

[HIGH COURT OF AUSTRALIA.]

SUMMERS APPELLANT ;
PLAINTIFF,

AND

THE COMMONWEALTH RESPONDENT.
DEFENDANT,

H. C. OF A. *Contract—Construction—Supply of marble in blocks.*

1919.

MELBOURNE,

May 15.

Barton,
Powers and
Rich JJ.

By a contract the plaintiff undertook to supply marble in accordance with a specification. The specification stated that it was for the supply of marble in blocks, and provided that the blocks were to be sawn or rough chiselled square, that the size of each block should be full enough “to admit of its being worked and polished in London without blemish on every side if need be to the sizes set out in the schedule,” and that the blocks should be quarried so that the figure of each piece should, when in finished position, lie in the same general direction. The schedule set out the number of pieces required and specified their dimensions.

Held, that the plaintiff was not entitled to supply blocks of such dimensions that from each of them could be cut more than one piece of the specified dimensions.

Decision of *Isaacs J.*: *Summers v. The Commonwealth*, 25 C.L.R., 144, affirmed.

APPEAL from *Isaacs J.*

This was an appeal by the plaintiff Charles Francis Summers from the decision of *Isaacs J.* (*Summers v. The Commonwealth* (1)), in whose judgment the material facts are set out.

The contract in respect of which the action was brought was a contract whereby the plaintiff agreed with the Commonwealth for the “supply and delivery f.o.r. Darling Harbour, Sydney, of ‘Dark

(1) 25 C.L.R., 144.

Caleula' marble for use in connection with the erection of the new Commonwealth offices, London, in accordance with the plan, specification and general conditions hereunto annexed," at the price of 13s. 6d. per cubic foot. The specification was headed "Specification for supply and delivery of marble in blocks free on railway truck Darling Harbour, Sydney, in accordance with particulars detailed in attached schedule and drawing" &c. It then provided (*inter alia*) as follows:—"The blocks are to be sawn or rough chiselled square, straight and true of the best quality that the quarry is capable of producing uniform in colour and grain. The size of each block to be full enough to admit of its being worked and polished in London without blemish on every side if need be to the sizes set out in the schedule. The blocks to be quarried so that the figure of each piece shall, when it is in finished position, lie in the same general direction. Each block to be numbered on two faces with incised numerals. Payment will be made at the tendered rate per cubic foot measured according to the sizes set out in the schedule." The schedule set out 78 "pilaster shafts," of which 60 were each of one measurement, 6 of another and 12 of another; 12 "column shafts," each of a certain measurement; 26 "pilaster bases," of which 20 were each of one measurement, 2 of another and 4 of another; and 4 "column bases," each of a certain measurement. The measurement was in each case represented by setting out the length, breadth and thickness in feet and inches.

The only question raised on the hearing of the appeal was whether the plaintiff Summers was entitled to deliver blocks from which two or more of the pieces mentioned in the schedule could be cut, or whether he was bound to deliver blocks from each of which only one of those pieces could be cut.

Walker (with him *Owen Dixon*), for the appellant. The contract is for the supply of "blocks" of marble, and the specification draws a distinction between "blocks" and "pieces." Unless those words are synonymous, the specification means that each "block" is to be of such a size that several "pieces" can be cut out of it. If that is the meaning, then the evidence of experts is admissible to

H. C. OF A.
1919.
SUMMERS
v.
THE COM-
MONWEALTH.

H. C. OF A.
1919.

SUMMERS

v.

THE COM-
MONWEALTH.

show what is the proper way of supplying the blocks. If the contract is ambiguous the evidence of experts is also admissible to show what is a reasonable way of doing the work.

Morley, for the respondent. The proper meaning of the contract is that the appellant was to supply blocks of particular sizes, which were defined in the schedule. Unless each block was of such a size as to allow of its being worked to only one piece, it could not be discovered in which direction the figure of each piece would lie.

The judgment of the COURT, which was delivered by BARTON J., was as follows :—

There is no necessity for a long judgment in this case. The appellant is ready to stand or fall on the interpretation of the contract. There has been full argument in the endeavour to show that the construction placed upon it by *Isaacs J.* is wrong. It is enough, in our judgment, to say that we entirely concur in the way in which the learned Judge interpreted the contract.

So far as any question of fact independent of the contract is concerned, the plaintiff cannot succeed except by showing that the findings against him are wrong, and there is no substantial reason shown to us for coming to that conclusion. Indeed, we do not see that any finding of fact was seriously attacked. I ought to add that the appellant has limited himself to the question of the contract, and, therefore, we have no concern with the sum of £25 awarded to the plaintiff Mrs. Peterson on the alternative claim, or with the allowance of one shilling damages on the counterclaim.

The appeal must be dismissed with costs.

Appeal dismissed with costs.

Solicitor for the appellant, *J. W. Dixon*.

Solicitor for the respondent, *Gordon H. Castle*, Crown Solicitor for the Commonwealth.

B. L.