SHERIFFDOM OF TAYSIDE, CENTRAL AND FIFE AT PERTH

[2016] SC PER 33

PD32/13

JUDGMENT OF SHERIFF WM WOOD

In the cause

ELAINE SANDISON (AP)
residing in Paisley

Pursuer;

Against

THOMAS COOPE
residing in Taynuilt

Defender:

Pursuer: Magill; Messrs Robertson & Ross, Paisley
Defender: Thornton; Messrs E Thornton & Co, Oban

Perth, 19 February 2016

The Sheriff, having resumed consideration of the cause, Finds in Fact:

[1] The pursuer is Elaine Sandison who resides in Paisley along with her husband, Mr Greig Sandison. She was born 17 March 1968. She has not been employed since she had her daughter in or about 1996: before that, she was a self-employed baker and confectioner, principally engaged in making wedding and birthday cakes. At approximately 12.30pm on 11 July 2010 the pursuer was riding her bicycle on an unnamed country road around half a mile from the Bridge of Gaur at the western end of Loch Rannoch, in the company of Colin Howard. The pursuer's bicycle collided with a dog as a result of which the pursuer and her bicycle were thrown, landing on the road and causing injury to the pursuer.

[2] The defender is Thomas Edward Coope, presently residing on the Isle of Islay and formerly in Taynuilt, where he was born and brought up. On 11 July 2010 at approximately 12.30pm the defender and two friends – James Shorthouse and Iain Connel – were making preparations for a fishing expedition just off the road on which the pursuer was cycling. The party were accompanied by two dogs, one of which belonged to the defender and the other to Mr Shorthouse.

[3] The witness Colin Howard was born 12 November 1975. He lives in Johnstone. He is a project manager for a construction company. Mr Howard is a cyclist of some 20 years' experience, mainly with the "Johnstone Wheelers" club. He had held a British Cycling coaching qualification for some two years at the date of the proof and he is a youth coach for the junior section of his club. His qualification is at SVQ level and it allows him to teach intermediate and novice riders with a vie to developing their skills and abilities. His qualifications included examinations in personal safety, rider safety and good cycling techniques.

[4] On 11 July 2010 at approximately 12.30pm, the pursuer's husband, Greig Sandison, was in a car, following the pursue and Colin Howard in order to provide logistic support.

[5] On 11 July 2010, the pursuer, Mr Howard and Mr Sandison had all been part of a larger group from the Johnstone Wheelers cycling club who intended to undertake a well-known route known as the "Etape Caledonia" which extends to some 84 miles or thereby. Neither the pursuer nor Mr Howard had cycled the route before. At the time, the pursuer had been road cycling in earnest for about a year. Through more experienced club members, she had enhanced her knowledge of the Highw Code and road safety in general with particular regard to cycling safety. Away from the club, she and her husband would frequently cycle together. In good weather, the pursuer would cycle three times a week. Sometimes they would cycle to Largs and back from their home – a round trip of around 38 miles. The outing on 11 July 2010 was purely social and not a race.

[6] At approximately 12.00 noon on 11 July 2010, the pursuer, Mr Howard and Mr Sandison had separated from the mair group and were travelling eastward together on the B846. Mr Sandison was not cycling that day, but following the cyclists in h car to provide logistic support. The weather was bright and dry and the road conditions were also dry. Prior to the junction

leading to Bridge of Gaur, the pair stopped in order to allow the pursuer to change her clothes from her husband's car. Shortly after setting off again, they turned right (southbound) onto the unclassified road that crosses the River Gaur by a bridge and then runs along the south side of Loch Rannoch. The said road is a single track road, with passing places. Mr Howard set the pace, with the pursuer approximately half a wheel behind. Mr Sandison followed in his car at some distance behind.

[7] At or shortly after midday on 11 July 2010 the defender, James Shorthouse and Iain Connel had arrived in the area of Bridge of Gaur with the intention of embarking on a fishing trip. They had driven there in a red Peugeot Partner Van that belonged to James Shorthouse's father. James Shorthouse had driven to the locus. They had arrived there shortly before 12.30pm and James Shorthouse had parked the van front-first into a recess in the road that provides access to a property to the north of Bridge of Gaur called "Craigriach". The defender and his two friends were very familiar with the locus having travelled and fished there for a considerable number of years. The defender and his friends had used the said property access for the same purpose on numerous occasions in the past, and they knew it well. It is relatively wide and easily provides parking for two cars, side by side; it is also relatively deep, and it provides a comfortable space for the defender and his friend to lay out and prepare their equipment. The access area does not form part of a road.

