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Case No. 868227

IN THE CROWN COURT AT LEEDS

22nd December 1986

BEFORE

HIS HONOUR JUDGE P H C WALKER

- - - - - - - - - - -

COLIN SEYMOUR	COMPLAINANT
NORTH YORKSHIRE COUNTY COUNCIL	RESPONDENT
MR W H PICK (LANDOWNER)	THIRD PARTY

J U D G M E N T

APPEARANCES

For the Complainant	Mr David Bradshaw
For the Respondent	Mr Stephen Sauvain
For the Third Party	Mr Paul Worsley QC

Transcribed from Notes Taken By Two Independent Persons

Stephen Warburton MA (Yorkshire Wildlife Trust)

and

Mrs Penny Cole (Local Landowner)

Case No 868227

LEEDS CROWN COURT 22nd December 1986

SEYMOUR v NORTH YORKSHIRE COUNTY COUNCIL

SEYMOUR v PICK (A landowner and a THIRD PARTY)

SECTION 56 HIGHWAYS ACT 1980

Transcript taken by Stephen Warburton MA : verified by notes taken by Mrs P. Cole.

His Honour Judge Harry Walker	'J'
Mr David Bradshaw for Seymour	'B'
Mr Stephen Sauvain for NYCC	'S'
Mr Paul Worsley QC for Pick	'W'
Mr Pick	'P'
Mr Seymour	'CS'
North Yorkshire County Council	'NYCC'

. . . . . .

The Court Hearing commenced at 10.30 am.

W - CS seeks to say first, that the bridge was a highway.
Secondly, that it is maintainable at public expense, or by some third party.
Thirdly, that the highway is out of repair.
NYCC appear to have conceded that it is a highway.
If P has no right to be heard, then CS can also drop out, because it is not a matter to him who pays for the bridge to be repaired.
If P has a right to be heard, I will show that the Book of Bridges is not definite proof that this bridge is a public highway.
If P is responsible, it costs NYCC nothing to admit that a highway exists.

J - Perhaps NYCC were wrong in conceding it is a highway and that any costs of repair might be recoverable from P .

W - P submits that the cost of repairing the bridge, or in fact of providing a replacement is £22,000 according to the estimate produced by CS , and over £100,000 according to NYCC's estimate.
This raises questions of natural justice for P .
On 17–7-86 a date was fixed of 3-10-86 for a Hearing between CS and NYCC .
By 1-6-86 P had already been served notice by CS requiring him to put the bridge in repair.
On 10-9-86 NYCC served a notice on P saying that if the Court finds NYCC liable, they would seek to recover costs from P by reason of prescription or tenure.
NYCC were wrong in serving this notice because by that time the highway issue had not been resolved in Court.
So P had been brought in at too early a stage.
Only when it had been proved, or admitted a highway, should he have been brought in.
CS , the most thorough litigant, and experienced and wise, knew of NYCC's notice.
He could have argued on 3-10-86 that we should not have been there, but he did not do so.
CS now seeks to go on; one looks suspiciously at his timing.
The Court then ordered that we re-assemble today to discuss if it is a highway, and, as usual CS is way ahead of me. . . .
(Pause - W then read an extract from something in the 1870's and gave it to the Judge as relevant background information) . . . .
I submit that CS's service of notice against P gives P a right to come before this Court.
I submit that he is a Respondent to the Complaint.
It would seem the Respondent can be either a Highway Authority or a Third Party, and that a Third Party can be at a Court Hearing, and, by implication can be a party to a case.

J - I must correct you Mr W . CS has served a notice to admit facts against P but he is not bringing him to Court. The meaning of the word Respondent under Section 56 is different from the normal meaning of the word.

W - Notice should not have been served on P until the highway issue had been resolved.
Section 57(1) excludes bridges, it only applies to footpaths and bridleways.
Notwithstanding that, the bridge may carry a footpath or bridleway.
The reason for this distinction - between Sections 56 and 57 - is that a footpath or bridleway may only require minimal expense to put into repair, whilst a bridge or carriageway may cost thousands.

J - Let us pursue this distinction, and talk about, say, a potholed footpath.
If an adjoining owner has exclusive or concurrent liability, and if the Local Authority is to avoid paying for it out of the rates, the Authority must give 21 days notice before any Hearing.
It suggests that P could have come along, if it's a pothole in a footpath, and say "Yes, there is a pothole, but it is not in bad enough repair".
And that is all that he could have said.
If, on the other hand, he disputed his liability - in what forum would he argue ?

W - In a Magistrates' Court.

