we again meet it here. In the absence of any restriction by contract or special restriction in the Constitution, the power of the legislature over the uses of public property — that is, its power to modify and regulate such uses — is undisputed, and so far as the public or municipality is concerned, it is, perhaps, quite unlimited. Doubtful and difficult questions arise, however, when the legislature, instead of regulating, asserts the right to destroy, and when such legislation injuriously affects the dedicator of property or the abutting owners. No general rule can be laid down on this subject. Special provisions having a bearing upon it vary in the Constitutions of the several States. Indeed, the general principles of the law relating to the rights of the dedicator and of such owners are in a state not completely developed. It is therefore not possible to do more than to affirm that while the general rule is that the legislative dominion over the uses of public property is plenary, it is also true, as is more fully shown elsewhere, that there may be rights in the dedicator or in the abutting owner of such a nature, — that is, property rights and rights resting upon contract, — that they cannot be destroyed, and of which he can only be deprived by the exercise of the right of eminent domain, — that is to say, on being justly compensated therefor.[1]

§ 652 (514). **Civil Law Doctrine; Alienation in Louisiana.** — By the *civil law the public have*, in land dedicated to public use, *the right to the ground itself*.[2] But such lands form no part of the public domain or crown lands, and the king or sovereign cannot alien them otherwise than by exercise of the right of eminent domain, although he may authorize certain erections thereon.[3] And the doctrine has been declared by the Supreme Court of Louisiana, that where *public places* have been destined or created by the sovereign power, or with its consent, this power may authorize the municipal corporation interested in such places to alien or to change their use or designation whenever the public interest requires it, and that the rights of the owners of property in the vicinity are subordinate to this paramount right of the legislature.[4]

[1] See *ante*, chaps. iv. and vii., as to extent of legislative power; secs. 589, 590, 598, 602, 651, and notes; *post*, secs. 656 *a*, 656 *b*, 723 *a*–723 *d*.

[2] Renthrop *v.* Bourg, 4 Martin (La.), 97; Doe *v.* Jones, 11 Ala. 63, 83.

[3] New Orleans *v.* United States, 10 Pet. 661, 725, 735, where *McLean*, J., examines very fully the laws of France and Spain in respect to dedications to public use. 3 Kent Com. 451, and note.

[4] New Orleans *v.* Hopkins, 13 La. 326; New Orleans *v.* Leverich, *Ib.* 332; Delabigarre *v.* Municipality, 3 La. An. 230. It was decided, both by the State court (New Orleans *v.* Hopkins, *supra*, and see De Armas *v.* New Orleans, 5 La. 132), and by the Supreme Court of the United States, that the public space, or *quay*, in front of Old Levee Street and the river, in the city of New Orleans, was public property, *hors de commerce* (New Orleans *v.* United States, 10 Pet. 662), and did not pass to the United States under the treaty of cession of the Province of Louisiana. Pending the controversy between the United States and the city of New Orleans as to the ownership of this property, the parties litigant agreed that it should be laid out into lots and sold, and the proceeds be held subject to the final decision of the court. After judgment was rendered in favor of the city of New Orleans, the legislature of *Louisiana* passed an act sanctioning the sale of this public property, and the question arose whether the legislature had this power. The Supreme Court of *Louisiana* held that the legislature possessed this right, laying down the principle that the *sovereign power of the State had the right to change the destination of public places* whenever it deemed the interest of the public required it, and that the right of the adjacent lot proprietors was necessarily subordinate to the paramount power of the legislature. New Orleans *v.* Hopkins, 13 La. 326; Same *v.* Leverich, *Ib.* 332. See *supra*, sec. 651; *post*, sec. 670.

§ 653 (515). **Reverter; Misuser; Remedy.** — Property unconditionally dedicated to public use, or to a particular use, *does not revert to the original owner* except where the execution of the use becomes impossible. If the dedicated property be appropriated to an unauthorized use, equity will cause the trust to be observed or the obstructions removed.[1]

[1] *Per McLean*, J., Barclay *v.* Howell's Lessee, 6 Pet. 498, 507 (1832); Coffin *v.* Portland (dedication for "public levee"), 11 Sawy. C. C. R. 600; s. c. 27 Fed. Rep. 412 (1886); *per Deady*, J., citing text; compare Portland & W. V. R. R. Co. *v.* Portland, 14 Oreg. 188; Williams *v.* First Presb. Soc., 1 Ohio St. 478 (1853); Webb *v.* Moler, 8 Ohio, 552; Price *v.* Thompson, 48 Mo. 363; Warren *v.* Lyons City, 22 Iowa, 351 (1867), *per Wright*, J.; Price *v.* Meth. E. Church, 4 Ohio, 514; Brown *v.* Manning, 6 Ohio, 298; Leclerq *v.* Gallipolis Trs., 7 Ohio, Pt. 1, 217; Van Wert Bd. of Ed. *v.* Edson, 18 Ohio St. 221 (1868); Harris *v.* Elliott, 10 Pet. 25; Campbell Co. Court *v.* Newport, 12 B. Mon. (Ky.) 538; Augusta *v.* Perkins, 8 B. Mon. (Ky.) 207. *Post*, sec. 676 *et seq.* Reverter on abandonment or cessation of the public use. Mills Em. Dom. sec. 57, and cases. Dedication on condition. *Supra*, sec. 629, note. Where property had been dedicated for a *county seat*, and the county afterwards removed the county seat to another place and sold the court-house thereon to the owner of the fee, it was held that it had lost all interest in the land, and had no proprietary rights under the dedication. County of Kent *v.* Grand Rapids, 61 Mich. 144.

