

The right of public navigation on the Hampshire Avon

Legal research by Douglas Caffyn has shown there to be a right of public navigation on the Hampshire Avon from Harnham Bridge near the cathedral in Salisbury 40km to the sea at Mudeford. He has circulated his findings to a number of authorities including county and local councils and was interviewed for the better part of a quarter of an hour on BBC South's Inside Out programme. In six months the sole contradiction has been from a landowner who has expressed the unsubstantiated opinion that there has never been a right of navigation on the river. Below is the paper putting the case for the right of navigation.

The River Avon from Harnham Bridge, Salisbury, to the Sea

A public navigable river

Most legal texts which deal with the subject of public navigable rivers state that a public right of navigation may be created by Statute, Historic Use or Dedication at Common Law. These are considered in order in this paper. However, it is also claimed that there is a public right of navigation on all rivers which are physically navigable. The reasons for this are set out in the paper *The Right of Navigation on Non-tidal Rivers and the Common Law* [Dec 04, p27].

Right created by Statute

In 1664 an Act was passed for making the River Avon navigable from Salisbury to the Sea (17 Charles II c 12). This section of the river was made navigable but it is thought that part of the works were swept away by a flood soon after. However, John Chandler (*Endless Street*) records that traffic on the river included 25 ton barges.

It is understood that in the early 20th century a gentleman claimed that there was still a right of navigation on the river but that when he was sued for trespass it seems that the case was not defended and so no precedent was created.

If there was such a case it has now been over-ruled by the Appeal Court in *A-G ex rel Yorkshire Derwent Trust Ltd v Brotherton* ((1990) 61 P & CR 198). In this case it was held that when a Navigation Act was passed it created, by implication, a public right of navigation on the river, both for commerce and for recreation, either from the date of the passing of the Act or from the date when the river was made navigable. It was also held that this right continues until the Act is repealed. However, if the river becomes silted up so that certain boats are physically unable to use the river then the right of navigation is suspended for such boats. Smaller boats may continue to use the river.

It was held by the House of Lords in *A-G v Simpson* ([1901] 2 Ch 671) that a river remains legally navigable even if the passage of boats is obstructed by weirs or other structures.

The course of the River Avon has changed over the last four centuries. It has been held that if a river changes its course then the right of navigation follows to the new course ((1349) 22 Ass 93 and *Mayor of Carlisle v Graham* ((1869) 4 LR 361).

Thus, there is now a Public Right of Navigation on the River Avon from Salisbury to the Sea by virtue of the Statute of 1664.

Right created by Historic Use

Hatcher (*The History of Modern Wiltshire*) records that 'From time immemorial, the river Avon had been subject to commissioners of sewers, to preserve various rights of fishery and passage. The ancient custom of this part of the river was that a passage was to be left free, fifteen feet wide, and twelve feet distant from either bank. This custom was confirmed by the commissioners, in the third year of James the First, 1604, and the eighth of Charles the First, 1632.'

A copy of an order made at Salisbury Quarter Sessions in 1590-91 confirms Hatcher's report (1590-1591, 24M82/PZ3).

It is also confirmed by an Order issued by a Session of Sewers held at Salisbury, concerning the River Avon in Wiltshire and Hampshire in 1605 (Hampshire Record Office, 21 Dec 1605, 24M82/PZ41).

In 1592 an Order of the Commissioners of Sewers refers to the obstruction of 'the free passage of ffishe swannes and boates' on the river between Harnham Bridge, Salisbury, and Christchurch (Wiltshire and Swindon Record Office, PR/Salisbury St Martin/1899/223 - date 1592).

Also in the Hampshire Record Office is an Inventory of Joseph Warne of Bisterne, Ringwood, Hampshire, dated 1632 which includes 'Boats and Nets'.

In 1623 John Taylor and his companions rowed a wherry upstream

to Salisbury (John Taylor, *All The Works of John Taylor the Water Poet. A Discovery by Sea from London to Salisbury*. London. 1630).

In 1685 two vessels laden with 25 tons were brought to Crane Bridge in Salisbury (A.T. Morley Hewitt, *The Story of Fordingbridge*. Fordingbridge. 1965, 42).

In 1724 Defoe recorded that 'with a deep Channel, and a Current less rapid, they [the Avon, Willy and Naddir] run down to Christ Church, which is their Port, and where they empty themselves into the Sea; from that Town upwards, towards Salisbury they are made navigable too within two Miles, and might be so quite into the City, were it not for the Strength of the Stream.' (Daniel Defoe, *A Tour Through the whole Island of Great Britain. Volume I*. (First published 1724.) London: Peter Davies. 1927, 188.)

1753. In Salisbury 'one of the piers of the north bridge had been taken away, and two arches thrown into one, for the better accommodation of the barges to be drawn up towards the city, as I have been informed they did as high as Crane-bridge.' (Francis Price, *A Series of particular and useful Observations Made with great Diligence and Care, upon that Admirable Structure the Cathedral-Church of Salisbury*. London. 1753, 30.)

Where a public right of navigation has been established it can only be extinguished by Act of Parliament, Statutory Authority or by the river becoming physically impassable. (*R v Betts*, (1850) 16 Q.B. 1022; *Vooght v Winch*, (1819) 2 B. & Ald. 662) and *Josie Rowland v Environment Agency* [2002] EWHC 2785)

Thus, there is now a Public Right of Navigation on the River Avon from Salisbury to the Sea by virtue of Historic Use.

It is often stated that only a Court can decide if there is a public right of navigation on a section of a river. In the case of the River Avon a Court has made such a ruling.

Right created by Dedication

Here only the section of the river at Fordingbridge is considered. There may also be other sections of the river on which a public right of navigation has been created by dedication.

Hewitt wrote about the Fordingbridge Regattas that 'In the mid-19th century sailing was a favourite pastime, and about 1850 regattas were being held: ... In 1870 a short-lived rowing club was formed, but in 1889 a strong committee inaugurated a rowing and sailing club, their initial regatta being held on the 1st August that year; it became a yearly event until the outbreak of the 1914 War and was so well organised and so popular that special trains were run from London. It even became known as the 'Hampshire Henley.' The regattas were revived after the war and continued until 1928, the 26th annual regatta being held on the 12th August, 1925.' (A.T. Morley Hewitt, *The Story of Fordingbridge*. Fordingbridge. 1965, 74.)

There is a similar record of the regattas in *A History of Fordingbridge and Neighbourhood* by Reginald Hannen.

The book *Fordingbridge in Old Picture Postcards* by Anthony Light and Gerald Ponting has photographs of sailing boats, rowing boats and punts on the river at Fordingbridge.

John Levell, vice chairman of the Wessex Salmon & Rivers Trust, confirmed in a statement quoted in the *New Forest Journal* dated 14 July 2006 that the river is still regularly used for recreation.

Thus there is such a public right of navigation on the river above and below Fordingbridge.

Any queries about the above paper should be addressed to:-

Rev'd D.J.M. Caffyn

255 Kings Drive
Eastbourne
East Sussex
BN21 2UR

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