

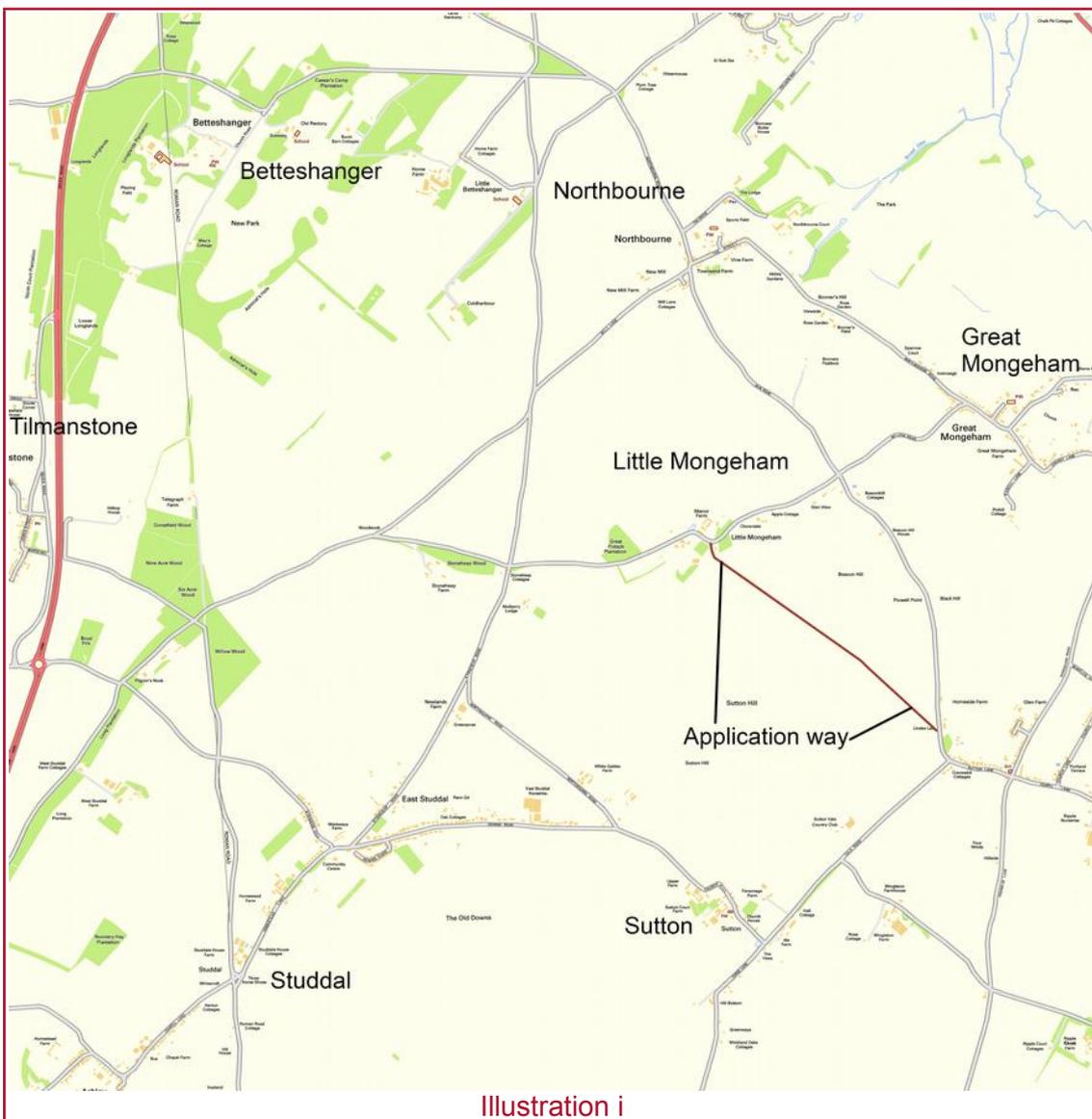
Sutton Hill bridleway: document analysis

Application to upgrade a footpath to bridleway from Little Mongeham to Beacon Hill, Ripple

I. Introduction

A. Quick reference

A.1. Location plan (see application map at part II below for scale representation):



- A.2. Existing public rights of way comprised in application way: EE423A (small part), EE422
- A.3. Parish of: Sutton (next Ripple)
- A.4. Former parishes of: Sutton, Little Mongeham
- A.5. Termination points: Little Mongeham, and near bottom of Beacon Hill, Ripple
- A.6. Termination points Ordnance Survey grid references: TR33345091, TR34325010
- A.7. Postcode: CT14 0HR
- A.8. Ordnance Survey Explorer sheet: 138
- A.9. Ordnance Survey County Series 25" sheet: Kent LVIII/7

B. The applicant

B.1. The application, the evidence for which is summarised in this document, is made by Hugh Craddock on behalf of the British Horse Society. I am appointed by the society as a volunteer historical researcher in relation to South and East Kent. I am employed as a casework officer for the Open Spaces Society, and was formerly a civil servant in the Department for Environment, Food and Rural Affairs (and predecessor departments), whose responsibilities included Part I of the Countryside and Rights of Way Act 2000 and the Commons Act 2006.

C. Locational details

C.1. This application relates to a way which is recorded in the definitive map and statement as a footpath in the parish of Sutton (next Ripple). The application seeks to record the way as a bridleway.

D. Application

D.1. The application is made under section 53(5) of the Wildlife & Countryside Act 1981 to Kent County Council that a definitive map modification order be made under section 53(3)(c)(ii) that a way that is shown in the map and statement for Kent as a footpath ought to be there shown as a bridleway.

D.2. The way begins on Willow Road in Little Mongeham at the triangular junction by the turn in the road opposite Manor Farm at A1 and A2 (OS grid reference TR33365091/ TR33345091), and proceeds south-southeast for 60m along a track (footpath EE423A), before turning southeast across an arable field (footpath EE422) for 765m to a junction with footpath EE421 at a headland on Sutton Hill at B (TR33995041), then continuing southeast across a further arable field (remaining footpath EE422) for 440m to a point near the bottom of the road known as Beacon Hill opposite 'Linden Lea' at C (TR34325010): a total distance of 1,265m.

D.3. The points A to C are identified in the application map at section II below.

D.4. The junction between the application way and Willow Road at A is a triangular junction. Insofar as this may not be correctly represented on the definitive map as a bridleway over the southeast and southwest limbs of the triangle, application is made under section 53(3)(c)(i) that a right of way which is not shown in the map and statement for Kent

subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a bridleway.

D.5. It is understood that the first 60m of the application way south from A may have been recorded on the first definitive map as a road used as public path, and subsequently reclassified as a footpath. If so, reclassification does not extinguish any latent rights: [*Kind v. Secretary of State for the Environment, Food and Rural Affairs*](#).¹

E. Background

E.1. The application way appears historically to be a field path between Little Mongeham and Ripple — the shortest distance between the two villages, cutting about a third off the route by road via Beacon Hill.

E.2. The status of the way as a bridleway is confirmed in the early twentieth century, by a Prosecution in Magistrates' Court (item IV.B below), the records of the Eastry Rural District Council (item IV.A below), and those of the East Kent mineral light railway (item IV.D below).

E.3. But any doubts about status must be resolved by the transaction recorded in the council's minute for 12 February 1907 (para.IV.A.14 below), in which the lawyers acting for the owner of the land between B and C submitted a letter and plan 'stating that their Client proposed to divide the land into two enclosures and to leave a 6 foot path through it where the green line appeared on the plan.' That green line was described as a bridleway on the plan, and forms today the course of the application way. If the way was not previously dedicated as a bridleway, it is manifest that the landowner did dedicate that line as a bridleway in communication with the council, and that the dedication was accepted by the highway authority and subsequently by the public.

F. Grounds for application

F.1. The courts have given guidance on how evidence of highway status is to be considered. In *Fortune and Others v Wiltshire Council and Another*², Lewison LJ said, at paragraph 22,

In the nature of things where an inquiry goes back over many years (or, in the case of disputed highways, centuries) direct evidence will often be impossible to find. The fact finding tribunal must draw inferences from circumstantial evidence. The nature of the evidence that the fact finding tribunal may consider in deciding whether or not to draw an inference is almost limitless. As Pollock CB famously directed the jury in *R v Exall* (1866) 4 F & F 922:

'It has been said that circumstantial evidence is to be considered as a chain, and each piece of evidence as a link in the chain, but that is not so, for then, if any one link broke, the chain would fall. It is more like the case of a rope composed of several cords. One strand of the cord might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength.'

¹ [2005] EWHC 1324 (Admin)

² [2012] EWCA Civ 334

F.2. The Planning Inspectorate *Consistency Guidelines* recognise that several pieces of evidence which are individually lightweight in themselves (such as an historic map or a tithe map) may, collectively, convey a greater impact:

If, however, there is synergy between relatively lightweight pieces of highway status evidence (e.g. an OS map, a commercial map and a Tithe map), then this synergy (co-ordination as distinct from repetition) would significantly increase the collective impact of those documents. The concept of synergism may not always apply, but it should always be borne in mind.³

F.3. The correct test under s.53(3)(c)(ii) is whether:

...the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows—... (ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description... .

F.4. While the applicant believes that the instrument of dedication is conclusive, the applicant also believes that, taken as a whole, the evidence in this document analysis demonstrates that the entire way has the reputation of a bridleway.

G. Points awarded

G.1. Points have been awarded to each piece of evidence in relation to the application way. But, having regard to the existing status of the application way as a definitive public footpath, points have been awarded only insofar as the evidence is indicative of a right of way on horseback or, where relevant, for vehicles — thus evidence which is suggestive of a public footpath attracts no points. Otherwise, the points have been calculated according to the guidance in *Rights of Way: Restoring the Record*⁴.

G.2. **Points:**

Item	Ref	Points
Eastry Rural District Council	IV.A	10
Prosecution in Magistrates' Court	IV.B	2
Finance (1909–1910) Act 1910	IV.C	1
East Kent mineral light railway	IV.D	5
Electricity Supply Acts 1882 to 1922	IV.E	2
Total points		20

H. Width of application way

H.1. The way between B and C was dedicated, or rededicated, at a width of 6 feet, or 1.83 metres — see the minutes of Eastry Rural District Council (item IV.A below) for 12 February 1907, at para.A.14.

³ *Consistency Guidelines*: para.2.17.

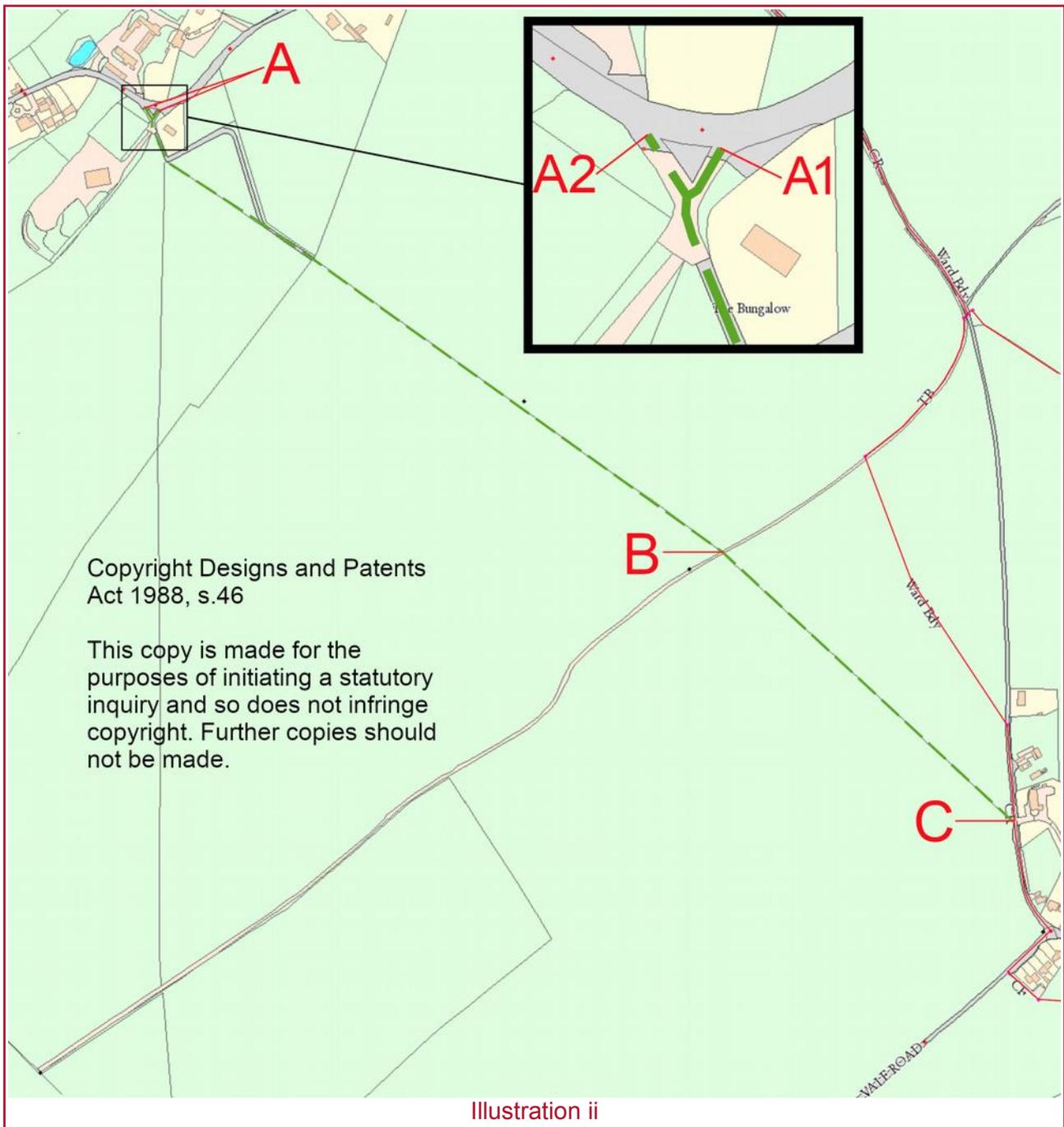
⁴ Sarah Bucks and Phil Wadey, 2nd ed. 2017.

I. Limitations

I.1. The correspondence between the council and landowner referred to above as regards the width of the way between B and C also refers to a concession made by the council that gates might be installed at B and C. Accordingly, it is accepted that such gates may be considered valid limitations in relation to the way.

I.2. No other consistent evidence of a historical limitation is apparent. It is therefore requested that any order arising from this application records the above limitations in the definitive statement, but records that there are otherwise no limitations.

II. Application map

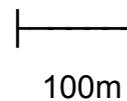


Map centred on B at TR340504

Scale of main plan: approx. 1:7,000 (when printed A4)

Application way is marked — — —

Parish boundary Sutton/Great Mongeham/Ripple is marked — — —



III. Along the way⁵



Illustration iii: South of A © Nick Smith



Illustration iv: South of A at EE423A © David Anstiss



Illustration v: Between A and B © David Anstiss



Illustration vi: Between A and B © David Anstiss



Illustration vii: At C © Nick Smith

5 All photos from [Geograph.co.uk](https://www.geograph.co.uk), [cc-by-sa/2.0](https://creativecommons.org/licenses/by-sa/2.0/).

