

**Appendix 15**

**A.G. (At Relation of A H Hastie) v. Godstone RDC (1912) JP 188**

**THE JUSTICE OF THE PEACE, MAY 25, 1912**

**CHANCERY DIVISION.**

*February 8, 9, 12, 13, 29, 1912.*

(Before PARKER, J.)

**ATTORNEY-GENERAL. (AT THE RELATION OF A. H. HASTIE) V. GODSTONE  
RURAL DISTRICT COUNCIL.**

Highway - Ancient roads - Evidence of user - Evidence of reputation - Evidence of repair.

*This was an action brought by the Attorney - General, at the relation of XA. H. Hastie, against the Godstone Rural District Council for a declaration that three ancient roads in the Parish of Lingfield were respectively public highways and repairable by the defendants. The defendants admitted that portions of two of the roads were highways and that they had been repaired, but as regards the remainder they denied that they were highways.*

*Held, on the evidence, that there must be a declaration that they were highways repairable by the inhabitants at large.*

This was an action brought by the Attorney - General at the relation of A. H. Hastie, the lessee and occupier of Starborough Castle, in the parish of Minefield against the Godstone Rural District Council for a declaration that certain ancient roads were respectively highways, and that the defendants were liable to repair the same. The action concerned three roads known respectively as St. Pier's Lane, Cottage Lane, and Water Lane. St. Pier's Lane commenced in the main road between Dorman's Land and Lingfield near a farm known as Clarewell Farm, and ran north-east past St. Pier's Farm, making a junction with Cottage Lane at a point some little way south of Eden Brook. Cottage Lane commenced in the main road between Dorman's Land and Marsh Green near a farm called Moor Farm, and running for some distance in a northerly direction turned to the north-west and made a junction with St. Pier's Lane. Water Lane commenced at this junction, and running north crossed the Eden Brook by a ford lying for some little distance up the bed of the brook and ended at a point in the main road from Lingfield to Edenbridge, west of a mill called Haxted Mill. There was a footbridge over the Eden Brook near the ford, and there was some evidence that Water Lane used at one time to be called Longbridge Lane. Similarly certain cottages, which previously stood in the angle made by St. Pier's Lane and Cottage Lane at their point of junction, used to be called Longbridge Cottages.

The roads in question existed far back into the eighteenth century; they were shown in many old maps, and had for the most part well defined hedges and ditches on either side. They were continuous roads throughout, and furnished convenient short cuts between main roads to the north and south respectively.

All further facts appear from the judgment of PARKER, J.

Romer, K.C., and J. W. Manning for the plaintiff.—These roads are highways and were highways before the Highways Act, 1835, and are repairable by the inhabitants at large (*R. v. Inhabitants of Leake* (1833), 5 B. & Ad. 469; *R. v. Inhabitants of Lordsmere* (1850), 15 Q. B. 689; *R. v. Inhabitants of Newbold* (1869), 19 L. T. 656). This case is almost exactly similar to the recent case decided in this court where considerations affecting the question of the *onus probandi* in highway cases were set forth — *Attorney - General v. Watford Rural District Council* (1911), 76 J. P. 74.

Alexander Macmorran, K.C., and W. W. Mackenzie, for the defendant council. - It is admitted that St. Pier's Lane from its commencement to a point near St. Pier's Farm, and cottage Lane from its commencement to its junction with a private accommodation way leading to Stockhurst Farm, are

public highways so repairable, but it is denied, save to this extent, that any part of the roads in question is a public highway at all. If there is any right of way at all it is merely a footway. The traffic over these roads can be accounted for by the necessities of several farms which exist in the area traversed by these roads. Water Lane is really only the bed of an old stream. The old maps and the tithe maps produced in evidence do not agree. These roads are merely accommodation roads with public rights of footway over them (*Holloway v. Egham Rural District Council* (1908), 72 J. P. 433). They were used by the farms alone and no repairs have been done by the highway authority. Further, the culvert which has been referred to in evidence could not have been lawfully constructed as it was across a highway. The evidence of reputation in this case is inadmissible, because this matter was in controversy when the statements were made by the deceased persons.

Romer, K.C., in reply.

