Did Edward Starbuck grant the same land twice? Full Story

The quick answer is yes, but the real question is why did he do that? We must start with Edward’s recorded land grants in the town records and Rockingham County deeds to understand the history of the land in question.

**Piscataqua Records**

Unfortunately, the news on early Piscataqua Plantation records isn’t good. The earliest town records of Dover covering up through the late 1640s were lost. The area that became Dover was first settled in 1623, but there’s no civil records until about 1640. The documents covering approximately 1640 to nearly 1650 are a haphazard collection of notes which reconstruct early events. The entries are out of chronological order and some are loose scraps. There is no way to tell how complete they are. All existing Dover town records are online at <https://www.dover.nh.gov/government/city-operations/finance/city-clerk-tax-collection/historic-dover-records/>. The town website uses the year 1657 for the records’ beginning, but there are many entries before that year, and those after 1647 are mostly in order with earlier records interspersed so it looks like the town started their records over by the late 1640s but continued to enter records as they were brought in.

There are gaps in those early records. For instance, there’s no documentation for Edward or other early townsmen receiving their houselots. Edward Starbuck’s first recorded land grant was a 1642 division that wasn’t entered into the Dover town records until several years afterwards.[[1]](#footnote-1) (link) The grant gave him and twenty-two or twenty-three other men control of lots along the Back River on the west side of Dover Neck. Each of the allotments was twenty acres.

**Edward Receives Back River Land**

The next mention of Edward’s Back River acres was a 1652 deed in the Dover town records, which wasn’t added to the town book until four decades later.[[2]](#footnote-2) This document is important because it shows the land on the Back River still belonged to Edward Starbuck in 1652 and it bordered land Joseph Austin had received further inland. Joseph Austin moved to Dover from a nearby town in the late 1640s. The 1652 document was entered into the town records by William Pomfrett, who was the town clerk in the 1690s.

**Edward Gives His Back River Land to Joseph Austin, and to Humphrey Varney**

Joseph Austin had business interests with Edward Starbuck, and he married Edward’s eldest daughter, Sarah. There is no record of the marriage, but calculations by family historians place their marriage about 1649 due to the estimated birth year of Sarah’s first child. It’s also possible the marriage took place a year or two later and their children were born in the 1650s.[[3]](#footnote-3)

At some point between 1652 and 1662, Edward Starbuck gave Joseph Austin his twenty acres on the Back River. No deed has been found which conveyed that land, but a later entry in the town records mentioned the conveyance by essentially stating the twenty-acre parcel Edward owned on the Back River, which he had previously gifted to Joseph Austin, was regifted to Humphrey Varney on 11 May 1664.[[4]](#footnote-4) That’s the only proof on record that Joseph Austin received Edward Starbuck’s twenty Back River acres. The witness to that 1664 document was William Pomfrett. There is a duplicate of that record in the Rockingham County land and property records which states the original was presented for recording in December 1699.[[5]](#footnote-5)

After only a few years of marriage, Joseph Austin died in 1662.[[6]](#footnote-6) His transcribed probate includes his inventory which shows he died with several pieces of property including thirty acres of land on the Back River.[[7]](#footnote-7) Because this is a transcribed will, it’s possible the thirty acres should have been written twenty. Either that or Joseph purchased an additional ten Back River acres from someone other than Edward Starbuck. The only division of the Back River acres was in 1642 and Joseph Austin was not living in Dover at that time and was not on the list of recipients.

In March of 1664, the widowed Sarah Starbuck Austin married Humphrey Varney in Dover. According to the document dated 11 May 1664, Humphrey received the same Back River acreage Edward had given to Joseph Austin two months after he married Sarah.[[8]](#footnote-8)

In early 1696, the land Edward Starbuck had on the Back River is again mentioned by description in the town records.[[9]](#footnote-9) It appears a question arose about the ownership of some land by Thomas Austin, Joseph and Sarah’s eldest son. The record stated Thomas Austin now possessed the land his father had owned *bordered by land Edward Starbuck held on the Back River in 1652*. It did not, however, mention the Back River land belonged to Thomas.

