

The Byways & Bridleways Trust 2015.

As with all Byways & Bridleways Trust materials, this paper is made available for interest, information, and academic research only.

Any paper dealing with matters of law inevitably goes out of date, and sometimes soon after publication. Readers should take advice on the current situation on any legal matter rather than relying on archived papers.

© Byways & Bridleways Trust, and/or the Authors.

All rights reserved. No part of any Byways & Bridleways Trust publication may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the Trustees, except in the case of brief quotations embodied in critical reviews and certain other noncommercial uses permitted by copyright law. For permission requests, write to the Trustees at the address on the Trust's website.

IN THE CROWN COURT AT LEEDS

Case No. 868227

6th March 1987

BEFORE

HIS HONOUR JUDGE P H C WALKER

COLIN SEYMOUR

COMPLAINANT

NORTH YORKSHIRE COUNTY COUNCIL

RESPONDENT

J U D G M E N T

APPEARANCES

For the Complainant

Mr David Bradshaw

For the Respondent

Mr Stephen Sauvain

NOTE : There was no record of any sort made by the Court during this hearing. This transcript was compiled in March 1987 from the comprehensive notes taken by Stephen Warburton MA (Yorkshire Wildlife Trust) who was also present throughout the earlier hearings in 1986 and was familiar with the case. The transcript was carefully and accurately prepared **for the approval of Judge Walker** (see Postscript on the final page). To assist a better understanding of the facts and the law, the information [in square brackets] taken from the original documents before the court, has now been added. Thus, 18 years later, these notes and this transcript remain the only complete and true record of the matters raised before the Court on the 6th March 1987. Whilst learned counsel are still in practice today, His Honour Judge Walker is now retired, and Stephen Warburton died in 2004.

Colin Seymour 6 January 2005

COLIN SEYMOUR v NORTH YORKSHIRE COUNTY COUNCIL

SECTION 56 HIGHWAYS ACT 1980

THE LIABILITY TO REPAIR SKEWKIRK BRIDGE

His Honour Judge Harry Walker	'J'
Mr David Bradshaw for Colin Seymour	'B'
Mr Stephen Sauvain for NYCC	'S'
Mr Colin Seymour	'CS'
North Yorkshire County Council	'NYCC'

Transcript of the Hearing of the morning of 6th March 1987

Stephen Sauvain - **North Yorkshire County Council has admitted a highway leads to the banks of the River Nidd and is linked by a bridge : a bridleway, which the bridge carries over the river.** There is then an onus on NYCC to establish it does not have the liability to repair, partly because the bridge predates 1835

[Note - Highway Act 1835 section 23]

and also predates 1949, the National Parks and Access to the Countryside Act
[Note - section 47]

Colin Seymour says that there are other forms of highway crossing the river
[Note - as set out in the Notice of Complaint to the Court - 23 June 1986].
But we do not agree this, in this case, so we feel that CS must prove his point.

Therefore, as a first issue we should deal with the bridge, which is a dispute of fact.

David Bradshaw - I reserve my position as to other forms of crossing. I want to concentrate on the bridge at present.

His Honour Judge Harry Walker - C S has complained, NYCC has made certain admissions. You (S) will say that you are not liable for the repair of the bridge and that the owner of the mill is. You served a notice bringing in a Third Party (Mr Pick)

and, on the last occasion, the argument was whether he had locus standi to be in court.

[Note - Seymour v Pick and NYCC : Leeds Crown Court, 22 December 1986]

If B succeeds, I understand that you (S) will probably take proceedings against the Third Party in the Magistrates' Court. My findings cannot in law bind Pick.

S - I will now present the background to the case. There is some contention, but this will not relate to today's issue. I will hand you a list of the pleadings to date, plus a list of facts, and CS's response to the "Statement of Facts".
(He then handed a "Statement of Facts" to the Judge)

Going back in time, the first document CS referred us to, re a bridge, was Drake's "Eboracum". The extract contains a map and text. In the second paragraph, Drake, in 1736, stated "What else remains to complete this chapter are the highways and bridges, the former of which will be best understood by the map of this district" - - - (after moving on several passages he continued to read) - - - "Over the Nidd is also Hammerton Bridge and Cattal Bridge"

The second document CS produced was the "Bridge Book" of 1752, which has two lists.

[Note - the front cover states "An Account of all the Bridges in the West Riding of York in 1752. Then follows an alphabetical list, and then a numerical list, of "all the bridges situate in and repaired by the West Riding of the County of York". These two lists are followed by an alphabetical list, and then a numerical list, of "all the bridges in the West Riding of the County of York which are repaired by particular Wapentakes, Parishes or particular Persons, distinguishing in what Wapentake they respectively lie and by whom they are respectively effectively repaired"]

These show those bridges to be maintained by the County of the West Riding of York and those bridges to be maintained privately. Bridge 244, Church Hammerton Bridge, was repairable by "The Owners of Church Hammerton Mill". A plan accompanies it

[Note - the front cover states "A Map of all the Rivers in the West Riding of the County of York with an Account of the Bridges over the same taken by actual Survey in 1752 by J. Westerman and J.Gott]

This document was prepared for the West Riding Quarter Sessions as a guide for indictment in the event of disrepair.

The vast majority of these ('private') bridges are repairable by parishes and townships, therefore they would have been considered to be public bridges. The specification of repair by private persons suggests an obligation to repair by reason of tenure, prescription or statute.

Watson and Carr

[Note - "the Surveyors of the Repairs of the Bridges"]
then drew up some plans of some bridges, and this was followed by a "Book of Bridges". We feel that the 1752 "Bridge Book" was preparatory to this "Book of Bridges" published in 1753. This latter one does not identify bridges repairable by private persons.

J - Thus a comparison has been made between bridges in the 1753 Book and bridges in the second part of the 1752 Book ?

S - Yes (handing the book to the Judge).

There are a few discrepancies. However, at no stage does Church Hammerton Bridge appear to be repairable by the County of the West Riding of York.

I turn now to the Kirk Hammerton Inclosure Award of 1768. This is only of limited use. There is a road, appearing to be Mill Lane, leading to the location of the bridge. This has no particular significance. It is not helpful regarding the existence of a bridge or the liability for repair.

The Jeffery's Map (1767-70) produces a dispute between NYCC and CS. The map is not very clear. You cannot see whether the bridge is marked or not. But CS may say that on the original map you can see it.

