and privileges of a riparian proprietor as respects alluvial formations or additions; these partake of the same character and are subject to the same use as the soil to which they become united.[1] This proposition, it is believed, is affirmed by the decisions without exception. The ground of the right is that the stream is the boundary, and the riparian proprietor is entitled to the alluvial accretions made by natural changes in a shifting stream which constitutes the boundary of his lands. Such accretions are his because they are within the description of his original grant on the stream as a boundary.[2] Where the shore owner, through whose lands a street comes to the shore, fills in in front of his lands, and also in front of the *terminus* of the street, the public is entitled to the extension of the street the same as if the land filled in were an alluvion.[3] But where the *State is the owner of the lands under water below the shore line, a street or public use in such lands* cannot be dedicated or created therein by the private riparian proprietor; and hence a dedication by such proprietor of streets terminating on the water does not have the effect

lands for streets]. Estoppel by reason of taxation, see *ante*, chapter on Corporate Property.

[1] New Orleans *v.* United States, 10 Pet. 662 (1836); Cook *v.* Burlington, 30 Iowa, 94 (1870); Godfrey *v.* Alton, 12 Ill. 29 (1850); Newport *v.* Taylor, 16 B. Mon. (Ky.) 699 (1855); *ante*, sec. 109. Dedication of streets bordering on navigable water extends, if there be no limitation, to the water, and, in *Alabama*, to low-water mark, and accretions belong to the public. Doe *v.* Jones, 11 Ala. 63 (1847). The Supreme Court of the United States has decided that the *title* to lands bordering on navigable streams, when derived from the general government, "stops at the stream." St. Paul & Pac. R. R. Co. *v.* Schurmeir, 7 Wall. 272, 289 (1868); Barney *v.* Keokuk, 94 U. S. 324 (1876); s. c. below, 4 Dillon, 593. At the "margin of the stream." Yates *v.* Milwaukee, 10 Wall. 497, 504 (1870), *per Miller*, J. This last case refers to and comments on Yates *v.* Judd, 18 Wis. 118; Martin *v.* Evansville, 32 Ind. 85; Elgin *v.* Beckwith, 119 Ill. 367; Illinois *v.* Illinois Central R. R. Co. 33 Fed. Rep. 730; Turner *v.* People's Ferry Co., 21 Fed. Rep. 90. See Wharves, *ante*, chap. vi.; also chap. xv. on Corporate Property, *ante*.

[2] Hoboken *v.* Penn. R. R. Co., 124 U. S. 656, 690 (1887), *per Matthews*, J. Barney *v.* Keokuk, 94 U. S. 324, 340. If in such case a *street or common lies along the stream, and intervenes between it and lots fronting on such street or common*, no riparian rights exist in favor of such lot owners. Potomac Steamboat Co. *v.* Upper Pot., &c. Co., 109 U. S. 672 (1883). This general proposition was agreed to by the dissenting judges, who only disputed its application to the facts of that case. *Ib.* pp. 698, 699. *Pre-emptive rights* of riparian proprietors under legislation of New York in respect of grants of *land under water* to the city of New York, and by it to others, see New York *v.* Hart, 95 N. Y. 443, 452, 456 (1884).

[3] Jersey City *v.* Morris Canal & B. Co., 1 Beasley (12 N. J. Eq.), 547, 558, *per Whelpley*, J.; Barney *v.* Keokuk, *supra*. See, also, People *v.* Lambier, 5 Denio, 9 (1847); Henshaw *v.* Hunting, 1 Gray (Mass.), 203; Cook *v.* Burlington, 30 Iowa, 94; see also Steers *v.* Brooklyn, 101 N. Y. 51. *Dedication of streets, &c. under tide-water.* Morris Canal & B. Co. *v.* Jersey City, 1 Beasley (12 N. J. Eq.), 252; s. c. on appeal, *Ib.* 547; Jersey City *v.* Dummer, Spencer (20 N. J. L.), 106; Henshaw *v.* Hunting, 1 Gray (Mass.), 203.

to preclude the State from making a grant of such lands under water opposite the end of such street to others, with the right to reclaim the land; and the State in making a grant thereof by legislative act may exclude, and if such be its plain purpose the grant will be construed to exclude, any right of the public to insist that the lands when reclaimed by the grantee are subject to the uses of a street, or other public purpose, declared by the private riparian dedicator, inconsistent with such legislative grant by the State, which in such case is not only a conveyance of the land under water, but is also a law which repeals all inconsistent laws and extinguishes all inconsistent public easements, if any such exist in the lands under water thus granted by the State. Applying these principles under the legislation of New Jersey applicable to the case in hand, it was held by the Supreme Court of the United States, that the city of Hoboken could not recover of the State's grantees lands which they had filled in under such legislative grant and conveyance below high-water mark in front of such streets. Under such an act and conveyance, the court decided that the title of the grantee differed in every respect from that of a riparian owner to alluvial accretions made by the changes in a shifting stream, which constituted the boundary of his lands.[1]

[1] Hoboken *v.* Pennsylvania R. R. Co., 124 U. S. 656 (1887). The case was distinguished from that of The Hoboken Land & Imp. Co. *v.* Hoboken, 36 N. J. Law, 540, where the subject underwent very full examination; also from Jersey City *v.* Morris Canal & B. Co., 1 Beasley (12 N. J. Eq.), 547, and other cases, — holding that a dedicated street terminating at the waters of a navigable river is continued to the new water front obtained by filling in in front of the shore by the owner of the land over which the street was dedicated. Such cases rest on the principle that the essence of the gift or dedication is the means of access to the public waters of the river, which can only be preserved by maintaining unbroken the connection of the street with the navigable river; which principle was held not to apply under the facts and legislation appearing in Hoboken *v.* Penn. R. R. Co., *supra*. See Morris Canal & B. Co. *v.* Central R. R. Co., 16 N. J. Eq. 419, 431; Stevens *v.* Paterson & N. R. R. Co., 34 N. J. L. 532, 553; New York, L. E. & W. R. R. Co. *v.* Yard, 43 N. J. L. 121; s. c. *Ib.* 632; Lockwood *v.* N. Y. & N. H. R. R. Co., 37 Conn. 391; Campbell *v.* Laclede Gasl. Co., 84 Mo. 352, 372; Benson *v.* Morrow, 61 Mo. 352; Steers *v.* Brooklyn, 101 N. Y. 51; Barney *v.* Keokuk, 94 U. S. 324; Potomac Steamboat Co. *v.* Up. Pot. Steamboat Co., 109 U. S. 672.

