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DEDICATION OF STREETS IN PENNSYLVANIA.

PRELIMINARY.

Dedication is the term commonly applied to the case where an owner of land gives it or a part of it to some public use, and is generally confined to the case of a gift for a road, public park, playground, *etc.*, and does not appear to be used in the case which very often occurs of a gift to a private corporation exercising public franchises, as, for instance, a railroad company. The terms seems, furthermore, to be confined to the case of a gift and does not embrace the case where the land is conveyed to the public use for a consideration. It is our purpose briefly to notice the law in Pennsylvania so far as it relates to the dedication of land for a street or road.

It is perhaps useful in the first place to note that in new countries cases of dedication will be very much more frequent than in an old and thickly settled country like England, where roads and streets have existed from time immemorial, and there is no necessity for constantly opening new avenues of communication between different parts of the country. In a new sparsely settled country, like the State of Pennsylvania, there will be constant demand for new roads and streets, and accordingly, we will find an

increasing number of dedications.[1] Where a direct dedication is made by formal deed, no difficulty occurs as there is no ground for controversy as to the intention,[2] and upon the deed being duly accepted, the transaction is complete as between the parties, and, when it is recorded, as against third parties. This situation need not detain us longer as the chief controversy is over what is sometimes called indirect or implied dedication. Implied or indirect dedication occurs when the intention of the owner of property to dedicate is inferred from acts which he has done with respect to the property. There is in these cases usually no direct evidence of intention to dedicate and the law deals in inferences. The presumption of intention to dedicate may be overcome by direct evidence to the contrary or by presumption drawn from other acts done by the owner of the property.

The cases of dedication may be grouped under three headings: (1) Where the property owner permits the public to use a part of his land; (2) Where the property owner draws up a plan of lots showing a division of the property into lots and streets, and subsequently conveys according to the plan, whether the same be recorded or not; (3) Where the owner makes a conveyance of part or all of his property, and in the conveyance refers to a

[1] Mr. Chief Justice Gibson, in Gowen v. Phila. Exchange, 5 W. & S. 141 (1843), at page 142, said: "Though the anomalous doctrine of dedication to a public use or more properly of a grant to the public without the intervention of a trustee began so late as 1732, it is of still more modern growth," etc. The English cases referred to by the learned judge did not comment on the doctrine as anomalous but dealt with the dedications before them as a matter of course. The only anomaly perhaps is in the grant of the title directly at law to the public, and thus attempting to bring about a state of affairs which the common law of real property was not able to recognize; that is the notion of a title to an interest in real estate vested in an indefinite and fluctuating class of persons. This is probably what the learned chief justice had in mind. It may be surmised that at first a conveyance was made to a trustee so that the case would come within the jurisdiction of equity which at an early date, beginning with charitable uses, recognized the possibility of having an indefinite *cestui que trust*. We have, however, no difficulty on this score in modern times, the conception at least in the case of a public use of the legal title to an interest in real estate being vested in the public presents no difficulty, whatever difficulties there may be about a technically accurate description of the nature of the title. For a good short account of the history of dedication, see H. W. Chaplin: "The Law of Dedication in its Relation to Trust Legislation," 16 HARV. LAW REV. 329 (1903).

[2] For an instance of such a dedication, see Phila. v. Peters, 18 Pa. Super. Ct. 388 (1901); Vacation of Osage Street, 90 Pa. 114 (1879).

street laid out over his own land and contiguous to the property conveyed. We shall discuss these in the order named, briefly refer to the acceptance of the street, its status as a dedicated street, and the effect of vacation.

Before proceeding, however, it may be useful to note that executors with full testamentary powers of sale may dedicate by a plan of lots showing streets,[3] and that although a dedication has in fact been made, it does not, of course, bind a *bona fide* purchaser for value without notice.[4]

Dedication by Acts Done on the Land.

The owner may dedicate property by opening a road or street through his land or by abandoning a portion of his land fronting on an already opened street. In these cases the question arises whether a permissive user will amount to a dedication. The law appears to be that permissive user is evidence of an intention to dedicate but not conclusive.[5] The conclusion may always be overcome by contrary proof of a satisfactory character or by presumptions drawn from the circumstances of the case. The cases are as follows: In *Gowen* v. *The Exchange*,[6] the abutting owner for a number of years left open a space bordering on the highway, the space so left open apparently being a part of the street. He subsequently resumed possession of the strip by building on it, and it was held in a suit by an adjoining owner that the latter was not entitled to an injunction to restrain the obstruction. In *Neill* v. *Gallagher*,[7] all the abutting owners in one block built the fronts of their properties back to the same line, and one of them subse-

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[3] Higgins v. Sharon Borough, 5 Pa. Super. Ct. 82 (1897).

[4] Consequently, a purchaser at sheriff's sale of lots with respect to which the dedication was not recorded and the streets did not appear on the ground, could resist a claim of the borough under the dedication even though others knew thereof. Shuchman v. Borough of Holmesburg, 111 Pa. 48 (1886). As to dedication by vendor pending completion of contract of sale, see Tabor Street, 26 Pa. Super. Ct. 167 (1904). Dedication does not affect rights acquired prior to the dedication. Del. and Hud. Co. v. Olyphant Borough, 224 Pa. 387 (1909).

[5] *Dictum contra* of Knox, J., in Commonwealth v. Cole, 26 Pa. 187 at page 189 (1856), criticised by Green, J., in Weiss v. Borough of South Bethlehem, 136 Pa. 294 at page 304 (1890).

[6] 5 W. & S. 141 (1843).

[7] 10 Phila. 172 (1874).

quently reoccupied the part which had been abandoned in the street, and it was held that an adjoining owner could not restrain the reoccupation of the strip. In *Griffin's Appeal*,[8] the city filed a bill for an injunction against a land owner to prevent occupation of a strip of land alleged to have been dedicated. A prior owner had set his fence back from the highway for his own convenience and used the intervening strip for his own purposes for more than twenty-one years. There was a joint user by the public of this strip with the sufferance of the owner. It was held that there was no dedication and the bill was dismissed.[9] In *Sechrist* v. *Dallastown Borough*,[10] a farmer had constructed a lane leading from the highway back to his farm building, which lane was used by himself and his family. The farmer conveyed a portion of his farm abutting on this lane, and also on the public road. It was held that this conveyance did not create an implied easement in the grantee and that the farmer was entitled to claim damages from the borough for opening a street over the bed of the lane. In *Root* v. *Commonwealth*,[11] an indictment was brought for obstructing the public highway. The owner had maintained a lane for more than twenty-one years through his land, which lane led to a ferry which he had established across a river, and which lane was used by the public to approach the ferry. The indictment was dismissed and it was held that the lane was not a public thoroughfare. The public had used the land by invitation and permission of the owner, and the possession was not adverse.[12] In *Fitzell* v. *Philadelphia*,[13] a land owner in 1888 dedicated the street as plotted and opened fifty feet wide. The city subsequently added ten feet to the width of the street. The owner then conveyed a portion of his lot fronting on the street, naming the street as a boundary. The city then opened the street as of the increased width, and it was held that the owner could recover damages for the strip taken in front of the ground which he

[8] 109 Pa. 150 (1885).
[9] See Commonwealth v. Barker, 140 Pa. 189 (1891).
[10] 45 Pa. Super. Ct. 105 (1911).
[11] 98 Pa. 170 (1881).
[12] See Weiss v. Borough of South Bethlehem, 136 Pa. 294 (1890), *Accord*.
[13] 211 Pa. 1 (1905).

still owned; that the conveyance of the portion of the lot to the street as widened did not create any covenant of an easement over the strip retained by the grantor.

