for the circumstance that the Sheriffs have come to another conclusion, I should say an exceptionally strong and clear case of liability. If your Lordships think proper I should therefore propose to recal the judgment of the Sheriff, and find the pursuer entitled to damages as well as to expenses, and the damages I would propose should be fixed at £30.

LORDS CRAIGHILL and RUTHERFURD CLARK concurred.

LORD JUSTICE-CLERK—I quite agree in the judgment proposed by Lord Young, but I only wish to say one word in regard to the case of *Arrol*, because I think that that case illustrates a distinction sometimes lost sight of. If a dog is known to be vicious, then there is an obligation on the owner of the dog to keep it in proper restraint. But knowledge that he is a vicious dog does not impose an obligation on the friends and acquaintances of the owner to stay away from his premises. They are bound to exercise a reasonable amount of precaution, but that is all. In this case the proprietor ought to have kept the vicious animal in restraint, and it is quite clear that he was in fault in not so restraining him. But in the other case—that of *Arrol*—the dog was restrained; he was securely chained up, but the injured man in taking a short cut out of the works went within the length of his chain, so that the restraint was neutralised by the man going too near the dog. I quite concur in the present judgment.

The Court pronounced this interlocutor—

"The Lords . . . find that on the occasion libelled the pursuer, while in the defender's garden by permission and on the invitation of his wife, was attacked and severely bitten by his dog, which was known to him and to his wife to be vicious: Find that the defender was in fault in allowing the dog to be at large, and is liable in damages to the pursuer, who did not by fault or negligence on her part induce the said attack: Therefore sustain the appeal, recal the judgments of the Sheriff and Sheriff-Substitute, assess the damages at £30," &c.

Counsel for Pursuer—Steele. Agent—E. Bruce Low, S.S.C.

Counsel for Defender—Sym. Agent—D. Hill Murray, S.S.C.

Friday, June 25.

SECOND DIVISION.

[Sheriff-Substitute of Lanarkshire.

DALY *v.* ARROL BROTHERS.

Reparation—Dangerous Animal—Dog—Contributory Negligence.

A workman was bitten in his master's yard when passing within reach of a dog chained there, and which was known by the master to have previously bitten more than one person. *Held* that, in the circumstances, the workman was acting incautiously in going near the dog, and that the injury was due to his own carelessness, and not to any want of precaution on the part of his master.

This was an action by Myles Daly, a boiler-maker, against Arrol Brothers, engineers, Glasgow, in whose employment he was at the date of the injury after mentioned.

The defenders had in their works a large watch-dog, which was chained in a kennel in their yard by a chain about six feet long. This dog had, previously to 13th June, attacked and bitten two workmen in the works who came in without lawful reason when it was off the chain. Its kennel was in a part of the yard where it was not usual or necessary for workmen to pass. On 13th June 1885 the pursuer, during working hours, was passing the kennel within reach of the chain. The dog came out and bit him very severely, and this action was raised in consequence. The pursuer denied, but it was proved, that he had known before he was bitten of the dog being chained there.

The Sheriff-Substitute (SPENS) found, after findings to the effect above explained, that the pursuer was barred by his own contributory carelessness from recovering damages, in respect he went too close to the kennel, even if *culpa* had been proved against defenders, which, however, he held not proved. He therefore assoilzied them.

The pursuer appealed to the Court of Session, and argued that the dog having previously bitten, and the master being well aware of that, it was his duty either not to keep the dog, or to take not only reasonable but effective precautions against it doing injury.

Authorities cited—Stair, i. 9, 5; *Sarch* v. *Blackburn*, 4 Carrington & Payne, 297; *Clark* v. *Armstrong*, July 11, 1862, 24 D. 1315; *Burton* v. *Moorhead*, July 1, 1881, 8 R. 892; Addison on Torts, p. 115.

The Court pronounced this interlocutor:—

"Find that on the occasion mentioned in the record the defenders' dog was lodged in their works in a kennel, to which it was attached by a chain 6 feet in length: Find that the pursuer was aware of the presence of the dog there, but nevertheless approached it so near as to be within range of the chain, and was attacked and bitten: Find that the injury thus sustained by the pursuer is attributable to his own fault, and not to any fault on the part of the defenders: Therefore dismiss the appeal: Affirm the judgment of the Sheriff-Substitute appealed against: Of new, assoilzie the defenders from the conclusions of the action: Find them entitled to expenses in the Inferior Court and in this Court," &c.

Counsel for Pursuer—Rhind—A. S. D. Thomson. Agent—

Counsel for Defenders—Jameson—Napier. Agents—J. & J. Ross, W.S.
