

The Carysfort Committee & the Wine Gallon

1758

From:

Report from the Committee Appointed to Inquire into the Original Standards of Weights and Measures in this Kingdom, and to Consider the Laws relating thereto. [Carysfort Report.]

Reports from Committees of the House of Commons (1737-65), Vol II, pages 414, 415 & 432- 433.

In the 51st of Henry the 3rd, A.D. 1266, there is in the Statute Book what is called the Statute, intituled, *Assisa Panis et Cervisiae*; but it appears to be an Inspecimus and Exemplification of certain Ordinances of the Assize of Bread and Ale, and of the making of Money and Measures, made in the Times of the Progenitors of the King, (Henry the 3rd) sometime Kings of England, exemplified, because the King, in the first Year of his Reign (which was 1216) at his Parliament at *Westminster*, had confirmed all the Statutes and Ordinances made in the Times of his Progenitors. In Sect. the 3rd of the Exemplification, it is said, that by the consent of the whole Realm of *England*, the Measure of our Lord the King was made, that is to say, "That an English Penny, called the Sterling, round, without clipping, should weigh thirty-two Grains of Wheat, well-dried, and gathered out of the Middle of the Ear; and Twenty-pence to make an Ounce, twelve Ounces a Pound, eight Pounds a Gallon of Wine, and eight Gallons of Wine a Bushel of *London*, which is an eighth Part of a Quarter:" The Statute intituled, *An Ordinance of Measures*, the 31st of Edward the 1st, A.D. 1302, is a Repetition of the exact Words contained in the Exemplification of the 51st of *Henry* the 3rd aforesaid. The Standard, as then made, appears to have been taken from Grains of Wheat, dried, and gathered from the Middle of the Ear.-----But if those Grains were meant to be the smallest Parts of the Standard Weight then made, and the lowest Denomination from whence others were to rise progressively, it is evident, that nothing could be more uncertain; for such Grains must naturally differ, not only in the same Counties, but in the same Field, as the Ear of Wheat happened to be

gathered; but if by this Statute, the lowest Part of the Standard Weight was intended to be an *English* Penny, and the Grains of Wheat were mentioned only as the Measure from which the Standard Penny was first established, then the *English* Pennyweight, called the Sterling, is the proper Original of all the Weights and Measures established by this Law. The Progression from the Penny to the Pound, corresponds exactly with the Weight, since called the Troy Weight: And the Measure of Wine begins at the 8 lb. Weight, where the Weight is dropt, as the strictly liquid Measure is, at the Gallon; for eight Gallons of Wine are made a Bushel of *London*, which is said to be the eighth Part of a Quarter, referring, without Doubt, to the Quarter of *London* mentioned in *Magna Charta*.

...

Your Committee find, in Chap. 5 of this Statute [31st of *Edw.* the 3rd, A.D. 1357, Stat. 1st] a Reference to some former Act, whereby it was established, That a Ton of Wine ought to contain a certain Number of Gallons, according to the old Gauge, which Statute is required to be holden and kept in all Points; but they have not been able to discover any such former Statute as is here referred to, nor any other Standard Measure for Wine than what is mentioned before, *viz.*, the 31st of *Edw.* the first whereby a Gallon is to consist of eight Pounds, each Pound twelve ounces, and each Ounce twenty Pennyweights; but your Committee find, amongst the Records in the Tower of London of the 21st Year of this King, *Edw.* the 3rd, No. 21, mentioned likewise in *Cotton's* Abridgement of the Records, Page 63, a Complaint, that the Ton of Wine did not bear its right Measure: And the King is Prayed, that the Ton might be gauged by the Verge, according to the Standard of *England*; but the King not consenting to this petition, they are unable to explain this ancient Standard of *England* farther than that it appears by a subsequent Statute of the 2nd of *Henry* the 6th, Chap. 11, that the ancient Standard of the Ton of Wine ought to contain 252 Gallons.

...

Your committee, observing that by the evidence of the Gaugers, the Ale and Beer Gallon contained 282 cubical inches; and finding, that by all the statutes down to

the 5th of Queen Anne, wherever Wine Measure is mentioned, the legal standard Gallon of the Exchequer is referred to or understood, endeavoured to discover for what Reason the Wine Gallon was reduced 51 cubical Inches, *viz.*, from 282 to 231 : And upon Inquiry of the Commissioners of Excise, they communicated to your Committee Copies from their Books of a Memorial from the Commissioners of Excise, and Hearth Money to the Commissioners of the Treasury, dated the 15th of *May* 1688, setting forth, that all Beer and Ale had been gauged at 282 cubical Inches for the Gallon, and other exciseable Liquors according to the supposed Wine Gallon at 231 cubical Inches; but being informed that the true Standard Wine Gallon ought to contain only 224 cubical inches, they had applied to the Auditor and Chamberlains of the Exchequer to examine the Standard Measures in their Custody; and, upon Examination, they found three Standard Gallons, one of *Henry* the 7th, and two of 1601, which an able Artist employed by them had found to contain each 272 cubical Inches; that finding no Wine Gallon at the Exchequer, they had applied to the *Guild-Hall* of the City of *London*, where they were informed the true standard of the Wine Gallon was: And they had found, by the said Artist, that the same contained 224 cubical Inches only, and they further represent, that the Gallons of other Parts of the Kingdom used for Wine had been made, and taken from the said *Guild-Hall* Gallon.

In consequence of this Memorial, the Lords of the Treasury, the 21st of *May* 1688, direct an Authority to be drawn for gauging, according to the *Guild-Hall* Gallon, which was accordingly done; but it does not appear that such Authority was ever signed.

