Street, and, according to the evidence, had crossed to the west side, and was running on the crossing at the time it was shot.

Dow was, at the time he shot the dog, specially on duty for the purpose of shooting dogs which were without metallic plates, being appointed to that duty by the Chief of Police, and had in his possession a gun belonging to the defendants, and was followed by another man with a waggon, in which the dogs shot by him were put and carried away.

The statute under which the by-law was passed was R. S. of O. cap. 174, sec. 461, sub-sec. 10 & 11, which read as follows: 461. The council of every township, city, town or incorporated village may pass by-laws.

10. For restraining and regulating the running at large of dogs, and for imposing a tax on the owners, possessors or harbourers of dogs,

11. For killing dogs running at large contrary to the by-laws.

These sections are the same as in the act now in force, the Con. Mun. Act, 1883, sec. 490, sub-sec. 12 & 13.

It was not shown, or even suggested, that any proclamation had been issued by the Mayor under the 7th section of the by-law enjoining all persons in the city to confine their dogs or keep them muzzled, as can be done by the Mayor when he is satisfied there is any danger to the citizens from mad dogs; but the right to kill the dog is rested on the 5th section which enacts that "No dog or bitch shall be permitted to roam at large in the city without the collar and metallic plate mentioned in the preceding section, and any dog or bitch roaming at large contrary to this by-law may be forthwith destroyed by the police of the city."

SENKLER, Co. J.—In the case of *McKenzie* v. *Campbell*, 1 U. C. R. 241, the question arose whether under 4 Will. IV., cap. 23 (incorporating the city of Toronto) by sec. 22 of which power was given to the Mayor and Aldermen to make laws to prevent and regulate the running at large of dogs, and to impose reasonable tax upon the owners or possessors thereof, a by-law could be passed authorizing the Mayor to issue his proclamation requiring the owners of dogs to keep them confined for a period in his discretion, and that upon such proclamation being issued it should be lawful for the high bailiff, constables or any inhabitant of the city to shoot any dog running at large until the time limited in the proclamation should expire, and it was held that it could.

The act did not in terms authorize the killing of dogs, but it was held that for the purpose of preventing and guarding against hydrophobia, such a by-law might be passed.

A long judgment was rendered by Chief Justice Robinson, in which he points out that the act of killing the dog was an act of precaution for preventing an impending evil, or perhaps even an act for removing a present evil, and not a punishment for disobedience of the by-law, in which case he intimates that it might be illegal on the ground that other modes of punishment were provided in the Act (see page 248).

In the present case the killing the dog was not done in pursuance of any proclamation occasioned by fear of hydrophobia, under the 7th section, as already pointed out, but under the 5th section of the by-law, and can only be regarded as a punishment for not having the metallic plate attached.

The statute, however, now expressly empowers the killing of dogs running at large contrary to the by-law, and gives this power generally, and does not limit it to cases of apprehension of hydrophobia, so that the question considered in *McKenzie* v. *Campbell* does not arise.

The council have used the words "roam at large" instead of "run at large," the words used in the statute, in the first part of the 5th section of the by-law. No argument was based on this by the counsel for the plaintiff; it must, however, be shown that the justification comes within the words of the by-law. Under the circumstances it seems to me that that the only question to be considered is whether the dog can be said to be roaming at large at the time it was shot; the fact that the tax had been paid and the collar and plate procured cannot avail so long as the latter were not on the dog.

The dog was, at the time, accompanying the plaintiff's daughter along the street; it did not keep close to her heels and was not under any confinement or restraint, but the evidence shows, frequently ran a number of yards from her, as dogs will do while accompanying their owners, and the girl having stopped at a shop window, the dog ran on and crossed Ontario Street, and then came back, and seems to have been crossing again when shot. It was proved the dog was in the habit of following the little girl, and in fact was obtained by the plaintiff for her, and would only follow her.

It was urged by the plaintiff that the dog could not be said to be running at large under these circumstances, but that only dogs that were running about without their masters or members of the master's family could be so considered.

For the defendant it was contended that a dog's running at large when it is off its master's