

taint in honey being sufficient to spread the disease. The statute aimed at preventing that by forbidding the sale, and the injury to the plaintiff arose from the act done by the defendant in contravention of the statute: *Hagle v. Laplante*, 20 O.L.R. 339, 1 O.W.N. 413; *Groves v. Lord Wimborne*, [1898] 2 Q.B. 402.

The distinction in the law between an Act passed prohibiting a certain thing, with penalty in case of breach, in the interests of the public or for a certain class, is pointed out in *Ward v. House*, 4 App. Cas. 13. . . .

I do not think the damages in this case should be limited to a return of the purchase-money. Having regard to the nature of the business, the defendant must have known that these bees would be associated with others; and, if tainted, the natural consequence would be to spread the disease among other colonies. . . .

[Reference to *Penton v. Murdock*, 22 L.T.R. 371; *Earp v. Falkner*, 34 L.T.R. 284; *Mullett v. Mason*, L.R. 1 C.P. 559; *Wolverhampton New Waterworks Co. v. Hawkesford*, 6 C.B. N.S. 356; *Bowing v. Goodehild*, 2 W. Bl. 906; *Couch v. Steele*, 3 E. & B. 402; *Atkinson v. Newcastle Waterworks Co.*, 2 Ex. D. 441; *Emerton v. Matthews*, 7 H. & N. 586; *Burnaby v. Babbitt*, 16 M. & W. 644; *Watkins v. Naval Colliery Co.*, [1911] 2 K.B. 174; *Groves v. Lord Wimborne*, [1898] 2 Q.B. 402; *Britannic Merthyr Coal Co. v. David*, [1910] A.C. 74; *Butler v. Fife Coal Co.*, [1912] A.C. 149, 160; *City of Vancouver v. McPhalen*, 45 S.C.R. 194, 214.]

The appeal should be dismissed with costs.

MULOCK, C.J.:—I agree with the view expressed by my brother Clute in his written judgment, that the representations made by the defendant at the time of the sale amounted to a warranty that the bees were clean, whereas they were then in fact tainted with foul brood. I, therefore, would dismiss this appeal with costs.

I express no opinion as to whether the Foul Brood Act gives to the plaintiff a cause of action.

SUTHERLAND, J., dissented, for reasons stated in writing.

Appeal dismissed; SUTHERLAND, J., dissenting.