

TOLLS AT DURSLEY MARKET HOUSE

Summary of the legal case made in 1833 on behalf of T.G.B. Estcourt

Background

This document is in the possession of Dursley Town Council, kept with other documents relating to ownership of Dursley Town Hall and Market House. It has been copied by A.G. Pierce who, as a Councillor, had access in January 1996. It is a legal document written in 1833 asking questions about the interpretation of various matters relating to the Market in Dursley and the tolls levied. The lawyer commenting on the case was John Bayley of the Middle Temple. His opinion is dated March 21st 1834.

Case

By a grant of King Henry the Eighth in the nineteenth year of his reign, licence was given to Nicholas Wykes Esqre. and his Heirs to hold yearly for ever within the Town of Dursley one Market in every week on Thursday and two Fairs on the days therein named and by the same instrument "All tolls, issues, emoluments and profits from the same Markets and Fairs issuing or growing" were also granted to the said Nicholas Wykes and his Heirs.

The Parish of Dursley consists of the Town and Manor of Dursley and of the Tithing and Manor of Woodmancote - the Manor of Dursley extending itself over about one half of the Parish and the Manor of Woodmancote over the other half. The Manor of Dursley and the Tolls were purchased by one of the Estcourt Family in the reign of Queen Elizabeth and have since continued in that family. Mr Estcourt is now Lord of the Manor of Dursley and holds a Court Leet yearly under a grant from the Crown. The Manor of Woodmancote has also a Leet which is held annually and belongs to another person.

In the year 1758 the Tolls of the above Market and Fairs and also the Manor of Dursley became vested in the late Thos. Estcourt Esqre. as Tenant for life under the Will of a distant relative and upon his death in 1818 the same became vested in the present proprietor T.G.B. Estcourt Esqre. as tenant in tail who has since suffered a Recovery and settled the same to his own use.

Besides the Market held under the grant on Thursday, another is now held on the Saturday in every week and has continued about 40 years. This latter market is generally confined to Butchers who pay a weekly sum for the use of their stalls but if other persons attend with articles on which the toll has customarily exacted the same is paid as on the Thursday.

A Market House was built in the reign of Queen Anne by one of the Estcourt family, the then owner of the Tolls and of the Manor and the Market and Fairs are held therein and on the ground adjoining which is called the Market place and being about the centre of the Town there are several Shops fronting it. One of the Houses is a Public House and close to the Market House and for some years Shambles were put on the outside and let to persons on Fair and Market days for exposure and sale of Meat, the owners of the House receiving the profits and no Market Toll being paid.

In December 1830 the House was let to a Butcher who had previously rented stalls in the Market House and the Shambles were removed and a Butchers Shop opened by him in part of the House. This has continued to the present time and he has ceased to hold his Stalls.

Tolls at Dursley Market House

Many of the frequenters of the Market and particularly persons in the Butchery who formed an important article for sale from the Town being situate in the rich Vale and Hundred of Berkeley are in the habit of carrying their Goods to Public Houses for sale as well as to private houses in different parts of the Town without bringing them to the Market place but in all parts excepting in Woodmancote. When the toll is demanded it is paid. In circumstance however causes great trouble and evasion. Upon Fair days the Horsefair is always held in Woodmancote and appears to have been considered by the tenants of the Tolls as on that account free from Toll and never to have been demanded.

The place provided for the Pig and Sheep Market is at the extremity of the Town and suffers from its inconvenient distance; the owner of a large Yard near the Market House was permitted many years since to put up pens therein and let them out on Fair and on Market days for pigs, which he still continues to do. The Market Toll however on the sale of the animals is always paid, the loss to Mr Estcourt being on the Stallage or piccage toll which is considerable.

The Butter is supplied from the numerous different dairies in the neighbourhood and in many instances one person is employed to bring to market the produce of several Farms some supplying six or eight pounds and others twenty, thirty or forty pounds. From the best enquiries that can be made the following practice may be said to have prevailed in Dursley relative to the payment of Toll since the year 1813 or 1814 when the tolls were raised as noticed hereafter - tho' from the circumstance of the tolls having been always let to Tenants and their natural reluctance to litigate any disputed question and consequently yielding in many instances their just claims from a fear of the consequences of enforcing any right upon Custom or Immemorial usage.

