

Planning Inspectorate Reference: TR010062

Deadline 1 - Post-Hearing Note to Compulsory Acquisition Hearing 1

Written Submission on behalf of Brough Hill Fair Community.

Note on Proprietary Rights and Prescriptive Rights

The right to hold a Fair at Brough Hill derives from two sources: 1. The right granted by the Charter of 1330, (see verbatim text in separate submission) which was incorporated in the 1947 conveyance and on the Land Registry entry, and also 2. a Prescriptive Right based on evidence of the long customary holding of the Fair in a particular place on a particular date.

The law governing these rights can be summarised by reference to Halsbury's 'Laws of England' Volume 29 (2) which includes a Chapter on "Markets, fairs and street trading." The following submission is a precis of relevant parts of Halsbury. Scanned copy of the relevant chapter has been submitted for ease of reference. As summarised by Halsbury, the law recognizes three ways in which the right to hold a Fair may be legally created and exercised. These three different origins have different principles governing their conduct. The three origins are:

- By Royal grant, or **Charter**. (Halsbury, Para 604, Page 315)
- By Act of Parliament, or **Statute**
- By long custom and usage, or **Prescription**. (Halsbury, Para 608, Page 316)

All three legal principles recognize the central fact that the right to hold a Fair is a right of ownership, an 'incorporeal hereditament' or intangible right associated with land, and, as such, it is a proprietary right, and its lease or transfer must be executed by a Deed. The conveyance of land to the MoD in 1947, later registered at Land Registry, transferred the rights granted by the 1330 Charter by Deed.

The law is also clear that the right of holding a Fair may be established by prescription. That is to say, if the Fair has been continuously held at a certain place on a certain date since before living memory (i.e. since time immemorial) then a grant by Charter may be presumed from evidence of long custom. The uninterrupted holding of Brough Hill Fair at its current location raises exactly such a presumption, independently of the 1330 Charter. If it is not to be extinguished, the prescriptive right which has accrued since time immemorial, and is now established, must also be transferred by Deed.

The law recognizes associated rights and liabilities as essential to the conduct of Fair, for the benefit of the common good. Some of those legal rights and constraints which are particularly relevant to Brough Hill Fair are set out in Halsbury as follows:

1. A duty to provide a place for the holding of the Fair, of a size sufficient for the convenient accommodation of all who wish to buy and sell at the Fair.
2. The right of action against any person who unlawfully disputes or interferes with the holding of the Fair. For example, a policeman who tries to prevent a horse dealer from selling a horse at a horse fair is himself acting unlawfully.
3. The right to decide the particular location on the Fair at which different commodities are to be sold, and the right to remove the Fair to a new place.

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4. Where a Fair is held in a district, such as a Borough or Township, it may be held in any one or more places throughout that district.
5. Where a Fair is held by a Local Authority by Prescriptive title, a court may properly infer that it was originally granted to be held anywhere within the area of the Local Authority, even though it has always been held in a particular place within it.
6. The owner of a fair normally has the right to remove it to another location, whenever he thinks fit. If the old marketplace or fair ground has ceased to afford reasonable accommodation, it may be his duty to change or remove it.
7. A removal is unlawful if members of the public are deprived of any right to sell or expose for sale their goods.

These legal principles depend on both statute law and on common law, or precedent. It is notable that the legal principles recognize that various difficulties are, and always have been, associated with the holding of Fairs. For example: lost Charters, changes of date, changes of location, changes of the ownership of the Fair. The framework of English law has addressed all these issues in various ways, all of which tend to recognize that, in spite of the occasional nuisance and abuse, the right to hold a properly managed Fair is of considerable importance to the economic and social wellbeing of those who attend, and thereby to the regional economic community.

We submit that the proposed mechanism to transfer rights associated with the Fair is inadequate to the case. Unless the rights are defined and transferred correctly by a Deed, the transfer will break the long continuous custom of the fair, and the Prescriptive right will be lost.

Conclusion

Although it would be difficult to predict the outcome of any particular legal case, it is clear that the existence of the right to hold a Fair is very ancient, and that right has been fiercely defended. The courts have in the past gone to considerable lengths to protect the owners of a fair and the general public from attempts to obstruct, interfere with, or subvert their lawful rights to buy and sell in the manner to which they are accustomed by long usage and practice.

Although it is undeniable that the Brough Hill Fair stands in the way of the preferred route proposed by National Highways, there is a proper legal framework in place under which this problem may be addressed. The Fair community recognises the need for national infrastructure and has no objection in principle to relocating the site, but we submit the replacement site must be suitable, with the consent of the fairgoers, and the rights must be transferred to the new site by Deed.

Bill Lloyd
Brough Hill Fair Communities Representative
12/12/2022

- 1 Powers of Criminal Courts Act 1973, s. 51 (3) (a). This expenditure is expenditure under Sch. 3 and, so far as the Receiver for the Metropolitan Police District is concerned, expenditure under the Metropolitan Magistrates' Courts Act 1959, s. 3 (1) (see para. 523, ante), on premises for probation purposes: s. 3 (2); Powers of Criminal Courts Act 1973, s. 56 (1), Sch. 5, para. 10.
- 2 I.e. under *ibid.*, Sch. 3, para. 11: see para. 529, ante.
- 3 *Ibid.*, s. 51 (3) (b); Criminal Law Act 1977, s. 65 (4), Sch. 12. For the meaning of "bail hostel" and "probation hostel", see para. 529, notes 2, 3, ante. The conditions may include conditions as to repayment in part or in whole if the hostel in question ceases to be used as such: Powers of Criminal Courts Act 1973, s. 51 (6); Criminal Law Act 1977, s. 65 (5), Sch. 13. Sums so repaid must be paid into the Consolidated Fund: Powers of Criminal Courts Act 1973, s. 51 (8).
- 4 *Ibid.*, s. 51 (3) (c); Criminal Law Act 1977, Sch. 13. For the meaning of "approved probation hostel", see para. 538, ante. The conditions may include conditions as to repayment in part or in whole if the bail hostel ceases to be used as such or the approved probation hostel ceases to be approved, and, notwithstanding the constitution or trust concerned, the managers or trustees may accept and are bound by and empowered to fulfil the conditions: Powers of Criminal Courts Act 1973, s. 51 (7); Criminal Law Act 1977, Sch. 13. Sums so repaid must be paid into the Consolidated Fund: Powers of Criminal Courts Act 1973, s. 51 (8).
- 5 *Ibid.*, s. 51 (3) (d).
- 6 *Ibid.*, s. 51 (3) (e); Criminal Law Act 1977, Schs. 12, 13.
- 7 Powers of Criminal Courts Act 1973, s. 51 (3) (f).
- 8 *Ibid.*, s. 51 (3) (g).
- 9 I.e. which would otherwise be payable under *ibid.*, s. 51 (3). For the meaning of "local authority", see para. 543, note 2, ante.
- 10 *Ibid.*, s. 51 (5).
- 11 *Ibid.*, s. 51 (4) (a).
- 12 *Ibid.*, s. 51 (4) (b).
- 13 *Ibid.*, s. 51 (4) (c); Criminal Law Act 1977, Schs. 12, 13.
- 14 Powers of Criminal Courts Act 1973, s. 51 (2).

548-600. Expenses of the Secretary of State. Expenses incurred by the Secretary of State in the training of probation officers or of officers or servants serving in approved bail hostels or approved probation hostels¹ or of persons for any such appointments², or in the conduct of research into the causes of delinquency and the treatment of offenders, and connected matters³, are to be defrayed out of money provided by Parliament, to such amount as is sanctioned by the Treasury⁴.

- 1 For the meaning of "approved bail hostel" and "approved probation hostel", see para. 538, ante.
- 2 Powers of Criminal Courts Act 1973, s. 51 (1) (a); Criminal Law Act 1977, s. 65, Schs. 12, 13.
- 3 Powers of Criminal Courts Act 1973, s. 51 (1) (b).
- 4 *Ibid.*, s. 51 (1), which also extends to any expenses of the Secretary of State under Part II (ss. 47-60): s. 51 (1).

MANDAMUS

See ADMINISTRATIVE LAW; CROWN PROCEEDINGS AND CROWN PRACTICE

MARINE INSURANCE

See INSURANCE; SHIPPING AND NAVIGATION

MARKETS AND FAIRS

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licences for sale of intoxicating liquor	INTOXICATING LIQUOR
marketing schemes	AGRICULTURE
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medical officers of health	PUBLIC HEALTH
merchandise marks	TRADE MARKS
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I. THE RIGHT OF MARKET

(1) NATURE

601. Meaning of "market". At common law a market¹ is a franchise² conferring a right to hold a concourse of buyers and sellers to dispose of the commodities in respect of which the franchise is given³. It is also applied to the same right when conferred by Act of Parliament. Although strictly applicable to the right itself⁴, "market" is often applied to the concourse of buyers and sellers⁵, or to the market-place⁶, or to the time of holding the market⁷. A gathering of buyers and sellers, although held at regular intervals in a fixed place, if it is not held by virtue of a franchise or under statutory authority, is not in law a market⁸ and cannot enjoy the privileges of a franchise market or fair⁹.

1 The word is derived from the Latin "mercatus", which signifies trade or traffic, or buying and selling. So also is "mart", which, according to 2 Co Inst 221, is "a great faire holden every yeare". Markets held for the sale of agricultural livestock are frequently termed "marts". In Latin instruments "mercatus" is the common word for market, whether a market franchise or a market de facto. "Forum" is sometimes so used (cf. 1 Domesday, 163a, 219b, 356a), but more often it means the market-place; "nundinae" (really market-days) usually means a fair but is occasionally used for market. "Feria" is the ordinary word for fair.

2 2 Bl Com (14th Edn) 36, 37; 3 Cru Dig (4th Edn) 264 (xxvii, Franchises, s. 85); see 1 Bl Com (14th Edn) 273; and CONSTITUTIONAL LAW, vol. 8, para. 1072.

3 *Marquis of Downshire v O'Brien* (1887) 19 LR Ir 380 at 390, per Chatterton V-C; approved in *Scottish Co-operative Wholesale Society Ltd v Ulster Farmers' Mart Co Ltd* [1960] AC 63, [1959] 2 All ER 486, HL. The grant of a market was usually for a specified day in the week: see *Oswestry Corp v Hudd* (*Valuation Officer*) [1966] 1 All ER 490 at 496, [1966] 1 WLR 363 at 377, CA, per Russell LJ.

4 "A market is the privilege within a town to hold a market": Com Dig, Market (A).

5 For instance, in the Oxford English Dictionary "market" is defined as "the meeting or congregating together of people for the purchase and sale of provisions or livestock, publicly exposed, at a fixed time and place; the occasion, or time during which such goods are exposed for sale; also the company of people at such a meeting". See also *R v Bungay JJ, ex parte Long* (1959) 123 JP 315, DC.

6 "The usual place where a market is held is the market, not every place within the same town": Com Dig, Market (A).

7 See note 5, supra.

8 "The King alone possesses the power of creating markets and fairs": Chitty's Prerogatives of the Crown 193, citing 2 Co Inst 220; *Marquis of Downshire v O'Brien* (1887) 19 LR Ir 380 at 389.

9 See para. 653, post.

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feeding stuffs, sale of	AGRICULTURE
fertilisers, sale of	AGRICULTURE
fish, close seasons	FISHERIES
food, sale of unwholesome	FOOD
standards of purity	FOOD
franchises, granted by Crown	CONSTITUTIONAL LAW
game, close seasons for	ANIMALS
licensing	ANIMALS
highways, rights of user	HIGHWAYS
hops, regulation	FOOD
sale by weight	AGRICULTURE
fish, sale of	FOOD
agricultural produce, sale of	AGRICULTURE
inspectors, public health	PUBLIC HEALTH
licences for sale of intoxicating liquor	INTOXICATING LIQUOR
marketing schemes	AGRICULTURE
meat, sale of	FOOD
medical officers of health	PUBLIC HEALTH
merchandise marks	TRADE MARKS
milk and cream	AGRICULTURE; ANIMALS; FOOD
nuisance	NUISANCE; PUBLIC HEALTH
pie poudre, courts of	COURTS
pleasure fairs	PUBLIC HEALTH
prescription, doctrine of	EASEMENTS
public health	PUBLIC HEALTH
rating	RATING

royal grants	CONSTITUTIONAL LAW
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I. THE RIGHT OF MARKET

(I) NATURE

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1 The word is derived from the Latin "mercatus", which signifies trade or traffic, or buying and selling. So also is "mart", which, according to 2 Co Inst 221, is "a great faire holden every yeare". Markets held for the sale of agricultural livestock are frequently termed "marts". In Latin instruments "mercatus" is the common word for market, whether a market franchise or a market de facto. "Forum" is sometimes so used (cf. 1 Domesday, 163a, 219b, 356a), but more often it means the market-place; "nundinae" (really market-days) usually means a fair but is occasionally used for market. "Feria" is the ordinary word for fair.

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7 See note 5, supra.

8 "The King alone possesses the power of creating markets and fairs": Chitty's Prerogatives of the Crown 193, citing 2 Co Inst 220; *Marquis of Downshire v O'Brien* (1887) 19 LR Ir 380 at 389.

9 See para. 653, post.

602. Meaning of "fair". At common law a fair is a franchise² conferring a right to hold a concourse of buyers and sellers³. "Fair" is applied also to the same right when conferred by Act of Parliament⁴.

