The River Access Acts 1350 – 1472

Introduction

The River Access Acts 1350 – 1472 are important because they provided for some sections of rivers to be kept clear for boats.[1] On these rivers there is a public right of navigation today. The Acts were needed because some landowners built mills and improved fisheries in such a way that the passage of boats was obstructed.

This paper discusses the question 'To which rivers did and do the Acts apply?' The conclusion reached is that they apply to the navigable sections of tidal and non-tidal rivers.

These Acts have been repealed but they never created rights. They confirmed common law rights which still exist today for the rights have not been extinguished.

Mr Hart when advising the Angling Trust in 2016 wrote "once you read all the Acts together, you realise that the intent, in terms of navigation, is to protect the passage of ships and boats in the great rivers (whatever that may mean), …"[2] It is to be hoped that it is very unusual for a Q.C. to give an opinion on a series of Acts of Parliament without understanding clearly the subject of the Acts.

Three sources of information about these Acts are considered:

1. Information independent of the Acts.
2. The effect of the Acts.
3. The wording of the Acts.

Information independent of the Acts.

1. There was a public right of navigation on the sections of river since they were to be kept clear for the passage of boats.
2. Some of them were narrow like the Fleet which had to be kept ten feet wide.[3]
3. Some of them only carried boats laden with one ton since 'The Fleet Ditch ought of right to be ten feet wide … that boats laden with a tun of wine can float thereon'.[4]
4. They were well defined since the commissions which were sent, eg. to Yorkshire, Sussex or Cornwall, needed to know which sections of river needed to be kept clear. As Mr Hart implies the king would not send a commission to clear the 'great rivers' in a county unless the commission understood what was meant by 'great'.
5. There were many sections of river to be kept clear.

Prior to the passing of the Acts from about 1194 to 1348 groups of judges were sent to all the counties of England except Durham and Chester. There were about 18 visitations, called Eyres,

---

[1] 25 Edward III s4 c4 (1350); 45 Edward III c2 (1371); 1 Henry IV c 12 (1399); 4 Henry IV c 11 (1402); 1 Henry V c2 (1413); 12 Edward IV c7 (1472)

[2] Mr David Hart Q.C. 'Further Advice'. May 2016, para 15

[3] Coram Rege Roll, Hil., 30 Edward III. Rex 24

[4] *Idem.*

to each county. There were about 35 counties. The counties had between 8 and 50 districts. Among their duties the judges were told to examine the *veredicta* presented by the jury from each district. This included a reply to the question "Have there been any purprestures or enroachments on the land or water of the king since the last Eyre?" The 'land of the king' included the highways. The 'water of the king' was the Royal Rivers. This question must have been asked over 10,000 times. This implies that there were a large number of Royal Rivers. Only a few of the records of the Eyres have been translated into modern English and printed. Three[5] of these have been examined and they show that purprestures were reported on the river Fleet in London[6] and the river Kennet near Marlborough.[7]

The Effect of the Acts. The Commissions. 1265 to 1427

The Patent Rolls record that from 1265 the king periodically appointed commissions to correct purprestures which had narrowed or blocked a river so that ships and/or fish could not pass and/or where land was flooded.[8] With regard to the right of navigation the writs appointing the Commissions prior to the 1350 Act were based on the customary common law public right.[9] The writs issued after 1350 were based on the River Access Acts.

The commissions were made responsible for a section of a river, a whole river, several named rivers, all the rivers in a county or several counties.[10] The sections of rivers for which commissions were appointed included tidal, non-tidal and partly tidal lengths.

Since the Commissions were appointed by the king it is clear that they all referred to the Royal Rivers and possessed a public right of navigation. Again the fact that more than 250 commissions were appointed indicates that there must have been a public right of navigation on many sections of rivers.

Magna Carta

Magna Carta required that 'kiddles' be removed *per totam Anglia* [the whole of England]. The text does not make it clear whether this was so that boats or fish could pass along the rivers. However it is possible to know how Magna Carta was understood in the medieval period. One section of the Act 1472 12 Edward IV c 7 states:

> Whereas by the laudable Statute of Magna Carta, amongst other things it is contained, that all Wears through Thames and the Medway, and through all the Realm of England, should be put down, except by the sea coasts; which statute was made for

[5] Surrey 1235, 546 items; London 1244, 486 items; Wiltshire 1249, 567 items.
[6] Helena M. Chew and Martin Weinbaum, Editors, *The London Eyre of 1244.* London: London Record Society, 1970, 137-8
[7] C.A.F. Meekings, Editor, *Crown Pleas of the Wiltshire Eyre, 1249.* Devizes: Wiltshire Archaeological and Natural History Society, 1961, 230.
[8] I am grateful to Andy Biddulph and 'River Access for all Ltd' for extracting the details from the Patent Rolls.
[9] Except that in one commission relating to the Thames in which there was specific reference to the obstruction being 'contrary to divers charters of the citizens, and more especially to Magna Carta.'1327, *Calendar of Patent Rolls,* Edward III, volume I, 150.
[10] Commissions were appointed for every county except the three Palatines counties, three counties near the border with Scotland, Rutland, Staffordshire and Suffolk.