*Cur. Adv. Vult.*

*February 29.*

PARKER, J.—This action concerns three roads in the county of Surrey now known respectively as St. Pier's Lane, Cottage Lane and Water Lane. St. Pier's Lane commences in the main road between Dorman's Land and Lingfield, near a farm known as Carewell Farm, and running north-east past St. Pier's Farm makes a junction with Cottage Lane at a point some little way south of the Eden Brook. Cottage Lane commences in the main road between Dorman's Land and Marsh Green near a farm called Moor Farm, and running for some distance in a northerly direction turns to the north-west and makes a junction with St. Pier's Lane at the point above mentioned. Water Lane commences at this junction, and running north crosses the Eden Brook by a ford lying for some little distance up the bed of the brook, and ends at a point in the main road from Lingfield to Edenbridge west of a mill called Haxted Mill. There is a footbridge over the Eden brook near the ford, and there is some evidence that Water Lane used at one time to be called Longbridge Lane, probably from this bridge. Similarly certain cottages which previously stood in the angle made by St. Pier's Lane and Cottage Lane at their point of junction, used to be called Longbridge Cottages. The Attorney – General claims a declaration that all these roads are Public highways repairable by the inhabitants at large. The defendants, who are the highway authority for the district in which the roads are situate, admit that St. Pier's Lane from its commencement to a point near St. Pier's Farm and Cottage Lane from its commencement to its junction with a private accommodation way leading to Stockhurst Farm are public highways so repairable. But they deny that, save to this extent, any part of the roads in question is a public highway at all. The roads in question certainly existed far back into the eighteenth century. They are shown in many old maps. They have for the most part well-defined hedges and ditches on either side, the width between the ditches, as is often the case with old country roads, varying considerably. There is nothing to distinguish any part of these roads respectively from any other part except the state of repair. They are continuous roads throughout and furnish convenient short cuts between main roads to the north and south respectively. It is possible, of course, that a public way may end in a cul-de-sac, but it appears rather improbable that part of a continuous thoroughfare should be a public highway and part not. It was suggested that there might be a public carriageway ending in a public footpath and that Cottage Lane and St. Pier's Lane are public carriageways to the points to which they are at admittedly highways, and public footpaths for the rest of their length. I cannot find any evidence which points to this solution of the difficulty, and so far, at any rate as evidence of the user of the road is concerned, there is no difference *qua* the nature of that user between those parts of the roads which are admittedly highways and those parts as to which the public right is in issue. These considerations might, I think, fairly have some weight with a jury in considering evidence on the question whether the roads in question were or were not throughout public highways. I propose to consider this evidence under the following heads, that is to say, first, the evidence of user; secondly the evidence of repair; and thirdly, the evidence of reputation. With regard to the first head, it was contended that I ought to disregard all evidence of user for the purpose of access to fields or houses adjoining the roads in question because such user might conceivably be explained by the existence of private rights of way. No doubt the possibility of explaining and accounting for acts of user by the existence of private rights must affect the value of the facts proved as evidence of dedication, but in my opinion the proper course is in the first instance to take cognizance of all the facts and then to consider what inference ought properly to be drawn from them. While on the one hand little weight ought to be attached to occasional user by the public of a road systematically used for occupation purposes, it is on the other hand necessary to remember that user for occupation purposes may have arisen precisely because the road was a public road, it being open to every one with a field adjoining a highway to open from the highway a gate into

