

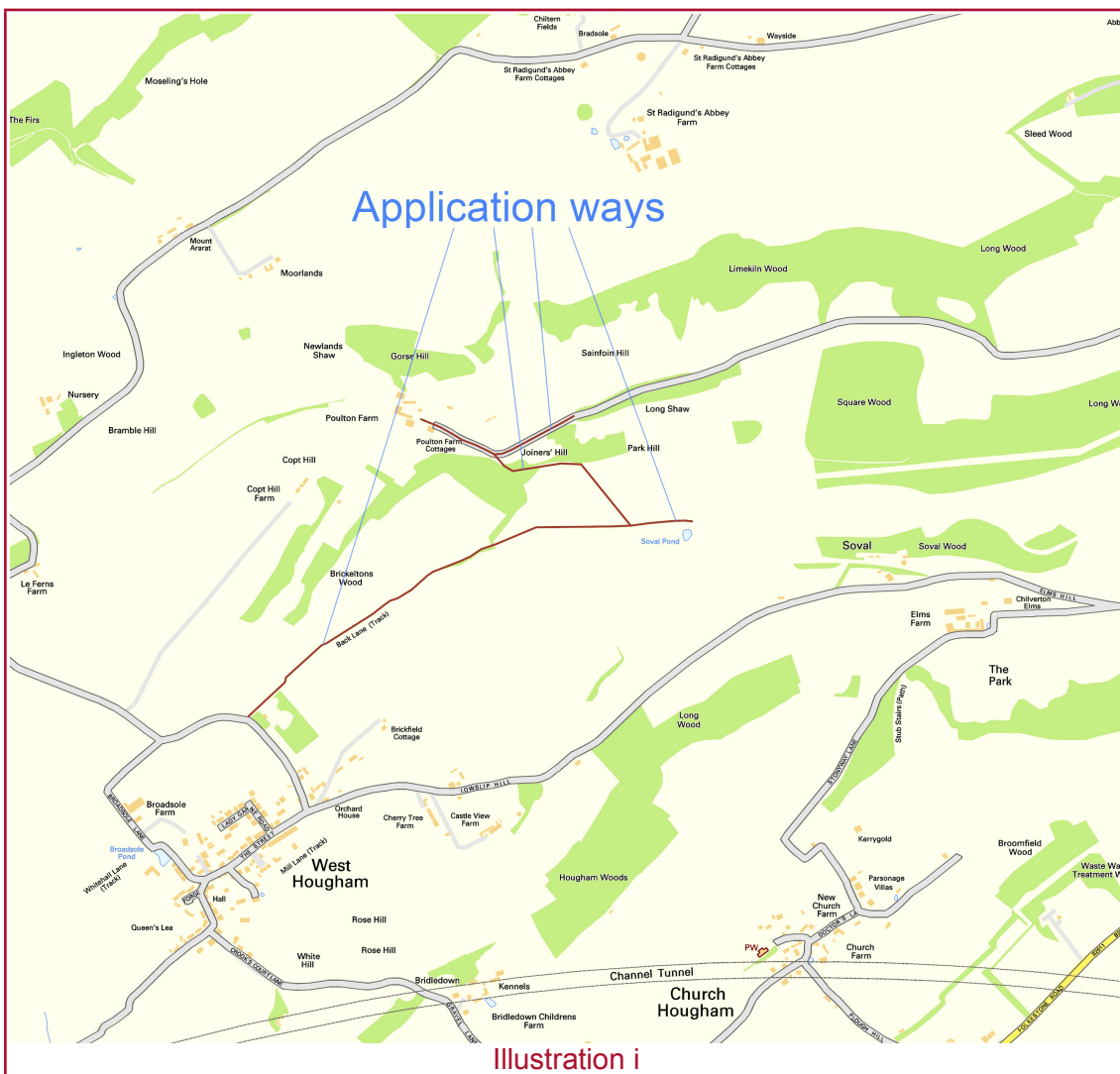
Poulton byways: document analysis

Application to record several restricted byways and one byway open to all traffic in the vicinity of Poulton Farm, Hougham

I. Introduction

A. Quick reference

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



A.2. Existing recorded public rights of way comprised in application way: ER218B, ER218A, ER217

A.3. Parish of: Hougham Without

- A.4. Ancient parishes of: Hougham, Poulton (and touching on Capel-le-Ferne)
- A.5. Termination points: P: Poulton Farm; Q: west end of Coombe Road at junction with bridleway ER218A; R: junction of bridleway ER218A with footpath ER218B and bridleways ER217 (Back Lane) and ER219; S: Soval pond; C: Coombe Road below Joiners Hill; H: junction of ER217 (Back Lane) and Eight Acres (West Hougham)
- A.6. Termination points Ordnance Survey grid references: P: [TR27024124](#); Q: [TR27194116](#); R: [TR27524099](#); S: [TR27644100](#); C: [TR27384125](#); H: [TR26604053](#)
- A.7. Postcode: CT15 7DP
- A.8. Ordnance Survey Explorer sheet: 138
- A.9. Ordnance Survey County Series 25" sheet: Kent LXVII/16

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 a member of the Institute of Public Rights of Way and Access Management. 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 several ways, in the parish of Hougham Without, East Kent. All but one of the ways is currently recorded on the definitive map and statement as footpath or bridleway; the remaining way is recorded in the list of publicly-maintainable streets held by Kent County Council under s.36(6) of the Highways Act 1980 (but not recorded on the definitive map). The application seeks to record the ways as restricted byways and one as byway open to all traffic.

D. Application

D.1. The application is made under s.53(5) of the Wildlife & Countryside Act 1981 to Kent County Council that a definitive map modification order be made under s.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, being a byway open to all traffic, and under s.53(3)(c)(ii) that ways shown in the definitive map and statement as bridleway or footpath should be shown instead as restricted byways.

D.2. The first way (Coombe Road) begins at a junction with the way recorded as bridleway ER218A at Q (TR27194116), and follows Coombe Road east-northeast below Joiners Hill for 220m to a gate at C (TR27384125). The way is not currently recorded in the definitive map and statement, and is to be recorded as a byway open to all traffic.

D.3. The second way (ER218A) begins at the southeastern corner of Poulton Farm at P (Ordnance Survey grid reference TR27024124), and follows bridleway ER218A in a southeasterly direction for 180m to Q (TR27194116), then easterly, then resuming southeasterly, direction for 410m to a junction 140m west of Soval Pond with footpath ER218B, bridleway

ER217 (also known as Back Lane), and bridleway ER219, at R (TR27524099). The way is currently recorded as a bridleway, and is to be recorded as a restricted byway.

D.4. The third way (ER218B, Back Lane) begins 140m west of Soval Pond at R (TR27524099), and follows footpath ER218B east for 140m to Soval pond and the junction with footpath ER192 at S (TR27644100). The way is currently recorded as a footpath, and is to be recorded as a restricted byway.

D.5. The fourth way (ER217, Back Lane) begins 140m west of Soval Pond at R (TR27524099), and follows bridleway ER217 west and then southwest for 1,060m to Eight Acres (a public road) at H (TR26604053). The way is currently recorded as a bridleway, and is to be recorded as a restricted byway.

D.6. The points P to S, C and H are identified in the application map at part II below.

E. Nomenclature

E.1. The ways are clustered in the area around Poulton and Soval, within (today) the parish of Hougham Without. Three of the ways are named: the second way is a part of Coombe Road (although this name may be relatively recent in origin), the third and fourth ways are components of Back Lane.

E.2. For the former extent of the parishes of Hougham, Capel-le-Ferne and Poulton, see the Application map at section II below.

E.3. Coombe Farm, at the foot of Coombe Road, spelled in certain historical sources as Coom Farm, is now the site of Poulton Close Business Park in Dover, at TR295421 (bridleway EB16 within Poulton Close Business Park is the course of Coombe Road, now superseded by Poulton Close to the south).

E.4. Soval is now a place name lacking a place. A dwelling or farmstead is shown here on the Ordnance Survey, Mudge-Faden one-inch map of Kent (item IV.C below) dating from the beginning of the nineteenth century, but there is no trace of it by the time of the Tithe Commutation Act 1836 survey (item IV.H below). Yet, in various nineteenth century records, it continues to be noted as a distinct destination.

F. Background

F.1. The application ways historically are part of a network of public cart roads connecting the farming settlements of Poulton, Soval, Elms, West Hougham, and others. All of the application ways are recorded on the Ordnance Survey County Series 25-inch maps (item IV.L below) as metalled, and therefore intended for vehicular traffic. All of the ways complement a coherent network of public roads: to the northwest, the application way at P formerly connected with byway ER218 to Fern Cottage (the connection is now interrupted by a diversion in 2019 around the north side of Poulton Farm which is only of bridleway status); to the southeast, restricted byway ER218C connects to Elms Farm and the minor road to Dover. There is also evidence that footpath ER192/EB5 east from Soval was formerly recognised as a public road to Diggle's Tower, Charlton and Dover.

F.2. Back Lane is a largely enclosed road which extends between Elms Hill at Elms Farm via Soval to the north side of West Hougham village: its very name is suggestive of a subsidiary route between those places, and its largely enclosed nature reinforces that likelihood.

F.3. Coombe Road was admitted as publicly maintainable by the parish of Poulton since the mid-nineteenth century, as has remained so ever since. The highway authority continues to recognise it as publicly maintainable, including the application way C–Q, and there is no plausible reason why it should cease to be either publicly maintainable, or a highway, west of C. It is inevitable that this part extended as far west as Q, and continued thereon to Poulton Farm at P. The evidence and logic is clear that the whole of the road, including C–Q, is public and publicly maintainable.

F.4. Finally, the recording of R–S as a footpath on the initial draft Definitive map and statement (item IV.Q below) for Kent is clearly identified as a mistake arising subsequent to the parish survey. Not only is there no logical explanation for this part, connecting several carriageways, being a footpath, there is strong evidence that it is itself a carriageway.

G. Grounds for application

G.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*¹, 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.'

G.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.²

G.3. In relation to Coombe Road, the correct test under s.53(3)(c)(i) is whether:

...the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows—(i) that a right of way which is not shown in the map and statement 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 public path, a restricted byway or, subject to section 54A, a byway open to all traffic...

¹ [2012] EWCA Civ 334

² [Consistency Guidelines](#): para.2.17.

The surveying authority must therefore make an order consequent on this application where the evidence (of the application, taken with any other evidence) shows that there is a reasonable allegation of the existence of the application way.

G.4. In relation to ER218A and Back Lane, 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...

G.5. While no single piece of evidence in this application is conclusive, the applicant believes that, taken as a whole, the evidence in this document analysis demonstrates reputation of the application ways as carriage ways over many years, indicating that the routes do indeed have carriageway status, and that prior to the Natural Environment and Rural Communities Act 2006 (as to which, see Natural Environment and Rural Communities Act 2006, item I below), there were full vehicular rights.

H. Discovery of evidence

H.1. There is no evidence that the application way Q–C has ever formally been considered for inclusion on the definitive map and statement for Kent. It was excluded from the draft map and statement prepared under Part IV of the National Parks and Access to the Countryside Act 1949. Therefore, there has been no discovery of evidence for the purposes of s.53(2) of the 1981 Act, and the evidence disclosed in this application is wholly new evidence.

H.2. In relation to the other application ways, there is no evidence that the evidence contained in this application was considered by the parish, district or county council in preparing the draft map and statement. Again, therefore there has been no discovery of evidence for the purposes of s.53(2) of the 1981 Act, and the evidence disclosed in this application is new evidence.

I. Natural Environment and Rural Communities Act 2006

I.1. The application seeks to show that the application ways are public carriageways.

I.2. In relation to the way Q–C, the way was recorded as a publicly-maintainable highway in the list of streets maintained by Kent County Council under section 36(6) of the Highways Act 1980 on 2 May 2006, the date of commencement of s.67 of the 2006 Act — Highway authority public maintainability (item IV.R below). Public rights for mechanically-propelled vehicles are therefore preserved under s.67(2)(b). Application is therefore made to record Q–C as a byway open to all traffic.

I.3. None of the remaining application ways is recorded as publicly maintainable in the list of streets. The effect of section 67 of the Natural Environment and Rural Communities Act 2006 is to extinguish public rights for mechanically propelled vehicles where none of the exceptions in section 67 apply. The application in relation to the remaining application ways therefore is made for restricted byway.

J. Points awarded

J.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 ways (save Q–C) as a definitive public footpath or bridleway, points have been awarded only insofar as the evidence is indicative of a right of way for vehicles. The points have been calculated according to the guidance in *Rights of Way: Restoring the Record*³.

J.2. Points:

Item	Ref	Points Q–C	Points P–R	Points R–S	Points H–R
Ordnance Survey surveyor's drawing, Canterbury (East)	IV.A	1	1	1	1
Barlow-Hasted map of Kent	IV.B				
Ordnance Survey, Mudge-Faden one-inch map of Kent	IV.C				
Hougham diversion at Elm Farm	IV.D		3	3	
Paterson's Roads — Thanet and Kent and Sussex Coast	IV.E	1	1	1	1
Greenwood's map of Kent	IV.F	1	1	1	1
Ordnance Survey, Old Series one-inch map of Kent	IV.G				
Tithe Commutation Act 1836	IV.H	0	4	4	4
Wingham Highway Board	IV.I	5	5	5	0
The Buckland highway case	IV.J				
Order of exchange (glebe land)	IV.K				
Ordnance Survey County Series 25-inch maps	IV.L	2			
Dover Rural District Council	IV.M	3	3	5	5
Bartholomew's map	IV.N	1			
Ordnance Survey name book	IV.O				
Finance (1909–1910) Act 1910	IV.P				5
Definitive map and statement	IV.Q			2	
Highway authority public maintainability	IV.R	4			
Total points		18	18	22	17

K. Width of application way

K.1. For the way R–H from a point 230m northwest of R west to H, the way is shown on the Ordnance Survey County Series 25-inch maps fourth edition (item IV.L below) as entirely enclosed for a distance of 830m. The enclosed area is recorded as comprising a total area of 1.344 acres. This returns a mean width of the section of way of 6.55m. However, it is suggested that the width of the way should be defined as the width between hedges as shown on the current 1:2,500 Ordnance Survey MasterMap.

³ Sarah Bucks and Phil Wadey, 2nd ed. 2017.

K.2. Elsewhere, the width of the application ways should be recorded as the width between hedges or fences (where relevant), else a width of at least 4m being sufficient for a restricted byway, subject to an additional ½m against the root of any hedge on either side. This is the minimum width which is likely to have been dedicated in respect of any way which is not, and was not, enclosed.

K.3. However, care must be taken not to record the width between hedge and fence where a fence currently stands within the extent of the highway. In particular, fences have been observed between H and R, and between R and Q, which restrict the available width. In these places, the correct width is as measured between the true boundaries of the highway, and if necessary, recourse should be had to historical mapping to resolve any inconsistency. See the photograph of the fence at OS grid reference TR27284111, between R and Q in Illustration ii below.



Illustration ii: Fence within boundary of highway above Q

K.4. Note also that the way between Q and P appears to have been widened in recent years, with excavation into the hillside, and it may be that the historical width of this way is less than is now available.

L. Limitations

L.1. The Ordnance Survey County Series 25-inch maps first edition (revised) (item IV.L below) shows gates across the application ways at the following locations:

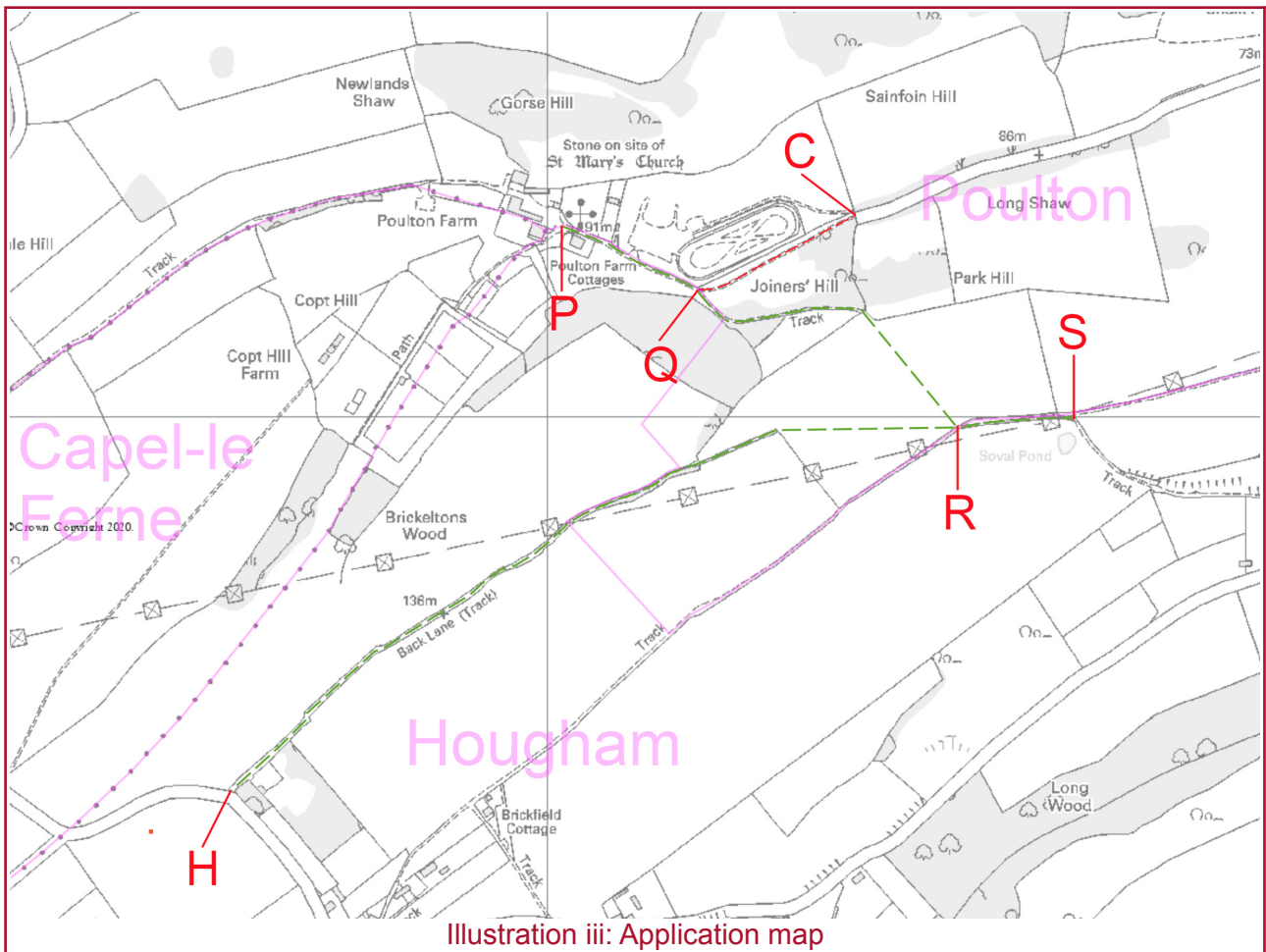
- C
- Q
- mid-way between Q and R, at the southeast corner of the field marked Joiners Hill

L.2. These gates are replicated on the second, third and fourth edition maps. The applicant is prepared to accept that these gates represent lawful limitations on the use of the application ways.

L.3. In addition, the second series map shows a gate in Back Lane, between H and R, at the turn in direction from east-northeast to east. This gate is not present on the first edition map, and it is not accepted that this gate was lawfully present as a limitation.

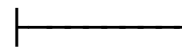
L.4. The way is believed not otherwise to be subject to any limitations, and we therefore seek that express mention is made in any definitive map modification order that there be no limitations other than those recorded.

II. Application map



Map centred on Q at TR271941163

Scale: approx. 1:9,250 (when printed A4)



Application way is marked — (restricted byway) 200m

Application way is marked — (byway open to all traffic)

Ancient parish boundaries of Poulton, Capel-le-Ferne and Hougham are marked —

III. Along the way



Illustration iv: At H



Illustration v: Back Lane east of H



Illustration vi: Back Lane near H

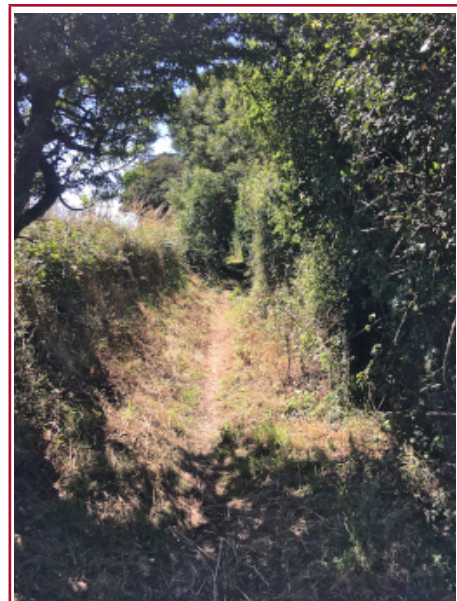


Illustration vii: Back Lane near H



Illustration viii: Back Lane towards R



Illustration ix: Back Lane at R



Illustration x: Back Lane at R towards Q



Illustration xi: At S — Soval pond



Illustration xii: Between Q and R



Illustration xiii: At Q towards C



Illustration xiv: Between Q and C



Illustration xv: At C

IV. Evidence

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A. Ordnance Survey surveyor's drawing, Canterbury (East)

A.1. **Date:** 1797

A.2. **Source:** British Library website⁴

4 Dover, sheet 106(E): www.bl.uk/onlinegallery/onlineex/ordsurvdraw/d/002osd000000017u00365000.html

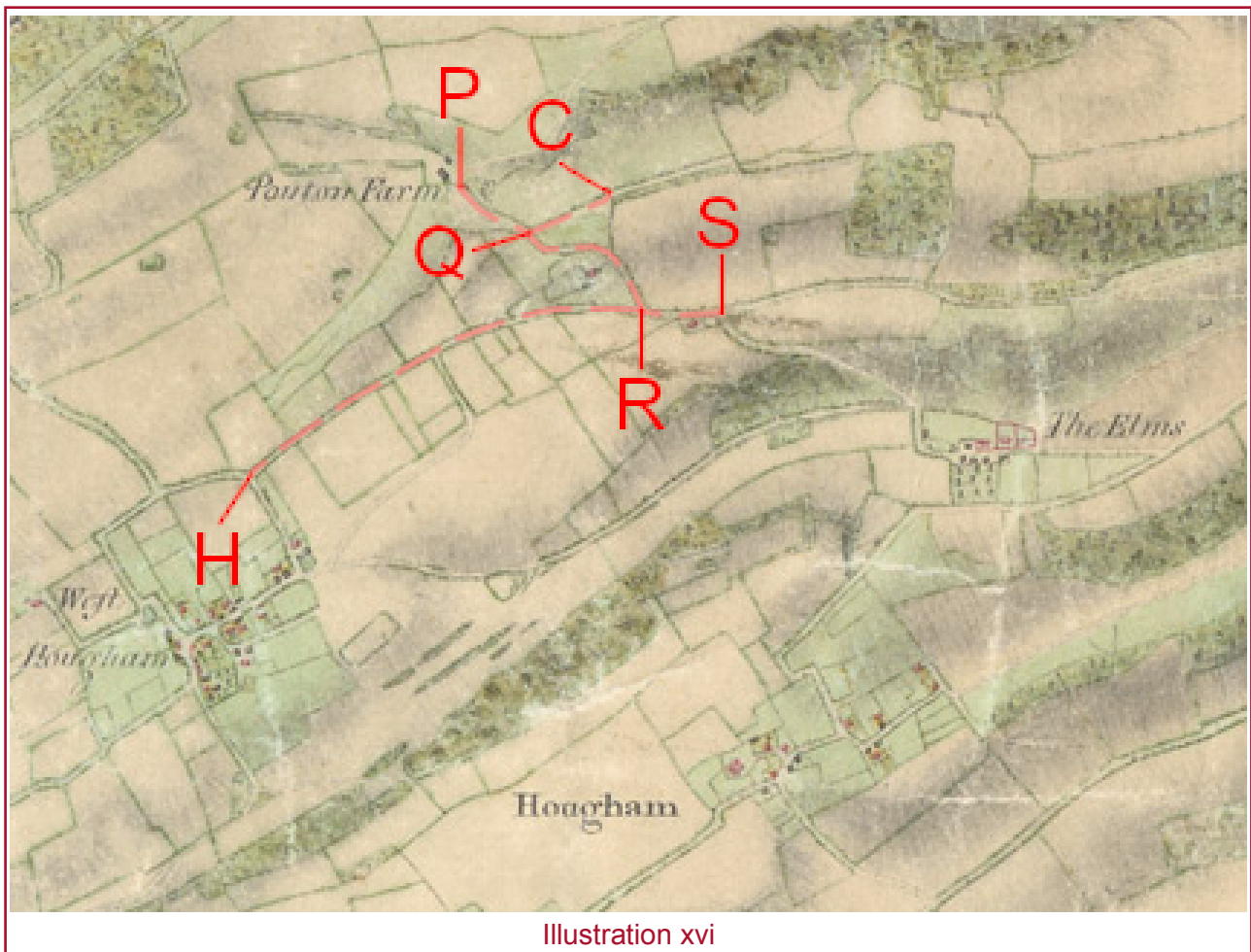


Illustration xvi

A.3. **Description:** Original scale: believed to be 1:31,680 (three inches to one mile); orientation: unchanged (north).

