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.

advanced civilization, and which are essential to its accommodation. The importance of this doctrine may not always be appreciated, but we are in a great degree dependent on it for highways and streets, and for the grounds appropriated as places of amusement or of public business which are found in all our towns, and especially in our populous cities.[1] The subject is, therefore, one which falls within the scope of the present work, and we have endeavored to present its leading doctrines with care and adequate fulness.

Statutory and Common-Law Dedications.

§ 628 (491). **Classes of Dedication.** — Dedications of land to public uses are divisible into two classes: 1. *Statutory Dedications;* 2. *Common-Law Dedications.* Statutory dedications are made, and it has been decided, can be made, only by pursuing substantially the course prescribed by the particular statute. Thus, if the statute requires that the map or plat describing the streets, alleys, commons, or other public grounds, shall be *acknowledged* before it is recorded, an acknowledgment is essential to a valid and effective dedication under the statute.[2] The effect of a dedication under the statute is

[1] *Per McLean*, J., in New Orleans *v.* United States, 10 Pet. 662, 712 (1836). *Infra*, sec. 631. As to the forums and public places in Ancient Rome, see *ante*, chap. i. sec. 3 *a*.

Dedication is "the act of devoting or giving property for some proper object, and in such a manner as to conclude the owner." *Beardsley*, J., Hunter *v.* Sandy Hill Trs., 6 Hill (N. Y.), 407, 411 (1844). See Dovaston *v.* Payne, 2 Smith Lead. Cas. 142, and notes, for a general view of the law of dedication. There is an excellent view of the subject in Angell on Highways, chap. iii. See, also, chapters on Property and Eminent Domain, *ante*, and chapter on Streets, *post*.

[2] Wisby *v.* Bonte, 19 Ohio St. 238; Fulton *v.* Mehrenfeld, 8 Ohio St. 440 (1858), questioning the *grounds* of prior decision in Morris *v.* Bowers, Wright (Ohio), 750; Williams *v.* First Presb. Soc. in Cinc., 1 Ohio St. 478; Winona *v.* Huff, 11 Minn. 119 (1866); Baker *v.* St. Paul, 8 Minn. 491 (1863); Schurmeier *v.* St. Paul & Pac. R. R. Co., 10 Minn. 82 (1865), affirmed in Supreme Court, 7 Wall. 272 (1868); State *v.* Hill, 10 Ind. 219 (1858); Hays *v.* State, 8 Ind. 425; Noyes *v.* Ward, 19 Conn. 250 (1848); Des Moines *v.* Hall, 24 Iowa, 234 (1868). See Ragan *v.* McCoy (requisites of acknowledgment), 29 Mo. 356 (1860); Detroit *v.* Det. & Milw. R. R. Co., 23 Mich. 173 (1871); Baker *v.* Johnston, 21 Mich. 319 (1870). If the plat as recorded, pursuant to a statute requiring it, contains enough to show that it was intended by the owner to be a dedication under the statute, it would seem to the author to be right, notwithstanding a defective acknowledgment, or the like, to hold the proprietor estopped to make the objection that he did not comply with the statute. See Hurley *v.* Boom Co., 34 Minn. 143; Gebhardt *v.* Reeves, 75 Ill. 301 (1874). Other considerations would apply where statutory requirements for the benefit of the public are not observed by the dedicator.

Authentication of town plats and maps, nature of evidence necessary, &c., effect of unrecorded map, &c., see Commonwealth *v.* Alburger, 1 Whart. (Pa.) 469; Biddle's Lessee *v.* Shippen, 1 Dallas, 19; Franey *v.* Miller, 11 Pa. St. 434; Commonwealth *v.* Wood, 10 Pa. St. 93; Baird *v.* Rice, 63 Pa. St. 489 (1871); Winona *v.* Huff, 11 Minn. 119; Ragan *v.* McCoy, 29 Mo. 356; Chicago, B. & Q. R. R. Co. *v.* Banker, 44 Ill. 26; Gebhardt *v.* Reeves, 75 Ill. 301; United States *v.* Chicago, 7 How. 185; Gosselin *v.* Chicago, 103 Ill. 623 (effect of acknowledgment by an attorney in fact). *Ante*, sec. 185, note; *post*, sec. 640, note.

Requirement that plat be recorded. Strong *v.* Darling, 9 Ohio, 201; Pangborn *v.* Westlake, 36 Iowa, 546 (1873); s. c. 7 West. Jurist, 420, and cases cited by *Cole*, J.

[1] Fulton *v.* Mehrenfeld, 8 Ohio St. 440; Brown *v.* Manning, 6 Ohio, 298, 304 (1834); Baker *v.* St. Paul, 8 Minn. 491, 493, note remarks of *Flandrau*, J.; Ragan *v.* McCoy, 29 Mo. 356; Wisby *v.* Bonte, 19 Ohio St. 238. See People *v.* Jones, 6 Mich. 176; Jacksonville *v.* Jacksonville Ry. Co., 67 Ill. 540 (1873); Mytton *v.* Duck, 26 Up. Can. Q. B. 61; Harr. Munic. Man. (5th ed.) 481. "*The difference between a statutory and a common-law dedication* [under the statutes of *Illinois*] is, that the one vests the *legal title* to the ground set apart for public purposes in the municipal corporation, in trust for the public, while the other leaves the legal title in the original owner, charged, however, with the same rights and interests in the public which it would have if the fee was in the corporation." *Per Sheldon*, J., in Chicago, R. I. & Pac. R. R. Co. *v.* Joliet, 79 Ill. 25. See, also, Maywood Co. *v.* Maywood, 118 Ill. 61. As to effect of the legal title being in the one or the other, see chapter on Streets, *post; infra*, sec. 631, note. In *Illinois*, a statutory dedication vests the legal title to streets in the city in trust for public uses as streets, while a common-law dedication leaves it in the owner, but subject to the public uses of streets. Gosselin *v.* Chicago, 103 Ill. 623; Zinc Co. *v.* La Salle, 117 Ill. 411 (1886).

