

Barons Courts of Prestoungrange & Dolphinstoun

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

JUDGEMENT AND DECLARATOR

[E II. 53. 2004 P&D. 05] Collection of the Impost of 2d Scotch per pint of Ale brewed and sold by Fowler’s Ales [Prestoungrange] on the baronial lands as enacted by Parliament in 1753, the proceeds to go for the benefit of the Prestoungrange Arts Festival:

UPON THE PETITION of the Procurator Fiscal on behalf of those owing feu duties that the closure in 1962 of the brewery of John Fowler & Company led to most considerable diminution of the quality of social and economic life in the baronies and that the heirs to John Fowler & Company as brewers of real ales in the baronies being Fowler’s Ales [Prestoungrange] should make vicarious restitution under the provisions of the Impost enacted by Parliament in 1753 by making a gift aided donation of 2d Scotch or 1 new penny per pint brewed by their micro-brewery at The Prestoungrange Gothenburg and sold on the baronial lands; and any and all others who may in future come to brew and sell on these baronial lands should also be required to pay the same Impost; viz:

1. THAT all the shares in John Fowler & Company were acquired by Northern Breweries on August 19th 1960, being a company within the United Caledonian Group. The assets of the Company at year ending September 1961 were valued at £890,540 including some 40 public houses across central Scotland, two small hotels and a fleet of 25 lorries. The public houses included the Fa’side Inn in Wallyford, The Johnnie Cope, Queen’s Arms and Railway Tavern in Prestonpans and the Dolphin in Whitecraig.
2. THAT in Autumn 1961 *United News* stated the new owner’s policy as: ‘to be successful the Group aims to develop its local business and its national brands side by side. Neither is complete without the other.’
3. THAT giving back-word almost immediately, in May 1962 the brewery was closed and all machinery and plant was transferred elsewhere.
4. THAT on March 5th 1969 A Declaration of Solvency for voluntary winding up was entered in Glasgow by John Fowler & Company and a Liquidator appointed; and then on 14th October 1969 an Extraordinary Resolution was passed: ‘that the books and papers of the Company be handed over to Tennent Caledonian Brewers Limited and that they be retained by them for a period of two years and thereafter be destroyed’.
5. THAT following this Resolution, “Fowler’s”, concluded Anderson writing the definitive analytical study in 2002, in *Fowler’s Brewery – Famous Since ’45*, “was no more”.
6. THAT the publication of Anderson’s analysis of the destruction of the capacity of Prestonpans to continue brewing its own ales with its heritage dating back some 217 years, and the detailing of the jobs lost and its impact on the community at large as recounted to Anderson by those who formerly worked at the brewery led the Prestoungrange Arts Festival to enter into negotiations nationwide with members of CAMRA and microbrewers to ascertain whether real ales that honour the memory of John Fowler & Company could once again be brewed in the town after an absence of forty two years. If this was possible it would bring some local employment,

but most significantly it would assist in the continuing and self-sustaining restoration of community self esteem and economic regeneration thereby.