- 1 In Latin instruments "feria" or "nundinae" were commonly used for a fair, although "nundinae" may sometimes mean a market: see para. 601, ante. Grants of fairs were generally for specified days, e.g. the day before or the day of a festival or the day after. "Wake" was used for the merry-making which went with the fair. "Wake" means a concourse for purposes of pleasure held usually on a feast day following a vigil connected with the feast of a saint or some religious purpose: see *Wyld v Silver* [1963] Ch 243 at 261, 262, [1962] 3 All ER 309 at 317, CA, per Harman LJ. An assembly of roundabouts, shows etc., although held annually, is not a fair: *Walker v Murphy* [1914] 2 Ch 293; affd. [1915] 1 Ch 71, CA; and see para. 601, ante.
- 2 2 Bl Com (14th Edn) 37; 3 Co Inst (6th Edn) 264 (xxvii, Franchises, s. 85). Cf. "market", which is also a franchise: see para. 601, ante.
- 3 See para. 603, note 4, post.
- 4 However, "statute" or "hire" fairs are survivals of statute sessions formerly held in connection with the fixing of wages under the Statutes of Labourers, and are not legal fairs or markets: see *Simpson v Wells* (1872) LR 7 QB 211. The first of the Statutes of Labourers was 23 Edw. 3 (Labourers Artificers, etc.) (1349) (repealed by Statute Law Revision Act 1863 (repealed)). "Pleasure fairs" are not legal fairs or markets. For the meaning of "pleasure fair", see the Public Health Act 1961, s. 75 (2) (a), (4) (a), and PUBLIC HEALTH. For the meaning of "travelling showmen's pleasure fair", see the Gaming Act 1968, s. 52 (1), and BETTING. For the meaning of "fair" in the Public Health Act 1961, s. 75 (2) (a), (4) (a), and the Gaming Act 1968, s. 52 (1), and BETTING, see para. 134, note 3. As to the distinction between "fair" and "market", see para. 603, post.

603. Distinction between market and fair. As regards legal incidents, there seems to be no distinction, at common law, between a market¹ and a fair². It has been laid down that every fair is a market but every market is not a fair³; and a fair has accordingly been defined as a great sort of market, which is usually kept once or twice in the year, and a market to be less than a fair, being usually kept once or twice in the week⁴. It seems that the legal incidents of a fair do not include the amusements which often accompany the holding of fairs⁵, although their presence has been recognised by statute⁶. Therefore, the difference seems to lie merely in the size or frequency of the gathering⁷; and whether a particular gathering should be called a market or a fair must depend usually upon the term chosen for it in the instrument by which it is authorised. The two franchises are of equal dignity⁸.

- 1 For the meaning of "market", see para. 601, ante.
- 2 For the meaning of "fair", see para. 602, ante.
- 3 2 Co Inst 406, giving the reason why fairs were included in the term "mercatus" as used in 13 Edw. 1 (Statute of Westminster the Second) (1285) c. 24 (repealed). As to the term "marche" as used in 3 Edw. 1 (Statute of Westminster the First) (1275) c. 31 (repealed), see 2 Co Inst 221.
- 4 3 Readings upon the Statute Law . . . by a Gentleman of the Middle Temple (1724) 172, citing 2 Co Inst 221; 15 Vin Abr 244. "Market (A 3); Gunning's Law of Tolls 44. "Fair" is a term of art and connotes a concourse of buyers and sellers for the purchase and sale of commodities pursuant to a franchise with an optional addition of provision for amusement: *Wyld v Silver* [1962] Ch 561 at 570, [1961] 3 All ER 1014 at 1019, per Lloyd-Jacob J; see also on appeal [1963] Ch 243 at 261, [1962] 3 All ER 309 at 317, CA, per Harman LJ. "Fair is only a market held at rarer intervals".
- 5 *Walker v Murphy* [1914] 2 Ch 293; affd. [1915] 1 Ch 71, CA. In *Collins v Cooper* (1893) 68 LT 450, DC (Gainsford Bruce dissenting), "fair" was construed as including a fair solely devoted to amusements, but the Court of Appeal in *Walker v Murphy*, supra, approved and adopted the construction of Gainsford Bruce J in the latter case.
- 6 Thus the Metropolitan Police Act 1839, s. 38, requires "the business and amusements of all fairs" within the metropolitan police district not to begin before 6 a.m. and to cease at 11 p.m.
- 7 See *Collins v Cooper* (1893) 68 LT 450 at 452, DC, per Gainsford Bruce J.
- 8 See *Newcastle v Workson Urban Council* [1902] 2 Ch 145 at 156, per Farwell J, and para. 669, post.

(2) CREATION

(i) Creation by Grant or Prescription

604. Grant by the Crown. By virtue of the royal prerogative, the Crown has always had the power of granting to a subject the right of holding a market or fair¹, and in former times this power was exercised frequently. A market or fair which depends for its legal existence upon a grant from the Crown is a franchise².

- 1 In early times the Crown occasionally established a market or fair by ordinance, without granting it to any subject: see *Burgesses of Parliament Case* (1614) Hob 14; *Merchant Adventurers' Co v. Rebow* (1687) 3 Mod Rep 126 at 127; 2 Roll Abr 197 (H) 4; 17 Vin Abr 145, Prerogative of the King (H c) 4; Chitty's Prerogatives of the Crown 193. For instances, see *Rot Cart temp John*, 77 (Portsmouth), 135 (Marlborough); *Calendar of Close Rolls temp Edw. 2* (1318-23), 166 (Woodstock), 173 (Middleton, Kent). It seems that an ordinance was the appropriate mode of establishing a market or fair in a royal manor. The ordinance took the form of a letter to the sheriff or other officer directing him to proclaim that a market or fair would be held: see the *Calendar of Close Rolls temp Edw. 2* (1318-23). For the meaning of "market" and "fair", see paras. 601, 602, ante.
- 2 See paras. 601-603, ante.

605. Limitation of power of the grant. The essence of a franchise is that the holder has a monopoly of market, the justification for which is that the existence of the market is for the benefit of the public¹, and, therefore, the Crown's power to grant markets and fairs has always been limited by the rule that a later grant, if made without the consent² of the owner of an earlier grant, and injuriously affecting his rights under it, is void as against him³. A grant of a new market usually contains a clause to the effect that the market is not to be to the hurt of any neighbouring market⁴, and such a clause, if not expressed in the grant, is implied by law⁵.

Because of this limitation, a grant for a new market to be held by another person at the same times and within seven miles of the place in which an existing market is held is prima facie void as against the owner of the existing market⁶; and default by him in not providing proper accommodation cannot of itself justify the new grant. However, where the place defined by metes or bounds or the district where the grant permits the market to be held is not sufficient for the accommodation of buyers and sellers, the Crown has power to grant a new market as required, without affecting the existing market, for that portion of the public which cannot be accommodated in the existing market⁶.

- 1 *A-G v Horner (No. 2)* [1913] 2 Ch 140 at 198, CA, per Hamilton LJ; *Leicester Forest Case* (1607) Cro Jac 155.
- 2 Consent may be presumed from long acquiescence: *Great Eastern Rly Co v Goldsmid* (1884) 9 App Cas 927, HL; *Holcroft v Heel* (1799) 1 Bos & P 400; *Campbell v Wilson* (1803) 3 East 294, 298.
- 3 *Keeble v Hickeringall* (1706) Holt KB 19, per Holt CJ; 13 Vin Abr 514, Franchises (G) 9; *Re Islington Market Bill* (1835) 3 Cl & Fin 513.
- 4 "Ita ut non sit ad nocumentum vicinorum mercatorum": see 2 Co Inst 406; 2 Wms Saund (6th Edn) 174 n (2).
- 5 *R v Butler* (1685) 3 Lev 220 at 222, HL.
- 6 *Re Islington Market Bill* (1835) 3 Cl & Fin 513.

606. Inquisition before grant. The Crown's usual practice has been not to make a grant of a new market or fair until an inquisition has been held under a writ of ad quod damnum, and a return has been made to the writ stating that the jury found that such a market would not be to the damage of the Crown or any subject¹. However, the inquisition does not bar

the Crown from proceeding by scire facias² to obtain the repeal of a grant which is in fact injurious to an earlier grant, or which for any other reason, such as that the Crown was deceived in the making of it, is void³. Nor does it bar an action for damages against the holder of the new market, and the owner of the earlier grant making that action without waiting until the grant of the new market has been repealed⁴.

- 1 Fitz Nat Brev 225. The writ of ad quod damnum (see 2 Bl Com (1761 Edn) 271) has fallen into disuse.
- 2 As to scire facias, see CROWN PROCEEDINGS, vol. 11, para. 1578, and para. 662, post.
- 3 17 Vin Abr 102; Prerogative of the King (O 1714); *R v Aires* (1710) 10 Mod Rep 258, 354, sub nom. *R v Eyre* 1 Stra 43; *R v Butler* (1685) 3 Lev 201; *Re Islington Market Bill* (1835) 3 Cl & Fin 513.
- 4 2 Co Inst 406; and see para. 662, post.

607. Extent of Crown's grant. A clause in a grant made solely by the Crown, purporting to give a market a protection greater than that which is attached by the common law to such a grant, would be void².

A charter conferring market privileges, made by the Crown with Parliament's assent, has the same force as private or local and personal Acts of Parliament have, but no greater force³.

- 1 As to grants by the Crown, see para. 604, ante.
- 2 *Re Islington Market Bill* (1835) 3 Cl & Fin 515.
- 3 *Great Eastern Rly Co v Goldsmid* (1859) 9 Cas 927, HL.

608. Markets by prescription. If a grant from the Crown is not in evidence, the right of holding a market or fair and of taking tolls may be established by prescription of immemorial user from which a grant may be presumed¹. An uninterrupted modern user raises such a presumption, but it is rebuttable by evidence that the user arose within the time of legal memory³.

Even if it can be shown that there was a time within legal memory when the market or fair did not exist, a lawful origin in a lost grant may be presumed from long user⁴.

- 1 Co Litt 114b; 2 Co Inst 406; and see *Wyld v Silver* [1963] Ch 243, [1962] 3 All ER 309, CA. As to prescription, see EASEMENTS, vol. 14, paras. 79 et seq.
- 2 *Penryn Corp v B...* 3 Ex D 292, CA; *R v Joliffe* (1823) 2 B & C 54; *Jenkins v Harvey* (1835) 1 Cr M & R 877; *Shephard v Payne* (1864) 16 CBNS 132 at 136, Ex Ch.
- 3 Co Litt 115a; *Kingston upon Hull Corp v Horner* (1774) 1 Cowp 102 at 108. The Prescription Act 1832 (see EASEMENTS, vol. 11, paras. 97 et seq.), does not apply to market franchises: *Benjamin v Andrews* (1858) 5 CBNS 299.
- 4 *A-G v Horner* (1885) 14 QBD 245, CA; affd. (1885) 11 App Cas 66, HL; *A-G v Horner (No. 2)* [1913] 2 Ch 14; *Benjamin v Andrews* (1858) 5 CBNS 299; *Campbell v Wilson* (1803) 3 East 294, 298; *Holcroft v...* (1799) 1 Bos & P 400; *Kingston upon Hull Corp v Horner* (1774) 1 Cowp 102. As to the presumption of a grant from the Crown, see CONSTITUTIONAL LAW, vol. 8, paras. 1056, 1057.

(ii) Creation by Local Acts

609. Markets created by statute. The right to hold a market or fair may be created by statute, and in that case differs from a franchise granted solely by the Crown¹, since it is not to become forfeited to the Crown nor to be called in question by any process of scire

- 1 As to grants by the Crown, see paras. 604-607, ante.
- 2 *New Windsor Corp v Taylor* [1899] AC 41 at 50, HL, per Lord Davey; see also at 45 per Earl Halsbury LC and at 48 per Lord Watson. As to forfeiture, see para. 661, post. As to scire facias, see CROWN PROCEEDINGS, vol. 11, para. 1578, and para. 662, post.

610. Franchise regulated by local Act. The effect of a local Act for the regulation of a market or fair originally created by grant of the Crown¹ may be not merely to supplement the franchise by adding parliamentary rights, but to extinguish the franchise and to substitute the parliamentary rights². The question whether the rights given by the Act have superseded those that previously existed can be determined only by considering the language of the Act³.

- 1 As to grants by the Crown, see para. 604, ante.
- 2 *Manchester Corp v Lyons* (1882) 22 Ch D 287, CA; *Birmingham Corp v Foster* (1894) 70 LT 371; *Stevens v Chown, Stevens v Clark* [1901] 1 Ch 894; *Taylor v New Windsor Corp* [1898] 1 QB 186, CA; affd. [1899] AC 41, HL. In relation to a new statutory market, an intention may be more readily implied to negative or limit the rights of monopoly that would otherwise attach to the franchise than where a statute continues an existing market: *Hailsham Cattle Market Co v Tolman* [1915] 1 Ch 360; affd. [1915] 2 Ch 1, CA.
- 3 *Manchester Corp v Lyons* (1882) 22 Ch D 287, CA, especially at 307 per Cotton LJ, and at 310 per Bowen LJ.

611. Incorporation of the Markets and Fairs Clauses Act 1847. Local Acts for the establishment or regulation of markets or fairs usually incorporate the whole or some parts of the Markets and Fairs Clauses Act 1847¹, the object of which was to avoid repetition and to ensure greater uniformity by comprising in one Act the sundry provisions that had usually been inserted in earlier local Acts authorising such undertakings².

The Act extends only to such markets and fairs as are authorised by any local Act (called "the special Act") which expressly incorporates it³, and its clauses apply to the authorised undertakings subject to any express variations or exceptions in the special Act, and only so far as they are applicable⁴.

