

Public Rights of Navigation on the River Wye upstream of Herefordshire.



**River Access For All
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Note – This publication includes many links to source documents.

Introduction

The question of the existence of public navigation rights on the rivers of England and Wales evokes strong feelings – none stronger than those of Geoff Maynard of Llanthomas Fishery, on the River Wye upstream of Hay on Wye, who asserts “*People need my permission to paddle through my stretch. This is not my opinion, it is the law.*” Mr Maynard has announced his intention to enforce charges, to some canoeists, for use of “his stretch” of the river. Others dispute his view of the law and claim a public right to navigate the upper Wye without any let or hindrance.

We don’t doubt that Mr Maynard believes his version of the law any less vehemently than the canoeists believe theirs. In such circumstances, the truth can only be determined by examination of the evidence. So we publish here a selection of that evidence in the hope that this dispute and the threat of “enforcement” can be ended and we can progress to a constructive sharing of the river.

The Common Law Public Right of Navigation

- Under Roman Law ([Institutes of Justinian](#) – see page 19, Book II, 1-4) all rivers were considered *res publica* and open to reasonable use, including navigation, by all. The Romans considered this a natural law which applied to all permanently flowing rivers irrespective of time or place.
- This public right of navigation was defended by Clause 33 of Magna Carta which stood witness to the existence of navigation rights in all rivers throughout the realm. Professor Nigel Saul - Professor of Medieval History, Royal Holloway University of London, in [a lecture to the All Party Parliamentary Group on the Constitution, 26 February 2013](#)) said “*Magna Carta, clause 33 was to be of enormous significance in the history of navigation in this country, because it established the principle of free passage along England’s rivers, so laying the foundations for transport development in the Industrial Revolution*”. (see page 2)
- The protections embodied in Clause 33 of Magna Carta were confirmed and developed in a number of statutes e.g. 1225 9 Henry III cap 23, 1297 25 Edward I c 23, 1350 25 Edward III C 4, 1371 45 Edward III C 2, 1399 1 Henry IV c 12, 1402 4 Henry IV cap 11, 1413 1 Henry V c 2, 1423 2 Henry VI cap 15 etc..
- The intent of Magna Carta was elaborated and confirmed by the [1472 Act for Weirs and Fishgarthes](#) “*Whereas, by the laudable Statute of Magna Carta, among other Things, it is contained That all Kedels by Thamise and Medway, and throughout the Realm of England, should be taken away, saving by the Sea-banks, which Statute was made for the great Wealth of all this Land, in avoiding the straitness [obstruction] of all Rivers, so that Ships and Boats might have in them their large and free Passage...*”
- Many Medieval commissions were appointed by the Kings to preserve and protect public navigation rights on a very wide variety of rivers, thereby confirming the existence of the

public's navigation rights in all rivers where navigation was then practical. See http://www.riveraccessforall.co.uk/docs/totally_compelling_evidence.pdf (see Page 7)

- The Laws in Wales Acts (1536 - 27 Henry VIII c. 26 and 1542 - 34 & 35 Henry VIII c. 26) specifically extended to Wales the full benefit of the law in England. This applied to all laws then in force in England. All future laws enacted by Parliament in Westminster applied equally to the joint administration of England and Wales. Evidence from England, where the evidence of historic navigation rights is better documented, can therefore be used to demonstrate the existence of public navigation rights in Wales

The Statutory Public Right of Navigation

Whilst there are different views on the public navigation rights on the River Wye upstream of Herefordshire, there is total agreement on the section downstream from the Hay on Wye Town Bridge. [The Wye Navigation Order 2002](#) provides full legislative clarity.

This order also addresses the situation upstream from Hay Town Bridge (the Upper River), in [Section 38](#) by referring to the two previous Acts of Parliament and confirms that any Statutory Public Navigation Rights granted by these Acts, ("if any") have not been repealed and are therefore still in existence. The two statutory declarations read

"PROVIDED also that it shall and may bee lawfull to and for any person or persons, to use occupy or imploy any boat, barge, leightor or other Vessell upon the said River of Wye for the carrying, transporting, or conveying of any passengers, goods or any other things whatsoever, as freely to all intents and purposes as is or hath been used or accustomed."

and

"That the said Rivers of Wye and Lugg be and from henceforth be accounted deemed and taken to bee free and Common Rivers and Streams to and for all His Majesties Subjects freely to make use of for the carrying and conveying of all Passengers, Good,s Wares and Commodities by Boats Barges Lighters and other Vessells whatsoever."

