corporation had the right to contract or stipulate with the land-owner as to damages without the intervention of a jury, and that this included the right to disregard their finding, and proceed to make a settlement as if they had never been summoned.[1]

§ 622 (486). **Amount of Damages.** — Concerning the *amount of damages*, or the principles upon which compensation to the owner whose property is taken should be measured, there are no fixed rules, embracing the whole subject, universally applicable throughout the different States. In some of the States provision is made, as we have seen above, in their organic law that the compensation shall be in money, and without deduction for benefits. Similar provisions are sometimes made in the charter or statute authorizing the appropriation, and which exert a modifying influence on the rules of law, as previously held in the same State or elsewhere. In determining the *quantum* of damages, regard must also be had to any special constitutional or statutory provisions relating to the subject, and the previous course of decision in which those provisions have not unfrequently originated. In States where the subject is not expressly regulated by positive law, the books abound in cases which cannot be reconciled, respecting what is and what is not proper to be taken into consideration, in the way of benefits on the one hand, and of injuries on the other, to the proprietor whose property is taken for some public work or improvement. The ultimate inquiry is not a complex one; it is simply, What is the damage which the owner will sustain in consequence of the proposed appropriation of his property? But the elements which enter into

[1] Mobile *v.* Richardson, 1 Stew. & P. (Ala.) 12 (1831). This case further holds that on the consent of the land-owner to the resolution, he could maintain an action for the recovery of the amount, and that the resolution was an admission, *prima facie* binding on the corporation, of the right of the owner to the land appropriated. *Ib.* In *Massachusetts*, an agreement by which a city undertakes with the owners of land taken for a street to submit the assessment of damages and betterments to arbitration is *ultra vires* and *void*, and the city cannot maintain an action to enforce an award made under such a submission. Somerville *v.* Dickerman, 127 Mass. 272; Boylston Market Assoc. *v.* Boston, 113 Mass. 528; Harvard College *v.* Boston, 104 Mass. 470; Brimmer *v.* Boston, 102 Mass. 19. See, as to arbitration, Mills Em. Dom., sec. 92. County commissioners can only exercise such powers as are expressly granted or are incidentally necessary for the purpose of carrying the same into effect. Stewart *v.* Otoe County, 2 Neb. 177; Sioux City & P. R. R. *v.* Washington County, 3 Neb. 42; McCann *v.* Otoe County, 9 Neb. 324. They can only locate public roads and erect bridges thereon in the manner provided by law. Thus, where they made a contract to buy a private bridge, and the parties selected arbitrators to appraise the same and they made an award, it was held that the award was a nullity. McCann *v.* Otoe County, 9 Neb. 324.

this inquiry, when the matter is left at large to the courts without legislative rule, are far from being easy of apprehension and application. Cases, however, in which the appropriation by municipal agencies is for streets, are not apt to present as many difficulties as are met with when the appropriation is for railway or other like purposes.

§ 623. **Same subject.** — The *adaptability for particular uses* of the lands sought to be condemned, if this confers upon them an additional value, is an element to be taken into the account in estimating the compensation to which the owner is entitled.[1] In adjudging this point the Supreme Court of the United States clearly expresses the general principles of law regulating the ascertainment of the *quantum* of compensation or damages. "In determining the value of land appropriated for public purposes the same considerations are to be regarded as in a sale of property between private parties. The inquiry in such cases must be, What is the property worth in the market, viewed not merely with reference to the uses to which it is at the time applied, but with reference to the uses to which it is plainly adapted; that is to say, what is it worth from its availability for valuable uses? Property is not to be deemed worthless because the owner allows it to go to waste, or to be