- 1 A public general statute may also do so: see e.g. the Diseases of Animals Act 1950, s. 61 (2) (see ANIMALS, vol. 2, para. 496), which incorporates some provisions of the Markets and Fairs Clauses Act 1847. However, the Food and Drugs Act 1955, Part III (ss. 49-61), which is concerned with markets, does not.
- 2 Markets and Fairs Clauses Act 1847, preamble.
- 3 *Ibid.*, s. 2. As to access to the special Act, see para. 612, post.
- 4 *Ibid.*, s. 1. The effect of an express variation by the special Act is illustrated by *Rutherford v Straker* (1887) 42 Ch D 85n; *Hailsham Cattle Market Co v Tolman* [1915] 2 Ch 1 at 8, CA, per Pickford LJ. The incorporation of the Markets and Fairs Clauses Act 1847, s. 52, by the special Act incorporates the clauses of the Railways Clauses Consolidation Act 1845 with respect to the recovery of damages not specially provided for, and penalties, and to the determination of any other matter referred to justices. Those provisions now comprise ss. 140, 142, 144, 145, 148, 149, 152-154, 156, as to which see RAILWAYS. As to the incorporation of the clauses as to penalties, see para. 689, post.

612. Access to the special Act. After six months from the passing of the special Act¹, a Queen's Printer's copy of it must be kept in the principal office of the persons authorised to construct or regulate the market or fair², who must also, within that six months' period, deposit a further copy with the proper officer of the local authority for the area³. The copies must be available for inspection and the making of extracts or copies, on penalty in default on summary conviction of a fine not exceeding £20⁴. Failure to keep or deposit these copies is an offence punishable with a fine not exceeding £50, and £5 for every day thereafter during the continuance of the offence⁵.

- 1 For the meaning of "the special Act", see para. 611, text to note 3, ante.
- 2 These persons are known as "the undertakers": Markets and Fairs Clauses Act 1847, s. 2.
- 3 *Ibid.*, s. 58; Courts Act 1971, s. 56 (1), Sch. 8, para. 1 (2); Local Government Act 1972, s. 251 (1), Sch. 29, para. 4 (1). See LOCAL GOVERNMENT, vol. 28, para. 1358.

4 See the Markets and Fairs Clauses Act 1847, s. 58; and the Local Government Act 1972, s. 228 (7) (see LOCAL GOVERNMENT, vol. 28, para. 1349), which has replaced the Act referred to in the Markets and Fairs Clauses Act 1847, s. 58.

5 Ibid., s. 59; Criminal Law Act 1977, s. 31 (5) (6) (b), (8), (9).

613. Acquisition of land and construction. Persons authorised by a local Act incorporating the Markets and Fairs Clauses Act 1847¹ to construct or regulate a market or fair² must, if empowered by the special Act to acquire land compulsorily for the purpose of constructing the market or fair, exercise that power in conformity with the Lands Clauses Consolidation Act 1845³. Errors in descriptions given in the special Act of land or of its owners may be corrected upon application to two justices⁴. In addition to the land which the undertakers⁵ are authorised by the special Act to take compulsorily, or to appropriate to the undertaking, they are given a limited power of appropriating land vested in them, or obtained by contract from a willing vendor, for certain "extraordinary purposes", which include the provision of houses and places for weighing carts and of roads and approaches to the market or fair, or for any other purpose necessary for its formation or convenient use⁶.

The nature of the works that may be done for constructing the market-place or fair is defined; these works include the building and maintenance of stalls, sheds, pens and other buildings or conveniences for the use of persons frequenting the market or fair, or for weighing or measuring goods, or for weighing carts⁷. The undertakers must exercise their powers causing as little damage as may be and for any damage so done full satisfaction must be made⁸.

1 As to incorporation of the Markets and Fairs Clauses Act 1847, see para. 611, ante.

2 For the meaning of "market" and "fair", see paras. 601, 602, ante.

3 The Markets and Fairs Clauses Act 1847, s. 6. As to acquisition under the Lands Clauses Consolidation Act 1845, see COMPULSORY ACQUISITION, vol. 8, para. 38; and see *Richards v Scarborough Public Market Co* (1853) 23 LJ Ch 110 on the construction of an Act conferring compulsory powers to take land for a market-place. The undertakers (para. 612, note 2, ante) must make full compensation to the persons interested in the land taken or injured for the purposes of the special Act or injuriously affected by the works authorised by that Act, and for all damage sustained by those persons by the exercise of those powers as to that land; and, except as otherwise provided by the Markets and Fairs Clauses Act 1847 or the special Act, compensation must be determined in the manner provided by the Lands Clauses Consolidation Act 1845: Markets and Fairs Clauses Act 1847, s. 6.

4 Ibid., s. 7. Certified copies of the alterations and corrections are evidence of their contents: see s. 8.

5 For the meaning of "undertakers", see para. 612, note 2, ante.

6 Markets and Fairs Clauses Act 1847, s. 9. See also COMPULSORY ACQUISITION, vol. 8, para. 50.

7 Ibid., s. 10. See further para. 697, post.

8 Ibid., s. 11. See also COMPULSORY ACQUISITION, vol. 8, para. 50.

614. Opening of market or fair. Before a market or fair is opened for public use, not less than ten days' notice of the time when it will be opened must be given in a local newspaper and by hand bills conspicuously posted¹. After the market-place or place for fairs is opened, the persons authorised to construct and regulate the fair must hold the markets and fairs in the place so provided².

1 Markets and Fairs Clauses Act 1847, s. 12. For a form of notice of the date of opening a new market, see 13 Forms & Precedents (4th Edn) 625, Form 2:1.

2 Markets and Fairs Clauses Act 1847, s. 14. They must also be held on the proper days: see s. 14, and para. 666, post.

(iii) Creation under Public Acts

615. Establishment of markets by local authorities under the Food and Drugs Act 1955. The council of a district¹ may² establish a market within its district³, and may

provide⁴ a market-place with convenient approaches to it⁵, and a market house and other buildings convenient for holding the market⁶ and may acquire land compulsorily for such purposes⁷.

However, a market may not be established so as to interfere with any rights, powers or privileges in the nature of a franchise⁸ enjoyed within the district⁹ in respect of a market by any person, unless that person consents¹⁰.

A local authority which has so established a market¹¹ is a market authority for the purposes of the Food and Drugs Act 1955¹².

1 "Council" includes a port health authority: Food and Drugs Act 1955, s. 135 (1). "District" in relation to the local authority of a London borough, the City of London, the Inner Temple or the Middle Temple, and in relation to the officers of such an authority, means the borough or other area for which the authority acts: s. 135 (1); London Government Act 1963, s. 54 (4), Sch. 13, para. 3. However, the Food and Drugs Act 1955, Part III (ss. 49-61) (relating to the provision and regulation of markets), does not extend to the City of London, the Inner Temple or the Middle Temple: s. 137 (3); London Government Act 1963, Sch. 13, para. 4.

2 A local authority has no power to covenant or agree not to exercise its powers: see *Spurling v Bantoft* [1891] 2 QB 384 at 392, DC, per Cave J.

3 Food and Drugs Act 1955, s. 49 (1) (a); Local Government Act 1972, s. 199 (3).

4 "Provide" has the meaning given by the Public Health Act 1936, s. 271 (see PUBLIC HEALTH), incorporated by the Food and Drugs Act 1955, s. 131 (1), Sch. 9.

5 Ibid., s. 49 (1) (i); Local Government Act 1972, s. 199 (3).

6 Food and Drugs Act 1955, s. 49 (1) (ii); Local Government Act 1972, s. 199 (3). It may provide cold stores and refrigerators and charge for their use: see the Food and Drugs Act 1955, s. 80, and FOOD, vol. 18, para. 1318.

7 See *ibid.*, s. 130, and FOOD, vol. 18, para. 1038.

8 *Spurling v Bantoft* [1891] 2 QB 384, DC; *Woolwich Corp v Gibson* (1905) 92 LT 538; see also *Fearon v Mitchell* (1872) LR 7 QB 690; *Ellis v Bridgnorth Corp* (1861) 2 John & H 67; *Ellis v Bridgnorth Corp* (1863) 15 CBNS 52.

9 As to the extent of the right of protection from disturbance enjoyed by a franchise holder, see para. 649, post.

10 Food and Drugs Act 1955, s. 49 (3). For these purposes, another local authority is not deemed to be enjoying any rights, powers or privileges within the district by reason only that it has established a market within its own district under either s. 49 (1) (a) (see the text to notes 1-3, supra), or under the Food and Drugs Act 1938, s. 44 (1) (i) (repealed), or (otherwise than by acquisition of a then existing market) under any corresponding provision repealed by that Act or the Public Health Act 1875: Food and Drugs Act 1955, s. 49 (3) proviso. For the meaning of "local authority", see para. 616, note 5, post.

11 I.e. under *ibid.*, s. 49 (1), or the Food and Drugs Act 1938, s. 44 (repealed): Food and Drugs Act 1955, s. 49 (2). See also para. 616, text and note 7, post.

12 Ibid., s. 49 (2). "Market authority" also includes (1) any London borough council to which a market was transferred by the London Authorities (Property etc.) Order 1964, S.I. 1964 No. 1464 (London Government Order 1966, S.I. 1966 No. 1305, art. 2 (11)); (2) any district council to which such a market is transferred by the Local Authorities (England) (Property etc.) Order 1973, S.I. 1973 No. 1861 (art. 31), or by the Local Authorities (Wales) (Property etc.) Order 1973, S.I. 1973 No. 1863 (art. 30); and (3) the Parish Council of Much Wenlock (Local Authorities etc. (Miscellaneous Provision) (No. 2) Order 1974, S.I. 1974 No. 595, art. 12 (3)).

616. Acquisition of market rights by local authorities under the Food and Drugs Act 1955. The council of a district¹ with a power to establish a market² may acquire by agreement (but not otherwise³), either by purchase or on lease, the whole or any part of an existing market undertaking within its district, and any rights enjoyed by any person within its district in respect of a market and of tolls⁴.

The owner of a market undertaking, or of any rights in respect of a market and of tolls, whether established under, or enjoyed by virtue of, statutory powers or not, may sell or lease to a local authority⁵ the whole or any part of his market undertaking or rights, but subject to all liabilities⁶.

or by any term or condition may appeal within twenty-four hours to a magistrates' court¹⁵, and there is a right of appeal from the decision of a magistrates' court to the Crown Court¹⁶. Persons authorised by the council and provided with such authorisation may enter premises within the market area to ascertain whether an offence has been committed under these provisions or otherwise for the purpose of assisting the council's functions under them¹⁷. The council is not authorised to sell horticultural produce¹⁸.

The Corporation of the City of London¹⁹ may provide market storage facilities²⁰ and may for that purpose borrow so much money as it may think requisite²¹, acquire land compulsorily²² and make byelaws²³.

- 1 The land may be acquired by agreement or by the authorisation of the Minister of Agriculture, Fisheries and Food, compulsorily: London County Council (General Powers) Act 1959, ss. 11 (1), 12 (2). The Acquisition of Land (Authorisation Procedure) Act 1946 applies to the compulsory purchase of land under this provision: London County Council (General Powers) Act 1959, s. 12 (3); and see COMPULSORY ACQUISITION, vol. 8, para. 10.
- 2 "Container" means a barrel, basket, box, crate, keg, sack, tray or other similar receptacle which is, has been or is intended to be used in connection with the transport of horticultural produce: *ibid.*, s. 11 (1).
- 3 *Ibid.*, s. 12 (1); Local Law (Greater London Council and Inner London Boroughs) Order 1965, S.I. 1965 No. 540, art. 4, Sch. 2. "Horticultural produce" means vegetation intended for purposes of decoration, or fruit, vegetables, flowers or plants: London County Council (General Powers) Act 1959, s. 11 (1). The council has power of entry for the purpose of surveying or valuing the land (see s. 12 (4)), but notice must be given (see s. 12 (4) proviso).
- 4 *Ibid.*, s. 13 (1).
- 5 I.e. in accordance with a scheme of stalls approved by the minister: *ibid.*, s. 13 (2).
- 6 *Ibid.*, s. 13 (3). The minister's confirming authority for such byelaws: s. 13 (4).
- 7 References to the sale of horticultural produce by way of wholesale dealing must be construed as references to the sale of such produce to a person who buys for the purpose of selling again: *ibid.*, s. 11 (2).
- 8 *Ibid.*, s. 14 (1). The market area is geographically defined in s. 11 (1). The council may also enter into and carry into effect agreements with such authorities or bodies for the provision, equipment, maintenance and management of the accommodation and for other incidental and consequential matters: s. 14 (1).
- 9 *Ibid.*, s. 14 (2).
- 10 *Ibid.*, s. 15.
- 11 "Empty container" means a container which contains no horticultural produce intended for sale: *ibid.*, s. 11 (1).
- 12 *Ibid.*, s. 16 (1). If within a period of two months from the date of the council's receipt of an application for such licence the council has not notified the applicant that the application has been granted, subject or not to terms and conditions (see the text and note 13, *infra*), or has been refused, the application is deemed to have been refused at the end of that period: s. 16 (2). The period may be extended by written agreement: s. 16 (2) proviso. The penalty for keeping empty containers in the market or for failing to comply with any terms or conditions attached to a licence is, on summary conviction, a fine not exceeding £10 and a daily fine not exceeding £5: s. 16 (8). As to where a licence application is made before the certificate comes into force, see s. 16 (8) proviso. Section 16 does not apply to any empty container sold or intended to be sold in the ordinary course of business: s. 16 (9).
- 13 *Ibid.*, s. 16 (3). In considering an application the council must have regard to (1) the subsisting facilities for dealing with the produce (including access and escape) and restricting their spread; (2) the premises' construction and their fire resistance; (3) the nature of the trade or business carried on in or on the premises; and (4) the facilities required by and available to the applicant for the reception and retention of empty containers for the purpose of carrying on his trade or business: s. 16 (3) provisos (i)-(iv). The letter or document notifying the council's decision must state the applicant's right to appeal and the time for appeal: see s. 16 (4).
- 14 *Ibid.*, s. 16 (5).
- 15 *Ibid.*, s. 16 (4). For the meaning of "person aggrieved", see ADMINISTRATIVE LAW, vol. 1, para. 49.
- 16 *Ibid.*, s. 16 (6); Courts Act 1971, s. 8, Sch. 1, para. 1. Where upon any appeal a court varies or reverses any decision of the council the council must give effect to the court's order and grant a licence or modify the terms or conditions as may be necessary: London County Council (General Powers) Act 1959, s. 16 (7).
- 17 *Ibid.*, s. 17 (1). Twenty-four hours' notice must be given to the occupier before entry: s. 17 (1) proviso. A person refusing admission is liable on summary conviction to a fine not exceeding £10: s. 17 (2).

