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## THE LAW OF BEES

HARRY R. TRUSLER\*

In 1916 Judge Beall, of New York, declared: "It has come to the hand of this court to decide all sorts of questions about all sorts of animals, reptiles, and insects. . . . But this is the first time it has had to dive into the interesting question of the law of bees." Most lawyers and more laymen are as ignorant of this subject as Judge Beall before his enlightenment. In extenuation of lawyers, it may be observed that none of them needs bees to assist him in stinging. On behalf of laymen, it may be said that wrongdoers often have found "the pains of conscience" augmented by other pains inflicted by the bees themselves, so the pains of the law, in consequence, may not have seemed so essential for the social good.

Yet there is a well-rounded, consistent law of bees that has come down to us from antiquity. It early was held in England, for example, that the honey and wax of bees, but not the bees themselves, were tithable, i.e., subject to a tenth-part tax.<sup>1</sup> But the law of bees runs back much further than this. Blackstone took his law on this subject from the Greeks and Romans; and, curiously enough, there has been practically no change in this law since the days of Plato. An uninterrupted line of decisions through Greek, Roman, French, the Netherlands, and English law, down to late decisions in Iowa, is practically to the same effect—the probable reason for this set policy being the danger of touching the subject.

How complete a system of law frequently develops respecting what often is deemed a trivial subject is surprising, even to lawyers. Nothing is trivial that involves human rights. With the thought that it may be of substantial value and interest, the following summary of the law of bees is given.

## CHARACTER OF WILD BEES

Until hived and reclaimed, bees, in legal contemplation, are wild animals. They are *ferae naturae*. The lawyer is more liberal in classification than the biologist; for animals, in law, may be said to

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<sup>1</sup> *Barfoot v. Norton*, Cro. Car. 559; Anonymous, Cro. Car. 404; 79 Eng. Reprint 951.

include all beasts, birds, reptiles, fishes, and insects. There is no absolute property in wild animals while living, and they are not goods and chattels. Originally the whole human family had a quasi property in all unreclaimed wild animals. This soon passed to the sovereign. In the United States, the general ownership of wild animals is in the state, not as proprietor, but in its collective sovereign capacity as representative of all its citizens in common. As a result, the state may regulate or prohibit the taking of wild animals to any extent it considers necessary for the public good.<sup>2</sup>

#### TWILIGHT ZONE OF PRIVATE OWNERSHIP

It is clear that one may acquire property in wild animals by taming or confining them. Before this is done, however, one yet may have a vague ownership in them *ratione soli* (by reason of the soil). Such ownership merely is the exclusive right that every owner of land has at common law to appropriate to his own use such wild animals as are from time to time found on his land. Absolute title to the land is not necessary; the exclusive right to take the wild animals thereon suffices. Property in wild animals *ratione soli* ceases when they leave the soil; and it may be restricted or taken away entirely by statute.<sup>3</sup>

By the Charter of the Forest, 9 Hen. 111, C. 13, every freeman is entitled to the honey found within his own woods. This charter merely is declaratory of the common law, which also gives the landowner an interest *ratione soli* in the wild bees on his land. The interest *ratione soli* of a landowner in wild bees on his land is sufficient to make their reduction to possession by a trespasser inure to the landowner's benefit. In other words, if X finds a swarm of wild bees on Y's land and without Y's consent X carries away the bees and the honey, X is liable to Y for the trespass and for the conversion of the bees and honey.<sup>4</sup> As a corollary, it follows that a trespasser who places an empty beehive on the land of another acquires no title to the wild bees which subsequently occupy it, or to the honey that they produce. Neither has he an action against an-

<sup>2</sup> 2 Blk. Com. 392; 1 Halsbury's Laws of Eng. 365; 3 C. J. 18-19; 1 R. C. L. pp. 1063-4.

<sup>3</sup> 3 C. J. 21-22; 1 R. C. L. pp. 1068-9.

