Colson Vs. Thompson

Colson Vs. Thompson

SooperKanoon Citation : sooperkanoon.com/78765

Court : US Supreme Court

Decided On : 1817

Appeal No. : 15 U.S. 336

Appellant : Colson

Respondent : Thompson

Judgement :

Colson v. Thompson - 15 U.S. 336 (1817)
U.S. Supreme Court Colson v. Thompson, 15 U.S. 2 Wheat. 336 336 (1817)

Colson v. Thompson

15 U.S. (2 Wheat.) 336

APPEAL FROM THE CIRCUIT COURT

FOR THE DISTRICT OF KENTUCKY

SYLLABUS

Bid for the specific execution of an alleged agreement to convey to the plaintiff one-third of a certain tract of land in Kentucky belonging to the defendant as a compensation for locating and surveying the same. Bill dismissed.

In order to obtain a specific performance of a contract, its terms should be so precise as that neither party can reasonably misunderstand them. If the contract be vague and uncertain or the evidence to establish it be insufficient, a court of equity will not enforce it, but will leave the party to his legal remedy.

The plaintiff, who seeks for the specific performance of an agreement, must show that he has performed or offered to perform, on his part the acts which formed the consideration of the alleged undertaking on the part of the defendant.

The appellee filed his bill in that court stating that in the year 1779 a number of persons, amongst whom was the defendant below, who is the appellant in this Court, employed him, the complainant, to locate lands for them in the then District of Kentucky; that he received from the defendant certain land warrants to the amount of 25,000 acres, which he located for him on 20 May, 1780. That the terms on which he was to do the business were that the owner of the warrants should furnish all the money that should be necessary for locating and surveying the said lands. That the complainant should direct the doing thereof, and receive for his compensation what

should be given to other persons for similar services. The bill then avers that the usual proportion which was then generally given to locators for similar services was one-third part of the land so located by them. The complainant further alleges that he was prevented from surveying the above entry by the Indians, who were very troublesome and who rendered the execution of such business difficult and dangerous; that during this time the defendant procured a survey to be executed of the entry made in his name by the complainant, and obtained a patent for the same. The bill admits that the complainant received a sum of money from the defendant, which, however, he charges as paid on account of the expenses attending the locating and surveying the said entry, and not as a compensation for his services. The prayer of the bill is for a conveyance of one-third part of the above-mentioned tract of 25,000 acres of land. It appears by the exhibits in the cause that the above entry was surveyed on 28 October, 1786.

The defendant states in his answer that previously to his employing the complainant to locate and survey his warrants, he received offers from other persons to do the business upon the terms stated in the bill, which he rejected, and that he was induced to authorize his friend, Mr. Webb, to place the warrants in the complainant's hands, in consequence of his having understood that he would undertake the business for a fair compensation in money. That Mr. Peachy, the agent of the defendant, paid to the complainant upwards of 7,000 pounds of tobacco within a few months after the entry was made. The

Page 15 U. S. 338

answer further states that the defendant frequently applied to the complainant to have the entry which he had caused to be made surveyed, and that after repeated promises to comply with these demands, made and broken, the complainant confessed it was not in his power to execute the business, and after claiming the tobacco, which he had received as a compensation for his services, advised the defendant to apply to some other person to attend to the surveying of the entry. The defendant owns that from the year 1785, when this advice was given, until sometime after he claimed his grant, he was frequently in company with the complainant, who, to the best of his recollection, never intimated that he expected to receive any part of the lands, nor was any such demand ever made by the complainant until the institution of this suit in 1794.

There was an amended bill filed in this cause, and the above answer was, by the agreement of parties, received as an answer to this bill. The amended bill states that the entry of the 25,000 acres of land was made by the intervention of a Mr. Shelby, a particular friend of the complainant. That the defendant caused the said entry to be surveyed without consulting the complainant on the subject, although he avers that he was always ready and willing, whenever he might have been called upon for this purpose, to show the beginning and other calls of the entry and to give the necessary directions to the surveyor.

The depositions taken in the cause prove that at the time when the entry was made, it was usual in Kentucky for the locators of lands to receive from

the owners, as a compensation for their services, a proportion of the land so located, beside the expenses which might be incurred in surveying the land, which the locator received from the owner in money. But what that proportion was is not precisely ascertained by any of the witnesses. They state generally that it was sometimes one-third and sometimes one-half. Mr. Peachy, the agent and attorney in fact of the defendant below, from the year 1780, when the defendant went to the West-Indies until his return, states that he had lands located in Kentucky for a part of which he allowed the locator one-fifth, and for the residue one-tenth, of the land located as a compensation for his services, beside paying the expenses of surveying, &c.; This witness further states that he never heard or understood, in conversation with the complainant, the defendant, or Mr. Webb, with whom the defendant deposited his warrants to be delivered to the complainant, that the defendant was to give any part of the land in consideration of locating the same.

The circuit court decreed that the defendant below should convey to the complainant one-third of the said tract of 25,000 acres of land, according to certain boundaries which had been previously laid down under an order of that court, from which decree the defendant appealed.

MR. JUSTICE WASHINGTON delivered the opinion of the Court.