[2] *Per Swan*, J., Fulton *v.* Mehrenfeld, 8 Ohio St. p. 444, *supra;* Cincinnati *v.* White, 6 Pet. (U. S.) 431; Pawlet *v.* Clark, 9 Cranch, 292; Hunter *v.* Sandy Hill Trs., 6 Hill (N. Y.), 407; Curtis *v.* Keesler, 14 Barb. (N. Y.) 521; Brown *v.* Manning, 6 Ohio, 298, 303, and cases cited; Cincinnati's Lessees *v.* Hamilton Co. Comm'rs, &c., 7 Ohio, Pt. 1, 88; *Ib.* 217; Schurmeier *v.* St. Paul & Pac. R. R. Co., 10 Minn. 82, 104; Cook *v.* Harris, 61 N. Y. 448; Zinc. Co. *v.* La Salle (city of), 117 Ill. 411 (1886), where the effect of a statutory dedication is fully considered; Reid *v.* Board of Education, 73 Mo. 295; *infra*, sec. 640, and note.

[3] 8 Ohio St. 440, *supra;* Baker *v.* Johnston, 21 Mich. 319 (1870); *infra*, sec. 633, note; Hurley *v.* Boom Co., 34 Minn. 143. *Equitable owner may dedicate*, and trustee holding the mere naked legal title is bound to respect it. Williams *v.* First Presb. Church, 1 Ohio St. 478; Baker *v.* St Paul, 8 Minn. 491; Hannibal *v.* Draper, 15 Mo. 638; Ragan *v.* McCoy,

often declared. Thus, if it be provided by statute that the map or plat "when so made and recorded, shall be deemed to be a sufficient *conveyance to vest the fee* in the county in which such town lies," this dispenses with any assent or acceptance on the part of the public, and in this respect differs from a common-law dedication.[1] It differs, also, in the mode of operation, since by the language above quoted the estate vests in the public by *conveyance* or *grant*, whereas, at common law, a dedication to public uses, in cases where there is no express grant to a grantee upon consideration, operates by way of an *estoppel in pais* of the owner, rather than by grant or the transfer of an interest in the land.[2] It should be remarked, however, that an incomplete or defective statutory dedication will, when *accepted by the public*, or when rights are acquired under it by *third persons*, operate in favor of the public and of such persons respectively, as a common-law dedication by the owner.[3]

§ 629 (492). **Extent of Dedication.** — Although the effect of a statutory dedication may be to grant the fee of the streets to the corporation in trust for the public uses, yet, unless prohibited by statute, the proprietor, in laying out a town or addition, *may grant the easement simply*, and reserve the minerals therein.[1] But such

29 Mo. 356, 366 (1860); Johnstone *v.* Scott, 11 Mich. 232; Doe *v.* Attica, 7 Ind. 641 (1856); Dover Trs. *v.* Fox, 9 B. Mon. (Ky.) 200; Banks *v.* Ogden, 2 Wall. 57; Sargeant's Heirs *v.* Ind. State Bank, 4 McLean, 339; 12 How. 371. "The authorities show that dedications have been established in every conceivable way by which the intention of the party could be manifested." *Per Breese*, J., in Waugh *v.* Leech, 28 Ill. 488 (1862); Alvord *v.* Ashley, 17 Ill. 363; Dunion *v.* People, *Ib.* 416; Maywood Co. *v.* Maywood, 118 Ill. 61; Waltman *v.* Rund, 109 Ind. 366. Thus, the *making and recording of a town plat* is evidence of the highest character of the dedication of the streets and alleys marked upon it. Waugh *v.* Leech, *supra;* Godfrey *v.* Alton, 12 Ill. 29; Belleville *v.* Stookey, 23 Ill. 441. *An unsigned and unacknowledged plat, recorded and acted on*, held to be effectual as a common-law dedication (Field *v.* Carr, 59 Ill. 198 (1871), while in *Indiana* it is held that a plat not signed by the owner and not acknowledged as required by law is not entitled to record; and if it be recorded, the record is a nullity. Taylor *v.* Fort Wayne, 47 Ind. 274 (1874). Unconditional dedication on recorded town plat (recognized by the city charter) of land as a "public levee" or landing place, held effectual without any specific formal acceptance of such levee; and it was further held that user was not essential to maintain or continue the rights of the public, and it was considered doubtful whether the public rights could be lost by adverse occupation. Coffin *v.* Portland, 11 Saw. C. C. R. 600 (1886); s. c. 27 Fed. Rep. 412, *Deady*, J. Compare Portland & W. V. R. R. Co. *v.* Portland, 14 Oreg. 188. *Infra*, sec. 649, note; San Leandro *v.* Le Breton ("Court Square") 72 Cal. 170 (1887); s. c. 13 Pac. Rep. 405.