<sup>4</sup> *Rexroth v. Coon* (1885) 15 R. I. 35, 2 A. S. R. 863; Notes, 70 Am. Dec. 260; Ann. Cas. 1917 B 981; 1 R. C. L. p. 1069; *State v. Repp* (1898) 104 Iowa 305, 40 L. R. A. 687, 73 N. W. 829.

other trespasser who removes the hive and its contents. Only the landowner has suffered a legal loss.<sup>5</sup>

On principle, and there is authority for the view, it seems that a landowner's property in wild bees occupying a tree on his premises is greater than his interest in wild bees swarming upon his land or temporarily clustered upon a branch or other convenient object thereon. "Though a swarm light upon my tree," says Bracton, "I have no more property in them till I have hived them, than I have in the birds which make their nests thereon." Bees clustered upon a tree are little more a part of the land than birds upon its branches. They easily can be driven away without injury to the realty. But after bees have made their home in a tree it is very difficult to dislodge them. Their combs are attached to the tree—a part of the realty—and can not be removed without injury to it. Hence, it is logical to say that bees and honey in a tree belong to the owner of the tree "in the same manner and for the same reason as all mines and minerals belong to the owner of the soil."<sup>6</sup>

#### RECLAIMING WILD BEES

Wild bees may be hived by one on his own land or on the land of another. One who hives them on his own land is undoubtedly their owner.<sup>7</sup> He is said to have a "qualified" property in them. This means that the hiver owns the swarm absolutely, so long as it does not escape and again become *ferae naturae*.<sup>8</sup>

Not necessarily every hiving, however, is sufficient to reclaim wild bees. For where they are confined in a skep, or hive of twisted straw, in the top of a tree, it has been said that their wild nature remains unchanged and that they are not completely, or for any valuable purpose, reduced to possession.<sup>9</sup>

What interest in wild bees does one acquire by going upon the premises of another and hiving them? The answer depends upon the hiver's status on the land. If he is a trespasser, he acquires no interest in the bees, for they belong to the owner of the land. The act of reducing a thing *ferae naturae* into possession, where title is

<sup>5</sup> *Rexroth v. Coon* (1885) 15 R. I. 35, 2 A. S. R. 863.

<sup>6</sup> *Fisher v. Stewart*, Smith (N. H.) 60; *Ferguson v. Miller*, 13 Am. Dec. 519; *Idol v. Jones* (1829) 13 N. C. 162.

<sup>7</sup> 1 Halsbury's Laws of Eng. 366; 3 C. J. 19.

<sup>8</sup> 1 R. C. L. p. 1063.

<sup>9</sup> *Wallis v. Mease*, 3 Bin. (Pa.) 546.

thereby created, must not be wrongful.<sup>10</sup> If the hiver is a licensee, however, the bees belong to him, not to the landowner.<sup>11</sup>

A case may be supposed where one goes as a trespasser upon the land of another, discovers a swarm of bees that have not yet acquired a permanent habitation, drives them upon the land of a third party, and there hives them. To whom do the bees belong? Admittedly, there is no bee case in point, but on principle, according to the rule applied to wild animals generally, the bees would belong to the hiver and not to the owner of the land whereon they were hived. The hiver, however, would be liable for trespass to each of the landowners whose premises he has invaded.<sup>12</sup>

#### STATUS OF RECLAIMED BEES

Reclaimed bees are personal property and, of course, may be bartered, sold, or mortgaged.<sup>13</sup> Such bees may be the subject of any sort of contract, such as the contract of carriage, and it is the duty of a railroad company to furnish a car suitable for their transportation.<sup>14</sup>

When in a wild state, bees are not the subject of larceny.<sup>15</sup> This is because they are in the possession of no owner, belong to the soil, and savor of the realty.<sup>16</sup> But reclaimed bees, as well as their hives and honey, are the subject of larceny.<sup>17</sup> In addition to instituting a criminal prosecution for larceny, the owner of stolen bees may replevy them,<sup>18</sup> or he may sue in trover for their conversion and recover their market value when taken.<sup>19</sup>

The difference between wild and reclaimed bees also is illustrated by decisions in civil actions for slander. The words "he has stolen my bee tree," are not slander *per se*, for when a tree is spoken of,

<sup>10</sup> *Rexroth v. Coon* (1885) 15 R. I. 35, 2 A. S. R. 863; *State v. Repp* (1898) 104 Iowa 305; 40 L. R. A. 687; Note, 70 Am. Dec. 260.

<sup>11</sup> *Ferguson v. Miller* (1823) 1 Cow. (N. Y.) 243, 13 Am. Dec. 519; *Adams v. Burton*, 43 Vt. 36.

