

30 Aug 1764 George Swinburn

[Note: Appears to be original record of the deposition, complete with words or phrases later struck out and which do not appear in the slightly less detailed summary. That summary is not included amongst these transcripts]

30th Aug 1764 – Geo[rge] Swinburn of Edesbridge in Newlands near Edmondbyers in the Co[unty] of D[urha]m Farmer Aged 70 Yea[r]s or thereabouts

Saith he was born at Minster Acres, left that place when very young & went to Cooperhaugh in the Co[unty] of Durham & lived 'till he was 12 ye[ar]s old or thereab[ou]ts from thence went to Black Hedley in the par[ish] of Shotley & lived there 13 ye[ar]s & then went to Edesbridge where he had lived ever since <...> 45 ye[ar]s. All these places are within 5 or 6 Miles of Woodhead (or Swalwell's) Loaning. Saith he hath known the Highway or Kings Street leading from Blaydon to Edmondbyers [struck out: 's[ai]d Loaning during all the time he lived at Black Hedley'] 50 ye[ar]s last past & that for all that time s[ai]d [struck out: 'Loaning'] Way or Street was in the neighbourhood generally reputed to be a Highway & was so used by the publik without any person claiming any Toll that he ever heard of for passing thro[ugh] or along the same till ab[ou]t 12 years ago that Sam[ue]l Swalwell Thomas Swallowell & some others <Owners> or Occupiers of Lands adjoining [struck out: 'said Loaning'] upon part of the s[ai]d way or Street demanded & rece[ive]d a penny or 2d a Wain p[er] year for passing along s[ai]d [struck out: 'Loaning'] Way or Street W[hi]ch demand this Informant Saith he <believes> an Imposition & has no foundation nor have the p[er]sons claiming the same any Right to exact Tolls for passing thro' or along s[ai]d [struck out: 'Loaning'] Way or Street in this Inform[ant]s judgm[en]t & Belief the same having as af[oresai]d always till within these 12 ye[ar]s been enjoyed by the publik as a Highway. Saith that he hath been 3 times Overseer for the Towns[hi]p of Edesbridge (the first time bet[ween] 20 & 30 ye[ar]s ago) & that whilst he was so Overseer & at other times for 45 years last past he & the other [struck out: 'Inhabitants'] Owners or Farmers of Lands lying bet[ween] Breckonside West to Newlands East (being ab[ou]t 4 Miles in length) constantly [struck out: 'frequently joined in'] repaired that part of the s[ai]d way or Street lying in the s[ai]d District of Edesbridge af[oresai]d looking upon themselves as under Obl[igatio]n to repair that part of the s[ai]d way or Street lying within <the sd> District <...> as it & the whole thereof was a <...> or part of the <Kings High Street>

Saith that whilst he was so Overseer he yearly summoned [struck out: 'Neighbours'] Farmers in Edesbridge Quarter to repair that part of the s[ai]d Way or Street w[hi]ch lay within that Quarter that they did accordingly from time to time repair their <sev[era]l places> thereof & that he this Informant in respect of his Farm at Edenbridge af[oresai]d (w[hi]ch he has held 45 years) did from time to time repair that part of the s[ai]d Way or Street running thro[ugh] his s[ai]d Farm Saith that for 45 ye[ar]s last past

he hath carried Lead from Rookhope Mill to Blaydon without being obstructed or having any Demand made as an acknowledgm[en]t for passing along the s[ai]d Way Till within 12 ye[ar]s last past.

The Mark of George Swinburn

Jno Richmond

[A summary of this deposition in another hand differs materially only in adding at the end:] ... within 12 year last past That Swalwell & Snowball demanded a Toll upon part of the s[ai]d Way as above mentioned

30 Aug 1764 George Rennison

[Note: Appears to be original record of the deposition, complete with words or phrases later struck out and which do not appear in the slightly less detailed summary. That summary is not included amongst these transcripts]

30th Aug[us]t 1764 George Rennison of Newlands in the County of North[umber]land Farmer Aged 75 ye[ar]s

Saith he hath lived all his lifetime at Newlands & that from his Age of 10 years till about 12 years ago he went with the Lead Wains from the Hill Top a Mile West of Newlands to Blaydon along the Way now used for the Lead Carriage & never was obstructed or required to pay Toll till about 14 years ago that 2d a year p[er] wain was demanded by Sam[ue]l Swalwell of Woodhead whose Lands adjoin on part of the s[ai]d Way which this Dep[onen]t submitted to pay for 1 or 2 years to avoid Disputes & Delay tho[ugh] he verily bel[ieve]s that the whole of the Way from the Hill Top to Blaydon af[oresai]d is a publik Highway or Kings Street the same having ever so reputed & freely used during his knowledge thereof saving the s[ai]d Obstruction af[oresai]d within 14 ye[ar]s last past Saith that about 30 years ago & sev[era]l times since he was Overseer for the Towns[hip] of Newlands & then & at other times before that period the part of the s[ai]d Way w[hic]h runs thro[ugh] Newlands Liberty was repaired by the Owners & Farmers of Lands there & by summons from the Overseer, who sometimes had a Warrant from the Justice of the Peace to enable him to compele the s[ai]d Duty & that he himself about 17 years ago when he was Overseer has such Warrant from sir Edw[ar]d Blackett Bar[one]t on his Neighbours neglecting to work at the s[ai]d part of the s[ai]d Way running thro[ugh] Newlands Liberty & that thereupon the sev[era]l Owners & Farmers within Newlands Liberty did perform their Service & Duty in repairing the s[ai]d part of the s[ai]d Way. Saith that about 50 years ago he took a Farm at Newlands af[oresai]d & continued to Farm there 'till [struck out: 'within 7'] about 8 ye[ar]s ago & that during that time when he himself was not Overseer he & his

neighbours were yearly by the Overseer of Newlands for the time being to work at the s[ai]d p[ar]t of the s[ai]d Way in repairing the same & did accordingly from time to time repair the s[ai]d p[ar]t of the s[ai]d Way

