

sunset on the 1st July—on the farm where sheep were kept. With great respect, I am not able to agree. The evidence seems to me quite clear that the dog was shot before sunset.

After the position taken by the defendants' counsel at the trial, when and where the evidence was in the minds of Judge and witnesses, I do not think it open to the defendants to fall back upon R.S.O. 1897 ch. 271. All that is open to the defendants is the defence, if any, under the by-law mentioned. The Municipal Council of the Township of Hillier had power, under the Consolidated Municipal Act, 1903, sec. 540, sub-secs. 1 and 2, to pass this by-law, which may be considered as a by-law restraining and regulating the running at large of dogs, and for killing dogs running at large contrary to the by-law. The defendants must justify, by strict proof, the act of killing.

I do not agree with the proposition of law laid down by the learned trial Judge that a by-law passed under the authority of the Municipal Act can justify the killing of such dogs only as are found running at large in a street or other public place. When a dog is found in a street or other place, not accompanied by the owner or some member of the owner's family, at a greater distance than half a mile from the premises of the owner; that dog shall be deemed to be running at large, and the onus of proof to the contrary is put upon the owner of the dog; but, when not in a street or public place, etc., the onus of proof to justify is entirely upon the person killing. The defendants, to succeed, must prove that the plaintiff's dog was found, unaccompanied, etc., on the defendants' premises at a greater distance than half a mile from the premises of the plaintiff, and that the defendant killing the dog was a resident ratepayer of the municipality.

The questions are questions of fact; and the trial Judge has not found in the defendants' favour upon all of these questions; and, in my opinion, this Court ought not to interfere with the findings of fact.

Then, as a matter of law, it seems to me an entire misapplication of the by-law to justify by it the killing of the plaintiff's dog, under the circumstances given in the evidence.

The dog was not at first found on the defendants' premises. He was seen upon the road—apparently having taken to the road from his master's home, although the defendants did not know that; but the defendants did know that the farm was occupied. The dog was walking from the west toward the east, quietly, on the road; he stopped once and turned back—perhaps, as suggested, because he heard the opening or closing of a door.