

“Why doesn’t New Jersey dump their garbage on Staten Island?”

By: Joseph A. Grabas, CTP

When I was a young boy growing up in Sayreville, I would often take my bicycle over the Old Victory Bridge across the Raritan River and into the historic City of Perth Amboy. These jaunts of wanderlust resulted in my discovery of Thomas Mundy Peterson, the first African American to vote under the 15th Amendment (March 31, 1870), who lies peacefully in the graveyard at St. Peters Church and the Proprietary House where William Franklin, last Royal Governor and son of Ben Franklin, was arrested during the Revolutionary War.

Invariably I would be drawn down to the waterfront, along the Arthur Kill (*Dutch for riverbed or creek*) to gaze across at the mysterious Island of Staten. Mysterious because of the foul odors that drifted across the waters from a place oddly named Fresh Kills. But even more peculiar because it was inhabited by New Yorkers! How could an island that was no more than 1400 feet away from the foot of Fayette Street, not be part of New Jersey. I may have been a curious fellow, but I was not yet so stout of heart to ride my bike over the Outerbridge onto a smelly island inhabited by *foreigners*. I would have to wait until I was older and drive over to watch the sun rise on Great Kills Beach with a few friends and a few beers.

So why is Staten Island part of New York? If you were to draw a line from Jersey City to the tip of Sandy Hook, Staten Island would lie fully within what would appear to be the boundaries of New Jersey. The Hudson River channel, a natural boundary, obviously runs through the Narrows and could not be alleged to run through the Kill Van Kull and Arthur Kill. It is only 1200 feet at the Bayonne Bridge and a mere 672 feet at the Goethels Bridge. The closest point between Staten Island and the rest of New York is at the Verrazano Bridge, a whopping 4,620 feet away. You can row a boat from Jersey to Staten Island and not even break a sweat, but don’t try to cross the Narrows that way! From a geographic, commercial and real estate point of view it just doesn’t make sense.

As early as 1609, Henry Hudson had claimed the area of New York and New Jersey as part of Nieuw Netherlands for the Dutch. He named *Staaten Eylandt* after the *Staaten Generaal*, the Dutch Parliament. The island of Manhattan was officially settled in 1625, south of what is today known as Wall Street (because there was an actual wall built there by the Dutch for defensive purposes). By 1630 the Dutch attempted to increase their settlement.

As discussed in previous articles, the Dutch seemed to have some difficulties getting along with the local Lenape tribes, hence the Wall. Each time the Dutch attempted to expand out beyond Nieuw Amsterdam, they ran afoul of the locals. There were continued hostilities in New Jersey up until 1660 when the first successful fortified Dutch settlement in New Jersey was established at Bergen, today known as Jersey City.

The Dutch had similar problems on Staten Island. Settlements were plagued by three wars, the Pig War (1641), the Whisky War (1642) and the Peach War (1655). In 1661 the Dutch established a permanent settlement called Oude Dorp, or Old Town, which was later expanded to

include Nieuw Dorp. Just three years later the English came to town and claimed EVERYTHING for England.

Now the legend goes that in 1668 the question of ownership for Staten Island was settled by a boat race. The story, recounted in an 1873 newspaper article (over 200 years later) and erroneously repeated by Mayor Bloomberg a few years ago, stated that James, The Duke of York granted all the lands west of the Hudson River to New Jersey with the exception of all the “small” islands in the Bay. A small island was defined as any island that could be circumnavigated in less than 24 hours. A stalwart English Captain named Christopher Billopp and supposed resident of Staten Island, rose to the occasion and got around in a few minutes under 24 hours and thus the Island was claimed for New York!

This is a very romantic yarn but is utterly unsupported by facts. Capt Billopp did become a resident of Staten Island, his home still stands near Tottenville, but it was not until 1674 that he purchased 932 acres from The Duke of York. He did not achieve the rank of Captain in the Royal Navy until 1671. There is no proof that such a race ever took place.

This is the true story. James, The Duke of York received title to all of New York, New Jersey and Part of Connecticut by Grant from Charles II on March 12, 1664. This grant not only included the title to the land but also the right of governance. It was 3 months later when the Duke “subdivided” his property and created New Jersey. He gave New Jersey to Berkeley and Carteret, once again along with the right to govern.

The problem begins in the interpretation of the descriptions contained in these two Grants. Neither one refers to Staten Island by name or metes and bounds. The only reference in the Duke of York’s March 12th Grant is “*together also with the said river called Hudson’s River, and all the land from the west side of the Connecticut river to the east side of the Delaware Bay: and also several other islands and lands...*” This description although extremely vague, most certainly includes Staten Island.

The description in the June 24th “Subdivision” Grant to Berkeley & Carteret sets the easterly boundary line for New Jersey as “*lying and being westward of Long Island, and Manhitas Island and bounded on the east part by the main sea, and part by Hudson’s River...*” No mention of the Kill Van Kull. No mention of the Arthur Kill. No mention of the Narrows. No mention of Staten Island and most certainly NO mention of the “small islands.” New York would later argue that this meant they had jurisdictional authority right up to the Low Water Mark of the New Jersey mainland.

What we are discussing here is sovereignty and jurisdiction. In the Colonial or Provincial period New Jersey and New York were Proprietary Colonies and were governed by Proprietary Governors. Richard Nicolls was the first Englishman to exert political control over NY & NJ in 1664 when he arrived to conquer the Dutch. He governed until 1668. He was replaced by Francis Lovelace, who would later suffer the misfortune of being “out of town” when the Dutch recaptured Nieuw Netherlands in 1673. Lovelace would lose all his lands and die a pauper in the Tower of London just two years later.

