

[GRIFFITH WILLIAMS AND HALID, JJ.]

BEHJET HASSAN FAKI,

Appellant,

v.

SAVVAS CONSTANTINOU, POLICE CONSTABLE, *Respondent.**(Civil Appeal No. 3680.)**The Dogs Law, 1920—Municipal Corporation Laws, 1930–1938, section 182—Municipal Bye-laws (Kyrenia) 191—Conflict of Laws.*

There is a difference in the method of treatment and disposal of stray dogs laid down in the Dogs Law and in bye-laws passed under Municipal Corporations Laws.

Held: The Dogs Law is not applicable within municipal limits when it conflicts with local municipal bye-laws dealing with the treatment and disposal of stray dogs.

Appeal from a judgment of the District Court of Kyrenia.

C. Constantinides for the appellant.

Ch. Demetriades for the respondent.

The facts are sufficiently set out in the judgment of the Court which was delivered by:

GRIFFITH WILLIAMS, J.: This is an appeal from the judgment of the District Court, Kyrenia, of 19th March, 1940, dismissing the plaintiff's action for damages for trespass by the defendant in unlawfully shooting his dog.

The defence alleged that the defendant, a police constable, acting under instructions of his superior officer and in execution of his duty shot the dog because it was not wearing a badge, as required by Law, and that he was entitled to shoot the dog by virtue of the provisions of Law 10 of 1920.

The agreed facts were as follows: The defendant, a police constable stationed at Kyrenia, received instructions from his superior officer in November, 1939, to kill every dog he might find in Kyrenia that had attached to it no badge shewing it to be duly licensed in accordance with the law. On 2nd December, 1939, the defendant saw, within the Municipal Area of Kyrenia, the plaintiff's dog, which was wearing no badge, and he shot it. It would seem that the first shot only wounded the dog; but the police constable, in spite of protests by the plaintiff's wife, fired at the dog a second time and killed it. The District Court held that the second shot was fired by the defendant to put the wounded animal out of its misery; but it does not appear why the police constable did not succeed in killing the dog with the first shot as it was lying down, nor, if the dog was so seriously wounded that the second shot was necessary, why 5 minutes—the plaintiff's witnesses say 10–15 minutes—were allowed to elapse before the dog was put out of pain.

At the trial in the District Court and again in this Court the plaintiff raised the legal point that since the dog was within the limits of the Municipality of Kyrenia when shot, Law 10 of 1920 should not be held to apply; as the Municipal Corporations Laws, 1930–1938 and Kyrenia Municipal Bye-laws, 1939, made thereunder, provide an entirely different set of rules, for dealing with ownerless dogs within the Kyrenia Municipal Area.

Plaintiff further contended that it was no defence to the action for the defendant to say that he was not responsible on the ground that he was carrying out an order of his superior.

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On both these points the District Judge found in favour of the defendant, and the plaintiff has appealed to this Court.

The plaintiff's notice of appeal set out seven grounds of appeal; the sixth ground was regarding a finding of fact by the District Court and need not concern us, while the other six grounds raised only the two points of law above set out.

The Dogs Law, 1920 (10 of 1920) the object of which was to authorize the destruction of ownerless dogs, made compulsory the wearing by dogs of a badge, which could be obtained at a charge not exceeding 4½p. And by section 4 of this law any dog found not wearing such a badge could be destroyed. The section is as follows:—

"4. All dogs found not wearing a badge in the prescribed form may be destroyed and buried in such manner and by such persons as the High Commissioner may by order direct, and the owner, if any, of such dog shall have no right to compensation in respect of the destruction of such dog."

In exercise of his powers under the Dogs Law, by Order of 8th February, 1935, published in *Cyprus Gazette*, Notification 131/1935, replacing the order of 13th December, 1926, His Excellency the Governor ordered that: "Dogs not found wearing a badge in the prescribed form shall be destroyed by lethal chamber or shooting and be buried by any member of the Police Force or the Mukhtar". It was by virtue of this authority that the respondent purported to act when he shot the appellant's dog.

It will be noticed that section 4 of the Dogs Law empowering the destruction of dogs wearing no badges imposes no limit to the area within which the law is to operate. Section 5 of the law however is as follows:—

"5. This Law shall not apply to dogs under the age of six months nor to dogs duly registered and wearing a badge in manner prescribed by the Bye-laws of a Municipality."