Under the statutes of *Kansas, the execution and recording of a plat of a city or town* conveys to the county the fee of such parcels of land as are therein expressed, named, or intended for public use, in trust and for the uses therein named, expressed or intended, and for no other use or purpose, and a subsequent conveyance of land thus dedicated to public uses by the proprietor of the city, town, or addition, to the county does not destroy the trust created by the execution and recording of the plat. Franklin Co. Comm'rs *v.* Lathrop, 9 Kan. 453 (1872); *infra*, sec. 629, note.

By the making and recording of a town plat, under the statutes of *Indiana* on that subject, the designation of streets, lanes, and alleys on the plat gives to the public only an easement therein for such use as the public have a right to make of them; but the fee simple remains in the proprietor. Cox *v.* Louisville, N. A. & C. R. R. Co., 48 Ind. 178 (1874). Construction of *Missouri statute*. Price *v.* Thompson (as to "park"), 48 Mo. 363; Rutherford *v.* Taylor (rights of adjoining owners), 38 Mo. 315.

[1] Dubuque *v.* Benson, 23 Iowa, 248 (1867). See Noyes *v.* Ward, 19 Conn. 250 (1848); Manly *v.* Gibson, 13 Ill. 312; Peck *v.* Prov. Steam Engine Co., 8 R. I. 353 (1866). Words on the plat "The streets are dedicated for *street purposes, and those only*," held to give the public only an easement, and that subterraneous mines were reserved. 23 Iowa, 248, *supra*. Under statute of *Illinois*. Zinc Co. *v.* La Salle (right of abutter to mine), 117 Ill. 411 (1886). Right of city to remove soil, gravel, &c. *Post*, sec. 687 *et seq. Dedicator may limit duration* (Antones *v.* Eslava's Heirs, 9 Port. (Ala.) 527), or make a qualified dedication, that is, prescribe or limit the nature and extent of the use to which the property may be subject, as for a "common," "public square," "landing place," "markets," &c. Niagara Falls Susp. Br. Co. *v.* Bachman, 66 N. Y. 261 (1876). *Infra*, sec. 648; Tyler *v.* Sturdy ("foot-way"), 108 Mass. 196;

proprietor cannot confer upon a county or extraneous corporation the control of streets in a city, and thus deprive the proper municipal corporation of the control given to it by law.[1] A dedication may be made *in præsenti*, to be carried into effect *in futuro*.[2]

Trustees *v.* Hoboken, 33 N. J. L. 13; Hoboken Imp. Co. *v.* Hoboken, 36 N. J. L. 540; Hoboken *v.* Pa. R. R. Co., 124 U. S. 656, 681 (1887), distinguishing preceding case; De Witt *v.* Ithaca, 15 Hun, 568; Morant *v.* Chamberlin, 6 H. & N. 541. *Infra*, sec. 634.

Dedication of ordinary highways gives the public an easement of passage only, all other rights remaining with the dedicator. The owner who dedicates to the public use *as a highway* a portion of his land parts with no other right than the right of passage to the public over the land so dedicated, and may exercise all other rights of ownership not inconsistent therewith. St. Mary's, Newington, *v.* Jacobs, L. R. 7 Q. B. C. 53. There may be a dedication to the public of a right of way, such as a *footpath* across a field, subject to the right of the owner of the soil to plough it up in due course of husbandry, and destroy all trace of it for the time. Mercer *v.* Woodgate, L. R. 5 Q. B. C. 26; Arnold *v.* Blaker, L. R. 6 Q. B. C. 433; Arnold *v.* Holbrook, L. R. 8 Q. B. C. 96. A deed executed by the owner of the land abutting on a lane in which the limits of the lane were given may be referred to for the purpose of ascertaining the width of the lane. The Queen *v.* Donaldson, 24 Up. Can. C. P. 148. An owner who clears open a passage through his land and neither marks by any visible distinction nor excludes persons from passing through his land by positive prohibition, shall be presumed to have dedicated it to the public. Rex *v.* Lloyd, 1 Camp. 260. But an obstruction, such as a gate-post or chains, may be looked upon as evincing a contrary intention. Roberts *v.* Karr, 1 Camp. 262 *n;* Lethbridge *v.* Winter, *Ib.* 263 *n;* Woodyer *v.* Hadden, 5 Taunt. 126; Rex *v.* St. Benedict Par., 4 B. & Ald. 447; Rex *v.* Leake, 5 B. & Ad. 469; Marquis of Stafford *v.* Coyney, 7 B. & C. 257; Barraclough *v.* Johnson, 8 A. & E. 99; Poole *v.* Huskinson, 11 M. & W. 827; Pryor *v.* Pryor, 26 L. T. N. S. 758; Healey *v.* Corp. of Batley, L. R. 19 Eq. 375; Commonwealth *v.* Newbury, 2 Pick. (Mass.) 51; Proctor *v.* Lewiston, 25 Ill. 153. But it is not conclusive. Johnston *v.* Boyle, 8 Up. Can. Q. B. 142; Davies *v.* Stephens, 7 C. & P. 570; Beveridge *v.* Creelman, 42 Up. Can. Q. B. 29. A highway may be dedicated to the public *subject to a pre-existing right of user by the occupiers of adjoining land for the purpose of depositing goods thereon*. Morant *v.* Chamberlin, 6 H. & N. 541. Where an erection or excavation exists upon land, and the land on which it exists or to which it is contiguous is dedicated to the public, it is dedicated subject to the inconvenience or risk arising from the existing state of things. Fisher *v.* Prowse, 2 Best & S. 770; Robbins *v.* Jones, 15 C. B. N. S. 221; Le Neve *v.* Mile End Old Town, 8 E. & B. 1054; Harr. Munic. Man. (5th ed.) 483, 484. As to extent of dedication, see *infra*, secs. 633, and note, 644 *et seq.*

[1] Derby *v.* Alling, 40 Conn. 410 (1873).