his field and to use the highway for his own accommodation as owner of that field. No doubt in the present case there has been a considerable user of the roads in question for purposes not necessarily involving through traffic. It appears that some of the meadows adjoining the Eden Brook near the footbridge are divided into " cuts " which belong to the owners of numerous farms, some adjoining the roads in question and some lying to the north or south of the respective main roads with which the roads in question communicate. It does not appear from the evidence what the nature of these cuts precisely is. Apparently each cut involves the right to take hay from a defined portion of the meadow and after the hay is cut to pasture cattle in common with the owners of other cuts on the whole of the meadow. There is plenty of evidence as to the user of all three roads for approaches to the cuts for these purposes as well as for approaches to fields and houses adjoining the roads throughout their whole length. Besides this traffic, which may perhaps be called accommodation traffic, there is, however, considerable evidence of the user of the roads in question for through traffic from or to the main roads with which they communicate on the north and south respectively. There is, for example, the evidence of James Laker 79 years old, who, when a boy, for the fun of driving through the ford used to get into tradesmen's carts going from Dorman's Land to places north of the main road between Minefield and Edenbridge. They used to go this way when the load was light for the sake of the short cut, driving the whole length of St. Pier's Lane and Water Lane respectively, and returning by the same route. Anyone, the witness said, would go that way if they could. But people could not always get through the water. Again, Francis Owall, who is 81 years old, and has lived most of his life at Marsh Green, used often to drive the whole length of Cottage Lane and Water Lane in order to fetch flour from Haxted Mill. He, too, speaks to a similar user of St. Pier's Lane and Water Lane by butchers taking meat from Dorman's Land to places north of the road from Lingfield to Edenbridge. Then there is the evidence of Barnabas Eddings, John Chapman, Albert Edward Poynter and George Eddings to somewhat the same effect, though in the case of some of these witnesses it is less clear that they are referring to through as opposed to accommodation traffic. William Greenaway, one of the defendants' witnesses, used, however, to cart goods from Haxted Mill down Water Lane and Cottage Lane to several places on the main road between Dorman's Land and Marsh Green. There is evidence that some at any rate of the persons who used the roads did so in the belief that they were public roads, but I can find no evidence that any person used any part of the roads in the assertion of a private as opposed to a public right of way. My conclusion is that the proved user of the roads points to a public right rather than to private easements. I will now pass to the evidence as to how the roads in question have been repaired. Mr. Stallard, the Oxfordshire county surveyor, made two sections in Water Lane at points taken haphazard, one towards its northern end and one a little distance above the ford over the Eden Brook. The first section showed that the road at that point is for some fourteen feet a metalled road with fourteen inches of gravel and flint obviously brought there for metalling purposes. The second section which was near the brook did not disclose any traces of metalling. There was gravel beneath the silt, but this appeared to be the natural formation. Mr. Stallard also made a section on Cottage Lane at a point where it is not admitted to be a highway. He found a metalled road surface obviously constructed with some skill extending for a width of 7 feet 9 inches and thicker under the wheel tracks than elsewhere. It was made of stone, which Mr. Powell identified as probably from the Limpsfield Common Quarry. Lastly, Mr. Stallard made two sections of St. Pier's Lane at points where it is not admitted to be a highway. In both sections under the surface silt he found a properly shaped metal road made with some skill to a width in one section of 10 feet 6 inches and in the other of 9 feet, the metalling consisting of stone which Mr. Powell identified as from the Mutton Hill Quarries. Both the quarries I have mentioned are in the neighbourhood. This evidence proves that the three roads in question have even in parts where the public right is denied been made up or repaired with material brought from elsewhere for the purpose. If this repair was done by the highway authority for the time being, one would expect to find entries connected with the work in the records of such authority if such records have been preserved. As a matter of fact some of the account books of the surveyor of highways for the parish of Lingfield, in which all these roads are situate, have been preserved, and in these account books are found entries of payments on account of work done on all three roads. So far, however, as St. Pier's Lane and Cottage Lane are concerned it is difficult to say whether the entries relate to those parts of these lanes where the public right is denied as well as to those parts where it is admitted. I will mention a few of the entries relating to each lane. I ought, however, to say that I take the entries relating to work done at Longbridge or Longbridge Lane as referring to work done in Water Lane, though possibly at a point south of the Eden Brook. I think this is the correct inference, for the account books distinguish between Cottage Lane and St. Pier's Lane on the one hand and Longbridge or Longbridge Lane on the other. First, then, as to Water Lane. Under date July 9th, 1836, we find Thomas Bran paid for two days' work at Longbridge, and he is similarly paid for one day's work at Longbridge on October 8th the same year, and on January 5th, 1837. On March 15th 1837, and again on August 1st, 1837, Mr. Skinner is paid for

