

# Mill litigation in the equity side of the Exchequer c.1558 to 1815

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Grain mills were central to the life of local communities in the past. However, for the history of early modern mills there is as yet no major study. This contrasts with the medieval period for which there are important studies of the business of milling, technological innovation, regulatory measures, and the politics of tenurial relations that arose from these arrangements.<sup>i</sup> It also contrasts with the later period, for which there are equally important studies of technological developments in steam and steel, the changing market for bread, and the politics surrounding the import/export trade.<sup>ii</sup> One reason for these contrasts is a discontinuity in available source materials. Medieval studies of milling rest primarily on manorial records, while later studies of milling have used governmental and other sources as well as business records, such as mortgage and insurance documentation, all of which offer insights into the economics, ownership, and regulation of mills. In this article we offer an overview of records of litigation that can help bridge the gap between these two periods, offering a source base through which to study the milling industry as a whole and to trace individual mills and the communities within which they operated.

In particular, the article presents the findings of a comprehensive survey of cases in the equity side of the Court of Exchequer between 1558 and 1815. These findings are contextualised in relation to samples of litigation in other jurisdictions where mill cases were also tried. It begins with an overview of why mill litigation came to the Exchequer, and what kind of mills feature in it. This is followed by an outline of the methodology used for surveying the Exchequer and other jurisdictions. The remainder is devoted to analysing the Exchequer survey and sample jurisdictions, looking at the volume of business, geographical distribution, power source of mills, and grievances brought before the court and the potential they hold for further studies into mills and the milling industry in early modern England. The purpose is to evaluate how much of the life of early modern mills is revealed in the Exchequer records, the extent to which their limitations can be compensated for from other sources, and to illuminate the utility of these records for studies of individual mills and the wider milling industry.

## The Exchequer and mill litigation

Why did the Exchequer attract mill litigation? The equity jurisdiction emerged as an extension of the Exchequer's revenue business, aiming to resolve disputes that affected Crown revenue. Many mills were part of the Crown estates, built on royal manors to serve the local lord and population. The lord or mill owner of a Crown mill was required to pay a fee farm to the Crown – a perpetual fixed rent, which was usually a nominal fee. This meant that Crown mill owners, or their tenants, could access the court of Exchequer as 'royal debtors' using the writ of *quo minus*—the claim that the plaintiff was a debtor to the monarch and that the cause affected his or her ability to pay that debt.

Mills were also prominent features in monastic establishments and estates, and the dissolution of the monasteries brought further mill litigation to the Exchequer. Adam Lucas estimated that 43 per cent of all powered mills in fourteenth-century England (including fulling as well as grain mills) were held by the church.<sup>iii</sup> In the 1530s and 1540s some 60 per cent of church lands were transferred into Crown hands and sold off.<sup>iv</sup> Monastic lands sold by the Crown often carried fee farms, thus creating many more landholders who could sue using *quo minus*. Immediately following the dissolution, litigation concerning mills was entered in the Court of Augmentations, the court established to deal with the transfer of property and goods from the dissolution. Augmentations heard 121 cases concerning mills between its inception in 1536 and 1554, when it was folded into the Exchequer. Henceforth, mill cases increasingly found their way into the Exchequer. The dissolution signalled not only a change in jurisdiction for much mill litigation but also provoked suits due to changes implemented because of land transfers.<sup>v</sup> From the 1550s the Crown estates, including appropriated church lands, were increasingly sold off, but mills were usually sold in fee-farm. Therefore, the Crown retained its financial interest but rather than acting as a landlord, with responsibility for repairs and maintenance, instead became a rentier.<sup>vi</sup>

More broadly business was brought to the Exchequer because of the advantages of equity jurisdictions. Equity courts did not follow the strict principles of writs and evidence observed in common law but were concerned with 'conscience', seeking out the wider facts and circumstances of each individual case. Equity courts could also issue common injunctions on cases in other courts, particularly common law courts, where the very proceeding was

thought to be unconscionable.<sup>vii</sup> Therefore, this jurisdiction was particularly attractive in cases testing custom because the judgement did not rely on clear written proofs. As we will see, about 60 per cent of Exchequer cases involved disputed custom of suit of mill: an obligation to use the manorial mill, owned by the lord of the manor, for all grain ground within the manor. In origin, it was a tenurial obligation but by the fourteenth century was more often a matter of custom relating to all the inhabitants of an area, not just the lord's tenants. Its value lay in the potential to exclude competition, meaning that existence of the custom was intrinsic to the value of the mill and suit of mill was increasingly written into contracts for grants and sales of mills.<sup>viii</sup> As a result, our sample is skewed toward mills that could claim customary right regardless of whether or not they owed fee farm rents. After 1649 *quo minus* was confirmed to be a legal fiction, stated as a formal requirement to proceed in the Exchequer but not requiring substantive justification, but that did not alter the kind of mills featured in the litigation. Approximately 95 per cent of the Exchequer mill cases featured a Crown mill paying fee farm rent.

Exchequer cases are particularly alluring sources for local historians because they are rich in detail of local social life and relatively easy to search. However, it is important to recognise that there is a jurisdictional bias toward demesne or manorial mills, particularly those owing fee farm rents.<sup>ix</sup> The records are less revealing about independent or tenant mills which operated outside manorial authority, although such mills do appear in the Exchequer as rivals to manorial mills, negatively impacting upon their business and the owners' ability to pay the fee farm rent. For similar reasons Exchequer records are less revealing, except incidentally, of urban milling and of the use of hand-mills and horse-mills in domestic settings or as part of a single enterprise. Some urban mills were subject to manorial custom, and some borough mills brought Exchequer cases arguing that they were Crown debtors through the fee farm rent paid to the Crown for their incorporation to which mill revenue contributed. However, much urban milling capacity was not subject to such constraints. Therefore, the Exchequer records are less informative for studies of milling in urban centres.

