

THE IMPROVEMENT BOARD OF EYLENJA,

*Appellant-Defendant,*

v.

ANDREAS CONSTANTINOU,

*Respondent-Plaintiff.*

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(Civil Appeal No. 4575).

*Constitutional Law—Article 23, paragraphs 1, 2, 3, 4 and 7 of the Constitution—Right to acquire, own, possess etc. etc. of any movable or immovable property—No deprivation or restriction or limitation of any such right except as provided in the said Articles—Constitutionality of statutes—Constitutionality of section 9 (2) of the Dogs Law, Cap. 52 (as amended by Law 56 of 1964)—Provisions of section 9 (2) empowering the appropriate authority to shoot “stray dogs” within the meaning of section 2 of the said Law, as applied by the appellant Board in this case, not unconstitutional—As being within the police power of the State expressly provided in the said Article 23—Cfr. sections 2, 4 (1), 5 and 9 (1) (2) of the Dogs Law, Cap. 52 (as amended) (supra)—The restrictions or limitations laid down in the Dogs Law (supra) for the keeping of a dog (such as licence, wearing a badge etc. etc.) appear to be within the ambit of paragraph 3 of Article 23 of the Constitution—It follows that persons who do not comply with such restrictions or limitations are not protected by paragraph 1 or 2 of that Article 23 and cannot have the “right to respect for such right” as provided in paragraph 1 of the same Article.*

*Constitutional Law—Practice and Procedure—Constitutionality of statutes—Issue of alleged unconstitutionality—Such issues must be treated now as issues of law and be subject to revision on appeal—Reference under Article 144 of the Constitution no longer applicable (see the Attorney-General v. Ibrahim 1964 C.L.R. 195)—Observations by the Court as to the procedure to be followed when a question of unconstitutionality of a statute is raised.*

*Unconstitutionality of Statutes—Procedure—Practice—See above.*

*Property—Right to acquire, own, possess, enjoy etc. any movable or immovable property—Deprivation, restrictions or limitations thereof—Article 23 of the Constitution—See above.*

*Police—Police power of the State expressly provided in Article 23 of the Constitution.*

*Limitations or Restrictions of the right of property—See above.*

*Restrictions of the right of property—See above.*

*Deprivation of the right of property—See above.*

*Dogs—Stray Dogs—Shooting “stray dogs”—Conditions required for keeping dogs—The Dogs Law, Cap. 52 (as amended by Law 56 of 1964)—See above.*

*“Stray dogs”—Shooting “stray dogs”—See above.*

*Practice and Procedure—Unconstitutionality of statute—The issue is now a mere issue of law—Procedure to be followed when raised—Article 144 of the Constitution—Ibrahim’s case (supra)—See, also, above.*

This case turns on the constitutionality of section 9 (2) of the Dogs Law, Cap. 52, as amended by Law No. 56 of 1964, which empowers the appropriate authority to destroy by shooting any stray dog found not wearing a badge anywhere in Cyprus, except within the area of the six main towns, and provides that no compensation shall be payable in respect of the destruction of such a dog. The full text of section 9 (2) is set out in the Judgment delivered in this case by Josephides, J. *post*. The objects of the Law appear mainly from the provisions of section 5 (see those provisions set out in the same Judgment of Josephides J. *post*). The Law further provides that no person shall keep a dog unless he is licensed to do so and that stray dogs (which are defined in section 2 as dogs “found wandering on a public road or in any other place to which the public has access without proper control and creating a nuisance”) may be seized and destroyed under certain conditions as laid down in section 9 (1) of the Law, regarding the six main towns of the Republic, and under the aforesaid section 9 (2) with regard to all other areas.

On the 1st May, 1965, the appellant Board put up notices in public places in its area (Eylenja) informing all dog-owners to comply with the provisions of section 4 (1) of the Dogs Law which provides that no person shall keep a dog unless he has obtained a licence in that behalf from the appropriate authority; and warning them that any stray dog found without a badge for the year 1965 would be shot by the Police and/or by any

other authorized person. Copies of such notices were also distributed by a servant of the Board to all houses in Eylenja village, including that of the respondent.

