

Email to Simon Pryor
Natural Environment Director and Lead for the Outdoors and Nature Programme
National Trust
Simon.Pryor@nationaltrust.org.uk
29th Jan 2015

Hi Simon,

When I last heard from you (via email 8th November 2014) you indicated that you were close to finalising the National Trust's position statement and hoped to be able to have our planned meeting before Christmas. I took this to be Christmas 2014. Yet again time has passed with no progress forcing me to question the sincerity of the National Trusts intentions.

You have had the evidence for over a year and despite all this time you have offered no challenge to the validity of the evidence and no evidence to oppose our conclusions concerning the existence of public navigation rights on National Trust portions of

1. The Dorset Stour
2. The Warwickshire Avon
3. All other rivers in England and Wales

During this time our research has continued and as we approach the 800th anniversary of Magna Carta in June there is a natural upsurge in academic comment on Magna Carta and Clause 33 (23 in post 1215 versions) and it's role in protecting public rights of navigation. I would therefore like to draw your attention to the case of The King v Clark, 1702, (12 Mod 615; 88 ER 1558) which established

“And per Holt, Chief Justice, to hinder the course of a navigable river is against Magna Charta, c. 23, and anything that aggravates the fact, though not directly to the issue, may be given in evidence upon it; as here the taking of money to let people pass. And it is no exception to a witness here, that he contributes to carry on the suit, or that this public nuisance (sic) was to his private nuisance (sic).”

I must also draw your attention to academic comment on the subject. In [a lecture to the All Party Parliamentary Group on the Constitution, 26 February 2013](#) (see page 2), Professor Nigel Saul, Professor of Medieval History, Royal Holloway University of London 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.”

The [Magna Carta Project academic commentary on Clause 33](#) (at the end of section (b)) confirms that this applied to all rivers -

“Londoners came to believe that this could only be achieved if they had the control of the whole of the Thames. The Charter did not make this sweeping concession, but repeated John’s prohibition, without a penalty clause, and extended it to all English rivers.”

The [attached document](#) also contains extensive research into statutes and Royal Commissions which demonstrates clearly that the public navigation rights were not subject to any limitation based on their tidal or non tidal nature or the size/status of rivers as part of a limited group of “Great Rivers”. The evidence from statute, Royal Commissions, case law and academic research all confirms the existence of public navigation rights in all rivers subject only to the practicality of navigation and the size/nature of the craft able to navigate.

As we have discussed before, public navigation rights can only be modified or extinguished by Parliament, either directly or through delegated powers. There has been no such “due legal process” to change the law (if there had been, lawyers or historians could say what it was) so the same public navigation rights must still exist today. The continued refusal of the National Trust to accept the evidence or offer evidence to the contrary reflects badly on an organisation set up solely to protect our heritage for the benefit of the public and contrasts pointedly with the spirit and intent of Magna Carta which will be celebrated on the NT owned meadow at Runnymede on June 15th.

In 1215, Magna Carta was a sham. King John had no intention of observing the agreement and within weeks he had petitioned the Pope to have it annulled. When we celebrate the 800th anniversary in June, hosted by the National Trust, will the NT be honouring the spirit and intent of Magna Carta over the centuries by upholding “*the principle of free passage along England's rivers*” referred to by Professor Nigel Saul, or paying lip service in the style of King John?

I am disappointed that despite your assertions of goodwill and positive intent, the National Trust continues to demonstrate by its' actions (and lack of actions) the wish to exercise precisely the kind of arbitrary power that Magna Carta itself opposed.

Regards

Keith Day
Director, River Access For All