J - On a previous case, I recall doubt being cast about the accuracy of Jeffery's Map away from main roads.

[Note - - the Judge, B, and CS were involved in West Yorkshire Metropolitan County Council v The Frontagers to Chancery Lane Ossett – Wakefield Crown Court : Judgment 22.4.83 – where Jeffery's Map was argued over by expert witnesses]

(Note - at this point David Bradshaw handed to Stephen Sauvain another map showing the bridge)

S - I have been handed another map of the Ainsty. It shows a road on both sides and a bridge over the Nidd

[Note - "A Plan of the City of York and Ainsty" - 1785]

Tuke's Map (1787) is so badly copied it doesn't help.

The Tockwith Inclosure Award (1797) makes no mention of the bridge, but it shows a bridge on the map

[Note - "A Map of the Township of Tockwith" - 1792]

There are several references to the lane but these are of no particular relevance

[Note - the Award recites "Skewkirk Road" leading to "The Ness Lane" which in turn led to "Ness Low Road" a "carriage and driving road"]

The award to R and J Oxtoby is next. This states "And we also set out allot and award unto Robert and John Oxtaby one rood and thirty eight perches of land, parcel of the said Ings or Ness, bounded by the said River Nidd on or towards the east, by the said Ness Drain on or towards the west, by an allotment herein awarded to the said Thomas Cartwright on or towards the north, and by an allotment herein awarded to the said Hall Plummer on or towards the south. And we do order award and direct that the said Robert and John Oxtaby and the owners and occupiers of the same allotment for the time being shall make and forever hereafter sufficiently maintain a fence and a ditch on the north side thereof and a fence and a carriage gate on the west end thereof. Which said last mentioned allotment is to be subject to a carriage

and driving road through and over the same as herein awarded and also to and from the sand bed in the River Nidd”

The two relevant matters here are that there is a carriage and driving road to and from the sand bed in the River Nidd, and also that they have to maintain a gate.

J - Where is the north point ? On the Westerman and Gott's Map

[Note - the 1752 Bridge Book plan]

the bridge appears to be shown north to south. But this bridge runs north east to south west

[Note - the 1792 Award Map]

S - Yes. But details of the River Nidd differ too.

J - What is the significance of the Oxtaby award ?

S - There is nothing in the Award to suggest that the road goes to the bridge. I can detect no track leading to the sand bed.

J - But if it was an ancient right, the bridge and track leading to it wouldn't need to be referred to in the Inclosure Award.

S - Yes. But in practice plans normally show such things. Anyway, I am not drawing any conclusions from all this.

Lets now go to Greenwood (map). This is not a NYCC document, but one of CS's documents prepared in 1817 by Greenwood who had a much better reputation (i.e. than Jeffery's). It clearly shows a through route, in roughly the same location.

Going back to my 'Statement of Facts'. We've researched the Quarter Sessions' archives and come up with other Bridge Books, especially two dated 1847 and 1849. These indicate that the Quarter Sessions compiled later books of bridges repairable at the public expense and Kirk Hammerton Bridge doesn't feature in them.

Now, a memorandum

[Note - Document 21 of the NYCC bundle before the Court]

an undated book of bridges. This is not direct evidence, but just a note of Mr Wellbourn's researches (Rights of Way officer NYCC). No bridges in this list are repairable by private persons. Kirk Hammerton Bridge doesn't appear.

There's then a misstatement of fact re Document No. 13

[Note - Records relating to 1910 Finance Act]

refuted by Document 10b

[Note - 1st Ed. 6" OS c.1856].

Document 10b refers to a "ford" in the area probably of the mill pond, about 100 yards or less from the bridge.

J - Its not adjacent to the bridge though.

S - No. But there's a spur.

B - Can I hand in a copy magnified four times.

S - The spur leading from the road to the bridge is probably the road leading to the sand bank.

There is no record of any repairs carried out by the West Riding to Kirk Hammerton Bridge. CS doesn't refute this.

The next document is the 1910 Finance Act. One of CS's documents.

The 1909 OS map giving OS parcel numbers
[Note – this was the 25" OS map used as the base map by Inland Revenue surveyors for the purpose of the 1910 Finance Act 'Record Map']

Under the heading "Public Rights of Way" there's a reduction of £50
[Note - S was referring to the 'Field Book' prepared by the Inland Revenue for each hereditament. In this instance Kirk Hammerton : Assessment Number 177]

Document 26 shows the adjoining parcels of land (to the bridge)
[Note - Finance Act 1910 : section of the 'Valuation Book' for the Parish of Tockwith]

B - I have just been handed another document referring back to Document 13 : the £50 reduction. There's another document showing that the £50 relates to a "Footpath . . . Tockwith to Kirk Hammerton (not over present bridge)"
[Note – this was the Inland Revenue Field Book for Tockwith : Assessment No.180]

S - The significance of this is that the footpath is suggested to have been "not over present bridge"

J - It looks like the same writing.

S - Yes. Added as an afterthought.

Turning now to the Definitive Right of Way Map prepared under the 1949 Act : Document 25. No public paths lead to river on Kirk Hammerton side. But on Tockwith side, there's a public footpath along river side (Tockwith No. 2) plus a public bridleway up Ness Lane (Tockwith No. 5). This leads to Skewkirk Bridge. Let us hope that the word "to" is a neutral word.

[Note - the Definitive Map Statement for Bridleway No. 5 reads "Bridleroad from Fleet Lane proceeds in a northerly direction along Ness Lane to the Kirk Hammerton Boundary at Skewkirk Toll Bridge" – the width of the road is given as "8 feet"]

The precise boundary of the two parishes would normally be the middle of the river.

So, all that is the documentary evidence that is not significantly in dispute.

Turning now to the List of Pleadings. I refer you to a letter from CS dated 27-2-87, and he is right. He says it's a selective list. He criticises my accuracy. He takes issue

with Jeffery's Map, and I now accept his point. He refers to the Statement of the Definitive Right of Way; and he's right about one item, but not necessarily about whether the bridleway goes to the middle of the bridge.

Based on this evidence, NYCC accepts evidence for a road carrying a footpath and/or a bridleway leading to and from the bridge on the Tockwith side and then from the bridge northwards to Kirk Hammerton.