> the great Weal of all this Land, in avoiding the straiteness of all Rivers, so that Ships and Boats might have in them their large and free Passage, and also in Safeguard of all the Fry of Fish spawned within the same.

Those who wrote and approved this Act clearly thought that this statement was true in 1472. It implies that the members of Parliament and their advisors thought that the law was the same in 1472 as when Magna Carta was first approved. Thus in 1472 parliament thought that there was a public right of navigation on all the rivers in England.

The wording of the Access to Rivers Acts. 1350 to 1472

The six Access to Rivers Acts provided for the removal of obstructions in the rivers so that boats could pass. Three of the Acts also referred to the passage of fish and all allowed obstructions built before the time of Edward I to remain. The Acts provided increasing penalties for such obstructions.

The Acts were all written in French. The rivers to which the 1350 Act applied were the '*g'ntz rivers Denglet're*'[11] and in the following Acts variously as *g'ntz rivers*,[12] *g'ndes rivers*,[13, 14,] *g'undez Riv's*,[15] all of which are medieval spellings of *grande rivières.* Four hundred years after the Acts were passed these words were translated into English as 'the great rivers' in both *Statutes of the Realm* and *Statutes at Large*. This may have caused confusion in some people's minds.

In the Acts written in the French language the term '*grandes riviéres*' was limited to Acts concerned with keeping rivers clear for boats. In the other Acts for fishing and land drainage the terms used were '*la rive de Thamise*' or '*l'eaux*'.

There are many books written in French about the law relating to rivers.[16] They divide the rivers into two classes *les grandes riviéres* or *fleuves* and *les petites riviéres.* The second group is divided by some authors into little rivers and streams. The terms *les grandes riviéres* or *fleuves* denote the navigable rivers both in the legislation and in the legal literature. (See the Appendix.)

Thus during the period of the River Access Acts there was in the French language an equivalence between *grandes rivières* and *navigable rivières* and between *petites rivières* and *non-navigable rivières.* There is no reason to think that the French language as written and spoken in England was different from the French language written and spoken in France.

---

[11] 1350, 25 Edward III. s.4 c.4
[12] 1371, 45 Edward III. c.2
[13] 1402, 4 Henry IV. c.11 and 1399, 1 Henry IV. c.12
[14] No words describe the rivers in 1413, 1 Henry V. c.2
[15] 1472 12 Edward IV. c. 7
[16] For some see the footnotes in the Appendix.

The meaning of the word 'navigable'

The French word normally used in the Law Books referring to vessels on navigable rivers is '*bateau*' as in the phrase '*petites rivières et tous les cours d'eau ne portant pas bateau'*. It seems that *bateau* includes all the many types of vessel used in England including:- boat, cobble, wherry, rowing boat, log boat, skiff, punt, canoe, *Navicula*, *batella*, *scafula*. Some of these were small like the Bridgewater barges, Fleet trows and Parrett flatners which were about 2 metres wide.[17]

The canals which were used by boats included a section of the Forth Dyke which was 5 metres wide.[18] On the River Lea there was a dock which 'would have been capable of accommodating flat-bottom boats up to 2.7 metres long and 1.2 metres beam.'[19] Kyndelwere which was used by boats was ten feet wide.[20]

There are records of the use of sections of 170 rivers in medieval England.[21] The smallest of these are now only streams. The reduced size may be due to faster drainage and abstraction.

Nothing has been found which implies that the River Access Acts referred to anything other than normal rivers of a minimum width of about 10 to 14 feet which were usable by boats worked by one or two people. These are easily recognized by any experienced small boat user.

The rights have not been extinguished

In 2016 Mr David Hart QC advised the Angling Trust that rights of access on rivers which existed in medieval times still exist. His understanding of the law has not been challenged.

In the case *Josie Rowland v The Environment Agency*[22] Lightman J. stated that a public right of navigation can only be extinguished by legislation or exercise of statutory powers or by destruction of the subject matter of the public right of navigation. The rights which were confirmed by the River Access Acts have not been extinguished in any of these ways.

