4-1-1971

The Common Law Doctrine of Implied Dedication and Its Effect on the California Coastline Property Owner: Gion v. City of Santa Cruz

Richard E. Llewellyn II

THE COMMON LAW DOCTRINE OF IMPLIED DEDICATION AND ITS EFFECT ON THE CALIFORNIA COASTLINE PROPERTY OWNER:

GION v. CITY OF SANTA CRUZ[1]

The doctrine of implied dedication has long been recognized in California,[2] and until the California Supreme Court's companion decisions of *Gion v. City of Santa Cruz* and *Dietz v. King*,[3] a shoreline property owner rarely worried about the possibility that his lands might be deemed to have been dedicated to the public.[4]

Gion concerned three parcels of land[5] with approximately 480 feet of shoreline in the city of Santa Cruz, California. Some of the land adjoined a public road. This road had been built by the city and then later relocated because of severe erosion to the entire area. However, the land in dispute was always contiguous to the road.

Since 1900 the public had parked vehicles on the land and proceeded toward the sea to fish, swim, picnic, and view the ocean. These activities occurred without any significant objection by Gion's predecessors in title,[6] Gion having acquired the lots individually in 1958, 1961, and 1963.[7] One predecessor testified that on some occasions he had granted permission to visitors to enter the property. He further stated that he had posted signs that the property was privately owned, but the signs quickly blew away or

---

1 2 Cal. 3d 29, 465 P.2d 50, 84 Cal. Rptr. 162 (1970).

2 Hare v. Craig, 206 Cal. 753, 276 P. 336 (1929); City of San Diego v. Hall, 180 Cal. 165, 179 P. 889 (1919); F.A. Hihn Co. v. City of Santa Cruz, 170 Cal. 436, 150 P. 62 (1915); People v. Myring, 144 Cal. 351, 77 P. 975 (1904); Hartley v. Vermillion, 141 Cal. 339, 74 P. 987 (1903); Niles v. City of Los Angeles, 125 Cal. 572, 58 P. 190 (1899); Hargro v. Hodgdon, 89 Cal. 623, 26 P. 1106 (1891); Arnold v. City of San Diego, 120 Cal. App. 2d 353, 261 P.2d 33 (1953); 15 CAL. JUR. 2d, *Dedication* § 8 (1954); 9 CAL. JUR., *Dedication* § 15 (1923).

3 2 Cal. 3d 29, 465 P.2d 50, 84 Cal. Rptr. 162 (1970).

4 "Most of the case law involving dedication in this state has concerned roads and land bordering roads." *Id.* at 41, 465 P.2d at 58, 84 Cal. Rptr. at 170. Prior to *Gion* a dedication could only be shown by traditional proof of open, continuous, adverse use under a claim of right, or by actual consent to dedication. Diamond Match Co. v. Savercool, 218 Cal. 665, 24 P.2d 783 (1933).

5 The three lots were not all adjoined; apparently another lot separated two of the lots here involved from the third lot. This intervening lot had been dedicated to the city prior to this action. Brief for Appellant [Gion] at 7,8, Gion v. City of Santa Cruz, 2 Cal. 3d 29, 465 P.2d 50, 84 Cal. Rptr. 162 (1970).

6 The court only named Gion's two immediate predecessors in title, G. H. Normand and M.P. Bettencourt, although the court traced the use of the property back some seventy years. 2 Cal. 3d at 34, 465 P.2d at 53, 84 Cal. Rptr. at 165.

7 Brief for Appellant [Gion], *supra* note 5, at 4. It might also be noted that the 1963 acquisition is omitted from the opinion without any apparent reason.

were torn down. Testimony regarding the pre-1941 use of the land revealed that "the public went upon the land freely without any thought as to whether it was public or privately owned."[8]

The trial court found that in the early 1900's the Santa Cruz school system had sent school children to the general area to plant iceplant in an effort to thwart erosion. In the 1920's the city posted signs on the property to warn fishermen of the eroding cliffs. In the 1940's, the city filled some holes and built an embankment to prevent cars from going into the sea. The city also installed an emergency alarm system to a nearby fire station. In the 1950's, the city oiled a parking lot. In 1960-61, it filled some collapsed tunnels and moved boulders to aid in the erosion control, and it spent $500,000 to prevent erosion in the general area. In 1963, the city paved the level areas for parking, and in recent years, placed trash receptacles on the land and cleaned up after summer weekends.