The Mark of George Rennison

Witness Jno Richmond

30 Aug 1764 George Fairbridge

[Note: Appears to be original record of the deposition, complete with words or phrases later struck out and which do not appear in the slightly less detailed summary. That summary is not included amongst these transcripts]

30 Aug[us]t 1764. George Fairbridge of the Bridge End in the Towns[hi]p of Newlands & Co[unty] of No[thumber]land Yeom[an] Aged 85 years

Saith he hath lives 70 Years at Newlands & at Woodhead w[hi]ch is within 1 Miles thereof that during all that time (save the last 14 or 15 ye[ar]s) he & is Father rented & lived upon a Farm there p[ar]t of the Darwent Water Est[ate]. Saith that during all the time he & his Father so farmed he was frequently employed in carrying Lead from Rookhope Mill to Blaydon & Wood from Linnells to Ravensworth Caste along the present Lead Way without being obstructed or ever paying any acknowledgment Saith s[ai]d Way was always deemed to be a publik Highway & used as such. Saith that the Farmers etc in the Township on Newlands were from time to time summoned by the Overseer for the time being to repair that p[ar]t of s[ai]d Highway w[hi]ch runs thro' the Township & in Obedience to such Summons he this Informant & the other Farmers did from time to time send Dra[ugh]ts & Men to work at repairing s[ai]d part of s[ai]d Way w[hi]ch they considered as a publik Highway or Kings Street. Saith that he remembers in particular that one year when Geo[orge] Rennison was Overseer of Newlands he summoned the Tenants or Occupiers of Lands there to repair s[ai]d part of s[ai]d Way & that he & the <other> Ten[ant]s &c accordingly went or sent Dra[ught]s & Men to work in repairing s[ai]d Way. Saith that during all his Knowledge of s[ai]d Way bet[ween] Rookhope Mill & Blaydon he hath been informed & believed the whole way was repaired as a Highway according to the General Rules or Laws respecting & directing the Repairing of Highways [struck out: 'in General Saith that four or five years Saith that for 4 o4 5 years of the 70 he'] Saith that about 24 year ago he lived with Mr [gap left] Marley at Woodhead & that during 4 or 5 years that he lived there with his said Master that part of the s[ai]d Highway called Woodhead Loaning was an open publik Highway like the Rest of the s[ai]d Highway bet[ween] Rookhop Mill & Blaydon & no demand of Toll or an Acknowledgm[en]t for passing along the same was then claimed or Demanded & no Barr or Gate was putt up to collect any Toll at.

The Mark of George Fairbridge

Witness Jno Richmond

[Footnote at foot of page:] Swalwell is <Trustee> for a young Fellow of 22 y[ea]rs, his name Hugh Newton of the Highfield Near Whittonstal Serv[an]t to John Summerbea, but will not acco[un]t

31 Aug 1764 William Fuester

[Note: Contained within pages of summary notes from the depositions, the original of which has not survived, and so is given here.]

William Fuester of Ebchester Aged 53 Y[ea]rs

Says that he has known the Highway between Blaydon and Edmondbyers for upwards of 36 y[ea]rs and that he never know it stopt (till w[i]thin these few Years) and then by Samuel Swallowell but he says he never was stopt, but always believed it to be a Highway and that he went to live at the Holings 36 Y[ea]rs ago where He lived for 9 Y[ea]rs during w[hi]ch time he remembers that the Woodhead Lane was repaired by the Farmers & Cotagers in Hedley Wood Low Quarter

Aug 31st 1764

31 Aug 1764 William Green

[Note: Contained within pages of summary notes from the depositions, the original of which has not survived, and so is given here. Undated but assumed to be of same date as other summarised statements]

William Green of Whitensday [Whittonstall?] Aged 70 Y[ea]rs and upwards

Says that he has lived there & Hedley all his life & that he has known the Highway between Blaydon & Edmondbyers for 55 Y[ea]rs & upwards and that he never heard of anybody make any stop till w[i]thin this 12 or 14 Y[ea]rs - & then by S. Swallowell & others - & He says that he remembers when ever the Way wanted any mending that it was don by Statute Work.

31 Aug 1764 George Willy

[Note: Contained within pages of summary notes from the depositions, the original of which has not survived, and so is given here. Undated but assumed to be of same date as other summarised statements]

George Willy of Whitensday [Whittonstall?] aged 78 Y[ea]rs

Says that he has lived all his Life there w[hi]ch is within 2 Miles of Woodhead Lane, and that he has known the Highway between Blaydon & Edmondbyers for upwards of 60 Y[ea]rs & that it never was stop but allways enjoyd as such till w[i]thin these <14> Y[ea]rs & then stopt by S. Swallowell

31 Aug 1764 John Charlton

[Note: Appears to be original record of the deposition, complete with words or phrases later struck out and which do not appear in the slightly less detailed summary. That summary is not included amongst these transcripts. No date given; assume same approximate date as other depositions]

John Charlton of Broadoak in the pa[rish] of Ovingham Aged 80 or thereabouts.