From this it can be seen that dogs other than those wearing the particular badge required under this law are protected, namely, those dogs registered and wearing a badge in accordance with the Bye-laws of a Municipality. Nothing is said of there being any necessity for a dog to wear two badges one under the Dogs Law and another under the Municipal Corporations Laws. Thus under the Dogs Law itself any dog with a municipal badge though found wandering outside the Municipal Area would be protected.

The licensing and registration of dogs within Municipal Areas are dealt with by Sections 181, 181A, B and C of the Municipal Corporations Laws, 1930-1938. And by Section 182 provision is made for the seizure, destruction, etc., of dogs within the Municipal Area, and for the making of bye-laws in that behalf. The section is as follows:—

"182.—(1) The council may, by bye-laws made in that behalf, provide for the seizure, detention, disposal and destruction of any dog—

- (a) found wandering in any street within the municipal limits and not wearing a metal badge or duplicate metal badge as required by section 181B, or not wearing a metal badge required under the provisions of any other Law;
- (b) in respect of which a licence has been refused;
- (c) in respect of which a licence has been withdrawn.

(2) No compensation shall be payable in respect of the disposal or destruction of any dog in pursuance of bye-laws made under this section.

(3) Every bye-law made under this section shall be subject to the provisos to section 117 (1)."

Section 117 (1) of the Municipal Corporations Laws gave power to Municipal Councils to make bye-laws subject to the approval of the Governor-in-Council. And by virtue of this section and of section 182 the Council made bye-laws in 1939 of which bye-law 191 is as follows :—

" 191.—(1) Every dog—

- (a) found wandering within the Municipal limits and not wearing either the numbered metal badge or a duplicate metal badge, as required by section 181B of the Law, or a metal badge required under the provisions of any other Law ;
- (b) in respect of which a licence has been refused ;
- (c) in respect of which a licence has been withdrawn, may be seized by any member of the Cyprus Police Force or by any person authorized in writing by the Mayor in that behalf, and delivered to the kennels of the Municipal Corporation.

(2) Every dog of class (a) above so seized, shall be detained in the said kennels for a period of 24 hours, and if during the said period the dog is not claimed, it shall be disposed of in such manner or destroyed by electrocution, by lethal or asphyxiating chamber as the Mayor may direct in writing : Provided that if the dog appears to be of value and there is reason to believe that it is licensed, although not wearing the metal badge required as in paragraph (1) (a) hereof mentioned, the period of detention may be extended to seven days before disposal or destruction, if the Mayor so directs in writing, and the owner of such dog may, within such period, recover the same upon production of the licence and payment to the treasurer of all seizure and custody charges, the custody charges not to exceed the sum of 3p. per diem.

(3) Every dog of class (b) or (c) above so seized, shall be detained in the said kennels for a period of seven days, and in case of an appeal to the Commissioner under section 181A (2) of the Law within that period, until the decision of the Commissioner on such appeal be given.

After the expiration of the period of seven days, or in case of an appeal, if the decision of the Commissioner upholds the refusal to grant a licence or the withdrawal of the licence granted, as the case may be, such dog shall be disposed of in such manner or destroyed by electrocution or by lethal or asphyxiating chamber, as the Mayor may direct in writing."

It will be noted that just as dogs wearing municipal badges are exempted from the operation of the Dogs Law, 1920, so by section 182 and by the Bye-laws of Kyrenia dogs wearing badges authorized under any other law are recognized as properly licensed and thereby protected.

It is evident that wherever the Municipal Corporations Laws do not apply the Dogs Law, 1920, is in force. The question for

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decision is whether the converse applies and the Dogs Law can be considered to be excluded from operation in the Municipal Areas where other provisions apply. The provisions regarding the treatment of ownerless dogs in Municipal Areas are completely at variance with those in force under the Dogs Law. The cost of registration of a dog within a Municipal Area is 5s., whereas under the Dogs Law it is only, at present, 3p. It is therefore only to be expected that the provisions within the Municipal Area in respect of dogs not wearing badges should be less drastic since the dogs there must be regarded as more valuable. There is apparently no necessity for a dog within a Municipal Area to wear a badge issued under the Dogs Law as a municipal badge is recognized under that law. In the same way if a dog licensed outside the Municipal Area and wearing a badge issued under the Dogs Law comes inside the Municipal Area, his badge is to be respected by virtue of section 182 (1) (a) of the Municipal Corporations Laws. Hence, at any rate, one provision of the Dogs Law is not intended to apply to dogs licensed within a Municipal Area.