Since the two declarations contain nothing to suggest any limited interpretation of "*the said River of Wye*" or "*the said Rivers of Wye and Lugg*" it is logical to interpret these declarations as applying to the whole of the rivers Wye and Lugg. The first Act also acknowledges earlier common law rights with the phrase "*as freely to all intents and purposes as is or hath been used or accustomed.*"

However those that oppose recognition of the PRN upstream of Hay on Wye, claim that the titles of the two Acts of Parliament viz.,

"An Act for the making navigable the Rivers Wye and Lugg, and the Rivers and Brooks running into the same, in the Counties of Hereford, Gloucester and Monmouth." -1662

and

"[An Act for making navigable the Rivers of Wye and Lugg in the County of Hereford.](#)" - 1695

impose an implied limitation excluding any application beyond the named counties.

Examination of the text of the Acts reveals specific provisions applying to other counties that are clearly inconsistent with an intent to be bound by a suggested implied limitation in the title of the Act. For example, the Act referring only to Hereford in the title makes specific provision for defending the fishing rights of the “*Towne of Monmouth*” which is not in Hereford.

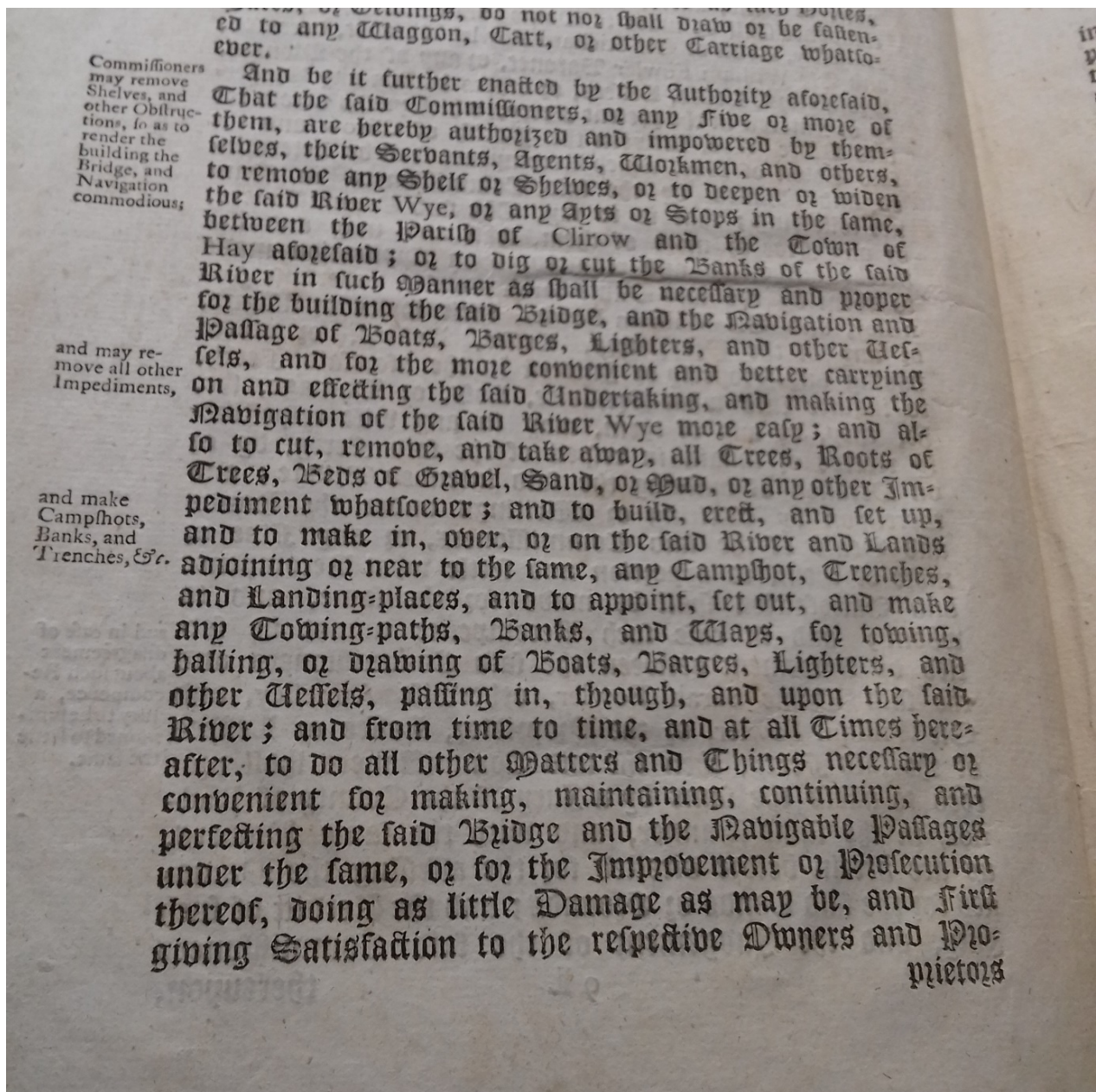
It’s also worthy of note that “[*An Act for Making Navigable the River of Wye*](#)” 1651, in fact referred to the River Wey at Guildford so the inclusion of reference to “Hereford” in the title of the Act was necessary to bring clarity to which river was the subject of the Act, in the same way that “The Salisbury Avon” and “The Warwickshire Avon” distinguishes between the two rivers rather indicating specific sections of river defined by either the boundaries of Salisbury or Warwickshire.