[2] Des Moines *v.* Hall, 24 Iowa, 234, 241 (1868). In this last case, construing the *Iowa* statute, it was held (*Cole*, J., dissenting) that the laying off and recording a town plat or an addition thereto, under the code, had the effect to vest in the corporation the *fee simple title* to, and exclusive right of dominion over the streets and alleys thus dedicated to the public use; and in such case the original proprietor has no right to the *subterraneous deposits of coal* within the limits of such streets, and the corporation may maintain an action against him for coal mined and taken by him from beneath the same. In *Minnesota*, it is held that under a statutory dedication the fee simple to land dedicated for streets, squares, &c., does not pass, but only such an estate or interest as the purposes of the trust require. Schurmeier *v.* St. Paul & Pac. R. R. Co., 10 Minn. 104; affirmed, 7 Wall. 272. The owner of a tract of land laid the same out into blocks and

It may also, if there be no restrictive statute, be *made upon condition*.[1]

Common-Law Dedication; Rationale and Requisites.

§ 630 (493). **Common-Law Dedications.** — As to *common-law dedications*, the right to make which is not usually taken away or abridged by statutory regulations respecting town-plats,[2] the subject may be advantageously presented by referring to the leading case of the City of Cincinnati *v.* White,[3] decided by the Supreme Court of the United States, which has been extensively followed by the State tribunals, and is everywhere recognized as a sound exposition of the peculiar doctrines of the law respecting the rights which may be parted with by the owner and acquired by the public under the doctrine of dedication. In that case it appeared that in 1789 the original proprietors of Cincinnati *designated on the plan of the town the land between Front Street and the Ohio River as a common*, for the use and benefit of the town forever. A few years afterwards a claim was set up to this common by a person who had procured a deed from the trustee in whom the fee of the land was vested, and who had entered upon the common and claimed the right of possession. The proof of the dedication (marking on the plat, accompanied by public use) being made out to the satisfaction of the court, it sustained the rights claimed by the city. At the time the plan was

lots, dedicating a strip of ground in front of the lots to the public for a street, reserving a space between the lots and street dedicated for *courtyards only*. The city authorities cannot appropriate the portion dedicated as a street to the purpose of a roadway merely, and deprive the owners of lots on one side of the street of a sidewalk between the courtyards and the roadway proper. Carter *v.* Chicago, 57 Ill. 283. Under the Town Site Act of *Kansas*, the fee of streets, &c., dedicated to public use by an owner, vests in the county absolutely, subject to the control of the city as another agent of the public. Wood *v.* National Water Works Co., 33 Kan. 590.

[1] St. Louis *v.* Meier, 77 Mo. 13. In this case one Kingsland, an owner of land in a city, filed a plat showing streets and alleys "dedicated to public use, *provided* the owners north and south of the subdivision will dedicate the same streets and alleys through their respective tracts without expense to the owners of the lots of the above subdivision." The adjacent owners having made no dedication as contemplated by Kingsland, the city proceeded to condemn their land for streets, treating Kingsland's dedication as complete, and not including the streets and alleys on his plat in the proceedings. It was held that the dedication was conditional, and should "take effect according to its terms or not at all;" but the city could acquire title to the streets and alleys appearing upon the plat by proceedings for condemnation. See, also, Port Huron *v.* Chadwick, 52 Mich. 320; *infra*, sec. 632, note.

[2] Abbott *v.* Cottage City, 143 Mass. 521; Sanborn *v.* Minneapolis, 35 Minn. 314; Browne *v.* Bowdoinham, 71 Me. 144.

Cincinnati *v.* White, 6 Pet. (U. S.) 431 (1832). See Noyes *v.* Ward, 19 Conn. 250; Manly *v.* Gibson, 13 Ill. 312; Perry *v.* New Orleans, M. & C. R. R. Co., 55 Ala. 413; citing and approving text.

adopted by the proprietors, and this ground was marked on the plat as a common, they did not, in fact, possess the equitable (or legal) title to the space dedicated, but they shortly afterwards purchased the equitable title; and it was held (their assent to the dedication continuing) that under the purchase the prior dedication was good.[1]

§ 631 (494). **Same subject. General Features.** — In its opinion in the case just mentioned, the Supreme Court assert or assent to the following principles: 1. That it is not essential to a dedication that the legal title should pass from the owner.[2] 2. Nor is it essential that there should be any grantee of the use or easement *in esse* to take the fee, such cases being exceptions to the general rule requiring a grantee.[3] 3. Nor is a deed or writing necessary to constitute a valid dedication; it may be by parol.[4] 4. No specific length of

[1] *Per McLean*, J., in New Orleans *v.* United States, 10 Pet. 713: Coffin *v.* Portland (dedication "public levee") 11 Saw. C. C. R. 600 (1886); s. c. 27 Fed. Rep. 412; *infra*, sec. 643 *et seq.* Where the municipal corporation is in possession of land under an alleged dedication, equity will not, at the instance of the original proprietor, enjoin the corporation from interfering with such proprietor, and thus put the latter in possession. The latter has an adequate remedy at law. Chicago *v.* Wright, 69 Ill. 318 (1873).

