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CARTWRIGHT, MASTER. SEPTEMBER 17TH, 1906.

CHAMBERS.

BLACK v. ELLIS.

Stay of Proceedings—Motion for—Other Actions Arising out of Same Contract—Different Causes of Action.

Motion by defendant Ellis to stay the action until the disposition of other pending actions in which, as it was alleged, the same issue was raised.

W. R. Riddell, K.C., for defendant Ellis.

W. E. Middleton, for plaintiff.

THE MASTER:—The facts as they appear in the report of the case in 7 O. W. R. 490, shew the nature of this action. From defendant's affidavit filed in support of the motion it appears that on 6th August the Consumers Electric Co. commenced an action against the city of Ottawa, which, it is alleged, raises the same point as the present action, and is no doubt in respect of the same agreement. By agreement of the parties it seems that this later action will be set down for trial at Ottawa on the 24th instant. The present action was at issue in June, and has, I think, been already set down and notice of trial given.

It was contended by counsel for plaintiff (1) that there was no power to stay in such a case as the present; and (2) that even if the power existed it should not be exercised here.

As to the first objection it looks as if it was met by the case of Lee v. Mimico Real Estate Co., 15 P. R. 288. But it is not necessary to decide this at present, for on the second

ground I agree with the plaintiff. The actions are so different that they certainly could not be consolidated. Even if this could be done, the conduct of the cause should ordinarily be given to the earlier plaintiff. See Girvin v. Burke, 13 P. R. 216.

If both of these cases are set down on the same list, and come on before the same Judge, he will be in a position to deal with them far better than any one else. I think it should be left with him, and that this motion should be dismissed, with costs to plaintiff in the cause.

This will be without prejudice to any application that may be made to the presiding Judge at Ottawa. . . .

It may be safely assumed that all the witnesses in both actions reside at Ottawa, and can be secured at any time.

CARTWRIGHT, MASTER. SEPTEMBER 17TH, 1906.

CHAMBERS.

GRANT v. McRAE.

Slander—Pleading—Defence—Striking out—Embarrassment—Privilege—Mitigation of Damages.

Motion by plaintiff to strike out paragraphs 3 and 4 of the statement of defence as embarrassing.

Featherston Aylesworth, for plaintiff.

Grayson Smith, for defendant.

THE MASTER:—This is an action in which the plaintiff alleges that the defendant on 3rd January last, and on various other occasions, spoke and published the following words concerning the plaintiff: "Dan Grant burnt the barn for the insurance." The innuendo was that the plaintiff was guilty of the crime of arson.

It is admitted that the barn was insured at the time it was burnt.

The statement of defence was delivered on 4th September instant. The defendant was examined for discovery

on the following day, pursuant to an appointment given on 1st September. The statement of claim was delivered on 19th June.

The plaintiff probably thought he might get down to trial at the Cornwall Assizes commencing on 24th instant. Otherwise it was inconvenient to have examination for discovery before the statement of defence was delivered: see Barwick v. Radford, 7 O. W. R. 237.

The statement of defence in the 2nd paragraph denies the allegations contained in the statement of claim, and proceeds as follows:

3. On the evening of the 3rd of January, 1906, a barn belonging, as the defendant believes, to the plaintiff, was totally destroyed by fire, and in this barn was a large quantity of hay belonging to the defendant's father, which was totally destroyed by this fire and was uninsured.

4. The defendant says that if he ever spoke or used any language concerning the plaintiff in reference to the said fire, what he said was nothing more than a mere expression of belief or opinion made honestly and without malice.

The plaintiff moves to strike out paragraphs 3 and 4 as embarrassing.

It is clear from the decision in Rassam v. Budge, [1893] 1 Q. B. 571, that the motion must succeed, as it is impossible to say what these paragraphs mean. If the defendant wishes to set up privilege or to plead in mitigation of damages, he must do so plainly. If he denies that he used the words alleged or words substantially the same, he must be content with the 2nd paragraph.

The paragraphs must be struck out, and the defendant, if he desires to do so, must amend within 10 days.

The costs of the motion will be to plaintiff in any event.

SEPTEMBER 17TH, 1906.

DIVISIONAL COURT.

LAKEFIELD PORTLAND CEMENT CO. v. E. A. BRYAN CO.

Summary Judgment—Rule 608—Action for Money Demand —Effect of Delay—Payment into Court.

