

## CHURCHWARD v CURTISS

High Court Apia  
24 August 1931  
Luxford CJ

ANIMALS (Diseased dog at large) - The Dog Registration Ordinance, 1923 - The Police Offences and Other Ordinances Amendment Ordinance 1929 - Meaning of "at large" - Duties of Police - Charge of cruelty under s 195 of the Samoa Act, 1921.

Held: By virtue of section 8.(2) of The Dog Registration Ordinance, 1923 a dog suffering from a disease, no matter how slightly, is liable to immediate destruction at the hands of the Police if found at large without a proper registration collar; and for the purposes of the Ordinance such dog is "at large" even if on private property.

Nevertheless, a person with authority to destroy a dog must take reasonable precautions to ensure its destruction is instantaneous and accompanied by as little pain as possible. Otherwise, he may be convicted of cruelty under s 195 of the Samoa Act, 1921.

Private prosecution.

Klinkmueller for prosecutor.  
Andrews for defendant.

Cur adv vult

LUXFORD CJ. This is a private prosecution against a member of the Samoan Constabulary. There are two charges, both of which arise out of the shooting by the Constable of the prosecutor's dog, the first being laid under section 195 and the second under section 182 of the Samoa Act, 1921.

On the morning of 18th July last, while the defendant was on duty as a Constable, he observed the dog standing in the lane, which runs from the main Beach Road to the rear of the prosecutor's premises. There is no gateway at the junction of the lane with the Road, but it is common ground that the lane is the prosecutor's private property.

This dog apparently had been under the observation of the Police for some time because it had been running around without a collar and showed signs of mange. The Police, however, made no serious attempt to ascertain to whom the dog belonged. Had they done so I am satisfied they would have speedily learnt that the dog belonged to the prosecutor.

The defendant was carrying a .22 rifle, which he had been in the habit of using for destroying dogs. When he saw the prosecutor's dog he at once took aim, and from a distance of about eighteen feet fired at the dog, which was then standing still. The bullet was aimed to strike the dog in a vital part, but failing to do so, passed through the body without inflicting serious injury. The dog yelped on being struck and ran underneath the prosecutor's premises. The space between the floor and the ground is two feet. The defendant made a perfunctory examination to ascertain whether the dog had been killed, and he deposed that because he heard no noise from underneath the building he assumed the dog was dead. He then went to the Police Headquarters and instructed a native Police Officer to send a prisoner to look for the dog. If the dog was dead its body was to be buried.

If it was still alive it was to be brought to the Police Station to be destroyed.

The prisoner shortly afterwards made a search underneath the prosecutor's premises, but found no trace of the dog, the reason for this being that the prosecutor, who had seen the defendant fire, learnt that his own dog had been hit, and going underneath the premises brought it out. He found that it was still alive. The dog was nursed by his daughters, recovered, and is now apparently none the worse for its experience.

The prisoner reported that the dog could not be found. Before the Police took any further action, however, the prosecutor, or someone on his behalf, attended at the Police office to state that the dog was still alive, and to register it for the current year. It was registered accordingly.

The main question to be decided in this case is whether the defendant had a legal power to destroy the prosecutor's dog. If that right did not exist he must be convicted of both offences. If it did exist he cannot be convicted of the offence of mischief, but he may be convicted of the offence of cruelty, if in the exercise of that power he caused undue pain or suffering to the dog by reason of any act or omission on his part.

The defendant contends that he was justified in shooting the dog by reason of the powers conferred on Constables by subsection (2) of section 8 of The Dog Registration Ordinance, 1923 and by section 6 of The Police Offences and other Ordinances Amendment Ordinance 1929. The powers given to Constables by those sections respectively are:-

- (a) Any Officer of Police ... may forthwith destroy or cause to be destroyed, any diseased dog found at large without a collar having the proper identifying label or mark thereon.
- (b) Any ... member of the Samoan Constabulary may catch and impound any such dog found without a collar having the proper identifying label or mark thereon, or if such dog cannot be conveniently caught may destroy the dog forthwith. (Then follows procedure to be followed after the dog has been impounded).

The prosecution contends firstly that the dog was not at large within the meaning of subsection (2) of section 8 of the 1923 Ordinance at the time when the defendant shot it. In my opinion the contention must fail. The words "at large" occur in subsection (1) of the same section, whereunder an offence is committed by any person "who permits any diseased dog to be at large". The section aims to prevent the possibility of diseased dogs wandering among other dogs, animals, or people. The prosecution submitted that a dog is not at large while it is on private property.

The acceptance of that proposition would defeat the object of the section and I can find nothing in its language to so limit its scope. In my opinion, the section clearly places a duty on the person in whose care a diseased dog is to keep it tied up or confined in such a way that it cannot wander. Unless this is done the dog is at large, and its custodian and the dog itself are liable to the consequences prescribed by the section.

The second contention put forward by the prosecution is that the dog was not diseased to such an extent as to justify its destruction.

The evidence adduced satisfies me that the dog at the time of shooting was affected very slightly with mange. The dog was produced in Court and the affected part was then barely visible. The prosecutor has treated the dog for the complaint and it has responded to the treatment.

No evidence was tendered concerning mange, but it is common knowledge that the complaint will develop into a dangerous disease if neglected.

The subsection under which the defendant justifies his action authorises the immediate destruction of a diseased dog found at large

without a proper registration collar. I regard this subsection as penal rather than humanitarian. The power to destroy animals for humane reasons is given by section 18 of The General Laws Ordinance, 1929. If the Legislature intended any such reasons under the subsection with which we are now dealing, it would not have limited the summary destruction to dogs which were not wearing collars.

The language adopted in the Ordinance compels me to hold that whenever a dog is suffering from a disease, no matter how slightly, it is liable to immediate destruction at the hands of the Police if it is found at large without having on it a proper registration collar. It follows, therefore, that the defendant was justified at law in taking proper steps to destroy the prosecutor's dog, and that the information charging him with the offence of mischief must be dismissed.

The second information stands on a different footing. If the defendant in the exercise of his powers to summarily destroy a dog causes any undue suffering to the dog he is guilty of the offence of cruelty. That means he must take reasonable precautions to ensure that the destruction of the dog will be instantaneous and will be accompanied by as little pain as possible.

From the evidence adduced I find the following facts:-

- (a) The defendant is a good shot and has had a great deal of experience in shooting dogs.
- (b) He had legal justification to destroy the prosecutor's dog.
- (c) He fired at it from a distance of eighteen feet.
- (d) He aimed to kill.
- (e) The weapon used was a .22 rifle, but such a weapon is not authorised by Police Standing Orders No. 32 relating to the destruction of dogs.
- (f) He knew that the dog was only wounded as a result of the shooting and that it had run to cover beneath the prosecutor's premises.
- (g) He knew or ought to have known that by using a small bore rifle instead of the prescribed shot-gun there was every possibility of only wounding the dog, and that if it was wounded it would run to cover under the prosecutor's premises.
- (h) He failed to take reasonable steps to find the wounded dog as quickly as possible for the purpose of ending its life.
- (i) Undue pain and suffering was inflicted on the dog by reason of the defendant's acts and omissions in the premises.

From the findings of fact it follows that the defendant is guilty of the offence of cruelty. He is convicted accordingly.

I wish to point out that the summary method of shooting dogs in the streets of Apia, except in special circumstances, cannot be tolerated. When those circumstances arise Constables must observe carefully the provisions of the Police Standing Orders on the subject.

The defendant is convicted and ordered to pay £2.2.0., the costs of the prosecution.