Twenty-four days later, namely on the 24th May, 1965, the respondent's dog was found wandering in a public road in the village without any control, wearing no collar or badge and creating a nuisance by interfering and spilling the rubbish-bins. It was then shot on the spot by the Board's authorised servant who, at the time, did not recognize the animal and did not know who the owner was. The respondent has not obtained a licence to keep his dog for 1965 under the Law.

On those facts the trial Judge, in an action instituted by the respondent for damages, found that the destruction of the respondent's dog was not, in the circumstances, illegal but within the provisions laid down in section 9 (2) of the Dogs Law, Cap. 52, as amended (*supra*), and held that in accordance with the express provisions of that section, no compensation was payable. However, the learned Judge then proceeded to consider the provisions of that section and held that "the Dogs Law is unconstitutional as contravening Article 23, paragraphs 1, 2 and 3 of the Constitution in so far as it authorises the destruction of dogs owned by others", on the ground that such Law provided for the deprivation of a proprietary right not covered by the provisions of Article 23, that is, "the destruction of dogs which entails the deprivation of their owners of the right to possess and own them", without the payment of compensation. In the result he awarded £20 compensation to the respondent-plaintiff.

Article 23, paragraphs 1, 2, 3 and 4 of the Constitution provide :

"1. Every person, alone or jointly with others, has the right to acquire, own, possess, enjoy or dispose of any movable or immovable property and has the right to respect for such right.

The right of the Republic to underground water, minerals and antiquities is reserved.

2. No deprivation or restriction or limitation of any such right shall be made except as provided in this Article.

3. Restrictions or limitations which are absolutely necessary in the interests of the public safety or the public

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health or the public morals or the town and country planning or the development and utilization of any property to the promotion of the public benefit or for the protection of the rights of others may be imposed by law on the exercise of such right.

Just compensation shall be promptly paid for any such restrictions or limitations which materially decrease the economic value of such property; such compensation to be determined in case of disagreement by a civil court.

4. Any movable or immovable property or any right over or interest in any such property may be compulsorily acquired by the Republic or by a municipal corporation or by a Communal Chamber for the educational, religious, charitable or sporting institutions, bodies or establishments within its competence and only from the persons belonging to its respective Community or by a public corporation or a public utility body on which such right has been conferred by law, and only—

(a) for a purpose which is to the public benefit and shall be specially provided by a general law for compulsory acquisition which shall be enacted within a year from the date of the coming into operation of this Constitution; and

(b) when such purpose is established by a decision of the acquiring authority and made under the provisions of such law stating clearly the reasons for such acquisition; and

(c) upon the payment in cash and in advance of a just and equitable compensation to be determined in case of disagreement by a civil court."

In effect, the learned trial Judge held that the provisions of section 9 (2) of the Dogs Law (as amended, *supra*) were repugnant to the provisions of Article 23, paragraphs 1, 2 and 3 of the Constitution; but his attention does not seem to have been drawn to the provisions of paragraph 7 of the same Article which reads as follows :

"7. Nothing in paragraphs 3 and 4 of this Article contained shall affect the provisions of any law made for the purpose of levying execution in respect of any tax or penalty, executing any judgment, enforcing any contractual obligation or for the prevention of danger to life or property."

*Held, Per Josephides J. (Hadjianastassiou J. concurring) :*

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(1) The restrictions or limitations laid down in the Dogs Law, Cap. 52 for the keeping of a dog appear to be within the ambit of paragraph 3 of Article 23 which provides that restrictions or limitations absolutely necessary in the interests of public safety or the public health or for the protection of the rights of others may be imposed by law on the exercise of the right to acquire, own, possess, enjoy or dispose of any movable or immovable property under paragraph 1 of Article 23.

(2) It follows as a corollary from this that persons who do not comply with such restrictions or limitations, which are made in the interest of public safety or the public health or for the protection of the rights of others, are not protected by paragraph 1 or 2 of Article 23 and cannot have "the right to respect for such right" (vide paragraph 1); and, also, paragraph 7 of the same Article provides that nothing in paragraphs 3 and 4 (*supra*) contained shall affect the provisions of any law made for the prevention of danger to life or property.

