

“An Act concerning Water Mills,” *The Acts of Assembly Now in Force, in the Colony of Virginia* (Williamsburg: W. Rind, A. Purdie, and J. Dixon, 1769), Ch. 20, pp. 230-33.

From “A GENERAL ASSEMBLY begun and held at the College, in Williamsburg, the 27<sup>th</sup> Day of October, in the 22<sup>d</sup> Year of the Reign of our Sovereign Lord GEORGE II.” [1749] – King George gave assent to this act, 31 Oct. 1751.<sup>i</sup>

CHAP. XX – An Act Concerning Water Mills

Be it enacted, by the Lieutenant Governor, Council, and Burgesses, of this present General Assembly, and it is hereby enacted, by the Authority of the same, that where any Person, intending to build a Water Mill on some convenient Run, shall have Land only on one Side thereof, such Person shall petition the Court of that County wherein the Land on the other Side such Run shall lie for one Acre to be laid off for such Use, which Court is hereby authorized and required, upon such Petition, at the Costs and Charges of the Petitioner, to issue their Order to the Sheriff, commanding him to summon a Jury of twelve Freeholders of the Vicinage to meet upon the Land petitioned for, who being met, and duly sworn before a Magistrate, or the Sheriff, shall diligently view and examine the said Land, and the Lands adjacent thereto, on both sides of the Run, in the same or the next County, which may be affected or laid under Water by building such Mill, together with the Timber and other Conveniencies thereon, and shall report the same, with the true Value of the Acre petitioned for, and of the Damages to the Party holding the same, or to any other Person or Persons, under their Hands and Seals, which Report shall be returned by the Sheriff to the Court whence such Order issued; and if thereupon it appears reasonable to such Court, and it not take away Houses, Orchards, or other immediate Conveniencies, then they may and are hereby authorized and empowered, to grant such Acre to the Petitioner, and order the Return to be recorded, which shall be a good and effectual Seisin<sup>1</sup> in Law, and upon paying down the Valuation Money of the Land and Damages, reported by the Jury, to the Person and Persons legally entitled thereto, shall create a Fee Simple<sup>2</sup> in the said Acre of Land to such Petitioner or Petitioners, his, her, and their Heirs, and Assigns.<sup>ii</sup>

II. PROVIDED *nevertheless*, that the Person so put in Possession shall, within one Year afterwards, begin to build, and within three Years finish, a Water Mill, and continue to keep the same in good Repair, for publick Use; otherwise such Acre shall revert to the former Proprietor, from whom the same was so taken, his or her Heirs.

III. PROVIDED *also*, that where any Water Mill shall be built, pursuant to the Directions of this Act, and any Person or Person shall conceive him, her, or themselves, to be injured by the building of such Mill, it shall and may be lawful for the Party injured to bring his or her Action on the Case against the Owner or Owners of such

<sup>1</sup> A legal term meaning ‘the possession of an estate in freehold.’

<sup>2</sup> A legal term for ‘A right to the use of a superior's land, as a stipend for services to be performed.’

Mill, any Thing herein contained to the contrary, or seeming to the contrary, in any Wise notwithstanding.

IV. PROVIDED *also*, that where any Water Mill shall belong to any Person being within the Age of one and twenty Years, *Feme Covert, Non Compos Mentis*, or imprisoned, and shall be discontinued, burnt, or destroyed by Tempest,<sup>iii</sup> every such Person, his or her Heirs, shall have Liberty to rebuild or repair within three Years after such Disabilities removed.