[8] The two dogs that accompanied the defender and his friends were a black and white Cocker Spaniel belonging to James Shorthouse and a chocolate brown Labrador, belonging to the defender. For their journey to the locus, the dogs had bee in the rear of the van. On arrival, Mr Shorthouse let the dogs out of the back of the van and the defender and his friends begar to sort their tackle, laying out their rods and lines.

[9] The approach to the Craigriach access is the road that leads from the B846 to Bridge of Gaur and which then continue along the south side of Loch Rannoch in an eastward direction. From its junction with the B846, the road is generally straight for about 250 metres before it bends to the right and then, just before it would otherwise meet the River Gaur, it follows a relatively long left hand bend before it once again straightens in order to cross the Bridge of Gaur itself. The access to Craigria sits within the bend. The access is – at least partly – obscured from sight to those approaching it from the north by a banked wall and woodland. Immediately after the Craigriach access, the road is straight, with clear views to and beyond the Bridge o Gaur. To all intents and purposes, for the pursuer and Colin Howard this was a blind corner.

[10] As the pursuer and Mr Howard approached the corner on their bicycles the dogs had been on the west side of the roa sniffing about the trees and fence there. Around that time, unaware of the presence of the pursuer and Mr Howard, the defend called the dogs to him. Responding to command, they began to cross the road back towards the van. As they did so they met, first, Mr Howard – who managed to avoid them, and shouted "dogs" – and immediately thereafter the pursuer, who collided with the defender's dog, striking him with her front wheel, just behind his ribs on the left hand side. As a consequence of striking the dog, the pursuer lost effective control of her bicycle and she tumbled, ending up on the road and still attached to h bicycle by her cleats.

[11] As a result of the incident, the pursuer was diagnosed with a broken jaw, five broken teeth, and her shoulder was broken in five places.

[12] The defender's dog is a working dog, trained to follow the defender's commands: when told to do so, it will ordinaril return to the defender when called. At no material time was the dog physically restrained or controlled or on a leash. The pursuer and Mr Howard had approached the corner at a speed of 18-20mph. While the defender had not checked that the roa was safe and clear before calling his dog, neither the pursuer nor Mr Howard gave any advance warning of their approach anc neither had seen either of the dogs until they were virtually upon them.

[13] Following the incident, Mr Howard, Mr Sandison and the defender made attempts to contact the Scottish Ambulance Service. When told it was likely to take at least 45 minutes for an ambulance to be made available, Mr Sandison determined to drive the pursuer to hospital himself instead. Following her admission, the pursuer was examined and diagnosed with the injuries she sustained.

Finds and fact in law:

[1] That the primary cause of the collision between the pursuer and the defender's dog was the fault of the defender in failing to take relevant and appropriate steps to control his dog on a public road and thereby allowin it to run into the path of the pursuer's approaching bicycles.

[2] That the pursuer, having failed to moderate her speed or to be aware of the potential presence of hazards around a blind bend or to have given any warning of her impending approach, contributed to the loss, injury anc damage that she sustained as the direct result of the collision. Liability will be apportioned as 70% to the defende and 30% to the pursuer.

Therefore finds the defender liable to the pursuer for payment of 70% of the valuation of the loss, injury and damage that she sustained as a result of the accident; the case will be put out by order to determine further procedure.