A.4. Facing the threat of invasion, the English government commissioned a military survey of the vulnerable south coast. An accurate map of Jersey had already been made, soon after a French attempt to capture the island in 1781, but this had been restricted to government use only. The new maps were to be published at the detailed scale of one inch to the mile. Responsibility for what became an historic venture fell to the Board of Ordnance, from which the Ordnance Survey takes its name. From its headquarters in the Tower of London, engineers and draftsmen set out to produce the military maps by a system of triangulation. The survey of Kent was first to go ahead. It began in 1795 under the direction of the Board's chief draftsman, William Gardner. Critical communication routes such as roads and rivers were to be shown clearly and accurately. Attention was paid to woods that could provide cover for ambush, and elaborate shading was used to depict the contours of terrain that might offer tactical advantage in battle. Preliminary drawings were made at scales from six inches to the mile, for areas of particular military significance, down to two inches to the mile elsewhere.⁵

A.5. The Dover drawing shows ER218A and Back Lane with clarity, alongside other connecting lanes and tracks. All are shown drawn within solid double lines, suggesting that the ways were enclosed, and presumably hedged, ways, save the most northwesterly

5 From the Curator's introduction to the Ordnance Survey drawings, British Library: www.bl.uk/onlinegallery/onlineex/ordsurvdraw/curatorintro23261.html.

part of ER218A, which is unenclosed on the west side, suggesting passage across open or waste ground (which remains the case today).

A.6. The definition of Coombe Road is less clear: if shown at all, it is unenclosed on the south side across the bottom of Joiners Hill, before an enclosed section east of C. However, the line to Dover is partly undefined, although it appears to resume further east.

A.7. **Conclusion:** The Ordnance Survey drawing is good evidence for the physical existence of the ways at the end of the eighteenth century (with the possible exception of Coombe Road). As generally enclosed tracks, connecting farming communities, one might expect them to be public, but the map is not conclusive as to status.

A.8. **Points:**

Q-C: 1

P-R: 1

R-S: 1

H-R: 1

B. Barlow-Hasted map of Kent

B.1. **Date:** 1797–1801

B.2. **Source:** Kent County Archives: engraved by William Barlow in Edward Hasted's *The History and Topographical Survey of Kent*: published in in 12 Volumes.

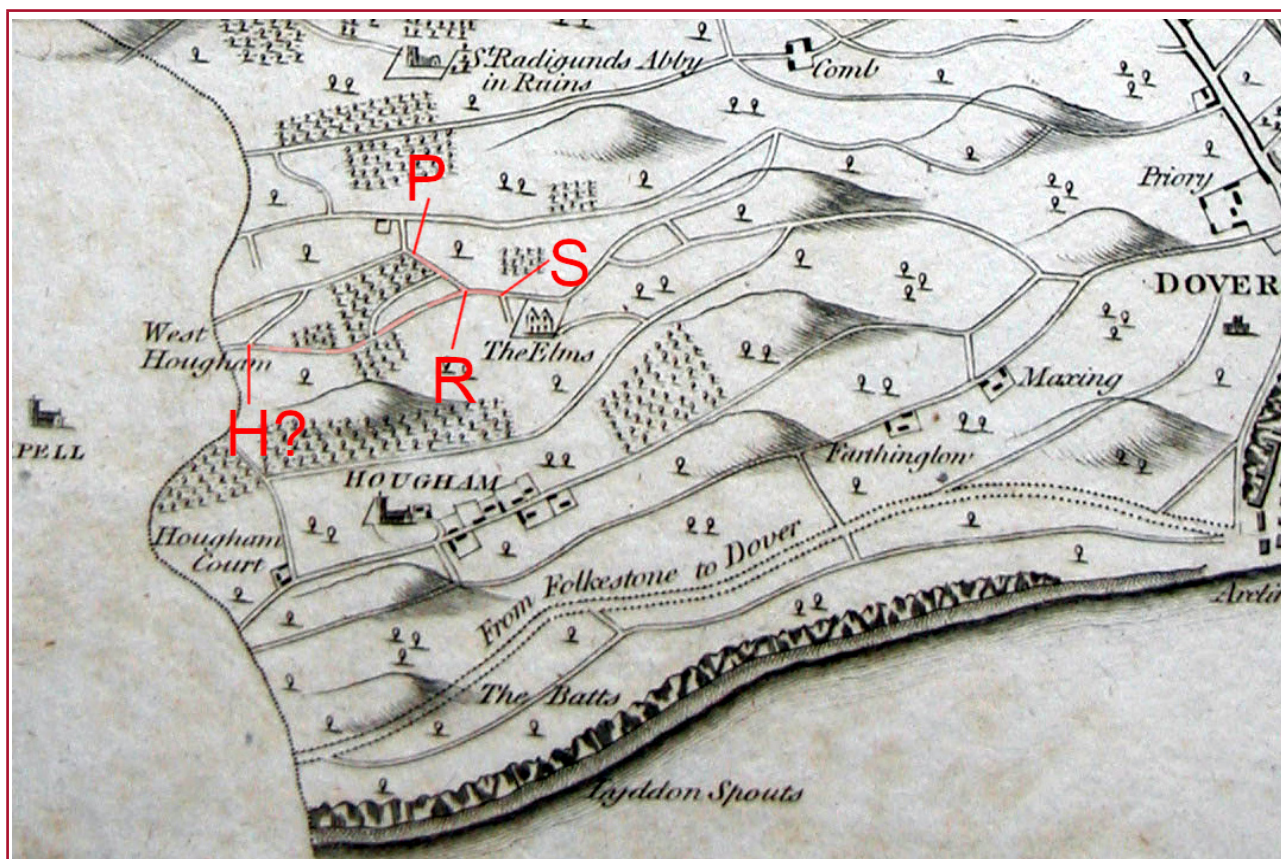


Illustration xvii

B.3. **Description:** Original scale: not known; orientation: unchanged (north).

B.4. William Barlow's maps of Kent were incorporated within the first edition of Edward Hasted's *The History and Topographical Survey of Kent*. Each map represented one or more of the Kent hundreds: that shown here is an extract from the hundred of Bewsborough.

B.5. The representation of ways on the Barlow-Hasted map of the lands west of Dover is not entirely consistent with modern or contemporary mapping. The map extract is marked up with an interpretation which best fits circumstances. It appears to depict ER218A and Back Lane, but not Coombe Road.

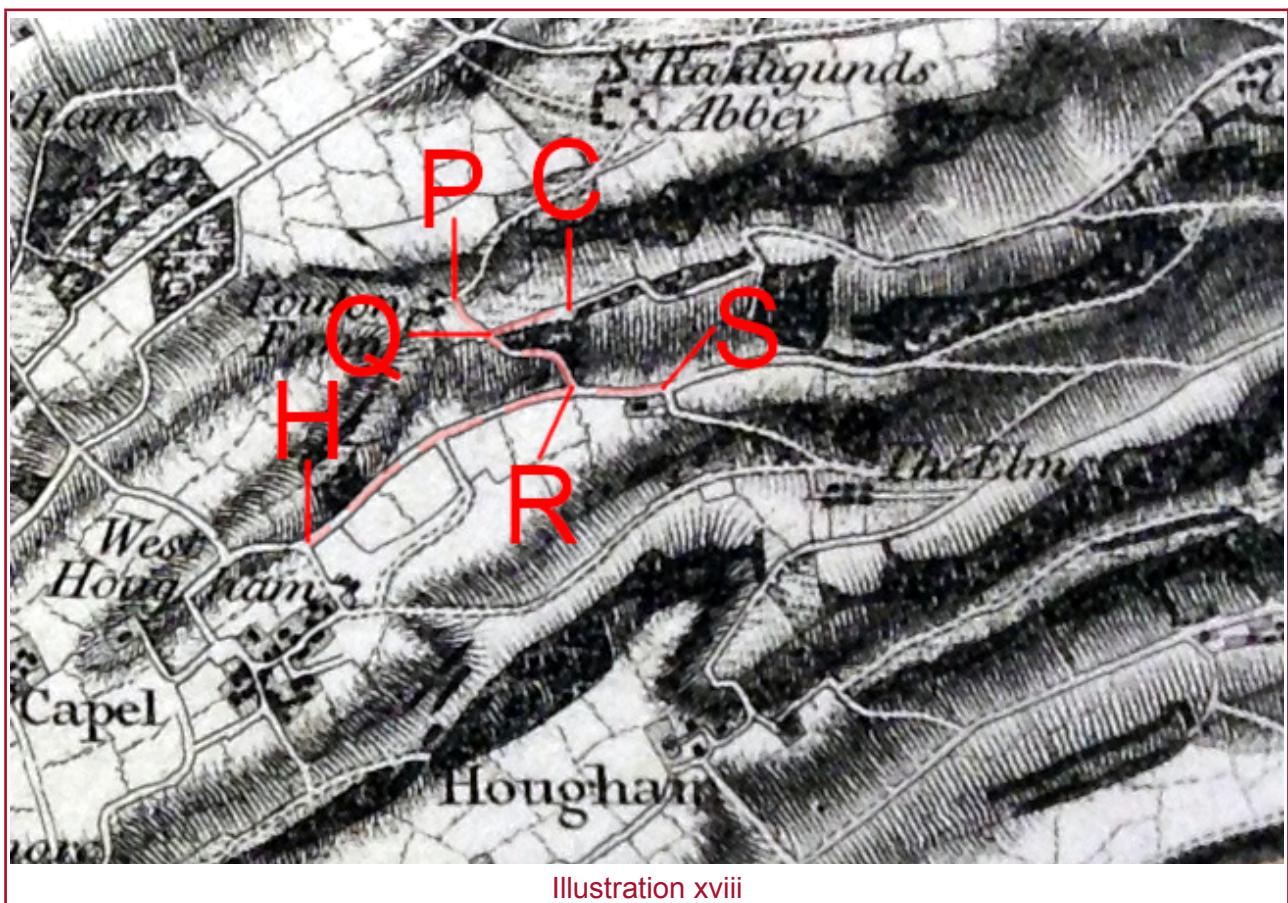
B.6. **Conclusion:** The Barlow-Hasted map is possible evidence for the existence of a defined way along ER218A and Back Lane. The map was widely commercially published, and would tend to show through routes which were public highways. However, it cannot be assumed that the status of any way shown is any greater than bridleway.

B.7. **Points:** 0

C. Ordnance Survey, Mudge-Faden one-inch map of Kent

C.1. **Date:** 1801

C.2. **Source:** Kent County Archives, also available at Mapco.net



C.3. **Description:** Original scale: one inch to one mile (1:63,360); orientation: unchanged (north).

C.4. This map of Kent was the first map to be to rely primarily on the survey data collected in the Ordnance Survey surveyor's drawing, Canterbury (East) (item A above).

However, the Ordnance Survey did not itself publish a map of Kent until well into the nineteenth century: instead, this map was initially published on 1st January 1801 by William Faden, Geographer to the King, for sale to the public.

C.5. The Mudge-Faden map shows ER218A and Back Lane with clarity, alongside other connecting lanes and tracks. All are shown drawn within solid double lines, suggesting that the ways were enclosed, and presumably hedged, ways, save the most northwesterly part of ER218A, which is unenclosed on the west side, suggesting passage across open or waste ground (which remains the case today).

C.6. Coombe Road is better defined than on the Ordnance Survey drawing: it is shown unenclosed on the south side across Joiners Hill, before continuing as a defined way east of C.

C.7. **Conclusion:** All of the application ways are depicted on the map as defined ways. The Ordnance Survey map of Kent was prepared in response to an invasion threat, and primarily had a military purpose. However, this map was published privately by Faden for public and not military use. It is therefore likely to reflect the needs of the purchasing public, rather than purely military requirements. The application ways cannot be proven to the public, but they are likely to have had at least the status of bridleways.

C.8. **Points:** 0

D. Hougham diversion at Elm Farm

D.1. **Date:** 1810

D.2. **Source:** Kent County Archives⁶

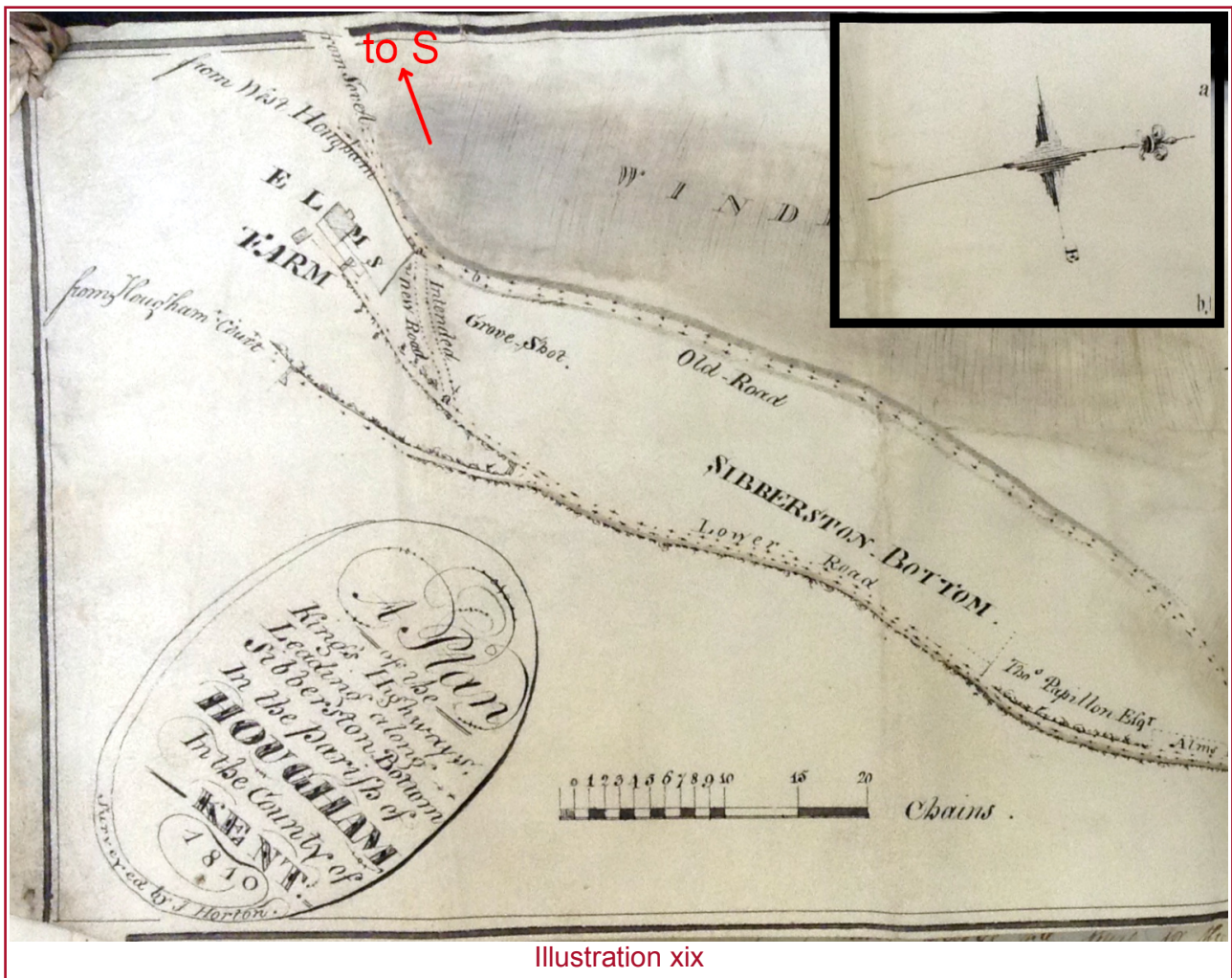


Illustration xix

D.3. **Description:** scale: marked on plan in chains; orientation: unchanged (top purports to be west)

D.4. Until 1810, Lowslip Hill above Elms Farm followed a higher alignment from just east of the Vicarage (*i.e.* the junction with restricted byway ER218C), contouring along the slope of Whinless Down (then described as Windless Down) above Sibberston Bottom, before descending to join the present road, Elms Vale Road, in the vicinity of Elmswood Farm (this alignment may be seen in the Ordnance Survey, Mudge-Faden one-inch map of Kent at item IV.C above). A diversion was authorised by an order of the magistrates, creating Elms Hill to descend more rapidly to join the road from Elms Farm to Dover, and stopping up the higher line.

D.5. In the diversion order, it is stated that the justices of the peace:

Having upon View found that a certain part of the King's Highway, leading from West Hougham otherwise Huffam Sovil and Poulton to Dover or thereabouts and particularly described in the Plan...

D.6. The road to be diverted is described as from Hougham, Soval and Poulton, comprising respectively what are now restricted byway ER218C connecting with Lowslip Hill from West Hougham.

D.7. On the order map, restricted byway ER218C is described as 'from Soval'.

D.8. **Conclusion:** The diversion order describes restricted byway ER218C as a road from Poulton, and therefore that road must extend beyond Soval along the application way S–R–Q–P. On the order map, the restricted byway ER218C is alike described as ‘from Soval’. The road from Soval must have some prior origin — even in mediæval times, Soval appears to have been no more than a hamlet (see para.I.E.4 above). Thus the narrative in the diversion order, which describes the road as leading from Poulton, must be respected as describing a road throughout (but without prejudice as to whether Back Lane was also a public carriageway).

D.9. **Points:**

Q–C: 0
P–R: 3
R–S: 3
H–R: 0

E. Paterson’s Roads — Thanet and Kent and Sussex Coast

E.1. **Date:** 1811

E.2. **Source:** British Library⁷

⁷ 10348.d.15: copy available at www.pastpages.co.uk/site-files/maps-uk/Mx/MEM006.jpg .

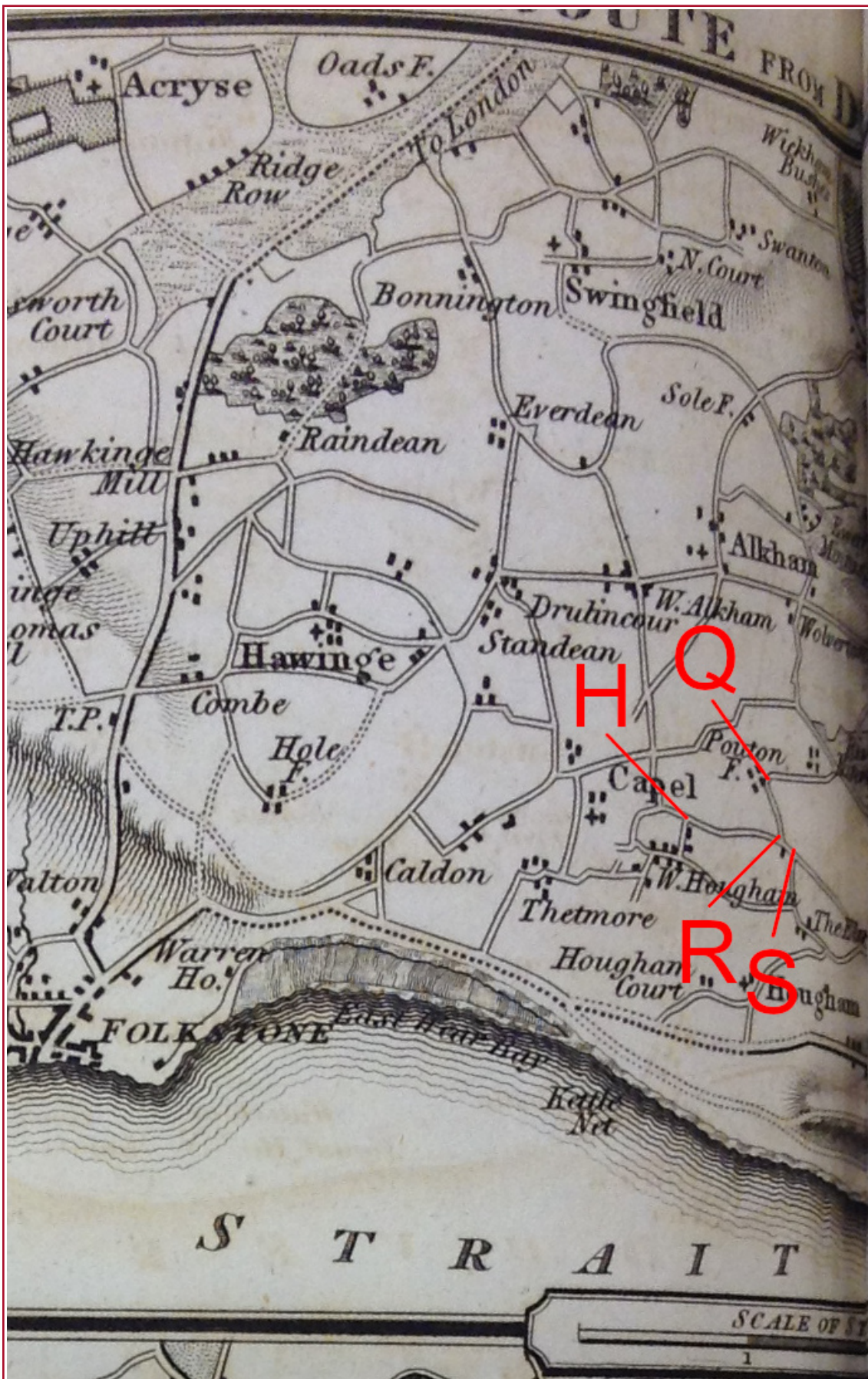


Illustration xx

E.3. **Description:** scale: marked in miles on map (but scale bar may be affected by distortion owing to the effect of the binding); orientation: unchanged (top is approximately north).

E.4. This map by J Thomson appears as one of several maps of Thanet and the Kent and Sussex coast annexed to the thirteenth edition of *Paterson's Roads*, a directory of main roads.

E.5. The map shows the application routes in their entirety, with the exception of that part of the application way between P and Q, in the immediate vicinity of Poulton Farm, which is not shown.

E.6. The map appears to be derived from the Ordnance Survey, Mudge-Faden one-inch map of Kent (item IV.C above).

E.7. **Conclusion:** The Thomson map leaves out many minor roads. It is therefore some evidence for the existence of a defined way along the application ways which are likely to have public status as cart roads.