[2] Lade *v.* Shepherd, 2 Stra. 1004; Beatty *v.* Kurtz (dedication of lot on plan "for the Lutheran Church"), 2 Pet. (U. S.) 566; New Orleans *v.* United States, 10 Pet. 662; Dubuque *v.* Maloney, 9 Iowa, 450; Kelsey *v.* King, 33 How. (N. Y.) Pr. 39. Whether the bare title to streets is in the adjoining proprietor or in the city, is regarded as substantially immaterial in many respects, as to the extent of the rights. Barney *v.* Keokuk, 94 U. S. 324; s. c. below, 4 Dillon, 593; Story *v.* N. Y. El. R. R. Co., 90 N. Y. 122; Lahr *v.* Metrop. El. Ry. Co., 104 N. Y. 268 (qualified nature of fee in public); *Ib.* p. 291; Backus *v.* Detroit, 49 Mich. 110 (1882); *infra*, secs. 633, note, 687.

[3] Pawlet *v.* Clark, 9 Cranch (U. S.) 292; New Orleans *v.* United States, 10 Pet. 661, 713 (1836), where *McLean*, J., says, "It is not essential that this right of use should be vested in a corporate body; it may exist in the public, and have no other limitation than the wants of the community at large." See, also, McConnell *v.* Lexington Trs., 12 Wheat. 582; Doe *v.* Jones, 11 Ala. 63 (1847); Vick *v.* Vicksburg, 1 How. (Miss.) 379 (1837); Antones *v.* Eslava's Heirs, 9 Port. (Ala.) 527; Winona *v.* Huff, 11 Minn. 119 (1866). Dedications to the public of streets, commons, &c., may, on the corporation being erected, pass to it by operation of law. Savannah *v.* Steamboat Co. of Ga., R. M. Charlt. (Ga.) R. 342 (1830); *infra*, sec. 642, note; Doe *v.* Jones, 11 Ala. 63; Klinkener *v.* M'Keesport Sch. Dir., 11 Pa. St. 444; Pella *v.* Scholte, 24 Iowa, 283, 293; Ill. & Mich. Canal Trs. *v.* Havens, 11 Ill. 554; Waugh *v.* Leech, 28 Ill. 488; San Leandro *v.* Le Breton, 72 Cal. 170; more fully noticed, *post*, sec. 642, note; Wood *v.* National Water Works Co., 33 Kan. 590. If no donee or trustee be named the dedication is valid, and the *legislature*, as well as chancery, may *directly* appoint trustees who may recover in ejectment. Bryant's Lessee *v.* McCandless, 7 Ohio, Pt. 2, 135.

[4] Barclay *v.* Howell's Lessee, 6 Pet. 498; Skeen *v.* Lynch, 1 Rob. (Va.) 186 (1842); Dummer *v.* Jersey City, Spencer (20 N. J. L.), 86 (1843); Vick *v.* Vicksburg, 1 How. (Miss.) 379 (1837); State *v.* Catlin, 3 Vt. 530; McKee *v.* St. Louis, 17 Mo. 184 (1852); Hunter *v.* Sandy Hill Trs., 6 Hill (N. Y.), 407; Cook *v.* Harris, 61 N. Y. 448 (1875); Post *v.* Pearsall, 22 Wend. (N. Y.) 425, 454; Dover Trs. *v.*

possession is necessary to constitute a valid dedication; all that is required is the assent of the owner of the soil to the public use, and the actual enjoyment by the public of the use for such a length of time that the public accommodation and private rights would be materially affected by a denial or interruption of the enjoyment.[1]

§ 632 (495). **Acceptance; Revocation.** — Conformably to the foregoing principles, a proposal by a land-owner to give, free of charge, and upon certain conditions to be performed by the city, so much of his land as may be required to open or widen a street or highway, will, if the proposition be accepted and the conditions

Fox, 9 B. Mon. (Ky.) 200; Macon *v.* Franklin, 12 Ga. 239; Steele *v.* Sullivan, 70 Ala. 589. Where there has been no public use of a street the owner may dedicate his land for such use by acts and declarations without a deed. In such a case these acts and declarations must be deliberate, unequivocal, and decided, manifesting a positive and unmistakable intention to permanently abandon his property to such public use. Pierpoint *v.* Harrisville, 9 W. Va. 215; Boughner *v.* Clarksburg, 15 W. Va. 394. A party *taking under a partition* in which streets were dedicated is estopped to deny dedication. Wisby *v.* Bonte, 19 Ohio St. 238. "To make a good dedication either under the statute, or at common law, requires a *definite and certain description* of that which is proposed to be dedicated, and an acceptance by the public before the withdrawal or abandonment of the offer to dedicate." Winnetka *v.* Prouty, 107 Ill. 218; citing Littler *v.* Lincoln, 106 Ill. 353; and Trustees of First Ev. Church *v.* Walsh, 57 Ill. 370. But as to revocability of statutory dedication after map is recorded, see *infra*, sec. 632, note; *supra*, sec. 628.

