

SPENCE V. CITY OF ST. CATHARINES.

REPORTS.

ONTARIO:

MUNICIPAL CASES.

COUNTY COURT OF LINCOLN.

SPENCE V. CITY OF ST. CATHARINES.

*By-law for destroying dogs—Municipal Act, 1883,
sec. 49, ss. 12, 13.*

Defendants held responsible for the act of the policeman who shot a dog under the authority of a by-law for the destruction of dogs roaming at large, not having on a specified tag or plate.

The purchase of the plate does not protect the dog unless it is worn.

A dog following its owner cannot be said to be wandering about at will, or to be roaming or running at large.

Discussion as to the object of the Legislature in reference to the provisions of the Act.

(St. Catharines—Dec. 29, 1886.

This was an action brought to recover damages sustained by the plaintiff in consequence of a cocker spaniel dog belonging to him having been shot by a policeman of the defendants, on the 6th August, 1885.

A by-law, called "By-law relating to Dogs," was passed by the municipal council of the corporation of the city of St. Catharines on the 23rd June, 1879, by the second section of which it was enacted that the owner, possessor or harbourer of any dog or bitch within the city shall pay a yearly tax to the city of one dollar for every such dog, and two dollars for every such bitch.

By the 4th section it was enacted that every owner of a dog or bitch in the city shall annually on or before the 1st August in each year procure the same, to be registered, numbered, described and licensed for one year from the 1st January next, thereafter ensuing, in the office of the general license inspector of the city, and shall cause the said dog or bitch to continually wear around its neck a collar bearing the name of the owner legibly written, stamped or engraved thereon, to which collar shall be attached a metallic plate having raised or cut thereon the letters C. L. P. (city license paid) St. Catharines, and the figures

indicating the year for which the license has been paid, which said metallic plate shall be furnished by the inspector at the expense of the city, and further provides that the owner shall pay 25 cents for the license and metallic plate as a fee to the inspector for such registration and metallic plate; provided that no license shall be issued to any person, unless such person shall have paid first the yearly tax of the then current year to the collector of taxes, and produced the receipt of the collector therefor to the said inspector.

By the 5th section, it was enacted 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 running at large contrary to this by-law may be forthwith destroyed by the police of the said city."

The 6th section made provisions for Justices of the Peace ordering dogs that have attacked persons travelling in the street, or done any damage, or that have by barking or howling or in any other way disturbed the quiet of any person, to be destroyed.

The 7th section authorized the Mayor on being satisfied that there is danger to the citizens from mad dogs to give notice enjoining all persons in the city to confine their dogs and bitches or muzzle them for a period not to exceed two months from publication of the notice.

The 8th section authorized the killing of dogs or bitches known to be rabid.

The plaintiff was shown to have been the owner of a cocker spaniel on the 26th August, 1885, and to have owned it some time previously. He had paid the tax on the dog and had also had him registered and had obtained a tag or metallic plate, as required by the by-law, but owing to the collar which had been on the dog having been stolen or lost, the tag had not been attached to the dog. On the 26th August, 1885, the dog accompanied the plaintiff's little daughter and some other children, who had left the plaintiff's house on James Street, St. Catharines, and had gone along St. Paul Street in a westerly direction. When the children had gone nearly as far as Ontario Street, they stopped to look into a shop window on St. Paul Street, and the dog ran on, and while running about at or near the intersection of St. Paul and Ontario Streets Thomas Dow, a policeman of the city, who was walking along Ontario Street with a gun looking for dogs running at large without the metal plate came across the dog, and shot and killed it. The dog, at the time it was shot, was on the crossing leading from St. Paul Street across Ontario Street, near the west side of Ontario