(3) In considering the question of prevention of danger to life or property, under the provisions of Article 23, paragraph 7, of the Constitution (*supra*), I think that although decayed food, infectious rags and clothing, houses on fire, deceased cattle, obscene books or pictures and gambling instruments, are the property of individuals, nevertheless, it cannot be said that it is not within the police power of the State to provide by law for their destruction when such articles or property are dangerous to life or property of others.

(4) For the above reasons and in the light of American case law relevant to the matters in hand (see the cases as well as the 5th and 14th Amendments cases as well as the 5th Amendment to the Constitution of U.S.A. and the 14th Amendment (section) set out in the judgment delivered by the learned Justice in the present appeal *post*), I am of the view that the provisions of section 9 (2) of the Dogs Law, Cap. 52 (as amended by Law 56 of 1964) as applied in this case by the appellant Board, after due notice, are not unconstitutional as they are within the police power of the State expressly provided in Article 23 of our Constitution.

(5) I would accordingly allow the appeal, set aside the judgment of the trial Judge and dismiss respondent's-plaintiff's claim with costs here and below.

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*Held, Per Stavriniades, J. :*

(1) It seems to me that the power to destroy "stray dogs" may fairly be regarded as being "absolutely necessary in the interests of public safety or public health" within paragraph 3 of Article 23 of the Constitution (*supra*) or, alternatively, as falling within the ambit of "a Law made for ..... the prevention of danger to life or property" within paragraph 7 of the same Article (*supra*).

(2) For this reason I agree that section 9 (2) of the Law is not unconstitutional.

*Appeal allowed. Judgment of the District Court set aside. Respondent's-Plaintiff's claim dismissed with costs here and in the Court below.*

Cases referred to :

*Sentell v. New Orleans and Carrollton Railroad Co.*, 166 U.S. 698 at pp. 702, 704; 41 Law. ed. 1169 at p. 1171;

*Morey v. Brown* 42 N.H. 373;

*Blair v. Forehand* 100 Mass. 136 (1 Am. Rep. 94, 97 Am. Dec.82);

*Morewood v. Wakefield*, 133 Mass. 240;

*Jenking v. Ballantyne*, 8 Utah, 245 (16 L.R.A 689);

*The Attorney-General of the Republic v. Ibrahim*, 1964 C.L.R. 195.

*Observations of the Court as to the procedure to be followed when a question of unconstitutionality of a law is raised.*

The question of the unconstitutionality of the Law in this case was not raised in the pleadings and was not raised at all until the final address of the plaintiff's-respondent's counsel before the trial Judge and the record shows that the appellant Board's-defendant's counsel was not given the opportunity of addressing the Court on this important question. It is true that following the decision of this Court in the case of the *Attorney-General v. Ibrahim*, 1964 C.L.R. 195, it is no longer necessary to follow the procedure for a reference, under Article 144 of the Constitution, by any Court to the Supreme Constitutional Court, and that all questions of alleged unconstitutionality

should be treated as issues of law in the proceedings, subject to revision on appeal in due course. But that does not mean that questions of constitutional importance may be raised in an offhand way without giving the opportunity to the other side of being heard. I am of the view that where a party in a civil proceeding wishes to raise the question of the unconstitutionality of any law, he should follow one of two courses :

(a) he should either raise it specifically with full particulars in his pleading, and refer to the specific provision of the Constitution which is alleged to have been violated by the impugned statute, thus giving the opportunity to the other side of replying by his own pleading; or

(b) if he wishes to raise such a question at a later stage of the proceedings—and indeed it would seem that he has the right to raise such a question at any stage thereof—see Article 144 (1) of the Constitution—then he should do so formally in writing, formulating the question raised in detail, as in paragraph (a) above, so as to give the opportunity to the other side of being heard on the point.

It should, perhaps, be added that if such a question were raised in the course of the hearing, the trial Court might have to exercise its discretion of granting an adjournment to the other side to enable it to prepare its case. Needless to say that the question of unconstitutionality thus raised must be material for the determination of any matter at issue in such proceedings (see Article 144.1).

### Appeal.

Appeal against the judgment of the District Court of Nicosia (Ilkay D.J.) dated the 7th March, 1966, (Action No. 2007/65) whereby the defendants were adjudged to pay to the plaintiff the sum of £20 as damages for shooting his dog.

*A. Triantafyllides* with *A. Serghides*, for the appellant.