### **Methodology and survey of Exchequer**

Exchequer litigation was surveyed using a combination of the National Archives' (henceforth TNA) online and paper catalogues. The court records were properly administered and survive from 1558 onwards. Litigation was initiated by written English bill from the plaintiff to which the defendant might exhibit an answer, and there could then be further rejoinders, surrejoinders and demurrers, identifying the key issues at stake. These records, collectively called pleadings, are found in the TNA series E112. Following pleadings, a set of interrogatories were drawn up and witnesses gave depositions in response to those questions. Depositions could be taken in London but were often taken 'in the country', and those latter depositions survive in TNA series E134. However, proceedings did not always progress as far as taking depositions—a common feature of early modern litigation was to open proceedings as part of a negotiation that might lead to a cheaper out of court settlement. It has been estimated that between 30 and 55 per cent of bills filed in the late-seventeenth and eighteenth centuries never proceeded beyond the bill. If depositions were taken, the final stage was a hearing and final decree which pronounced the judges' final decision.<sup>x</sup> It is this procedure that makes the records so valuable for social and economic historians—full and detailed statements and depositions, taken in English, that range well beyond narrow precedent and the existence of written proofs.

In an ideal world the historian interested in quantifying litigation would count bills rather than depositions, since so many cases did not proceed to a full resolution. Unfortunately, this is much harder to do than counting depositions, for which the online and paper catalogues provide litigants' names and the subject matter of the case. For bills, contemporary indexes are catalogued by reign and county and held on site at The National Archives (IND 1/16820-16847). The indexes for Elizabeth I's to James II's reign provide the plaintiffs' names as well as a brief note on the cause of the litigation, allowing bills without depositions to be identified. However, from the reign of William and Mary onwards they record only the plaintiffs' names, not the cause of the dispute. To identify bills without depositions concerning milling from 1688 onwards requires a manual search of the bills themselves, some 60,000 in total—a task beyond the resources of this research project. Researchers interested in particular litigants can however locate them via the IND volumes, and those interested in a particular place could locate disputes by trawling the boxes of bills for the relevant county.

Given these problems of searching, we started with depositions and identified 556 cases concerning grain mills across the period 1558-1815. These were then matched with their corresponding bills. In the period down to 1688 we identified 452 cases with depositions and a further 675 pleadings-only cases in the contemporary indexes—in line with earlier estimates, it seems that around 60 per cent of bills relating to mills never proceeded to the taking of depositions. In the period 1688 to 1815 we identified a further 104 depositions; if the ratio between cases with depositions and pleadings-only was constant, we would expect there to have been a further 156 pleadings-only cases before 1815. We have not relied on that estimate when quantifying overall levels of Exchequer litigation but refer to cases with depositions only.

The research generated a combined sample of 1231 cases, including those which proceeded to depositions and those that did not. These cases refer to 1050 individual mills or sets of mills, which represents about 10% of the mills at work in England and Wales at the beginning of the early modern period.<sup>xi</sup> Using the litigation, we created

a database recording the date of litigation, litigants' names, litigants' status in relation to the mill (owner/tenant/customer etc), the name and location of the mill, the power source, the grievance or main cause of litigation, and notes relating to specific content included. We then used this to build up a qualitative picture of mill disputes heard in the Exchequer over this period.

In order to assess how far this picture was biased by Exchequer procedure and the means by which we could search the records, we contextualised our sample of litigation against samples taken from other equity courts, all held at TNA: the central courts of Chancery (C) and Star Chamber (STAC), and the provincial equity jurisdictions of the Court of the Council of the Duchy of Lancaster (DL 1), the Chancery court of Lancaster (PL), the Exchequer court of Chester (CHES 15 & 16), and the Chancery court of the Bishopric of Durham (DURH 2). None of these courts is as well-catalogued as the Exchequer and often have poor record survival rates so we had to proceed by sampling.

For the four provincial courts manual searches of proceedings in 25 sample years were taken across the period 1575 to 1815 and compared with corresponding years in the Exchequer.<sup>xii</sup> Of these provincial courts, the Court of the Duchy of Lancaster is most significant for mill studies. The Duchy of Lancaster's jurisdiction covered a much wider area than the other three palatinate courts, which were restricted to the 'persons and property within the county', and it wielded the same jurisdiction as the Exchequer but solely over crown estates owned and administered by the Duchy.<sup>xiii</sup> The Duchy court had operated since the 1470s, much earlier than the Exchequer, and used the English bill procedure outlined above. Unfortunately, contemporary calendars detailing plaintiffs and cause end in 1603 so no systematic survey over the period can be carried out.<sup>xiv</sup>

The sample of Star Chamber was hampered by poor record survival and the absence of a catalogue for Elizabeth's reign when the court was most active.<sup>xv</sup> The sample was conducted using the online catalogue but is incomplete. Chancery saw a much higher volume of business than the Exchequer,<sup>xvi</sup> but the searchability of the catalogue varies significantly over time, with some series consisting of plaintiffs' names only and others identifying the subject matter or grievance. In our sample we therefore undertook an analysis of the C2 and C6 series, which partially cover the period 1558 to 1625 and 1625 to 1714 and are more searchable than the other series. This obviously does not allow for a strict comparison of volume of business but can tell us about the kind of mill business heard by Chancery.

Overall, whilst our data is not absolutely accurate evidence for the volume of litigation in the Exchequer, nor the other equity courts, it is sufficiently sound to give a broad sense of the changing scale of business and, more importantly, to give an insight into the nature of that business across this period.

### **Volume and geographical distribution**

Across the period 1558-1815, mill litigation represented 2.97 per cent of the total volume of Exchequer cases that proceeded to depositions, but there is significant variation over time. The increase of mill business in the sixteenth and early seventeenth centuries largely followed the general increase in Exchequer equity business, but mill business began to decline in the mid-seventeenth century and fell off very sharply in the eighteenth century, both in absolute numbers and, more markedly, as a proportion of total Exchequer business (Table). The reasons for the decline of Exchequer mill business in the eighteenth century are considered below.

