MONTSERRAT

IN THE COURT OF APPEAL

MAGISTERIAL APPEAL NO. 7 of 1986

BETWEEN:

LESLIE WILLIAMS - Defendant/Appellant

and

GABRIEL MURRAINE - Plaintiff/Respondent

Before: The Honourable Mr. Justice Robotham - Chief Justice
The Honourable Mr. Justice Bishop
The Honourable Mr. Justice Moe

Appearances: John Kelsick for the Appellant
Kenneth Allen for the Respondent

1987: March 18,
Nov. 16.

JUDGMENT

ROBOTHAM, C.J.

This is an appeal which does not involve any complicated questions of fact but rather a determination of the question of Law namely, what is the liability, if any, of the owner of bees which are hived, where they cause personal injury to a person working on his adjoining property.

The facts simply stated are that the defendant/appellant, Leslie Williams, is a commercial bee-keeper who has in a state of reclamation or captivity 20 hives of bees on his land at Harris in Montserrat which land is comprised of 1½ acres. The respondent Gabriel Murraine, farms a small portion of land adjacent to that where the appellant has his bees hived some 50 yards away on the hillside.

Up to 31 May 1986, the respondent had farmed his piece of land on a regular basis for a period of two years, and there was no complaint about his being stung by the appellant's bees. Indeed when he commenced working his land, the appellant already had his bees on his 1½ acres of land. On the said 31 May, whilst the respondent was working on his piece of land, he was bitten in four places by bees.

There was no contest that the bees were belonging to the appellant. The contention put forward by the appellant was that the respondent swatted the bees whilst they were foraging, despite being warned by the appellant not to do so, and being told that the bees would not sting him unless they were molested. It was whilst he was none-the-less so engaged in swatting the bees from the flowers, that he was bitten.

/The appellant.....

The appllant also stated in his evidence that he had imported from the U.S.A. a queen bee, and because of the presence of the queen bee on the land, wild bees were also attracted thereto.

Also giving evidence for the appellant in the Court below was Franklyn Margetson, the Manager of the local Land Development Authority and himself a bee-keeper. He stated that there were at least 20 bee-keepers in Montserrat, and that the strain of bees are honey bees, or Italian bees which are more docile than wild bees. Bees he said forage over an area of 4-5 miles, and do not attach human beings, unless they themselves molested.

Unfortunately the Magistrate in his reasons for judgment stated that he excluded Margetson's evidence from his consideration of the case because no application was made at the trial for him to be treated as an expert. In this he was clearly wrong. There was no need for such an application to be made and the question for the Magistrate to consider was what weight and value he was going to attach to such evidence.

The Magistrate in accepting the submission of Counsel for the plaintiff/respondent held that liability for the stings suffered by the plaintiff was governed by the rule in Rylands and Fletcher and awarded the plaintiff damages amounting to $110 with costs $120. His specific findings were (1) that bees are not dangerous creatures, (2) that they are wild by nature and were not confined, (3) that there was thus a risk in bee-keeping and (4) the bees escaped from the defendant's land and injured the plaintiff.

The first question to be asked in dealing with this appeal is how are bees to be classified?

In the first place they are classed as wild or ferae naturae animals. There is no absolute property in wild animals such as bees. A person may however acquire what is known as a qualified property in them by lawfully taking or reclaiming them. This property remains in the person reclaiming them, until they regain or return to the natural liberty, without any animus revertendi. It follows therefore that bee-keeping is not unlawful in Montserrat and that an action for trespass would lie against any person who without lawful excuse takes bees from a hive in which they are kept in a state of capacity - see Halsburys Laws of England, 4th edition, vol. 2 paras 205, 206.

The liability for injuries caused by animals depends on their known nature. Those which have been domesticated, e.g., dogs, and are by their

/nature.....

nature harmless create no liability on the part of the owner for injury done unless there is proof of a vicious propensity or scienter, which was known to the owner. Once this knowledge is known to the owner, he keeps the animal at his peril. This rule of course is subject to any statutory exceptions. On the other hand, animals which are naturally savage e.g. tigers, may lawfully be kept by a person but if damage is caused by such an animal, liability is established irrespective of negligence or scienter. These are well established principles and the next question is, in what category do bees fall?