<sup>12</sup> 1 Halsbury's Laws of Eng. 368; 15 *Ibid.* 213; 3 C. J. 20; Note, 1 R. C. L. p. 1069.

<sup>13</sup> *Simpson v. Parks*, 23 Ont. W. Rep. 837.

<sup>14</sup> *International & G. N. R. Co. v. Aten* (Tex. 1904) 81 S. W. 346.

<sup>15</sup> *Cock v. Weatherby*, 5 Smedes & M (Miss.) 333.

<sup>16</sup> 1 Halsbury's Laws of Eng. 370.

<sup>17</sup> *State v. Murphy*, 8 Blackf. (Ind.) 498; *Harvey v. Com.*, 23 Grat. (Va.) 941; *Com. v. Hazlewood*, 84 Ky. 681.

<sup>18</sup> Fritzerherbert's *Natura Brevium* 68.

<sup>19</sup> *Rexroth v. Coon* (1885) 15 R. I. 35, 2 A. S. R. 863; *Adams v. Burton*, 43 Vt. 36.

without any explanation, it implies a standing tree, which is not the subject of larceny, because larceny cannot be committed of things belonging to the realty. One part of the charge is relieved of its criminal character by the other part.<sup>20</sup> Neither is it slander *per se* to charge one with having stolen wild bees and their honey.<sup>21</sup> But if the bees are reclaimed and the subject of larceny, or the objectionable language implies they are such, it is slander *per se* to impute thievery of them.<sup>22</sup>

#### OWNER'S INTEREST IN ESCAPING BEES

A distinction must be made between wild bees that come upon one's land, wherein the landowner has an interest *ratione soli*, and reclaimed bees that do so. If a swarm fly from a hive of another, his qualified property continues so long as he keeps them in sight and sees them settle. Under these circumstances no one else is entitled to take them.<sup>23</sup> The Supreme Court of Connecticut, it is true, contrary to the general rule, seems to have dispensed with the necessity of keeping the bees in sight. The principle, as laid down by it in 1790, is as follows: "A swarm of bees going from a hive, if they can be followed and known, are not lost to the owner, but may be reclaimed."<sup>24</sup> The reason for requiring the owner of swarming bees, or his employee, to keep them in sight until they settle is that this is considered the only certain way for the owner to identify them.<sup>25</sup>

After the owner of swarming bees has seen them settle, however, it is not necessary for him to take them at once. In one case the owner, seeing his bees go into a hollow tree on another's land, marked the tree. Two months afterwards a third party cut down the tree, killed the bees, and took the honey. It was held that he was liable in trespass to the owner who had marked the tree, the court saying: "It cannot, I think, be doubted, that if the property in the swarm continues while within sight of the owner—in other words, while he can distinguish and identify it in the air—that it equally belongs to

<sup>20</sup> *Idol v. Jones* (1829) 13 N. C. 100; *Cock v. Weatherby*, 5 Smedes & M. (Miss.) 333; 1 Cooley, *Torts* (3rd Ed.) 385.

<sup>21</sup> *Wallis v. Mease*, 3 Binn. (Pa.) 546.

<sup>22</sup> *Thibbs v. Smith*, 83 Eng. Reprint 18.

<sup>23</sup> 2 Blk. Com. 393; 2 Kent Com. 394; 1 Halsbury's Laws of Eng. 367; Note, Ann. Cas. 1917 B 983.

<sup>24</sup> *Merrills v. Goodwin*, 1 Root (Conn.) 209.

<sup>25</sup> *Brown v. Eckes*, 160 N. Y. Supp. 489, Ann. Cas. 1917 B 981.

him if it settles upon a branch or in the trunk of a tree, and remains there under his observation and charge. If a stranger has no right to take the swarm in the former case, of which there seems no question, he ought not to be permitted to take it in the latter, when it is more confined and within the control of the occupant."<sup>26</sup> The owner of escaping bees, however, cannot follow them upon another's land and take them without being liable in trespass to the owner of the land. Unless the owner consents to his entry, the predicament is unavoidable.

