The Byways & Bridleways Trust 2015.

As with all Byways & Bridleways Trust materials, this paper is made available for interest, information, and academic research only.

Any paper dealing with matters of law inevitably goes out of date, and sometimes soon after publication. Readers should take advice on the current situation on any legal matter rather than relying on archived papers.

PASSAGE AND CARRIAGE

By Colin Seymour MA BA (Hons) Cert.Ed.

From time immemorial every way used or created by man has served two distinct purposes. The primary purpose being for passage. The secondary purpose being for carriage.

The ancient law concerning highways recognised the importance of ensuring that the public of the nation could enjoy "their passages and carriages" without suffering "great pains, perils and jeopardy" (26 Henry 8 (1534) c.7 section 1)

Over the centuries, the usual and everyday meaning of the words "passage and carriage" has changed. In particular the word "carriage" and the terms "carriage road" and "carriage way" have taken on a different meaning, and a change of emphasis, from that understood in the time of Henry 8 in 1534. Therefore, as with the term "private road", the original meaning of the term "carriage road" has been lost with the passage of time.

The meaning of the word "passage" has changed little. It was defined by 'The Imperial Dictionary' (1854) as 'the action of passing'. This definition was repeated over a century later by the 'Shorter Oxford English Dictionary on Historical Principles' (3rd Ed. – 1983)

The everyday usage and meaning of the words "carriage" and "carriageway" has changed however. The word "carriageway" was defined by statute for the first time by the Highways Act 1959 section 295 which stated that it "means a way constituting or comprised in a highway, being a way (other than a cycle track) over which the public have a right of way for the passage of vehicles".

This modern statutory meaning is now being applied to matters of law, concerning times long ago, when the words "carriage" and "carriage road" meant something entirely different. Between the 13th and 19th century the word "carriage" was normally used to describe the act of carrying rather than a wheeled vehicle of any description.

In 1854, 'The Imperial Dictionary' defined "carriage" as 'the act of carrying'. In further defining the word it added – "Appropriately the word is applied to a coach; and carts and waggons are rarely or never called carriages"(my emphasis)

The 'Shorter Oxford Dictionary' (1983) also defines carriage as " the action of carrying". However it further states: "a wheeled vehicle – 1450": "a cart or other carriage –1611": " a wheeled vehicle kept for private use for driving in – 1771"

As 'The Imperial Dictionary was written in an era when horses drawn vehicles were at their peak, and at a time when everyone had 'common knowledge' about carts, waggons and carriages, the emphasised words above are more likely to be correct, rather than the definition compiled 130 years later, when the

everyday knowledge of 1854 had been forgotten, and, seemingly, the meaning of the words had changed.

It is clear however, from the ancient statutes and the old law books, that the words 'carriage' and 'carriages' were often, or usually, used in former times to describe the act of carrying rather than a particular wheeled vehicle.

For example - Chapter 23 of "The Great Charter": 28 Edward 1 (1300) (which reconfirmed the Magna Charta of King John - 1215)-stated that
"No Sheriff nor Bailiff of ours, or any other, shall take the horses or carts of any man "to make carriage"(my emphasis)

Three centuries later, King Henry the Eighth confirmed the dual importance of 'passage' and 'carriage' along common ways. 26 Henry 8 (1534) chapter 7 section 1 (re-confirming 14/15 Henry 8 (1522) cap. 6 section 3) stated: "In consideration that many common ways in the Weld of Kent be so deep and noyous by wearing, and course of water, and other occasions, that people cannot have their passages and carriages by horses upon or by the same, but to their great pains, perils, and jeopardy"(my emphasis)

Given the research of the Webbs (1913) (see below) it is more likely than not that the words "passages and carriages by horses" referred to the passage of horses along the ways, either carrying riders or carrying materials on their backs. It is clear, from later legislation (see below) that a "carriage way" could be a way along which goods or materials were carried by means other than carts. Thus a horse carrying goods on its back, or pulling a sledge behind it carrying turf or other materials, was using the way as a 'carriage way'.

