STREETS AS BOUNDARIES IN PENNSYLVANIA.

The question as to whether a grantee in a deed calling for a street or highway as a boundary takes title to the middle of the street or whether he is limited to the side thereof has produced an unusually large number of cases in Pennsylvania. This is due chiefly to the fact, as pointed out by the late Mr. Justice Dean, that the two earliest decisions of importance on the subject were decided each on its facts, which, while different, were so closely related that both bench and bar became involved in an uncertainty as to what was the rule and what were the exceptions. The law is now well settled on the main point that where a grant is made of land abutting on an open street the grantee takes title to the middle of the street unless the fee of the street bed is reserved to the grantor by express language of the deed. This was decided in the leading case of *Paul* v. *Carver*, 26 Pa. St. 224 (1856) and has been uniformly followed. But while it is easy enough to thus state the general proposition, there still remain many collateral questions to which the answer has not been so clearly indicated. For instance, does the rule above stated apply also to plotted but unopened streets? Under what circumstances does reference in a deed to an unopened street amount to a dedication thereof? Who is entitled to damages upon the opening of such a street, and to whom does the fee revert if it is never opened, but instead is vacated? To review the cases on these and related questions is the sole excuse for the writing of this article, which from the necessarily generic nature of the title might seem to be entirely superfluous.

For convenience of treatment the cases are classed under three heads, though there is naturally considerable overlapping. But in general the questions have arisen in the three following ways: (1) In an action of ejectment between the grantor and grantee upon the vacation of a street. (2) In an action of covenant or trespass

by the grantee against the grantor for interference with alleged rights. (3) In an action for damages against the municipality upon the opening of a street, either grantor or grantee being plaintiff.

1. ACTIONS OF EJECTMENT.

These necessarily involve the question of the title to the bed of the street. The first case in which the matter squarely arose was *Union Burial Ground* v. *Robinson*, 5 Wharton 18 (1839). The deed to Robinson, the plaintiff below, called for Washington Street as a boundary "as the same may hereafter be opened." The street had been previously plotted and recorded but was then unopened and was later vacated. The Court, per Kennedy, J., held (1) that there was a presumption that the grantee's title went to the middle, which presumption was met and rebutted in this case by the nicety with which the distances were calculated to the side, and (2) that "had the street here been laid out and dedicated to public use * * * possibly a different question might have been involved." While to-day the mere exactness in bringing the feet and inches of a deed to the side of the street is not sufficient to limit the title there,* the distinction between an opened and an unopened street made in the second portion of the opinion is supported by several later cases.

Thus in *Bellinger* v. *Union Burial Ground*, 10 Pa. St. 135 (1848), it was held, in an action of covenant on the same facts as the Robinson case, that there was no covenant by the grantor that the City would open the street, and on vacation of it the grantor took possession of the bed. Such possession could only be based on the assumption that he had not passed title to it to the grantee.

*But in *Neely* v. *Phila.* 212 Pa. St. 551, (1905) the deed called for the *side* of an unopened street as the southern boundary and for the *middle* of an open street as the northern boundary. Held that title went only to side. This is in line with *Union Burial Ground* v. *Robinson* as to grantor retaining title to unopened street, but the Court also relies on the fact that the measurements brought it to the side only and also that for the southern boundary the word "side" was used and for the northern the word "middle."

The distinction thus made in the Robinson case was further strengthened by the reference to it in both *Paul* v. *Carver*, 26 Pa. St. 224 (1856) and *Cox* v. *Freedly*, 33 Pa. St. 124 (1859) and apparently it would be the law of Pennsylvania to-day if it were not for a decision to be mentioned presently. In *Paul* v. *Carver* the ejectment was for the bed of a street open and in use at the time of the deed, and the Court in referring to the earlier case distinguished it from the case at bar by saying—

"the Court (in the Robinson case) carefully stated that the case of a lot bounded on a street laid out and dedicated to public use at the time of the grant would present a different question. The case is therefore no precedent for one like the present."

And in *Cox* v. *Freedly* on facts similar to *Paul* v. *Carver*, the Court refers to what it terms "the doctrine" of *Union Burial Ground* v. *Robinson* by saying that it is not to be applied to streets actually opened and used by the public. In *Speckman* v. *Steidel* 88 Pa. St. 453 (1879) the Court says—

"where the street called for as a boundary is not a public highway, nor dedicated to public use, the grantee does not take title in fee to the centre of it, but by implication acquires an easement or right of way only over the land."

In the case of *Philadelphia & Trenton R. R. Co.*, 6 Wharton 25 (1840) Chief Justice Gibson said:

"In *The Union Burial Ground Company* v. *Robinson*, 5 Wharton 18, in which the point was elaborately argued, the contest was betwixt the grantor and a purchaser from the grantee; and though the cause was eventually decided on another ground, the Court inclined to think, on the authority of many decisions, that the title to the street, even had it been opened, would have remained in the grantor; and such appears to be the principle of *Kirkham* v. *Sharp*, 1 Wharton 323."