Permissive user by the public may amount to a dedication when the circumstances of the case indicate that the intention of the owner was to make a dedication. A leading case on this point is *Kaufman* v. *Philadelphia.*[14] In this case the city widened the opened street by taking a strip three feet wide on each side, and then the owner conveyed the land as running to the strip as widened. When the city subsequently took the extra feet actually to widen the street, it was held that the then abutting owner could not recover any damages. The owner who had the fee to the three feet effectually dedicated it to the public by abandoning it in the bed of the street, and conveying the remainder of the lot as of the decreased depth. This extra three feet was of no use to him or anyone else, and the circumstances, therefore, indicated a dedication. In *Bornot* v. *Bonschur,*[15] the property owner drew back his property line from the established line of the street, and in his conveyance abandoned the piece of ground to the city, the grantor evidently parting with the title to the abandoned piece of ground and showing an intention to dedicate. The city subsequently adjusted the lines of the street, taking a portion only of the strip thus abandoned, as a result of which a strip one foot wide was left in front of the abutting lot. It was held that this reverted to the abutting property owner as part of the vacated street, and that an adjoining owner was not entitled to an injunction restraining the occupation of it. In *Forsythe* v. *Philadelphia,*[16] the property owner moved back a wall which was constructed along the line of the street, as a result of which the width of the pavement was increased by six feet, and after the wall was moved back an ordinance was passed by the city moving the street line back five feet. It appeared from the circumstances connected with the moving back of the wall that it was the intention of the owner of the property to dedicate the strip of ground in front of

[14] 235 Pa. 276 (1912).
[15] 202 Pa. 463 (1902).
[16] 211 Pa. 147 (1905). *Cf.* Waters v. Phila., 208 Pa. 189 (1904).

his property, and it was accordingly held in a subsequent claim for damages by the then-abutting owner against the city that damages could be recovered only for the one foot of ground.

Dedication by Adopting Plan of Lots.

Where an owner of ground adopts a plan of lots and conveys according to the plan, he dedicates the streets shown on the plan. This is held to be a clear evidence of intention to dedicate. The dedication, however, is not complete until conveyance made, consequently the owner may change the plan or abandon it altogether at any time before he has made the conveyance.[17]

As between the grantor and the grantee, the question will frequently arise as to the extent of the dedication and the right of the grantor in the bed of the dedicated streets or the right of the grantee to have the streets kept open. In *Trutt* v. *Spotts*,[18] the grantor failed to open the streets shown on the plan, and it was held that the grantee could maintain an action of covenant on the deed for damages for his failure to do so. In *Dobson* v. *Hohenadel*,[19] the grantor claimed the title to the bed of the street which he had dedicated by plan of lots. The plan of lots adopted and recognized a city street which had been plotted but not opened and subsequently abandoned and in the middle of which a railroad was constructed. The court said that the conveyance must be held to pass title to the middle of the street, and the grantor could not assert any title as against the grantee. In *Kinsel* v. *Baird*,[20] the grantee sued the grantor for damages which had been caused by acts done on the street by another grantee, and it was held that the defendant was not liable as the second grantee was the one to sue, the plaintiff having permitted that grantee to construct a fence across the road. In *Robinson* v. *Myers*,[21] a

[17] For a case of a change in the plan of lots reducing the width of the street, see Miller v. Grandey, 45 Pa. Super. C. 159 (1911). See also the case of a plan of lots laid out by the commonwealth and changed in the width of one of the streets by conveying lots as of the reduced width, Willock v. Beaver Valley R. R. Co., 222 Pa. 590 (1909).

[18] 87 Pa. 339 (1878).

[19] 148 Pa. 367 (1892).

[20] 56 Pa. Super. Ct. 375 (1914).

[21] 67 Pa. 1 (1870).

plan of lots had been laid out and a conveyance made of two lots on the plan, each lot described as running along an alley, although no alley was shown on the plan, but another lot was shown between the two lots conveyed in the place indicated for the alley. No alley was ever opened and the defendant, a grantee, enclosed the lot. In an action of ejectment by the grantor, it was held that the plaintiff could recover as the defendant had only an easement which had been extinguished, first, by his fencing and enclosing the lot and, second, by a decree of the Quarter Sessions under Act of May 8, 1854, vacating the alley.[22]

As between the several grantees, the law is that they may enforce the dedication as against each other and compel the streets to be kept open. The rights of the parties will be affected by changes in the title since the dedication, or by acts done on the ground changing the plan, as, for instance, the adverse occupation of a street for a sufficient length of time or by something done which amounts to an extinguishment of the easement. In *Spackman* v. *Steidel*,[23] the street referred to as a boundary existed only on paper, was not on the city plan and never opened, and had been built upon for more than twenty-one years, and it was held that the grantee could not recover in trespass on the case for damages for obstruction of the right of way by another grantee. On the other hand, in *Transue* v. *Sell*,[24] the right of one grantee to the use of the alley being clear, he was held entitled to recover damages in an action against another grantee. In *Paterson* v. *Harlan*,[25] the deed conveyed the soil of the unopened street, and the lots were sold under a mortgage which did not contain the recital as to the bed of the street. The purchaser at the sheriff's sale took title, nevertheless, as the right to the street passed as appurtenant notwithstanding the omission in the mortgage, and it was held that he could recover half of the bed of the unopened and unusued streets. Even though there be a dedication as be-

[22] For a case of a sale of lots at auction according to a plan showing a street on adjoining land not belonging to the grantor, where the grantor was held liable to the grantee because the street was afterwards vacated, see McCall v. Davis, 56 Pa. 431 (1867).

[23] 88 Pa. 453 (1879).

[24] 105 Pa. 604 (1885).