Wharves: Where streets bordering or terminating on navigable waters have been established, whether by condemnation or dedication, and whether the fee is in the city or in the adjoining proprietor, the city under the power to establish and regulate wharves, may cause public wharves to be constructed at the ends thereof, and, unless it is otherwise agreed or provided, may receive the wharfage from the same; and this is no invasion of the rights of the owner of property abutting on such street and on the navigable water. McMurray *v.* Baltimore, 54 Md. 104 (1880), approving Dugan *v.* Baltimore, 5 Gill & J. 375; Haight *v.* Keokuk, 4 Iowa, 199; Barney *v.* Keokuk, 94 U. S. 324; Rowan's Ex. *v.* Portland, 8 B. Mon. 253; Newport *v.* Taylor's Ex., 16 B. Mon. 700; Barney *v.* Baltimore, 1 Hughes C. C. 118; Coffin

Who may dedicate; Intent, how established.

§ 635 (498). **Dedication must be made by the Owner.** — *The dedication must be by the owner of the land,* or of an estate therein.[1] A

v. Portland, 11 Saw. C. C. R. 600 (1886); s. c. 27 Fed. Rep. 412. Compare Portland & W. V. R. R. Co. *v.* Portland, 14 Oreg. 188. See further on the subject of Wharves, *ante,* secs. 103–113; *post,* sec. 649.

[1] Hoole *v.* Attorney-General, 22 Ala. 190; Irwin *v.* Dixion, 9 How. 10; Lee *v.* Lake, 14 Mich. 12; Leland *v.* Portland, 2 Oreg. 46; Lownsdale *v.* Portland, Deady, 1, 39; Baugan *v.* Mann, 59 Ill. 492; Lawe *v.* Kaukauna, 70 Wis. 306; 35 N. W. Rep. 561. In a case where a plat included land *not owned by the dedicator,* it was held that the real owner could not be presumed to have dedicated the part owned by him, from the fact that he had paid taxes assessed by the city after it had formally accepted the plat. Armstrong *v.* Topeka, 36 Kan. 432. If land is dedicated to public use before the issue of a patent by the *United States,* the subsequent issue of the patent to such dedicator will not defeat the dedication, but the patentee will hold the legal title in trust for the public. Reid *v.* Edina Bd. of Ed., 73 Mo. 295; Cincinnati *v.* White's Lessee, 6 Pet. 431, 440. A dedication by a *State* has the same effect as if made by an individual. Terre Haute & I. R. R. Co. *v.* Scott, 74 Ind. 29; Matthiessen & H. Zinc Co. *v.* La Salle, 117 Ill. 411 (1886); Reilly *v.* Racine, 51 Wis. 526; *infra,* sec. 642, note. A *city* may dedicate its own lands to public use. Story *v.* New York Elev. R. R. Co., 90 N. Y. 122. The *United States* may lay out its lands and dedicate streets and public places. Illinois *v.* Ill. Cent. R. R. Co. (Chicago Lake Front case, *Harlan and Blodgett,* JJ.), 33 Fed. Rep. 730, more fully noticed, *infra,* sec. 640, note. *Remainderman* not bound by acts of the owner of a particular estate unless his assent can be shown or implied. 2 Smith Lead. Cas. 95; Detroit *v.* Det. & Milw. R. R. Co., 23 Mich. 173 (1871). *By agent of owner.* United States *v.* Chicago, 7 How. (U. S.) 185; Barclay *v.* Howell's Lessee, 6 Pet. 498. *An agent laid out a town plat* with "public square;" the proprietors denied his authority; but it was held, that having conveyed property by adopting his numbers, referring to the "recorded town plat," and "public square," *his act was ratified,* and these facts were sufficient proof of his authority. Brown *v.* Manning, 6 Ohio, 298 (1834). *By administrator.* Logansport *v.* Dunn, 8 Ind. 378 (1856). *By executor.* Earle *v.* New Brunswick, 38 N. J. L. 47. Cannot dedicate land unless empowered to do so by will or order of court. Kaime *v.* Harty, 73 Mo. 316. Presumption from long use by public against *married woman.* Schenley *v.* Commonwealth, 36 Pa. St. 29. *Dedication by married woman.* Todd *v.* Pittsburg, Ft. W. & C. R. R. Co., 19 Ohio St. 514. A *husband* cannot dedicate his wife's land. Indianapolis *v.* Patterson, 112 Ind. 344; Marshall *v.* Anderson, 78 Mo. 85 (his curtesy not affected thereby). *Infra,* sec. 640, note. *Widow not dowable* in property dedicated to public uses. Gwynne *v.* Cincinnati (bill for dower in market-house), 3 Ohio, 25 (1827); Moore *v.* New York, 8 N. Y. 110. In *Louisiana* a certificate of renunciation by the donor's wife is not necessary. Lawrence *v.* Jeff. Par. Pol. Jury, 35 La. An. 601; *ante,* sec. 594; Mankato *v.* Meagher, 17 Minn. 265. A *railroad company* can dedicate land for a public highway. Williams *v.* N. Y. & N. H. R. R. Co., 39 Conn. 509. An owner cannot dedicate land so as to affect the title of a *mortgagee* or of purchasers at a sale under the mortgage. Moore *v.* Little Rock, 42 Ark. 66; McShane *v.* Moberly, 79 Mo. 41; Smith *v.* Heath, 102 Ill. 130; People *v.* Herbel, 96 Ill. 384. "Where, without judicial proceeding or compensation, or solemn form of conveyance, it is sought to establish *in pais* a divestiture of the citizen's landed property in favor of the public, the proof ought to be so cogent, persuasive, and full as to leave no reasonable doubt of the existence of the *owner's intent* and consent." *Per Philips,* C., in Landis *v.*

municipal or other corporation may, unless restricted, dedicate to public use land of which it is the proprietor.[1] Accordingly, if a town or city, owning land in fee, suffer it to remain unenclosed, place a survey of the same on record, describing it as the "town common," and then permit an uninterrupted use of it by the public for a series of years, this will amount to an irrevocable dedication of the land to the public, and the subsequent grantee of the corporation would obtain no title.[2] But if the title in fee to a piece of land be in the municipal corporation, although it was purchased by it for a market, and constantly used for that purpose for forty years, the land is not thereby dedicated for market purposes, but the market may be changed or abandoned, and the taxpayers or others cannot object, since the power to establish and regulate markets is a continuing one, and the land thus used for market purposes may be sold by the corporation.[3]

§ 636 (499). **Intention essential.** — An *intent on the part of the owner to dedicate* is absolutely essential, and unless such intention can be found in the facts and circumstances of the particular case, no dedication exists.[4] Where a *plat is made and recorded* the re-

Hamilton, 77 Mo. 554, citing Irwin *v.* Dixion, 9 How. 30, and Brinck *v.* Collier, 56 Mo. 164.

