

No. 12 of 1943

(7)

IN THE HIGH COURT OF AUSTRALIA.

PETERSON

v.

THE COMMONWEALTH OF AUSTRALIA

and

STENHOUSE & ORS.

v.

THE COMMONWEALTH OF AUSTRALIA

ORIGINAL

REASONS FOR JUDGMENT.

High Court of Australia.
Principal Registry.

23 JUL 1944

Judgment delivered at MELBOURNE
MONDAY
on 3rd JULY, 1944.

PETERSON

V.

THE COMMONWEALTH OF AUSTRALIA

STENHOUSE & OTHERS

V.

THE COMMONWEALTH OF AUSTRALIA

JUDGMENT

STARKE J.

In these actions the plaintiffs claim compensation in respect of field peas, known as blue peas, acquired by the Commonwealth on the 29th January 1942 pursuant to the National Security (Field Peas Acquisition) Regulations. The claim is based upon reg. 12, which provides that the rights and interests of every person in field peas shall upon acquisition be converted into claims for compensation.

The Commonwealth pursuant to the regulations acquired from Peterson, who was a farmer and grower of field or blue peas in Tasmania, 2,563 bushels of such peas, A grade, of which he was the owner or possessor.

The Commonwealth also pursuant to the regulations acquired from Stenhouse & Co., who were produce merchants in Tasmania, 1,101¹/₃ bushels of such peas, A grade, of which that firm was the owner or possessor.

The claims are for compensation in respect of the peas so acquired.

Compensation means the value or money equivalent of the property acquired or taken, so that the owner is put in as good a position as he would have occupied if his property

had not been taken. Usually the market value of a commodity is the standard or measure whereby the value or pecuniary equivalent of the commodity can be ascertained. But there may be cases in which market quotations would afford no true criterion of value, for instance, if the market had been "rigged" or "cornered", and there may also be cases in which there is no market and therefore no market value. In such cases the Courts would resort to other methods in determining value. The present cases, however, present no such difficulties, for the market value of field or blue peas, A grade, on or about the 29th January 1942 (the date of acquisition and the relevant date) was about 22/6 f.o.b. at the main ports of Tasmania.

Peterson has claimed 21/- per bushel f.o.r. Launceston, giving credit, however, for cost of transport to Launceston from his farm, or, in all, £2,659.2.9. This sum ^{works out at} ~~represents~~ (about) 22/6 f.o.b. Tasmania.

Stenhouse & Co. have claimed 22/6 per bushel, the market price f.o.b. Tasmania, or, in all, £1,239.

The Commonwealth contends, however, that 15/- per bushel is a fair and just value or the pecuniary equivalent of the peas acquired by it.

The market value of blue peas on the 29th January 1942 was the result, it was said, of speculative anticipation and activity. That value was not in my opinion the result of speculative activity, but of war conditions and a largely increased demand thereby occasioned. But war inevitably affects the value of commodities and indeed is usually an element entering into the value of any commodity in the market. And, even if the market value were the result of speculation, still the market was free and the plaintiffs were entitled to sell in that market and obtain the price there ruling.

Again it was said that, averaging prices over a series

of years and allowing for an increase in the costs of production, the sums claimed by the plaintiffs were more than a "fair thing" or "just" compensation. But that, as it seems to me, is an irrelevant topic, for the owner's cost, profit or loss does not establish the value of his commodity at the time of acquisition. All that concerns the Court is the ascertainment of the pecuniary equivalent or value of the plaintiffs' peas on the day of acquisition, which in these cases is best measured, as it would be in the case of a wrongful taking, by the price at which the peas were being dealt with in open market.

Lastly, it was suggested that the plaintiffs had the benefit of a controlled economy in Australia, for instance, price control and so forth, and should not be in any better position than those subject to such control. This is again an appeal to the argument that the plaintiffs should have no more than a "fair thing" or a "just" compensation having regard to all the circumstances of the time. But it has, with respect, nothing to do with the value of the plaintiffs' peas, whatever merit the argument may have with those who fix prices pursuant to legislative authority.

Judgment for the plaintiff Peterson for the sum claimed by him, £2,659.2.9, with costs of action.

Judgment also for the plaintiffs Stenhouse & Co. for the amount claimed by them, £1,239, with costs of action.

Order that the sums paid into Court in these actions be paid out to the party in whose action the same was paid into Court in and towards satisfaction of the judgment aforesaid in favour of that party.

In the case of Stenhouse & Co. I have assumed that their peas were made available to the Commonwealth f.o.b. Tasmania; otherwise there should be some slight adjustment of the amount of judgment in their favour which can be agreed upon between the parties before the entering of judgment or be ascertained by the Court in case the parties differ.