In 1555 the preamble to the Act of 2/3 Philip and Mary chapter 8 stated "For amending of High-ways, being now very noisom and tedious to travel in, and dangerous to all passengers and carriages (my emphasis)

Once again, given the date, and the state of the roads at that time, it is more likely than not that the words "passengers and carriages" referred to the feet of men and beasts rather than to wheeled vehicles. As to a particular use and meaning of the word "carriages" within a statute, see the Act of 1670 below (which reconfirmed 2/3 Philip and Mary - 1555)

In 1670, the Act of 22 Charles 2 chapter 12, entitled "An Additional Act for the better repairing of High-Ways and Bridges" clearly confirmed that a way could be used for "carriages" as a carriage road even where there was no use of carts or teems in that locality.

Section 8 stated: - "And it is further enacted by the authority aforesaid, That in such places where there is no use of carts and teems for the amending of high-ways, but the usage and practice is to carry stones, gravel, earth or other materials for such amendment, upon the backs of horses, or by any other kinds of labour, and such their other carriages, with able persons to work with the

same, in like manner, and under the like directions, forfeitures and penalties, as by any former statute for repairing of high-ways, is appointed for carts and teems"(my emphasis)

It is clear from the context of Section 8 above that the use of the word "carriages" had nothing to do with wheeled vehicles. But it was to do with the act of carrying by means other than the use of carts.

Two hundred years later, in 1845, the legislature continued to recognise that a public or private carriage road could be a way for "carriages" along which neither carts nor other normal wheeled vehicles could be driven. Sections 49 and 50 of the Railway Clauses Consolidation Act (8 Vict. cap. 20 - 1845) (which deal with bridges over roads and railways) refer to "a private carriage road, not being a tramroad or railroad". The inference being that a 'tramroad or railroad' (as with a 'waggonway' on railway lines) could, in other circumstances, be a 'private carriage road'.

Whilst preparing the 'The Story of the King's Highway" (1913) Sidney and Beatrice Webb, along with their research team, examined countless ancient documents. Their observations, findings and conclusions set out in great detail a picture of "The World We Have Lost" (to quote the title of Peter Laslett's book (1965) of that name)

The Webbs created a picture of what the ways of this 'lost world' were really like. "The customary highways (as they existed in the twelfth, and even in the fifteenth century) were used almost exclusively for foot traffic of man or beast. For this purpose the immemorial track from village to village across the waste sufficed in its primitive condition; and if, in the months of summer dryness, the rude sledges or carts carrying home the crops could find a reasonably firm passage, it was all that was desired. That the ways, in winter, must be impassable for wheel traffic was habitually taken for granted. This primitive conception of locomotive needs lasted, in remote corners of England, right down to the end of the eighteenth century" (page 6) (my emphasis)

They confirmed that "there was, in the fourteenth and fifteenth centuries, a considerable amount of travelling". However, they concluded that this was mainly confined to the feet of men and beasts - "Of wheel traffic, indeed, there was comparatively little, and that of the most primitive kind. Every one travelled on foot or on horseback, and nearly all goods were carried on the backs of animals" (page 8)

They did acknowledge that the manorial tenants had "their own rude carts", and that as early as the fourteenth century "the common carrier" existed, and that some heavy goods must have been moved by road using vehicles of some description (page 8)

The Webbs wrote about the "New Users of the Roads in the Seventeenth and Eighteenth Centuries". They concluded that although the roads were by then

used for different purposes such use remained that of trodden feet. "The new users of the roads were, for a long time, still, for the most part, horsemen and cattle. We can hardly imagine today how rare, outside the Metropolis, was any sort of wheeled vehicle, even during the seventeenth century. Right down to the middle of the eighteenth century – in remote parts of these islands we may even say down to the middle of the nineteenth century – the passage of a wheeled vehicle of any kind remained, on all but the main roads, an exceptional event of the day. To an extent that we find it now difficult to realise, the seventeenth and eighteenth century roads were trodden by animal feet"(page 63)

The Webbs further stated that "Right down to the nineteenth century, indeed, every increase of travel meant, for the most part an increase in the number of well-mounted horsemen, with saddle-bags behind them, that were a constant feature of the roads". They cited examples of such horsemen as being circuit judges and barristers, commercial travellers (known as "riders or bagmen"), merchants and manufacturers and their customers, and legislators and officials. (page 64)

Note: Circuit Judges and Barristers probably carried with them their own law books, which were of a small enough size to fit in a saddlebag. In 1789 a Geo Seycester (or Leycester) purchased, and signed and dated, the 16th Edition (1788) of "The Justice of the Peace and Parish Officer" by Richard and John Burn. The four volumes together measure 6" x 8" x 8" and weigh 7 Ibs. They would have easily fitted within his saddlebag. It is hard to imagine today, that in 1788 the criminal Law of England could be condensed, for judicial purposes, into 384 cubic inches.