Appeal by defendants from order of Judge of County Court of Peterborough granting summary judgment under

Rule 608, in an action to recover $116.51 for cement sold and delivered, and appeal by defendants from an order of MACMAHON, J., in Chambers, removing stay of execution consequent upon appeal.

J. Bicknell, K.C., for defendants, contended that Rule 608 could not be applied in a case of this kind, citing Leslie v. Poulton, 15 P. R. 322; Molsons Bank v. Cooper, 16 P. R. at p. 202; Lake of the Woods Milling Co. v. Apps, 17 P. R. 496.

O. A. Langley, Lakefield, for plaintiffs, contra.

THE COURT (MULOCK, C.J., ANGLIN, J., CLUTE, J.), held that the fact that the effect of delay would defeat plaintiffs' claim was sufficient to warrant a summary judgment in a case where the debt was due, approving Kinloch v. Morton, 9 P. R. 38, and that the judgment could be set aside only on payment into Court of the amount for which judgment was entered.

If the money is paid in within a week, costs of appeal and of motion before MACMAHON, J., reserved until after the trial. In default of payment in, appeal to be dismissed with costs.

BOYD, C. SEPTEMBER 19TH, 1906.

CHAMBERS.

REX v. FERGUSON.

Police Magistrate—Charge under Ontario Factories Act—Discharge of Accused—Application for Stated Case—Time for Making.

Motion by the Attorney-General for Ontario for an order requiring the police magistrate for the city of St. Thomas to state a case for the consideration of the High Court.

J. R. Cartwright, K.C., for the Attorney-General.

J. B. Davidson, St. Thomas, for the defendant.

BOYD, C.:—The defendant, being charged with a breach of duty under the Ontario Factories Act, was, after hearing

before the police magistrate for the city of St. Thomas, discharged on 14th February, 1906. On 1st March an application was made to the magistrate on behalf of the Attorney-General for Ontario to state a case for the consideration of the High Court of Justice, under sec. 900 of the Criminal Code. This section of the Code has now been made available for the review of all summary convictions under Ontario law by virtue of the amendment made of R. S. O. 1897 ch. 90, as contained in 1 Edw. VII. ch. 13, sec. 2 (O.), which was apparently intended to obviate the difficulty raised in Regina v. Simpson, 28 O. R. 531.

The only objection now raised is that the application to state a case should have been made within 10 days after the dismissal. This is based upon an application of the time limit fixed in R. S. O. ch. 90, sec. 9, to the method of appeal or review by way of case stated. In terms, however, that section applies only to appeals to the General Sessions, whereas the provision in the Criminal Code as to case stated to the High Court has no such limitation of time, but provides that the application shall be made and the case stated within such time and in such manner as is directed by Rules under sec. 533 of the Code. No such Rules have been passed, and the result is that the matter should be prosecuted in a reasonable time.

The difficulty raised by the magistrate as to the effluxion of time does not appear to be one that should deprive the Attorney-General of the right given by sec. 900 of the Criminal Code, sub-sec. 5. The order should, therefore, go for the statement of the case forthwith. No costs.

CARTWRIGHT, MASTER. SEPTEMBER 20TH, 1906.

CHAMBERS.

ELGIE & CO. v. EDGAR.

EDGAR v. ELGIE & CO.

CLEMENS v. ELGIE & CO.

Interpleader—Action for—Previous Refusal of Summary Application—Stay of Proceedings in Separate Actions Brought against Interpleading Parties.

After the disposition of an interpleader application in Re Elgie, Edgar, and Clemens, ante 33, 299, Elgie & Co., on the

25th June, commenced an interpleader action, and, on the order of a Judge, paid into Court $730.44 next day. Both defendants duly appeared or accepted service. The defendant Clemens delivered his statement of defence on 8th September. For some reason Edgar allowed the time to elapse, and the pleadings were noted as closed against him. He is applying now for leave to defend if necessary.

On 25th June Edgar commenced an action against Elgie & Co. for $400; and on 26th June Clemens commenced an action also against Elgie & Co. for more than $900.

Elgie & Co. set their action down for trial on the non-jury list at Toronto. The venue in the Edgar action was at Bracebridge, and that in the Clemens action at Berlin.

Elgie & Co. now moved to stay the two actions brought against them until their action should be finally disposed of.

F. Arnoldi, K.C., for Elgie & Co.

F. E. Hodgins, K.C., for Edgar.

J. E. Jones, for Clemens.

THE MASTER:—The motion was opposed on several grounds. It was said that the refusal of the interpleader order was res judicata as disproving any right on Elgie & Co.'s part to interplead. Even if such a ground can be taken before the Master in Chambers, it is sufficient to note the difference between the two procedures.

