DIVISIONAL COURT. MARCH 6TH, 1913.

*McKAY v. DAVEY.

Sale of Goods—Representations—Warranty—Breach—Swarms of Bees—Foul Brood Act—Inspection—Disease—Cause of Action—Damages.

Appeal by the defendant from the judgment of the Judge of the County Court of the County of Grey in favour of the plaintiff in an action for damages for breach of an alleged warranty upon the sale of bees or for contravention of the Foul Brood Act.

The appeal was heard by MULOCK, C.J.Ex., CLUTE and SUTHERLAND, JJ.

E. D. Armour, K.C., for the defendant.

I. B. Lucas, K.C., for the plaintiff.

CLUTE, J.:—In February, 1911, the plaintiff bought from the defendant about twenty swarms of bees, upon the representation, as he says, that they had been inspected and "were clean and all right." Twelve of these hives, the rest having died during the winter, were brought to the plaintiff's premises about the 1st May, making, with the nine hives the plaintiff then had, twenty-one hives in all.

By the 1st June some of the bees had died off, leaving only thirteen hives altogether, viz., nine of the plaintiff's and four of those bought from the defendant. These were inspected on the 10th June, 1911, when it was found that all four of those purchased from the defendant were diseased with "foul brood," the nine hives of the plaintiff still remaining clean.

The plaintiff attempted to treat them, but found them so bad that all purchased from the defendant had to be destroyed.

It was argued at bar that these bees might have been infected from the honey supplied by the plaintiff feeding the bees during the winter; but, upon a perusal of the evidence, I think it is wholly improbable.

The plaintiff had sold out all he had in the spring of 1910, except one hive at his father-in-law's, three miles away. The bees so sold by the plaintiff were claimed to be diseased, and he made a settlement with the purchaser. He started anew with three hives, which were inspected in 1910, and reported clean. These three at the time of the purchase had increased to nine.

*To be reported in the Ontario Law Reports.