Evidence of Navigation Beyond Herefordshire.

There are numerous references to navigation to Hay Bridge. Hay Bridge is not in Hereford. The bridge at Hay is from Brecknockshire (Breconshire) on one bank to Radnorshire on the other. Further, The Act of Parliament (George II (1756) cap 73 - *An act for building a bridge across the river Wye from the town of Hay in the county of Brecon to the opposite shore in the county of Radnor*) covering the building of the bridge, makes specific provision for the preservation of navigation at this location.

“And be it further enacted by the Authority aforesaid, that the said Commissioners, or any five or more of them, are hereby authorised and impowered by themselves, their servants, agents, workmen, and others, to remove any Shelf or Shelves, or to deepen or widen the said River Wye or any Ayts [aits] or Stops in the same between the parish of Clirow and the Town of Hay aforesaid; or to dig or cut the Banks of the said River in such manner as shall be necessary and proper for the building of the said Bridge, and the Navigation and Passage of Boats, Barges, Lighters, and other vessels, and for the more convenient and better carrying on and effecting the said Undertaking, and making the Navigation of the said River more easy;”

The building of Hay Bridge was a public project funded by public money. It would have been illegal for such public funds to have been spent on maintaining or improving a private navigation.



Clearly this establishes that in the view of the Parliament of 1756, the navigation of the River Wye was not limited to the county of Herefordshire by the statutes passed in the previous century.

Various publications confirm navigation upstream of Hay on Wye.

Taylor's Illustrated Guide to the Banks of the Wye. – 1853 – [page 54](#)

