair, rebuild or reconstruct a loading platform upon the following described portion of plaintiff's land:

Beginning at a point 7.3 feet East of the Southwest corner of Lot 3, Block 43, Plat "A", Salt Lake City Survey; thence North 10.7 feet; thence East 34 feet; thence North 14.6 feet; thence South approximately 70 degrees East 61.2 feet following the curve of the Oregon Short Line tracks and on the South side thereof; thence South 5.0 feet to the South side of said Lot 3; thence West 91.7 feet to point of beginning. Also

-3-

steps to said platform extending 7 feet West and 5 feet North from the Southwest corner of said platform

That said defendants are entitled to maintain, repair and use the overlapping roof above said plaintiff's land described as follows:

Beginning at a point 29 feet East of the Southwest corner of Lot 3, Block 43, Plat "A", Salt Lake City Survey; thence North 11.5 feet; thence East 57 feet; thence South approximately 78 degrees East 13 feet; thence South approximately 6.6 feet to the South line of said Lot 3; thence West 69 feet to point of beginning.

That said defendants are entitled to use that portion of plaintiff's land lying South of the Oregon Short Line spur track and that portion of the West 99 feet of plaintiff's said land which lies north of the spur track for loading and unloading wagons, trucks and other vehicles to and from said platform and that said rights are not exclusive of like rights of the plaintiff, all for the use and benefit of the following described land, or any portion thereof owned by anyone of the said defendants, to-wit:

Commencing at the Northwest corner of Lot 2, Block 43, Plat "A", Salt Lake City Survey, thence South 10 rods; thence East 6 rods; thence North 10 rods; thence West 6 rods to place of beginning.

IT IS FURTHER ORDERED that as to the appealing defendants, the said Decree may be and it is hereby modified to read as follows, to-wit:

AMENDED DECREE

This cause having come on regularly for hearing before the Honorable P. C. Evans, one of the Judges of the above-entitled court, J. D. Skeen and E. J. Skeen appearing as attorneys for the plaintiff; Hurd and Hurd appearing as attorneys for the defendants, Bailey & Sons Company, a corporation, and Seymour N. Bailey and Emma Z. (G.) Bailey, his wife, J. W. Summerhays & Sons Company, a corporation, G. E. Summerhays, and J. J. Summerhays; Emerson C. Willey appearing as attorney for John Scowcroft & Sons Company, a corporation; Bagley, Judd, Ray & Nebeker appearing as attorneys for the defendant, Robert Bailey Whitehill; Moyle

-4-

Richards & McKay appearing as attorneys for the defendant, Colorado Animal By-Products Company, a corporation and the Court having heard the evidence adduced on behalf of the parties hereto, the Court having made its Findings of Fact and Conclusions of Law and being fully advised in the premises;

IT IS ORDERED, ADJUDGED, AND DECREED:

That the plaintiff is the owner in fee simple of the following real estate located in Salt Lake County, State of Utah and particularly described as follows, to-wit:

The South Half of Lot 3, Block 43, Flat "A", Salt Lake City Survey,

and plaintiff's title to said real estate is hereby quieted, subject only to the easements and right of ways hereinafter specifically described.

That the defendants, Bailey & Sons Company, a corporation, Seymour N. Bailey and Emma Z. (G.) J. W. Summerhays & Sons Company a corporation, Bailey, his wife; C. E. Summerhays; J. J. Summerhays; Colorado Animal By-Products Company, a corporation, and Robert Bailey Whitehill are entitled to use, maintain, repair, rebuild or reconstruct a loading platform upon the following described portion of plaintiff's land:

Beginning at a point 7.3 feet East of the Southwest corner of Lot 3, Block 43, Flat "A", Salt Lake City Survey; thence North 10.7 feet; thence East 34 feet; thence North 14.6 feet; thence South approximately 70 degrees East 61.2 feet following the curve of the Oregon Short Line tracks and on the South side of said tracks; thence South 5.0 feet to the South side of said Lot 3; thence West 91.7 feet more or less to point of beginning. Also steps, 5 feet wide, extending 7 feet West from the Southwest corner of said platform.

That said defendants are entitled to maintain, repair and use the overlapping roof above that portion of plaintiff's land particularly described as follows, to-wit:

Beginning at a point 29 feet East of the Southwest corner of Lot 3, Block 43, Flat "A", Salt Lake City Survey; thence North 11.5 feet; thence East 57 feet; thence South approximately 78 degrees East 13 feet;

-5-

thence South approximately 6.6 feet to the South line of said Lot 3; thence West 69 feet to point of beginning.

That said defendants are entitled to use that portion of plaintiff's land lying South of the Oregon Short Line Spur track and that portion of the West 99 feet of the plaintiff's said land which lies north of the said spur track for the purpose of loading and unloading railroad cars and for loading and unloading trucks, wagons, and other vehicles to and from the loading platform hereinabove described, and that said rights are not exclusive of like rights of the plaintiff. That said uses of plaintiff's land shall be for the benefit of the following and the respective portion thereof owned by any of said defendants described land in Lot 2/and no other:

Commencing at the Northwest corner of Lot 2, Block 43, Plat "A", Salt Lake City Survey; thence South 10 rods; thence East 6 rods; thence North 10 rods; thence West 6 rods to place of beginning.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED:

That the defendant, John Scowcroft & Sons Company, a corporation, is entitled to the use of that portion of plaintiff's premises lying between the Oregon Short Line Spur Track and the South boundary line of Lot 3, Block 43, Plat "A", Salt Lake City Survey for loading and unloading railroad cars upon the said spur track for the use and benefit of the following described premises, to-wit:

Commencing 99 feet East of the Southwest corner of Lot 2, Block 43, Plat "A", Salt Lake City Survey; thence East $57\frac{3}{4}$ feet; thence North 10 rods; thence West $57\frac{3}{4}$ feet; thence South 10 rods to the place of beginning, together with the appurtenances pertaining thereto, including all trackage rights together with right of way for loading and unloading cars over Oregon Short Line Spur Track.