[1] Miss. & R. Rivers Boom Co. *v.* Patterson, 98 U. S. 403 (1878); s. c. below, 3 Dillon, 465. Here three islands in the Mississippi River, peculiarly adapted for the purpose of a boom, were condemned; their value aside from boom purposes was only $300, but in view of their adaptability for such purposes their value was $5,500. The court held the owner entitled to the latter value. Mr. Justice *Field*, in the course of his judgment, says: "The views we have expressed as to the justness of considering the peculiar fitness of the lands for particular purposes as an element in estimating their value find support in several cases. Thus, in Furman Street, *In re*, 17 Wend. (N. Y.) 669, where a lot upon which the owner had his residence was injured by cutting down an embankment in opening a street in the city of Brooklyn, the Supreme Court of *New York* said that neither the purpose to which the property was applied, nor the intention of the owner in relation to its future enjoyment, was a matter of much importance in determining the compensation to be made to him; but that the proper inquiry was, What is the value of the property for the most advantageous uses to which it may be applied? In Goodin *v.* Cinc. & W. Canal Co., 18 Ohio St. 169, where a railroad company sought to appropriate the bed of a canal for its track, the Supreme Court of *Ohio* held that the rule of valuation was what the interest of the canal company was worth, not for canal purposes or for any other particular use, but generally for any and all uses for which it might be suitable. And in Young *v.* Harrison, 17 Ga. 30, where land necessary for an abutment of a bridge was appropriated, the Supreme Court of *Georgia* held that its value was not to be restricted to its agricultural or productive capacities, but that inquiry might be made as to all purposes to which it could be applied, having reference to existing and prospective wants of the community. Its value as a bridge site was, therefore, allowed in the estimate of compensation to be awarded to the owner."

regarded as valueless because he is unable to put it to any use. Others may be able to use it and make it subserve the necessities or conveniences of life. Its capability of being made thus available gives it a market value which can be readily estimated. So many and varied are the circumstances to be taken into account in determining the value of property condemned for public purposes, that it is perhaps impossible to formulate a rule to govern its appraisement in all cases. Exceptional circumstances will modify the most carefully guarded rule; but, as a general thing, we should say that the compensation to the owner is to be estimated by reference to the uses for which the property is suitable, having regard to the existing business or wants of the community, or such as may be reasonably expected in the immediate future."[1]

§ 624 (487). **Same subject. Rules to measure Damages.** — The author must content himself with a statement of those rules or general principles he believes to be the best supported by reason, and which embrace the cases ordinarily arising in connection with the exercise of the right of eminent domain by municipalities, whose chief occasion for the power is to open and establish streets and ways. The rules here laid down are, of course, subject to modification by any special constitutional provision or legislative enactment varying them. I. If the proposed improvement takes *all* of the land of the owner, the case, as to the amount of compensation, is comparatively easy of solution. He is entitled to the fair and full market or pecuniary value of the property at the time it is appropriated, and to no more. This statement of the rule excludes from consideration all such elements as that the owner does not desire to sell, or that the property is endeared to him by association, and the like.[2] But it includes, and justly so, the full value at *the time* it is taken, no matter what may have caused that value, and although it may have shared with other property in the benefits of the proposed improvement. The transaction is a compulsory purchase, the compulsion, however, coming from the public, and the amount to which the owner is entitled is not simply the value of the property at forced sale, but such sum as the property is worth in the market, if persons desiring to purchase were found who were willing

[1] Boom Co. *v.* Patterson, *supra*, *per Field*, J. Proof of a former dedication by the owner is not admissible for the purpose of fixing the amount of compensation. San Jose *v.* Reed, 65 Cal. 241.

[2] Furman Street, *In re*, 17 Wend. (N. Y.) 650; William and Anthony Streets, *In re*, 19 Wend. (N. Y.) 678; *per Potter*, J., in Stafford *v.* Providence, 10 R. I. 567 (1873); s. c. 14 Am. Rep. 710; Kerr *v.* South Park Comm'rs, 117 U. S. 379 (1885), approving the rule stated in Cook *v.* South Park Comm'rs, 61 Ill. 115 (1871); Green *v.* Chicago, 97 Ill. 370.