Saith ever since he rem[em]bers anything he knew the present Lead Way from Rookhope Mill to Blaydon & that it was always reputed to be used as a [struck out: 'Lead'] publik Highway Saith that as soon as he was able to go with a dr[ough]t he has travelled the s[ai]d Way with Carriages & never mett with an Obstruction till 12 or 14 ye[ar]s ago. Saith that during 32 Years he hath lived at Broadoak w[hi]ch is ½ a Mile from [struck out: 'the Lead Way'] Woodhead Loaning he hath frequently been summoned by the Overseer of to repair the Woodhead Loaning (part of the s[ai]d Highway) in respect of his Farm at Broadoak af[oresai]d & saith that he & the other Farmers at Hedley Wood Quarter in w[hi]ch is Broadoak af[oresai]d went with or sent men & Dra[ugh]ts to repair the s[ai]d Loaning accordingly. Saith that in two of the years or at two of the times of repairing the s[ai]d [struck out: 'Swalwell'] Woodhead Loaning W[illia]m taylor of Broadoak af[orsai]d was employed as well as this Dep[onen]t & others in repairing the s[ai]d Loaning

The Mark of John Charlton

Witness Jno Richmond.

31 Aug 1764 William Taylor

[Note: Appears to be original record of the deposition, complete with words or phrases later struck out and which do not appear in the slightly less detailed summary. That summary is not included amongst these transcripts. No date given; assume same approximate date as other depositions]

W[illia]m Taylor of Broadhead – Aged 80 [given as Broadoak in the summary]

Saith he hath known & travelled the Leadway from Rookhope Mill to Blaydon ever since he was able to go with Dra[gh]t. Saith s[ai]d Way was always reputed to be & used as a Highway & that he never knew of any Obstruction till within 12 or 14 ye[ar]s last that an Acknowledgm[en]t was demanded but he never paid any. That about 60 Years ago he travelled s[ai]d Way with Lead for as Servant to Jonathan Angus & hath constantly ever since yearly so lead Lead & Wood from Crook [struck out: 'hope'] Oak down the s[ai]d Way. Saith that [struck out: 'upwards of'] 49 Years ago he went to live at Broadoak and lived there 20 ye[ar]s and then went to [struck out: 'Woodhead'] Newlands & lived there till about 20 y[e]ars ago since w[hi]ch time he hath lived & farmed at Broadoak. That Woodhead Loaning was during all these 49 Years repaired by the [struck out: 'Broadhead Tenants Woodhead Hedley'] Hedley Wood Quarter Tenants & during the time he lived at Newlands the Tenants there repaired a p[ar]t of the s[ai]d Highway to the so[uth] West of the s[ai]d Loaning as far as their Liberty extended. Saith that they were summoned by the Overseer to work at the s[ai]d Road & in all respects these <pts> [parts] as well as the whole of the s[ai]d Way appeared to be & were used & enjoyed & repaired as a publik Highway. Saith he rem[em]bers to have seen John Charlton of Broadoak Sam[ue]l Swalwell of Woodhead Mr. [space] Marley of Woodhead & Ravenside & others or their Servants with Dra[ugh]ts working at repairing the s[ai]d [struck out: 'Way'] Woodhead Loaning when he this Informant was so summoned to work in repairing the s[ai]d Loaning by John Lumly the then Overseer

The Mark of William Taylor

Witness Jno Richmond

31 Aug 1764 Robert Stephenson

[Note: Appears to be original record of the deposition, complete with words or phrases later struck out and which do not appear in the slightly less detailed summary. That summary is not included amongst these transcripts. No date given; assume same approximate date as other depositions]

Rob[er]t Stephenson of Milkhouse Burn Aged 42

Saith that about 8 Years ago this Dep[onen]t living in the Constabley of Hedley Wood Side he was Summned by [struck out: 'Sam[ue]l Swalwell of Woodhead <.....>'] the then Overseer for Hedley Wood Side to do Statute work as a Cottager in repairing Woodhead Loaning & accordingly [struck out: 'he & his wife did wrought there 2 Days & his Wife one Day & the'] his Wife wrought there 1 Day. That the next Year he was summoned by Sam[ue]l Swalwell of Woodhead the then Overseer of Hedley Woodside as he believed to do Statute Work in the repairing of the s[ai]d Loaning & accordingly this [struck out: 'Dept'] Informant wrought there 2 Days. Saith that Swalwell as well as the Overseer for the previous Year threatened to Distrain upon this Informant if he refused to do the Statute Work.