Note

Introduction

[1] In this case, the pursuer seeks damages in respect of life changing injuries that she sustained on 11 July 2010 following a collision between the bicycle on which she was riding with the defender's dog, a chocolate–brown Labrador, in the vicinity o Bridge of Gaur near Loch Rannoch. At the proof, it was my understanding that the pursuer had recently required further surgery and the matter therefore came before me only to determine liability in the first instance. For the pursuer, evidence wa led from her personally; from her cycling companion at the time of the accident; and from her husband. For the defender, evidence was led from the defender himself and from his two friends who were his intended fishing companions on 11 July 2010. With the exception of the pursuer's husband, all the witnesses were present at the locus when the harmful incident occurred; Mr Sandison arrived at the scene a few minutes later. There was a dispute as to precisely where the incident had taken place – in broad terms, whether it had occurred 100 metres or so to the north of the Bridge of Gaur or 50 metres or so to the south of it. This will be a significant question in ascertaining any element of contributory negligence and I shall revert to tl aspect in due course. Otherwise, the evidence was largely non-controversial and it seemed to me that all parties gave their evidence to the best of their recollection, with no attempt to dissemble.

Background

[2] On the date of the incident, the pursuer was not working, having given up her job as a self-employed baker/confectioner following the birth of her daughters some 16 years previously. Although she had cycled since she was a child, she had taken up cycling as a regular hobby for about a year before the accident. She had joined a club – the "Johnstone Wheelers" – with whom she cycled frequently; and in between club activities, she and her husband would often go for a ride o around 38 or 39 miles of an evening, depending on the weather. On 11 July 2010, she and a mix of club members and non-club members had arranged to cycle a well-recognised route known as the "Etape Caledonia" – the name given to a tour around The Trossachs and Perthshire extending to around 84 miles. This was a social event, and not a race. Colin Howard, a club member of some considerable experience was also participating while the pursuer's husband, Mr Greig Sandison, was followi the route in his car in order to provide backup and support. The pursuer is aware of the Highway Code and of the need to cyc responsibly. At all material times, her bike was in good and serviceable condition with appropriate tyres, having been checkec by her and her husband both the night before and before setting off cycling. There is no dispute that she was appropriately dressed. At all material times she was wearing a helmet and cycling cleats.

[3] In the latter part of the morning – probably sometime after midday – she had stopped to adjust or change her clothing in light of changing conditions. Her husband had stopped the car to provide support and assistance and Colin Howard had remained with her. At this point, the pursuer and her group were heading east along the B846, which runs along the north sid of the River Gaur in the direction of Loch Rannoch. Before they reached the Rannoch Lodge, it was their intention to turn righ onto an unnamed public road (leading to Bridge of Gaur and Rannoch Barracks) and the intention was to follow that road as it then ran along the south side of Loch Rannoch. While the pursuer was making adjustments to her clothing, Colin Howard and her husband were chatting; the remainder of the group had cycled on. Her adjustments complete, the pursuer and Mr Howar cycled on, with Mr Sandison bringing up the rear some distance behind in his car. Mr Howard and the pursuer were cycling side by side most of the time, but from time to time Mr Howard would ease forward by half a wheel or so.

[4] At or about the same time, the defender and his companions arrived at a layby with the intention of fishing in the vicinity of Bridge of Gaur. These three men had been boyhood friends and they had often fished from the same spot. On 11 July 2010, they had travelled from Kinloch Rannoch to Bridge of Gaur in a works van belonging to the father of James Shorthouse, a red Peugeot Partner Van. The three men had travelled in the front of the van, with two dogs in the back: Cocker Spaniel and a Chocolate Labrador. They said they parked on the "west" side of Bridge of Gaur (the bridge runs from northwest to southeast – hereafter I will refer to this as the "north" side, the River Gaur running west to east) in a layby offerin access to a house called "Craigriach". They had parked as far forward as they could go. On arrival, they all got out and, while the defender got the fishing gear out of the side door of the van, Mr Shorthouse had gone to the back to let the dogs out. Both dogs are trained and generally obedient. While the fishing gear was being prepared they were "snuffling about" in undergrowth on the opposite side of the road to the layby.

Decision on the locus

[5] In her evidence, the pursuer described how she and Mr Howard negotiated a T-junction shortly after leaving her husband and the car and then cycling up what she thought was "quite a wide road". She said that she had noticed what she

thought was a white van being parked up and, as she approached the locus, some water on her right hand side like a loch. She thought that shortly after the junction, she had crossed over a small wooden bridge. She had thought that there were, perhaps three vans parked in the layby. She recalled the road as being quite straight and she did not recall any bends. She was adamant that she never negotiated any left hand bend. In cross-examination, by reference to the defender's photographs, she accepted that her accident occurred on the road to the north of Bridge of Gaur. She was also adamant that the pursuer's dog appeared from her left.