to pay its just and full value, and no more.[1] II. If, however, as most commonly happens, *part* only of the property is to be taken more embarrassing questions are apt to arise, in determining which regard must be had to the condition as to the shape, use, and convenience in which the residue of the property will be left, and how its value will be affected by that which is taken for the proposed improvement. And here usually arises the difficult inquiry, What benefits and what injuries are proper to be regarded as affecting the question of damages? Now, benefits and injuries are of two kinds: 1. General or public, being such as are not peculiar to the particular proprietor, part of whose property is taken, but those benefits which he shares and those injuries which he sustains in common with the community or locality at large. 2. Special or local, being those peculiar to the particular land-owner, part of whose property is appropriated, and which are not common to the community or locality at large, — such, on the one hand, as rendering his adjoining lands more useful and convenient to him, or otherwise giving them a peculiar increase in value; and, on the other, rendering them less useful or convenient, or otherwise in a peculiar way diminishing their value. The former class of benefits or injuries — namely, those which are general, and not special — have, according to the almost uniform course of decision, no place in the inquiry of damages, and cannot be considered for the purpose of reducing the amount, being too indirect and contingent; but injuries which specially affect the proprietor, or benefits which are specially conferred upon his adjacent property, part of which is taken, are to be considered, unless, by the Constitution of the State or legislative enactment, *all* benefits, special as well as general, are to be excluded.[2]

[1] Somerville & E. R. R. Co. *v.* Doughty, 22 N. J. L. 495 (1850); Driver *v.* Western Union R. R. Co., 32 Wis. 569 (1873); s. c. 14 Am. Rep. 726; Patterson *v.* Miss. & R. Rivers Boom Co., 3 Dillon, 465, 467 (1875), affirmed by the Supreme Court, 98 U. S. 473 (1878); Cooley Const. Lim. 565; Giesy *v.* Cinc., W. & Z. R. R. Co., 4 Ohio St. 308 (1854). In Stafford *v.* Providence, 10 R. I. 567 (1873); s. c. 14 Am. Rep. 710, the text was quoted, and the doctrine there laid down was applied to the condemnation of lands for a *water reservoir* for the city, in a case, where, after the location and partial construction of the improvement, it was decided to take the land in question; and it was held that its value was to be estimated as it was at the time it was condemned, and not at the time of the location of the improvement.

[2] Meacham *v.* Fitchburg R. R. Co., 4 Cush. (Mass.) 291 (1849); Dickenson *v.* Fitchburg, 13 Gray (Mass), 546; Upton *v.* South Reading Br. R. R. Co., 8 Cush. (Mass.) 600 (1851); Robbins *v.* Milw. & H. R. R. Co., 6 Wis. 636; Farwell *v.* Cambridge, 11 Gray (Mass.), 413; Dwight *v.* Hampden Co. Comm'rs, 11 Cush. (Mass.) 201; Howard *v.* Providence, 6 R. I. 514; Chattanooga *v.* Geiler, 13 Lea, 611; Lehigh Valley Coal Co. *v.* Chicago, 26 Fed. Rep. 415; Arbrush *v.* Oakdale, 28 Minn. 61. A learned jurist and experienced and able judge thus expresses his views on this subject: "When only a

§ 625 (488). **Same subject.** — Applying these principles, *a proper and practical general rule* is to first ascertain the fair

portion of a parcel of land is appropriated, just compensation may, perhaps, depend upon the effect which the appropriation may have on the owner's interest in the remainder to increase or diminish its value, in consequence of the use to which that taken is to be devoted, or in consequence of the condition in which it may leave the remainder in respect to convenience of use. If, for instance, a public way is laid out through a tract of land which before was not accessible, and if, in consequence, it is given a front, or two fronts, upon the street, which furnish valuable and marketable sites for building lots, it may be that the value of that which remains is made, in consequence of taking a part, vastly greater than the whole was before, and that the owner is benefited instead of damnified by the appropriation. Indeed, the great majority of streets in cities and villages are dedicated to the public by the owners of lands, without any other compensation, or expectation of compensation, than the increase in market value which is expected to be given to such lands thereby; and this is very often the case with land for other public improvements which are supposed to be of peculiar value to the locality in which they are made. But where, on the other hand, a railroad is laid out across a man's premises, running between his house and his outbuildings, necessitating, perhaps, the removal of some of them, or upon such a grade as to render deep cuttings or high embankments necessary, and thereby greatly increasing the inconveniences attending the management and use of the land, as well as the risks of accidental injuries, it will often happen that the pecuniary loss which he would suffer by the appropriation of the right of way would greatly exceed the value of the land taken, and to pay him that value only would be to make very inadequate compensation." Cooley Const. Lim. 565. See, also, Green *v.* Chicago, 97 Ill. 370. When land taken for a public way is already burdened with a private right of way and an incipient dedication to the public, the owner is entitled to no more than nominal damages. Bartlett *v.* Bangor, 67 Me. 460 (1878).

