HIGHWAYS BY DEDICATION

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EXCUSE AND SCOPE

No ambition to become a literary light set the task that has resulted in the following pages, but rather the inability to answer the same question presented in multitudinous ways by homesteader, road foreman and supervisor: "Is it a public highway?" The necessity to know the law to be found only in the cases was so compelling, that an exhaustive examination of the California decisions was entered upon.

That is the excuse and the only merit claimed for what follows.

Highways by Dedication

I. TERMS.

"Dedication" is the word most generally used in the authorities to name the process whereby land privately owned becomes voluntarily subjected to a public use.

> "Dedication of land to a public use is simply setting it apart or devoting it to that use."
>
> Smith v. San Luis Obispo (1892), 95 Cal. 463, 466.

No attempt will be made to list the cases characterizing the matter in which we are interested as "dedication". As exceptions, we note that the word "abandon" is sometimes used to express our idea: *Babcock v. Welsh* (1886), 71 Cal. 400; *Patterson v. Munyan* (1892), 93 Cal. 128; *Plummer v. Sheldon* (1892), 94 Cal. 533; and in *Rice v. Boyd* (1883), 2 Cal. Unrep. 196, it appears:

> "By dedication, he abandons the land to the public for the use to which he has subjected it."

See also:

> Prescott v. Edwards (1897), 117 Cal. 298, 301.

Section 2618 of the Political Code uses both terms. As we have said, however, "dedication" is the word employed most generally, and as there seems to be no distinction made between it and "abandon", we shall make none.

Of "dedications" there are said to be two forms: Express and implied.

> "The substantial difference between the two consists in the mode of proof. In the former case, the intention to appropriate the land to public use is manifested by some outward act of the owner, while in the latter it is shown by such acts and conduct, not directly manifesting the intention, but from which the law will imply the intent."
>
> Sussman v. San Luis Obispo Co. (1899), 126 Cal. 536, 539.

Chief Justice Beatty concurring in this case said: "In my opinion there is no inconsistency between the findings of dedication and of a prescriptive right in the public." A similar distinction, that is, recognizing not "express" and "implied" dedication but "dedication" and "prescription", is found in *Schwerdtle v. Placer Co.* (1895), 108 Cal. 589, where a discussion of the use of these terms is quoted from a Massachusetts case. In *Hartley v. Vermillion* (1903), 141 Cal. 339, the public is said to have gained its right to use a road by "prescription or implied dedication".

In *People v. Rindge* (1917), 174 Cal. 743, 755, we find:

> "It is manifest that if a public highway exists at all, it exists by prescriptive user and not by official acceptance of an offer of dedication."

In *Bolger v. Foss* (1884), 65 Cal. 250, however, we are told that "prescription" is not the word to use, but that it is "dedication", of which use is evidence.

Whatever the correct term, we have, as we shall find, two classes of cases: Those where dedication is evidenced by some affirmative act or expression of the owner; those where the dedication is implied from long continued, adverse use. These we shall consider separately.

II. INTENT AND OFFER TO DEDICATE.

(a) *Principles governing.*

Two of the essential elements of dedication are intent to dedicate and an offer. These two ingredients are so inextricably bound together that the courts frequently fail to separate them, and as the offer is but the manifestation of the intention, they may properly be discussed together.

We find several principles thoroughly established.

> "The vital principle of dedication is the intention to dedicate, the *animus dedicandi.*"
>
> Quinn v. Anderson (1886), 70 Cal. 454;
> People v. Reed (1889), 81 Cal. 70;
> Phillips v. Day (1889), 82 Cal. 24;
> Griffiths v. Galindo (1890), 86 Cal. 192;
> Logan v. Rose (1891), 88 Cal. 263;

Hibbard v. Mellville (1893), 3 Unrep. 879, 33 Pac. 201;
Silva v. Spangler (1896), 5 Unrep. 277, 43 Pac. 617;
San Francisco v. Grote (1898), 120 Cal. 59;
Eureka v. McKay & Co. (1899), 123 Cal. 666;
Niles v. City of Los Angeles (1899), 125 Cal. 572;
Wheeler v. City of Oakland (1917), 35 Cal. App. 671;
City of Venice v. Short Line etc. Co. (1919), 57 C. D. 502, 181 Pac. 658.

"Where a dedication rests in acts and conduct and not in grant, the rule is well settled and has been many times repeated by this court to the effect that 'property cannot be taken for public use without compensation unless the owner is willing, and this willingness should be manifested by clear and unmistakable acts. Parties may not be done out of their property by doubtful implications, no matter how greatly the public may be inconvenienced.'"
Burk v. Santa Cruz (1912), 163 Cal. 807, 812.

"Dedication is always a question of intent, and the acts of the owner of the property are sufficient to prove a dedication only when they are evincive of such intent, or, what amounts substantially to the same thing, when they are such as to estop him from denying that such was his intent."
Eureka v. McKay & Co. (1899), 123 Cal. 666, 670.

"When it is sought to show that an owner has, without a conveyance, divested himself of title to land in favor of the public, by way of gift or abandonment, the proof ought to be such as to clearly show that such was the owner's intent."
Latham v. Los Angeles (1891), 87 Cal. 514, 519.

"The question of intent is paramount, and, unless such intent expressly appears, or can be fairly inferred from the acts of the donor, there is no valid dedication."
Silva v. Spangler (1896), 5 Unrep. 277, 281, 43 Pac. 617.

To the same effect are the following:
Spaulding v. Bradley (1889), 79 Cal. 449;
Cerf v. Pfleging (1892), 94 Cal. 131;
Helm v. McClure (1895), 107 Cal. 199;
San Francisco v. Grote (1898), 120 Cal. 59.

