**Hobson Vs. Mcarthur**

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**Court** : US Supreme Court

**Decided On :** 1842

**Appeal No.** : 41 U.S. 182

**Appellant** : Hobson

**Respondent** : Mcarthur

**Judgement** :

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**Hobson v. McArthur**

**41 U.S. (16 Pet.) 182**

*APPEAL FROM THE CIRCUIT COURT OF THE*

*UNITED STATES FOR THE DISTRICT OF OHIO*

## SYLLABUS

It was agreed between McA. & H. that McA. should withdraw the entries of ten thousand acres, part of eleven thousand six hundred and sixty-six acres, which had been located for the use of H., and should relocate the same elsewhere, and

that the ten thousand acres, the entries of which had been withdrawn, and the ten thousand acres relocated elsewhere by McA., should be valued by two disinterested persons, and to be chosen by each party, and if the two could not agree on the value of the land or any part thereof, they should choose a third person, who should agree on the value of the land, and that H. should have so much of the land relocated as should amount to the value of the land for which the locations had been renewed, and also to the value of two thousand dollars in addition to the value of the ten thousand acres. The two persons appointed could not agree as to the value of part of the land, and they nominated a third person. Of the three persons thus appointed, two only agreed as to the value of part of the land. By the Court: it is an unreasonable construction of this agreement that it was so framed as that it not only might fail to accomplish the very object intended, but that in all probability it must fail and become entirely negatory, as the third man was not to be called in until the two had disagreed. It is a more reasonable construction to consider the third man as an umpire to decide between the two that should disagree. This would ensure the accomplishment of the object the parties had in view. The valuation by the two appraisers was within the submission.

Where there is an original delegation of power to three persons, for a mere private purpose, all must agree, or the authority has not been pursued.

The court, under the prayer in a bill in chancery for general relief, will grant such relief only as the case stated in the bill and sustained by the proof will justify.

In the Circuit Court of Ohio, a bill was filed by Duncan McArthur, asking for a specific performance of a contract, dated 10 November 1810. The complainant and the defendant, with John Hobson, entered into certain articles of agreement, relative to the withdrawal of the entries of land, in the State of Ohio, and the reentry thereof on other lands, out of which, by the contract between the parties, compensation was to be made in the lands included in the relocation of the lands, of which the entries had been withdrawn. The value of the lands, the entries of which were, by the agreement, to be withdrawn, and of the

land on which the entries were to be relocated, were to be determined by persons mutually chosen and agreed upon, who, if they could not agree, were to nominate a third person.

Out of this agreement and proceedings under it, the questions in this case arose and were argued by Stanbery for the appellant, and by Mason for the appellees, the heirs of Duncan McArthur, who became parties to the proceedings on the decease of Duncan McArthur. In the circuit court, a decree was given in favor of the complainant, Duncan McArthur, and the defendant, Matthew Hobson, prosecuted this appeal. The case is fully stated in the opinion of the Court.

The question decided by the Court was as to the construction of the agreement of the parties to submit the value of the land to the determination of persons mutually chosen and agreed upon, and if they could not agree, that they should appoint a third person.

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THOMPSON, JUSTICE, delivered the opinion of the Court.

The bill filed in the court below is founded upon and seeks a specific execution of the following agreement, bearing date 10 November 1810.

"It is hereby agreed upon, between Duncan McArthur, of Ross County, and State of Ohio, of the one part, and John Hobson, of Jackson County, and State of Georgia, and Matthew Hobson, of Oglethorpe County, and State of Georgia, aforesaid, on the other part, witnesseth that whereas 11,666 2/3 acres were sent to Col. Richard C. Anderson's office on or about the first instant by Col. Ellis Langham in the name and for the use of said John and Matthew Hobson, with entries for the same. Now be it known that it is hereby understood and agreed upon by the contracting parties that said McArthur is to withdraw 10,000 acres of the 11,666 2/3 acres, and to relocate the said 10,000 acres elsewhere in the name of the said John and Matthew, and it is further agreed upon by the contracting parties that the land from which the said 10,000 acres is to be withdrawn as