The Superior Court for the County of Santa Cruz decided the Gions were fee owners of the lots

> subject to an easement in defendant City of Santa Cruz, a municipal corporation, for itself and on behalf of the public, in, on, over and across said property for public recreation purposes, and uses incidental thereto, including, but not limited to, parking, fishing, picnicking, general viewing, public protection and policing, and erosion control, but not including the right of the City or the public to build any permanent structures thereon.[9]

Dietz v. King involved a small beach and the 2,200 foot unimproved Navarro Beach Road. The road is the only one leading to the beach, and the court found that the public had used the road and the beach for the past one hundred years. Indians had used the land annually until as late as 1950. The public had travelled over the road in automobiles, trucks, campers, and trailers to the beach where such recreational activities as picnicking, swimming, fishing, camping, and other activities were pursued.

The court found that none of the previous owners of the King property had objected to the public's use. The original owners, various lumber and railroad companies, had never objected. On the contrary, one previous owner testified that she intended "that the beach be free for anybody".[10] In 1959, the Kings purchased the property, and in 1960, the first attempt was made to stop the public use of the road (and thereby the beach) by placing a timber across the road. However, within two hours it had been removed. Mr. King posted "no trespassing" signs but he conceded that they never remained posted for any significant length of time. In August of

[8] 2 Cal. 3d at 35, 465 P.2d at 53, 84 Cal. Rptr. at 165.

[9] *Id.* at 35, 465 P.2d at 54, 84 Cal. Rptr. at 166.

[10] *Id.* at 37, 465 P.2d at 55, 84 Cal. Rptr. at 167. Although the court refers to the beach throughout its opinion, it has been noted that all the court's findings regarding the beach must be considered dicta because dedication of the beach above the high tide line was not in issue. 80 Cal. Rptr. 234, 238 (1969), *vacated*, 2 Cal. 3d 29, 465 P.2d 50, 84 Cal. Rptr. 162 (1970). *See* 46 L.A. Bar. Bull. 55, (1970) (letter from Thomas K. Armstrong).

1966, King again placed a timber across the road, and again it was quickly removed. Shortly thereafter, King's attempt to permanently block the road was stopped by the issuance of a temporary restraining order.

The only other indication that the land was privately owned resulted from a toll sign posted on the road by the Navarro-by-the-Sea Hotel owner at a point prior to the King's land in 1949. It met with moderate success over a relatively short period of time.

The Mendocino County Superior Court held that no dedication of the road or the beach had occurred.

The California Supreme Court noted two common law tests by which land may be dedicated in California: First, an offer to dedicate land may be inferred from the owner's acquiescence in the public use of the land under the circumstances which negate the idea that the use was under a license.[11] If the dedication is sought to be established by a use which is less than five years, a period "not long enough to perfect the rights of the public under the rules of prescription—then truly the actual consent or acquiescence is an essential matter [of proof]."[12] This is not to say that this approach is limited to cases where the public use is less than five years; rather that actual consent is an additional requirement if the use has existed for less than five years, and if the use has existed over five years and there has been actual consent and acquiescence

> the length of time ceases to be of any importance, because the offer to dedicate, and the acceptance by use, both being shown, the rights of the public have immediately vested.[13]

The thrust of the inquiry under this theory is the intent and activities of the owner.[14]

Second, dedication can also be shown by the public use of the land "for a period of more than five years with full knowledge of the owner, without asking or receiving permission to do so and without objection being made by anyone."[15] Such a situation gives rise to a conclusive presumption of dedication to the public.[16] This theory may also be established by a showing of

---

[11] *Id.* at 38, 465 P.2d at 55, 84 Cal. Rptr. at 167. *See* F.A. Hihn Co. v. City of Santa Cruz, 170 Cal. 436, 150 P. 62 (1915); Niles v. City of Los Angeles, 125 Cal. 572, 58 P. 190 (1899); Hargro v. Hodgdon, 89 Cal. 623, 26 P. 1106 (1891).

[12] Schwerdtle v. County of Placer, 108 Cal. 589, 593, 41 P. 448, 449 (1895); *see* Gion v. City of Santa Cruz, 2 Cal. 3d at 38, 465 P.2d at 55-56, 84 Cal. Rptr. at 167-68.