[6] Mr Howard and Mr Sandison in their evidence were both adamant that the incident had taken place on the south side of the River Gaur, some 50 metres or so beyond the southern end of the bridge. Mr Howard described how the dogs appeared "from nowhere" and he recalled very clearly crossing the bridge shortly prior to the accident. For his part, Mr Sandison recalled stopping his car on the bridge in order to provide protection for his injured wife from oncoming traffic.

[7] The defender, Mr Shorthouse and Mr Connel all said that their vehicle – the only vehicle in the vicinity – had parked the recessed access to the house known as "Craigriach" some 100 metres of so prior to the north end of the bridge. They said that they had fished there for many years and that they always parked in the same spot. They described how the dogs had been snuffling about in the undergrowth adjacent to a fence on the west side of the road as their vehicle was parked in the layby on the east side.

[8] In determining the place where the defender and his companions were parked I have taken into account the evidence given by all the witnesses and the very helpful photographs provided as part of the defender's productions. The pursuer – no doubt because of the trauma she sustained – has little clear recollection of the incident, but she did accept that she had no recollection of crossing over the Bridge of Gaur, which is a significant, tarmacked bridge. There is no wooden bridge of the type described by the pursuer in the immediate vicinity, although she is likely to have crossed such a bridge at an earlier stage in her journey: a photograph of such a bridge was produced and spoken to by the defender. The pursuer was also the only witness who spoke to seeing 3 vans at the locus, one of them being white. I find that this part of her evidence is unreliable.

[9] Had the incident occurred at the place described by Mr Howard and Mr Sandison then, that part of the road being straight, I would have expected Mr Howard to have had a clear view, not only of the defender's vehicle, but also of the dogs, which he did not describe. Conversely, the "layby" described by Mr Howard and Mr Sandison on the left hand side of the road is exceptionally narrow, compared with a farm access immediately opposite which appears to have ample parking next to some outbuildings and bins. The locus described by the defender and his witnesses, on the other hand, seems to have a relatively wide access with space to park more than the one vehicle (if need be) and it seems to be an altogether more sensible place to park, well off the road in order to prepare for a fishing trip in the company of dogs. The apparently ample space at the latter and the explanation by the defender and his witnesses of the dogs were "snuffling about" in the undergrowth adjacent to a fence on the opposite side of the road provides, in my view, added reliability to their account of where they parked. In addition, neither the pursuer nor either of her witnesses had returned to the locus since 11 July 2010, which reduces the reliability I can place on their evidence of this. Accordingly I was satisfied that, on the balance of probabilities, the harmful event occurred in the vicinity of the access to the house known as Craigriach some 100 metres or so to the north of the Bridge of Gaur.

The Incident

[10] At approximately 12.30pm, the pursuer and Mr Howard were approaching the locus from the north. The road is a metalled, single track country road with passing places. As the road continues to the south, approaching the locus, there is a significant bend to the left, with banking on the left hand side rendering the turn "blind". To the right, there is a fence and woodland and, through the trees, the River Gaur is visible. As they approached the bend, Mr Howard was approximately half a wheel in front of the pursuer, setting the pace. At or about the same time, the defender, Mr Shorthouse and Mr Connel had completed their preparations for their fishing trip and called the dogs back to them. In obedience, the dogs left what they were doing and set off back across the road towards the defender's party and their vehicle. As they did so, Mr Howard and the pursuer rounded the corner. They had not seen the dogs up to this point. As they rounded the corner, the pursuer and Mr Howard would have been cycling at around 18-20 mph. Although he could not recall so doing, Mr Howard shouted "dogs" and swerved to the left in order to avoid them. Unfortunately, the pursuer was unable to avoid the dogs and struck and collided with the defender's Chocolate Labrador at the mid area of its body on its left hand side. The pursuer had not seen the dogs and had no time to react. The pursuer landed in the road, face down, with her bike on top of her, still attached by her cleats.