E.8. **Points:**

Q-C: 1

P-R: 1

R-S: 1

H-R: 1

F. Greenwood's map of Kent

F.1. **Date:** 1819–20

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

Greenwood map



Illustration xxi

Greenwood map key

Churches & Chapels	++	Cross Roads	
Castles & Priories	■	Towns & other Places that send	}
Houses		Members to Parliament	
Water Mills	.	Mills & Rising Grounds	
Wind Mills	⊕	Boundaries of Counties	
Woods & Plantations		Boundaries of Lathes & Hundreds	
Heaths & Commons		Boundaries of Townships & Parishes	
Rivers & Brooks		Market Towns, in Roman Capitals as	DEAL
Navigable Canals		Parishes & Townships, in small Roman as	Reculver
Turnpike Roads		Villages Hamlets & other Places as	Dungeness

Illustration xxii

F.3. **Description:** Original scale: one inch to one mile (1:63,360); orientation: unchanged (north). This copy appears to be state iii, published between 1821 and 1827.

F.4. The one-inch maps by Christopher and John Greenwood set new standards for county maps. This one of Kent is remarkably accurate. Although based on the Ordnance Survey map, it clearly has been extensively updated from local survey.

F.5. All of the application ways are depicted as enclosed roads, save Coombe Road, which is shown as less well defined, although it is not clear whether this was intended to be represented as unenclosed.

F.6. **Conclusion:** The key to the Greenwood map describes the application ways as 'cross roads', suggestive of a public highway inferior in status to turnpike roads (separately identified).

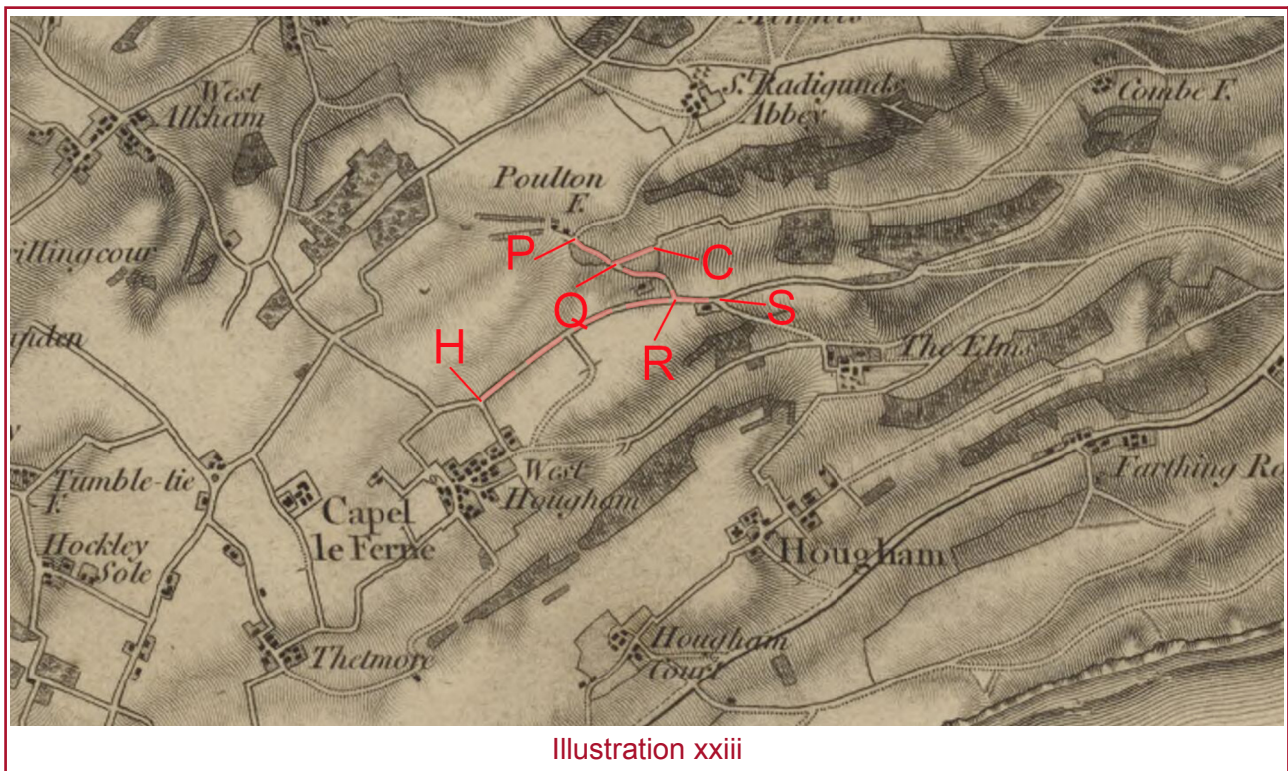
F.7. **Points:**

Q-C: 1
P-R: 1
R-S: 1
H-R: 1

G. Ordnance Survey, Old Series one-inch map of Kent

G.1. **Date:** 1831 (but survey dating from late eighteenth century)

G.2. **Source:** National Library of Australia⁸



G.3. **Description:** Original scale: one inch to one mile (1:63,360); orientation: unchanged (north).

G.4. This is the Old Series one inch map first published officially by the Ordnance Survey. The map reproduced here is state 4, from circa 1831, but believed to be unchanged in material respects from state 1. Although published some years later than the Ordnance Survey, Mudge-Faden one-inch map of Kent (item IV.C above), the 'official' Ordnance Survey Old Series map was based on the same survey data, and is consistent with the Mudge-Faden map.

8 nla.gov.au/nla.obj-231917365

G.5. **Conclusion:** While the Old Series map is not conclusive as to the public status of the way, it was primarily intended for military use, and the surveyor was unlikely to map footpaths being of little military interest.

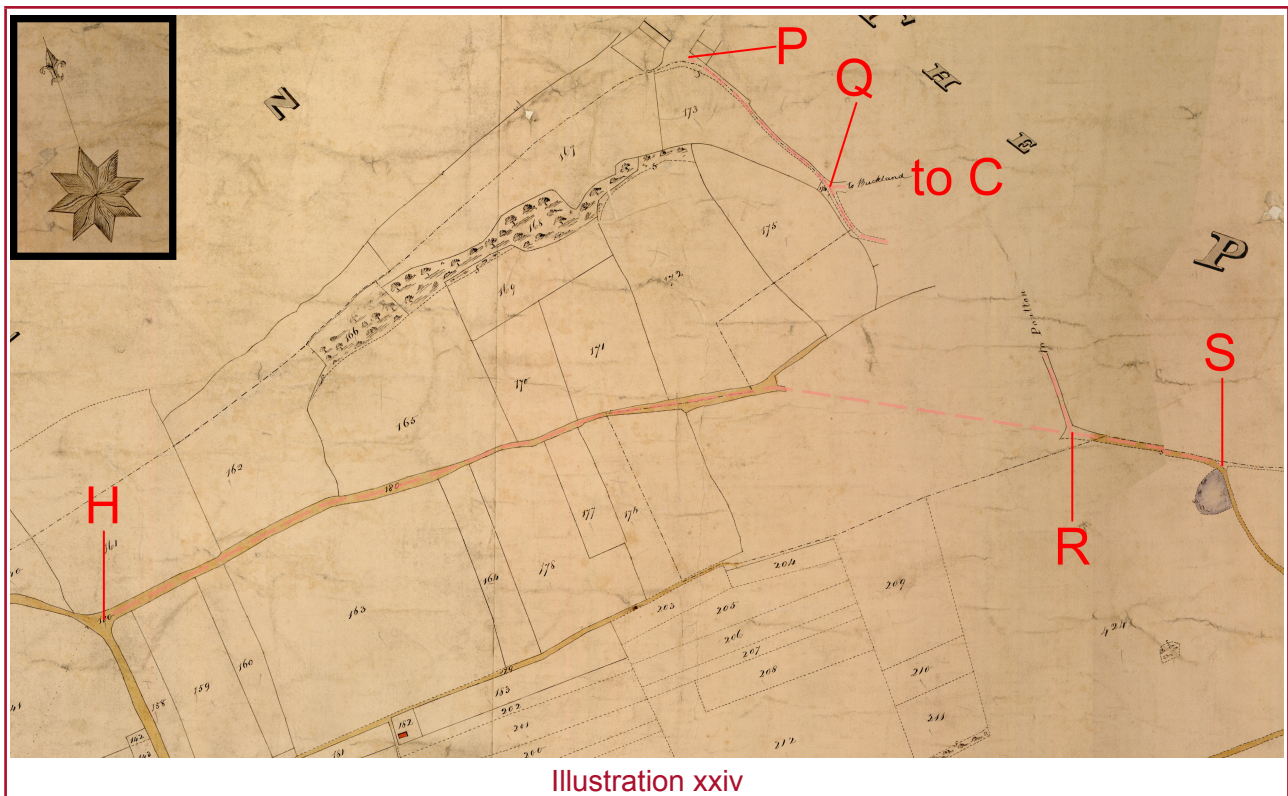
G.6. **Points:** 0 (no more than two maps of Ordnance Survey provenance are scored)

H. Tithe Commutation Act 1836

H.1. **Date:** 1841

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

Hougham tithe map



Dawson's conventional symbols

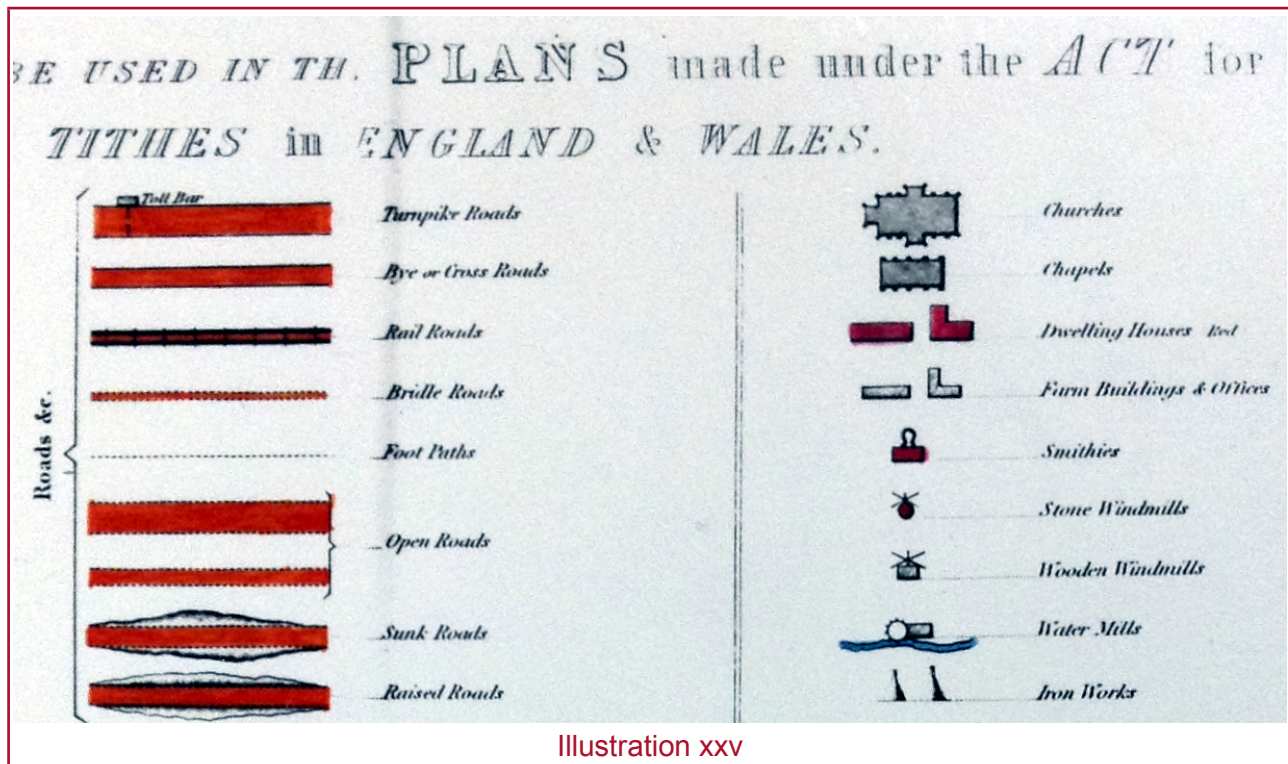


Illustration xxv

H.3. **Description:** Original scale — 1 inch to 1.5 chains (1:1188); orientation — unchanged (top is approximately north). The tithe map for Hougham is first class⁹. There is no tithe survey for the ancient parish of Poulton.

H.4. The Tithe Commutation Act 1836 enabled tithes (*i.e.* a tenth of the produce of the land) to be converted to a monetary payment system. Maps were drawn up to show the titheable land in order to assess the amount of money to be paid. An assessment of the tithe due and the payment substituted was set out in an apportionment. The 1836 Act was amended in 1837 to allow maps produced to be either first class or second class.

H.5. First class maps are legal evidence of all matters which they portray and were signed and sealed by the commissioners. They had to be at a scale of at least three chains to the inch. Second class maps, signed but not sealed, were evidence only of those facts of direct relevance to tithe commutation, and are often at six chains to the inch. There was a proposed convention of signs and symbols to be used, which included bridle roads and footpaths, but this was not strictly adhered to¹⁰: an extract from the convention is shown at Illustration xxv above.

H.6. The tithe process received a high level of publicity as landowners would be assiduous not to be assessed for a greater payment than necessary. In *Giffard v Williams*, it was said, referring to a tithe map and award:

...the Act of Parliament requires these things to be done, not in a corner, but upon notice in all the most public places; so that it is impossible to treat this

⁹ See the record for this tithe apportionment held by the National Archives: [IR 30/17/188](#).

¹⁰ *Survey of lands (Tithe Act.)*, letter from Lt. Dawson, R.E., to the Tithe Commissioners for England and Wales, on the Nature, Scale and Construction of the Plans required for the Tithe Commutation Act, 29 November 1836 (copy held at the National Archives).

document otherwise than as a public one, and as public evidence that at that time the owner of the undivided moiety of this field was aware of the facts.¹¹

H.7. Non-titheable land deemed to be unproductive was usually excluded from the assessment. It is common therefore for no tithe to be payable on roads, although wide grass drovers' routes could carry a tithe as they were used as pasture. It was in the interest of the landowners for untithed roads to be shown correctly to minimise their payments. Footpaths, bridleways and unenclosed tracks were more likely to be at least partially productive (for example as pasture). Therefore, although the process was not necessarily concerned with rights of way, inferences can be drawn from tithe documents regarding the existence of public rights, and in particular, public vehicular rights. In some cases highways are coloured yellow or sienna to indicate public status, and highways expressly may be described as such in the apportionment.

H.8. The use of dotted parallel lines to depict unfenced roads appears to follow the guidance of Lt. Dawon (see footnote 10) that:

The boundaries and limits of all lands and parcels of land which are to be treated separately under the provisions of the Tithe Act, should be marked on the Plans, whether they be defined by fences or not. This will be more particularly requisite in cases which claim exemption from rent-charges under the Act; and where no boundary fences appear, the limits should be shown by a dotted line.

H.9. The tithe map for Hougham is by John Cheesman of nearby Buckland (Dover). A number of roads and tracks are shown coloured sienna, many of which are assigned parcel numbers given in the apportionment.

H.10. In the apportionment, the following entries appear grouped on sheet 25 but with no heading:

Entry on sheet 25	Parcel no.
Military Road	620
The Street & Roads on Mount Pleasant	621
The Turnpike Road	539
Parish Road	540
Old Dover Road	581
Waste adjoining	582
Road to Poulton	179
About West Hougham	180
From Turnpike Rd to the Old Road	329
Dover to West Hougham	502
Bridle road to Hougham	503
The Old Dover Road	505
Road from Dover to Hythe	504

11 (1869) 38 LJ (Ch) 597 at 604, per Stuart V-C.

Entry on sheet 25	Parcel no.
Road about Church Hougham	310
Road from the Elms to Poulton	425

The apportionment elsewhere includes a number of apparently private roads, viz: 353 Occupation Road, 68 Occupation Road, 29 Carvet & Road, 577 Road, 433 Road & Waste, and 174 Road & Waste. Among these, parcel 433 is an area of waste immediately east of the Elms including Stonyway Lane; parcel 174 is an area of waste adjoining Q.

H.11. **Conclusion:** Notwithstanding the convention commended for use on tithe maps, which proposed that turnpikes, bye, cross and bridle roads to be coloured, those roads and tracks on the tithe map which are coloured sienna are not inevitably public roads. One road, at the Priory, is so coloured, numbered 629, and separately described in the apportionment as 'House & Yards on Mount Pleasant'. Whereas an enclosed road described in the apportionment as 'Bridle Road to Hougham' and numbered 503 is not so coloured (save that it is half coloured sienna, this being described in the key as the boundary of 'Thomas Coleman's tithing'), nor is the road from the Elms to Church Hougham numbered 310. It may be that the intention was that roads and tracks coloured sienna were intended to be public roads (but that certain errors and omissions were corrected in the apportionment), or that they were so coloured because they were metalled roads.

H.12. However, the list of roads and waste given in the apportionment appears to be consistent with ways which are public. It is suggested that those ways listed together on sheet 25 are public roads, publicly maintainable. Those listed elsewhere in the apportionment are either private roads, or unenclosed public roads across productive or potentially productive land which in certain cases are included in the apportionment for the parcels across which they lie.

H.13. Accordingly, it is submitted that some considerable value may be placed on the status of the following ways as public roads, publicly maintainable, being among a list of ways considered to have the same status, and not expressly described as a 'bridle road' (as is the 'Bridle road to Hougham').

Road to Poulton	179
About West Hougham	180
Road from the Elms to Poulton	425

H.14. The 'Road to Poulton' is now recorded as bridleway ER219, numbered 179, and does not appear to be relevant here. The ways 'About West Hougham' include the way H–R, numbered 180. The 'Road from the Elms to Poulton' is the way from Elms Hill to Soval, thence S–R, numbered 425, as far as where the way crosses into the former parish of Poulton. This way may also include P–Q, so far as it lies in the former parish of Hougham.

H.15. Accordingly, the tithe apportionment provides significant evidence that the ways H–R, P–Q and R–S (but not the application way lying wholly within the former parish of Poulton, Q–C) are public roads. It is likely therefore that the connecting way Q–R is also of the same status.

H.16. Points:

Q-C: 0
P-R: 4
R-S: 4
H-R: 4

I. Wingham Highway Board

I.1. **Date:** 1863–67

I.2. **Source:** Kent County Archives¹²

I.3. **Description:** The Wingham Highway Board was established in 1863 and wound up in 1880 (its functions assumed by the Eastry and Dover Rural Sanitary Authorities). Its area included the parishes of Buckland, Ewell, Hougham and Poulton (but not Alkham).

I.4. The waywardens elected for the year from April 1863 included, for Ewell (a parish near Dover), a certain William Robinson, but that Robinson appears to be distinct from W P Robinson and E P Robinson, the complainants referred to below.

I.5. The board minutes record that, on 12 November 1863¹³:

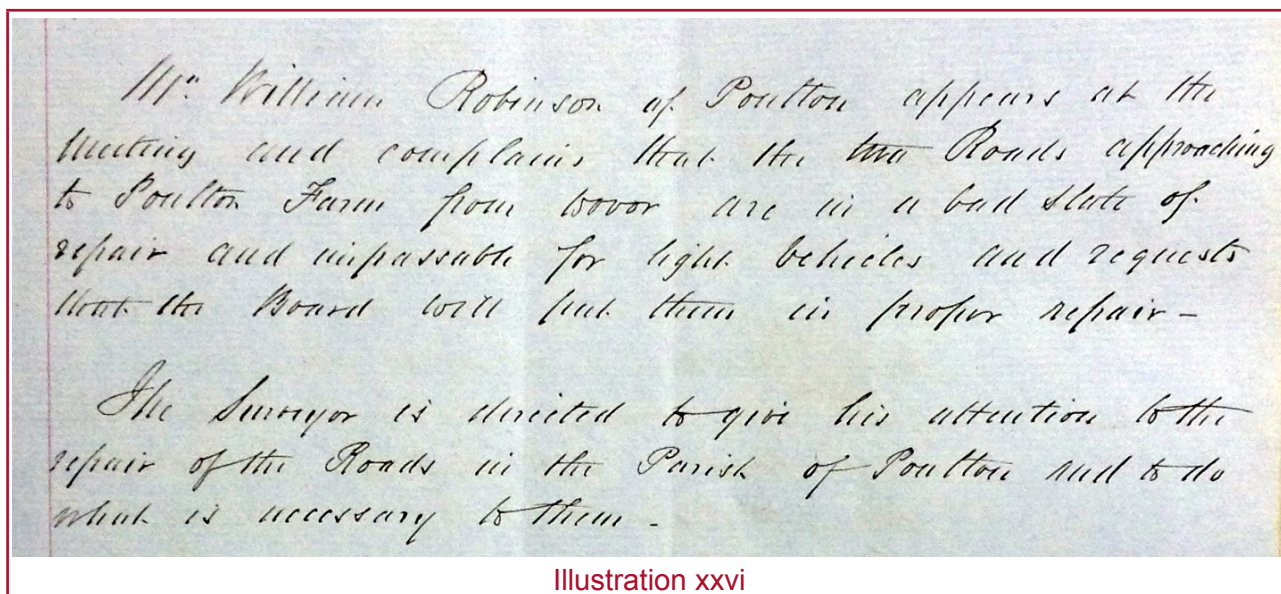


Illustration xxvi

Mr William Robinson of Poulton appears at the Meeting and complains that the two Roads approaching to Poulton Farm from Dover are in a bad state of repair and impassable for light vehicles and requests that the Board will put them in proper repair—

The Surveyor is directed to give his attention to the repair of the Roads in the Parish of Poulton and to do what is necessary to them.

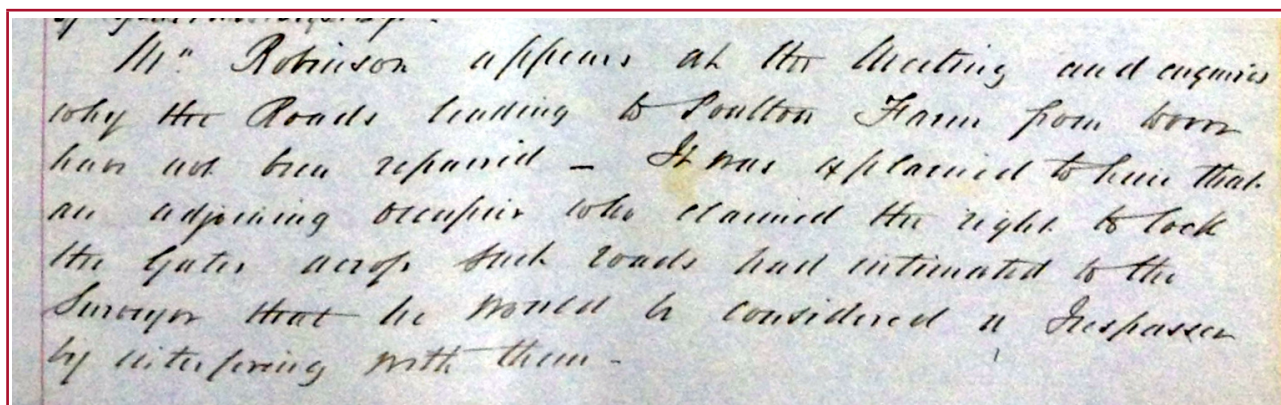
I.6. The ‘two Roads approaching to Poulton Farm from Dover’ must be Coombe Road, via C–Q–P, and that via S–R–Q–P (whether approaching S via the ridge of Whinless Down, now footpath EB5/ER192, or via Elm Vale Road and Back Lane). While there is some evidence of a bridle road from St Radigund’s Abbey (now footpath ER189),

¹² Volume 1: HB/W1

¹³ P.55

Robinson's reference to 'light vehicles' rules out a bridle road (and the route from Dover via the abbey is circuitous and involves unnecessary ascent).