On moving for an interpleader order the applicant must shew clearly his right to be rid of all responsibility, and to throw the burden on the claimants. It was only decided on that motion that this right was not so established in face of the opposition of both claimants. In the present action the plaintiffs assume the whole burden of proof, and also not only have brought the money into Court, but are liable for costs to both claimants if their present action fails. It was admitted on the argument that they were perfectly responsible for costs and damages. When the matter is fully and carefully investigated at a trial, it may be held that Elgie & Co. were right after all, and that the claimants should have consented to the order asked for. Then it was said that Clemens having claimed the whole $730.44 and more, while Edgar only claimed $400, this shewed that interpleader could not lie. The contrary is distinctly said to be the law in the very

elaborate work of Mr. R. J. Maclennan on Interpleader: see p. 86, where the cases are collected.

Then the very salutary provisions of the Ontario Judicature Act, sec. 57 (12), are always to be applied "so that as far as possible all matters so in controversy between..... parties.....may be completely and finally determined and all multiplicity of legal proceedings concerning any of such matters avoided."

In the present case it would seem discreditable to our system if one action could be proceeding in Toronto, a second at Berlin, and a third at Bracebridge, all involving the same initial question.

Here Elgie & Co. were the first to take proceedings, and if they can prove their claim to a judgment that defendants must interplead, they should certainly be allowed to do so, unless the defendants Clemens and Edgar will in any way be prejudiced thereby.

But I do not see how this can be the case. The powers of the Court were thought sufficiently wide to determine in one action all the matters arising in the curious case of Morton v. Grand Trunk R. W. Co., 8 O. L. R. 370 (see at p. 381), against the opposition of the plaintiffs in the two actions. These powers will certainly have no great difficulty in this case in "the determination of all the matters which must be dealt with before the rights of the parties are finally settled, and that without doing any injustice to any of them:" per Meredith, C.J., at p. 381, supra. See, too, Maclennan, at p. 13.

The proper order to make, as I understand it, is as follows. The motion to stay the Edgar and Clemens actions is granted. The defendant Edgar is to be at liberty to deliver such a statement of defence as he may be advised, in 10 days. The defendant Clemens may amend his statement of defence by counterclaim or otherwise as he may desire to do, within the same time.

The costs of this motion will be, as the matter is novel, in the cause, except so far as they have been increased by allowing Edgar in to defend, which must be to plaintiffs in any event.

This order is not to have the effect of delaying the trial of the plaintiffs' action, and the record can be taken out and

amended and returned without any fresh charges, so far as I have power so to order.

I note that Mr. Maclennan (at p. 18) says: "There is nothing in any of the existing interpleader statutes forbidding an action of interpleader." If the refusal of the interpleader order in the present case prevents this action from being brought, that must be set up as a defence to the action, and cannot be dealt with in Chambers so as to have any effect on the disposition of the plaintiffs' motion to stay the other actions.

BOYD, C. SEPTEMBER 20TH, 1906.

CHAMBERS.

CITY OF TORONTO v. GRAND TRUNK R. W. CO.

Costs—Taxation between Party and Party—Charges for Searches for Documents—Allowances for.

Appeal by defendants the Grand Trunk R. W. Co. from rulings of a taxing officer upon taxation against the appellants of the costs of the plaintiffs and the defendants the Canadian Pacific R. W. Co. The officer allowed to plaintiffs $150 and to defendants the Canadian Pacific R. W. Co. $25 for searches for documents made in preparation for trial, and these were the items objected to.

R. C. H. Cassels, for appellants.

W. Johnston, for plaintiffs.

Shirley Denison, for defendants the Canadian Pacific R. W. Co.

BOYD, C.:—In a book of great accuracy it is said that searches for pedigrees and for ancient records, charters, or other documents, may, if successful, be allowed between party and party: Marshall on Costs, 2nd ed., 1862, p. 285. This charge, though not expressly provided for in our tariff of costs, is not necessarily excluded therefrom—it is in fact by the practice of the Courts a recognized item to be allowed in a proper case according to the discretion of the taxing officer. Rule 1,178 makes the tariff conclusive in respect of the matters

thereby provided for, but it does not mean to exclude other charges which may be proper though omitted therefrom.

In Bastard v. Smith, 10 A. & E. 213, a charge of £93 paid to a gentleman in the Chapter house for making searches, &c., was allowed, though it was objected to on the ground that it was not properly an item between party and party, to charge for such precautionary measures as searching for evidence.

