

## Nine Captains prosecuted for breaking through a lock

After the gates to Pickering's Lock, on the River Weaver between Frodsham and Northwich, were broken through in 1860, nine captains were prosecuted and fined despite the culprit not being identified. The following account, published in the Chester Chronicle on July 25<sup>th</sup>, indicates that the defence counsel intended to take the case to a higher court, but no report of a further hearing has been found.

### Charge against Captains for illegally opening a lock on the River Weaver

For 'wantonly and without occasion' causing Pickering's Lock, belonging to the Trustees of the River Weaver, to be opened on July 16, 1860.

*Monthly Petty Sessions, Northwich, heard before J H Harper, W Worthington and J H Marshall.  
Counsel: Mr Blake for the Trustees; Mr Green for the Defendants, namely:-*

John Holford, captain of the flat *Tom*\*  
John Mills, captain of the *Enterprise*\*  
Thomas White, captain of the *Jane*  
Charles Cowley, captain of the *Lilly*\*  
Joseph Palin, captain of the *Little John*\*  
William Hickson, captain of the *Lord Hill*\*  
John Alcock, captain of the *Blake*  
Thomas Dutton, captain of the *Lancaster*  
John Hankinson, captain of the *Obediah*

*\* = Recorded on the Boatfamilies website (see final page)*

The case of John Holford was taken first, and Mr Blake said it was with great regret that he appeared to support this information against the defendants. He was sorry they had so far forgotten themselves as to have committed the act with which they stood charged.

The river was drawn off on the night of Saturday 14<sup>th</sup> July; the locks were all fastened at 12pm and early the following morning the whole of the parties summoned came up to Pickering's Lock, knocked up the keeper, and requested to be passed through. The keeper said the gate was fastened and he could not of course allow them to proceed.

A conversation then seemed to have taken place, all the defendants agreeing to break through the gates, come what would. None asked the lock-keeper for a light note, which was their duty to have done, because they knew that a note would not have been given to them; but they forced their way through the lock, having first broken the staple and taken off the chain, against the express direction of the lock-keeper.

(Regulations provided that if any person should wantonly, or through carelessness, or any negligence, break through, damage or destroy any banks, or other works erected for the purpose of navigation, he should forfeit a penalty of 40 shillings.)

The defendants behaved in a most unseemly manner, not only at Pickering's but also at Acton, but fortunately for themselves they did not force the gates at Acton, for had they done so they could have

rendered themselves liable to prosecution for felony. He simply proceeded against them for 40 shillings and he regretted to do so, but he acted under the direction of the Trustees. He then called George Twist, the lock-keeper at Pickering's Lock, whose evidence was chiefly confirmatory of Mr Blake's statement.

Mr Green then submitted that there was not a shadow of a case against the defendants. The words of the Act were: 'If any person should wantonly and without occasion open any lock, etc'. Where was the wantonness? The defendants were coming up the river, and there being plenty of water in the lock, passed their flats through.

There was no evidence at all of their having opened the lock, it was not even shown who caused it to be opened. They wanted to get out of the tideway as they had been accustomed to. There was sufficient water to allow them to do it, and in pursuance of their duty to their employers, they came up the river as far as Acton Bridge.

That was an occasion which required them to come up the river, and he apprehended that they could not be held liable for the penalty prescribed by the Act, which applied only to wanton mischief by persons who opened the locks without occasion, and was never intended to apply to a case of that sort when a man passed through with his flat, as he believed in the exercise of a right.

The Bench having consulted together for a few minutes, the Chairman said they were perfectly satisfied that there was a prima facie case. He thought the word 'wanton' was never more applicable than in this case. Mr Green then objected further, that the Trustees had no right to close the navigation. Here is a river, the navigation of which is declared free by Act of Parliament. There is evidence on the part of the prosecution that there was water sufficient for navigation, and the lock-keeper had no right to prevent the boats from passing.

Mr Harper: 'But you know the Trustees have very considerable powers which are sometimes embodied in bye-laws.' Mr Green: 'But this is not a bye-law that we are going upon, but an Act of Parliament.'

Mr Blake, in reply to the Bench, said there could not be the slightest doubt, speaking either as an advocate or as the advisor of the Bench, that the Trustees had full power in the performance of their duty to turn off the water for any purpose they chose. Supposing they kept the water off for six months, they might be amenable to some control, but when they turned it off in order to effect necessary repairs, there was no doubt whatever that they had the right to do so.

After some conversation, the objection was overruled.

Mr Green then proceeded to address the Bench on the merits of the case. He said Holford was captain of a flat, and having been employed on the Weaver nearly all his life, he knew well the customs of the river, and knew also that it had been customary, however Mr Twist might twist it to the contrary, for light flats coming up the river to pass by Pickering's o' th Boat whenever there was water, and never before had he been refused..

On the day in question, Holford's flat was lying in Weston basin when he was called up by the Dockmaster and told to be off. He consequently left the Weston basin by the orders, it must be remembered, or at all events by the directions and consent of the Trustees' own officer – and where was he to go? He was not sent into the Mersey, but up the Weaver. He reached Sutton Bridge, which was opened to him by the servant of the Trustees. He went on to Sutton Lock, and there met with no obstruction from the servant of the Trustees.

But when he arrived at Pickering's Lock he, as duty bound, applied to Mr Twist for a light note. Mr Twist said he should not pass through, and declared that he would be a fool to break into his leisure time while the water was off.

The defendant and the captains of the other boats who came up thereupon held a consultation as to

the desirability of sending to Mr Williams (the Trustees' Engineer) for an order, but whilst this was proceeding, some person called out: 'There's a road now'. The boats were then passed through, Holford's being the sixth. There was plenty of water and they went up to Acton Bridge without difficulty.

