

Barons Courts of Prestoungrange & Dolphinstoun

Trinity Session: Elizabeth II. 53. 2004. July – November

JUDGEMENT AND DECLARATOR

[E II. 53. 2004 P&D. 10 A] COMPLAINS this twelfth day of July to the Clerk at the Caput Baroniae: '*Original John Fowler & Co.*' against Iain Turnbull, Head Brewer of Fowler's Ales at The Prestoungrange Gothenburg, being the Caput Baroniae, that betwixt the eighth day in May and the first day in June the Said Head Brewer did cause some little confusion amongst three ale drinkers on these our Baronial Lands [which was only made more disturbing by the most favourable reports received in the *Glasgow Herald: Food & Drink Supplement* concerning the Head Brewer's intentions on the fifteenth day of May] as between the Fowler's Ales now being brewed at The Prestoungrange Gothenburg and those originally brewed as *Fowler's Wee Heavy* and *Fowler's 90/- Pale Ale* by heirs whosoever of 'The Original John Fowler & Co.'

THE DEFENDER answered the Complains:

1. THAT with the sole exception of a completely erroneous statement in *Brushstrokes Issue # 2* published in July 2002 by Jane Bonnar, Arts Festival Project Director, being nearly two years before the microbrewing company was established and before the Defender did or ever could have held office as Head Brewer with Fowler's Ales [Prestoungrange], it has never been suggested or stated that the ales being brewed at The Prestoungrange Gothenburg are the original recipes and in particular no attempt has ever been made to brew a Wee Heavy.
2. THAT for the record Jane Bonnar is no longer in the employ of the Arts Festival and her regrettable and erroneous statement was [page 1 column 3]: "*To really show our appreciation of our Fowler's Brewery heritage we intend to reproduce the beer enjoyed by many, way back when, and by a few nowadays. We propose to establish a microbrewery in Prestonpans and start brewing 'Wee Heavy'.*"
3. THAT the examples of all promotional materials produced since Fowler's Ales [Prestoungrange] was established, most especially the Brewers' Manual and the Registration Forms for the School of Brewing but also the website at www.prestoungrange.org/fowlers/ – all go out of their make wholly clear that no infringement of the three registered Marks for Wee Heavy and 90/- Pale Ale including the name Fowlers.
4. THAT further the registered Marks for Fowler's Wee Heavy quite specifically exempt from registration the term 'Wee Heavy' per se.
5. THAT lest there might be any who might be confused at all, because they had not heard the Town Crier on the seventh day of May or read the story giving rise to the establishment of Fowler's Ales [Prestoungrange] to Honour John Fowler and Company, the directors of that Company had on the occasion of the hoisting of the first Besom at The Prestoungrange Gothenburg, when the James Fewell Bar served the new 60/- & 75/- & 85/- Fowler's Ales for the first time but no Wee Heavy or 90/- howsoever, made Declarator before the Common Baron Bailie of these Courts on the eighth day of May 2004 and made such Declarator most widely available to all who attended that occasion including the Provost of East Lothian and the Captain of Scotland Rugby Union XV who had assisted in making the ales, and to sundry members of the press and Panners at large; such Declarator as is appended hereto.

6. THAT the report in the Food and Drink Section of the *Glasgow Herald* on May 15th 2004 indicates that the Head Brewer is: “on a mission to brew beers in the style of the famous John Fowler, who cultivated a national reputation as a brewer of strong bottled ales”. And further: “Iain admits they would love to have the original recipes, but he needs to consider whether buying the rights to use them is a feasible option for an operation planning to brew just 600 gallons a week”. Neither of these attributed remarks can be taken to suggest that as Head Brewer he was the reincarnation of the original enterprise or using its original recipes.
7. THAT in sum the Head Brewer submits that he had done all that could reasonably be done to ensure there shall be no confusion and that it is unreasonable to suggest that he or the directors of Fowler’s Ales [Prestoungrange] have in any manner sought to create confusion indeed the absolute reverse was the case.
8. THAT what is being attempted with very great support from local drinkers of real ales and proud residents of Prestonpans is in the public interest and that any who seek to hinder it howsoever are to him no better than dogs-in-a-manger.

DECLARATOR

Fowler’s Ales [Prestoungrange] Limited wishes it to be known to all it may concern that their enterprise is established in Prestonpans to brew real ales that Honour the Memory of John Fowler & Co. that traded in the town employing hundreds of families from 1745 till 1962 – when having been acquired by United Caledonian its town brewery was closed with major job losses. John Fowler & Co. was later liquidated as a company in 1969.

Today’s successor enterprise to United Caledonian still holds three Registered Marks using that original Fowler’s name: Wee Heavy [1979], Twelve Guinea Wee Heavy Strong Ale [1985] and 90/- Pale Ale [1996]. Fowler’s Ales [Prestoungrange] Limited does not brew any ales of these strengths or characteristics or purport in any way whatever to be associated with these ales but has specifically asked The Prestoungrange Gothenburg to carry them in its bars as demand permits and supply may allow.