If the 1752 Bridge Book is a list against indictment it implies there is a highway over it.

(Note - the notes record however that at this point S went back on his words and asked for the words "and over" to be removed)

Turning now to section 56 of the 1980 Highways Act. The section states "the way or bridge" (sub section(1)). This is the only place within that Act where that distinction is drawn.

To turn to the definition sections :-

Section 328(2) states - "Where a highway passes over a bridge or through a tunnel, that bridge or tunnel is to be taken for the purposes of this Act to be part of the highway".

Section 329(1) states - "in this Act, except where the context otherwise requires - "bridge" does not include a culvert, but, save as aforesaid, means a bridge or viaduct which is part of a highway, and includes the abutments and any other part of a bridge but not the highway carried thereby"

I submit that where a "bridge" is mentioned it doesn't refer to a highway. Section 56 draws an important distinction between "bridges" and "ways".

J - I am not clear on this distinction.

S - An interpretation section would never have aimed to alter the law substantially. Until the 1972 Local Government Act (query section 187) and since time immemorial, bridges in highways were repairable by the county and roads leading up to them, as highways, were, prior to 1959 repairable by the parish.

[Note - section 38(1) Highways Act 1959]

The 1980 Act makes, in my submission, a distinction between a "way" or "bridge". It would be illogical for this to be nullified by the interpretation clause of that same Act.

Common law recognised a distinction between repair of roads and bridges. The parish to repair roads, the county to repair bridges - and the reason was that roads concentrated from several parishes at bridges. It would have been unfair for any one parish to have to maintain a bridge.

Now, the 1530 Statute of Bridges (22 Henry 8 c.5). This seemed to confirm the common law.

Lord Coke (2 .Co. Inst. 700) considered how public bridges should be repaired by the common law. After stating that particular persons may be bound to repair a public bridge *ratione tenurae* or by prescription, he proceeds - - (page 701) - - - - -

“The answer is, that the whole county - that is, the inhabitants of the county or shire wherein the bridge is – shall repair the same; for of common right the whole county must repair it, because it is for the common good and ease of the whole county” - - (moving on he continued) - - - - “ If a man make a bridge for the common good of all the subjects, he is not bound to repair it; for no particular man is bound to reparation of bridges by common law, but ratione tenurae, or praescriptionis “

(Here S commented on the Mill Owner’s liability to repair Church Hammerton Bridge, as set out in the Bridge Book. He concluded that the owner’s obligation arose by reason of tenure or prescription. This obligation remained as long as the “private emolument continued” - - - - - “and it was not reasonable for him to make the county contribute to it, whilst the private benefit continued to himself”)

[Note - this was taken from the Glusburne Bridge case below at 2597 where 1 Ro. Abr. 368 was cited as authority]

I submit that section 2 of the 1530 Act recognised that there might be private liabilities to repair bridges and that the county became liable to repair a decayed bridge if it could not prove anyone else was liable.

To turn now to the Glusburne Bridge case as a development of the common law

[Note - R v Yorkshire (West Riding) Inhabitants 5 Burr. 2594]

S - (then dealt at length with the Glusburne Bridge case - where a township, liable by custom to repair a footbridge in a highway, beside a ford for horses and another ford for carriages, took down the footbridge, and erected near its site a carriage bridge which was afterwards constantly used by all persons passing that road. It was held that the new bridge was repairable by the county)

S - (also dealt with other cases such as R v Yorkshire(West Riding) Inhabitants (1802) 2 East 342 which followed after Glusburne Bridge and which were decided in a like manner)

B - (then interrupted on the point about the mill and the mill owner, and the continuation of his private emolument : “whilst the private benefit continued to himself” (quoting the words of S above).The thrust of his argument was that he did not accept that the benefit still continued . He concluded by saying “So I don’t accept Mr Sauvain’s case totally)

S - The law was then changed by the 1803 Bridges Act

[Note - 43 Geo 3 c.59 : commonly known as Lord Ellenborough’s Act]

Counties were saddled by the Glusburne Bridge case with vast repair liabilities. So in 1803 this Act was passed. It stated that bridges erected thereafter would only become the responsibility of the county if they were erected under the direction of the county surveyor.

Section 7 (of the Act) is an exclusion clause, recognising that private liability continued for some bridges . The clause heading stated - “Act not to extend to bridges repaired by reason of tenure or prescription”

I turn to the 1835 Highway Act, section 23, dealing with the liability of parishes to repair highways. I submit that section 23 brought (new) highways into line with bridges, by getting them adopted.

Section 5 deals with the interpretation of highways and bridges - and the case of R v Chart and Longbridge Upper Half Hundred (Inhabitants) does too - - - - -
[Note - L.R.I.C.C.R. 237 (1870) where Bovill C.J. (at page 240) said "I am of the opinion, therefore, that the interpretation clause (i.e. section 5) of the Highway Act 1835, includes in the words "county bridges" all public bridges, although they may be repairable by divisions other than the county" - - - - "there is nothing in the statute to take away the liability of the hundred which existed formerly. The general rule is, that affirmative words do not take away such a liability as this. It is necessary that there should be some negative words to do so"]

S - This means that the 1835 Act did not affect the liability to repair by private persons under *ratione tenurae*, prescription, or by statute.

We then come to the 1949 Act

[Note - National Parks and Access to the Countryside Act – 12,13 & 14 Geo 6 c.97, section 47, which stated "Liability for repair of public paths - (1) Subject to the following provisions of this Part of this Act, the rule of law whereby a highway is repairable by the inhabitants at large shall apply to all public paths, whether coming into existence before or after the commencement of this Act, notwithstanding anything contained in any enactment passed or made before the commencement of this Act and notwithstanding any liability to repair of any other person; and accordingly the enactments relating to highways so repairable shall have effect in relation to all such public paths"]

S - This clarifies things, in that all public paths, before and after, would be repairable at the public expense. But there's a distinction between "highways" and "paths", so it can't apply to bridges because bridges aren't paths.

So this Act doesn't attempt to alter the law re the division of liability between the county and private persons relating to bridges.

I turn to the 1959 Act, section 38

[Note - the Highways Act 1959 7 & 8 Eliz, 2 c. 25, section 38 which stated :-
"Highways maintainable at public expense –

(1) After the commencement of this Act no duty with respect to the maintenance of highways shall lie on the inhabitants at large of any area.