- 7.** THAT the response was overwhelmingly enthusiastic and the services of two local microbrewers from East Lothian were enlisted, planning consents were obtained and a microbrewery established at The Prestoungrange Gothenburg at the rear of its fine Edwardian Macintosh style arts-and-craft designed 'James Fewell Bar' by a new company established solely for the purpose and known as Fowler's Ales [Prestoungrange] Limited.
- 8.** THAT to develop and sustain social inclusion and the educational goals of the Prestoungrange Arts Festival a Fowler's School of Brewing has also been established to teach small BrewSets how to brew real ales and those who do so become Fowler's Fellows and Companions on successful completion of the brews. The first BrewSet included the Captain of Scotland's International Rugby Union XV, a former scholar from Preston Lodge School and the Provost of East Lothian. The initiative and the ales brewed have been very well received in the local East Lothian press and *The Glasgow Herald*.
- 9.** THAT the Register of Marks indicates that the contemporary successor enterprise to Northern Breweries which so blatantly gave back-word and closed the brewery in Prestonpans in May 1962, BrewBrands SA of Luxembourg being a subsidiary of Interbrew of Leuven in Belgium and the current owners *inter alia* of Tennent Caledonian, still holds three Marks using the name Fowler's in association with Wee Heavy and 90/- Pale Ale. Fowler's Ales [Prestoungrange] has studiously avoided any infringement of these three Marks but in the absolute knowledge that the original John Fowler and Company was "no more", legally liquidated, and its books and papers resolved by its shareholders and the liquidator to be destroyed by Tennent Caledonian two years after 14th October 1969, has made comprehensive use of its own Fowler's name – taken to honour the heritage so wantonly destroyed.
- 10.** THAT it is accordingly to be hoped and to be expected that in the years to come, Fowler's Ales [Prestoungrange] will benefit from the brewing and selling of its own real ales in honour of John Fowler & Company and it thereby becomes necessary and proper once again to seek the benefit for the community of the Impost enacted by Parliament in 1753 being 2d Scotch or 1 new penny per pint brewed and sold in the baronial lands from that Company; but in unlike manner because Tennent Caledonian caused John Fowler & Company to be "no more" no similar recourse can be sought there not even for the accruals seemingly arising for the community from the Impost not paid by John Fowler & Company which certainly would have benefited Northern Breweries its heirs and successors.
- 11.** THAT in this matter it is now the case that circumstance has already smiled particularly on the community in the baronial lands because the directors of Fowler's Ales [Prestoungrange] have committed to the implementation of the 1908 Gothenburg Principles in their trading by Declarator Sworn before these Courts on the eighth day of May 2004 after meeting the demands of the loan stock and a 5% pa cumulative return on their capital employed.
- 12.** THAT in addition to this Fowler's Ales [Prestoungrange] have gladly agreed to enter into a Solemn and Binding Agreement to pay the Impost of 1753 from the eighth day of May 2004 without further recourse by these Courts save that it make Judgement and Declarator that they and all who may in future brew and sell ales on these baronial lands shall all be required to meet that said Impost and to see its earnings made available to the Prestoungrange Arts Festival through the charitable processes of these Courts.

HELD:

THAT our Declarator and Judgement be made this thirteenth day of July 2004: That the Provisions of the Impost enacted by Parliament in 1753 of 2d Scotch/ 1 new penny per pint of ale brewed and sold on these baronial lands shall be required of Fowler's Ales [Prestoungrange] with effect from the eighth day of May 2004; and of any and all others who shall in the future brew and sell ales on these our baronial lands: all proceeds going for the purposes of the Prestoungrange Arts Festival through the charitable institutions of these our Barons Courts.

THAT no recourse for accrued arrears in respect of the Impost should be sought howsoever from the successors to the three Marks using the name Fowler's owned by BrewBrands SA of Luxembourg and brewed from time to time by Tennent Caledonian and others under their licence on the grounds that John Fowler & Company is "no more" and that no records of its existence were legally held by Tennent Caledonian after October 16th 1971; but that a donation to the Prestoungrange Arts Festival in the manner espoused by Fowler's Ales [Prestoungrange] would be most welcomed and to be encouraged as a gesture of goodwill and a token of respect for the local initiative in these baronial lands to re-establish its brewing heritage in honour of John Fowler & Company.

A. D. 1753, the heritors, and some of the feuars, applied to Parliament, and obtained an act for imposing a duty of two pennies Scotch on each Scotch pint of ale brewed, brought into, and vended in the parish; the money arising from which was to be applied for repayment of a sum to be advanced for purchasing a charity work house, for conveying soft water to the town of Prestonpans, and for repairing Morison's Haven. For the first mentioned purpose a house was purchased at Preston, with a small garden; but, after a trial of a few years, the scheme not answering, it was given up. Besides the utter aversion which many in actual want had against entering into the house, the expence was found to be greater than when the pensioners had a stated allowance given to them, and were permitted to spend it after their own way. Since that time, the rent of the house and garden have made a part of the poor's fund.

[p. 76, Statistical Account of Prestonpans 1790]