"Just compensation" consists in making the owner good by an equivalent in money, and includes not only the value of the land appropriated, but the diminished value of the residue. Bigelow *v.* West Wis. Ry. Co., 27 Wis. 478, 487 (1871). The owner is entitled to compensation for the injury to the *whole property*, and not merely for that to the separate lots over which the railroad is to be built. Welch *v.* Milw. & St. P. Ry. Co., 27 Wis. 108; Driver *v.* Western Union R. R. Co., 32 Wis. 569 (1873); s. c. 14 Am. Rep. 726. In *Alabama* the measure of damages caused by lowering a sidewalk is the difference between the market value of the lot before and after the lowering,— the diminution in value produced thereby. Montgomery *v.* Townsend, 80 Ala. 489. *Post*, sec. 995 *c*, and note. *Post*, chap. on Streets.

The words in the act relating to eminent domain, "which may damage property not actually taken," relate to contiguous lands of the same owner, a part of which only are taken, so that where the party seeking condemnation has not embraced all the owner's contiguous lands not actually taken, but damaged, the owner may file a cross petition and have the damages to the other lands assessed. But even in that case, the damages must be direct and physical, and result from the taking of a portion of his land. Stetson *v.* Chicago & Ev. R. R. Co., 75 Ill. 74 (1875). See *supra*, secs. 587 *a*–587 *d*.

The phrase in an act allowing "*any* benefit" to be considered in estimating damages to the land-owner, construed and limited. Wier *v.* St. P. S. & T. F. R. R. Co., 18 Minn. 169 (1872). Where the value of lots is less than the amount assessed upon them for a public improvement, their enhanced value is nothing to the owner; and the benefits to him being no greater than to any other citizen, the assessment is unconstitutional. Zoeller *v.* Kellogg, 4 Mo. App. 163. Such unconstitutionality is not affected by the fact that the municipal authority to assess is not referable to the right of eminent domain, but inheres in the taxing power alone. *Ib.* In assessing damages to a land-owner for land taken to widen a street, the jury may consider an agreement made by him with the city, just before institution of the proceeding, and not for compromise or to avoid litigation, to take a certain sum for the strip of land required. Springfield *v.* Schmook, 68 Mo. 394; Miss. River Br. Co. *v.* Ring, 58 Mo. 491. In such proceeding, consequential damages are not to be regarded. Springfield *v* Schmook, *supra*. The vacation of a street, the use of which has been granted to a railroad, does not render a city liable to an owner of a lot, which does not adjoin the street, and whose damage is the same as that sustained by all other property owners though greater in degree. East St. Louis *v.* O'Flynn, 119 Ill. 200.