I.7. On 14 January 1864¹⁴:



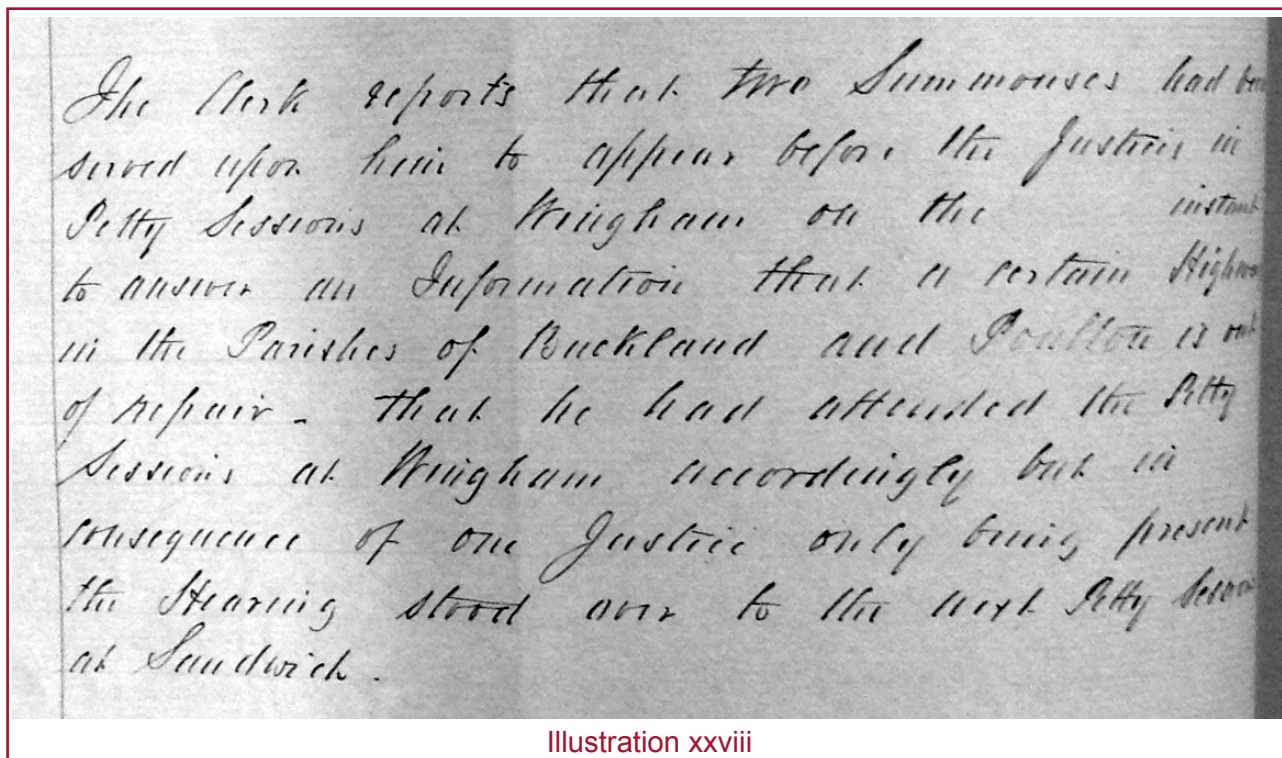
Mr. Robinson appears at the Meeting and enquires why the Roads leading to Poulton Farm from Dover have not been repaired — It was explained to him that an adjoining occupier who claimed the right to lock the Gates across such roads had intimated to the Surveyor that he would be considered a trespasser by interfering with them.

Illustration xxvii

Mr Robinson appears at the Meeting and enquires why the Roads leading to Poulton Farm from Dover have not been repaired — It was explained to him that an adjoining occupier who claimed the right to lock the Gates across such roads had intimated to the Surveyor that he would be considered a trespasser by interfering with them.

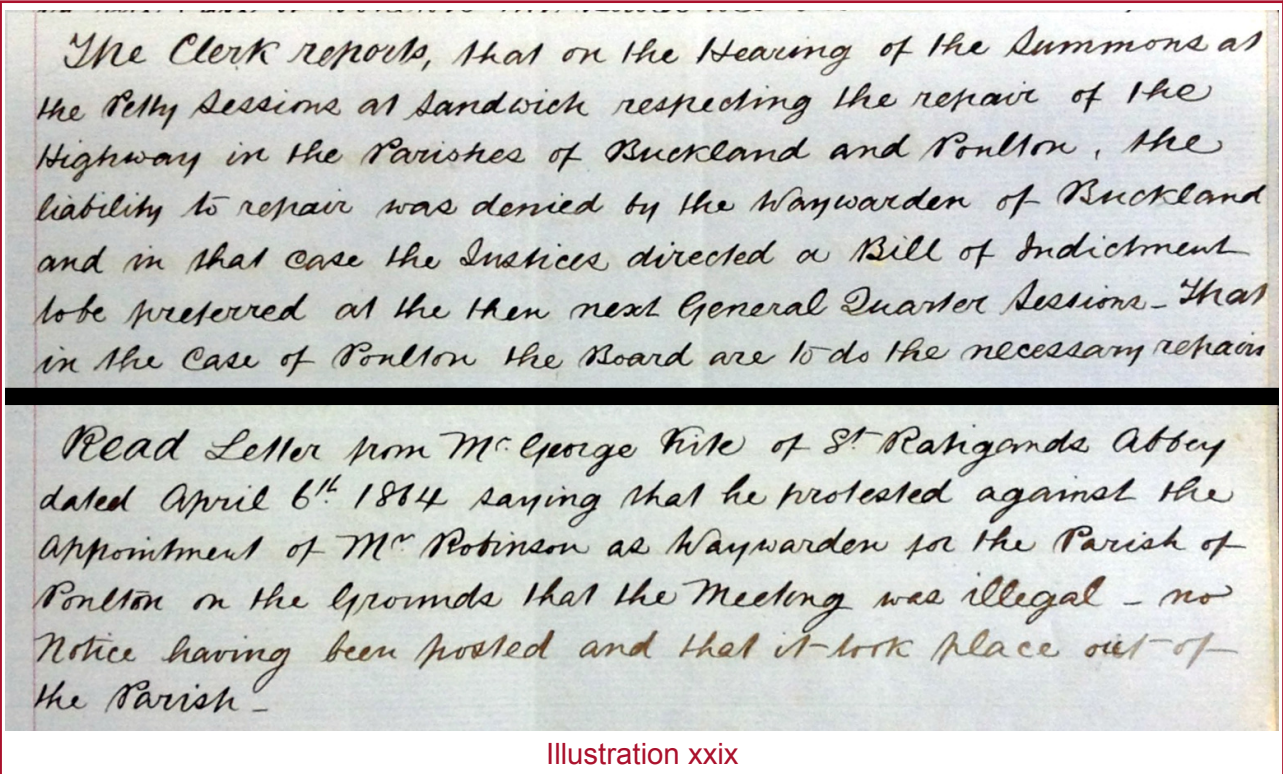
I.8. The adjoining occupier who locks gates across such roads appears to be a reference to the occupier of Coombe Farm: see the minute of 14 July 1864 at para.I.12 below below.

I.9. On 10 March 1864¹⁵:



The Clerk reports that two Summonses had been served upon him to appear before the Justices in the Petty Sessions at Wingham on the instant to answer an Information that a certain Highway in the Parishes of Buckland and Poulton is out of repair. That he had attended the Petty Sessions at Wingham accordingly but in consequence of one Justice only being present the Hearing stood over to the next Petty Sessions at Sandwich.

I.10. 14 April 1864¹⁶:



The Clerk reports, that on the Hearing of the Summons at the Petty Sessions at Sandwich respecting the repair of the Highway in the Parishes of Buckland and Poulton, the liability to repair was denied by the Waywarden of Buckland and in that case the Justices directed a Bill of Indictment to be preferred at the then next General Quarter Sessions - That in the case of Poulton the Board are to do the necessary repairs

Read Letter from Mr George Kite of St Ratigunds Abbey dated April 6th 1864 saying that he protested against the Appointment of Mr Robinson as Waywarden for the Parish of Poulton on the Grounds that the Meeting was illegal - no Notice having been posted and that it took place out of the Parish -

Illustration xxix

The Clerk reports, that on the Hearing of the Summons at the Petty Sessions at Sandwich respecting the repair of the Highway in the Parishes of Buckland and Poulton, the liability to repair was denied by the Waywarden of Buckland and in that case the Justices directed a Bill of Indictment to be preferred at the then next General Quarter Sessions. That in the case of Poulton the Board are to do the necessary repairs.

...

Read Letter from Mr George Kite of St Ratigunds Abbey dated April 6th 1864 saying that he protested against the appointment of Mr Robinson as Waywarden for the Parish of Poulton on the Grounds that the Meeting was illegal — no Notice having been posted and that it took place out of the parish.

I.11. The acquiescence of the board in repairs to the way or ways in Poulton must relate to Coombe Road from Q through C as far east as the parish boundary with Buckland (Coombe Road formerly lay wholly in the parish of Poulton for about 2km east of C, a further 300m being jointly maintained, and a small part of about a further 300m wholly within the parish of Buckland). And to the application way between Q and R (the application way between P and R was jointly maintained by Poulton and Hougham parishes, and between R and S wholly maintained by Hougham parish). The portions of the application ways under Robinson's complaint must therefore comprise the whole of Coombe Road (including Q–C) together with Q–R.

I.12. On 14 July 1864¹⁷:

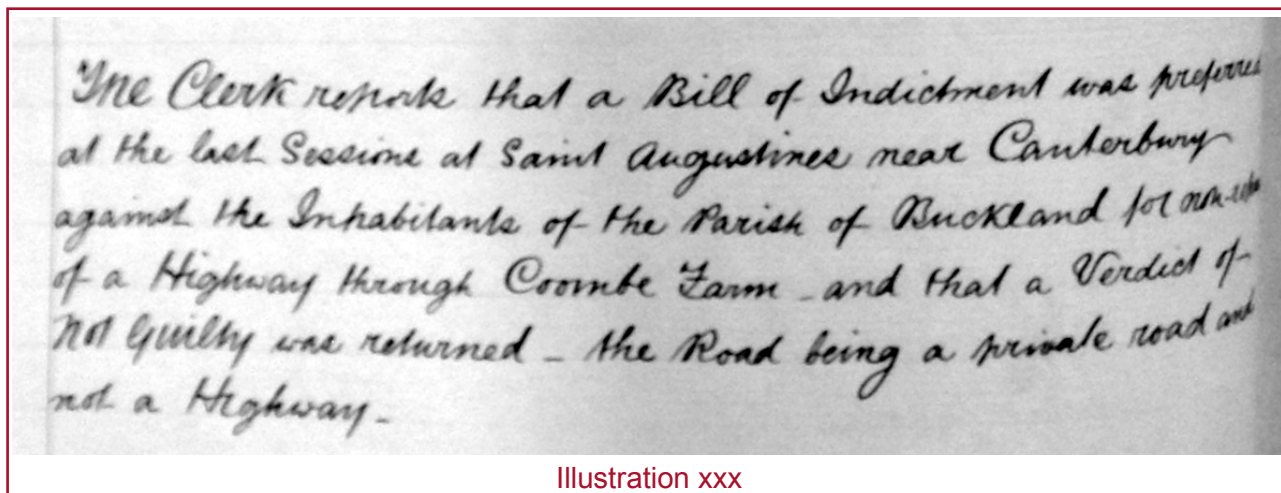


Illustration xxx

The Clerk reports that a Bill of Indictment was preferred at the last Sessions at Saint Augustine near Canterbury against the Inhabitants of the Parish of Buckland for non-repair of a Highway through Coombe Farm — and that a Verdict of Not Guilty was returned — the Road being a private road and not a Highway.

I.13. For discussion of the trial, see The Buckland highway case (item IV.J below).

I.14. On 26 October 1865¹⁸:

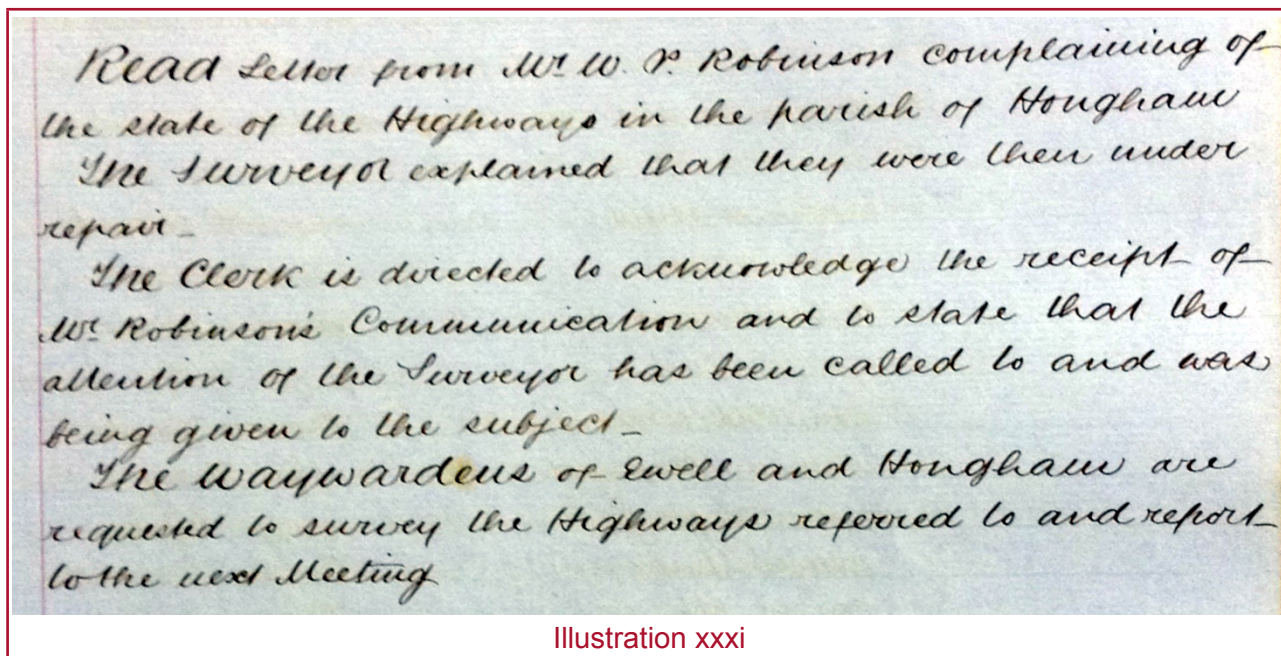


Illustration xxxi

Read Letter from Mr W P Robinson complaining of the state of the Highways in the parish of Hougham.

The Surveyor explained that they were then under repair.

17 P.85

18 P.116

The Clerk is directed to acknowledge the receipt of Mr Robinson's Communication and to state that the attention of the Surveyor has been called to and was being given to the subject.

The Waywardens of Ewell and Hougham are requested to survey the Highways referred to and report to the next Meeting.

I.15. It seems that the complaint related partly to ways within the parish of Poulton (see the following minute of 14 December 1865 at para.I.16 below), and that the waywarden of Ewell was appointed to investigate as Robinson was himself the waywarden for Poulton.

I.16. On 14 December 1865¹⁹:

The Clerk read the Report of the Waywardens of Ewell and Hougham as to the state of part of the Highways in the parishes of Hougham and Poulton, complained of by W. L. Robinson, as follows:

"To the Chairman of the Wingham Highway Board

"Sir,

"It being the wish of the Board of Waywardens that we the undersigned should send in a Report as to the state of that part of the Roads complained of by W. L. Robinson, in the parishes of Hougham and Poulton. We have surveyed the said Roads and find that part of the Road in Hougham impassable in consequence of the late heavy rains, the Hedges want brushing very much.

The Upper and Lower Poulton Road require the Water Tables cleaned out and about a dozen loads of Stones put in the Ruts at different places, the Stones that are broken ought to be examined by the Surveyor (a Deputy) before being put on the Roads that he may know whether they are broken or not.

"Dated Nov. 6th 1865

(signed) W^m Robinson } Waywardens
(") Daniel Tapley }

Resolved, that the Report be received and entered in the Minutes of the Proceedings of the Board

The Clerk is directed to write to Messrs John Horton and William Bromley of Church Hougham and request them to brush their Hedges

Illustration xxxii

The Clerk read the Report of the Waywardens of Ewell and Hougham as to the state of part of the Highways in the parishes of Hougham and Poulton, complained of by Mr W P Robinson, as follows:

“To the Chairman of the Wingham Highway Board

“Sir

“It being the wish of the Board of Waywardens that we the undersigned should send in a Report as to the state of that part of the Roads complained of by Mr W P Robinson, in the parishes of Hougham and Poulton. We have surveyed the said Roads and find that part of the Road in Hougham impassable in consequence of the late heavy rains, the Hedges want brushing very much.

“The Upper and Lower Poulton Road require the water tables cleaned out, and about a dozen loads of stones put in the Ruts at different places, the Stones that are broken ought to be examined by the Surveyor (or Deputy) before being put on the Roads that he may know whether they are broken or not.

“Dated Nov 6th 1865

(signed) Wm Robinson	}	Waywardens
(signed Daniel Tapley	}	

Resolved, that the Report be received and entered in the Minutes of the Proceedings of the Board.

The Clerk is directed to write to Messrs. John Horton and William Bromley of Church Hougham and request them to brush their Hedges.

I.17. The ‘Upper and Lower Poulton Road’ are not otherwise identified, but presumably are the same roads in Hougham and Poulton referred to in Robinson’s original complaint of 12 November 1863 at para.I.5 above, *i.e.* Coombe Road via C–Q–P, and S–R–Q–P.

I.18. On 24 January 1867²⁰:

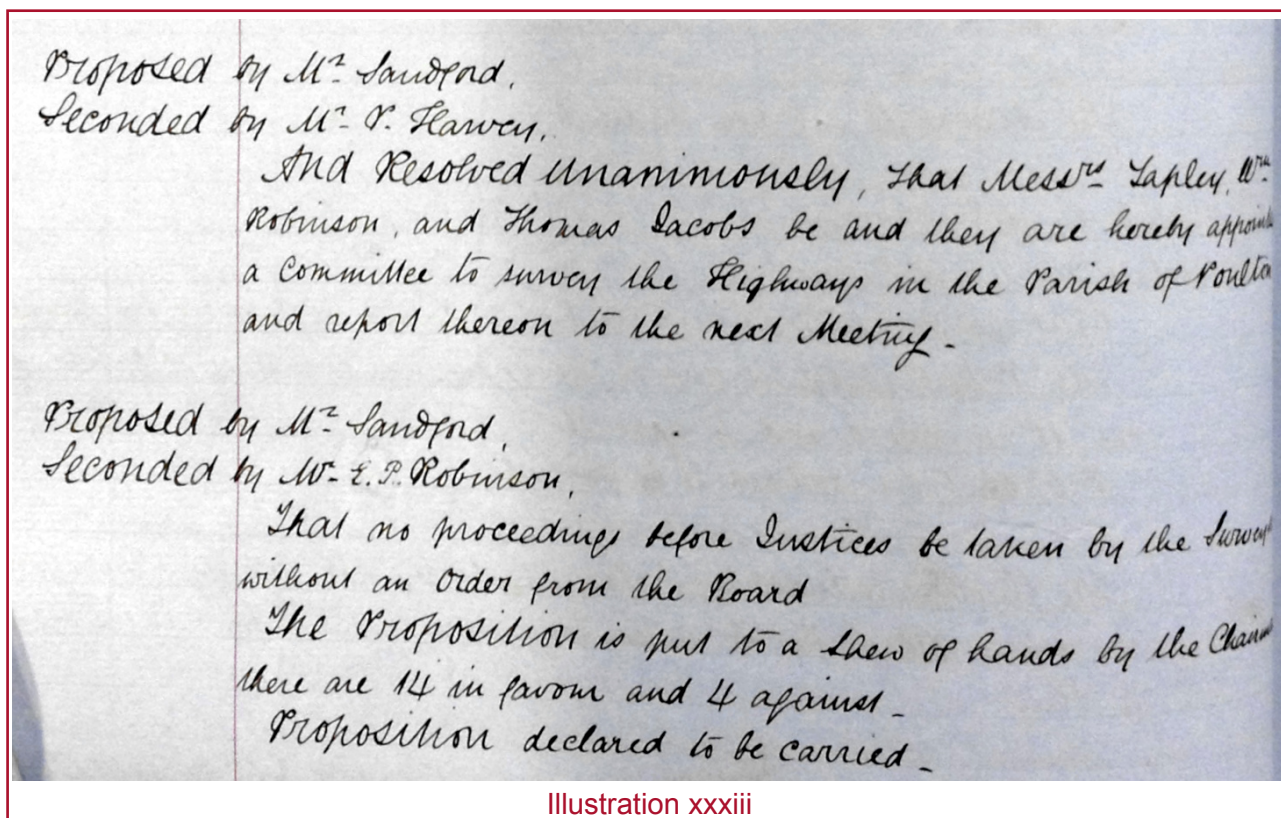


Illustration xxxiii

Proposed by Mr Sandford

Seconded by Mr P Harvey

And Resolved Unanimously, that Messrs Tapley, W^m Robinson, and Thomas Jacobs be and they are hereby appointed a committee to survey the Highways in the Parish of Poulton and report thereon to the next Meeting.

Proposed by Mr Sandford

Seconded by Mr E P Robinson

That no proceedings before Justices to be taken by the Surveyor without an Order from the Board.

The Proposition is put to a shew of hands by the Chairman, there are 14 in favour and 4 against.

Proposition declared to be carried.

I.19. On 28 February 1867²¹:

20 P.141

21 P.143-5

First part

Read Report of Committee appointed at the last Meeting to survey and report as to the state of the Highways in the parish of Poulton as follows: -

(Copy)

The Board of Waywardens of the Wingham District gentlemen,

We the undersigned being appointed at a Meeting of Waywardens at Easting on Thursday the 24th day of Jan last to inspect a road complained of by Mr E. P. Robinson in the parish of Poulton, and beg to say that on

the 29th of Jan'y we inspected the said Road and found in several places the Road cut through by the traffic, and in a bad state, we are of opinion that a quantity of Stones are required to repair it, if not it will soon be impassable

Yours faithfully

(signed) Wm Robinson

(") Thomas Jacob

(") Daniel Tapley

Ordered, that the Surveyor's attention be given to the repair of the Highways referred to in the Report -

Read Memorial from Ratepayers in the parish of Poulton as follows: -

(Copy)

Poulton, Feby 20th 1867

To the Board of Waywardens of the Wingham District gentlemen,

We the undersigned Ratepayers of the Parish of Poulton beg most respectfully to call your attention to the following matter -

The Road from Buckland to Poulton Farm by Coombe Farm, appears from a late legal decision to be in part a private Road, namely, that part as belongs to, and which passes through Coombe Farm in the parish of Buckland

Illustration xxxiv

Second part

Therefore that part of the Road which passes through Coombe Farm, being in this position, it is impossible for the Public to avail themselves of a passage to, or on the road leading, as may be expressed, from Coombe to Poulton without committing a trespass. And the public have been prevented from passing that way by having the Gate at Coombe Farm locked against them. Yet the Parish of Poulton is called upon to keep this Road (situated in Poulton) in repair and during the last 3 years at a most alarming expense, and we beg to add in a great degree an unnecessary expense -

We therefore with due respect beg to request that you will take this matter into your consideration, and give us that relief which in your judgment these circumstances call for -

And we remain
Gentlemen,

Your most obedient Servants
(signed) Geo: Kite
Chat. Elwin
Geo: Gale
W. Tremblett
M. Brockman
Luke Marsh
Charles T. White
Ann Friend
William Parker

The Clerk is directed to acknowledge the receipt of the Memorial and to state that the Parish having admitted their liability the Board are bound to do the repairs but that if any expenses are incurred which ought not to be the Parish have the right of appeal to the Court of Quarter Sessions -

Illustration xxxv

Read Report of Committee appointed at the last Meeting to survey and report as to the state of the Highways in the parish of Poulton as follows:—

(Copy)

The Board of Waywardens of the Wingham District

Gentlemen

We the undersigned being appointed at a Meeting of Waywardens at Eastry on Thursday the 24th day of [?] last to inspect a road complained of by Mr E P Robinson in the parish of Poulton, and beg to say that on Tuesday the 29th of January we inspected the said Road and found in several places the Road cut through by the traffic, and in a bad state, we are of the opinion that a quantity of Stones are required to repair it, if not it will soon be impassable.

