HOYLAKE
VILLAGE LIFE

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Laden mules don't fly

Research in support of the establishment of a market in Hoylake, Wirral

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Who we are

Hoylake Village Life is a new community group whose primary aim is the regeneration of Hoylake.

The makeup of the group is formidable: we have members whose professional expertise involves urban regeneration, grant funding applications, community arts initiatives, journalism, PR, planning and more. The group as a whole has ambitious plans for Hoylake's regeneration and there is no doubt that we have the skills and creative energy to realise these.

We have already developed excellent relationships with local councillors, Wirral Council Special Initiatives and Tourism Destination Officers, politicians and businesses and soon hope to roll out the brand 'Hoylake Village' locally with window stickers, banners and more.

We aim to fill empty shops quickly with art galleries, coffee shops, and other pop up retail businesses, and are exploring peppercorn rent deals to attract larger names.

We are also planning local events for 2010 to encourage the community and local businesses to take a positive and proactive approach to our village. The group is only a few weeks old, but we are all totally committed to succeeding; Hoylake has so much to offer and the present decline presents us with an opportunity to do great things.

We can be contacted on 0151 632 1657.

What is this particular issue about?

One key project which has been considered by the wider community for some years is the possibility of hosting a local open air **market** in Hoylake. Markets increase footfall, encourage the development and consumption of local produce and have a low carbon footprint. They enhance the communities in which they exist.

Hoylake Village Life wish to explore the possibility further.

To this end we secured the pro bono reseach services of Bermans Law in Liverpool.

The facts

In his book, On the Laws and Customs of England, written around 1230, Henry de Bracton wrote:

> 'A market may be called neighbouring, and a wrongful nuisance, because it is harmful wherever it is held within six leagues and a half and a third part of a half [of the first]. The reason, according to the sayings of the elders is because every reasonable day's journey consists of twenty miles. A day's journey is divided into three parts.The first part, in the morning, is given to those going to the market; the second to buying and selling . . .; the third part is left for those returning from the market to their homes. All these must be done by day, not at night, because of ambushes, and the attack of robbers, that everything may be safe'.

Thus, a distance of six and two thirds miles has been set in UK law since that time.

The definitive reference we have used for this research is:

• *Pease & Chitty's Law of Markets and Fairs Fourth edition* page 72

It may seem anachronistic but this law remains in place today.

We would assume from this, therefore, that the distance is measured by walking distance, not linear distance (i.e. as the crow flies).

However, in a landmark case in Newcastle in December 1990, Judge Maddocks ruled that this distance should be measured as the crow flies. This ruling set a case law precedent which has been used since to prevent other markets opening.

Birkenhead market operates under Royal Charter, and is thus protected by the six and two thirds miles law.

Station Gateway, Hoylake, is more than six and two thirds miles walking distance from Birkenhead market, but less than this distance as the crow flies.

Thus, according to case law precedent, we would not be allowed to hold a market here.

However, the Interpretation Act 1978 point 8 cites that distance should be interpreted as linear distance 'unless the contrary intention appears'.

Could it be argued that the contrary intention does indeed appear? We think it possible.

Laden mules do not fly.

So what can we do?

But we do not want to put ourselves, or Birkenhead Market, in the position of arguing this in the courts; we believe we can work together for a mutually beneficial outcome.

A market in Hoylake will be good for the whole of Wirral, not just Hoylake.

To this end we are investigating the details with a view to supporting the opening of a market here. But we must get all our facts in place first.

We hope to talk further with the management of Birkenhead Market with a view to establising a friendly rapport and to get their support in principle for the idea, regardless of how distance is interpreted.

We believe there are a number of creative routes to be explored which could be mutually beneficial.

Throughout it all, we must recognise that the traders of Birkenhead market have livelihoods to protect and that the Management of Birkenhead Market have a duty to them. Our approach needs to take that into account.

We know that they will expect us to set our stall out well. And we will.

We must be sure that there is sufficient footfall to support a market in Hoylake, and be sure that the format of the market is sufficiently attractive to locals as well as to people from outside Hoylake. It must be viable.

A well researched, well presented and realistic business plan is essential.

There are many other issues to be considered, such as staffing, Public Liability Insurance, and Health and Safety.