#### RIGHTS OF FINDERS OF BEE TREES

Upon finding a bee tree, the first question is whether the inmates are wild or escaped reclaimed bees. If the latter, the bees belong to the owner from whom they have swarmed, provided he has kept them in sight until they entered the tree. If he has not kept them in sight, or if the bees are wild, they belong to the owner of the land upon which the tree stands.<sup>27</sup> Hence, the finder of a bee tree on another's land gains no property therein by marking it and notifying the landowner.<sup>28</sup> Should he go a step further and obtain a license from the landowner to take the bees he yet has no property in them, but merely the power to become their owner by taking possession of them. Hence, if each of two finders gets a license to take the bees, they belong to the one who first reduces them to possession, regardless of which one first found them or first obtained a license to take them.<sup>29</sup> Should one of the licensees be chopping the tree and the other drive him away, finish the work, and appropriate the honey, the latter is liable to the former in damages. Holding that the licensee who was driven away was in actual possession of the tree for the purpose of removing the honey, the court said: "No principle is better settled than that a person in possession of property can maintain trespass against any one who interferes with such possession, who cannot show a better right of title."<sup>30</sup>

#### INJURIES BY BEES

Except in rare cases, where bees are so kept as to constitute a nuisance, the keeper of bees is liable for injuries inflicted by them

<sup>26</sup> *Goff v. Kilts*, 15 Wend. (N. Y.) 550.

<sup>27</sup> *Brown v. Eckes*, 160 N. Y. Supp. 489, Ann. Cas. 1917 B 981.

<sup>28</sup> *Fisher v. Steward*, Smith (N. H.) 60.

<sup>29</sup> *Ferguson v. Miller* (1823) 1 Cow. (N. Y.) 243, 13 Am. Dec. 519.

<sup>30</sup> *Adams v. Burton*, 43 Vt. 36.

only upon the theory of negligence in the number kept, in their management or in the location of their hives. Courts recognize that bees are very useful, the apiary often furnishing a livelihood, and generally proving a source of profit. Keepers of bees have carefully studied their habits and instincts, and control them almost as certainly as domestic animals. Indeed, bees have become almost as completely domesticated as the ox or the cow. Such a thing as serious injury to persons or property from their attacks is very rare, not occurring in a ratio more frequently, certainly, than injuries arising from the kick of a horse or the bite of a dog. However skeptic the layman may be of the good behavior of bees or their progress in domestication, the above assurances may be found in solemn judicial determinations. Such opinions cure no stings; but they undoubtedly make it more difficult for the stung party to secure the balm of awarded damages.

Certain it is that the law looks with more favor upon the keeping of animals useful to man than those which are worthless save as curiosities. Liability for safe-keeping depends, not so much on the classification of animals into wild and domestic, as upon their natural propensities for mischief. Bees, not being regarded as animals of a savage or ferocious nature, their keeper is not liable, at all events, for any injury that they may do, but only upon proof that he had previous notice of their propensity to do the mischief.<sup>31</sup>

The immunity of the bee keeper from liability, however, is not so great as, at first blush, may appear from the reading of this rule; for the notice of the bees' vicious propensities may be implied from the circumstances of each case. Thus, in a Canadian case, the defendant kept 160 or 170 hives of bees near the plaintiff's oat field. As the plaintiff was engaged in cutting his oats, the defendant's bees attacked his horses in swarms (estimated at over four bushels) and stung them to death. "In this case," said the court, "it is a pure question of fact whether the 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 the plaintiff's land. I think the reasonable deduction from the answer of the jury is that the bees, because of their numbers and position on defendant's land, were dangerous to the plaintiff, and also that the

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<sup>31</sup> *Parsons v. Manser* (1903) 119 Iowa 88, 62 L. R. A. 132 and Note; Note, Ann. Cas. 1917 B 988.

defendant had reason so to believe." Consequently a judgment for damages was sustained.<sup>32</sup>

Evidence of the past conduct of bees is pertinent upon the question of their keeper's negligence. In a New York case it was held that there was no negligence in keeping bees in a yard adjoining a public highway where they had been so kept for eight or nine years without causing damage, and that one so keeping them was not liable for injuries inflicted by them on horses passing on the highway. The following excerpt from the opinion clearly expresses the court's position. "It appears that bees had been kept in the same situation for some eight or nine years, and no proof was offered of the slightest injury ever having been done by them. On the contrary, some of the witnesses testify that they had lived in the neighborhood and had been in the habit of passing and repassing frequently, with teams and otherwise, without ever having been molested. This rebuts the idea of any notice to the defendant, either from the nature of bees or otherwise, that it would be dangerous to keep them in that situation: and of course, upon the principles already settled, he could not be held liable."<sup>33</sup>

