1921/34

In the High Court of Australia

Brompton & Ors

v.

Commonwealth

& Ors

Reasons for judgment

Starke J.

JUDGMENT STARKE J.

This was a summons, issued by the defendants, seeking to strike out the plaintiffs' Statement of Claim and to enter judgment in the action for the defendants, substantially upon the ground that the Statement of Claim discloses no reasonable cause of action and is frivolous and vexatious. The applicants relied upon the inherent power of the Court "to stay all proceedings before it which are obviously frivolous and "vexatious or are an abuse of its process", rather than upon Order XVII r 30. Under its inherent jurisdiction, the Court may receive evidence by affidavit to show that a pleading is an abuse of the process of the Court, whereas under the Rule "the nature of the action or the defect "in the pleading must appear by the pleading and no affidavit is per- "missible". (Republic of Peru v. Peruvian etc Co 36 Ch D 489, Annual Practice 1924 pp 414-417).

In this case, the respective parties filed affidavits in support of and in opposition to, the application, and some of the deponents were cross examined on behalf of the plaintiffs. The jurisdiction is clear enough, but this summary process will only be exercised in obvious cases - cases which have no solid basis and must fail (Lawrance v. Lord Norreys 15 A.C. 210, Willis v. Earl Howe 1893 2 Ch 345, Electric Development etc Co v. Attorney General of Canada 1919 A.C. 687) . The plaintiffs allege that in the year 1916 the Imperial Government arranged with the Commonwealth to obtain for it the whole of the wool clip for the season 1916-1917 (with certain exceptions) on the terms that the Imperial Government paid 15½d per lb. on the greasy basis plus a charge of ¾d per lb. to cover holding and handling charges till the wool was placed f.o.b. ship, that it was a term of the arrangement that wool on sheepskins as well as skin wool and shorn wool should be obtained by the Commonwealth for the Imperial Government, and that these arrangements were continued over the wool season 1917-1918 and for the remainder of the duration of the war, and one wool season thereafter, subject to an increase of the holding and handling charges from ¾d per lb to ⅞d per lb. And according to the plaintiffs' ~~pleading~~ pleading, wool on sheepskins belonging to the plaintiffs was appraised pursuant to the War Precautions (Sheepskins) Regulations and the War Precautions (Wool) Regulations, and after

such appraisement, sheepskins were purchased ~~by~~ or acquired by the Commonwealth from the owners thereof on the terms, or on the faith of an arrangement, that the owners should be paid, in respect of the wool on such sheepskins, the said appraised values of such wool adjusted up to the flat rate of 15½d per lb on the greasy basis, together with the values of the skins, apart from the wool upon them, as fixed in accordance with the Regulations. It is also alleged that the total sum of money representing the flat rate of 15½d per lb. on the greasy basis for the quantities of wool submitted for appraisement was greater than the sum of money at which such wool was appraised, and that at the end of each wool season the Commonwealth had in hand moneys amounting to a difference between the total sum of money representing a flat rate of 15½d per lb ~~per lb.~~ on a greasy basis for the total quantity of wool submitted for appraisement, and the sum of money at which such wool was appraised, which difference, the plaintiffs allege, the Wool Committee have distributed or will distribute, between the owners of shorn wool, and refuse to pay any part of such difference to the plaintiffs. As an alternative, the plaintiffs submit that by virtue of the Regulations they, and other vendors of wool and sheepskins, are entitled to equality of treatment with the vendors of shorn and skin wool as regards the price to be paid for all wool on sheepskins purchased or acquired by the Commonwealth .

The arrangement between the Imperial and the Commonwealth Governments as to the acquisition of the Australian wool clips was exhaustively examined by this Court and by the Judicial Committee of His Majesty's Privy Council in Cooke and others v. The Commonwealth of Australia and others 31 C.L.R. 394, and on appeal 1923 No 157 (judgment delivered 24th March 1924). "Taking the evidence as a whole their Lordships" were "of opinion "that the only contract or arrangement into which the British Government "entered was an arrangement with the Comonwealth Government, not enforceable by any Court, to purchase the clip through the Commonwealth "Government at the all-round price of 15½d per lb, with an addition "for the handling charges, and to pay to the Commonwealth Government one "half of any profits derived from the sale of wool for other than military "purposes, and that it was left to the Commonwealth Government to make its "own terms with the wool owners as to the distribution among them of the

"price paid for the wool and any share of profits". Their Lordships did not, I think, specifically consider the case of suppliers of sheepskins with wool upon them. It is therefore advisable to consider this particular case a little more in detail.