- 18 *Ibid.*, s. 18.
- 19 I.e. the mayor and commonalty and citizens of the City acting by the Common Council: see the City of London (Various Powers) Act 1959, s. 4 (1).
- 20 "Market storage facilities" means facilities for the storage, sorting and disposal of horticultural produce in containers and for the storage, sorting, repair and disposal of containers, but the provision of facilities for the storage, sorting and disposal of horticultural produce on land acquired or used under these powers does not include the provision of facilities for making contracts for the sale or exchange of horticultural produce: *ibid.*, s. 6.
- 21 See *ibid.*, s. 7.
- 22 See *ibid.*, s. 8 (1). The minister's authorisation is required (s. 8 (1)), and the Acquisition of Land (Authorisation Procedure) Act 1946 applies (City of London (Various Powers) Act 1959, s. 8 (2)).
- 23 See *ibid.*, s. 10; Local Law (City of London) Order 1965, S.I. 1965 No. 508, art. 4, Sch. 2.

(3) RIGHTS AND LIABILITIES

620. Rights and duties of the owner in the holding of the market. A right to hold a market involves the following rights and duties on the part of the owner.

- (1) A right of having a concourse of buyers and sellers for the buying and selling of the commodities vendible in the market¹. This right may justify a concourse which, but for the right, would be liable to be put down as a nuisance².
- (2) A right of action against persons who unlawfully dispute or interfere with the lawful holding of the market or the collection of its profits³.
- (3) The right to direct in what part of the market the various commodities are to be sold, for he has the general direction of the market, but he is bound to appropriate the whole space of the market if the public convenience requires it⁴.
- (4) A duty to provide a place for the holding of the market, of a size sufficient for the convenient accommodation of all who are ready to buy and sell in the market⁵. If the owner's rights are limited to the holding of his market in a fixed spot defined by metes and bounds, his duty is to devote to the accommodation of the public so much of that spot as the public's convenience requires⁶. He is not under a duty to provide stalls or pens, but if he does so, he may not cover the place with stalls so as to compel the public to take stalls⁷.
- (5) The right to remove the market to a new place, provided that he keeps to the limits within which the market may lawfully be held⁸.

1 *Marquis of Downshire v O'Brien* (1887) 19 LR Ir 380 at 390, per Chatterton V-C.

2 *Elwood v Bullock* (1844) 6 QB 383 at 411; and see para. 678, post.

3 See paras. 649-658, post.

4 *Prince v Lewis* (1826) 5 B & C 363 at 374, per Littledale J; *London Corpn v Lyons, Son & Co (Fruit Brokers) Ltd* [1936] Ch 78, CA. As to the rights and duties of the market authority imposed by statute, see paras. 686 et seq., post. As to his remedies for disturbance, see paras. 649 et seq., post.

5 *Re Islington Market Bill* (1835) 3 Cl & Fin 513 at 518, HL. As to forfeiture for not holding a market, see para. 661, post. As to certain duties imposed by statute, see e.g. the provision of weights and measures (see para. 697, post), provision for weighing cattle (see para. 704, post), and provision for furnishing accounts (see para. 702, post). A local authority has power to contract with any person for lighting markets, and may provide such lamps, lamp posts and other materials and apparatus as may be necessary for the purpose: see the Public Health Act 1875, s. 161; Gas Act 1948, s. 76, Sch. 4 (repealed); and HIGHWAYS.

6 *Re Islington Market Bill* (1835) 3 Cl & Fin 513 at 519.

7 See para. 640, post. He is liable for the safe condition of the stalls or pens (*Lax v Darlington Corpn* (1879) 5 Ex D 28, CA; *Brackenborough v Spalding UDC* [1942] AC 310, [1942] 1 All ER 34, HL), but he is not liable to the owner of the animals or to the public in the market or at large for injury by the escape of animals from pens (*Brackenborough v Spalding UDC*, *supra*).

8 See para. 681, post.

621. Transfer of market by owner. A deed is generally necessary for the transfer or lease of a franchise market or fair¹ or of franchise tolls; for, being incorporated hereditaments, they pass only by deed². A franchise market does not usually pass by the conveyance or demise of the market-place, for the market and the market-place are distinct properties³. However, exceptions to these rules may arise on the construction of a local Act.

A public body does not possess the power to convey or demise market rights vested by statute in it, not for its own benefit, but for the benefit of the public, unless such power has been conferred by statute⁵.

District councils have no power to transfer or lease the market rights which they exercise under the Food and Drugs Act 1955⁶, nor may they make a valid covenant not to exercise them⁷.

1 For the meaning of "market" and "fair" and as to franchise, see paras. 601-603, ante.

2 Co Litt 9a, 49a, 169a; *Duke of Somerset v Fogwell* (1826) 5 B & C 55; see generally, DEEDS, vol. 12, paras. 1307 et seq., LANDLORD AND TENANT. "Fairs and markets are things which are not transferable over from man to man, in fee, for life, or years, in infinitum": Shep Touch (7th Edn) 240. In the case of conveyance of a market or fair, see 13 Forms & Precedents (4th Edn) 615, 617, 619, Forms 1 and 2. On the death of the owner of a franchise market or fair it passes to his personal representative as to the market: see the Administration of Estates Act 1925, ss. 1 (1), (3), 3 (1), and EXECUTORS, vol. 17, paras. 1001 et seq.

3 See *A-G v Horner* (1884) 14 QBD 245 at 254, CA, per Lord MR; affd (1885) 11 App Cas 66, HL. If a franchise market is leased at a sum reserved in the nature of a rent, the amount due under the reservation is recoverable by action, but not by distress (Co Litt 47a; *Bac Abr*, Rent (B); *Jewel's Case* (1588) 5 Co Rep 3a; *Gardiner v Williamson* (1831) 2 B & Ad 336; LANDLORD AND TENANT), unless the Crown is the lessor, in which case the amount due under the reservation may be distrained for upon any land of the lessee (*Lord Montjoy's Case* (1589) 5 Co Rep 3b at 3c; *Knigh's Case* (1588) 5 Co Rep 54b at 56a; Chitty's Prerogatives of the Crown 208, 209). The lessee's covenant to pay binds his assignee: *Earl of Egremont v Keene* (1837) 2 Jo Ex Ir 307; *Earl of Lucan v Dea* (1831) 2 Hud & B 635. For a form of lease of a market or fair, see 13 Forms & Precedents (4th Edn) 619, Form 1:4.

4 *Bridgland v Shapter* (1839) 5 M & W 375, where it was held that the local Act vested the right to the tolls in the plaintiff who held the market buildings under a leasehold demise.

5 See *Haynes v Ford* [1911] 1 Ch 375 at 385, per Lord Chelmsford; affd [1911] 2 Ch 237, CA; *Tepper v Nichols* (1864) 34 LJCP 61 at 67, per Erle CJ; *Gardiner v London, Chatham and Dover Rly Co (No. 1)*, *Drawbridge v London, Chatham and Dover Rly Co (No. 2)*, *Imperial Mercantile Credit Association v London, Chatham and Dover Rly Co (No. 2)* (1867) 2 Ch App 201 at 212, per Cairns LJ; *Re Salisbury Railway Market House Co Ltd* [1969] 1 Ch 349, [1967] 1 All ER 813; and see generally COMPANIES, vol. 7, paras. 695 et seq., CORPORATIONS, vol. 9, paras. 1332-1344.

6 See paras. 615, 616, ante.

7 *Spurling v Bantoft* [1891] 2 QB 384 at 385, per Lord DC. The plaintiff contended that there was no power to lease the market tolls was not raised in *Kidderminster Corporation v Hardwick* (1873) LR 9 Exch 13. As to the disposal of land by principal councils, see the Local Government Act 1972, s. 123, and LOCAL GOVERNMENT, vol. 28, para. 1222.

622. Transfer of powers by public bodies. Any of the functions of any trustees, commissioners or other persons who, for public purposes and not for profit, act under any enactment or instrument for providing or maintaining a market in any place¹ may, with the approval of the public body, be transferred by order of the Secretary of State² to any local authority³ whose area comprises the district of the public body, or jointly to two or more local authorities whose areas together comprise that district⁴.

1 See the Local Government Act 1972, s. 253 (2).

2 I.e. the Secretary of State for the Environment: see CONSTITUTIONAL LAW, vol. 8, paras. 1223-1235.

3 "Local authority" means a county council, the Greater London Council, a district council, a London borough council, a parish council, a community council or, in this context, the Common Council of the City of London: Local Government Act 1972, ss. 253 (4), (5) (1).

4 Ibid., s. 253 (1). The order may contain incidental, consequential, transitional and supplementary provisions, and is subject to the approval of the House of Commons and the resolution of either House of Parliament: s. 253

(3); see further LOCAL GOVERNMENT, vol. 28, para. 1027. The trustees under any local Act for the providing or maintaining of a market in or for any place, whether or not their powers under the Act extend beyond that place, may transfer to the local authority for that place, with its consent, all the rights, powers, estates, property and liabilities vested in or imposed on them under the local Act: see the Municipal Corporations Act 1882, s. 136. The effect of the transfer is to make the local authority the trustees for executing the powers and provisions of the local Act and to discharge the transferring trustees from their liabilities and obligations under it. The former power under s. 136 for trustees of a market to transfer it to the municipal corporation of a borough has become obsolescent by virtue of the Local Government Act 1972, ss. 1 (1), 245 (5).

623. Public's right to attend a market. At all times when a market ought lawfully to be held, every member of the public¹ has, of common right, the liberty to enter and frequent the market-place for the purpose of bringing there and exposing for sale and selling, or of buying, such commodities as are vendible in the market².

However, this common right does not entitle any person to take exclusive occupation of any part of the market-place, such as by erecting a stall³, but it does entitle him, on payment of the dues, to fix the conditions on which he will sell his goods⁴.

1 This includes an auctioneer wishing to exercise his calling in the market: *London Corp'n v Lyons, Son & Co (Fruit Brokers) Ltd* [1936] 1 Ch 78, CA; and see *R v Barnsley Metropolitan Borough Council, ex parte Hook* [1976] 3 All ER 452, [1976] 1 WLR 1052, CA.

2 *Austin v Whitred* (1746) Willes 623; *Townend v Woodruff* (1850) 5 Exch 506; *Duke of Newcastle v Worksop Urban Council* [1902] 2 Ch 145 at 159; and see *R v Barnsley Metropolitan Borough Council, ex parte Hook* [1976] 3 All ER 452, [1976] 1 WLR 1052, CA. The owner of goods which have been wrongfully abstracted from him may lawfully seize them to his own use if he finds them in a fair (3 Bl Com (14th Edn) 4, cited in *Anthony v Haney* (1832) 8 Bing 186 at 192, per Tindal CJ) and therefore, apparently, has a right of entry into the fair for the purpose of seeking for them. As to estrays being proclaimed in markets, see Dalton's Office and Authority of Sheriffs (1700) 79; Com Dig, Waife (F); 1 Bl Com (14th Edn) 297; and CONSTITUTIONAL LAW, vol. 8, para. 1517. Goods brought to market may not be distrained for rent of the market-place: Co Litt 47a. As to the exemption of cattle on their way to market from distress for rent while they are pasturing, for one night, see DISTRESS, vol. 13, para. 235. The rights referred to do not extend to the transferred Covent Garden Market at Nine Elms: see the Covent Garden Market Act 1966, s. 30, and para. 618, ante.

3 *Northampton Corp'n v Ward* (1745) 2 Stra 1238; *Norwich Corp'n v Swann* (1776) 2 Wm Bl 1116; *Yarmouth Corp'n v Groom* (1862) 1 H & C 102; *Brandon v Barnes* [1966] 3 All ER 296, [1966] 1 WLR 1505, DC. As to stallage, see para. 637, post.

4 E.g. he may sell the goods by auction: *Scott v Glasgow Corp'n* [1899] AC 470 at 490, HL, per Lord Shand; *Nicholls v Tavistock UDC* [1923] 2 Ch 18; *London Corp'n v Lyons, Son & Co (Fruit Brokers) Ltd* [1936] Ch 78, CA. For the power to regulate by byelaw the place of sale by auction, see also para. 687, note 3, post.

(4) SALE IN MARKET OVERT

(i) Acquisition of Title by Buyer

624. Title by sale in market overt. Where goods¹, other than goods belonging to the Crown², are sold in market overt according to the usage of the market, the buyer acquires a good title to the goods, provided he buys them in good faith³ and without notice⁴ of any defect or want of title on the part of the seller⁵. However, the title is liable to be defeated in the case of stolen goods⁶. The rule is for the protection of the buyer, and the seller is not protected by it and an action for wrongful interference with goods lies in conversion against one who wrongfully sells and delivers the goods of another in market overt⁷. If, after a sale

621. Transfer of market by owner. A deed is generally necessary for the transfer or lease of a franchise market or fair¹ or of franchise tolls; for, being incorporated in hereditaments, they pass only by deed². A franchise market does not usually pass by the conveyance or demise of the market-place, for the market and the market-place are distinct properties³. However, exceptions to these rules may arise on the construction of a local Act⁴.

A public body does not possess the power to convey or demise market rights vested by statute in it, not for its own benefit, but for the benefit of the public, unless such power has been conferred by statute⁵.