But none of this is insurmountable. We need evidence of widespread public support for this idea.

What if Birkenhead Market will not allow us to proceed

Bermans Law have done a lot of research for us and agree that common sense and a reading of the Interpretation Act 1978 would indicate that distance in this context should be measured as walking distance (although in most other cases it would be judged as linear distance), in which case we could hold a market.

At the same time, they indicate to us that there are many other factors to be considered, and that appointing a barrister would be the wise course of action. We have been pointed towards a barrister and are currently deciding whether to ask if he would be prepared to take this on.

Bermans have supplied the full transcript of that judgement and that is reproduced below.

We may contest that, in this particular case, the distance was only one of the reasons why the defendant lost, indeed distance was ultimately irrelevant and only cited by the defendant as one piece of somewhat shaky supporting evidence. Therefore, the ruling on distance might lose its value as case precedent.

However, before doing that, and with uncertainty over whether distance would in our context be measured as linear or as walking distance, it is recommended that we build a stronger case.

We should consider commissioning **independent surveys** on some key issues: how many people from Hoylake and West Kirby use Birkenhead market; how many people from Birkenhead or anywhere in between who currently use Birkenhead market would come to Hoylake instead; what is the offering at Birkenhead and the overall profile, would ours be unique; what evidence of NEED is there for a new market in Hoylake?

Surveys like this cost money. If Birkenhead market decided to take the matter to court we would need legal representation. A barrister would not work pro bono.

We also need to develop a **business plan** that clearly indicates that such an initiative is indeed viable. We need to show that all health and safety, legal and practical considerations have been considered and costed within that context. **It must be shown to be realistic and sustainable.**

Most importantly, we need to show strong evidence suggesting that Birkenhead market would **not** be affected.

If we pursue a case in the courts and lost we might be liable for the full costs, possibly as high as £150,000 or more.

So the message from Bermans Law is cautionary but supportive. We just need to be mindful of the potential implications and build a case that takes this into account, in other words, we must be very, very thorough.

We would need to show evidence of widespread public support as we understand this would be influential in a Judges' decision.

With these things in place we would then be prepared to secure the services of a Barrister.

Further reference

Official Transcripts (1990-1997)

Council of the City of Newcastle Upon Tyne v Noble and another

CHANCERY DIVISION

JUDGE MADDOCKS

89 LGR 618, (Transcript:JL Harpham)

12 December 1990

Mr Trotter for the Plaintiff; Mr Horner for the Defendant

JUDGE MADDOCKS

In this action the Newcastle City Council seek to restrain the Defendants from carrying on rival markets competing with their own market, known as the Quayside Market, which is held every Sunday and, as its name implies, at the Quayside in Newcastle on the north side of the river adjacent to the main bridges.

The First Defendant, Mr Noble, conducts, on a commercial basis, functions which are popularly known as "car boot sales". The interest of the Second Defendant is somewhat secondary in that he is associated with a company which owns the site of one of those sales, being a site of which complaint is made, and he authorised the sales to take place. He has, nevertheless, chosen to join with Mr Noble in seeking to resist the claim.

That site was the English Mustard Lorry Park at Birtley in County Durham on the south side of the river and in the area of another Council, Gateshead Metropolitan Borough Council. I will call that "the English Mustard site." It is common ground that the distance between the two sites, as the crow flies, is less than six and two-thirds miles, and the Plaintiff's case, quite simply, is that the Defendants' operations constituted a rival market which, as it was carried on on the same day of the week (Sunday) as that of the Quayside Market, entitles them to an injunction to restrain it as of course and without proof of damage. It is right to note that the site has not, in fact, been used for these car boot sales since the last occasion in October 1990, and the Defendants disclaim any intention to resume them on that site.

But Mr Noble takes a number of points by way of defence to the claim and does assert that he was entitled to conduct the car boot sale from the English Mustard site. He has not been prepared to undertake not to operate any other car boot sales on other sites within the six and two-thirds mile distance. Indeed, the Plaintiffs complain that in addition to the English Mustard site, has has operated a Sunday sale on another site, being Tyne Tees Motor Auctions, North Shields, which they say is also within the protected distance.