From 1668 to 1674 New Jersey did not have a resident Governor. Philip Carteret would arrive in 1674, be deposed by a popular uprising led by his cousin “President” James Carteret and was later abducted, beaten and arrested by Governor Edmund Andros who believed that he was the rightful Governor of New Jersey. In the 17th Century it was a very long way from England to the American colonies. This was a period of political and social unrest and governance was a right to be seized. In the 1680’s East and West Jersey had separate Governors. In 1702 the rights of governance were revoked by Queen Anne and thus began the period of Royal Governorship. New York and New Jersey would share the same Royal Governor from 1702 to 1738.

So one can see how the question of who had sovereignty over the Island of Staten was not a significant concern prior to the Revolution. They were too busy just trying to keep their Governor’s scorecard accurate. It was not until after the Revolution that the former colonies, now States, would start to flex their territorial muscles. Although they had entered into a Union, the individual States conducted themselves more as individual nations. You were a New Yorker, a New Englander or a Virginian before you were a citizen of the United States. So of course these burgeoning economies were extremely protective of their commercial rights. One author would refer to it as “Commercial Warfare.”

That brings us to 1798 and the Hudson River Steamboat franchise. Now this is where the story gets interesting because of the cast of characters involved. New York granted Robert Livingston, Founding Father and negotiator of the Louisiana Purchase, the exclusive rights to operate steamboats within the waters of the Hudson River and New York Bay. That would include the Arthur Kill, Kill Van Kull, Raritan Bay, Newark Bay and the entrances to the Passaic and Hackensack Rivers! New Jersey objected, seeing this as an obvious move to establish the right to regulate all navigational commerce along their eastern coast. New Jersey claimed that the boundary line should be down the middle of the River. The two States unsuccessfully attempted to resolve this dispute in 1807.

Meanwhile both Connecticut and New Jersey reacted harshly to this monopoly. Connecticut passed a law forbidding monopoly vessels from all their waters and in New Jersey the owner of any vessel seized by the monopoly for violations, was authorized to return the insult by commandeering any and all monopoly vessels in Jersey waters. Once again piracy had returned to the Jersey Coast!

In 1818 Thomas Gibbons had hired a young 24-year-old Capt. Cornelius Vanderbilt, a native of Staten Island, to run a steamboat ferry service from New Brunswick to Manhattan. Vanderbilt was particularly resourceful and elusive. He was able to avoid seizure by the monopoly vessels time and again. His early experiences on these High Seas would serve him well in becoming the second richest man in America, worth more than 143 billion dollars in today’s money.

Vanderbilt’s success would cause his employer’s competitor, Aaron Ogden, a former New Jersey Governor, to file suit against Gibbons, which suit would result in the landmark Supreme Court decision in *Gibbons v. Ogden*, 22 U.S. 1 (1824). The Court decided in favor of Gibbons in establishing that only the U.S. Congress had the right to regulate interstate navigation.

Unfortunately the Court did not address the specific sovereign boundaries between New York and New Jersey.

Once again both sides sat down in 1827 to hammer out an agreement, unsuccessfully. So New Jersey turned to the Supreme Court to resolve the question in *New Jersey v. New York*, 28 U.S. (3 Pet.) 461 (1830). However, before this case was decided the two States came to an agreement in 1833, which was approved by Congress as the **Compact of 1834**, and enacted it into federal law, *Act of June 28, 1834, ch. 126, 4 Stat. 708*. Article I of this Compact set the territorial boundaries between New York and New Jersey as follows:

“The boundary line between the two states of New York and New Jersey, from a point in the middle of Hudson river, opposite the point on the west shore thereof, in the forty-first degree of north latitude, as heretofore ascertained and marked, to the main sea, shall be the middle of the said river, of the Bay of New York, of the waters between Staten Island and New Jersey, and of Raritan Bay, to the main sea; except as hereinafter other-wise particularly mentioned.”

If you go to MapQuest or look at any Hagstrom Map you will see that only half of the Raritan Bay is in New Jersey and all of the Narrows is in New York. The Proprietors and our fore fathers did us no favor in the vague and ambiguous way in which they described lands and boundaries 350 years ago. Although those ambiguities have offered great opportunities for our profession. That is our *Raison d'être*.

Author's Notes:

This would not be the end of boundary controversies in the waters between New Jersey and New York. Under the Compact of 1834, New York retained regulatory and police powers over all the waters right up to New Jersey's low water line. This would foster another controversy over Ellis Island, which was ultimately decided favorably for New Jersey by the U.S. Supreme Court in 1998. This may be the subject of a future article.

In a previous issue I spoke about the New Jersey/Delaware boundary line. On March 31, 2008 the U.S. Supreme Court handed down a decision in the case of *New Jersey v. Delaware* (No. 134, Orig.). New Jersey lost. The Delaware line was confirmed to extend across the bay and run up to the New Jersey low water line. Noteworthy was the Court's determination that, *“The novel term “riparian jurisdiction,” as used in Article VII, is properly read as a **limiting modifier** and does not mean “exclusive jurisdiction.”* (Emphasis added) Unfortunately for British Petroleum, the ethanol transfer company who wanted to construct a wharf, must obtain a Tidelands Grant from BOTH New Jersey and Delaware as the Court asserted that both States have overlapping jurisdiction. That could take a very long time.

Joseph A. Grabas, CTP is a title agent, educator, historian and genealogist. He began his title career in the Record Room in 1978. He graduated Summa Cum Laude from Monmouth University with a degree in Early American History. He is a member of the New Jersey Historical Society, New Jersey Historical Commission, Monmouth County Historical Society and the Ellis Island Foundation. This is part of a continuing series about the origins of land titles & boundaries in New Jersey.