

- a* nineteenth century and by 1880 were reasonably clear (see eg Coulson and Forbes *The Law Relating to Waters* (2nd edn, 1902). The principles are even clearer today. The PRN is a right to public use of the river (see Lord Wilberforce in *Wills' Trustees v Cairngorm Canoeing and Sailing School Ltd* 1976 SC (HL) 30 at 123). The river may be used by the public for purposes of exercise and recreation as well as transport and commerce (see Lord Salmon in *Wills' Trustees' case* 1976 SC (HL) 30 at 152–153).
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This High Court Judgement means that unless someone can produce documentary evidence of legislation or the exercise of statutory powers the public right of navigation, affirmed by the 1472 Act for Wears & Fishgarths, has not been extinguished.

- g* [50] At common law PRN cannot be lost by disuse (see *Wills' Trustees' case*, above). As Lord Lindley said in *Simpson v A-G* [1904] AC 476 at 510: 'the doctrine once a highway always a highway is, I believe, as applicable to rivers as to roads.' Likewise PRN could not be extinguished by physical obstruction (see eg *Vooght v Winch* (1819) 2 B & Ald 262, [1814–23] All ER Rep 270). Though Lord Hailsham in *Wills' Trustees' case* 1976 SC (HL) 30 at 147 reserved his opinion whether a physical obstruction by a riparian owner might extinguish the PRN, the weight of authority militates against any such exception, and it is common ground in this case that the general principle which I have stated is free from any such exception.
- h* PRN may only be extinguished by legislation or exercise of statutory powers or by destruction of the subject matter of PRN eg through silting up of the watercourse. On principle for this purpose the process of silting up would have to be irreversible if it was to give rise to an extinguishment, as opposed to a suspension, of PRN. (Swift Ditch near Culham, the subject of the 1857 Conveyance at D/326, may be an example of a property in which PRN had become extinguished in this way.) The claimant has cited to me as authority for the proposition that PRN might be extinguished in some other way the cautious words of Bayley J in *R v Montague* (1825) 4 B & C 599, 107 ER 1183 that the Commissioners of Sewers might have the power to extinguish PRN if they found that it would be for the benefit of the whole level. The words bear no such
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construction. They presume the existence of the necessary express or implied statutory authority which is absent in this case.

[51] The position in respect of obstructions requires a moment's further consideration. Obstructions may arise naturally through seasonal fluctuations in water levels and through