REPORTS

OF

APPEAL CASES

IN THE

HOUSE OF LORDS.

During the Session, 1813—14.

53 GEO. III.

ENGLAND.

IN ERROR FROM THE COURT OF KING'S BENCH.

INHABITANTS of West Riding of Yorkshire - - - - } *Plaintiffs in error.*

THE KING (on Prosecution of R. BUCKLEY) - - - } *Defendant in error.*

Nov. 8, 1813.

CASE RESPECTING REPAIR OF HIGHWAY AT ENDS OF BRIDGES.

By the common law, declared and defined by the statute 22 Hen. 8, cap. 15, and the subsequent Bridge Acts, where the inhabitants of a county are liable to the repair of a public bridge, they are liable also to the repair of the highway at the ends of the bridge, to the extent of 300 feet; and if indicted for the non-repair thereof, they cannot exonerate themselves except by pleading specially that some other is bound by prescription or tenure to repair the same.

State of the facts.

AT the township of Quick, in the West Riding of Yorkshire, in a highway there leading between the towns of Huddersfield and Manchester, there had been, immemorially, a public foot-bridge, and

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a public ford for cattle and carriages, across the river Tame. Some time previous to the year 1756, a public stone bridge was erected by voluntary subscription across the river about five yards higher up than the ford. In the year 1756, this stone bridge was swept away by a flood, and another stone bridge, a little larger than the former, was rebuilt by voluntary subscription, which was also swept away by another flood in the year 1799. The present bridge was then built and completed in the year 1802, at the expense of the inhabitants of the West Riding of Yorkshire, and was made a little wider and larger than either of the two preceding bridges.

That part of the highway which lies immediately westward of the bridge is in a district called Shaw Mear, and that part of it which lies immediately eastward of the bridge is in a district called Lords Mear; both which districts are in the township of Quick and parish of Saddleworth. These two districts had immemorially repaired so much of the highway in question as lies within each of them till a short time previous to 1803, when (the highway at each end of the bridge being out of repair) an indictment was preferred against the Riding for not repairing the highway to the extent of 300 feet at each end of the bridge. The indictment was as follows:—

Indictment.

"*That from time whereof the memory of man is "not to the contrary, there was, and yet is, a "certain common and ancient King's highway, "leading from the market town of Huddersfield, in "the West Riding of the county of York, to-*

" *wards and unto the market town of Manchester,*
" *in the county palatine of Lancaster, in, through,*
" *and over, the township of Quick, in the West*
" *Riding of the county of York aforesaid, used for*
" *all the liege subjects of our said Lord the King,*
" *and his predecessors, for themselves, and with*
" *their horses, coaches, carts, and carriages, to go,*
" *return, pass, ride, and labour at their will and*
" *pleasure, and that a certain part of the same*
" *King's common highway at the said township of*
" *Quick, in the West Riding of the said county of*
" *York, to wit, a certain part thereof lying next*
" *adjoining the west end of a certain public bridge*
" *there, called Tame Water Bridge, and within the*
" *distance of* 300 *feet thereof, beginning at the*
" *west end of the said public bridge, and extending*
" *from thence westwards, containing in length*
" 45 *feet, and in breadth seven yards, and a cer-*
" *tain other part thereof, lying next adjoining to*
" *the east end of the said bridge, and within the*
" *distance of* 300 *feet thereof, beginning at the*
" *east end of the said bridge, and extending from*
" *thence eastwards, containing in length* 150 *feet,*
" *and in breadth seven yards, on the 2d day of*
" *March, in the 42d year of the reign of our So-*
" *vereign Lord George the 3d, now King of the*
" *United Kingdom of Great Britain and Ireland,*
" *Defender of the Faith, and continually after-*
" *wards until the day of the taking of this inquisi-*
" *tion at the said township of Quick, in the West*
" *Riding of the county of York aforesaid, was,*
" *and yet is, very ruinous, miry, deep, broken, and*
" *in such decay for want of the due reparation and*