Perfectly consistent with the above case is a decision of the Supreme Court of Iowa affirming a judgment given a peddler of medicines for the value of his horses that were stung to death by defendant's bees. The peddler, preparing to call at a house, had hitched his team to a post by the side of the road. From twenty-five to thirty-five feet from it, in defendant's yard, were situated five beehives. Bees therefrom, despite all the peddler could do, stung his horses to death. Said the court: "The defendant naturally expected people to visit his home, and that teams would in all probability be hitched to the post. It was put there and maintained for that purpose, and this in itself was an assurance that it was a safe place to leave horses. But that was the course the bees were likely to fly in going to and from their hives, and there was evidence to the effect that they were prone to attack horses when perspiring, if near them. Moreover, the defendant was advised of this, as his daughter had cautioned a music teacher in his presence of the danger from them in tying her horse to this very post but a few days before. In this respect the case differs from *Earl v. Van Alstyne*, 8 Barb.

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<sup>32</sup> *Lucas v. Pettit*, 12 Ont. L. Rep. 448.

<sup>33</sup> *Earl v. Van Alstine*, 8 Barb. (N. Y.) 630.

630, where the bees had been in the same place eight years without knowledge of them molesting anyone. Because of their situation and the notice of their inclination to interfere with horses when hitched where plaintiff left his team, the question of defendant's negligence was for the jury, as was also that of contributory negligence."<sup>84</sup>

#### BEE AS A NUISANCE

Anything which is due to one's act or omission not amounting to trespass, and which is a substantial interference with the reasonable and comfortable use and enjoyment by another of his land or property is a nuisance.<sup>85</sup> Under certain circumstances it clearly is possible for an apiary to be a nuisance. Should it be one, the apiarist may be enjoined from keeping it in the objectionable locality or he may be sued at law for the injury inflicted by his bees. It is better for the injured party to secure redress, if possible, on the theory of a nuisance, for if he establish the nuisance, the doctrines of negligence and contributory negligence have no application.<sup>86</sup>

In a New York case it appears that the defendant kept about ninety swarms of bees on a village lot within sixty feet of the plaintiff's premises and about fifty swarms on another lot within one hundred feet. During the spring and summer months these bees were a great annoyance to the plaintiff, stinging him, his guests and servants, and soiling articles of clothing exhibited on the premises. The court said:

"The identity of the bees was a matter for the jury. The issue was not as to the motives of the defendants, or whether they had knowledge of any vicious propensities of the bees, but whether, under the condition of things as then and before existing, there was a nuisance. The jury and the court both so found. Apparently the bees can be removed, without material injury, to a locality where neighbors will not be affected, and the defendant is in fact carrying on a similar business upon farms. Having in view the peculiar situation, and the inadequacy of any other remedy, we are inclined to the opinion that an injunction was properly awarded."<sup>87</sup>

While bees in fact may constitute a nuisance, they do not necessarily do so, and an ordinance making it punishable as a nuisance to

<sup>84</sup> *Parsons v. Manser* (1903) 119 Iowa 88, 62 L. R. A. 132, 93 N. W. 86.

<sup>85</sup> Burdick, *Torts* (3rd. Ed.) 450; 2 Cooley, *Torts* (3rd. Ed.) 1174-5.

<sup>86</sup> Notes, 62 L. R. A. 134; Ann. Cas. 1917 B 991.

<sup>87</sup> *Olmstead v. Rich*, 6 N. Y. Supp. 826, 25 N. Y. St. Rep. 271, 53 Hun. 638.

own, keep, or raise bees in a city is invalid. The legal doctrine is expressed clearly by the following language of the court:

“Neither the keeping, owning, or raising of bees is, in itself, a nuisance in a city, but whether they are so or not is a question to be judicially determined in each case. The ordinance under a consideration undertakes to make each of the acts named a nuisance without regard to the fact whether it is so or not, or whether bees in general have become a nuisance in the city. It is, therefore, too broad, and is invalid.”<sup>88</sup>

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<sup>88</sup> *Arkadelphia v. Clark* (1889) 52 Ark. 23; 11 S. W. 957; 20 A. S. R. 154.