On any view, the points taken by the Defendants need to be resolved, if only to ensure that they know and, indeed, that both sides know, exactly where they stand in relation to the market rights and the Defendant's car boot sales.

There is some history to the matter, although it is not particularly material at the end of the day to the issues involved. It began in 1988 when Mr Noble had promoted various activities of which the Plaintiff Council complained and which led to them issuing proceedings by Writ on 11th August 1988, by which they sought injunctions against him on the same grounds as those sought in this action. Those proceedings were compromised by undertakings being given by Mr Noble until the trial of that action or further Order. He complied with those undertakings and, in due course, the proceedings were discontinued.

In April 1990, he started the car boot sales at the English Mustard site. The activity was investigated by the Council and a letter was written to Mr Noble, asserting their rights, on 17th April. Mr Noble then said that the car boot sales were being transferred to Chester-le-Street and that no more would be held on the English Mustard site. However, he later took the view that the Council, for their part, were allowing other people to carry on similar activities closer to their market so he returned to the site for a sale on Sunday, 23rd September.

These proceedings followed. The Writ was issued on 1st October 1990, accompanied by Notice of Motion for 5th October. The matter came before Mr Justice Scott who made no Order on the Motion but gave directions as to affidavit evidence and dispensing with discovery. The result has been that the action has come before me for trial in the remarkably short time of just over two months, which is much to the credit of both sides.

Although not expressly stated in the Order of Mr Justice Scott, it was agreed that the trial was to proceed on the affidavit evidence, subject only to the Defendants being called to answer any supplementary questions and being tendered for cross-examination. In addition, I allowed one expert witness to be called from each side on the issue as to the measurement of distances.

I turn, then, to the issues. It was conceded that the Plaintiff Council is a Market Authority. The Quayside Market was established many years, and probably many centuries, ago. However, the Plaintiffs rely simply on two Acts of Parliament; the first being The Newcastle Upon Tyne Improvement Act of 1837 and the second, The Tyne and Wear Act of 1976. In the first Act, the relevant sections are Sections 91 and 92; in the second Act, Section 59.

The first of these Acts provided by Section 91 that it should be lawful for the Council:

". . . for the time being from time to time to find, provide and appropriate proper and convenient places within the said borough, for holding and keeping public fairs and markets for the sale of horses, sheep, swine or other live cattle, corn and other grain, fish, butchers' meat, poultry, milk . . ."

and it goes on to list a number of items and to confer extensive powers in relation to those markets and fairs.

Then by Section 92, it was provided as follows:

"And be it further enacted, that from and after the making and publishing of any acts or orders of the council which shall direct or appoint, ascertain or set out, any particular place or places for holding and keeping any such fairs, markets or hirings as aforesaid, no person shall hold any such fair, market or hiring in any other part or place of the said borough for the purpose for which any place or places shall be so directed or appointed, ascertained or set out as aforesaid, nor shall any person erect or set up any stall, booth, or standing whatsoever, or expose to sale (except in some shop or warehouse, or in his own dwellinghouse) any such corn . . . etc."

Then, by the 1976 Act, Section 59, it was provided by subsection 2, that:

"As from the passing of this Act, the market (which is defined as being the Quayside Market) shall be deemed to have been established by the City Council under the provisions of the Act of 1955 —"

which is defined there to mean The Food and Drugs Act of 1955: as if the City Council were a Market Authority within the meaning of subsection 2 of Section 49 of that Act.

Now, as I have said, the Defendants did not challenge that the Plaintiffs were a Market Authority and that they had the statutory right to hold the Quayside Market under those Statutes.

In the end, the points raised by the Defendants, taken on their behalf, came to four, being as follows:

(1) they said the market did not enjoy the common law protection of the six and two-thirds miles at all;

(2) that if the common law protection did apply, the common law distance was the shortest route by which one could travel from one to the other, and not a radius as the crow flies and, in conjunction with this point, they said the shortest distance here between the two points was in excess of six and two-thirds miles or, at the very least, the Plaintiffs had not discharged the burden upon them of showing that it was less;

(3) they said that the car boot sale did not constitute a rival market or, indeed, a market at all and,

(4) that it was not a case for injunction.

