

Alec Samuels

The Itchen Navigation: The Legal History

The canal era ran from the later part of C18 until the earlier part of the C19, as the industrial revolution was getting under way. The roads were poor, industry needed water for the mills, and a cheap method of carrying bulky commodities and aggregates such as coal, iron, timber, stone, and chalk, and goods. The advent of the railways in mid C19 "killed" the canals. Those canals that have survived are today used for recreation such as holiday barges, canoes, kayaks, swimming and fishing, and pleasurable walking alongside.

The history of the River Itchen is unusual. The River rises near Alresford and flows into Southampton Water at Southampton. The Romans used their excellent roads, not the rivers, for troop movements. The Normans may have used the Itchen to bring Caen stone up to Winchester for the building of the cathedral. In the late C12 Bishop of Winchester Godfrey de Lucy is believed to have constructed a sort of pond or reservoir at Alresford to supply the Itchen between Alresford and Winchester for navigation purposes, for the fulling and weaving industry.

By C17 the people of Winchester were agitating for a canal to transport cloth to Southampton and the sea. With the surge in economic activity following the Restoration in 1660, Parliament passed the 1665 Itchen Navigation Act, authorising the construction of the Navigation for the passage of boats, barges, lighters and other vessels for the transport of goods, with a commercial monopoly for seven grantees. A navigation is a form of canal "straightening out" the bends and shallow parts of a river to form a navigable passage. Some 10-12 miles long (depending upon the point to which it is measured in Southampton), the rights over the land were authorised by magisterial order in 1701 and the Navigation finally opened for business in 1710 or thereabouts. There are 17 locks: St Catherines, Twyford Lane End, Twyford, Shawford, Compton Malm, College Mead, Brambidge, Allbrook, Brambridge, Allbrook, Withymead, Bishopstoke, Conegar, Lock House, Decoy Pond, Sandy, Mansbridge (originally the first bridge crossing the Itchen) and Woodmill. During C18 there were continuing complaints about exorbitant charges, for the use of the boats, and the water, and the wharfs. There were usually only six barges available, alleged to be insufficient, and delays. The owners were alleged to give preference to their own goods, and even to refuse to take the goods of rivals. The 1767 Act appointed managing commissioners and gave access to all traders, though the monopoly remained.

The 1802 Act broke the monopoly, gave to the public the right of public navigation for commercial purposes, the use of the towing or hauling paths, and access to the quays and wharfs. The charges on tolls were prescribed, for the purpose of raising revenue for maintenance of the Navigation.

The Napoleonic wars led to considerable increases in inflation, as so often happens in wars, and the 1811 and 1820 Acts further fixed and controlled the charges. Also the riparian owners were entitled to open the sluice gates or hatches for the important purpose of irrigating their "water meadows", especially in the Twyford area. Providing summer drainage was also important.

Incidentally the River Itchen is a most important source for water abstraction by the water companies, and today there is a dispute over the amount of abstraction to be permitted by the Environment Agency, conservationists claiming that excessive abstraction can harm the flow and the wildlife, the water companies pointing to the growing demands of the public for water.

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The Navigation always needed water for the barges, for irrigation, and for abstraction; and to take excessive drainage water. There were several mills along the length, such as a brickbuilt timber sawmill at St Catherine's Lock, making blocks for the Navy, and mills for cornmilling.

1840 the railway arrived in Southampton, and the Navigation soon fell into decline. The last barge unloaded its cargo of coal at Blackbridge Wharf in Winchester in 1869. The Navigation fell into decay. Parts are still used, for boating, swimming and fishing, but some parts are now dry and seriously overgrown. The owner of a navigation is under no obligation to maintain it unless the enabling Act says so or public rights have been acquired Simpson v Attorney General [1904] AC 476. The 1802 did require the owners to keep the Navigation in order. The company failed in the 1860s, the owner of the 160 shares one Hollis became bankrupt; the company was heavily mortgaged, the debts were never paid. The income was a mere £400 a year, from tolls, warehouse rents, and a small fee from Winchester College for swimming for the boys. Who now owns the shares is unknown. The six Acts have never been repealed and are still to this day technically the law in force.

The law requires passage for barges not exceeding 14 feet beam and 70 feet long, 20-45 tons. Over the years railways and roads have been built across the Navigation. The two railway bridges at Allbrook and the bridge at Winchester give plenty of clearance, statute requiring the railway company to "properly arch" crossings of the Navigation. The Hockley Viaduct (itself now in need of protection) respects the Navigation.

The A27 at Mansbridge gives adequate clearance, but the B3335 and B3037 in Eastleigh and Brambridge do not give minimum clearance.

The M3 in the Hockley area provides appropriate clearance, and the M27, by way of providing a diversion of the Navigation, also provides appropriate clearance. The Department of Transport gave an undertaking in both the M3 and the M27 decisions to restore the banks of the Navigation so far as necessary in the event of the Navigation re-opening.

A public right of way for walkers exists along the entire length of the Navigation; and also by law for towing and hauling horses. Over the years some diversions and encroachments have taken place from the original towpath, e.g. at Chicken Hall, Shawford, Hockley and Blackbridge, either by custom and practice or by magisterial or local authority order.

The owners of the Navigation do not own the bed of the Navigation, they simply have the right to navigate on the water. There is no general legal public right for the public to take boats on rivers, though in respect of individual rivers there may be and often is a statutory right by special Act of Parliament or a right based upon long usage. The 1665 Act expressly protected existing rights of navigation, granting a commercial monopoly to the Navigation owners, and the subsequent Acts opened up commercial navigation to the public. In the canal era legislation regarding tolls, especially for commercial goods passing through locks, was very common. Boats are seen on the Navigation, e.g. the rowing boats of the boys from Winchester College. The owner of the bed of a river or navigation is entitled to navigate on the water directly above his land.

In resolving an issue over proposed compulsory acquisition of part of the Malms near Winchester the Southampton Corporation Act 1931 c 99 cl 43 expressly required the Winchester Council to maintain a grid in the Navigation and to compensate the owner of the land Mr Alfred Bonker for the loss of bathing rights and also protected all his rights of boating and navigation.

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Riparian owners enjoy the right to fish from their own river banks, and this right may apply to the Navigation also, based on the proposition that a navigation is in reality an extension of its river. Whereas a canal is an entirely artificial construction carrying no common law rights to fish for the riparian owners. Fishermen often object to boats, because of disturbance to the fish, and object to outsiders fishing from public banks without a licence.

The future

In an ideal world the Navigation would be restored to its pristine glory. But that is unrealistic for the foreseeable future. The two crossing roads at Eastleigh and Brambridge would need to be raised over the Navigation. Huge investment would be needed. Recreational use would be highly unlikely to yield much in the way of income. However, the line of the Navigation still exists, albeit with some minor variations, and fortunately no building has been built across the line. So full restoration is technically possible.

A substantial grant of public money has financed the Itchen Navigation Heritage Project and a considerable amount of most repair and restoration commendable work has been done to strengthen and restore the banks, to repair the locks and to improve the footpath. The visual and recreational amenities have been markedly improved.

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