District councils have no power to transfer or lease the market rights which they exercise under the Food and Drugs Act 1955⁶, nor may they make a valid covenant not to exercise them⁷.

- 1 For the meaning of "market" and "fair" and as to franchise, see paras. 601-603, ante.
- 2 Co Litt 9a, 49a, 169a; *Duke of Somerset v Fogwell* (1826) 5 Ch 105; see generally, DEEDS, vol. 12, paras. 1307 et seq., LANDLORD AND TENANT. "Fairs and markets are things vendible over from man to man, in fee, for life, or years, in infinitum": *Shep Touch* (7th Edn) 240. For the effect of conveyance of a market or fair, see 13 Forms & Precedents (4th Edn) 615, 617, 619, Forms 11-13. On the death of the owner of a franchise market or fair it passes to his personal representative as to the market: see the Administration of Estates Act 1925, ss. 1 (1), (3), 3 (1), and EXECUTORS, vol. 17, paras. 100-102, et seq.
- 3 See *A-G v Horner* (1884) 14 QBD 245 at 254, CA, per Lord MR; affd (1885) 11 App Cas 66, HL. If a franchise market is leased at a sum reserved in the natural or ordinary course of the reservation, the amount due under the reservation is recoverable by action, but not by distress (Co Litt 47a; *Bac Abr*, Rent (B); *Jewel's Case* (1588) 5 Co Rep 3a; *Gardiner v Williamson* (1831) 2 B & Ad 336; *LANDLORD AND TENANT*), unless the Crown is the lessor, in which case the amount due under the reservation may be distrained for upon any land of the lessee (*Lord Montjoy's Case* (1589) 5 Co Rep 3b at 3c; *Knights Case* (1588) 5 Co Rep 54b at 56a; *Chitty's Prerogatives of the Crown* 208, 209). The market owner's covenant to pay binds his assignee: *Earl of Egremont v Keene* (1837) 2 Jo Ex Ir 307; *Earl of Lucan v Dea* (1831) 2 Hud & B 635. For a form of lease of a market or fair, see 13 Forms & Precedents (4th Edn) 619, Form 1:4.
- 4 *Bridgland v Shapter* (1839) 5 M & W 375, where it was held that the local Act vested the right to the tolls in the plaintiff who held the market buildings and the right to the tolls in the defendant who held the market buildings under a leasehold demise.
- 5 See *Haynes v Ford* [1911] 1 Ch 375 at 385, per Lord Chatham and *Dover Rly Co (No. 1)*, *Drawbridge v London, Chatham and Dover Rly Co (No. 1)*, *Imperial Mercantile Credit Association v London, Chatham and Dover Rly Co (No. 2)* (1867) 2 Ch App 201 at 212, per Cairns LJ; *Re Salisbury Railway Market House Co Ltd* [1969] 1 Ch 349, [1967] 1 All ER 813; and see generally COMPANIES, vol. 7, paras. 695-700, CORPORATIONS, vol. 9, paras. 1332-1344.
- 6 See paras. 615, 616, ante.
- 7 *Spurling v Bantoft* [1891] 2 QB 384 at 385, per Lord DC. The defendant contended that there was no power to lease the market tolls was not raised in *Kidderminster Canal v Hardwick* (1873) LR 9 Exch 13. As to the disposal of land by principal councils, see the Local Government Act 1972, s. 123, and LOCAL GOVERNMENT, vol. 28, para. 1222.

622. Transfer of powers by public bodies. Any of the functions of any trustees, commissioners or other persons who, for public purposes and not for profit, act under any enactment or instrument for providing or maintaining a market in any place¹ may, with the approval of the public body, be transferred by order of the Secretary of State² to any local authority³ whose area comprises the district of the public body, or jointly to two or more local authorities whose areas together or comprise that district⁴.

- 1 See the Local Government Act 1972, s. 253 (2).
- 2 I.e. the Secretary of State for the Environment: see CONSTITUTIONAL LAW, vol. 8, paras. 1223-1235.
- 3 "Local authority" means county council, the Greater London Council, a district council, a London borough council, a parish or community council or, in this context, the Common Council of the City of London: Local Government Act 1972, ss. 253 (4), 254 (1).
- 4 *Ibid.*, s. 253 (1). The order may contain incidental, consequential, transitional and supplementary provisions, and is subject to the approval in pursuance of a resolution of either House of Parliament: s. 253

(3); see further LOCAL GOVERNMENT, vol. 28, para. 1027. The trustees under any local Act for the providing or maintaining of a market in or for any place, whether or not their powers under the Act extend beyond that place, may transfer to the local authority for that place, with its consent, all the rights, powers, estates, property and liabilities vested in or imposed on them under the local Act: see the Municipal Corporations Act 1882, s. 136. The effect of the transfer is to make the local authority the trustees for executing the powers and provisions of the local Act and to discharge the transferring trustees from their liabilities and obligations under it. The former power under s. 136 for trustees of a market to transfer it to the municipal corporation of a borough has become obsolete by virtue of the Local Government Act 1972, ss. 1 (11), 245 (5).

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- 3 *Northampton Corpn v Ward* (1745) 2 Stra 1238; *Norwich Corpn v Swann* (1776) 2 Wm Bl 1116; *Yarmouth Corpn v Groom* (1862) 1 H & C 102; *Brandon v Barnes* [1966] 3 All ER 296, [1966] 1 WLR 1505, DC. As to stallage, see para. 637, post.
- 4 E.g. he may sell the goods by auction: *Scott v Glasgow Corpn* [1899] AC 470 at 490, HL, per Lord Shand; *Nicholls v Tavistock UDC* [1923] 2 Ch 18; *London Corpn v Lyons, Son & Co (Fruit Brokers) Ltd* [1936] Ch 78, CA. For the power to regulate by byelaw the place of sale by auction, see also para. 687, note 3, post.

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Tolls are payable on demand⁵. Tolls for weighing or measuring must be paid before the weighing or measuring takes place⁶, and tolls for cattle must be paid as soon as the cattle are brought to the market-place, and before they are put into a pen or tied up, and an additional toll is imposed if they are not removed within one hour after the close of the market⁷. As a condition of liability to pay, a list of the dues payable under the Markets and Fairs Clauses Act 1847 and the special Act must be set up on boards and exhibited in the market-place and each weighing house⁸.

If dues are not paid when demanded, distress may be levied on any cattle or article chargeable or in the market, belonging to or in the charge of the person liable, or the amount may be recovered as a civil debt⁹. Any person assaulting or obstructing any other person authorised to collect dues is liable to a fine not exceeding £25¹⁰. Any dispute concerning any stallage, rent or toll must be determined by a justice, who may make such order as is proper, including costs, and in default of payment on demand, they may be recovered by the issue of a distress warrant¹¹. Any person demanding a greater toll than that authorised is liable to a fine not exceeding £25¹².

1 As to such markets, see paras. 609–617, ante.

2 I.e. the Markets and Fairs Clauses Act 1847, ss. 31–41. For the meaning of “the undertakers”, see para. 612, note 2, ante.

3 Ibid., s. 31. A certificate signed by two justices is conclusive evidence to this effect: s. 32.

4 Ibid., s. 36. For the meaning of “the special Act”, see para. 611, text to note 3, ante. The special Act may impose tolls on the exposure for sale, or on the sale, of goods anywhere in the district or town in which the market is held. As to the interpretation of such a provision, see *Philpott v Allright* (1906) 94 LT 540, DC; *Newton-in-Makerfield Urban Council v Lyon* (1900) 69 LJKB 230, DC.

5 Markets and Fairs Clauses Act 1847, s. 33.

6 Ibid., s. 34.

7 Ibid., s. 35.

8 Ibid., s. 41. It seems that this should be a list of the tolls actually in force at the time and not a list of the maximum tolls authorised: *Gregson v Potter* (1879) 4 Ex D 142.

9 Markets and Fairs Clauses Act 1847, s. 38.

10 Ibid., s. 40; Criminal Law Act 1977, s. 31 (5) (a), (6) (a), (9). See note 11, infra.

11 Markets and Fairs Clauses Act 1847, s. 39. If s. 52 is incorporated in the special Act, the clauses of the Railways Clauses Consolidation Act 1845 apply: see para. 689, post.

12 Markets and Fairs Clauses Act 1847, s. 37; Criminal Law Act 1977, s. 31 (5) (a), (6) (a), (9); and cf. the fine imposed under the Food and Drugs Act 1955, as to which see para. 646, text and note 6, post.

646. Profits under the Food and Drugs Act 1955. A market authority¹ may demand in respect of the market² and in respect of the weighing and measuring of articles and vehicles such stallages, tolls and charges as it may from time to time determine³. A market authority which provides a weighing machine for weighing cattle, sheep or swine may demand in respect of such animals such charges as the authority may from time to time determine⁴. Tables in large print of the dues payable must be kept conspicuously exhibited in the market-place and in any market house, and the tables in respect of weighing vehicles or animals must be conspicuously exhibited at the respective weighing machines⁵.

Any person demanding or accepting an excessive charge is liable to a fine not exceeding £2⁶. However, rents charged by a market authority in respect of the letting of accommodation within the market for any period longer than one week, are not so restricted⁷.

Stallages, tolls and charges must be paid on demand to an authorised market officer⁸. Charges for weighing or measuring must be paid before the weighing or measuring takes place⁹. Tolls for animals are payable and may be demanded as soon as the animals are brought into the market-place and before they are put into a pen or tied up, and further tolls are payable for animals not removed within an hour after the close of the market¹⁰. Distress may

be levied by the authorised market officer in respect of unpaid dues on any animals, poultry or other articles which are either chargeable or belonging to, or in charge of, the person liable¹¹. Charges due may also be recovered summarily as a civil debt or as a simple contract debt in any competent court¹².

1 For the meaning of “market authority”, see para. 615, text and notes 11, 12, ante.

2 I.e. a market under the Food and Drugs Act 1955: see para. 615, ante.

3 Ibid., s. 52 (1); Local Government Act 1972, ss. 199 (4), 272 (1), Sch. 30; and see para. 706, post.

4 Food and Drugs Act 1955, s. 52 (2); Local Government Act 1972, s. 199 (4).

5 Food and Drugs Act 1955, s. 52 (3).

6 Ibid., s. 52 (4); Decimal Currency Act 1969, s. 10 (1). Cf. the fine imposed under the Markets and Fairs Clauses Act 1847, s. 37, as to which see para. 645, text to note 12, ante.

7 Food and Drugs Act 1955, s. 52 (5).

8 Ibid., s. 53 (1). “Authorised market officer” means an officer of a market authority specially authorised by it to collect tolls, stallages and other charges in its market: ss. 53 (4), 135 (1). “Officer” includes servant: s. 135 (1). As to the requirements of authorisation, see the Public Health Act 1936, ss. 284, 286, incorporated by the Food and Drugs Act 1955, s. 131, Sch. 9; and see PUBLIC HEALTH.

9 Ibid., s. 53 (2).

10 Ibid., s. 53 (3). “Animal” does not include bird or fish: s. 135 (1).

11 Ibid., s. 54 (1).

12 Ibid., s. 54 (2).

647. Profits under the Diseases of Animals Act 1950. In markets authorised by the Diseases of Animals Act 1950¹ the local authority may charge for the use of a wharf or other place provided by it under the Act such sums as may be imposed by byelaws approved by the Minister of Agriculture, Fisheries and Food². The tolls are regulated by the Markets and Fairs Clauses Act 1847³, which is incorporated⁴.

The tolls so received must be carried to a separate account, and be applied in payment of the interest on and principal of loans which the local authority has contracted under the Diseases of Animals Act 1950 and then towards the discharge of the local authority's expenses under the Act⁵.

1 As to such markets, see para. 617, ante.

2 I.e. made under the Diseases of Animals Act 1950, s. 61 (3): s. 61 (4). As to local authorities under that Act, see ANIMALS, vol. 2, para. 492.

3 See the Markets and Fairs Clauses Act 1847, ss. 31–41, and para. 645, ante.

4 See the Diseases of Animals Act 1950, s. 61 (2), and para. 617, ante. The charges are deemed to be tolls authorised by the special Act: s. 61 (4).

5 See *ibid.*, s. 61 (5). As to accounts, and as to the returns of expenditure and receipts, see para. 702, post.

648. Profits under local Acts. A local authority which maintains a market in pursuance of a local Act¹, may, notwithstanding anything in any enactment relating to the market, make in connection with it such charges as the authority determines from time to time².

1 As to such markets, see paras. 609 et seq., ante.

2 Local Government (Miscellaneous Provisions) Act 1976, s. 36 (2).

(6) DISTURBANCE

(i) In general

649. Nature of disturbance. The owner of a market or fair is entitled to protection from disturbance, and disturbance may consist in any unjustifiable interference with the owner's

exclusive right to hold his market or fair and take profits¹. It is a tort in respect of which there is a right of action². Interference with the exclusive right may arise from the levying of a rival market³, selling outside the market or fair⁴ or hindering or obstructing the market or fair⁵.

- 1 See *Birmingham Corp v Perry Barr Stadium Ltd* [1972] 1 All ER 725 at 729, per Pennycuik V-C.
- 2 See *Scottish Co-operative Wholesale Society Ltd v Ulster Farmers' Mart Co Ltd* [1960] AC 63, [1959] 2 All ER 486, HL; and see para. 652, post.
- 3 See paras. 653 et seq., post.
- 4 See para. 651, post.
- 5 See para. 650, post.

650. Obstruction or hindering the market. An action of disturbance¹ lies against one who on his own account collects toll² in the market³, obstructs the toll-collector appointed by the owner⁴, hinders persons⁵ or tollable goods⁶ from coming to the market or causes a physical obstruction of the market-place by which persons are excluded from part of it⁷ or of the approaches to the market-place⁸.

