

# RUMINATIONS

## Grinding Well and Sufficiently: The Grist-Mill in Vermont Law

Though the mills of God grind slowly,  
Yet they grind exceeding small;  
Though with patience he stands  
waiting,  
With exactness grinds he all.<sup>1</sup>

In 1787, the Sprague family was starving. In desperation, they sent their 14-year-old son John from their place in Randolph to Williston, to the Governor's farm, to barter for some grain. Most of the way he followed blazed trails. The boy took a cow, two ounces of indigo, and a pewter inkstand, to trade. The Governor was skeptical of the cow. It looked old; it had many wrinkles. The boy defended the bargain, saying, "It was born with three wrinkles," and this amused Tom Chittenden so that he agreed to the sale.

The boy then carried the bag of grain to Montpelier, to the grist-mill, to have it ground. In the early history of Randolph, the boy is described as having "begrudged the miller every spoonful he took for toll." Once he arrived home, the family ate the flour. When that was gone, they "sifted over the bran and ate the finest of it, and then, rather than starve, ate the hulls."<sup>2</sup>

John Sprague's journey was all too common for early Vermonters. Even if you were fortunate enough to have a good year for your wheat or corn, you could not enjoy it or barter with it for other goods, until it was ground. There were hand grinders, but they were slow and very crude. The first settlers relied on pound cake. They would burn a hole in the top of the stump of a large tree, smooth it off, pour grain onto the surface, and then beat it with the rounded end of another tree.<sup>3</sup> Gathered up, and cleaned of the ashes and other chaff, the product made a rough, hard bread.

There was no real alternative to ground flour or meal, which could be digested, first, and made fit for taste as well. But there were few mills at first, and the roads, to the extent they even deserved that name, were terrible. Residents of Concord, as late as 1795, had to carry their grain on their

backs or by horseback to Lancaster or Haverhill, thirty to forty miles away, to be ground.<sup>4</sup>

A man could carry a bushel on his back, two bushels by horse. Coventry settlers took their grain down the river to West Derby in canoes.<sup>5</sup> Morgan residents made it, there and back, in two days, leading a horse.<sup>6</sup> Residents of Fairlee had a fifty-mile trip to Charleston with ox-sleds over the ice of the river in winter and in log canoes during the summer, to have their grist milled.<sup>7</sup> A man named Hobbs from Westfield "fitted out his sons with moose-sleds," carrying one and a half bushels each, in the journey to Craftsbury, and they made the forty-mile round-trip in two days. Westfield's earliest historian said this invention was "considered a great step towards the conveniences of civilized life."<sup>8</sup>

The first mill in the region became a hub. Mills were used as monuments when the first state roads were laid out.<sup>9</sup> The roads leading to the mill were the first to be opened up, and villages formed around the mill, as other businesses opened to serve the needs of the settlers who came from remote parts with their grain. The first wagon made it to Concord in 1806, driven by Capt. John M. Darling. Before then, the roads were exclusively for two and four-legged animals.<sup>10</sup>

The best roads were those maintained by turnpike companies. In 1799 the legislature created the Green Mountain Turnpike, granting its founders the exclusive privilege of maintaining the road from Clarendon to Bellows Falls, generally along the track of the present Route 103, and collecting tolls for the use of the road. The act contained exemptions. You would not have to pay a toll if you were going to or from public worship, militia duty, ordinary domestic business of family concerns, or travel to and from a grist-mill or saw-mill.<sup>11</sup>

Many towns actively promoted the building of a mill. Settlers of Westminster offered money and 110 acres of land to Col. Willard to build a grist-mill and a saw-mill, and operate

it for ten years, on penalty of default. Later they voted £30 for a road to the mill.<sup>12</sup> Elijah Paine received two hundred acres of Northfield land for a promise to build a saw-mill within eighteen months and a grist-mill the next year.<sup>13</sup> In addition to land and a site on a stream, the first miller of Bennington was given the privilege of tolls of three quarts per bushel.<sup>14</sup>

### Regulating Mills

The Sprague boy begrudged the miller every spoonful he took. Millers had a reputation for being hard businessmen.<sup>15</sup> Describing the business habits of millers, Chief Judge Isaac Redfield quoted Hotspur, from Shakespeare's *Henry IV, Part I*, saying they "will give twice so much to any well-deserving friend, but in the way of a bargain will cavil upon the ninth part of a hair."<sup>16</sup> Early on, the legislature saw the value of regulating what millers would take for tolls.