Yours faithfully

(signed) Wm Robinson

(“) Thomas Jacob

(“) Daniel Tapley

Ordered that the Surveyor's attention be given to the repair of the Highways referred to in the Report.

Read Memorial from Ratepayers in the parish of Poulton as follows:—

(Copy)

Poulton, Feby 20th 1867

To the Board of Waywardens of the Wingham District

Gentlemen

We the undersigned Ratepayers of the Parish of Poulton beg most respectfully to call your attention to the following matter.

The Road from Buckland to Poulton Farm by Coombe Farm, appears from a late legal decision to be in part a private Road, namely, that part as belongs to, and which passes through Coombe Farm in the parish of Buckland.

Therefore that part of the Road which passes through Coombe Farm, being in this position, it is impossible for the public to avail themselves of a passage to, or on the road leading, as may be expressed, from Coombe to Poulton without committing a trespass. And the public have been prevented from passing that way by having the Gate at Coombe Farm locked against them. Yet the Parish of Poulton is called upon to keep this Road (situated in Poulton) in repair and during the last 3 years at a most alarming expense, and we beg to add in a great degree an unnecessary expense.

We therefore with due respect beg to request that you will take this matter into your consideration, and give us that relief which in your judgment these circumstances call for.

And we remain

Gentlemen

Your most obedient Servants

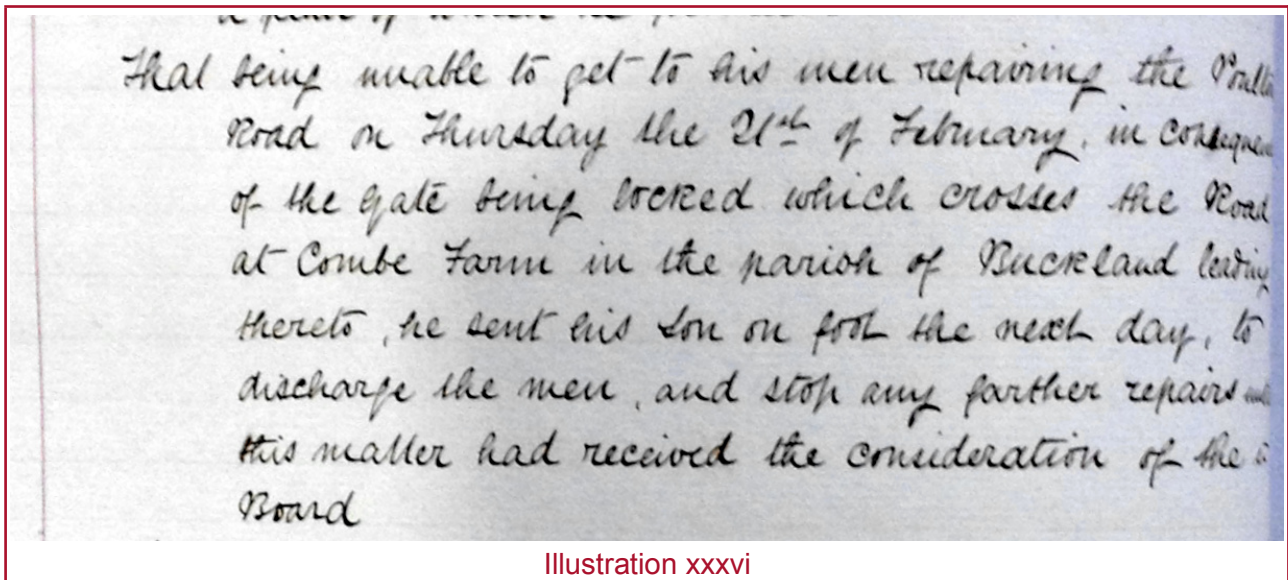
(signed)

Geo. Kite
Chas Elwin
Geor. Gale
W. Trembleth
M. Brockman
Luke Marsh
Charles J White
Ann Friend
William Parker

The Clerk is directed to acknowledge the receipt of the Memorial and to state that the Parish having admitted their liability the Board are bound to do the repairs but that if any expenses are incurred which ought not to be the Parish have the right of appeal to the Court of Quarter Sessions.

I.20. The memorial from certain ratepayers of Poulton relates to Coombe Road, and recites the odd position that the court had, in June or July 1865, found that Coombe Road through Coombe Farm in Buckland was not a publicly-maintainable highway, but that the parish of Poulton had always admitted that the majority of Coombe Road was so maintainable. The coincidence of the memorial and the investigation of the waywardens, reporting a week later, suggests that the report of the waywardens also related to Coombe Road.

I.21. On 28 February 1867²²:



The Surveyor's Report is read by the Clerk as follows:—

Wingham Highway District

Report of the Surveyor the 28th of Feby 1867

...

That being unable to get to his men repairing the Poulton Road on Thursday the 21st of February in consequence of the Gate being locked which crosses the Road at Combe Farm in the parish of Buckland leading thereto, he sent his son on foot the next day, to discharge the men, and stop any farther repairs until this matter had received the consideration of the [?] Board.

I.22. The surveyor reports his exasperation that he was unable effectively to maintain Coombe Road (described as 'the Poulton Road') owing to it being inaccessible from Dover. The surveyor sought further instructions from the board, but none was recorded. It seems likely that the board was content to abstain from further works given the circumstances.

I.23. **Conclusion:** The minutes of the Wingham Highway Board provide convincing evidence that both Coombe Road (including the application way Q–C) in the former parish of Poulton, and the application way P–Q–R–S in the parish of Hougham, were recognised as maintainable by the inhabitants of the parish, and so by the board. Robinson's reference to 'light vehicles' removes any doubt that he, and the board, were solely concerned with the maintenance of carriageways.

I.24. **Points:**

Q–C: 5
P–R: 5
R–S: 5
H–R: 0

J. The Buckland highway case

J.1. **Date:** 1864

J.2. **Source:** local newspapers²³

J.3. **Description:** In the *Kentish Gazette*²⁴, a brief report is given of the Buckland highway case in East Kent Quarter Sessions on 29 and 30 June 1864:

The Midsummer Quarter Sessions for East Kent were held, at St. Augustine's, on Tuesday. ... Indictment for refusing to repair a road in the parish of Buckland. — This indictment was preferred by Mr. Robinson, of Poulton Farm, against Messrs. Wm. Coleman and Edward Coleman, of the parish of Buckland, for allowing a road in that parish to get into a dilapidated and dangerous state. — Mr. Biron and Mr. Barrow appeared for the prosecution, and Mr. Russell and Mr. Kaye for the defence. — The road in dispute is a portion of one leading from Buckland to West Hougham. Some doubts appeared to exist whether the road was a public one or not. In the first place the parish authorities were called upon to repair it, and they pleaded that they were not liable, but that the Messrs. Coleman were in consequence of a clause in an agreement under which they held their land. The cause occupied the remainder of the day, a large number of witnesses being examined. It had not concluded when the Court rose.

Wednesday. ... The Buckland Highway Case. — This case was resumed this morning, and again occupied the Court several hours, no less than 14

²³ British Newspaper Archive

²⁴ 5 July 1864, p.8

witnesses being called for the defence, to prove that the road in dispute is not a highway. Mr. Russell also put in a lease of Coom [*sic*] Farm, covenanting that the tenant of that farm shall keep the road in repair and do all he can to prevent it being dedicated to the public. One of the defendants deposed that he had always had the road repaired at his own cost. The jury returned a verdict that the road is not a highway, and that the parish was not liable to keep it in repair. An order was made for the costs of both sides to be paid out of the rate of the parish.

A fuller account of the trial is given in the *Dover Telegraph*²⁵, as follows. A more detailed account of the first day of the trial is available from the *Canterbury Journal and Farmers Gazette*²⁶ — see appendix at p.67 below.

CHARGE OF MISDEMEANOUR AGAINST THE PARISH OF BUCKLAND, DOVER

At the East Kent Quarter sessions Canterbury, on Tuesday, Edward Coleman and William Coleman were indicted as the representatives of the parish of Buckland, with misdemeanour, in permitting a road leading from Buckland to Hougham, to get into a bad state of repair.

Mr Biron and Mr Barrow (Instructed by Mr Fox) appeared for the prosecution, and Mr Russell and Mr Kaye (instructed by Mr Emmerson) for the defence.

Mr Barrow, in opening the case to the jury, produced a plan of the road, and said that the parish was bound to repair the whole width of the road for some distance, and further on they were called on to repair half the width of the road. The parish were called on to repair this road and had refused. They were then served with a notice to repair, when they pleaded first not guilty; and, secondly, that the two defendants were the persons who are bound to repair it. They held land under an agreement to repair this road. He only mentioned this to show them the reason why the two defendants were charged with misdemeanour.

John Quested was examined by Mr Biron: I am a surveyor living at Dover. I have surveyed the road from the Borough of Dover to West Hougham. I made this plan. It is a representation of a road leading from the London Road in the parish of Buckland, Dover, to West Hougham. There is a turn leading to St Radigund's Abbey. I inspected the road the day before the last Quarter Sessions. It was in very bad repair. I have not seen it since then.

By Mr Russell: I have not surveyed the whole of the road from Dover to West Hougham. It runs about a mile south of Court farm. The distance from Dover to West Hougham is about 3 miles and a half. I have been from Dover to West Hougham, but I have never been by the road which I was called on to survey. I do not know whether the boundary of the parishes of Buckland and Poulton is the boundary between Coombe farm and Poulton farm.

Mr E P Robinson: I am the prosecutor in this case, and I occupy Poulton farm. The road goes through the parish of West Hougham, and leads to Folkestone. I have known the road for 20 years, and it has always been considered as a

25 2 July 1864

26 2 July 1864

public highway; and I have always heard the road spoken of as such. I have been along the road thousands of times, and have never been disturbed. There are six gates on the road between Buckland and West Hougham. There are two gates on the portion in dispute. The gates have never been locked when I have gone along. From this plan and all maps that I have seen, the boundary runs in the centre of the road. For two years and a half I have known that the Poulton Surveyor has repaired one half of the road, and Buckland repaired the other half. Mr Coleman, a fortnight ago, repaired a portion of this road.

By Mr Russell: The parish boundary divides Poulton farm from Coombe farm. I know there are two gates now in the road. I have never heard of the gates being locked nor persons being turned back. I have been told by Mr Coleman that that it is not a public road. I have been told by Mr Smith, my predecessor, that Mr Coleman claimed the road as a private one. I have seen men employed by the surveyor of the parish of Buckland repairing the road. It might be because he was tenant of Coombe farm. I met Stephen Palmer in 1862 with some sheep, and told him it was a private road and he had no business there. I have repaired the road at the expense of the parish. I did not repair them at my own liability, and then apply for the money. The waywarden said that the road was a private one, but he found by the books that it was a public road.

By Mr Barrow: When I stopped Palmer he was a mile and a half from any portion of it. He said "Neither you nor all belonging to you can stop me; it is a public road, always has been, and always will be."

Thomas Robinson, examined by Mr Biron: I am an alderman of the borough of Dover. I know all the gates on this road. I have never found them locked. If they had been locked I should have done all in my power to pull them down. No one has ever disputed my right to pass.

By Mr Russell: I have had to do with this road. I have not been through there during the last two years and a half. I remember one gate being there; the one at the bottom of the hill.

Issac Whitnall, examined by Mr Biron, said he had lived in the parish of Buckland for fifty years. He knew the road in question, and he believed it to be a public road. He had been along the road several times, and had never been stopped there. There were two gates, one near Combe and one near Poulton. He knew the turning to St Radigund's Abbey. There was a gate there, which was never locked.

By Mr Russell: I was churchwarden of Buckland for seven years. I used to go along there at night for illicit trading. The road is a private one for private purposes. I have been along the road fifty times in fifty years.

William Rouse, examined by Mr Barrow, said he was fifty-nine years old. He had known this road forty-seven years.

By Mr Russell: I know Steven Palmer. Coming along the road about two years ago, I did not tell him that it was a private road. I told him I understood it was not a highway.

By Mr Barrow: Mr Holmes, who is dead, said twenty years ago that it was a private high-road.

John Richards, examined by Mr Biron, said he lived at Tower Hamlets. From 1834 to 1850 he worked for Mr Gorely. He used to go along the road in question from Buckland. He was never warned off. He never found the gates locked. The horses he used on the Poulton land were kept at Dover.

By Mr Russell: Mr Going held part of Poulton farm. He carried a portion of his corn by a road leading by Diggle's Tower towards Charlton. There was another road which ran across Poulton farm into the other road passing by Diggle's tower. That road had been out of use for years

Charles Holloway, examined by Mr Biron: He had known the road since 1831; had gone through the road constantly, and had never been warned off. He never knew the gates to be locked.

Daniel Dawkins, examined by Mr Barrow; He had known the road in question for thirty years. He was never stopped by anyone, nor did he find the gates locked.

William East, examined by Mr Biron, had known the road fifty years, and was in the habit of going along the road.

William Mattson was a farmer living at Buckland, and had used the road for fifty years. He had never found a gate locked but once. That was the lower gate, and he went to Mr Norton, the surveyor of the roads, who told him to pull it down, and he did so. Witness expected he should have had to go to gaol for pulling down the gate, that he had heard nothing since of the matter.

Mr Barrow having stated that this concluded the case on the part of the Crown.

Mr Russell proceeded to address the jury on the part of the defendants. The chief points of his argument were that the road in question never was anything but an accommodation thoroughfare for the convenience of the occupiers of Coombe and Poulton farms; that no delegation of the road had been made by the owners of it to enable it to be used by "any of her Majesty's subjects," as was argued on the other side; and that the parish had never been called upon to put it in repair.

At the conclusion of the address, the further hearing of the case was adjourned until Wednesday, when the case was resumed. The first witness called for the defence was:

John Cheeseman, who said he was a Surveyor, residing at Buckland. The plan produced was made by him. The road for a short distance laid through Coombe farm, and further on it laid partly in Coombe farm and partly in Poulton farm; going further on it laid wholly in Poulton farm. The boundary of the farm is the boundary of the parish. This road is an open road, after passing the second gate. He had marked a road which had been ploughed up. That used to go into the road that leads now by Diggle's tower into Charlton and Dover. That is a copy of a portion of the Ordnance map. The road pointed to is a continuance of the road in question towards West Hougham. A portion of the road is ploughed up. In 1849 he was parish Surveyor for the Parish of Buckland. He was well acquainted with the public roads during his year of office. He measured all the roads. He measured for the magistrates return. He did not take into his admeasurement the road in question. He had always understood the road to be an occupation land for Coombe farm, and could not say whether it was for Poulton farm. He had never repaired it as a parish road, nor

had never known it to be repaired by the parish surveyor. He had known the road for 25 years. It had not been repaired by anyone. He knew a little about the parish of Poulton, but did not know what the extent of the Poulton farm is.

By Mr Barrow: There are parish books in which the repairs are entered. They are submitted to the parish once a year.

John Pearce, examined by Mr Kaye: I have lived in the parish of Buckland 34 years. I was surveyor of highways about 30 years. I was surveyor to the parish of Buckland for one year. Mr Fuller succeeded me. I know this road. A road beyond Coombe farm we considered an occupation farm. We never repaired the road further than the turning leading to the Abbey. I have never known the road repaired by the parish. I always understood the road to be a private road. I knew Mr Finn to be a tenant of Coombe farm. He was tenant about 15 or 16 years, perhaps longer. I remember his putting stones on this road sometimes to carry out his manure. I know that he locked the gate. I have known people to go that road, but it was not right. It was not a road fit to use. There was an old road down by Diggle's Tower. The road marked on the plan produced is the one. I recollect that road being used, and recollect its being ploughed up. That was between 20 and 30 years ago. I cannot say whether it was used or not.

By Mr Barrow: The parish repaired the road to the turning. I cannot swear whether Finn was the surveyor at the time he altered the road. There were no books kept in the parish at the time I was there. I have never known people to go from Buckland to Hougham that way. I know a person named Stanley was stopped.

By Mr Russell: Mr Standen lives at Buckland.

By the court: I have seen the gate locked when Finn lived there.

Benjamin Fuller: I lived at Buckland 36 years. In 1836 I was appointed surveyor of the Highway, and served 2 years. Mr Finn occupied Coombe farm. I always considered the Road a private road. During the time I was surveyor I never repaired this road as a parish surveyor. I have never known the road to be repaired by the parish surveyors. I know the gates. They have never been locked to my knowledge. I seldom go that way. I never saw that road repaired. Thomas Hatton, examined by Mr Kaye: I have lived in Buckland nearly all my life. I was surveyor from 1842 to 1848. I always considered this road to be a private road. It was never repaired by the parish when I was surveyor. I have never known anybody repair the road.

Edward Pilcher Coleman was occupier of Coombe farm. He entered on the farm at Michaelmas, 1845. The lease produced is the one entered into.

Mr Russell proposed to put the lease in evidence.

Mr Barrow objected to this on the ground that the lease, being in favour of the defendants, could not be put in.

Mr Biron followed on the same side, and objected on the ground that the public were not parties to the lease, and could not be bound by it.

Mr Russell, in reply, contended that he could put in the lease in order to prove that there had not been any dedication of the road to the public. With regard to the question of the public being no party to the lease, that was not necessary.

Mr Kaye, on the same side, said the lease was admissible as being a statement which brought a burden on them.

The chairman considered that the lease was the strongest evidence which the defendant had, and he could not shut it out.

Mr Russell read the lease, and then proposed to put in one between Mrs Horne and Mr Finn.

Mr Barrow objected on the same ground.

The chairman asked where it came from, and whether from a proper course; but as Mr Russell could not prove that he came into possession through any channel from the landlord, he held it could not be admissible.

Witness continued: I have repaired the gates. The gate "B" on the plan is not out of repair, but the other was for some time, and I repaired it. I have given my bailiff orders occasionally to lock the gates. I have during my tenure repaired the road. It had not been repaired by the parish of Buckland. I was surveyor of highways from 1850 to 1856. During those years I repaired the road at my own expense. There was not much traffic there. There are about 300 acres on Poulton farm in Poulton parish. There are between 600 and 700 acres of land in the parish of Poulton. There is a farm called St Radigund's Abbey, and there are about 300 acres in that. Persons going to the Abbey would not come along the road.

By Mr Barrow: my farm has about 200 acres. There is Coombe wood in it. There are words on the land. I have never heard land called Coombe pasture. The book produced is my highway book, in my own parish. It was not always put down; sometimes I entered it and sometimes I did not. There is an entry road to "C" and "A.R." That means up to the first road and down the road to the Abbey. There is an entry on 28th April, 1856 "road by Coombe pasture." That is the road near the Abbey. This is not Coombe pasture, but cow pasture. It is on Barton farm.

William Andrews, examined by Mr Kaye, was a labourer living near St Radigund's Abbey. He had lived there 40 years. He had worked on Poulton farm; knew the road through Coombe farm, which was a private farm. Knew Mr Gorley, and he was a tenant of Coombe farm.

William Godden, examined by Mr Russell, was living at St Radigund's Abbey. He had lived at Coombe farm, and Poulton farm. Mr Finn was tenant of Coombe farm. There are other gates on this road beside those at Coombe. When he lived there the gates were occasionally locked. He had found them locked many times when he wanted to go through. When Mr Finn was tenant of Coombe farm he repaired the road. Witness had been with him and he told him It was a hard case he was compelled to repair his road while the farms had public highways. The road was used very rarely indeed. He remembered when he was living with Mr Finn he came by Poulton farm with some sheep. He remembered Mr Mowl speaking to him then. He left Mr Wilson the landlord of the farm, and told him he had no business there. That road was a continuation of this very road. Witness asked where he should have gone and they told him up the hill. He asked his leave to go through, and after some hesitation he permitted him.

By Mr Barrow: Mr Finn thought it was hard that he should have to repair the road.

Stephen Palmer examined by Mr Kaye, was born at Hougham, and had lived there all his life. He lived with Mr Finn from 1831 till 1841. He remembered the gates being locked once while in his service. In 1862 he met Mr Robinson, jun. He spoke to him and told him he had no business there as that was not a high road. He replied that he thought it was. He had not been that way with stock or with a cart since.

By Mr Barrow: I did not say that I knew it was always a highway. I knew the gates were locked. Matson pulled the gates down before I was able. Mr Staine's waggoner was stopped, but he got through afterwards.

Thomas Johnson had lived with Mr Coleman for seven years. Mr Coleman gave him instructions to lock the gates one day every year, and he kept them locked.

By Mr Barrow: I never saw anyone come along the road when the gates were locked.

Richard Palmer, examined by Mr Kaye, was bailiff to Mr Coleman. He knew the gates in question. He had locked them ten or twelve times a year, and kept them locked for twenty-four hours each time; had sent persons back when the gates were locked several times. He recollected John Dennis coming along. He let him through and told him not to come again. He stopped Mr Wilson once.

By Mr Barrow: I saw Mr Wilson about eight months ago. Mr Robinson was with him.

Richard Smith said his father occupied Poulton farm from 1857 to 1862. He knew the road in question, and had always understood it was a private road. He twice tried to pass the road and found the gate locked. He went to Mrs Palmer and asked leave, which he obtained. He had seen Mr Coleman's men repairing it. He remembered Mr Wilson coming to him. He complained of the gate being shut, and he said it was a private road.

By Mr Barrow: My father lived at Poulton. I should get to Dover by going round the Elms.

John Dennis, examined by Mr Kaye, said that he was a labourer, at Charlton. He knew the road in question 16 or 17 years ago. He had been stopped before. After he had been stopped by Palmer he tried to get through, and if the gate was unlocked he went through.

Thomas Beer, examined by Mr Russell, knew the road in question. He had found the gates locked, and gone back.

Benjamin Terry, examined by Mr Kaye, was labourer at Buckland. He was stopped two years ago by Mr Palmer, who told him that there was no thoroughfare.

George Adams, examined by Mr Russell, was a butcher living at Dover. About 7 years ago he was stopped, and Mr Palmer let him through.

Mr Russell then summed up his evidence.

Mr Barrow replied upon the whole case.

The chairman summed up in favour of the defendants.

The jury returned a verdict of not guilty. This is equivalent to a verdict that the road is not a highway liable to be repaired by the parish.

The costs of both sides were ordered to be paid from the highway rate of the parish of Buckland.

Mr Russell strongly protested against this decision and it is probable it will be disputed in a superior court.

J.4. **Analysis:** The trial was an indictment of Buckland parish council for non-repair of Coombe Road leading through Coombe Farm. The trial turned on evidence both of public use as a highway, and of repair by the parish. There was little evidence of repair by the parish of Buckland, and the defendants presented testimony that gates on the way had from time to time been locked in the vicinity of Coombe Farm and that users had been turned back or allowed to continue with permission. The jury found for the defendant parish (*i.e.* that the way was not publicly maintainable)..

J.5. In *R v Inhabitants of Claxby*²⁷, the parish of Claxby was indicted for failure to repair a byway which crossed into, and back out of, the neighbouring parish of Normanby, and which that neighbouring parish declined to recognise as repairable by it. Coleridge J said that:

...the legal character and consequence of this verdict cannot depend on the greater and less use which may be made of the highway, still less on what may be done with regard to the continuing track in another parish.

J.6. **Conclusion:** Notwithstanding the verdict in relation to the parish of Buckland, Coombe Road was recognised by the parish of Poulton as repairable by the inhabitants, continued to be repaired by the parish as a highway, and by the twentieth century, had become established as a public road throughout, notwithstanding the verdict of the jury in the Buckland highway case (save that a small part in Poulton Close Business Park has been downgraded to a bridleway, there being substitute access via Poulton Close).