[1] Boston *v.* Lecraw, 17 How. (U. S.) 426; State *v.* Woodward, 23 Vt. 92 (1850); Wright *v.* Victoria, 4 Tex. 375; Macon *v.* Franklin, 12 Ga. 239. *Corporation* may dedicate. Grand Surrey Canal Co. *v.* Hall, 1 M. & Gr. 392; Green *v.* Canaan, 29 Conn. 157; San Francisco *v.* Calderwood, 31 Cal. 585; Niagara Falls Susp. Br. Co. *v.* Bachman, 66 N. Y. 261 (1876). Donation of lots by a town-site company to a university located just outside of the town is not *ultra vires* the powers of the company. Lamar County *v.* Clements, 49 Tex. 347, citing text.

[2] State *v.* Woodward (indictment for enclosing public common), 23 Vt. 92 (1850).

[3] Gall *v.* Cincinnati, 18 Ohio St. 563 (1869). See, also, Boston *v.* Lecraw, 17 How. (U. S.) 426 (1854), cited *ante,* sec. 109, note; *infra,* sec. 636, note. A city *held not estopped* from claiming land which has been dedicated for the public use and used for that purpose, by the fact that it has afterwards included it in an ordinance and in proceedings for condemnation. Moses *v.* St. Louis Sectional Dock Co., 84 Mo. 242.

[4] Baltimore *v.* White, 62 Md. 362; Rozell *v.* Andrews, 103 N. Y. 150 (holding that the mere removal of a fence without an acceptance by the public does not constitute a dedication); Tinges *v.* Baltimore, 51 Md. 600; Miller *v.* Aracoma, 30 W. Va. 606 (1888). Where the dedication is an implied one the intent to dedicate may be rebutted; otherwise where the dedication is express. *Elliott,* J., said: "The intention to which courts give heed is not an intention hidden in the mind of the land-owner, but an intention manifested by his acts. It is the intention which finds expression in conduct, and not that which is secreted in the heart of the owner, that the law regards." Indianapolis *v.* Kingsbury, 101 Ind. 200, 213. "To constitute a valid dedication there must have been an actual intention on the part of the owner, clearly indicated by unequivocal acts or conduct, to dedicate the land to the public for use as an alley, and there must have been an acceptance by the public of the land dedicated." *Mitchell,* J., Shellhouse *v.* State (criminal information for obstructing public alley), 110 Ind. 509,

quisite intention is generally indisputable. But the intention *may also be established by parol evidence* of acts or declarations which show an assent on the part of the owner of the land that the land should be used for public purposes. To deprive the proprietor of his land, the intent to dedicate must clearly or satisfactorily appear.[1]

513 (1886). See, also, Gwynn *v.* Homan, 15 Ind. 201; Columbus *v.* Dahn, 36 Ind. 330; Lamar County *v.* Clements, 49 Tex. 347; Denver *v.* Clements, 3 Col. 484; McGehee *v.* Woodville, 59 Miss. 648, where a deed of land to a town *for literary purposes*, with an agreement that the corporation should keep the tenements in repair, "for the specific purpose of maintaining a public school," was held not to be a dedication of the property to public uses. For the *rights of riparian owners* in the city of New York under the act of 1813, providing for laying out an exterior street, see Turner *v.* People's Ferry Co., 21 Fed. Rep. 91.

[1] Irwin *v.* Dixion, 9 How. 10; The Indianapolis & B. R. R. Co. *v.* Indianapolis, 12 Ind. 620 (1839); Logansport *v.* Dunn, 8 Ind. 378; San Francisco *v.* Canavan, 42 Cal. 541 (1872); Fisk *v.* Havana, 88 Ill. 208; Grube *v.* Nichols, 36 Ill. 92; Rees *v.* Chicago, 38 Ill. 322; Harding *v.* Hale, 61 Ill. 192; Ill. Ins. Co. *v.* Littlefield, 67 Ill. 368; Wragg *v.* Penn. Tp., 94 Ill. 11; Pennington *v.* Willard, 1 R. I. 93; Westfall *v.* Hunter, 8 Ind. 174; Cincinnati *v.* White's Lessee, 6 Pet. 435; Wilson *v.* Sexon, 27 Iowa, 15; Onstott *v.* Murray, 22 Iowa, 466; Manderschid *v.* Dubuque, 29 Iowa, 73; Detroit *v.* Det. & Milw. R. R. Co., 23 Mich. 173; Lamar County *v.* Clements, 49 Tex. 347, citing and approving text. Also Talbott *v.* Richmond & D. R. R. Co., 31 Gratt. 685; s. c. 22 Alb. L. J. 57; Chicago *v.* Johnson, 98 Ill. 618; Collins *v.* Macon, 69 Ga. 542; Morse *v.* Zeize, 34 Minn. 35; Glenn *v.* Baltimore, 67 Md. 390; Price *v.* Breckenridge, 92 Mo. 378; Pierce *v.* Chamberlain, 82 Mo. 618; Gilder *v.* Brenham, 67 Tex. 345; Wyandotte Co. Comm'rs *v.* First Presb. Church, 30 Kan. 620, in which a plat showed lots marked "*church lots.*" Parol testimony was admitted to prove that the city officers had designated a particular church to occupy one of them. Where A. had land platted, and before the plat was acknowledged and recorded sold another tract, including a part of a street shown on the plat, to B., it was held that the act of B., in conveying a part of his land by a description which referred to A.'s plat, then on file, and in having it surveyed so as to be bounded by a street laid out in the plat, was sufficient evidence of the intention of B. to dedicate the street to the public. Brooks *v.* Topeka, 34 Kan. 277.

