

The defendants now appeal both as to quantum and otherwise.

So far as the quantum is concerned, leaving aside all sentimental damages (and that these are great is shewn amongst other things by the fact that the dog's dead body was dug up by his master and buried near his own home), there is, as I have said, ample evidence to justify the estimate of the learned County Court Judge, even if the animal were a mongrel as contended by the defendants.

Whether the plaintiff is entitled to damages at all depends upon the law which was canvassed before us with great care, skill and erudition.

At common law it is correctly said: "To kill . . . another man's dog without legal justification is an actionable wrong . . . It is no legal justification that the dog was trespassing. In order legally to justify such an act, it must be proved that it was done under necessity for the purpose of protecting the person or saving property in peril at the moment of the act." Halsbury's Laws of England 595, sec. 857. No doubt in the present case the dog was trespassing—why does not appear unless, indeed he was in search of a *lectus genialis* as suggested by the learned County Court Judge. But there was no present or any danger to person; and before the fatal shot all danger—even all apparent danger—to the sheep was over for the time being; the dog had turned back and was no longer on his way toward the sheep.

The defendants rely upon the statute and a by-law of the township.

The statute R. S. O. 1897, ch. 271, sec. 9 (c) provides: "Any person may kill . . . any dog which any person finds straying between sunset and sunrise on any farm whereon any sheep or lambs are kept." The learned Judge does not deal with this statute; but I think it affords a perfect defence to the action. Notwithstanding the evidence of Hamilton Collins, I think it fairly established by other evidence that it was after sunset that the dog was killed—the dog was found straying, and it was on a farm whereon sheep were kept.

But in any case, the by-law in my view is sufficient to protect the defendants.

By-law No. 14 reads, sec. 2: "It shall not be lawful for any dog to run at large unaccompanied by its owner or by some member of such owner's family; and any dog except