

The judgment of the Court (MULOCK, C.J., ANGLIN, J., CLUTE, J.), was delivered by

MULOCK, C.J.:—The defendant was the owner of 160 or 170 hives of bees, which he placed in a small yard situate within about 20 feet of the highway, running east and west. At the southerly end of this yard was a small building with a frontage of about 24 feet on the highway, about 18 feet in depth and 17 feet in height. From north to south the yard occupied by the hives was about 124 feet in length. Immediately opposite this yard on the south side of the road was plaintiff's property consisting of a field of about 8 acres, which was in oats, and beyond it another field in buckwheat. The highway is about 56 feet in width. On 10th August, 1905, plaintiff proceeded to the oat field with a pair of horses and a binder for the purpose of cutting the oats, when the horses were attacked by a large number of bees. The horses ran away from plaintiff, dragging the binder with them to the south end of the field, and there stopped at the fence.

Plaintiff followed them and endeavoured to unhitch and take them away, but was unable to make them move. He himself was being similarly attacked and made his escape by immersing himself in a neighbouring pool of water, and covering the exposed portions of his body with mud. One of the horses died almost at once in the field from the effect of the stings, and the other succumbed within 2 or 3 days. Plaintiff himself suffered severely, and was under medical treatment.

The questions put to the jury and their answers are as follows:—

1. Were the plaintiff Lucas and his horses injured by bees engaged in ordinary flight or work, or by the swarming of a colony of bees? Ordinary flight.
2. If they were injured by bees engaged in ordinary work and flight were those the defendant's bees? A. Yes.
3. If the plaintiff and his horses were injured by the swarming of a colony of bees had the bees swarmed from the defendant's colony? A. No answer.
4. Had the defendant reasonable grounds for believing that his bees were more dangerous than ordinary bees? A. Yes.