

HOBOKEN

The Last Attainder

Joseph A. Grabas, CTP

*I*t was a warm and muggy morning on August 19, 1779 as Major Henry “Light Horse Harry” Lee (father of General Robert E. Lee, CSA) and 300 American soldiers made their way across the Salt Marsh at Paulus Hook (Jersey City) to attack the British fortifications on the Hudson River. It was a daring raid that would be fought with bayonets only, in the dark of night at 4:00am. They would advance in three columns up to their waist in muck and mire, getting lost and turned around, before they would successfully descend upon the British position, killing 50 and capturing 150 while suffering only two killed and three wounded Americans. This would be one of the last

major engagements of the Revolution to be fought on New Jersey soil. Washington and his men would retire to Jockey Hollow/Morristown to endure the coldest winter of record and mutiny among the ranks.

But not more than a mile up the Hudson River a different but equally injurious kind of punitive action was being employed. In 1711, the Bayard Family came into possession of 500+ acres of waterfront land at Hobocan, just below the palisades directly across from the City of New York. Over the years this land descended through generations and eventually became vested in William Bayard. William Bayard, a prominent and influ-

ential New York merchant and the great-great grandson of Anne Stuyvesant, sister to the venerable Peter Stuyvesant, was in possession of this legacy at the advent of the American Revolution. Initially William joined the Sons of Liberty and frequently engaged and entertained various delegates to the Continental Congress as they passed through New Jersey on their way to Philadelphia.

His cause was “Liberty and the Rights of Englishmen.” When rebellion turned to revolution, however, and General Washington fled across New Jersey in retreat from New York in late 1776, William chose to remain faithful to Mother England and joined the



Major Henry "Light Horse Harry" Lee

attainder was a declaration of a person's civil death

British Forces as a Colonel in the Loyalist Militia. He now found himself the object of Rebel anger. In 1778, it was reported in *The New York Gazette* that the same "Light Horse" Harry Lee, had taken all of Bayard's livestock and later in 1780 "burnt Col. William Bayard's new home and barn, on the north end of Hobuck, and destroyed all the forage and timber."

It did not end there, for in the January term of 1780, a writ or process of forfeited estates was issued out of the Court of Common Pleas of the County of Bergen in New Barbadoes. A final judgment was had in favor of the State of New Jersey, pursuant to law, against "William Bayard late of the Township of Bergen on an Inquisition found against the said William Bayard for joining the Army of the King of Great Britain, pursuant to certain Legislative Acts." His lands were seized and forfeited under an act of attainder. Under English Common Law, attainder was a declaration of a person's *civil death* (extinction of all civil rights and capacities) and a legislative act that

singles out an individual or group for punishment *without* a trial. Certainly Col. Bayard could not appear before a New Jersey Court even if he wanted to. Undoubtedly he would suffer the same fate as his house and barn, or worse.

The land was sold at public auction on March 16, 1784 to John Stevens, Jr., who also happened to be the NJ State Treasurer at that time. He paid the sum of £18,360 for 564 acres (or approximately \$159.00 per acre) of prime waterfront real estate. Shortly after the war Stevens and his family subdivided and developed the property under the auspices of the Hoboken Land & Improvement Company and made a fortune. Later on in the mid-nineteenth century, Stevens and his family would petition the legislature to pass an act allowing them to fill the bay that separated Paulus Hook from Hoboken, what is today the land where the Holland Tunnel entrance is located.

It is important to note that the US Constitution, passed on September 17, 1787—just 3 years after this attainder—

contained the following:

Article I, Section 9, paragraph 3 provides that: "No Bill of Attainder or ex post facto Law will be passed."

Both Hamilton and Madison spoke strongly against this Common Law practice.

"Bills of attainder, ex post facto laws, and laws impairing the obligations of contracts, are contrary to the first principles of the social compact, and to every principle of sound legislation. ...The sober people of America are weary of the fluctuating policy which has directed the public councils. They have seen with regret and indignation that sudden changes and legislative interferences, in cases affecting personal rights, become jobs in the hands of enterprising and influential speculators, and snares to the more-industrious and less-informed part of the community."

— James Madison,
Federalist Number 44



New Jersey's use of the attainder as a weapon against loyal British subjects

James Madison

Certainly John Stevens was one of those “enterprising and influential speculators.” The First NJ State Constitution enacted on July 2, 1776 did not contain any prohibition against attainder. William Bayard was not the only loyalist to be attainted, there were others here in New Jersey and in other colonies like Mr. Parker Wickham from New York who lost his land and estate on Long Island through a Bill of Attainder passed by the New York Legislature on October 22, 1779.

William Bayard left America and would end his days in Southampton, England in 1804. Mr. Bayard's story stands as an example of the tyranny dealt out under English Common Law and one of the significant reasons for Colonial America's thirst for liberty, freedom and independence. Individual prop-

erty rights stood at the epicenter of the revolutionary movement. The State of New Jersey's use of the attainder as a weapon against loyal British subjects, and Treasurer John Stevens' use of his influence and advantage to enrich himself shortly before the passage of a US Constitution, that specifically and definitively expunged the practice from our new government and society, resounds with irony.

Always remember that the soft veil of time often blurs the images of our forefathers. They were hard men in hard times. Both Loyalist and Rebel would see themselves as a “patriot.” There was no precedent in the fledgling American law for enforcing attainder. William Bayard chose to defend the country and system of government that placed him in America and from whom his

land title rights descended. He was the successor to the Native claims, Dutch claims and English proprietary claims. He did not acquire these lands through the fruits of ill-gotten gains; his family was invested with these rights long before there was talk of independence and a new nation.

Although he survived the war and returned to England, William Bayard should be counted as a casualty. The very same rights of property, over which the American Revolution was waged, were denied to William Bayard and to the victor go the spoils. Fortunately just a few years later, much more enlightened men like Hamilton and Madison clearly saw the tyranny of the attainder and would smite it with their pens.



Joseph A. Grabas, CTP is a title researcher, title agent, educator, historian and genealogist. He began his title career in the County Record Room in 1978, conducting title research in 5 states and all 21 counties in NJ. 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, Monmouth County Historical Society and the Ellis Island Foundation.