The first Vermont law governing mills was enacted on February 17, 1779, and served as a model for more than a century. For every bushel of Indian corn he ground (which made about thirty-two quarts in all), a miller was allowed to keep two quarts. The same was true for English grain, and he was allowed an extra pint for bolting. In bolting, the grain or corn would be strained through a cloth, usually a cheese cloth, to remove impurities. For malt, the toll was a single quart. As further protection to the farmer, each mill had to provide sealed measures of a pint, quart, and two quarts, and to strike off the measures with a straight edge when toll was taken.<sup>17</sup>

This law was amended in 1797, changing the toll to 1/16 part of the meal or flour ground, with an extra 1/64 part if bolted, and one 1/32 for malted grain. This law also set the weight of corn, rye, and oats. A bushel of oats was thirty-two pounds; a bushel of Indian corn or rye, fifty-six pounds.<sup>18</sup> This avoided having a scale to weigh the product as it was brought to the mill.

Dry measure could be trusted. In 1840, the legislature set the statutory weight of wheat, barley, and buckwheat at sixty pounds a bushel.<sup>19</sup>

In 1853, the law first recognized steam grist-mills, exempting them from the laws on tolls and allowing those millers to charge whatever the market would bear.<sup>20</sup> This meant new competition for water-powered grist-mills. Later in the century, the conversion of mill sites to the production of electric power doomed the grist-mill as a viable industry. All laws governing the running of grist-mill tolls were rescinded in 1896.<sup>21</sup>

Most of the rules regulating millers came from the common law, not statute. Millers fought with other millers for their just measure of stream flow. Partners refused to pay their share of a mill or dam ravaged by flood, fire, or decay. The Supreme Court, through dozens of decisions, constructed the common law of grist-mills, and mills generally, and from those derived the law of natural and artificial streams.

The general rule of riparian ownership, between landowners whose land is crossed by a stream, was stated plainly by Judge Samuel Prentiss in *Johns v. Stevens* (1830):

[E]ach has an equal right to the use of the water, in its natural course, without diminution or alteration; and neither has a right to use or obstruct the water to the prejudice of other proprietors, unless he has acquired a title to some exclusive enjoyment, by an actual appropriation and use of the water, in this state, for fifteen years, in some particular manner. This principle, however, is subject to the qualification, that each proprietor may use and apply the water, while it runs over his own land, to domestic, agricultural, and manufacturing purposes, provided he uses it in a reasonable manner, and so as to work no material injury or annoyance to others; and a proprietor below can maintain no action for the damage he may incidentally suffer from such use or interruption of the water, if it is not detained unreasonably, or let off in unusual quantities so as to deprive him of the use of it.<sup>22</sup>

In disputes between private property and industry, there was a decided preference taken by the Court. In 1857, Chief Judge Redfield wrote, "It is all

important to the interests of business, and to the proprietors of water power, that there should be as little restriction upon its use, as is consistent with the rights of other adjacent proprietors."<sup>23</sup> He told a miller who complained of low flow from a stream, while another had more regular flow, to quit complaining and deepen the channel.<sup>24</sup>

### A Miller's Challenges

To make a mill, you needed a miller, and before that a mill-wright, to build it, and before that a stream. You needed adequate water flow, or enough upstream land to create a dam. You needed a wheel and a stone, and a lot of industry and persistence.