IV. Evidence

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A. Eastry Rural District Council

A.1. **Date:** various

A.2. **Source:** Kent County Archives

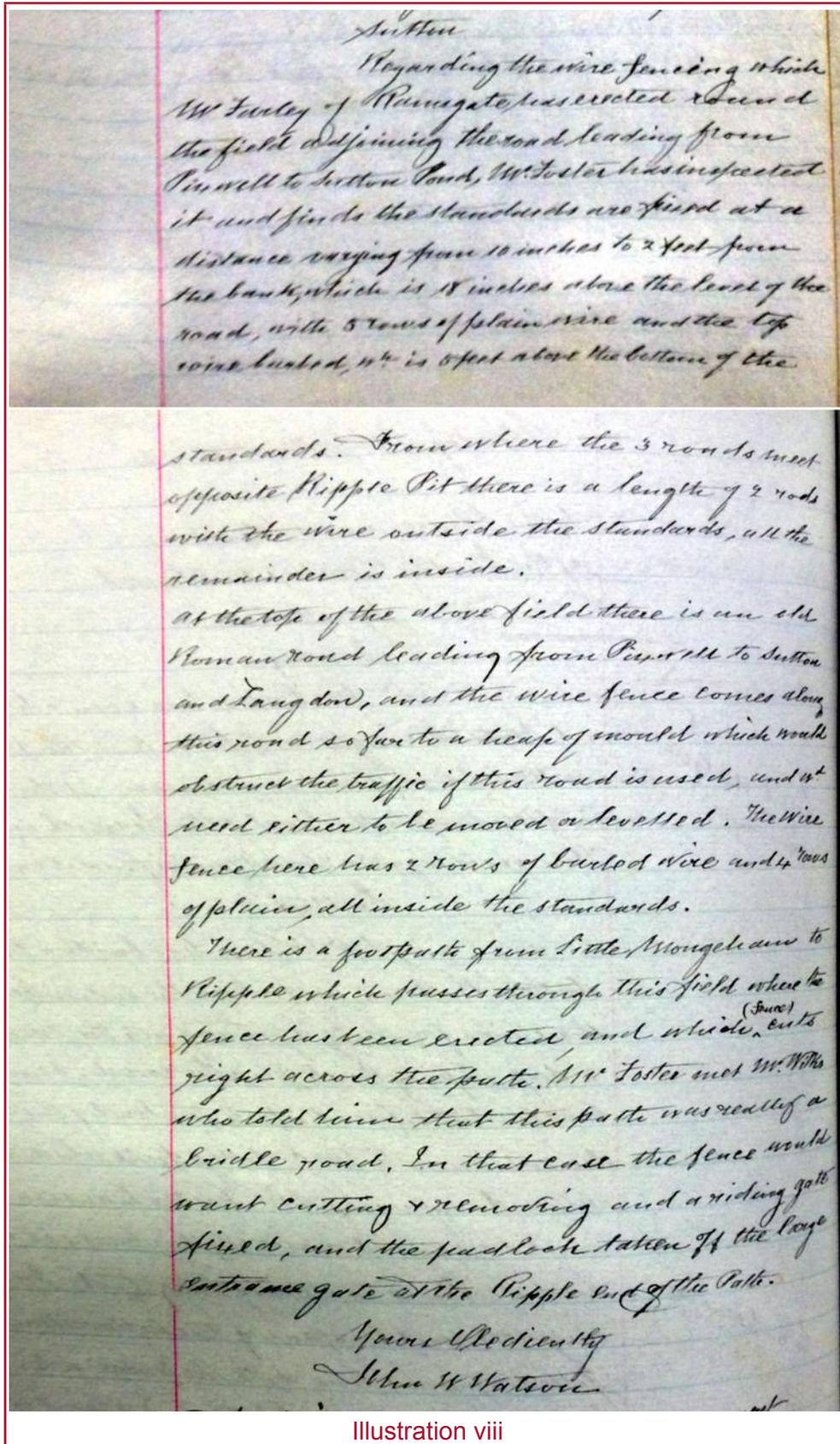
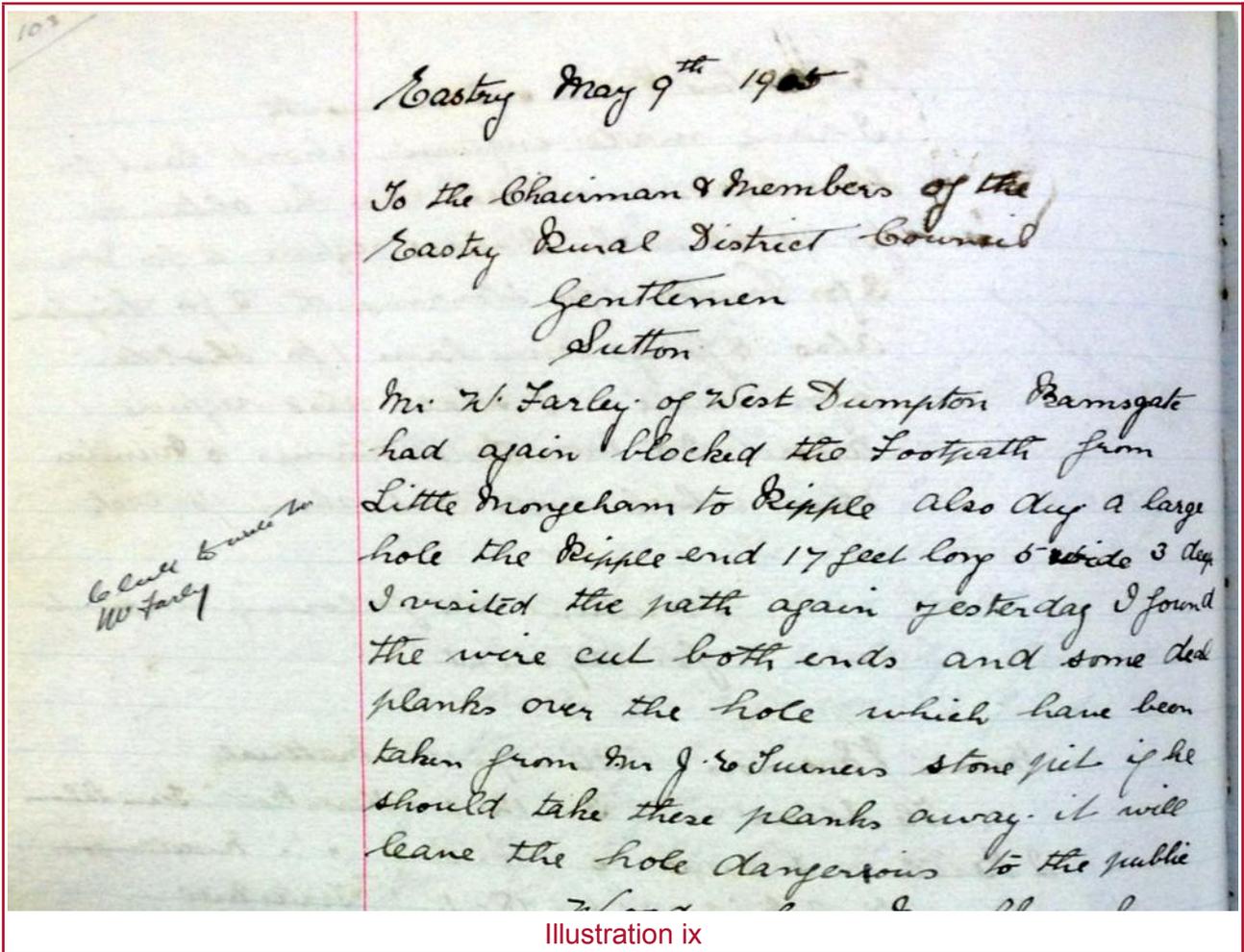


Illustration viii



7 RD/Ea/H5, p.103.

The Inspector's and Surveyors' reports were read and orders made thereon

It appeared from the Surveyors' report that Mr J. Farley of West Bampton Ramsgate had again blocked a footpath from Little Mongeham to Ripple and had also dug a large hole the Ripple end, 14 feet long 5 feet wide and 3 feet deep and had placed wire fencing at the ends of the path - it appeared that the wire had been cut and some plants taken from Mr J. & E. Turners Stone pit and laid across the trench to enable the path to be used.

The Clerk was directed to write to Mr Farley and state that unless the path was at once reinstated the Council would take proceedings against him