Conclusion

In the French language, as used by lawyers, there was, and is, an equivalence between *grande rivières* and *navigable rivières* and between *petite rivières* and *non-navigable rivières.*

---

[17] Stephen Rippon, 'Waterways and Water Transport on Reclaimed Coastal Marshlands: The Somerset Levels and Beyond.' In John Blair, *Waterways and Canal Building in Medieval England.* Oxford: Oxford University Press. 2007, 222

[18] James Bond, 'Canal Construction in the Early Middle Ages: An Introductory Review.' In John Blair, *Waterways and Canal Building in Medieval England.* Oxford: Oxford University Press. 2007, 195

[19] James Bond, 'Canal Construction in the Early Middle Ages: An Introductory Review.' In John Blair, *Waterways and Canal Building in Medieval England.* Oxford: Oxford University Press. 2007, 190

[20] John Blair, 'Transport and Canal-Building on the Upper Thames, 1000-1300.' In John Blair, *Waterways and Canal Building in Medieval England.* Oxford: Oxford University Press. 2007, 285

[21] D.J.M. Caffyn, 'River Transport 1189-1600.' Thesis for Doctor of Philosophy, University of Sussex, 2010. Appendix A

[22] [2003] 1 All ER 625, para 50

The words *grande rivières* in the River Access Acts must be interpreted in today's language as the navigable sections of tidal and non-tidal rivers. River users know which these are.

Appendix

The words '*grandes rivières*' might mean 'rivers too wide to jump across' or 'too deep to wade across' or 'too deep to ride a horse across' or 'big enough to use a boat on' or other meanings. The only way now to know how the word was used in medieval legislation is to study its use in the legal texts which are available.

In a history of French law, which has been translated into English, Bissard discussed the law concerning rivers in France in the 14th and 15th centuries. He wrote:

> In many places the seignior regarded himself as the exclusive owner of the forests and also claimed for himself the ownership of the waters. …. On his part the king claimed the right to navigable rivers and streams suitable for rafting."

Included in the footnotes for the first statement are the references "*Boutillier,*I, 73; the large rivers belonged to the king and were treated as royal streams (a question of navigable rivers). The others belonged to the seigniors of the territory through which they flowed. … *Guyot*, 'Inst. Féod.,' p.269: the unnavigable rivers belonged, according to the localities, to the superior justiciaries or to the feudal seigniors; *cf Boutaric*, p. 554."[23]

Thus Bissard considered that in the feudal period in the French language 'the large rivers' were 'the navigable rivers' which the king claimed were his property.

In France the law relating to rivers has not always been clear. The matters which have been disputed include the ownership of the bed, the banks, the islands, and the water in the water-course, the existence of a public right of navigation, the right of fishing, the right to abstract water for irrigation and the right to build mills, weirs and fish traps in both navigable and non-navigable rivers. In France in the medieval period there were over 200 different legal systems. These matters do not concern us. It is only the language used in the legislation and legal texts which was common to France and England.

Wodon in his history of the law of waters has chapters on the feudal period '*Des eaux publique ou navigable sour the droit féodal et coutumier*' and '*Des eaux privées ou non navigable sour the droit féodal et coutumier*'.[24] He also wrote about *les grandes rivières navigables*[25] linking navigability to the word *grande*.

---

[23] Jean Brissaud, *A History of French Public Law.* Translated from French by James W. Garner. London: John Murray. 1915, 237-8.
[24] Leon Wodon, *Le droit des Eaux et des cours d'eau.* Bruxelles: Bruylnt-Christophe et Compagnie. 1874
[25] *Idem.* 191

In France in 1669 an ordinance was approved stating "*Déclarons la propriété de tous les fleuves et rivières portant bateaux de leurs fonds, sans artifice et ouvrages de mains, sans notre royaume et terres de notre obéissance, faire partie du domaine de la Couronne, sauf les droits de pêche …*"[26]

In the Edit of 1683 the description of the rivers was changed to '*Les grandes fleuves et les rivières navigables*'.[27]

The authors who wrote after 1669 about ownership of rights on rivers stated or implied that in French *rivières navigables ou flottables* and *grandes rivières* are in one category and '*les petit cours d'eau qui ne sont navigables ni flottable'* and '*les cours d'eau ne portant pas bateau*' are in another category. [28] Their opinion varied as to which rights were owned by various parties but the language in which the arguments took place is clear. For example Champonnière wrote *"Que reste-t-il donc des usages possibles d'une grande rivières? la navigation. Là, mais là seulement, l'usage est public."*[29]