One final note about the Back River property is that it appears Humphrey Varney possessed it in 1696 and sold the land to a Will[iam] Blackstone. This entry was not added to the Rockingham County property records until 1699. The land Varney possessed and sold to Blackstone was described as a “written gift,” which was a clear reference to the entry immediately above it, the 1699 copy of Edward’s 1664 gift of the Back River land to Humphrey Varney.[[10]](#footnote-10) (link) It was likely Blackstone wanted a clear title to the Back River land and wanted the 1664 transfer to Varney recorded as well.

**A Recap of the Back River Land**

Timeline of the Back River property:

* 1642-Edward Starbuck received 20 acres on the Back River (entered in the town books at some point after 1647)
* 1652-The twenty acres were still in Edward’s possession (not entered into the town books until the 1690s)
* 1652-1662-Edward Starbuck gave Joseph Austin the Back River land during this period
* 1663-Joseph Austin’s probate inventory includes the Back River property
* 1664-Edward Starbuck regifted the land to Humphrey Varney (recorded in 1699 in Rockingham deeds)
* 1696-Humphrey Varney sold the land to William Blackstone (recorded 1699)

**Did the Back River Land Come Into Edward’s Possession Again?**

The questions these documents raise are did Edward get the Back River land back between 1663 and 1664 to give it again? If so, how did that happen? Though there are gaps in the early Dover records, by the 1660s they were being kept more consistently and it would have been unusual for Edward to have the land he’d given to his daughter and son-in-law returned to him. One possibility is he bought it back to help the widowed Sarah with her finances, but there’s no record of that or any other transfer of Austin property back to Edward. As a widow, Sarah may have been able to sell property that was hers by dower right, however, Joseph Austin’s probate was not settled until after 1680.[[11]](#footnote-11) There was no partition of land to Sarah in any record, let alone a specific one on the Back River. Additionally, the 1664 document transferring the land to Humphrey Varney makes no mention of it being purchased or owned again by Edward.

Was the land only a loan from Edward Starbuck to Joseph Austin for his use for as long as he was married to Sarah? Perhaps, but if that was the case, those conducting Joseph Austin’s probate inventory should not have listed the land amongst Joseph’s holdings. It’s unlikely the inventory men, all long-time associates of both Edward Starbuck and Joseph Austin, got Joseph’s ownership wrong.[[12]](#footnote-12) While the regifting might be chalked up to simply “doing things differently back then,” there are some other intriguing possibilities.

**Did Humphrey Varney Get the Back River Land Legally?**

It's likely Humphrey Varney’s desire to sell the Back River property to William Blackstone triggered a need for proof Humphrey Varney had title to the land. He may have had proof of possession since 1664, but until the time of the sale, there was no need to record it in Rockingham County deeds or Dover town records. There is little, if any, question Humphrey Varney legally possessed the land when he sold it. With William Pomfrett both witness to the 1664 event and town recorder in the 1690s, he would likely have challenged Varney’s ownership had he felt it was wrong. Additionally, although Edward had moved to Nantucket by 1661, he could have easily sent a document verifying Humphrey Varney’s gift of land or written it up on a trip back to Dover in 1664, perhaps for the occasion of Sarah’s marriage to Humphrey Varney.

If the 1664 transfer to Humphrey Varney was verbal only, it's remotely possible Humphrey Varney forged his deed from Edward Starbuck, or had one of his brothers-in-law, Nathaniel Starbuck or Peter Coffin write it up, with William Pomfrett agreeable to the arrangement. With Edward deceased by 1696, he could not document anything for Varney, nor could he have objected to Varney claiming ownership of the land. It should be noted that Sarah (who was alive in 1696) made no documented objection. The sale of land to William Blackstone does not include Sarah’s name or mention her giving up her dower right, which would be hers to give. The concept that wives agreed to land sales by their husbands happened as shown by the deeds of Sarah’s own parents.[[13]](#footnote-13) In theory, Sarah could have objected to the sale of land to Blackstone if she felt the land was not her husband’s to sell, but she did not.

This was a time of flux for property law and dower rights in all the colonies. If a widow brought dower property to a marriage it might belong to her new husband, or it might be held in reserve for her children, to be distributed after her death. In some places and at some times, it could even be hers to sell or bequeath. However, Joseph Austin’s probate was not completed until after 1680, so even if Sarah received the property as part of her dower, it would not have been hers until after that date.[[14]](#footnote-14) Once it was, it could possibly become Humphrey Varney’s by virtue of their marriage, making it his to legally sell.

