

“An Act for the Encouragement of such Persons, as will undertake to build Watermills,” *Acts of Assembly Passed by the Province of Maryland, from 1692, to 1715* (London: John Baskett, 1723), pp. 41-44

[spellings modernized]

Daily experience shows, that the want of water mills is the true cause that husbandry¹ in tilling the ground, and for sowing of wheat and barley, is but coldly prosecuted,² though the advantage thereby in raising the stock of neat cattle be great; and forasmuch as most part of the places fit for setting up water mills are already in the hands of persons under age, or unable to be at the charge of building a water mill; or else, such as are willfully obstinate in forbidding and hindering such persons as would purchase the said places fit for building water mills, and set them up, to the increase of our trade and navigation, much to the public damage of the province;ⁱ Be it enacted by the Queen’s most Excellent Majesty, by and with the advice and consent of Her Majesty’s Governor, Council, and Assembly of this province, and the authority of the same, that if any person or persons, from and after the publication hereof, shall desire to set up a water mill upon any land next adjoining to any run³ of water within the province, not being the proper possession or freehold⁴ of such person or persons, nor leased to them, to the intent thereon to set a water mill, they shall purchase a writ out of chancery⁵ directed to the sheriff of the county where such land lies, requiring him, by the oath of twelve men of his county, to enquire what damage it would be to Her Majesty, or others, to have a mill set up in such place, as aforesaid.ⁱⁱ The form of the writ follows:

Anne,⁶ by the grace of God, of England, Scotland, France, and Ireland, Queen, Defender of the Faith, &c. To the sheriff of ____ County, greeting: We command you, that by the oaths of twelve honest and lawful men of the county, by whom the truth of the matter may be better known, you diligently enquire if it to be the damage of Us, or others, if We grant ____ of ____ County, twenty acres of land, lying at ____ in the county aforesaid; (viz.) ten acres on the one side [of] such run, and ten acres on the other side of such run of water, together with liberty⁷ to take, fell, cut down, and carry away, either by land or water, any wood or timber⁸ fit for building a mill, other than timber fit to split into

¹ Husbandry is the process of taking care of all domestic cares, especially farming and agriculture.

Animal husbandry is a specific type related to livestock.

² That is, because there aren’t enough watermills, farmers are not actively growing enough crops, since there is no way to have them ground to flour.

³ A run is a small stream – it is most familiar to Americans immortalized in the Civil War Battle of Bull Run, fought across a creek valley.

⁴ Freehold is the legal possession of a *fee*, land or an estate, which is held for life in either *fee simple*, freely inheritable, or *fee tail*, where inheritance is limited to a certain class of heirs.

⁵ A “writ out of chancery” is a legal document obtained from the financial branch of the government.

⁶ Queen Anne, who ruled England from 1702-1714.

⁷ Literally “freedom” – that is, the right.

⁸ Although largely interchangeable, the distinction is that *wood* is the tree as it stands in the forest, whereas it becomes *timber* once it is felled for building material. In British English the term timber is still used for building material (like 2x4s), while in American English, timber has become the felled tree which

clapboards,⁹ upon any the lands next adjoining to the said twenty acres of land lying on each side of the said run of water, at ____ aforesaid, in the county aforesaid: And if it be to the damage and prejudice¹⁰ of Us, or others, then to what damage and prejudice of Us, and to what damage and prejudice of others, and of whom, and in what manner, and how, and of what value they are by the year, according to the true value thereof now, before any other improvement of the said twenty acres of land; and who are the present possessors of the said twenty acres of land; and what lands and tenements¹¹ remain in the present possessor over the said twenty acres; and if the said land remaining to the present possessors, over the said twenty acres, will suffice to uphold their manor, (viz.) the sixth part of their manor allotted them by the conditions of plantations for the demesne¹² as before the alienation, so as the county by the alienation aforesaid, in default of the present possession, more than was wont, be not charged and grieved;¹³ and the inquisition thereupon, openly and distinctly made to us in our chancery, under the seal, and the seals of them by whom it was made, without delay, send, &c. ⁱⁱⁱ