*A. Georghiadis*, for the respondent.

*Cur. adv. vult.*

The following Judgments were read :

JOSEPHIDES, J. : This case turns on the constitutionality of section 9 (2) of the Dogs Law, Cap. 52, as amended by Law 56

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of 1964, which empowers the appropriate authority to destroy by shooting any stray dog found not wearing a badge anywhere, except within the area of the six main towns of Cyprus, and provides that no compensation shall be payable in respect of the destruction of such a dog.

The facts as found by the trial Judge, and not challenged on appeal, are as follows :

The respondent was the owner of a three-year old hunting dog which he bought for £5 as a puppy. This dog was, on the 24th May, 1965, shot and killed by a person duly authorized under the provisions of section 9 (2) of the Dogs Law, within the area of Eylenja, which is a suburb of Nicosia. Such person was acting with the authority and on the instructions of the appelland Improvement Board of Eylenja (to which I shall refer in this judgment as "the Board").

On the 1st May, 1965, the Board put up notices in public places in Eylenja informing all dog-owners to comply with the provisions of section 4 (1) of the Dogs Law which provides that no person shall keep a dog unless he has obtained a licence in that behalf from the appropriate authority; inviting them to apply to the office of the Board at Eylenja to be furnished with the relevant licence to keep a dog for the year 1965; and warning them that any stray dog found without a badge for the year 1965 would be shot by the Police and/or by any authorized person, and that the Board would not be liable for such destruction. These notices were posted up on 14 notice-boards within the improvement area and at cafés and clubs. Copies of such notice were also distributed by a servant of the Board to all houses in Eylenja, and a copy was actually inserted under respondent's door.

Twenty-four days later, namely on the 24th May, 1965, the respondent's dog was found wandering in a public road in Eylenja without proper control and creating a nuisance by interfering and spilling the rubbish-bins. This was some 130-200 yards from respondent's house. It was then shot on the spot by the Board's authorized servant and killed, without being detained for any period prior to its destruction. The respondent had not obtained a licence to keep his dog for 1965 and at the material time the animal was not wearing a collar or a badge. The Board's servant did not recognise the animal and did not know who the owner was.



On these facts the trial Judge found that the destruction of the respondent's dog was not, in the circumstances, illegal but within the provisions laid down in section 9 (2) of the Dogs Law, Cap. 52, as amended by Law 56 of 1964, and held that, in accordance with the express provisions of that section, no compensation was payable to the respondent in respect of the destruction of his dog. However, the learned Judge then proceeded to consider the provisions of that section and held that "the Dogs Law is unconstitutional as contravening Article 23 (paragraphs 1, 2, and 3) of the Constitution in so far as it authorises the destruction of dogs owned by others", on the ground that such law provided for the deprivation of a proprietary right not covered by the provisions of Article 23, that is, "the destruction of dogs which entails the deprivation of their owners of the right to possess and own them", without the payment of compensation. In the result he awarded £20 compensation to the respondent and made no order as to costs.

It is significant to observe that the question of the unconstitutionality of the law was not raised in the pleadings, nor was it raised at all before the learned District Judge except in the final address of respondent's counsel, after the Board's counsel had addressed the Court, and the record shows that the Board's counsel was not given the opportunity of addressing the Court on this important question. I shall have something to say on this point at a later stage of my judgment.

Learned counsel for the Board argued several grounds before us on appeal but it is convenient to consider first the question of the constitutionality of the Law, because if we decide the point in the Board's favour, that is to say, that the Law is not unconstitutional, then it will not be necessary for us to consider the other points raised by the Board in this appeal.

Section 9 (2) of the Dogs Law, Cap. 52, as amended by Law 56 of 1964, the constitutionality of which is challenged, reads as follows :

"(2) Notwithstanding anything contained in subsection (1) every stray dog found anywhere other than in the area of any of the towns of Nicosia, Limassol, Famagusta, Larnaca, Paphos and Kyrenia, not wearing a badge in the prescribed form may be destroyed by shooting by any member of the Cyprus Police Force authorized in this respect by the Chief Constable, or by such other person

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as may be authorized by the Governor. No compensation shall be payable in respect of the destruction of a dog in pursuance of this subsection”.