The Mark of Rob[er]t Stephenson

Witness Jno Richmond

31 Aug 1764 Anthony Surtees

[Note: Appears to be original record of the deposition, complete with words or phrases later struck out and which do not appear in the slightly different summary also included here. No date given; assume same approximate date as other depositions]

Anthony Surtees of Medomsley Gent[leman] Aged 58

Hath known the Lead [struck out: 'Road'] Way from Edmondbyers to Blaydon 38 Years, saith that it was always reputed to be & was always used as a publik [struck out: 'Road'] Highway without Interruption till [struck out: 'within'] about 14 Years last past. Saith that about 33 Years ago he took a Farm at Woodhead in the pa[rish] of Ovingham & lived there 3 Years & is well acquainted with Woodhead Loaning (part of s[ai]d Lead way) Saith that s[ai]d Loaning & also other p[ar]ts of s[ai]d Way (ab[ou]t 1/3d of Mile) on the S[outh] of s[ai]d Loaning was during these 3 years repaired by Stat[ute] Work as a publik Road lying in Township of [struck out: 'Woodhead'] Hedley Low Wood, That this Informant & the other Farmers of Lands in Woodhead & also at the Hollings & Broadoak [struck out: 'and from time to time when summoned'] in the s[ai]d Township particularly Saml Swalwell of Woodhead all joined in to repairing s[ai]d p[ar]t of s[ai]d Way, by sending or providing [struck out: 'Waines'] Dra[ugh]ts & Men thinking it their Duty to repair it as a publik Highway Saith that he hath know s[ai]d [struck out: 'p[ar]t of s[ai]d Way'] Loaning for 50 Years he going to School at Woodhead & during all his knowledge thereof it was called & deemed generally to be a publik Highway or or Kings street. Saith that the Farm he so held at Woodhead is now in the pos[se]ssion of Thomas Snowball [struck out: 'who'] as Ten[an]t to Mr Aubone Surtees who this [struck out: 'Dep[onent]'] Informant says he

has heard hath taken upon him to stop of obstruct [struck out: 'the s[ai]d High Loaning or Way'] the passage thro' part of the s[ai]d Highway.

[Summary of this deposition given elsewhere differs slightly from the above, and is therefore given here:]

Saith that he hath known the present Lead Way from Edmondbyers to Blaydon 38 Years & that it was always reputed to be & enjoyed as a Public Highway & that he never knew of any Interruption 'til about 14 years ago that Sam[ue]l Swalwell & others demanded & exacted a Toll or Acknowledgm[en]t for passing along Woodhead (or Swalwell's) Loaning part of the s[ai]d Way Saith that about 33 years ago he took a Farm at Woodhead & lived there 3 years was well acquainted with the s[ai]d Woodhead Loaning. Saith that the s[ai]d Loaning & also other part of the s[ai]d Way (ab[ou]t 1/3d of a Mile) on the South of the said Loaning was during these 3 years repaired by Statue Work as a Public Road or Highway lying in the Township of Hedley low Wood Saith that he this Informant & the other Farmers & Occupiers of Lands in the s[ai]d Township particularly Samuel Swalwell of Woodhead all joined in so repairing the said part of the s[ai]d Way Saith that he hath known the s[ai]d Loaning for 50 years & dur[ing] all his knowledge thereof it was called & generally deemed to be a public Highway or Kings Street Saith that the s[ai]d Farm he so held at Woodhead is now in the possession of Tho[ma]s Snowball as Tenant to Mr Aubone Surtees And this Informant says he hath heard that the s[ai]d Tho[ma]s Snowball hath lately taken upon him to Stop or Obstruct the passage thro' part of the s[ai]d Highway.

9 Sep 1764 John Ellison

[Note: Contained within pages of summary notes from the depositions, the original of which has not survived, and so is given here.]

John Ellison of Whitensday [Whittonstall?] Aged 65

Says that he has known the Highway between Blaydon & Edmondbyers for upwards of 50 Y[ea]rs - & that he never know it stopt till w[i]thin this 14 Y[ea]rs.

George Usher of D[itt]o Aged 65 – And John Wilkinson of D[itt]o Aged 52

Both give the same Evidence as John Ellison

9 Sep 1764 Thomas Ward

[Note: Contained within pages of summary notes from the depositions, the original of which has not survived, and so is given here.]

Thomas Ward of Edmondbyers Ages 73

Says he has travelled the Highway between Blaydon & Edmondbyers for 40 Y[ea]rs & upwards & never was stoped, and that 38 Years ago when he lived at Whitensday he carried Wood form Blaydon to Jefforas Mill along the Woodhead Lane & never was hindered by anybody

Sept 9th 1764

9 Sep 1764 Cuthbert Mills

[Note: Contained within pages of summary notes from the depositions. Undated but assumed to be of same date as other summarised statements]

Cuthbert Mills of Medomsley in the County of Durham Yeoman Aged 52 Years .

Was Serv[an]t to Mr Surtees for 2 of 3 ye[ar]s at Woodhead & proves the repairing the Road as above ment[ione]d , & that Swalwell assisted with a Dra[ugh]t p[er]sonally.

10 Apr 1765 Fletcher Norton

[Note: This appears to be Fletcher Norton who was at Lincolns Inn Field between 1742 & his death in 1789. 'Fletcher Norton, first Baron Grantley, successively solicitor-general, attorney-general, and speaker of the House of Commons. He was known in the satires and caricatures of the day as 'Sir Bull-Face Double Fee.' In his pleading, he was 'remarkable alike for the clearness of his arguments and the inaccuracy of his statements.' In the position of speaker he rendered himself obnoxious to the Court, and on the meeting of the Parliament on 31st October, 1780, he was not re-elected. In 1757 he had removed from No. 65 to No. 63, and at the latter house he died on 1st January, 1789.' <http://www.british-history.ac.uk/report.aspx?compid=74162>]

Additional Case relating to the Lead Way with Mr. Norton's Opinion.