(b) *Evidence of intent and offer, in general.*

What evidence has satisfied the courts of the existence of this necessary element of dedication? By way of general statement, we find that no formula of word or deed is necessary to dedicate land to public use, but that any act which reveals the intent is sufficient.

Harding v. Jasper (1860), 14 Cal. 642;
Hope v. Barnett (1888), 78 Cal. 9;
People v. Reed (1889), 81 Cal. 70;
Smith v. San Luis Obispo (1892), 95 Cal. 463.

In an even earlier case we find:

"There are several ways in which a dedication of land to the public use as a street or highway may be made. It may be made by deed or other overt act, or may be presumed from the lapse of time or acquiescence of the party."
San Francisco v. Scott (1854), 4 Cal. 114, 116.

In *Kittle v. Pfeiffer* (1863), 22 Cal. 484, the court lists as among the ways dedication can be made the following:

(1) Conveyance, though no grantee *in esse;*
(2) Sale by reference to map showing street;
(3) Sale of lots bounded by street (whether to boundary or centre line).

"The offer of the owner to dedicate may be manifested in a hundred different ways."
City of Los Angeles v. Kysor (1899), 125 Cal. 463, 466.

"Such intent need not be manifested by any contract, writing or express declaration of the owner. It may be implied from his conduct."
City of Venice v. Short Line Beach Land Co. (1919), 57 Cal. Dec. 502.

"Stronger evidence is required of the dedication * * * of a country road than of a street in a town or city."
Quinn v. Anderson (1886), 70 Cal. 454;
Harding v. Jasper (1860), 14 Cal. 642.

(c) *Evidence—maps of subdivisions.*

One of the manifestations of intent most frequently encountered is found in the platting of property for sale showing a

highway. Of course, it is only when the owner himself causes the subdivision to be made that the map is of any effect, for one's intention is not proven by what another has done.

Cerf v. Pfleging (1892), 94 Cal. 131;
City of Eureka v. McKay & Co. (1899), 123 Cal. 666;
City of Eureka v. Fay (1895), 107 Cal. 166;
Burk v. City of Santa Cruz (1912), 163 Cal. 807.

Nor is a reference to such unauthorized map by the owner of the land platted on it evidence of an intent to offer for dedication the land shown as highways. (*Cerf v. Pfleging, supra,* and *Eureka v. Fay, supra.*)

But where the owner of property makes or causes to be made a map of his land, showing a part as a highway (or park), and either records it or sells land by reference to it, he thereby clearly shows his intent to dedicate the portion shown as a highway (or park) to public use.

Stone v. Brooks (1868), 35 Cal. 489;
San Leandro v. Le Breton (1887), 72 Cal. 170;
Brown v. Stark (1890), 83 Cal. 636;
Griffiths v. Galindo (1890), 86 Cal. 192;
Wolfskill v. Los Angeles County (1890), 86 Cal. 405;
Logan v. Rose (1891), 88 Cal. 263;
Mills v. Los Angeles City (1891), 90 Cal. 522;
People v. Beaudry (1891), 91 Cal. 213;
Archer v. Salinas City (1892), 93 Cal. 43;
Southern Pacific v. Ferris (1892), 93 Cal. 263;
Eureka v. Fay (1895), 107 Cal. 166;
Koshland v. Spring (1897), 116 Cal. 689;
Sussman v. San Luis Obispo Co. (1899), 126 Cal. 536;
City of Anaheim v. Langenberger (1901), 134 Cal. 608;
Los Angeles v. McCollum (1909), 156 Cal. 148;
Davidow v. Griswold (1913), 23 Cal. App. 188;
People v. Langenour (1914), 25 Cal. App. 44;
Eltinge v. Santos (1915), 171 Cal. 278;
Berton v. All Persons (1917), 176 Cal. 610;
Daly City v. Holbrook (1918), 28 C. A. D. 66, 178 Pac. 725.

And see *Prescott v. Edwards* (1897), 117 Cal. 298, where instead of a map the land itself was marked off by stakes.

Nor does the fact that the highway shown is a *cul de sac* destroy the value of the evidence (*Stone v. Brooks* (1868), 35 Cal. 489, and *Smith v. San Luis Obispo Co.* (1892), 95 Cal. 463), even where the *cul de sac* is neither named nor labeled. (*Los Angeles v. McCollum, supra.*)

In *People v. Reed* (1889), 81 Cal. 70, 77, it appears, however,

> "But it is not the mere making of the map, or its delivery or exhibition to private individuals, that constitutes the offer of dedication to the *public*, but the *filing;* and where the right to claim the street by the public *rests upon the map alone*, there is no offer to be accepted until the same is filed for record."

Under the present laws, the questions arising out of the making of a map and recording it are largely governed by statute. (Stats. 1907, p. 290, as amended.) So far no case has arisen where the provisions of this statute have not been complied with sufficiently to establish a highway by virtue of its power yet where the intent is manifest in an offer, and an acceptance is in evidence; but it seems quite possible that when that case arises it will be held that while the statutory dedication is not proven the common-law dedication is, and a public highway exists. Such a conclusion would find support in principle in *People v. Marin Co.* (1894), 103 Cal. 223, where the procedure was too imperfect to establish a highway by declaration under the statute, but nevertheless resulted in proving a dedication.

(d) *Evidence—reference in deeds.*

Evidence of the intent to dedicate is also found in the reference to a road contained in a deed conveying land.

> "It is useless to cite authorities to maintain the proposition. So firmly has it become established, that where lots are sold as fronting on, or bounded by, a certain space designated in the conveyance as a street, the use of such space as a street passes as appurtenant to the grant, and vests in the grantee in common with the public the right of way over such street; that such acts on the part of the