packing, etc. By one of the conditions of the policy, it was provided that the proofs of loss should be delivered as soon after the fire as possible. The fire occurred on the 17th September, 1881, and the proofs of loss were not delivered until the middle of May, 1882, when they were objected to and returned to the insured who re-delivered them in the same condition in the month of July following. The only reason given for not delivering them sooner, was that it was not convenient to do so.

Held, that the condition was not complied with.

Another condition required that the proofs of the loss or damage was to be estimated according to the actual value of the property, *i.e.*, what it could have been actually sold for in cash at the time of loss, and the affidavit should state the actual cash value of the property. In the printed form of proofs of loss, which were used, the words actual cash value were struck out and a statement substituted giving the cost of replacing the whole property destroyed, and the cost of the property at the time it was put into the ice-house being in 1880, a year previous to the insurance being effected.

Held, this was not a compliance with the conditions.

Under these circumstances there would be no recovery on the policy.

Rose, J.]

RE MILLOY AND CORPORATION OF ONONDAGA.

By-law—Animals running at large—Unreasonableness—Mode of enforcing penalties—Indians and Indian Lands—Motion to quash amending by-law after year from passing of original by-law.

By by-law No. 84, passed by the Township of Onondaga, on the 29th May, 1882, certain animals therein named, were prohibited from running at large. Clause 5 provided *that except between the 10th May, and the 1st December in any year*, it should not be lawful for the owners of any other animals not thereinbefore mentioned or indicated to allow or permit the same to run at large. Clause 6 imposed a fine or penalty not exceeding $5 for every offence, but the imposition of any such fine was not to relieve the animals from the operation of any by-law relating to pounds or poundkeepers, or for any trespass or damages committed or done by them, by reason of their being so permitted to run at large. Clause 7 provided for the recovery of fines or penalties (not adding the words "and costs") under sec. 421 *et seq.* of the Summary Convictions Act, and in the event of no distress for imprisonment, etc., unless such fine or penalty and costs, including costs of committal, be sooner paid. By by-law No. 97, passed on 9th July, 1883, after reciting that the object was to prevent all animals of any age or description running at large at all seasons of the year, amended by-law 84 by striking out from Clause 5 the words in italics. A motion to quash By-law 97, was made after a year from the passing of By-law 84, but within the year after the passing of By-law 97.

Held, that the by-law was not oppressive and unreasonable as extending to all animals and all seasons of the year, inasmuch as the by-law was no wider than the statute under which it was passed.

An objection that the provision of the by-law as to levying fines, was *ultra vires* in that sec. 492, sub-sec. 2, provided a mode of recovery, *i.e.*, by sale of the animals impounded, and hence that secs. 421 *et seq.* did not apply; but held that the objection was taken under a misconception of facts in that the by-law was not nor did it profess to be a pound by-law; and it was by no means clear that these sections would not apply to a pound by-law.

Quære as to the effect of the omission of the errors "and costs" in the clause providing for the penalty, but as these were not taken in the rule, it was not considered.

A further objection was that the by-law should have been limited in its provisions so as not to extend to the Indian lands within the township; but the learned judge refused to quash on this ground (1) because the quashing a by-law is not imperative but discretionary; (2) and if it were quashed the original by-law would remain. (3) It would only be quashed, as to the Indians and Indian lands. (4) The applicant is not prejudiced and this is not a substantial objection. (5) and the Indians who are alone affected are not complaining.

The cases in which an amending by-law may be moved against, after the expiry of a year from the passing of the original by-law considered.

V. Mackenzie, Q.C., for the applicant.

Wilson, Q.C., contra.