"The doctrine of all the authorities is, that the *intention to dedicate land to the public use* is of the very essence of the act; but this intention may be proved as a fact or inferred from circumstances." *Per Potts*, J., Smith *v.* State, 23 N. J. L. 712, 725; Lee *v.* Lake, 14 Mich. 12; Stuyvesant *v.* Woodruff, 21 N. J. L. 145; Mayo *v.* Murchie, 3 Munf. (Va.) 358 (1811); Niagara Falls Susp. Br. Co. *v.* Bachman, 66 N. Y. 261 (1876). May be shown by acts *in pais*. Aiken T. C. *v.* Lythgoe, 7 Rich. (Law.) 435; Angell on Highways, sec. 132; Princeville *v.* Auten, 77 Ill. 325 (1875); Ill. Ins. Co. *v.* Littlefield, 67 Ill. 368; Quinn *v.* Anderson, 70 Cal. 454.

Proof of dedication and of acts which will estop original proprietor or his grantee, with notice, from resuming the lands set apart to the public. Consult Commonwealth *v.* Alburger, 1 Whart. (Pa.) 469; State *v.* Wilkinson, 2 Vt. 480; Abbott *v.* Mills, 3 Vt. 521; Pomeroy *v.* Mills, *Ib.* 279; State *v.* Catlin, *Ib.* 530; State *v.* Woodward, 23 Vt. 92. When the property was not *urban*, mere platting and recording, when no sales had been made and no acceptance appeared, held, under the circumstances, not to consummate a dedication. Trustees of First Ev. Church *v.* Walsh, 57 Ill. 363 (1870). *Declarations of owner* of soil admissible to show a dedication to public use. State *v.* Catlin, 3 Vt. 530 (1831); McKee *v.* St. Louis, 17 Mo. 184; Buchanan *v.* Curtis, 25 Wis.

Effect of Long User and Acquiescence.

§ 637 (500). **Presumption from Long User.** — Such *intent will be presumed* against the owner where it appears that the easement in the street or property *has been used and enjoyed by the public* for a period corresponding with the statutory limitation of real actions. But where there is no other evidence against the owner to

99 (1869); Evans *v.* Evansville, 37 Ind. 229 (1871). Declarations of *deceased surveyor*, at the time of making survey, were admitted as part of the *res gestæ*. Barclay *v.* Howell's Lessee, 6 Pet. 498; referred to by *McLean*, J., 10 Pet. 714; Birmingham *v.* Anderson, 40 Pa. St. 506; In an action for obstructing a public alley the plaintiff may show by the acts and declarations of former proprietors that their use and occupation of the alley were for temporary purposes. McKee *v.* Perchment, 69 Pa. St. 342 (1871). A report of commissioners, awarding no compensation to one whose land had been taken, was confirmed, the street opened in 1871 without his objection, and a fence placed by him on the street line. He could not in 1878 disturb the report. The land is presumed to have been dedicated to public use. State *v.* Jersey City, 40 N. J. L. 483. Where the owner is interested to prove a dedication, he will be held to strict proof. Rector *v.* Hartt, 8 Mo. 448.

Where the dedication is specific and certain, as, for example, where the words "public ground" or "public square" appear on the recorded plat, *parol testimony is not receivable* to establish or affect the intention of the donors; and therefore, in such a case, the donors cannot show, by evidence *aliunde*, that they designed the square for a court-house, and if no court-house should be erected, then to resume it or appropriate it to a seminary of learning. Brown *v.* Manning, 6 Ohio, 298 (1834); Princeville *v.* Auten, 77 Ill. 325 (1875). *Contra*, Westfall *v.* Hunt, 8 Ind. 174; but *quære* as to competency of the parol evidence to show the intent. See Indianapolis *v.* Croas, 7 Ind. 9; Cincinnati's Lessee *v.* Hamilton Co. Comm'rs, 7 Ohio, Part 1, 88 (dedication "for public uses," — contest between city and county); Lebanon *v.* Warren Co. Comm'rs ("public ground," contest as to square between town and county), 9 Ohio, 80; *infra*, sec. 645, note. In Scott *v.* Des Moines, 64 Iowa, 438, it was held that the words "*Market Square*" by which land was designated upon a plat did not necessarily show a dedicatory intent, nor did they conclusively show that the land was to be used for a market only; but, inasmuch as the city had always treated the land as public by omitting to tax it, and as the dedicator had never treated it as private, it was found to have been dedicated to public use. *Supra*, sec. 635. See Darlington *v.* Commonwealth, 41 Pa. St. 63. Declarations to bind *corporation dedicator* must be by its authorized officers. Niagara Falls Susp. Br. Co. *v.* Bachman, 66 N. Y. 261 (1876). Where a block on a map was marked "*court-house*," the *declarations* of the original owners, who made the dedication, to the effect that the block was intended for a court-house square, and not for a jail, were held to be admissible. Harris County *v.* Taylor, 58 Tex. 690. Where the plat of a city bordering on a river showed a line marked "*bridge*," this fact was held to indicate unmistakably that the owner intended to dedicate the land for a street to the centre of the stream. Elgin *v.* Beckwith, 119 Ill. 367. A judgment in a suit between the landowner and the municipal corporation, when the latter pleads a right of way granted or dedication to the public made by the former, is conclusive upon that question in a subsequent action between the same parties; and evidence *aliunde* the record in the first suit is, if necessary, admissible to show what was therein really put in issue and controverted. Hickerson *v.* Mexico (trespass), 58 Mo. 61 (1874); San Francisco *v.* Holliday, 76 Cal. 18 (1888).

support the dedication but the *mere fact* of such user,[1] so that the right claimed by the public is purely prescriptive, it is essential, to maintain it, that the user or enjoyment should be adverse, that it is with claim of right, and uninterrupted and exclusive for the requisite length of time; but when it is said that it must be uninterrupted, this refers to the *right*, and not simply to an interruption of the *use*.[2]

