

ANNUAL REPORT
OF THE
STATE LIBRARIAN
OF
NEW JERSEY
1906

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NEW JERSEY

For the Year Ending October 31st

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TRENTON, N. J.
MACCRELLISH & QUIGLEY, STATE PRINTERS.
1906

Commissioners of the State Library.

The Governor, HON. EDWARD C. STOKES,MILLVILLE.
Chancellor, HON. W. J. MAGIE,ELIZABETH.
Chief Justice, HON. WILLIAM S. GUMMERE,NEWARK.
Secretary of State, HON. S. D. DICKINSON,JERSEY CITY.
Treasurer, HON. FRANK O. BRIGGS,TRENTON.
Comptroller, HON. J. WILLARD MORGAN,CAMDEN.
Attorney-General, HON. ROBERT H. McCARTER,NEWARK.

Librarian and Secretary, HENRY C. BUCHANAN,TRENTON.

Assistants.

JOHN D. FAUSSETT,Law Librarian.
JOHN M. ROGERS,Reference Librarian.
SHEFFIELD TUESDAY,Messenger.

Report of State Librarian.

Hon. Edward C. Stokes, Governor of New Jersey:

DEAR SIR—In accordance with the requirement of the act regulating the State Library, the following report of the condition of the library is submitted for transmission to the Legislature.

On October 31st, 1905, the number of books and pamphlets in the library was shown to be 71,057. The additions made during the past year were 3,211, as follows:

From the United States Government,	1,003
From other States and Territories, in exchange,	787
Through donations,	238
From the Custodian of the Capitol,	190
By purchase for the Law Library,	339
By purchase for the Reference Library,	599
Daily and weekly newspapers donated,	55
Total,	3,211

There were returned to the Superintendent of Documents at Washington, D. C., 710 duplicates, making the net gain for the year 2,501, and showing the contents of the State Library to be at this time 73,558 books and pamphlets.

The library is in good condition. In the law department the sets of reports and statutes of other States have been kept up through a system of exchange, and purchases have been made of the new text-books as they have appeared, and of the encyclopedias, revisions, digests and serials already in the library. In the miscellaneous department many reference works have been added, special attention having been given to securing copies of books relating to the history of the State.

The appropriation made "for the repair, preservation and purchase of useful books for the State Library" during the year was \$3,500. Of this sum \$1,526.79 was spent for books and peri-

odicals added to the law library; \$1,644.06 for additions made to the reference library; and \$314.20 for binding and repairing books; a total of \$3,485.05. The expenditures in detail are shown upon the ledger of the State Library and appear in the annual report of the State Treasurer.

In April last distribution was made of Volume 25 of the First Series of the New Jersey Archives. Copies of the Archives are now sent to 856 persons whose names are upon the State Library list. Under the Act of 1881 one thousand copies of each volume are received by the Commissioners of the State Library, and are to be distributed by them among the various State and public libraries of the United States that they may designate, and to the various offices and departments of this State and to the officers in charge thereof. This method of distribution proved unsatisfactory in some respects, and the earlier volumes were soon out of print. Finally the disposition of the books was by general consent left with the Commissioners of the Library, and distribution is made by a committee, upon written application or the recommendation of members of the Legislature or State officers. Under this system there is an avoidance of duplication, many complete sets have been made up in public and private libraries in all parts of the State and the United States, and the object of the law—the preservation of the early history of New Jersey—is being accomplished. Volumes 26 and 27 of the First Series, and Volumes 3 and 4 of the Second Series, are now in the press, and may be ready for distribution during the year.

The most valuable addition made to the library during the year was thirty-three volumes presented by Hon. Robert H. McCarter, Attorney-General. The books, which are of great historical value, had been procured for use in the settlement of the New Jersey-Delaware boundary dispute. Other important additions include the latest revisions, digests and codes of the various States; a complete set of the Insurance Law Journal; all the latest law text-books; a set of English Notes and Queries, nineteen volumes; Henry George's works, ten volumes; Burton Holmes' Travel Lectures, ten volumes; the English Dialect Dictionary, six volumes; the International Scientific Series, fifty-eight volumes; the Dictionary of Agriculture, six volumes; Life

and Works of Abraham Lincoln, twelve volumes; History of the Jews, and the Ethics of Judaism, eight volumes; American Church History, thirteen volumes; the World's Best Poetry, ten volumes; fifteen volumes of the New York Genealogical and Historical Records, the set of which it is hoped may be completed during the present year; Constitutional History of New York, five volumes; Literature of the World, ten volumes; grammars and dictionaries of several languages; Technical and Scientific Dictionary; the Iconographic Dictionary, seven volumes; Lippincott's New Gazetteer of the World; Famous Families of New York; History of Ancient Pottery; Land Birds of North America, three volumes; The Dog Book, two volumes; Tree Book, Frog Book, and many histories and genealogies.