I will take these points in turn.

The first concerns, really, the construction of the statutes. The principle is reasonably well settled; that in the absence of express provision or exclusion, a statutory market enjoys the same protection as a common law market; that is protection within the legal distance and that is established fairly plainly by two cases. First, the case of the Court of Appeal in East Lindsey District Council v Hamilton at pages 19 to 20 from the transcript. That case is unreported but was (1983) E No 3284. The Judgment was dated 29th March 1984, and Oliver LJ at page 19 of the transcript says:

In most, if not all of the authorities to which we and the learned Judge below were referred, a market concern was set up under private local acts incorporating The Markets and Fairs Clauses Act 1847, except where expressly varied by the private act involved. A good example of this can be seen in the Hailsham Cattle Market case, to which reference is already made by my Lord. In this case, the market was created and operated under a public general act. It must at least be arguable that Parliament intended that such a market should enjoy the full rights of protection afforded by the common law to the holder of the franchise market unless the contrary intention appears from the terms of the public general act itself."

In that case, which was on Motion, he referred the Notice to the public general act itself. The matter was dealt with more fully, perhaps, in the Court of Appeal decision in Manchester City Council v Walsh: Vol 84 Local Government Reports, the decision being dated 21st March, 1985, the report being at page 1. There it was held:

"That the protection afforded to a statutory market was not restricted by the powers contained in the statute under which such a market was established, but included as a part of such a market's rights the common law protection against disturbance by a rival market set up within six and two-thirds miles, unless the wording of the relevant statute modified that right."

It was accepted by Mr Trotter that the relevant statutes here were the two statutes which I have referred to and that if they had modified the right, then the right would be excluded. The principle is stated by Griffiths LJ at page 10. After referring to a number of authorities, he said:

"In our judgment, this weight of authority must prevail over the view of Pickford LJ and establish that a statutory market, whether established under a private or public act, enjoys as a part of the market rights protection from disturbance by a rival market set up within six and two-third miles of the boundaries, unless the wording of the relevant statute modifies that right."

The reference to boundaries may not perhaps be correct, unless it is taken to refer to the market itself. But, subject to that, the decision plainly establishes that a statutory market has the same common law rights, unless they are excluded.

Mr Horner urged here that Section 92, which I have read, deals specifically and expressly with the area protection for the market and confines it to the said borough. That does not leave room, he said, for any extension. The words, "the said borough" must necessarily exclude the intention for there to be a like protection within a different area falling outside the borough. The case is not on a par with those where there is simply some additional power granted, but is an area of protection which is incompatible, he said, with there being a common law area protection for a different area. It seems to me, however, that in Section 92, the Section is doing no more than providing a statutory restraint on the setting-up of markets within the borough so as to confine the number of markets within the borough to those of the Council. It does not follow, and certainly does does not necessarily follow that the common law protection for the Council's markets outside the borough was excluded for any market which the Council did establish under the Act. The two are not, in my judgment, at all incompatible, and certainly not necessarily so.

I turn, then, to the second point taken by Mr Horner, which is the question of the distance. Curiously, there appears to be no clear authority on this. All the cases seem to be cases where the rival market was either clearly within the distance, however it was measured, or well outside the distance. In the cases, from time to time references are made which suggest it is a radius distance; that is distance as the crow flies, but that is really without there having been any consideration given to the point. I notice, and it was drawn to my attention, that Sir Nicholas Brown-Wilkinson VC in the case of Birmingham City Council v Anvil Fairs & Others dated 6th October 1988, in dealing with an allied question, spoke of it in these terms; he was there concerned with whether the distance was to be measured from

the market or from the boundary, a point to which I adverted earlier in the Manchester City Council case. He held that the distance was to be measured from the place at which an authorised market was actually conducted, and not from the boundary of the authorised area and, as a consequence, the Plaintiff's action necessarily failed there because the Defendant's market was more than six and two-third miles away. So the present point did not arise. But he said at page 396:

"I will also assume, but without deciding, that the protected area of the statutory market enjoyed by the Council is the same as in the case of a franchise market, ie, I feel that the radius of six and two-thirds miles applies (see Manchester City Council v Walsh) I will further assume, again without deciding, that even if this radius of six and two-thirds miles extends outside the boundaries of the city, a rival market conducted outside the city limits but within six and two-thirds miles of any market, can be restrained."