[1] Remington *v.* Millard, 1 R. I. 93 (1847); Thayer *v.* Boston, 19 Pick. (Mass.) 511 (1837); Talbott *v.* Grace, 30 Ind. 389 (1868); Keyes *v.* Tait, 19 Iowa, 123; Detroit *v.* Det. & Milw. R. R. Co., 23 Mich. 173; Green *v.* Oaks, 17 Ill. 249; Smith *v.* State, 23 N. J. L. 130, affirmed, *Ib.* 712; Shawangunk Kill Br., *In re*, 100 N. Y. 642; Smith *v.* Gardner, 12 Oreg. 221; Onstott *v.* Murray, 22 Iowa, 457. Where conflict in the cases is noticed, and where it is held that if the public, with the knowledge of the owner of the land, even though it be unenclosed timber or prairie land, has claimed and exercised the right of using the same for a public highway for a period equal to that fixed by the statute limiting real actions, the public right is complete, unless such use be by favor or leave of the owner. Manderschid *v.* Dubuque, 29 Iowa, 73. In *Pennsylvania*, the Supreme Court holds the law to be, "that the use of ground by the public as a highway for more than twenty-one years makes it a public road just as effectually as though it had originally been laid out and opened by the proper authorities." *Per Knox*, J., Commonwealth *v.* Cole, 26 Pa. St. 187 (1856); Thayer *v.* Boston, 19 Pick. (Mass.) 511, 514, *per Shaw*, C. J. And the same principle is adopted as to sidewalks and streets. Bush *v.* Johnson, 23 Pa. St. 209 (1854). It is held in *Massachusetts* that a *town* way can only be established in the mode prescribed by statute; though a town may acquire a right of way by grant or user, it will be a private way, and obstructions to it not indictable. Commonwealth *v.* Low, 3 Pick. (Mass.) 408 (1826). But see Commonwealth *v.* Belden, 13 Met. (Mass.) 10 (1847); Commonwealth *v.* Coupe, 128 Mass. 63; State *v.* Bradbury, 40 Me. 154 (1855); State *v.* Wilson, 42 Me. 9; Collins *v.* Macon, 69 Ga. 542. In Kranz *v.* Baltimore, 64 Md. 491, the city had used for more than twenty years a *stream within its limits as a common sewer*, and had repaired it, as needed, both where it ran through private property and along public streets; eventually it became, throughout its length, completely arched over and covered, and was extended in the same way, as the city condemned and improved new streets. It was held that the city had acquired the right to use the stream, wherever it crossed or flowed upon streets as they were laid out over the land through which the stream ran, by virtue of its power to open and condemn streets; and that it had acquired *by adoption* such parts of the stream as were upon private property, though it had been originally arched or covered by the owners, it being presumed that such owners had dedicated their rights in the bed of the stream to the public for the purposes of a sewer, and that the city had accepted the dedication.

For construction of a statute providing that lands which have been used as highways and so considered for twenty years, and which shall be declared by the town council to be highways, shall be taken and considered as public highways, see Goelet *v.* Newport Bd. of Ald., 14 R. I. 295.

[2] 2 Greenl. Ev., tit. Prescription, secs. 537–546; Perry *v.* New Orleans, M. & C. R. R. Co., 55 Ala. 413, citing and approving text. See San Francisco *v.* Canavan, 42 Cal. 541 (1872); Sherman *v.* Kane, 86 N. Y. 57; Ruland *v.* South Newmarket, 59 N. H. 291; Childs *v.* Nelson, 69 Wis. 125; Visalia *v.* Jacobs, 65 Cal. 434; Stewart *v.* Frink, 94 N. C. 487; Ely *v.* Parsons, 55 Conn. 83; Steele *v.* Sullivan, 70 Ala. 589; Smith *v.* Inge (length of user), 80 Ala. 283 (1887); People *v.* Blake, 60 Cal. 497. Where adjoining

§ 638 (501). **User as affecting Question of Intent.** — But where the question is as to an *intent* on the part of the owner to dedicate, *user by the public* for a period less than that limiting real actions is important as evidence of such intention, and as one of the facts from which it may be inferred. Where the *animus dedicandi* is established, no user for any definite period by the public is necessary.[1] "No particular time," says an English judge, "is necessary

owners of land agree to reserve an alley between their premises for their own use, the fact that the same for years is open to the public use, that in several conveyances it is described as an alley, and that the owner of the soil never paid taxes on the same, will not bring the alley into existence as a public easement. Illinois Ins. Co. *v.* Littlefield, 67 Ill. 368 (1873).

In Herhold *v.* Chicago, 108 Ill. 467, the fact that the public had travelled over certain premises as over a public street for sixteen years, when the owner fenced it in and resumed possession, was held, in a suit brought fourteen years afterwards, not to justify an inference of dedication. And where *an alley* had been dedicated to public use, but the land comprising it had been fenced in and occupied by the adjoining lot owners for a sufficient time, such owners' claim of adverse possession was sustained, in an application for an injunction restraining the city from opening the alley. Fort Smith *v.* McKibbin, 41 Ark. 45. To same effect, Hayward *v.* Manzer, 70 Cal. 476. A dedication of land for a highway and user by the public constitute a highway, though there be no record of it as such. Driggs *v.* Phillips, 103 N. Y. 77. Where there was a dedication *in pais* and user by the public for more than twenty years, it was held that the owner could not defeat the right of the public by filing a plat of the property. Getchell *v.* Benedict, 57 Iowa, 121.

[1] Hoole *v.* Attorney-General, 22 Ala. 190; Boyer *v.* State, 16 Ind. 451; Evansville *v.* Paige, 23 Ind. 525; Cincinnati Trs. *v.* White's Lessee, 6 Pet. 431; Barclay *v.* Howell's Lessee, 6 Pet. 498; Irwin *v.* Dixion, 9 How. 10; State *v.* Wilkinson, 2 Vt. 480; Hunter *v.* Sandy Hill Trs., 6 Hill (N. Y.), 407. *Proof by user.* See Gamble *v.* St. Louis, 12 Mo. 617; Marcy *v.* Taylor, 19 Ill. 634; Grube *v.* Nichols, 36 Ill. 93; Harding *v.* Hale, 61 Ill. 192; Manrose *v.* Parker, 90 Ill. 581; Lewis *v.* San Antonio, 7 Tex. 288; New Orleans *v.* United States, 10 Pet. 661, 722; Weisbrod *v.* Chicago & N. W. Ry. Co., 18 Wis. 35; Doe *v.* Jones, 11 Ala. 63 (1847); Smith *v.* Inge, 80 Ala. 283 (1887); 2 Smith Lead. Cas. 95; Onstott *v.* Murray, 22 Iowa, 457; Pella *v.* Scholte, 24 Iowa, 283; Saulet *v.* New Orleans, 10 La. An. 81; City Cem. Assoc. *v.* Meninger, 14 Kan. 312 (1875); Faust *v.* Huntington, 91 Ind. 493; Bradstreet *v.* Dunham, 65 Iowa, 248; Shea *v.* Ottumwa, 67 Iowa, 39; Griffin's Appeal, 109 Pa. St. 150; McKenna *v.* Boston, 131 Mass. 143. The dedication of a highway may be established by use by the public for more than ten years, if during that time it *is kept in repair by the road supervisor*, with the acquiescence of the owner of the land. Gerberling *v.* Wunnenberg, 51 Iowa, 125; Onstott *v.* Murray, 22 Iowa, 457; Wilson *v.* Sexon, 27 Iowa, 15; State *v.* Kan. City, St. J. & C. B. R. R. Co., 45 Iowa, 139; Manderschid *v.* Dubuque, 29 Iowa, 73.

