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## SOME OLD-TIME BOOTLEGGERS

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WILLIAM RENWICK RIDDELL<sup>1</sup>

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The more we read of the older literature of our law, as of everything else, the more we are assured of the truth of the apothegm of the Wise King: "There is no new thing under the sun," of which the modern version reads: "There is a good deal of human nature in man."

The lover of the Common Law turns with delight to the perusal of the works, edited by such scholars as Maitland, Pollock, Holdsworth: and it is with interest that he sees the early doings corresponding not too remotely to those he sees or hears of in our own time.

The Bootlegger, now!

As is well known, it was the law in ancient time that each organization, corresponding to what we call a "municipality," was required to have from time to time an Assise of Bread, and an Assise of Ale-Assisa Panis, Assisa Cerevisiae—and that if they omitted, a fine might, and most probably would, be imposed by the Justices in Eyre on their next visit to the County. We here are concerned with drink, not meat. At the Assisa Cerevisiae was fixed the strength of the Beer to be sold and its price: and it was unlawful to sell drink—for sometimes wine was included—of weaker strength or at a higher price. At more than one time, indeed, Parliament found it necessary to interfere; e. g., in 1266, the Act 51 Hen. III, St. 1, directed the Brewers in Cities to sell two Gallons of Ale or Beer for a penny, and, out of the City, three or four.<sup>2</sup> This seems to have been the first general provision; previously, each part of the country could suit itself as to price, &c.

The regulations were not always satisfactory (when was the case different?). We read, for example, that at the Eyre of 1221, the Vill of Gloucester complained of the new Regulations: "formerly

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<sup>1</sup>Justice of Appeal, Toronto; Associate Editor of this Journal.

<sup>2</sup>See an article: "*The Food and Drink of an Englishman—by Statute,*" 18 Journal of Criminal Law and Criminology (Feb., 1928), pp. 527 sqq.

. . . the Castellans used to take throughout the Vill on the first day of brewing . . . 28 gallons of beer from a single brewing for two pence, and either pay the two pence down or give tallies, and so long as the woman (brewer) had a tally they could not have any more beer. But Thomas (de Rochfort, the new man) made them take two pence when he did not take beer and moreover took beer to the last day of selling just as on the first day when the beer was light-colored.<sup>3</sup>

Little, if any complaint seems to have been made as to any want of strength in the beer brewed by the Englishwomen—men did not brew in rural England, as a rule. It is of record that Pope Innocent, on an Englishman arguing before him and saying: "Holy Father, we teach in our Schools and it is the opinion of our Magistrates that prescription does not run against *jura episcopalia*," broke out: "Assuredly, you and your Magistrates had drunk too much of English beer, when you taught that."<sup>4</sup> I know of no more interesting records of the olden times than are to be found in a work all too little known: *Pleas of the Crown for the County of Gloucester, before the . . . Justices Itinerant . . . 1221*, edited by F. W. Maitland, London, 1884.

The official records here copied make it quite clear that the Holy Father was not unjust in his view of the potency of English beer: we read, over and over again of unfortunates being drowned falling from a boat into the Severn—such entries as the following are very

<sup>3</sup>This is taken from the work, "*Pleas of the Crown*," etc., mentioned in the Text, *infra*, p. 108, No. 459.

<sup>4</sup>*Op. cit.*, p. xii, note 1: the authority is Bracton himself.

#### NOTE

Old John Selden (1584-1654) of the Temple, a man of great and varied learning, or, as Lord Clarendon enthusiastically puts it, "of stupendous learning in all kinds and in all languages," knew all about Beer as about most other things, including Tythes and Syrian Goddesses: in his "*Table Talk*," of which the Society named after him have published a satisfactory edition, he tells us: "Dissentions in parliamt. may att length come to a good end, tho' first there bee a great deale of doe [this does *not* mean 'dough,' but 'ado'] & a great deale of noyce, wch madd folkes make: just as in Brewing of beer, there is a great deale of business in grinding the Malt, & that spoiles any man's clothes that comes neer it; then it must be mash'd, then comes a fellow in, & drinks of the Wort, & hee is drunke, then they keepe a huge quarter [in other words and in modern terminology 'they kick up an awful row'] when they carry it into the Cellar, & a Twelve month after tis delicate fine beer."