(2) Without prejudice to any other enactment (whether contained in this Act or not) whereby a highway may become for the purposes of this Act a highway maintainable at the public expense, and subject to the provisions of this section and of subsection (6) of section two hundred and six of this Act, and to any order of a magistrates' court made under section 50 of this Act, the following highways shall for the purposes of this Act be highways maintainable at the public expense, that is to say - - - - (a) a highway which immediately before the commencement of this Act was maintainable by the inhabitants at large of any area or maintainable by a highway authority - - - - -

(5) Where under any rule of law relating to the duty of maintaining a highway by reason of tenure, enclosure or prescription, and apart from any enactment (whether contained in this Act or not), a highway would, on the happening of any event after the commencement of this Act, become, or cease to be, maintainable by the inhabitants at large of any area, the highway shall become, or cease to be, a highway which for the purposes of this Act is a highway maintainable at the public expense :

Provided that a highway shall not by virtue of this subsection become a highway which for the purposes of this Act is a highway maintainable at the public expense unless either -

- (a) it was a highway before the thirty-first day of August, eighteen hundred and thirty five ; or
 - (b) it became a highway after that date and has at some time been maintainable by the inhabitants at large of any area or a highway maintainable at the public expense;
- and a highway shall not by virtue of this subsection cease to be a highway maintainable at the public expense if it is a highway which under any rule of law would have become a highway maintainable by reason of enclosure but is prevented from becoming such a highway by section fifty-four of this Act”]

S - (the notes record that S then argued at length that if the bridge is a public highway then it is a private liability not NYCC’s liability)

So, in 1752, if Kirk Hammerton Bridge was repairable privately, nothing has happened since to transfer that liability to NYCC.

As far as public ownership of highways is concerned - it doesn’t matter if its just a footpath or a bridleway. There’s no expense in it. But a bridge is different . There’s a lot of property in a bridge beneath the top inch or so of a public footpath, and a lot of liability to repair.

-----The Court adjourned for lunch-----

Transcript of the Hearing of the afternoon of 6th March 1987

S - (the notes record that S began by pointing out that a past liability to repair a bridge by a private owner is not necessarily a continuing and present liability. For whilst an obligation to repair *ratione tenurae*, by reason of the tenure of certain lands, may pass from one individual to another, the obligation to repair by prescription does not necessarily so pass.)

[Note - In *R v Kerrison* (1813) 1 M & S 436, at 437, 1 Hawk. c.76, s.8 was cited as stating “that a corporation aggregate may be bound by force of a general prescription that it ought and hath used to repair, without shewing that it has been used to do so in respect of the tenure of certain lands or for any other consideration; but an individual cannot be charged with such a duty by a general prescription from what his ancestors have done”]

S - (the notes further record that S then dealt with instances of case law which are entirely separate from matters of prescription. These were based on the premise that if you interfere with a highway you must keep the highway open, otherwise you’ll be charged with nuisance. This is different from the maintenance of a bridge by prescription)

[Note - in *R v Yorkshire (West Riding) Inhabitants* (1802) 2 East 342 at page 344, it was pleaded that “If indeed a miller make a new bridge over a new cut of water for his own profit, the county shall not be bound to repair it, though it be used by the public; according to 1 Roll. Abr. 368” - - - Lord Ellenborough C.J. at page 350 added “But that is a case where the party is guilty of a nuisance in the first instance in

making a cut across a highway, which the public might have prevented, and all along he continues it for his own benefit”]

[Note - this case may be distinguished from R v Kent (Inhabitants) (1814) 2 M & S 513 : where a person erected a mill and dam for his own profit, thereby slightly deepening the water of a ford through which there was a public highway. But the passage through which was before such deepening very inconvenient, and at times unsafe to the public, and the miller afterwards built a bridge over it, which the public always afterwards used. It was held that the county were liable to repair the bridge]

J - I don't understand the Kent Case. Why isn't the mill owner liable to repair the bridge ? It seems an extraordinary decision, and very unjust for the public.

S - The Kent Case was vindicated in the Ely Case.

[Note – the Court had before it the 21st Ed. Pratt & Mackenzie's 'Law of Highways' which states, page 93 note (o) - - "R v Kent(1814) 2 M & S 513. This has been supposed to be a case of doubtful authority; and it has been satisfactorily shown that the court took a mistaken view of a case in 1 Roll. Abr. 368, which has always been considered good law. See R v Ely (1850) 15 Q.B. 827. But the facts show that the public inconvenience was only slightly increased by the erection of the mill, and the bridge was, therefore, of public utility by removing an existing inconvenience; and unless the inconvenience had been created by the person who built the bridge, the principle of the case in Roll. does not apply" -----
Pratt & Mackenzie at note (h) page 100 further states - - - - "the accuracy of Rolle's statement has been vindicated (see R v Ely (1850) 15 Q.B. 827 and note at p. 845) and the principle has been repeatedly recognised and followed"]

S - There is no evidence at Kirk Hammerton of the county repairing the bridge. No one has suggested it should have been doing so. So given the case law, I submit that the repairs to this bridge are the responsibility of others, by reason of prescription. The 1949 Act (National Parks and Access to the Countryside) hasn't changed this.

B - (In response) - - - - From time immemorial, and certainly before 1835, there was a highway leading from both sides of the bridge. I and CS submit that the bridge was, and is, a highway. NYCC have admitted a highway goes over the bridge, or at least over the line of a bridge.

I don't know whether NYCC are disclaiming responsibility for the bridge, or for the surface of the highway across the bridge. They've not made this clear. They are in any event, responsible for maintaining the top two inches or so of the surface of the bridge.

Therefore, C S succeeds on section 56(1)(a) : it is a highway. He also succeeds on (1)(b) : it is out of repair.

[Note - Section 56 states - "Enforcement for liability for maintenance" - -

(1) A person ("the complainant") who alleges that a way or bridge –

(a) is a highway maintainable at the public expense or a highway which a person is liable to maintain under a special enactment or by reason of tenure, enclosure or prescription, and

(b) is out of repair,

may serve a notice on the highway authority or other person alleged to be liable to maintain the way or bridge (“the respondent”) requiring the respondent to state whether he admits that the way or bridge is a highway and that he is liable to maintain it”]

B - Given those two things, the primary person against whom this case should be brought is NYCC. It is then NYCC’s responsibility to show that the repair of the bridge is the liability of someone else. The burden of proof, therefore, is on NYCC if it admits that there is a highway.