[1] Jarvis *v.* Dean, 3 Bing. 447; State *v.* Catlin, 3 Vt. 530; Barclay *v.* Howell's Lessee, 6 Pet. 498 (1832); Saulet *v.* New Orleans (Square), 10 La. An. 81 (1855), *per Ogden*, J.; Smith *v.* Flora, 64 Ill. 93; Arrowsmith *v.* New Orleans, 24 La. An. 194 (1872); Noyes *v.* Ward, 19 Conn. 250, 268 (1848); 2 Greenl. Ev. sec. 662; Denning *v.* Roome, 6 Wend. (N. Y.) 651; State *v.* Marble, 4 Ired. (N. C.) L. 318; Columbus *v.* Dahn, 36 Ind. 330 (1871); Evansville *v.* Evans, 37 Ind. 229 (1871); Fisher *v.* Beard, 32 Iowa, 346 (1871). The doctrine of the text approved. Chicago *v.* Wright, 69 Ill. 328 (1873); Field *v.* Carr, 59 Ill. 198 (1871). Lands, "after being set apart for public use, and enjoyed as such, and private and individual rights acquired with reference to it, the law considers it in the nature of an *estoppel in pais*, which precludes the original owner from revoking such dedication." *Per Thompson*, J., in Cincinnati *v.* White's Lessee, 6 Pet. 431, 437 (1832); Morgan *v.* Chicago & A. R. R. Co., 96 U. S. 716 (1877). As to *irrevocability of dedication*, after other rights have attached, see Macon *v.* Franklin, 12 Ga. 239 (1852); Haynes *v.* Thomas, 7 Ind. 38; Indianapolis *v.* Croas, *Ib.* 9, 12; Ragan *v.* McCoy, 29 Mo. 356; State *v.* Catlin, 3 Vt. 530; Weisbrod *v.* Railroad Co., 18 Wis. 35; Commonwealth *v.* Alburger, 1 Whart. (Pa.) 469; Lee *v.* Lake, 14 Mich. 12. And see the instructive opinion of *Campbell*, J., in Baker *v.* Johnston, 21 Mich. 319 (1870); Peoria *v.* Johnston, 56 Ill. 45 (1870); Pierpoint *v.* Harrisville, 9 W. Va. 215; Boughner *v.* Clarksburg, 15 W. Va. 394; and 2 Herman on Estoppel, "Dedication," secs. 1140–1149, where many cases are cited.

In *California* it is one of the essential elements of a good dedication that it shall be irrevocable, and that the land shall be effectually dedicated for the public use which is designated, provided the public see fit to use it for that purpose. A reservation of the right to revoke the dedication defeats the dedication. San Francisco *v.* Canavan, 42 Cal. 541 (1872).

complied with, in a reasonable time, *estop such owner from claiming damages* for his land; a formal vote of acceptance is not necessary; and seasonably fulfilling the conditions of the offer is sufficient.[1] But unless private rights have attached, a common-law dedication of land for a highway, street, or other public use may, according to some authorities, *be revoked by the owner* at any time before there has been an acceptance by formal act of the proper authorities, or by user, as hereinafter explained, but not afterwards.[2] And a municipal

[1] Crockett *v.* Boston, 5 Cush. (Mass.) 182 (1849). Sixteen months, considering the matter to be acted upon and the usual course of proceeding, was not considered an unreasonable time. *Ib.* See on this point, Baker *v.* Johnston, 21 Mich. 319; 2 Herman on Estoppel, secs. 1140–1149. Where a citizen offers on certain conditions to open a street across his land for the public use, the acceptance of the offer by the proper authorities is a sufficient declaration of its necessity as a public improvement, if such declaration is needed. Long *v.* Battle Creek, 39 Mich. 323. So where a proposition made to a municipal corporation as to matters within the scope of its powers is accepted with modifications which the proponent assents to, he is as much bound by them as if they had been in his original proposition. *Ib.* Where the *dedication is on condition*, the terms of the dedication must be complied with, and the public take it subject thereto. Fisher *v.* Prowse, 2 Best & S. 770; Boughner *v.* Clarksburg, 15 W. Va. 394; Pierpoint *v.* Harrisville, 9 W. Va. 215; St. Louis *v.* Meier, 77 Mo. 13; *supra*, sec. 629, note.