Grist-mills have their own vocabulary. The right, usually granted by deed, to run a mill on a particular stream is called the *water privilege*. The *flowage rights* are easements to submerge upstream land to build up a sufficient amount of water in a dam to turn the wheel. Wheels ran by gravity and pressure from the water. *Overshot wheels* were propelled by water pouring on top of the wheel; *breastshot wheels* received the water from the side of the wheel; *undershot wheels* moved by water hitting the wheel's buckets after a drop in elevation at the bottom of the wheel.<sup>25</sup>

The stones were the most difficult part of the mill to obtain. Eleazer Hubbard brought the mill-stones and irons for his grist-mill in Berlin from Glastenbury, Connecticut, in 1790.<sup>26</sup> The Sutton saw-mill was built around a wheel crank carried by hand-sled from New Hampshire.<sup>27</sup> The granite mill-stones used at the first Cabot mill were hewn on the spot.<sup>28</sup>

The bible of mill construction was Oliver Evans's *The Young Mill-wright and Miller's Guide* (1797). Those who could build a mill, principally of wood with few iron parts, earned good money and sometimes a reputation. Ira Allen hired James Hawley to build and run the mill at Shelburne, and Hawley is remembered as a master-builder.<sup>29</sup>

Poor construction techniques were costly. A six-foot stone came undone and threw Samuel Haskins, working at the Middlesex mill, against another piece of equipment, breaking both his legs, an accident that ended his life a few days later.<sup>30</sup> Another man was killed in 1807 in Swanton when the mill-stone burst while the wheel was turning at too high a speed.<sup>31</sup> Joshua Rowe of Wells was injured, while building the mill in

that town in 1786, when the post he was setting in place into a mortise crushed his toes. Rowe, well-known for the mildness of his temperament, said to his son, "Joseph, I wish you would get the crow-bar and raise up this post. I should like to get my toes out from under it."<sup>32</sup>

Hawley built the mill at Fair Haven, in exchange for one-third interest in the enterprise from those who owned the land and paid for the works. He was killed after falling on the water wheel, attempting to cut away ice from the works. After his death, his widow received, as his share, the right to run the mill two days a week. She made her 14-year-old son the miller.<sup>33</sup>

Floods were a common peril. Three times between 1868 and 1881, Lorenzo L. Bush watched as his Brookline mill was swept away; each time he started over, being, as the early history says of him, a man of energy.<sup>34</sup> Tired of repeated damage, Jeduthon and Luther Haskins, the brothers who built the mill at Middlesex, chained their saw-mill to large trees, and it was the only mill in that village to survive the flood of 1869.<sup>35</sup>

Mills even played a role in the hostilities leading to independence. Yorker Col. Reid built the grist-mill at Ferrisburgh before independence. Ethan Allen and the Green Mountain Boys destroyed it, just to show him. After they left, a party of Scots rebuilt it, but before the mill was in full operation the Boys returned, and repeated the destruction, including smashing the mill-stone.<sup>36</sup> After independence was declared, the Vermont Council of Safety made a mistake sequestering the mill at Bennington in 1777, thinking Yorker Joseph Haviland owned it, but later learned it was William Haviland's mill, and by act of the General Assembly the mill was restored to the real owners.<sup>37</sup>

### Keeping It Running

Water was a constant problem.<sup>38</sup> David Kendall's mill at Coventry was served by Day Brook, with an overshot wheel, chosen because the stream was small. The water was intermittent in some seasons, and sometimes the men had to get outside on the wheel and use it as a human treadmill to grind the grain.<sup>39</sup> In other cases, the stream or dam was sufficient for one mill, but not at all times for other users.

The energetic Matthew Lyon had a grist-mill and later a paper-mill constructed in Brandon. When he

went on to other adventures, he sold the grist-mill on condition that the saw-mill's flow not be disturbed between noon and midnight.<sup>40</sup> This practice was common, whenever millers subdivided their property, and led to court battles over what constituted a proper flow of water among competing neighbors.<sup>41</sup> What a miller did with the water while it was on his property—such as diverting it to a sluiceway—was no business of the downstream user, as long as the flow was not interrupted.<sup>42</sup>

Privileges could be lost by abandonment. It all depended on how the deed was written. If the privilege was specific to a particular use, or even a particular building, it could be lost if the use changed or the building collapsed and was not promptly rebuilt.<sup>43</sup> So with the bed of the stream. Prompt action was required to retain a right to a particular alignment. In the 1830s, a stream cut a new channel for itself. The mill was abandoned, but ten years later the landowner decided to restore the stream to its original location. The court refused to allow it. In that time, according to Judge Milo Bennett, the “the immediate and manifest power of a stream of water ... [if] permitted to remain on the land, ... cements and coalesces with the soil,” and there is no right to reclaim the soil.<sup>44</sup> Bennett held that the 15-year prescriptive period was not needed in such cases.