Mr Sauvain says that it is Mr Pick who is responsible. So far there has been no evidence as to this.

Taking the sole liability of NYCC first. The case of Glusburne Bridge establishes that there is a continuing and present liability. There has to be a continuing benefit in relation to prescription.

[Note - here B was taking up S’s concluding point where he stated that “others” were responsible for the repair of the bridge “by reason of prescription”]

B - (the notes record that B then read from “Coke’s Institutes” (Vol.2 page 100) which gave authority for the proposition that if the responsibility of a person for maintaining a bridge is not by tenure but by prescription then he has to have a benefit out of the bridge)

[Note - the passage states “Ratione praescription tantum, but herein there is a diversity between bodies politick or corporate, spiritual or temporal, and natural persons : for bodies politick or corporate, spiritual or temporal, may be bound by usage and prescription only, because they are local, and have a succession perpetual : but a natural person cannot be bound by act of his Ancestors, without a lieu, or binding, and assets”]

B - Thus - “the act of the ancestor cannot charge the heir without profit”

I assert that the responsibility (for repair) can only be made by occupation (i.e by tenure). He (S) says that it can happen by prescription.

J - Yes. But a body corporate. Like a Parochial Church Council (as linear inheritors of abbot and monks) can have liability without owning land.

S - (then interrupted and introduced the case of Baker v Greenhill (1842) 3 Q.B. 148)

[Note - the headnote states - “Where lands charged (ratione tenurae) with repair of a bridge are occupied by a person not the owner, such occupier is primarily responsible to the public for the repairs, but may demand reimbursement from the owner”]

J - The primary liability rests on the occupier. We’re agreed on that.

B - I am saying that because the owner isn’t liable by tenure (whereas the occupier is) he must be liable by prescription.

J - Am I being thick ? I depart from you on this.

B - NYCC have selected the mode (of liability). They've done so on the basis of prescription

J - But if it's prescription is there any benefit ?
One could say that the distinction between owner and occupier is in the Bridge Book.
I reserve my position.

B - But the issue of the continuing obligation must be there.

J - Mr Sauvain won't have that.

B - And that's what I dispute

(Note - the notes record that this issue was resolved by the Judge agreeing with B and S also agreeing with B regarding prescription and the lack of current benefit)

B - My second submission relates to sole liability. The actions of their predecessors (the former West Riding County Council) have prevented anyone, themselves included (NYCC), from making P responsible. I refer to the letter of the 1st of August 1969.

[Note – this was the letter from the Clerk of the West Riding of Yorkshire County Council to solicitors acting for Mr Fattorini of Skewkirk Hall. The letter states “With reference to your letter of 18th July, 1969, I can see no reason why the bridge referred to should not be dismantled by your Client, provided that appropriate measures are taken to prevent passage from the bridleway and footpath to the river”. The bridge was then removed by Mr Fattorini]

J - But how does it prejudice NYCC's chance of subsequently getting P to pay for the replacement or repair of the bridge ?

B - By looking at the letter.

J - If I am against you in your point that NYCC are solely responsible, and that some other person was liable, and leaving aside the letter of 1969, then what next ?

B - My final point is joint liability via the 1949 Act section 47.

I don't accept that the word “highway” excludes a bridge. If you look at the notes for “Enforcement of liability to maintain highway” - they support my submission too.

[Note - “The notes” B was referring to, was a court document (Seymour 7(7) containing pages 569 –575 of 21st Ed. Pratt & Mackenzie's ‘Law of Highways’ re sections 59 to 61 Highways Act 1959]

B - So, as the consequence of the 1949 Act, as re-enacted in 1980 (section 36(1) Highways Act 1980), NYCC have a primary and joint liability to repair the highway which includes the bridge.

B - (the notes record that B then introduced the case of Sandgate UDC v Kent County Council (1898) 79 L.T. 425 where the House of Lords reversed the Judgment of the Court of Appeal)

[Note - the headnote states "A local authority under an obligation to keep up a road is chargeable with the cost of works necessary for the preservation of the road, even though they may not actually form part of it, such as a sea wall and groynes necessary to prevent a road running along the sea shore from being periodically injured by inroads of the sea"

At page 427, the Earl of Halsbury (the Lord Chancellor) stated "Over and over again it has been decided that where a person is bound *ratione tenurae* to repair a main road, and becomes insolvent, the obligation immediately falls upon the parish, and that the parish, or the authority whatever it is, is bound to take upon itself the repair. You cannot, for reasons of public policy which are obvious enough, allow the roads to get out of repair"]

B - Here, it is nonsense to distinguish between the fabric of the bridge and the surface of the highway. The term "highway" includes the bridge

[Note - he was referring to section 328(2) HA 1980]

S - Go back to section 56. The complainant must show that it is a highway maintainable at the public expense.

J - You (S) concede do you - that evidence now is that there is a highway - that there is no bridge now - and that Mr Pick ought to be putting it back ?

S - Yes.

J - And should you be compelling him ?

S - Yes.

J - You may be in for a rude shock when that happens.

S - We'll have to do one of a number of things. We may not necessarily pursue P we might try and stop up the highway .

I must remind the court that before going to the authority (the former West Riding County Council) Mr Fattorini had taken learned counsel's advice (about the Bridge)

J - (Here - the notes record that - - the Judge nearly said "Fattorini ought to be brought to court")

Even if I were against B's second argument - what do you say about it ?

[He was referring to the letter (1969) from West Riding County Council to Fattorini]

S - It can't saddle us with the responsibility to repair.

J - No.

S - The Highway Authority should probably not have written that letter. I say that on a "without prejudice" basis.

But, C S still has to prove NYCC has to maintain the highway.
If we go against P we might be estopped, and one point arises from this - - -

J - The 1835 Act (section 23 Highway Act 1835) provided for highways in existence before then to be maintainable by the inhabitants at large. Subsequent ones are not so maintainable.

The 1949 Act, section 47, applies to all paths before or after that Act. Now does that apply to bridges ? You (S) say no, by going back to the 1835 Act which distinguishes repairs to bridges (from repairs to highways)

S - The 1949 Act, section 47, applies to paths, not to highways. Would it therefore include bridges ?

J - To bridge paths ?

S - Yes.