<b>decade</b>	<b>no. of Exchequer deposition cases</b>	<b>no. of mill-related deposition cases</b>	<b>% depositions which are mill related</b>
<b>1570-79</b>	362	12	3.31
<b>1580-89</b>	839	25	2.98
<b>1590-99</b>	1052	47	4.47
<b>1600-09</b>	904	49	5.42
<b>1610-19</b>	933	62	6.65
<b>1620-29</b>	959	43	4.48
<b>1630-39</b>	1282	78	6.08
<b>1640-49</b>	314	12	3.82
<b>1650-59</b>	755	45	5.96
<b>1660-69</b>	906	31	3.42
<b>1670-79</b>	1034	27	2.61
<b>1680-89</b>	1070	24	2.24
<b>1690-99</b>	1050	33	3.14
<b>1700-09</b>	1121	21	1.87
<b>1710-19</b>	1013	10	0.99
<b>1720-29</b>	851	14	1.65
<b>1730-39</b>	604	6	0.99
<b>1740-49</b>	290	5	1.72
<b>1750-59</b>	315	6	1.9
<b>1760-69</b>	335	5	1.49
<b>1770-79</b>	441	1	0.23
<b>1780-89</b>	526	0	0
<b>1790-99</b>	411	0	0
<b>1800-09</b>	480	0	0
<b>1810-19</b>	592	0	0

Source: TNA.

Our samples suggest that Exchequer business exceeded that of the palatinate courts when it came to mill disputes (fig.1 below) and is therefore quantitatively the most important single resource for studies of milling in this period. Provincial court samples had to be done using bills, because depositions are not catalogued, and across our 25 sample years yielded 138 bills concerning milling: 94 in the Duchy of Lancaster, 31 in Durham, 9 in Chester, and 4 in Lancaster. In the same 25 sample years there were 146 bill proceedings in the Exchequer. Therefore, even though Exchequer bills are undercounted for the period post-1688, the Exchequer still predominates.

Significant competition is evident in the earlier years from the Duchy of Lancaster court which, as previously stated, was established and heard large volumes of business while Exchequer equity jurisdiction was still developing. Exchequer business began to match the Duchy court from the 1580s and during the seventeenth century eclipsed the Duchy Court in all but one of the sample years. The high volume of Duchy business helps to explain the low level of litigation in the Lancaster Chancery, which competed with the Duchy court and was ultimately restricted to hearing ‘minor matters’ and cases under £10 in value.<sup>xvii</sup> Chester clashed to a lesser degree with its own urban courts.<sup>xviii</sup> In contrast, the Durham Chancery was first point of call for issues within the county boundaries, and the central courts only acted as courts of appeal when a solution could not be found or when the grievance concerned the bishop or his officers who operated the court.<sup>xix</sup> Therefore, for mills in Durham the palatinate court would be most significant. All the provincial equity courts show a decline of mill business towards the eighteenth century like the Exchequer but, unlike the Exchequer, in overall volume of business as well.<sup>xx</sup>

Samples also suggest that a lower volume of mill business was heard at the courts of Star Chamber and Chancery. For Star Chamber direct comparison can be made with the Exchequer for the short period between 1603 and 1625, when the Star Chamber heard 81 proceedings related to milling and Exchequer heard 277 or 3.5 times the number of proceedings. No direct comparison can be made with Chancery, but in the C2 series, which partially covers 1558 to 1625, we identified 174 bills concerning mills. In contrast, from the 1550s to the 1620s, the Exchequer heard 537 proceedings (E 112) concerning mills.

Exchequer equity records are the largest single concentration of mill litigation, and our sample also suggests that Exchequer business was broadly geographically representative. Mill litigation came from all the counties of England and Wales. It does not seem that proximity to London was a significant factor in bringing mill business to the Exchequer. The largest concentrations of business (fig.2) were in Yorkshire (93 cases with depositions) and Devon (60), followed by Cornwall (27), Leicestershire (21), and Somerset (18). Taken together mill business from Welsh counties was also significant, producing 77 cases. The counties of the home circuit are all under-represented and Cumberland (10), Westmorland (4), Northumberland (14) and Durham (2) all had levels of litigation comparable with more populous counties located nearer London. In general business was probably brought to the Exchequer by provincial attorneys, and they were as likely to refer business from anywhere in the country where there was no local alternative. The number of Crown or ex-monastic mills, and the persistence of suit of mill are likely to be more important factors in generating business than proximity to the capital.

The most significant provincial alternative to the Exchequer was the Duchy of Lancaster court, which heard mill business from 26 counties as opposed to 52 in the Exchequer. Unsurprisingly, the highest concentration of business in the Duchy Court came from the counties of Lancashire and Yorkshire (Figure below), followed by Derbyshire and Carmarthen. Lancashire and Derbyshire do not feature heavily in Exchequer mill litigation, so it seems the Duchy court was the preferred court in those counties. Yorkshire features equally highly in both courts. The other palatinate courts of Cheshire, Lancashire, and Durham were restricted to those counties and so offer little in the way of geographical variation. The samples from Star Chamber and Chancery both feature litigation from 43 counties and appear to have no strong geographical bias.

Another indication of the representativeness of Exchequer cases is the power source of the mills involved in litigation. Exchequer mill business is dominated by watermills, featuring in 90.5 per cent of cases. Watermills were the most powerful and profitable mills, and the most likely to be built as part of a manor. Windmills feature in 11.2 per cent of cases and were concentrated in the southern and eastern regions. While this is probably an under-representation of their importance in overall capacity, windmills were less profitable, declining in number in the early sixteenth century, and acted mainly as a supplement to watermills.<sup>xxi</sup> Similar patterns emerge from the other jurisdictions. Horse- (in 14.2 per cent of cases) and hand-mills (11 per cent) however are certainly under-represented in the Exchequer. Both mill types are notoriously poorly documented as they were moveable and mainly used in domestic settings or in conjunction with specific trades and industries. Horse-mills were commonly used in the brewing industry, incorporated into brewhouses and breweries, and hand-mills were widely employed in the malt trade. Horse- and hand-mills were also associated with urban settings, where space was at a premium and watercourses could not be easily engineered or interrupted for milling. While not representative of the total number of horse- and hand-mills, Exchequer litigation offers an invaluable qualitative insight into their use in the absence of other obvious sources.

### **Motivation behind Exchequer mill business**

What grievances lay behind mill litigation? To analyse the substantive causes of disputes over mills we developed a set of categories or ‘grievances’, rather than applying the legal or procedural reason for the suit having reached

the Exchequer (fig.3). The following section analyses each grievance, explaining what kind of information historians can extract from these cases, and compares the Exchequer findings to grievances heard in the samples from other equity courts.