None of the real ales brewed by Fowler’s Ales [Prestoungrange] Limited use any original John Fowler & Co. recipes. Fowler’s Ales [Prestoungrange] Limited makes no claim that it is the reincarnation of that original company that ceased trading in 1962 and was then liquidated in 1969, or that it has any rights to any of those assets that were disposed howsoever after its acquisition by United Caledonian.

Fowler’s Ales [Prestoungrange] Limited shareholders and directors are wholly committed to brew real ales in the town in support of its Arts Festival and to embrace The Gothenburg Principles of 1908 which help to fund that Arts Festival’s charitable work.

Let These Facts Be Known to All It May Concern

*

Sworn by The Directors of Fowler’s Ales [Prestoungrange] Limited

***Before us: Bailie in these Baronial Courts of Prestoungrange & Dolphinstoun
This Eighth Day of May in the Year Two Thousand and Four***

FINDINGS OF THE BARONS COURTS

In Fact:

THAT the Head Brewer and directors of Fowler's Ales [Prestoungrange] had done all that they reasonably could have been expected to do, provided they were intent upon Honouring John Fowler and Company, which seemed to these Courts to be a most worthy purpose.

THAT nonetheless three from five thousand local inhabitants had been found who had given testimony that they were 'some little confused' because they had not heard or listened to the communications made to all including those of the Town Crier on the seventh day of May.

In Law:

THAT there was no clear basis in law to hold the Head Brewer liable for the little confusion that had arisen notwithstanding the erroneous statement made before the Company was established by the Project Director of the Arts Festival which was not the declared corporate purpose of Fowler's Ales [Prestoungrange] except permission might be sought from the registered holders of the Fowler's Wee Heavy Marks concerned.

HELD:

THAT the said Defender ought to be descerned and ordained to make wholly and absolutely certain that no such confusion may again occur in the future even amongst single individuals and should make proper yet token restitution by payment of amerciamendis three times to the Scottish Charity leading the activities to Honour '*The Original John Fowler & Co.*' – once for each reported confusion and offence together making a total sum of 90/- [being two of 40/- and one of 10/-] together with which the Head Brewer shall be set in the stocks for nine minutes of daylight time in the expectation that such will be sufficient time to help him and all others who thus behold him to reflect upon the most great and proper need to avoid all such Confusion now and for all time.



These 30/- and three 40 pence [120 pence = 10/-] Scots coins issued by Charles I of Scotland were paid as amerciamendis or fines after Judgements at the last Public Sitting of a feudal Baron's Court of Civil and Criminal Justice in Scotland held at the Caput of the Baronies of Prestoungrange and Dolphinstoun being The Prestoungrange Gothenburg on July 27th 2004; 40/- being the maximum fine that the Courts were authorised to make under the Heritable Jurisdictions [Scotland] Act 1746



These stocks were publicly used to punish miscreants in the last rendition of Civil and Criminal Justice by a feudal Baron's Court in Scotland following Judgements delivered at the Barons Courts of Prestoungrange and Dolphinstoun at the Caput of their baronies being The Prestoungrange Gothenburg on July 27th 2004

[E II. 53. 2004 P&D. 10 B] COMPLAINS this twenty sixth day of July to the Clerk at the Caput Baroniae by the Keeper of the Fortalice: **THAT** in the construction between March 1st and July 1st 2004 of agreed additional facilities for The Caput of the Baronies being The Prestoungrange Gothenburg William Robertson as Chief Builder neglected to provide gas supplies of 28ml, three phase electricity and triple window glazing being the necessary specifications, thereby causing delays in the granting of the Full Licence for the establishment to provide food and beverages for those dwelling on the baronial ancient Lands and Crown Baronies.

THE DEFENDER answered the Complains:

1. THAT the reason why the required supplies of gas and of electricity were not in place by the appropriate dates was that it was unclear until a late stage in the engineering specifications for the kitchens and the lift that were being installed what the precise requirements would be [i.e. 28ml rather than 22ml and three phase not two phase respectively] and when they did become apparent the only sub-contractors that were able to accomplish the additional work were not able to provide timeous service.
2. THAT in respect of the installation of triple glazing the Defendant asserts that he had held consultations with experts in respect of noise transference through glass and had been privately assured that two was as good as three and so had installed double not triple.

HELD:

THAT the said Defender ought to have taken proper steps to make contingency plans in respect of such eventualities arising re gas and electricity, and the inability of sub-contractors to make timeous amends, but he failed so to do thereby occasioning most considerable delays in the receipt of the Full Licence and accompanying inconvenience to those dwelling on the ancient Lands and Crown Baronies; and that the Complains in respect of gas and electricity be Upheld and the Defender should make restitution by payment of amerciamentis of 60 pence on each Complains, a total of ten shillings or 120 pence Scots;

THAT the said Defender had knowingly installed double glazing since it was more convenient so to do knowing that the specification from the Planning Requirements was for triple glazing and that the Defender had not taken proper steps to ensure expert written evidence was provided in respect of the adequacy of double glazing to meet the noise reduction requirements; and that these shortcomings could have led to most considerable inconvenience to neighbours on Redburn Road and had clearly led to delays in the granting of the Full Licence for the establishment at The Prestoungrange Gothenburg; and that the Complains in respect of triple glazing be Upheld and he should make restitution by payment of amerciamentis of thirty shillings Scots.

