

still liable; and one has to read the whole section to see whether this is so.

I am obliged to accept, and do accept the statement of defendant and his witness, corroborated as it is in part by plaintiff's wife, as to where the dog was, how long he had been there, and what he was doing when shot. From the state of facts that statement discloses, in my judgment, under the authorities, the dog was at large, and while he seems to have had a strap around his neck, it did not have its owner's name on it. In other words, defendant under the strict reading of the sub-section was justified in killing him, unless the proviso applies. But does it apply? I cannot think it does. I think the language of the proviso makes it clear that only sub-section (c) is affected or governed by it. "No dog so straying," it says, and the word "straying" is only found in sub-section (c). "Adjoining such farm,"—the word "farm" is only found in the same sub-section; and the last words of it "said farm," to which every part of the proviso refers, most assuredly can only mean the farm mentioned in sub-section (c).

The defendant will have judgment, but without costs. I refuse him costs because I think his action in shooting the dog was a bit of wanton cruelty, justified under the statute, it is true, but for which certainly there can be no other excuse. He evidently did not think his cow was in any danger—he does not attempt to justify the killing of the dog because the dog was doing, or he apprehended the dog might do, any injury to his cow—he knew the owner of the dog and saw that owner within call—surely, under these circumstances, he should not have resorted to extreme measures.

I have a further reason for refusing defendant costs: He told his story of the killing of the dog in a most disingenuous way, wanting, evidently, to deny it, but afraid to do so.

Should this decision be reversed on appeal and judgment be directed to be entered for plaintiff to avoid necessity for a new trial, I assess his damages at \$15.