J - Where is the enforcement section ?
Is it Section 56(7) in a Magistrates' Court ?

B - I refer you to Section 57(1)
Where a Local Authority has admitted - and they have yet to prove this against P - he could then argue that he was not liable, and proceedings would have to happen in a Magistrates' Court.

S - The Local Authority has the burden of proof to show the other party is liable.
Mr W's main point is that this was not a footpath or bridleway but a bridge.

J - You are not barred from arguing these points, but it's the forum you argue it in.
It should perhaps be argued first in a Magistrates' Court.

W - We should view the statute against potential liability to my client.

J - P could have argued whether it is a highway by getting together with the NYCC to rebut CS's evidence.

W - It is not only a Highway Authority who can say whether or not it is a public highway, other people can argue it.

S - Three matters have to be proved under Section 56(2).
Firstly, that there is a highway.
Secondly, that the Respondent before the Court is liable to repair it.
Thirdly, that the highway is out of repair.
It is for the Court to find that the Respondent is liable.
It is not right to say that CS has to prove that it is a highway - if NYCC have already admitted it.
If one has to notify a Third Party that NYCC are likely to seek expenses from that Third Party, consequence upon a Hearing, the notice has to be conditional.
That explains why there is an "if" , and no more (S was referring to Section 57(2))
W argues under Section 57(3)(a) that bridges are different from footpaths and bridleways in this matter.
But your Honour may decide that the bridge is a footpath or bridleway.
So we have had to serve a contingent notice.
What is the point of serving a notice under Section 56(9) if the Third Party is so circumscribed in what he can do in the Crown Court.
The right of recovery is only exercisable where there is a concurrent liability, and that only applies to footpaths and bridleways under the 1949 NPAC Act Section 47(1).
There is no harm as far as the public right is concerned about shifting this argument to a Magistrates' Court.
Does the absence of any mention in Section 56 make a statute sufficient to create a form of expropriation without a reply being heard ?

J - Do I have jurisdiction to let a Third Party in ?

You, S , argue that I can determine a right of way without a Third Party being present - for footpaths and bridleways only - so there is an inconsistency.

S - Is the result of this court case against all the world, or against the parties only ?
Because of the wording of Section 56, it may be that the order was not binding against the world but only against the parties involved.
Therefore, P should be heard.
A Magistrates' Court could order P to repay CS if CS went ahead to repair the bridge himself.
NYCC's admissions are based on the Bridge Book, but if the Court dismisses that then we may need to reconsider our position.
We could take on board P's arguments to resist the application that it is a highway.
But, B will object
We could ourselves serve a notice of complaint on P .
There are ways we could get P before this court - if CS consents.

J - That seems unlikely.
If by some legitimate means P were before this court, what issue would I have to decide ?
I would have to decide whether it is a highway - also whether it is NYCC's liability to repair, or if there is a concurrent liability.

S - You may conclude that NYCC are not liable, and that there is no highway.
CS would then fail and costs would remain to be determined.

J - That would leave in the air whether he could then have a second bite of the cherry against P - who would no doubt raise the matter of estoppel.
What is there in it for P to stay in these proceedings ?
I had rather naively thought originally that in some way we could deal with this as per ordinary civil litigation, and that we could pass on any liability to P by other proceedings.

S - Would P be able to raise the question before Magistrates of whether it is a highway once this court has argued that it was ?

J - His chances would be much better if he was not here and had not argued his case here.

S - But by that time NYCC would be under an obligation to repair it.

B - This is not a Public Inquiry.
People cannot file in on the back of NYCC .
NYCC have admitted - but that does not bind P.
He can argue it in a Magistrates' Court.
I regard NYCC's admission as binding on them.
They cannot go back on it.

If they had admitted it within one month under Section 56(4) it would have gone straight to a Magistrates' Court.

J - Which ever solution we get, I am unhappy.
If P is debarred, and CS succeeds, then P is faced with arguing in a Magistrates' Court that it is not a highway.
That Court will be influenced by a Crown Court judgment.
But if P is let in, I am not sure it helps him anyway.
Because these proceedings are not competent to decide liability.

B - Fairness also extends to CS .
I do not want things widened such that CS cannot pay.
This case is not just about the bridge, it is about providing a way across the River Nidd - perhaps by stepping-stones or a ford.
It is not the manifest injustice argued.
P can appeal to the Crown Court (B was referring to an appeal from the Magistrates' Court under either Section 56(9) or 57(1) or (2)

W - P can always appeal.
Or, alternatively, NYCC can withdraw their admission and P can go in under their case.