carting stones from Tilbuster Hill to "Longbridge or Longbridge Lane." In April, 1837, Thomas Bran is paid for twelve days' work at Longbridge, three of them for road scraping. In January 1838, he is paid for breaking gravel at Longbridge, and in February of the same year for laying on gravel at Longbridge. In December, 1855, three men are paid for repairing the road at Longbridge. In May, 1860, Abraham Betts is paid for five days' work for packing in, etc., that is, in all probability packing in the ruts at Longbridge. In June, 1861, William Agent, William Stone and Thomas Humphreys are paid for several days' work in repairing the road at Longbridge, and about the same time there is an entry of a payment to Joseph Stamford for team work at Water Lane leading to Longbridge. In 1863 there is an entry relating to levelling down in Water Lane. Next, with regard to St. Pier's Lane, omitting entries for work done at St. Pier's Green or Sampier's Green, where the lane is admittedly a highway, we find in 1837 numerous entries of payments for laying gravel, scraping, or letting out water in St Pier's Lane or Sampiers, and there are entries in 1837 and 1838 of payments for team work in connection with carting gravel to this lane. There is a like entry in 1854, and in June of that year George Titchener is paid for ten days' team work in carting gravel to all parts of St. Pier's Lane. In 1857 and 1858 there are several entries of payment for work in repairing St. Pier's Lane. In 1859, 1860, 1861 and 1863 there are similar entries either for repairing or laying gravel or levelling in this lane. Lastly, with regard to Cottage Lane, there are a considerable number of similar entries, but as in the case of St. Pier's Lane so in the case of this lane, it cannot be said with any certainty whether the entries relate to work done on that part of the lane where the public right is in issue. The entries in the surveyor's account books cease in 1864, for in that year the public highways in Lingfield came under the control of the Godstone Highway District board, and the account books of this board are not forthcoming. There is, however, some oral evidence with regard to repairs done in Cottage Lane, where the public right is in issue. Mr. Powell, who was from July 1st, 1896, to Christmas, 1908, surveyor to the Godstone Rural District Council, who as highway authority succeeded the Godstone Highway District Board, on one occasion at least did repairs in Cottage Lane near the point where it bends to the north-west. The road had become dangerous, and he ordered a specially large gauge of stone to fill in the holes made by floods. Again, Mr. Poynter, of Stockhurst Farm, remembers one occasion upon which the whole of Cottage Lane was repaired, and the steam-roller rolled in the ruts right down to the junction with St. Pier's Lane. This was, he thinks, eight or nine years ago. Before leaving the question of repairs I ought to add this. There was some evidence that Joseph Stanford, who had land adjoining Water Lane, or men in his employ, used from time to time to repair the roadway for his or their own convenience, and this was relied on as showing that the lane was not a public highway but an occupation road only. The value of this evidence is, however, diminished by the fact that this same Joseph Stanford appears from the surveyor's account books to have been paid, at any rate on one occasion, by the highway surveyor, for carting stone to the lane, and also by the fact that two of the men in his employ, who are said to have done work of repair in the lane, appear from the same account books to have been paid by the surveyor for work in the lane. It is not impossible, therefore, that the work said to have been done by Joseph Stanford or his men was in reality paid for by the road authority. Even, however, if this were not so, I do not think that the evidence of what Joseph Stanford did in the way of repairs destroys the value of the evidence contained in the surveyor's account books. I will now turn to the evidence of reputation. There is an entry in the Lingfield highway rate book, dated March 1st, 1859, and entitled "A memorandum of the measurements of the highways in the parish of Lingfield measured by Mr. Batchelor's cart the wheel of which measured 15 feet 2W inches in circumference by Mr. Batchelor and Benjamin Groves." It is proved that Mr. Batchelor was the parish surveyor and Benjamin Groves the parish clerk at the date of the entry. It is also proved that the entry was in the handwriting of Benjamin Groves. Both he and Mr. Batchelor are dead, but Mr. Groves' son was called as a witness. He remembers seeing his father and Mr. Batchelor start on the expedition of which the memorandum purports to be a record. The highways to which the record relates include the three lanes in question and though its contents may not be evidence of any particular fact stated therein, I think the record itself is admissible as showing that in March, 1859, the three lanes in question were all of them reputed to be public highways. Again, John Chapman, aged sixty-nine, remembers his mother, who used to go about in a caravan selling baskets, complaining to him about thirty-five years ago that Water Lane, which she called the old parish road, was out of repair. But perhaps the strongest evidence of reputation, at any rate as to Water Lane, is obtained from the minute book of the Godstone Highway District Board, which was formed in 1864. On June 24th, 1864 that board passed a resolution in reference to a proposed diversion of Water Lane, and on July 22nd, 1864, appointed a committee to inspect the lane with that object, and directed their clerk to write to the landowners to inquire whether they would give the land required for the diversion. On August 30th, 1864, the question of the proposed new road at Water Lane was again considered and estimates directed to be prepared. On October 28th, 1864, the board considered estimates relating to the propose road in substitution for a