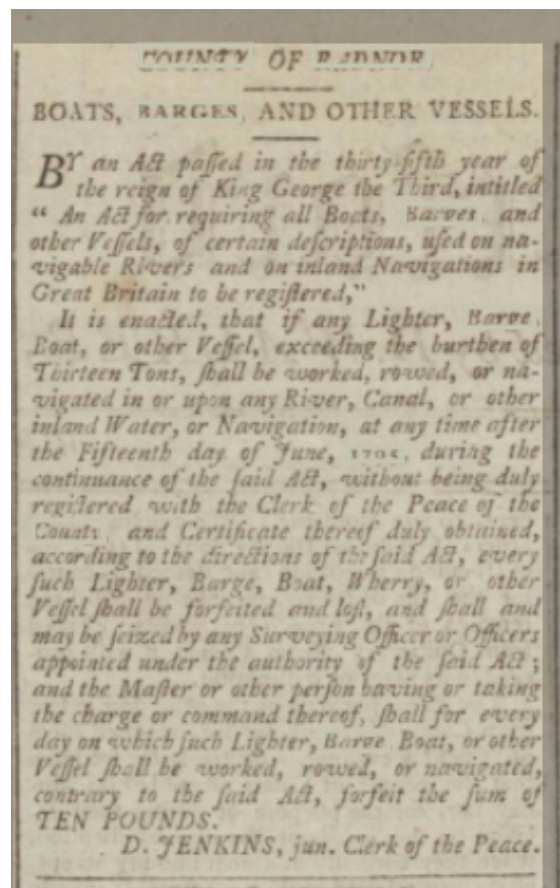
“On the left bank stands Maeslwch, the property of Walter Wilkins, Esq., the views from whence are grand and diversified; next Glasbury and four miles and a quarter further the Hay. This town is situated in Brecknockshire, on the right bank of the Wye. The smaller kind

of barges, denominated floats, ascend the river to this place; but, on account of the destruction of the bridge in 1795, by a thaw which succeeded the long frost of that winter, the navigation is obstructed any further up."

This clearly implies that prior to the destruction of the bridge by the floods of 1795 "floats" travelled further upstream. Even smaller vessels, of course, could go still further.

1795 Advertisement by the County of Radnor – Hereford Times Wednesday 16 September 1795

In 1795 a public advertisement appeared in the local press under the heading of the "County of Radnor" which went on to require that owners of barges (of over 13 tons burthen) on the river should register with the clerk of the peace for that county, pursuant to a recent Act of Parliament.



This notice would have been entirely redundant had the County officials not considered the Wye in Radnorshire to be a navigable river.

An advert for the sale of a farm near the “Navigable River Wye” from the Morning Chronicle Tuesday August 15th 1797

This advertisement (see below) refers to a property for sale “*within half a mile of the much-admired navigable river, Wye*”.

RADNORSHIRE.

To be SOLD (in Fee) by AUCTION, at the Lion Inn, in the Town of Brecon, on Wednesday, the 30th Instant, between the hours of three and six of the clock in the afternoon, under such conditions as will be then produced, in the following Lots,

Lot 1. A Messuage or Tenement, called BRYNE-HYDD, with necessary and convenient Barns, Beast-houses and other Buildings, and 112A. 2R. and 30P. of Meadow, Pasture, Arable and Wood Land, divided into 22 inclosures, surrounding the same, and now in the occupation of Mr. William Gore, under a lease, of which there will be 18 years unexpired at Christmas next, at the clear yearly Rent of 10l., subject to an annual allowance of 5l. for Lime at the Kiln, upon condition that the Tenant will, yearly, lay on the premises as much Lime as will, at the Kiln, cost the full sum of 10l.

There is now growing on this Farm (which lies very compact, and within a ring fence) a considerable quantity of Timber, and a great number of fine sapling Oak, Ash and Wytch, and there is abundance of fine Roof and building Stone on different parts of the lands, to which there is attached an unlimited right of Pasturage on a fine healthy common, contiguous to part of the premises, which are situated on the banks, and within half a mile of the much-admired navigable river, Wye, noted for salmon, perch, grayling, and other fresh water fish, and of which, as well as of the Turnpike-road leading from Hay to Brecon, and the adjacent picturesque country, they command a very extensive and admirable prospect.

