

## THE COURT CASE

Thomas G. Ackland v Sandown Town Council

By Dave Bambrough 2009.

These are a cross section of the Councillors that held office during the period of development of the Sandham Park Recreation Grounds: Mr. Frank White, (Chairman), Mrs Bennington Wood, Major D. W. Moss, D.S.O., M.C., Messrs. Cyril Goodman, O.B.E., G. Lowe, E. Kennedy, W. J. Board, A. J. Byerley, Mr. H. W. Falkner, R. H. Pitt, G. H. Knighton, G. A. Craddock, D. Shove, A. Dutton, W. H. Brown, W. M. Riddick, S. G. Comden, L. A. Moorman, Mr. Snudden, Mr. Atrill and Commander Horsley. The Clerk, Mr. R. Jones (later Mr. C. E. Saunders) and the Surveyor, Mr. Tom Josey. Five of these formed a small sub-committee who dealt exclusively with the development of the Louisville Estate/ Sandham Grounds, changing personnel periodically.

Having been warned by letter in May 1924 that there were still outstanding plots of the Louisville Estate for which compensation was merited, the Council chose to ignore these claims, continued developing the area and opened the Park in June 1924. They had taken this attitude from the onset of their quest to create the Recreation Grounds and had eventually found, through the protestations of landowners and the diligence of locals, that they were dutifully bound to pay for the required land. When one of the plot owners died, the executors of his will decided to challenge the Sandown Council over rightful ownership in the Courts.

The chief protagonists were as follow:

His Honour: Judge Barnard Lailey.

The original plot owner: Thomas G. Ackland.

The plaintiffs: Edwin Charles Webb of Bank House, New Southgate, and Charles Gresswell, executors under the will of Thomas G. Ackland.

Mr. F. J. Newman, Counsel for the prosecution: (instructed by Messrs. Breeze & Tyler of London).

Mr. F. Hinde, Counsel for the defense: (instructed by Mr. E. H. Woods of Sandown).

Mr. Baker: 1888 Auctioneer.

Samuel White: Professed to own all 7¼ acres of the Louisville Estate.

Mr. Walter William Jolliffe: Worked for Thomas Ackland.

Preston Bell and a Mr. Walker: Friends of Thomas Ackland.

Mr. Newton & son John Newton: Owners of twelve plots on the Estate.

The Council were summoned to the court hearing on Wednesday October 1<sup>st</sup> 1924 before Judge Barnard Lailey at the I. W. County Court Newport. The case was brought to court over the acquisition of land, which had been converted into the Sandham Recreation Grounds. Their action against the Sandown Council was that of "ejectment" (A form of legal action to regain control of real estate and collect for damages) in respect of eight plots in the centre of the estate, which the plaintiffs contended that, as executors, they were the owners. Counsels were engaged on both sides, Mr. F. J. Newman (instructed by Messrs. Breeze & Tyler of London) and Mr. F. Hinde (instructed by Mr. E. H. Woods of Sandown).

Mr. Newman, for the plaintiffs related the following statement. He referred to the year of 1888 when he said that the land known as Fort Marsh belonged to the Crown, it was subsequently sold and ultimately mortgaged for £700 or £800. Then an old fashioned sale was held with a champagne luncheon, available in a marquee on the estate for which it was hoped would create a cordial atmosphere amongst the purchasers. The 103 plots were then sold by auction, realising about £1,200 and amongst the buyers' was Mr. Thomas G. Ackland (now deceased). With his friend Mr. Walker, Ackland bought eight plots, numbered 63 to 70 inclusive and by conditions of sale they were to be fenced in immediately. Ackland arranged this with a Mr. W. W. Jolliffe (landlord of the Commercial Hotel at this time) and instructed him to let it for grazing or other purposes.

Jolliffe then leased the land on an annual tenancy to a man named Newton, (of Fort Street) and for two or three years spent the rent repairing the fence, eventually making an agreement with Newton that if he (Newton) would keep the fence in repair, he need pay no further rent.

In 1910, Mr. P. Bell, a friend of Ackland, came down and took three photographs of the plots, but could not find Newton. He returned in December 1912 located Newton and requested a payment of rent from him. Newton offered 1/- a year, which was not acceptable, whereupon he vacated the land. In 1916 Thomas Ackland died and the plaintiff, E. C. Webb was one of the executors. He came down to inspect the site in 1918 and measured the land with a Mr. Mitchell (local Estate agent).

Whilst in the process of measuring, one Samuel White arrived, stating that the land was his and that he had the deeds. The plaintiff challenged White to produce the deeds, adding, that he would leave the land immediately if he did.

Mr. Newman then highlighted the fact that a group of locals had formed a Committee on realising that the plot owners were being badly treated and after negotiations, these public-spirited gentlemen paid many of the plot owners' compensation, or gave them *ex gratia* payments. The plaintiffs however had not received any compensation and were asking for the land, which was rightfully theirs. Edward C. Webb, manager of Barclay's bank, New Southgate, then gave evidence supporting

the prosecutions statement. He said that as executer for Mr. Ackland he had never received any payment for the land.