From contemporary sources the Webbs concluded that the main users of the roads at this time were the pack-horse trains: "More numerous, however, than the mounted travellers were the pack-horses, with their tinkling bells, heavily laden with a pair of bales, or with "dungpots" "crooks" or "panniers", used for nearly every kind of commodity". .. . . "the single pony. . . gradually developed into long strings of pack-horses to and from every industrial centre, passing in some frequented thorough-fares, in an almost continuous stream". . . .. "Twelve or fourteen in a line, they would travel the North Road. . . from the North to the Metropolis, to return with wares of a smarter kind from the London market for the country people"

They concluded also that "The adoption of the pack-horse as the universal means of conveyance of goods led to the construction, in the middle or by the side of the broad soft tracks which served as roads, of narrow causeways, wide enough for one horse to walk on". They cited two travellers from Glasgow to London in 1739 who found no hard road until they came to Grantham 110 miles from London, and who had met strings of pack horses "thirty to forty in a gang, the mode by which goods seemed to be transported from one part of the country to another"(page 66)

Although stage coaches commenced to run in 1640, twenty years later only six

coaches were running in the whole of England (Bradley "The Old Coaching Days in Yorkshire" (1889) pages 6 -13). He stated that from the middle of the 18th century the state of the roads began to improve and by 1775 four hundred coaching routes existed in different parts of the country. However, it was not until 1786 that the first Royal Mail coach ran from London by the Great North Road.

It is clear however from the sources cited by the Webbs that in most parts of the country up to the end of the 18th century vehicular traffic was a rarity and in many areas wheel carriages were almost non-existent. They cited one autobiographical work of 1845, which stated that in Cornwall, right down to the opening of the nineteenth century - "there were no carriages in general use. I remember only one kept in Falmouth and one in Flushing" (page 80)

They further stated (from a contemporary essay) that "In 1813 the "slide-car', a kind of sledge, was still used in Wales instead of a wheeled vehicle". Evidence from other sources led them to conclude that "As late as 1843 a Banffshire parish (Scotland) had no vehicular traffic, and hence no "made roads". They cite also two writers of that period who confirmed that "The harvest was got in on sleds, i.e. two long poles trailing behind a horse, and connected by a cross piece. Corn was carried to market, and lime fetched for farm purposes, on horseback".

It is clear from the various 'essays', 'observations', and 'treatise' referred to by the Webb's (at pages 83 and 84) that between 1753 and 1817 the term "Wheel Carriages" was much in evidence, as a succession of writers sought to devise methods of making the roads more passable. They state that in 1773, a draft bill was prepared in order to improve the roads "for the accommodation of the wheel carriages" .

The seeds of what were to become known as "public carriage roads" rather than "public cartways" were being planted. But it was another century before the word "carriageway" took on its now accepted meaning.

Thus when the Highway Acts of 1534 and 1555 referred to "passages and carriages by horses "and" passengers and carriages "it is more likely than not that what the legislature had in mind was the passage of people and horses. With goods and materials being carried on the backs of the horses, or dragged along by animal power, rather than being carried upon wheeled vehicles.

However, by the time that 22 Charles 2 cap.12 was enacted in 1670, the general practice must have been to use "carts and teems" for the repair of parish roads. Thus section 8 (above) was enacted in order to re-state the general rule, and to ensure that in those places where carts were not used, or not available, the inhabitants could not escape statute duty by claiming that the 1555 Act did not apply to them.

It is essential that the terms "carriage" and "carriage road", when used in ancient

documents without qualification, be now looked at more closely than has usually been the case. This particularly applies to documents dating back to before 1800. For it is clear, that in certain circumstances, a reference to a road as a "carriage road" may not have been referring to a road used by, or intended to be used by, wheeled vehicles. Likewise, a reference to a "carriage" may not have been referring to a wheel carriage, it may have been describing a form of carriage without wheels.

There may be a presumption that ways which were awarded within Inclosure Awards as "public carriage roads" or "private carriage roads" were intended to be used by carts and other wheeled vehicles. This presumption however may be rebutted by evidence which shows that nowhere within a particular Inclosure Act or Award were such roads specifically awarded for the use of wheeled vehicles - for example "for the use of waggons and carts". In such circumstances, the "carriage roads" may have been intended to be used, by either the public or private persons, merely for the act of carrying, by whatever means were appropriate (other than wheel carriages) for the width of the way, the state of the ground, the season of the year, and the customary practice of the locality.