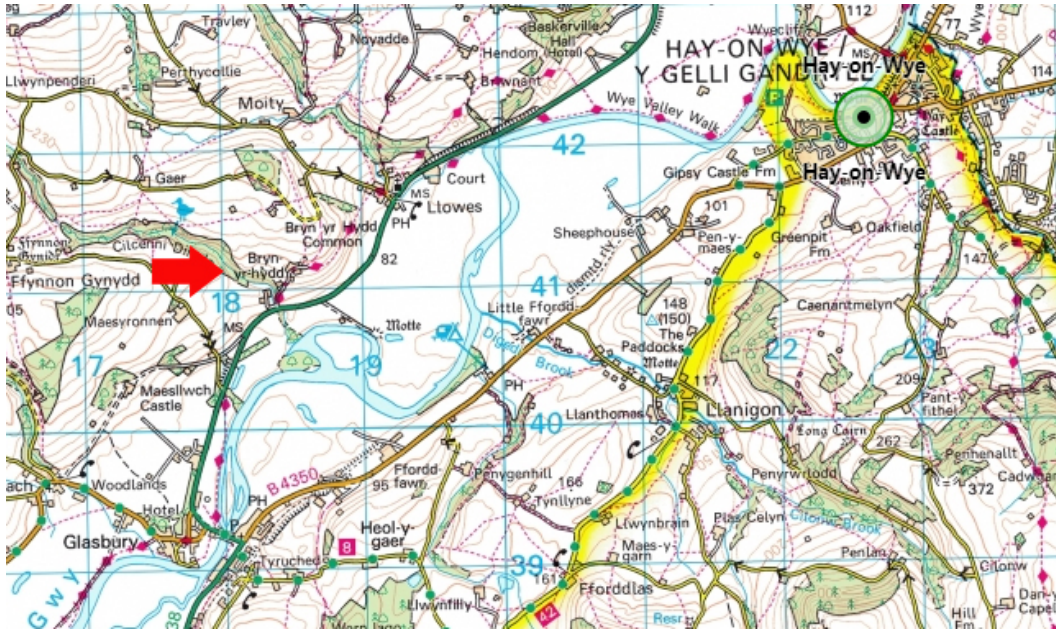
Lot 2. A Messuage or Tenement, called NOYADDE, with necessary Out-buildings, and 38A. 1R. 3P. of Meadow, Pasture, and Wood Land, divided into sixteen several inclosures thereto adjoining, pleasantly situated, at the distance of less than a mile of the above Farm, and now in the occupation of Mr. John Jones, the Proprietor.

There is a good deal of improving Timber upon this Lot also, which will be sold, subject to the life-interest therein of a person turned of 20 years of age.

Lot 3. A Cottage, Garden and Orchard, containing 38 Perches of Land, in the village of Llowes, let to John Powell, at the yearly Rent of 21. 2s.

All the above Premises are within the Parish of Llowes, in the County of Radnor.

Bryne Hydd (Brynnrhydd) is just downstream of Glasbury (OS Map ref SO 185411)



Advertisement from the Herford Journal of 2 May 1798

The advertisement below lists destinations upstream of Herefordshire and makes special mention of “*barges well calculated for the undertaking*” and “*Spring tides*”, demonstrating that the limit of navigation was understood not as a geographic limit imposed by Parliament but as a practical limit reflecting the condition of the rivers and the suitability of the vessel selected.

HEREFORD.

JONATHAN CROMPTON,
BARGE-OWNER, &c.

BEGS leave to return his most sincere Thanks to the Gentlemen of Chepstow, from whom he has received such liberal support, and to assure them that, as it ever has been, so it ever shall be his constant endeavours deserve their favours.—He likewise desires to inform his Friends from whom he has received similar favours in the Bristol Trade (to whom he begs his sincere thanks,) and the Public at large, that he has formed a connection with **Owner BROWNE**, of Brockware, who has a new-built Sloop, well calculated for the Trade, with which he will punctually attend every Spring Tide, to take and bring all kinds of Goods to and from Bristol, consigned there, or to Hereford, Kington, Hay, Talgarth, Builth, or the intermediate places directed; and that he is prepared with Barges well calculated for the undertaking, steady and punctual Masters, and good Warehouses for storing all kinds of Goods consigned to his or their care.

April 24, 1798.

This advertisement is from before the construction of the horse-drawn tramways which later took over from river navigation as the most cost effective method of moving goods to places on the river system.

Kington is on the River Arrow, a tributary of the River Lugg with the confluence at Leominster. Talgarth is on the Afon Llynfi a tributary of the River Wye with its confluence at Glasbury, upstream of Hay.

Newspaper Article of 19 June 1913

The reported incident took place near Boughrood station.



