Marsh v Baxter

Marsh v Baxter is a landmark case against the planting of GMO crops in Australia. The case delivered a big win for GMO farmers and produced no protection for organic farmers. The case pitted farmer against farmer.

Organic farmers Steve and Sue Walsh, initiated the legal action against their GMO growing neighbour, Michael Baxter in the Supreme Court of Western Australia. The Marsh and Baxter farms (477 hectares and 900 ha. respectively) are adjacent to each other and located in Kojonup, 260 km south east of the capital city of Perth in the wheat belt of Western Australia (WA).

Just before Baxter's first crop of Monsanto's genetically modified (GM) Roundup Ready (RR) canola (a variety of rape) was harvested, the standing crop was sprayed with herbicide (glyphosate) (in November 2010), and rather than being direct harvested, the crop was swathed, i.e. the stalks were mown off, dropped in situ and windrowed, and left in the field (exposed to the elements) for collection in two or three weeks.

GMO swathes, seeds and plant material were subsequently found dispersed over much of Marsh's farm. As a consequence 70% of Marsh's farm lost its organic certification (from 29 December 2010 until it was restored in October 2013).

Marsh sued Baxter for economic loss (agreed between the parties as $85,000), on the basis of common law negligence or private nuisance, and sought a permanent injunction, initially to stop Baxter in future planting GM canola in paddocks adjacent to Marsh's organic fields and finally lessened to stopping Baxter harvesting GM canola by swathing in adjacent paddocks.

The case ran over three weeks (in February 2014), and was then dismissed in its entirety (in May 2014) - no nuisance, no negligence, no injunction, and no damages.

The cornerstone of the case was that Marsh's organic farm had been "contaminated" with GMO plant material. There was no dispute that GM canola plant material was blown onto 70% of Marsh's farm, no dispute that it came from Baxter's farm, and not even any dispute that Baxter's chosen harvesting method of swathing created the precondition for the wind to blow the GMO material into Marsh's farm.

But the case foundered on the characterisation of what the judge referred to as the "incursion" of the GM canola and he rejected it as "contamination". The failure to cross this necessary rubicon was fatal to the case.

The case was appealed to the Court of Appeal (WA) in March 2015 with three judges presiding. The appeal was lost by majority verdict (2:1).

Leave was sought to appeal to the High Court of Australia (Canberra). This was rejected.

Costs were awarded against Marsh. The costs of Baxter were paid by Monsanto.

See also
Organic and sustainable farming
Biodynamic Farming
Sustainable agriculture
Lord Northbourne
GMO
Australia

Notes and references