

The document appears to be a thesis for a Master's degree written by someone who admits to having no legal training. He has published the thesis himself. The basic point which the writer seems to wish to achieve is to open up the rivers for canoeists at the expense of anglers. He criticises the Environment Agency as favouring angling over canoeing, claiming that the interests of members of the statutory committees are primarily angling rather than navigation. He endeavours to establish a common law right to navigation on non-tidal waters but his logic and the often obscure material he is quoting are legally unconvincing.

The generally held legal view is that there is a general absence of public right of navigation on non-tidal waters or inland lakes. The public right of navigation that exists on tidal waters does not apply. The soil of rivers is vested not in the Crown, but in the riparian owners and in the case of inland lakes, in the adjoining proprietors. This is established by a series of common law cases such as *Murphy v Ryan* (1868) and *Hargreaves v Diddam* (1875). The Reverend Caffyn attempts to argue against these and against Halsbury's Laws of England but without giving any real or convincing reason why he considers them to be incorrect. For instance, in the case of *Rawson v Peters* (1972) he claims that the judgment given by Lord Denning in the Court of Appeal was flawed, apparently because he was in favour of the anglers. A public right of navigation can be granted only (1) by immemorial usage (2) by Act of Parliament or an order made under the authority of an Act of Parliament or (3) by express grant or dedication by the owner of the soil. There are several cases seeking to establish "immemorial usage" such as *Ewing v Colquhoun* (1877) and *Bourke v Davis* (1889) and these would not have been necessary or heard by the courts if a right to navigation on non-tidal rivers exists as the Reverend Caffyn argues.

[REDACTED]

From: [REDACTED] (MW) [REDACTED]
Sent: 28 October 2004 12:39
To: Secretariat - MOS (Rural Affairs) (Secretariat)
Cc: [REDACTED] (LEGAL); [REDACTED] (LEGAL); [REDACTED] (MW); [REDACTED]
Subject: (CYD); [REDACTED] (CYD)
RE: POCAM 2574 Caffyn 011004

[REDACTED]

The Minister asked for a steer from legal on the work published by Mr Caffyn. [REDACTED] has accordingly read the document and has provided the attached note. As you will see she considers Mr Caffyn's arguments unconvincing.

Having read the document myself it seems that the basis for Mr Caffyn's claim that there is a public right of navigation on non tidal rivers is his belief that this was the accepted position in early medieval times and that, over time, changing attitudes towards the relationship between public rights and private property, backed up by a succession of sometimes (in his view) unhelpful court cases has resulted in the more restricted position we find it today. As a layman with an interest in the history of the waterways I have some sympathy with what Mr Caffyn says about historical customs and attitudes. However the fact remains that the law is as [REDACTED] describes it in her note and until it is changed, Mr Caffyn's work can only be regarded an expression of a personal view.

[REDACTED]

[REDACTED]



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Thank you for your letter of 9 November about our meeting on the 20 October.

I am aware that the Environment Agency has arranged a follow up meeting with you and Defra officials later this week. I can assure you that I will continue to take a close interest in this work and my officials will be providing me with regular updates.

You refer in your letter to Dr Caffyn's paper, '*The Right of Navigation on Non-tidal Rivers and the Common Law*'. I have seen the paper and it is clear that Dr Caffyn has researched this area of the law very thoroughly. The historical perspective is an important one but I am advised that Dr Caffyn's work does not offer an immediate solution in that only the courts can determine whether a public right of navigation exists on a particular river. Dr Caffyn's research will be a valuable guide to those seeking to establish such a right but each case will need to be considered on its merits.