J - I hope you assure the public, that if you come before the Magistrates, you will explain that P has not had a chance in the Crown Court to put his case.

. . . . . The Court Adjourned . . . . . .

His Honour Judge Harry Walker then gave his Judgment

CS had his attention turned to Skewkirk Bridge at Kirk Hammerton - and he is an extremely accomplished individual.
The bridge was removed seventeen years ago - and CS , under the provisions of the 1980 Highways Act, called upon certain persons to admit whether there was a highway, and whether they admitted liability to put it in repair.
Under Section 56(1) CS served notices on NYCC and also on P , who is the owner of land which may, or may not, be saddled with the responsibility for maintenance of this bridge.
CS's notice calls upon the addressees to state whether a highway exists and whether they are liable to put it in repair.
Those addressees are called Respondents.
Neither NYCC nor P responded.
So CS put into gear the next step, under Section 56(2), to require the Respondent to put it in repair, should the court find that it is a highway.
CS has never applied Section 56(2) to P .
P did not rise to what I might call the fishing notice of Section 56(1), nor did NYCC.
We then have complications.
NYCC thought it could shift liability to P , and served the notice on P under Section 57(3) - possibly saying that he was in the firing line.

NYCC also admitted that the bridge in question was a highway, but did not admit concurrent or sole liability to repair it.
It wants P to shoulder that responsibility.
In October (1986) I directed things - the time available was not suffcient for a full consideration of matters, and CS was acting in person - and, with the apparent concurrence of CS , S , and W , I ordered pleadings to be put in, so that I would know what the allegations would be.
There was no apparent dissent and the documents were then filed.
But soon after, CS wrote in to say that the Third Party had no locus standi.
And, I ordered it to be listed today as a preliminary point for argument.
It is open for any Complainant to decide upon whom he serves a notice for repair.
So CS says - you cannot hear P .
P argues, at first sight compellingly - but I have to dismiss it - that it is not open for this court to sit and not hear P .
B points out that this is not a proper forum, because, under Section 56 of the Highways Act, once CS has gone against NYCC they are the ones to bring in P and they have not done so.
There is then a very different point as to whether we are dealing with a footpath or a bridge carrying one.

J - I am satisfied that P has no right of audience in this Court.
He has every right to be heard in a Magistrates' Court.
The only matter this Court has power to determine is under Section 56(1) and Section 56(2).
I regret my simplistic view in October - and although it was not argued against by anyone - that is not the case.
The matter must therefore proceed as CS v NYCC.
If P wishes to appeal I will give leave.

W - I give notice that I wish to apply for P's costs to be paid by either or both parties

B - I will be applying for costs against the Third Party.

W - P will not appeal, though we do not bind him to this.
I invite you to consider costs now.
It is NYCC's action which has brought P to Court.
CS has successfully challenged P's locus standi.
If the Hearing on the 3rd October had concluded things, P's costs would not be so great.
His locus standi should have been raised earlier.

J - But perhaps the notice served by NYCC was necessary under Section 57(3) of the Act ?

W - The actions of the other two parties have caused P expense.

J - But you, Mr W , could have made that very point, and, of course, you have fought strongly to remain in. You, Mr W , are asking for your costs against NYCC.
Mr B is asking for his costs against you.

B - There was only half-an-hour allowed on the 3rd October, and even if it had been raised last time he would have been here today, for there was not sufficient time on that occasion.

J - I received submissions from CS on Thursday last week.
When did P have them ?

W - This morning at 11.0 am.

B - They were handed in in person.
The Third Party's submissions were only handed in today too.

J - Had CS encapsulated his arguments earlier, your case would have been stronger ?

B - But they would have only been skeletal.

J - CS did not raise the matter at all on the last occasion, though he thought about it soon after, and his reasons for saying P had no locus standi were only advanced recently.

B - No your Honour.
They were advanced on the 8th October.

J - Yes - I agree.
Is it true Mr W ?

W - Yes

B - So that is the position.
No one mentioned it last time, but had they done so it would have had to have been raised (today).
Things were sent out on the 8th October.
This is a normal civil case and things follow on.
On the last occasion P's attendance was not eligible for costs.
But for P's intervention we would not be here.

S - The application against NYCC is that it was wrong of us to serve notice on P

J - If by your actions, you serve a wrong notice on P , that does not make you liable for his costs.
For he could have appeared and said I have no standing - and he would then ignore the notice.

W - P received the notice on the 1st June (1986) requiring him to make admissions.

J - The notice was contingent on the Court finding that NYCC has a liability.

W - The notice states :-
(1) If the court finds there is a highway
(2) The court might find you liable to repair it.
I note that there were two notices, it appears, with slightly different wordings.