[13] Schwerdtle v. County of Placer, 108 Cal. 589, 593, 41 P. 448, 449 (1895).

[14] 2 Cal. 3d at 38, 465 P.2d at 55, 84 Cal. Rptr. at 167.

[15] *Id.* at 38, 465 P.2d at 56, 84 Cal. Rptr. at 168, *quoting* Union Transp. Co. v. Sacramento, 42 Cal. 2d 235, 240, 267 P.2d 10, 13 (1954) and Hare v. Craig, 206 Cal. 753, 757, 276 P. 336, 338 (1929).

[16] Union Transp. Co. v. Sacramento, 42 Cal. 2d 235, 240, 267 P.2d 10, 13 (1954); Hare v. Craig, 206 Cal. 753, 757, 276 P. 336, 338 (1929); People v. Myring, 144

> long-continued adverse use of the land sufficient to raise the conclusive and undisputable presumption of knowledge and acquiescence, while at the same time it negatives the idea of a mere license.[17]

The first theory has been entitled dedication implied in fact because it is inferred from the owner's acts or acquiescence; whereas the second theory has been entitled dedication implied in law because it is established from the intent and activities of the *public*, the adverse user.[18]

The court decided both the cases under the second test.[19] The court's opinion is primarily addressed to three areas of interpretation involved in cases of dedication by adverse use. First, when is a public use adverse? Second, is a litigant representing the public required to prove that the owner did not grant a license to the public? Third, are the rules for dedication of shoreline property different from the rules for dedication of other property?

The court initially warned that analogies from the law of adverse possession and easements by prescriptive rights can be misleading in determining public adverse use. This admonishment keynotes the court's new approach to defining public adverse use. Prior decisions had defined adversity for purposes of public dedication essentially in the same terms as adverse use is defined for adverse possession,[20] "openly, adversely, and under claim of right."[21]

Adverse use by the public may now be established by a showing that persons used the property believing the public had a right to use it.[22] Evidence that the public used the land as they would use public land, and that they looked to a governmental agency for maintenance are significant elements towards proof of implied dedication.[23]

> This public use may not be "adverse" to the interests of the owner in the sense that the word is used in adverse possession cases. If a trial court finds that the public has used land without *objection or interference* for more than five years,

---

Cal. 351, 354, 77 P. 975, 976 (1904); Arnold v. City of San Diego, 120 Cal. App. 2d 353, 356, 261 P.2d 33, 35 (1953).

17 2 Cal. 3d at 38, 465 P.2d at 56, 84 Cal. Rptr. at 168, *quoting* Union Transp. Co. v. Sacramento, 42 Cal. 2d at 241, 267 P.2d at 13 and Schwerdtle v. County of Placer, 108 Cal. at 593, 41 P. at 449.

18 Union Transp. Co. v. Sacramento, 42 Cal. 2d 235, 241, 267 P.2d 10, 13; City of Laguna Beach v. Consolidated Mort. Co., 68 Cal. App. 2d 38, 43, 155 P.2d 844, 847 (1945); Diamond Match Co. v. Savercool, 218 Cal. 665, 669, 24 P.2d 783, 784-85 (1933).

19 2 Cal. 3d at 39, 465 P.2d at 56, 84 Cal. Rptr. at 168.

20 Diamond Match Co. v. Savercool, 218 Cal. 665, 24 P.2d 783 (1933); Niles v. City of Los Angeles, 125 Cal. 572, 58 P. 190 (1899); Rochex & Rochex, Inc. v. Southern Pac. Co., 128 Cal. App. 474, 17 P.2d 794 (1932). *See* Schwerdtle v. County of Placer, 108 Cal. 589, 41 P. 448 (1895); People v. Sayig, 101 Cal. App. 2d 890, 226 P.2d 702 (1951).

21 Diamond Match Co. v. Savercool, 218 Cal. 665, 670, 24 P.2d 783, 785 (1933).

22 2 Cal. 3d at 39, 465 P.2d at 56, 84 Cal. Rptr. at 168.