J.7. It may therefore be said that, before and after the trial, the parish of Poulton acknowledged and maintained that part of Coombe Road lying in the parish as publicly maintainable.

J.8. **Points:** 0

K. Order of exchange (glebe land)

K.1. **Date:** 1873

K.2. **Source:** National Archives²⁸

27 (1855) 24 LJ QB 223

28 MAF 14/13/1277



Illustration xxxvii

K.3. **Description:** S.5 of the Tithe Act 1842 permitted the Tithe Commissioners to make an order of exchange between glebe land and other land on the application of the incum-

bent of the living and with the consent of: the owner of the other land, the Ordinary (*i.e.* the bishop) and the patron of the living.

K.4. An order of exchange was made by the Tithe Commissioners on the application of the Rev C A Molony, R B Lawes, and with the consent of the Archbishop of Canterbury and the patron of the living.

K.5. The plan embodied in the order identifies the glebe land to be surrendered by the vicar edged green in the angle between Elm Hill and Back Lane. The application way R–S is colour-washed in sienna, as are various other roads in the parish of Hougham.

K.6. **Conclusion:** The use of sienna on the plan is consistent with its use on other public carriageways in the parish. However, the road passing to the west of Elms Farm (now footpath ER204), while coloured sienna, is not known to have been a public road, and this suggests that the colouring may instead relate to ways which were metalled.

K.7. No conclusion therefore can be drawn from the map.

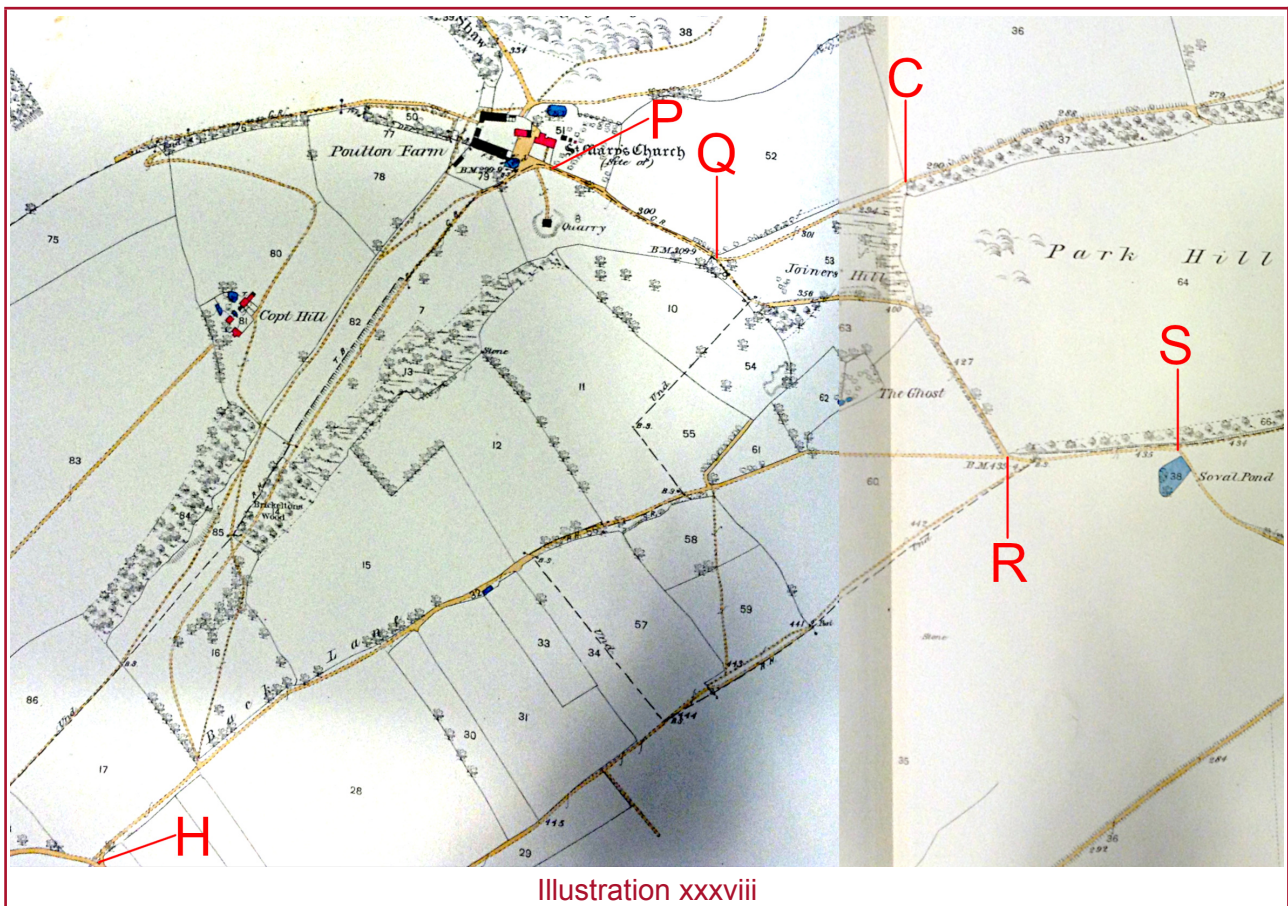
K.8. **Points:** 0

L. Ordnance Survey County Series 25-inch maps

L.1. **Date:** various

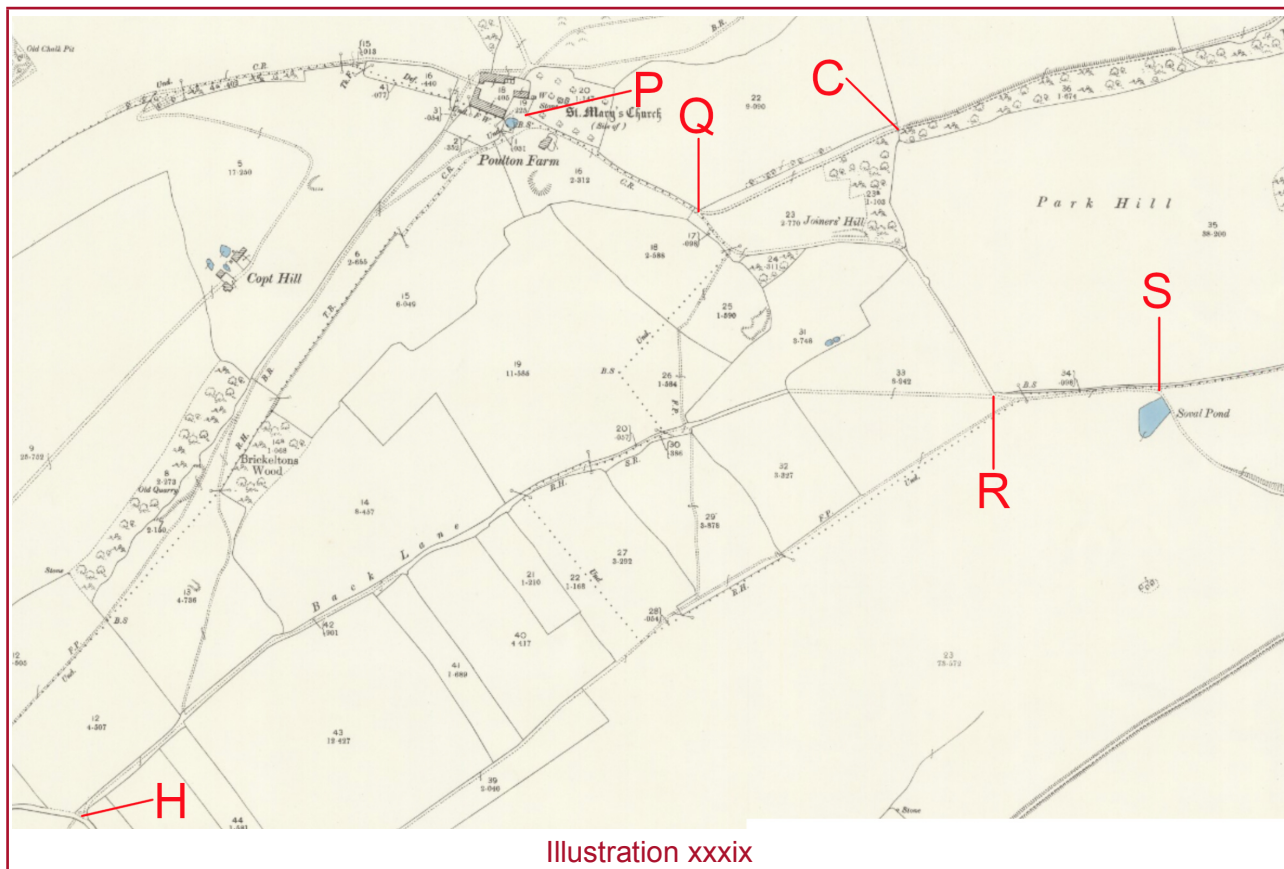
L.2. **Source:** British Library, National Library of Scotland²⁹

County Series revised first edition 25" map (revised: 1872)

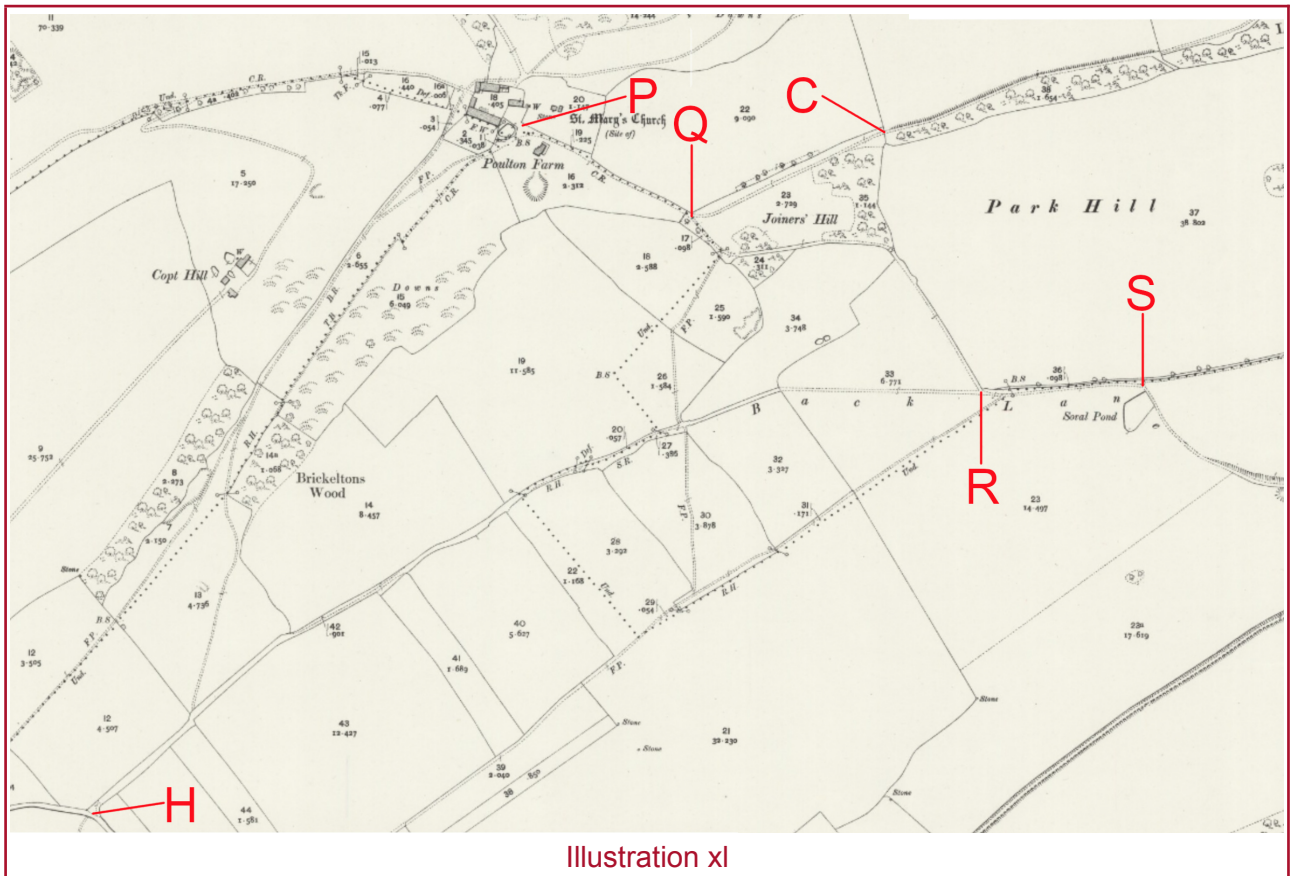


29 Via maps.nls.uk/os/25inch-england-and-wales/kent.html, sheet LXVII/16.

County Series second edition (surveyed: 1896)



County Series third edition (surveyed: 1906)



County Series fourth edition (surveyed: 1938)

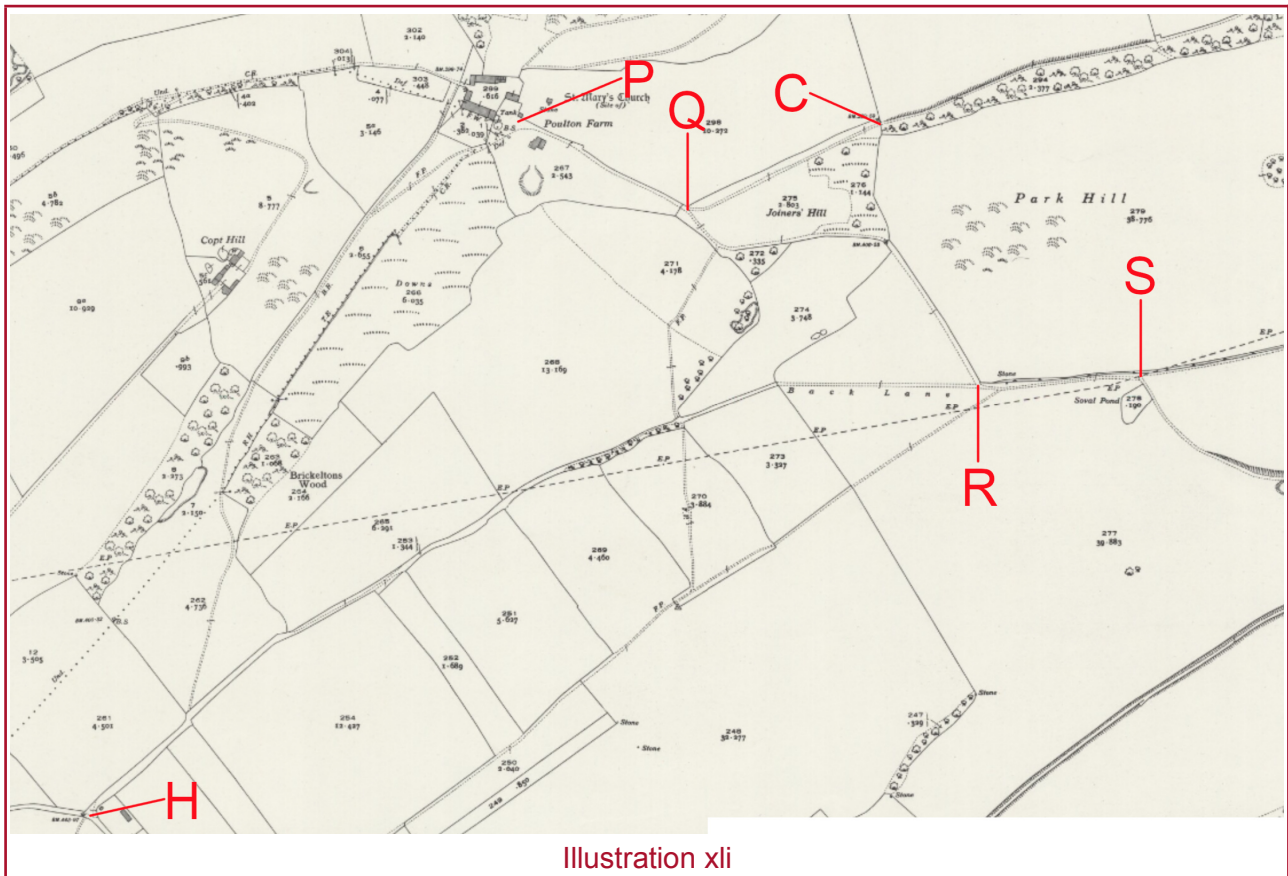


Illustration xli

L.3. **Description:** Original scale: 1:2,500 (twenty five inches to one mile); orientation: unchanged (north is top).

L.4. The Ordnance Survey published in the County Series the first national mapping of England at a large scale of six and twenty-five inches to one mile. Coverage of Kent was in four successive editions. All four editions show the application ways in their entirety.

L.5. Colouring in sienna on the first edition map indicates that the application ways were metalled³⁰. This map was revised in 1872 and the numbering of parcels changed: no area book has been traced corresponding to this revised sheet.

L.6. On the second series map, the way between Q and C is shown with one side of the casing of the road shaded, suggesting a road which is kept in repair.³¹

L.7. **Conclusion:** The Ordnance Survey County Series maps consistently show the presence of the application ways. The metalling of the ways recorded on the first edition map is consistent with the ways being public roads. The maps consistently identify the parish boundary (which then divided Hougham from Poulton) between P and Q, and continuing part way to R, as 'C.R.' — lying along the centre of the road.

³⁰ '*Carriage drives* were tinted sienna on 1:2500 sheets produced before about 1880, and again from 1884 onwards... (SC, 25:6:1884) This instruction was presumably cancelled after 1889 or so.' *Ordnance Survey Maps—a concise guide for historians*, 3rd ed., Richard Oliver. However, in practice, it seems that colouring was not restricted only to 'carriage drives', but any road or path which was metalled: see *Roads on OS 1:2500 plans 1884–1912*, Yolande Hodson, *Rights of Way Law Review*, s.9.3.107 at 110.

³¹ *Roads on OS 1:2500 plans 1884–1912*, Yolande Hodson, *Rights of Way Law Review*, s.9.3.107.

L.8. The representation of the way between Q and C as shaded might indicate either a private carriage or public road which is kept in repair. But if it were a private road, one would expect the shaded casing to continue to Poulton Farm (P) and it does not. Instead, the casing begins at Q on Coombe Road and continues east through C towards Dover: this suggests that the casing was applied to Coombe Road because it was a public road kept in good repair, and not because it was a private carriage road.

L.9. On neither the second nor the third edition is any of the application ways annotated as 'F.P.' or 'B.R.' (*i.e.* footpath or bridle-road), notwithstanding that many neighbouring tracks and paths are so annotated.

L.10. **Points:**

Q-C: 2

P-R: 0

R-S: 0

H-R: 0

M. Dover Rural District Council

M.1. **Date:** 1898–99

M.2. **Source:** Kent County Archives³²

M.3. **Description:** Between 1898 and 1899, the Dover Rural District Council — the then highway authority for all but the county (*i.e.* main) roads in Kent — responded to a series of accusations by A Long that highways in the vicinity of Poulton had been stopped up by the proprietor, Major Lawes. In addition, in late 1898, the council decided to respond to an invitation from the county council to identify roads which were unsuitable to traction engines, by nominating a list of such ways including various ways servicing Poulton.

M.4. The transactions are recored in the minutes of the council.

M.5. The minutes record that on 19 May 1898³³:

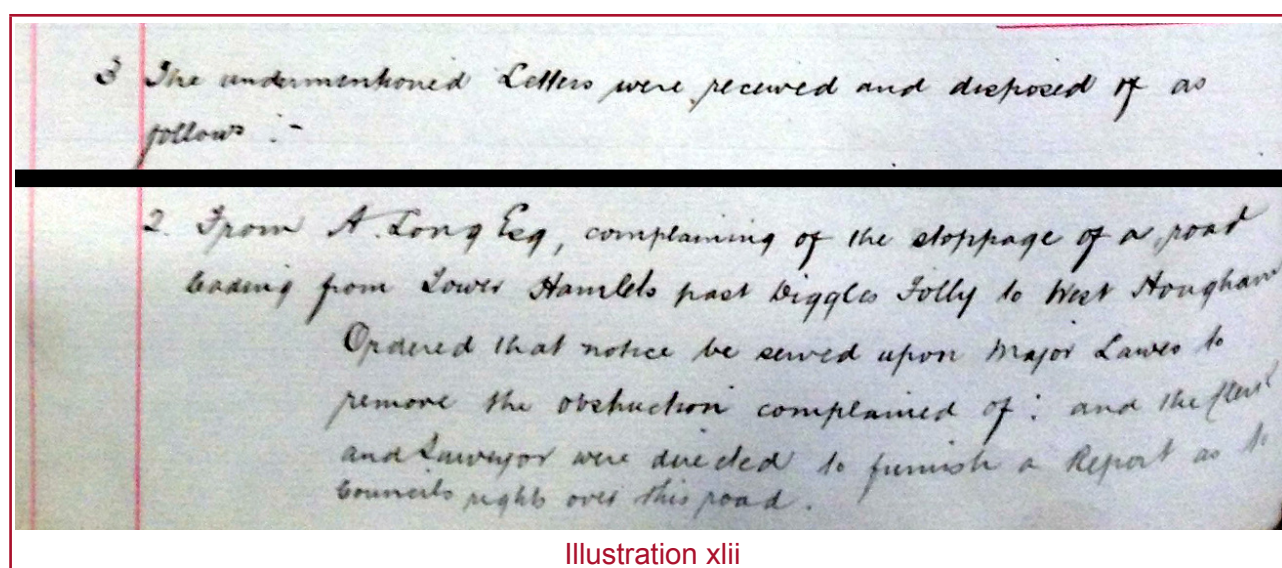


Illustration xlii

32 , Volume 2: RD/Do/Am2

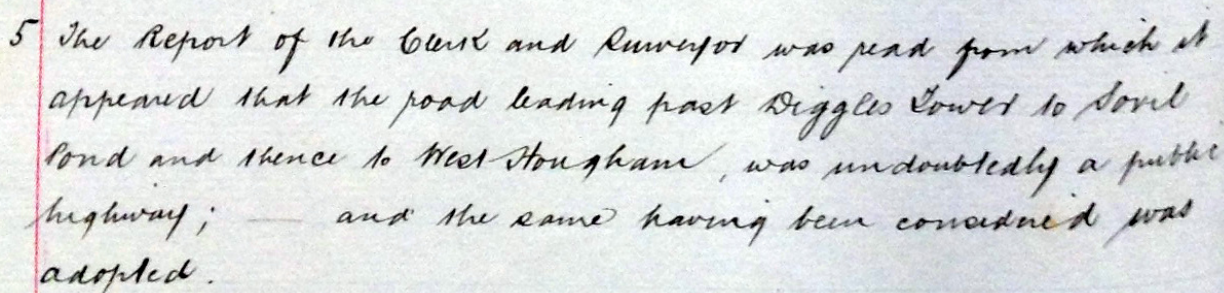
33 P.299

3/2 From A. Long Esq, complaining of the stoppage of a road leading from Tower Hamlets past Diggles Folly to West Hougham.

Ordered that notice be served upon Major Lawes to remove the obstruction complained of: and the Clerk and Surveyor are directed to furnish a Report as to the Council's rights over this road.

M.6. Diggle's Folly was at the eastern end of Whinless Down, immediately above Elms Vale and Tower Hamlets, and now crossed by footpath EBX2/EB5 on its ascent from Elms Vale, at grid reference TR30074158. The road referred to is therefore footpath EB5/ER192 (with the ascent to Diggle's Folly taken along Noah's Ark Road).