[11] Although she said in her evidence that the dog had come from the van, the pursuer accepted that this was an explanation that she had constructed; Mr Howard (who had only seen one dog) said that the dog had come "from nowhere"; had been making its way from the right hand side to the left hand side, which was consistent with the account of the defender and his companions that two dogs had been on the west side of the road and had been making their way back to the layby.

[12] Mr Howard was immediately aware of the collision and returned the few metres he had gone to the locus. By the tim he got back there, Mr Sandison had arrived and was in the process of unclipping the pursuer's feet from her pedals. Mr Howard, a trained first aider, took control of the situation, and asked for someone to call "999". The defender telephoned, only to be told that it would be at least 45 minutes for an ambulance. Initially, the pursuer was kept warm by coats made available to her by the defender and his companions while (unsuccessful) efforts were made to see if anyone was available at nearby properties to provide blankets. A decision was eventually taken to transport the pursuer to hospital in Mr Sandison's car.

[13] As a result of this incident, the pursuer sustained injuries. Although medical evidence will no doubt be provided in due course in relation to *quantum*, it is worth recording at this stage that the pursuer's evidence – which was uncontested – is that she sustained a "one inch" break in her jaw; she gashed her chin, which had to be glued back together; she sustained five broken teeth at the back of her mouth; and, most significantly, she broke her shoulder in five places and damaged her axillary nerve, ultimately leading to a full shoulder replacement.

[14] As she said in her evidence, had the pursuer seen the dogs, she would have been able to stop quickly and thereby avo a collision.

Submissions

[15] I am grateful to the agents for both parties for supplying helpful written submissions, supplemented by oral submissions.

[16] For the pursuer, Mr Magill confirmed that the case was reliant on common law delict: the defender owed a duty of care; the defender was negligent; and that there was a causal link between the breach of duty of care and the injuries sustaine by the pursuer. It was submitted that, in context, the causal link between the defender's conduct and the pursuer's injuries we not a matter of dispute. In relation to the duty of care, the pursuer relied on the decision of Lord Malcolm in the case of *Welsh Brady* 2008 CSOH 45, a case where the pursuer was knocked over by a dog when walking her own dog in a field where many others walked dogs and where it was common practice to allow them off the leash. In that case, his Lordship had determined that the "unfortunate accident" met by the pursuer had been "no more than a possibility" and that "the likelihood of injury wa not sufficient to impose a duty to take any steps to prevent it". In the instant case, it was submitted that it was foreseeable that person such as the pursuer might well suffer serious injury if the defender had allowed his dog to run off the lead given that th had been next to a road and that it was reasonably foreseeable that the dog could cause an accident to road users. The defende had said in his evidence that he had not been watching the dogs that crossed the road; the dog was trained to do as it was told and the locus was shortly following a blind corner in both directions, rendering it reasonably foreseeable that an accident coul be caused to a road user such as the pursuer. The defender had been negligent in allowing his dog to be off the lead next to a road: although the road was quiet, the defender had no way of knowing when traffic might appear. In failing to keep his dog on a lead or under control next to the road, he had failed in his duty of care to the pursuer and thereby he caused the pursuer's injuries. In relation to contributory negligence, given that the defender was riding with a cyclist of some considerable experience (Mr Howard), she had been riding at a speed appropriate to the road conditions and no further action would have been required by her. I was invited to find the pursuer and her witnesses credible and that the evidence of Mr Howard and Mr Sandison was clearly not designed to favour the pursuer in any way.

[17] For the defender, Mr Thornton submitted that I should prefer the evidence of the defender and his witnesses to that o the pursuer and hers in relation to the locus and circumstances of the accident. Further, had Mr Howard and the pursuer not engaged the left hand bend at excessive speed, then the collision would not have taken place. There had been a duty on the pursuer and Mr Howard to navigate the blind bend at a speed whereby in the event that there was an obstruction in the road then they could take immediate and effective action in order to avoid collision. It was material that the pursuer and Mr Howa were only aware of the dogs when they came into actual physical contact with them. The evidence of the defender and his witnesses was that they had had no reason to be aware of any approaching traffic; had the cyclists not rounded the bend at excessive speed then the collision would not have taken place. In relation to *Welsh* v *Brady*, a collision was "no more than a possibility" as Lord Malcolm had identified; there were no facts or circumstances from which it could be properly concluded that the defender had been guilty of such carelessness as amounts to negligence in this case.