- For Poultry and Eggs one penny, usually brought to Market in baskets and not pitched in the Market Place and paid by the owner whether sold or not.
- For Butter two pence, usually carried (except in the instances before alluded to) direct into the Market House and placed upon the Benches which are provided by Mr Estcourt or his tenant. This as in the tolls for Poultry and Eggs is paid by the party in whose possession the article is immediately on being brought into the Market and no variation is made in the sum however large or small the stock or however many or few its proprietors and no toll is afterwards paid on the sale.
- Butchers Stalls 1d a week.
- Gardeners Carts 4d each.
- Horses or Asses with Vetatables [*sic*] 2d each.
- For each pig one penny, paid only on a sale and generally between the Buyer and Seller but in case of demur the animal is seized and the toll is then immediately paid by one or the other.
- For Sheep which are only brought on Fair days, five pence a score or [*blank*] each, paid only on a sale and by the buyer.
- And for each Cow and every other head of Cattle 2d paid only on a sale and by the buyer.

These are the commodities that may be said to be commonly brought to the Market and Fairs but if any other were introduced, toll would be demanded.

Tolls at Dursley Market House

It seems that from an enquiry made of a person employed by the Tenant of the tolls from the year 1811 to 1818 (the Tenant being dead) that for the first two years he used to exact the following tolls: Poultry - usually Fowls and Ducks only 1d each person; Eggs 1d each person; Butter 1d each person, all paid by the owner on the goods being offered for sale in the Town or Market House; Butchers Stalls 6d each; Gardeners Carts 4d each; Horses or Asses with Vegetables 2d each; Pigs, if a sow and young ones unringed 4d, if ringed 1d each and paid by the buyer and seller equally; Sheep 4d a score, single sheep ½d each; Cows 1d each and paid on sale. That he has seized the articles until the Toll was paid and remembers once seizing and selling an egg.

That about the third year he asked and generally enforced the following sums and so continued as long as his employer continued Tenant: Poultry 2d; Eggs 1d; Butter 2d; Butchers Stalls 1d a week; the other articles remaining the same; that he never asked toll in Woodmancote; and never had toll of Butchers on sale of meat but only for Stalls and never received rent for the Shambles. This may be an important fact shewing a variation in the tolls.

In some of the cases referred to in the questions hereafter submitted for consideration, the words "Marketable Articles" or those of a like import and referring to the place involved in the question at issue frequently occur, implying as it should seem a local or particular custom as to the articles tollable. This is so indefinite that a difficulty might arise as to what should be exacted in Dursley.

With regard to the Butter it should be observed that those persons who do not bring that article into the Market House, pay when discovered the same sum as if they did, viz. 2d each, and this may raise a doubt whether the sum be the marketable or the Stallage or piccage toll, or both. It should be observed that however unjust, it appears in the Markets held in the City of Gloucester a similar Custom prevails with regard to the toll for butter, each person paying 4d a day but at Cirencester Market (which is one of the largest in the County) a graduated scale of payments similar but higher than those now claimed in Dursley is drawn out and the sum paid; that for butter is 1 & ½d per every dozen lbs.

Until the present year commencing at Lady Day 1833 it is not known that anyone of the Estcourt family ever had the tolls in hand but always let them to a tenant, neither was it known until now what were the articles for which toll was demanded or the sum paid. Considering those accustomed to be unfair both towards himself and the frequenters of the Market and fearing lest his acquiescence, as now being in possession, in those paid might prejudice his right to higher sums, Mr Estcourt in the Month of November last [1833] caused a table to be prepared, upon a graduated scale, of the Tolls and Dues to be paid from the 1st day of January following.

This Table was then printed as a Handbill circulated in the Market and throughout the neighbourhood and two large boards were printed and affixed in conspicuous places in the Market House. The sums here are lower than those paid at Gloucester or Cirencester. A copy of the handbill is attached [*see Page 6 of this summary*].