Walter William Jolliffe said he attended the auction in 1888 and on Acklands instructions he fenced in the eight plots, using posts, 4 x 4 inches and four rows of barbed wire all round. He agreed that he had made an agreement to lease the land to Newton.

John Newton, a second hand dealer said his father rented the eight plots for 10 or 12 years. He then took over and turned out his horses there until the end of 1912, he paid no rent but kept the fences in repair. He confirmed that Preston Bell called on him in September 1912 and he (Newton) had offered him 1/- a year to rent the land.

Preston Bell, an insurance official, said Mr. Ackland was manager in the same office as himself. When he visited the plots in 1910 they were the only ones fenced in and he took photographs, which showed the fences still intact at that date. When he returned in 1912 Newton had an old bathing machine and a chicken run on the land. He agreed with the Council's brief that he had written a letter to Ackland stating, "I notice the property is still in the hands of the infidel". (A joke he said). He also added that Ackland had paid several sums for the upkeep of the sea wall. (A smaller wall that preceded the current one).

William G. Mitchell (estate agent) confirmed that 20 years ago the land was derelict but it now formed part of a recreation ground developed by the defending council. He confirmed the evidence of Webb as to the measuring of the land, and the arrival of White on the site. White ordered them off the land, and received assurance that they would go, if he would produce the deeds, White left them, failing to return with the requested document.

Mr. Hinde for the Council contended there was no case to answer and that the plaintiff had not shown there was anything in the way of exercise of ownership by his client, or the original person between 1905 and 1921. Hinde proceeding, said that the Council acquired the land, buying it from Mr. Samuel White on a possessory title, who had had uninterrupted and peaceful possession of the land for 30 years. Hinde stated that he was sure that the Council had been careful enough to make thorough enquiries and had taken solemn declarations from White and others. His honour again interjected that he would decide if White had a title to sell or not.

Martin White of 15 Fitzroy Street, son of Samuel White, said he had worked for his father and knew the Louisville Estate well. The fence erected by Newton had stood for four years, fell down and had been down ever since. His said his father had used the eight plots for about 14 or 15 years for cutting turf and grazing cattle and continued to do so until 1921. He (Martin) had carted turf to places in the town and his father had taken the money. When touring circuses arrived they had had access to all parts of the estate, his father gave them permission and charged them rent, but he stated there was no fencing standing during this period

From 1904 until 1914 when witness went to war a Mr. Alfred Chambers put bathing machines on the land and paid his father about a £1 a week. The witness when asked by what name the estate was known, replied, "White's Field". The Judge rejected this statement. Pressed by Mr. Newman, White said he was sure there was no fencing after 1904.

On being called to the box, Samuel White aged 77 of 64 Avenue Road described himself as a hire carter, (a transporter of merchandise to a known destination). He had lived in Sandown all of his life and was present at the 1888 auctions. White stated that he remembered the eight plots being fenced in but the wood had rotted and his cattle grazed there. He had never paid any rent, as he had never been asked for any and there was no question of the plaintiffs plots being fenced in. (The case appeared to centre on whether there was fencing standing when White claimed sole possession or whether he had lied over this).

The Judge asked White how he came to use the land. White replied that the auctioneer had given him permission in 1888 and there was definitely no fencing to stop him. When asked if anyone came to tell him that the land was theirs, White replied that numerous people came in the summer and asked him to bring the plan of the estate and show them their plots. He added that he had not paid rent to any of them and very soon after 1888 he began to cut turf on the estate and sell it on, but never from the eight plots belonging to Newton. Witness then went on to state that he was paid 3s. per week for grazing rights, and that circuses also paid rent to him, they used the eight plots (as they were not fenced in) and the rest of the land. White said "I was always on the look out for money", (this produced laughter in court). He maintained that the fencing around the eight plots was down before 1912 and the wire remained on the ground. He went on to say that after the 1888 auctions were over, the auctioneer (Mr. Baker) came out of his office and told him to take the land and do whatever he wanted with it, which he had and he had never paid a penny in rent. Under pressure, White then admitted that he was simply a squatter on it. Mr. Newman then asked him how he came to sell it. White in his indigenous brogue replied, "I caught them on the quick (the Council) and took their money".

Richard Jones, (Council Clerk) then produced the conveyance to the Council and the statutory declaration made by Samuel White. Jones stated that in 1905 the estate was assessed for poor rate

as a whole and in the name of Samuel White. He remained assessed until 1911 when Hedley William Thomas was assessed apparently in error. He said the witness had lived in Sandown for 30 years and had always been recognised as the owner. The Council had regarded White as a squatter and accepted his title as such.