In 1837 Daviel refers to fourteen authors who have written about the rights of the king, the riparian owners and others on non-navigable rivers.[30] In 1844 Rives wrote "*La confusion don't j'ai parlé plus haut, des rivières navigable et des petites rivières, n'avait pas encore cessé."*[31] In 1846 Champonnière quotes from 41 authors who had written about the ownership of watercourses. The authors divided the rivers into two classes *grandes / navigable* and *petite / non-navigable*.[32]

Coquille in *La Coutume De Nivernais* wrote about '*des eaux d'un fleuve ou d'une rivière navigable ou flottable*' as opposed to '*des petit cours d'eau non navigable ni flottables*'.[33]

This division of the rivers did not start in 1669. "Loisel was a French juriconsult who was notable among jurists for having collected the general principles of old French customary law."[34] In 1608 he wrote "*Les grands chemins & rivieres navigables appartiennent au Roy*". "*Les petites rivieres & chemins sont aux seigneurs des terres, & les ruisseaux aux particuliers tenanciers*." "*La seigneurie des seigneure s'estend jusques aux bords des grandes rivieres: & des subjects tenanciers jusques aux petites.*" Thus for Loisel all rivers were either '*grande*' or '*petite*' and the '*grandes*' were navigable.[35]

---

[26] Cited by Pascal Gourdault-Montagne, *Le Droit de Riveraineté.* Paris: Technique & Documentation Lavoisier, 1994, 6

[27] Paul Lucas Championnière, *De la Propriété des Eaux Courantes.* 1846, 658

[28] A. Daviel, *Traité de legislation et de la pratique des Cours d'Eau. Tome premier.* Paris: Charles Hingray, 1837, 22 and 24.

[29] Paul Lucas Championnière, *De la Propriété des Eaux Courantes.* 1846, 17

[30] A. Daviel, *Traite de La Législation et de la pratique des Cours D'eau. Tome second.* Paris: Charles Hingray, 1837, 12.

[31] M. Rives, *De la propriéte de Cours et du lit des rivières non navigable et non flottables.* Paris: Typographie de Firmin Didot Frères. 1844, 40

[32] Paul Lucas Championnière, *De la Propriété des Eaux Courantes.* 1846, 692-705

[33] Guy Coquille, *Coutume de Nivernais. Nouvelle edition.* Paris: Henri Plon. 1864, 270

[34] Wikipedia, 'Antoine Loysel'. Accessed 23/5/2021

[35] Antoine Loisel, *Institutes Coustumières, ou manuel de plusieurs et diverses reigles, sentences, proverbs tant anciens que modernes du droit coustumier plus ordinaire de la France*. ['A Treatise on the Customs, or a Manual of the many and diverse rules, maxims and proverbs, both ancient and modern, of the ordinary customs of France.] Paris: Abel L'Angelier, 1608, 19

Loisel also wrote '*Grosses rivieres ont pour le moins quatorze pieds de largeur, les petites sept, & les ruisseaux trois & demy.*' This may be translated 'Great rivers are at least fourteen feet wide, the little seven, and the streams three and a half.'[36] Nothing has been found which implies that the River Access Acts referred to anything other than normal rivers of a minimum width of about 10 to 14 feet which were usable by boats worked by one or two people in boats carrying a load of up to one ton.

In 1613 Loyseau wrote *"En France on distingue les rivières navigable d'avec les non navigable."*[37]

Legrand in the *Coutumes de Troyes* wrote "*Pour ce qui est des rivières navigables, les rois se les sont attribuées d'ancienneté … Qunat aux autres sortes de rivières que nous avons dit être petites rivières non navigables, …*"[38]

In 1603 Bouteiller wrote in *Somme Rural, ou le Grand Coustumier*: "*toutes grosses rivieres courans parmy le Royaume ont au Roy nostre Sire*". Further on he wrote: "*tous fleuves navigables sont repites estre du domaine du Roy*". Later in the passage he wrote "*petites rivieres qui ne portent point de navire, & qui ne sont point rivieres tells que dessus sont dites, sont aux seigneurs parmy qui terre & seigneurie elles passent*"[39] which implies the equivalence of the great/navigable as opposed to the little/not navigable rivers.

The laws of France in the 14th and 15th centuries were contained in at least three sources, *Ordinances, Regulations* and *Coutumes.* The *coutumes* were the customary laws for each region. They are the laws as they were in the early to middle feudal period and were collected and printed after about 1580. The earliest were written in manuscript in the late 13th centuries.