It is no longer sufficient to point to the words "carriage" or "carriage road" within a document and then claim that vehicular rights exist over that route. Simply because our modern-day-world equates the word "carriage" with a wheeled vehicle does not mean that the 'World We Have Lost' understood the word to mean the same thing in times long ago.

In summary - It seems that up to the mid-19th century at least, a 'carriage road' was a way along which materials could lawfully be carried by means of a 'carriage'. That 'carriage' could be a 'carriage' on wheels: a wheeled vehicle such as a waggon, wain, cart or coach. It could also be a 'carriage' without wheels such as materials being carried on the back of a horse, or carried on a sledge or similar "framework without wheels for dragging goods along the ground" - pulled by a horse.

A 'carriage road' could also be a railroad (either public or private) - or a tramroad with carriages on "flange wheels or wheels suitable only to run on the rail prescribed" (Tramways Act (1870) 33/34 Vict. c.78 section 34) and moved "by the power prescribed" . . or ... "by animal power only".

A 'carriage road' was therefore not necessarily a way for wheeled vehicles. And a 'carriage' was not necessarily a wheeled vehicle either. Whilst the term "cart way" or "cart road" included the right to use the road as a 'carriage road' by whatever means were appropriate for the circumstances - the term 'carriage road' did not necessarily include the right to use the road with wheeled vehicles.

Indeed, some 'carriage roads' used by pack horse trains could not accommodate wheel carriages, as the width of many of the ancient pack horse bridges confirm. Nevertheless, such ways and such bridges were 'public carriage roads' and were used by 'carriages' and by "public carriers" for the carriage of

materials.

The Act of 3 Charles 1 cap.1 (1627), which prohibited the movement of materials and cattle on a Sunday, confirmed that a "carrier" could be a person "with any horse or horses". Whilst persons using wheeled vehicles to carry goods were known as "waggoners" or "waggon-men" (driving waggons) - "carters" or "car-men"(driving carts) - and "wain-men" (driving wains). The Act also applied to "butchers and drovers of cattle".

Evidence indicates that it was generally accepted that the terms 'cart road' and 'carriage road' were not synonymous expressions. Each had a definite meaning, albeit a meaning which in certain circumstances could overlap. The legislature, who must have been aware of this subtle difference in meaning, preferred, and remained with, the use of the words "public cartway" (rather than the term "public carriage road") for 268 years (1691 to 1959) when referring within a highway statute to the required width of a public vehicular way.

Whilst the terms "public carriage road" and "private carriage road" were used by Inclosure Commissioners from at least 1765 onwards, the words "carriageway" or carriage road" were not commonly used to describe a public vehicular road until at least the middle of the 19th century. See the General Inclosure Act of 1845 below.

Every Highway Act from 1691 to 1835 used the term "cart way" or "public cartway" to describe a public vehicular road leading to a market town which had to be maintained to a prescribed width :
Section 15 (1691) required "every cart way" to be "eight foot wide" Section 11 (1767) required "every Cartway" to be "twenty Feet wide" Section 15 (1773) required "every publick cartway" to be "twenty feet wide" Section 80 (1835) required "every public cartway" to be "twenty feet wide"

Thus section 80 of the Highway Act 1835 retained the existing statutory term "public cartway" to describe an all purpose highway along which carts and all other carriages of every description could pass from one market town to another.

Section 5 of the same Act includes within its interpretation clause relating to the word "highways" the expression "carriage-ways". And in section 80, after referring to the width of a "public cartway" then required that "every public footway by the side of any carriageway or cartway" be maintained to a width of three feet.(my emphasis)

As the word "carriageway" was not then defined by either statute or common law, it could have been referring to a way which was used for 'carriage' by means other than by vehicles, or, to a way used for the act of carrying by whatever means were appropriate. Because the common and generic term for an all purpose vehicular highway, at this time, was a "public cartway".

However, the General Inclosure Act of 1845 ((8/9 Vict. cap.18) suggests that by this date the terms "public road" and "public carriage road" and "public cartway" were all being used to describe a public highway open to all manner of user.

