

City of Cambridge,
Office of City Solicitor.
Dec. 22^d 1883.

To the Mayor and Aldermen.

Gentlemen. I respectfully
return herewith the following papers relating
to the old road to Kerry's landing, which were
referred to me, namely: -

1st The report of the standing committee on
roads and bridges.

2^d The letter from Mr. J. E. Corlidge to that
committee.

3^d The letter from H. W. Muzzey Esq. to the
same committee.

It appears that the order of the board alluded
to in the report was passed after a ^{careful} ~~full~~ examination
into the matter by a committee and a full and
exhaustive report thereon. I have read that
report and have nothing to add to it.

In my interviews with Mr. Muzzey (and I
have had several) he has not stated any
thing which has thrown any new light on the
subject. It is clear that the road was once a public

highway, and that there is no record of its discontinuance.

The only question remaining is whether the rights of the public have been lost by the adverse possession and occupation of the road by private persons. This is a mixed question of law and fact and can be definitely settled only by the courts. I think the public has a fair chance to maintain its rights. If the city desires to test the matter in the courts I see no better way than that suggested by the order alluded to in the report. Should Mr. Coolidge neglect to remove his fences, then the city can remove them and leave Mr. Coolidge to prosecute his claims.

It is proper for me to add that I received the following proposition from Mr. Murray namely - that the city should lay out a street forty feet wide and pay Mr. Coolidge one thousand dollars in full for his damages.

I am not prepared to recommend to the city the acceptance of that proposition.

Respectfully submitted
J. W. Hammond
City Solicitor

Cammanicote "
from City Solicitor

Dec. 24, 1883.

Gerry's Landing

Cambridge Decem. 21st 1883

To the Honorable, the Mayor, and Aldermen,
of the City of Cambridge.

The undersigned
having obtained, after a careful and thorough
investigation by one of our eminent jurists of
Cambridge, a legal opinion touching the
validity of the City's claim to the Perry Landing,
so called, I cheerfully submit a copy to your
board for consideration, respectfully asking,
if there be no objection, that it be placed on file
with the committee's report, for future reference.

Respectfully yours

Joseph. S. Coolidge.

Communication
from Joseph G. Coolidge
Dec. 24. 1883.

City of Cambridge.

In Board of Aldermen, July 2 1883.

~~Ordered,~~

The Standing Committee on Roads and Bridges which was directed by an order of this board, to notify Joseph E. Coolidge to remove any and all fences within the limits of the highway leading from Mount Auburn Street to Genij's landing, so-called, -

Reports,

That your Committee caused a copy of the order aforesaid to be served upon Mr. Coolidge in a communication to him dated June 13. 1883, the receipt of which he has acknowledged in a communication addressed to the committee, and transmitted herewith. An additional note addressed to the chairman of the committee, in reference to the matter, from Hon H. W. Muzzey, Attorney for Mr. Coolidge is also submitted.

Your committee would recommend that these two communications be referred to the City Solicitor,

For the Committee,

J. J. Sleeper

Report accepted, and communications referred to the City Solicitor.

Attest: Justus A. Jacobs. City Clerk

Report
Standing Committee
on Roads & Bridges -

~~transmitting~~ Communications

from J. G. Coolidge and his
att'y in relation to the public
way leading from Mt Auburn^{St.}
to Henry Landry.

July 2, 1883.

(Copy)

To Joseph G. Coolidge, Esqr.

My advice having been asked by you as to the validity of the claim recently set up by the City of Cambridge to a public road or way leading from Mount Auburn Street to "Gerry's Landing," so called, on Charles River, I have made as thorough an investigation of the subject as seems to me to be at present necessary to the giving of an opinion.

The controversy presents questions of both law and fact.

The claim of Cambridge is two-fold:—
First: That the Landing and Way were lawfully laid out or established by the Town of Watertown.

Second: That the way exists by prescription or through the dedication of it to the public by the proprietors of estates through which, as claimed, it passes to the landing.

In support of the first branch of

this claim various ancient records are adduced, and in support of the second branch many conveyances by and to owners of lands in the vicinity of the assumed way are referred to as recognizing its existence. I will postpone the consideration of the evidence of the existence of the way in order to state, as preliminary thereto, certain principles of the law applicable to the same.

Ordinarily, a public road or way is created by the County, town or municipal authorities, who, clothed with the power of eminent domain, condemn private lands to public use. When this power is exercised, the private owner of the land taken has a right to a tribunal for the assessment of his damages. The constitution of Massachusetts expressly gives him this right. But the pretended laying out of this way was, in date, prior to the existence of Massachusetts

as an independent state and while she was a colony of Great Britain. However, the English law then recognized the same right on the part of the subject where his private property was taken for a necessary public use or benefit. The power of the sovereign over the subject was thus limited, and the private person's rights thus protected at the period (about 1630) when it is asserted that the Landing and the Way to it were established by the Town of Watertown.

It is not pretended that any record of the laying out of the way by Watertown exists or ever existed. But it is claimed that evidence of the existence of the way by prescription creates the presumption of the loss of a grant, and that an uninterrupted use by the public indicates an original legal laying out of it. I will hereafter review the facts bearing upon these propositions of law.