Halsburys Laws of England, 3rd edition, Vol. 1 para 1272 puts the matter thus:-

> "It is difficult to enunciate an exact formula for the classification of dangerous animals. Whether they are ferae naturae so far as rights of property are concerned is not the question. Some are certainly included, in that they are of a dangerous nature, and to this class belong monkeys, lions, tigers.....which still remain wild and untamed though individuals are brought to a degree of tameness which amounts to domestication. It would seem that bees do not fall into this category....."

For the proposition that bees do not fall into this category of dangerous animals, the authority given as footnote (f) is Ogorman v Ogorman (1903) 22 Ir. R. 73. This report is not available so I will have to be content with reproducing the footnote. It was a case of injury and subsequent death of a man brought about by bees swarming on his horse thus causing him to be thrown therefrom. It reads:-

> "The jury expressly found negligence in that the bees were kept in unreasonable numbers and in an unreasonable place and were smoked out at an unreasonable time."

The footnote then went on to state:-

> "Bees unless disturbed do not generally sting, and probably the keeping of a few ordinary hives in an ordinary place would not render the owner liable for damage caused by their stings in the absence of negligence. If kept in unreasonable numbers however they may amount to a nuisance - Parker v Reynolds (1906) Times, December 17, 2 Digest 252 (341).

The learned author of Clerk and Lindsell on Torts, 14th edition in paragraphs 1401-1402 deals with the question of nuisance by the keeping of animals. The principle is that for it to amount to a nuisance it must be by virtue of some excessive or abnormal user of the land. He gives as the authority for this principle the case of Ogorman v Ogorman referred to above.

/ in deciding.....

In deciding this appeal, and before turning to the question whether the Magistrate was right or wrong in his application of the rule in Rylands v Fletcher to this case, I would briefly dispose of the question of liability under the possible head of nuisance. I must do this because the Magistrate's Court is not a Court of pleadings, but a plaintiff none-the-less is entitled to be granted such relief in that Court, as the circumstances of the case warrant. If therefore his claim could be established under the heading of nuisance, he would be entitled to relief.

The essence of nuisance is the interference of a persons right to the enjoyment of his land. In scope it can sometimes overlap with the rule in Rylands v Fletcher and negligence.

In deciding whether a nuisance exists or not, a balance has to be struck between the right of a defendant to use his own property for lawful purposes and the competing right of his adjoining neighbour to the undisturbed enjoyment of the use of his property.

In this case I do not consider that the defendant/appellant was using his land for an unreasonable purpose or that the bees were in unreasonable quantities. He was a commercial bee-keeper, using his land for keeping bees in a state of reclamation. He was in no position to prevent them from foraging according to their nature over the plaintiff's land. It is not a case that he was keeping the bees in a highly residential area, to the annoyance of his neighbours on either side of him. He was keeping them on his land, in a rural and agricultural community. There was no evidence of negligence, it was not in unreasonable quantities, or in an unreasonable place and there was evidence before the Magistrate that bees from their nature do not sting unless disturbed. There was also evidence to show, if believed, that the plaintiff was swatting the bees when he got stung. I do not consider that the plaintiff could succeed either in nuisance, trespass or on the ordinary limb of negligence. In any event he has failed on a balance of probabilities and in law to establish liability under any of these heads. Can he succeed under the rule in Rylands v Fletcher as the Magistrate found? I think not. The rule in Rylands v Fletcher can only be invoked if the defendant is making a non-natural use of the land, as Lord Moulton said in Richards v Lothian 1913 A.C. 263,280.

> "It is not every use to which land is put that brings into play that principle in Rylands v Fletcher. It must be some special use bringing with it increased danger to others and must not merely be the ordinary use of land or such a use as is proper for the general benefit of the community."

I do not consider as I have already indicated that the defendant here was making a non-natural use of the land.

/A further.....

A further application of the rule shows that there must be some escape of the dangerous thing from the place in which it was confined. The Magistrate found that bees were not dangerous creatures. This finding alone would take this case out of the application of the rule. In any event bees by their nature forage for miles so it cannot be said they "escaped" on to the plaintiff's land.

I am of the view that the Magistrate erred in coming to the conclusions which he did. I would allow the appeal and enter judgment for the defendant with no order as to costs.

L.L. ROBOTHAM,
Chief Justice

E.H.A. BISHOP,
Justice of Appeal

G.C.R. MOE,
Justice of Appeal.