So, it is right to say that he was, there, considering the question of distance, so that the case is a little closer to the present, but he was not concerned to decide whether the six and two-thirds was a radius, or to be measured in some other way.

The distance of six and two-thirds is, and has been described as somewhat anomalous and arbitrary, but it has been preserved. Its origin lies in the earlier concept that a reasonable day's walking distance was twenty miles for an average person. To attend market he would need to spend one-third of his time on the journey out and the journey back and one-third of his time at the market and so the distance adopted was a distance of one-third of a day's walking distance. From this Mr Horner argued, not altogether unreasonably, one should look at the actual distance a person would need to walk by the nearest, shortest, convenient route.

Now that origin was dealt with by Mr Vivian Price, QC, where he referred to it in the case of Tamworth Borough Council v Fazeley Town Council 77 LGR 238. At page 245 he cited the origin as set out in Bracton back to the middle of the 13th Century, the passage being in these terms:

"Among other nuisances a liberty may be granted to the nuisance of a liberty previously granted, as where the liberty of having a market in some fixed place is granted to a person 'provided it is not to the nuisance of any neighbouring market'. Hence, we first must see what sort of market ought to be called neighbouring and what not neighbouring but remote. Also, what sort of nuisance, if the thing causing the harm admits of abatement; that is whether it is harmful and wrongful, or only harmful and not wrongful, because it is remote or harmful and wrongful because it is neighbouring, or, if neighbouring, not wrongful because not harmful but beneficial. A market may be called neighbouring and a wrongful nuisance because it is harmful whenever it is held within six leagues and a half and third part of a half of the first. The reason, according to the sayings of the elders, is because every reasonable day's journey consists of twenty miles. A day's journey is divided into three parts. The first part, in the morning, is given to those going to the market; the second to buying and selling, which ought to suffice for all except for those merchants who have stalls to lay out and expose their wares for sale, for whom a larger sojourn in the market will be necessary; the third part is left to those returning from the market to their homes. All these must be done by day, not at night, because of ambushes and the attacks of robbers, that everything may be safe. Then, if a market is established within this limit it must be cast down since it is a harmful nuisance and wrongful because neighbouring. If it is beyond this limit, though harmful it will not be wrongful, because it is remote and not neighbouring."

And he continues in that vein. That plainly shows the origin as I have stated it.

In the leading textbook on markets, Pease and Chitty's Laws of Markets and Fairs, at paragraph 5(4), the law is summarised in these terms:

"There appears to be no authority as to whether the six and two-thirds miles should be measured by the nearest road or in a straight line. In view of the reason for fixing the distance at six and two-third miles, ie that it is one third of a day's journey of twenty miles, it might be thought that the proper way to measure the distance is by the nearest road. At one time, the measurement for the purposes of statutes was by the nearest and most usual way, rather than as the crow flies, but by The Interpretation Act 1889 (now replaced by the Interpretation Act 1978) measurement of any distance shall, unless a contrary intention appears, be measured in a straight line. In determining whether or not a reference in a document, other than statute, to a measurement should be taken to be as the crow flies, regard must be had to the subject matter of the document and the object which the draughtsman had in mind in mention-

ing the measure of distance. Courts have, in analogous cases, generally favoured the distance as the crow flies, and it is likely that in the market context the distance should be measured this way."

Well, that confirms what I said, that the matter is still not covered by authority. It seems to me that even the original reasoning which led to the distance is somewhat unsatisfactory, of itself, because it still allows a rival market, say, seven and a half miles away, to draw off persons who would be within the catchment area of the first market. Thus, a person within, say, three miles of the rival market might well prefer to go to that market although he would only be four and a half miles away and could easily reach the statutory or franchise market.

It seems to me that to apply these supposed origins of the rule so slavishly would be to extend it beyond that which can reasonably be inferred. The rule was in the nature of a broad and simple rule. Roads might vary from time to time. I think the more rational approach, whatever the origins of the common law distance, is to suppose that the common law distance crystallized as a simple fixed distance measured as the crow flies; that is to say as a radius, based perhaps on the old concept, but not in other respects tied to it.