Upon return of which writ, in the case of the person or persons, who by the said inquest shall be found to be the true owners and possessors of the land fit to build a mill upon, shall refuse to build a mill thereon within one year, from that day to be computed and reckoned, and give security the same building to prosecute and finish within two years after the said beginning or laying the foundation,^{iv} as aforesaid, for the public good of the province; it shall and may be lawful for her said Majesty, her heirs or successors, or for her chief governor here for the time being, from time to time, to grant any such twenty acres of land, fit to build a water mill upon, as aforesaid, together with free egress and regress¹⁴ to the said watermill, either by land through any man's land next adjoining, or else by water; together with liberty to fell any timber for building the said water mill, other than board timber fit to split or cleave into clapboards, for any time or term not exceeding eighty years then next to come, under the yearly rent of the land, then, by the oath of twelve men, by virtue of the writ aforesaid returned, to be paid to the owner of the said land so found and returned, as aforesaid:^v The grant from her

is then turned into *lumber*. Hence, an American goes to the lumber yard, while the Brit goes to the timber merchant to buy wood to build a house.

⁹ Clapboards are beveled long boards used for siding.

¹⁰ “Damage and prejudice” is a legal phrase referring to injury resulting from some judgment or action of another in disregard of one's rights and especially a detriment to one's legal rights or claims. So here the sheriff is asked to make sure no one else has claim on the land.

¹¹ “Lands” refers to specific uses of the land, such as orchards, pastures, fields, and so forth; “tenements” are dwellings.

¹² Pronounced “d’main” or “d’mean” (often “domain”) – the feudal term for the land held by the lord and only worked by the tenants; roughly equivalent to “manor” or “estate,” although local variations did exist.

¹³ This clause, from “(Viz.)” [which means, “namely”] explains that if the 20 acres that the writ is trying to establish for the mill is owned by someone else, then as long as it is no more than one-sixth part of their whole manor or estate, then the 20 acres can be taken from them and given to the miller without compensation.

¹⁴ *Egress* and *regress* refer to “going to” and “coming back home from” the mill.

Majesty... shall be good and available in law to the grantee... for any term of years not exceeding eighty years against all persons whatsoever: any law, customs, or usage heretofore had, made, or used within this province, to the contrary notwithstanding.

Provided always, that before any person or persons whatsoever shall have such grant to build a water mill, as aforesaid, he or they shall enter into bond to her said Majesty, with two sufficient sureties,¹⁵ in the sum of fifty thousand pounds of tobacco, with condition to begin to build the said water mill within one year then next to come, and the building to prosecute and finish within two years after such a beginning.^{vi}

[the Act also retroactively allowed existing mills the same 20-acres and up to 80-year lease]

And be it enacted... that any person or persons, that have already built, or that shall hereafter build any water mills, which are, or that hereafter shall be broke, or gone to Decay... and shall not, within two years after... cause the same to be new built, repaired, and finished, it may be lawful for the real owner or owners of such land, to such person or persons so granted... to reenter upon such land. [If the renters refused to allow the owners onto the land,] the owner or owners shall and may recover his right to the same by ejectment, or otherwise, as law directs.^{vii}

And for prevention of he abuse frequently committed by person keeping water mills, by taking excessive toll; be it therefore enacted [that] no master, owner, miller, or other person, properly belonging to, or otherwise owning any mill within this province, shall ask, demand, or receive any grinding any quantity or quantities of *Indian* corn or wheat whatsoever, above the sixth part of every bushel of *Indian* corn, and eighth part of every bushel of wheat, by him or them so ground... upon penalty and forfeiture of one thousand pounds of tobacco; one half to the use of her Majesty...for the support of government, and the other half to him or them that shall inform or sue for the same.^{viii}

[Note, any mills that were currently under construction at the time were grandfathered under earlier statutes]

Passed 3 October 1704

Revised 16 May 1715

¹⁵ *Sureties* are guarantees; that is, a sort of collateral for finishing the project.