The distinction is well marked between such instances of successful search for existing evidence in the shape of lost or mislaid documents, and preparation being made for giving evidence by preliminary experiment or investigation. Such was the case of McGannon v. Clarke, 9 P. R. 533, where the charges claimed arose in order to qualify one to become a witness. These, unless special provision is made for them by Rule or tariff, are not proper items to be paid by the opposite party. Item 142 of the tariff is perhaps wide enough to cover the case of searches out of Court in different places by competent persons in the case of material documents, which have got astray from the proper custody. But, without explicit directions, it was the practice to allow these searches for existing documents according to the course of the Court in dealing with costs; see this elucidated in Archbold's Practice, 14th ed., vol, 1, p. 703, note (u). See Cherton v. Freeman 19 W. R. 559.

The documents searched for and found in this case were, it is not disputed, of vital importance, and the efforts made and expenses incurred were reasonable in themselves.

I think that the ruling and allowance of the taxing officer should be upheld, but it is not a case to give costs against the appellants.

SEPTEMBER 20TH, 1906.

DIVISIONAL COURT.

GILLARD v. McKINNON.

Promissory Note—Fraud in Procuring Signatures of Makers —Holder for Value—Suspicious Circumstances—Failure to Make Inquiry—Findings of Jury—Judge's Charge.

Motion by defendants to set aside verdict and judgment for plaintiff for $11,000, and interest, in an action by the

holder to recover the amount of a promissory note from the makers and indorser. Defences of fraud in the procuring of the note, and of knowledge by the plaintiff of circumstances connected with the note, which either did in fact cause him to suspect the existence of something that would affect the validity of the note, or which were such as should have raised such a suspicion in his mind, and failure to make inquiry, were set up.

The jury found that defendants made the note; that there was no fraud in the procuring of the signatures to the note; that the plaintiff was a bona fide holder for value, and without notice of the circumstances attending the making of the note; and that the plaintiff did not, believing there was fraud in procuring the note, deliberately refrain from inquiring.

G. H. Watson, K.C., for defendants.

G. T. Blackstock, K.C., for plaintiff.

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

ANGLIN, J.:—The defendants object to the charge of the trial Judge upon several points, and also maintain that the finding of absence of fraud is against the weight of evidence. But their chief objection is that the trial Judge refused to put questions to the jury to elicit their opinion whether the plaintiff—though he did not believe that the note had been fraudulently procured—in fact suspected that there were some facts affecting its validity, or, if he did not in fact so suspect, whether the circumstances, of which he was aware, were not such as would raise such suspicion in the mind of an ordinarily prudent man; and whether, in either case, he refrained from making such inquiries as he should have made to remove any such suspicion.

Mr. Blackstock's position is that nothing short of proof of suspicion in fact raises a duty of inquiry. Mr. Watson maintains that, if circumstances calculated to arouse suspicion in the mind of an ordinarily prudent man be shewn, though they did not in fact create such suspicion, the duty to inquire arises, and in default of inquiry plaintiff cannot recover.

It seems unnecessary to determine this question, because, upon a careful consideration of all the portions of the evidence relied upon by Mr. Watson, we find no circumstances shewn to have come to the knowledge of plaintiff, which should, in our opinion, have aroused in the mind of an ordinarily prudent man any suspicion of a want of bona fides in the procuring of the note in suit, and certainly nothing upon which a jury could reasonably find that there was in fact such suspicion in plaintiff's mind.

When plaintiff acquired title to the note—as he did on the 24th December—the only circumstances known to him were that a note for $11,000, drawn at one year at 6 per cent., bearing signatures of 7 makers and an indorser, in form perfectly regular, was presented to him for discount with the recommendation of his most intimate friend, Mr. Ballantyne. Mr. Ballantyne gave him a plausible explanation of the fact that the note was to be negotiated so far from the homes of the parties to it. The plaintiff, it is true, hesitated to make the advance—says he decided that he would not do so without knowing more of it. His only doubt, apparent from the evidence, was as to the financial sufficiency of the parties to the note. To ascribe to him doubt upon any other point would be sheer conjecture. It is impossible to say that inquiry to remove the doubt shewn by the evidence would have led to knowledge of any of the circumstances attendant upon the making of the note. To impute to the plaintiff knowledge of these circumstances would be to charge him with knowledge which he would not, unless accidentally, have acquired, had he made the inquiry appropriate to remove the doubt in his mind. But plaintiff saw Ballantyne (who had come from Montreal to Stratford), and, upon his assurance merely that the parties to the note were financially sufficient to insure payment, his hesitation disappeared, and he gave his cheque for the face amount of the note. He also admits that he thought Ballantyne, though not a party to it, had some personal interest in the discounting of the note.

