

according to English Law, which, according to the decision of the Court of Appeal in the *Keeewatin Power Co. v. Kenora*, 16 O.L.R. 184, must, unless altered by Provincial legislation, be the rule for decision. According to English law the question of navigability depends on whether or not the river is a tidal river. According to Chief Justice Macaulay there are in English law three classes of rivers:

1. Navigable rivers, technically so termed, which are practically arms of the sea or tidal rivers.

2. Rivers *not navigable rivers in law*, but so in fact; and though private in relation to the ownership of the soil, yet public highways in relation to the use of the water.

3. Private rivers, strictly so called: see 3 C.P., p. 318.

To which of these classes does the Act apply? Does it include rivers not "navigable in law but navigable in fact?"

In the Province of Ontario, where tidal rivers do not in fact exist (except in the Hudson Bay region), there appear to be in fact but two classes of rivers, viz., public rivers and private rivers. The one class being public highways and the other not. And in determining to which class any particular river is to be assigned it does not appear that the question of navigability is the sole criterion. As we have seen, a highway may be laid out and dedicated to the public, and yet prove to be quite impassable; and there seems to be no sufficient reason for supposing that a highway along a river may not in like manner be "laid out" and dedicated to the public, although it may prove in part or in whole to be impracticable for the purpose of travelling. This may be thought to conflict somewhat with what Macaulay, C.J., says: "Highways exist by land and water. In Upper Canada those by land have accrued to the public by dedication of the Crown: *Regina v. Inhabitants of East Mark Tilting*, 12 Jur. 332; 11 Q.B. 877, in what is commonly termed allowances for roads, in the original survey of towns and townships, or by dedication of private individuals, or under the provisions of the statute law or by occupation or long enjoyment. Upon land, therefore, highways are established only by some positive act indicating the object and its accomplishment. They are, it may be said,