Illustration x

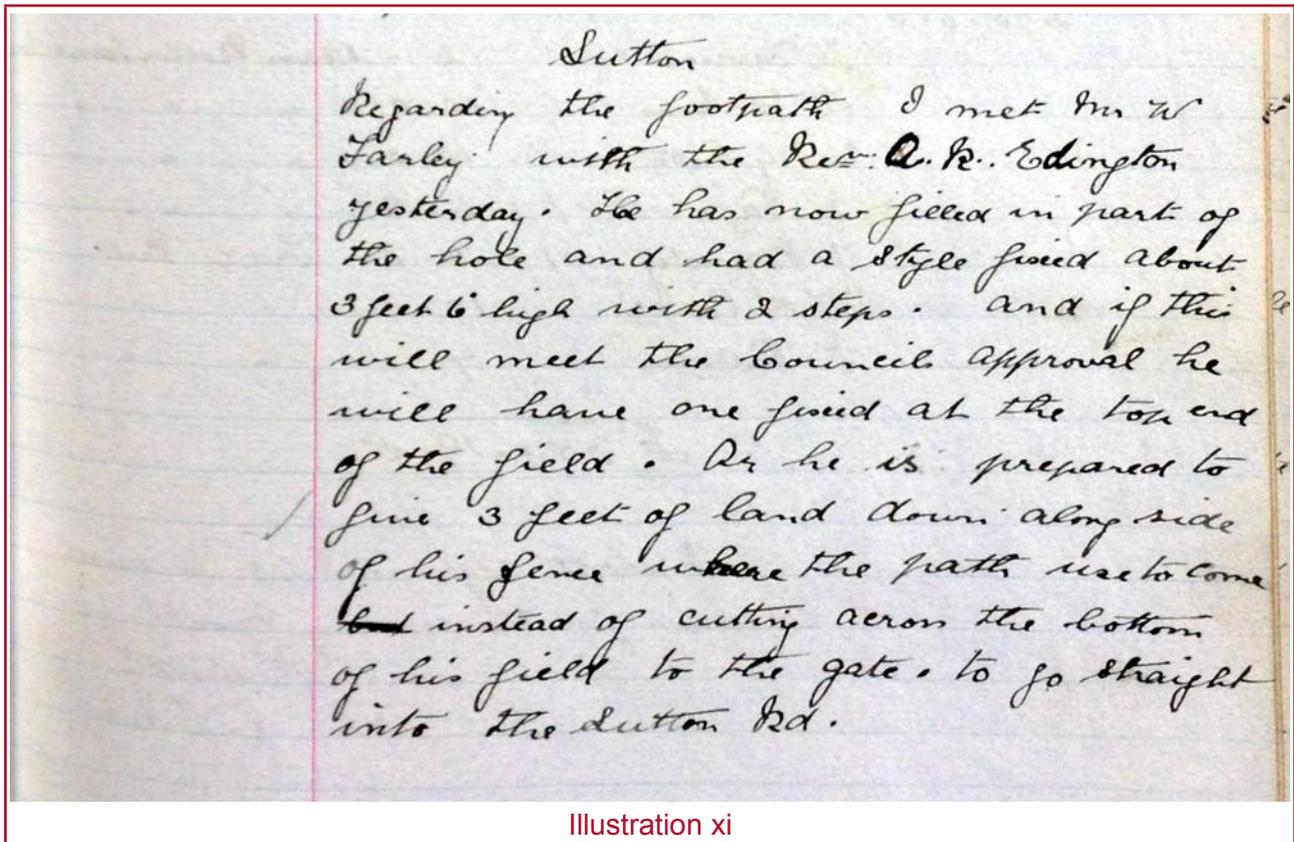


Illustration xi

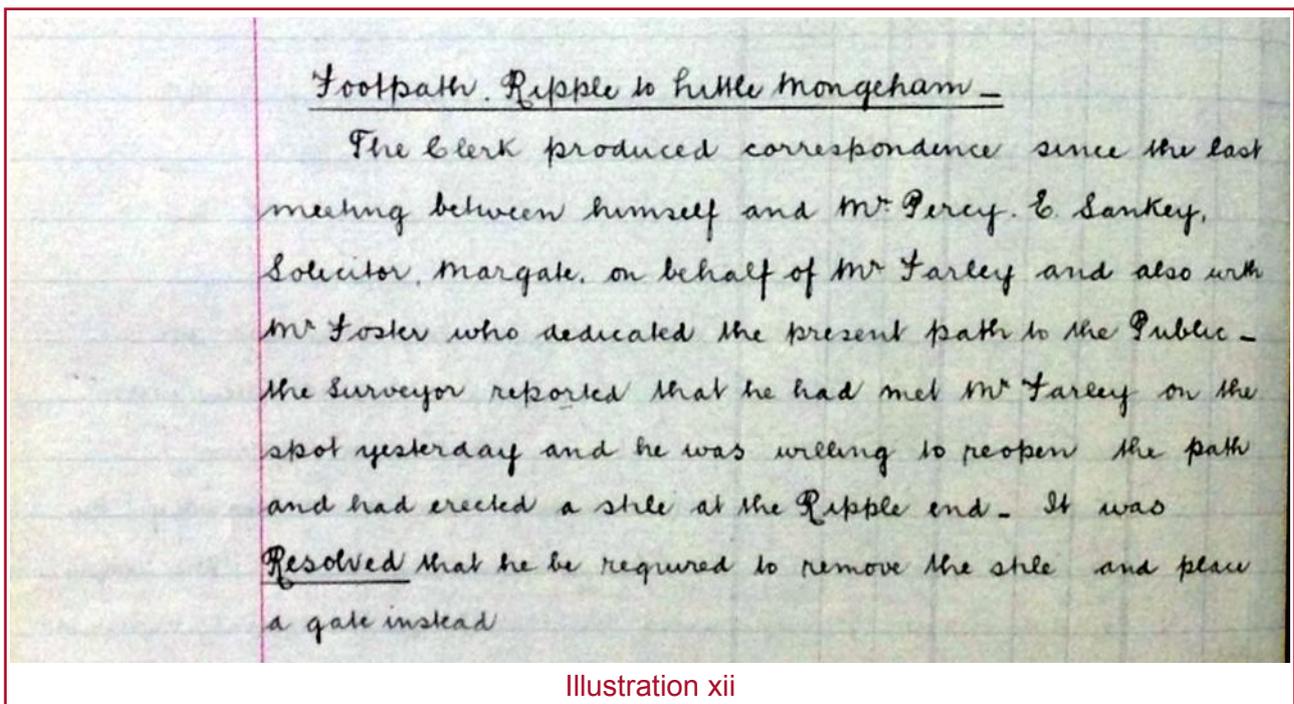


Illustration xii

9 RD/Ea/H5, p.104.

10 RD/Ea/Am4, p.5.

Eastry RDC surveyor's report book: 6 June 1905¹¹

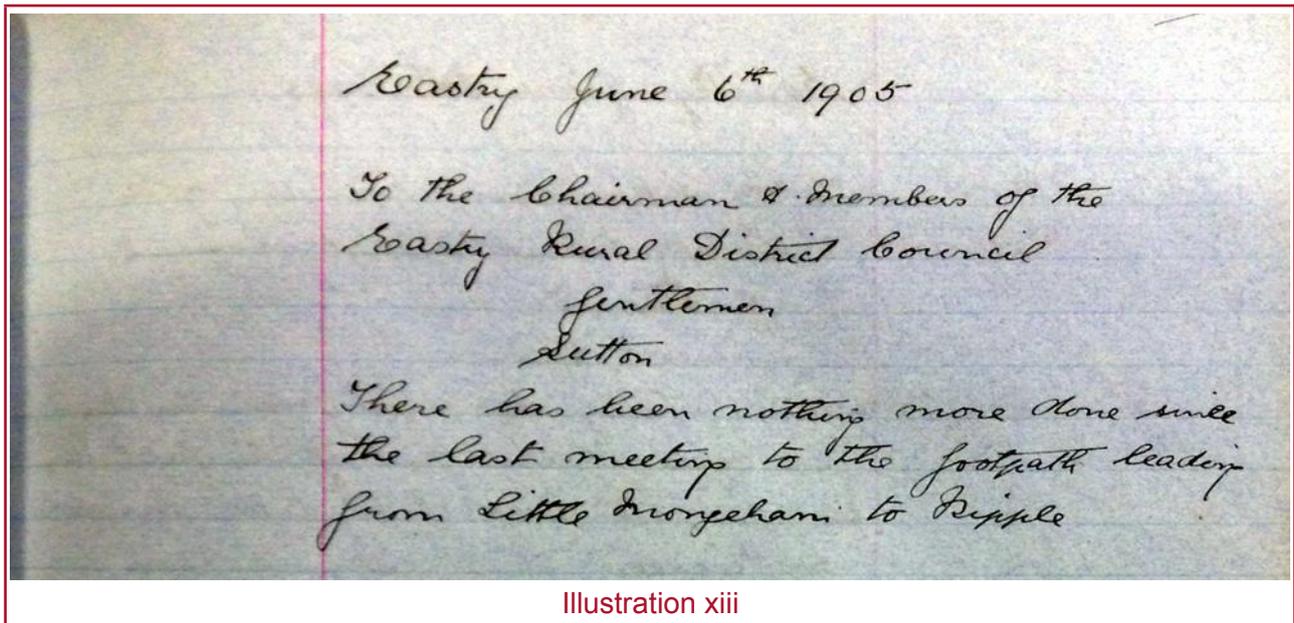


Illustration xiii

Eastry RDC surveyor's report book: 20 June 1905¹²

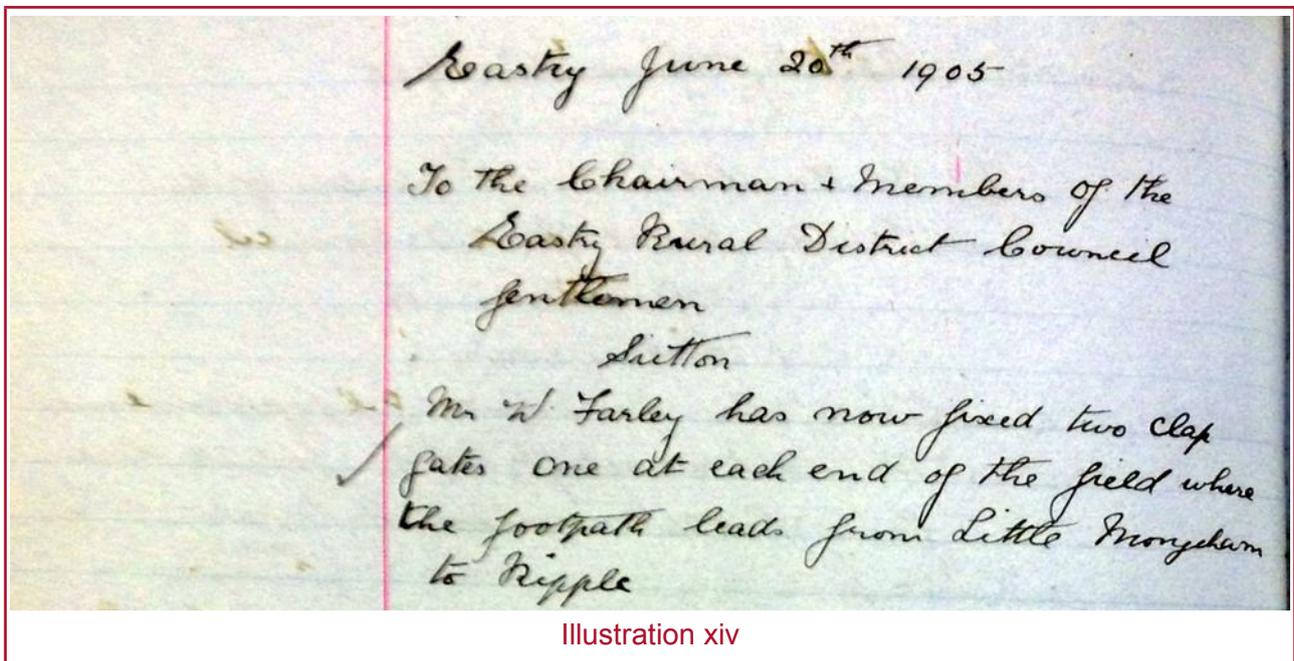


Illustration xiv

11 RD/Ea/H5, p.106.

12 RD/Ea/H5, p.107.

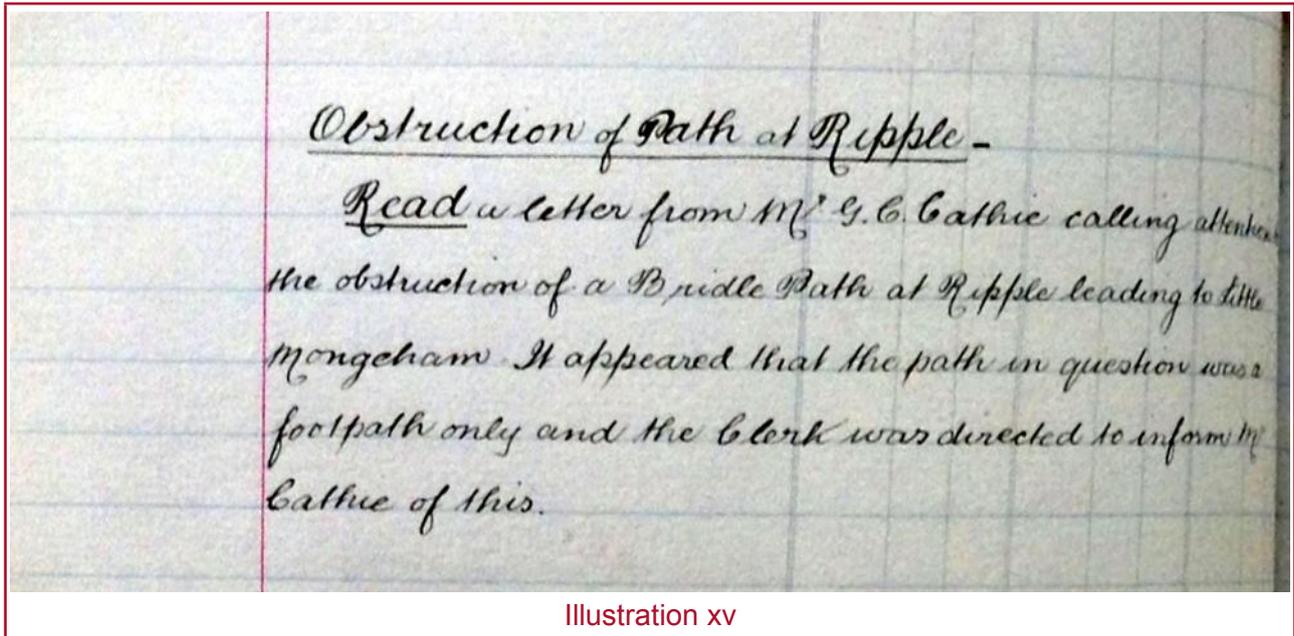


Illustration xv

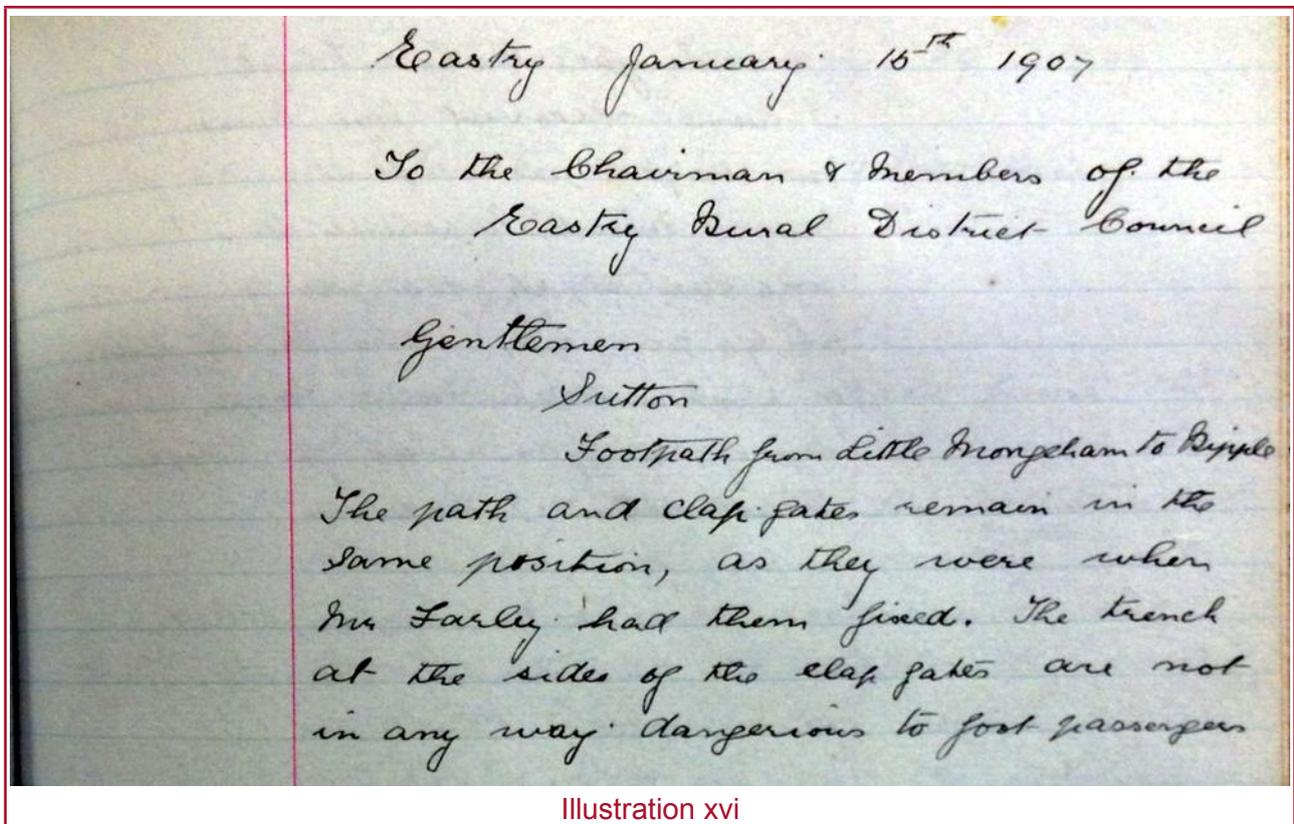


Illustration xvi

13 RD/Ea/Am4, p.117.

14 RD/Ea/H5, p.188.

Obstruction of Bridle Way Sutton—

Read a further letter from Mr G. C. Cathie with reference to the obstruction of a bridle way at Sutton (in the minutes of the 1st instant stated to be in Ripple) stating in effect that he had been summoned for cutting the barbed wire obstructing the path and had satisfied the justices that he had ground for believing it to be a bridle way so that they had dismissed the summons for want of jurisdiction and asking the Council to take steps to have the way properly opened to the Public - it appeared from his letter that he had witnesses who could speak as to a bridle way across the land in question for the last 50 years.

It was Resolved that the Clerk write to the owner of the land pointing out the facts and stating that no obstruction must be placed in the way of the Public using the Bridle way.

Illustration xvii

Obstruction of Bridle way Sutton -

The Clerk reported that he had been in correspondence with Messrs Burrows & Weigall Solicitors to Mr Farley and a letter from them dated the 4th instant was read enclosing plan showing their Client's land and stating that their Client proposed to divide the land into two enclosures and to leave a 6 foot path through it

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where the green line appeared on the plan

It was Resolved that the Clerk write in reply that the course proposed would be satisfactory to the Council although they considered that it would be sufficient if suitable gates were fixed without enclosing the land and that if the land was enclosed as suggested the fences erected must not be of barbed wire.