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" amendment of the same, so that the liege subjects " of our said Lord the King, through the same " way, by themselves, and with their horses, " coaches, carts, and carriages, could not, during " the time aforesaid, nor yet can, go, return, pass, " ride, and labour, without great danger of their " lives, and the loss of their goods, to the great " damage and common nuisance of all the liege " subjects of our said Lord the King, through " the same way going, returning, passing, riding, " and labouring, and against the peace of our said " Lord the King, his crown and dignity, and " against the form of the statute in that case made " and provided; and that the inhabitants of the " West Riding of the said county of York, the " common highway aforesaid, so as aforesaid, " being in decay, of right ought to repair and " amend when and so often as it shall be ne- " cessary."

The inhabitants pleaded " Not guilty;" and, upon trial at York, 23d July, 1803, the Jury found a special verdict, stating the facts as above. The record and proceedings being removed by *certiorari* into the King's Bench, the Court, after argument in T. T. 1806, gave judgment for the King; whereupon the Defendants brought this writ of error.

Lambe and *Scarlet*, (for Plaintiffs in error.) This was only a ford and foot bridge at first, and who were liable to repair the highway on each side then? The Lordships of Shaw Mear and Lords Mear. These were therefore *primâ facie*

liable to repair now; for there could not be two objects of *primâ facie* liability—the Parish and the Riding—at the same time. It had been said that, having pleaded the general issue, the inhabitants of the Riding were not entitled to throw the burden on others; but it was hoped their Lordships would be of a different opinion.

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The liability of the Riding to repair the highway, to the extent of 300 feet next adjoining to each end of the bridge, is assumed as a necessary legal consequence of the liability of the Riding to repair the bridge itself. But no case is to be found where that consequence has been holden to follow; and where the highway is repaired as dependant upon, and forming as it were a part of the bridge, and therefore to be repaired by the same persons who are bound to repair the bridge itself. There is no case to be found where an indictment has been preferred against persons who are bound to the repair of the bridge, for not repairing the highway at each end of the bridge only, though it must frequently have happened that the highway was out of repair at a time when the bridge itself wanted no reparation.

It has been the opinion of several eminent lawyers, that the modern case in which it was decided that the inhabitants of the county at large are bound to keep in repair a public carriage bridge, built by individuals for their own private benefit, where no bridge of that kind ever stood before, if such bridge be afterwards used by the public, and become of public convenience and utility, was a considerable extension of the principle of the liability of the in-

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habitants of the county to repair such bridge, and sufficiently hard upon them; but there is no principle or authority to warrant the extending of that liability to the repair of the highway within the limits of 300 feet at each end of such bridge, and particularly so in a case where the inhabitants of a district have immemorially hitherto repaired such highway, and now seek to discharge themselves from that legal obligation which they were so under, and endeavour to throw it upon the inhabitants of the Riding. The statute 22 Hen. 8, cap. 5, which has been so much relied upon, does not impose any such liability on the Riding. It looks only to such bridges as were then in existence, and where, probably by immemorial usage, the persons who were bound to repair the bridge, had also immemorially repaired the highway at each end of the bridge, but to what extent was not certainly known, and therefore that act limited the extent to 300 feet at each end of such bridge. No certain inference can be drawn from the case in the Year Book 43, Assize Pl. 37.; the case is not clearly reported; and Broke, who has abridged it in title *Presentment in Courts*, Pl. 22 and 29, takes no notice of that part of the case at large which is supposed to speak of the liability of the Abbot of Coombe to repair the highway adjoining each end of the bridge. If it did pass, it was at best but extrajudicial, as the Abbot was not indicted for not repairing the highway, but only for not repairing the bridge itself.

The objection, that the inhabitants of the West Riding ought to have shown specially by their plea, that some other person was bound by tenure or pre-

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scription to sustain the charge, depends entirely upon the other question; namely, whether the highway at each end of the bridge is by law to be repaired by the same persons who are bound to repair the bridge itself. But it is insisted that, by law, this is by no means the case; but, on the contrary, that the inhabitants of the Riding are not bound to repair the highway at each end of this modern bridge, and, more especially, as it has immemorially hitherto been repaired by the inhabitants of the two districts of Shaw Mear and Lords Mear, the Plaintiffs in error may, on the general issue, show that other persons are bound to repair.