Milling was hard work, and grist-mills were cold places. Just how cold was suggested when Judge Bennett wrote in 1846 that a so-called “winter strained whale oil,” advertised as able to stand the climate of Vermont without chilling, would have to work in a grist-mill to sustain its promise.<sup>45</sup>

Milling was hardly an exact science. The mill-stones at the first grist-mill at Randolph were “far from true, wobbled badly, so that much grain would pass through unground.”<sup>46</sup> Coventry's mill was without a bolt, so the meal was coarse. It made a rough pudding-and-milk, and locals called it the “pudding mill.”<sup>47</sup> At Concord, according to a local legend, the milling was so rough, a woman first tried to sift her newly-ground flour with a meal sieve, but failed because the meal was so coarse. Next she tried a ladder, but it would not go through the rungs. It worked only after she removed every other rung.<sup>48</sup>

Millers were blamed for everything. At Deacon True's mill at Sutton, a farmer grew impatient with how long the grinding was taking, and said, “I

could eat it faster than you grind.” The Deacon asked how much longer he could wait. “Until I starve to death,” the farmer replied.<sup>49</sup>

### The Environment

As fortunate as a town might be to have a mill, it came at some cost, particularly to neighboring properties. In 1798, the inhabitants of Shelburne petitioned the legislature to order Nathan Tyler to drain the waters of his mill dam on Muddy Brook to its natural level, between May 1 and September 10 of each year, because of the increase in sickness caused by the impounded waters.<sup>50</sup> The following year, Tinmouth residents persuaded the legislature to order the drawing down of Furnace Pond, as it became “greatly prejudicial to the health of the inhabitants” during summer months.<sup>51</sup>

When neighbors turned to the courts, they were often disappointed. When pieces of bark from a tannery choked the downstream flume of a grist-mill at West Dover, on the Deerfield River, the Supreme Court found nothing wrong. In *Snow v. Parsons* (1856), Chief Judge Isaac Redfield overlooked the hardship. He cited other acceptable waste byproducts, like soap dyes and sawdust, that would be tolerated without affecting the rights of downstream landowners:

There is no doubt one must be allowed to use a stream in such a manner as to make it useful to himself, even if it do produce slight inconvenience to those below. This is true of everything which we use in common with others. The air is somewhat corrupted by the most ordinary use; large manufacturing establishments affect it still more seriously; and some, by reason of their vicinity to a numerous population, become so offensive and destructive of comfort, and health even, as to be regarded as common nuisances. Within reasonable limits, those who have a common interest in the use of air and running water, must submit to small inconveniences to afford a disproportionate advantage to others.<sup>52</sup>

When sawdust ran down a stream in Newbury to a starch-mill, the court found no injury. Judge James Barrett's decision in *Jacobs v. Allard* (1869) found this a common practice of such mills,

and concluded that as long as it was not done wantonly or needlessly, the starch-factory in Newbury must live with it. Barrett could not understand why the starch-mill's owners had not installed fenders and strainers to treat the water before it reached their works.<sup>53</sup>

But when ice built up on a mill and backed up the water onto another miller's works, this went beyond the tolerable. Judge Jacob Collamer wrote, in *Davis v. Fuller* (1840),

The notion now insisted on for the defendants, that a man who has a mill privilege may use it, if he does no wanton or unnecessary injury to another, is entirely without foundation. No man can be said to have a mill privilege which cannot be used without injury to others. The plaintiff acquired ... a right to the natural flow of the stream. The defendants, by their dam, interrupted that right. The plaintiff was thereby injured, and for this could sustain his action.<sup>54</sup>

Eventually, the *small inconvenience* theory became unsustainable. The legislature passed laws regulating the disposal of waste in Vermont waters in 1908.<sup>55</sup> In 1911, the Vermont Supreme Court acknowledged the germ theory, protecting the Montpelier water supply at Berlin Pond from swimmers.<sup>56</sup>