Barges and Bargemen - A social history of the Upper Severn Navigation 1160-1900

"In 1856 eight young men from Gloucester rowed up the river (Severn) in a 33 ft (10m) flat bottomed vessel, the Venom, camping out en-route. After pulling their boat up the weir at Pool Quay, they rowed to a point 3 miles from Newtown before conveying it by wagon to Builth, where they commenced their homeward journey on the River Wye" – page 131

Blacks Guide to the Wye; 1904; Ed AR Hope Moncrieff; Black, London. P4

“Above Hereford, boats can be taken sometimes as far as Glasbury, but this depends on the state of the river.”

Herefordshire’s River Trade, Craft and Cargo on the Wye & Lugg, Heather Hurley, 2013, Logaston Press

[P13](#) - *“...in 1772 the river was navigable to Glasbury Bridge”*, ref: Fairs (1972) p266
Herefordshire Miscellany 2000 p50

[P48-49](#) – *“The first bridge at Whitney was built in 1774 at a time when ‘barges full of Forest of Dean coal were regularly coming up the river as far as Glasbury and often those barges would be lashed together for the return journey so that they could carry whole tree trunks down to the river mouth.’”* Ref: Hurley, 2010 chapter Four: Gerhold 2005 chapter V

[P153](#) – *“the occasional barge that continued upstream from Hay had to navigate almost six miles over shallows and around meanders before reaching Glasbury. In the Late 18th century the barges were in ‘the midst of this rich and beautiful valley [where] an elegant stone bridge of seven arches is thrown across the river’. This, however was total destroyed by floods in 1795 when Hay and Whitney Bridges met the same fate. In the early 19th century Glasbury was a village with ‘no manufactures ... but the woolstapling business is carried on to a considerable extent. The Wye runs through the village, and divides the counties of Brecon and Radnor, the river being crossed by a neat bridge of wood, of great length and lofty’.”* Ref: Ireland, 1797, pp 28-29; 1835 Directory

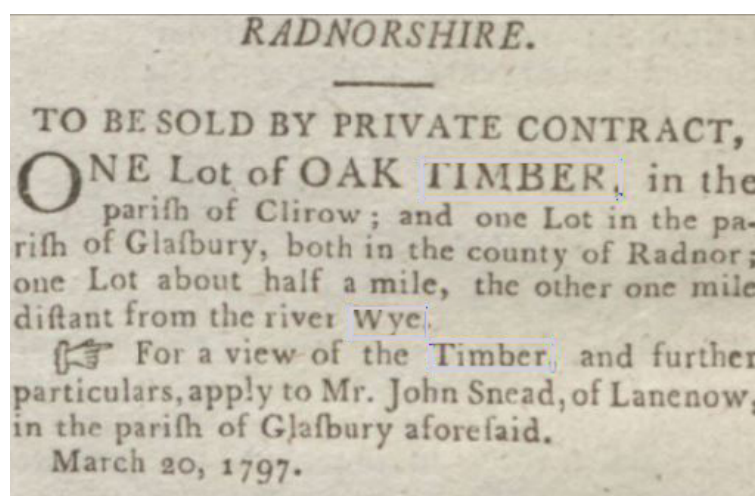
[P154](#) – *“Despite the shallows and extreme floods of the Wye between Hay and Glasbury, a few barges made the long journey from the Forest of Dean to deliver coal at Glasbury during the 1770’s, and timber was exported downstream, which possibly included ‘all of the Timber and Iron from the Old Bridge’. In 1794 it was recounted that the area up to 6 miles above Hay received some benefit from being close to the river when it was in flood, for it was then navigable. Thought of such benefit may have changed after the floods of the following year when there was concern about the Wye ‘breaking out on the Radnorshire side, and is likely to leave Builth Bridge upon dry land; any person or persons conversant with Embankments, who will undertake to keep the river in its useful and proper channel are desired to attend with their Plans and estimates, at the next General Quarter Sessions’.”* Ref: Chapters 1 & 3
Hereford Journal 4 Feb 1779; Fairs 1972, p 265; Hereford Journal 21 Sept 1796