The construction of a *canal through a street* by the State suspends, but does not destroy, the easement for a street, and such easement revives on the abandonment of the canal. Logansport *v.* Shirk, 88 Ind. 563.

Chancery will protect the rights of the public in all public places, and will restrain an illegal alienation by the municipal corporation or by others, and, if necessary, will order a reconveyance. Attorney-General *v.* Goderich, 5 Grant (Can.), Rep. 402; Guelph *v.* Canada Co., 4 Grant (Can.), Rep. 654. Harr. Munic. Man. (5th ed.) 350; *post*, sec. 661.

Conveyance to municipality on condition that the property be used for a specific purpose. French *v.* Quincy, 3 Allen, 9. As to remedy, see chapter on Streets, *post*, sec. 659 *et seq.*

Reverter on vacation. In *Illinois*, under the legislation of that State, the majority of the Supreme Court held that on the vacation of a street it reverted to the original proprietor, and not to the then owners of the adjacent lots. Gebhardt *v.* Reeves, 75 Ill. 301 (1874); Zinc Co. *v.* La Salle, 117 Ill. 411. *Contra*, in *Iowa*. Day *v.* Schroeder, 46 Iowa, 546 (1877). So in *New York*, if the adjacent owner's land extends to middle of street subject to the easement of the public, and

§ 653 *a*. **Concluding Observations.** — In closing our survey of this interesting title we may stop pausefully for a moment to note how impressively the doctrines of our jurisprudence concerning it illustrate their thorough and complete adaptation to the wants and exigencies of civilized society. To meet these, the ordinary rules of law relating to private rights have been modified and limited by the public convenience and necessities. Thus the requirement of the common law that private grants must be made to a definite person, natural or artificial, is disregarded, because it would, if applied to dedications, frequently be detrimental to the public welfare. So, although the subject-matter of the dedication be land, interests therein can regularly be parted with by the owner and acquired by the public without the solemnity of a seal, or even the formality of a writing. So, also, the usual rules of law applicable to individuals respecting the necessary duration of adverse possession or of prescriptive user to give a right by possession or prescription, are here modified from considerations of public utility. A consummated intent on the part of the owner to dedicate is all that is required, and such intent may be shown by parol evidence of declarations and of acts *in pais* which unequivocally establish it. It may, we think, truly be affirmed, that the doctrines of our law on this subject as moulded and settled by judicial tribunals, though in many respects seemingly anomalous, are characterized by practical wisdom, and are beneficent in their operation. Rightfully applied they work no injustice to the supposed dedicator, since they draw the line with enlightened and considerate care between a just measure of his rights on the one hand and the rights of the public on the other.

the street is discontinued, such owner holds free from the easement. Wallace *v.* Fee, 50 N. Y. 694; Weisbod *v.* Railroad Co., 18 Wis. 43; Banks *v.* Ogden, 2 Wall. 57, 69. *Post*, sec. 666, note. And the street is not excluded by reason of the dimensions of the lot marked on the plat or described in the deed. Sherman *v.* McKeon, 38 N. Y. 271. See 3 Wash. Real Prop. 635, and cases as to *boundaries upon streets and rivers*.

CHAPTER XVIII.

STREETS.

§ 654 (516). **Prefatory.** — Municipal corporations in this country sustain most important relations to *streets and highways within their limits*. By statute or charter they are usually authorized to open, establish, alter, and vacate streets. Land may be dedicated for streets and ways, as we have elsewhere shown.[1] The authorities of these corporations are usually invested with the capacity to acquire property for streets for the public use and convenience, by the exercise of the power of eminent domain.[2] Streets, when dedicated and accepted by the corporation, or acquired by purchase or otherwise, are usually placed under the control of the corporation, with power to improve, grade, pave, regulate, &c. In some of the States there are statutes that the fee in the streets shall be in the municipality in trust for the public, while in other States the fee is considered to be in the adjoining proprietor, the public having only an easement (so-called) therein. The right to acquire public streets by dedication,[3] and the power to condemn private property for this purpose by the exercise of the delegated right of eminent domain, have been elsewhere considered,[4] and the liability of municipal corporations, in respect to defects and want of repair of the public streets within their limits, is reserved for treatment in another place.[5]

§ 655 (517). **Subject outlined.** — The subject of *Streets* has, in this edition, been reconsidered with diligence, and will be presented in this place under the following heads: —

1. *Legislative Control over Streets, and Their Uses;* and herein of *obstructions* and *the remedy* of the public *by indictment and in equity;* the remedy *of the adjoining proprietors and others,* including the municipal corporation; *the effect of adverse possession,* and the operation of *statutes of limitation* — secs. 656–675.

2. The Establishment and Control of *Ordinary Roads* and Ways within Corporate Limits — secs. 676–679.

[1] *Ante*, chap. xvii., on Dedication, sec. 626 *et seq.*

[2] *Ante*, chap. xvi., on Eminent Domain, sec. 583 *et seq.*

[3] *Ante*, chap. xvii. sec. 626 *et seq.*

[4] *Ante*, chap. xvi. sec. 583 *et seq.*; *post* sec. 680.

[5] *Post*, chap. xxiii., on Actions.