Illustration xviii

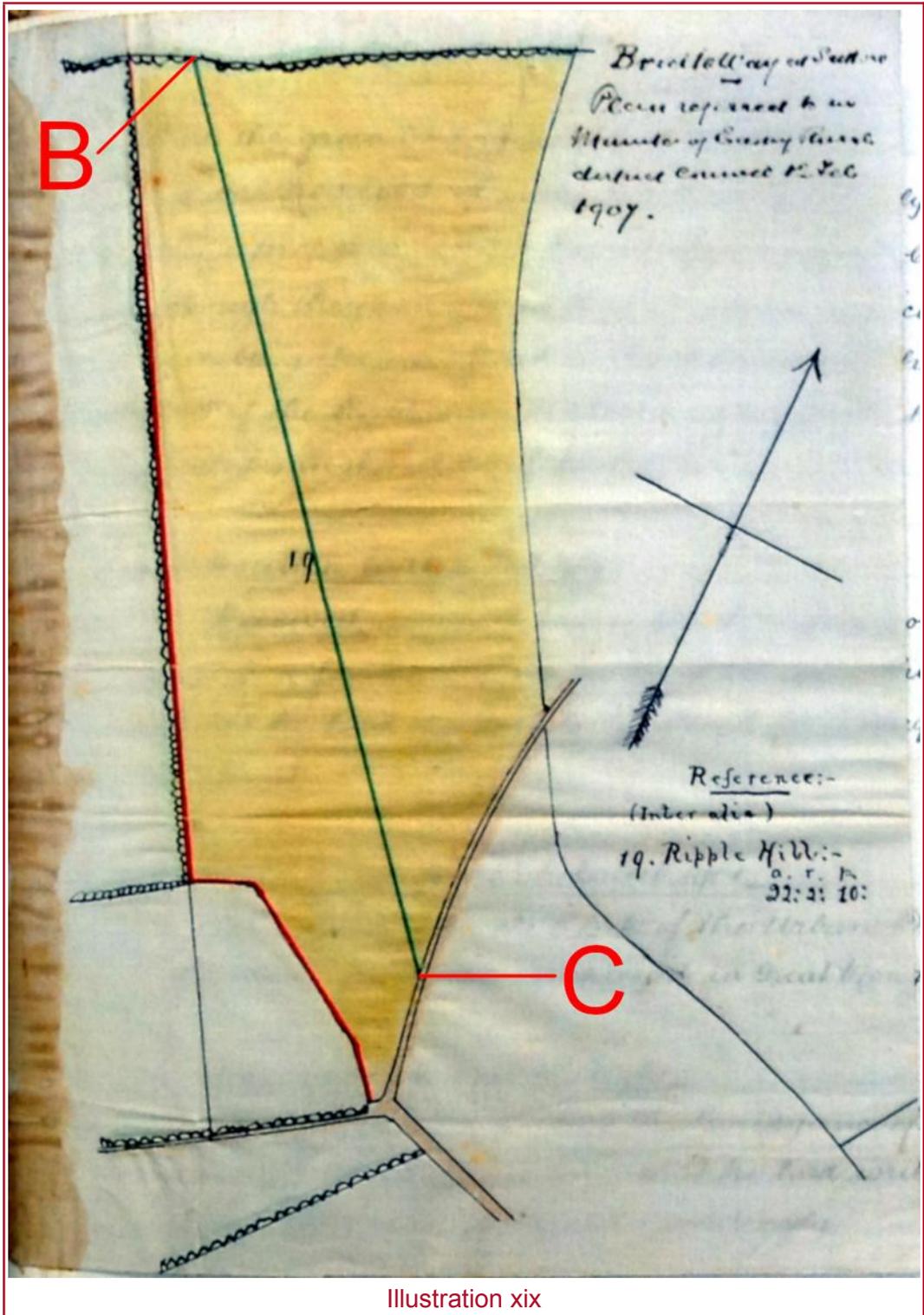


Illustration xix

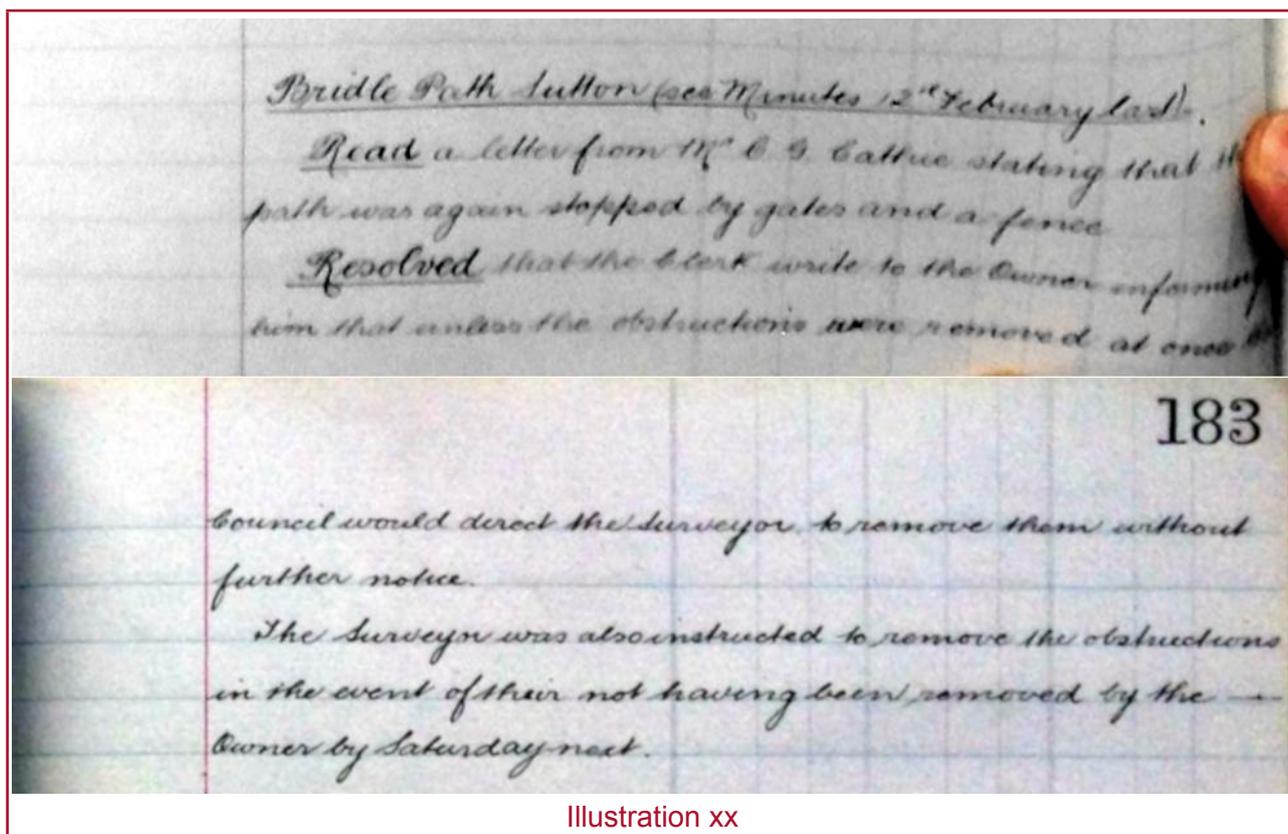


Illustration xx

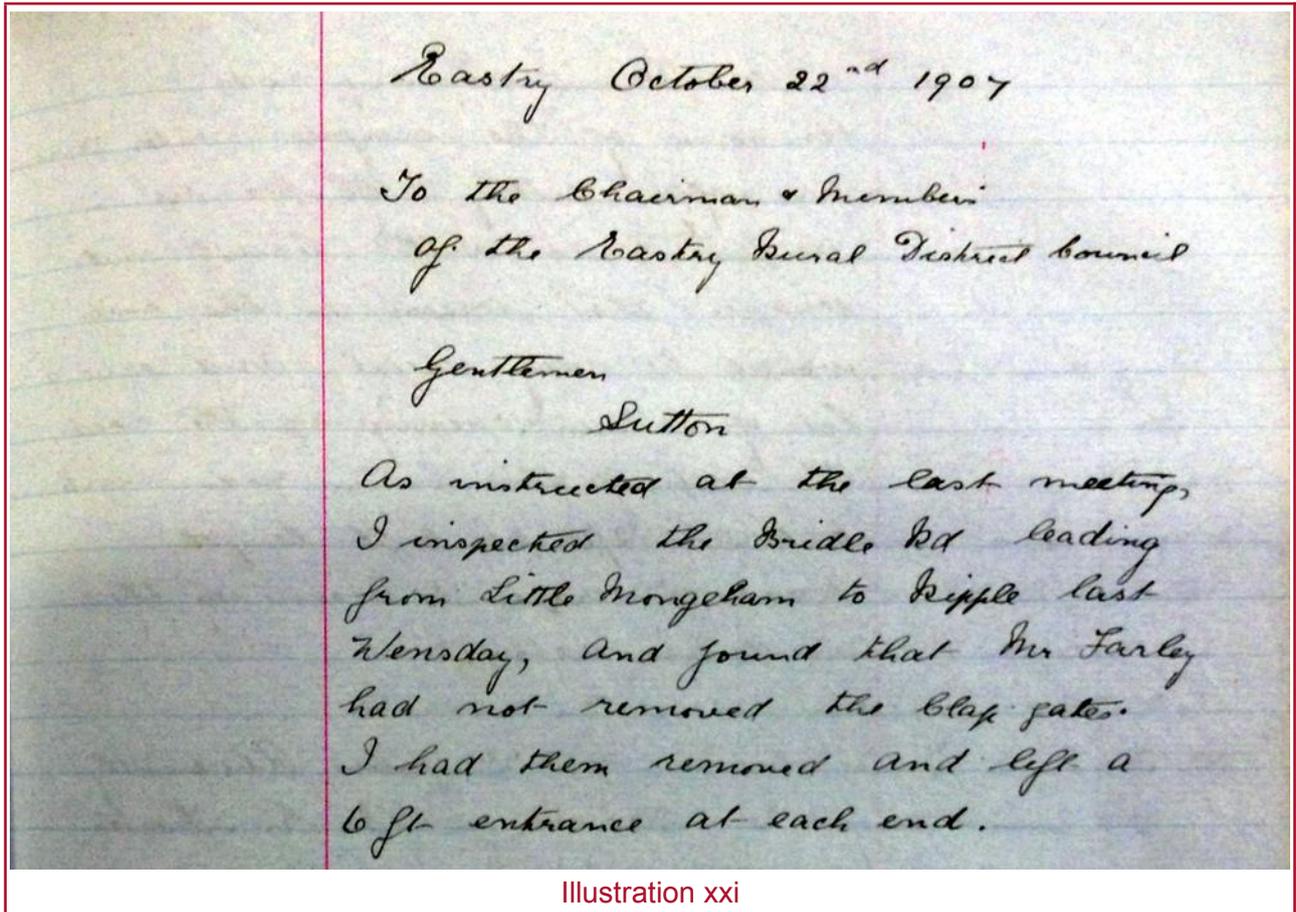


Illustration xxi

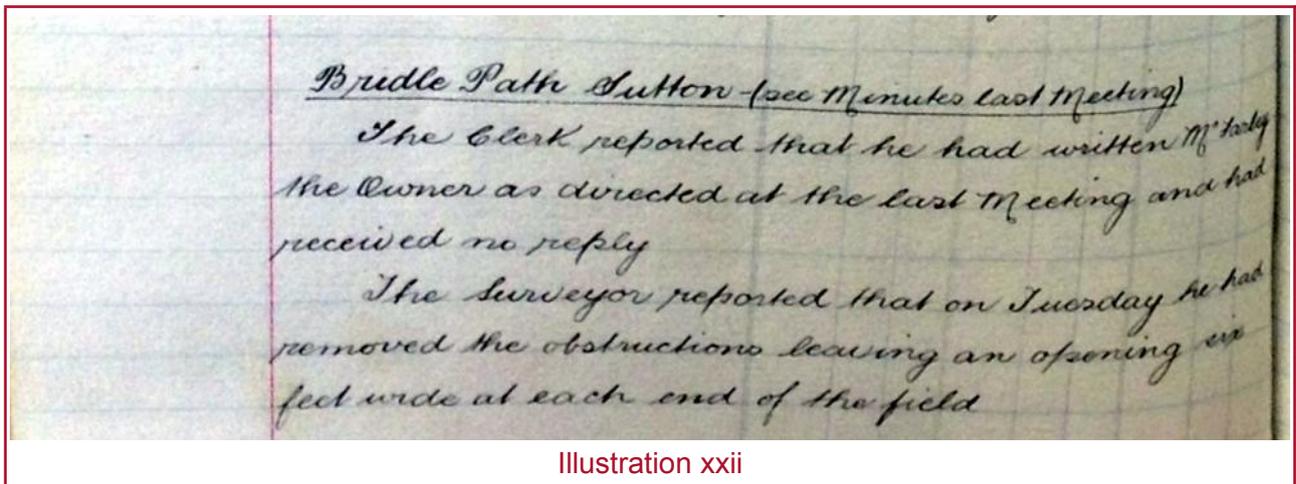


Illustration xxii

18 RD/Ea/H5, p.219.

19 RD/Ea/Am4, p.188.

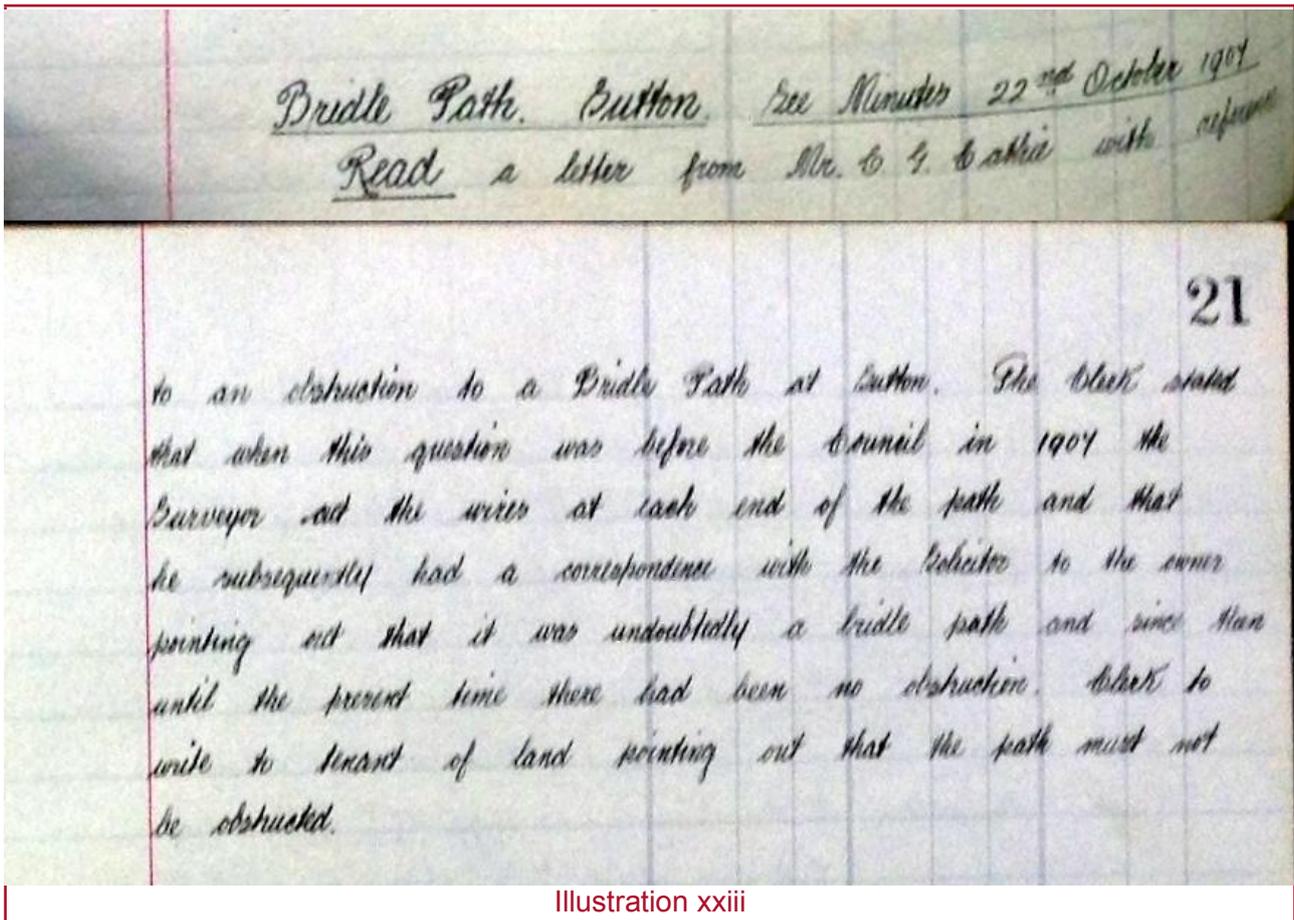


Illustration xxiii

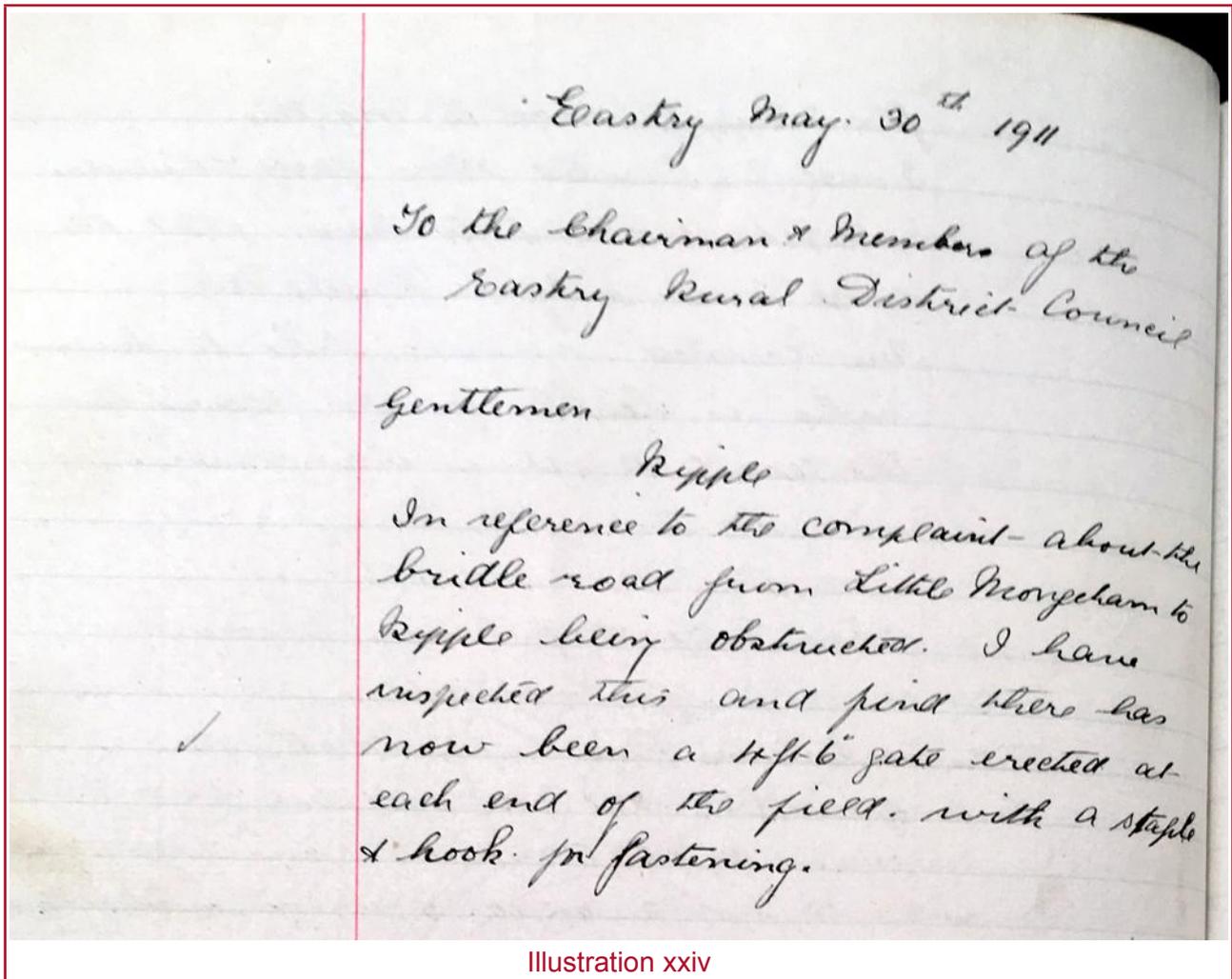


Illustration xxiv

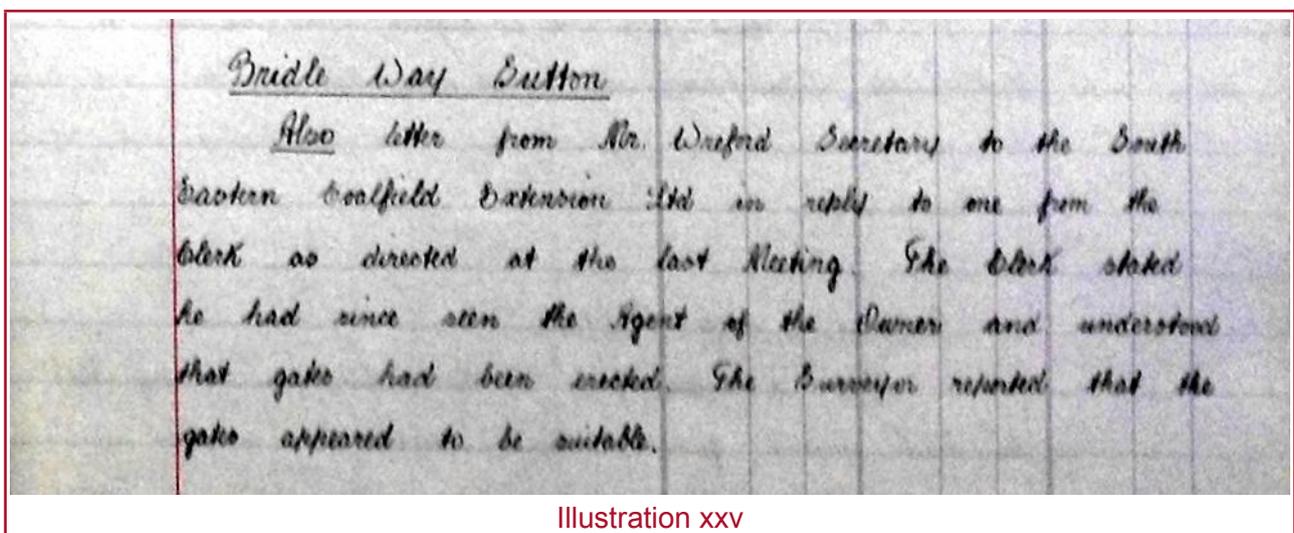


Illustration xxv

21 RD/Ea/H6, p.167.

22 RD/Ea/Am6, p.22

A.3. **Description:**

A.4. In a report by the surveyor to the council dated 27 September 1904,²³ it is recorded:

Sutton

Regarding the wire fencing which Mr Farley of Ramsgate has erected around the field adjoining the road leading from Pixwell to Sutton Pond, Mr Foster has inspected it and finds the standards are fixed at a distance varying from 10 inches to 2 feet from the bank, which is 18 inches above the level of the road, with 5 rows of plain wire and the top [?] barbed, w^h is 5 feet above the bottom of the standards. From where the 3 roads meet opposite Ripple Pit there is a length of 2 roads with the wire outside the standards, all the remainder is inside.

At the top of the above field there is an old Roman road leading from Pixwell to Sutton and Langdon, and the wire fence comes along this road so far to a heap of mould which would obstruct the traffic if this road is used, and w^d need either to be moved or levelled. The wire fence here has 2 rows of barbed wire and 4 rows of plain, all inside the standards.

There is a footpath from Little Mongeham to Ripple which passes through this field where the fence has been erected, and which (fence) cuts right across the path. Mr Foster met Mr Wilks who told him that this path was really a bridle road. In that case the fence would want cutting & removing and a riding gate fixed, and the padlock taken off the large entrance gate at the Ripple end of the Path.

Yours obediently

John W Watson

A.5. And on 9 May 1905²⁴:

Eastry May 9, 1905

To the chairman and members of the Eastry Rural District Council

Gentlemen

Sutton

Mr W Farley of West Dumpton Ramsgate had again blocked the footpath from Little Mongeham to Ripple also dug a large hole the Ripple end 17 feet long five wide three deep. I have visited the path again yesterday. I found the wire cut both ends and some deal planks over the hole which have been taken from Mr J E Turner's stone pit. If he should take these planks away it will leave the hole dangerous to the public.

A.6. The minute for that date records²⁵:

23 RD/Ea/H5, pp.64–65.

24 RD/Ea/H5, p.103.

25 RD/Ea/Am4, p.3.

It appeared from the surveyors report that Mr W Farleigh of West Dumpton Ramsgate had again blocked the footpath from Little Mongeham to Ripple and had also dug a larger hole the Ripple end. 17 feet long 5 feet wide and 3 feet deep and had placed wire fencing at the end of the path — appeared that the wire had been cut and some planks taken from Mr J E Turner's stone pit and laid across the trench to enable the path to be used.

The clerk was directed to write to Mr Farley and state that unless the path was at once reinstated the council would take proceedings against him.

A.7. In a report by the surveyor to the council dated 23 May 1905,²⁶ it is recorded:

Sutton

Regarding the footpath I met Mr W Farley with the Rev. A K Edington yesterday. He has now filled in part of the hole and had a stile fixed about 3 feet 6" high with 2 steps. And if this will meet the Council's approval he will have one fixed at the top end of the field. As he is prepared to give 3 feet of land down along side of his fence where the path use to come instead of cutting across the bottom of his field to the gate, to go straight into the Sutton Rd.

A.8. The minute for that date records²⁷:

Footpath. Ripple to Little Mongeham—

The Clerk produced correspondence since the last meeting between himself and Mr Percy E Sankey, solicitor, Margate, on behalf of Mr Farley and also with Mr Foster who dedicated the present path to the Public — the surveyor reported that he had met Mr Farley on the spot yesterday and he was willing to reopen the path and had erected a stile at the Ripple end. It was Resolved that he be required to remove the stile and place a gate instead

A.9. In a report by the surveyor to the council dated 6 June 1905,²⁸ it is recorded:

Eastry June 6th 1905

To the chairman and members of the Eastry Rural District Council

Gentlemen

Sutton

There has been nothing more done since the last meeting to the footpath leading from Little Monegham to Ripple.

A.10. And on 20 June 1905²⁹:

Eastry June 20th 1905

To the chairman and members of the Eastry Rural District Council

Gentlemen

26 RD/Ea/H5, p.104.

27 RD/Ea/Am4, p.5.

28 RD/Ea/H5, p.106.

29 RD/Ea/H5, p.107.

Sutton

Mr W Farley has now fixed to clap gates one at each end of the field where the footpath leads from Little Mongeham to Ripple.

A.11. In a minute for 1 January 1907,³⁰ it is recorded:

Obstruction of Path at Ripple—

Read a letter from Mr C G Cathie calling attention to the obstruction of a bridle path at Ripple leading to Little Mongeham. It appeared that the path in question was a footpath only and the Clerk was directed to inform Mr Cathie of this.

A.12. In a report by the surveyor to the council dated 15 January 1907,³¹ it is recorded:

Eastry January 15th 1907

To the chairman and members of the Eastry Rural District Council

Gentlemen

Sutton

Footpath from Little Mongeham to Ripple. The path and clap gates remain in the same position, as they were when Mr Farley had them fixed. The trench at the sides of the clap gates are not in any way dangerous to foot passengers.

