

at large in the one case; and to lay down as a matter of law that when a dog was "found in a street or other public place . . . not under the control of any person," he was running at large; and it must be so held: *Rogers v. McFarland* (1909), 19 O. L. R. 622, 14 O. W. R. 943. But no other case is provided for and in any other case the question of running at large *aut non* remains a question of fact. Clause (a) is not like a mathematical definition, convertible—there is no provision that no others shall be considered running at large than those in the street, etc., and I cannot think that the Legislature intended to limit the power previously given to the municipalities by introducing this clause.

It was argued that where the dog was killed was not half a mile from the premises of his owner—but the distance was measured, and it was found that even as the crow flies, the distance from the nearest point of the plaintiff's field to the place where the dog was when shot was $11\frac{1}{2}$ feet over half a mile.

The learned County Court Judge seems to be rather of the opinion that as the dog was seen running for some distance before he was shot, he was "found" when he was first seen, and consequently he was "found" less than half a mile from his owner's premises, and so could not have been found where and when he was shot. This, with much respect, is quite too subtle. I may find a man in my house though I saw him go in, a dog in my garden though I saw him jump the fence—and one arrested on the street for being there found drunk and disorderly, would hardly be acquitted because the policeman saw him coming down his own walk from his house drunk and howling. Although I do not think authority is necessary for the construction, I refer to a few.

In *R. v. Lopez* and *R. v. Salter*, 7 Cox C. C. 431, it was held that a person is "found" wherever he is actually present: and in *Jowett v. Spencer*, 1 Ex. 647, a mineral is "found" where "it is ascertained to be and be." See also such cases as *Simmons v. Mulligan*, 2 C. B. 524; *Griffiths v. Taylor*, 2 C. P. D. 194.

The by-law itself may be subject of criticism—it is not quite what a careful draftsman would make it—it would seem to require the premises of the owner to accompany the dog—but the "therewith" must, I think, in view of the earlier provisions in the section be interpreted as meaning "by its owner or some member of such owner's family." With this interpretation the by-law is well enough.