Sections 62, 63 and 64 of the 1845 Inclosure Act refer to "public Roads and Ways" or "Road or Way". But – section 65 then recites "And be it enacted, That such public Carriage Roads so to be set out aforesaid shall be well and sufficiently fenced on both Sides. . . . . .and every such public Road and Way. . . . shall be of the Width required by the Act of the Sixth Year of King William the Fourth, intituled "An Act to consolidate and amend the Laws relating to Highways in that Part of Great Britain called England, for a road or way of the like description which may be
dedicated to the Use of the Public" (my emphasis)

Section 65 above was referring to section 80 of the Highway Act 1835. Therefore, it is clear from this section of a Public Act, that it was the intention of the legislature that the terms "public road" and "public carriage road" were to be used synonymously with the words "public cartway" as far as their statutory meaning was concerned.

The Towns Police Clauses Act of 1847, at section 28 was concerned with persons committing offences in public streets. Several of these offences related to "waggon, cart, or carriage" or "public carriage" or "hackney carriage". There is thus an
inference that a "public street" could also have been known at that time as a "carriage road" or "public carriage road". And that both terms may by then have become synonymous expressions for a public road along which wheeled vehicles pulled by animals could be driven.

The Highway Act 1862 at section 4 took its authority from the Highway Act 1835 ("so far as is consistent with its provisions, is to be construed as one with the Highway Act 1835" – Pratt & Mackenzie 19th Ed. page 243). The 1835 Act used the term "public cartway" to describe an all purpose highway – thus following every general Highway Act since 1691. Section 36 of the 1862 Act however introduced the term "public carriage road" for the first time within a Highway Act.

Section 36 allowed the district surveyor to apply to the justices to undertake the maintenance of "any driftway, or any private carriage or occupation road". The justices could then "declare the same to be a public carriage road". (my emphasis)

The question arises, however, did the legislature intend that the term "public carriage road" was to have the same meaning as the statutory term "public cart road" ? Or, did Parliament simply intend a "public carriage road" to be a public road along which goods could be carried by whatever means were appropriate, as did the ancient legislation?

For if the legislature intended the road to be used as an all purpose highway why did it not use the generic term "cart road" (which was generally understood to mean an all purpose highway) rather than a term as yet undefined by statute? Particularly when a dictionary of that period ('The Imperial Dictionary' - 1854) stated that "carts and waggons are rarely or never called carriages"

The Highway Act 1864 at section 51 ("As to encroachments on highways") used the terms "carriageway or cartway" in the same context as did section 80 (1835) but the meaning of the word "carriageway" still remained ambiguous. It could have meant a vehicular highway, but it could also have meant just a way for the act of carrying.

The Public Health Act of 1875 favoured the term "public streets or roads" (as defined by section 4 - "any highway. . etc"). However, at section 150 ("Power to compel paving, etc. of private streets") the Act used the words "carriageway footway or any other part of such street" in a context which suggests that by that date the legislature was using the word "carriageway" in the sense of its modern definition.

When the Local Government Act 1888, at section 85, declared that "bicycles, velocipedes, and other similar machines are hereby declared to be carriages within the meaning of the Highway Acts" there arose, once again, an inference that the roads upon which these "carriages" were ridden were known as "carriageways" or "carriage roads" or "public carriage roads".

As the mid-nineteenth century was a time of great public statutory reform, it seems extraordinary that the legislature did not then define the meaning of the words "carriageway" or "carriage road". It seems that the words were understood by everyone as part of their common knowledge, for a hundred years or so, but were not defined by Parliament until section 295 of the Highways Act 1959 was enacted. Thus the expression "public cartway" was to remain on the statute books until repealed by section 312 and the 25th Schedule of the same Act.

However, as the nineteenth century merged into the twentieth century, the various categories of carriages increased and the roads upon which they were used became more and more "carriage roads" and "carriageways" rather than merely "cart roads" .

The Public Health Acts Amendment Act 1907, at section 18, was concerned with "the provision and use of new means of access for any cattle, any beast of draught or burden, any waggon, cart, or other wheeled vehicle exceeding four feet in width or two hundredweight in weight, to or from any premises fronting, adjoining, or abutting on any street which has become a highway repairable by the inhabitants at large"

Sub-section (c) used the word "carriageway" in a similar manner to modern usage. It stated - "After completion of the works the new means of access may be used, subject to the conditions which, in pursuance of any provisions of the

law relating to highways, attach to the use for the like purpose of any carriageway forming part of a highway repairable by the inhabitants at large"(my emphasis)

By 1907 the word "carriageway" (when used in the context of a public road or street) was clearly considered by the legislature to be "any street and highway repairable by the inhabitants at large" and which was used, and which could be used, by "any waggon, cart, or other wheeled vehicle".