A.13. In a minute for 29 January 1907,³² it is recorded:

Obstruction of Bridle Way Sutton—

Read a further letter from Mr G C Cattice with reference to the obstruction of a bridle way at Sutton (in the minutes of the 1st instant stated to be in Ripple) stating in effect that he had been summoned for cutting the barbed wire obstructing the path and had satisfied the justices that he had ground for believing it to be a bridle way so that they had dismissed the summons for want of jurisdiction and asking the Council to take steps to have the way properly opened to the Public — it appeared from his letter that he had witnesses who could speak as to a bridle way across the land in question for the last 50 years.

It was Resolved that the Clerk write to the owner of the land pointing out the facts and stating that no obstruction must be placed in the way of the Public using the Bridle way.

A.14. In a minute for 12 February 1907,³³ it is recorded:

Obstruction of Bridle way Sutton—

The Clerk reported that he had been in correspondence with Messrs Burrows & Weigall Solicitors to Mr Farley and a letter from them dated the 4th instant was read enclosing plan showing their Clients' land and stating that their Client proposed to divide the land into two enclosures and to leave a 6 foot path through it where the green line appeared on the plan.

30 RD/Ea/Am4, p.117.

31 RD/Ea/H5, p.188.

32 RD/Ea/Am4, p.125.

33 RD/Ea/Am4, p.128.

It was Resolved that the Clerk write in reply that the course proposed would be satisfactory to the Council although they considered that it would be sufficient if suitable gates were fixed without enclosing the land and that if the land was enclosed as suggested the fences erected must not be of barbed wire.

A.15. The minute is accompanied by a plan (at Illustration xix above) of the parcel occupying the land between B and C, and showing the application way marked by a green line.

A.16. In a minute for 8 October 1907,³⁴ it is recorded:

Bridle Path Sutton (see Minutes 12th February last)

Read a letter from Mr C G Cathie stating that the path was again stopped by gates and a fence.

Resolved that the Clerk write to the owner informing him that unless the obstructions were removed at once the Council would direct the Surveyor to remove them without further notice.

The Surveyor was also instructed to remove the obstructions in the event of their not having been removed by the owner by Saturday next.

A.17. In a report by the surveyor to the council dated 22 October 1907,³⁵ it is recorded:

Eastry October 22nd 1907

To the chairman and members of the Eastry Rural District Council

Gentlemen

Sutton

As instructed at the last meeting I inspected the Bridle Rd leading from Little Mongeham to Ripple last Wednesday, and found that Mr Farley had not removed the clap gates. I had them removed and left a 6 ft entrance at each end.

A.18. The minute for that date records³⁶:

Bridle Path Sutton (see minutes last meeting)

The clerk reported that he had written Mr Farley the owner as directed at the last meeting and had received no reply.

The Surveyor reported that on Tuesday he had removed the obstructions leaving an opening six feet wide at each end of the field.

A.19. In a minute for 16 May 1911,³⁷ it is recorded:

Bridle Path. Sutton See Minutes 22nd October 1907

Read a letter from Mr C G Cathie with reference to an obstruction to a Bridle Path at Sutton. The Clerk stated that when this question was before the

34 RD/Ea/Am4, p.183..

35 RD/Ea/H5, p.219.

36 RD/Ea/Am4, p.188.

37 RD/Ea/Am6, p.21.

Council in 1907 the Surveyor cut the wires at each end of the path and that he subsequently had a correspondence with the Solicitor to the owner pointing out that it was undoubtedly a bridle path and since then until the present time there had been no obstruction. Clerk to write to tenant of land pointing out that the path must not be obstructed.

A.20. In a report by the surveyor to the council for 30 May 1911,³⁸ it is recorded:

Eastry May 30th 1911

To the chairman and members of the Eastry Rural District Council

Gentlemen

Ripple

In reference to the complaint about the bridle road from Little Mongeham to Ripple being obstructed. I have inspected this and find that there has now been a 4ft 6" gate erected at each end of the field, with a staple and hook for fastening.

A.21. In a minute for that date,³⁹ it is recorded:

Bridle Way Sutton

Also letter from Mr Wreford Secretary to the South Eastern Coalfield Extension Ltd in reply to one from the Clerk as directed at the last Meeting. The Clerk stated that he had since seen the Agent of the Owner and understood that gates had been erected. The Surveyor reported that the gates appeared to be suitable.

A.22. **Conclusion:** The council engaged with the application way on a number of occasions between 1904 and 1911. An initial assumption that the way was a public footpath evolved into recognition of a bridleway. In 1907, the owner of the land southeast of B, Mr Farley, who by this time was notorious for obstructing the way, sought the agreement of the council to the direct alignment of the path between B and C.

A.23. It is not clear whether this alignment represented a purported diversion of the way: the Ordnance Survey County Series first edition 1:2,500 plan dated 1871 shows no such direct alignment, but a track following the headland further southwest, which emerged at the road junction at the bottom of Beacon Hill. But the 1898, 1906 and subsequent plans show this direct alignment already established. Neither the landowner nor the council had any power to enter into a diversion agreement.