located by Ellias Langham, and also the land to be reentered by said McArthur is to be valued by two disinterested men, one to be chosen by each of the contracting parties, and if the said two men cannot agree on the price of said lands or any part thereof, the said two men are to choose a third man, who, together with the other two, shall agree on the price of said land, and the said Hobsons are to have so much of said land, so to be relocated by said McArthur, as will amount to the value of the land from which said warrants shall have been removed, and also land to the amount and value of $2,000 in addition to the value of the 10,000, and where the same was entered by Elias Langham. And the said John and Matthew Hobson doth hereby obligate themselves, their heirs, executors, and administrators, separately and jointly, to convey unto the said McArthur, his heirs &c.;, all singular the balance of said 10,000 acres, after deducting therefrom such quantity as, by valuation as aforesaid, will amount to the value of the said 10,000 acres, where the same was first located by said Langham, and also land to the value of $2,000, as



aforesaid, and it is further understood and agreed upon that if the lands located by the said McArthur should not be valued to the amount of the lands so located by said Langham, and also $2,000, then and in that case, said McArthur is to convey unto the said John and Matthew, their heirs &c.;, other lands to the amount of said valuation, with the value of $2,000 in land, as aforesaid, said Hobson to pay all office fees and surveying expenses. Said valuation to take place on or before the expiration of three and a half years from the date hereof, said Hobson to pay the taxes on said lands until divided, and then the said McArthur to pay to said Hobson his proportionable part of said taxes."

"In witness whereof we, the contracting parties, do hereunto set our hands and seals, this 10 November, A.D. 1810."

"Be it remembered before signing that the division of said lands shall take place forthwith, after the titles are considered secure, and that the lands located by Langham are to be picked as he, upon his honor, intended."

"DUNCAN Mc ARTHUR [L. S.]"

"JOHN & M. HOBSON [L. S.]"

"Witness:"

"E. LANGHAM"

"EDWARD BASKERVILLE"

The bill, after having set out substantially this contract, states that John Hobson, on 24 November 1818, sold and assigned to the complainant all his right and title to one-half (5,000 acres) of the land warrants located by him. That in pursuance of said agreement he withdrew 10,000 acres of Langham's entries, and located them elsewhere. That on 30 July 1830, he appointed his son, Thomas J. McArthur, his attorney, to transact the business under the said contract, who, in pursuance of said power, appointed, on his part, William Vance to proceed in the valuation of the said lands. And that for the same purpose Matthew Hobson appointed Matthew Bonner, who proceeded to view the land, and finding that they could not agree on the value, they selected Lyne Starling as a third man to make the appraisement pursuant to the terms of the agreement, who, together with Vance and Bonner, agreed upon the valuation of the lands located by Langham. The complaint

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further states that afterwards his agent proposed to the said Matthew Hobson to select and point out to the appraisers for valuation such parts of the entries made by McArthur as would amount to a sufficient quantity to satisfy the said Hobson, which proposition he declined, and insisted that it was his right to have the whole of the lands entered by the complainant valued. That he was entitled to an interest in the whole of the entries made by the complainant, proportional to the valuation of the Langham entries. The bill states that, afterwards, the three appraisers proceeded to examine the lands relocated by McArthur, and that two only of the appraisers, Bonner and Starling, agreed on the valuation. And the bill then

charges, that the said valuation has not been made in conformity to the said agreement, in this; that the said three appraisers have not all agreed as to the value of the lands relocated by the complainant, but that only two agreed thereto. Several other charges are made against the validity of this appraisement, which it is unnecessary to notice. The bill then sets out several proposals made by the complainant, for the settlement of the controversy, which he declined accepting, and refused making any conveyance or assignment of his interest in the land located by the complaint. The bill, then, for the purpose of obtaining an injunction, refers to an Act of Congress of 26 May 1830, for the settlement of the conflicting claims of the complainant and the United States, to the land in question, and charges, that the defendant, Hobson, threatens to apply to the government for the appraised value and interest of $5,000 acres of the land, entered in the name of the said Matthew Hobson; and prays that he may be enjoined from claiming and receiving from the Treasury of the United States any part of the money appropriated by the act of Congress, until the same is heard and adjudicated upon by the court. And further, praying that the said Hobson may be decreed to accept someone of the terms proposed by him, in fulfillment of the contract, according to its true intent and understanding. And that he may be compelled to perform the said agreement specifically, on his part, as the complainant has proposed and tendered to do on his part, and such other and further relief as may seem meet and just.

