

HIBERNIA MEATS LIMITED

266
1982 No 4798

.v.

MINISTER FOR AGRICULTURE

PREMIER MEAT PACKERS (IRELAND) LIMITED

1982 No 499

.v.

MINISTER FOR AGRICULTURE

Judgment of Mr. Justice Barron delivered the 29th day of July 1982
hence, P.D. may have 11.1.82

In the first of these Actions the Plaintiff claims the sum of £211,719.84 for export refunds. In the second, the Plaintiff claims the sum of £90,987.07 for goods sold and delivered. It is common case that the Plaintiffs are entitled to these sums. The issue before me is whether or not the Defendant is entitled to set off a claim by him against each Plaintiff for an equivalent sum in extinction of such claims.

The circumstances giving rise to this claim of set off are identical to those giving rise to a similar defence in Agra Trading Limited .v. The Minister for Agriculture. When the Plaintiffs purchased Layer Wrapped Meat from the Defendant in his capacity as the Irish Intervention Agency, they agreed as a necessary condition of their contract to provide



security.

Following their purchase, the Plaintiffs before exporting the meat as required by the terms of their contract, changed the packaging of the meat to individual wrapping. Some of the meat was individually wrapped when purchased, but this factor is not relevant to the main issue before me.

Having done this and having exported the meat, the Plaintiffs applied to the Minister to release the security which had been given. This the Minister did although at the same time in relation to part of the security released he intimated that the Commission might take the view that the alteration of the wrapping on the meat was a change in the state of the meat and so breach of condition requiring the security to be forfeited.

Subsequently, the Commission did form such a view and require the Defendant to recover the amount of the security. This the Minister has in substance done by refusing to pay monies which otherwise are not in dispute.

Considerable argument was addressed to me as to the right of the Minister to recover either the amount of the security or the amount of the export refund to which the Plaintiffs became entitled. I am satisfied

having heard this argument that a substantial question of law arises for determination. It is essentially a question of E.E.C. law but a determination of the issue is not necessary to a determination of the matters in issue before me. Further the question also arises in Agra Trading Limited .v. The Minister for Agriculture of which the Supreme Court now has seisin. In these circumstances, I do not consider it appropriate to refer the question to the European Court for decision.

If the Defendant had seized the property of the Plaintiff claiming to be entitled to it, the Plaintiff would, where the conditions necessary for the exercise for that jurisdiction existed, have been granted an injunction to maintain the status quo ante pending the hearing of the Action. In such circumstances, he would have had to give an undertaking as to damages.

The situation in the present case is in a sense similar. I accept the reasoning of Barrington J. that it would be wrong to keep the Plaintiffs out of their money while the Defendant's claim is being litigated. At the same time, I do not see that it would be unfair to the Plaintiffs on the analogy of an undertaking as to damages if I put the Defendant back into the position in which he would have been if he had waited for the views of the Commission before releasing the security.

4.

I will give the Plaintiffs leave to enter final judgment for the sums claimed by them on condition that they provide security upon the same terms and conditions as before save that they will not be required to furnish such security in relation to that portion of the meat which was individually wrapped when it was purchased by them.

Henry Barron
28/9/82.