23 *Id.*

it need not make a separate finding of "adversity" to support a decision of implied dedication.[24]

By implication from the court's language, it would appear that if a land owner does make objections or interferes with the public's use that "a separate finding of adversity" would be required.[25] The court does not make clear the definition of this additional finding of "adversity". Having been given no other frame of reference by the court it would seem that the additional finding of adversity must be of the type found in adverse possession cases. This is not necessarily so. A different interpretation for the "separate finding of adversity" is possible, since the court has been willing to find a new meaning for adversity where no objection has been shown. However, attempting a definition of this "separate finding of adversity" in terms of analogy to the adverse possession definition flies in the face of the court's admonishment that in determining the adverse use necessary to raise a conclusive presumption of dedication, analogy to the law of adverse possession can be misleading.[26] If it is true that the separate finding of adversity is defined by analogy to adverse possession, then, it must mean that where a separate finding of adversity is necessary, no *conclusive* presumption of dedication will be raised.

Thus, a public entity is not likely to run the risk of having to make a separate showing adversity by framing its cause of action in terms of "use without objection or interference for more than five years". Practically, it will avail itself of the advantage of a conclusive presumption raised by the alternative language set forth by the court:

> Litigants, therefore, seeking to show that land has been dedicated to the public need only produce evidence that persons have used the land as they would have used public land.[27]

The purpose of the traditional adversity requirement is to provide the land owner with adequate opportunity to become aware of the adverse claim. Now, however, "adverse use" is sufficient to raise a *conclusive* and indisputable presumption of knowledge and acquiescence thereby effectively destroying the purpose of the traditional "adversity" requirement. Thus, a land owner might have no, or merely partial, knowledge of the public use and because of this have made no objection. Nevertheless if the public can be shown to have used the land as if it were public land, he will have no defense. Dedication implied in law will be conclusively presumed to have occurred.

Second, must the public prove that the use was not under a license?

The question of whether public use was under a license is one of fact. The

---

[24] *Id.* (emphasis added).

[25] *Id.* The court did not make this positive statement. The statement that adversity need not be separately found if the public use has been without objection does not *necessarily* mean that a finding of adversity must be made if the public's use has been in spite of objection.

[26] *Id. See* notes 20 & 21 *supra*, and accompanying text.

[27] 2 Cal. 3d at 39, 465 P.2d at 56, 84 Cal. Rptr. at 168.

presumption in favor of a license as set forth in *F. A. Hihn Company v. City of Santa Cruz*[28] was overruled in favor of the approach of *O'Banion v. Borba,*[29] which held that the preferable method is to discuss the question from the standpoint of an inference to be drawn from all the circumstances, rather than from a standpoint of presumptions.[30]

Gion refused to presume that property owners today will knowingly permit the general public to use their lands under a license.[31] The effect is to shift the burden of proof to the landowner.[32] Previously, a nearly insurmountable burden of proof existed for the public user to establish a vested right by adverse use.[33] The *Gion* court's holding was more in line with *Morse v. Miller*[34] which held that once adverse use has been established for the prescriptive period, the burden of proof is on the landowners to show by affirmative proof that the use was permissive.

Thus, under *Gion*, for the owner to negate a finding of intent to dedicate as the result of the public's use, the owner must either prove he has granted the public a license, or provide evidence of a "bona fide attempt" to prevent public use. If the latter showing is undertaken, the court will determine if the owner's efforts are adequate, based upon the means the owner used in relation to the character of his property and the kind of public use he sought to prevent. The owner must show that he has made more than minimal and ineffectual efforts to exclude the public if the court is to consider favorably the question of adequacy; and if the attempt has not been significant, the means will be adjudged inadequate and the owner will be held to have intended to dedicate the property or an easement therein to the public.[35]

The statement that the fee owner may negate a finding of intent to dedicate suggests an inconsistency in the court's analysis. There exists, in fact, a declaration that a conclusive presumption of dedication will arise only if the public succeeds in showing either adversity or lack of interference or objection on the part of the fee owner for five years. Since the owner is

---

28 170 Cal. 436, 448, 150 P. 62, 68 (1915).

29 32 Cal. 2d 145, 195 P.2d 10 (1948).

30 *Id.* at 149, 195 P.2d at 13.

31 2 Cal. 3d at 41, 465 P.2d at 57, 84 Cal. Rptr. at 169.