 From Joseph Austin’s will and inventory it appeared the Back River property should have belonged to the Austin children or been part of Sarah’s dower property, but that did not happen. It’s clear Humphrey relied on the document Edward signed in 1664 for ownership rights. The questioning of parcel ownership occasionally played out in New England town records when townsmen challenged claimants they believed were selling land of questionable ownership, but it’s apparent the residents of Dover believed the land was Humphrey Varney’s to do with as he pleased because no one objected to his sale to William Blackstone.

**Why Might Edward Have Gifted the Back River Land Again?**

All these details circle back to the basic question of why Edward wrote the 1664 note to give the Back River land to Humphrey Varney. He must have believed it was perfectly acceptable and the town of Dover did as well.

With Joseph Austin’s probate unsettled when Sarah remarried in in 1664, it could be Edward wanted to make sure Humphrey got some land as a gift for marrying his daughter and taking care of his Austin grandchildren. Edward was living on Nantucket by then and he’d already sold or given away all his Dover land, so regifting may have been all he could do to make sure the property went to Humphrey whether it was “strictly legal” or not. These days it would not be legal if Joseph Austin truly owned it, but things may have been done differently in the 1600s. Land and property laws were more flexible as residents figured out how to handle property questions. Early New Hampshire settlers handled land ownership quite differently from the English model of large landowners being landlords on vast properties they had been used to having. Jeremy Belnap wrote about the colonial concept of land ownership in his *History of New Hampshire.[[15]](#footnote-15)* Colonists generally believed once land was purchased from the Native Americans who owned it, that it was theirs to divide, use, and sell.

Edward many have legitimately believed he could take back the land and regift it since he meant for the land to be used by whoever Sarah married. He might also have been his grandchildren’s undocumented legal guardian (meaning no one recorded that status for him). In later times, having a legal guardian was required when land was inherited by a minor. The legal guardian was usually an adult male, often a relative if one was available. Even though Edward was on Nantucket at in the 1660s, the two towns were not that far apart by sea and he may have come to Dover after Joseph Austin died, though he didn’t have to be in Dover to act as a formal or informal guardian. As an acting guardian, the town might have recognized his right to use that land for the benefit of his grandchildren. When Sarah married Humphrey, Edward may have been within his town-given or colony-given right to make sure the land went to Humphrey with the understanding the land was to be used for the upkeep of his grandchildren from Sarah’s first marriage.

Although the wording of the document did not imply it was a type of quit-claim deed, it may have been meant to function that way. Had the land been a type of loan to Joseph Austin, the 1664 deed showed Edward no longer claimed any right to the land. By marrying Sarah, the land now belonged to Humphrey Varney.

**In Conclusion**

The conclusion is that we truly don’t know what the exact reason Edward Starbuck gave the same property away twice. There’s little or no documentation to verify any guess. One thing that can be stated with certainty is that Edward’s actions were acceptable to the Dover community and to his family.

1. Dover, New Hampshire, Town Records 1647-1753; digitized images, *City of* *Dover, New Hampshire* (https://www.dover.nh.gov/government/city-operations/finance/city-clerk-tax-collection/historic-dover-records/ : accessed 10 August 2021), unpaginated, approx. p. 181. [↑](#footnote-ref-1)
2. Dover, New Hampshire, Town Records 1647-1753; digitized images, *City of* *Dover, NH* (https://www.dover.nh.gov/government/city-operations/finance/city-clerk-tax-collection/historic-dover-records/ : accessed 10 August 2021), 117. [↑](#footnote-ref-2)
3. “Clarence A. Torrey, New England Marriages to 1700,” database with images, American Ancestors (www.americanancestors.org : accessed 25 July 2022), Joseph Austin. This source states, “by October 1649.”