[25] 23 W. N. C. 230 (1889).

tween the parties, the abutting owner can hold possession of the bed of the streets, according to his title, until they are opened. It seems clear that the right of one grantee in the street is not affected by the decree made in an injunction suit between another grantee and a third party.[26] Where some of the lots are sold at sheriff's sale under an apparently prior mortgage, the description referring to the streets shown in the plan as boundaries, the successors in title cannot close the street as against other grantees.[27] A number of other cases are referred to in the note dealing with controversies between the grantees.[28]

It seems clear that where a plan of lots is laid out and conveyances made according to the plan, that the grantees are not entitled to recover damages when the streets are subsequently opened to the public.[29] Where a plan of lots has been drawn up and conveyances made accordingly, and a street which was actually opened but not legally laid out or accepted was widened by the plan, the borough may widen the street to the new line without paying damages to a grantee or the owner who laid out the lots, and the fact that the lot of the grantee encroached on the street as widened by the plan does not affect the case.[30]

Where the grantor refers to a street abutting on the lot conveyed, we must distinguish several cases: (1) where the street referred to is a street already laid out, opened and used by the public; (2) where the street is laid out according to law but not

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[26] Bond v. Barrett, 50 Pa. Super. Ct. 307 (1912).

[27] Baker v. Chester Gas Co., 73 Pa. 116 (1873). In Bond v. Barrett, 50 Pa. Super. Ct. 307 (1912), the bill of the lotholder was dismissed because the evidence as to the alley was insufficient.

[28] In Ferguson's App., 117 Pa. 426 (1888), the plan apparently was not recorded, and one grantee obtained an injunction against another to prevent obstruction of a street shown upon the plan. See also Witman v. Smeltzer, 16 Pa. Super. Ct. 285 (1901); Wickham v. Twaddell, 25 Pa. Super. Ct. 188 (1904); Fereday v. Mankedick, 172 Pa. 535 (1896); Ermentrout v. Stitzel, 170 Pa. 540 (1895); Garvey v. Refractories Co., 213 Pa. 177 (1906).

[29] *In re* Opening of Pearl St., 111 Pa. 565 (1886). This is the leading case on the point and is badly reported. The syllabus says the conveyance was according to a plan. The date of putting street in plan was not given, and it cannot be said whether the street was on the plan when the conveyance was made or when user actually began. Osterheldt v. Phila., 195 Pa. 355 (1900).

[30] Higgins v. Sharon Borough, 5 Pa. Super. Ct. 92 (1897).

yet opened; (3) where the street is laid out by the grantor.[31] Where the reference in the deed is to a public street already existing as a public street, the deed simply recognizes an existing fact, and the rights of the abutting owners arise by act of the public authorities in laying out the street, and the lot is conveyed with those publicly created rights attached.[32] There is no question of dedication here because the street has already been opened by law or duly dedicated.[33]

Where a street is laid out on the city plan but not opened over the land of the grantor and he refers to that street in the conveyance, he is, in like manner, referring to something existing as a fact, which is about to be created by law over which he has no control, and for which he has received no damages. The street not being opened, no title has been transferred. In *Forbes Street,*[34] certain streets were placed on a public plan according to law. After this, the property owner sold a lot describing it as bounded by Forbes Street, one of the streets on the plan. When the city subsequently opened the street, it was held that the grantor was entitled to recover damages for the bed of the street.

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[31] If the way thus referred to is a private way, there is no question of dedication but merely of an easement, and a consequent adjustment of the rights of the various parties therein. This case comes under the law of easements. We must distinguish the cases where the controversy is over the extent of the easement conferred by a grant of a right of way, as in Kirkham v. Sharp, 1 Whart. 323 (1835), and the case where the owner of a tract of land lays out an alley for the use of the different lots into which he divides the tract, and the controversy is between his various grantees or their successors in title as to their rights in the alley. *E. g.* Cope v. Graham, 7 Pa. 488 (1848); Twibill v. R. R. Co., 3 Pa. Super. Ct. 487 (1897); Hogan v. Burneson, 44 Pa. Super. Ct. 409 (1910); Andreas v. Steigerwalt, 29 Pa. Super. Ct. 1 (1905). In Clymer v. Roberts, 220 Pa. 162 (1908), it appears that the plaintiff took title to a lot described as "extending to the middle line of the street and thence along the same", and he filed a bill for an injunction to restrain the construction of a building in the other half of the street which was not opened or on the city plan. The injunction was awarded as the mention of the street indicated an intention on the part of the grantor that the street should be opened, and gave to the plaintiff an easement in the other half which entitled him to maintain the bill.

[32] So also where reference is to a canal. Scholl v. Emerich, 36 Pa. Super. Ct. 404 (1908).

[33] Thus, in City's App., 100 Pa. 315 (1882), the street had been duly laid out by proceedings, and it was simply a question of fact on a bill in equity by the land owner to restrain the city from occupying the bed of the street whether it was within the limits of the highway as laid out or not.

[34] 70 Pa. 125 (1872).

In *Brooklyn Street,*[35] a similar state of facts existed, and it was held that the grantor could recover damages from the city when the street was opened. It is to be noted here, however, that he apparently retained other property than that conveyed abutting on the street. In the case of *Whitaker* v. *Phoenixville Borough,*[36] however, a property owner sold all the property which he owned abutting on the street as laid out, and was left with no ownership except that of the bed of the street. When the street was subsequently opened, the court held that he was entitled to recover damages for the strip taken as a piece of ground without reference to the advantages to the adjoining lots or any increased price he had received because of the opening of the street, but that the value of the land taken would be affected by the description in the deeds which the plaintiff had made in so far as by those descriptions he had given the grantees an easement in the strip of ground. In the case of *Gamble* v. *Philadelphia,*[37] which was followed by the case of *Cole* v. *Philadelphia,*[38] the principle in *Whitaker* v. *Phoenixville Borough* was applied, and it was held that while the owner of the street in such a case could technically recover damages from the city, yet as his title in fee was subject to the easement of his grantees, it was practically worthless and therefore a verdict in the court below awarding him no damages, would not be disturbed on appeal.[39] In *Bellefield Avenue,*[40] however, the court followed *Forbes Street,*[41] and held that the grantee was entitled to recover damages. Mr. Justice Smith said:[42]

> "The exact question is this: does the fact that Mrs. S. recognized the existence of Bellefield Avenue and referred to it as a boundary in grants by her of land abutting on it and contiguous to it, after it was located by the municipality

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[35] 118 Pa. 640 (1888).
[36] 141 Pa. 327 (1891).
[37] 162 Pa. 413 (1894).
[38] 199 Pa. 464 (1905).
[39] *Accord, dictum* in Sechrist v. Dallastown Borough, 45 Pa. Super. Ct. 105 (1911).
[40] 2 Pa. Super. Ct. 148 (1896). Neely v. Phila., 212 Pa. 551 (1911), *accord.*
[41] 70 Pa. 125 (1871).
[42] At pp. 150-151.

and before it was opened, operate to prevent her from claiming the damages for the loss of the land upon which that avenue is located?"