The material parts of Article 23 are the following :

#### ARTICLE 23.

“1. Every person, alone or jointly with others has the right to acquire, own, possess, enjoy or dispose of any movable or immovable property and has the right to respect for such right.

The right of the Republic to underground water, minerals and antiquities is reserved.

2. No deprivation or restriction or limitation of any such right shall be made except as provided in this Article.

3. Restrictions or limitations which are absolutely necessary in the interest of the public safety or the public health or the public morals or the town and country planning or the development and utilization of any property to the promotion of the public benefit or for the protection of the rights of others may be imposed by law on the exercise of such right.

Just compensation shall be promptly paid for any such restrictions or limitations which materially decrease the economic value of such property; such compensation to be determined in case of disagreement by a civil Court.

4. Any movable or immovable property or any right over or interest in any such property may be compulsorily acquired by the Republic or by a municipal corporation or by a Communal Chamber for the educational, religious, charitable or sporting institutions, bodies or establishments within its competence and only from the persons belonging to its respective Community or by a public corporation or a public utility body on which such right has been conferred by law, and only—

(a) for a purpose which is to the public benefit and shall be specially provided by a general law for compulsory acquisition which shall be enacted within a year from the date of the coming into operation of this Constitution; and

- (b) when such purpose is established by a decision of the acquiring authority and made under the provisions of such law stating clearly the reasons for such acquisition; and
- (c) upon the payment in cash and in advance of a just and equitable compensation to be determined in case of disagreement by a civil court."

The learned Judge in effect found that the provisions of section 9 (2) of the Dogs Law (as amended) were repugnant to the provisions of Article 23, paragraphs 1, 2 and 3 of the Constitution; but his attention does not seem to have been drawn to the provisions of paragraph 7 of the same Article which reads as follows :

"7. Nothing in paragraphs 3 and 4 of this Article contained shall affect the provisions of any law made for the purpose of levying execution in respect of any tax or penalty, executing any judgment, enforcing any contractual obligation or for the *prevention of danger to life or property*".

It will be seen that paragraph 7 of Article 23, *inter alia*, provides that nothing in paragraphs 3 and 4 of that Article shall affect the provisions of any law made "for the prevention of danger to life or property."

Dogs, which are included in the category of domestic animals, are the subject of property, which is subject to certain restrictions and the provisions for their licensing. One view may be that the principle is that there is a qualified property in a dog (see *Sentell* case quoted below) and that unless a person is licensed to keep a dog he may not be considered to have the property of it and the rights and protections which flow from the absolute right of property.

Be that as it may, I shall proceed to consider whether the provisions of section 9 (2) of the Dogs Law (as amended) are repugnant to, or inconsistent with, the provisions of Article 23, paragraphs 1, 2 and 3.

The restrictions or limitations laid down in the Dogs Law, Cap. 52, for the keeping of a dog appear to be within the ambit of paragraph 3 of Article 23 which provides that restrictions or limitations absolutely necessary in the interests of public safety or the public health or for the protection of the rights of others may be imposed by law on the exercise of the right

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to acquire, own, possess, enjoy or dispose of any movable or immovable property under paragraph 1 of Article 23. It follows as a corollary from this that persons who do not comply with such restrictions or limitations, which are made in the interest of public safety or the public health or for the protection of the rights of others, are not protected by paragraph 1 or 2 of Article 23 and cannot have "the right to respect for such right" of property (paragraph 1); and, as already stated, paragraph 7 of the same Article provides that nothing in paragraphs 3 and 4 contained shall affect the provisions of any law made for the prevention of danger to life or property.

The objects of the Dogs Law, Cap. 52, appear mainly from the provisions of section 5, that is to say, that the Law has as its object (a) to protect members of the public, cattle and domestic animals from dangerous dogs; (b) to prevent dogs from being a public nuisance; (c) to prevent persons who have been convicted of cruelty to animals from possessing dogs; and (d) to protect public health by preventing the keeping of dogs under conditions which are dangerous to public health. The appropriate authority may refuse to grant a licence, or may withdraw a licence to keep a dog, for the purpose of achieving the aforesaid objects, and in that case such dogs may be destroyed by the said authority (provided certain conditions are fulfilled).