(S then turned to section 93 of the Highways Act 1980. He emphasised that the law recognised that some bridges are privately maintainable yet might carry highways)

[Note - the margin note of the section states "Power to make orders as to reconstruction, improvement, etc., of privately maintainable bridges" - - - - sub-section (1) states "the owners or the authority may apply to the Minister for an order to provide for the reconstruction, improvement or maintenance of the bridge, or of the highway carried by the bridge, or of the approaches to the bridge"]

S - (then returned to the matter of prescription) Prescription - this must arise in relation to some sort of benefit accruing to the initial owner of the land. It then passes to subsequent owners of that land.

It is a fact that tolls were being charged (for the bridge) for some time.

Prescription implies something that accrues over a long period and becomes binding. It cannot be thrown away by any current owner.

J - What about other matters ? Ferry - Ford - Stepping Stones ?

[Note - he was referring to the Notice of Complaint to the Crown Court dated 23 June 1986 (Document CS 1(2)) - which referred to (a) "the ancient bridge" (b) "successor bridges" (c) "a footbridge" (d) "an ancient weir" (e) "former stepping stones" (f) "the ford" (e) "a ferry" : as all being out of repair and formerly linking both sides of the river]

B - We've limited ourselves to a bridge. If the local authority have to put a bridge there, that's all C S wants. If your Honour is against us, we'll have to decide what action to take.

J - So, it is just the bridge that is out of repair ?

B - Yes. It is out of repair. We'd like a Declaration (i.e. as per section 56(2) HA 1980)

S - We don't admit that anything other than the approaches to the bridge are out of repair.

J - Once the bridge is put back, someone is going to ask for the rest to be put right.

S - But only the three hundred feet on either side.

[Note - S here was referring to the obligation at common law and to section 49 HA 1980 which states "Where a person is liable to maintain the approaches to a bridge by reason of the fact that he is liable to maintain a bridge by reason of tenure or prescription, his liability to maintain the approaches extends to 100 yards from each end of the bridge"]

B - There is a signed copy of some Minutes which shows that following complaints repairs were carried out to the footpath leading to the Bridge and to Kirk Hammerton in the 1940's and 1950's.

[Note - he was referring to Doc. CS 33, an extract from Tockwith Parish Council Minutes (30-9-40) : "Footpath to Kirk Hammerton" - - "Mr Timms was authorised to arrange for the cleaning of the footpath and repairing of the bridge across the ditch"]

J - What's the significance of that ?

B - Tockwith Parish Council acknowledged responsibility for the repair of the footpath.

J - But, the Parish Council aren't responsible under the 1949 Act.

B - Yes. But S's maintaining that the path doesn't exist.

S - No. It's on the Definitive Map. NYCC acknowledge this.

B - When considering the responsibility for repairs, the parish boundary goes to the middle of the river.

J - What's significant about that ?

B - In Document NYCC 25 - The Statement from the Definitive Map of 1952 - it gives a width (8 feet) - and the responsibility extends to half-way across the bridge.

-- At this point the legal submissions ended without any witnesses being called --

HIS HONOUR JUDGE HARRY WALKER then gave his JUDGMENT

Mr Seymour brought a complaint in June 1986. A long one. Against North Yorkshire County Council. Alleging that there was an ancient common highway between the villages of Tockwith and Kirk Hammerton. Being one maintainable at the public expense. And that the highway was out of repair, at the place where it crossed the River Nidd, because of either or both of the following reasons. Namely, that there was an ancient bridge which was no longer in position, and that the last bridge there was no longer in position.

There are other reasons, too old to mention, for it being out of repair, which would relate to fords, ferries, stepping stones, etc. But I am not called to deal with those.

Skewkirk Bridge, looking like a Bailey Bridge, was removed by Mr Fattorini in 1969. Apparently, with West Riding County Council's blessing.

After some initial fencing, **North Yorkshire County Council, admitted** that there was a highway in the position indicated by Mr Seymour – and that it was a **bridleway**. They do not admit, and have never committed themselves to admitting, that they're responsible for the repair or replacement of the bridge. They say that it's the job of the owner of Kirk Hammerton Mill, because of what it says in the Bridge Book of 1752.

This is a list, prepared with care, together with a plan, for the benefit of the Quarter Sessions, to show which bridges were the responsibility of the County and which were the responsibility of other individuals. The second part of the list, includes Skewkirk Bridge (shown as Church Hammerton Bridge) and gives, as the person responsible for it, the owner of the mill at Kirk Hammerton.

There is no primary evidence as to the origin of the responsibility. It has been argued that it is a responsibility due to prescription, and not to *ratione tenurae*. But it's a distinction that is blurred. No case that we know of has been taken because of prescription.

In 1752, the County saw the repair of the bridge as a private responsibility. **So they saw it as a highway.** A point now conceded by North Yorkshire County Council.

Early in the proceedings, they (NYCC) served a notice on the owner of Kirk Hammerton (Mr Pick). The owner came in to the proceedings.

[Note – He was referring to the hearing in Leeds Crown Court, 22 December 1986, Seymour v Pick and NYCC - where he held that Pick did not have locus standi]

But, I was then reluctantly persuaded that he had no locus standi. And that if there was a liability against him, the place for it to be heard was in a Magistrates' Court. And that it would be for North Yorkshire County Council to take it there.

[Note - he was referring to section 57 HA 1980 - margin note states "Default powers of highway authorities in respect of non-repair of privately repairable highways"]

It was an unhappy decision, based on the wording of section 56 and one that caused me a great deal of anxiety. So, Mr Pick has been dropped from these proceedings.

[Note – he was referring to sub-section (9) which states, re section 56 proceedings, "where some other person is liable to maintain the footpath or bridleway under a special enactment or by reason of tenure, enclosure or prescription, that other person has a right to be heard by the court which hears the application, but only on the question whether the footpath or bridleway is in proper repair"]

Mr Seymour seeks to establish that the County Council is responsible for the replacement of the bridge. There is no argument that it is not in repair, for it was demolished. If Mr Seymour can't succeed in persuading me of that, then all right, North Yorkshire County Council may be entitled to show that a third party is responsible. But, he (CS) claims that in this case they cannot do so, because of the letter which their predecessors wrote to Mr Fattorini.