32 *See* Armstrong, *Gion v. City of Santa Cruz: Now You Own It—Now You Don't,* 45 L.A. BAR BULL. 529, 549 (1970).

33 Brief for City of Carpenteria as Amicus Curiae at 16, Gion v. City of Santa Cruz, 2 Cal. 3d 29, 465 P.2d 50, 84 Cal. Rptr. 162 (1970). *See* Manhattan Beach v. Cortelyou, 10 Cal. 2d 653, 76 P.2d 483 (1938); Whiteman v. City of San Diego, 184 Cal. 163, 193 P. 98 (1920); City of San Diego v. Hall, 180 Cal. 165, 179 P. 889 (1919); F. A. Hihn v. City of Santa Cruz, 170 Cal. 436, 150 P. 62 (1915); People v. Rio Nido Co., 29 Cal. App. 2d 486, 85 P.2d 461 (1938); County of San Luis Obispo v. Hart, 127 Cal. App. 365, 15 P.2d 873 (1932).

34 128 Cal. App. 2d 237, 275 P.2d 545 (1954).

35 2 Cal. 3d at 41, 465 P.2d at 58, 84 Cal. Rptr. at 169-70.

free to prove that he granted a license, the presumption is not, theoretically, conclusive.[36]

Third, is the dedication of the shoreline property to be considered differently from the dedication of other property? The court concluded that "rules governing implied dedication apply with equal force"[37] to all lands which the public uses for public purposes, such as roads, parks, and beaches.

Additionally, there is a strong public policy expressed in the California constitution and various statutes which encourages the public use of the shoreline recreational areas. The public owns the shorelands between the high and low tide marks;[38] and the California constitution provides the public with a paramount right to such tide lands when required for any public purpose;[39] and recreational purposes are within the category of public purposes recognized.

Also, the court felt that the rationale against implied dedication of open beach lands should be disfavored because of the compelling problems of intensification of land use. It is now necessary to expand the public access to and use of shoreline areas because of such intensification. Only 179 miles of California's 1,051 mile coastline consists of safe beach lands suitable for recreation use, and presently only one half of the 179 miles is owned by the public.[40] With the increasing population and the development of coastlines for non-recreational use, the presumptions no longer serve the public needs. The restrictive rules prevent public dedication of beach lands by public use, and therefore, should yield.[41]

In conclusion, the court found that

> Previous owners . . . by ignoring the widespread public use of the land for more than five years have impliedly dedicated the property to the public. Nothing can be done by the present owners to take back that which was previously given away.[42]

The court made no finding of dedication by the present fee owners, but found that the land had been dedicated by the previous owners. Therein lies the critical impact of this decision, for in effect a governmental authority can find any land to have been dedicated provided it can find evidence of public use for five years. Therefore, the doctrine becomes largely eviden-

---

36 As will be demonstrated *infra*, the opportunity to negate a finding of adversity or lack of interference or objection is simply illusory.

37 2 Cal. 3d at 41, 465 P.2d at 58, 84 Cal. Rptr. at 169-70. *See* 15 CAL. JUR. 2d *Dedication* § 9 (1954).

38 CAL. CIV. CODE § 830 (West 1970).

39 CAL. CONST. art. XV, § 2.

40 Address by James R. Christiansen, City Attorney of Carpenteria, Annual Conference of the League of California Cities, Oct. 27, 1970 *citing* CAL. DEPT. OF PARKS AND RECREATION, CALIFORNIA PARK SYSTEM PLAN (1968).

41 Brief for City of Carpenteria as Amicus Curiae, *supra* note 33, at 6.

42 2 Cal. 3d at 44, 465 P.2d at 60, 84 Cal. Rptr. at 172. *See* Washington Blvd. Beach Co. v. City of Los Angeles, 38 Cal. App. 2d 135, 137, 100 P.2d 828, 830 (1940).

tiary, and every dedication case becomes a problem of proof rather than intent. Elderly witnesses may suddenly be in large demand,[43] and the public richer in "public" lands.

It is apparent from this decision that the current shoreline property owner may have to worry a great deal whether or not his valuable beach will continue to be "his". If sued, the present owners must prove that neither their successors nor themselves ever acquiesced in a public use of their beach for five years, *and* they must make an affirmative showing that they have either granted the public a license or that they have made a bona fide attempt to prevent the public use.