The court held that she could recover. In the case of *In re Forty-fourth Street,*[43] the owner of the ground was held entitled to the fee to the middle of the street and to recover damages for the taking of the bed of the street, although he had previously conveyed the abutting land and referred to the street in the deed. In *North Front Street,*[44] the street was actually opened on the ground but not accepted by the city. The street was apparently actually opened by the city on a changed grade, and the question involved was whether the abutting owner, at the time the notice of the opening was served, was entitled to damages, or the owner at the time of the physical opening, one year later, was entitled to damages, the ownership having changed in the meantime. It was held that the former was entitled and no question was raised as to the effect of the reference to the street in the conveyance to him by his predecessors in the title. Of course, since there was a change in grade, there would be a right to recover damages irrespective of any dedication.[45] The character of the proceeding as an opening was swallowed in the change of grade when determining that there were damages due, and the character as a change of grade was merged in that as an opening for the purpose of determining who was entitled to damages.

On the other hand, we must consider the right of the grantee in such a case to recover damages. This question has come up in several cases. The leading case is *Lehigh Street,*[46] where the conveyance referred as a boundary to a street laid out but unopened, and the question arose as to the right of the grantees to recover damages when the street was subsequently opened. It was held that they could recover on the theory that the grantee's title to the center of the street vested the moment the street was opened, and they thus became entitled to recover damages for the

[43] 7 Pa. C. C. 69 (1889).
[44] 52 Pa. Super. Ct. 345 (1912).
[45] Hobson v. Phila., 150 Pa. 595 (1892).
[46] 81½ Pa. 85 (1872).

taking. It was a question for the jury what damages were sustained. The next case was the opening of *Wayne Avenue,*[47] where a street laid out but not opened was similarly referred to, and it was held that the grantee was entitled to recover damages. The deed to the plaintiff in this case described the property as extending across Wayne Avenue. An implied covenant was said to have arisen because of a prior deed in the chain of title, in which the land had been conveyed as fronting on Wayne Avenue. Paxson, C. J., in the Supreme Court, however, only referred to the description crossing Wayne Avenue, proceeding upon the authority of *Brooklyn Street,* and not noticing that the case was that of a grantee. This case was followed by *Hancock* v. *Philadelphia,*[48] where the court further pointed out that the plotting of the street did not divest any title, and that the grantee took only to the side of the street by the conveyance, the rule differing in this case from that of a conveyance to the side of an already opened street, and that when the opening of the street took place, the title of the grantee was extended to the middle, and at the same time the title of the public attached, and since the grantee took subject to the public use he really suffered no actual damage when the title was taken away from him.

The difficulty with this course of reasoning is that it, in conjunction with the cases we have already referred to affecting the right of the grantor to recover damages, results in the city being able to take the street without paying any damages at all. Since the grantor by the covenant he has made in the deed is precluded from actually recovering damages for the bed of the street, and the grantee is, in like manner, precluded because his title only attaches subject to the public use, the net result seems to be unsound. It is suggested that the real error is in the cases relating to the right of the grantee, because the opening of the street, although it vests his title to the middle of the street, cannot be said to operate before the vesting, and, since some title must be taken, the city must either be held to have taken the title of the grantor

[47] 124 Pa. 135; s. c. 23 W. N. C. 232 (1889).
[48] 175 Pa. 124 (1896).

or the title of the grantee, and if it takes the title of the grantee it takes it unburdened by the public use which is imposed by the taking. In *Hobson* v. *Philadelphia*,[49] an action of trespass was brought in the common pleas against the City of Philadelphia for damages caused by changing the grade of a street. The plaintiff took title to the lot abutting on the street by a deed describing it as bounded by the laid out but unopened street, in which street the deed also conveyed a right of way. It was held that this negatived an intention to convey to the middle of the street and the grantee took no title when the street was opened, but was, nevertheless, entitled to damages for change of grade.[50]

It may also appear that the grantor intended to convey the title to the bed of the street. In *Felin* v. *Philadelphia*,[51] the abutting owner was entitled to claim damages caused by the opening of the street, although the street had been mentioned in the deeds in his chain of title. These deeds, however, conveyed the property to the middle of the street to identify the street, and it appeared that there had been a deed of dedication, which, however, did not lie in the chain of the plaintiff's title. The street referred to as about to be laid out was probably the prolongation of a street already on the city plan, and the lot conveyed extended along the side of that street. The city took proceedings to widen that street which had been on the city plan and opened as of a certain width, and in doing so took a strip of ground of the plaintiff's property. It was held that the references to the middle of the street about to be opened, did not import a dedication; that the plaintiff took title to the bed of the street and was entitled to recover damages.

In all cases, however, where the grantor has made a dedication of the street by deed, the grantee takes subject to the dedication and cannot recover damages when the street is subse-

[49] 150 Pa. 595 (1892).

[50] In Easton Borough v. Rinek, 116 Pa. 1 (1887), it was held that the plaintiff could recover damages for the opening of the street notwithstanding a deed executed before the street was opened by a predecessor in title which deed called for the line of the street as a boundary but which deed conveyed property in another block from that in which plaintiff's property was situate.

[51] 241 Pa. 164 (1913).

quently opened. In *Philadelphia* v. *Ash*,[52] the conveyance described the lot as extending in depth so many feet to a street intended to be opened, and in the subsequent deed in the chain of title, there was a clause granting the use and privilege of the aforesaid street intended to be opened at all times hereafter forever. The court found that the intention to dedicate the ground was established by testimony *dehors* the deed; that the ground had been set apart for that purpose, and that the grantee knew of the setting apart and accepted title with express notice in his deed of the fact of dedication, and that the dedication was accepted by the city, and consequently the grantee could not resist the claim of the city for the cost of street improvements on the ground that there was no public street.

Acceptance of the Dedication.

The dedication must be accepted as streets and roads cannot be forced on the public authorities without their consent. Their consent may be formal or implied, and a distinction is to be drawn between dedication by the sovereign and dedication by an individual. In *Commonwealth* v. *McNaugher*,[53] the Commonwealth laid out public land as a town site, establishing streets and alleys thereon. On indictment being brought for maintaining an obstruction in the street, it was held that the defendant was guilty, even though there was no formal acceptance and the street was only passable on foot.[54] The law is really the same as in the case of an ordinary conveyance between individuals, except that in such case the law presumes an acceptance, whereas, in the case of a conveyance of land for a street the acceptance must be shown. Accordingly, in proceedings to vacate a public alley, a mere averment that the alley was dedicated to public use was not sufficient. It must also be stated that the alley was accepted.[55]

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[52] 15 Phila. 45 (1881).