However, if that argument fails, Mr Seymour says - "Then look at the 1949 National Parks and Access to the Countryside Act and see what that says. If you accept my interpretation, then you will say that even if its only a bridleway, North Yorkshire County Council are responsible for the bridge which accommodates it"

This, albeit crudely, and neither with the grace nor precision with which Mr Sauvain and Mr Bradshaw have used, sums up the position.

With respect - I reject all the submissions.

As far as Mr Seymour's first submissions goes, that North Yorkshire County Council is responsible. Section 56 (1) is argued to the contrary.

Now - without going into detail, I accept Mr Sauvain's submission that throughout history, and since the Highway Act of 1835, there has always been an implicit distinction between a highway and the fabric of a bridge accommodating a highway. It may be, that the responsibility, to maintain both, ends up vested in the same person though. Section 93 of the Highways Act 1980, maintains this distinction.

So can Mr Bradshaw's reading of section 56(1) be supported? Mr Seymour has not served a notice on the owner of the mill.

[Note – J was wrong, CS did serve a notice, see S below]

If it turns out on the balance of probabilities, that he (the owner) is responsible, then these proceedings have been taken against the wrong body.

He could have sought to get at Mr Pick in the alternative. But he hasn't done so. I think that this is because of the distinction between the owner and the occupier. This distinction depends on prescription, and since this, in turn, depends on some sort of consideration or benefit, in these circumstances it cannot apply. There is no benefit to the owner of a mill from a non-existent bridge.

Mr Sauvain has pointed out the blurred nature of the difference between *ratione tenurae* and prescription.

(Note - here the Judge quoted at length from Volume 2 of 'Coke's Institutes' - (as read out by Sauvain and Bradshaw above) - "If a man make a bridge for the common good of all the subjects, he is not bound to repair it; for no particular man is bound to reparation of bridges by common law, but *ratione tenurae* or by prescription" - - - (he continued - re prescription) - - - - "but herein there is a diversity between bodies politic or corporate, spiritual or temporal, and natural persons : for bodies politic or corporate, spiritual or temporal, may be bound by usage and prescription only, because they are local, and have a succession perpetual : but a natural person cannot be bound by act of his ancestors, without a lieu, or binding, and assets")

J - Therefore, "the act of the ancestor cannot charge the heir without profit"

Mr Bradshaw is saying this :- that since the schedule to the 1752 Bridge Book refers to owners and not to occupiers - and that, since subsequent cases show that it is the occupier and not the owner who is responsible - and that, since the owner cannot be indictable if he is not in occupation. Therefore, the responsibility of the owner arises not through *ratione tenurae* but by prescription - and, since there is no benefit (from a non-existent bridge) the owner is not liable.

I take the view that, there is sufficient evidence, on the balance of probabilities, that **a person other than North Yorkshire County Council was, and may still be, responsible**, Whether he will still be responsible, in the light of the letter sent to Mr Fattorini, is a matter for North Yorkshire County Council to consider.

So - as for the first submission, I do not say that North Yorkshire County Council is primarily or solely responsible.

As far as the second submission goes - that by virtue of the letter dated 1st August 1969 the highway authority have prevented anyone, themselves included, from making Mr Pick responsible. It thus follows from this argument - that if the County Council weren't solely responsible - and if there was a third party responsible - having written the 1969 letter - they (NYCC) couldn't come before this court and deny their responsibility.

However much the County Council may be embarrassed, they have a duty to their ratepayers. I therefore reject the suggestion that that letter puts the County Council out of court.

(Note - the notes here record "N.B. There was some elaboration by the Judge and the last two sentences may not reflect what he intended. My understanding was that however embarrassed NYCC may be by a letter their predecessors may have written - they themselves said, without prejudice, that West Riding County Council should probably not have written it - they may want to reverse the position the letter appears to put them in, and take out a case against Mr Pick, by virtue of their duty to the ratepayers who would expect them to ensure all highways to be put

into good repair. This is borne out by referring back to the exchanges during the hearing, in which the Judge appeared to suggest that perhaps it should have been Fattorini who should be in court)

The final submission which I have to consider is, that under the 1949 Act - and notwithstanding Mr Pick's possible liability - the North Yorkshire County Council have a responsibility to put the bridge into repair, with or without, a contribution from Pick.

[Note – the notes record that the Judge then quoted from the 1949 Act - - - - -
“Section 47 (1) “Subject to the following provisions of this Part of the Act, the rule of law whereby a highway is repairable by the inhabitants at large shall apply to all public paths, whether coming into existence before or after the commencement of this Act, notwithstanding anything contained in any enactment passed or made before the commencement of this Act and notwithstanding any liability to repair of any other persons; and accordingly the enactments relating to highways so repairable shall have effect in relation to all such public paths” - - (He continued) - - -

(3)“ Where apart from this section any person would be under an obligation to repair a public path, whether under any enactment, or by reason of tenure, enclosure or prescription -

- (a) the operation of subsection (1) of this section shall not release him from the obligation, but
- (b) if in the performance of their duty under the said subsection (1) the highway authority repair the public path, they may recover from the said person the necessary expenses of so doing -----(He continued) -----

Provided that the right of recovery conferred by paragraph (b) of this subsection shall not be exercisable unless, before repairing the path, the highway authority have given notice to the said person that the path is in need of repair, specifying a reasonable time within which he may repair the path, and the said person has failed to repair the path within that time”]

J - The Act recognised, that as far as public paths are concerned, even if someone other than the local highway authority had to repair it, that local authority had the same liability as it did under the 1835 Act [Highway Act 1835]

Mr Bradshaw says that even if Mr Pick can be made ultimately to pick up the bill, North Yorkshire County Council can be made to repair it. But, this disregards the distinction between the highway itself and the structure of the bridge.

I think that Mr Sauvain is right.

So, with reluctance, I hold, on the balance of probabilities, that there is a third party responsible. It is right to say that the highway is out of repair. But the bridge must be put into repair by someone other than North Yorkshire County Council.

Therefore, the application fails.

S - Mr Seymour did serve a notice on the owner of the Mill your Honour. But he did not pursue it.

As far as costs go. I should now like to raise that matter. Since the County Council admitted there was a highway, and yet denied responsibility for the bridge – a point which you have upheld - we should be ordered our costs.

J - Yes. But some of your costs don't lie against Mr Seymour.

