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APPELLATE DIVISION.

SECOND DIVISIONAL COURT.

OCTOBER 12TH, 1917.

*HOGLE v. TOWNSHIP OF ERNESTTOWN.

Municipal Corporations—Claim against Corporation for Loss of Sheep—Dog Tax and Sheep Protection Act, R.S.O. 1914 ch. 246, secs. 17, 18—Tender by Council of Amount Awarded by Valuer—Right of Action for Larger Sum—Finding of Trial Judge—Appeal—Costs.

An appeal by the plaintiff from the judgment of the County Court of the County of Lennox and Addington dismissing an action brought in that Court to recover from the Corporation of the Township of Ernesttown the sum of \$202.50, alleged to be the amount of damage caused to the plaintiff by reason of some of his sheep, in an enclosed field upon his farm, having been killed and others injured and worried by a dog, the owner of which was unknown.

The plaintiff applied to the council of the defendants, and they appointed a valuer, who estimated the plaintiff's damage at \$117.50. That amount was tendered by the defendants to the plaintiff, before action; but he refused it, and brought this action for the larger sum. The defendants brought \$117.50 into Court, but admitted no liability.

The Judge in the Court below held that there was nothing in the Dog Tax and Sheep Protection Act, R.S.O. 1914 ch. 246, or elsewhere, to create a liability for the amount of damages sustained by the owner of sheep killed or worried by a dog whose owner is unknown. He was also of opinion that, if the defendants were liable, the valuer's estimate was a fair one, and the plaintiff was not entitled to recover more than the amount paid into Court.

* This case and all others so marked to be reported in the Ontario Law Reports.