- 1 As to the nature of disturbance, see para. 649, ante; and see para. 652, post.
- 2 As to the nature of toll, see para. 629, ante.
- 3 *Dent v Oliver* (1606) Cro Jac 122. As to trespass with force and arms for erecting a toll booth and collecting toll and assaulting the servants of the owner and preventing them from collecting toll, see *de Chaunce v de Twenge and de Ros* (1337) YB (Rolls Series) 11 Edw 3, p 38. As to trespass with force and arms for taking toll in another's market, see Fitz Nat Brev 91 (G).
- 4 *Dent v Oliver* (1606) Cro Jac 122.
- 5 *Abbot of Denesham's Case* (1355) YB 29 Edw 3, fo 18; *Gloucester Grammar School Case* (1410) YB 11 Hen 4, fo 47, pl 21, per Serjeant Skrene; *Ashby v White* (1703) 6 Mod Rep 45 at 49, per Powell J; approved in *Tewkesbury Corp v Diston* (1805) 6 East 438 at 462.
- 6 *Turner v Sterling* (1672) 2 Vent 25 at 26, per Wylde B. Purchasing goods on their way to a market on which tolls are not payable may, notwithstanding 7 & 8 Vict. c. 24 (Forestalling, Regrating, etc.) (1844) (repealed), abolishing the offences of forestalling, regrating and engrossing, be an actionable disturbance: *Loughrey v Doherty* [1928] IR 103, CA.
- 7 *Thompson v Gibson* (1841) 7 M & W 456.
- 8 *Horner v Whitechapel District Board of Works* (1885) 53 LT 842, CA. As to further causes of action, e.g. evading toll, see para. 651, post, and as to setting up a rival market, see paras. 653 et seq., post.

651. Selling outside the market to evade toll. An action for disturbance¹ by evading payment of toll² lies against one who designedly, with an intention to take the benefit of the market without paying toll, sells outside a market³. However, proof of the design to evade payment of toll fails if it is shown that there was at the time of the sale no room in the market⁴, or that the market is ordinarily overcrowded and that the defendant had no notice that there was room on the particular occasion⁵. Selling tollable commodities by sample in or near a market is not in itself a disturbance⁶, but it is an actionable disturbance if it is done with intent to evade payment of a toll which would be due if the bulk were brought into the market and there sold, and to get the benefit of the market without such payment⁷.

- 1 See para. 652, post.
- 2 As to the nature of toll, see para. 629, ante.
- 3 *Bridgland v Shapter* (1839) 5 M & W 375; *Great Eastern Rly Co v Goldsmid* (1884) 9 App Cas 927 at 960, HL, per Lord Blackburn; affg. (1883) 25 Ch D 511 at 555, CA, per Fry LJ; applied in *Scottish Co-operative Wholesale Society Ltd v Ulster Farmers' Mart Co Ltd* [1960] AC 63, [1959] 2 All ER 486, HL. Selling from carts or vans standing outside a house is an actionable disturbance: *Horner v Freeman* [1884] WN 223.

- 4 *Goldsmid v Great Eastern Rly Co* (1883) 25 Ch D 511 at 555, CA.
- 5 *Prince v Lewis* (1826) 5 B & C 363.
- 6 *Blakey v Dinsdale* (1777) 2 Cowp 661; *Tewkesbury Corp v Diston* (1805) 6 East 438; *Brecon Corp v Edwards* (1862) 1 H & C 51.
- 7 *Moseley v Pierson* (1790) 4 Term Rep 104 at 107, per Lord Kenyon CJ; *Tewkesbury Corp v Bricknell* (1809) 2 Taunt 120.

652. Action for disturbance. An action for disturbance is a possessory action. The plaintiff must prove the existence of the franchise to hold a market or fair, and that he is in possession of the franchise¹ and actually holds the market or fair², or would do so if he were not prevented by the acts of disturbance³.

The plaintiff may recover damages, and the continuance of the disturbance may be restrained by injunction⁴.

- 1 *Dent v Oliver* (1606) Cro Jac 122; *Baron and Baroness de Rutzen v Lloyd* (1836) 5 Ad & El 456; *Yard v Ford* (1670) 2 Saund 172 (1871 Edn 500 and notes); *Fitzgerald v Connors* (1871) IR 5 CL 191.
- 2 *Dorchester Corp v Ensor* (1869) LR 4 Exch 335.
- 3 *Marquis of Downshire v O'Brien* (1887) 19 LR Ir 380 at 389.
- 4 See *Dorchester Corp v Ensor* (1869) LR 4 Exch 335; *Great Eastern Rly Co v Goldsmid* (1884) 9 App Cas 927, HL; *Wilcox v Steel* [1904] 1 Ch 212, CA; *Morpeth Corp v Northumberland Farmers' Auction Mart Co Ltd* [1921] 2 Ch 154 at 163; *Birmingham Corp v Perry Barr Stadium Ltd* [1972] 1 All ER 725; and see INJUNCTIONS, vol. 24, paras. 901 et seq.; TORT. As to trespass generally, see TRESPASS.

(ii) Levying a Rival Market

653. Rival market within the common law distance. A franchise of market or fair carries with it a right to be protected from disturbance by a rival market or fair levied within the common law distance of seven miles¹, or more strictly six and two-third miles², of the place where the market or fair is held³. Any other market or fair held within that distance may be a disturbance, but a market or fair held beyond that distance, although it may cause loss, cannot be an injury in law; it is at most *damnum sine injuria*⁴.

- 1 See the declaration in *Yard v Ford* (1670) 2 Saund 172. The distance in the case of fairs may be more than seven miles: see 32 LQR 206; cf. *R v Aires* (1717) 10 Mod Rep 354. See also *Leicester Corp v Maby* (1971) 70 LGR 209; and *Northampton Borough Council v Midlands Development Group of Companies Ltd* [1978] JPL 543.
- 2 Bract, bk iv, c. 46, fol 235b (3 Sir Travers Twiss' Edn 585); *Great Eastern Rly Co v Goldsmid* (1884) 9 App Cas 927 at 936, HL, where Lord Selborne LC speaks of the distance as "nearly seven miles". See 32 LQR 199-207, where the rule given by Bracton is discussed and explained.
- 3 It may be "of the town or district within which it may be held" (*Great Eastern Rly Co v Goldsmid* (1884) 9 App Cas 927 at 936, HL, per Lord Selborne LC, who says "the protection extends to a distance of nearly seven miles of the places in which they" (i.e. the market rights) "might be exercised"). See also the declaration in *Yard v Ford* (1670) 2 Saund 172. But in answer to questions proposed by the House of Lords to the judges in *Re Islington Market Bill* (1835) 3 Cl & Fin 513, in which this point was clearly involved, the judges say "within the common law distance of an old market".
- 4 Bract, bk iv, c. 46, fo 235b (3 Sir Travers Twiss' Edn 585); Britton, II, c. 32, s. 8, fol 159; Fleta, IV, c. 28, s. 13.

654. Rival market on market days or other days. If the rival market or fair is held on the day for holding the market or fair and within the common law distance¹ of a lawfully established market or fair, it is a disturbance by intendment of law and it is not necessary to prove actual damage². The mere infringement of the exclusive right of the owner of the franchise without justification is per se actionable, without proof of special damage. It is a

ground for at least nominal damages, and therefore for an injunction³. However, where the rival market or fair is held within the common law distance of a lawfully established market or fair but on a day other than the market or fair day, actual damage by loss of tolls, stallage or other profits of the market must be proved⁴.

¹ See para. 653, text and notes 1–3, ante.

² *Windsors* Saund (6th Edn) 172, 174; *Dorchester Corp v Ensor* (1869) LR 4 Exch 335 at 343, per curiam; *Elwes v Payne* (1879) 12 Ch D 468 at 472, per Jessel MR; *Cork Corp v Shinkwin* (1825) Sm & Bat 395 at 398, per curiam; *Winsford Entertainments Ltd v Winsford UDC* (1924) 23 LGR 254; *Hammerton v Earl of Dysart* [1916] 1 AC 57 at 89, HL, per Lord Parker of Waddington; *London Corp v Lyons, Son & Co (Fruit Brokers) Ltd* [1936] Ch 78 at 124, 140, CA, per curiam. *Tamworth Borough Council v Fazeley Town Council* (1978) 77 LGR 238, where the authorities are reviewed. In giving their opinion in *Re Islington Market Bill* (1835) 3 Cl & Fin 513 at 520, HL, the judges regarded the establishment of a new market as prima facie injurious to the old market and therefore void. In *Wilcox v Steel* [1904] 1 Ch 212 at 218, CA, it was suggested in argument that such a presumption could be rebutted, but in *Cork Corp v Shinkwin*, supra, it was held in the King's Bench in Ireland that an action for disturbance would lie, even where the jury found no damage in fact, and it is submitted that this is right. The cause of action is complete when the franchise owner establishes that there is a same-day market within the common law distance, and there is an irrebuttable presumption that a new market set up to be held on the same day is a nuisance unless licensed by the franchise market holder or the subject of a concurrent right of market franchise either by Crown or by statute: *Tamworth Borough Council v Fazeley Town Council*, supra, at 266 per Vivian Price QC (deputy judge). *Cork Corp v Shinkwin*, supra, was followed by Sargant J in *Morpeth Corp v Northumberland Farmers' Auction Mart Co Ltd* [1921] 2 Ch 154. As to damages generally, see DAMAGES, vol. 12, paras. 1101 et seq.

³ *Morpeth Corp v Northumberland Farmers' Auction Mart Co Ltd* [1921] 2 Ch 154 at 162, per Sargant J. For a form of injunction, see *Morpeth Corp v Northumberland Farmers' Auction Mart Co Ltd*, supra, at 163.

⁴ *Yard v Ford* (1670) 2 Saund 172; *Great Eastern Rly Co v Goldsmid* (1884) 9 App Cas 927, HL; and see the authorities cited in note 2, supra, and para. 655, notes 2–6, post. A market held on Monday is prima facie evidence of damage to a market held on Thursday, or vice versa: *Elwes v Payne* (1879) 12 Ch D 468 at 473. Loss of stallage is enough (*Cork Corp v Shinkwin* (1825) Sm & Bat 395; *Morpeth Corp v Northumberland Farmers' Auction Mart Co Ltd* [1921] 2 Ch 154), and also, it would seem, the loss of tolls, the power of charging which has been acquired by a local authority, the owners of a franchise market, under the Markets and Fairs Clauses Act 1847 (*Morpeth Corp v Northumberland Farmers' Auction Mart Co Ltd*, supra, at 162). Where a rival market is held on a different day from the market day, it is a question of fact whether damage is caused, but it is evidence of apprehended damage if a rival market is levied on the next day after a market: *Leicester Corp v Maby* (1971) 70 LGR 209. See also *Northampton Borough Council v Midlands Development Group of Companies Ltd* [1978] JPL 543.

655. What constitutes a rival market. To constitute a disturbance¹ it is not necessary that the rival market should purport to be a franchise market² or that the defendant should have any intention of setting up a rival market³. Any user of land which encourages and provides for a concourse of buyers and sellers by which members of the public are provided with the means of selling their goods without bringing them to the market may amount to a disturbance⁴, and it is enough to show that the defendant has actively participated in the levying of the rival market by providing land for it and participating in the profits⁵, or that he has knowingly and wilfully contributed to the damage by selling his goods there instead of in the plaintiff's market⁶. What will constitute a rival market to a statutory market will depend on the rights given by the statute⁷.

¹ As to the nature of disturbance, see para. 649, ante.

² *Yard v Ford* (1670) 2 Saund 172; *Moseley v Chadwick* (1782) 3 Doug KB 117; *Morpeth Corp v Northumberland Farmers' Auction Mart Co Ltd* [1921] 2 Ch 154 at 160, per Sargant J.

³ *Wilcox v Steel* [1904] 1 Ch 212 at 218, CA.

⁴ *Cork Corp v Shinkwin* (1825) Sm & Bat 395 (user of land for stalls let out to dealers for selling marketable goods); *Dorchester Corp v Ensor* (1869) LR 4 Exch 335; *Fearon v Mitchell* (1872) LR 7 QB 690; *London Corp v Low* (1879) 49 LJQB 144; *Elwes v Payne* (1879) 12 Ch D 468 (cases of holding

public auction sales); *Marquis of Downshire v O'Brien* (1887) 19 LR Ir 380; *Birmingham Corp v Foster* (1894) 70 LT 371; *Great Eastern Rly Co v Goldsmid* (1884) 9 App Cas 927, HL; *Morpeth Corp v Northumberland Farmers' Auction Mart Co Ltd* [1921] 2 Ch 154 (sale of cattle in auction mart); and see *Scottish Co-operative Wholesale Society Ltd v Ulster Farmers' Mart Co Ltd* [1960] AC 63, [1959] 2 All ER 486, HL.

⁵ *Dorchester Corp v Ensor* (1869) LR 4 Exch 335; *Elwes v Payne* (1879) 12 Ch D 468.

⁶ *Marquis of Downshire v O'Brien* (1887) 19 LR Ir 380.

⁷ *Hailsham Cattle Market Co v Tolman* [1915] 2 Ch 1 at 7, 8, CA, per Pickford LJ.

656. Sales in shops. It is not ordinarily a disturbance¹ for a person to sell his goods in the ordinary course of business in his own shop near the market-place and on market days²; although by immemorial custom or prescription the owner of a market may have the right to prevent sales of marketable commodities, on market days, in shops in the town where the market is held³. However, even where such a custom exists, a sale in a shop may be justified if the owner of the market neglects to provide sufficient accommodation⁴.

¹ As to the nature of disturbance, see para. 649, ante.