V. AND whereas some Persons may have built Water Mills on a Point of Land of their own, in the Fork of a Swamp, between two Runs, and extended their Dams each Way cross both Runs, to Lands in which they had only an Estate Taille,<sup>3</sup> and have sold the same, whit an Acre at each End of the said Dams; and though each of the Acres aforesaid are really opposite tot eh Land of such Builders, yet it has been doubted whether the Court, upon Application, could confirm the Purchaser in a Fee Simple in each of he said Acres: And forasmuch as such Cases are within the equitable Intent and Construction of this Act, *Be it therefore further enacted, by the Authority aforesaid*, that the court of the County where the said Acres lie shall, and they are hereby required, on the Petition of the Purchaser, to inquire into the Facts, and if it appear to them that the Purchaser hath paid a valuable Consideration for the said Acres, they shall record the Title of the Purchaser confirmed in Fee Simple thereto; of if, in their Opinion, a sufficient Consideration is not already paid, they shall, at the Costs and Charges of the Petitioner, issue their Order to the Sheriff to summon a Jury as is herein before directed, who, being duly qualified, shall view, value, and report under their Hands and Seals, how much more the Petitioner ought to pay, and the Court shall record such Report, and that the Petitioner’s Title to the said Acre, at each End of the dam, is confirmed to him in Fee Simple, on his paying down to the Party or Parties entitled thereto the Sum so reported, if any be found due: Which Proceeding shall be good and effectual Sesin in Law to the Petitioner, and shall create a Fee Simple in the said two acres to such Purchaser, his , her or their Heirs, for ever, subject nevertheless to the Provisos, Conditions, and Limitations, of this Act; and if the Bounds of the said two Acres are not ascertained in the Deed of Purchase, the Jury appointed to value as aforesaid, or any two Members of the Court, or other Persons whom the Court shall appoint, shall fix and ascertain the same, by Marks on the Land, and express the same in Writing, under their Hands and Seals, which shall be recorded in Court, and be sufficient to fix and ascertain the Bounds thereof.<sup>iv</sup>

VI. AND that if at any Time any Mill, now built, or hereafter to be erected, shall happen to be burnt, carried away by Water,<sup>v</sup> or any Way destroyed, the Proprietor being under none of the Disabilities herein before provided for, shall have the same Time allowed to rebuild and repair such Mill as is there allowed for the first Building thereof.

VII. AND that no Person or Persons whatsoever, after passing this Act, shall erect any Mill, notwithstanding he or she has Land on both Sides a Creek or Run, and

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<sup>3</sup> Related to *Fee Taille*, that is, where the estate is only limitedly heritable.

although there be no other Mill standing thereon, without Petition first exhibited to the County Court, who are to consider whether the adjacent Lands of other Persons may or will be affected thereby, and in that Case to order a Jury to value the Damages, and make Report thereof, in Manner herein before directed, and thereupon to grant or reject such Petition: but where the Petitioner’s Land extends so far, on both Sides, as not to affect or overflow the Land of any other Person, the Court may, if they see Cause, grant Leave to the Petitioner for erecting such Mill, without ordering any Jury.

VIII. PROVIDED *always*, that this Act shall not extend to Mills heretofore built, nor to Mills now begun, though not yet finished; but that the Owners thereof shall be and continue possessed of the same, under their respective legal Titles, as if this Act had never been made. And where any Mill has been built, and is now standing, and the Owner thereof, through Ignorance or Mistake, hath not exactly pursued the Method prescribed by the Law in Force when such Mill was built, in Respect to an Acre of Land adjoining, the Court of the County wherein such Acre lies shall, upon Petition of such Owner, order and appoint two of their Members to value the Acre petitioned for, without having Regard to any of the adjacent Lands affected by such Mill, and upon the Petitioner’s paying down the Valuation Money, to the Party entitled thereto, he shall have a Fee Simple Estate in such Acre of Land; but, in both these Cases, such Estate shall be subject to the Conditions and Limitations of this Act.

IX. AND *be it further enacted, by the Authority aforesaid*, that all Millers shall well and sufficiently grind the Grain brought to their Mills, and in due Turn, as the same shall be brought, and may take for Toll one eighth Part of all Grain, and no more;<sup>vi</sup> and every Miller, or Occupier of a Mill, who shall not well and sufficiently grind as aforesaid, or not in due Turn, or take or exact more Toll, shall, for every such Offence, forfeit and pay fifteen Shillings to the Party injured, recoverable, with Costs, before a Justice of Peace of the County where such Offence shall be committed. And where the Miller shall be an imported Servant, or Slave, she shall, upon the first Conviction for such Offence, receive thirty Lashes, and upon a second Conviction forty Lashes, on his bare Back, well laid on, in Lieu of the Forfeiture aforesaid; but, upon a third Conviction, his Master or Owner shall be liable to pay fifteen Shillings, and so for every such Offence by such Servant or Slave afterwards committed: Provided always, that every Owner or Occupier of a Mill may grind his or her own Grain at any Time.