[53] 131 Pa. 55 (1890).

[54] See also Kopf. v. Utter, 101 Pa. 27 (1882), which was a case of a trespass by abutting owner against borough authorities for moving his fence back from the street, the controversy being over the true location of the street line.

[55] Alley in Pittsburgh, 104 Pa. 622 (1883).

Where there is no acceptance, the street is not a public street, consequently there can be no indictment for maintaining the nuisance of obstructing it.[56] In *Scranton* v. *Thomas*,[57] a bill in equity was filed by a city for an injunction against maintaining a fence in a street. The street was not shown on the plan of lots duly recorded, according to which conveyances had been made. It was held that there was a clear dedication of the streets on the plan, but as there was no other evidence of dedication of the street in question, the bill was dismissed.

Acceptance may be evidenced by public use for many years without intervention of the municipal authorities. Where the public user is in pursuance of dedication by the owner, it is not necessary that it should continue for a very long period of years.[58] Where, however, the public user is without dedication by the owner, a longer period of time is required to show a dedication. Strongest evidence of acceptance is the assumption of control of the street and expenditure of public money by the township supervisors.[59] Use by the public, and expenditure of money by public officials upon the street, when it has been used for a period of ten years, will be a sufficient acceptance.[60] In the case of boroughs, the following have been sufficient evidence of acceptance: user by public for thirty years;[61] acceptance of the plan by ordinance;[62] recording of plan with concurrence of borough.[63] In a city, entering upon an opened street and construct-

[56] Commonwealth v. Shoemaker, 14 Super. Ct. 194 (1900); Scott v. Donora Southern Rwy. Co., 222 Pa. 634 (1909), *semble;* consequently in this case the street, not having been opened, did not exist and the land on both sides of the street is to be considered as one tract for the purpose of assessing damages. A jury of view may lay out a road on the line of the dedicated but unaccepted street; Scott v. Union Twp. Road, 39 Pa. Super. Ct. 361 (1909).

[57] 141 Pa. 1 (1891).

[58] In these cases there was an acceptance of a dedication by user: Commonwealth v. Shoemaker, 14 Pa. Super. Ct. 194 (1900), 30 years; Commonwealth v. Llewellyn, 14 Pa. Super. Ct. 214 (1900), 30 years; Commonwealth v. Moorhead, 118 Pa. 344 (1888), 50 years.

[59] Commonwealth v. Shoemaker, 14 Pa. Super. Ct. 194 (1900).

[60] Weida v. Hanover Township, 30 Pa. Super. Ct. 424 (1906), where action was brought against the township for negligence in repairing the road.

[61] Commonwealth v. Llewellyn, 14 Pa. Super. Ct. 214 (1900).

[62] McGuire v. Wilkes-Barre, 36 Pa. Super. Ct. 418 (1908).

[63] Miller v. Grandey, 45 Pa. Super. Ct. 159 (1911). See also Seminary v. Washington Borough, 18 Pa. Super. Ct. 555 (1902).

ing a sewer has been held to be sufficient evidence of an acceptance.[64]

An interesting question arises in a case where the acceptance is by user of the street and that user does not appear to go to the entire extent of the street as dedicated. The law on this point seems to be a little uncertain. In *Commonwealth* v. *Shoemaker*,[65] the street had been dedicated to a certain width and the acceptance by user was only of a portion of that width, the balance being unused. It was held that the acceptance will be presumed to go to the whole width, even though only a part is used. On the other hand, in the case of *Commonwealth* v. *Royce*,[66] which, however, is very briefly reported, it appears that the street had been dedicated of the width of sixty feet and accepted by the user of a smaller width, and an indictment for maintaining an obstruction in that part of the street not used was dismissed.[67]

The law formerly was that there was no limit to the time within which the public authorities might accept the dedication. The Act of May 9, 1889,[68] therefore provided as follows:

> "That any street, lane or alley, laid out by any person or persons in any village or town plot or plan of lots, on lands owned by such person or persons, in case the same has not been opened to, or used by, the public for twenty-one years next after the laying out of the same, shall be and have no force and effect and shall not be opened, without the consent of the owner or owners of the land on which the same has been or shall be, laid out."

In any case, therefore, where the streets laid out on the plan of lots have not been opened to or used by the public for twenty-

[64] Phila. v. Peters, 18 Pa. Super. Ct. 388 (1901); Phila. v. Thomas's Heirs, 152 Pa. 494 (1893), although in both of these cases there was an actual deed of dedication of the street which did not appear to have been formally accepted. See also Commonwealth v. R. R. Co., 135 Pa. 256 (1890), and North Front Street, 52 Pa. Super. Ct. 345 (1912), where there was no acceptance, and P. R. R. Co. v. Street Rwy. Co., 176 Pa. 559 (1896), where there was an acceptance by user for six years.

[65] 14 Pa. Super. Ct. 194 (1900); Hileman v. Hollidaysburg Boro., 47 Pa. Super. Ct. 41 (1911), *Accord*.

[66] 152 Pa. 88 (1892). See remarks on this case by Head, J., in Hileman v. Hollidaysburg Borough, 47 Pa. Super. Ct. 41 at p. 49 (1911).

[67] *Cf.* Commonwealth v. Llewellyn, 14 Pa. Super. Ct. 214 (1900). In State Road, 236 Pa. 141 (1912), an existing road fifty feet wide was dedicated as of the width of sixty feet in 1856 and the city was held entitled to widen in 1894. See also Darlington v. Comm., 41 Pa. 63 (1861); Pittsburgh v. Epping-Carpenter Co., 194 Pa. 318 (1900).

[68] P. L. 73.

one years after the adoption of the plan, the effect of the dedication, so far as the public is concerned, is removed, and the abutting owners may recover damages as the streets are opened.[69]

The question is as to the right of the municipality to open streets without compensation by reason of the dedication. The Act of 1889 establishes a limitation of time as against this right, and when it applies the city must pay for the taking. The Act of 1889 does not apply where the streets have been opened and used prior to its passage, even though twenty-one years had elapsed between the opening and the taking.[70] The act does not apply to the case of a conveyance of a lot bounded by one street, as in this case there is no plan of lots.[71] It is to be noticed that the act applies only to the opening, and therefore it is immaterial if the borough has accepted the streets more than twenty-one years before the proceedings to open.[72] It has not been decided whether the provisions of the act in determining the right of the city to open without paying damages at the same time limits the easement existing under the original dedication in favor of the various lot owners. There is a *dictum* in *Barnes* v. *Railroad Company*,[73] that the act does not have such an application. This seems to be the better view.