certain road in Lingfield parish, called Water Lane, in conformity with s.47 of the highways Act, 1864, and the clerk was directed to consult with Lingfield Vestry. The reference to s. 47 of the Act of 1864 makes it quite clear that the board were proceeding on this footing that Water Lane was a highway. The clerk did consult the Lingfield Vestry and the vestry passed a resolution that did not consider the making of the proposed new road necessary for the convenience of the public. This resolution is in my opinion only explicable on the same footing. November 25th, 1864, the highway board determined to postpone further consideration of the matter for six months, and the proposal does not appear to have been revived again. There can be no doubt, however, that throughout the whole of these transactions everyone concerned took it for granted that Water Lane was a highway. On November 2nd, 1869, the vestry passed a resolution that the board be asked to repair the culvert at or near Longbridge, There appear to be only two culverts to which this resolution can refer. The first is a culvert by which the surface water of St. Pier's Lane and Cottage Lane is taken into the Eden Brook. The second is a culvert north of the Eden Brook by which Water Lane is carried over a small natural watercourse. The resolution may relate to either culvert, but both are in Water Lane. On December 3rd, 1869, the board directed their surveyor to attend to the matter. On January 19th 1877, Mr. Stanford, the waywarden for Lingfield and therefore a member of the board, complained to the board of the condition of Water Lane, saying it was almost impassable, and the board directed its surveyor to attend thereto as soon as possible. On July 26th, 1882, a Mr. Hamlin, a member of the board, reported as to inquiries he had made on the subject of Water Lane being a highway and recommended that no more gravel should be taken there. The discussion of the matter was postponed. This is the first Suggestion I can find that Water Lane was not a highway. I cannot find that the matter was again discussed, but it is not improbable from the evidence that the board did cease carting gravel to Water Lane. At any rate, it must now be very many years since the road authority or anyone else has done anything in the way of repairing Water Lane, and such lane has long been almost, if not quite, impassable. With regard to St. Pier's Lane there appears to be only one entry relating to it. On October 8th, 1869, there is a minute to the effect that Mr. Barnford, of Starborough Castle, attended and complained of its condition, saying it was a public highway repairable by the inhabitants at large, having been gravelled up to St Pier's Farm and near Longbridge at the public expense. The board resolved that there was no sufficient evidence that St Pier's Lane was a public highway repairable by the inhabitants at large. It should be noticed that the Lingfield waywarden was not present at this meeting of the board. Further, the resolution does not appear to draw any distinction between the various parts of the lane. It is quite clear, however, that the board or their successors must subsequently have admitted that at any rate from its commencement to St. Piers Farm Mr. Barnford's contention was correct. There appears to be no entry in the minute books of the board with regard to Cottage Lane, nor is there any further material entry in the minutes of the board or their successors until we come to the complaints and correspondence which led up to the institution of this action. I will now consider the evidence relied on by the defendants as tending to show that Water Lane and those parts of St. Pier's Lane and Cottage Lane where the public right is in issue were never public highways. The evidence adduced by the defendants mainly concerned Water Lane, probably because if Water Lane is not a highway the probability of St. Pier's Lane and Cottage Lane being public thoroughfares is greatly diminished. It is improbable that anyone should leave the main roads on the south merely for the sake of getting back into them by a long circuitous route through the two lanes. The evidence adduced by the defendants shows clearly that Water Lane is now in such a state of disrepair, and is in places so overgrown with alders and rushes, that no one would be likely to infer from its appearance that it was a public highway. Further, it is for a great part of the year so waterlogged as to be quite impassable either on foot or in carts or carriages. It must be remembered, however, that nothing in the way of repairing it has been done for many years, and I cannot properly from its present condition infer what its condition was in the days when the vestry of Lingfield and their surveyor had the care of the parish roads. Certainly no one could ever use it without fording the Eden Brook, and as the road descended into the Eden Brook from the south and came up out of the Eden Brook towards the north, the road would necessarily be waterlogged for a distance on either side of the brook varying with the height of the water in the brook itself. In times of heavy water, and such times are frequent during the winter months, the road could never have been used because of the depth of water at the ford and the length of road which would necessarily be submerged. The present waterlogged condition of the road is not, however, in my opinion accounted for by the Eden Brook. It depends largely on the surface water coming from lands lying north of the main road from Lingfield to Edenbridge. This water is led under the main road by a culvert which empties itself into one of the ditches, or what used to be one of the ditches, of Water Lane. The ditches of Water Lane have, however, from want of proper cleaning long since silted up, and the water from the north now passes down the road itself, and has so washed away the road that it has the appearance of a water course. Further, there is a point between the main road and the ford where Water Lane is carried over a small