² *Macclesfield Corp v Chapman* (1843) 12 M & W 18; *Manchester Corp v Lyons* (1882) 22 Ch D 287, CA. What constitutes a shop depends on the circumstances of each case: see *Fearon v Mitchell* (1872) LR 7 QB 690; *Haynes v Ford* [1911] 2 Ch 237 at 248, CA; and para. 659, post.

³ *Macclesfield Corp v Pedley* (1833) 4 B & Ad 397; *Devizes Corp v Clark* (1835) 3 Ad & El 506; *Penryn Corp v Best* (1878) 3 Ex D 292, CA.

⁴ *Mosley v Walker* (1827) 7 B & C 40.

657. Justification for holding a rival market. The holding of a rival market or fair within the common law distance¹, and whether on the same day or on other days, is justifiable if it is held (1) with the consent or licence of the owner of the older franchise²; (2) by statute³; or (3) by grant from the Crown made in those circumstances in which the Crown may lawfully grant a new market to be held within the common law distance of an older market⁴.

¹ As to the common law distance, see para. 653, text and notes 1–3, ante.

² Bract, bk iv, c. 46, fo 235b (3 Sir Travers Twiss' Edn 585–587); *Tamworth Borough Council v Fazeley Town Council* (1978) 77 LGR 238. Such consent may be presumed from long acquiescence in the disturbance (*Holcroft v Heel* (1799) 1 Bos & P 400, as explained in *Campbell v Wilson* (1803) 3 East 294 at 298, by Le Blanc J; *Great Eastern Rly Co v Goldsmid* (1884) 9 App Cas 927, HL), but mere quiescence or inertia on the part of the owner, which was not continued long enough to satisfy the requirements of the statutes of limitation either directly or by analogy, is no defence (*Morpeth Corp v Northumberland Farmers' Auction Mart Co Ltd* [1921] 2 Ch 154 at 163).

³ *Re Islington Market Bill* (1835) 3 Cl & Fin 513, HL; *Tamworth Borough Council v Fazeley Town Council* (1978) 77 LGR 238.

⁴ *Re Islington Market Bill* (1835) 3 Cl & Fin 513, HL; *Tamworth Borough Council v Fazeley Town Council* (1978) 77 LGR 238; and see para. 605, ante.

658. Where rival market is not justified. Where a rival market is a disturbance of an older and lawfully established market it is not usually a defence that it is held by authority of a grant from the Crown, as in such a case the grant of the new market, even if it does not contain a proviso that it should not be to the nuisance of another market, would itself be void as being in derogation of the earlier grant¹.

Provided the market or fair is lawfully established and in fact held, it is no justification for levying a rival market that the plaintiff has been guilty of irregularities by extorting illegal tolls or unreasonable stallages², or by holding his market on illegal days³, or by not providing sufficient accommodation for the public⁴.

power from time to time to make byelaws fixing the days and hours for the holding of the market⁶, subject to the approval of the Minister of Agriculture, Fisheries and Food⁷.

- 1 As to the incorporation of the Markets and Fairs Clauses Act 1847, see para. 611, ante.
- 2 See *ibid.*, s. 14, para. 614, ante. As to the power to make such byelaws, see s. 42, and para. 687, post. For the meaning of "undertakers", see para. 612, note 2, ante. Provisions of local Acts which confer power on a local authority to make byelaws appointing days on which or during which markets or fairs are to be held must be construed as conferring on the authority power to appoint such days or hours. Resolution: Local Government (Miscellaneous Provisions) Act 1972, s. 36 (1). For the meaning of "market authority", see para. 615, text to note 1, 12, ante.
- 3 Food and Drugs Act 1955, s. 51; Local Government Act 1972, s. 39 (4), 272 (1), Sch. 30.
- 4 As to such markets, see para. 617, ante, and ANIMALS, vol. 2, para. 696.
- 5 Diseases of Animals Act 1950, s. 61 (2), incorporating the Markets and Fairs Clauses Act 1847, s. 42: see the text and note 2, supra.
- 6 Diseases of Animals Act 1950, s. 61 (3); Transfer of Functions (Ministry of Food) Order 1955, S.I. 1955 No. 554.

676. Statutory restriction of hours. The business and amusement of all fairs held within the Metropolitan Police District¹ must cease at 10 p.m. and must not begin earlier than 6 a.m.² If, during the continuance of any such fair, any house, room, booth, standing, tent, caravan, wagon or other place is open within the prohibited hours for any purpose of business or amusement in the place where the fair is held, the person having the care or management of such house or other place is liable to be taken into custody by a constable and to be fined not more than £25³. Persons in the house or other place who do not quit it at the constable's direction may also be taken into custody and may be fined not more than £25⁴.

Generally the hours during which a market may lawfully be kept open⁵ may be limited by a closing order made under the Shops Act 1950⁶, but no such order may limit the hours for a fair⁷.

- 1 As to the extent of the Metropolitan Police District, see the London Government Act 1963, s. 76 (1), and POLICE. As to places of amusement generally, see THEATRES.
- 2 Metropolitan Police Act 1839, s. 31 (5) (a), (6) (a), (9).
- 3 *Ibid.*, s. 38; Criminal Law Act 1977, s. 31 (5) (a), (6) (a), (9).
- 4 Metropolitan Police Act 1839, s. 31 (5) (a), (6) (a), (9); Criminal Law Act 1977, s. 31 (5) (a), (6) (a), (9).
- 5 As to the hours of selling in markets, see para. 627, ante.
- 6 See the Shops Act 1950, ss. 1 and 2, and TIME. Markets are not specially mentioned, but a market-place would seem to fall within the definition of "shop" as including any premises where any retail trade or business is carried on: see s. 1 (1). See also s. 12, which prohibits retail trade or business of any class at any time when shops have to be closed: see TIME.
- 7 See *ibid.*, s. 45, and TIME.

SITUATION AND REMOVAL

(i) Place and Enlargement

677. Place and area for franchise markets or fairs. The limits within which a market or fair may lawfully be held are those defined by the grant¹, and it is not necessary for the owner of the market or fair to own the land on which it is held so long as he has the permission of the owner of the land or some right to possession². Where a market or fair is granted to be held in a district such as a borough, township or manor, it may be held throughout that district or in any one or more places within it³, but where it is granted to be held in a place defined by metes and bounds it must be held within them⁴. Where a

market is owned by a local authority or a lord of a manor by a prescriptive title, a court may properly infer that it was originally granted to be held anywhere within the area of the local authority or the manor, even though it has always been held in a particular place within it⁵.

- 1 As to markets held under charter, see para. 604, ante, and as to the place for holding statutory markets, see para. 680, post.
- 2 It seems to be unnecessary that the owner of the market or fair should have the ownership of the soil, provided he has the permission of the owner (*A-G v Horner* (1884) 14 QBD 245, CA; *affd.* (1885) 11 App Cas 66, HL; *Lockwood v Wood* (1841) 6 QB 31); and it seems that there may be a prescriptive right in the nature of an easement to hold a market on the land of another (see *Austin v Whittred* (1746) Willes 623 at 627; *R v —* (1433) YB 11 Hen 6, fo 23, pl 20), but unless he has the soil the market owner may not take stallage (*Elwood v Bullock* (1844) 6 QB 383 at 411). As to stallage, see further paras. 637 et seq., ante.
- 3 *Re Islington Market Bill* (1835) 3 Cl & Fin 513 at 518, HL (opinion of the judges); *Dixon v Robinson* (1686) 3 Mod Rep 107; *Mosley v Walker* (1827) 7 B & C 40 at 54, HL, per Bayley J; *Hammerton v Earl of Dysart* [1916] 1 AC 57 at 88, 90, HL, per Lord Parker of Waddington. Where the boundaries of an ancient borough have been extended for all purposes by statute, a market held by prescription within the borough may be removed to a place outside the old, but within the new, boundaries: *Dorchester Corp v Ensor* (1869) LR 4 Exch 335.
- 4 See *Re Islington Market Bill* (1835) 3 Cl & Fin 513 at 518, HL; *Prince v Lewis* (1826) 5 B & C 363, 374; *Hammerton v Earl of Dysart* [1916] 1 AC 57 at 88, 90, HL, per Lord Parker of Waddington. A grant to hold a market "in sive juxta" a certain defined area enables the grantee to hold the market on the land immediately surrounding that area (*A-G v Horner* (1885) 11 App Cas 66, HL), but only on the market days mentioned in the grant (*A-G v Horner* (No. 2) [1913] 2 Ch 140, CA).
- 5 *R v Cotterill* (1817) 1 B & Ald 67; *Baron and Baroness de Rutzen v Lloyd* (1836) 5 Ad & El 456; *Gignell, Son and Foskett Ltd v Stepney Borough Council* [1906] 2 KB 468; *affd.* [1908] 1 KB 115, CA, sub nom. *Stepney Corp v Gignell, Son and Foskett Ltd* [1909] AC 245, HL.

678. Markets and fairs on highways. A market or fair may lawfully be held upon a portion of a highway, sufficient room being left for the public to pass and repass, if the dedication of the highway to the public was subject to the right of partial interruption during a certain limited and not unreasonable time for the purposes of the market or fair as often as it might lawfully be held¹.

When dedicating land to the use of the public, the owner may reserve the right to use it for market purposes², and when both the dedication of the highway and the market are immemorial, and the market has always been held upon the highway, it may properly be presumed that the dedication was subject to the right to hold the market on it³.

Where a market or fair is lawfully held on a highway, an obstruction caused by what is properly done in exercise of the franchise is not an indictable offence, nor is it liable to be abated as a nuisance to the highway⁴. Proceedings in respect of such an obstruction cannot be taken under Acts of Parliament which, without making illegal that which is otherwise legal, merely provide new remedies for nuisances on highways⁵.

It is unlawful to hold a market or fair on land which is reserved by statute for a special purpose not consistent with its use as a place for holding markets or fairs⁶.

- 1 *Elwood v Bullock* (1844) 6 QB 383; and see *Brandon v Barnes* [1966] 3 All ER 296, [1966] 1 WLR 1505, DC.
- 2 *A-G v Horner* (1885) 11 App Cas 66, HL, where the court drew the inference from documents and evidence that streets dedicated after the grant of a market in 1682 were dedicated subject to the rights of the owner to extend the market into those streets. In *Gignell, Son and Foskett Ltd v Stepney Borough Council* [1908] 1 KB 115, CA; *affd.* sub nom. *Stepney Corp v Gignell, Son and Foskett Ltd* [1909] AC 245, HL, it was held that a statutory dedication of a street was subject to market rights. It has been suggested that the Crown might lawfully grant a franchise to hold a market on an existing highway after proper inquiry: see *A-G v Horner* (1884) 14 QBD 245 at 258, CA, per Brett MR, and at 265 per Lindley

public may still be removed from a charter market to an inconvenient place prejudicial to the objects of the charter. It would lay the foundation of a scire facias by the Crown to repeal the grant. The removal cannot justify the wrongful erection of a rival market⁵.

¹ As to the right of removal, see para. 681, ante.

² *Curwen v Salkeld* (1803) 3 East 538. For form of notice of removal of a market or fair, see 13 Forms & Precedents (4th Edn) 627, Form 2:4.

³ *R v Starkey* (1837) 7 Ad & El 95.

⁴ *R v Cotterill* (1817) 1 B & Ald 67 at 75, per Lord Ellenborough CJ. As to scire facias, see paras. 606, 662, ante, and CROWN PROCEEDINGS, vol. 11, para. 1578.

⁵ *Lord Middleton v Power* (1886) 19 LR Ir 1. As to rival markets, see further paras. 653 et seq, ante.

685. Removal of statutory markets. The right of removal of a statutory market will depend on the terms of its statute, and, if a statute requires a particular place to be devoted to market purposes, it necessarily curtails the right of removal¹. Similarly, in the case of a market under a special Act incorporating the Markets and Fairs Clauses Act 1847², the right of removal will be limited to the area of the land specified in the special Act³ unless the special Act provides otherwise.

However, in the case of a market under the Food and Drugs Act 1955⁴, as the market may, subject to existing rights, be established within the district of the local authority, it is removable within those limits subject to those rights⁴; and in the case of a market under the Diseases of Animals Act 1950 the market may be removed by the acquisition or appropriation of other lands⁵.

¹ *Edinburgh Magistrates v Blackie* (1886) 11 App Cas 665, HL. As to the right of removal, see para. 681, ante.

² As to the incorporation of the Markets and Fairs Clauses Act 1847, see para. 611, ante.

³ As to the special Act, see paras. 611, 612, ante.

⁴ As to such markets, see paras. 615, 616, ante.

⁵ As to such markets, see para. 617, ante.

(3) REGULATION BY BYELAW

686. In general. The owner of a franchise market or fair has no power except under statute of regulating the market by regulations or byelaws enforceable by fine or imprisonment¹.

In addition to powers of making byelaws conferred specifically in relation to markets and fairs, the council of a district or London borough may make byelaws for good rule and government and for the prevention and suppression of nuisances², which may control in some respects the conduct at markets or fairs³.

Any provision of a local Act which confers power on a local authority to make byelaws appointing days on which or hours during which markets or fairs are to be or may be held must be construed as conferring on the authority a power to appoint such days or hours by resolution⁴.

¹ The common law powers of regulation have either been surrendered or have fallen into disuse. As to the byelaw-making power of a local authority which maintains a market, whether a franchise market or statutory, and whether established or acquired under the Food and Drugs Act 1955, see para. 690, post.

² See the Local Government Act 1972, s. 235 (1), and LOCAL GOVERNMENT, vol. 28, para. 1325. Local authorities have power to make byelaws for the regulation of pleasure fairs: see the Public Health Act 1961, s. 75, and PUBLIC HEALTH.

³ However, a byelaw cannot be made restraining or prohibiting market rights in streets: *Elwood v Bullock* (1844) 6 QB 383.

⁴ Local Government (Miscellaneous Provisions) Act 1976, s. 36 (1).

