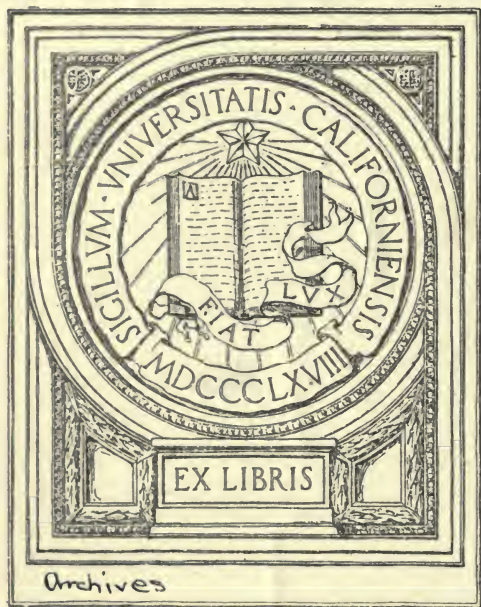



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*See Map, accompanying this Report,
by King, March 1882. Archives: case 5*

UNIVERSITY OF CALIFORNIA.

*The Kesterberger map referred to is in
the Bancroft Library - m. 8.*

REPORT OF THE COMMITTEE ON GROUNDS AND BUILDINGS RELATIVE TO THE
BOUNDARIES OF THE UNIVERSITY SITE AT BERKELEY.

SAN FRANCISCO, October 7, 1882.

To the Board of Regents of the University of California:

GENTLEMEN: In February last the Board of Regents deemed it advisable to order a survey of the boundaries of the University site at Berkeley. Two considerations dictated this action: the necessity of defining boundaries accurately for police purposes, and the possibility that the statute of limitations might affect University interests. The whole matter was referred to the Committee on Grounds and Buildings, with authority to employ a surveyor and begin suits if found advisable.

Your committee employed Mr. M. G. King, of Oakland, a thoroughly competent surveyor, and one familiar with the surveys of the town of Berkeley and the former surveys of the University property, to make a complete survey of the University site. Mr. King immediately made a preliminary survey, to enable the committee to ascertain what parts or parcels of land might be imperiled by adverse possession under the statute of limitations. This sketch was referred to J. B. Mhoon, counsel of the Board, with instructions to take such legal steps as might in his judgment be necessary to protect all the rights and interests of the University.

REPORT OF COUNSEL J. B. MHOON.

Pursuant to your request that I report what steps had been taken by me to establish the lines of the University grounds, I have to say: That last February, Mr. King, in accordance with instructions, handed me a sketch of the grounds as surveyed by him, according to the calls of the several deeds of conveyance to the University (Regents, etc.); also showing the present fences on the north and east. It appears, from the sketch so furnished, that there is a small strip about nine and six twelfths feet wide along the northern boundary, outside the University fence, but inside the surveyed line. This strip is within the premises claimed by the Le Roy heirs. It also appears from Mr. King's sketch that a triangular piece of six and three twelfths feet at the northeastern corner, and running down to a point on the eastern boundary, is within the survey, but outside the University fence. The report showing these facts was made to me about the ninth or tenth of February, 1882, and I at once filed complaints to recover the two pieces of land, as aforesaid, outside the inclosure, but inside the survey lines. The suits are respectively: The Regents, etc., vs. Le Roy et al., and the same vs. Brayton et al. These suits were instituted to save the question of the statute of limitations, on the tenth of February, 1882, and are now pending. I am informed that the parties will agree to the surveyed lines without further litigation or cost.

Very respectfully,

J. B. MHOON.

Subsequently Mr. King completed his survey and verified the above preliminary sketch. The completed survey, with field notes, maps, and a report, is herewith submitted.

