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Preston Adjourned Quarter Sessions, Alleged Encroachment on a Highway
THE QUEEN V CRABTREE. This case, which was adjourned, came up for hearing again on Thursday, before W.H. Higgins Esq, Q.C., and Mr W. Brirley. The action was instituted at the instance of Captain Patrick, a landowner in the neighbourhood of Deadwen Clough, in the township of Newchurch, near Rawtenstall, and the defendant Mr John Crabtree. The indictment charged him with obstructing a certain highway in Deadwen Clough by building certain erections, houses &c upon it. Mr Smylay and Mr Hatton appeared for the plaintiff and Mr Jordan and Mr Blair for the respondent. On Friday last it was stated that the defendant had taken 15 feet of the highway. Mr Jordan said he would prove that the wall was built on the ruins of an ancient wall, and that he present wall was built 38 years ago by Mr Robinson-Kay, from whose executors Crabtree bought the land; and that there was no obstruction whatever. This was the point at which the case was adjourned on Friday. On resuming on Thursday morning last, Mr Jordan called as the first witness for the defendant, Abraham Ashworth, wool-sorter, of Spring Side, near Rawtenstall, who stated that he was 65 years of age. In 1823 he lived at Clough Fold and worked at the Hall Carr Mill, and for five years had occasion to walk along the highway five times backwards and forwards every day. At the point opposite Crabtree's property the road was wider now than it was when he first knew it. He had seen two carts pass yesterday at that point. John Spencer, shoemaker, of Rawtenstall, said that before Kay's wall was built there was an old 'burr' wall there to support the road, and to prevent the brook from ruining the road. Lawrence Ashworth, beamer, James Edmondson, warehouseman, and John Ashworth corroborated Spencer's evidence, and Ashworth stated that to the best of his belief the new wall was built on the top of the old wall, and Crabtree's buildings were built where the wall was. Mr Jordon then addressed the jury, and said the question for them to decide was whether or not the land behind Kay's wall had been dedicated to the public 38 years ago. A proof of dedication was the fact that the public had been allowed to use the land without let or hindrance for a number of years, more or less - not less than four years. To prove that a piece of land was a highway there must have been the constant passing and repassing of travellers upon it. Mr Smyley's witnesses said that they themselves used to put cinders on the pieces of land between the beaten track and the brook, and that that was the way in which they showed their right to it. But putting cinders or rubbish on a road did not constitute it a highway - Mr Smyley, addressing the jury, said no evidence had been brought forward to prove that the land belonged to Mr Kay. There was a hedge at the other side of the brook, and what was it if it was not the boundary of Kay's property? Therefore, from the brook up to the beaten track, between which the wall is build, belonged to the public; and if the brook belonged to the public Mr Crabtree had obstructed the highway as the book ran underneath the cellars of his houses. Or if the brook did not run under the houses, as Mr Jordan had said, what had Mr Crabtree to fear? They only wanted to clear the brook, and if the brook was not there, it would not interfere with his buildings. The Chairman said that this was a very unusual case, and had been brought for the purpose of proving that Crabtree had infringed the public right to the way, and of establishing that right. The test of the public highway was whether it had been

dedicated to the public, or, if it had not been dedicated, then they must find a user. The question for the jury to decide was whether there had been such a user of that part of the land as would enable them to say that it was part of the highway. He then read the evidence, and the jury retired. After 55 minutes consultation, the Foreman returned into court, and said that eleven of them were agreed, but one dissentient would not agree. The Chairman: We can only receive the verdict of the twelve jurymen. Is there anything in which I can assist you? You had better bring the jury in again, and if there is anything in which I can assist them, I will do so (The jury then returned into court) and the Chairman said: Mr Foreman, are you agreed? The Foreman: We are not. The Chairman: Is there anything you want to ask me? A Jurymen: I cannot see that Mr Crabtree had encroached. The Chairman: I cannot argue with you, but if there is anything I can explain I will do so. You had better go back to your room again. After an absence of an hour the jury again returned into court, and the Foreman said they had not yet agreed. The Chairman: Are you divided as you were before? The Foreman: Yes. The Chairman: I don't know which of you it is that is of a different opinion from the remainder, but, whoever it may be, I would have him to consider whether it is more likely that eleven men, who are his equals in life and station and every other respect, are taking a just view of the case, or whether he, the solitary individual, is. I recommend him well to consider that. I have a very painful duty to discharge in this case. I cannot allow you to go except that you agree, and therefore I must lock you up for the rest of the night, and I will come again in the morning. If you are then agreed I shall discharge you. You can go back to your room. The jury here wished to override the objection of the stubborn one. The Chairman: You must go back to your room, and if he can see his way to agreeing with the rest of you, you can come back and say so. The jury again retired, and in two minutes returned, and the foreman said they had agreed on a verdict. "That the late Mr Robinson-Kay had encroached on the highway, and that Mr Crabtree had built on the said encroachment". The Chairman: That is equivalent to a verdict of guilty. Mr Jones asked if that was the verdict of the whole jury. The foreman: Yes. The Chairman: The sentence of the court will be for the present that judgement be respited until the next quarter sessions, and I should strongly recommend that some arrangement be come to before that time. Mr Jordan: I should say the jury ought to define the length of the encroachment. Mr Smyley said that they would undertake that no more of the property was cleared away than was absolutely necessary.