Deborah, the oldest child of Joseph and Sarah (Starbuck) Austin had her first child 1 June 1669 in Nantucket (VR). For her to marry at an average age in approximately 1668, she was born about 1647-49. John Ham’s Dover, New Hampshire Marriages 1623-1823 stated Deborah’s marriage took place in 1668. The Nantucket vital records and Ham’s book were the two best sources, in addition to Torrey, for estimating the marriage of Joseph Austin and Sarah Starbuck. [↑](#footnote-ref-3)
4. Dover, New Hampshire, Town Records 1647-1753; digitized images, *City of* *Dover, NH* (https://www.dover.nh.gov/government/city-operations/finance/city-clerk-tax-collection/historic-dover-records/ : accessed 10 August 2021), 114. [↑](#footnote-ref-4)
5. “Rockingham County, NH deeds,” database, *Ava* (www.ava.fidlar.com : accessed 9 Jun 2022), Edward Starbuck, 1664-05-11. [↑](#footnote-ref-5)
6. Nathaniel Bouton, editor, *New Hampshire State Papers vol 31*, (Concord, New Hampshire: George E Jenks, state printer, 1867), 56-57; digital images, *New Hampshire Secretary of State* (www.sos.nh.gov : accessed 25 July 2022), Joseph Austin, 1663 p. 1-2.  [↑](#footnote-ref-6)
7. “New Hampshire, U.S., Wills and Probate Records, 1643-1982,” database with images, Ancestry (www.ancestry.com : accessed 25 July 2022), Joseph Austin p. 1, 2, 3. [↑](#footnote-ref-7)
8. “Clarence A. Torrey, New England Marriages to 1700,” database with images, American Ancestors (www.americanancestors.org : accessed 25 July 2022), Humphrey Varney. This source states, “2 March 1664.” [↑](#footnote-ref-8)
9. Dover, New Hampshire, Town Records 1647-1753; digitized images, *City of* *Dover, NH* (https://www.dover.nh.gov/government/city-operations/finance/city-clerk-tax-collection/historic-dover-records/ : accessed 10 August 2021), 117. [↑](#footnote-ref-9)
10. “Rockingham County, NH deeds,” database, *Ava* (www.ava.fidlar.com : accessed 9 Jun 2022), Edward Starbuck, 1696-05-02. [↑](#footnote-ref-10)
11. Nathaniel Bouton, editor, *New Hampshire State Papers* vol 40, (Concord, New Hampshire: George E Jenks, state printer, 1867), 359; digital images, *New Hampshire Secretary of State* (www.sos.nh.gov : accessed 2 Jan 2023), Joseph Austin admin granted to Peter Coffin. [↑](#footnote-ref-11)
12. Those signing off on the inventory were Hatevil Nutter who had known Edward since 1638, and long-time residents John and Ralph Hall. See “New Hampshire, U.S., Wills and Probate Records, 1643-1982,” database with images, Ancestry (www.ancestry.com : accessed 25 July 2022), Joseph Austin p. 2.

  [↑](#footnote-ref-12)
13. “Rockingham County, NH deeds,” database with images, *Ava* (www.ava.fidlar.com : accessed 9 Jun 2022), Edward Starbuck 1653-07-20. p. 1-2

“Rockingham County, NH deeds,” database with images, *Ava* (www.ava.fidlar.com : accessed 9 Jun 2022), Edward Starbuck, 1660-03-06. [↑](#footnote-ref-13)
14. Nathaniel Bouton, editor, *New Hampshire State Papers* vol 40, (Concord, New Hampshire: George E Jenks, state printer, 1867), 359; digital images, *New Hampshire Secretary of State* (www.sos.nh.gov : accessed 2 Jan 2023), Joseph Austin admin granted to Peter Coffin. [↑](#footnote-ref-14)
15. From page 8 of Jeremy Belnap’s History of New Hampshire (Dover, New Hampshire: S. C. Stevens & Ella & Wadleigh, 1831): “By this deed, the English inhabitants with these limits obtained a right to the soil from the original proprietors, more valuable in a moral view, than the grants of any European prince could convey. If we smile at the arrogance of a Roman Pontiff in assuming to divide the whole new world between the Spaniards and Portuguese, with what consistency can we admit the right of a king of England to parcel out America to his subjects when he had neither purchased or conquered it, nor could pretend any other title than that some of his subjects were the first Europeans who discovered it whilst it was in possession of its native lords? The only validity which such grants could have in the eye of reason was that the grantees had from their prince a permission to negotiate with the possessors for the purchase of the soil thereupon a power of jurisdiction subordinate to his crown.” [↑](#footnote-ref-15)