

West-Riding } At the Christmas General Quarter Sessions of the Peace of our Lord the King  
OF } holden by ~~Adjournment~~ at *Wetherby* in and for the West-Riding of the County  
Yorkshire. } of York, on *Tuesday* the *fourteenth* Day of *January*  
in the *Third* Year of the Reign of our Sovereign Lord GEORGE the *fourth*  
by the Grace of God of the United Kingdom of Great-Britain and Ireland King, Defender  
of the Faith; Before *Sir William Amcott Ingilby*  
*Baronet Chairman James Geldart*  
*Doctor of Laws*

and others their Fellows, Justices of our said Lord the King, assigned to keep the Peace of our said Lord the King in the said Riding; and also to hear and determine divers Felonies, Trespasses, and other Misdemeanors committed within the Riding aforesaid.

Whereas at the general Quarter Sessions of the Peace holden in and for the said Riding at *Skipton* the *sixteenth* day of *July* last past an Indictment was preferred and found against the Inhabitants of the Township of *Sawkland* in the said Riding for not repairing a certain common and antient Kings Highway leading from the Township of *Gisburn* in the said West Riding of the County of *York* towards and unto the Township of *Austwick* in the said Riding into through and over the Township of *Sawkland* aforesaid to wit beginning at a certain place there called *Eldroth Chapel* and extending from thence to a certain other place there called *Garnet Brow* containing in length divers to wit one thousand seven hundred and seventy yards and in breadth seven yards And whereas at the general Quarter Sessions of the Peace holden in and for the said Riding at *Knaresborough* the *fifteenth* day of *October* last past the said Defendants

traversed the said Indictment And whereas ~~on~~  
afterwards at this Sessions of the Peace holden at  
Wetherby as aforesaid the said Defendants the  
Inhabitants of the Township of Sawkland have  
been thereupon found not guilty by Verdict of their  
Country and thereby acquitted and discharged of  
the Nuisance in the said Indictment supposed  
and alledged against them And this Court ~~is~~  
being of opinion that such prosecution was ~~an~~  
frivolous and vexatious Doth therefore adjudge  
and order that ~~the~~ ~~same~~ George Brown the ~~an~~  
prosecutor of the said Indictment shall and do  
forthwith pay or cause to be paid unto the Defendants  
the Inhabitants of the said Township of Sawkland  
so Indicted the sum of Ten pounds for Costs-

By the Court

W. P. P. P.  
Deputy Clerk of the Peace

W. P.

Your opinion is requested whether, under the circumstances stated, the Indictment can be supported; - also if the production of the Rolls of 1782 and 1783, shewing the Indictment found and acquitted recorded at such periods, will not be conclusive against the attempt to make this road a Highway. If not, will the onus lay on the Township to prove who is liable to make the road, in order to get rid of the Indictment: and will the evidence of the present Surveyor of the Highways, or any other person residing in, and having an Interest in the township be admissible.

And generally, be pleased to point out the evidence, which it will be necessary to adduce on the part of the Inhabitants of Lawkland.

From the above statement, I think the Prosecutor will not be able to support his Indictment. He must prove it to be a public Highway, and if he has charged the Deft with the liability of repairing it because they have immemorially repaired it, according to the old and short form of Indictment which has been usually adopted at the Sessions he must produce evidence to prove that allegation. The Inhabitants of the Township of Lawkland, whether rated or not may be witnesses in support of the Prosecutor, but no rated Inhabitant, <sup>or Surveyor</sup> can be a witness against. The Rolls of 1782 & 1783. will certainly not be conclusive evidence in favor of the Deft nor will they bear upon the question at all, unless it can be proved that the Road at that time was out of repair and that the

acquittal ~~was~~ was clearly upon the ground <sup>or that Highway</sup> were not liable to repairing it. <sup>and this</sup> can only be done by some competent witnesses who were present and can prove what took place upon the Trial, which at this distance of time may be difficult to establish. If the Road has been in point of fact used by the public very little evidence is required to repair

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may be sufficient in support of the Indictment some however must be given. It is rather an unlikely fact that one of the instances of repair should have been by the Surveyor if this was really done for his own convenience and at his own expense. The Deft must shew repairs in fact, and being prepared with evidence to prove that that was the case. In general to shew that all the instances which can be shewn of any repairs <sup>however trifling</sup> have been done, that the same were done by that the expense of persons who occupied

Case

A certain road in the township of Lawkland in the West Riding of the County of York was indicted at Skipton Sessions by George Brown one of the occupiers of land in that township, and the Indictment has been traversed to the next Wetherby Sessions. The road has always been treated as a private occupation road, and though the whole of it is almost impassable, it has never been repaired within the Memory of man, except a very small part thereof, where there was Luicksand, which the occupier of the lands adjoining attempted to remove, - and another portion of it, leading upon the Common, which was repaired by an occupier of land in the township, who happened to be Surveyor of the Highways at the time, but he did it entirely for his own convenience in conveying turves from the Common. The road is indicted as a Highway from a place called Eldroth Chapel to Garnet Browgate, being about 1770 yards in length and seven yards in breadth, but it is rarely used, that distance, as there are other roads from Episturn to Austwick, not only much better but considerably more direct; - indeed, the line pointed out as a Highway, is across a Common, where there is scarcely any vestige of a road.

On reference to the Rolls at the Clerk of the Peace's Office in Wakefield, it appears that in 1782 this identical piece of road was indicted to the same extent as at present, being to the extremity of the township of Lawkland, and that the Inhabitants were found - "Not Guilty", at the ensuing Sessions at Wetherby in 1783, although the Road was as much out of repair then as at present. The proprietors and occupiers of the adjoining lands have taken considerable slices off the road, which have since formed fronts of their fields, and have also carried away the soil from the remaining part of the Road.

Expte the Indictments of Lawkland on the Indictment of a Road in that Township by Geo: Brown -

Case

For the opinion of Mr. Maunde

1 Jan

Lands into which the Road led and that no repairs have been done, <sup>ever</sup> at the expense of the Town or by Statute Duty or under the direction of the Township Surveyor. The Defts from the nature of the case can only adduce negative evidence that the Road has not been used ~~by~~ or repaired by the public; it will not be necessary for them to show who is liable to repair it, but only that they by such

medium of proof as I have already pointed out) are not. and before they can be called upon to prove any thing the Prosecutors must make out & establish all the material allegations in his Indictment by Evidence

Francis Maunde  
Wakefield Jan 7. 1783.

I think the Defts should be prepared with evidence of the Indictment of former Sessions of 1782 & 1783. altho' they will not conclude the question  
Fm

our Son  
Skipton