On 4th December 1916 the Commonwealth Government intimated to the Imperial Government, in connection with the acquisition of the wool clip, that arrangements would be made to control exportation of sheepskins in order to safeguard the wool position (Cooke's Transcript Ex. P. 15 p 178) On the 11th the Imperial Government was informed that the Commonwealth had acquired all woolly sheepskins and were taking a census of all sheepskins under the Regulations of the War Precautions Act. On 20th December 1916 the War Precautions (Sheepskins) Regulations were passed (See Rules, 1916 No 321), and on 3rd January 1917 the Commonwealth advised the Imperial Government of the terms of these Regulations and submitted the following proposal: "that Imperial authorities notify Commonwealth Wool "Committee of its monthly requirements which would be supplied at ap- "praised price plus ½d per lb to cover charges from warehouse to f.o.b. "balance of sheepskins to be sold though Commonwealth Government by pub- "lic tender or to approved buyers". On 10th January 1917 the Imperial Government agreed to the proposed procedure, and stated its monthly requirements. But there is nothing in all this which detracts from the proposition that the only contract or ~~agreement~~ arrangement made by the Imperial Government was "an "arrangement with the Commonwealth Government, not enforceable by any "Court", and that it was left to the Commonwealth Government to make its own terms with the suppliers of sheepskins with wool upon them. What arrangements, then, were made by the Commonwealth for the acquisition of sheepskins with wool upon them?

This Court in Cooke's Case 31 C.L.R. at p 419, was of opinion that the Wool Regulations ~~were~~ conferred the only legal rights upon owners of skin wool enforceable in the Courts of Law. But on appeal the Judicial Committee took somewhat broader grpund, and investigated the terms on the faith of which the suppliers had been induced to part with or deliver up their wool to the Commonwealth or to the Wool Committee. The Regulations necesarily formed part of the material upon which this conclusion was founded, but were not, as I follow their Lordships, the only relevant

material. Until July 1918 both parties in this case took their stand upon the Regulations, the Table of Sheepskin Limits and the Appraisements and Invoices. Sir Edward Mitchell for the plaintiffs relied mainly upon the Sheepskin Regulations. He contended that the parity on which the appraisements of sheepskins should be made was the price or standard fixed by the Commonwealth Government for the balance of the Australian clip of greasy wool for the season 1916-17. This was, as we know from Cooke's Case, the sum of 15½d per lb on the greasy basis, with a further sum not exceeding ¾d per lb for handling charges. Now it is conceded that appraisements of sheepskins were made on the basis of the Table of Sheepskin Limits. Several factors were taken into consideration in fixing these limits (Yeo's affidavit pph 12), but the factor which rendered limits necessary was no doubt the arrangement between the Imperial and the Commonwealth Governments for the acquisition of the Australian wool clips at the flat rate of 15½d per lb on the greasy basis. According to Mr Crompton's affidavit, which I must accept for present purposes, it would be possible to arrive at the sum allowed for wool in the appraisements of sheepskins (See Crompton's affidavit pph 9 and cf. Yeo's affidavit pph 22). It is not, I think, disputed that the appraised value of wool based on the Limits fixed under the Wool Regulations (See Wool Regulations pph 13) produced a sum less than that produced for a complete clip based on the flat rate of 15½d per lb on the greasy basis. (See Yeo's evidence on cross-examination and in Cooke's Transcript p 43, Crompton's affidavit pphs 4 and 5). Further, I am prepared to assume for present purposes that the appraised value of shhepskins based on the Table of Sheepskin Limits, might, in respect of the Wool item included therein, produce a sum less than that produced for a complete wool clip on the flat rate basis. At all events, I could not, on this summary process, exclude the plaintiffs from attempting to prove the fact. Consequently, Sir Edward Mitchell claims, the sheepskin owners are entitled to have the value of the wool on their sheepskins adjusted to the sum of 15½d per lb for wool on the greasy basis. And he relies on the fact that, whilst the owners of shorn wool all received, or will receive, an additional sum for their wool on adjustment, the sheepskin owners received nothing beyond the appraised value of their skins with wool upon them. This view, in my opinion, ignores the true meaning of the Sheepskin Regulations. The wool parity was introduced