In 1849 Bordeaux wrote that an Edict of Francois II of 1558 was "*la première* [*édit*] *qui distingue entre les rivières navigables et celles qui ne l'étaient pas.*"[40] This is possibly mischievous. This may have been the first 'Edict' to distinguish between navigable and non-navigable rivers but "*Les Coûtumes qui sont les loix que les peoples se sont faites eux-mêmes.*"[41] [The coutumes are the laws which the people have made for themselves.] As quoted above some of the *coutumes* referred to navigable rivers.

---

[36] In Nivernois an 'A*ncien pied*' was 0.3248 metres. Guy Coquille, *La Coutume de Nivernais*, Paris: Henri Plon. 1864, 456

[37] Quoted by Paul Lucas Championnière, *De la Propriété des Eaux Courantes.* 1846, 696

[38] Quoted by Paul Lucas Championnière, *De la Propriété des Eaux Courantes.* 1846, 697

[39] Jean Bouteiller, *Somme Rural, ou le Grand Coustumier General de Practique Civil et Canon.* Mont Hilaire: Eseu de Bretaigne. 1603, 428

[40] M. Raymond Bordeaux, *De la Législation des Cours D'eau dans le Droit Francais Ancien et dans le Droit Moderne.* Paris: Alphonse Delhomme. 1840, 18

[41] Anon, *Conference de L'Ordonnance de Louis XIV. Du mois d'Août 1669, sur le Fait des Eaux et Forests. A Paris, Au Palais,* 1725, Preface 9th page.

Thus the *Coutume de Metz* refers to a '*rivière navigable*'.[42] The *Coutume de Meaux* states that "*On tient que tous fleuves navigables sont au roy, s'il n'y a seigneur qui ait tiltre particulier.*"[43] *La Coutume de Sens* comments on '*autres grandes rivières navigables*'[44] and the right of fishing '*en rivières et risseaux non navigable*'.[45]

Gourdault-Montagne wrote in 1994 that "*Par ailleurs, dès le XIV^e^ siècle, apparaît la distinction entre rivières navigables et celles qui ne le sont pas.*"[46] This is supported by Gazaniga and Ouriliac who wrote in c.1980 "*Les droits de la Couronne – Mais déjà – et les textes tardifs le rappellent – apparaissait au XIV^e^ siècle, la distinction des rivières navigables et de celles qui ne le sont pas.*"[47] No reference is given in either text but it is seems that the information arises from the study of the manuscript copies of the *coutumes* of the 14th century.

Guy Pape died in 1476. He wrote "*flumina non navigabilia sunt dominorum juririsdictionalium per quorem territorium fluunt*".[48]

Ordonnances of 1292, 1326, 1372, 1388, 1515 and 1554 refer to '*rivières grandes et petites*'.[49]

The *Consuetudines feudorum* of 1170 concerning the law in the time of Emperor Frederic I, king of Burgundy 1152-1190, stated that '*flumina navigalia*' is one of the objects '*Quai sint Regaliae*'.[50]

Thus in the 14th and 15th centuries, in the French legal language, the discussion as to whether the sections of the rivers were public or private was based on the division into two classes *grandes / navigable* and *petite / non-navigable*.

Dr. Douglas Caffyn
caffyn585@gmail.com
20 October 2021

[42] Paul Lucas Championnière, *De la Propriété des Eaux Courantes.* 1846, 635
[43] Paul Lucas Championnière, *De la Propriété des Eaux Courantes.* 1846, 655
[44] Paul Lucas Championnière, *De la Propriété des Eaux Courantes.* 1846, 635
[45] Paul Lucas Championnière, *De la Propriété des Eaux Courantes.* 1846, 703
[46] Pascal Gourdault-Montagne, *Le Droit de Riveraineté.* Paris: Technique & Documentation Lavoisier, 1994, 5
[47] Jean-Louis Gazzaniga and Jean-Paul Ourliac, *Le Droit de L'eau*. Paris: Libraire de la Cour de casssation. c.1980, 17
[48] M. Rives, *De la propriéte du Cours et du Lit des Rivières non navigables et non flottables.* Paris: Typographie de Firmin Didot Frères. 1844, 45
[49] M. Rives, *De la propriéte du Cours et du Lit des Rivières non navigables et non flottables.* Paris: Typographie de Firmin Didot Frères. 1844, 37
[50] M. Rives, *De la propriéte du Cours et du Lit des Rivières non navigables et non flottables.* Paris: Typographie de Firmin Didot Frères. 1844, 34
and Paul Lucas Championnière, *De la Propriété des Eaux Courantes.* 1846, 653