M.7. On 2 June 1898³⁴:



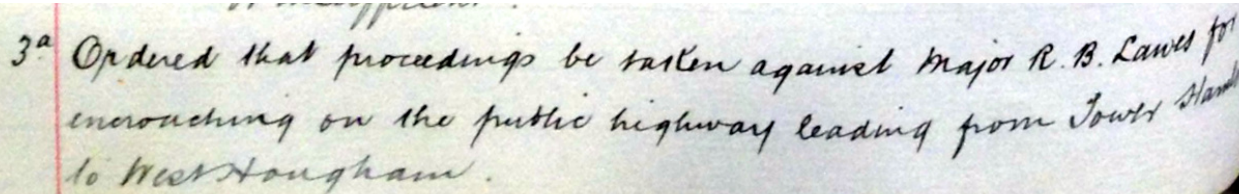
5 The Report of the Clerk and Surveyor was read from which it appeared that the road leading past Diggles Tower to Sovil Pond and thence to West Hougham, was undoubtedly a public highway; — and the same having been considered was adopted.

Illustration xliii

5. The Report of the Clerk and Surveyor was read from which it appeared that the road leading past Diggles Tower to Sovil Pond and then to West Hougham was undoubtedly a public highway; and the same having been considered was adopted.

M.8. The minutes leave unstated whether footpath EB5/ER192 was considered to be a carriageway, but it is unlikely that the council would have referred to the way as a 'highway' if it were a footpath, particularly in the context of the previous report which referred to its status as a 'road'.

M.9. On 16 June 1898³⁵:



3^a Ordered that proceedings be taken against Major R. B. Lawes for encroaching on the public highway leading from Tower Hamlets to West Hougham.

Illustration xliv

3a Ordered that proceedings be taken against Major R. B. Lawes for encroaching on the public highway leading from Tower Hamlets to West Hougham.

M.10. On 1 December 1898³⁶:

34 P.301

35 P.303

36 P.326-7

H The Surveyors Report was read and considered.

Ordered thereon that the County Council be recommended to close the following roads against traction engine traffic: viz.

- (1) From Uphill to Keston towards Ewerden Farm, (2) leading from Drillingore past Ewerden Wood, (3) From South Altham past Great Ewerden Farm, (4) From Altham Village past Stonehill Wood to Guide Post and then to Ellinge and Great Ewerden Farms, (5) From Altham Villa to Chastelote Green, (6) From Rusby Rough House to Altham South Altham Drillingore and Lowest Standen, (7) Lowest Standen to Hookley Role and Capel Role, (8) From past Hulston Farm along Hill Wood Ingleton Wood Farm Cottage to Guide Post & to the Blue Road, (9) From Mount Ararat towards the Village of Altham, (10) Back Lane past Lovell and Broadsole Lane to West Hougham and road leading thereout to Boulton & from Boulton to Dover, (11) Church Hougham to the Elms, (12) Abbey Road to Rustland Bottom, (13) From Hookley Role past Coldham to Capel Street to Main Road, (14) From West Hougham to Satmas and Frosto Lane, (15) From Lowest Standen towards Standen Windgates, (16) From Swanton Farm to Lydden, (17) From St Radigunde Road to Crabble Farm, (18) Archer's Court Lane from Old Park North Lodge to Pineham Farming, (19) From Easting down towards Whitfield Church, (20) Green Lane from Old Park North Lodge to Rustland Farm & road leading thereout down past Charlton Cemetery, (21) Old Roman Road from Drove Gate to Water Mill, (22) Martin Mill to East Langdon, (23) Martin Cross to St Margarets, (24) Langdon Cross to West Cliffe,

- (25) Old Back (Upper Road) Convent Union to Dover, (26) Shelton Lane from Wootton Vicarage to Broom Park, (27) Road past Snodhill Farm, (28) From Coochell past Giddinge to Rickleden Lodge, (29) From Guide Post on Main Road to Wootwich Green, (30) Martin to Ringwood & from Martin Village to West Langdon, (31) From Court Farm out of Martin Road, (32) and from Hingedown past the Butts & through Bottom to Hahurst.
- Bridges over stream near Paper Mills at Hurst, and at Rusby Rough.

Illustration xlv

The Surveyor's report was read and considered.

Ordered thereon that the County Council be recommended to close the following roads against Traction Engine traffic; viz:—

Roads recommended to exclude traction engines: Uphill Folkestone to Everden Farm; Drellingore past Everden Wood; South Alkham past Great Everden Farm; Alkham village past Stonehill Wood, guide post to Ellinge and Great Everden Farms; Alkham Villa to Chalksole Green; Bushy Rough House to Alkham, South Alkham, Drellingore and Lower Standen; Lower Standen to Hockley Sole and Capel Sole; past Chilton Farm, Stoney Hill Wood Ingleton Wood, Fern Cottage, guide post and to the Elms (?) Road; Mount Ararat to village of Alkham; *Back Lane past Sovil and Broadsole Lane to West Hougham and road leading thereout to Poulton and from Poulton to Dover*; Church Hougham to the Elms; Abbey Road to Buckland Bottom; Hockley Sole past Coldham to Capel Street to main road; West Hougham to Satmar and Crooks (?) Lane; Lower Standen to Standen Windgates; Swanton Farm to Lydden; St Radigunds Road to Crabble Farm; Archers Lane from Old Park North Lodge to Pineham Turning; Easting Down towards Whitfield Church; Green Lane from Old Park North Lodge to Buckland Farm and road leading thereout down past Charlton cemetery; old Roman road from Downe Gate to Martin Mill; Martin Mill to East Langdon; Martin Cross to St Margaret's; Langdon Cross to West Cliffe; Old Bank (Upper Road) convict prison to Dover; Shelvin Lane from Wootton vicarage to Broome Park; road past Snodehill Farm; Coxhill past Giddinge to Pickleden Lodge; guide post on main road to Woolwich Green; Martin to Ringwould and from Martin village to West Langdon; from Court Farm out of Martin Road; from Kingsdown past Bulls and Knights Bottom to Walmer. [*Emphasis supplied*]

M.11. Among the roads considered to be closed to traction engines were: 'Back Lane past Sovil and Broadsole Lane to West Hougham and road leading thereout to Poulton and from Poulton to Dover'. This comprises the entirety of the application ways.

M.12. On 19 October 1899³⁷:

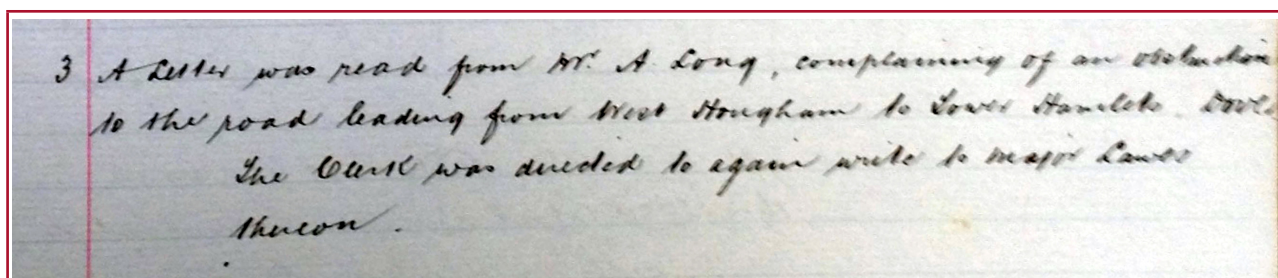


Illustration xlvi

3. A Letter was read from Mr A Long, complaining of an obstruction in the road leading from West Hougham to Tower Hamlets, Dover. The Clerk was directed to again write to Major Lawes thereon.

M.13. **Conclusion:** The council's resolution that the application ways should be among those recommended to the county council for closure to traction engines demonstrates that they were considered to be public carriageways otherwise open to such traffic.

37 P.372

M.14. The council's willingness to enforce against obstruction of the 'road' leading from Tower Hamlets to West Hougham, and its recognition of the road as a public highway, is suggestive that the entire route, including S–R–H, was considered to be a public carriageway.

M.15. **Points:**

Q–C: 3

P–R: 3

R–S: 5

H–R: 5

N. Bartholomew's map

N.1. **Date:** 1904, 1922 and 1953

N.2. **Source:** National Library of Scotland³⁸ (1904 and 1922), published map (1953)

38 maps.nls.uk/mapmakers/bartholomew.html

Bartholomew's maps: 1904, 1922 and 1953

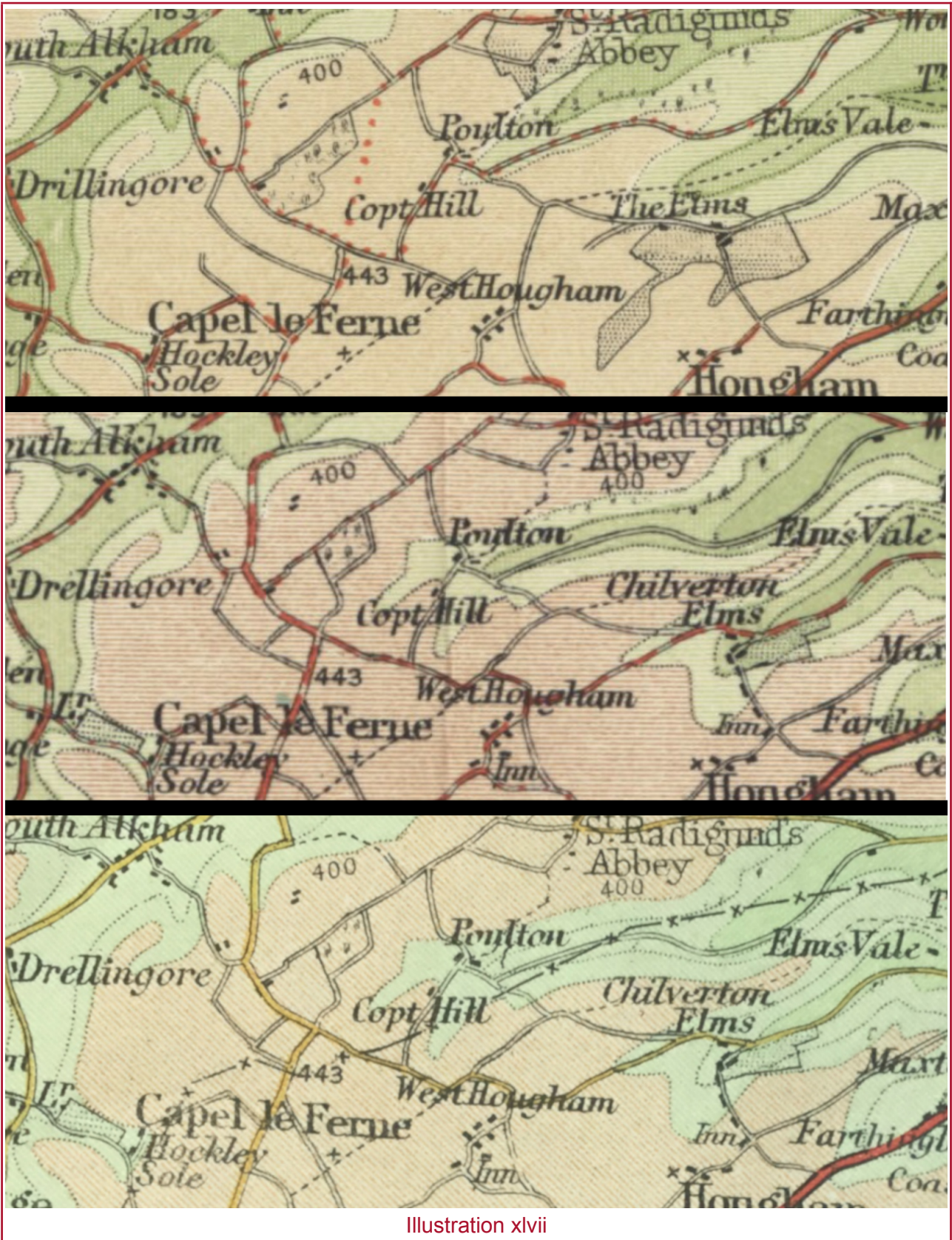
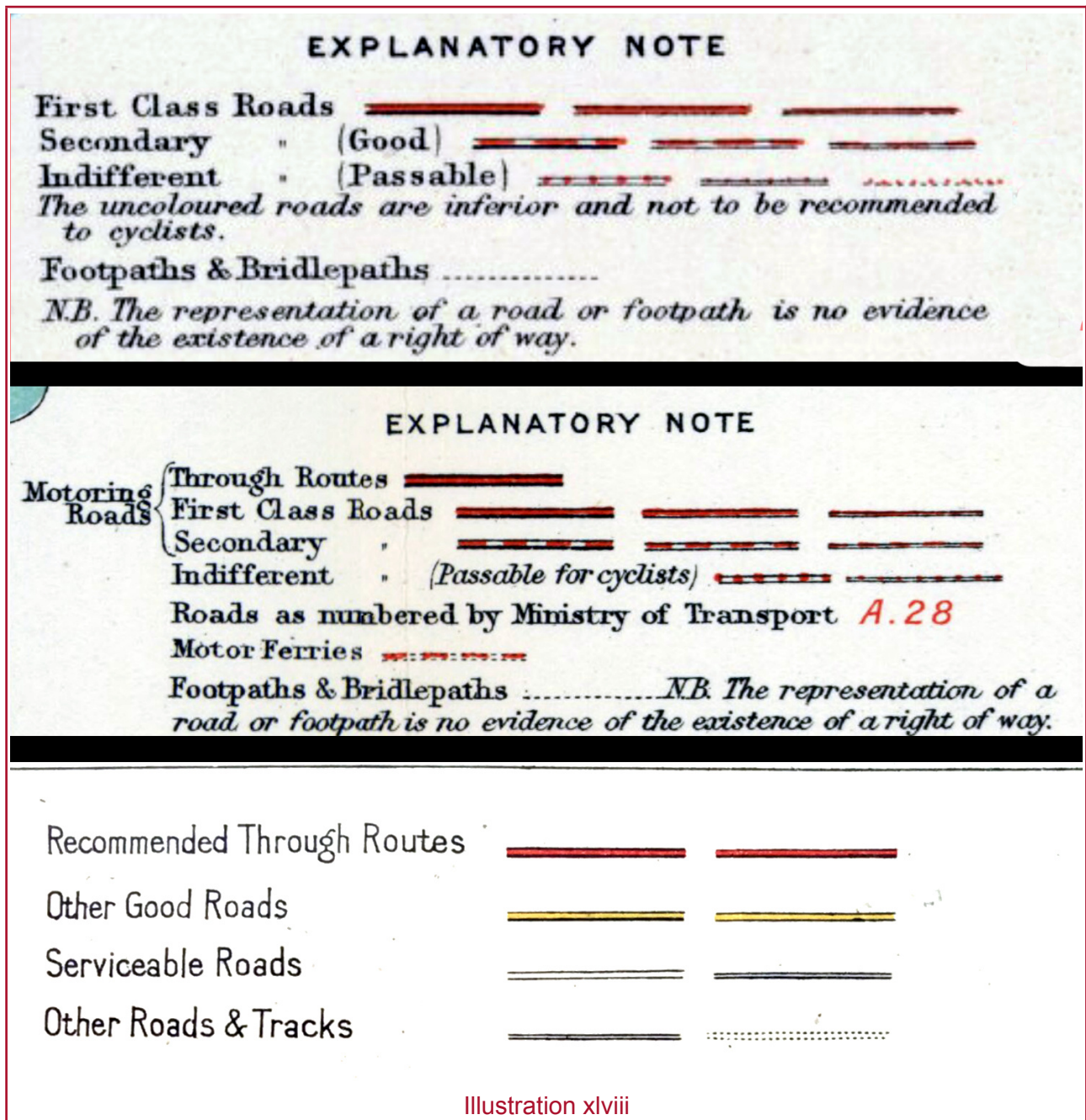


Illustration xlvii



N.3. **Description:** Original scale: half inch to one mile (1:126,720); orientation: unchanged (north).

N.4. Bartholomew's maps from the first half of the twentieth century present a slightly confused presentation of roads serving Poulton Farm. The purported road shown leading generally north from Poulton Farm to Abbey Road has never been marked on Ordnance Survey maps, while the road leading southwest through Copt Hill to Eight Acres Road appears always to have been a subsidiary means of access (and is now recorded as bridleway ER249).

N.5. Coombe Road is consistently shown to include Q-C and continuing east to Dover: on the 1903 edition, it is marked as an indifferent road, but passable for cycling (this

colouring is omitted from the 1923 edition, and no colouring is attempted on the 1953 edition).

N.6. A road leading southeast from Poulton Farm to Soval and Elms Hill consistently is shown to include P–Q–R–S as an inferior road (not recommended for cyclists). A similar road to West Hougham may represent the way R–H, but is more consistent with the bridleway to the north now recorded as ER217.

N.7. **Conclusion:** The Bartholomew's maps from the first half of the twentieth century show that Poulton was at the centre of a network of serviceable roads which include some of the application ways.

N.8. Paragraph 12.41 of the consistency guidelines³⁹ notes that:

current evidence indicates that, although Bartholomew were highly regarded as map producers, they did not employ independent surveyors to carry out any surveys on the ground nor to determine the nature and status of the roads on their maps. Moreover, they do not appear to have examined the legal status of the routes on their Cyclists' Maps before colouring them for use as suitable for cyclists.

N.9. However, this seems to be a too simplistic approach: we do not know what criteria Bartholomew used to assess the suitability of individual roads for cycling, but it is unlikely that it may have made a decision using no more than published Ordnance Survey data, if its maps were to meet with a favourable reception among its target market of cyclists. The representation of Coombe Road, including Q–C, as a road passable for cyclists is suggestive of a public carriageway.

N.10. **Points:**

Q–C: 1
P–R: 0
R–S: 0
H–R: 0

O. Ordnance Survey name book

O.1. **Date:** 1906

O.2. **Source:** National Archives⁴⁰

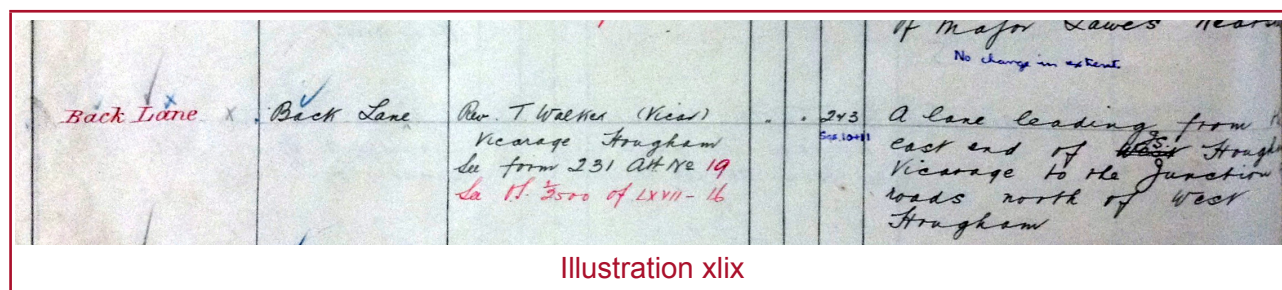


Illustration xlix

O.3. **Description:** The Ordnance Survey made rigorous efforts to record information about place names. It sought information from what it perceived to be senior members of

³⁹ Planning Inspectorate: September 2015: www.gov.uk/government/publications/definitive-map-orders-consistency-guidelines.

⁴⁰ OS 35/3666

local society, which was recorded in a name book. Only the name books from the early twentieth century survive.

O.4. This extract is from the name book for the southeast quarter of Ordnance Survey six-inch sheet LXVII/SE. It records Back Lane (i.e. the application way between H and S, and continuing east to Elm Hill) as:

‘A lane leading from the east end of S. Hougham Vicarage to the Junction of roads north of West Hougham’

The original entry is attested by the Vicar of Hougham. South Hougham Vicarage was located near Elms Farm situated between Lowslip Hill (the road to West Hougham) and Back Road (restricted byway ER218C) towards point S.

O.5. **Conclusion:** The entry in the name book is inconclusive about status (some other roads are described as ‘public’, others as ‘occupation’).

O.6. **Points:** 0

P. Finance (1909–1910) Act 1910

P.1. **Date:** 1911

P.2. **Source:** National Archives⁴¹

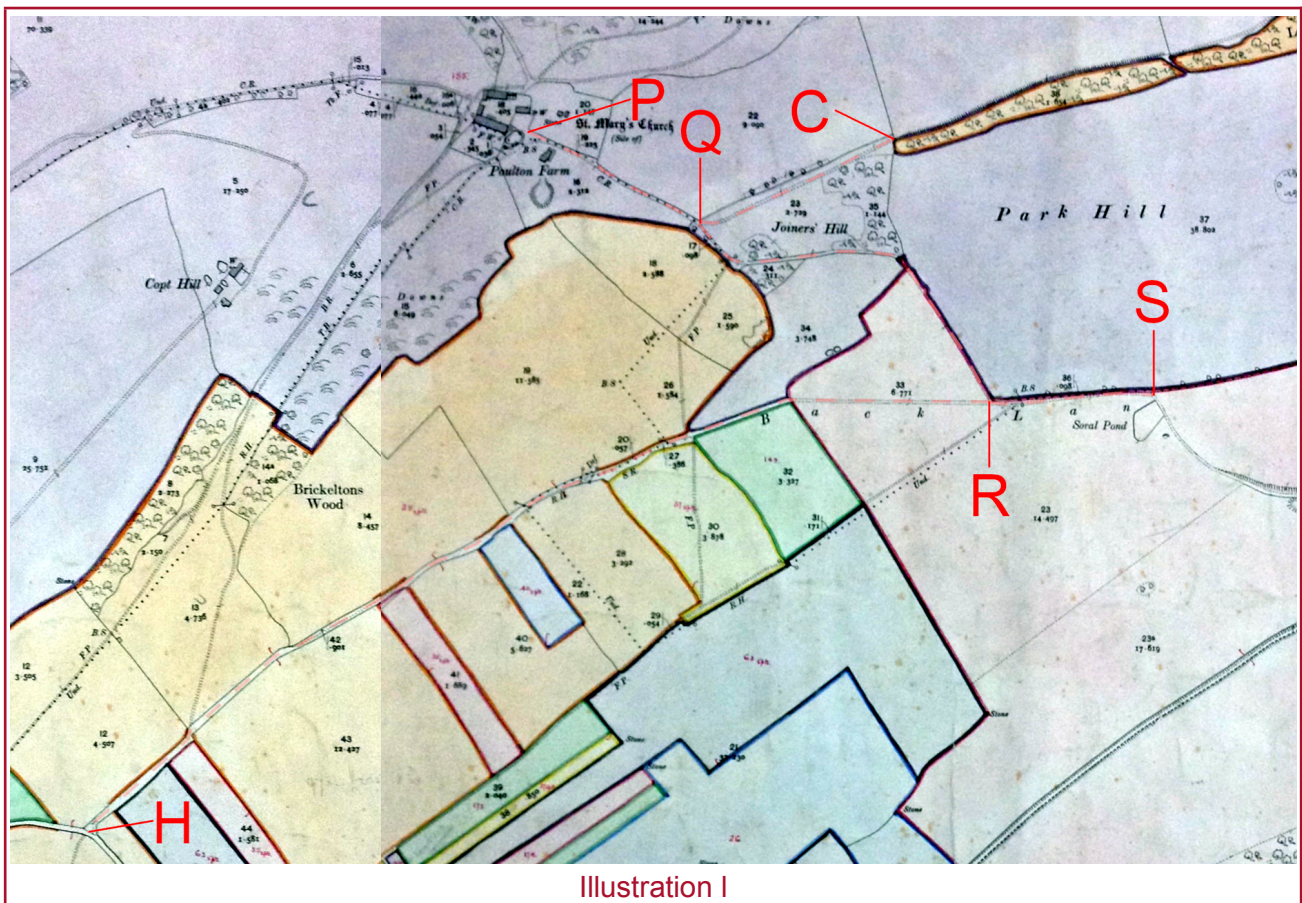


Illustration I

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

41 IR 124/5/240

P.4. The application way, Back Lane, between a point 230m west of R, and H, is uncoloured and separated from the adjoining hereditaments. It is also uncoloured (not shown on extract above) for a distance of 210m west of the junction with Elms Hill.