What *acts will repel presumption of dedication* arising from owner's knowledge of the use by the public. Durgin *v.* Lowell, 3 Allen (Mass.), 398; Skeen *v.* Lynch, 1 Rob. (Va.) 186, 194; Roberts *v.* Karr, 1 Campb. 262, note; *Ib.* 263, note; Schoonmaker *v.* Ref. Prot. Dutch Church, 5 How. (N. Y.) Pr. 265; 2 Smith Lead. Cas. 176. Upon the question of dedication, *non-user* is important, but not conclusive, evidence against the public. Barclay *v.* Howell's Lessee, 6 Pet. 498. Concurrence *of all the owners* interested in an alley essential to establish an *abandonment* of it. McKee *v.* Perchment, 69 Pa. St. 342 (1871). Effect of *occupancy by alleged dedicator*. Cook *v.* Hillsdale, 7 Mich. 115 (1859); Peoria *v.* Johnson, 56 Ill. 45 (1870). Maintenance of *gates* or

for evidence of a dedication. If the act of dedication be unequivocal, it may take place immediately. For instance, if a man build a double row of houses opening into an ancient street at each end, making a street, and sells or lets the houses, that is *instantly* a highway."[1]

§ 639 (502). **Same subject. Widening Street.** — A *street may be widened* by the dedication of a strip of land adjoining it, and such dedication may be shown by long use by the public, and acquiescence in such use by the owner. And if the street has been long used and built upon to a particular line, which line has been acquiesced in by the adjoining owners, who have built and made improvements to correspond with such line, such owners and the public acquire rights in consequence, and one or more of such owners cannot afterwards change or narrow the street by showing that the original survey made the line of the street different from that which had been long regarded, built upon, and acquiesced in as the line of the street.[2]

Effect of Platting and Sale of Lots.

§ 640 (503). **Dedication by Platting and Sale.** — While a mere survey of land, by the owner, into lots, defining streets, squares, &c., will not, without a sale, amount to a dedication,[3] yet *a sale of lots with reference to such plat,* or describing lots as bounded by streets, will, as between the grantor and grantee, amount to an immediate and irrevocable dedication of the streets, binding upon both vendor and vendee.[4]

other obstructions to public use is ordinarily strong evidence to rebut intent to dedicate. Quinn *v.* Anderson, 70 Cal. 454 (1886), and cases cited.

Woodyer *v.* Hadden, 5 Taunt. 126, *per Chambre*, J., 2 Smith Lead. Cas. 176.

[2] Smith *v.* State, 23 N. J. L. 712 (1852), affirming s. c. *Ib.* 130. In this case the different owners had acquiesced in the line built upon, and treated it as the true line for forty or fifty years. The defendant, disregarding this line, built out into the street some four or five feet. He was indicted for the nuisance thus created, and convicted, the court holding the rights of the public had attached, and that it was no defence to show that the building erected was on the line of the street as originally surveyed. A road or street which becomes a public highway by user is of no established *width* by law; its width, as used at the time when the rights of the public become complete, is the established or legal width of the highway. Hart *v.* Bloomfield Tp. Trs., 15 Ind. 226 (1860); 5 Ind. 459. See Darlington *v.* Commonwealth, 41 Pa. St. 63.

[3] United States *v.* Chicago, 7 How. (U. S.) 185, 196. In *Arkansas*, by statute, an owner of land contiguous to a city of the first class, who lays it off in blocks and lots as an addition to the city, thereby dedicates the streets and alleys contained in it to the city. Moore *v.* Little Rock, 42 Ark. 66.

[4] Where the United States as the owner of lands, by its proper officials,

§ 641 (504). **Plat as Evidence of Intention.** — A *dedication of land for a public square was not,* under the circumstances of the case,