The Road or Highway between the Town of Blaydon & the Town of Edmondbyers is generally during the Summer Season (when Lead is Bro[ugh]t down the same) found to be in good repair, therefore Sir Walter Blackett had no occasion to indict any part thereof as ruinous & out of Repair in the Winter. Sevysike Lane is part of the said Road or High Way, but no Obstruction has been given on that part of the Road. 'Tis observed

that the persons interrupting the passage along Swalwells or Woodhead Loaning may be indicted on that account or prosecuted for receiving the Tolls exacted, but as the free use & enjoyment of the whole of the Highway is essential to the carrying on the Lead Mines to advantage, & as Disputed may hereafter arise touching the Right to use other parts of the Highway than Sevysike Lane or Swallwells or Woodhead Loaning, & the old Witnesses whose Examinations are annexed may then be Dead, sir Walter Blackett is desirous of having the Testimony of these Old People perpetuated, if that Evidence may be made use of on any other dispute touching the Right of using the High Way in any part thereof.

Q.1st if in your Opinion the Evidence will prove this to be a common Public Highway, will it be proper to file a Bill in the High Court of Chancery at Westm[inste]r or in the Co[ur]t of Chancery at Durham & to sue out a Commission to perpetuate the Evidence of the Old Witnesses?

I think the Evidence stated is very strong to prove the Road in Question an Highway, but I cannot advise filing a Bill in any Court of Equity to perpetuate the Testimony of the Witnesses, as it will be attended both with great Expencc & Delay; & the same end will be much better answered by indicting the Road in sev[era]l diff[eren]t parts of it, which may be done if the Road is out of Repair in the Winter just as well as if it was so in the Summer & if the Parishes indicted either submit or sho[ul]d be found guilty, if they traverse, the Right is quieted for Ever.

Q.2nd Sho[ul]d this Step be advised, who must be made Def[endan]ts in such Bill? Will the Owners or Landlord as well as the Tenants of the Estate in which the Way is stopt or interrupted be necessary Parties? And is whose Name or Names must the Bill be filed? And against whom will the Depositions in the Cause be hereafter admitted Evidence?

After what I have said above it becomes unnecessary to answer their Quare, but if a Bill is to be filed all the interested Parties must be made Def[endan]ts, also the Deposit[i]ons taken will be of no use.

Q.3d If filing such a Bill be not a proper Measure, may an Information in the Name of the Att[orne]y General (at the relation of Sir Walter Blackett Bar[one]t who hath more than common occasion to use the Way) be bro[ugh]t & maintained against the Owners of the Said & their Tenants or any & what other Persons for the purpose of perpetuating Testimony?

I never knew a Proceeding of this sort in the Name of the Att[orne]y Gen[era]l & indeed I see no occasion for it.

Q.4th If filing such a Bill of Information be directed, will it be proper to name Def[endan]ts therein the Owners & Tenants of sev[era]l Estates adjoining the Highway & distant from each other 3 or 4 Miles, thereby forming a Line or Chain bet[ween] the Township of Blaydon & Edmondbyers, And will the Owners of the intermediate Estates (whether there be any or no other Road within them) be concluded by the Issue of the Cause?

If a Bill is fil[e]d it will be necessary to make the Overseers of the Highways parties when the parish repairs the Road & the sev[era]l Owners of Estates Def[endan]ts when the Roads are repaired by such Owners *ratione tenure*.

If the Road sho[ul]d be indicted at both ends & about the middle, I think there will be no danger of future Disputes if the Def[endan]ts either submit or sho[ul]d be found guilty.

<Mr.> Norton Lincolns Inn 10th April 1765.

9 Jun 1766 Christopher Fawcett

[Note: Probably Christopher FAWCETT Barrister (christened on 2 Jul 1713, from Cheshire, England, died on 10 May 1795, buried in St. John, Newcastle, Northumberland, England).]

[cover note:] Copy of Additional Case relating to the Lead Way with Mr Fawcett's Opinion thereon June 1766 Widdrington & Richmond

Additional Case

As there seems to be no means of perpetuating the Testimony of the old Witnesses, & as the Way is at all Times in too good a state to be indictable, You'l please to give your Opinion, Whe[the]r some of the steps proposed to be taken in the following Queries, will prove effectual to establish the Way, as a public High Way, in case the p[er]sons indicted sho[ul]d submit, or be found guilty of any of the offences in these Queries ment[ione]d

Q.1st Sho[ul]d the Owners of the Gro[un]ds adjoining the Way, which is a narrow inclosed Lane or Way in gen<era>l, be indicted, in case they do not cut down, or keep low, all trees & Bushes growing in or adjoining to the way? Or wo[ul]d you advise an Action at Law for the penalty?

Vide 5 Eliz. Cap: 13., 3. W & M Cap: 12., 13 Edwd 1. St. 2 C: 5., 24 Geo 2. Cap:43.