A.24. However, the effect of the correspondence, the record of the correspondence contained in the council's minutes, and the plan of the acknowledged bridle path, is that if a public bridleway did not exist on the alignment B–C before 1907, one was dedicated on that occasion, and subsequent events, up to the surveyor's report of 1911, shows that the way subsequently was recognised as a bridleway.

A.25. **Points:** 10

38 RD/Ea/H6, p.167.

39 RD/Ea/Am6, p.22.

B. Prosecution in Magistrates' Court

B.1. Date: 1907

B.2. Source: Dover Express and East Kent News

Dover Express and East Kent News (page 1)

OVER EXPRESS AND EAST

DOVER COUNTY SESSIONS

THURSDAY.
(Before Major Monins, T. A. Terson, J. L. Bradley, A. Matthews, H. Hart, G. Jeken, and E. Dawes, Esqrs.)

LICENSING BUSINESS.—The transfer of the Three Horse Shoes, Hougham, from F. Philpott to F. Potter, was confirmed.

A temporary transfer of the Rose, Wickham-breaux, from R. Marsh to A. Archer, was granted. Mr. Marsh, it was stated, had had to leave the house as he was suffering from locomotor ataxy, and was also unable to be present. The new applicant had been gamekeeper to Mr. Wotton.

Permission was given for a hour's extension at the Donkey, Ewell, on February 6th, on the occasion of the Temple Ewell Cottage Gardeners' Society dinner.

RIGHT OF WAY DISPUTE.—Cecil Graham Cathie, Cleave Lodge, Ripple, was summoned for, on December 7th, damaging a wire fence at Sutton to the extent of 30s.

The defendant: I plead guilty to cutting it, but there is a right of way there.

Frank Fittall, living at Minster, said: I am a milkman, and was in Mr. C. Solley's employ at Mongeham till a month ago, when I left him. On December 7th I was looking after the sheep in Mr. Farley's field at Sutton, and I saw Mr. Cathie ride up to a wire fence near the top of the field. He got off, and cut the wire fence at the top and bottom, five wires at each place. These two places were more than a hundred yards apart. It was necessary for him to cut this in two places in order to get through. The fence was cut 15 yards from the path at the top. The path was not blocked by the fence, as there was a swing gate at both the top and bottom. It would not be possible to go through them on a horse. I do not know if it is a bridle road. I spoke to the defendant when he was cutting the top, and he said he should go through it, and it had nothing to do with me.

Cross-examined. I do not know whether it is a bridle path. I know it is a pathway.

William Farley, West Dümpton, Ramsgate, said: I let the field to Mr. Fowler, of Great Mongeham for sheep keeping. He wrote to me on December 21st, and in consequence I went to the field. I found the fence cut down at the bottom and the top of the field. It cost me 30s. to do it up again. I sent a man from Ramsgate to do it.

Why did you put up the gate?—Because the Guardians said they would like to have a foot-path. I have been put to £20 expense in repairing that fence.

Has anyone been there and cut the fence before?—Twelve months ago he cut it.

Then people have cut the wire; other people than Mr. Cathie?—I do not know of anyone else.

Have you found it cut?—I have found it cut in the same way in different places.

The defendant: You say it cost you £20?—Yes, it has cost me £20 to repair the fence.

Who has done it then?—I say Mr. Cathie has done it. I do not know of anyone else.

How many times has it been cut?—About a dozen times.

The defendant: I claim a right of way there as a bridle path, and have got two witnesses who are prepared to swear to it.

The Magistrates' Clerk said that a bridle path required proof of antiquity.

The defendant: They will say it was used 40 years ago. He had ridden over it previous to Mr. Farley coming and putting the fence round it.

Mr. Hart: Do we understand you used it as a bridle path before the fence was put up by Mr. Farley?

The defendant: Yes, continually. Mr. Foster used it, and Mr. Wilks before that. I have Mr. Wilks here.

The defendant, having been sworn, said: I cut the wire in order to assert the public right of way. I could not cut where the path goes because of the defendant having dug two ditches. The defendant has diverted the path to where the gates are. The gates could not be easily removed, and if they had been I could not get through it. I did not cut the fence at the exact bridle path. I cut it at the same place a year ago. I know another person who has cut it for certain, and I know that it has also been often cut by other people. I claim the right to cut it at the spot where others have cut it. I claim it as a bridle path as I have used it for the last seven years, and seen others use it as a bridle path. The fence was put up three years ago, and it has been ridden over every year by myself and others. I wrote to Mr. Cloke, of the Eastry Rural District Council, four days after seeing Mr. Farley. They replied that they did not know. I asked if he would lay it before the Authorities for it to be decided. They replied that they were not certain as they had not gone into it.

Are you going to continue to go over it then

Illustration xxvi: Dover Express and East Kent News, 18 January 1907

Dover Express and East Kent News (page 2)

The Chairman: Is this your field?—Yes.
Who told you there was no right of way?—
There never was a right of way.

The witness, who produced a small sketch plan, then indicated the places on it at which the fence was cut.

The Magistrates' Clerk: Is there a path between these two points?—There is a pathway. I had a little argument with the Parish Council about the footpath. They said this was one then, and I put up stiles. That did not suit them, and I met their surveyor then and suggested the gates. They were put up, and the Surveyor was satisfied. The fence was cut 18 yards from the gate at the lower part, and nine yards at the top. I went to see Mr. Cathie, and asked why he had done this. He replied that when he went out hunting he cut down anything before him, as all roads belonged to him.

The Magistrates' Clerk: Did he say anything about it being a bridle footpath?—He said "I have lived here for seven years, and hunted over that field for seven years, and I shall continue to keep on going."

Did he say anything about it being a bridle footpath?—No, he did not. He claimed that everything belonged to him, and I told him that he must be a very wealthy man to own everything all round. He said, "I shall write to the Guardians at Eastry, and if they advise me to cut down people's fences and to go hunting, I shall continue to do so," so I thought I would have no more to say to him, and came away.

In reply to the defendant, witness said that the fence was cut about a yard from the end of a ditch that he had made. When it was suggested by the defendant that he should write to the Eastry Rural District Council, he did not say it was about the question whether there was a bridle path there or not.

The witness added: You said that when you went hunting with Lord Northbourne you could cut any fence you liked. You had been out hunting that morning?—With Lord Northbourne? I do not think Lord Northbourne entered into the matter.

Mr. Bradley said that the complainant had said he had been put to great expense over the fence. Had anyone else been there before?

The complainant said that when he put the fence there three years ago the Parish Council had a dispute with him whether there was not a footpath through there. There was no footpath mentioned in the plans when he bought it, nor in the deeds.

Are you going to continue to go over it then when they say they are not certain?—They advised me to cut it, as a matter of fact.

Cross-examined. He cut it in the same panel last year, but not exactly the same place.

John Wilks said: I have known the bridle path for the last 30 years, and used it. Once I used to go through it twice a day. Previously my father used it for 30 years. It was the only means of communication between Little Mongeham and Ripple.

The Chairman asked witness if he had seen an old plan dated 1799. It showed an enormous number of roads in their district, of which the public knew nothing about.

Witness said that he had not.

The defendant: I bought the land from you. Why did you not put a path across the plan?—I did not make the plan.

I took it off the deeds. You liked to sell the land, and would like to get it back?—No, I do not want it back.

And now *you* have been trying to get the land back?—*How?*

By trying to claim different parts of it. You ought to have put a proper path across there on the plan, and then I should have known what I was buying. You are a solicitor and ought to know that?—I am not; you are mistaking me for my brother. (Laughter.)

George Bailey, who appeared as the oldest inhabitant, said that he lived at Sutton. Previously he had lived his lifetime at Ripple. He was a farm labourer. Fifty years ago it was used as a bridle road, although he could not say whether it was one or not.

The Magistrates, after retiring to consider the matter, said that they would dismiss the case. They did not consider it was within their jurisdiction.

The defendant asked what he could do.

The Magistrates' Clerk: You had better consult a solicitor.

18 January 1907

Illustration xxvii: Dover Express and East Kent News, 18 January 1907 (pt.2)

B.3. Description: The newspaper contains a detailed report of a prosecution for damage caused by cutting a fence. The defendant and witnesses claim that the damage was done on a public path between Little Mongeham and Ripple. It is clear that the path was recognised by the landowner as a footpath, but it was claimed to be a bridleway, so as to justify cutting the fence. The defendant produced two witnesses to testify to long use as a bridleway. John Wilks said: 'It was the only means of communication between Little Mongeham and Ripple.' The magistrates dismissed the case.

B.4. Conclusion: Where a defendant to a criminal charge seeks to prove some exception, the burden transfers to the defendant to prove the exception (on the balance of probability).⁴⁰ The magistrates were satisfied that the exception was proved.

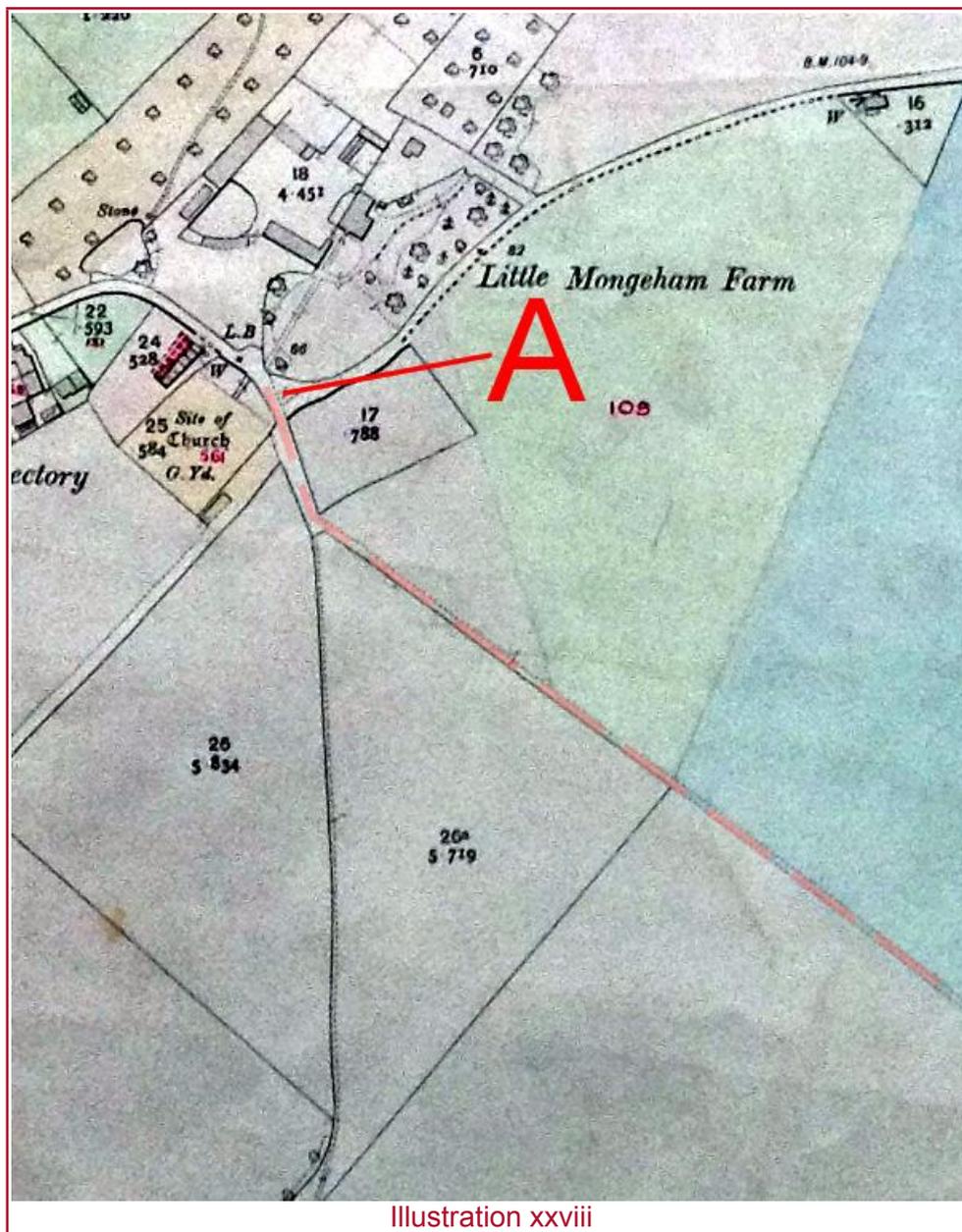
B.5. Points: 2

⁴⁰ See, now, s.101 of the Magistrates' Courts Act 1980. The standard of proof is on the balance of probabilities; see *Islington London Borough v Panico* [1973] 3 All ER 485. Similar words originate in s.14 of the Summary Jurisdiction Act 1848, and the principle has common law origins.

C. Finance (1909–1910) Act 1910

C.1. **Date:** 1911

C.2. **Source:** National Archives⁴¹



C.3. **Description:** original scale: 1:2,500; orientation: unchanged.

C.4. The Finance (1909–10) Act 1910 caused every property in England and Wales to be valued. The primary purpose was to charge a tax (increment levy) on any increase in value when the property was later sold or inherited. The valuation involved complicated calculations which are not relevant for highway purposes. However, two features do affect highways. First, public vehicular roads were usually excluded from adjoining landholdings and shown as 'white roads'. This is because s.35 of the 1910 Act provided,

41 IR 124/5/152

'No duty under this Part of this Act shall be charged in respect of any land or interest in land held by or on behalf of a rating authority.'

A highway authority was a rating authority.

C.5. Secondly, discounts from the valuation could be requested for land crossed by footpaths or bridleways. The information in relation to discounts from valuation have not been sought in relation to this application, as it is unusual for bridleways to be distinguished from footpaths.

C.6. **Conclusion:** Only the first 60m of the application way, south of A, is shown as a 'white road'. This is consistent with bridleway status, but not determinative.

C.7. **Points:** 1

D. East Kent mineral light railway

D.1. **Date:** 1910

D.2. **Source:** National Archives⁴²

42 MT 54/532, MT 54/544, MT 54/640

East Kent light railway line 11 deposited plan

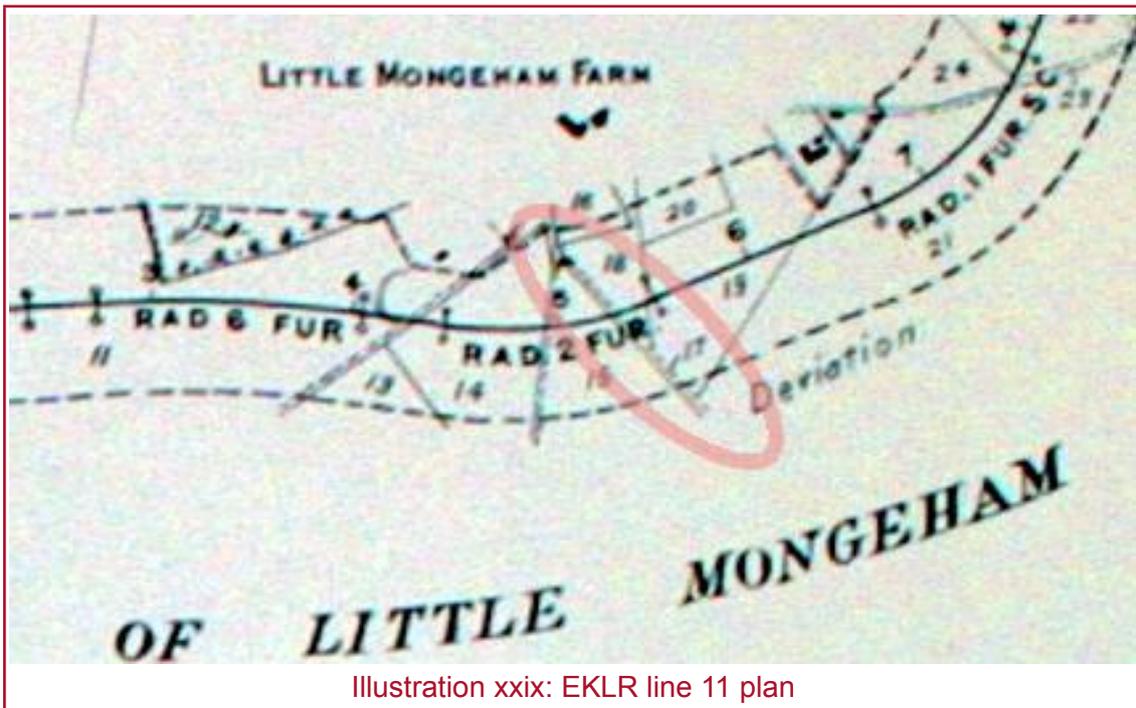


Illustration xxix: EKLR line 11 plan

East Kent Light Railway line 11 book of reference

6

EAST KENT LIGHT RAILWAYS (EXTENSIONS).