The survey indicates discrepancies other than those referred to by Counsel Mhoon. The western boundary line of the new survey shows that about thirty feet of the University site, with slightly varying width along the whole western boundary, is outside of the University fence, and on what is termed Oxford Street, Berkeley; also, that about thirty-six feet, for a distance of five hundred feet at the north-western corner of the University tract and upon the line running east and west, is not included within our inclosures, said slip having been appropriated for a street now known as College Way. This is the 0.57 of an acre reported by Mr. Mhoon as having been conveyed to and inclosed by Martin Kellogg. We herewith submit the supplementary report of Mr. King:

In accordance with your order, I have surveyed and located the boundaries of the University tract, at Berkeley, and present herewith the map and transcript of the field notes of the same. I have taken particular pains in examining the abstract of title to ascertain the description of boundaries as per recorded deeds, and in the final location, according to the Kellersburger subdivisions of the V. and D. Peralta portion of the ranchos of San Antonio and the records. The property referred to is in plot No. 80. I found the stakes of a former survey on the ground, from which I differed materially. After conferring with the party who made the survey, and the agent having charge of the property, they concluded that my survey was correct, and they would adopt it.

In order to preserve the lines of this survey, and to permanently establish the prominent corners, I would recommend the placing of granite monuments, three feet long, six inches square on top, and properly centered, at such corners; and one inch iron bolts, two feet long, driven at the intermediate meander corners. For this purpose there should be nine monuments, and thirty-four iron bolts, the tops of which should be set at the surface of the ground.

The points at which the monuments should be set are: First, southwest corner of the tract in plot 69; the northwest corner of the ten-acre tract in plot 69, near the center of Addison and Oxford Streets; the northeast corner of the tract in plot 82, and the southeast corner of the tract of 17.63 acres, taken from plot 71, the point being on the center line of Audubon Street. Also the point on the line between plots 79 and 81, intersected by the northern boundary line of the tract, and the northeast corner of plots 69 and 70. The other points on the southern boundary line should be marked with iron bolts.

Respectfully submitted.

M. G. KING, Civil Engineer.

OAKLAND, April 27, 1882.

The survey clearly defines the lines of the University site, and if finally recognized and adopted by the Regents, will in all probability be acceptable to all.

Your committee therefore make the following recommendations with reference to the University site boundaries:

First—That the western fence be removed westward upon the west line of the University site, as indicated by the survey of Mr. M. G. King, beginning at the northwest corner of said survey and running southward on said line of the survey to the north line of "Allston Way."

That all cognate matters may be in possession of the Board, your committee submits the following petition relative to the improvement of Oxford Street. Should the petition be granted, the first recommendation of the committee could not be approved:

To the honorable the Board, of the University of California:

The undersigned, members of the Board of Trustees, the Board of Education, the societies for village improvement, and citizens generally of the Town of Berkeley, do respectfully request the attention of your honorable body to a matter of public interest, to wit: the improvement of Oxford Street, in the Town of Berkeley.

There exists at the southwest corner of the University grounds, at a point where Oxford Street crosses Strawberry Creek, a wide and deep washout, caused by the waters of the creek, which at present prevents the construction of a roadway along the westerly line of the Univer-

sity grounds, and forces all who desire to approach the University from the north and west with vehicles to make a long detour.

The construction of a roadway at the point specified, including the grading of Oxford Street throughout its entire length, filling the chasm at the crossing of Strawberry Creek, and putting in the bed of the creek a capacious and substantial culvert, is now being undertaken by the citizens of Berkeley, with the authority and aid of the Town Trustees. The funds needed to accomplish the work, aside from an appropriation from the town to provide the culvert, are to be procured by voluntary contributions from the property owners along the line of the street, supplemented by outside contributions. The property owners on Oxford Street are taxing themselves to the amount of twenty-eight cents per foot of their frontage. The completion of the work in full and permanent form, as provided by the specifications adopted by the three village improvement societies, will require an expenditure of about three thousand (\$3,000) dollars.

Now, we the undersigned, in view of the benefits which would accrue to the University property, and to the safety and convenience of its patrons and pupils, in having the unsightly and dangerous chasm filled and a substantial street constructed to take the place of the unsafe foot-bridge which now exists, do most respectfully request your honorable body to join with the individual property owners in the neighborhood in a voluntary contribution, according to the amount of your frontage on Oxford Street, for the prosecution of the work, with the understanding that no contribution shall be payable until the work is accomplished to the satisfaction of your honorable body.