Consideration

[17] It would appear that there is a paucity of settled case law on the duties owed by dog owners to others in respect of los injury or damage caused by a dog in circumstances where the dog's nature or propensities are not the features giving rise to a potential liability. In this case, it has not been suggested that the nature of the defender's dog had any bearing on the circumstances given rise to the collision with the pursuer's bicycle; indeed, it has not been seriously challenged that the defender's dog was anything other than obedient to his master's will or that the dog did anything other than respond to the

defender's command in returning from the west side of the road to the east side at the critical moment Mr Howard and the pursuer rounded the corner. As I understand the pursuer's case, the issue is whether the defender, in the circumstances, took reasonable care for the safety of other road users such as the pursuer in allowing his dog to roam, unfettered, on a public road and, in particular, in failing to ensure that the road was clear before calling the dog to him.

[18] Both parties placed reliance upon the persuasive opinion of Lord Malcolm in *Welsh* v *Brady* [2008] CSOH 45. In that case, the pursuer sought damages for a severe injury to her right knee sustained as a result of a collision with the defender's black Labrador. The harmful incident took place in a field that was in common use for exercising dogs, and at the material tim both the pursuer's dog and the defender's dog were exercising freely off the leash. In that case, the Lord Ordinary reached the conclusion that reasonable attention to the safety of Mrs Welsh did not require Mr Brady to put his dog on the lead when the pursuer and her dog came into view, and he made it clear that his decision related only to the particular circumstances of that case. Clearly, the instant case can be distinguished from *Welsh v Brady* on the facts, the harmful incident here having occurred on a public, metalled road (albeit a minor one) when neither party was aware of any hazard presented by the other; indeed, th defender was not aware of the pursuer at any time until fractionally prior to the actual collision that resulted in harm to her.

[19] Nevertheless, the Lord Ordinary made a number of helpful observations. At paragraph [17] of his decision, he reiterated that the standard required was that of "reasonable care" and he determined that:

> "In all the circumstances I consider that this most unfortunate accident was no more than a possibility. There was no good reason for [the defender] to foresee that if [the dog] was allowed to run off the lead [the pursuer] might well suffer serious injury. Of course had that been foreseeable the precise way in which the accident happened would not have been important… However, in my opinion, the likelihood of injury was not sufficient to impose a duty to tal any steps to prevent it."

And at paragraphs [18] and [19], he said:

> "[18] If the law was to consider a Labrador running around in a field as something which is dangerous in itself, this would come close to making dog owners insurers in respect of all injuries and damage caused by their animals. Some legal systems do go down that route, but in the 1987 Act, Parliament chose not to do so. Further, in my view a decisio in favour of the pursuer would run counter to the desire of Lord Scott of Foscote to guard against the imposition of a 'grey and dull safety regime' (*Tomlinson* v *Congleton Borough Council* [2004] 1 AC 46 at 100) and to the warning of Lord Steyn that 'the courts must not contribute to the creation of a society bent on litigation which is premised on the illusion that for every misfortune there is a remedy' (*Gorringe* v *Calderdale MBC* [2004] 1WLR 1057 at 1059).
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> "[19] It is true that many generations of lawyers were brought up on the basis that since dogs are not wild animals, their owners would only be liable for failure to restrain or control if there was reason to anticipate that the particular animal had a vicious or otherwise dangerous propensity. (This approach was said to be sanctified by a passage in *Sta* at 1,9,5, which in turn was based on laws laid down in *Exodus* chapter 21 concerning the ox 'wont to push with his horn') However, in *Henderson* v *J.Stuart Farms Limited* 1963 SC 245, in a rigorous and learned opinion, Lord Hunter explained that this general approach was over-simplistic. **Rather, the only question is whether negligence has been established**… However, in the specific context of injury caused by a dog, in *Fardon* v *Harcourt-Rivington* (1932) 146 LT 391, **Viscount Dunedin rejected the Court of Appeal's reliance on 'the particular licence allowed to the domestic dog', and determined the case in favour of the defendant by simply asking whether the owner had breached a duty of care to the plaintiff**… **[I]n the absence of some warning or reason to anticipate that a dog might cause harm, a pursuer will need to point to other facts and circumstances from which it can properly be concluded the defender has been guilty of such carelessness as amounts to negligence**."
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> (**Emphasis** added)