S - Yes - your Honour. For the October hearing
[Note - this was the Hearing at Leeds Crown Court on the 3-10-86]
and for today, I would ask for those costs. We have a duty to the ratepayers. We did invite Mr Seymour to withdraw, and he declined.

B - Your Honour - one can split this case into periods, as far as costs go. The County Council denied any responsibility to begin with - and any proceedings against them, they brought they brought upon their own head. Nothing was done. But very late on, they made an admission – just before the October hearing. The initial admission was that there was a public highway to both banks – dated the 29th September 1986 - just before the October hearing.

[Note – re the letter of 29-9-86. The Solicitor to North Yorkshire County Council wrote to Mr. Seymour and said that further to a Committee Meeting - - - - -
“I have been authorised to state that The Council will admit the following facts :-

- 1 That a public bridleway runs from the village of Tockwith to the southern bank of the River Nidd.
- 2 It is admitted that a public right of way runs from Kirk/Church Hammerton High Street to the northern bank of the River Nidd
- 3 It is admitted that the two highways were connected at various times until Skewkirk Bridge was demolished in the year 1969
- 4 It is admitted that the public were entitled to the maintenance of the Skewkirk Bridge
- 5 It is denied that the Skewkirk Bridge is, or was, maintainable by the highway authority
- 6 It is averred that the said bridge and any highway over it was and is maintainable by the owners and occupiers of Kirk Hammerton Mill”]

[Note - when questioned about the above letter by the Judge, at the hearing on the 3rd October 1986, Mr Sauvain, (for NYCC) stated that the letter meant that a public right of way also existed over the bridge]

B - Your Honour has found that - not the highway over the bridge – but the fabric of the bridge itself - is maintainable by Mr Pick.

An offer was made this morning to pursue Mr Pick. You ordered a meeting, which did not take place because the highway authority didn't want one.

[Note - he was referring here to the hearing of 22-12-86 where the notes of the transcript record this exchange between the Judge, Mr Sauvain and Mr Bradshaw :

S - We will take steps to really firm this up'

J - Yes. You would give an undertaking ? Elsewhere with other authorities CS has had assurances and it has taken ages to get it back to court. Are you involving Pick in your firming up ?

S - Maybe.

J - I would be unhappy to come to an agreement with CS without P being involved.
B - Three months is reasonable.
S - No objection to that]

B - It is up to North Yorkshire County Council to show you what offers they have made. You said yourself that they are in an embarrassing position. They have done nothing. Today is the first time that something is going to be done. So I suggest no order for costs.

S - I will not ask for costs before 29th September 1986.

J - No, Mr Sauvain.. I think that Mr Seymour would be entitled to his costs against you.

S - Beyond that, I ask for my costs - But not for the December hearing
[Note – on 22-12-86 - His Honour Judge Harry Walker held that “Mr Seymour’s argument for costs against Mr Pick should succeed” - and that --- “Mr Pick’s application for costs against North Yorkshire County Council must fail”]

B - But – Mr Sauvain has admitted - - - - - (the highway over the bridge)

S - The drafting of our admission was done very carefully. On the 11th February(1987) we wrote to Mr Seymour [inviting him to withdraw]. After the December hearing we couldn’t decide what to do about the bridge whilst these proceedings were pending.

I’ve not undertaken to proceed against Mr Pick. But rather to consider whether to go against him – or - to try and reach an agreement with him – or – to apply for a stopping-up order.

Your Honour, I’ve argued this case mainly on points or arguments provided by Mr Seymour. Therefore, I ask for costs.

His Honour Judge Harry Walker - I order the Complainant’s costs to the 29th September 1986, and the Respondent’s costs thereafter, save the hearing on the 22nd December 1986.

POSTSCRIPT

Re the Transcript

The above transcript was carefully prepared from the notes taken during the Hearing by an impartial person who had been present throughout the three earlier hearings and who was, therefore, fully familiar with what the case was all about. The essential purpose of the transcript was to provide an accurate record of the proceedings. A record, which needed to be agreed by His Honour Judge Walker, before being sent to the High Court as part of the appeal documents. Therefore, it had to be correct.

On the 13 March 1987, an Application was made by Colin Seymour in person, to the Crown Court, under section 28(1) of the Supreme Court Act 1981, seeking that a **“Case may be stated for the Opinion of the High Court”**

A reply dated 17 March stated **“Your application under Section 28 Of the Supreme Court Act 1981 has been considered by His Honour Judge Walker. He has agreed to state a case for the opinion of the High Court, and requests that you instruct both counsel to draw an agreed case for his consideration. Failing agreement His Honour will see them both to adjudicate on any differences”**

On the 23rd March 1987, Colin Seymour wrote to NYCC enclosing copies of the above two letters; copies of the notes of the proceedings; a copy of the prepared draft transcript taken from the notes; and a draft of the questions to be decided by the Queen’s Bench regarding the appeal. The letter also asked NYCC to **“kindly request Mr Sauvain to draw up a case for the judge to consider”**.

Mr Pearlman (instructing solicitor present throughout the Court Hearing) was also sent a copy of the transcript and the letter from the Judge, and asked to forward them to David Bradshaw (of counsel) with instructions to agree a case (with Stephen Sauvain) upon the basis of the draft transcript provided.

In a telephone conversation of 7th April 1987 (regarding what progress NYCC had made to draw up a case) David Parrish (solicitor) stated that he had not received the letter dated 23 March which contained the documents. A further letter was sent the same day, repeating the request that Mr Sauvain draw up a case. This letter was received by NYCC (acknowledged 29 May 1987) but it was not confirmed whether or not counsel had been instructed to draw up a case as required by the Judge.

On the 8th April 1987, Colin Seymour was taken into hospital with a serious heart condition. On the 23 April 1987 his application for Legal Aid to pursue the Appeal in the High Court was rejected. On the 9th June 1987 his Appeal against the Legal Aid decision was also rejected. He was therefore unable to continue with his proposed Appeal to the High Court because of lack of funds. Thus, he had no alternative but to settle the matter of the outstanding costs with North Yorkshire County Council.

Re Costs

After both the Complainant and the Respondent had calculated and agreed their respective costs for the periods at issue, it was found that those of the Complainant were the highest. North Yorkshire County Council paid the outstanding difference of £750 to Colin Seymour on the 8th July 1987 in final settlement of the costs of the proceedings.

Colin Seymour

