

there when he returned home. When they saw him they ran away. He followed their tracks in the snow as far as they could be followed, and the next day he instituted, and thereafter continued, an inquiry as to the person who owned or kept the dogs, but was unable to find him.

The defendants had collected a dog-tax, but the council had not exercised the power conferred by sec. 17 of the Dog Tax and Sheep Protection Act then in force, R.S.O. 1914 ch. 246, of appointing sheep-valuers.

The plaintiffs applied to the township council for compensation; the council entertained the claim, but adjourned the investigation of it from time to time, and in the end it was found, as the plaintiff said, and as the learned Judge believed, that 98 of the sheep had died from injuries inflicted by the dogs.

At a meeting held on the 1st July the council purported to appoint "sheep-valuers for the year 1918," and also passed a resolution that the council hold a special meeting on the 15th July for the purpose of investigating the plaintiff's claim. On the 5th July the resolution for the special meeting was rescinded, and before the 15th July the Reeve informed the plaintiff Hardy that the investigation could not be held, as the power to hold it had been taken away by the new Dog Tax and Sheep Protection Act, 8 Geo. V. ch. 46, which repealed R.S.O. 1914 ch. 246, and was assented to on the 26th March, 1918.

The learned Judge said that an investigation had now been made—at the trial of this action—and that the plaintiffs' claim for \$2,805.60 was a reasonable one. The rumour that the plaintiffs' loss had occurred by disease or in a snow-storm, and not by dogs, was unfounded. The plaintiffs had "made diligent search and inquiry to ascertain the owner or keeper of" the dogs "and that he cannot be found" (R.S.O. 1914 ch. 246, sec. 18).

The defendants contended that the plaintiffs' rights, if any, accrued while the Act R.S.O. 1914 ch. 246, as amended by 6 Geo. V. ch. 56, was in force, and that the power of the Court is to be ascertained without reference to the new Act; and that, if the plaintiffs were entitled to any relief, it must take the form of an order to the council to perform the duties cast upon it by the old Act; and that such an order can be made only by way of the issue of the prerogative writ of mandamus, and not by way of the mandatory order that may be granted in an action.

The learned Judge referred to *Eastview Public School Board v. Township of Gloucester* (1917), 41 O.L.R. 327; *Hogle v. Township of Ernesttown* (1917), 41 O.L.R. 394; *Noble v. Township of Esquesing* (1917), 41 O.L.R. 400; and said that the *Noble* case bound him to hold that the appropriate remedy was the mandatory order issuable in an action—not the prerogative writ; and