The Law further provides that no person shall keep a dog unless he is licensed to do so and that stray dogs (which are defined in section 2 as dogs "found wandering on a public road or in any other place to which the public has access without proper control and creating a nuisance") may be seized and destroyed under certain conditions, as laid down in section 9 (1) of the Law, with regard to the six main towns of the Republic, and under section 9 (2) with regard to all other areas.

Undoubtedly private interests require that valuable dogs shall be protected and public interest demands that the worthless shall be destroyed, and it has been aptly said, in the American case of *Sentell v. New Orleans and Carrollton Railroad Co.*, 166 U.S. 698 at page 702 (41 Law. ed. 1169 at page 1171), that dogs "have, from time immemorial, been considered as holding their lives at the will of the legislature, and properly falling within the police powers of the several states. Laws for the protection of domestic animals are regarded as having but a limited application to dogs and cats, and, regardless of statute, a ferocious dog is looked upon as *hostis humani generis*,

and as having no right to his life which man is bound to respect." Higher breeds rank among the noblest representatives of the animal kingdom and are justly esteemed for their intelligence, fidelity and their natural companionship with man, while others are a serious danger to public health, life, limb and property.

The legislation which is usually enacted in all civilized countries, and Cyprus is no exception, is really directed against the worthless class of dogs and is based upon the theory that the owner of a really valuable dog will feel sufficient interest in him to comply with any reasonable regulation which is made in the public interest.

Counsel have been unable to direct our attention as to how cases were decided in other countries; however, we have been able to trace an American case which summarizes a number of cases decided in the United States, and which we have found very helpful in deciding the present appeal: see the *Semell* case quoted above.

In *Morey v. Brown*, 42 N.H. 373—

"a statute providing that no person should be liable for Killing a dog found without a collar with the name of the owner engraved thereon, was held to justify the killing, although the defendant had actual notice of the ownership of the dog found without such collar. Plaintiff claimed that the act was unconstitutional, but the Court held that it was not an act to take private property for public use or to deprive parties of their property in dogs; but merely to regulate the use and keeping of such property in a manner which seemed to the legislature reasonable and expedient. 'It is a mere police regulation such as, we think, the legislature might constitutionally establish'. To the same effect are *Carter v. Dow*, 16 Wis. 299; *Mitchell v. Williams* 27 Ind. 62; *Haller v. Sheridan*, 27 Ind. 494."

It will be observed that it was held that the aforesaid statute was not unconstitutional as it was not an act to take private property for public use or to deprive parties of their property in dogs but merely to regulate the use and keeping of such property in a manner which seemed to the legislature reasonable and expedient. This is the case with our Dogs Law which is made for the purpose of preventing danger to life or property, and for no other purpose.

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The statutes of Massachusetts, from the earliest colonial period, are reviewed in an elaborate opinion in *Blair v. Forehand*, 100 Mass. 136 (1 Am. Rep. 94, 97 Am. Dec. 82), and laws were shown to have existed, sometimes for the killing of “unruly and ravenous dogs”; sometimes, as in Nantucket in 1743, for the killing of “any dog or bitch whatsoever that shall at any time be found there”; and sometimes for the killing of dogs “strolling out of the inclosure or immediate care of the owner”, or going at large without a collar. In the particular case it was held that a statute declaring that any person might, and every police officer and constable should, kill or cause to be killed, all dogs, whenever or wherever found, not licensed and collared according to other provisions of the statute, was within the constitutional limits of the authority of the legislature. Such acts appear to have been very frequent in that state, and their constitutionality generally acquiesced in.

In the case of *Morewood v. Wakefield*, 133 Mass. 240, the same statute was construed as authorizing any person to kill a dog which was licensed, but had no collar on, provided that he could do so without committing a trespass, although no warrant for the killing of dogs had been issued. The constitutional objection against general warrants, which was the occasion of so much controversy in that state in its colonial days, was held not to apply to dogs, and a warrant was sufficient which ordered the killing of all dogs, living in a town, not duly licensed and collared.