Suit of mill litigation accounted for just under 60 per cent of cases with depositions in the Exchequer. Witnesses in these cases were drawn from a cross-section of society, not just prominent landowners or farmers using the mill for grain they grew but also craftsmen, labourers, and women who ground grain they had bought from the market or the mill itself. Deponents often provided estimates of a mill's profitability or yield, information about the workforce, the amount of toll charged, rental values, tenancy agreements, and social interactions between mill owners, millers, and their customers. Suit of mill disputes can therefore offer significant insight into the social and economic role of a mill within a community.<sup>xxii</sup>

As suit of mill was the most common grievance, the pattern of litigation related to it explains the main peaks and troughs in mill litigation (fig.4). Historians have identified a decline in suit of mill cases following the mid-fourteenth century Black Death, as tenants had more power to demand freedoms from lords and mill numbers fell for lack of business.<sup>xxiii</sup> Our sample suggests that in the late sixteenth and early seventeenth centuries it was once again attractive to enforce the custom, probably a result of inflation which lords attempted to counteract by implementing measures to improve their revenue, and reflecting the effects of population growth in driving a recovery both of the milling industry and the power of mill owners.<sup>xxiv</sup> There is qualitative evidence from early seventeenth-century Exchequer cases that pressure on mill capacity was an important factor in challenges to suit of mill custom. For example, in 1630 in Lutterworth, Leicestershire, deponents justified their use of other mills by arguing that the town was 'very much increased both in howses and people' and that the customary Lodge Mills were no longer sufficient to serve the population.<sup>xxv</sup> Similarly, in Great Torrington, Devon, in 1635 defendants argued that if suit of mill was enforced 'well neere one half of the said inhabitants would perish for want of bread' because the town was not only 'verie populous' but also 'a place of great resort for the country thereabouts on Markett daies and other tymes', which rendered the customary mills insufficient.<sup>xxvi</sup> As well as resorting to other mills, population growth encouraged the building of new mills against which established mills would defend their customary suit. For example, in Halifax, Yorkshire, in 1618 deponents argued that they had been 'releaved' by newly erected mills, necessary 'by reason of the great multitude of people in Halifax & the three weekly marketts' which made the customary mills insufficient.<sup>xxvii</sup>

A further catalyst to the growth of Exchequer suit of mill litigation was the sale of Crown mills from 1608, part of a wider effort to increase Crown revenue through the sale of assets. Mills were time-consuming to manage and costly to maintain; in the early-seventeenth century the crown divested itself of the cost and trouble of managing mills, selling them via fee farm to retain a source of revenue. Syndicates of contractors offered lump sums to the Crown and then sold the mills on to private individuals.<sup>xxviii</sup> The sale brought mill ownership to a wider variety of people,<sup>xxix</sup> and increased litigation over mills in the following few decades as new owners sought to enforce their rights and improve profits.<sup>xxx</sup> In the 1610s 26 per cent of suit of mill cases, including pleadings-only cases, featured mills involved in the Crown sale, and the percentage peaked at 46 per cent of cases in the 1650s. The contracts drawn up for the sale specified that mills were sold along with the 'suits at the mills ... and all liberties and privileges to the same mills belonging ... as amply as they were ever before enjoyed by any Kings or Queens of England'.<sup>xxxi</sup> As many suit of mill claims relied on an 'appeal to contract', the articles of agreement for the sale of Crown mills provided written substance to subsequent customary claims that suit was owed.<sup>xxxii</sup>

Mill litigation declined drastically during the civil wars but then generated a backwash of suit of mill litigation in the 1650s and 1660s. Complaints were made about infringements of rights during the 'late rebellious wars', particularly erecting new mills while lords were absent or, as Royalists, had their lands sequestered, which mills then posed a threat to so-called customary mills. The new mills were invariably hand- or horse-mills, which had supposedly not been used prior to the wars.<sup>xxxiii</sup> The interregnum also led to arguments that the status of a mill had altered. For example, in Ottery Saint Mary, Devon, defendants claimed that 'nowe the said mills are noe parcel of the said mannor nor are the Inheritance of the Commonwealth government since the death of the Late King Charles being altered', and as such no longer possessed customary rights.<sup>xxxiv</sup>

After the 1660s suit of mill litigation followed a steady downward trajectory, almost disappearing by the beginning of the eighteenth century. The custom did continue in some places, mostly in the north of England, into the nineteenth century but was not generating Exchequer litigation.<sup>xxxv</sup> There is no obvious jurisdictional reason for the decline in Exchequer suit of mill cases. As we have seen, mill business arrived in the Exchequer partly through *quo minus*, particularly attractive to those holding Crown mills or owing fee farm rents. After 1649 *quo minus* became a formal legal fiction, removing any bias in favour of mills owing fee farm rents.<sup>xxxvi</sup> If anything, this should have opened the court to more mill business, but the opposite is true.

As noted previously, Exchequer business also arrived by injunction on suits in other courts. There was a relevant change in common law practice in relation to suit of mill, but it is not clear why this would have affected the

volume of business that found its way into the Exchequer. Suit of mill had been heard at common law using the writ *de secta ad molendinum* which some commentators said treated suit of mill as a tenurial obligation. Suit of mill had though become a customary obligation on all local inhabitants, regardless of their tenurial relationship with the mill owner. At least as early as the mid seventeenth century, and certainly during the eighteenth century it became more usual to try to enforce suit of mill as a general 'tort' or harm, claiming it was a personal harm, an 'action on the case', rather than a real action relating to specific rights in land or related to land. Essentially it was a damage to the personal financial interests of the plaintiff rather than to their landed rights. This rather technical change makes it harder to trace disputes about suit of mill in the common law courts, since actions on the case are so voluminous and miscellaneous, and because the writ being used does not signal that they are mill disputes. However, this does not explain why fewer cases might be brought into the Exchequer by injunction: it would still be possible to bring a mill dispute into the exchequer, even though it had not arisen from the writ *de secta ad molendinum*.<sup>xxxvii</sup>

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<sup>i</sup> John Langdon, *Mills in the Medieval Economy: England 1300-1540* (Oxford UP, 2004); Richard Holt, *The Mills of Medieval England* (Oxford UP, 1988); Adam Lucas, *Ecclesiastical Lordship, Seigneurial Power and the Commercialization of Milling in Medieval England* (Routledge, 2014).