And we would most respectfully intimate in conclusion, that the grading of Oxford Street and filling the creek in the manner specified, are looked upon by the people of Berkeley generally as an improvement which the town greatly needs, and the coöperation of your honorable body will be generally esteemed; and your petitioners will ever pray, etc.

[Signed by the members of the Board of Town Trustees of Berkeley, by the members of the Board of Education, and by sixty-five members of the village improvement societies.]

In the matter of the above petition, we recommend that the prayers of the petitioners be denied.

Second—We recommend that a fence be built from the east end of Allston Way (north side) eastward to the Hillegos line, along the line indicated as the southern boundary of the University site, by the survey of Mr. King, leaving an opening for the steam dummy on Choate Street.

The property owners affected by this proposed action submit the following petition:

To the Honorable Board of Regents of the University of California:

GENTLEMEN: In view of the proposition to build a fence between Dana Street and the Hillegos line, we your petitioners ask that you place your fence at least thirty feet from our property line, though the same ought to be sixty feet to correspond with the street in front of the cottages, which is a connecting link between established streets, and is a public necessity.

On the map now on file in the Recorder's office, bearing date May, 1872 (P. C. Rector's survey), and on the line you now propose to close up, is found an avenue one hundred feet wide, and we purchased our property upon the assurance given by said map, and by Henry Durant and Samuel Merritt, that a street of that width would be opened in front of our property. The proposed fence will leave us a very narrow space in front of our property, and one hardly wide enough in which to move a small wagon. Indeed, in two or three places room will not be left for a wheelbarrow.

[Signed by John Bachman, John Chart, Catherine Paolatti, Margaret J. Edgar, Peter McEvoy, and John Hart.]

Your committee recommends that the prayers of said petitioners be denied.

Third—That the University fence be extended from the easterly point of the ending of the present fence to the easterly point of plot 71, as laid down on King's map; thence northerly on the line as per survey to the creek; thence along the line of said survey to the eastern boundary of the University lands, except so far as the necessity of a fence may be obviated by the creek; thence northerly to the northeasterly corner of the University tract along the line of the survey; thence westerly from said northeast corner, along the line of said survey of the University lands, to the northwesterly corner of said tract.

Objection is made only to the last sentence of the above recommendation.

First, we present the petition of Mr. Le Breton, administrator of the Le Roy estate, which is self-explanatory:

To the Board of Regents of the University of California:

GENTLEMEN: As the administrator of the estate of Theodore Le Roy, deceased, I recently adjusted, with Martin Kellogg, the boundary lines on the east side of a tract of about two hundred acres, in which the estate of Theodore Le Roy, deceased, has an interest, at Berkeley, adjoining the grounds of the State University. In connection with this adjustment of limits, I caused the tract of land in question to be thoroughly surveyed by M. G. King, surveyor, who, I believe, has recently also surveyed the University tract. I find that there are certain rectifications to be made for the boundary line between our tract and that of the University, and as I find explanations of your surveyor satisfactory, I am willing that the proposed new fence should be put on your northerly line as surveyed by Mr. King.

Having heard, however, that there is a possibility of your constructing a closed board fence on your north line, I beg to suggest that such a fence could certainly be advantageously replaced by a picket fence, which would as well answer the purpose for an inclosure, and at the same time be less detrimental to the Le Roy tract.

Another object I have in view, in addressing you this communication, is, to lay before your honorable Board the propriety of opening and extending College Way, so called, eastward, from the Kellogg tract, a distance of about two thousand feet, to the roadway leading north from your line to the house on the Le Roy tract. Mr. Kellogg has opened the way up to our line, and if you are disposed to contribute thirty feet of the University tract, the Le Roy estate, and other owners, will contribute the remaining thirty feet (the way is sixty feet inside.)

The residents of Berkeley, north and northeast of the University, are certainly entitled to an entrance convenient to them; and I think you will, moreover, recognize that, to have no outlet except on the west side, is an injustice to a great portion of Berkeley.