### Takings

After the Civil War, the legislature sought to encourage more mills. It was time to get back to business. To address the problem of upstream landowners who opposed the impoundment of their land by mill dams, in 1866 the General Assembly enacted the first of several flowage acts granting mill-owners the power of condemnation. Whether there was a public benefit for the mill and how much the taking was worth were questions addressed to commissioners, and then the county courts.<sup>57</sup> The legislature had done the same for railroads, first by charter and in 1851 by general law.<sup>58</sup>

Judges of the Supreme Court had been talking about such legislation for many years before the flowage acts were adopted. Judge Samuel Prentiss seemed to approve the idea of them in *Johns v. Stevens* (1830), when he wrote, “If public policy require that encouragement should be given to the building of mills and manufactories,

and the liability to frequent actions at common law will discourage the proprietors of mill seats in this state from building in places where they must overflow the land of others, it belongs to the legislature to interpose, and make such provision as policy, consistently with justice, may require. Until this is done, we cannot deny to a party the remedy given him by the common law."<sup>59</sup>

The subject came up again in 1860. Judge Luke Poland found no constitutional infirmity in a law authorizing school districts to condemn land for school purposes, in *Williams v. School District No. 6 in Newfane*. In reaching that conclusion, Poland discussed, by analogy, Massachusetts laws that allowed the same appropriations of private property for mills. "No such legislation has been adopted in this State," he wrote, "and it seems to me that at least it steps to the very verge of constitutional limit, if not beyond, but it is doubtless true that the differences in the face of the country, and quantity of water power in different States, create a great difference in the public necessities and wants in that respect. It is hardly to be supposed that in this State any necessity will ever exist to render such legislation necessary or proper."<sup>60</sup>

Legislators were either not listening or not caring, as they enacted the flowage laws of 1866. They were soon challenged, and invalidated, as violations of Article 2 of the Vermont Constitution. Hoyt Wheeler wrote the court's decision in *Tyler v. Beacher* (1871), forcefully rejecting the taking of private property for private purposes. Mills are private enterprises; without a statutory obligation for them to serve the public; they cannot be treated as public uses.<sup>61</sup> Everyone could ride on the railroad. Anyone could travel a turnpike and send their children to schools, but the miller could refuse to serve you, and that meant his service, and his mill, was not a public benefit. From 1797, the law regulating grist mills provided, "every owner or occupier of a gristmill, shall well and sufficiently grind the grain brought to said mill,"<sup>62</sup> but that was a standard of grinding. It did not establish any obligation on the part of the miller to take the grain.

Reading *Tyler v. Beacher*, you might well conclude that the law was voided by the decision, but the flowage acts were reprinted in the compilations of 1870, 1880, 1894, 1906, 1917, and

finally omitted only when the *Public Laws* were published in 1933.<sup>63</sup> It took sixty-two years, and several other cases, to get legislative attention in order to strike the laws from the statutes—and two more lawsuits.

In 1890, the Town of Barre attempted to exercise its eminent domain powers in taking over a private dam and pond, originally constructed for a grist-mill, to establish a water supply. It intended to convey the rights to a private water company, which would in turn supply water for fire protection, drinking water, and sewers, all well-recognized public benefits. Its plans were dashed by the Supreme Court. The Barre Water Co. was a private enterprise, and its use of the privilege could not then qualify as a public benefit.<sup>64</sup>

The last official appearance of the flowage acts in Vermont law came in 1903, in *Avery v. Vermont Electric Co.*, when the owner of the mill privilege at Winooski wanted to raise the height of the dam fifty feet to use the water power for the making of electricity. The power would be used by the Burlington and Hinesburg railroad, which the court recognized as a public benefit. Judge Loveland Munson wrote the opinion of the court, concluding there was no right to take the lands to be flowed.<sup>65</sup> Plaintiffs demonstrated that most other states' decisions favored the electric company. Munson remained unmoved. *Tyler v. Beacher* was good precedent. He wrote, "It is true that the railroad must serve the public, but there is nothing that binds the petitioner to serve the railroad. And if we look to some direct service of the general public, there is nothing that binds the petitioner to give equal advantages to all," he wrote.