[2] Holdane *v.* Cold Springs Trs., 21 N. Y. 474 (1860); Baldwin *v.* Buffalo, 35 N. Y. 375; s. c. 29 Barb. 396. But see Jersey City *v.* Morris Canal & B. Co., 1 Beasl. (12 N. J. Eq.) 547 (1849); Weisbrod *v.* Chicago & N. W. Ry. Co., 18 Wis. 35; Lee *v.* Sandy Hill, 40 N. Y. 442 (1869). Completed dedication by map held not revocable, although not accepted. Meth. E. Church *v.* Hoboken, 33 N. J. L. 13 (1868); Cook *v.* Burlington, 30 Iowa, 94 (1870). See *supra*, sec. 631, note. So, in *California*, *an acceptance by the public*, by a formal act or by actual user, is not necessary to complete a dedication where the intent to dedicate is made out. Stone *v.* Brooks, 35 Cal. 489 (1868). Compare Baker *v.* Johnston, 21 Mich. 319; Perry *v.* New Orleans, M. & C. R. R. Co., 55 Ala. 413, citing text; San Francisco *v.* Canavan, 42 Cal. 541; Cass County *v.* Banks, 44 Mich. 467; noted *post*, sec. 642, note. *Cul de sac.* As to dedication and revocation of dedication of a strip of land which was a mere *cul de sac*, see Holdane *v.* Cold Springs Trs., 21 N. Y. 474 (1860); s. c. 23 Barb. 103; Tillman *v.* People, 12 Mich. 401; People *v.* Jackson, 7 Mich. 432; Stone *v.* Brooks, 35 Cal. 489 (1868). In Hanson *v.* Eastman, 21 Minn. 509 (1875), an open place on a town plat, although a *cul de sac*, was held to be a public street. See, also, Mankato *v.* Warren, 20 Minn. 144 (1873); Bateman *v.* Bluck, 14 E. L. & Eq. 69; People *v.* Kingman, 24 N. Y. 545. The fact that if a street did not exist, each intersecting street would be a *cul de sac*, does not establish dedication in the absence of other evidence. Manchester *v.* Hoag, 66 Iowa, 649. *Highways.* A road although obstructed at one end may be deemed a highway (Wood *v.* Veal, 5 B. & Ald. 454; The Queen *v.* Spence, 11 Up. Can. Q. B. 31, 46, 47), but would not be deemed a highway if closed at both ends. Bailey *v.* Jamieson *et al.*, L. R. 1 C. P. Div. 329. And once a highway always a highway. Badgely *v.* Bender, 3 Up. Can. Q. B. o. s. 221; Rex *v.* Marchioness of Downshire, 4 A. & E. 232; Regina *v.* Purdy, 10 Up. Can. Q. B. 545; Thomas *v.* Ringwood Board, L. R. 9 Eq. 418. Land may under statute become a public highway by deposit of a plan showing it as a highway. McGregor *v.* Calcutt, 18 Up. Can. C. P. 39; The Queen *v.* Rubidge, 25 Up. Can. Q. B. 299; and in some cases independently of any statute. Guelph *v.* Canada Co., 4 Grant (Can.),

corporation which has accepted a dedication of property to public use may, before vested rights have been acquired under the dedication, revoke, with the consent of the dedicator, the acceptance.[1]

Extent of Dedication as respects Donor.

§ 633 (496). **Dedication "for the Use of the Public."** — Where the land is dedicated by the proprietor "for the use of the public," this has been considered to show, in the absence of statute to the contrary, an intention to give a mere *easement and not the fee*. In such case the owner of the land, whether dedicated for the use of a highway, or street, or square, or common, retains, if there be no controlling statute, the exclusive right in the soil for every purpose of use or profit not inconsistent with the public easement, and may maintain appropriate actions for any encroachment upon it.[2]

632, 654; Attorney-Gen. *v.* Goderich, 5 Grant (Can.), 402; Attorney-Gen. *v.* Toronto and Molson, 10 Grant (Can.), 436; O'Brien *v.* Trenton, 7 Up. Can. C. P. 246; Attorney-Gen. *v.* Boulton, 21 Grant (Can.), 598. The assumption of a highway by a road company for the purpose of macadamizing or planking it does not render the highway less a highway for the purpose of prosecution in the event of obstruction. The Queen *v.* Davis, 35 Up. Can. Q. B. 107. It is not clear that the ordinary power of indictment for obstructing a highway is applicable where the highway is one which had never been opened or used. Rex *v.* Allen, 2 Up. Can. Q. B. o. s. 101; Regina *v.* Great Western Ry. Co., 32 Up. Can. Q. B. 506; Harr. Munic. Man. (5th ed.) 479. Under a *statute* authorizing *commissioners* to lay out a highway upon petition stating only the points of termination and commencement, a road so laid out by them is a public highway, although it terminates upon private land with no outlet. Sheaff *v.* Colwell, 87 Ill. 189.

[1] Municipality *v.* Levee, S. C. P. Co., 7 La. An. 270 (1852).

[2] Lade *v.* Shepherd, 2 Stra. 1004; adhered to in the case of St. Mary's, Newington, *v.* Jacobs, 25 Law T. N. S. 800 (1872); L. R. 7 Q. B. 53. See, also, Goodtitle *v.* Alker, 1 Burr. 133; Harrison *v.* Parker, 6 East, 154; Jackson *v.* Hathaway, 15 Johns. (N. Y.) 447; Perley *v.* Chandler, 6 Mass. 454; Pomeroy *v.* Mills, 3 Vt. 279 (1831); Abbott *v.* Mills, *Ib.* 521; Des Moines *v.* Hall, 24 Iowa, 234; Dubuque *v.* Maloney, 9 Iowa, 450 (1859); Boston *v.* Richardson, 13 Allen (Mass.), 152, 153; White *v.* Godfrey, 97 Mass. 472; Bliss *v.* Ball, 99 Mass. 597; Perry *v.* New Orleans, M. & C. R. R. Co., 55 Ala. 413, approving text. Stephenson *v.* Chattanooga, 20 Fed. Rep. 586; Brakken *v.* Minneapolis & St. L. Ry. Co., 29 Minn. 41; Baker *v.* St. Louis, 75 Mo. 671; Indianapolis *v.* Kingsbury, 101 Ind. 200. As respects *streets*, some explanation of the doctrine as stated in the text, if not limitations upon it, is suggested in the chapter on Streets. The public rights in streets are greater than in a country highway, and the dedication must in the case of streets be intended to give to the public the right to all legitimate uses thereof for the public convenience and accommodation. Note remarks of *McLean*, J., in Barclay *v.* Howell's Lessee, 6 Pet. 512. The fee of a highway at common law remains in the owner of the land. Every *v.* Smith, 26 L. J. Exch. 344; Lade *v.* Shepherd, 2 Stra. 1004; Borrowman *v.* Mitchell, 2 Up. Can. Q. B. 135; Dawes *v.* Hawkins, 4 Law T. N. S. 288; Queen *v.* Plunkett, 21 Up. Can. Q. B. 536; Harr. Munic. Man. (5th ed.) 480. *Supra*, sec. 629, note. The question as to *how much* land is included in a dedication is one wholly of fact. In this case the court refused to find, as a matter of law, that a fence which had been standing for