The answer of Hobson admits the contract of 10 November, 1810, set out in the bill, and that he is willing to abide

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by the same according to the just interpretation thereof. He admits the appointment of appraisers, an their proceeding to the valuation of the land, as stated in the bill, and that thereupon he informed the complainant of his willingness to settle all matters under the contract, and that after taking and retaining such proportion of the lands entered by the complainant, and valued as set out in the bill and answer, as would cover and include the claims of him, the defendant, under the contract, and agreeable to such valuation, he was willing, and then offered to

assign and relinquish to the complainant, the rest and residue of the lands so valued, and also all the other entries and surveys made by the complainant; which he wholly refused to do. The defendant admits, that he rejected all the demands and requisitions of the complainant, made at the time alluded to, and all the demands which had for their object and design a disregard in part or in whole of the doings of the appraisers. The defendant admits the passage of an act of Congress mentioned in the bill, and that he means to avail himself of its provisions, if he can obtain a settlement of the matter with the complainant; but he is prevented by the complainant from relinquishing his interest in the land to the United States. And he denies the right of the complainant to confine him to any particular part of either of the surveys, valued by the appraisers; but that when it is ascertained what number of acres he is entitled to, under the contract and valuation, then he will hold the same undivided and in common with the complainant, until by partition it shall be divided. And he denies the right of the complainant to pay off and settle with him in a given sum of money. That he is perfectly willing to abide by the valuation made by the appraisers, and relinquish his claim as before offered.

An interlocutory decree was thereupon entered, declaring that the appraisement made by only two of the appraisers of the relocated entries and surveys made by McArthur was void, and ordered the same to be set aside and annulled, and then proceeds to give directions for another appraisement, which the defendant Hobson refused to comply with, and thereupon, a final decree was entered, declaring that the complainant, McArthur, had complied on his part with the interlocutory decree, and that the respondent Hobson had altogether neglected to comply with

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the same on his part, and alleging that the sum of $9,250 had been paid by McArthur to Hobson, as appeared by his receipt annexed to the agreement of 25 September 1830. It was thereupon ordered, adjudged, and decreed that the said Hobson should, within sixty days after the rising of the court, by a good and sufficient deed, transfer and assign to Duncan McArthur, his heirs and assigns, all his right, title and interest in the 10,000 acres of land relocated and surveyed by

the said Duncan McArthur, and that in case he should fail to comply with this decree, within the time thereby limited, then that the decree should operate as such conveyance. And from this decree, the present appeal is taken.

The first and principal question in the case is whether the appraisement or valuation of the land was made pursuant to the provisions of the contract of 10 November 1810. If it was, then the decree in this respect is erroneous. And it was the fault of the complainant that the contract was not carried into execution, and he cannot come now to ask for a specific execution of it.

The agreement was that the land located by Langham, from which the 10,000 acres were to be withdrawn, and also the land to be reentered by McArthur, should be valued by two disinterested men, one to be chosen by each of the contracting parties, and in case the two men thus chosen could not agree on the price of said lands, then they were to choose a third man, who, together with the other two, should agree on the price of the said lands. The parties, in pursuance of the agreement, each chose a man to make the valuation, and upon their disagreement with respect to the same, they chose a third man, and the whole three thereupon agreed as to the valuation of the Langham location, but disagreed in the valuation of the McArthur location, and the valuation was made by Starling and Bonner, two of the appraisers; and it is contended, that this valuation was void, because made by two only.

It has been argued that this being a delegation of power to the three for a mere private purpose all must agree, or the authority has not been pursued. This may be admitted to be the rule, where the original delegation of the power is to the three, without any other provision on the subject. But in construing



this agreement, we must look at what was the obvious intention of the parties. The parties clearly intended, that the valuation should, at all events, be made. A third man was not to be called in unless the two disagreed, and it is an unreasonable construction of this agreement that it was so framed that it not only might fail to

accomplish the very object intended, but that in all probability it must fail and become entirely nugatory, as the third man was not to be called until the two had disagreed. Upon the construction of the agreement, that the three must unite in the valuation, the office to be performed by the third man was to persuade the other two to agree with him. This could never have been the understanding of the parties. It is a more reasonable construction, to consider the third man in the character of an umpire, to decide between the two that should disagree. This would ensure the accomplishment of the object the parties had in view, but a contrary construction would most likely defeat that object.