In 1912, the Supreme Court expressly recognized the eminent domain powers of electric companies, as public uses. Shortly thereafter the legislature enacted statutes describing a procedure for such takings.<sup>66</sup>

Today all the talk is about the case that held you can take private property for private purposes—*Kelo v. New London* (2005), the U. S. Supreme Court decision that authorized the exercise of eminent domain to promote economic development, in the face of a Fifth Amendment challenge, where the condemned property was taken by government and then conveyed to a developer for a private use.<sup>67</sup> If *Tyler v. Beacher* is still good law—and there is no reason it is not—Vermonters have

nothing to fear from *Kelo*. The Vermont Constitution proscribes the taking of private power for private purposes. The Fifth Amendment may allow it, but Article 2 of the Vermont Constitution, and an interpretation largely unique among the states, according to these decisions, will protect private property.

### Goodbye to the Grist Mill

In 1882, Sylvanus Nye visited the site of the first grist-mill at Berlin Corners, and waxed a little sentimental:

... [S]tanding on the ground and seeing left only the foundation walls and the millstone lying in the stream below, one questions whether the stream itself had not something to do in their abandonment, this turbulent, willful thing, so fascinating in its power; now abating somewhat of its violence, turning aside here and there, into little nooks, connecting with the fallen trunks of trees, then back again over the smaller rocks in its bed, giving, as it emerges from the shelter of the woods, a tithe of its power to turn the wheel of the little mill—thus "work out its highway tax," and then after one short, short and final plunge, gracefully, yield to the inevitable, making its way through the fertile meadows, passed quickly into the waters of the Winooski.<sup>68</sup>

The day of the grist-mill is done. It fed the hungry. It made the village. It turned the products of the land into wealth. Today, what remains, aside from a few ruins, is principally found in the Vermont law of natural streams, in the meaning of the takings power, and in the stories that survive. The personal histories are the most moving—of how people traveled for miles, carrying their grain on their backs, to get their grist ground; how they argued with the miller over what he took for his services, and complained that the grinding was crude and coarse; and how they slung that sack over their backs and headed home, dreaming of fresh-baked bread.

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<sup>1</sup> Henry Wadsworth Longfellow, *Retribution* (trans. Friedrich Von Logau), at <http://www.giga-usa.com/quotes/authors/>

friedrich\_logau\_a001.htm.

<sup>2</sup> ABBY MARIA HEMENWAY, 4 VERMONT HISTORICAL GAZATEER 1044-1045 (1868-1891).

<sup>3</sup> *Id.* at 57.

<sup>4</sup> *Id.* at 969.

<sup>5</sup> *Id.* at 138.

<sup>6</sup> *Id.* at 285.

<sup>7</sup> *Id.* at 893.

<sup>8</sup> *Id.* at 344.

<sup>9</sup> 9 STATE PAPERS OF VERMONT: PETITIONS 1778-1787, 284 (Edward A. Hoyt ed., 1952) (laying out the county road, starting from Rumseys Mills in Hubbardton).

<sup>10</sup> 1 VERMONT HISTORICAL GAZATEER 969.

<sup>11</sup> "An act incorporating certain persons therein named by the name of the Green Mountain Turnpike Company," 16 VERMONT STATE PAPERS 400-405 (11/2/1799). Escaping tolls became a regular feature of rural life. Moses Pingry refused to pay, claiming he was heading for the grist-mill, but the facts showed he was carrying the grist of Nathaniel Pingry, his son, as well as ashes he was bringing to town to sell. The prosecution of Moses failed, but the lesson of the suit is that scofflaws ought to watch out, that the law would be read closely by the court. Pingry v. Washburn, 1 Aik. 264 (1826). This decision includes an interesting ruling that evidence of a promise by Defendant and others residing in Mount Holly not to object to a legislative act running the turnpike through that town, in exchange for exemption from tolls at Ludlow and Cavendish, was inadmissible, because such a contract is "against sound policy, prejudicial to correct and just legislation." See also Green Mountain Turnpike Co. v. Hemmingway, 2 Vt. 512 (1830) (explaining that the court must read the charter widely to secure the corporation's just rights and individuals their proper exemptions, "keeping in view the temptations to extortion on the one side, and to evasion and fraud on the other"). In that case the court reversed the decision after concluding that the jury was misdirected, when Hemmingway attempted to avoid tolls by claiming his "domestick business," when he was actually moving materials to repair buildings on a Ludlow farm. Hemmingway lived in Mount Holly.