[P154](#) – *“Once the horse-drawn Hay Railway from Brecon to Eardisley opened in stages between 1816 and 1818 with its straight line through Glasbury, coal was available at a cheaper price from south Wales. ... The Glasbury inns and beer houses, that served the occasional bargemen, continued their trade with the tramroad drivers and hauliers.”* Ref: Scudamore accounts 1697 – 1703, TNA C115/114

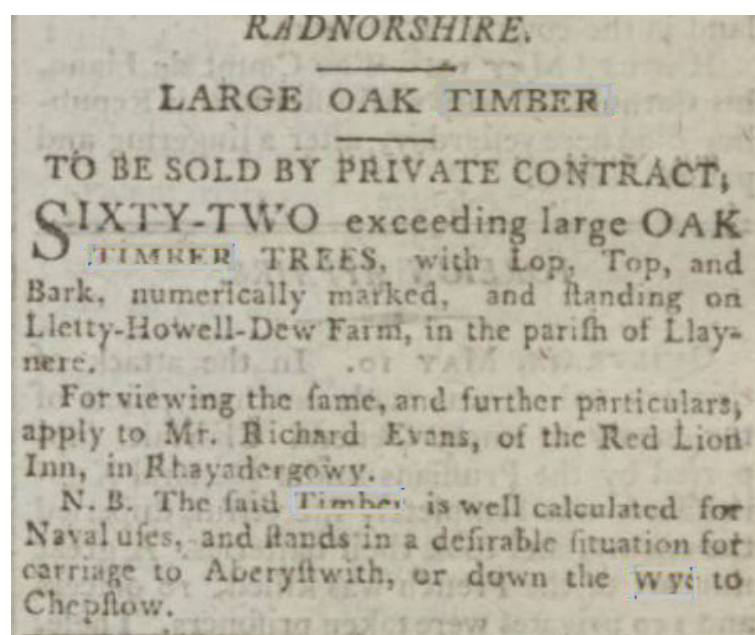
Timber

In 1559 [The Timber Act](#) (1 Eliz 1 c15) made specific reference to “any Part of the Rivers of Thames, Severn, Wye, Humber, Dee, Tine, Teese, Trent or any other River, Creek or Stream, by the which Carriage is commonly used by Boat or other Vessel to any Part of the Sea.” This witness’s the fact that not only was the River Wye considered a navigable river but that the public navigation rights extended to “any part” of the river.

In the 1790s, during the French Revolutionary Wars, ready access to naval timber was again crucial to the security of the nation. A search of newspaper archives from the period reveals many notices for the sale of standing “naval” timber in the county of Radnorshire. The notices routinely refer to the proximity of the river Wye as a means of transporting the timber to the sea.



The notice below, from the Hereford Journal of 22nd May 1793 and refers to its “desirable situation for carriage down the Wye to Chepstow”. The location of the standing timber is the parish of Llaynere (Llanrye) north of Builth Wells.



Conclusion

The above evidence (see page 2) seems sufficient to establish the existence of a common law Public Right of Navigation on all rivers in England and Wales which are physically capable of navigation. How and when the common law PRN was created is lost to the mists of time.

This PRN on the Rivers Wye and Lugg and all tributaries flowing into them was specifically confirmed and given statutory status by “*An Act for the making navigable the Rivers Wye and Lugg, and the Rivers and Brooks running into the same, in the Counties of Hereford, Gloucester and Monmouth.*” -1662 and “*An Act for making navigable the Rivers of Wye and Lugg in the County of Hereford.*”- 1695. The publications referenced demonstrate that the PRN

- was not limited to the county of Hereford and this was
- recognised by Parliament,
- recognised by the officers of The County of Radnor,
- recognised by traders on the river system,
- recognised by landowners
- recognised by other river users

We can find no reference to any landowner disputing the existence of public navigation rights on the upper Wye until the twentieth century by which time public navigation rights had been established for hundreds, if not thousands, of years. Public navigation rights, once established, can only be extinguished by Act of Parliament or by exercise of powers delegated by Parliament for the purpose (e.g. the National Assembly of Wales) . [The Wye Navigation Order of 2002](#) specifically confirms that such navigation rights on the upper river and tributaries have not been repealed. Therefore they still exist.