

“An Act for Encouragement of Building Water Mills,” An Abridgement of the Public Laws of Virginia in Force and Use, June 10. 1720” (London: F. Fayram and J. Clarke, 1728), pp. 73-75.

If any Person, willing to build a Water Mill, hath Land only on one side the Run, and the Owner of the Land on the other side, shall refuse to let him have an Acre of Land on the other side at a reasonable Rate, the Court of the County, upon Petition, are hereby empowered and required to order two Commissioners, or such other credible Persons as they shall think fit, to view the said Land, and if it takes not away Housing, Orchards, or other immediate Conveniencies,<sup>1</sup> to value the same, and put the Party, who desires to build a Mill, in Possession thereof, which way of Possession shall create a Fee Simple in the Acre.<sup>i</sup>

*Provided*, The Party so being put into Possession, forthwith pay down the Money to the Owner, upon Such Valuation.

*Provided*, Also that the said Party, within one Year do begin to build a Water Mill, and furnish the same within three Years, and thereafter keep up the same for the Use of the Customers, otherways, the said Land to revert.

*Proviso*, If any Water Mill, belonging to a Person under the Age of twenty one Years, *feme Covert*,<sup>2</sup> *Non compos mentis*,<sup>3</sup> or imprisoned, be let to fall, burnt, or destroyed, such Person and their Heirs, shall have three Years to rebuild and repair such Mill, after such Disability removed or Death.<sup>ii</sup>

When there shall be a Public Mill standing on any Run, there shall not be another Mill, or Dam, built on the same Run below such Mill within a Mile, nor above such Mill, without the particular Leave of the General Court, or County-Court.<sup>iii</sup>

*Proviso*, This Act not to prohibit the carrying on any Mill now begun, but that the same may be finished, in the same manner as it might have been before this Act.

*Proviso*, Where any Owner of a Mill, now built, or to be built, shall conceive himself injured, by Building another Mill on the same Run, he may have his Action on the Case against the Owners of such latter built Mill, in the same manner, as he might have had before the making of this same Act.

Millers shall grind according to turn, and shall sufficiently grind the Grain, and take no more Toll than one eighth Part of Wheat, and one sixth Part of Indian Corn, on Penalty of fifteen Shillings to the Party injured, for Default of any of the Premises with Costs.<sup>iv</sup>

*Proviso*, The Owner not held to turn for his own Grain.

All Millers shall keep in their Mills English sealed Measures, or sealed by the County-Court (viz.) Bushel, half Bushel, Peck,<sup>4</sup> and shall strike the Measures, and Use no Toll Dish, but what shall be Sealed by the County-Court (who are at the County

<sup>1</sup> *Conveniencies* are necessary structures or man-made features, like orchards or gardens.

<sup>2</sup> A legal term for a married woman (from the French meaning “covered woman”).

<sup>3</sup> The legal term for a person deemed mentally incompetent (Latin for “not in control of one’s mind”).

<sup>4</sup> A *bushel* is 4 pecks (35.2 litres) and a *peck* is 8 quarts (8.81 litres).

Charge to provide an Iron Brand for these Uses)<sup>v</sup> on Penalty of fifteen Shillings to the Informer, with Costs; and if the Owner by himself, or Servant keep the Mill, he to pay the Fine, and if the Miller be a Servant, or Slave,<sup>vi</sup> his Owner shall be answerable for his Default, and if such Owner lives out of the County, and have no known Attorney therein for that Use, the Appearance of the Miller shall be sufficient for the Justice to proceed against the Matter, and if the Owner shall live in the County or have a known Attorney therein, then his Appearance shall be required.

*Proviso*, Where a Mill is kept by a Slave, or imported Servant, that shall refuse to grind according to turn, or grind sufficiently, or exact upon the Toll, such Servant or Slave for such first Offence, shall have thirty Lashes, and for the second forty, in Lieu of the Forfeiture, and for every Offence afterwards, the Matter to pay as aforesaid.

Teacher’s Notes

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*i* Within a few years of the first law, we now see some land and water rights issues creeping into the colonial context. Now the situation is that one man may want to build a mill, but an owner owns the other side, where the miller would need to put the other end of a dam or weir, and would be unwilling to sell the land, or (more likely) would be trying to get a much higher price for the land than market rates would dictate. The colonial officials make it a law that one acre of land on the other side of the river could be transferred to the miller at market rates as long as the acre did not take away any of the owner’s necessary buildings or gardens or other developed property.

*ii* This clause gives a very interesting view on the legal status of people in colonial America. Minors and wives are classed with the mentally disabled and criminals as people who are mandated to repair their decayed mills. It presumably assumes that someone not of these groups – that is, an upstanding adult male of sound mind – would not let it happen, or else would be somehow otherwise compelled to repair the mill.

**STUDENT ACTIVITY:** Develop some scenarios why these four groups of people would be unable to repair a mill, or why a mill under their ownership would decay in the first place.

*iii* Here we see two interesting developments, one entirely medieval, the other quite new. The medieval-style development concerns water rights, or as they are known *riparian* rights. In Europe, with high population densities, there were constant legal battles over mills being built upstream of a mill and siphoning off their water, so that the miller did not have enough water to run his wheel. Alternately, the downstream mill became beholden to the upstream mill’s use of water – the upper mill could be hoarding water during dry periods or the lower mill could only run when the upstream mill was letting water through its gates. Similarly, mills built downstream might build a millpond that would back water up into the existing mill so there was not enough outflow drop and the mill could not be run. In either case, this was an infringement on the existing mill and its rights. Here we see an attempt to deal with this issue by separating mills by at least one mile along the river. This demonstrates that there are clearly more and more settlers flocking into Virginia and that mills are being built at a relatively rapid pace, but it also shows the transference of medieval disputes to a new land where the colonial administrators were trying to avoid repeating past mistakes.

The other facet of the colonial context that becomes apparent here is that this dispute, when it arose, was handled by the general or county court, and no longer the royal representative or the governor of the colony. Similarly, note that a few paragraphs below, the county is the guarantor of standard measures as well. Local administration that would eventually become a cornerstone of the States Rights vs. Federalism debates in American history was beginning even as early as 1720.

*iv* Note that while the toll rates on corn and wheat are the same, now the penalty has changed from 1000 pounds of tobacco in 1715 to 15 shillings. This demonstrates the growth of the money economy in the colonies, but also indicates that millers may no longer be tobacco farmers.

**STUDENT ACTIVITY:** Find out the rates for tobacco in the early 17<sup>th</sup> century. Did the change from tobacco-money to cash equivalent make the penalty stronger or weaker?

*v* That is, now the county commissioners were in charge of going around to all the mills, certifying their measures, and providing a certified “toll dish”, or scoop that the miller would then take his toll from the ground grain. This was yet another attempt to curb the always greedy millers who would take more in toll if they could.

*vi* Here we have the first mention of slavery in these documents, and it shows that often slaves were functioning as millers and operating the mills for a landlord. Interestingly, it also seems to imply that the slave owner might have been an absentee owner, who was responsible for the fine if the miller-slave did not pay, but who nonetheless did not need to be in constant attendance. The following *proviso*, however, demonstrates that slaves (and indentured servants) did not pay their fines for taking too much toll or provided substandard flour ground too coarse in shillings but in flesh. And if you compare proviso IX in Document 3, you see that only on the third offense is the owner of the slave or servant liable.

**STUDENT ACTIVITY:** Look into the role of slaves in skilled professions. What other skilled trades did slaves work in, and to what degree were they autonomous in their work, if not so in their personal freedom?