On that basis, it would not strictly be necessary to look beyond the radius in this case, and it is admitted that the Defendants' car boot sale came within that radius. But I should deal with the alternative on the facts, which is that the distance, as measured by the roads, was more than six and two-thirds miles. As to this, the Defendant relied primarily upon the evidence of his son-in-law, Mr Robinson, who said he had had some small surveying experience at a Polytechnic, although not in any sense extensive, when he had used a pedometer. His Affidavit shows that he used a pedometer as a measuring device and his evidence was that the distance came to 6.7 miles and he described how he had used the pedometer. In his Affidavit he said it had previously been properly calibrated. In his evidence he said he had simply calibrated it or checked it, himself, on the ground as against a distance he had measured out of 100 metres.

I should perhaps add that Mr Noble, himself, said that his own car reading over a single distance had come to 6.7 miles in 1988, but he had not referred to that in his original Affidavit evidence.

The Plaintiff's evidence was of an odometer reading which had been taken in both directions and their readings came just short of the distance, being 6 miles and 6.2 miles.

Then I heard the evidence of Mr Adams, a Survey Manager for the Ordnance Survey of 32 years' experience, whose evidence was based on the Ordnance Survey itself and the records of distances for each road which were extracted from a computer of the Ordnance Survey into which they had been fed. With adjustments at each end to the actual location, that gave, he told me, a highly accurate measurement of the actual distance by road, both north to south and south to north. The results of those measurements came to, in one direction, 6 miles 162.9 yards, and in the other, 5 miles 1746.6 yards, so that one broadly amounts to 6.1 and the other to 6 miles.

Now, I am bound to say that, having considered the evidence and also the expert evidence I heard from the Defendant as to the reliability of pedometers, it seems to me that the highest standard of evidence is undoubtedly that of Mr Adams, which incidentally is extremely close to the evidence of Mr Ingham as to his odometer readings, and shows that even along the roads, if one took those measurements, and making all allowances for gradients and so forth, the distances lay within the six and two-third miles and my finding on the evidence is that, even on that basis, the English Mustard site was within that distance.

The third point argued by the Defendant was that the car boot sale did not constitute a rival market. Now, upon this, the definition of a market is a fairly short one and it is contained, among other places, in the case of Scottish Co-operative Wholesale Society v Ulster Farmers' Mart Company Limited [1959] 2 All ER 486, where the headnote reads:

"The essential feature of levying a rival market is the provision of facilities for a concourse of buyers and sellers."

That is taken from a passage in the Judgment of Viscount Simonds, starting at page 490:

"Before I consider whether there is any justification for the differentiation made by the Court of Appeal, I must examine more closely the nature of the respondents' claim that their market rights have been disturbed. In what way,

it must be asked, have they been disturbed? 'Disturbance of a market' says the classic book (Pease and Chitty's Law of Markets and Fairs) may be either unlawfully setting up a rival market or by doing some other act or acts whereby the market owner is deprived, either wholly or in part, of the benefit of the franchise."

He then refers to the fact that the levying of a rival market was relied upon in that case and cited Pease and Chitty again, page 65 of that edition:

"What is a rival market is a question of fact. To sustain an action for disturbance by setting up a rival market, it is not necessary to show that the defendant has set up what purports to be a legal market, or has usurped a franchise upon the Crown by taking toll or holding a court of pie powder. It is enough that he has erected stalls on his own soil and taken rents in the nature of stallage for their use by persons bringing their goods thither for sales, or has so used his land as to encourage and provide for a concourse thereon for the buyers and sellers."

He refers, then, to an earlier case, the Marquis of Downshire v O'Brien reported [1887] 19 IR 380, where Chatterton VC said:

"A market is, properly speaking, the franchise right of having a concourse of buyers and sellers to dispose of commodities in respect of which the franchise is given."

That principle, again, was applied in the Manchester case to which I have referred.