The several Statutes requiring all Trees & Bushes growing in or adjoining to an High Way be cut down or kept low seem to me to make it an offence not to do so in such cases only where by means of their not being kept low the Highway is prejudiced; But in the present Case, the Way being at all times in too good a State to be indictable, I cannot recommend either an Indictment or an Action on Acco[un]t of Trees or Bushes not being cut down or kept low. But if any Thing was to be done on Acco[un]t of Trees or Bushes growing ion or adjoining to the Way, I would advise an indictment rather than an Action.

Q. 2d. Sho[ul]d they be indicted for suffering their Ditches, adjoining to the Way, to be foul? Or wo[ul]d you advise that the Surveyor in execution of his Offices & at the public Expense, or by summoning the inhabitants, sho[ul]d cleanse the Ditches.

Vide 3 W & M C 12.

I think the proper Method of proceeding in cases where the Ditches adjoining an Highway are permitted to be foul is for the Surveyor to give Notice to the Owner or Occupier of the Lands adjoining & to proceed upon the Act 3. W & M. for the penalty in case they are not cleansed in 10 Days after such notice: but in the present Case it does not appear to me That there are any annoyances to the Way by means of the Ditches not being cleansed.

Q. 3d In case any Gates have in Time of Memory been erected in the Highway, sho[ul]d the persons so erecting Gates (if living) or the Owners of the adjoining Gro[un]ds be indicted for such offence? Vide 1 Han. 199.

If there are any Gates erected in the Highway within the Memory of any persons living The owners of the adjoining Gro[un]ds may in my Opinion be indicted for the Nuisance to the Highway & in such Case also any p[er]son might justify the pulling down of such Gates. But I think the End proposed will be much better answered by an Indictment than by removing the Nusances & leaving the Owners of the adjoining Ground to bring an Action, And I Think some of the persons having occasion to pass along the Way shjo[ul]d give Notice to the Owner of the adjoining Gro[un]d to remove the Gates And that unless they are removed before a certain Day to be mentioned in such Notice The person to whom the Notice is given will be indicted. And it will also be proper to take Two or Three people as Witnesses of such Notice That in Case they should be removed thereupon there may be evidence ready to produce hereafter of the Fact which in my Opinion would be conclusive against the Owners of the Ground as to its being an Highway.

Q. 4th If the Way be too narrow sho[ul]d the Owners of the adjoining Gro[un]ds be indicted? Or sho[ul]d the Surveyor ex Officio to make it suff[icien]t (to wit) 8 feet wide

at least? Or sho[ul]d the Justices at the Quarter Sessions, be applied to for an order to enlarge the Way by taking in gro[un]d not exceeding 8 Yards in Breadth?

Vide 9.W. & M.C.3, 84g.W.3.C.3.

If any part of this Lane is too narrow , it will in my Opinion afford the best opportunity of any other to perpetuate the Testimony of its being an Highway (viz.t) In such case I would advise an application to the Justices at the next Qua[rte]r Sessions (where you must be prepared with proper Evidence to support your Allegations) to issue precepts to the Owners of the next adjoining Grounds to appear & shew Cause why the way should not be enlarged; And this will be a means of having the point in Regard to its being an Highway brought fully in Question & determined upon Record to all Intents & purposes. For the whole of this method of proceeding will be recorded at the Sessions, & if the order for the enlarging the Way should be obtained & and assessment made upon the persons liable to repair pursuant to the Statute of the 8.4.g.W.3. & submitted to; There cannot I think ever afterwards be any Controversy concerning its being an High Way.

Q. 5th If a Surveyor shall not have been appointed by any Township within which the Way lies, can the Township be indicted? Or sho[ul]d a warr[an]t to levy <20s>, be applied for, & when, & to whom, & against whom?

Vide 3.10.C,12,S.9.

In case no Surveyor of the Highway has been appointed for the Township within which the Way lies I see no method you have to procure one to be appointed but by applying to the Justices at their Special Sessions to issue their Warrant to the High constable to issue his Warrants to the petty Constables to make a Return of persons to be Surveyors. I think the Township cannot be indicged for not having a Surveyor; And the <20s> forfeiture is only upon the Constables &c for not returning the Lists, upon Notice given for that purpose.

Q 6th If the Surveyor for the time being, after so long discontinuing to repair by Statute Work, can be prevailed on (even by a reward) to summon the Inhabitants to repair the Way, & they sho[ul]d obey the Summons, Wo[ul]d not the p[er]formance of that Duty be strong Evidence of a High Way, & hereafter conclude the towns[hi]p or any individual pretending it to be a private or p[er]missive Way? And on refusal to work, may not the delinquents be punished & in what manner? or would you advise an Order of the Justices at the Special Sessions for reparation of the Way?

Vide 1.Geo:St.2.C.52.

Any reparation of the way by the Inhabitants pursuant to a Summons from the Surveyor would undoubtedly be Strong Evidence of its being an High Way & wo[ul]d be conclusive to the Inhabitants of the Township hereafter in case of an Indictm[en]t against them for not Repairing it But I do not think it would be conclusive to the Owners of the Ground on each Side tho[ugh] it wo[ul]d certainly be very strong Evidence against him of its being a public Highway & not a Way by permission – If the Inhabitants upon being summoned by the Surveyor sho[ul]d neglect to do their Duty He must make Complaint upon Oath to the Justices at their Special Sessions who may & ought to Summon the delinquent & upon Conviction levy the penalty; And if you could prevail upon the Justices to make an order at their Special Sessions for Repairing this Lane it would be well.

