Beresford in support of the demurrer, contended that the declaration was without precedent. He cited *Barber* v. *Lissiter*, 29 L. J. C. P. 161. [He was then stopped by the Court.]

C. W. Wood, in support of the declaration, contended that it was good, because, although it averred that the plaintiff was convicted, it also alleged that there was no Court of Appeal to which the plaintiff could apply in order to have the conviction reversed. He cited *Whitworth* v. *Hall*, 2 B. & Ad. 695; *Mellor* v. *Baddeley*, 2 C. & M. 675; *Fitzjohn* v. *Mackinder*, 29 L. J. C. P. 167, 8 W. R. 341; *Steward* v. *Gromett*, 29 L. J. C. P. 170; *Churchill* v. *Siggers*, 23 L. J. Q. B. 308, 2 W. R. 551; *Venafra* v. *Johnson*, 10 Bing. 301.

Byles, J.—We should be disturbing previous cases if we doubted that criminal proceedings must have terminated before the civil action is commenced. The fact that there is no appeal from the criminal court makes no difference.

Keating, J., concurred.

Smith, J.—In *Castrique* v. *Behrens*, 30 L. J. Q. B. 162, the Court says, "There is no doubt on principle and on the authorities that an action lies for maliciously, and without reasonable and probable cause, setting the laws of this country in motion to the damage of the plaintiff; but in such a case it is essential to show that the proceeding alleged to be instituted maliciously, and without probable cause, has terminated in favour of the plaintiff, if from its nature it be capable of such a termination." Mr. Wood says that this case is distinguishable because here there was no court of appeal from the criminal court, but if we gave judgment for the plaintiff in this case we should be establishing a court of appeal where the Legislature has said there should be none. The decision of the magistrates is binding, and when they have decided a case it is not open to the plaintiff to impeach their judgment by a civil action.

Judgment for the defendant.

Worth v Gilling and another.

Animals—Negligence—Negligently keeping a ferocious dog—Scienter.

It is not necessary, in order to sustain an action against a person for negligently keeping a ferocious dog, to shew that the animal had actually bitten another person before it bit the plaintiff: it is enough to shew that it has, to the knowledge of its owner, evinced a savage disposition by attempting to bite.

[C. P., M. T, 1866.]

The declaration stated that the defendants unlawfully kept a dog of a fierce and mischievous nature, well knowing that the said dog was of a fierce and mischievous nature *and accustomed to bite mankind* * and that the said dog, whilst the defendants so kept the same, attacked and bit the plaintiff, whereby the plaintiff was wounded, &c., and was prevented from carrying on his business, and incurred expense for medical and other attendance, &c.

The defendants pleaded,—first, not guilty,—secondly, that they at the said time when, &c., carefully and properly kept the said dog chained up on their own land for the protection of their property, and that the plaintiff at the said time when, &c., was trespassing on the said land without leave of the defendants,—thirdly, a similar plea, but alleging that the plaintiff, having notice of the premises, carelessly, negligently, and improperly went near to the said dog, and that the injury complained of was caused by his own negligence and want of due and proper care. Issue.

The cause was tried before Willes, J., at the last summer assizes at Hertford. It appeared that the defendants, who were engravers and watch-dial finishers, in the neighbourhood of Clerkenwell, had their work-shops and counting-house in a paved yard having an entrance in the public street which was common to two or three other tenants of premises in the same yard; that, for the protection of their property, the defendants kept a dog, which was chained to a kennel, at one side of the yard; that the yard was about twenty feet wide, and the chain about seven feet long; that the plaintiff was going across the yard towards one of the workshops, when the dog attacked and severely bit him in the arm.

The dog had been purchased by the defendants on the 5th of June, 1865, and the injury to the plaintiff was on the 17th of July in the same year.

There was no evidence that the dog had ever before bitten any person; but it was proved that he had uniformly exhibited a ferocious disposition, by rushing out of his kennel when any stranger passed, and jumping up as far as the chain would allow him, barking and trying to bite. One of the other tenants in the yard, who spoke to the savage disposition of the dog, also said he had complained to the defendants about it, and told them that the dog should be more closely secured: but on cross-examination would not say whether this was before or after the injury had been inflicted on the plaintiff.

On the part of the defendants it was submitted that there was no evidence that the animal was ferocious and accustomed to bite, and, at all events, none that the defendants knew he had such a propensity.

The learned judge left it to the jury to say whether or not the dog was of a savage and dangerous disposition, and whether the defendants were aware of it and neglected to take due precautions to guard against injury to persons lawfully coming upon the premises.

The jury returned a verdict for the plaintiff, damages £10.

Thesiger, pursuant to leave reserved to him at the trial, moved to enter a verdict for the defendants or a nonsuit. In order to sustain an action of this sort, the plaintiff is bound to prove that the dog is of a savage and ferocious disposition, and that the defendant had notice thereof: Com. Dig.* In *Beck and Wife* v. *Dyson*, 4 Camp. 198, it was held not to be sufficient to shew that the dog was of a fierce and savage disposition, and usually tied up by the defendant, without proving that he had before bitten some one.

[Byles, J.—In *Judge* v. *Cox*, 1 Stark. 285, it was ruled by Abbott, C J., that, in an action for negligently keeping a dog, proof that the defen-

* The words in italics were added by way of amendment, at nisi prius.

* Action upon the case for negligence (A. 5).