Rev. Allen H. Brown, D.D., of Montclair, N. J., presented to the library twenty-nine books and pamphlets, nearly all of which relate to New Jersey history. Among others who made contributions during the year were: Rev. A. E. Ballard, Ocean Grove; Colonel Robert G. Smith, Jersey City; Dr. A. M. Stackhouse, Moorestown; Hon. Frank O. Briggs, Theodore G. Kitchin, Dr. Henry Mitchell, E. P. Southwick, Francis H. McGee, Lewis Parker, A. L. Clark, Harry B. Salter, Rev. Dr. George B. Wight, Prof. H. B. Kummel and Dr. Carlos E. Godfrey, Trenton; Hon. J. Willard Morgan and William J. Kraft, Camden; General R. H. Breintnall, Winton C. Garrison and Charles J. Allen, Newark; Hon. John Kean, Elizabeth; Rev. Walter Reid Hunt, Orange; W. F. Allen, South Orange; Fred. R. Lehlbach, Newark; Merchants' Association, New York; Vineland Historical and Antiquarian Society, R. Winder Johnson, Philadelphia; Louisiana Purchase Exposition Company, St. Louis; Junius Davis, Wilmington, N. C.; Ethan Allen Weaver, Philadelphia; American Antiquarian Society, Worcester, Mass.; Ivy L. Lee, New York.

Annexed hereto is a copy of a brief by Mr. John A. Hartpence, a member of the New Jersey Bar, which was prepared for clients who had been led to believe that they had a reversionary interest in the lands upon which the State Capitol stands. The investigations made by Mr. Hartpence seem to dispose effectively of the generally credited tradition that the lands were

donated, and conclusively show that they were deeded in fee, without conditions, and for valuable consideration. In view of the fact that the Legislature has twice made appropriations of money for the benefit of the members of the family of Joseph Brittain, and at least once under the impression that the State Capitol grounds had been "donated," the brief may be found useful in the future, as it is interesting historically now. In order that it may be preserved, I respectfully suggest that it be published as an appendix to this report. Mr. Hartpence has consented that this shall be done.

HENRY C. BUCHANAN,

State Librarian.

APPENDIX.

Title to the State Capitol Grounds.

IN RE LANDS OF JOSEPH BRITTAIN,
UPON WHICH HAS BEEN ERECTED
THE STATE CAPITOL AT TRENTON,
NEW JERSEY.

Joseph Brittan, of Trenton, New Jersey, by will dated January 16, 1755, and probated April 23, 1756, bequeathed certain personal property to his wife, Charity Brittan, together with the use of the best room in the house in which he had dwelt so long as she should live, and then devised to his sons, Isaac Brittan and Joseph Brittan, the aforesaid house, with the lot upon which it stood, and all the rest of his lands and estate, to be equally divided between them when they reached twenty-one years of age, and if either should die before reaching that age, his share was to go to the survivor, and to their heirs and assigns forever.

Office Secy. of State. Book 8 of Wills, p. 456.

Charity Britton, by will dated April 13, 1790, and probated April 27, 1790, made certain bequests of personal property to Charity, daughter of her son Joseph; to Susannah, wife of her son Joseph, and to her sons Joseph and Isaac.

Office Secy. of State. Book 30 of Wills, p. 311.

On January 24th, 1786, Joseph Brittain and Susannah Brittain conveyed to Paul Tharp, in fee, a certain lot of land in Trenton, designated as Lot No. 1 on a plan of lots of said Joseph Brittain. The consideration was twenty-five pounds.

Office Secy. of State. Liber A-S of Deeds, p. 317.

This lot was afterward conveyed by said Tharp to William Reeder and wife for seventy-five pounds, and by said Reeder and wife conveyed to Joseph Cooper and others, commissioners, their heirs and assigns forever, in trust and for the use of the State of New Jersey, agreeably to the provisions of an act of the Legislature of said State passed November 22d, 1791. This latter deed was dated January 19th, 1792. Consideration, sixty-two pounds, ten shillings.

Ibid., p. 283.

Ibid., p. 285.

New Jersey Laws, 1789-1798, p. 729.

On March 13th, 1784, Joseph Brittain and Susannah Brittain, his wife, conveyed to John Emerson, in fee, a certain lot of land in Trenton, designated as Lot No. 2 on a plan of lots of said Joseph Brittain. Consideration, twenty-five pounds.