Parish of LITTLE MONGEHAM, in the County of KENT.

RAILWAY No. 11—*continued*.

No. on Plan.	Description of Property.	Owners or Reputed Owners.	Lessees or Reputed Lessees.	Occupiers.
17	Public bridle road	The Eastry Rural District Council	The Eastry Rural District Council

Illustration xxx: EKLR line 11 book of reference

East Kent Light Railway line 16 deposited plan

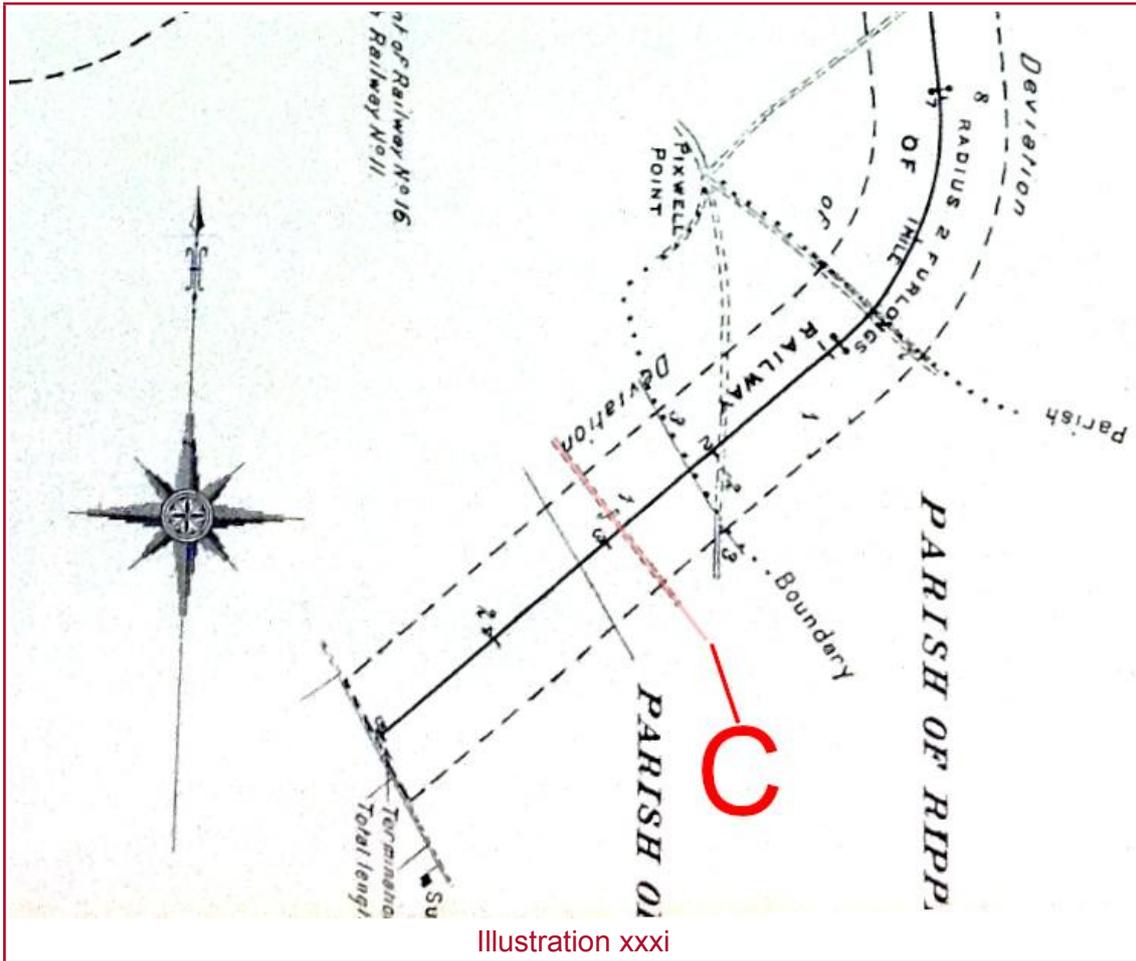


Illustration xxxi

East Kent Light Railway line 16 book of reference

9

EAST KENT LIGHT RAILWAYS (EXTENSIONS).

Parish of SUTTON, in the County of KENT.

RAILWAY No. 16—continued.

no. n.	Description of Property.	Owners or Reputed Owners.	Lessees or Reputed Lessees.	Occupiers.
1	Pasture and footpath	Frederick Launcelot Hamilton Morrice	Frederick Launcelot Hamilton Morrice The Easry Rural District Council
2	Arable and pasture	John Wilks	Frederick Stephen Solley

Illustration xxxii

East Kent Light Railway line 37 deposited plan

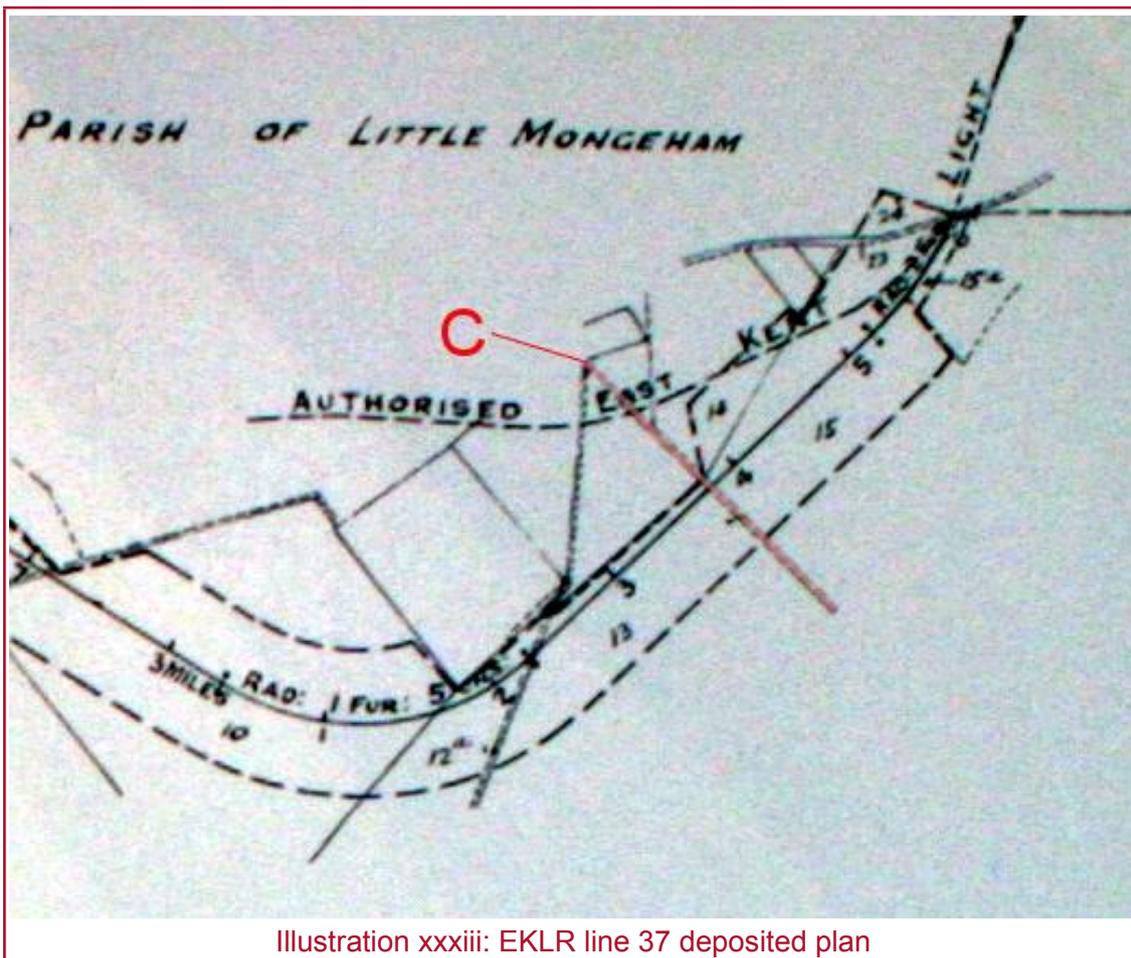


Illustration xxxiii: EKLR line 37 deposited plan

East Kent Light Railway line 37 book of reference

EAST KENT LIGHT RAILWAYS (EXTENSIONS & GENERAL POWERS) IN
PARISH OF LITTLE MONGEHAM IN THE COUNTY OF KENT.
RAILWAY No. 37.—*continued.*

Number on Plan.	Description of Property.	Owners or Reputed Owners.	Lessees or Reputed Lessees.	Occupiers.
12a	Pasture and Public Foot-path	Do.		Messrs. Pearson & Dorman Long, Ltd. The Eastry Rural District Council
13	Arable and Public Bridle Road	Do.		In hand The Eastry Rural District Council
14	Pasture and Poultry Farm	Miss Wilhelmina Moncrieff		William Frank Hardie

Illustration xxxiv: EKLR line 37 book of reference

D.3. **Description:** original scale: scale marked on original plan in chains; orientation: unchanged (save line 16, rotated by 90° so top is north).

D.4. Originally called the East Kent Mineral (Light) Railway when first proposed in 1909, the undertaking later became generally known as the East Kent Light Railway, not least because the railway carried modest passenger traffic. The promoters included Kent Coal Concessions Ltd, the original promoter of the Kent coalfield. The railway was promoted under the Light Railways Act 1896. The 1896 Act required the deposit of plans and books of reference in connection with a submission seeking authorisation under the Act.

D.5. After the initial lines were authorised in 1910, from Shepherdsweil via Eythorne to Eastry, Wingham and Richborough Port, approval was sought for various extensions over the following 17 years, mainly to service planned coal pits or to improve connectivity with the main line railways. Three lines were planned to cross the application way: none was put into effect.

D.6. The first was for line 11, one of several extensions which were put forward for approval. Line 11 was an extension from Eythorne to Great Mongeham. The deposited plan shows the application way as a track marked by double lines, pecked on the east side, which crosses the proposed line just south of Little Mongeham, at a distance of just over 3 miles and 5 furlongs from the point of origination in Eythorne. The track is assigned plot number 17. The deposited book of reference records for Eastry parish that plot 17 is a 'Public bridle road' in the ownership and occupation of The Eastry Rural District Council.

D.7. The second was for line 16, a short extension from near the terminus of line 11, to circle round Beacon Hill and terminate near Sutton, to service a potential colliery. The deposited plan shows the application way as a track marked by double pecked lines, which crosses the proposed line just short of C. The track is assigned as part of parcel 1. The deposited book of reference records for Sutton parish that plot 1 is 'Pasture and foot-path' in the occupation of, *inter alia*, Eastry Rural District Council.

D.8. The third was for line 37, a deviation from the route proposed for line 11 but now proposed in 1927, and continuing from Great Mongeham to Deal. The deposited plan shows the application way as a track marked by double pecked lines, which now crosses the proposed line further south of Little Mongeham. The track is braced with plot number 13. The deposited book of reference records for Little Mongeham parish that plot 13 is 'Arable and Public Bridle Road' in the occupation of, *inter alia*, Eastry Rural District Council.

D.9. **Conclusion:** Three separate proposals were put forward for lines crossing the application way — two at the northern end, near Little Mongeham, and one at the southern end, near the bottom of Beacon Hill. Both the proposals at the northern end recorded the application way as being a public bridleway vested in the Eastry Rural District Council. The other proposal, for line 16, at the southern end (which immediately post-dated the first, but long pre-dated the third proposal) recorded the application way as being a public foot-path. It is not clear why the survey relating to line 16 recorded the lesser status, whereas a survey some months previous had reached a different conclusion. Indeed, on 30 May 1911, Eastry Rural District Council corresponded with the agent of South Eastern Coalfield Extension Ltd (see para.A.21 above), which was the then tenant of the land and presumably interested in the railway extension, and satisfied the agent that the way was a bridleway.

D.10. It cannot be said that the surveys for the East Kent Light Railway were particularly diligent, and numerous errors can be elsewhere identified in deposited proposals. But the first survey in 1911, and the later survey in 1927, recorded the existence of a bridleway, and the second survey in 1911 appears to be erroneous.

D.11. The plan and book of reference provide good evidence for the status of the application way between A and C as a public bridleway.

D.12. **Points:** 5

E. Electricity Supply Acts 1882 to 1922

E.1. **Date:** 1923

E.2. **Source:** London Gazette⁴³

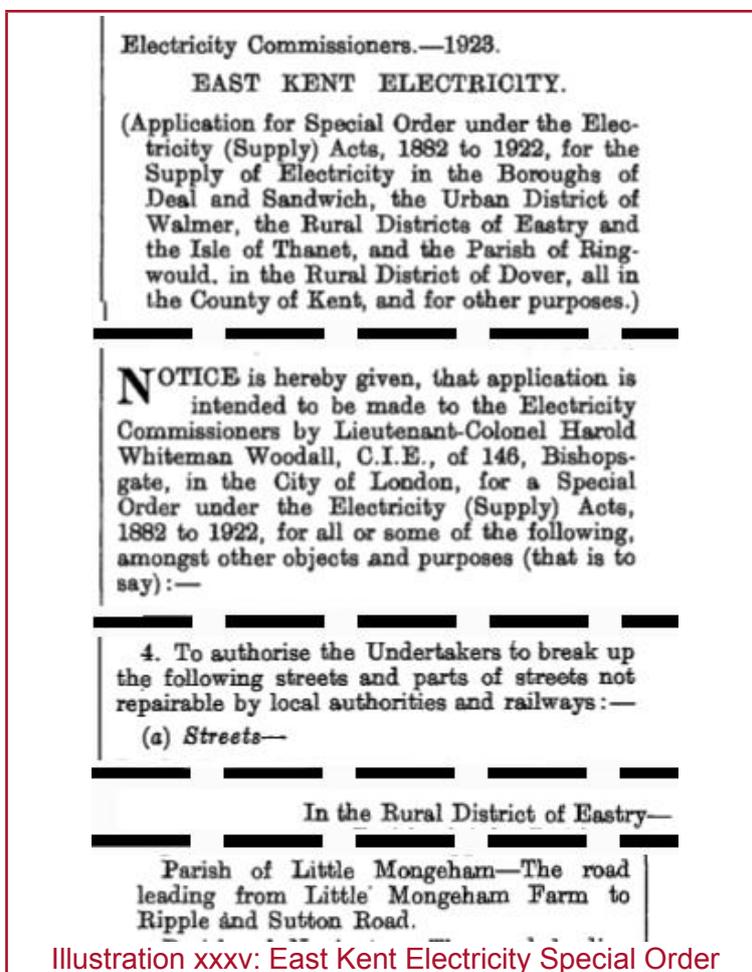


Illustration xxxv: East Kent Electricity Special Order

E.3. **Description:** The notice published in the London Gazette on 23 October 1923 gives notice of the intention of an electricity undertaker for East Kent to lay its apparatus in certain streets not repairable by local authorities and railways. One of those specified, in the parish of Sutton, is:

| The road leading from Little Mongeham Farm to Ripple and Sutton Road.