On the first Market day after the 1st of January the new Tolls were demanded of Butter Sellers and payment was refused and this is still persevered in. They then offered the usual sums which have been received as on account only and nothing yet arisen upon the other Tolls.

No Clerk of the Market or other Officer has ever been appointed by Mr Estcourt as collector of the Tolls, the entire management of their collection etc. having been left to his Tenant. At the Court Leet held annually for the Manor of Dursley, two Officers called Inspectors or Cardinals are regularly appointed whose duty is to inspect all meat brought for sale but it is seldom perhaps discharged.

Questions

The following points arising upon the foregoing case are submitted for the advice of Counsel:

[the questions and answers are summarised]

- Q1. What evidence of title Mr Estcourt must produce....?
- Aprove the Grant of Henry VIII.... and that tolls have been taken.
- Q2. Is Mr Estcourt entitled to a toll on every article for sale at Market or Fair?... and to vary or increase the toll....?
- A confined to whatever is sold.... toll should be reasonable.
- Q3. Can parties be compelled to use the Market Place and be prohibited from using public and private houses?
- A parties be compelled to use the Market.... but any man of the Town might sell on his own premises what he was in the habit of selling there on other days.
- Q4. Whether the whole Town is the Market and on Fair and Market days all articles are tollable?
- A only the Market Place is tollable.
- Q5. Should the toll be before or after sale?... by owner or seller?... depend on the number of owners?
- A No special customs for Dursley can be supported. Toll should be just on sales. *[Notes that Pickage is a compensation for breaking soil whilst Stallage is for setting stalls upon it].*
- Q6. Whether the recently opened butchers shop in a house near the Market House is liable to pay toll?
- A No....
- Q7. What redress Mr Estcourt has to enforce the several tolls....?
- A seizure of goods is undesirable.... but if done it should be on the day in the market when the toll was due. Best to take legal action....
- Q8. Should action be against owner or servant?
- A Owner.
- Q9. What about the use of private land for stalls and cribs for pigs and sheep....?
- A The owner of the soils, let him be who he may, has all rights of stallage and piccage.
- Q10. If tolls are not paid, can Mr Estcourt exclude persons?... and can he rail off the Market House and exclude the public (except for his benefit)?
- A Not on Market Days, but if he owns the House he can on other days.

Tolls at Dursley Market House

Q11. Can Mr Estcourt enforce tolls on Saturdays as well as the Thursday Market?

A Rights are given by the Grant from Henry VIII for the Thursday Market.

Q12. How far is Mr Estcourt prejudiced by acts and omissions of his Tenants?

A Nothing is shown to be prejudicial, but he is liable....

Q13. If expedient to adopt proceedings, what is it best to do?

A action for an unpaid Toll against a buyer upon a sale in the Market on a Thursday.
But the toll must be reasonable.

John Bayley

Middle Temple

21 March 1834

TOLLS and DUES

**To be payable and taken ON DEMAND in the
Market House and Town of**

DURSLEY,

From the First Day of January, 1834.

	s.	d.	
Turkeys - - -		2	each
Geese - - -		1	each
Guinea Fowls - - -		1	each
Fowls and Ducks - - -		1	per couple
Pigeons - - -		2	per dozen
Every other species of Poultry - - -		1	each
Eggs - - -		$\frac{1}{2}$	per score
Butter - - -		1	per doz. lbs.
Cheese - - -		1	per cwt.
Butchers' Stalls - - -	1	0	per week
Butchers Hawking - - -		6	per week
Gardeners' Carts - - -		4	each per day
Horses or Asses with Vegetables - - -		1	each per day
Hawkers or others carrying any sort of Merchandize in Baskets - - -		1	each per day
Horses sold or exchanged - - -		6	each
Pigs and Sheep - - -		1	each
Every other Cattle - - -		2	each
Pigs' Cribs - - -		6	each
Sheep Cribs - - -	1	0	each
Stalls for every foot in length - - -		1	per day
For every Waggon or Cart with Corn, Seed, or Potatoes - - -		4	per day

By Order of the Lord of the Manor:

NOVEMBER, 1833.

VIZARD BUCHANAN & MOORE,
STEWARDS.

RICKARDS, PRINTER, DURSLEY.