[1] See Sater *v.* Burlington & Mt. P. Pl. R. Co., 1 Iowa, 393, decided under the Constitution of 1846. The rule, as there laid down, does not fully accord with that stated in the text, since it requires the marketable value of the premises proposed to be taken to be ascertained irrespective of the proposed improvement, and does not distinguish between general and special benefits. By the *Iowa* Constitution of 1857, *benefits are excluded*. Deaton *v.* Polk County, 9 Iowa, 594; Israel *v.* Jewett, 29 Iowa, 475. Other like constitutional provisions, see *supra*, secs. 587, 616; Mills Em. Dom. secs. 149–158, 204 *a*; Lewis Em. Dom. sec. 472. *Pennsylvania rule* is similar to the one in Sater *v.* Mt. P. Pl. R. Co., *supra*. Watson *v.* Pittsburgh & C. R. R. Co., 37 Pa. St. 469; Pennsylvania R. R. Co. *v.* Heister, 8 Pa. St. 445; Hornstein *v.* Atl. & Gt. W. R. R., 51 Pa. St. 87; Harrisburg & Pot. R. R. Co. *v.* Moore, 4 W. N. C. 537 (1877); Philadelphia *v.* Linnard, 97 Pa. St. 242. *As to general and special benefits.* Little Miami R. R. Co. *v.* Collett, 6 Ohio St. 182 (1856); Cleveland & P. R. R. Co. *v.* Ball, 5 Ohio, St. 568; State *v.* Digby, 5 Blackf. (Ind.) 543; Robbins *v.* Milw. & H. R. R. Co., 6 Wis. 636; Hornstein *v.* Atl. & Gt. W. R. R. Co., 51 Pa. St. 87; Woodfolk *v.* Nashville & C. R. R. Co., 2 Swan (Tenn.), 422; McIntire *v.* State, 5 Blackf. (Ind.) 384; Ind. Central R. R. Co. *v.* Hunter, 8 Ind. 74; Vanblaricum *v.* State, 7 Blackf. (Ind.) 209; McMahon *v.* Cinc. & C. S. L. R. R. Co., 5 Ind. 413; Isom *v.* Railroad Co., 36 Miss. 300; Pacific R. R. Co. *v.* Chrystal, 25 Mo. 544; Newby *v.* Platte County, 25 Mo. 258; Sutton's Heirs *v.* Louisville, 5 Dana (Ky.), 28; Jacob *v.* Louisville, 9 Dana (Ky.), 114; Arnold *v.* Cov. & Cinc. Br. Co., 1 Duvall (Ky.), 372; Robinson *v.* Robinson, *Ib.* 162; Shipley *v.* Balt. & P. R. R. Co., 34 Md. 336 (1871). In *Mississippi even incidental benefits* cannot be set off against incidental damages. New Orleans, J. & Gt. N. R. R. Co. *v.* Moye, 39 Miss. 374 (1860). In *Georgia benefits are excluded.* Savannah *v.* Hartridge, 37 Ga. 113 (1867). Rule in *Minnesota* when land is taken by railway company. Curtis *v.* St. Paul, S. & T. F. R. R. Co., 20 Minn. 28 (1873), and cases cited. Rule in *Missouri* is, the reasonable value of the land taken. Jamison *v.* Springfield, 53 Mo. 224 (1873). *California*, no benefits. Ventura County *v.* Thompson, 51 Cal. 577. Rule in *Kansas:* For the purpose of reducing damages, all *conveniences and benefits accruing* can-

market value of the entire premises, part of which is proposed to be taken, *not* necessarily irrespective of such improvement, but irrespective of the causes which have contributed to that value; then ascertain the like value of the premises in the condition in which they will be after the part is taken, without deduction for any general benefit which will result from the proposed improvement, but, unless specially excluded by positive law, deducting special benefits as above defined; and the difference in value, be it more or less than the value of the part taken, will constitute the measure of compensation.[1] Even without an express provision of

law requiring that there shall be no deduction for benefits, it seems to the author unjust to require that the value of the land shall be

not be considered, but only such as are a direct and special benefit to the owner and his land, and such as are the direct, certain, and proximate result of the establishment of the road, not benefits received by him in common with the whole community. Roberts *v.* Brown Co. Comm'rs, 21 Kan. 247; Pottawatomie Co. Comm'rs *v.* Sullivan, 17 Kan. 58. In *Massachusetts*, upon an assessment of damages for land taken to widen a street, a benefit to be deducted may be direct and special, although other estates on the same street, similarly situated, are similarly benefited. Cross *v.* Plymouth County, 125 Mass. 557. On a petition for damages to the abutters from raising the grade of the street, benefits derived from the situation of the petitioner's lands as to the street are direct and special, and may be set off, although common to all the property on the street. Donovan *v.* Springfield, 125 Mass. 371. Benefits classified. Upham *v.* Worcester, 113 Mass. 97.