laid them out into blocks and streets, and the lots were sold with reference to such plat, it was held that the dedication of the streets and public grounds, whether regarded as a statutory dedication or a common-law dedication, was effectual as against the United States to exclude all right and jurisdiction of the United States, and to vest them, under the statute of Illinois, in the city of Chicago as the public agency of the State, for the purposes for which the dedication was made. State *v.* Ill. Cent. R. R. Co. (Chicago Lake Front Case, before *Harlan* and *Blodgett*, JJ.), 33 Fed. Rep. 730, 752 (1888); *supra*, sec. 635; Rowan's Ex. *v.* Portland, 8 B. Mon. (Ky.) 232 (1847); Augusta Trs. *v.* Perkins, *Ib.* 207; Wickliffe *v.* Lexington, 11 B. Mon. (Ky.) 155; Campbel Co. Court *v.* Newport, 12 B. Mon. (Ky.) 538; Newport *v.* Taylor's Ex., 16 B. Mon. (Ky.) 699 (1855); Kittle *v.* Pfeiffer, 22 Cal. 490; Breed *v.* Cunningham, 2 Cal. 368; Memphis & St. L. Packet Co. *v.* Grey, 9 Bush (Ky.), 137, 146 (1872); Schneider *v.* Jacob (Ky.), 5 South West. Rep. 350; Morgan *v.* Chicago & A. R. R. Co., 96 U. S. 716 (1877); Lamar *v.* Clements, 49 Tex. 347; Stone *v.* Brooks, 35 Cal. 489 (1868); Cook *v.* Burlington, 30 Iowa, 94 (1870); Fisher *v.* Beard, 32 Iowa, 346 (1871); Wiggins *v.* McCleary, 49 N. Y. 346; Preston *v.* Navasota, 34 Tex. 684 (1871); Hannibal *v.* Draper, 15 Mo. 634 (1852); Schenley *v.* Commonwealth, 36 Pa. St. 62 (1859); Doe *v.* Attica, 7 Ind. 641, 644 (1856); Wyman *v.* New York, 11 Wend. 487; Livingston *v.* New York, 8 Wend. 85; Davis *v.* Sabita, 63 Pa. St. 90 (1869); McKee *v.* Perchment, 69 Pa. St. 342 (1871); Portland *v.* Whittle, 3 Oreg. 126 (1869); McKenna *v.* Lancaster Dist. R. Comm'rs, Harper (S. C.) Law, 381; White *v.* Cower, 4 Paige (N. Y.), 510; Barclay *v.* Howell's Lessee, 6 Pet. 498, 506; 10 Pet. 718; Aiken T. C. *v.* Lythgoe, 7 Rich. (Law) 435; Dubuque *v.* Maloney, 9 Iowa, 450; Pope *v.* Union, 18 N. J. Eq. 282; Field *v.* Carr, 59 Ill. 198 (1871); Arrowsmith *v.* New Orleans, 24 La. An. 194; Lake View *v.* Le Bahn, 120 Ill. 92 (1886) (a dedication under the statute of *Illinois* cannot be revoked); see *infra*, sec. 642, and note; Shea *v.* Ottumwa, 67 Iowa, 39; Stephenson *v.* Chattanooga, 20 Fed. Rep. 586; San Leandro *v.* Le Breton, 72 Cal. 170; Hurley *v.* Miss. & Rum River B. Co., 34 Minn. 143; Hobson *v.* Monteith, 15 Oreg. 251; Smith *v.* Portland, 30 Fed. Rep. 734 (1887); Pearl Street, *In re*, 111 Pa. St. 565; Chapin *v.* Brown, 15 R. I. 579; Union Co. *v.* Peckham (R. I.), 12 At. Rep. 130; Steele *v.* Sullivan, 70 Ala. 589; Tinges *v.* Baltimore, 51 Md. 600; Vicksburg *v.* Marshall, 59 Miss. 563. Where the plat shows an *alley to be a private one,* a sale of lots by reference to the plat will not constitute a dedication of the alley to public use. Dexter *v.* Tree, 117 Ill. 532. Purchaser's right extends to have *all streets,* &c., remain public which were marked on the plan exhibited by the proprietor. Rowan *v.* Portland, 8 B. Mon. (Ky.) 232 (1847); Winona *v.* Huff, 11 Minn. 119; Huber *v.* Gazley, 18 Ohio, 18; 2 Smith Lead. Cas. 181; Logansport *v.* Dunn, 8 Ind. 378; Dubuque *v.* Maloney, *supra*. *Effect of sale by plat as to the rights of the public.* Detroit *v.* Det. & Milw. R. R. Co., 23 Mich. 173 (1871); Evans *v.* Evansville, 37 Ind. 229; Baker *v.* Johnston, 21 Mich. 319 (1870); Hawley *v.* Baltimore, 33 Md. 270 (1870); Hall *v.* Baltimore, 56 Md. 187; West Cov. *v.* Freking, 8 Bush (Ky.), 121; Arrowsmith *v.* New Orleans, 24 La. An. 194; Parsons *v.* Atlanta Univ. Trs., 44 Ga. 529. As to effect of reference to other than official maps, Smith *v.* Portland, 30 Fed. Rep. 734 (1887). Reference in a deed, as a boundary, to a street as laid out, *but not opened,* while it would estop the grantor as against his grantee, is not a dedication to the public so as to deprive the grantor of the right to compensation, when the land is actually taken under the power of eminent domain. *Re* Brooklyn Street (Pa.), 19 Am. & Eng. Corp. Cas. 584; Easton Bor. *v.* Rinek, 116 Pa. St. 1 (1887).

So, in *Maryland,* it is laid down, "that

implied against the heirs of the grantor from its representation as a *mere blank*, undistinguished from, and continuous with, the streets

where a party sells property lying within the limits of the city, and in the conveyance *bounds such property by streets designated as such in the conveyance*, or on a map made by the city or by the owner of the property, such a sale implies, necessarily, a covenant that the *purchaser* shall have the use of such streets." Moale *v.* Baltimore, 5 Md. 314, 321 (1854); following White *v.* Flannigain, 1 Md. 525, 540 (1852); distinguished from Underwood *v.* Stuyvesant, 19 Johns. (N. Y.) 186; Howard *v.* Rogers, 4 Harr. & J. 278.

Where a paper village is laid out as an entire thing, *the dedication of all the streets to the public is entire*, and when the public act upon such dedication the acceptance of part may, and in general will, be construed as an acceptance of the whole, or an entirety. Derby *v.* Alling, 40 Conn. 410 (1873). See *infra*, sec. 642, note. Where several owners of land join in making a town plat, no one of them acquires thereby an easement distinct from that of the public in the streets marked on the plat. Patterson *v.* Duluth, 21 Minn. 493. In Bryant *v.* Estabrook, 16 Neb. 217, a proceeding to foreclose liens for taxes, it was urged that in legal contemplation there was no such property as the lots described, because no plat or map containing or embracing them had ever been filed or recorded. It appeared that the tract had been laid out in lots, blocks, streets, and squares, for more than twenty-five years, and had been used, enjoyed, and extensively improved by the owners. The contention was rejected on the ground of public policy. *Cobb*, Ch. J., saying: "For this court to now hold that these lots have no legal existence for the reason that no plat or map of said city has ever been recorded, would be to declare all taxes ever levied upon such property for any purpose, whether collected or uncollected, now being collected, or just assessed for future collection, illegal, null, and void, would thus cut off the necessary resources of said city for years to come, and, in my opinion, be against public policy; and I do not feel justified to enter upon the discussion of authorities that might logically lead to that conclusion. Certainly it was some one's duty at one time to have recorded a plat of that part of the city where the property in question is situated; but that duty was neglected, and in this neglect individuals and the public have acquiesced for a generation. Its question at this late day in the courts cannot be entertained without the infliction upon the public of a wrong, beside which even the alleged wrong to the appellant by reason of the judgment in the court below falls into insignificance."