The first showing is necessary if the landowner is to defeat any dedication theory by acquiescence, or implied in fact; and the second showing is necessary if the landowner is to defeat any dedication theory by public use, or implied in law.

However, satisfaction of this second requirement may be an unreasonable if not insurmountable burden for the landowner.[44] How is one to affirmatively prove he has granted a license to the public? Generally, a license can be created expressly, or implied by conduct.[45] Possibly California Civil Code section 813[46] could be construed as an express license since it permits a landowner to record that henceforth any use of his land is permissive.

However, such recordation is only evidence of permissive use; no case has held that recordation would be sufficient to terminate the possession claim of a user prior to the end of the prescriptive period.[47] Assuming that section 813 is inadequate, could a license to the public be implied? Although cases of implied license to the public exist,[48] the language of this decision is directly contrary: "We will not presume that the owners of property today knowingly permit the general public to use their lands and grant a license to the public to do so."[49] Possibly then, the landowner could erect signs announcing the use to be by license; however, the danger in this is that the court might interpret such conduct as an express intent to dedicate; similarly, if an owner complies with Civil Code section 813. The court seemed willing to interpret the evidence of express permission in the *Gion*

---

43 Daily Pilot, December 17, 1970, at 4, col. 4. Daily Pilot, May 23, 1970, at 1, col. 1.

44 Address by James R. Christiansen, City Attorney of Carpenteria, Annual Conference of the League of California Cities, Oct. 27, 1970.

45 RESTATEMENT OF PROPERTY § 516, comment *c* at 3129 (1944).

46 CAL. CIV. CODE § 813 (West 1970) permits recordation by the landowner that use of his land is permissive henceforth; recordation of revocation is also required.

47 *See Selected 1963 Legislation*, 38 CAL. ST. B.J. 646 (1963).

48 Lawson v. Schreveport Waterworks, 111 La. 73, 35 So. 390 (1903); Wheeler v. St. Joseph's Stockyards, 66 Mo. App. 260 (1896); State v. Pierce, 164 Ohio St. 482, 132 N.E.2d 102 (1956). *See* 53 C.J.S., *Licenses*, § 81 (1948).

49 2 Cal. 3d at 41, 465 P.2d at 57, 84 Cal. Rptr. at 169.

and *Dietz* cases in such a way;[50] whereas signs in the past have usually been found to be adequate to allow or prevent use.[51] Thus, the landowner can prevent the accrual of public rights if the public's use is under a license;[52] his problem is one of proof that such license was given.

Alternatively, the landowner may demonstrate bona fide attempts to prevent the public use. He must show his attempts were bona fide or significant as opposed to minimal and ineffectual. The court will determine if the attempts were adequate from the means used in relation to the character of the land and the type of use which was sought to be prevented.

A problem exists however, for those landowners who have permitted public use out of their personal sense of decency or cooperation, when they could easily have closed off such access. These owners have not truly acquiesced, nor have they taken any prohibitive steps; therefore, their land will be deemed to have been dedicated even if an intent of license on their part can be shown.

Similarly, those property owners who were fully aware of the doctrine of implied dedication but who felt no need to prohibit the public's use since the law recognized and even presumed such use was by virtue of a license,[53] now find themselves defenseless under the test established by the *Gion* decision.[54]

As the doctrine was laid down by this court, it would appear to have few, if any, limits. It is inconceivable that the public would ever seek to declare as dedicated everyones' driveways, and walkways to their front doors; however, it would seem to be possible under the tests for dedication set forth by this court. The fact that the public can now acquire interests in uncultivated, unenclosed, and unimproved property for a potentially infinite period brings the doctrine of implied dedication closer to the English "doctrine of Ancient Lights".[55] Under the English doctrine the failure of a property owner to develop his land within the prescriptive period will result in the vesting of easement rights for light, air, and view, in favor of his neighbors.[56] Similarly, under implied dedication now, anytime a landowner permits a use, or

---

50 Armstrong, *supra* note 32, at 546.

51 City of Laguna Beach v. Consolidated Mort. Co., 68 Cal. App. 2d 38, 155 P.2d 844 (1945).

52 Jones v. Tierney-Sinclair, 71 Cal. App. 2d 366, 162 P.2d 669 (1945); Matthiessen v. Grand, 92 Cal. App. 504, 268 P. 675 (1928); CAL. CIV. CODE § 1008 (West 1970).