X. AND that every Owner or Occupier of a Mill shall keep therein sealed Measures,<sup>4</sup> of Half Bushel and Peck, and a Toll Dish sealed, and shall measure of all Grain by strike Measure, under Penalty of paying fifteen Shillings for every such Failure; recoverable, with Costs, by the Informer, before a Justice of Peace, of the County wherein such Mill shall be. And if the Miller be a Slave, or Servant, his Master or Owner shall be liable to the Penalty; or if the Owner of such Mill shall not live within the same Country, nor have any known Attorney therein, the Appearance of such Servant or Slave, before the Justice to whom such Complaint shall be made, shall be

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<sup>4</sup> In the margin of the original source, the statutes of 3 George II (1734), cap. 2 is noted. This statute defined by law these measures.

sufficient for him to proceed against the Master or Owner, but if he or she, his or her known Attorney, lives in the County, his or her Appearance shall be required.

XI. *AND be it further enacted, by the Authority aforesaid,* that no Owner or Occupier of a Mill shall keep any Hogs at his or her Mill, except in Enclosures, unless such Owner or Occupier shall have fifty Acres of Land at the least adjoining to such Mill; and if any Hogs, belonging to the Owner or Occupier of such Mill, shall be found running at large, it shall and may be lawful for the Proprietors of the Land adjoining to such Mill to kill, or cause to be killed or destroyed, all such Hogs.<sup>vii</sup>

XII. *AND be it further enacted, by the Authority aforesaid,* that all and every other Act and Acts, Clause and Clauses, heretofore made for or concerning any Matter or Thing within the Purview of this Act, shall be and are hereby repealed.

XIII. *AND be it further enacted, by the Authority aforesaid,* that this Act shall commence and be in Force from and immediately after the tenth Day of June, which shall be in the Year of our Lord one Thousand seven Hundred and fifty one.

## Teachers’ Notes

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*i* This 1749 Act is interesting in that although it is made and enacted by the King’s Parliament, and it was eventually assented to by King George, there is no mention of the crown in the document itself. All enforcement and adjudication is done at the county level by county officials. This is 25 years before tensions with England ran high and this level of independence helps to explain why the American revolution occurred when England began trying to reassert its rights – especially legal and economic rights – in the 1770s. A modern parallel might be that of Taiwan and mainland China, where nominal economic and political independence has developed since World War II and when the mother country tries to reassert its claim, as China has done recently, the potential for military action begins to loom large.

*ii* Notice that now there is inheritance law specifically mentioning women.

**STUDENT PROJECT:** Investigate inheritance laws for men and in particular for women. See how they evolved in the American colonies, where land did not automatically revert to the Lord or King at the end of each generation.

*iii* This is an interesting observation on weather in America vs. Europe. Storms tend to be fiercer, winters harsher, and variation in rainfall and climate larger in America. Europeans simply were not always prepared for the violence of North American meteorology, and this seems to acknowledge that this was an issue here. Of course, mills were destroyed by flooding in Europe – especially in mountainous areas – but even seemingly benign gentle river valleys here might be prone to surprising amounts of water and wind.

*iv* By 1749 a number of new concerns had come into the same issue as in the 1720 law regarding the transfer of an acre on the other side of the river, namely the surveying of flooding that would be caused by damming the river (see also §VII further on), the properly surveyed boundaries of the one or two acres (“by marks on the land” – that is, ‘surveyors’ posts’ or marks on significant landmarks as major trees or boulders). This mirrors the rise of the importance of the surveyor in America, and it will not be long after this that two expert surveyors will survey a disputed boundary between Pennsylvania and Maryland, which became forever known as the Mason-Dixon Line, named after Charles Mason and Jeremiah Dixon, who arrived from England in 1763.

*v* Environmental historians suggest that, contrary to our assumption about damming and controlling rivers, as more and more mills are built, and settlements encroach more and more into floodplains and along creeksides, the ironic consequence is more severe flooding. Mild floods are rare as each dammed millpond can buffer moderate fluctuations in rainfall, but one dam overflow (or worse, a dam break) can trigger a domino effect down the river, destroying mills along the way. Even without

dam breaks, flooding on the heavily controlled and engineered upper Mississippi in the 1990s seems to bear out this observation.

*vi* Notice here that the grinding quality is now specified and there is now a flat toll of  $1/8$ , regardless of the type of grain being ground. Why would this be the case?

*vii* This is the first appearance of any law regarding health and safety in a mill. Although hogs are not terribly dirty animals (despite liking to roll about in mud) as animals go, they are both rambunctious and voracious. Thus, having a pig at a mill could lead not only to relatively unsanitary conditions from droppings, but also could run the risk of the grain being eaten or damaged by the pigs.