Office Secy. of State. Liber A-S of Deeds, p. 288.

This lot was afterward conveyed by said John Emerson to James Emerson. *Ibid., p. 319.*

On September 13th, 1784, Joseph Brittain and Susannah Brittain, his wife, conveyed to James Emerson, in fee, a certain lot of land in Trenton, designated as Lot No. 3 on a plan of lots of said Joseph Brittain. Consideration, twenty-five pounds.

Office Secy. of State. Liber A-S of Deeds, p. 321.

This lot, together with Lot No. 2 (next above), passed by deed of said James Emerson to George Ely, and by deed of said Ely and his wife to the aforesaid Commissioners, in the manner aforesaid, said deed last mentioned being dated January 19th, 1792. Consideration, one hundred and twenty pounds.

Ibid., p. 323.

Ibid., p. 325.

On January 19th, 1792, Joseph Brittain and Susannah Brittain, his wife, conveyed to the aforesaid Commissioners, in the manner aforesaid, a certain lot of land in Trenton, situated in the rear of the three lots hereinbefore referred to, containing about two and one-quarter acres. Consideration, five shillings. This was an absolute grant, in fee simple, by warranty deed.

Office Secy. of State. Liber A-S of Deeds, p. 278.

On February 4th, 1792, Joseph Brittain and Susannah Brittain, his wife, conveyed to the aforesaid Commissioners, in the manner aforesaid, a certain lot of land in Trenton, adjoining the last above-stated lot, on the west, containing about three-quarters of an acre. Consideration, fifty-seven pounds, ten shillings. This was an absolute grant, in fee simple, by warranty deed.

Office Secy. of State. Liber A-S of Deeds, p. 281.

On March 13th, 1784, Joseph Brittain and Susannah, his wife, conveyed to George Ely, in fee, a certain lot of land in Trenton, designated as Lot No. 4 on a plan of lots of said Joseph Brittain. Consideration, twenty-five pounds. Title to this lot, by sundry devolutions, eventually vested in Maria Meredith, who, on April 10th, 1849, conveyed the same to the State of New Jersey.

Office Secy. of State. Liber A-V of Deeds, p. 289.

Ibid. 285.

Merccr Co. Clerk's Office. Liber P of Deeds, pp. 431. 434.

These various lots of land comprise the present tract upon which is erected the State Capitol at Trenton, New Jersey. A map of the said tract is shown herewith.

On April 15th, 1796, Joseph Brittain and Sarah, his wife, conveyed to John Beatty a certain lot of land in Trenton, designated in the deed as Lot No. 14, which deed reads, in part, as follows:

"WHEREAS, James Gould in his life time was seized in his demesne as of fee of Land in a certain tract or parcel of Land situate lying and being in the County aforesaid (Hunterdon) near the falls of Delaware River Con-

taining eighty acres with the appurtenances and being So Seized the said James Gould by his deed bearing date on the thirteenth day of December in the year of our Lord one thousand seven hundred and thirty-three bargained sold and conveyed the premises aforesaid with the appurtenances to Benjamin Smith his Heirs and assigns in fee simple and whereas the said Benjamin Smith and his wife by their deed bearing date on the twenty-second day of May in the year of our Lord seventeen hundred and fifty bargained sold and Conveyed thirty-eight acres of Land with the appurtenances part of the aforesaid premises to Joseph Brittain since deceased his Heirs and assigns in fee simple; And whereas the said Joseph Brittain afterwards to wit on the Sixteenth day of January, in the year of our Lord Seventeen hundred and fifty-five made and published his last will and testament in due form of Law, and therein and thereby devised the said thirty-eight acres of Land with the appurtenances to Isaac Brittain and Joseph Brittain their Heirs and assigns forever in fee simple and Soon after died without having in any manner revoked or altered the Said Last Will and Testament and Whereas the said Isaac Brittain one of the devisees aforesaid by his deed bearing date on the Twenty-eighth day of March in the year of our Lord Seventeen hundred and Seventy-four, granted released and conveyed to the said Joseph Brittain the other said devisees, and Grantor in this present Indenture all his the said Isaac Brittain's moiety or equal undivided half part of the said thirty-eight acres of land with the appurtenances, to have and to hold the said moiety or equal undivided half part thereof to the said Joseph Brittain his Heirs and assigns forever (Resource being had to the said several recited deeds, and to the said last will and Testament of record in the Office of Secretary of State at Trenton will more fully and at large appear) whereby the said Joseph Brittain became seized in Severally of the said thirty-eight acres of land with the appurtenances in his demesne as of fee. Now THIS INDENTURE WITNESSETH that the said Joseph Brittain and Sarah his wife for and in consideration of," etc.

