



## **Cattle Dined on Apples 1897**

County Court Shaftesbury

### **Charles Edgar Lever v Mrs. Brain, of Ansty, Tisbury**

Plaintiff claimed £7 15s. for damages sustained by the trespass of defendant's cattle on his land. Mr. Trethowan, of Salisbury, was for the plaintiff and Mr. W Marsh, of Yeovil, for the defendant.

The case for the plaintiff was that in 1895 he occupied a holding adjoining that of the defendant. He had an orchard and a small bit of grass land, one acre and three quarters in extent. The fences of defendant's property were so bad that cows, pigs, geese, &c were constantly trespassing on plaintiff's land. They were driven off, and defendant was told to repair her fences so as to keep them in.

In September, plaintiff had collected and measured up a lot of apples in his orchard. Five sacks were left there in a cart, and two sacks more on the ground. Defendant's cows broke into the orchard and ate the greater portion of the apples.

In January, plaintiff impounded the cattle, putting them in a field and locking them in. when defendant sent for them, plaintiff refused to give them up until he had received compensation for the damage he had suffered. Defendant's manager, who came for the cows, thanked plaintiff and said he already had them, and on going to his field Lever found the lock and chain on the gate unfastened, and the cows gone. Plaintiff kept three horses, but owing to the continual trespassing of defendant's cows, also pigs, geese and lambs, he alleged he had insufficient feed for them and had to buy corn and put them out to pasture. Application had been made to the defendant for damages, and 5s had been paid into Court, with a denial of liability. In cross-examination, plaintiff said on one occasion he counted 17 of the defendant's cows in his orchard. The cows ate the apples by night.

His Honour: They stopped home to dine and went out to dessert (laughter)

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He made entries of 14 occasions of trespass. The rent of the orchard and ground was £4 10s per annum. He had to leave the farm last December. He did not bring the action before as he wanted to be good friends. He thought defendant had tried to get him out of his farm.

Closely questioned by His Honour, plaintiff denied that the entries produced as to the trespasses were made at one and the same time or that they had been copied. His Honour said from the writing and general characteristics, he was of a contrary opinion.

The defence was that the claim was a preposterous one, and was brought out of animus. Mr. Marsh said he had no hesitation in stigmatising the statement of plaintiff, that the entries presented were made on the occasion of each trespass, as a deliberate falsehood and asked His Honour to disbelieve many of his other statements. He admitted a technical trespass on two or three occasions.

Charles Gray, Mrs Brain's manager, said he sent for the cows directly he found them trespassing and they were never in the orchard more than an hour. He did not break the chain when plaintiff impounded the cows. He merely shook the gate and the lock became unfastened.

His Honour said plaintiff had exaggerated his claim, yet he could not accept the plea that the damage done was quite nominal.

He gave judgment for the plaintiff for £3 3s, including the money paid into Court.

**Western Gazette Friday, 22 January 1897**