[20] Although *Welsh* v *Brady* is only persuasive authority, I nevertheless find that I agree with Lord Malcolm's analysis, especially given that neither party referred me to any other authorities on the matter. In my opinion, the pursuer has established negligence here on the part of the defender: the defender was parked in a layby adjacent to a public road; he allowed his dog to cross the road to the other side; the defender should have been aware of the possibility of other road users, particularly in the vicinity of a blind corner; having taken no steps to ensure that the road was clear before so doing, the defender called the dog to him in the full knowledge that it would require to cross the public road in order to get to him; while there is a duty on all road users to take reasonable care for their own safety and to use roads at a safe speed that is appropriate for the road in question, it is not an absolute duty against all potential hazards. The pursuer was not travelling at an unsafe

speed or with any degree of recklessness. Had she seen the dog, she would have been able to stop or to slow down sufficiently to avoid any collision. There is no evidence to suggest that the pursuer was using the road incorrectly in any way.

[21] While I shall revert to the extent to which the pursuer may be held responsible for her own loss, I am satisfied that the "facts and circumstances" (to borrow Lord Malcolm's expression) in this case lead me to conclude that the defender has been guilty of such carelessness as amounts to negligence. Had the defender moved to the blind corner to see round it, he would doubtless have seen Mr Howard and the pursuer approach, yet he failed to do so; had the dog not been on a public road, and had the defender not called his dog to him when he did, then the collision with the pursuer would not have occurred.

Decision on Contributory Negligence

[22] Neither party addressed me at any great length on the issue of contributory negligence, although the defender raised as an issue in his pleadings. Section 1 of the Law Reform (Contributory Negligence) Act 1945 provides:

> "Where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of default of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in a responsibility for the damage."

[23] In *Stapley v Gypsum Mines Limited* [1953] AC 663 at 682, Lord Reed said:

> "A court must deal broadly with the problem of apportionment and in considering what is just and equitable must have regard to the blameworthiness of each party, but 'the claimant's share in the responsibility for the damage' cannot, I think, be assessed without considering the relative importance of his acts in causing the damage apart from h blameworthiness."

[24] There is no doubt in my mind that the collision between the pursuer and the defender's dog on 11 July 2010 was unfortunate in the extreme inasmuch as, had the defender called his dog to him a second or two earlier or later or had the pursuer (and Mr Howard) been travelling marginally faster or slower, then the collision might not have occurred and the parti might have continued in their planned activities having only experienced a "near miss". I may say that, while I have found th all the witnesses gave their evidence in a relatively straight forward fashion, I did find the pursuer a most engaging witness; I certainly formed the impression that she had formed a slightly belated engagement with road cycling and about which, at the date of the accident, she was passionately engaged. Nevertheless, on 11 July 2010, while she did not have the substantial experience of Mr Howard, she was an experienced cyclist who was well aware – by her own admission – of the need to be aler to road hazards and the needs of other road users. Whilst she could not recall the blind left hand corner, she nevertheless accepted that the collision with the defender's dog had taken place at the locus the defender had described; she accepted that she had given no warning of her impending approach and she accepted that she not moderated her speed in any way. While I do not doubt that she was following the pace set by Mr Howard, it was nevertheless her responsibility to take reasonable care for her own safety in avoiding any potential hazards that may have lain around the bend, given that the vehicle on which she was travelling (her bicycle) was under her sole control. On a quiet country road such as that on which the defender and Mr Howard were cycling, animals on the road must have been one of the potential hazards. In all the circumstances, I conside that it would be just and equitable that her contributory liability be assessed at 30%.

Further Procedure

[25] At the proof, the pursuer plainly still had further procedures occasioned by her injuries that were yet to resolve. I will put the case out for a further hearing to determine what additional procedure might be appropriate.