(Here follows the grant of Lot No. 14.)

Office Secretary of State, A. S. of Deeds, p. 414.

This territory became part of Mercer county when this county was created in 1838.

Woodward and Hageman's History of Burlington and Mercer Counties, p. 525.

The records of wills and deeds in the office of the Secretary of State of New Jersey fail to show, so far as an exhaustive search will disclose, any devise or grant of other lands to Joseph Brittain.

The falls of the Delaware river are immediately in the rear of the present site of the State Capitol.

The land on which the State Capitol now stands seems to have at one time belonged to Joseph Brittain, who was the great-great-grandfather of Miss Emma M. Brittain, of Butler, Pa.; Mr. John Brittain, of Allegheny City, Pa., and Mr. J. F. Brittain, of Maryville, Tenn. The plot is part of a tract of thirty-eight acres conveyed to said Joseph Brittain by Benjamin Smith, which, in turn, had been carved out of an eighty-acre tract conveyed to said Smith by James Gould.

Joseph Brittain died about 1756, and by his last will devised these lands to his sons, Isaac and Joseph. In 1774, Isaac released his moiety, or equal undivided share, in the lands to his brother, Joseph, and Joseph thus became the sole owner thereof in fee.

Joseph Brittain, the first, made bequests to his wife, Charity Brittain. Charity, in her last will, refers to her son Joseph, and to Susannah, wife of her son Joseph. Both Joseph the first and Charity refer to their sons Isaac and Joseph. The grants of the several parcels of land which now comprise the Capitol tract are by Joseph Brittain and Susannah, his wife. The complete chain of title to Lot No. 4 does not appear, but this lot was conveyed to George Ely by Joseph Brittain and wife on March 13th, 1784, and eventually the title vested in one Marie Meredith, who, on April 10th, 1849, conveyed the lot in question to the State of New Jersey.

Up to this point, therefore, the chain is apparently without a faulty link, and the recitals in the deed of April 15th, 1796, made by Joseph Brittain and wife to John Beatty, would seem to conclusively confirm the reasoning by which I have sought to invest Joseph Brittain the second with title in fee to these lands.

Miss Emma M. Brittain, a great-great-granddaughter of Joseph Brittain the first, is authority for the statement that Joseph Brittain the second twice married. The deeds of 1784, 1786, 1791 and 1792 are by Joseph Brittain and Susannah, his wife. The deed of 1796 is by Joseph and Sarah, his wife. The facts, therefore, seem to dovetail.

According to a common tradition, the land on which the State Capitol now stands was donated to the State of New Jersey by one Joseph Brittain, with the condition that if the land ever ceased to be used for the purposes of such Capitol, it was to revert to the donor, with all its appurtenances, or to his heirs and assigns. Tradition also has it that large sums of money have been appropriated by the State of New Jersey from time to time for the use of the heirs of Joseph Brittain the second, and that this fund awaits the claim of such heirs.

The records show that at the time Joseph Brittain conveyed the land in question to the State of New Jersey his title to the same was absolute. The grants of the various parcels of land are grants in fee simple, absolute and unconditional, and for valuable consideration. Three lots of one-quarter of an acre each were sold by Joseph Brittain to certain individuals between the years 1784 and 1786, for which he received, in all, seventy-five pounds, or about three hundred and seventy-five dollars. On January 19th, 1792, these lots were conveyed to the State of New Jersey by their then owners. On that same date Joseph Brittain and his wife, Susannah, conveyed a tract containing about two and one-quarter acres to the State of New Jersey for the sum of five shillings. This doubtless is the transaction which gave rise to the tradition above referred to, for the consideration was but a nominal one. But, about two weeks later, on February 4th, 1792, another tract of about three-quarters of an acre was conveyed to the State by the Brittaines for the sum of sixty-two pounds, ten shillings, or about three hundred and twelve dollars. These two large tracts were in the rear of the lots first sold, those lots facing the then road to Beatty's Ferry, now West State street. The tract in the rear ran back to the Delaware river, and could have had

but little value separate and apart from the front lots. In fact, it was mere river bank. Including Lot No. 4, for which Joseph Brittain also received twenty-five pounds (about one hundred and twenty-five dollars), Brittain received about eight hundred dollars for the land which now comprises the Capitol tract. At the time these transactions occurred, this must have been a most adequate remuneration for the land. The transaction in its entirety, therefore, loses its romantic aspect, and from beginning to end has the appearance of a bargain in which the vendor received good value for the property disposed of. All possibility of a donation is dispelled by the deeds themselves, which show the grants to have been, in each instance, for valuable consideration. The grants were also in fee, and without condition.