Teachers' Notes

i It would appear that at this time for some reason the Colony of Maryland felt that its mill building was being impeded. The reference to underage owners is unclear but may refer to hereditary land ownership by minors back in England.

ii These provisions read very much like a legal system of a medieval English town. The colonial administration had replicated the medieval Chancery system, and preserved a trial-like ‘jury’ of 12 men (a tradition deriving from the Anglo-Scandinavian laws from the early Middle Ages) that would swear an oath that the potential mill-owner was who he said he was, was trustworthy and of good repute, and sound financial status. Similarly, notice that the writ is delivered to the sheriff, a position that derived from “shire reeve” or what we might call the county official. In the Middle Ages, the sheriff was the agent for the Crown in the counties, or shires (as in Oxfordshire), of England, and often possessed a great deal of autonomous authority. In addition, he was the man in charge of the collection of taxes and rents for the King, although often he gained a considerable income by demanding slightly higher taxes than were actually being sent back to London. The Robin Hood legend plays off this issue of power in that the Sheriff of Nottingham had routinely exceeded his authority, giving one more reason for Robin and his Merry Men to steal from the rich to give to the poor.

iii The writ to the sheriff is interesting on a number of levels. The writ is delivered to the sheriff so that he may find out whether it would be a disadvantage to the Queen to have a mill built where the person has requested one. This presumes that the mill is a public good, but that it may in some way cause the Queen to lose rents or cause other difficulties. The sheriff is to discover the legal standing of the person making the request to build a mill as well as the status of the land upon which the mill will sit. It is clear that the land was not all virgin territory, as the writ expressly asks the Sheriff to find out who owns the land – that is, the European who owns it, as Amerindian land rights were virtually non-existent at this time – and make sure that they are not unduly impacted by having 20 acres of their land given over to build a mill. This implies that the statute was championing an infill mentality, placing mills in settled or partially-settled lands as a Crown strategy.

First, that it grants 10 acres on either side of the watercourse. This was done to insure that the miller had full control of the water for forming a weir or dam to run the mill. There were many, many cases of water rights disputes in the Middle Ages and they were especially acrimonious if two parties had control of opposite sides of the river.

Further, it is interesting to note that the writ specifies the timber rights for both mill structure and covering the building itself. As will be seen below, the miller was given remission of a year’s rent to renovate a mill, or two years to build one from

scratch, but this was only financially feasible if he had the right to take free wood from the surrounding 20 acres.

STUDENT ACTIVITIES:

- Search out the origins of *timber* vs. *lumber* and suggest why they should have overlapping yet distinct meanings.
- Look up how manors were granted by the Crown to colonists and see how large they were, how they were defined, and what sorts of rents the colonists owed back to the ‘landowner’ (i.e. the Crown).
- Why would the timber for the mill itself but *not* the clapboards for the siding be given to the miller for free?
- Note that the miller is permitted use of timber on lands *adjoining* his 20 acres – what would this mean for the surrounding landowners? Why would they be in favor of this? Why wouldn’t they?

iv **STUDENT PROJECT:** try to discover how long it took to build a mill. Was this two-year allowance reasonable or tight? Set out a hypothetical building program for building a mill from scratch. In what order would things need to happen? How long would each stage take?

v Thus the process worked as follows: a person asked the Crown to determine whether a mill could be built at a certain place. The sheriff went out to find out who owned the land, and under what conditions. If the then owner then was willing to begin building a mill within a year (and then have it operational within two years of laying the foundations), then the original claimant had not claim. But if the property owner was unwilling or uninterested in doing so, the 20 acres could be granted to the petitioner for up to 80 years and all previous grants and liens were voided for the term of that 80-year lease.

vi Here we see how the colonies operated on a modified economic system, where tobacco stood in for money. In effect, the mill builder was assumed to be a tobacco farmer and he was to put up a bond of 50,000 pounds of tobacco if he failed to get the mill operational in the allotted time.

vii The act went further, and made it a sort of crime to *not* repair a mill. If the millers did not fix the mill, the landowner could break the 80-year lease and take it back, and if the miller refused, he could be evicted. In effect, the crown said, “Fix the mills and keep them running, or lose them.”

viii Here we see the colonial law trying to combat a perennial complaint in Europe: millers taking too large a percentage of the grain or corn they grind as fees. The rates are comparable to the English rates of the time, although note here that the miller kept $1/6$ of the maize he ground, but only $1/8$ of the wheat.

STUDENT ACTIVITY: Why would the tolls on the two different grains be different?