

a mile from the premises of the plaintiff, and that the defendant killing the dog was a resident ratepayer of the municipality. The questions are questions of fact, and the trial Judge has not found in defendants' favour upon all of these questions, and in my opinion this Court ought not to interfere with the findings of fact. Then as a matter of law it seems to me an entire misapplication of the by-law, by it, to justify the killing of plaintiff's dog under the circumstances given in the evidence. The dog was not at first found on defendants' premises. He was seen upon the road, apparently having taken to the road from his master's home, although the defendants did know that the farm was occupied. The dog was walking from the west toward the east, quietly on the road—he stopped once and turned back, perhaps as suggested, because he heard the opening or closing of a door. He then turned east, for the younger defendant saw him go upon defendants' premises and continue easterly along the east and west fence, not acting like a stray dog, not “giving tongue,” apparently perfectly harmless—and when turning to the south, but continuing easterly he was wantonly shot. The dog was apparently sent from home to meet his master. A strict application of the by-law would permit the shooting, by a resident ratepayer, of a dog, having followed his master for a distance of one half a mile, was left outside the door upon a neighbour's premises. That was not the intention of the law, and if a strict application of the words of the by-law is insisted upon by defendants, then there should be a strict application as to where the dog was “found.” He was found in the sense of being seen walking or running on the highway as he was on defendants' premises, and when on the highway he was within the distance of half a mile from his master's home.

In my opinion the appeal should be dismissed with costs.

HON. SIR GLENHOLME FALCONBRIDGE, C.J.K.B.:—I agree in dismissing the appeal with costs.

HON. MR. JUSTICE RIDDELL (*dissenting*):—The plaintiff a farmer in Prince Edward county, owned a half bred collie (the stenographer thinks it was a coolie, but that is not material). The dog was of more than ordinary intelligence, very much of a house dog, a good watch dog and useful about the farm. Both the plaintiff and his wife estimate his value at least \$300, and in that estimate they are backed up by at least one neighbour, while another thinks