The Judge then pointed out to the Council Clerk that they had risked £100 on the title, if it was a good title the land was the Councils, but if a bad one they had wasted £100 and he alone would decide if it was a good title for White to sell.

On Wednesday November 5<sup>th</sup> 1924 the case resumed for Judge Lailey's deliberation. He said that although the defence admitted the plaintiffs documentary title, they had set up a case, that after the purchase by the testator (Thomas Ackland), one Samuel White had acquired a good title to the land by virtue of the Statute of Limitation (A law which limits the length of time within which a suit must be commenced before the right to sue is lost) and conveyed it to the defendants by a deed dated April 12<sup>th</sup> 1921. By this deed White purported to convey a possessory title. Therefore the only question to be determined in the action was whether the Statute afforded an answer to the plaintiff's claim.

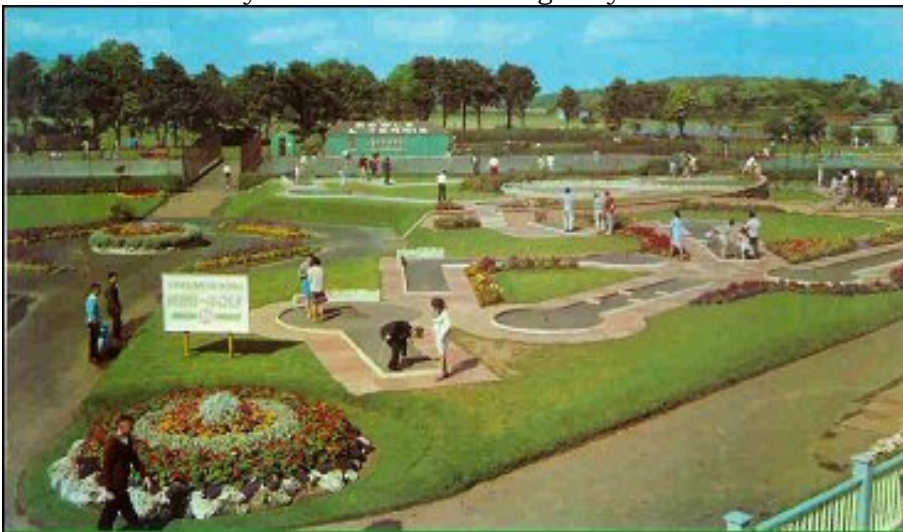
The Judge then summed up the facts of the case. Shortly after the auction he said the testator had a post and wire fence erected around the eight plots and let them to one Mr. Newton for a nominal rent. The land was low lying and of a marshy character, fit only for rough grazing. Newton paid the rent for about three years, and it was then arranged between him and the testator's agent that instead of paying the rent, he should thenceforth maintain the fences. Up until 1912, Newton, and his son in succession, had possession of the land and maintained the fences pursuant to the agreement. The fences were in existence and Newton was in possession as the testator's tenant at least as late as September 1912. Subsequently, Newton, having allowed the fences to become dilapidated, abandoned the land and eventually the fences disappeared entirely.

Samuel White, as a squatter, was in occupation of the remainder of the so called building plots and as the testator's fences went from bad to worse, White's animals were able to, and did stray on to the eight plots, which in the end as far as geography was concerned, became merged with the surrounding land.

One did not acquire title he stated by one's neighbour submitting to casual trespassing by his cows and horses, and he was satisfied that White did not have possession of the plots in question to the exclusion of the owner, or at all, until the end of the year 1912. During the war (1914) the land presented a derelict and unsightly appearance and the defendants, desiring to improve the town, paid White £100 and took, for what it was worth, a conveyance of the whole 7¼ acres, and had since adapted the land for public recreation purposes. White he said had no title and the defendants have acquired none.

The Judge passed no comment with reference to Samuel White or the defendants title with regards to anything but the eight plots in question. White, he said, had no title and the defendants (Council) have none. The title, which the testator (Thomas Ackland) obtained, still exists with the plaintiffs (Edwin Charles Webb & Charles Gresswell) who are his successors in interest, and there will be judgement for possession, with costs.

So, Samuel White was a fraudster, having sold land to the Council, which he did not own. One must assume that compensation was eventually paid to Mr. Louis Zdzienicki, (plots, 59 & 60) and Mr. Lewis E. Isaac, of South Hampstead, on behalf of his mother, plot No. 55. A later claim by a Mr. Peacock in January 1925 was acknowledged by the council to the tune of £25 compensation.



At the end of the day the Council had achieved their ambition in creating the Sandham Grounds Recreation Park with little more than a bloody nose. At a Council meeting in October 1925 the financial situation was declared as very satisfactory. Including the original purchase price, (not pursued from Samuel White after evidence proved that he was a fraud) all legal expenses, the purchase of disputed plots amounted to £300, which Council

members all agreed had been well worth it.

That concludes the trials and tribulations of the construction of Sandham Recreation Grounds Park, which we would probably all agree was well worth it. Next issue, "Sausages & Golf".