

ERMATINGER, JUN. CO. C.J.

FEBRUARY 19TH, 1909.

FIRST DIVISION COURT, ELGIN.

CRAIG v. TOWNSHIP OF MALAHIDE.

LIDDLE v. TOWNSHIP OF MALAHIDE.

*Municipal Corporations—Payment for Sheep Killed and Worried by Dogs—Sheep Protection Act, sec. 18—Damages—Discretion of Council—Municipal Act, 1903, sec. 537.*

The plaintiffs were farmers residing in the township of Malahide, in the county of Elgin. In July, 1908, both plaintiffs had a number of sheep killed and others badly worried by dogs. They made application to the council under sec. 18 of the Act for the Protection of Sheep, R. S. O. 1897 ch. 271, for payment of two-thirds of the value, according to their own valuation, of the sheep killed and injured. The council refused to accede to their demands, but offered to pay two-thirds of the value as estimated by the inspector appointed by by-law under sec. 537 of the Consolidated Municipal Act, 1903, for the purpose of valuing and appraising the damages for sheep killed and worried by dogs. The plaintiffs refused to accept the cheques tendered them by the council, and brought these actions to enforce their claims.

W. E. Stevens, Aylmer, for plaintiffs.

E. A. Miller, Aylmer, for defendants, contended, first, that so long as the by-law under which the inspector had been appointed was in force, there was no appeal from his valuation, and that all parties were bound by it; and secondly, that the council was not bound in any event under sec. 18 of the Sheep Protection Act to pay two-thirds of the value; and that payment of two-thirds or a smaller sum was discretionary with the council.

ERMATINGER, JUN. CO. C.J., upheld the contention of the defendants on the latter point, and dismissed both actions with costs.