Therefore, when The Roads Act 1920 was enacted "To make provision for the collection and application of the excise duties on mechanically propelled vehicles and carriages - - - - and to make other provisions with respect to roads and vehicles used on roads, and for purposes connected therewith" - it was in fact dealing with "public carriage roads" and "carriageways" as we understand the words to mean today.

To return to the nineteenth century and the evolution of the word "carriageway". As the century progressed, the everyday meaning, comprehension and usage of the words "public carriage road" and "carriageway" changed also. Seemingly, as far as common usage was concerned, there became no legal difference between a "public carriageway" and a "public cartway".

In 1854, The Imperial Dictionary, explaining the meaning of the word "way" stated that "Four species of way are known to the law :- 1. A foot-way; 2. A horse-way, which includes a foot-way; 3. A carriage-way, which includes both a horse-way and a foot-way; 4. A drift-way, for driving cattle. It thus seems that whilst the statutory term for a vehicular highway remained "cartway", the ordinary and usual word had become "carriage-way"(my emphasis) This is confirmed in 1883, when W & A Glen compiled 'The Law Relating to Highways'. They referred at page 3 to highways being "footways, bridleways and carriageways" (rather than to cartways).

Sir Robert Hunter in 1896 ('Rights of Way' etc) also referred, at page 253, to "three kinds of public way, a foot-way, a bridleway, and a carriage or cartway".

Yet, one hundred years earlier an important legal text book made no mention of a carriageway being an all purpose highway. Rand J Burn ('The Justice of the Peace, and Parish Officer' 16th Ed. (1788) Vo1.2) stated at page 482 - re "What is a highway" :
"There are three kinds of ways; (1) a foot way. (2) A foot and horse way. (3) A foot, horse, and cart way1 Inst.56"(my emphasis)

Thus between the era of Burn in 1788 and the era of the Imperial Dictionary of 1854 there was a change of emphasis and of common usage and the word "carriageway" became the accepted word for an all purpose or "common highway" rather than the term "cart way".

What brought about this change in the ordinary meaning of the terms "cart way"

"carriage road" or "carriage way" is not clear. As the Turnpike Trusts took hold of the nation's road network, the emphasis seems to have changed, from that of the passage of the feet of men and beasts, to that of the passage of the wheel carriage engaged in the act of carrying persons and materials.

The term "wheel carriage" was widely used during the period 1750 to 1850. 'The Imperial Dictionary' (1854) described it as "A carriage moved on wheels – drawn by horses or propelled by steam – and included coaches, chaises, gigs, railway carriages, waggons, carts etc"

The legislature had always been conscious of the existence and use of both wheel carriages and carriages other than wheel carriages, and for the avoidance of doubt made specific reference to both where necessary. The Hessle to Beverley (East Riding of York) Turnpike Act of 1811 (51 Geo 3 cap.4) at section 13, enacted that if any persons hauled any timber or stone upon the road "otherwise than upon wheeled carriages" they were guilty of an offence.

The new growth of industry and commerce demanded more reliable methods of moving goods and people. The new roads were vital to this expanding economy. These roads became increasingly more than merely public cartways, they became public carriage ways (using the words in their modern sense) along which the goods of the nation travelled far and wide at ever increasing speeds.

This change in public perception was reinforced by the new users of the roads in the late 19th century. These new "carriages", first the bicycle and later the motor car, changed for ever the everyday ordinary meaning of the word "carriage" and altered the common usage of the word "carriageway" to that meaning a public road for vehicular traffic, rather than a way along which goods could be carried by whatever means were appropriate.

Section 31 of the Road Traffic Act 1930 changed the general law relating to carriages and all motor vehicles were deemed to be a carriage within the meaning of any Act of Parliament. Thus a cartway could lawfully be used as a carriageway by motor vehicles.
Section 31 (1930) stated "Any motor vehicle or trailer shall be deemed to be a carriage within the meaning of any Act of Parliament, whether a public general Act or a local Act, and of any rule, regulation or byelaw made under any Act of Parliament, and if used as a carriage of any particular class, shall for the purpose of any enactment relating to carriages of any particular class be deemed to be a carriage of that class"

Another 30 years were to pass, however, before Parliament felt the need to define the exact extent of the public right within the term "carriageway" (as relating to a public highway).

