Before doing this, it may be well to state shortly what I apprehend to be the effect of the finding of the county court judge. In the first place, I consider that the judge has so found the facts as to the planting and growth of the yew trees as to preclude the supposition of mere accident, and that the trees must be taken so to have been planted and grown with the knowledge of the defendants as to make them responsible for whatever might be the direct consequence of the original planting.

Secondly, although it is found that the plaintiff saw the horse in the meadow the day before it died, it is also found that he was not aware of the existence of the yew trees, and I think it must be taken that any such negligence on the part of the plaintiff as would disentitle him to recover is negatived. The mere fact that the plaintiff saw the horse in the field would go for nothing, and I do not think that he was bound to examine all the boundaries so as to see that no tree likely to be injurious to his horse was projecting over the field he had hired.

It ought also to be noticed that the decision in no way depends upon any question of fencing or the co-relative rights and duties arising therefrom, and therefore the cases which are cited to us based upon these afford us no assistance.

The question seems to resolve itself into this: Was the act of the defendants in originally planting the tree, or the omission to keep it within their own boundary, a legal wrong against the occupiers of the adjoining field, which, when damage arose from it, would give the latter a cause of action?

On the part of the defendants it may be said that the planting of a yew tree in or near to a fence, and permitting it to grow in its natural course, is so usual and ordinary that a court of law ought not to decide that it can be made the subject of an action, especially when an adjoining land-owner, over whose property it grew, would, according to the authorities, have the remedy in his own hands by clipping.

On the other hand, the plaintiff may fairly argue that what was done was a curtailment of his rights, which, had he known of it, would prevent his using the field for the purpose for which he had hired it, or would impose upon him the unusual burden of tethering or watching his cattle, or of trimming the trees in question; and although the right to so trim may be conceded, this does not dispose of the case, as the watching to see when trimming would be necessary, and the operation of trimming, are burdens which ought not to be cast upon a neighbor by the acts of an adjoining owner. It may also be said that if the tree were innocuous it might well be held, from grounds of general convenience, that the occupier of the land projected over would have no right of action, but should be left to protect himself by clipping. Such projections are innumerable throughout the country, and no such action has ever been maintained; but the occupier ought, from similar grounds of general convenience, to be allowed to turn out his cattle, acting upon the assumption that none but innocuous trees are permitted to project over his land.

The principle by which such a case is to be governed is carefully expressed in the judgment of the Exchequer Chamber, in *Fletcher* v. *Rylands*, 14 W. R. 799, at p. 801, L. R., 1 Ex. 265, at p. 279, where it is said. "We think that the true rule of law is that the person who, for his own purposes, brings on his lands, and collects and keeps there, anything likely to do mischief if it escapes, must keep it in at his peril; and if he does not do so, is *prima facie* answerable for all the damage which is the natural consequence of its escape." This statement of the law was cited and approved of in the judgment of the House of Lords in the same case.

In *Fletcher* v. *Rylands*, the act of the defendant complained of was the collecting in a reservoir a large quantity of water, which burst its bounds and flowed into the plaintiff's mine; but though the degree of caution required may vary in each particular case, the principle upon which the duty depends must be the same, and it has been applied under many and varied circumstances of a more ordinary kind, as in *Aldred's Case*, 9 Rep. 75b, where the wrong complained of was the building of a house for hogs so near to the plaintiff's premises as to be a nuisance: *Tenant* v. *Goldwin*, 1 Salk. 360; and others which are cited in Comyn's Digest, tit. "Action on the Case for Nuisance"; and in the judgment in *Fletcher* v. *Rylands*, in all which cases the maxim "*Sic utere tuo ut alienum non lœdas*" was considered to apply, and those who so interfered with the enjoyment by their neighbors of their premises were held liable.