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[69] Quicksall v. Phila., 177 Pa. 301 (1896); Woodward v. Pittsburgh, 194 Pa. 193 (1899), where there was a sale by the committee of a lunatic, and the court held that the statute ran from the date of conveyance; Seminary v. Washington Borough, 18 Pa. Super. Ct., 555 (1902), where the plan was made in 1814 but never opened as a street; Cotter v. Philadelphia, 194 Pa. 496 (1900), which decided that the running of the statute was not suspended by a conveyance by a grantee within twenty-one years referring to the plan. The statute runs from the time of the actual laying out of the plan. Flaccus Glass Co. v. Brackenridge Borough, 226 Pa. 89 (1909).

[70] In Osterheldt v. Phila., 195 Pa. 355 (1900), no damage was recovered by grantee, though the street was opened by the city in 1884. McGuire v. Wilkes-Barre, 36 Pa. Super. Ct. 418 (1908); Bond v. Barrett, 50 Pa. Super. Ct. 307 (1912); Hileman v. Hollidaysburg Borough, 47 Pa. Super. Ct. 41 (1911); Corbett v. Wilkes-Barre, 38 Pa. C. C. 565 (1910) (misprint in syllabus 1899 for 1889 and P. L. 72 for 173); Sturges' App., 240 Pa. 44 (1913).

[71] Barnes v. Railroad Co., 27 Pa. Super. Ct. 84 (1905). See remarks on this case in Hogan v. Burneson, 44 Pa. Super. Ct. 409 at p. 413 (1905).

[72] Flaccus Glass Co. v. Breckenridge Borough, 226 Pa. 89 (1909). This was a bill in equity to enjoin the opening of a street. The court below said that the borough could not lawfully execute its purpose. This language, of course, should be understood to mean opening of the street without paying damages. Notwithstanding the Act of 1889, the borough may open the streets upon paying damages.

[73] 27 Super. Ct. 84 (1905).

Status of the Dedicated Street.

We must consider the status of the dedicated street, in which case it is necessary to distinguish between the street as accepted by the public authorities and the street as unaccepted by the public authorities. If the street is not accepted, it is not a public street, and consequently a title may be obtained in the same by adverse possession;[74] on the other hand, if the street has been accepted, it is a public street, and like any other such street, a lot owner is subject to indictment if he obstructs the street,[75] nor can a title be acquired by adverse possession of a part of the street.[76] In some cases the city failed in its efforts to show that there was a public street because there was no evidence to show that the street had been dedicated.[77]

Vacation.

Vacation is a closing up of an already open or laid out public street and is to be distinguished from abandonment.[78] The street, therefore, must be a street accepted by the public authorities. We must distinguish between the abutting rights acquired under the dedication and the abutting rights acquired by the opening by public authorities. In *Bellinger* v. *Union Burial Ground Society*,[79] the conveyance referred to a street as a boundary "as the same shall thereafter be opened", and the street which was laid out but never opened was subsequently vacated according to law. The plaintiff who claimed under the grantor was not allowed to recover in an action against the grantor for damages because the grantor had resumed possession of the dedicated street. The grantor does not covenant by the deed that the street is to be

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[74] Scott v. Donora Southern Rwy. Co., 222 Pa. 634 (1909).

[75] Commonwealth v. McDonald, 16 S. & R. 390 (1827); Commonwealth v. Llewellyn, 14 Pa. Super. Ct. 214 (1900).

[76] McGuire v. Wilkes-Barre, 36 Pa. Super. Ct. 418 (1905). The abutting owners may be assessed for street improvements. Sturges' App., 240 Pa. 4; (1913). See also Pittsburg, *etc.*, R. R. Co. v. Dunn, 56 Pa. 280 (1867).

[77] Scranton v. Thomas, 141 Pa. 1 (1891).

[78] *E. g.*, abandonment of a street proposed but never opened, as in Dobson v. Hohenadel, 148 Pa. 367 (1892), where, however, the rights of private parties acquired under the deed of dedication were not affected by the abandonment.

[79] 10 Pa. 135 (1848).

laid out. The language is simply conditional "as the same shall thereafter be opened", over which he has no control, and if not opened no rights attach to the grantee. In this case the street was vacated before actually opened, and is therefore to be distinguished from some of the subsequent authorities.[80] In *Union Burial Ground Society* v. *Robinson*,[81] A, the owner of a piece of ground over which a street had been laid out but not opened, conveyed a lot to B, describing it as bounded by the side of the street hereafter to be opened. The street was vacated and it was held that the grantee could not succeed in an action of ejectment against A for the bed of the street. This is another case arising on the same set of facts as in *Bellinger* v. *Union Burial Ground Society*.[82] It appears that the owner of the large lot had remained in possession of the bed of the street after the deed to B, and apparently in possession of other ground surrounding it. The court laid down a general rule that a conveyance to the side of the street carries with it the title to the middle on the ground that such was the intention of the parties, but that a contrary intention may be inferred from the circumstances of the case, and in this case the circumstances were the minute accuracy of the description precluding the idea of any more land being granted.

In *Paul* v. *Carver*,[83] the owner of a large lot of ground directed by will the opening of a certain street through the tract. A part of the street was subsequently opened by law and then vacated. Parties claiming under the owner of the large tract, made conveyance of a lot described as running along the side of the said street. It was held that the title went to the middle of the street, and that the grantee could recover in ejectment against third parties for the bed of the street after it was vacated. Mr. Chief Justice Lewis said, at page 225:

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[80] Green, J., in Brooklyn Street, 118 Pa. 640 (1888) at p. 647, said that the value of the above decision lay in the distinction it makes between the effect of reference to a street laid out by public authority and a street laid out by act of the owner.

[81] 5 Whart. 18 (1839).

[82] 10 Pa. 135 (1848).

[83] 26 Pa. 223 (1856). In Paul v. Carver, 24 Pa. 207 (1855), the controversy was between the owners on the opposite side of the vacated street, and it was held that each could occupy to the middle, according to his title. See Act Feb. 27, 1849, P. L. 90.

> "A long strip of ground fifty to one hundred feet wide and perhaps several miles in length without any access to it except at each end is a description of property which is not likely either party ever contemplated as remaining in the grantor of the lot each side of it. Influenced by this consideration, the law has carried out the real intention of the parties by holding that the title passed to the centre of the street subject to the right of passage."