We cannot find in these circumstances anything which should have aroused in the mind of an ordinarily prudent man a suspicion that the note was fraudulently or irregularly procured, or that its validity was in any respect open to question, certainly not anything from which a jury could reasonably infer that there was actually such a suspicion in plaintiff's mind.

There was, therefore, we think, nothing upon which a finding could be based of conditions raising a duty on the part of plaintiff to make inquiries. There was, in our opinion, no evidence proper to submit to the jury upon the questions which counsel for the defendants urges should have been put to them.

It is unnecessary, therefore, to consider the other points raised at bar, though we should, perhaps, state that, after considering the evidence, we remain unconvinced that any of the findings of the jury should be disturbed because against the evidence.

The defendants' motion fails and will be dismissed with costs.

BOYD, C. SEPTEMBER 21ST, 1906.

CHAMBERS.

WOODRUFF CO. v. COLWELL.

Company—Parties to Action—Authority to use Name—Solicitor—Meeting of Shareholders.

Appeal by defendant from order of Master in Chambers (ante 302) dismissing motion to strike out the name of the company as plaintiffs, and for security for costs.

C. A. Moss, for defendant.

W. E. Middleton, for plaintiffs.

BOYD, C., dismissed the appeal; costs in the cause. If defendant gives security, plaintiffs to give security in like amount.

BOYD, C. SEPTEMBER 21ST, 1906.

CHAMBERS.

McRAE v. BALLANTYNE.

Writ of Summons—Service out of Jurisdiction—Motion to set aside—Grounds—Res Judicata—One Defendant in Jurisdiction—Conditional Appearance.

An appeal by defendants Ballantyne and Lowell & Christmass from order of Master in Chambers (ante 289) dismissing

motion to set aside service of writ of summons out of the jurisdiction, and order permitting such service.

G. T. Blackstock, K.C., for appellants.

G. H. Watson, K.C., for plaintiffs.

BOYD, C.:—Upon the affidavits and material before me it does not appear expedient to deal with all the large questions raised by the appellants. The consideration of them will more fitly come up at a later stage. It should be open for the appellants to raise the question when the pleadings are complete as to the cause of action alleged being res judicata as to the co-defendant McKinnon, and if this is made to appear it should be also open to the appellants to raise the question as to the competency of the Court to deal with the cause of action as it is to be made out against the other defendants. At present it seems to me that the order to serve out of the jurisdiction is maintainable because one of the defendants, McKinnon, is within the jurisdiction—but if the action is vexatious as to him, this reason for upholding jurisdiction as to the others disappears. I would also allow the appellants to enter a conditional appearance. It is no doubt premature to discuss the method of trial, but it may be found not to be a fit case for a jury.

Order accordingly and costs in cause.

SEPTEMBER 24TH, 1906.

DIVISIONAL COURT.

LUCAS v. PETTIT.

Animals—Escape of Bees from Defendant's Land—Injury to Property of Plaintiff—Negligence—Scienter—Liability—Findings of Jury.

Motion by defendant to set aside the findings of the jury at the trial of this action before MAGEE, J., and the judgment entered for plaintiff thereon, and to enter judgment for defendant.

The action was brought for injuries caused by bees of defendant.

G. Lynch-Staunton, K.C., for defendant.

W. S. McBrayne, Hamilton, for plaintiff.

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.

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-

fendant had reason so to believe. In my view, it is immaterial whether or not defendant, in these circumstances, regarded the bees as dangerous. If he was making an unreasonable use of his premises, and injury resulted therefrom to plaintiff, he is liable.

It was defendant's right to have on his premises a reasonable number of bees, or bees so placed as not to unfairly interfere with the rights of his neighbour, but, if the number was unreasonable, or if they were so placed as to interfere with his neighbour in the fair enjoyment of his rights, then what would otherwise have been lawful, becomes an unlawful act. In this case the jury found as a matter of fact that the bees, because of their number and situation, were dangerous to plaintiff. Defendant was acting unlawfully, and he is liable for injury flowing directly from such unlawful act: O'Gorman v. O'Gorman, [1903] 2 I. R. 573; Farrer v. Nelson, 15 Q. B. D. 260.

Appeal dismissed with costs.