

5. Had the defendant reasonable grounds for believing that his bees were, by reason of the situation of his hives, or their numbers, dangerous to persons or horses upon the highway or elsewhere than on the defendant's premises? A. Yes.

6. At what sum do you assess the damages of the plaintiff if the defendant be liable for damages? A. \$400.

On these findings the trial Judge entered a judgment for plaintiff for \$400.

There is abundance of evidence, I think, for the findings of the jury, and the question is whether they warrant the judgment in question.

It was estimated that the strength of a hive was between 15,000 and 50,000 bees, and the plaintiff speaks of them as attacking the horses and himself in clouds. He estimated that there were more than 4 bushels of bees on the horses and in the air. This, of course, is a mere estimate, but it is clear that the number of defendant's bees was very great.

For the defence it was contended that defendant was guilty of no negligence, and that there was no evidence that the bees were of a vicious nature, and that defendant was not aware of any viciousness or propensity on the part of the bees to attack mankind or animals.

The doctrine of scienter or "notice of mischievous propensities" of the bees has, I think, no application to this case, nor could the absence of negligence, in the sense pressed upon us, relieve defendant of liability. The facts shew that defendant placed a very large number of hives of bees within 100 feet of plaintiff's land, and that in the course of their ordinary flight between the hives and plaintiff's field of buckwheat they would pass directly over plaintiff's intervening field of oats, where it was necessary for plaintiff to be for the purpose of harvesting the same.

The right of a person to enjoy and deal with his own property as he chooses is controlled by his duty to so use it as not to affect injuriously the rights of others, and in this case it is a pure question of fact whether defendant collected on his land such an unreasonably large number of bees, or placed them in such position thereon as to interfere with the reasonable enjoyment of plaintiff's land. I think the reasonable deduction from the answer of the jury to question 5 is that the bees, because of their numbers and position on defendant's land, were dangerous to plaintiff, and also that de-