§ 634 (497). **Alluvium and Accretions.** — If land dedicated to a city for public use *is bounded by a river*, the city has all the rights

forty years marked a boundary line of the strip dedicated. Wetherell *v.* Newington, 54 Conn. 67. In *Illinois*, an abutting lot owner has no power to enter upon the actual possession of the soil or minerals in the street, to appropriate and use the same. Zinc Co. *v.* La Salle, 117 Ill. 411 (1886).

Boundaries of lots on streets. It has been definitely settled by the Court of Appeals in *New York*, whatever may have been the intimations or decisions in the prior cases, that *as between grantor and grantee*, the conveyance of a lot bounded upon a street in a city carries, in the absence of legislative provision to the contrary, the land *to the centre of the street*, there being no distinction in this respect between the streets of a city and country highways. And the grantee goes to the middle of the street, though the conveyance contains no reference to the street, and the depth of the lot is stated by figures which would not include any part of the street. Bissell *v.* N. Y. Central R. R. Co., 23 N. Y. 61 (1861), five judges concurring, three others expressing no opinion. Hammond *v.* McLachlan, 1 Sandf. (N. Y.) 323, and Stiles *v.* Curtis, 4 Day (Conn.), 328, approved. The case of Bissell *v.* Railroad Co., *supra*, approved and followed in Wager *v.* Troy Union, &c. R. R. Co., 25 N. Y. 526 (1862), and note remark on p. 533, as to fee of streets in city of New York; S. P. Sherman *v.* McKeon, 38 N. Y. 266; Columbus & W. Ry. Co. *v.* Witherow, 82 Ala. 190. See, also, Willoughby *v.* Jenks, 20 Wend. (N. Y.) 96 (1838). Actual possession of lot shows constructive title of occupant to middle of street. *Ib.*; John and Cherry Streets, *In re*, 19 Wend. 659; Penn. R. R. Co. *v.* Pittsburgh Gr. Elev. Co., 50 Pa. St. 499; Woodruff *v.* Neal, 28 Conn. 168 (1859). *Effect of fee being in city corporation.* People *v.* Kerr, 27 N. Y. 188; Clinton *v.* Cedar Rap. & Mo. R. R. R. Co., 24 Iowa, 455; Gebhardt *v.* Reeves, 75 Ill. 301 (1874); Moliter *v.* Sheldon, 37 Kan. 246. *Supra*, sec. 631, note; *post*, sec. 687. See chap. xviii. on Streets, where the subject is more fully considered. Where a street was opened by the owner and accepted and improved by the city, it was held that the owner could not *resume possession*, on the ground that an oral promise to him made by the proper city officer to drain the street and the adjoining land, had not been fulfilled; and that his only remedy was for a breach of condition. Port Huron *v.* Chadwick, 52 Mich. 320. *Supra*, sec. 629, note.

Notwithstanding a dedication under a statute may pass the fee to the streets and alleys, yet if these are dedicated by a different mode from that prescribed by the statute, the fee remains in the adjacent proprietor as at common law, subject to the public easement. *Supra*, sec. 628, and note; Manly *v.* Gibson, 13 Ill. 312; Dubuque *v.* Benson, 23 Iowa, 248. See Cox *v.* Louisville, N. A. & C. R. R. Co., 48 Ind. 178 (1874); San Francisco *v.* Spring V. W. W., 48 Cal. 493 (1874); Gebhardt *v.* Reeves, 75 Ill. 301 (1874).

A dedication to the use of *specified persons* is not a dedication to the public. Talbott *v.* Richmond & D. R. R. Co., 31 Gratt. 685; s. c. 22 Alb. L. J. 57; Illinois Ins. Co. *v.* Littlefield, 67 Ill. 368 (1873). A dedication of a tract of land to public use is not impaired because only a part has been actually put to public use, and the residue temporarily leased to private individuals; the whole remains so dedicated. Plaquemines Par. Pol. Jury *v.* Foulhouze, 30 La. An. Part I. 64. So, unconsummated proceedings by a municipality to condemn land as a street, or taxing land for city and county purposes, do not conclude the public from afterwards claiming that the land had been effectually dedicated and the dedication accepted by the public. Lemon *v.* Hayden, 13 Wis. 159; Chicago *v.* Wright, 69 Ill. 328 (1873). In the last cited case, *McAllister*, J., in delivering the opinion of the court, says the several acts of the corporate authorities cannot be regarded as amounting to a conclusive negative of the inference of acceptance by the public, because the citizens of the State generally have an equal right with those of the municipality in the appropriate enjoyment of the dedication [of