That the defendant, John Scowcroft & Sons Company, a corporation, has no right or title to interest in or easement upon the plaintiff's said real estate for the use and benefit of the following described land:

Commencing $9\frac{1}{2}$ rods East from the Southwest corner of Lot 2, Block 43, Plat "A", Salt Lake City Survey; thence North 10 rods; thence East $3\frac{1}{2}$ rods; thence South 10 rods; thence West $3\frac{1}{2}$ rods to the beginning.

Commencing at a point 7 rods West of the Southeast

-6-

corner of Lot 2, Block 43, Plat "A", Salt Lake City Survey; thence North 10 rods; thence East 32 feet; thence South 10 rods; thence West 32 feet to the beginning.

That the defendant, Bailey & Sons Company, a corporation, has an easement over and upon that portion of plaintiff's land lying South of the Oregon Short line Spur Track for the purpose of loading and unloading to and from railroad cars on said spur track for the use and benefit of the following described real estate, to-wit:

Commencing at a point $8\frac{1}{2}$ feet West from the Southeast corner of Lot 2, Block 43, Plat "A", Salt Lake City Survey; and running thence North 10 rods; thence East $25\frac{3}{4}$ feet; thence South 10 rods; thence West $25\frac{3}{4}$ feet to the place of beginning.

That the defendants, and each of them, are the owners of the right to the use in common with the plaintiff of the Oregon Short Line Spur Track which said track curves across the Southwest corner of plaintiff's said land and extends easterly along the South boundary thereof for purposes of loading and unloading railroad cars for the use and benefit of the lands hereinabove described, except the defendant, John Scowcroft & Sons Company, a corporation, has no right to use the said spur track for any purpose whatsoever for the use and benefit of the following described real estate, to-wit:

Commencing $9\frac{1}{2}$ rods East from the Southwest corner of Lot 2, Block 43, Plat "A", Salt Lake City Survey; thence North 10 rods; thence East $3\frac{1}{2}$ rods; thence South 10 rods; thence West $3\frac{1}{2}$ rods to the beginning.

Commencing at a point 7 rods West of the Southeast corner of Lot 2, Block 43, Plat "A", Salt Lake City Survey; thence North 10 rods; thence East 32 feet; thence South 10 rods; thence West 32 feet to the beginning.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED:

That the defendants, and each of them, have no right, title or interest in and to plaintiff's said land, except as hereinabove described; that said easements are not exclusive to the defendants; that plaintiff has a right to the use of his property subject only to the right of the said defendants to make joint use thereof to the extent and for the purposes hereinabove specifically stated and no others, and the

113

defendants have no right to erect or maintain any structure whatsoever and roof upon the said land of the plaintiff except the loading platform/herein specifically described or to obstruct or interfere with the joint use of said right of ways, loading platform and spur track by the plaintiff, his successors or assigns, and that portion of the concrete ramp or loading platform now upon the plaintiff's premises, which said platform was erected about the year 1932 and which covers all of plaintiff's land located South of the Oregon Short Line Spur track and West of a point 561 feet East of the Western Boundary of said Lot 3, Block 43, Plat "A", Salt Lake City Survey, constitutes an invasion of plaintiff's rights, exceeds the right of the defendants to use plaintiff's land for the purposes herein specifically set forth and a portion of said structure was wrongfully constructed and is being wrongfully maintained.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED:

That the defendants, Bailey & Sons Company, a corporation; Seymour M. Bailey and Emma L. (O) Bailey, his wife; Robert Bailey Whitehill; and the Colorado Animal By-Products Company, a corporation, forthwith remove the said concrete ramp or loading platform from all of plaintiff's said real estate, except the following described area, to-wit:

Beginning at a point 7.3 feet East of the Southwest corner of Lot 3, Block 43, Plat "A", Salt Lake City Survey; thence North 10.7 feet; thence East 34 feet; thence North 14.6 feet; thence South approximately 70 degrees East 61.2 feet following the curve of the Oregon Short Line Tracks and on the South side thereof; thence South 5 feet to the South side of Lot 3; thence West 91.7 feet more or less to point of beginning. Also, steps five (5) feet wide, extending 7 feet West from the Southwest corner of said platform.

June
Dated this 24 day of May, 1941.

ATTEST:
WILLIAM J. KORTH, CLERK

BY C. L. COUNTRYMAN, DEPUTY CLERK SEAL P. C. EVANS JUDGE

ENDORSED NO. 61698

FILED IN THE CLERK'S OFFICE, SALT LAKE COUNTY, UTAH, JUN. 25, 1941

WILLIAM J. KORTH, CLERK 3rd. DIST. COURT BY TED C. WESTWOOD, DEPUTY CLERK