In the present case, the nature of a car boot sale was described, and this particular car boot sale was described at page 104 by Mr Ingham, the Markets' Manager, where, when he visited the site on Sunday 7th October, he said:

"I saw the prospective sellers were being charged £3 per car and £5 per van to enter the site. Prospective purchasers were charged 20 pence. I counted a total of 123 vehicles on site from which were sold a variety of goods including clothing, toys, electrical equipment, video and audio cassettes, books, ornaments, jewellery, bedding and towels. Most of the sellers were selling second-hand goods but a number were selling new goods. There were a total of 16 vehicles selling new goods and 4 catering vans. These vehicles dealt in the following commodities: fruit and vegetables, bread, sweets, smoke accessories, jewellery, video cassettes, bedding plants, flowers, bulbs, compost, fertilizer."

He goes on to name a number of others which I need not go into. All these goods were sold at the Quayside Market except the last two mentioned, those being self-assembly kitchen-unit doors and wallpaper.

Now, Mr Noble did not join issue at all as to the statement of the nature of the operations. There were not stalls as such. Each seller would bring a trestle table or something of that sort on which to display his wares. The car boot sales were, of course, advertised. They were open to buyers and sellers on payment of the appropriate charge, at a differential rate of course. Anybody could come along.

I am bound to say, I can think of nothing which is more clearly a market than the car boot sales which were being carried on upon this site. They appear to me to fulfil exactly the requirements of a concourse of buyers and sellers and I cannot see that there is any ground for saying this was not a market.

It is well settled that in order to seek relief in the case of what is called a "same day market", where a rival market is carried on on the same day, it is not necessary for there to be proof of damage on the part of the owner of the market, and I was cited the authorities of Tamworth Borough Council v Fazeley Town Council which is reported in 77 LGR 238 in 1978, where it was held in granting the injunction:

"That there was an irrebuttable presumption that a new market set up to be held on the same day as the franchise market was a nuisance and that the cause of action for nuisance to the franchise market was complete when the franchise owner established that there was a same day market within common law distance."

That statement is plainly borne out by authority and, indeed, Mr Horner did not seriously seek to argue that it was not the position.

I turn then to the fourth point, which is Mr Horner's contention that there should, nevertheless, not be an injunction here. The factors I have to bear in mind, however, are that Mr Noble has plainly moved sites from time to time. He has, from time to time, started a site operation and then, when objection was made, finished the activity and moved on. But in evidence to me he plainly indicated his attitude. He felt that the Council were being unreasonable in insisting on their rights. He considered that other people were being allowed to operate on licence when he was not and, as a consequence, it is plain that, for reasons which may even have seemed good to him, he was proposing to operate whenever he could, despite the objection of the Council, within the common law distance for which they were protected.

That being so, the fact remains that the Plaintiff is entitled to protection. It is not for me to consider the reasons or its policy in this Court, although these were set out in the evidence. Being entitled to that protection at law, if Mr Noble is not prepared to abide by it, the only course is for the Council to seek an injunction, and it must follow that they are entitled to be granted the injunction. There is plainly a threat by Mr Noble, certainly, to conduct rival markets in the form of car boot sales and, that being so, it seems to me the Plaintiffs are entitled to the relief they seek.

The form of Order I propose to make, subject to any observations of Counsel, is, as against the First Defendant an injunction restraining him, whether by himself, his servants or agents or otherwise howsoever, from establishing, managing or operating, or causing or permitting to be established, managed or operated, any car boot sale or other form of market, on any day on which the Quayside Market of the Plaintiff is operated, at the English Mustard Lorry Park, Birtley, County Durham, or elsewhere within a radius of six and two-third miles of the Quayside, Newcastle upon Tyne.

I have considered whether there should be an injunction against the Second Defendant. His part is a minor one, but he does have control of the English Mustard site and has not come to disclaim any intention to hold further car boot sales or to authorise anyone else to hold one in the future and it does seem to me, therefore, appropriate to make an injunction against him in similar terms, that is against the Second Defendant, whether by himself, his servants or agents or otherwise howsoever, from causing or permitting the First Defendant or any other person to establish, manage, or operate, or cause any car boot sale or other form of market, on any day on which the Quayside Market of the Plaintiffs is operated, at the English Mustard Lorry Park, Birtley, County Durham or elsewhere within a radius of six and two-thirds miles of the Quayside, Newcastle upon Tyne.

Judgment accordingly