<sup>12</sup> 5 VERMONT HISTORICAL GAZATEER 569.

<sup>13</sup> 4 *id.* at 659. The early historian of Northfield reported, "The ravine is one of the wildest and most romantic places we know of, and the very last place (with our abundance of water) that would be selected at the present day for that purpose."

<sup>14</sup> 1 *id.* at 137. Not all enjoyed the prize. Nathaniel Niles never received his promised award of money from Fairlee for building a mill, even though the town had voted a half-penny per acre tax to pay a bounty for a saw-mill and a grist-mill. *Id.* at 891.

<sup>15</sup> "Whereon the miller stole both flour and wheat/A hundredfold more than he used to cheat;/For theretofore he stole but cautiously,/But now he was a thief outrageously." GEOFFREY CHAUCER, *The Reeve's Tale*, CANTERBURY TALES, at <http://www.litrix.com/canterby/cante006.htm>.

<sup>16</sup> Conant v. Bellows Falls Canal Co., 29 Vt. 263 (1857). Millers could also be victims. The Hydeville mill at Castleton was run by a hired miller, who took half the proceeds and paid the other half to the owner. One night, within the mill, the owner suddenly demanded more, and shut the miller in a room, forbidding him to leave until he

consented. Finding duress, and recognizing that the miller was a simple-minded man, the court ordered the money returned. Sartwell v. Horton, 28 Vt. 370 (1856).

<sup>17</sup> "An act regulating mills and millers," 12 STATE PAPERS OF VERMONT 77 (Feb. 17, 1779).

<sup>18</sup> "An act relating to mills and millers," LAWS OF VERMONT (1825) 476 (Feb. 23, 1797).

<sup>19</sup> R.S. (1840), ch. 70, 46.

<sup>20</sup> LAWS OF 1853, No. 45; R.L. (1880), Chapter 167, 716-717.

<sup>21</sup> LAWS OF 1896, No. 83.

<sup>22</sup> Johns v. Stevens, 3 Vt. 308 (1830).

<sup>23</sup> Adams v. Warner, 23 Vt. 395 (1851).

<sup>24</sup> Conant v. Bellows Falls Canal Co., 29 Vt. 263 (1857).

<sup>25</sup> <http://www.angelfire.com/journal/millrestoration/restoration.html>.

<sup>26</sup> 4 VERMONT HISTORICAL GAZATEER 57.

<sup>27</sup> 5 *id.* at 1139.

<sup>28</sup> 4 *id.* at 81.

<sup>29</sup> 1 *id.* at 865.

<sup>30</sup> 4 *id.* at 223.

<sup>31</sup> *Id.* at 1020.

<sup>32</sup> 1 *id.* at 1109.

<sup>33</sup> *Id.* at 679.

<sup>34</sup> 5 *id.* at 379.

<sup>35</sup> 4 *id.* at 223.

<sup>36</sup> 1 *id.* at 32.

<sup>37</sup> *Id.* at 139.

<sup>38</sup> "What, man! more water glideth by the mill/Than wots the miller of." WILLIAM SHAKESPEARE, *TITUS ANDRONICUS*, act 2, sc. 1. Shakespeare's miller had plenty of flow.

<sup>39</sup> 1 VERMONT HISTORICAL GAZATEER 139.

<sup>40</sup> *Id.* at 696.

<sup>41</sup> Miller v. Lapham, 46 Vt. 525 (1874).

<sup>42</sup> Norton v. Valentine, 14 Vt. 239 (1842).