Dedication where the conveyance bounds the purchasers by a street or public square, designated on a map. See People *v.* Lambier, 5 Denio, 9, 19; Thirty-second Street, *In re*, 19 Wend. 128; followed in Twenty-ninth Street, *In re*, 1 Hill (N. Y.), 189; *Ib.* 191; Furman Street, *In re*, 17 Wend. 649; Livingston *v.* New York, 8 Wend. 85; Willoughby *v.* Jenks, 20 Wend. 96; Oswego *v.* Osw. Canal Co., 6 N. Y. 257; Brown *v.* Manning, 6 Ohio, 298; Smith *v.* Lock, 18 Mich. 56 (1869); Meth. E. Church *v.* Hoboken, 33 N. J. L. 13; State *v.* Elizabeth, 37 *Ib.* 434. Where the dedication of property to the public is clearly manifested by acts and declarations of the owner, which have been acted upon by the public, the fact that the owner may have entertained a different intention from that manifested by his acts will not affect rights acquired under the dedication. The laying out of land into a town, exhibiting a map or plan, with streets and public squares, and selling lots with reference to such map, implies a grant or covenant for the benefit of the purchasers of lots. The streets and public squares represented by the map cannot be appropriated by the person making such grant to a use inconsistent with that represented on the map. The owner, as against his grantee, is estopped from so doing. Lamar *v.* Clements, 49 Tex. 347. But the city acquires no right until acceptance, to claim the property for a street. Galveston *v.* Williams, 6 South West. Rep. 860; Gilder *v.* Brenham, 67 Tex. 345.

surrounding it, upon a partition map made by such heirs, and by reference to which they conveyed lots.[1]

Acceptance by the Public; When and for What Purpose Necessary.

§ 642 (505). **Acceptance by Municipal Authorities.** — As against the proprietor, a dedication of land for streets and highways *may be*

The presumption of an intent to dedicate derived from a sale of lots with reference to a plat may be *negatived by statements and reservations on the plat* showing that there was no present and actual intention to dedicate. Niagara Falls Susp. Br. Co. *v.* Bachman, 66 N. Y. 261 (1876). While persons who purchased lots described expressly as laid down on a map may have rights under the map, those *who bought before* it was made can have none. Lennig *v.* Ocean City Assoc., 41 N. J. Eq. 24. One who buys land at a public sale without notice express or implied of the dedication of a street through it, is not bound by the dedication, though others may have purchased other land with reference to it. Schuchman *v.* Homestead Bor., 111 Pa. St. 48. As to the effect of the *reservation of an easement* across a street, see Waterloo *v.* Union Mill Co., 59 Iowa, 437. Where a husband alone files a plat of his wife's land, and they afterwards join in conveying lots designated on the plat, the wife is not estopped from asserting her title to land designated as a street on the plat. Marshall *v.* Anderson, 78 Mo. 85; *supra*, sec. 635, note.

[1] New York *v.* Stuyvesant, 17 N. Y. 34 (1858). Mere unnumbered triangular space in plat, bounded by streets, without user by the public or other evidence of public right, held not to establish a dedication of such space as a common. Oswald *v.* Grenet, 15 Tex. 118 (1855). Compare Hanson *v.* Eastman, 21 Minn. 509 (1875).

Mode of platting, and peculiarities of lines and spaces on plats as showing an intention to dedicate, or the reverse. See Hanson *v.* Eastman, 21 Minn. 509 (1875); Saulet *v.* New Orleans, 10 La. An. 81; Yates *v.* Judd, 18 Wis. 118; Livaudais *v.* Municipality, 5 La. An. 8; Municipality *v.* Palfrey, 7 La. An. 497; Xiques *v.* Bujac, 7 La. An. 498; Barclay *v.* Howell's Lessee, 6 Pet. 498. *Water Street*, with open space on river side, 10 Pet. 714; Memphis & St. L. Packet Co. *v.* Grey, 9 Bush (Ky.), 137 (1872); Barney *v.* Keokuk, 94 U. S. 324 (1876); s. c. 4 Dillon, 593; Elgin *v.* Beckwith, 119 Ill. 367; Indianapolis *v.* Kingsbury, 101 Ind. 200; Fisher *v.* Carpenter, 36 Kan. 184; Hurley *v.* Miss. & Rum River B. Co., 34 Minn. 143 (public wharf); California *v.* Howard, 78 Mo. 88; Price *v.* Breckenridge, 77 Mo. 447; Holst *v.* Streitz, 16 Neb. 249; holding also that, in case of variance between the plat and survey as to monuments, the lines actually run and marked on the ground will control; Central Land Co. *v.* Providence, 15 R. I. 246; Hunt *v.* Chicago, 98 Ill. 147; Reid *v.* Edina Bd. of Ed., 73 Mo. 295; Gregory *v.* Lincoln, 13 Neb. 352; Burbach *v.* Schweinler, 56 Wis. 386. Opposite case with *both lines of Water Street defined* and width indicated. McLaughlin *v.* Stevens, 18 Ohio, 94 (1849), distinguished from Barclay *v.* Howell's Lessee, *supra*; United States *v.* Chicago, 7 How. 185; Commonwealth *v.* Alburger, 1 Whart. (Pa.) 469; Penny Pot Landing Case, 16 Pa. St. 79; Commonwealth *v.* McDonald, 16 Serg. & Rawle (Pa.), 390; Cowles *v.* Gray, 14 Iowa, 1; Grant *v.* Davenport, 18 Iowa, 179; Perrin *v.* N. Y. Central R. R. Co., 36 N. Y. 120; Cook *v.* Hillsdale, 7 Mich. 115 (1859); Newport *v.* Taylor's Ex., 16 B. Mon. (Ky.) 699 (1855); Baker *v.* Johnston, 21 Mich. 319; Van Valkenburgh *v.* Milwaukee, 30 Wis. 338; Columbus *v.* Dahn, 36 Ind. 330 (1871); People *v.* Klumpke (water front, San Francisco), 41 Cal. 263; Field *v.* Carr, 59 Ill. 198 (1871). *Construction of plat is for the court.* Hanson *v.* Eastman, 21 Minn. 509 (1875); and see State Hist. Assoc. *v.* Lincoln, 14 Neb. 336. Parol evidence to explain an erasure in recorded plat of a street. Smith *v.* Portland, 30 Fed. Rep. 734 (1887), *Sawyer*, J.