It is pertinent at this point to contemplate the restricted use to which the way, if ever legally established, was devoted. While it is true that a road leading to a public landing has been held to be a highway, yet it is such only in a limited sense, not in the general sense of a right in all the inhabitants to use it for all purposes. For instance, if a way were created merely for the enjoyment of the privilege of passing over it by a portion of the inhabitants and for a peculiar advantage to them distinct from the general community, it would be in contemplation of law only a special way. If a prescriptive right is presumed from a special use of the way by only a part of the inhabitants, or if a dedication by private owners for such a use by such a portion of the inhabitants is to be inferred from user, the general right of all the inhabitants to travel the same is

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not thereby permanently established. If, as in the case of a public Landing, the use of the Landing is abandoned, the right in the way to it is lost, and the owner's fee in the soil is freed from the public easement.

Without reviewing the evidence in detail I will state the conclusions I have drawn from the facts.

II.

At some remote period a Landing on the River existed, but whether this was a private or a public landing is uncertain. There is a presumption arising from the names by which it has been called that it was a private landing. It is variously named as "Oliver's Landing", "Gerry's Landing" and the "Landing near Samuels' (or Simons') Mill". I do not find that it was ever described as a public landing. The decayed timbers found at one point on the river furnish, it is claimed, evidence that the landing was located upon that

Spot, but this may be doubted.

III

As to the way to the Landing (whether public or private), - I cannot find in the ancient records, or grants, or deeds of conveyance, that which indicates with certainty the location of the way.

IIII

No proof exists that Watertown or Cambridge ever set up any visible boundaries to the way or did any physical act in creating or maintaining it; while undoubted evidence does exist showing that the private owners of adjacent lands have claimed the territory as belonging to them, and have for many years set up barriers against any public use of it.

IV

If it be assumed that the Landing was located as claimed, and that a public way to it ever existed, there is

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abundant testimony to show that the public use and enjoyment have been lost by abandonment.

The way, in any event, or state of facts, was only appurtenant to the landing. If, therefore, the landing ceased to be used, the way to it fell also, and the soil became freed of the public easement. A way, whether public or private, or however established, (until title is acquired by purchase), carries only a right of passage over the surface, or the creation for public use of conveniences such as sewers &c. and upon the disuse of the way the private property rights are resumed, discharged of the easement.

Respectfully Submitted.

H. W. Buzzey.

Boston, June 25, 1883.

(Copy)

BOSTON, June 20, 1883

Dear Col. Sleeper:

Please find enclosed a communication from my client, Mr. Joseph G. Coolidge, addressed to the Committee on Roads and Bridges, of which you are the Chairman.

I trust the communication will receive due attention, for, in my opinion, grave doubts exist as to the right of the City to proceed under the Order, and unprofitable litigation should always be avoided.

Perhaps a compromise of conflicting claims is possible.

Respectfully Yours,

H. W. Muzzey

To
Solomon S. Sleeper, Esqr.

To S. S. Sleeper, George W. Hale, and
Stephen Anderson, Esqrs., Committee,
Gentlemen:-

I received your communication
~~of dated~~ June 13, 1883, (a few days after that
date), addressed to me, stating that

"Under authority of an order of the
Board of Aldermen of the City of Cambridge,
adopted June 4, 1883, a copy of which is
hereto annexed, the undersigned, Committee
on Roads and Bridges on the part of said
Board, hereby notify you to remove any
and all fences within the limits of the
highway leading from Mt. Auburn St.
to Gerry's Landing, so-called, within ten
days from the date hereof."

I respectfully notify you, and
through you the Board of Aldermen of the
City of Cambridge, that I shall not
submit to any intrusion upon my private
land or property rights, but shall resist
it in all legal ways.

I wish no controversy with the
City of Cambridge, or with any individual
who claims a right of passage through
my land; but I am determined to

maintain my private right of possession.

I am a citizen of Cambridge,
and have paid taxes here for many years
upon this land.

I have not discovered
through the report of the Special Committee
of the Board of Aldermen anything which
stops my right to protect myself against
a public or private intrusion upon
my property.

I, therefore, respectfully request
that, before active measures of public
aggression upon what I am advised are
my private rights are taken, you ^{will} ask
the opinion of the City Solicitor.

Respectfully Yours,

Joseph T. Coolidge

June 20th 1883.

H. W. Mudge
of Council.

Joseph E. Coolidge

to

Committee on Roads
and Bridges.

June 20, 1883.

City of Cambridge.



In Board of Aldermen, June 4th 1883

Ordered,

That the Committee on Roads and Bridges be and are hereby authorized and directed to notify Joseph G. Coolidge to remove any and all fences within the limits of the highway leading from Mt. Auburn St. to Gerry Landing so-called within ten days; and upon his failure to remove them within said time, that said Committee proceed, with such assistance as to them seems proper, to remove any and all fences or other obstructions within said limits

Attest: Justin A. Jacobs. Secy. Clk.

#48.

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Ordered

2507 to Berry's Landing

June 4, 1943.