<sup>43</sup> Prentiss v. Leonard, 11 Vt. 135 (1839); Shed v. Leslie, 22 Vt. 498 (1850); Baldwin v. Aldrich, 34 Vt. 526 (1861); Albee v. Huntley, 56 Vt. 454 (1884); Clement v. Gould, 61 Vt. 573 (1889); Safford v. Gaysville Mfg. Co., 71 Vt. 36 (1898); Hartford Woolen Co. v. Bugbee, 76 Vt. 61 (1903); Sowles v. Minot, 82 Vt. 344 (1909); Lowe v. Green Mountain Power Corp., 111 Vt. 112 (1940).

<sup>44</sup> Woodbury v. Short, 17 Vt. 387 (1845).

<sup>45</sup> Hart v. Hammett, 18 Vt. 127 (1846).

<sup>46</sup> 1 VERMONT HISTORICAL GAZATEER 1040.

<sup>47</sup> *Id.* at 139.

<sup>48</sup> *Id.* at 969.

<sup>49</sup> 5 *id.* at 1139.

<sup>50</sup> "An act directing the time when Nathan Tyler shall draw off the waters to its natural level, from a mill pond by him raised on Muddy Brook in Shelburne . . .," 14 STATE PAPERS OF VERMONT 307 (Nov. 6, 1798).

<sup>51</sup> "An act to enable the inhabitants of Tinmouth to draw the waters of the furnace pond in said Tinmouth to their ancient and natural level at certain seasons of the year," 14 STATE PAPERS OF VERMONT 385 (Nov. 1, 1799).

<sup>52</sup> Snow v. Parsons, 28 Vt. 459 (1856).

<sup>53</sup> Jacobs v. Allard, 42 Vt. 303 (1869).

<sup>54</sup> Davis v. Fuller, 12 Vt. 178 (1840).

<sup>55</sup> "An act relating to the pollution of the waters of the Lamoille river," LAWS OF 1908, No. 211. Section 1 reads: "An owner or operator of a mill, who, by himself or agents, deposits or suffers to be deposited, any sawdust, shavings or mill refuse in the waters of the Lamoille river or in its tributaries above Cady's Falls in the town of Morrystown, shall be fined not less than twenty dollars nor more than one hundred dollars, for each offense." See State v. Haskell, 84 Vt. 429 (1911).

<sup>56</sup> State v. Morse, 84 Vt. 387, 393 (1911).

<sup>57</sup> "An act relating to the right of flowage," LAWS OF 1866, No. 12 (Nov. 16, 1866); "An act to amend an act entitled, 'An act relating to flowage,' approved November 19, 1866," LAWS OF 1867, No. 27 (Nov. 19, 1867); LAWS OF 1869, No. 27; R.L. §§ 3215-3224. The new law included a proscription against any new mill doing injury to any existing mill, unless the prior mill had been abandoned.

<sup>58</sup> LAWS OF 1851, No. 49; G.L. ch. 28, §§ 13-32.

<sup>59</sup> Johns v. Stevens, 3 Vt. 308 (1830).

<sup>60</sup> Williams v. School District No. 6 in Newfane, 33 Vt. 271 (1860).

<sup>61</sup> Tyler v. Beacher, 44 Vt. 648 (1871).

<sup>62</sup> "An act relating to mills and millers," LAWS OF VERMONT (1825) 476 (Feb. 23, 1797).

<sup>63</sup> P.L., Disposition Table 1570 (1933).

<sup>64</sup> In re Barre Water Co., 62 Vt. 27 (1890).

<sup>65</sup> Avery v. Vermont Elec. Co., 75 Vt. 235 (1903).

<sup>66</sup> Rutland Ry., Light & Power Co. v. Clarendon Power Co., 86 Vt. 45 (1912); LAWS OF 1915, No. 163 (now codified as 30 V.S.A. § 110).

<sup>67</sup> <http://www.law.cornell.edu/supct/html/04-108.ZS.html>.

<sup>68</sup> 4 VERMONT HISTORICAL GAZATEER 74. As if that is not indignity enough, 120-some years later that same mill-stone sits buried in pea stone on the outside walkway at a motel and restaurant in Berlin.

