

Rural Wealth and American Property Law: The Sagaponack and Bridgehampton Connections—1802 and 1805

by Ann Sandford

Notes:

i]See William S. Pelletreau, “Main Street Plan, Southampton” (1878), Southampton Historical Museum. The plan shows lots and owners’ names. Gelston’s father, Hugh Sr., is noted as occupying the corner during 1717-75. He was Judge of the Court of Common Pleas of Suffolk County under the British. Upon his death in 1775, he left the house to Hugh Jr. See James Truslow Adams, *Memorials of Old Bridgehampton* (Port Washington, NY: Ira J. Friedman, Inc., 1962; orig. publ. 1916), 127, for a 1776 muster role that lists “Hugh Gelston, Clerk.” He may have served at his father’s court. Hugh Jr. married Puah Corwith from Bridgehampton and in October 1794 became that hamlet’s first federal postmaster: see Frederic Gregory Mather, *The Refugees of 1776 from Long Island to Connecticut* (Albany: J. B. Lyon Co., 1913), 355-56; Ernest Clowes, *Wayfarings* (Bridgehampton, NY, 1954), 263. For the slave tally by household, see “Federal Census, 1800, Suffolk County, Long Island, New York,” *The New York Genealogical and Biographical Record* 56, no. 2 (April 1925): 135. For an editor’s note that states that Gelston, Jr. died in 1815, see William S. Pelletreau and James A. Early, eds., *Sixth Book of Records of the Town of Southampton with Other Ancient Documents* (Sag Harbor, NY: John H. Hunt, Printer, 1915), 239. Ages of the litigants were deduced from the cemetery stone transcriptions in Adams, 319, 334. The description of the 1802 trial is in Angela Fernandez, “The Lost Record of Pierson v. Post, the Famous Fox Case,” *Law and History Review* 27, no. 1 (Spring 2009): 161-65. For the story of how Fernandez located the record, see Fernandez, 156-57. For the article, go to <http://www.historycooperative.org/journals/lhr/27.1/index.html>.

[ii] The “beach” is quoted from the 1805 appeal record in Bethany Berger, “It’s Not About the Fox: The Untold History of Pierson V. Post,” *Duke Law Journal* 55, no. 6 (April 2006): 1091, 1119. The connection to Peters Pond and the “rail” was first made by H. P. Hedges, *Sag Harbor Express*, 24 October 1895. The phrase “dogs and hounds” is quoted from the 1805 record in Angela Fernandez, “Pierson v. Post: A Great Debate, James Kent, and the Project of Building a Learned Law for New York State,” *Law and Social Inquiry* 34, issue 2 (Spring 2009): 304. See Fernandez, “The Lost Record,” 158, 163, 169, for the depositions and the expenses in the case.

[iii] Fernandez, “The Lost Record,” 171-73, 176-77. The question of motives behind the aggressiveness of Post and Pierson in both suits has been much discussed. To Pierson, the wild animal was vermin, to be eliminated as expeditiously as possible. See *ibid*, 166. Perhaps there were other motives, particularly relating to the possible social animosity between the two families. See Berger, 1090, 1120, 1132-33

[iv] In her Google search, Berger was led to my name from a talk I gave on early republic Bridgehampton at the East Hampton library in 2002. The paper was archived on the library’s website at the time. The story about names came from our phone conversation (16 August 2005).

[v] Letter, Kevin Concagh to Ann Sandford, 18 May 2006. Included in the packet was a copy of the 1805 “Judgment of reversal.”

[vi] Phone conversation between Angela Fernandez and the author, 25 August 2009.

[vii] Fernandez, “Pierson v. Post,” 303, 322.

[viii] Berger, 1093-94, 1136-37. Fernandez, *ibid*, 305. See *ibid* 301, 303-04, for a discussion of how the “lawyers and judges involved in the [1805] case” used the appeal to engage “Roman and other civil law sources on how to establish possession in wild animals...on land that belonged to no one.” Justice Daniel Tompkins wrote the Supreme Court decision, elaborating upon these arguments. That Tompkins depended on Sanford’s arguments is shown in *ibid*, 326. For a discussion of shared rights to property, see Berger, 1094, 1107-18. That the case continues to be cited is described in Fernandez, “The Lost Record,” 150, n. 6: cases in oil and gas and the ownership of baseballs when hit into the stands are examples.

[ix] Fernandez, “Pierson v. Post,” 313; Berger, 1095; Fernandez, “The Lost Record,” 149-50.

[x] Hedges' lecture was published in *The Story of a Celebration: Bridgehampton, Long Island, 1660-1910* (Bridgehampton, NY: Hampton Printing & Publishing Co., Ltd., 1910) edited by John E. Heartt.

[xi] Franklin B. Hough, *The New York Civil List from 1777 to 1858* (Albany: Weed Parsons & Co., 1858), 148.

[xii] Ann Sandford, "Rural Connections: Early Republic Bridgehampton and Its Wider World, 1790 – 1805," *Long Island Historical Journal*, 15 (Fall 2002/Spring 2003), 3-7, 15.

[xiii] *Ibid*, 8-9; see "Federal Census, 1800," 135.

[xiv] Sandford, 9. Post may not have been a militia officer but had been the captain of the armed sloop, *Revenge*. See Mather, 512.

[xv] "Bridgehampton's 'Accidental' Settling, 1650 – 1700," paper delivered by Ann Sandford at the June 2007 New York State History Conference. For Captain David Pierson, see Adams, 75-76, 126-7; Mather, 505; Berger, 1124-25. David was well known to the Gelston family: his first wife was Elizabeth (1746-77), the daughter of Deacon Maltby Gelston. See Adams, 185.

[xvi] Grover Merle Sanford, *The Sandford/Sanford Families of Long Island* (Baltimore: Gateway Press, Inc., 1975), 15-16, 19, 27. For the slave tally by household, see *Heads of Families at the First Census of the United States Taken in the Year 1790*, New York (Washington: Government Printing Office, 1908), 167. See Adams, 315; Mather, 393; Sanford, 19.

[xvii] Nathan Sanford Appointment Letter, 18 November 1803, Box 13, RG59, Appointment Records, Administration of Jefferson, 1801-09, National Archives, Washington, DC.

[xviii] Fernandez, "Pierson v. Post," 308, 311, 316, 328, 330.

[xix] *Ibid*, 330.