<sup>ii</sup> John M. Orbell, 'The Corn Milling Industry in the Industrial Revolution, 1750-1830', Unpublished PhD thesis, University of Nottingham, 1977; John Orbell, 'The corn milling industry, 1750-1820', in Feinstein, C.H., and Pollard, Sidney (eds), *Studies in capital formation in the United Kingdom, 1750-1920* (Clarendon press, 1988) 141-63; Christian Petersen, *Bread and the British economy, c. 1770-1870* (Routledge, 1995); John Kanefsky and John Robey, 'Steam Engines in 18th-Century Britain: A Quantitative Assessment', *Technology and Culture*, Vol.21 (1980) 161-186.

<sup>iii</sup> Lucas, *Ecclesiastical Lordship*, 341.

<sup>iv</sup> Joyce Youings, *The Dissolution of the Monasteries* (George Allen and Unwin, 1971); W. G. Hoskins, *The age of plunder: the England of Henry VIII 1500-1547* (Longman, 1976), ch. 6.

<sup>v</sup> TNA, E 112/41/118, E 134/41Eliz/East14, Gent v Gent, 1598; E 134/38and39Eliz/Mich7, E 133/9/1378, and E 134/40Eliz/East32, Knowles v Blagrave, 1596; E 112/58/15, E 134/44Eliz/Hil10, Powell v Jones, 1599.

<sup>vi</sup> R. W. Hoyle, 'Introduction: aspects of the Crown's estate, c. 1558-1640', in R. W. Hoyle (ed.) *The Estates of the English Crown 1558-1640* (Oxford UP, 1992) 15-31.

<sup>vii</sup> W. H. Bryson, *The Equity Side of the Exchequer: Its jurisdiction, administration, procedures and records* (Cambridge UP, 1975) 27-30; J.H. Baker, *Introduction to English legal history* (Oxford UP, 2019) 111.

<sup>viii</sup> Holt, *Mills*, 80-85; Langdon, *Mills*, 259-78.

<sup>ix</sup> There is of course a similar bias exists in studies of medieval milling due to their reliance on manorial records.

<sup>x</sup> Henry Horwitz, *Exchequer Equity Records and Proceedings 1649-1841*, Public Record Office Handbook No.32 (PRO Publications, 2001) 36.

<sup>xi</sup> Langdon, *Mills*, 14.

<sup>xii</sup> Sample years: 1575, 1587, 1595, 1607, 1615, 1627, 1635, 1647, 1655, 1667, 1675, 1687, 1695, 1707, 1715, 1727, 1735, 1747, 1755, 1767, 1775, 1787, 1795, 1807, 1815.

<sup>xiii</sup> R. Somerville, 'The Duchy and County Palatine of Lancaster', *Transactions of the Historic Society of Lancashire and Cheshire* vol.80 (1952) 61-66; R. Somerville, 'The Palatinate Courts in Lancashire', in Alan Harding (ed.) *Law-Making and Law-Makers in British History: Papers presented to the Edinburgh Legal History Conference, 1977* (Royal Historical Society, 1980) 61.

<sup>xiv</sup> For further information about the cataloguing of Duchy records see R. Somerville, 'The Duchy of Lancaster Records', *Transactions of the Royal Historical Society* vol.29 (1947) 1-17.

<sup>xv</sup> Daniel Gosling, 'The records of the court of Star Chamber at The National Archives and elsewhere', in K.J. Kesselring and Natalie Mears (eds) *Star Chamber matters: an early modern court and its records* (University of London Press, 2021) 26.

<sup>xvi</sup> Henry Horwitz, 'Chancery's 'Younger Sister': the Court of Exchequer and its Equity Jurisdiction, 1649-1841', *Historical Research* vol.72 (1999) 167.

<sup>xvii</sup> Somerville, 'The Palatinate Courts in Lancashire', 61.

<sup>xviii</sup> W.J. Jones, 'Palatine performance in the seventeenth century', in Peter Clark, Alan G.R. Smith, and Nicholas Tyacke (eds) *The English Commonwealth 1547-1640, Essays in Politics and Society Presented to Joel Hurstfield* (Leicester UP, 1979) 198-9.

<sup>xix</sup> C. J. Kitching, 'The Durham palatinate and the courts of Westminster under the Tudors', in D. Marcombe (ed.) *The Last principality politics, religion and society in the bishopric of*

In the absence of an obvious legal reason for decline of Exchequer business, we suggest that it is more likely to reflect the decreasing commercial value of suit of mill. The potential reward for successfully defending or enforcing suit of mill no longer outweighed the expense and trouble of taking it to the Exchequer. Suit of mill had developed in an economy where most grain for human consumption was grown locally on small peasant holdings. In other words, milling was a processing industry for small producers. By the early eighteenth century, a high proportion of the population was wage-earning and landless, a development particularly reflected in urban growth, and dependent on the market for their food. Production for the market was increasingly concentrated in large farms, regional specialisation accelerated, and grain was increasingly traded over longer distances and off-market in sales by sample and at the farm gate. As a result, millers became more dependent on relationships with grain wholesalers or acted in that capacity themselves. Although most flour was still ground close to the point of consumption the source of the grain was increasingly likely to be the wholesale market than small local producers. Binding small producers to use a mill was therefore of declining commercial importance and could even be actively unattractive to mill owners who worked more efficiently with large batches.<sup>xxxviii</sup>

The dominance of suit of mill in the seventeenth-century also helps to explain the dominance of watermills in the Exchequer noted above. Windmills were less likely to be regulated by suit of mill: they were less capital intensive to build and often used as a supplement to watermills rather than the primary power-source.<sup>xxxix</sup> Only 51 cases (9.2 per cent) involved windmills to which suit was owed, and only nine of these were to a windmill alone rather than the other 42 where suit was owed to a complex of mills that included a windmill alongside water- and horsemills. Horse- and hand-mills were both significant in attempts to avoid suit of mill, with hand-mills particularly featuring as a source of friction in the fourteenth century and beyond.<sup>xl</sup> Of the cases involving a hand-mill 98.3 per cent concerned infringement of suit of mill.