In *Jenkins v. Ballantyne*, 8 Utah, 245 (16 L.R.A. 689), the constitutional question is considered at great length, and the provisions of a city charter authorizing the city to tax, regulate, or prohibit the keeping of dogs, and to authorize the destruction of the same, when at large, contrary to the ordinance, and the issuance of a certificate of registration, requiring the wearing of a collar by the dog with his registered number thereon, and providing that all dogs not so registered and collared should be liable to be killed by any person,—were valid and were not in violation of the 5th Amendment to the Constitution.

It should be borne in mind that the 5th Amendment to the Constitution of the United States of America provides that “no person shall be held to answer for a capital, or otherwise infamous crime.....nor be deprived of life, liberty or property, without due process of law; not shall private property be taken for public use, without just compensation”; and the 14th Amendment (section) provides :

".....nor shall any State deprive any person of life, liberty or property, without due process of law...."

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In considering the question of prevention of danger to life or property, under the provisions of Article 23, paragraph 7, of our Constitution, I think that although decayed food, infectious rags and clothing, houses on fire, diseased cattle, obscene books or pictures and gambling instruments, are the property of individuals, nevertheless, it cannot be said that it is not within the police power of the State to provide by law for their destruction when such articles or property are dangerous to life or property of others.

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This is what Mr. Justice Brown had to say in the *Sentell* case (at page 704 of 166 U.S.; 41 Law. ed. at page 1171) :

"Even if it were assumed that dogs are property in the fullest sense of the word, they would still be subject to the police power of the state, and might be destroyed or otherwise dealt with as in the judgment of the legislature is necessary for the protection of its citizens. That a state, in a *bona fide* exercise of its police power, may interfere with private property, and even order its destruction, is as well settled as any legislative power can be, which has for its objects the welfare and comfort of the citizen. For instance, meats, fruits, and vegetables do not cease to become private property by their decay; but it is clearly within the power of the state to order their destruction in times of epidemic, or whenever they are so exposed as to be deleterious to the public health. There is also property in rags and clothing; but that does not stand in the way of their destruction in case they become infected and dangerous to the public health. No property is more sacred than one's home, and yet a house may be pulled down or blown up by the public authorities, if necessary to avert or stay a general conflagration, and that, too, without recourse against such authorities for the trespass. *Bowditch v. Boston*, 101 U.S. 16 (25 : 980); *Mouse's Case*, 12 Coke, 63; *British Cast Plate Mfrs. v. Meredith*, 4 T.R. 794, 797; *Stone v. New York*, 25 Wend. 157; *Russell v. New York*, 2 Denio, 461.

"Other instances of this are found in the power to kill diseased cattle, to destroy obscene books or pictures, or gambling instruments, and, in *Lawton v. Steele*, 152 U.S. 133 (38 : 385), it was held to be within the power

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of a state to order the summary destruction of fishing nets, the use of which was likely to result in the extinction of valuable fisheries within the waters of the state.

"It is true that under the 14th Amendment no state can deprive a person of his life, liberty, or property without due process of law; but in determining what is due process of law we are bound to consider the nature of the property, the necessity for its sacrifice, and the extent to which it has heretofore been regarded as within the police power. So far as property is inoffensive or harmless, it can only be condemned or destroyed by legal proceedings with due notice to the owner; but so far as it is dangerous to the safety or health of the community, due process of law may authorize its summary destruction. As was said in *Jenkins v. Ballantyne*, 8 Utah, 245, 247 (16 L.R.A. 689): 'The emergency may be such as not to admit of the delay essential to judicial enquiry and consideration, or the subject of such action and process may be of such a nature, or the conditions and circumstances in which the act must be performed to effect the protection and give effect to the law may be such, as to render judicial inquiry and consideration impracticable.'

"Although dogs are ordinarily harmless, they preserve some of their hereditary wolfish instincts, which occasionally break forth in the destruction of sheep and other helpless animals. Others, too small to attack these animals, are simply vicious, noisy, and pestilent. As their depredations are often committed at night, it is usually impossible to identify the dog or to fix the liability upon the owner, who, moreover, is likely to be pecuniarily irresponsible. In short, the damages are usually such as are beyond the reach of judicial process, and legislation of a drastic nature is necessary to protect persons and property from destruction and annoyance. Such legislation is clearly within the police power of the state. It ordinarily takes the form of a license tax, and the identification of the dog by a collar and tag, upon which the name of the owner is sometimes required to be engraved, but other remedies are not uncommon."