Should however both laws be in operation in the same area there would be serious inconsistency in the provisions in force for the destruction of ownerless dogs. By the Kyrenia Municipal Bye-law 191 a dog wandering within the Municipal Limits and not wearing a metal badge may be seized by any member of the Cyprus Police Force and delivered to the kennels of the Municipal Corporation. Thereafter if not claimed within 24 hours the dog may be destroyed in such way as the Mayor may direct in writing. By the Dogs Law, 1920, such a dog might be destroyed without lapse of time. Now if the Dogs Law, 1920, applied in Kyrenia Municipal Area to enable the police to destroy a dog immediately, what could have been the object of giving them the more circumscribed powers by the Kyrenia Municipal Bye-laws to catch the dog, take it to the Municipal kennels, keep it there 24 hours, and only then destroy it by the special means authorized in writing by the Mayor?

It is most unlikely that when the Municipal Corporations Laws, 1930-1938, were made they were not intended to exclude or repeal the Dogs Law in so far as the new provisions relating to dogs were inconsistent with it. The fact that by the Dogs Law itself registration under Municipal Regulations was recognized suggests that when that law was originally passed it was not intended to apply to Municipal Areas.

When the provisions of statutes are inconsistent there are certain wellknown principles of interpretation to be applied by the Courts. One of these principles was stated thus by James, L.J., in *Ebbs v. Boulnois* (1875) 10-Chancery, p. 484 :—

“Common sense must be applied to reconcile the two enactments. It is a cardinal principle in the interpretation of a statute that if there are two inconsistent enactments, it must be seen if one cannot be read as a qualification of the other.”

Another principle is that “Where there are provisions in a special statute which are clearly inconsistent with the provisions of a general statute the provisions of the general statute must yield to those of the special statute.” This principle was laid down by Fry, J., in the leading case of *Corporation of Yarmouth v. Simmons* (10 Ch. D., 528).

Now in the present case it is clear that, following the above principles, the two enactments—the Dogs Law, 1920, and the Municipal Corporations Laws, 1930-1938—must be reconciled by the use of common sense and the provisions of the one read as a qualification of the other. This can only be done by holding that the Municipal Corporations Laws, Sections 181, 181A, B and C and 182, qualify the Dogs Law and govern the treatment of dogs in Municipal Areas—and to that extent exclude the Dogs Law from operation in those areas. Further, the Municipal Corporations Laws are enactments of special application to Municipal Areas, whereas the Dogs Law is of general application to Colony; following therefore the dictum of Fry, J., above-mentioned, namely that when the provisions of a special statute are inconsistent with those of a general statute the provisions of the general statute must yield to those of the special, it follows that the provisions of the Municipal Corporations Laws relating to dogs must take the place of the Dogs Law within Municipal Areas, where inconsistent special provisions are in force.

Hence it follows that the defendant had no right to shoot the plaintiff's dog within the Municipal Area of Kyrenia, as the Dogs Law must be held not to apply in that area. The defendant, therefore, committed trespass under Section 39 of the Civil Wrongs Law, and is liable to the plaintiff in damages.

It has been held by the District Court that because the defendant acted on the instructions of his superior officer, he would, in any event, be excused from liability. The law does not, however, protect anyone from doing a wrongful act on the orders of a superior, since the act being unlawful no one is compellable to obey. If however the wrongful act is done by someone supposedly acting under his superior orders, the person giving such orders is liable equally with the person executing them.

The law on this subject is covered by section 4 (2) of the Civil Wrongs Law, which provides that a servant of the Crown (as respondent is) shall be responsible for any civil wrong committed by him, provided he is sued in his personal capacity and provided that the act was not one within the scope of his lawful authority.

We have already held that the shooting of the dog was unlawful and consequently was not within the scope of respondent's lawful authority. The appeal will therefore be allowed with costs both here and in the Court below.

As the amount in issue is small and to avoid further expense we assess the damage suffered by the appellant at £1. 5s. Judgment will therefore be entered for the appellant for this amount together with £5. 6s. 4½p. for costs.

Appeal allowed.

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