

ROYAL COURT
(Samedi Division)

107.

22nd June, 1992

Before: The Bailiff, assisted by
Jurat Orchard and
Jurat Gruchy

Representation of Margaret Mary McInerney, asking the Court rule that, pending the hearing and decision of a representation brought under Article 11 of the Dogs (Jersey) Law, 1961, the Police Court has no inherent jurisdiction, when the dog's owner is known, and it is not a stray and has not worried livestock, to order its seizure, nor to deprive the owner of access or possession.

Advocate P. Landick for the Representor.
Advocate S.C.K. Pallot on behalf of the
Attorney General.

JUDGMENT

THE BAILIFF: This is a representation brought by the owner of a dog. That dog is at present in the Animals' Shelter where it was taken, on 3rd June, 1992, by the police after an incident in the "Berkshire Hotel" to which it had been taken by the son of its owner.

A representation under Article 11 of the Dogs (Jersey) Law, 1961, was eventually brought before the Police Court on 18th June, 1992. The reason for the delay being that the son of the owner was

said to have been bitten by the dog and had been in hospital and therefore could not be served with a summons. It was said in that representation that the dog had bitten two people on 3rd June, 1992.

The evidence was not proceeded with by the Magistrate at the hearing of the representation, and he remanded the case until 1st July, 1992, and in the meantime ordered that the dog would be kept at the Animals' Shelter.

The point therefore is a very narrow one: did the Magistrate have the power under Article 11 of the Law, to make such an Order?

It is not a question of jurisdiction - it is suggested in the representation that the Magistrate said he had inherent jurisdiction - it is not that, we think; it is whether the Magistrate had the power under the statute and under the statute which created his Court to make the Order. He clearly had jurisdiction in the sense that the Law of 1949 gives the Magistrate the power to try any matters except those which are peculiarly within Her Majesty's jurisdiction.

The Article of the Law which concerns this Court is Article 11. That Article provides (in the first paragraph):

"(1) Where it is shown to the satisfaction of the Police Court, on a representation made by any person, that a dog is dangerous or is not kept under proper control, the court may make an order directing either -

(a) that the dog shall be kept under proper control; or

(b) that the dog shall be destroyed.

Provided that no order shall be made under this paragraph unless the owner of the dog has been given an opportunity of being heard".

Paragraph (2) provides that where an order of destruction has been made and an appeal is entered, then until the appeal is heard the order of destruction "**shall (merely) have effect as if it were an order directing that the dog shall be kept under proper control**".

Mr. Pallot for the Attorney General has pointed out that the words which are found in the English Dogs Act 1871, do not appear in the Jersey Law. On the other hand Mr. Landick has said that our Law was not based on the Dogs Act because there was an earlier Law of 1868, which we have not seen, which itself repealed the Code of 1771. That may well be, but we have to interpret the statute as we find it.

Mr. Pallot has suggested that there is an implied term in the statute because of the wording in Article 11. The argument appears to be this: if the Magistrate reaches the conclusion that, although a dog should not be destroyed, it should be kept under proper control, and having heard the evidence comes to the further conclusion that the owner of that animal is unable to keep that animal under control, then it would be wrong for the Magistrate to leave it with the owner; he should be empowered, and is empowered by necessary implication, to place that animal somewhere where it will be kept under proper control, either with another member of the family, or a friend of the family, or, indeed, in a public institution such as the Animals' Shelter.

In other words Mr. Pallot submits that there is an implied power to deprive the owner of the control of that animal, if that is the only way it can be kept under control, and if the alternative of destroying it is not one that has been proved necessary to the satisfaction of the Magistrate.

To find otherwise, in the opinion of this Court, would be (in the words of Halsbury) **"to give no protection to the community"**. There are a number of adjectives used in 4 Halsbury Statutes 41 at p.466, about how the Court should approach this matter of a mischief.

In our opinion the restrictive interpretation which Mr. Landick has urged upon this Court would not give that protection to the community which we have no doubt the law was brought in to provide. Whether it was consolidated or otherwise, there is no doubt that the intention of this Law is to give protection to the community from dangerous dogs. It would be absurd, in our view, that if the Magistrate could make the order he did on a final adjudication, he should not be entitled to make it on an interim adjudication. Accordingly, the representation is dismissed.

Authorities

Dogs (Jersey) Law, 1961: Articles 6, 7, 9, 11.

Dogs Act 1871: s.2.

Loi (1853) établissant la Cour pour la répression des moindres délits.

Police Court (Miscellaneous Provisions) (Jersey) Law, 1949.

4 Halsbury Statutes 41: pp 453, 461, 465, 466, 467.