[E II. 53. 2004 P&D. 10 C] COMPLAINS this twenty sixth day of July to the Clerk at the Caput Baroniae by the Montjoye: **THAT** in the conduct of the artistic endeavours necessary to create and murals and other works of public art for The Prestoungrange Arts Festival during the twelve months period ending July 1st 2004 Andrew Crummy, Lead Muralist and Convenor of the Murals Action Group has demonstrated a cavalier attitude towards the timing of his arrival at properly convened meetings to the detriment of the proper conduct of such meetings and to inconvenience in respect of luncheon and child minding arrangements of others participating in such meetings.

THE DEFENDER answered the Complains as follows:

1. THAT he admitted that his tardiness had caused the inconvenience indicated and that it was appropriate for the Montjoye on behalf of all concerned to call for him to ameliorate the situation in the future.

HELD:

THAT the said Defender ought in respect of the Complains received to be committed to the stocks for a period of five minutes during daylight hours to contemplate in what manner he might in future behave.

THAT if the Baron Sergeand shall be notified that such tardiness is not most substantially ameliorated in the future then the Defendant shall on future occasions when found to have thus offended be placed in the stocks for 30 minutes during daylight hours.

[E II. 53. 2004 P&D. 10 D] COMPLAINS this twenty sixth day of July to the Clerk at the Caput Baroniae by The Courts' Horticulturis: THAT in the normal conduct of his activities for The Prestoungrange Arts Festival Steven Wilson demonstrated more interest in Jazz on Sunday and TULSA: The Bagpipe Opera than in the safe keeping of geraniums especially selected and reared for public display on the occasion of the visit by Her Majesty's Lord Lieutenant for East Lothian, Garth Morrison CBE, to The Prestoungrange Gothenburg being the Caput of the Crown Baronies; which geraniums he wantonly destroyed.

THE DEFENDER answered the Complains:

1. THAT whilst he admitted that the geraniums had been destroyed and that he alone have responsibility for their demise, he had no notion of their ceremonial significance or of the nurturing that Horticulturis had given to them; and further that the destruction thereof was not wanton but more of a manner accidental.

HELD:

THAT the said Defender ought to demonstrate more respect at all times for the significance of the work of Horticulturis since the seasons during which he can make a grand display are circumscribed by the climatic conditions of the area and Jazz on Sunday and any other similar divertimento can be conducted indoors regardless of the weather;

THAT the visit by the Senior Representative in East Lothian of the Barons Sovereign Lord, HM The Queen, was an occasion that had required the maximum and optimum display of geraniums and that any careless or accidental actions by the Defendant were not acceptable although the Courts held that his actions had not been wanton;

UPHELD the Complains and order that the offender be placed in the stocks for one minute in respect of each geranium destroyed subject to a minimum of three minutes of daylight hours.

[E II. 53. 2004 P&D. 10 E] COMPLAINS this twenty sixth day of July to the Clerk at the Caput Baroniae by The Dempster: THAT in the completion of the contract work for the soft furnishings of the Lord Mayor's Bar at The Prestoungrange Gothenburg so that a

celebration of the birthday of The Lady Prestoungrange could be held on April 1st 2004, Ken Hart failed to provide all the curtaining required for the decent and private conduct of the celebrations vis. he supplied only two pairs of the three pairs of curtains necessary.

THE DEFENDER answered the Complains as follows:

1. THAT he admits that the full complement of curtains required was not supplied timeously as had been contracted and agree.
2. THAT he had in his turn been disadvantaged by his suppliers and had personally held back on delivery and installation in order to ensure that proper fire-proofing of the fabric to the required specifications had been undertaken, these procedures being entirely responsible for the failure stated in the Complains.

HELD:

THAT the said Defender had offered a worthy but insufficient explanation of his failure which but, for the good grace and forgiving nature of The Lady Prestoungrange, could have resulted in severe repercussions for the Barons of Prestoungrange and of Dolphinstoun and their entire Courts and Clans;

THAT the celebration of such a birthday at The Prestoungrange Gothenburg in the Lord Mayor's Bar was a unique occasion that had required the optimum installation of soft furnishings and that steps to obviate any such outcome as occurred should have been taken well beforehand notwithstanding the explanation of the circumstances which eventuated;

Notwithstanding that the celebration was an acclaimed success, the Courts upheld the Complains and ordered that the offender pay amerciamentis of 40 pence Scots for each of the two curtains not hanging on April 1st 2004, being a total of 80 pence Scots.