Section 295 of the Highways Act 1959 enacted that "the following expressions have the meanings hereby assigned to them" – "carriageway" means a way constituting or comprised in a highway, being a way (other than a cycle track)

over which the public have a right of way for the passage of vehicles"

The meaning of the words "carriage" and "carriage road" have certainly changed over the last 800 years. But, the "carriageways" of today still fulfil the ancient dual purpose of providing a way along which passengers may have passage, and a way along which goods and materials may be carried.

Whilst most of the foregoing may be considered to be of academic interest only, that part which relates to the period of the Inclosure Acts has a relevance to issues of law being decided today. The question therefore arises :

Were the "carriage roads", referred to within Inclosure Acts and Awards, intended to be used as vehicular ways, or, were they only intended to be used for the act of carrying, an act which might, or might not, use wheel carriages?

Throughout the period of the Inclosure Acts the statutory term for a common highway was a "cart way" or a "public cartway".

Section 15 of The Highway Act 1691 confirmed that the statutory term for a common highway leading to market towns was a cart way. Section 11 of The Highway Act of 1767 re-confirmed and re-enacted this use of the word "cartway" . Section 15 of the Highway Act 1773 added the word "public" and the term remained "public cartway" until re-enacted once again by section 80 of the HA 1835.

In 1736 Lord Hardwicke C.J. in R v Hatfield (Lee Temp. Hard.315) stated "I cannot remember any authority that holds it necessary to say that it is a highway for this or that particular carriage; for a cartway is a common highway, and a highway for all manner of things"(my emphasis)

Thus, as the Glens (above) pointed out in 1883, at page 3, "The term cartway means a right of passage for all carriages". They also added "The size of the way is not material, for a right of way for all persons to pass and repass with their carts and carriages is not restrained because all carriages cannot pass and repass" (they cited R v Lyon (1825) 5 D & R 497)

The question therefore arises, why did Parliament introduce the term "carriage road" into inclosure legislation at a time when the common law and statutory law referred to common highways as "cart ways" or "public cartways"?

It is unclear whether this introduction of new terminology into inclosure legislation, from c.1765 onwards, was the result of a specific directive by the legislature, or, arose simply because of a change in common usage. If the later is the case why did the term "cartway" remain upon the statute books for the next 200 years, and be re-enacted by the Highway Acts of 1766, 1773 and 1835 ?

Could the answer to the question be that there was, and there remained, a

difference in the mind of the legislature between a "public cartway" and a "public carriage road" ? Or was it that the legislature intended to create a legal and physical difference between the new roads and the old roads by introducing a new terminology? In other words did the introduction of the new "public carriage roads" also herald a new order and new regime for the highways of the nation?

Certainly, the common law right of deviation was changed. There became no right of deviation once the new inclosure fences were erected alongside the new roads. The new roads being made to such a width as to accommodate deviation from the metalled carriageway if required. The liability for repair of the new roads was also firmly placed upon those who benefited from the new inclosures, be it the inhabitants or particular persons.

Whilst common grazing rights remained on any 'ancient lanes' which survived the inclosure, the grazing rights upon the new roads were more strictly defined. Thus to the local inhabitants, the new "roads" became, for a while at least, different
concepts from the "ancient lanes" which they had known before.

There was certainly a clear physical difference to the eye of the beholder between the ancient cart ways and the new carriage roads. A difference which can still be immediately noticed today the new roads being much wider, and set out in straight line running between fences.

The early Inclosure Acts required "public roads" to be made two or three times as wide as the Highway Act required a public cartway to be. For example - the Flamborough Inclosure Act (1765) in the County of York, required "all publick Highways or Roads" to be 60 feet wide: The Methley Inclosure Act (1786) in the County of York required public roads to be 40 feet wide: and the Inclosure Consolidation Act required "publick carriage roads and highways" to be 30 feet wide.

Only part of the awarded width was however 'made-up' for the passage of carts. As W H R Curtler stated in 'The Enclosure and Redistribution of Our Land' (1920) at page 161 "Public roads were usually 40 feet wide, of which 12 feet was stoned one foot thick in the middle and nine inches at the sides". It is therefore, easy to see, how the term "carriageway" evolved to describe that portion of the highway "which has been metalled or in any other way provided with a surface suitable for the passage of vehicles" (section 329 HA 1980).