The Chief Justice stated the case of the Abbot of Coombe thus: (*Vide* 7 East. 588:)—"It was presented in the King's Bench, before *Knivet* and "*Ing*, that the Abbot of Coombe ought to repair "the bridge of *Chesterford*, in the county of *Lei-* "*cester*, upon which a distress was awarded against "the Abbot: who now came and alleged a record "in the same Court of King's Bench, that how he "was heretofore before *Chebre* impeached for the "same bridge: when he came and pleaded that he "was not bound to repair, except two arches of "the bridge; upon which issue was joined, and it "was so found. The record was read, which was, "'Whereupon the Jury, &c. who say upon their "'oaths that the Abbot of Coombe is not bound "'to repair except two arches of the bridge, &c. "'and the bridge *ultra cursum aquæ*, and not the "'ends of the bridge.' KNIVET. We intend that "you are bound to repair the bridge and the "highway adjoining the one end of it and the

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" other, although the soil may be in another, " so that the easement shall be saved to the public. " And you are bound to make the bridge of sufficient height and strength for the course of the " water. And although, by the accretion of water, " the ends shall be removed, yet you are bound to " pursue the course of the water, and repair the " highway without leave of him to whom the land " belongeth. And inasmuch as in this case it is " not found nor limited in the record who ought to " repair the remainder of the bridge, and without " doing so, it will be of no value; although it shall " be found that the arches are sufficiently made, " yet this shall not discharge you, &c." The expression here was varied three times,—the ends,—the highway,—the remainder; and what was really meant no man could with certainty say. The Chief Justice had indeed stated, " that it was clear from " this case that in those days the charge of repair- " ing the highways at the ends of a bridge was " considered as belonging *prima facie* to the party " charged with the repair of the bridge itself." Now it was submitted whether this did so appear. The case of the Abbot of Coombe was a most unintelligible one, and not a sufficient authority for the present decision.

As to the Statutes of Bridges, the Act of 22 Hen. 8, cap. 5, gave the Sessions the same jurisdiction over bridges as the Court of King's Bench had before, and then gave them power to tax the county, in case no one else was liable. It did the same by the 9th section, in regard to highways at the ends of bridges, which it appeared to consider as entirely

distinct. The Statutes of the 1st Anne, cap. 18, and 12th Geo. 2, cap. 29, did not introduce any thing new, but were cautious as to shifting the obligation to repair. Unless, then, they could show that in every case the county was bound, they could not support this indictment. The Riding in some cases repaired ten feet of the way at the ends of bridges, in other cases 300 feet, &c. according to the inconvenience in each instance. But if the Riding had been liable by common law in every case, the parishes would never have let it alone, but would have enforced the obligation to the fullest extent. If Coke, in Rep. Part 13.—33, and in 2d Inst. 700, meant to say that the county was really *primâ facie* liable to the repair of highways, he had laid down a proposition which was not law; but he had excepted those instances in which others were known to be bound to repair, and his law, if correct, would not apply to this particular case, as it appeared here that others had within memory repaired it.

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As they had been met by a technical objection from the other side; viz. that they could not exonerate themselves unless they pleaded that others were bound to repair, it was but fair, on the part of the Plaintiffs in error, to resort to a technical objection likewise. Why, then, on the face of this indictment, it was not charged that the county was bound to repair this bridge; and if the indictment was bad on the face of it, the special verdict could not cure it. The county could not be bound to repair the 300 feet of the highway at the ends of the bridge, unless it was also bound to repair the

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bridge. It was a clear principle that in an indictment nothing could be supplied by intendment, but it must be sufficient on the face of it to charge the party. It was true that, *primâ facie*, a parish was bound to repair a road, and a county a bridge; yet, as there were exceptions, it was clear that they ought to have stated in the indictment the liability of the county to repair the bridge, as a foundation for its liability to repair the highway at the ends. It was not sufficient to say that this was a public bridge, but it ought to have been alleged that it was one which the county was bound to repair.