Now what harm had the men done? They wanted to go through Acton, and the lock tender said he would gladly have permitted them, but some repairs were about to be done immediately above the lock, and he was not sure whether there was water. He advised them to stop on the other side, and they did so. He had no wish to prevent them from getting as near home as they could. One great object of their going through Pickering's Lock was to get out of the tideway. When the water was off, the tide – especially spring tides – came rushing up with great velocity and flats could not rest securely, but were liable to serious damage.

Mr Harper reminded Mr Green of the notice posted at Pickering's lock. (This was a notice signed by the Trustees' Engineer, ordering that no flats should pass Pickering's Lock during the time the water was off, and referred to by Mr Twist in his evidence. Mr Green contended that the notice was nothing more than waste paper. The defendants had no desire to do anything contrary to the rules and regulations of the Trustees. But in this case they did what was necessary to protect their masters' property. Had he (Mr Green) been there he would have advised them to do what somebody did; in fact he would not have hesitated to have drawn the staple and broken the chain himself.

Mr Twist said there were sometimes upwards of 200 flats in Frodsham, which flatmen generally considered the best place for them. They were in no danger whatever by lying in the tideway.

James Mills, a flatman on board the *Enterprise* was next examined.

Mr Cheshire, magistrates' clerk, then asked Mr Green if he thought it worthwhile to take down the evidence of any more witnesses. The defence, if he understood it rightly, was that it had been customary for flats to pass through Pickering's Lock whenever there was sufficient water.

Supposing he proved the custom, the Trustees said they had power to stop it when they thought it proper. Accordingly they, or their Engineer Mr Williams, issued an order to the lock-tender that no flat should be allowed to pass under any pretence whatever when the cloughs were drawn. Would it not be advisable to leave the legal point as to whether the Trustees possessed this power or not for the discussion of the Queen's Bench?

Mr Green said the paper produced was signed by Mr Williams, Engineer, but Mr Williams was not the person to say when flats should and should not go through the lock. This was no notice from the Trustees, nor had any notice from them been produced. Mr Blake having replied, Mr Harper said the Bench was unanimously of the opinion that the notice was admissible and that Mr Williams was the proper person to issue such a notice.

Mr Green: 'You see I am contending against great odds. I am arguing the case before both the prosecutors and the judges.' The Chairman: 'We divest ourselves entirely of any feeling in the matter.' Mr Green: 'Well, if you can do so, I have no doubt you will.'

John Mills, captain of the *Enterprise* and father of the last witness, said he had seen boats when in the tideway in Frodsham pond washed on the bank by the rush of the tide and kept there or sunk. He had seen considerable injury done to flats, and their object in going through the lock was to avoid the danger.

When his boat arrived at Pickering's Lock he begged permission to go through, but Mr Twist said he would not break in on his leisure time for anybody. He repeated those words several times, and said he had a notice in the office. One of the men in the witness's presence asked him to come down and show it. They were talking about sending to Mr Williams when someone shouted: 'There's a road.'

Witness neither broke the lock off, nor saw it done. His flat went on to Acton. There was plenty of water on the sill and they got up to Acton without difficulty. John Allcock, captain of the *Blake*, and Charles Cowley gave similar evidence. Cowley admitted that he asked the lock-keeper what the fine was for going through, and that on receiving the answer 40 shillings he said: 'We'll pay that among us if that's all.' Before that he did not know that there was any penalty at all for going through.

The defendants' case being concluded, Mr Blake rose to reply. Mr Green objected – he said the Jervis Act (Justices Protection Act 1848, protecting magistrates from prosecution) expressly states that there shall be no reply: 'You know that as well as I do.' Mr Blake was nevertheless proceeding when Mr Green urged that he be ordered to sit down. Mr Cheshire said: 'There is no doubt Mr Green is right. Under the Jervis Act no reply is allowed.'

The Chairman said he was very glad that his brother magistrates were of the same opinion, that the Act bore so strongly on this case that it hardly permitted a doubt as to how the magistrates should act. Their unanimous opinion was that the defendant had been guilty of a breach of the law; that he had disobeyed an order made by the Engineer of the Weaver Trustees, the gentlemen to whom he must look to keep the river in good order.

He could not do this without creating a temporary stoppage at Pickering's Lock, and the defendant being one of a party who broke through the lock contrary to such order, it was their duty to inflict the lowest penalty allowed by the Act, viz 40 shillings and costs, in default of payment 14 days' imprisonment.

Mr Blake said that as the only object of the Trustees was to prevent a recurrence of such conduct, he must ask the magistrates as a matter of favour, with the consent of course of the defendants, to inflict the same penalty in all other cases; but he would advise the Trustees not levy any more than a nominal penalty, say one shilling, or even one penny, and costs.

Mr Green offered to object to the proposal, but without prejudice because, as he had already intimated, he should probably proceed further with the case. It was understood that in case of the magistrates' decision being quashed, the penalty would not be enforced in any of the other cases. He asked the Bench to name a sum to be guaranteed by the defendants as costs on prosecuting the appeal.

Mr Harper: 'Do you mean to carry this to a higher court?' Mr Green: 'I must take the opinion of my clients on that. I shall certainly advise them to do so.' The Bench then named £20.

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\* - Five of the defendants are recorded on the *Boatfamilies* website:-

John Holford, b 3.5.1819 Leftwich (aboard 'Tom' in 1861 census) cousin of Charles Cowley;

John Mills, b1811 Witton (aboard 'Enterprise' in 1861 census) cousin of Charles Cowley, (son James Mills, witness);

Charles Cowley, b1809 Witton (aboard 'Lilly' in 1861 census) cousin as above and brother-in-law of Joseph Palin;

Joseph Palin, b 14.12.1824 Barnton, brother-in-law of Charles Cowley.

William Hickson, b1812 Barnton.