After suit of mill, the next most common grievance was disputed title. This might involve inheritance or active fraud and violence as individuals attempted to occupy a mill owned by another. For example, at Stamford Bridge

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*Durham, 1494-1660* (University of Nottingham, 1987) 49-70.

<sup>xx</sup> Jones, 'Palatine performance', 203.

<sup>xxi</sup> Langdon, *Mills*, 34-36

<sup>xxii</sup> E.g. Winter, 'The role of mills in the local community and economy' (forthcoming).

<sup>xxiii</sup> Langdon, *Mills*, 286; Holt, *Mills*, 159-167.

<sup>xxiv</sup> Andy Wood, *The Memory of the People: Custom and Popular Senses of the Past in Early Modern England* (Cambridge UP, 2013), 41; Hillary Taylor, 'Paternalism and the politics of 'toll corn' in early modern England', *Social History* (2023), 214-231; For further discussion of suit of mill see Braddick and Winter, 'Business of milling' (forthcoming).

<sup>xxv</sup> TNA, E 112/195/26, E 134/6Chas1/Mich39, Temple v Fawnt, 1630.

<sup>xxvi</sup> TNA, E 112/171/119, Specot v Deane, 1635.

<sup>xxvii</sup> TNA, E 112/140/1550, E 134/17Jas1/Mich31 and E 134/18Jas1/East16, Ingram v Booth, 1618.

<sup>xxviii</sup> Hoyle, 'Introduction', 21-24, 28.

<sup>xxix</sup> Madeline Gray, 'Exchequer officials and the market in Crown property, 1558-1640', in Hoyle (ed.), *Estates of the English Crown*, 117.

<sup>xxx</sup> Simon Healy, Crown revenue and the political culture of early Stuart England [unpublished PhD thesis, 2015], 102-108; Anthony F. Upton, *Sir Arthur Ingram, c.1565-1642: a study of the origins of an English landed family* (Oxford UP, 1961) 41; David Thomas, 'The Elizabethan Crown lands: their purposes and problems', in Hoyle (ed.) *Estates of the English Crown*, 61-67.

<sup>xxxi</sup> State Papers Online, SP, 14/43 f.31, 'Agreement between the King's Commissioners and Sir Thos. Vavasour, Peter Vand Lore, and others, contractors for purchase of mills, lands, and other things specified', 15 January 1609.

<sup>xxxii</sup> Langdon, *Mills*, 266.

<sup>xxxiii</sup> E 112/333/240, E 134/13and14Chas2/Hil11, Avery v Markes, 1659;; E 112/489/83, E 134/18Chas2/Mich25 and E 134/18and19Chas2/Hil12, Farmer v Thomas, 1665; E 112/557/58, Eddisbury v Puleston, 1663; E 112/495/21; E 112/496/93, Earl of Newcastle v Hatfield; E 112/383/132, Duke of Newcastle v Smithson, 1666; E 112/383/133, Duke of Newcastle v Woodward, 1666; E 112/384/4, Tucker v Newcome, 1648; E 112/348/322, E 134/12and13Chas2/Hil1, Bailiffs and Burgesses of Scarborough v Skelton, 1659.

<sup>xxxiv</sup> TNA, E 112/295/38, Sherman v Rolle, 1652.

<sup>xxxv</sup> Orbell, 'The Corn Milling Industry, 1750-1820', 145-6.

<sup>xxxvi</sup> Bryson, *Equity Side of the Exchequer*, 25.

<sup>xxxvii</sup> J. H. Baker, *Introduction to English Legal History*, 480; Blackstone, Kemp v Gord (1654) Style 421; Cort v Birkbeck (1779) 1 Doug 218

<sup>xxxviii</sup> Braddick and Winter, 'Business of milling'; for the reluctance to grind small batches see Orbell, 'The Corn Milling Industry in the Industrial Revolution, 1750-1830', 46-48.

Mill, Peter Wilkinson was accused of using a 'fraudulent deed' to gain possession of the mill, and at West Burton mills William and Jane Man accused Christopher and Katherine Newport, among others, of making 'divers riotous and forcible entries' to the mill and having 'taken the proffitts of the toll of the said mill'.<sup>xli</sup> Like suit of mill, these cases also rose in number following the 1608 sale of Crown mills. There were far fewer cases over title overall, but the percentage involving sold Crown mills was significant: 25 per cent in the 1600s, 69 per cent in the 1610s, and 90 per cent in the 1620s. These cases were fought out between former Crown tenants of the mills, whose leases had been terminated, and the new owners. For example, William Hitchmough was tenant of Crash Mills near the Tower of London, paying £16 per annum fee farm and a one-off fine of £32 to the Crown, but found his lease terminated upon the sale of the mills in 1608. After legal wrangling, Hitchmough bought the mills from the contractors in 1614 for £555.<sup>xlii</sup>

Disputes over the correct recipients of tithes due from mills are the third most common grievance. Tithe cases were uncommon before the mid-seventeenth century but increasingly fell under the purview of the Exchequer, moving from the Church courts.<sup>xliii</sup> A good example is a case concerning a malt mill in Tiverton in 1705 which Rector John Newte claimed was grinding vast quantities of malt and producing toll 'of very greate value'. However, the proprietors had not given the tenth part to Newte as tithe and claimed there were 'noe tythes due or payable'.<sup>xliiv</sup> Tithe cases generally provide little information about mill operation or the wider socio-economic relations governing its use.

The fourth major category was nuisance, in which a mill affected the business of neighbouring mills. Nuisance can be hard to disentangle from disputed suit of mill: impressionistically 15-20 per cent of suit of mill cases involved some element of 'nuisance'. For example, in Mansfield, Nottinghamshire, the owner of the customary mills claimed that proprietors of Memotts Mill, newly converted from a walk (cloth) to a grain mill, had diverted the 'ancient water course' causing 'great losse'.<sup>xlv</sup> More importantly Memotts mill had withdrawn grist from the customary mills contrary to the suit of mill obligation. Here, and in other cases, we have assumed that where the ultimate aim was to stop or suppress the rival mill this is best understood as an effort to enforce suit of mill, rather than simply a correction to nuisance inflicted by the rival mill.