natural water course by means of the culvert I have mentioned The ditches of Water Lane would naturally drain into this water course and the water from the north would thus find an outlet from the lane. There are, however, certain works constructed in connection with the culvert and designed for the purpose of irrigating the adjoining meadows, and these works, at any rate in their present condition, tend to dam up the water coming from the north in the lane itself, which is for the most part somewhat below the level of the adjoining lands, and thus the lane constantly tends to become waterlogged. There is no satisfactory evidence when the works in connection with the culvert were constructed, or whether if the ditches of Water Lane were re-opened they could not be made to drain into this watercourse. But even the defendants' witnesses admitted that it would not be difficult to prevent the lane being injured by water from the north if those ditches were re-opened. In my opinion the right inference is that in the old days before 1864, when the highway board was constituted, the lane was not waterlogged north of the culvert to anything like the extent to which it is now. The fall between the main road and the culvert is quite sufficient to admit of the lane being properly drained and avoiding all difficulty from water except in times of flood. Apart from the evidence above mentioned as to Water Lane, the defendants adduced negative evidence to show, first, that Water Lane had never been repaired except by Joseph Stanford; secondly, that Cottage Lane and St. Pier's Lane, where the public right is in issue, had never been repaired at all; and, thirdly, that the only traffic in Water Lane, and those parts of the other two lanes in which the public right is in issue, was in the nature of accommodation traffic and not through traffic. In referring to the plaintiff's evidence I have already sufficiently indicated the view I take on these points. Having considered as carefully as I can the evidence before me, I have come to the conclusion that the facts proved can only be explained on the hypothesis that all three roads are throughout their whole length public highways repairable by the inhabitants at large. There can, I think, be no doubt that this was the view of the Lingfield Vestry when that vestry had the control of the highways in their parish, and accordingly they repaired these roads as far back as 1836. In default of evidence of dedication since the Highway Act, 1835, I think the proper inference is that the roads were dedicated before the passing of that Act. When the highway board was constituted such board acted on the footing that Water Lane, at any rate, was a highway repairable by the inhabitants at large. The scheme for the diversion of this road having fallen through, the board, however, began to neglect its repair, and finally ceased to repair it altogether, with the result that it soon fell into such a condition as to be practically impassable. It ceased to be used for through traffic, though it continued at times to be used for accommodation traffic, and possibly Mr. Stanford or others may for their own convenience have done temporary repairs. When through traffic ceased in Water Lane it would naturally cease also on the two other lanes, and the user of such lanes also would be confined to accommodation traffic The extent to which they were repaired would naturally be regulated by their user, and this in my opinion has led to the one being repaired only to St. Pier's Farm and the other to Stockhurst Farm only. I propose, therefore to declare that the three lanes are public highways for all purposes repairable by the inhabitants at large, and the costs of the action must follow the event.

Judgment for plaintiff.

Solicitors for the plaintiff: Hasties.

Solicitors for the defendants: Turner and Evans, for E. A. Head, East Grinstead.