Q 7th If there has been any late subtraction or inclosure of the Way, sho[ul]d the p[er]son so inclosing be indicted?

Any Thing of this kind which is a publick Nuisance ought in my opinion to be carefully attended to, & the p[er]son guilty of the offence should be indicted, and if you could lay hold of any p[er]son claiming under those who exacted the Toll as stated in the original Case, They ought to be proceeded against immediately by Indictment, & I think a Conviction upon a Traverse, or a Submission to such Indictment, would in a manner be decisive hereafter.

Q 8th If any landholder adjoining on the Way (or any other person) who admits it to be an Highway, sho[ul]d intentionally commit some offence against the Laws relating to Highways, in order to have the Question judiciously determined, & sho[ul]d thereupon be indicted, & on a Traverse be found guilty, would not such a Verdict be suff[icien]t to defeat any claim that may be made or founded, under the Submissions ment[ione]d in the original Case, & what Act sho[ul]d be committed for this purpose?

I think an Act done by any Landholder so as to give Ground for an Indictment for a Nuisance in the Lane as being an Highway & either a Conviction upon a Traverse of the Indictm[en]t or a Submission to it will be Evidence to be given hereafter of its Being an High Way but will not be conclusive Evidence against the Owners of the Land in another part of the Lane; And therefore i do not approve of a proceeding of this Kind except it should be absolutely adverse.

As the Obstructions & exactions Ment[ione]d in the original Case, have for many years been discontinued, & are not Offences (p[er]haps) at this Time cognizable some such Measures as are above proposed seem necessary, & are presumed to be altogether proper & Justifiable from Necessity, in any case of them will serve to support & establish the Right to use the Way as a public Highway. You'll please therefore to determine whether any & which (if any) of them sho[ul]d be pursued, or point out any

indicted sho[ul]d submit or be found guilty of any of the offences in these Quæries mentioned.

Q 1st Sho[ul]d the owners of Ground adjoining the Way w[hi]ch is a narrow inclosed Lane or Way in gen[era]l be indicted in case they do not cut down or keep low all Trees and Bushes growing in or adjoining to the Way? Or wo[ul]d you advise an Action at Law for the penalty?.

Vide 3.W&M.C.12 – 13 Edwd.1.St.2.C.5 – 24 Geo:2.C43 – 5 Viz.C13

I think an Indictment against the possessions of the Gro[oun]d will more effectually answer the purpose than an Action.

Q 2d Sho[ul]d they be indicted for suffering their Ditches adjoining the way to be foul? Or wo[ul]d You advise that the Surveyor in execution of his Office & at the public Expençe, or by summoning the Inhabitants Sho[ul]d cleanse the Ditches? Vide 3.W&M.C12

AS an Indictment will be more public & notorious than any Act done in consequence of an Application to the Surveyors I think an Indictment is preferable.

Q 3d In Case an Gates have been in Time of Memory been erected in the Highway sho[ul]d the p[er]sons so erecting the Gates (if living) or the owners of the Adjoining Gro[un]ds be indicted for such offence? – Vide 1.Han.199.

If any Gates have been erected by any person who is now living such person ought to be indicted; & is such person is dead I apprehend an indictment may be maintained ag[ain]st the Parish for permitting a Nuisance to continue in the Highway tho[ugh] I never heard of such an Indictment yet I think it comes within the gen[era]l principles of Law relating to Nusances & I do not think the Owners of the Lands adjoining are more are more culpable than any other of the Inhabitants of the parish.

Q 4th If the Way be too narrow sho[ul]d the owners of the adjoining Gro[un]ds be indicted? or sho[ul]d the Surveyors ex officio make it suff[icien]t (to wit) 8 Feet wide at least? Or sho[ul]d the Justices at the Quarter sessions be applied to for an Order to enlarge the Way, by taking in Gro[un]d not exceeding 8 Yards in breadth? Vide 9.W&M.C.12 – 8.&9.W.3.C.3.

Unless the owners of the owners of the Gro[un]ds adjoining the Highway have encroached thereon I think they cannot be indicted on account of the straitness of the Way as it is an ancient Road but the surveyor may be compelled to make

the Cart Way 8 Feet wide at the least in Case there is so much space between Fence & Fence if the Surveyor refuses to do so he will incur a penalty of 40s to be recovered as the Stat.12 W&M directs if the Highway is so narrow as to be incommodious Application ought to be made to the Justices at the Sessions to have the Way enlarged, by virtue of the power given them by the 8th & 9th 10.3.C.16.

Q 5th if a Survey shall not have been appointed by any township within which the Way lies can the township be indicted or sho[ul]d a Warr[an]t to levy 20s be applied for & when & to whom & ag[ain]st whom? Vide 3.W.C.12.S.3

As the Statute above referred to has imposed a penalty upon the Constables , Church wardens, & Surveyors if they do not duly return Lists to the Justices, also upon the Justices if they neglect or refuse to execute that Stat<ute>; I think the Township cannot be indicted on account of a Surveyor not being appointed If there is no Surveyor Application sho[ul]d be made to two of the Justices of the Division (who attended at the special Sessions which were held <after> Xmas last) for a Warr[an]t to levy the penalty of 20s on the late Surveyor or on the then Constables or Church wardens & in Case such Justices refuse to grant such warrant an Action may be commenced ag[ain]st each of th[e]m for the penalty of £5 incurred by such refusal.