However, the wide verges of the new inclosure roads still remained as 'soft roads' to accommodate the foremost purpose of the new roads which was to allow for the passage of animal feet.

To return to the introduction of the term "public carriage road" within Inclosure Acts and Awards. Whilst a general 'feeling' regarding the use of the words 'carriage road' may be gained from looking at various examples, it must be

emphasised that each award is unique to its own locality and each particular road is unique to that award.

The Kirk Hammerton Award of 1768 also set out several "publick carriage Way and Road" and several "private carriage Way or Road" which it also referred to as "the same private cart and carriage Way or Road" – when awarding the "herbage". Thus in the context of this Act and Award, a public, or private, "carriage road" was an all purpose road which could be used by carts. This may be one of the earliest examples of the use of the term "carriage road within an Inclosure Award.

One of the first Inclosure Acts to actually use the words "public Carriage Roads" was The Methley Inclosure Act (1786) – 26 Geo 3 NO.62 – (WR of York) at pages 18–19. However, the Methley Award of 1789 does not use the term "public carriage road" but instead awards "One road. . . and for a public Highway for Carts and Carriages and all other purposes". It was therefore made clear to everyone that the new public carriage roads could be used by carts and other wheeled vehicles for the purpose of the act of carrying and all other purposes. The Award further recited that the "Private Roads" could also "be used and enjoyed with carts and carriages for the occupation of the several lands.

Somewhere, in most awards, the Commissioners made it clear to everyone that the new "carriage roads" were to be used for carrying materials, by any appropriate means, including the use of wheeled vehicles. The Commissioners, being men of their time, must have known that the words "carriage road" were not in themselves sufficient to designate a highway for wheel carriages. Thus, for the avoidance of doubt they confirmed in plain words the full extent of intended user.

Therefore, even though an Inclosure Act may not itself define the full extent of the intended user of the public and private "carriage roads", that user may probably have been defined by the Commissioners within the Award. For the law holds that "An inclosure award made under an Act of Parliament is a form of delegated legislation, its provisions having the same effect as if they had been enacted in the Act itself' (Oliver J – re Turnwirth Down, Dorset (1976) 1 Ch 251 at 257)

The 1801 Inclosure Consolidation Act does not itself define the full extent of intended user by its use of the words "publick carriage roads and highways" in section 8. As the Act does not define the words further it gives no authority for the use of wheel carriages. On the other hand it does not state that wheel carriages cannot be used. The term "carriage road" as used within that Act, therefore remains ambiguous.

However, the majority (if not all) of the enabling acts and awards made under the 1801 Act do make it clear that the new "carriage roads" were intended to be used by carts and other 'carriages'.

Therefore, each Act and Award made under the authority of the Inclosure Consolidation Act must be looked at carefully in order to understand, either the intention of the legislature, or the intention of the Inclosure Commissioners at that time. It is not sufficient merely to point to the words "carriage road" within an Inclosure Act or Award and then claim the existence of a vehicular highway. The authority for vehicular rights must be found elsewhere within the enabling legislation, be it the Act or the Award.

POSTSCRIPT

I note from published research done by Alan Kind (16 June 2005) that ;

"In 1815 Parliament passed "An Act for procuring Returns relative to the Expense and Maintenance of the Poor in England; and also relative to the Highways" (12 May 1815) 55 Geo 3 , c.47. This Act required the surveyors of highways for " . . . . every parish, Township or Place. .. (to render) a just and true Account upon Oath. . . . of the estimated Extent of Public Highways or Roads used for Wheeled Carriages. . . ", this under pain of serious criminal sanctions for default. The exercise produced returns from 16,955 surveyors, with a 'deficiency' of 120 - a 99.3% complete response"

Alan Kind continues, and states that "The total length of public highways for wheeled carriages in Northumberland, on figures relating to returns in 1814, was 2,779 miles, including turnpike roads and paved streets"

The returns for the whole country should indicate the total length of public highways for wheeled carriages in England in 1814. These returns may shed a new light upon the conclusions reached by the Webbs exactly one hundred years later. However, according to Alan Kind, the House of Lords Record Office indicate that not all these records have survived at Parliament.