

It appears from the evidence of the inspector that the defendant's bees had been inspected on the 26th June, 1910. Of thirty-five hives he examined fourteen, and of these he found three diseased with foul brood, and instructed the defendant how to treat them.

I think the evidence shews that the defendant knew or had good reason to know that there was "foul brood" among his bees when he sold them; and, at all events, he sold them without the inspector's authority, as required by sec. 6 of the Foul Brood Act, 6 Edw. VII. ch. 51.

But it is said for the defendant that there was no warranty, and the Act was not passed for the benefit of purchasers; and, as it provides a penalty, no action will lie at the instance of a private individual for a contravention of the Act.

I think that the representations made at the time of the sale did amount to a warranty that the bees were clean, when in fact they were tainted with "foul brood."

The trial Judge in effect found that the plaintiff had satisfied the burden of proof when he found the probabilities in favour of the plaintiff's story, and that he was in error in supposing that "he was forced to find with considerable hesitation that he (the plaintiff) had not satisfied the burden of proof."

Having regard to the evidence and to the finding as above indicated, I think the only proper conclusion to be reached is, that the plaintiff had satisfied the burden of proof cast upon him. Taking the whole judgment, it is a strong finding indeed upon all essential points in favour of the plaintiff; and the assumption that the plaintiff had not satisfied the *onus probandi* cast upon him was quite erroneous.

I, also, am of opinion that the statute was made for the benefit of those engaged in bee-keeping. Section 5 imposes a penalty for knowingly selling or bartering or giving away diseased colonies or infected appliances; and sec. 6 also imposes a penalty upon any person who sells or offers for sale any bee hives or appurtenances whose brood has been destroyed or treated for "foul brood," without being authorised by the inspector so to do.

While this statute is in the interests of the public, in the sense of decreasing the danger that would limit the supply, yet it has for its immediate object the benefit of those engaged in bee-keeping (to which class the plaintiff belongs), in order to prevent the danger of infecting clean colonies by the introduction of bees already tainted with foul brood. The evidence clearly shews that this disease is very contagious, the slightest