687. Regulation under the Markets and Fairs Clauses Act 1847. Persons authorised to construct or regulate markets or fairs by special Acts incorporating the appropriate provision of the Markets and Fairs Clauses Act 1847¹ may make and from time to time repeal or alter byelaws for the following purposes²:

- (1) for regulating the use of the market-place and fair, and the buildings, stalls, pens and standings in it, and for preventing nuisances or obstructions there or in the immediate approaches to it³;
- (2) for fixing the days and the hours during each day on which the market or fair may be held;
- (3) for inspection of the slaughterhouses⁴, for keeping them in a clean and proper state, for removing filth and refuse at least once in every twenty-four hours, for requiring that they be provided with a sufficient supply of water⁵ and for preventing the exercise of cruelty in them;
- (4) for regulating the carriers resorting to the market or fair and fixing the rates for carrying articles from it within the limits of the special Act; and
- (5) for preventing the sale or exposure for sale of unwholesome meat or provisions⁶ in the market or fair⁷.

¹ I.e. the undertakers: see para. 612, note 2, ante. As to the incorporation of the Markets and Fairs Clauses Act 1847, see para. 611, ante. The byelaws must not be repugnant to the laws of that part of the United Kingdom where they are to have effect, or to the provisions of that Act or of the special Act with which those provisions are incorporated, or any Act incorporated with it: s. 42.

² *Ibid.*, s. 42. Model byelaws for the use of district councils establishing or regulating a market have been issued by the Minister of Housing and Local Government (now the Secretary of State for the Environment) for the purposes of the Food and Drugs Act 1955, s. 61, as to which see para. 690, post. The procedure for making byelaws under s. 61 is laid down in the Local Government Act 1972, s. 236: see LOCAL GOVERNMENT, vol. 28, paras. 1333, 1334; and see the Local Government (Miscellaneous Provisions) Act 1976, s. 36 (1), and para. 686, text to note 4, ante.

³ Instances of byelaws which have been held valid are byelaws providing that no auctioneer should sell cattle by auction before noon on the market day (*Collins v Wells Corpn* (1885) 1 TLR 328, DC; in effect overruled by *Scott v Glasgow Corpn* [1899] AC 470, HL; see per Romer J in *Nicholls v Tavistock UDC* [1923] 2 Ch 18 at 30); appropriating particular parts of the market-place for the sale of particular kinds of commodities (*Savage v Brook* (1863) 15 CBNS 264); appropriating part of the market-place for sales by wholesale (*Strike v Collins* (1886) 55 LT 182, DC); providing that sale rings should only be used for public auction sales (*Scott v Glasgow Corpn*, supra); and prohibiting the gutting of dogfish in the market without the leave of the wharfmaster (*Sutton Harbour Improvement Co v Foster* (1920) 89 LJKB 829, DC; *Sutton Harbour Improvement Co v Foster* (No. 2) (1920) 89 LJCh 540, CA). A byelaw prohibiting persons from exhibiting for sale in the market particular kinds of marketable commodities "without being authorised so to do by the superintendent of the market" is bad (*Wortley v Nottingham Local Board* (1869) 21 LT 582), as is one prohibiting sales by auction, or prohibiting them without the sanction of the market authority (*Nicholls v Tavistock UDC* [1923] 2 Ch 18). As to the validity of byelaws, see LOCAL GOVERNMENT, vol. 28, paras. 1326 et seq.

⁴ As to slaughterhouses, see FOOD, vol. 18, paras. 1314 et seq.

⁵ As to the general duty of local authorities in relation to water supply, see the Public Health Act 1936, Part IV (ss. 111-142), and PUBLIC HEALTH. For a form of agreement with a water company for water supply to a local authority under that Act, see 23 Forms & Precedents (4th Edn) 126, Form 1:B:14.

⁶ As to food unfit for human consumption and food hygiene, see FOOD, vol. 18, paras. 1130 et seq.; and as to byelaws, see FOOD, vol. 18, paras. 1016, 1157.

⁷ Markets and Fairs Clauses Act 1847, s. 42; Weights and Measures Act 1963, ss. 63 (1), 65, Sch. 9, Part II.

688. Confirmation of byelaws under the Markets and Fairs Clauses Act 1847. Byelaws authorised by special Acts which incorporate the provision of the Markets and Fairs Clauses Act 1847¹, which provides that they are not to come into force until approved, require the confirmation of the Secretary of State². Before application can be made for

public may still be removed from a charter market to an inconvenient place prejudicial to the object of the charter. It would lay the foundation of a scire facias by the Crown to repeal the grant. The removal cannot justify the wrongful erection of a rival market⁵.

As to the right of removal, see para. 681, ante.

Curwen v Salkeld (1803) 3 East 538. For form of notice of removal of a market or fair, see 13 Forms & Precedents (4th Edn) 627, Form 2:4.

³ *R v Starkey* (1837) 7 Ad & El 95.

⁴ *R v Cotterill* (1817) 1 B & Ald 67 at 75, per Lord Ellenborough CJ. As to scire facias, see paras. 606, 662, ante, and CROWN PROCEEDINGS, vol. 11, para. 1578.

⁵ *Lord Middleton v Power* (1886) 19 LR Ir 1. As to rival markets, see further paras. 653 et seq, ante.

685. Removal of statutory markets. The right of removal of a statutory market will depend on the terms of its statute, and, if a statute requires a particular place to be devoted to market purposes, it necessarily curtails the right of removal¹. Similarly, in the case of a market under a special Act incorporating the Markets and Fairs Clauses Act 1847², the right of removal will be limited to the area of the land specified in the special Act³ unless the special Act provides otherwise.

However, in the case of a market under the Food and Drugs Act 1955⁴, as the market may, subject to existing rights, be established within the district of the local authority, it is removable within those limits subject to those rights⁴; and in the case of a market under the Diseases of Animals Act 1950 the market may be removed by the acquisition or appropriation of other lands⁵.

¹ *Edinburgh Magistrates v Blackie* (1886) 11 App Cas 665, HL. As to the right of removal, see para. 681, ante.

² As to the incorporation of the Markets and Fairs Clauses Act 1847, see para. 611, ante.

³ As to the special Act, see paras. 611, 612, ante.

⁴ As to such markets, see paras. 615, 616, ante.

⁵ As to such markets, see para. 617, ante.

(3) REGULATION BY BYELAW

686. In general. The owner of a franchise market or fair has no power except under statute of regulating the market by regulations or byelaws enforceable by fine or imprisonment¹.

In addition to powers of making byelaws conferred specifically in relation to markets and fairs, the council of a district or London borough may make byelaws for good rule and government and for the prevention and suppression of nuisances², which may control in some respects the conduct at markets or fairs³.

Any provision of a local Act which confers power on a local authority to make byelaws appointing days on which or hours during which markets or fairs are to be or may be held must be construed as conferring on the authority a power to appoint such days or hours by resolution⁴.

¹ The common law powers of regulation have either been surrendered or have fallen into disuse. As to the byelaw-making power of a local authority which maintains a market, whether a franchise market or statutory, and whether established or acquired under the Food and Drugs Act 1955, see para. 690, post.

² See the Local Government Act 1972, s. 235 (1), and LOCAL GOVERNMENT, vol. 28, para. 1325. Local authorities have power to make byelaws for the regulation of pleasure fairs: see the Public Health Act 1961, s. 75, and PUBLIC HEALTH.

³ However, a byelaw cannot be made restraining or prohibiting market rights in streets: *Elwood v Bullock* (1844) 6 QB 383.

⁴ Local Government (Miscellaneous Provisions) Act 1976, s. 36 (1).

687. Regulation under the Markets and Fairs Clauses Act 1847. Persons authorised to construct or regulate markets or fairs by special Acts incorporating the appropriate provision of the Markets and Fairs Clauses Act 1847¹ may make and from time to time repeal or alter byelaws for the following purposes²:

- (1) for regulating the use of the market-place and fair, and the buildings, stalls, pens and standings in it, and for preventing nuisances or obstructions there or in the immediate approaches to it³;
- (2) for fixing the days and the hours during each day on which the market or fair may be held;
- (3) for inspection of the slaughterhouses⁴, for keeping them in a clean and proper state, for removing filth and refuse at least once in every twenty-four hours, for requiring that they be provided with a sufficient supply of water⁵ and for preventing the exercise of cruelty in them;
- (4) for regulating the carriers resorting to the market or fair and fixing the rates for carrying articles from it within the limits of the special Act; and
- (5) for preventing the sale or exposure for sale of unwholesome meat or provisions⁶ in the market or fair⁷.

¹ I.e. the undertakers: see para. 612, note 2, ante. As to the incorporation of the Markets and Fairs Clauses Act 1847, see para. 611, ante. The byelaws must not be repugnant to the laws of that part of the United Kingdom where they are to have effect, or to the provisions of that Act or of the special Act with which those provisions are incorporated, or any Act incorporated with it: s. 42.

² *Ibid.*, s. 42. Model byelaws for the use of district councils establishing or regulating a market have been issued by the Minister of Housing and Local Government (now the Secretary of State for the Environment) for the purposes of the Food and Drugs Act 1955, s. 61, as to which see para. 690, post. The procedure for making byelaws under s. 61 is laid down in the Local Government Act 1972, s. 236: see LOCAL GOVERNMENT, vol. 28, paras. 1333, 1334; and see the Local Government (Miscellaneous Provisions) Act 1976, s. 36 (1), and para. 686, text to note 4, ante.

³ Instances of byelaws which have been held valid are byelaws providing that no auctioneer should sell cattle by auction before noon on the market day (*Collins v Wells Corpn* (1885) 1 TLR 328, DC; in effect overruled by *Scott v Glasgow Corpn* [1899] AC 470, HL; see per Romer J in *Nicholls v Tavistock UDC* [1923] 2 Ch 18 at 30); appropriating particular parts of the market-place for the sale of particular kinds of commodities (*Savage v Brook* (1863) 15 CBNS 264); appropriating part of the market-place for sales by wholesale (*Strike v Collins* (1886) 55 LT 182, DC); providing that sale rings should only be used for public auction sales (*Scott v Glasgow Corpn*, supra); and prohibiting the gutting of dogfish in the market without the leave of the wharfmaster (*Sutton Harbour Improvement Co v Foster* (1920) 89 LJKB 829, DC; *Sutton Harbour Improvement Co v Foster* (No. 2) (1920) 89 LJCh 540, CA). A byelaw prohibiting persons from exhibiting for sale in the market particular kinds of marketable commodities "without being authorised so to do by the superintendent of the market" is bad (*Wortley v Nottingham Local Board* (1869) 21 LT 582), as is one prohibiting sales by auction, or prohibiting them without the sanction of the market authority (*Nicholls v Tavistock UDC* [1923] 2 Ch 18). As to the validity of byelaws, see LOCAL GOVERNMENT, vol. 28, paras. 1326 et seq.

⁴ As to slaughterhouses, see FOOD, vol. 18, paras. 1314 et seq.

⁵ As to the general duty of local authorities in relation to water supply, see the Public Health Act 1936, Part IV (ss. 111-142), and PUBLIC HEALTH. For a form of agreement with a water company for water supply to a local authority under that Act, see 23 Forms & Precedents (4th Edn) 126, Form 1:B:14.

⁶ As to food unfit for human consumption and food hygiene, see FOOD, vol. 18, paras. 1130 et seq.; and as to byelaws, see FOOD, vol. 18, paras. 1016, 1157.

⁷ Markets and Fairs Clauses Act 1847, s. 42; Weights and Measures Act 1963, ss. 63 (1), 65, Sch. 9, Part II.

688. Confirmation of byelaws under the Markets and Fairs Clauses Act 1847. Byelaws authorised by special Acts which incorporate the provision of the Markets and Fairs Clauses Act 1847¹, which provides that they are not to come into force until approved, require the confirmation of the Secretary of State². Before application can be made for

Planning Inspectorate Reference: TR010062
Deadline 1 - Post-Hearing Note to Compulsory Acquisition Hearing 1

Written Submission on behalf of Brough Hill Fair Community.

Brough Hill Fair: Verbatim text of the Charter of 1330.

Source:

Kendal County Archives, Reference CASCAT WDHOTH/3/45/16

By email from Max Clark, Archive Assistant

Quote:

Charter for Market and Fair at Brough (enclosed a Petition from Brough Tenants to the Earl of Thanet concerning the fair - endorsed with Lord Thanet's instructions) [2 August] 4 Edward III

Edward by the Grace of God King of England, Lord of Ireland and Duke of Aquitaine to his archbishops, bishops, abbots, priors, earls, barons, justices, sheriffs, reeves, officials and all bailiffs and faithful ministers greeting. Know that of our special grace we have granted and by this our charter confirmed to our beloved and faithful Robert de Clifford that he and his heirs may have one market each week on a Thursday at his manor of Brough under Stainmore in the county of Westmorland in perpetuity and one fair there lasting for four days that is to say for two days before the feast of St. Matthew the Apostle, on the feast day itself and for one day following so long as the market and the fair do no harm to neighbouring markets and neighbouring fairs. Therefore we wish and firmly order for ourselves and for our heirs that the said Robert and his heirs may have in perpetuity the aforesaid market and fair at his said manor together with all the liberties and free customs pertaining to such a market and fair so long as there is no harm to neighbouring markets and fairs aforesaid. These witnesses H[enry] Bishop of Lincoln our chancellor, R[obert] Bishop of Salisbury, John of Eltham earl of Cornwall, our very dear brother, Roger de Mortimer earl of March, William de Montacute, Oliver de Ingham, Hugh de Turpilton steward of our household and others. Dated by our hand at Northampton on the second day of August in the fourth year of our reign.

By writ of privy seal.

End Quote.

Bill Lloyd
Brough Hill Fair Community Representative
10/12/2022