J - Under Section 57(3)(a) there was good ground for serving the notice.
But under 57(3)(b) there was no ground for giving P notice.
I agree that a layman reading the notice might be advised to turn up, but, if you read on, a different interpretation emerges.
You had no locus standi, and if you chose to turn up in order to see what happens, you cannot, surely, expect costs.

W - Because Bridge and Way are not mentioned in the appropriate section that is not the case.
P is the person most at risk.
NYCC have brought P before the wrong court.

J - Yes - But have they ?
And what about CS's application for his costs ?

W - On the technical basis of Section 56 and 57, it may not be unjust for P .
But on the merits of the case it is unjust for him.
CS has taken a stance, that because a few members of the public wish to use a bridge it is worth coming before the court.
It is not meritorious - even if it is heartfelt.
Is it unreasonable to find that P , having come, cannot only not defend himself, but that he then gets saddled for costs ?
B is not here just to argue P's locus standi.
Nine-tenths of CS's work to date will have been on the highway issue, not on the locus standi issue.
The statute is not clear, and P should not be penalised on a technicality.

B - I have come along only to argue this point of jurisdiction.
I was under the impression that NYCC had conceded, so there would be no further work for me to do.

J - Again, this is an appallingly difficult matter to decide in a manner that gives proper justice.
CS made a submission about P's locus standi, and made it in October.
P , far from conceding the point that CS made, sought to refute it, and argued that he had a locus standi and it was wrong to be refused one - and argued it with force and nearly persuaded me.
I do not think in then lies in his mouth to say that he should not pay the costs of arguing.
True, he would be ill-advised not to turn up and listen, but he read CS's arguments as long ago as October.
J **- CS's argument for costs against P should succeed.**
P's application for costs against NYCC must fail.

With that regrettable two months delay what do you do now Mr B ?
Do you withdraw ?

B - Not immediately.
Where do we go from here ?

J - Yes - You will say that there is no more to be argued by CS ?

B - CS's allegation is that there is a highway.
He would be happy if it can just be a footpath.
If so, Section 36(1) comes into play, and there is a concurrent liability to maintain under the 1949 Act.

J - How long will it take you Mr S to argue contrarywise ?

S - If it is responded to, it will take two to three hours.
If we have an adjournment we could all take stock.

J - Yes - But you are not out of the wood then, for W may be instructed to fight on the highway issue.

S - Yes - So we should take stock.

J - If members of the public, and not only CS , would be satisfied with a bridge costing £20,000, by the end of this case the legal costs alone might exceed that figure.

S - Yes - But that is a low estimate for a bridge.
The Department of Transport have certain standards so the low cost has not been readily endorsed by NYCC engineers.
One course of action is to ask whether the highway might not be stopped-up.
These proceedings could be either in a Magistrates' Court or by the Secretary of State.

CS's assertions that NYCC are liable to maintain the highway are strongly contested.

J - Let us see what CS has to say.

B - We have had delays, and again we are faced with more delays.
Your Honour will recall the many delays which CS faced against British Waterways, and other statutory bodies, when championing causes of public concern.
He was met with very deliberate tactics of prevarication. This is not good enough.

J - I recall the incidents
(Note - Judge Harry Walker had already heard a dozen or so previous cases involving complaints by Colin Seymour against British Waterways, and against various local authorities - cases which he decided in favour of the Complainant)

B - NYCC are in possession of a notice issued by a Parish Council, a Section 130(6) Notice.
CS is not some crank.
The matter has been the subject of a lot of correspondence and CS is only asking NYCC to take the proper proceedings.

S - I cannot lay my hands on this notice.
Yes - here it is.
Yes - CS has asserted that a Parish Council have served such a notice, but I am not clear if that is the view of the Parish Council.

J - It is not something which this court could have any jurisdiction over.
If NYCC is failing under Section 130(6) presumably the Parish Council's action would be to put the matter in the hands of the Secretary of State or to request Judicial Review.

S - Or by Mandamus. It would not prevent NYCC bringing proceedings for stopping-up.
I have now been handed this notice, it is Document No. 11, and I have seen correspondence referring to it.

B - My only objection about an adjournment is whether NYCC would consider that point (i.e. delay)

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

J - Yes - You would give that as an undertaking ?
Elsewhere with other Authorities, CS has had assurances and it has taken ages to get it back to court (Note - Judge Harry Walker was referring here to the dozen or so previous cases involving Colin Seymour mentioned above)

Are you involving P 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.

. . . . . .

The Court ended in late afternoon.