The statute 22 Hen. 8, cap. 5, amounted to no more than this, that where the magistrates exercised the power confided to them by the statute, in regard to bridges, they should exercise the same power over the persons bound to repair the highways at the ends of bridges, and if there were none, that then they might tax the county, and limited the extent to 300 feet.

But then it was said that this 300 feet was only defining the limits of the common law liability of the county—reducing it to a certainty. But this argument was *felo de se*; for there was no principle on which the county could have been bound at common law to do that which was uncertain. The object of the legislature was merely the public convenience, without reference to who in particular was bound to repair.

But it was then said that Coke's Comment. 2d Inst. 700, explained the statute. He (*Scarlet*) could not find any such inference there as they wished to

draw from it. Coke was there speaking of the liability to repair bridges; the passage was this:— "If none at all were bounden to the reparation of "the bridge, how then, and by whom should it be "repaired by the common law? 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 county "must repair, because it is for the common good "and easement of the whole county." But both the statute and the comment were silent as to the common law liability of the county to repair the highway at the ends to the extent of 300 feet. If the liability had existed, it was singular that it had not been adverted to by Coke, who was so eager to communicate all he knew, and even inserted the verse in regard to the Tadcaster bridge:—

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"Nil Tadcaster habet musis aut carmine dignum,
"Præter magnificè structum sine flumine pontem."

Then it was said that, in Coke, Rep. Part 13.—33, where Coke spoke of bridges and highways, it was necessary to imply that he meant highways at the ends of bridges, in order to prevent the passage from being nonsense. But the more natural supposition was, that Coke said *county* instead of *parish*.

If it was the opinion at the time of the case in the Year Books, (Edward 3,) that whoever was bound to repair the bridge was bound to repair the road at the ends, it was singular that there never had been an indictment before against the county

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for not repairing the highway at the ends of a bridge separately from the repairing of the bridge itself. Was the county to be bound in defiance of the custom? The statutes had said no such thing, and the special verdict found that, for time immemorial, the bridge had been repaired by the township of Quick. If such was the principle, when one was bound to repair a road to a ford, he had only to throw a bridge over it, and cast the burden on the county. No case was to be found where an indictment against a parish for not repairing a highway was qualified by the exception of 300 feet of the road at the ends of bridges.

Topping and *Holroyd*, (for Defendant in error.) This case had been extremely well considered in the Court below, and an elaborate judgment given. The only really new argument was the technical objection now for the first time started. There was not a hint of this in their printed case; and when the name of Mr. Serjeant Williams appeared there, it was not to be readily supposed that, if the objection had been material, it would have escaped him.

This was an indictment against a county for not repairing a highway to the extent of 300 feet at the ends of a bridge; and if they could show that the county was liable at common law, then the Plaintiffs in error could not, on the general issue, throw the burden on others. When it was alleged that this was a public bridge, and was so found by the verdict, the county was bound, except it exonerated itself by some special plea. The case in 5 Bur.

2594, *Rex v. Inhabitants of West Riding, &c.* as to the bridge over Glusburne Beck, had been disputed; but it was now clear that when a new bridge was built, and found useful to the public, the burden of continuing it was fixed on the county; and this liability extended to the repair of bridges built by trustees under a turnpike act, unless the county be discharged by special provision.

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But the Plaintiffs in error said, that though the county must repair the bridge, others may be bound to repair the 300 feet at the ends; and they also said that there was no authority for throwing the common law liability to repair these 300 feet upon the county. But the case in the Year Books, which had been already mentioned, was a strong authority as to what was then the understanding in regard to the rule of obligation as to this matter. From that case it was clear, that in the time of Edward 3 the party liable to the repair of the bridge was also held to be bound to repair the road at the ends. The statute 22 Hen. 8, cap. 5, did not originally create this obligation, but was declaratory of the common law. Such was the opinion of the Court of King's Bench. The case in the Year Books was therefore fortified by the statute 22 Hen. 8, cap. 5, and the cases *Rex v. Inhabitants of West Riding, &c.* in 2 East. 342, and in 5 Bur. 2594.