Nuisance cases offer rich geographical and environmental evidence for historians, such as changes to the course of a river or waterway, flooding of highways, and conflicts between different industries. In Ashburton, Devon, for example, John Grute converted an old cloth mill into a grist mill and in doing so caused the mill leat to overflow onto nearby lands and highways 'to the great danger and annoyance of the people passage'.<sup>xlvi</sup> Similarly in Ruthin, Denbighshire, a newly built mill was said to have caused the water to swell and overflow the highway, making it 'unpassaigable'.<sup>xlvii</sup> In Horsham, Sussex, John Foys complained that alterations to the mill pond serving Ashleys Mill had flooded his neighbouring land to the 'great hurt' of the hay and grass that grew there.<sup>xlviii</sup> Agreements were made and broken between mills fed by the same river or watercourse. In Derby disagreements concerned who was responsible for the upkeep of different sections of the river and how many wheels each mill should operate to allow the other to work efficiently.<sup>xlix</sup> Similar arrangements were made in Cambridge.<sup>1</sup> Competition was also rife between different industries competing for water resources. In Monk Bretton, Yorkshire, corn mills competed with the local iron smithy, whose proprietors claimed that the corn mills were permitted use of the water only when the smithy 'might well spare the same'.<sup>li</sup>

Many of the other cases reveal routine economic conflicts over the operation of mills. Debt cases concern disputes between mill owners and tenants, usually over rent. Land cases refer to disputes over whose land a mill had been built on, and who owned and controlled the land or common highways providing access to mills. Maintenance cases refer to disputes over who was responsible for the upkeep of a mill and often referred to customary services owed to the manor and mill. For example, at Sedgefield Mill in Durham it was argued that manorial tenants were accustomed to scour the mill dam and carry timber and stone to the mill when required at their own 'costes & charges', with the mill owner only providing meat and drink as recompense. The defendants argued that they should, as a matter of custom, be paid for carrying timber and stones at 2s a load.<sup>lii</sup> Similarly in Cottingham, Yorkshire, defendants argued that the supposed customary services owed to the mill were 'done only in curtesie of neighbourhood and nott of comon right'.<sup>liii</sup> Maintenance cases can therefore reveal information about lease or service agreements within manors.

Malfeasance cases are those where a rival mill owner, miller, or other individual was accused of wilful damage to a mill. It is hard to distinguish malfeasance from nuisance cases, but nuisance cases are usually a result of the economic damage caused by another mill's operation rather than physical action inflicted on a mill by a rival. For example, in Exeter it was stated that rival mill owners had filled the watercourse with gravel so that water could not pass to Durryard Mills.<sup>liv</sup> In Wrexham, Denbighshire, commissioners sent to restore a watercourse to its proper course were met with resistance from local landowner William Edwards and his servants who had deliberately altered the watercourse to prevent it reaching the mill and were allegedly armed with staffs, swords, and cudgels.<sup>lv</sup>

<sup>xliii</sup> Horwitz, 'Chancery's 'Younger Sister'', 169.

<sup>xliiv</sup> TNA, E 112/790/83, E 134/4Anne/Mich21 and E 134/6and7Anne/Hil5, Newte v Chamberlin, 1705.

<sup>xlv</sup> TNA, E 112/34/11, Cotton v Cooke, 1578.

Default on an agreement cases related to broken or wilfully disobeyed contracts and were usually taken out between a mill owner and the mill tenant, the mill funder and mill builder, or between joint mill owners. For example, in both Doncaster and Essex mill tenants reneged on agreements over what profits they were to take from the mills.<sup>lvi</sup>

Decay cases concern mills that fell into a state of disrepair and were unable to work either through the wilful neglect of the tenant or through lack of a tenant. For example, in Bulford, Wiltshire, mill tenant James Lovell was accused of having ‘utterly wasted and consumed the tumber and other the foundations of the said mill’ during his tenancy.<sup>lvii</sup> River navigation cases only appear after 1660, and concern instances when mills came into conflict with projects to improve navigable waterways, such as Stoke Mills which supposedly hindered the passage of barges on the River Wey navigation.<sup>lviii</sup> Competition with water transport is also evident in other cases but was not the primary point of contention.<sup>lix</sup> Finally, fraud cases concern the misappropriation of mill funds or materials, and fishing rights cases occurred when mills disrupted fishing practices in millponds and rivers. These cases tend to offer less detail on the communities in which they were situated and the social and economic lives of their inhabitants.

The samples taken in other equity courts did not add to this range of grievances over milling identified in the Exchequer (table below). The Duchy of Lancaster court and the Durham Chancery saw a similar profile of grievances as the Exchequer. Suit of mill dominated business at both courts (52 per cent and 48 per cent respectively), followed by title (17 and 19 per cent) and nuisance cases (7 and 6 per cent). In the Chester Exchequer business was instead dominated by debt (45 per cent), followed by contract or default on an agreement (22 per cent), and finally suit of mill and title (11 per cent each). The Lancaster Chancery likewise saw a different profile of grievances, title representing 75 per cent of cases, followed by debt (25 per cent).

<b>% of grievance by court</b>	<b>CHES 15 &amp; 16</b>	<b>DURH 2</b>	<b>PL</b>	<b>DL</b>
<b>suit of mill</b>	11	48	0	52
<b>title</b>	11	19	75	17
<b>nuisance</b>	0	6	0	6
<b>maintenance</b>	0	3	0	5
<b>debt</b>	44	6	25	5
<b>land</b>	0	6	0	4
<b>unknown</b>	11	0	0	4
<b>decay</b>	0	3	0	2
<b>malfeasance</b>	0	3	0	2
<b>tithes</b>	0	0	0	1
<b>default on agreement</b>	22	3	0	0

In Star Chamber, by contrast, the majority of mill cases concern malfeasance (25 per cent), forcible entry (20 per cent), and title (13 per cent), all staples of Star Chamber jurisdiction,<sup>lx</sup> and there were no suit of mill cases. Star Chamber records do not therefore contain business not seen in the Exchequer but have more plentiful examples of a range of business that appears less frequently in the Exchequer. In Chancery the C2 series was predominantly concerned with title disputes (69 per cent). Debt cases were also significant in this court, comprising 9 per cent of the 174 cases. Suit of mill cases comprised just 2 per cent of these cases. Of the 12 cases concerning mills in C6 42 per cent disputed title to a mill, 17 per cent concerned suit of mill and nuisance respectively, and a further 8 per cent each concerned land, maintenance, and river navigation. In general Chancery typically heard matters relating to business, debt, and property,<sup>lxi</sup> and this is reflected in the kind of mill business found in the sample.