This suit, it is to be observed, was not brought against the original grantor. Mr. Justice Dean, in *Fitzell* v. *Philadelphia*,[84] says that *Paul* v. *Carver* was apparently inconsistent with *Union Burial Ground Society*, and the other cases. There is not even an apparent inconsistency. The distinction between the cases is clear, and is that between a conveyance to opened and unopened streets. In *Coxe* v. *Freedly*,[85] in an ejectment suit between the grantor against the grantee, judgment was entered for the defendant, and it was held that the same rule obtained, the title to each lot going to the center of the street, and when the street was vacated, the abutting owners were entitled to possession. In *Otto* v. *Kreiter*,[86] the conveyance was to the side of a public road not actually closed although vacated by an act of assembly, and it was held, when actually abandoned that the grantee, then the abutting owner, was entitled to the bed of the street.[87]

It is important to determine what effect the vacation of the street has upon the rights acquired under the deed of dedication. The law is that the vacation of the street does not impair the rights of the abutting lot owners in the street under their deeds, and they may proceed at law for damages against a railroad company which is proceeding to condemn the bed of the vacated street.[88] In *O'Donnell* v. *Pittsburgh*,[89] a grantee of the original owner filed a bill in equity for an injunction against the defendant to restrain an invasion of and occupation of the street which had

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[84] 211 Pa. 1 at p. 4 (1905).

[85] 33 Pa. 124 (1859).

[86] 110 Pa. 370 (1885).

[87] See Holland v. Kindregan, 155 Pa. 156 (1893).

[88] Chambersburg Shoe Mfg. Co. v. Cumberland Valley R. R. Co., 240 Pa. 519 (1913). In this case the lotholder filed a bill in equity for an injunction, which, however, was dismissed, his remedy at law being adequate.

[89] 234 Pa. 401 (1912).

been vacated by the city, and it was held that his right to the bed of the street was clear under the dedication. In *Shetter* v. *Welzel*,[90] a grantor had described the lot conveyed as bounded by a street plotted by the city plan but unopened. His grantee in proceedings by another grantee, was restrained by injunction from maintaining buildings on the street after it had been vacated by the city. The court said that the grantor is by his deed estopped from denying that the street is in existence as between himself and those claiming under him; and that the subsequent vacation of the street is immaterial as the terms of the deed are independent of the vacation. Consequently, where the owner adopts a plan of lots and actually opens some of the streets, and conveys according to the plan a lot on the street which has been so opened, and the plan is subsequently adopted by the city, and thereafter the street is duly vacated, the private rights in the grantees which have attached under the dedication prior to the acceptance are unaffected, and an abutting owner may have an injunction restraining the grantor from building a fence across the street.[91]

Where, however, the plan is laid out and the city accepts it before conveyance has been made, the streets are accepted by the public and become public streets, and, in such a case, subsequent grantees take title subject to them as such, and then upon vacation, the abutting owners may occupy the bed of the streets, the case being the same as that of the vacation of any other public street,[92] that is, a reference to the existing city street constitutes no covenant between the parties that the street will remain open or shall be opened. The most that can be said is that the title to the bed of the street is vested in the grantee unless the contrary appears, and he is therefore entitled to damages.

In *Barnes* v. *Railroad Co.*,[93] there was a conveyance of a lot bounded by a street not then or since opened or entered as a

[90] 242 Pa. 355 (1913).

[91] Carroll v. Asbury, 28 Pa. Super. Ct. 354 (1905).

[92] Bell v. Pittsburgh Steel Co., 243 Pa. 83 (1914); Tesson v. Porter Co., 238 Pa. 504 (1913), where an abutting owner was refused an injunction to restrain another abutting owner from occupying the bed of the street after it had been vacated.

[93] 27 Pa. Super. Ct. 84 (1905).

street upon the city plan. Upon ejectment being brought by an abutting owner, judgment was entered against him. He contended that the street had been vacated under the Act of 1889. The court said there was no vacation, the rights were fixed by the deed. The street not being opened, the fee remained in the grantor and the grantee had no title at all. It does not appear how the railroad came into the case.[94]

SUMMARY.

The result of the foregoing discussion may be summarized in the following propositions. As most cases of dedication arise with respect to streets and in cities, the statement for the sake of brevity will be so confined, although the word "street" may with equal accuracy be taken to refer to a road, lane, alley or any other avenue of communication, and the word "city" to refer to any public authority vested by law with control over roads, as townships, boroughs, *etc.* A land owner may dedicate a street to the public by formal deed, which must be expressly accepted by the city,[95] and a dedication subject to acceptance by the city, as hereinafter noted, will or will not be implied in the following cases:

1. The dedication of a street will not be presumed when the land owner permits the public to use a part of his land as a street, or leaves a part of his land in an existing public street.

a. Leaving land in existing public street. The presumption does not arise from a mere abandonment of the whole front of the lot in an existing street,[96] or of a portion of the front of a lot, the city having widened the street, and the owner having conveyed a part of the lot to the

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[94] The question was raised in a number of cases where the street dedicated was on the bank of a river, as to the effect of the dedication on the riparian rights attaching to what was practically the bed of the street. See Birmingham v. Anderson, 48 Pa. 253 (1864); Schenley v. Pittsburgh, 104 Pa. 472 (1883); Cake v. Sunbury Borough, 50 Pa. Super. Ct. 145 (1912); Pittsburgh v. Epping-Carpenter Co., 194 Pa. 318 (1900).

[95] Phila. v. Peters, 18 Pa. Super. Ct. 388 (1901).

[96] Griffen's App., 109 Pa. 150 (1885), proceeding on the authority of Gowen v. Exchange, 5 W. & S. 141 (1843); see Neill v. Gallagher, 10 Phila. 172 (1874), which cases, however, only sustain the right of an owner to reoccupy the abandoned land as against an adjoining owner.

street as widened.[97] The presumption will arise where the owner conveys the whole of the lot leaving the abandoned strip in the bed of the street,[98] or where the acts of the owner at the time of the abandonment and since indicate an intention to dedicate the strip.[99]

b. Street across land. The presumption does not arise from the mere opening of a lane to the dwelling house of the owner and a subsequent conveyance of a part of the land abutting on the lane and a public highway,[100] or from maintaining a lane for more than twenty-one years through his land, which land was used by the public by invitation of the owner.[101]

2. The presumption of dedication, subject to acceptance as aforesaid, will arise where the owner adopts a division of his land into lots with streets between, and conveys lots according to the plan, as to which case we may lay down the following propositions:

a. It is not necessary for the plan to be recorded, but the dedication does not bind a *bona fide* purchaser for value without notice.[102]

b. The dedication, according to the plan, is not complete until conveyance made, consequently the owner may until then change or abandon the plan.[103]

c. The dedication is not complete until acceptance by the city, consequently until then the streets are mere private ways, and the rights of the grantor and grantees therein are determined by the law of easements apart from any question of dedication.

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[97] Fitzell v. Phila., 211 Pa. 1 (1905).

[98] Kauffman v. Phila., 235 Pa. 276 (1912). Subsequent owner denied the right to recover damages for the taking of the abandoned strip.