In deciding this case, we are necessarily led to the examination of the following questions:

1. What

was the contract between these parties, the specific execution of which is sought to be enforced by this bill, and how is it proved?

2. Has the complainant entitled himself to ask for an execution of the contract, in case the same should be sufficiently proved?

The amended bill states that the complainant received certain land warrants from the defendant with instructions to locate the same in Kentucky, but that no particular stipulation was made respecting the compensation which he was to receive for his services, except that the general custom of the country in similar cases, and the general tenor of the complainant's contracts with other persons for such services were to furnish the rule of compensation to be allowed to him. This rule is averred to be one-third of the land located.

The defendant, in his answer, states that no contract of any sort was entered into between the complainant and himself. He even denies that he had any conversation with the complainant on this subject at any time previous to the entry being made. He states that offers were made to him by other persons to locate his warrants on the terms mentioned in the bill, which he rejected, and that, in consequence of his having understood that the complainant would do the business for a fair compensation in money, he deposited his warrants with his friend, Mr. Webb, with a request that he would engage the complainant to locate them.

The allegations of the bill in relation to this contract are wholly unsupported by the evidence in the cause, and, on the other hand, the answer, in relation to this point, is strongly corroborated by the testimony

Page 15 U. S. 341

of Mr. Peachy; by the uncertainty of the alleged usage as to the proportion of the land to be allowed to the locator; the improbability that so loose a contract would be made so early as the year 1779, when a usage, if any existed, must necessarily have been recent and unknown, especially to persons living remote from Kentucky, at that time wild and unsettled, and above all by the circumstance that from the year 1786, when the survey was made under the direction of another agent, no demand of a part of the land appears to have been made by the complainant until the institution of this suit in the year 1794.

This defect in the proof would seem to be fatal to the pretensions of the complainant. The contract which is sought to be specifically executed ought not

only to be proved, but the terms of it should be so precise as that neither party could reasonably misunderstand them. If the contract be vague or uncertain or the evidence to establish it be insufficient, a court of equity will not exercise its extraordinary jurisdiction to enforce it, but will leave the party to his legal remedy.

Page 15 U. S. 342

But if these objections could be surmounted, that which remains to be considered under the second head appears to the court to be conclusive against the appellee.

2d. Has the complainant entitled himself to ask for an execution of the contract if he had proved it?

It is very obvious from the complainant's own showing that the contract between himself and the defendant, taken in connection with the alleged usage, was that the former should not only make the entry, but should also cause the same to be surveyed under his direction and superintendence. It was the entry and the survey which constituted the location in the contemplation of the parties and formed the real consideration for which the allowance of a part of the land to the locator was to be made. The complainant states in his bill that the owner of the warrants was bound by the usage not only to make this allowance, but was also to furnish all the

Page 15 U. S. 343

money necessary for locating and surveying the land, and he endeavors to excuse himself for not having caused a survey to be made. Now if the mere making of the entry amounted to a full performance of the contract on the part of the locator, any stipulation with the same person for the expenses attending the survey would have been idle and unnecessary. But the evidence of Isaac Shelby upon this point is conclusive. He states that the usual compensation to a locator was one-third of the land for locating and directing the survey.

If this, then, be the contract as alleged by the complainant himself, in what manner has he performed his part of it? In the first place, the entry was made not by him, but by Isaac Shelby under some agreement which is not disclosed in the bill nor

proved by any testimony in the cause. In the next place, it does not appear that from the year 1780, when this entry was made, the complainant made one effort to have the entry surveyed, but the defendant, after wasting about 6 years, was compelled to employ another agent to have that service performed.

How does the complainant excuse himself for the breach of his contract in this respect? He alleges that he was prevented, during all that time by Indian hostility, which rendered it troublesome and dangerous to make surveys in the part of the country where this entry was made. This assertion is not proved by a single witness except Thomas Allen who deposes that from 1780 to 1789, he believes it was difficult to get any persons to risk their

Page 15 U. S. 344

lives in making surveys on the Ohio toward the Yellow Bank except for high wages, as he has been informed. Now even if this witness had positively proved the point for which he was examined, still his testimony could not avail the complainant, since he admits that for high wages men could have been procured to perform the service, and those wages, it was incumbent on the complainant, who claims no less than between 8,000 and 9,000 acres of this land, to pay. The difficulty and expense which would have attended his endeavors to perform this part of his contract afford no excuse for his breach of it, even if in a case like this any excuse could be admitted. But what is conclusive as to this point is that the entry was in fact surveyed in 1786 without any danger or difficulty so far as the record informs us.

The complainant alleges that he was always ready and willing, whenever he might have been called upon for that purpose, to show the beginning and other calls of the entry and to give the necessary directions to the surveyor. This allegation is positively denied in the answer, which states that the complainant declined making or attending to the survey, and that he advised the defendant to employ some other person to do the business.

Thus it appears that the complainant has failed not only to prove the contract stated in the bill, but also his performance of those acts which formed the consideration of the alleged promise on the part of the defendant.

Page 15 U. S. 345

The decree must therefore be reversed and the bill dismissed with costs.

Decree reversed.