

The Right of Navigation on Non-tidal Rivers and the Common Law

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ABSTRACT

The law relating to the right of navigation on non-tidal rivers affects numerous land-owners, an estimated two million canoeists and one million legal anglers. Having received reports of disputes between canoeists and the other interested parties a House of Lords Select Committee stated in 1973 that, 'The legal question of rights of way over water must be settled.' It is considered that this dissertation is the first critical study of this subject.

The dissertation reviews the evidence that prior to 1830 there was a public right of navigation on all rivers which were physically navigable. The wording of the River Navigation Acts are then examined and are shown not to be inconsistent with the concept that there was a prior public right of navigation on all the rivers.

In 1830 H.W. Woolrych published the first legal commentary specifically on the law of waters in which he claimed that all non-tidal rivers are private unless a public right of navigation had been established by statute, long use or dedication. The errors in Woolrych's text are examined and it is argued that subsequent commentators have followed his misconceptions.

Four leading cases from the 19th and 20th centuries are then considered.

In this dissertation it is argued that the original public right has not been lost but that there always has been, and there continues to be, a public right of navigation on all non-tidal rivers which are naturally physically navigable by small boats and on those rivers which have been made physically navigable at public expense.

LIST OF CONTENTS

Title Page

Abstract

Table of Contents

Acknowledgements

Table of Legislation

Table of Case Law

Chapter 1 Introduction

1.1 The Thesis

1.2 The People and Organisations Involved

1.2.1 The Navigators

1.2.2 The Anglers

1.2.3 The Land-owners

1.2.4 The Environment Agency

1.2.5 Protection of the Environment

1.3 The Social Context

1.3.1 The History of the Problem

1.3.2 Legal Uncertainty

1.3.3 Perceived injustice in the allocation of resources

1.3.4 Frustration of Government Policy

1.4 The Physical Environment

1.4.1 The Rivers

1.4.2 Mills, Weirs and Flashlocks

1.4.3 Boats

1.5 The Legal Environment

1.5.1 The boundary tidal to non-tidal

1.5.2 Ownership of the river beds, the fisheries and the water

1.5.3 The differences between Rivers and Roads

1.6 The Right of Navigation

1.6.1 The meaning of the word 'navigable'

1.6.2 The Right of Navigation

1.6.3 Recreation and the Right of Navigation

1.6.4 Ending a public right of navigation

1.7 Other Legal Systems

1.7.1 Roman Law

1.7.2 Scots Law

Chapter 2 Before the Pound Locks. 1189 - 1618

2.1 Introduction

2.2 Roger de Hoveden

2.3 Glanvill

2.4 Bracton

2.5 Magna Carta

2.6 Statutes for removing Weirs and other obstructions

2.7 State Records

2.8 The Use of Waterways in the Fens and other Wetlands

2.9 Tolls and Charters

2.10 Opposition to the use of rivers

2.11 The Commentators

2.11.1 Coke

2.11.2 Callis

2.11.3 Hale

2.11.4 Lord Macclesfield

2.12 Summary

Chapter 3 The River Navigation Acts

3.1 Introduction

3.2 The Statutes

3.2.1 Statutes containing recitals of immemorial rights and no provision for tolls. Category (1)

3.2.2 Statutes not containing recitals of immemorial rights and with no provision for tolls. Category (1a)

3.2.3 Statutes providing for the proprietors to be sole users of the river. Category (1b)

3.2.4 Immemorial rights and provision for tolls. Category 2

- 3.2.5 No immemorial rights but an express declaration of public rights. Category (3)
- 3.2.6 No immemorial rights but right implied by an Act. Category (4)
- 3.3 Comparison with the Turnpike Acts
- 3.4 Summary

Chapter 4 Tidal Creeks and Rivers

- 4.1 Introduction
- 4.2 Artificial Creeks
- 4.3 Tidal Non-navigable Creeks
- 4.4 Navigable Creeks and Tidal Rivers. Ownership
- 4.5 Navigable Creeks and Tidal Rivers. Physical Characteristics
- 4.6 Rivers tidal but for a sluice or weir

Chapter 5 The Commentaries.

- 5.1 Introduction
- 5.2 Kent and Wellbeloved
- 5.3 Woolrych
- 5.4 Coulson & Forbes
- 5.5 Wisdom
- 5.6 Halsbury's Laws of England
- 5.7 Telling
- 5.8 Bates

Chapter 6 The Cases after 1830

- 6.1 Introduction
- 6.2 *Bourke v Davis*
- 6.3 *A-G v Simpson*
- 6.4 *Rawson v Peters*
- 6.5 *A-G ex rel Yorkshire Derwent Trust Ltd v Brotherton*
 - 6.5.1 Introduction
 - 6.5.2 Questions (1) to (4)
 - 6.5.3 Question (5)

Chapter 7 Conclusion

Appendix A A Survey of the River Navigation Acts.

Appendix B Extracts from Humphrey W Woolrych,
A Treatise on the Law of Waters and of Sewers.

Appendix C A Survey of the Sussex Rivers

Bibliography.

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