[99] Forsythe v. Phila., 211 Pa. 147 (1905); Bornot v. Bonschur, 202 Pa. 463 (1902), *semble.*

[100] Seichrist v. Dallastown Borough, 46 Pa. Super. Ct. 105 (1911).

[101] Root v. Commonwealth, 98 Pa. 170 (1881).

[102] Schuchman v. Borough of Holmesburg, 111 Pa. 48 (1886).

[103] Miller v. Grandey, 45 Pa. Super. Ct. 159 (1911); Willock v. Beaver Valley R. R. Co., 222 Pa. 590 (1909).

d. Subject to the proposition in (*c*) as between the grantor and the grantee,

i. The grantor is liable in covenant on the deed for failure to open the street.[104]

ii. Upon abandonment of the street the grantees are entitled to the bed of the street.[105]

e. The dedication binds the grantees who may assert as against each other their respective rights in the streets, subject to variation therein when the streets are duly accepted by the public.

f. The grantees are not entitled to recover damages from the city as abutting owners when the streets are subsequently opened.[106] If the streets so opened are subsequently vacated, the rights of the grantees are unaffected being derived under their respective deeds and they may as against each other keep the streets open,[107] unless the city has accepted the dedication plan before any conveyance made, in which case the streets referred to are public streets, and on vacation the grantees may, as abutting owners, occupy the bed of the street.[108]

Where the owner conveys a lot abutting on an unopened street laid out by the city over his property, a presumption of dedication may arise subject to acceptance by the city, and as to which case the following proposition will apply:

1. Where the conveyance, although referring to the street as a boundary contains words indicating that the grantor reserves the title to the bed of the street.[109]

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[104] Trutt v. Spotts, 87 Pa. 339 (1878).

[105] Dobson v. Hohenadel, 148 Pa. 367 (1892). In Robinson v. Meyers, 67 Pa. 1 (1870), the grantor recovered the bed of the street, it appearing from the circumstances of the case that the grantee only took an easement.

[106] *In re* Pearl St., 111 Pa. 565 (1886); Osterheldt v. Phila., 195 Pa. 355 (1900).

[107] Carrol v. Asbury, 28 Pa. Super. Ct. 354 (1905).

[108] Tesson v. Porter, 238 Pa. 504 (1913); Bell v. Pittsburg Steel Co., 243 Pa. 83 (1914).

[109] *Cf.* Hobson v. Phila., 150 Pa. 595 (1892); Phila. v. Ash, 15 Phila. 45 (1881).

a. If the easement implied from the grant does not apply to the bed of the street reserved, the grantor may recover damages when the street is opened.[110]

b. If the street is abandoned before being opened, the grantor may resume possession of the bed of the street,[111] and is not liable to the grantee in an action on the deed for failure to open the street.[112]

c. If the street is subsequently opened, the grantee takes title to the bed of the street, and upon subsequent vacation may occupy the same as against the grantor.[113] If in such case there are several grantees, their mutual rights in the street amount to a joint easement unaffected by the vacation.[114]

d. The abutting owners may hold possession of the streets until they are opened.[115]

2. Where the conveyance refers to the street as a boundary and says nothing about the title to the bed,

a. The grantor is entitled to damages for the street when opened.

i. He was formerly allowed substantial damages.[116]

ii. But now the value of the strip is said to be affected by the implied easement in the grantee, consequently practically worthless, and a verdict awarding him no damages will not be disturbed on appeal.[117]

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[110] Easton Borough v. Reink, 116 Pa. 1 (1887).

[111] Union Burial Soc. v. Robinson, 5 Whart. 18 (1839).

[112] Bellinger v. Union Burial Soc., 10 Pa. 135 (1848); D. A. R. v. R. R. Co., 229 Pa. 636 (1911).

[113] Paul v. Carver, 24 Pa. 207 (1885); s. c. 26 Pa. 223 (1856); O'Donnell v. Pittsburgh, 234 Pa. 401 (1912).

[114] Shetter v. Wetzel, 242 Pa. 365 (1913).

[115] Patterson v. Harlan, 23 W. N. C. 230 (1889).

[116] Forbes St., 70 Pa. 125 (1872); Brooklyn St., 118 Pa. 640 (1888); Wayne Ave., 124 Pa. 135 (1889). *In re* Forty-fourth St., 7 Pa. C. C. 69 (1889).

[117] Whitaker v. Phoenixville Boro., 141 Pa. 327 (1891); Gamble v. Phila., 162 Pa. 413 (1894); Cole v. Phila., 199 Pa. 464 (1903); *dictum* in Seachrist v. Dallastown Borough, 45 Pa. Super. Ct. 105 (1911); Bellefield Ave., 2 Pa. Super. Ct. 148 (1896), and Neely v. Phila., 212 Pa. 551 (1905), followed the old rule and may probably be disregarded as opposed to the weight of authority. *Cf.* North Front St., 52 Pa. Super. Ct. 345 (1912), where the case was confused with a change of grade.

b. The grantee was allowed to recover damages when the street was opened in one case[118] on the theory that the opening of the street vested the title in him which *eo instante* was taken by the city, but in a subsequent decision it was said that the title vested in him subject to the rights of the public which attached under the opening, and consequently his title was practically worthless and he was not entitled to recover any actual damages.[119] The net result of this is that after such conveyance the bed of the street may be taken by the city without paying any damages at all. It is suggested that the reasoning in *Hancock Street* is open to objection.

c. The grantor may occupy the bed of the street until the opening.[120]

3. Where the conveyance refers to the street as a boundary and expressly conveys the title to the bed of the street,

a. The grantee may recover damages when the street is opened.[121]

The dedication must be accepted as a street and cannot be forced on the city without its consent. Where, however, the dedication is by the commonwealth, no acceptance need be shown.[122] Where there is no acceptance, the street is not a public street.[123] The acceptance may be formal or evidenced by public use.[124] In the case of a plan of lots, the Act of May 9, 1889,[125] provides that the dedication shall be of no effect unless accepted by the city within twenty-one years.[126]

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[118] Lehigh Street, 81½ Pa. 85 (1872).

[119] Hancock St., 175 Pa. 124 (1896).

[120] Barnes v. R. R. Co., 27 Pa. Super. Ct. 84 (1905).

[121] Felin v. Phila., 241 Pa. 164 (1913).

[122] Commonwealth v. McNaugher, 131 Pa. 55 (1890); Kopf v. Utter, 101 Pa. 27 (1882).

[123] See n. 56, *supra;* Scranton v. Thomas, 141 Pa. 1 (1891).

[124] See notes 58 to 64, *supra.*

[125] P. L. 173.

[126] See n. 69, *supra.*