Awaiting your action in the premises, of which I would be pleased to receive timely advice, I am, gentlemen,

Very respectfully yours,

E. LE BRETON,

Administrator estate of Theo. Le Roy, deceased.

We recommend that the request of the petitioner be denied.

Second, we submit the petition of Martin Kellogg, relating to the same matter:

I respectfully ask the attention of your committee, and through your committee, of the Board of Regents of the University, to the following facts:

I am occupying a piece of land adjoining the northwestern corner of the University site, having bought said land of the late President Durant. His deed to me entitled me to an eastern boundary coincident with the division line between plots 79 and 81, according to Kellerberger's map. Owing to an early error of survey, the fence, which should have been on the said division line, was put too far on the west, and until very lately I have not been able to gain possession of the strip of land thus cut off from my property. A suit, recently instituted, has now been settled in my favor, the case being so plain that the parties in adverse interest were unwilling to let it go to trial, and conceded my claim for the land up to said division line between plots 79 and 81.

If my deed from President Durant had been properly regarded from the first, I should all along have been in possession of a corner of land about thirty-nine feet by seventy-two feet, now in possession of the University, just at the head of College Way. That part of College Way is taken off from my land, and would have extended seventy-two feet further up the hill. The corner thus withheld from me, thus far, has now become the University's only by virtue of possession. It was included in the Durant deed to me (given before the Durant deed to the College of California), and I think equitably follows the strip just recovered by judgment of the Court.

This corner is very important to me, to give me a frontage and an outlet for the strip thus recovered. It is also important for an outlet for the Felton ranch, adjoining my land and the University land. I therefore respectfully request that my equitable claim to said corner be allowed by the Board of Regents, and that the cross fence at the head of College Way be set back to correspond with the rectified boundary of my land.

MARTIN KELLOGG.

BERKELEY, Cal., August 4, 1882.

The petition of Mr. Kellogg, with accompanying documents, were referred to counsel Mhoon, to ascertain the rights of the University under the several deeds to Mr. Kellogg and the University, and to report to the committee.

REPORT OF COUNSEL MHOON.

Pursuant to instructions from your committee, I herewith submit a report on the above matter:

The piece of land in question is 42.7 feet by 72.65 feet, according to the survey of M. G. King, and is now and has been in the possession of the Regents, and its immediate grantor, the College of California, since about August 15, 1860, the date of the deed from Goddard & Rankin to the President and Trustees of the College of California, for the southerly portion of plot 81, as laid down on Kellerberger's map.

The western line of plot 81 has been in Goddard's piece, where it joined the College site, located 72.65 feet too far to the west, and erroneously included the piece of land in question; that is to say, the westerly fence of Goddard extended south, threw this little piece of ground in plot 81, instead of plot 79, where it belonged. And it also seems, from the best information I can get, that the fence along the northerly line of the College site, now the University grounds, did in fact extend that distance, 72.65 feet, westerly beyond the true line between plots 81 and 79, which fence is in fact the northern line of the lot in question.

It also appears that on December 21, 1859, Mr. Pioche conveyed fifteen acres, in a square form, situated in the southeasterly corner of plot 79, to the College of California, the sides of which were 12.25 chains long. The northern line of this fifteen-acre tract was 2.75 chains south of the northern line of the College site, extended through plot 79.

It seems that the College took possession of these tracts in plots 79 and 81 according to the fences and lines above specified, and while it was so in possession, Mr. Henry Durant, to whom the balance of plot 79 had passed, on the twenty-eighth of January, 1864, conveyed to Mr. Kellogg the following described premises, to wit: Commencing at the northwest corner of the land of one Goddard, forming the northwest corner hereof, thence south $9\frac{1}{2}^{\circ}$ east along the line of said Goddard to the fence now forming the northern boundary of the College site, so called; thence south $80\frac{1}{2}^{\circ}$ west along said fence 9.36 chains to the northwest corner of the College site aforesaid; thence north $5\frac{1}{2}^{\circ}$ west along a line parallel with the line of land described in a certain bond given by H. M. Randall to Mrs. Martha P. Piercy for a deed to the same; thence north 79° east along the line of the land of one Byrne to the point of beginning; containing twenty-two acres (more or less), the same being the northeastern portion of plot No. 79.