Therefore, Exchequer records appear to provide a reasonable cross-section of the kinds of conflict generated by the operation of mills at any one point in time across the period if not their quantity, at least down to the mid eighteenth century. While the volume of certain grievances is higher in other courts, all grievances are represented

<sup>lvii</sup> TNA, E 112/130/216, E 134/9Jas1/Mich1, Prynne v Lovell, 1611.

<sup>lviii</sup> TNA, E 112/520/88, E 134/20Chas2/East35, Palmer v Ratcliffe, 1666.

<sup>lix</sup> E.g. E 112/623/63, E 134/11Wm3/East23, Mayor, bailiffs and burgesses of Cambridge v The master, fellows, and scholars of Gonvill and Caius College, 1697; E 112/635/45, E 134/3WandM/Mich40, Isaack v Snow, 1690.

in the Exchequer. Suit of mill disputes, which offer the richest source material for historians interested in milling, are particularly well represented in the Exchequer.

## Conclusion

Exchequer equity records are invaluable sources for the historian of milling. Exchequer cases do not represent the total amount of litigation relating to the milling trade at any one point in time, and the jurisdiction attracted business disproportionately from capital-intensive grain-mills which were more likely to be able to claim suit of mill and to be liable for fee farm rents. Because mills not subject to suit of mill are under-represented so are regions with few watermills and weak or defunct manorial jurisdiction. For related reasons, the Exchequer records under-represent urban milling. By 1750, as its business dwindled, the Exchequer is no longer revealing of the life of mills in England and Wales, not least perhaps because grain-milling governed by manorial custom was no longer the dominant method of grain processing.

Despite these limitations, Exchequer records are uniquely important for the history of early modern milling, for which few other records survive and none more detailed than the Exchequer proceedings. Our research suggests that Exchequer mill litigation made up a significant proportion of equity mill litigation as a whole and that Exchequer records provide a comprehensive view of the kinds of conflict generated by the operation of mills at least down to the mid-eighteenth century. Our sample of other courts supports this conclusion but also indicates how geographical variation and different composition of grievances within each court might direct the historian to these other records. For historians of the milling industry, or of a particular mill or community, equity litigation provides invaluable information concerning the operation and economics of mills between the mid-sixteenth and the mid-eighteenth centuries and about their place in local social relations.

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<sup>xxxix</sup> John Langdon, 'Water-mills and windmills in the west midlands, 1086-1500', *Economic History Review*, vol.44, (1991) 434, 436; Langdon, *Mills*, 35-37; Richard L. Hills, *Power from wind: A history of windmill technology* (Cambridge UP, 1994) 39.

<sup>xl</sup> Holt, *Mills*, 41; Lucas, *Ecclesiastical lordship*, 40.

<sup>xli</sup> TNA, E 112/50/126, E 134/28Eliz/Trin13, *Knype v Wilkinson*; E 112/52/356, *Mann v Newport*.

<sup>xlii</sup> TNA, E 112/98/806, *Hitchmough v Ferrers*, 1612; Ward 2/58/217/2, A compilation book of accounts of William Ferrers and Peter Vanlore, 1608-1618.

<sup>xlvi</sup> TNA, E 112/11/182, *Knowlinge v Grute*, 1600.

<sup>xlvii</sup> E 112/148/114, *Thelwall v Lloyd*, 1606.

<sup>xlviii</sup> TNA, E 112/45/13, E 134/21Eliz/Hil6, *Burchall v Foys*, 1578.

<sup>xlix</sup> TNA, E 112/382/38, E 134/22Chas2/East29; E 112/382/39, E 134/22Chas2/Mich27, E 134/22Chas2/Mich30; E 112/382/58, E 134/25Chas2/East12, *Mundy v Mayor and Burgesses of Derby*, 1669-72.

<sup>l</sup> TNA, E 112/71/196, E 134/21Jas1/Trin1 and E 134/21Jas1/East3, *Mayor, bailiffs and burgesses of Cambridge v Austen*, 1622; E 112/370/177, E 134/34Chas2/Mich20, *Townsend and Mayor, bailiffs and burgesses of Cambridge v The master, fellows, and schollars of Gonvill and Caius College*, 1680.

<sup>li</sup> TNA, E 112/52/326, E 134/30Eliz/East28, *Wood v Woodruffe*, 1587.

<sup>lii</sup> TNA, E 112/13/50, *Swift v Hedlam*, 1589.

<sup>liii</sup> TNA, E 112/261/174, E 134/11Chas1/East17, *Smith v Ruddock*, 1629.

<sup>liv</sup> TNA, E 112/11/168, E 134/41and42Eliz/Mich37, E 134/42Eliz/Hil18, E 134/42Eliz/Hil19, and E 134/41and42Eliz/Mich31, *Mayor, bailiffs and commonalty of Exeter v Coplestone*, 1598.

<sup>lv</sup> TNA, E 112/60/22, E 134/30Eliz/Hil21, *Wootton v Edwards*, 1587.

<sup>lvi</sup> TNA, E 112/263/271, E 134/8Chas1/Mich49, *Mayor, aldermen and burgesses of Doncaster v Bateman*, 1631; E 112/948/40, E 134/5Geo1/Hil23, *Bran v Rust*, 1717.

<sup>lx</sup> K. J. Kesselring and Natalie Mears 'Introduction: Star Chamber matters', in Kesselring and Mears (eds) *Star Chamber matters*, 1.

<sup>lxi</sup> Henry Horwitz and Patrick Polden, 'Continuity or Change in the Court of Chancery in the Seventeenth and Eighteenth Centuries?', *Journal of British Studies* vol.35 (1996) 32-5.