But then it was said, that when Coke gave his account (Rep. Part 13.—33) of the common law on this subject, he was asleep, and said *county* instead of *parish*. If this had been the case, it was not likely it should have passed so long without notice. But Coke was speaking of the statute 22 Hen.

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8, cap. 5, as declaratory of the common law; and when he mentioned highways, this must be understood with reference to the subject of which he was treating. Unless this was to be the rule in such matters, it would be sufficiently hard upon Judges. But they had farther legislative information on this subject, the statutes 1 Anne, cap. 18, and 12 Geo. 2, cap. 29, all of which supported the view of the case contended for on the part of the Crown.

As to there having been before no indictment of this sort, that was a strong argument to show that the roads at the ends of bridges had been always considered as parts of the bridges, and therefore to be repaired by the same persons. In regard to the technical objection to the indictment, it had been said that nothing was to be supplied by intendment, but that the law and fact must be stated. That proposition must be very much qualified. It might be true as to the facts, but that the law must be set forth was directly contrary to the first principles of pleading. In pleadings, both civil and criminal, the facts were set forth, but the Judges recognized the law. Then see whether the facts were sufficiently set forth here. The indictment stated that there had been from time immemorial a common highway, &c. and that 300 feet of this highway adjoining a public bridge was out of repair. The common law cast the burden of repairing this on the county. This was matter of law to be taken notice of by the Judges, and it was even unnecessary to have stated at the close that the county was bound to repair. If this had continued a ford, as before, that would have been a

different matter; but when it became a bridge, the county became bound at common law to repair the ends, and could only discharge itself by pleading specially that some other was liable. The moment a bridge became of public utility, the county, as a consequence of law, became bound to repair it, and also the highway adjoining, as an appendage of the bridge. (5 Bur. 2594.) If the utility was not adequate to the burden, the bridge might be indicted as a nuisance. The case of the Abbot of Coombe was clearly in their favour, and also the comment of Coke, 2d Inst. 700; and Coke, a few pages further on, (2d Inst. 705,) stated the law, directly as they, on the part of the Crown, understood it to be; and the statutes all took it for granted that such was the law.

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Lambe heard in reply.

Lord Eldon (Chancellor.) In consequence of a good deal of previous consideration, as well as present attention to the subject, he was of opinion that this judgment of the Court of King's Bench was right; meaning by that, that it appeared to him that it might be fairly inferred from the cases, Acts of Parliament, &c. that the county was bound by law, *primâ facie*, to repair the *ends* of a bridge, which bridge *itself* it was bound to repair; and the statute limited the extent to 300 feet at each end. On the merits, then, he was contented with the decision of the Court of King's Bench. He put this upon the notion that the objection to the indictment

Judicial observations. The Chancellor satisfied with the judgment of the Court below.

Doubtful whether the technical ob-

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in point of form could not be supported. On account of this objection, he should propose that the final decision be postponed till Friday (12th November;) 1st, Because the objection was a new one, though they should be of opinion that it was fit to consider it now for the first time. 2d, Because it was questionable whether it was proper to enter into it at all. He could not give implicit credit to printed cases, but if he could, he found in the printed cases here, that in the Court below this had been taken on all hands to be a bridge which the county was bound to repair. He now therefore stated his opinion that this judgment ought not to be reversed on the other point, and in all respects the case would be duly considered.

objection could be at all considered, as it appeared to have been taken for granted, on all hands, in the Court below, that this was a bridge which the county was bound to repair.

Lambe. If their Lordships were against them on the merits, they did not wish to give the House any farther trouble in regard to the other point.

Judgment. Judgment of Court of King's Bench affirmed. (*Vide* 7 East. 588.)

Agent for Plaintiffs, LAMBERT.
Agent for Defendant, ——————