for the purpose of appraisements. But the grades or classes of wool were very numerous, and clearly, the flat rate of 15½d per lb. for a season's clip could not be applied indiscriminately to all wool. The Table of Limits discriminated between the different classes or grades of wool: it was based on the flat rate for a complete clip, but differentiated the various classes or grades, and assigned the limit of price in each grade. It was a work, as I gathered in Cooke's Case, of great difficulty and amazing skill. Be that as it may, the Sheepskin Regulations provided that the appraisement of the prices to be paid for each parcel of sheepskins should be (in accordance) with the list of limits fixed by the Central Committee (See Sheepskin Regulations R 7, Wool Regulations R 13). Appraisements were made by sworn appraisers appointed in accordance with the Regulations, and it is declared that their determination of value was final and without appeal (R 9), though it may or may not be subject to arbitration pursuant to R 19. Apart from the provisions of R 5 (e), it is to be noted that a duty was imposed upon the appraisers representing the Government, to estimate the value of each parcel of sheepskins upon the basis prescribed by the Regulations (R 10(b)). Then we find in R 5(d) that the appraised value is the value at which dry sheepskins shall be available for fellmongering or any other local purpose. Here, at all events, the adjustment contended for by the plaintiffs would be impossible. There is nothing in the Regulations, to my mind, which suggests that the provision as to wool parity operates differently in the respective cases of skins delivered to the Comonwealth and of skins delivered to fellmongers, or to other persons, for local purposes . And, going further, we find that the invoices delivered by the plaintiffs to the Commonwealth, claim - until the season 1918-1919 at all events - the appraised prices of the sheepskins and nothing else. All this points, in my opinion, to one conclusion only,-that the sheepskin owners delivered up their skins on the faith of receiving the appraised value of those skins and nothing beyond ~~xxxxxxx~~ that appraised value. About July 1918 a new arrangement was made between the Imperial and the Commonwealth Governments, whereby appraisement was dispensed with, and the Commonwealth went into the market and purchased such skins as the Imperial Government required. But, according to Mr Crompton, whose version I accept for ~~the~~ present purposes,

there were no purchases by private treaty. The appraisers ~~appointed~~ appointed under the Regulations informed the sheepskin owners that they must name their prices within the Table of the Sheepskin Regulations, which they did. Later -namely, shortly after the institution of the proceeding known as the Wool Sliping Case 28 C.L.R. 51 - the system of appraisements was again reverted to, and sheepskins were delivered as formerly. But as to the intervening period, all that can be said is that the sheepskin owners during that time delivered up their skins on the faith of being paid prices within the fixed Table Limits, which they themselves named. They received those prices, and cannot now, in my opinion, put the Commonwealth "upon terms different from those" put forward by themselves. According to the facts deposed to before me, and not in any way displaced, the Imperial Government paid to the Commonwealth Government the appraised prices , or the prices fixed by the sheepskin owners, plus the ½d charge and no more, [redacted]

The alternative case made by the plaintiffs, based upon a ~~right~~ claim to equality of treatment (R 18) has been disposed of adversely to them by this Court in Cooke's Case 31 C.L.R. at p 420. But for the elucidation of legal principles involved in Cooke's Case, both in this Court and before the Privy-Council Judicial Committee, I should not have thought that the present case ought to be disposed of summarily. But in the light of that case and applying, however, the principles underlying ~~that case~~ it, I am of opinion that the present case is ~~plainly~~ without any solid basis and must fail at the trial, and ought, on well settled principles, to be stayed.

Perhaps I ought, in conclusion, to refer to a sum of £222,362, which was mentioned during the argument,. It represents a saving made by the Central Wool Committee on the handling charges of ½d per lb made to the Imperial Government. At one time, the Imperial Government made a claim to this sum, but did not pursue it, and the amount has been carried to the credit of the wool fund. Apparently it is intended to distribute ~~the sum~~ it amongst the shorn wool owners to the exclusion of the sheepskin owners. The plaintiffs have made no claim in ~~this~~ their present action in respect

of this sum, and apparently Sir Edward Mitchell has some doubts whether this Court, has, in any case, jurisdiction to entertain any such claim. All that I need say is that I cannot deal with it on the present pleading and in the present proceedings, but ~~that~~ I express no opinion, favorable or otherwise, with regard to it. I must leave the matter where it stands, and quite open, so far as I am concerned,

The order is that the action in this Court Crompton and Son and Another v. The Commonwealth of Australia and Others, 1931 No 5, be for ever stayed, and that the plaintiffs do pay the costs of such action to the Commonwealth, including the costs of the summons herein, and it is certified that this summons was proper for the attendance of counsel.