P.5. The remaining parts of the application ways are not shown uncoloured. The ways P–Q–R–S, and Q–C, are coloured within the hereditaments. The way P–Q together with 200m southeast and then east towards R is within the hereditament for Poulton Farm (no. 155), as is Q–C. The remaining part of Q–R, the last 230m of H–R, and R–S, is within the hereditament for Elms Farm (no.9).

P.6. **Analysis:** 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,

‘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.

P.7. That ‘white roads’ are some evidence of public, probably vehicular, status has been recognised in several cases in the superior courts:

- In [Fortune v Wiltshire Council](#), HHJ McCahill QC said (paras.753, 770), that:

‘the probable explanation for sections A and B being untaxed is because they were regarded as a full vehicular highway. ...the treatment of Rowden Lane in the 1910 Finance Act Map is clear and cogent evidence that Sections A and B of Rowden Lane were acknowledged to be a public vehicular highway in 1910’.

On [appeal](#), Lewison LJ upheld the judgment at first instance, observing (para.71):

‘The consensus of opinion, therefore, is that the fact that a road is uncoloured on a Finance Act map raises a strong possibility or points strongly towards the conclusion that the road in question was viewed as a public highway.’

- In [Robinson Webster \(Holdings\) Ltd v Agombar](#), Etherton J said (para.47) said:

‘The 1910 Finance Act map and schedule are, in my judgment, most material evidence in relation to the status of the Blue Land at that time. ... The fact that the Blue Land was not shown as falling within the hereditament of any private individual, but is shown as part of the general road network, in a survey which would have been undertaken by local officers of the Commissioners, and following consultation with the owners of private hereditaments, is a most powerful indication that the Blue Land was at that time thought to be in public ownership and vested in and maintainable by the District Council, which was the highway authority.’

- In [Commission for New Towns v JJ Gallagher Ltd](#), Neuberger J found (para.106) that:

The maps are not unambiguous in this regard, and they appear to have been prepared in something of a hurry. ... Accordingly, at least if taken on their own, the Finance Act maps are of only slight value in tending to support the Commission's case [that the way is public].

- In *R (on the application of Ridley) v Secretary of State for the Environment, Food and Rural Affairs*, Walker J said (para.65) that:
 'The point of the Finance Act was to identify taxable land and, taking account of the cases mentioned, I consider that this [Chapel and Primrose Lanes being uncoloured and excluded from surrounding hereditaments] provides strong evidence that both Chapel and Primrose Lanes were recognised as public vehicular highways at this time.'

P.8. All land had to be valued unless it was exempted by the Act. S.94 provided harsh penalties for making false declarations.

P.9. **Conclusion:** The uncoloured way, Back Lane, between a point 230m west of R, and H, is strongly suggestive of a carriage road which was excluded from assessment as vested in the rating authority. Other parts of the application ways are unenclosed, and therefore assessed as part of the hereditaments to which they belong.

P.10. **Points:**

Q-C: 0
 P-R: 0
 R-S: 0
 H-R: 5

Q. Definitive map and statement

Q.1. **Date:** 1949–51

Q.2. **Source:** Kent County Council

Q.3. **Description:** In the parish map for Houghton Without, prepared at first instance by the parish council under s.28 of the National Parks and Access to the Countryside Act 1949. The following attributes of that map may be noted.

Parish map: carriage road (footpath) 23

Q.4. Carriage road (footpath) 23 relates to restricted byway ER218C (from S southeast then east to Elms Farm, i.e. the continuation east from Soval Pond of Back Lane — it is not comprised in this application).

Q.5. On the parish map and statement, CR(F) 23 was described as:

| 23 C.R.F. from Old Vicarage entrance to Soval Pond.

Parish map: bridleway 32

Q.6. Bridleway 32 relates to the application way H–R–S (i.e. part of Back Lane, comprising ER217 and ER218B).

Q.7. Bridleway 32 was described as:

| 32 Back Lane. B.R. from agricultural camp to Soval Pond. Overgrown from junction of F.P. 31 and 34 & last field ploughed & track obliterated.

Q.8. The 'agricultural camp' was formerly just southeast of H, while intersecting footpaths 31 and 34 are now footpath ER191.

Parish map: bridleway 36

Q.9. Bridleway 36 relates to ER218A (*i.e.* the application way P–Q–R).

Q.10. Bridleway 36 was described as:

| 36 B.R. Poulton to Soval Pond. (F.G. at [top of?] Hill

Parish map: footpath 35

Q.11. Footpath 35 relates to ER192 (*i.e.* east from S, so far as it lies in the parish of Hougham Without).

Q.12. Footpath 35 was described as:

| F.P. Back Lane continuation to Dover. Over style at Soval Pond.

Draft definitive map and statement

Q.13. The ways comprised in the application, save Coombe Road between Q and C, were recorded on the first draft definitive map and statement for Kent as bridleways save, in relation to R–S, a footpath. Certain other neighbouring ways were recorded as carriage roads (footpath) or (bridleway), viz—

- ER219 (from R southwest to West Hougham), originally recorded as carriage road (bridleway) CRB30, now recorded as bridleway ER219;
- ER218C (from S southeast then east to Elms Farm), originally recorded as carriage road (bridleway) CRB23, now recorded as restricted byway ER218C;
- ER218 (Poulton Farm west then southwest to Le Ferns Farm), originally recorded as carriage road (footpath) CRF37, now recorded as byway open to all traffic ER218 (save for a recent diversion to the north of Poulton Farm, recorded as bridleway).

Q.14. **Conclusion:** It is apparent that the parish survey intended that the application way between R and S should be recorded as bridleway and not as footpath, being described as part of both bridleway 32 and bridleway 36, and continuing to Elms Farm as carriage road (footpath) 23. That this section between R and S was recorded on the draft map as a footpath was a mistake which went uncorrected.

Q.15. **Points:**

Q–C: 0
P–R: 0
R–S: 2⁴²
H–R: 0

R. Highway authority public maintainability

R.1. **Date:** 1952

R.2. **Source:** Kent County Council⁴³; www.findmystreet.co.uk

⁴² Evidence of status as bridleway, but not as restricted byway.

⁴³ Highway inspector's map supplied by the council on request.

Highway inspector's map

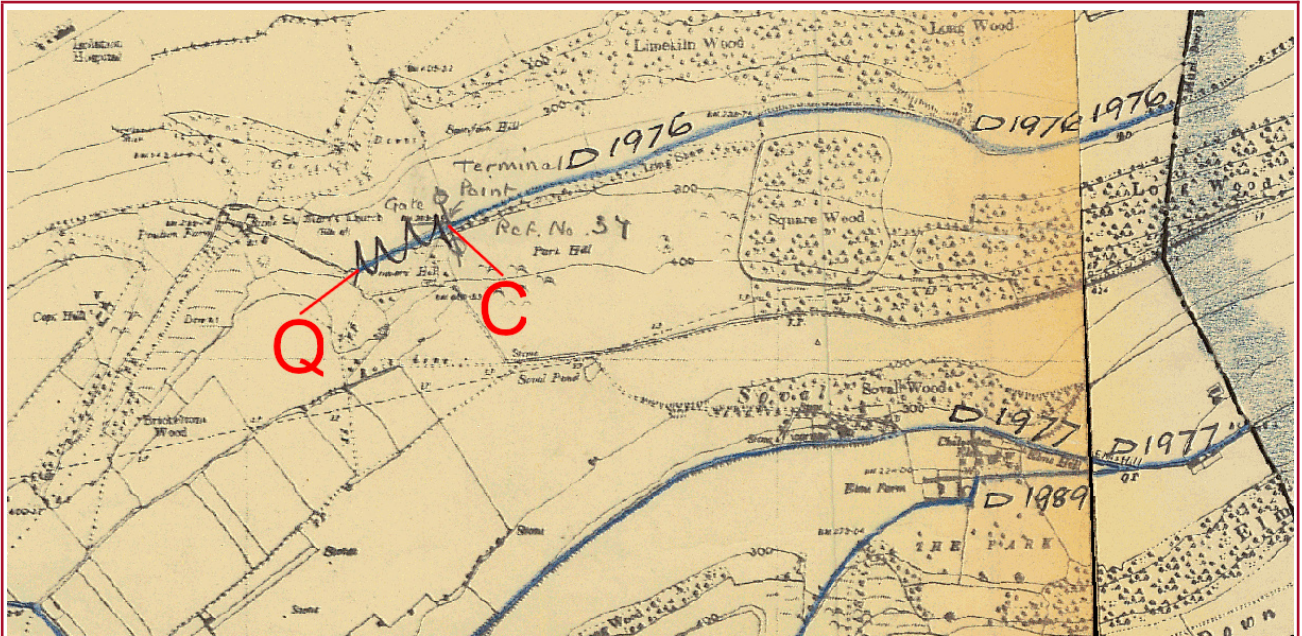


Illustration li

National Street Gazetteer

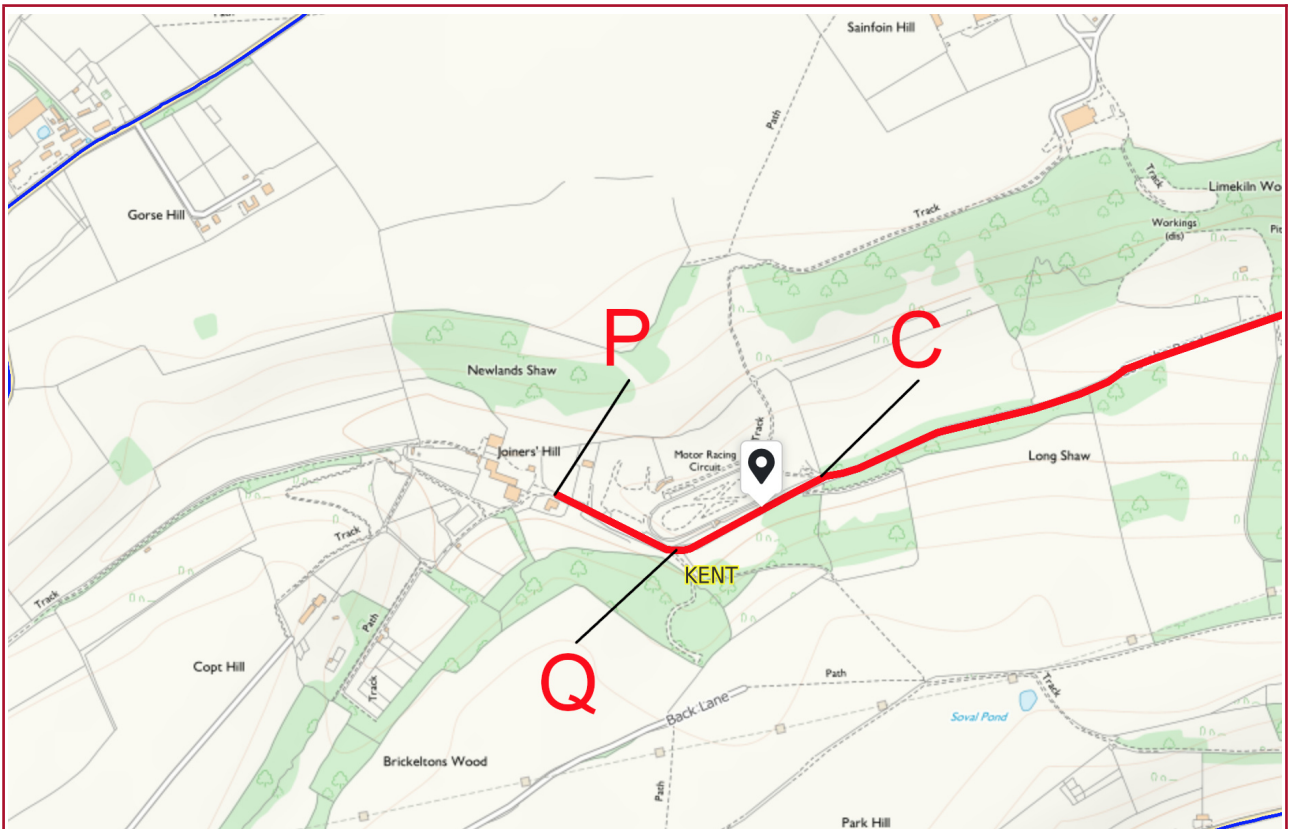


Illustration lii

R.3. **Description:** original scale: 1:10,560; orientation: unchanged.

R.4. The highway inspector's map shows the application way between Q and C, continuing east towards Dover, as a publicly maintainable highway, with the reference number D1976. No record is kept as regards the former county borough of Dover. The way between C and Q subsequently has been crossed out in pencil. The authority for the correction is unknown.

R.5. The highway authority list of streets prepared under s.36(6) of the Highways Act 1980 and published in 2003 contains two entries for Coombe Road:

- D3529 Unclassified single c/way from Joiners Hill to Agency Bdy 2273m from OSGR 627183,141157 to 629284,141934 (handover detail = 2294m)
- D3529 Unclassified single c/way from Agency Bdy to Poulton Close 83m from OSGR 629284,141934 to 629341,141993 (handover detail = 100m)

R.6. The grid reference of 627183,141157 is placed at Q. Thus the application way Q–C appears to have been included on the highway authority's list of streets in 2003, and it is inferred it remained so on 2 May 2006, the date of commencement of s.67 of the Natural Environment and Rural Communities Act 2006 (item I.I above).

R.7. The national street gazetteer⁴⁴ shows the application way as part of:

- USRN: 11300305
- Street: COOMBE ROAD
- Town: HOUGHAM
- Area: KENT
- Status : Maintainable at public expense

R.8. **Conclusion:** The inspector's map shows that the application way between Q and C formerly was considered to be a public highway, and was allocated an unclassified road number consistent with its being publicly maintainable. The authority for the deletion of the application way from the highway inspectors' map between Q and C is unclear: in any case, it does not appear to have been given effect.

R.9. **Points:**

Q–C: 4
P–R: 0
R–S: 0
H–R: 0

44 Inspected on 19 April 2020.

V. Appendix

Canterbury Journal and Farmers' Gazette, 2 July 1864

CHARGE OF MISDEMEANOUR AGAINST THE PARISH OF BUCKLAND

Edward Coleman and William Coleman were charged as the representatives of the parish of Buckland, with misdemeanour, in permitting a road leading from Buckland to Hougham, to get into a bad state of repair.

Mr Biron and Mr Barrow appeared for the prosecution and Mr Russell and Mr Kaye for the defence.

Mr Barrow in opening the case to the jury produced a plan of the road, and said that the parish was bound to repair the whole width of the road for some distance, and further on they were called on to repair half the width of the road. The parish were called on to repair this road and had refused. They were then served with a notice to repair, when they pleaded first "not guilty" and, secondly that the two defendants were the persons who are bound to repair it. They holding land under an agreement to repair this road. He only mentioned this to show them the reason why the two defendants were charged with misdemeanour.

John Quested was examined by Mr Biron.—I am a surveyor living at Dover. I have surveyed the road from the Borough of Dover to West Hougham. I made this plan. It is a representation of a road leading from the London Road in the parish of Buckland, Dover, to West Hougham. There is a turn leading to St Radigund's Abbey. I inspected the road the day before the last Quarter Sessions. It was in very bad repair. I have not seen it since then.

By Mr Russell.—I have not surveyed the whole of the road from Dover to West Hougham. It runs about a mile south of Court farm. The distance from Dover to West Hougham is about three miles and a half. I have been from Dover to West Hougham, but I have never been by the road which I was called on to survey. I do not know whether the boundary of the parishes of Buckland and Poulton, is the boundary between Coombe farm and Poulton farm.

By Mr Barrow.—The road by the Elms will not go near the London Road.

—Robinson.—I am the prosecutor in this case. I occupy Poulton farm. The road goes through the parish of West Hougham, and leads to Folkestone. I have known the road for 20 years, and it has always been considered as a public highway; but I have heard say that it is not a public highway. I have always heard the road spoken of as a public highway. I have been along the road thousands of times, and have never been disturbed. There are six gates on the road between Buckland and West Hougham. There are two gates on the portion in dispute. The gates have never been locked when I have gone along. From this plan and all maps that I have seen the boundary runs in the centre of the road. For two years and a half I have known that the Poulton Surveyor has repaired one half of the road, and Buckland repaired the other half. I took action against the parish of Buckland.

Mr Barrow.—What did that parish do?

Mr Russell.—I object to that.

Mr Barrow contended that he was at liberty to produce this answer, because he was permitted in cases of this kind to offer evidence of reputation.

The Court held that the answer could be received.

Examination continued.—Mr Coleman, a fortnight ago, repaired a portion of this road.

By Mr Russell.—The parish boundary divides Poulton farm from Coombe farm. I know there are two gates now in the road. I never knew the gates to be locked. I have never heard of the gates being locked. Mr Wilson is my landlord. When I go from my home to West Hougham I have no occasion to go through Coombe Farm. I have been told by Mr Coleman that that it is not a public road. Mr Smith was my predecessor. I have been told by Mr Smith that Mr Coleman claimed the road as a private one. That is since these proceedings have been taken. I never knew the gates to be locked or persons to be turned back.

Will you swear that the surveyor of the parish of Buckland has ever repaired the road?

I have seen his men doing it. It might be because he was tenant of Coombe farm. I know Stephen Palmer. I met him in 1862 with some sheep, and told him it was a private road and he had no business there. I have repaired the road at the expense of the parish. I did not repair them at my own liability, and then apply for the money. The waywarden said that the road was a private one, but he found by the books that it was a public road.

By Mr Barrow.—When I stopped Palmer he was a mile and a half from any portion of it. It was in the same route. He was in my field, I thought the sheep were diseased, and I objected to him bringing them there: He said “Neither you nor all belonging to you can stop me, it is a public road, always has been, and always will be.” He continued to use it.

By the Court.—I have seen Palmer along the road since.

Thomas Robinson, examined by Mr Biron.—I am an alderman of the borough of Dover. I know all the gates on this road. I have never found them locked. If they had been locked I should have done all in my power to pull them down. No one has ever disputed my right to pass.

By Mr Russell.—I have had to do with this road. I have not been three times a week for the last fifty years, but I have only been through there during the last two years and a half. I only remember one gate being there. The one at the bottom of the hill.

By Mr Barrow.—I have been along the road several times before I went to Poulton Farm.

Issac Whitnall, examined by Mr Biron, said he had lived in the parish of Buckland for fifty years. He knew the road in question, and he believed it to be a public road. He had been along the road several times, and had never been stopped there. There were two gates, one near Coombe and one near Poulton. He knew the turning to St Radigund’s Abbey. There was a gate there. That was never locked.

By Mr Russell.—I was Churchwarden of Buckland for seven years. I used to go along there at night for illicit trading. (Laughter). The road is a private one for private purposes. I have been along the road about fifty times in fifty years.

William Rous, examined by Mr Barrow, said he was 59 years old. He had known this road forty-seven years.

By Mr Russell.—I know Stephen Palmer. Coming along the road about two years ago, I did not tell him that it was a private road. He told me Mr Robinson had been scolding him about the sheep. I did not tell him it was a private road. I told him I understood it was not a highway. I have understood that the road was not a public highway. I recollect some gates. I know two gates near Coombe Farm.

By Mr Barrow.—When Palmer came back I was about a mile out of the road. He came to me. I told him it was not a highway, because I had heard people say that it was not a public highway. Mr Holmes, who is dead, said twenty years ago that it was a private high road. Parlmer told be it always had been a high road.

John Richards, examined by Mr Biron, said he lived at Tower Hamlets. He was 56 years old. From 1834 to 1850 he worked for Mr Gorely. He used to go along the road in question from Buckland. He was never warned off. He never found the gates locked. The horses he used on the Poulton land were kept at Dover.

By Mr Russell.—Mr Going held part of Poulton farm. He carried a portion of his corn by a road leading by Diggle's Tower towards Charlton. That corn was what was grown on the hills. There was another road which ran across Poulton farm into the other road passing by Diggle's Tower. That road has been out of use for years.

Charles Holloway, examined by Mr Biron.—Had known the road since 1831; had gone through the road constantly, and had never been warned off. Never knew the gates to be locked. Had met people on the road.

By Mr Russell.—Lived at Guston for three years, and he went to Mr Mowle at Poulton, for some seed barley. Went there twice. When Mr Staines lived there he went for some bushes. This was sixteen years ago. I became a milkman nine years ago. I got my milk at Poulton Farm in summer and at Farthingloe in winter. I have only had my milk at Poulton Farm for two years. I worked on Poulton Farm for ten years.

Daniel Dawkins, examined by Mr Barrow.—Had known the road in question for thirty years. When he was 17 years old his father occupied a farm near Satmir. He used to drive his father's horses through there. He was never stopped by any one, nor did he find the gates locked.

By Mr Russell.—When I went along that road I went to Mr Kingsford's mill, at Buckland. I went along there perhaps five or six times a year. I knew Mr Finn. He occupied the farm before my father. I do not remember young Mr Finn driving out anywhere with me. If I wanted to go from Satmir to Dover I should not go by Coombe Farm, for that would be out of the way about two miles.

William East, examined by Mr Biron, was 58 years old. Had known the road fifty years. Was in the habit of going along the road. About forty years ago he went to Poulton Farm to fetch some seed wheat. Mr Bean was the tenant.

William Matson—Was a farmer, living at Buckland, and had used the road for fifty years. He had never found a gate locked but once. That was the lower gate, and he went to Mr Norton, the surveyor of the woods, who told him to pull it down, and he did so. Witness expected he should have had to go to gaol for pulling down the gate, that he had heard nothing since of the matter.

Cross-examined.—When he pulled down the gate he was not aware that the road was a private one at that time. On the occasion referred to he had charge of a load of faggots.

Mr Barrow, having stated that this concluded the case on the part of the Crown,

Mr Russell proceeded to address the jury on behalf of the defendant. He made a rather lengthy address; but the chief points of his argument were that the road in question never was anything but an accommodation thoroughfare for the convenience of the occupiers of Coombe and Poulton farms; that no delegation of the road had been made by the owners of it to enable it to be used by “any of her Majesty's subjects,” as was argued on the other side; and that the parish had never been called upon to put it in repair.

At the conclusion of the address, the Chairman enquired of him how many witnesses he intended to call.

Mr Russell answered fifteen.

The Chairman then determined that as there was no probability of the case being terminated that night, to adjourn the Court to the following morning, and this course was pursued.

WEDNESDAY

The case was resumed this morning before T S Clarke Esq, W Delmar Esq and T G Peckham Esq.

Mr Russell for the defence, called fourteen witnesses the whole of whom deposed that they had known the road for years, that they had always considered to be a private road, repaired by the tenant of Coombe Farm. Some of the witnesses had been stopped from passing along the road, the gates thereon having been locked, and the bailiff of Coombe Farm refused to open them, while others going to Poulton had been permitted to pass on making application to the bailiff.

Mr Russell, after strong opposition on behalf of the plaintiffs, obtained permission from the Chairman to put in a lease granted to Mr Coleman, the occupier of Coombe Farm, by which he was bound to keep the road in repair, and also to “use all legal means to prevent it becoming dedicated to the justice.”

Mr Russell also applied to put in two other leases, which Mr Barrow also opposed, and the Chairman decided they could not be put in.

Mr Coleman was called, and deposed that ever since he entered on possession of his farm in 1845, he had repaired the road at his own expense.

Mr Russell then summed up his evidence.

Mr Barrow replied upon the whole case.

The Chairman summoned up evidently in favour of the defendants.

The jury returned a verdict of Not guilty.

This is equivalent to a verdict that the road is not a highway liable to be repaired by the parish.

The costs of both sides were ordered to be paid from the highway rate of the parish of Buckland.

Mr Russell loudly protested against this decision.