After this Direction, it appears, that several Merchants applied, that his Majesty would be pleased to empower the Merchants to sell as they were gauged, that is, according to 224 cubical Inches to the Gallon. And the Commissioners of the Customs not following the new proposed Method of gauging, upon the 12th of *June* 1688, Sir Thomas Powys his Opinion is taken upon it, in which he says, That having considered the Proposal of the Commissioners of Excise, concerning the gauging of exciseable Liquors, and perused the Acts of Parliament relating thereto, he cannot advise prosecuting the Proposal, in regard of the Hazard attending it: For if the Usage

of gauging is departed from, he knows not where we shall be, because Resort cannot be had to the Exchequer; for a Standard to which, almost all the Statutes refer; for there is none there but what the King would be vastly a Looser by.¹

Secondly, *Guild-Hall* cannot be resorted to for a Standard; for no Law or Statute refers to it.

He then, in the third Place, observes, that by the ancient Statutes, eight *lb.* made a Gallon; and the 12th of *Henry* the 7th, Chap. v. mentions the Pounds to be Pounds of Wheat; and as there was to be one Measure throughout the Kingdom, which could not be unless it was adjusted to some one Thing, and that seeming to be intended Wheat; therefore he did not know how 231 cubical inches came to be taken up, but did not think it safe to depart from Usage; and thereupon the Proposal dropt: But your Committee have been informed, that in 1700 there was still a Dispute, in respect to the contents of the Wine Gallon, and that an Information of *Devenerunt*² was tried in the Court of Exchequer, between the King's Attorney General and one *Thomas Barker*, for the Duty of 1417 Gallons of Wine imported from *Alicant*, in *Spain*; a Manuscript Account of that Trial has been communicated to your Committee; the substance of which is as follows: The Defendant, *Barker*, having imported in January 1699, sixty Butts of *Alicant* Wine, he paid the Duty for them as sixty Butts; the Officers of the Customs contended that, as by Law, the Pipe, or Butt of Wine, was to contain 126 Gallons; and these Butts contained more by the Gauge, as they said, than the Number of Gallons. The Information was brought to recover the Duty for that supposed Overplus. The Evidence, on the Part of the King, after shewing, that by the Statute of the 2nd of *Henry* the 6th, Chap. 11, confirmed by subsequent Laws, the Tun of Wine was to contain 252 Gallons, and the Pipe or Butt 126, was, that Mr. *Leader*, the City Gauger, Mr. *Flamstead*, and several other Artists, skilled in gauging, all agreed, that a Wine Gallon ought to contain 231 cubical Inches, and no more; that there was such a Gallon, containing so many cubical Inches, kept from Time out of Mind at *Guild-Hall*, as a Standard of that Measure; that the Wine Gallon was less than the Ale Gallon or Corn Gallon, the Ale Gallon being of 282

cubical Inches, and the Corn 272; and therefore reckoning the Wine Gallon at 231 cubical Inches, the Defendant had imported a greater Number of Butts at 126 such Gallons each than he had paid Duty for.

On the Part of the Defendant, it was insisted, that the Laws having directed a Standard Gallon to be kept in the Treasury, and there being one there, which, on measuring, was found to contain 282 cubical Inches, that Gallon was the Standard for the Kingdom, and not the *Guild-Hall* Gallon; and by that Measure the Defendant had paid the full Duty: And it was proved, by a great number of Merchants, Masters of Ships, and Vintners, who had been in Business forty, thirty, and twenty Years, that the Butts and Hogsheads which came from *Spain* had always been of the same Contents, viz., from 140 to 150 Gallons and upwards.

Upon this trial, which lasted about five Hours, it was agreed by the Attorney General to withdraw a Juror;³ and he was of Opinion, that no further Proceeding should be had in the Matter, but that it should be left to be remedied by Parliament, and accordingly Sir *Edward Northy*, in 1703, having perused a State of all the Laws relative to this Subject, advised, that as the contents of a Wine Gallon was uncertain, being to be fixed by Wheat Corns, an Application should be made to Parliament, to have a Standard of a Gallon made. These Proceedings produced the Act of the 5th of *Queen Anne*, whereby the Wine Gallon, now in the receipt of the Exchequer, was made the legal Wine Measure and the Standard.

Your Committee cannot help observing the Confusion that has arose in this Matter, by departing from the Exchequer legal Standards, and resorting to a Measure at the *Guild-Hall* of *London*, which was not made the Standard by any Law whatsoever: And this *Guild-Hall* Measure, which the Gaugers, in 1688, said did contain only 224 cubical Inches, and those examined in the Exchequer, in 1703, said contained 231 cubical Inches; and by both is agreed to be an old Measure, but less than the Exchequer Gallon, seems to your Committee to have been probably the same mentioned in the Statute of the 13th of *Elizabeth* 1571, which recites, That the Herring Fishers had packed their Herrings in Barrels of thirty-two Gallons, Wine Measure, agreeable to the Brass Measure delivered out of the Exchequer to the City of

London, but that Gallon Measure did not contain thirty-two, but about twenty-eight Gallons.⁴

Notes

1. The King would be a loser because the duty on wine was assessed by the gallon. A gallon of 282 cubic inches instead of 231 cubic inches would reduce the King's revenue from imported "exciseable Liquors" by nearly 20%.
2. Devenerunt concerns the King getting what is due to him, in this case the supposed shortfall in duty. The word is usually encountered in cases concerning real property.
3. "Withdrawing a juror" is a step still used to bring a trial to a halt, since without twelve impaneled jurors a trial cannot continue. "The term describes a fiction to which a court may resort when it appears that owing to some accident or surprise, defect of proof, unexpected or difficult question of law, or like reason, a trial cannot proceed without injustice to a party" (McKinne and Michie, *Encyclopedia of Pleading and Practice*, 1901).
4. See www.sizes.com/units/barrel_herring.htm