E.4. **Analysis:** The Electricity (Supply) Acts 1882 to 1922 provide for powers to be conferred on undertakers for the supply of electricity for public and private purposes. In the present case, notice of intention was given in the London Gazette for 23 October 1923 that application would be made to the Electricity Commissioners for a Special Order under the Electricity (Supply) Acts 1882 to 1922, to confer powers for the supply of electricity in East Kent.

43 Issue 32873, p.7140: www.thegazette.co.uk/London/issue/32873/page/7140.

E.5. The Electricity (Supply) Acts 1882 to 1922 incorporate:

- [Electric Lighting Act 1882](#)
- [Electric Lighting Act 1888](#)
- [Electric Lighting Act 1909](#)
- Electricity (Supply) Act 1919
- [Electricity \(Supply\) Act 1922](#)

E.6. The notice sets out, *inter alia*, details of 'streets and parts of streets not repairable by local authorities and railways' which the applicant wishes to 'break up' in order to lay its apparatus. The notice gives an opportunity for any 'local or other public authority, company or person desirous of bringing before the Electricity Commissioners any objection respecting the application'. The notice also contains for the same purpose a list of routes which are county roads, and of roads over railway bridges and level crossings. It seems that none of these is considered to be maintainable by the local district council, and that therefore public notice need be given of the application.

E.7. Section 32 of the Electric Lighting Act 1882 defines street in a similar form to section 48 of the New Roads and Street Works Act 1991 (similar definitions have been used in legislation for around 150 years):

The expression "street" includes any square, court, or alley, highway, lane, road, thoroughfare, or public passage, or place within the area in which the undertakers are authorised to supply electricity by this Act or any license, order, or special Act.

A street is therefore likely to be a public highway, but:

- it may not be publicly maintainable (there being no words in the definition which might imply such a requirement);
- exceptionally, it may not be a public highway, if it nevertheless conforms to an element of the description such as a (wholly private) 'square' or 'road'.

E.8. In addition:

- Electric lighting under the Act may be provided for both public and private purposes, and public purposes mean *inter alia*, in section 3(3) of the 1882 Act, 'lighting any street...belonging to or subject to the control of the local authority'. A privately maintainable public highway would be subject to the control of the local authority (but not maintained by it), and lighting such a street would be a naturally public purpose. Lighting a wholly private way would be a private purpose.
- Section 3(9) of the 1882 Act enables local authorities to be licensed to assume the powers of the undertaker: 'with respect to the breaking up of any street repairable by such local authority' (the expenses to be recoverable from the undertaker). The Acts therefore explicitly recognise the distinction between a street which is repairable by the local authority and a street which is not publicly repairable (*i.e.* maintainable).
- The marginal note to section 13 of the 1882 Act, 'Restriction on breaking up of private streets...' must be read in the context of the provision itself. Section 13 provides that the Act does not
authorise or empower the undertakers to break up any street which is not repairable by such local authority, or any railway or tramway, without the consent of the authority, company, or person by whom such street, railway, or tramway is repairable, unless in pursuance of special powers in that behalf...

after notice has been given to such authority, company, or person by advertisement or otherwise, as the Board of Trade may direct, and an opportunity has been given to such authority, company, or person to state any objections they may have thereto.

The presumption is that such streets may be broken up in order to lay apparatus, subject to an opportunity for the body by which the street is repairable to voice its objections. The reference to 'private street' in the marginal note to section 13 therefore appears to qualify 'street' as one which is privately maintainable vice one which is wholly private. If section 13 was concerned with wholly private ways, the body having responsibility for repair would be the owner, and it would not be necessary to distinguish the body by which the street is maintainable. Compare with Part XI of the Highways Act 1980, which sets out the code for *Making up of Private Streets*, in which: "private street" means a street that is not a highway maintainable at the public expense', and therefore includes a highway which is not maintainable at public expense.

- Section 14 requires the consent of the local authority to place an electric line above ground in a street, and the authority is empowered to seek a magistrates' court order if the line is 'dangerous to the public safety'. The requirement for such consent in relation to a street which is a wholly private way would be odd, and inexplicable if the private way was not used by the public.

E.9. The draughtsman, in defining a 'street', is likely to have had in mind public highways which were privately maintainable, or wholly private ways in use by the public (such as carriage roads leading to stations built by the railway company, or unadopted new residential streets in towns), or at most, wholly private ways in towns which served significant numbers of dwellings or commercial premises (such as private squares or yards). It is not possible to reconcile the duty placed on an undertaker in section 14 of the 1882 Act (to seek consent to place electric lines in a street) with its application to a wholly private way not used by the public.

E.10. The draughtsman of the Electric Lighting Act 1909 appeared to be uncertain of the definition of 'street'. Section 3 of the 1909 Act refers to 'roads', which are defined in section 25 of the Act so as to include any street as defined in the 1882 Act. Given that 'street' is defined in the 1882 Act to include a 'road', it is not clear whether this circular provision can have been intended, and is suggestive of some absence of rigour on the part of the draughtsperson.

E.11. The definition of 'street' does not extend to embrace a wholly private track, farm drive or path in the countryside. Such a way does not obviously fall within any of the components included in the definition of 'street' (unless, in particular circumstances, it might have the characteristics of a 'lane' or, if given a metalled surface, a 'road'). And while the definition of 'street' is not exhaustive, the *eiusdem generis* rule applied to the definition does not suggest that other, wholly private ways in the countryside were contemplated: quite the contrary. It would be inconsistent with the scheme of the Electricity (Supply) Acts 1882 to 1922 as a whole to apply the powers as regards streets to entirely rural, wholly private ways, without compensation for the owner, given that section 12(1) of the 1882 Act excludes undertakers from acquiring powers to compulsorily purchase private land: it would otherwise allow an undertaker to lay apparatus on private land without compensation, merely on the justification that the works were done along a part of that land which happens to conform (on one interpretation) to the general description of a 'lane'

or 'road'. The only justification for conferring powers on an undertaker to lay apparatus in a rural way is if it is a public way, albeit it may be privately maintained.

E.12. The Lord Chancellor, Lord Halsbury, said in *Mayor of Tunbridge Wells v Baird and Others*⁴⁴, in the context of the extent of the vesting in the highway authority of the surface of a highway maintainable at public expense⁴⁵:

“What is commonly done in a street” may include water-pipes and gas-pipes as well as sewers, and it could not be supposed that any such power was intended to be conveyed by such language. I think what his Lordship must have meant was such things as are usually done in a street for the purpose, as he elsewhere in his judgment describes it, of maintaining it as a street, and are incident to the maintenance and repair of the street as a street. For that purpose it would be intelligible. For any other purpose it would appear to me to be inconsistent with the language of the enactments, and contrary altogether to the policy which the Legislature has certainly always pursued of not taking private rights without compensation. In circumstances in which it is essential to take private property Parliament has always provided for compensation, and in this section the language itself imports that where private property is being dealt with it can only be done “with the consent of the owner.”

E.13. The notice contains the following entries, set out in the first column, together with the presumed location in the second column, and comments on the entry in the third column:

Description in notice	Presumed location	Comments
<i>Parish of Ash—</i>		
i. Richborough Castle Road	TR319603 to TR323602	Now known as Castle Road: restricted byway EE43A; title unregistered
ii. White House Drove Road	TR318604 to TR319613	Unrecorded ('private street' in NSG); title unregistered
iii. Rubery Drove Road	TR314607 to TR315613	Unrecorded; registered title
iv. Potts Farm Drove Road	TR301609 to TR304621	Public footpath EE49; registered titles
v. the road leading from Sandhill Farm to Cooper Street	TR298604 to TR304602	Public footpath EE52; title unregistered
vi. the road leading from Lower Goldstone to Red House Ferry	TR294611 to TR296625	Now known as Goldstone Drove; public footpath EE55; part title unregistered
vii. the road leading from Ash Main Road to Poulton Farm (Poulton Lane)	TR281582 to TR281577	Part adopted road, part public bridleway EE193; title unregistered

44 [1896] AC 434.

45 In the case, the vesting occurred under s.149 of the Public Health Act 1875.

viii. the road leading from Durlock Road to Ash-Canterbury Main Road	TR275577 to TR268582	Now known as Pedding Lane; part adopted road, part public footpath EE124; land unregistered
ix. the road leading from West Marsh Road to the Marshes	TR274615 to TR274624	Now known as Westmarsh Drove; public footpath EE76; 'private street' in NSG; unregistered title with caution
x. the road leading from Paramour Street to Downfield Farm	Not identified	
xi. the road leading from Overland Lane, Corking to Ware Road	TR275598 to TR280607	Part public bridleway EE86 and EE73; part adopted road (Ware Farm Road); part unrecorded; land generally unregistered
<i>Parish of Betteshanger—</i>		
xii. the road leading from Northbourne Road to New Road, Betteshanger	TR313537 to TR309529	Unrecorded; part unregistered (now the subject of restricted byway claim PROW/DO/C374)
<i>Parish of Eastry—</i>		
xiii. the road leading from Eastry Mills to Hammill	TR302545 to TR285552	BOAT EE109; part unregistered
<i>Parish of Eythorne—</i>		
xiv. the road leading from Upper Eythorne to Brimsdale Farm	TR283491 to TR280491	Now known as Flax Court Lane; public bridleway EE345; 'private street' in NSG; part unregistered
<i>Parish of Goodnestone and Wingham—</i>		
xv. the road leading from Twitham Farm to Caves Lane, Goodnestone,	TR262568 to TR255555	Part adopted, part unrecorded, part public bridleway EE269A; land unregistered (now the subject of bridleway claim PROW/DO/C391)
xvi. the road leading from Buckland Lane to Crixhall Farm	TR269554 to TR267556	Public bridleway EE28; land unregistered
<i>Parish of Great Mongeham—</i>		

xvii. the road leading from Cherry Lane to the road leading from Northbourne to Ripple	TR346512 to TR342507	Now known as Pixwell Lane; BOAT ED53; part adopted; unregistered title
<i>Parish of Little Mongeham—</i>		
xviii. the road leading from Little Mongeham Farm to Ripple and Sutton Road	TR333509 to TR343501	Public footpath EE422; title registered (the application way)
<i>Parish of Nonington—</i>		
xix. the road leading from Holt Street to Nonington Mill	TR262521 to TR268517	Now known as Mill Lane; adopted road; unregistered title
xx. the road leading from Gooseberry Hall to Young Wood, Goodnestone (Pilgrims Way)	TR266530 to TR259538	Now known as Cherrygarden Lane; BOAT EE280; 'private street' in NSG; part unregistered
<i>Parish of Northbourne—</i>		
xxi. the road leading from Willow Wood to Telegraph Farm	TR312506 to TR311511	Now known as Willow Woods Road (Roman Road); public bridleway EE377; 'private street' in NSG; part unregistered
<i>Parish of Preston—</i>		
xxii. the road leading from Preston Road to Marley Brook Farm	TR252616 to TR249618	Unrecorded; unregistered title
<i>Parish of Ripple—</i>		
xxiii. the road leading from Winkland Oaks Cottages Ripple to Dover Hill Sutton	TR342482 to TR334488	Public footpath EE427; title registered (now the subject of bridleway claim PROW/DO/C381)
<i>Parish of Sholden—</i>		
xxiv. the road leading from Walnut Tree Farm (Sholden) to Sandwich Bay	TR371545 to TR360572	Now known as Ancient Highway; BOAT EE245; adopted; title registered
<i>Parish of Stourmouth—</i>		
xxv. the road leading from North Court Farm, Upper Stourmouth to New Road	TR256630 to TR266630	Restricted byway EE485
<i>Parish of Sutton—</i>		

xxvi. the road leading from Sutton Court to Maydensole Farm (near Napchester)	TR334493 to TR314476	Public footpath EE417; part unregistered
<i>Parish of Wingham—</i>		
xxvii. the road leading from Dambridge Farm to Brook Farm (Brook Road).	TR249571 to TR260571	Now known as Dambridge Farm Road; part adopted, part restricted byway EE165A; part unregistered
<i>Parish of Woodnesborough—</i>		
xxviii. the road leading from Foxborough Hill, Woodnesborough to Sandwich Station	TR308561 to TR331576	Part was known as Black Lane (Sandwich), now St Barts Road; part public footpath EE226, public bridleway ES8, part BOAT ES10, part adopted; part unregistered title, part land unregistered (now the subject of claim PROW/DO/C385)
<i>Parish of Worth—</i>		
xxix. the road leading from Woodnesborough and Sandwich Road to Station	TR323574 to TR331576	Part known as Black Lane (Sandwich); part now known as St Barts Road; part BOAT ES10, part adopted; part land unregistered
xxx. the road leading from Deal and Sandwich Main Road to Worth Street Road,	TR329568 to TR334560	Now known as Coventon Lane; public bridleway EE236; part unregistered title
xxxi. the road leading from Deal and Sandwich Main Road to Temptye Farm,	TR328564 to TR341565	Public bridleway EE236; part unregistered title
xxxii. the road leading from Blue Pigeons Farm to Sandwich Bay	TR344566 to TR355575	Public bridleway EE232; part unregistered title

E.14. Of 32 'streets' recorded in the notice:

- 11 are now recorded as public carriageways,
- 8 are recorded as public bridleways,
- 8½ are recorded as public footpaths,
- 3½ are not recorded as public ways (but without prejudice to whether they may be unrecorded public ways), and
- 1 could not be located.

E.15. At least 28 of 31 identified 'streets' notified as "streets and parts of streets not repairable by local authorities and railways" cited in the public notice in the *London Gazette* are today public highways. This is strong evidence that such streets were considered to be public highways which were privately maintainable, and were not wholly private ways. Inclusion in the list is therefore evidence of the public status of these ways at the date of the notice.

E.16. The majority of the streets are now recognised as roads and public bridleways. Of those which are currently recorded as public footpaths, or not recorded as public ways, four (apart from the application way, xviii) are under application to be recorded as restricted byways (xii, xv, xxiii, xxviii), and one is the likely subject of a future application (xxvi).

E.17. **Conclusion:** Ways notified as streets not repairable by local authorities are likely to be those which were regarded at the time as of at least bridleway status, being described as 'roads'.

E.18. The notice is good evidence of the status of the application way as a public way, privately maintainable, of at least the status of bridleway.

E.19. **Points:** 2