It is my opinion, therefore, that the tradition, with regard to the donation of the land by Joseph Brittain, is without foundation.

It is true, however, that the estate granted may have been an estate upon condition, and that that condition was that the land should be used only for the purposes of a State Capitol, to revert to the grantor and his heirs in case of breach. But the deeds fail to disclose any such condition. They are absolute and unqualified. It must be admitted, though, that this is not conclusive against the condition, for by a contemporaneous instrument, separate and apart from the deeds, the condition of defeasance might have been created, to operate later in contravention of the absolute character of the grant. But I have been unable to find any such instrument of record, nor has such an instrument been produced before me by the heirs who are interested, nor has my attention been directed in any way to such an instrument. The possibility of its existence is very remote, and I have but little faith in it.

I am, therefore, of the opinion that there is no basis for the tradition in this respect.

My attention has been directed to the fact that at the time Joseph Brittain conveyed the land in fee, he was possessed of a life estate only. If this were true, it would be of importance, perhaps, in seeking to establish a claim against the State of New Jersey; but the records, in my opinion, conclusively disprove this contention, and I believe it to be without merit.

But, even though Joseph Brittain had a life estate only when he conveyed in fee, I can see but little hope of success in any litigation that might be instituted to attack the State's title. It has been in obvious possession since 1792, and it seems to me that the very spirit of the statute of limitations would preclude the possibility of suit, though the State should consent to it, the State's consent to the suit being necessary, of course. It may be that if the State were to consent to such a suit it would also waive the statute of limitations, for otherwise the waiver of immunity from suit would be farcical; but the waiver of immunity from suit could be withdrawn at any time, at the State's pleasure, and I have but little faith in the possibility of its now allowing the title to the Capitol property to be disturbed. Without the State's consent, there is no right of suit.

Part of my undertaking has been to ascertain, if possible, whether or not the State has taken action of this kind. After much research among the records and archives of many of the State departments, I have been unable to find any legislation permitting suit to be brought.

As to the fund which tradition states has been appropriated for the benefit of the heirs of Joseph Brittain, no trace of such a fund can be found. I believe it to be a myth. I do find, however, two statutes by which appropriations of small amounts have been made.

In 1824 the Legislature appropriated five hundred dollars for the benefit of Sarah Brittain, widow of Joseph Brittain. This sum was paid to Sarah Brittain, as will appear by reference to the report of the State Treasurer of New Jersey for the year 1825.

P. L. 1824, p. 158.

Minutes Assembly 1822-25. 50th Session, 1825, p. 31.

In 1872 an act was passed which provided for an annuity of two hundred dollars to be paid to Ann B. Brittain, daughter of Joseph Brittain. The annuity was to continue during her life. Reference to the various reports of the respective State Treasurers shows that this annuity was paid until the death of said Ann B. Brittain, which occurred in July, 1880. The sum of fifteen hundred and sixty-three dollars and fifteen cents was paid.

P. L. 1872, p. 26.

State Treasurer's Reports, 1873-1882.

It may be of interest, in passing, that this statute of 1872 refers to Ann B. Brittain as "the daughter of Joseph B. Brittain, who donated to this State the land upon which the capitol buildings now stand." This might be used as an argument in support of the tradition, but to me the very phraseology refutes its possibility, in the light of the facts disclosed by the records, as hereinbefore set forth. To me this language has no significance, and is but an instance among many of the looseness with which legislation is constructed. The Legislature has simply accepted the tradition without investigating it, and has taken for granted something which should have been satisfactorily proven.

As a result of my investigation, therefore, it is my opinion that—

First.—There is no foundation for the tradition that the land upon which the Capitol stands would revert to Joseph Brittain or his heirs in case it should cease to be used for any other purpose than that originally intended, either upon the ground of a donation or conditional grant.

Second.—There is no foundation for the tradition that a fund appropriated by the State of New Jersey for the benefit of the heirs of Joseph Brittain, in satisfaction of their claims growing out of the alleged cloud upon the State's title, awaits claimants at the State Treasury.

Third.—There is no sound basis for a legal claim against the State of New Jersey growing out of the alleged donation or conditional grant of lands by Joseph Brittain for the purposes of a State Capitol.

Fourth.—There is no sound basis for a legal claim against the State of New Jersey under the statutes of 1824 and 1872, the amounts appropriated by those statutes having been paid in full to the beneficiaries thereunder.

JOHN A. HARTPENCE.

TRENTON, N. J., July 10th, 1906.