53 City of Laguna Beach v. Consolidated Mort. Co., 68 Cal. App. 2d 38, 44, 155 P.2d 844, 848 (1945); City of San Diego v. Hall, 180 Cal. 165, 168, 179 P. 889, 890 (1919); F. A. Hihn v. City of Santa Cruz, 170 Cal. 436, 448, 150 P. 62, 68 (1915).

54 The retroactive effect of the *Gion* doctrine, it may be argued, has possible due process implications.

55 Pierre v. Fernald, 26 Me. 436, 46 Am. Dec. 573 (1847); 3 C.J.S. *Ancient Lights* (1936).

56 *Id.*

ignores his property, he runs the risk of losing all or part of his property to the public for whatever purpose or use they have established.

This decision has been viewed as presenting the public with a great opportunity, and also a great danger.[57] The opportunity is that immediate and effective steps can now be taken to preserve the beaches of this state for the people;[58] and such an effort has been requested of the city, county, and state agencies.[59] The danger is what might be termed as a "boomerang effect". It was by this decision that the court sought to increase the beaches and shoreline properties which the public may use; however, the decision will cause the private shoreline property owner to fence off his land and close off areas formerly left open to the public.[60] Thus, all private property owners will act to preserve their property and prevent any public use. The decision's immediate effect will therefore be to decrease the shoreline property to which the public will be permitted access.

The language of *Gion* would seem to strongly suggest that any acts by the present owner would not avail him of any defense to a prior implied dedication.[61] In *Gion* and *Dietz* no substantial improvements had been made to the beach property. In a case where substantial improvements have been made the harshness of a strict application of *Gion's* language can be noted. Suppose an implied dedication has occurred prior to any substantial improvements on the part of the apparent fee owner but public title is perfected subsequent to the substantial improvements, where is equity served by permitting no set-off of the apparent fee owner's improvements?[62] Thus it has been said ". . . this year and the coming months is a time which is very crucial if we are to prevent the *Gion* case from becoming a disaster . . . ."[63]

Apparently many city attorneys have heard the call and taken up suit. In *County of San Mateo v. Potter*,[64] the landowner sought compensation in a condemnation proceeding, but the Attorney General was allowed to intervene on behalf of the state. It was found that most of the area under condemnation has already been dedicated by public use, and thus the compensation was sharply reduced.[65]

---

57 Address by James R. Christiansen, *supra* note 40.

58 Prior to this case there had been a substantial number of cases in which the public had acquired shoreline property through condemnation.

59 Address by James R. Christiansen, *supra* note 40.

60 Los Angeles Times, July 23, 1970, Part I, at 3, 25.

61 2 Cal. 3d at 44, 465 P.2d at 60, 84 Cal. Rptr. at 172.

62 It might be suggested that a fee owner who innocently improved "his" land prior to *Gion* should be distinguished from one who improves "his" land subsequent to this decision, since in the latter case the owner may be said to have constructive notice that "his" land may in actuality not be "his".

63 Address by James R. Christiansen, *supra* note 40.

64 No. 129,019 (San Mateo County Superior Court, filed Mar. 29, 1967).

65 Address by James R. Christiansen, *supra* note 40. Other similar suits are City of

It is possible that Union Oil Company may plead a defense on similar grounds to the suits of Santa Barbara beach owners for damage resulting from the "Platform A" oil spillage in 1969. However, should the state as the proper owner thereafter sue for damages it is unlikely that Union Oil will retain their position.

Hopefully, the doctrine put forth by the California Supreme Court in *Gion v. City of Santa Cruz* will be clarified, defined, and limited in future litigation, and thereby restore some tranquility to the beachfront property owners who are currently having signs printed which read "You are hereby using this beach with the express permission of the owner".

Richard E. Llewellyn II

Huntington Beach v. Standard Oil Co., No. 175,055 (Orange County Superior Court, filed June 8, 1970); State v. Bolsa Pac. Corp., No. 161,595 (Orange County Superior Court, filed Aug. 1, 1968); Roberts v. City of Carpenteria, No. 79327 (Santa Barbara Superior Court, filed May 3, 1967).