The opinion of *Ranney*, J., in Giesy *v.* Cinc. W. & Z. R. R. Co., 4 Ohio St. 308 (1854), contains an able exposition of the *principles upon which damages should be assessed* under the Constitution of *Ohio*, which contains a provision that the "compensation shall be assessed by a jury, without deduction for benefits to any property of the owner." In the course of his opinion he says: "Whether property is appropriated directly by the public or through the intervention of a corporation, the owner is entitled to receive its fair market value at the time it is taken, — as much as he might fairly expect to be able to sell it to others for, if it was not taken; and this amount is not to be increased from the necessity of the public or the corporation to have it, on the one hand, nor diminished from any necessity of the owner to dispose of it on the other. It is to be valued precisely as it would be appraised for sale upon execution, or by an executor or guardian, and without any regard to the external causes that may have contributed to make up its present value. The jury are not required to consider how much, nor permitted to make any use of the fact that it may have been increased in value by the proposal or construction of the work for which it is taken. To allow this to be done would not only be unjust, but would effect a partial revival of the very abuse which it was a leading purpose of these constitutional provisions to correct. It would be unjust, because it establishes for a corporation what is done for no one else, — a sort of right in the property of others to the reflected benefits of its improvement, itself submitting to no reciprocity by affording others a compensation for the effect of their improvements upon the property of the corporation. And it is doubly unjust, where, as must very often happen, the increase in value accrued to the benefit of a former owner, and has been bought and paid for by the present holder, from whom the property is taken at a diminished price." In a proceeding to condemn a right of way for a railroad through a tract of land, the jury should assess the compensation due the owner for the land to be appropriated, irrespective of benefits, and also his damages by reason of the diminished value of the remainder of the tract, in consequence of such appropriation. In ascertaining these amounts, the jury are to take into consideration the real value of the land taken, and the diminished value to the remainder, and may for that purpose take into account, not only the purposes to which the land has been or is applied, but any other beneficial purpose to which it may be applied, which would affect the amount of compensation of damages. Cinc. & Spr. Ry. Co. *v.* Longworth, 30 Ohio St. 108 (1876). So, in Somerville & E. R. R. Co. *v.* Doughty, 22 N. J. L. 495 (1850), the Supreme Court of *New Jersey* expresses its opinion to be, that in estimating the value of land taken for the purpose of a public improvement the present value of the lands, not at a forced sale, but at a sale which a prudent holder would make if he had the power to choose his own time and terms, is to be given.

ascertained irrespective of those general benefits which are common to all land in the vicinity, and which arise out of the proposed improvement. And the rule held by some courts, that these benefits shall be excluded in ascertaining the value of the whole land in the first instance, and then allowing to be deducted from this sum the value of the remaining portion after the improvement is made, is still more indefensible, and it was the general conviction of the injustice of such a rule that has led to so many constitutional provisions and legislative enactments prohibiting the land-owner from being charged with benefits. But for benefits, direct and special to him, he should be charged in making the estimate of the amount to which he is justly entitled, unless, by the Constitution or statute, even such benefits are not to be considered.[1]

In the case of Paul *v.* Newark, at the Essex (N. J.) Supreme Court circuit, *Depue*, J., held that a *house wholly within the line of the proposed street* must (if the owner so wishes) be taken and paid for in full by the city, and the city cannot compel him to move it by merely paying costs of removal and restoration, even although the owner has immediately adjacent land, sufficient to accommodate the house. When statutes provide for taking "lands," the word is used in its broad signification, and includes all things affixed to lands. In Meyer *v.* Newark, where only a part (about one half) of a house was within the lines of proposed street, the question was left for review before the court *in banc*, whether the city was compelled to take the whole, or merely to pay for the damages incident to the destruction of the half of the house. The court, however, strongly intimated that in cases where the house was not entirely destroyed, it was only necessary to pay damages sufficient to compensate the owner, and the whole need not be taken or paid for. *Ib.;* 6 Am. Law Review, 576, from which the above is extracted. Compensation for *buildings* upon the lands taken. Schuchardt *v.* New York, 53 N. Y. 202 (1873); Portland *v.* Lee Sam, 7 Oreg. 397; Portland *v.* Kamm, 10 Oreg. 383.

