

Stuk v. Leever (1615)

You are practicing law in Canterbury in 1615. Leever has been served with a writ in trespass obtained by plaintiff, Stuk, from the King's Bench for assault and battery. Leever asks you to defend him.

Stuk's declaration states that the defendant Leever's land is adjacent to a public highway; that the defendant trimmed a thorn bush that was on his property; that the thorns landed on the public highway; and that defendant left the thorns. The next day the plaintiff walked on the public highway and got a thorn in his foot. You agree to represent Leever and tell him that you are going to demur to Stuk's declaration.

You are now before the judge for argument on your demurrer. Stuk's lawyer grins (in anticipation of a victory and, therefore, a fee) and says: "Your honor, the applicable law is stated clearly in *Case of the Thorns*. It holds that 'for though a Man doth a lawful Thing, yet if any damage do thereby befall another, he shall answer for it.' That is the exact circumstance of this case. Even though defendant did a lawful thing in cutting the thorns, the plaintiff was damaged, so the defendant must answer for it."

If you cannot distinguish the *Case of the Thorns*, the rule is likely to apply in this case and your client will lose. What can you say to persuade the Court to sustain your demurrer and, therefore, give judgment for the defendant?