In the *Sentell* case it was held by the Supreme Court of the United States that restrictions on property in dogs making its protection conditional upon compliance with regulations



for the protection of persons and property from destruction and annoyance by them were within the police power.

For the reasons I have endeavoured to explain above, I am of the view that the provisions of section 9(2) of the Dogs Law (as amended) as applied by the Board in this case, after due notice, are not unconstitutional as they are within the police power of the State expressly provided in article 23. I would accordingly allow the appeal, set aside the judgment of the District Court and dismiss the respondent's claim.

Before concluding this judgment, however, I would like to make certain observations with regard to the procedure followed in this case in the District Court. As already stated, the question of the unconstitutionality of the Law was not raised in the pleadings and was not raised at all until the final address of the respondent's counsel. It is true that following the decision of this Court in the case of the *Attorney-General v. Ibrahim* 1964 C.L.R. 195, at page 200 et seq., it is no longer necessary to follow the procedure for a reference, under Article 144 of the Constitution, by any Court to the Supreme Constitutional Court, and that all questions of alleged unconstitutionality should be treated as issues of law in the proceedings, subject to revision on appeal in due course. But that does not mean that questions of constitutional importance may be raised in an offhand way without giving the opportunity to the other side of being heard. I am of the view that where a party in a civil proceeding wishes to raise the question of the unconstitutionality of any law, he should follow one of two courses :

- (a) he should either raise it specifically with full particulars in his pleading, and refer to the specific provision of the Constitution which is alleged to have been violated by the impugned statute, thus giving the opportunity to the other side of replying by his own pleading; or
- (b) if he wishes to raise such a question at a later stage of the proceedings—and indeed it would seem that he has the right to raise such a question at any stage thereof—(see Article 144.1)—then he should do so formally in writing, formulating the question raised in detail, as in paragraph (a) above, so as to give the opportunity to the other side of being heard on the point.

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It should, perhaps, be added that if such a question were raised in the course of the hearing, the trial Court might have to exercise its discretion of granting an adjournment to the other side to enable it to prepare its case. Needless to say that the question of unconstitutionality thus raised must be material for the determination of any matter at issue in such proceedings (Article 144.1).

Finally, I would like to make some observations with regard to the provisions of section 9 (2) of the Dogs Law, Cap. 52 (as amended by Law 56 of 1964), which empowers the appropriate authority to shoot dogs publicly in any area other than the six main towns of the Republic. On the particular facts of this case we have held that the destruction of the respondent's dog, after due notice, was legal and that the provisions of that section as applied by the authority in this case, were not unconstitutional. However, without for a moment underestimating the danger to public health and the nuisance to the public from ownerless stray dogs, I venture to think that some other means may be employed in catching such dogs (and there are, I believe, more humane and up-to-date methods these days), instead of shooting them in the streets. To say the least, the grim sight of dogs shot in the middle of the street in the suburbs of the six main towns of Cyprus, especially in the suburbs of the capital of the Republic, which in reality form part of the town (as in the case of Ay. Dhometios, Engomi, etc.), is a terrible experience to the residents, especially to the children, and it is unlikely to appeal to overseas visitors to this country nor promote the good name of Cyprus abroad. I would, therefore, commend this matter for the consideration of the executive and legislative authorities of the Republic.

In the result the appeal is allowed, the judgment of the District Court set aside and the respondent's claim dismissed with costs here and the Court below.

STAVRINIDES, J. : It seems to me that the power to destroy "stray dogs" may fairly be regarded as being "absolutely necessary in the interests of public safety or public health" within para. 3 of Article 23 of the Constitution or, alternatively, as falling within the ambit of "a Law made for .... the prevention of danger to life or property" within para. 7 of that Article. For this reason I agree that s. 9(2) of the Law is not unconstitutional.

HADJIANASTASSIOU, J. : I have had the benefit of reading in advance the elaborate judgment of Mr. Justice Josephides

just read and as I am in full agreement, I do not consider it necessary to add anything myself. I would allow the appeal with costs in favour of the appellant here and the Court below.

*Appeal allowed. Judgment of the District Court set aside : Respondent's claim dismissed with costs here and the Court below.*

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