Mr. Kellogg, as I am informed, took possession under his deed, about the time of its date, of a piece of land having for its eastern boundary the Goddard fence, which was, in fact, some distance westerly of the true line between plots 81 and 79, called for in his deed, and having for its southern boundary a fence 42.7 feet south of where the northern line of the College site would cut plot 79 if extended. It will be seen that the piece of land in question is not embraced within the fences inclosing Mr. Kellogg's premises, nor within the calls of the deed.

It further appears that, in 1868, the College of California conveyed to Mr. Durant a piece of land exactly 2.75 acres, off of the western side of the fifteen acres derived from Pioche, as above referred to, and in exchange, and as the consideration therefor, Mr. Durant contemporaneously agreed, as I am informed, to convey the piece lying between the northern line of the fifteen-acre tract and the northern line of the old College site, extended into plot 79 ten chains, that would include a parallelogram 2.75 acres in extent. That is to say, Mr. Durant was to give 2.75 acres, lying along the northern side of the fifteen-acre tract for the same quantity lying along the western side of the fifteen-acre tract. This would have made the northern line of the College site a straight line clear to the western boundary of the College grounds.

But Mr. Kellogg, under his deed of 1864, had taken possession of 42.7 feet too far south. He may have and doubtless did understand that to be his southern line, and it is quite possible that upon an investigation a Court of law would so construe his deed, but I am convinced it was Mr. Durant's intention to convey to Mr. Kellogg only down to the northern line of the College site, extended on a straight line through plots 81 and 79 to the western boundary of the College grounds, and that it was the intention of Mr. Durant to convey the piece between the fifteen acres and Mr. Kellogg, 2.75 chains by 10 chains, to the College of California, of which piece Mr. Kellogg now has in his inclosure .57 of an acre. Mr. Durant, pursuant to the agreement to exchange, made his deed to the College in 1868—four years after the deed to Kellogg—and the College took possession up to Mr. Kellogg's fence. Mr. Kellogg discovered that his eastern boundary was not properly located, and some time ago brought his action against Le Roy and others, the successors of Goddard, to recover the piece lying between the Goddard fence and the true line between plots 81 and 79. I am informed that the Le Roy heirs have given up this piece, and placed the fence on the true line. I think Mr. Kellogg was clearly entitled to this under his deed, and would, doubtless, have recovered, if Le Roy had gone to trial; and while it seems clear that the College has not so strong a case against Mr. Kellogg for the 0.57 of an acre, as he had against Le Roy, still, if I am correctly informed as to the intention and understanding of the parties in the matter, the College, or its successor, the University, has an equitable claim as against Mr. Kellogg for this 0.57 of an acre. The descriptions in the deed from Durant to Kellogg, and from Durant to the College, are, however, not free from doubt as to construction, and probably the best interpretation of them is that which the parties have so long acted upon. Under these circumstances, I think the line should not be disturbed, and that Mr. Kellogg is not legally or equitably entitled to the piece of land in question.

The map and deed submitted by Mr. Kellogg have been returned to the Secretary, and are, perhaps, necessary to a clear understanding of the foregoing.

Very respectfully, etc.,

JOHN B. MHOON.

Your committee recommends that the request of Martin Kellogg be denied.

Fourth—We recommend that monuments be erected on the line of King's survey, in the manner and in the places suggested by him.

Fifth—To conclude the whole matter by definite action, we offer the following resolution:

Resolved, That the entire survey of the University site at Berkeley, recently made by M. G. King, maps and field notes of which are now before the Board, is hereby adopted, and the boundaries of the University site, as set forth in said survey, are hereby declared to be the boundaries of the University site, and that the several officers of the Board, heretofore charged with the matter, proceed to inclose the grounds upon said line so established.

Respectfully submitted.

J. WEST MARTIN,
JOS. W. WINANS,
Committee on Grounds and Buildings.



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