Upon this view of the agreement, the valuation by two of the appraisers was within the submission.

It has also been made a question whether the whole of the land reentered by McArthur was to be valued, or only so much as was to be retained by Hobson. The terms of the submission would seem to settle this question. It expressly provides that the land from which the 10,000 acres, located by Langham, was to be withdrawn, and also the land to be reentered by McArthur, were to be valued &c.;, and this must have been the understanding of the parties in order to make a just partition between them.

There is no provision made for the selection of any particular part to be appraised. By whom, then, was such part to be designated? But when the whole of each tract is valued, the proportion which Hobson is to have in the McArthur location is easily ascertained, and they would become tenants in common, subject to partition, according to their respective rights. Such is the clear construction of this agreement. It does not contemplate the sale of the land, or the division of any proceeds therefrom. A reference in the bill to the Act of Congress of 26 May 1830, 4 Stat. 405, appears to be for the purpose of obtaining an injunction to restrain Hobson from receiving any money from the Treasury of the United States, appropriated by

that act. But the bill is not framed with a view to enforcing any rights growing out of that act, but prays that Hobson may be compelled to perform the agreement of 10 November 1810, twenty years before that act was passed. It is true that there appears upon the record, an agreement entered into between these parties, bearing date 25 September 1830, relative to a division of the money to be paid by the government under this act. But this was an agreement made after the commencement of this suit, and which we cannot notice, for several reasons. If any relief is to be given on the basis of that agreement, it should have been brought before the court below, by a supplemental bill. But another insuperable objection is that by an express stipulation in the agreement, it is not to be made use of in this case. This stipulation is as follows:

"The said parties mutually agree and covenant that this contract and agreement shall not be used by either of them, nor at any time held or interpreted in the suit aforesaid, or in any other suit, or in any other court, or in any proceedings, whether in court or out of court, under the aforesaid contract (the contract of 10 November 1810), as affecting, changing or in any wise disturbing the rights of either in the matters aforesaid, but the suit aforesaid shall be conducted, and other suits which either of them may think proper to bring, founded on the contract aforesaid, may and shall be conducted, in all respects, as though this contract had not been entered into."

In addition to this, the counsel on both sides declined, upon the argument, making any use whatever of this agreement. It must therefore be dismissed, as having no bearing upon the case. And if so, there is no proof whatever that Hobson had received any money on account of his land. The defendant Hobson was under no obligations to accept either of the propositions of the complainant, as stated in the bill. There is nothing in the contract of 1810 that called upon him to do this, and especially, after he had, on his part, complied with the provisions of that contract. And if the agreement of 1830 is laid out of view, there is no proof to show that Hobson had received $9,250, as is assumed in the decree, and made the ground upon which he is ordered to transfer and assign to McArthur, all his right, title and interest in the whole 10,000

acres of land, relocated and surveyed by McArthur. This could not have been done under the prayer for general relief. The court under this prayer will grant such relief only as the case stated in the bill, and sustained by the proofs will justify. The frame and structure of the bill in this case is for a specific execution of the contract of 10 November 1810, which provides only for the valuation of the lands, and makes no provision for the sale of the land or the payment of any money. And if the facts would justify a prayer for any such relief, the bill should have been framed with a double aspect, so that if the court should decide against the complainant in one view of the case, it might afford him relief in another. But this bill is not so framed.

The decree of the circuit court must therefore be reversed. But as the rights of the heirs of McArthur may depend in some measure upon the contract of 10 November 1810, connected with what has since taken place, under the act of Congress, we think the bill ought to be dismissed, without prejudice.

*It is accordingly adjudged and ordered that the decree of the court below be reversed and the cause remanded to the circuit court with directions to dismiss the bill, without prejudice.*