common: "Duo homines de Munstrewurthe submersi fuerunt de quodam batello; nullus malecreditur; Judicium-infortunium; precium batelli 8d. unde vicecomes respondeat" i. e., two men of Munsterworth were drowned off a certain boat; no one is suspected; Judgment-misfortune; price of boat eight pence, for which the Sheriff is to account (of course, as a Deodand). Sometimes the drowned man is found "in quodam stagno molendini," i. e., in a certain mill-pond: sometimes in a swamp, sometimes in other places. Then, too, there is an amazing number of falls from a horse—a mare, generally, be it said—and that not in racing for some in the highest positions even now occasionally fall from their steed when racing without suspicion of having indulged in too much beer. We have no few entries like this: "Willelmus de Aumundusbiria cecidit de quadam equa sua et pependit per stiveram ita quod obiit, Nullus inde male creditur. Judicium-infortunium: precium eque 5s unde Englehard de Ciconny respondeat"—i. e., William of Almondsbury fell from his mare and hung by the stirrup so that he died. No one is suspected: Judgment-misfortune: price of mare five shillings for which let Engelard (the former Sheriff) account. In another case, Matthew, son of Walter, "cecidit de equa sua in aquam et submersus est," and no one was suspected.

In addition to the shocking number of murders in which the offender was undiscovered we have many, in which both the criminal and the moving cause are known. The "cervisia," that is the ale-feast, was very common, and a very common occasion of violence. A "mesleta" or "litigatio," or "discordia," a quarrel or dispute would arise "ad cerevisiam," blows be exchanged and often death ensue: or "in reditu de cervisia," on the return from an ale, the drinkers would fall out; and some of them be killed—not always men, for not only did "meretrices" or "nebulatrices" become victims, but sometimes appears a pitiful story like this: "Johannes Gigant et Thomas filius Roberti fabri et Oxethrote fuerunt ad quandam cerevisiam apud Esselewurth, et in reditu suo de cervisia illa quedam femina scilicet Basilia filia Godfridi occisa et Johannes Gigant fugit pro morte illa," i. e., John the Giant and Thomas, son of Robert the smith and Oxthroat were at a certain ale at Elsworth, and on the way home from that ale, a certain woman was killed, namely, Basilia, daughter of Godfrey, and John the Giant fled for that death.

And hardly a Vill comes up to give an account of what rascality is going on in it but it has to report the sale "contra assisam" by one or more of beer or what they call "vinum," but which is almost certainly beer masquerading as the nobler liquor. Even the Clergy seem not to have been exempt from this "bootlegging" the Villate of Campedene has to report: "Henricus de Grete et Robertus clericus vendiderunt vina contra assisam . . ." Perhaps the particular Villate was more than usually law-breaking, as we find: "Assisa de latitudine pannorum non est servata . . ."

But the climax is reached when the Villate of Winchcombe comes before the Justices in Eyre: "Andreas Vinitarius et David Dunninge et omnes de Glou cestria vendiderunt vina contra assisam . . .," i. e., Andrew the wineman and David Dunning and everybody of Gloucester have sold wine contrary to the assise. Which is distinctly worse than anything that has so far been said of Windsor, Ontario!

Of course, for every violation of the assise, a fine had to be paid to the King.

The most interesting "bootlegging" case, however, that I have run across in the old Records is not to be found in this book, but in a publication of the Selden Society: *Year Books of Edward II . . . 6 Edward II, A. D. 1313 . . .*, London, 1927, pp. 19-22; *Smythe v. The Abbot of Praaux*. In an action of Replevin, the plaintiff claimed that the defendant had wrongfully taken his bullock: the Abbot justified the taking on the ground that it had been presented at the Leet of Toft Monks that the plaintiff "auoit brace ceruoyse et vendu en countre Lassise, par quei fust am—ereye a xij deners . . .," i. e., had brewed and sold beer contrary to the assise, for which, he had been amerced twelve pence: and that on non-payment the beast was seized to be sold to pay the fine. The plaintiff replied that he was not bound by the assise, because, while he lived within the Vill of Toft, he was not within the jurisdiction of the Abbot, and the Assise before the Abbot did not bind him: he was as indignant, no doubt, as were the Windsor bootleggers, the other day, when they were fired on in Canadian territory by Detroit Customs Officers. A prolonged course of litigation followed; the plaintiff craved and was awarded the aid of his alleged landlady, Joan, who had been the wife of William Roscelyn; and as she claimed under Robert of Mauley

and Hawise (Avice) his wife, they, too, were brought in; and the Abbot made default—and what happened in the long run is not made to appear. The “law’s delays” were very real in the 14th Century in England. Nous avons changé tout cela, i. e., some of “nous.”