Q 6th If the Surveyor for the time being (after so long Discontinuance of repairing by Statute Work) can be prevailed on (even by a reward) to summon the Inhabitants to repair the Way and they Sho[hl]d obey the Summons would not the performance of that Duty be strong Evidence of a Highway and hereafter conclude the Towns[hi]p or any other individual pretending it to be a private or P[er]missive Way And of refusal to work may not the Delinquents be punished & in what manner? Or would you advise an order of the Justices at the Special Sessions for Reparation of the Way. Vide.1.Geo:S.2.C.52.

It will certainly be very strong Evidence of its being an Highway if the Inhabitants perform the Statute Work thereon either by the Direction of the Surveyor or by a Special Order from the Justices but I presume the Justices will not make an order unless it appears to them that there is great necessity for repairs; & in such a Case an Indictment would be much better than an application to the Justices.

The Surveyor has a Discretionary power to employ the Labourers upon what Road he thinks proper (unless there is a Special Order from the Justices) & in Case of Refusal by any one liable to do the Statute Work, (unless upon a reasonable Excuse allowed by the Justices) the person so refusing incurs certain forfeitures by the Stat[ute]. of 22.C.2.C.12.

Q 7th If there has been any late subtraction or Inclosure of the Way, sho[ul]d the p[er]son so inclosing be indicted?

An Indictment in such a Case would certainly be very proper.

Q 8th If any Landholder adjoining on the Way (or any o[the]r person) who admits it to be an Highway sho[ul]d intentionally commit some Offence against the Laws relating to Highways in order to have the Question judicially determined & sho[ul]d thereupon be indicted & on a Traverse be found guilty would not such a Verdict be suff[icien]t to defeat any Claim that may be made or founded on or under the Submissions ment[ione]d in the Original Case, & what act sho[ul]d be committed for this purpose?

If any landholder will make an Obstruction & <...>ce Tolls & such proceedings are had ag[ain]st him as are above <proposed> supposed; I think the Verdict will in great Measure defeat any Claim that can be founded on the Submission & payment of Tolls ment[ione]d in the Original Case.

As the obstructions and Exactions ment[ione]d in the Original case have for many Y[ea]rs been discontinued & are not Offences (p[er]haps) at this Time Cognizable some such Measures as are above propos[e]d seem necessary & are presumed to be altogether proper & Justifiable from Necessity in case any of them will serve to support & establish the right to use the Way as a public Highway; You'l please therefore to determine wh[ethe]r & wh[ic]h (if any) of them sho[ul] be pursued or point out any adequate remedy if you apprehend none of the above schemes w[oul]d answ[er] the desired End.

Though the Obstructions & Exactions have for many Years been discontinued yet I am of the Opinion an Indictment at this Time be maintained against any of the p[er]sons who made such obstructions upon the Evidence of the p[er]son obstructed for the length of Time in this Case cannot be a Bar as the prosecution will be in the Name of the King & for an offence at Common Law & not for an offence whereby any forfeiture or penalty is incurred & I think it would be right to indict all such persons who made the obstruction, as are now living.

Wm. Wilson Newcastle 16th June 1766

22 Aug 1767 Aubone Surtees to Henry Richmond

[Note: Unsigned but a neater copy of the same date appended to Thomas Snowball's submission is signed by Surtees]

[cover note:] To Mr Richmond Attorney at Law Snowball's Submission.

I beleive the above that relates to me is true, and the lane that comes through my Estate at Woodhead is a common cart and cariage road, and that I never did receive any gratuity or consideration from any person or persons whatsoever for any carts or cariage passing that road as witness my hand

22 Aug 1767 Thomas Snowball

Tho[ma]s Snowball's Submission, & acknowledgm[en]t that the Lead Way is a public Way.

Whereas I have of late years as Tenant Farmer or Occupier of Lands at Woodhead belonging to Aubone Surtees of Newcastle upon Tyne Esquire presumed to interrupt and obstruct that part of the Common Highway or Kings Street leading from the Town of Blaydon in the County of Durham to the Town of Edmondbyers in the said County in that part thereof which lies or runs in through or along the said Lands of the said Aubone Surtees And have also presumed to demand exact & receive an acknowledgment from divers persons passing and travelling with Carriages along or through the same part of the same Highway or Kings Street without my having any Cause or Foundation for so doing Now I do hereby (with the privity and consent of my Landlord the said Aubone Surtees) acknowledge confess and declare that such Interruption and Obstruction was illegal and unjustifiable And that such Acknowledgments so by me exacted and received were wrongfully taken and tending to deprive the publick of their just Rights And I humbly petition and request Sir Walter Blackett Baronet to drop and decline prosecuting me for the above mentioned offence As Witness my hand this 22nd August 1767.

The Mark of Thomas Snowball

Witness JNo Richmond

I believe the above that relates to me is true, & the Lane that comes through my Estate at Woodhead is a Common Cart & Carriage Road, and that I never did receive any Gratuity or Consideration from any Person or Persons whatsoever for any Cart or Carriage passing through or along that Road As Witness my hand this 26th Day of August 1767.

Aubone Surtees