Measure of compensation to *lessor and to lessee*. Dyer *v.* Wightman, 66 Pa. St. 425 (1870). A purchaser of land through which a public sewer had been previously built, without right, can recover damages in respect to it, only for such injuries as have resulted to the land since his purchase. Alexander *v.* District of Columbia, 3 Mackey, 192. In *Vermont*, it is held that commissioners to appraise damages for taking land for a sewer can make award only for the actual taking of the land, and cannot include consequential damages, — as for a nuisance caused by the discharge of sewage. Stewart *v.* Rutland, 58 Vt. 12.

[1] "The question of damages is to be determined with reference to special benefits to property not taken. Village of Hyde Park *v.* Dunham, 85 Ill. 569. Any mere general and public benefit, or increase of value received by the land, in common with other lands in the neighborhood, is not to be taken into consideration in estimating compensation. Page *v.* Chicago, M. & St. P. Ry. Co., 70 Ill. 324." *Per Magruder*, J., in Hyde Park *v.* Washington Ice Co., 117 Ill. 233. *Supra*, secs. 617, 618, and notes. In estimating the damage done to private property by a public improvement, evidence to show that the improvement, when completed, was a nuisance and a continuing damage to the property is not admissible; the owner has a separate right of action therefor. Badger *v.* Boston, 130 Mass. 170 (constructing a public urinal). See, also, Eames *v.* New Engl. Worsted Co., 11 Met. 570; Staple *v.* Spring, 10 Mass. 72.

Measure of damages for land taken for public park by right of eminent domain: Evidence is not admissible to show prices at which lands adjoining the proposed park were sold *after* the boundaries of the park had been determined. Kerr *v.* South Park Comm'rs, 117 U. S. 379 (1885), approving rule of damages in Cook *v.* South Park Comm'rs, 61 Ill. 115 (1871), by which the value of the land is to be estimated as of the date of the condemnation.

CHAPTER XVII.

DEDICATION.

§ 626 (489). This chapter will treat of the doctrine of the dedication of land to public uses, so far as relates to municipalities, under the following arrangement: —

1. Importance of the Doctrine of Dedication — sec. 627.
2. Statutory and Common-Law Dedications — secs. 628, 629.
3. Common-Law Dedication — *Rationale* and Requisites — secs. 630–632.
4. Extent of Dedication as respects the Donor — secs. 633, 634.
5. Who may dedicate — Intent — How established — secs. 635, 636.
6. Effect of Long User and Acquiescence — secs. 637–639.
7. Effect of Platting and Sale of Lots — secs. 640, 641.
8. Acceptance by the Public — When and for What Purpose Necessary — sec. 642.
9. Dedication of Public Squares and Their Uses — secs. 643–647.
10. Dedications for Other Purposes — secs. 648, 649.
11. Alienation and Change of Use — secs. 650–652.
12. Reverter — Misuser — Remedy — sec. 653.

Importance of the Doctrine of Dedication.

§ 627 (490). **Dedication founded in Public Convenience.** — That *property may be dedicated to public use* is a well-established principle of our jurisprudence. At common law a definite and certain grantee is necessary to take lands by grant or conveyance, and hence a grant or conveyance to the general public could not take effect.[1] The law meets this difficulty by the *doctrine of dedication*, which recognizes the rights of the public thus acquired by estopping the dedicator from disputing them. The principle is founded in public convenience, and has been sanctioned by long experience. Indeed, without such a principle, it would be difficult, if not impracticable, for society to enjoy those advantages which belong to a state of

[1] *Ante*, sec. 560; *infra*, sec. 631.