Kirkham v. *Sharp* was a case as to the extent an easement of way could be used. The decision in *Philadelphia & Trenton R. R. Co.* was never followed.

Moreover the only standing which a grantor of land on such an unopened street can have to claim damages when the street is later opened is that he is still the owner of the bed of the street. This is admitted by the cases

on this point discussed *infra* and it is sufficient to refer here to *In re Brooklyn Street*, 118 Pa. St. 640 (1887), in which the grantor of land on an unopened street was awarded damages for the bed of the street when taken by the City on opening. This could only be on the theory that he had retained title thereto, his deed not being under the facts a dedication, (when reference in a deed to a "paper" street is or is not a dedication is discussed *infra*,) and not being a conveyance of the street bed. The only ground for its not being a conveyance of the bed is the doctrine of the Robinson case.

But this line of cases and the Robinson case on which they rest must fall if the decision in *Dobson* v. *Hohenadel*, 148 Pa. St. 367 (1892), is the law. The facts were that the plaintiffs sold a lot to the defendant. The deed, plaintiff's plan which was referred to in the deed, and the City plan, all showed that the lot was bounded on the southwest by a railroad. The City plan showed a street of one hundred and twenty feet called "The Philadelphia & Norristown Railroad." The Railroad actually occupied sixty-six feet in the center, leaving a space of twenty-seven feet on either side. This street was plotted but never formally opened. Later the City abandoned the street and defendant advanced his building and fences so as to enclose the twenty-seven feet. The grantors brought an action on a case stated to determine the title to the strip.

It was held that as the grantors sold the lot to defendant by a plan which showed it to be upon a street, the conveyance was a dedication of the land covered by the plotted street, and that they retained no title to it; that the grantee took title to the middle of the street, subject, it is true, to the rights of the railroad, the City and the adjoining lot owners, but that as between the grantors and the grantee, the former had no standing to maintain an action.*

**Falls* v. *Reis* 74 Pa. St. 439 (1873) is an earlier decision in line with *Dobson* v. *Hohenadel*. There a testator devised land bounded by an unopened street and in ejectment by a devisee it was held that the latter took title to the middle of the bed.

It is true, under the decisions, that where a lot is conveyed according to a plan which shows it to be on a street, there is a dedication and a covenant enforceable against the grantor for free egress and ingress. And where such street is later opened the grantor is not entitled to damages. But this is so only where the grantor first so created the paper street, and not where he simply, in his deed, refers to a street already plotted on the City plan. This distinction was acted on in the opening of Brooklyn Street. And that a reference in a deed to such a street is not a covenant by the grantor that the street will be opened, was early decided in the Bellinger case. That being the case, should the grantor be in any worse position because he not only refers in his deed to such city-plotted street, but also refers to a plan showing such street? The facts in *Dobson* v. *Hohenadel* show that the City first plotted the street, and that the grantors simply adopted the City plan as their own. They refer to the street in their plan, and make the plan part of their deed, but by doing so, do they estop themselves any more than the grantors in the Bellinger and Brooklyn cases did? The Court in the Brooklyn case expressly declares that a distinction exists in the effect of words of description in a private grant where the adjoining street is laid out by public authority and where by act of the owner. Truly the additional description in the plan can be of no greater importance than the language of the deed, for while it is made a part of the deed, it is not superior to it. Therefore the grantors in *Dobson* v. *Hohenadel* when they referred to the railroad street in plan and deed were doing no more than the grantors in the Bellinger and Brooklyn cases did, for in all three cases the reference was to a street previously plotted by the City. And if the doctrine is sound that reference to a previously plotted street is no covenant that the public authorities will later open it, it ought not to be a dedication. In fact in the Bellinger case the grantors (who were the defendants, it being an action of covenant) did sell by a plan which showed the street

already plotted by the City. That case therefore squarely decides that there is no covenant by the grantor that the street will be kept open to be implied from the use in plan and deed of descriptive words referring to such street, and that, upon vacation of the street, the grantor may enter upon the bed of the street. The facts are exactly similar in the Dobson case, the Court itself saying—

"In laying out the lots for the plaintiff, Mr. L. *recognized and adopted* the line of the street *as it appeared at the time on the city plan.*"

It is therefore submitted that the decision in the Dobson case is inconsistent with both the Bellinger and Brooklyn cases, neither of which are referred to in the opinion, and *a fortiori* it is contrary to *Union Burial Ground* v. *Robinson.* Indeed Mr. Justice Williams' language completely erases the doctrine of these cases when he broadly says in the course of the opinion—

"We fully agree with the position of the appellee that the deed from the plaintiffs to him was in its legal operation a deed to the center of the street. * * * It is no matter that the street had not been opened according to law by the City."

If this is to be followed the distinction between opened and unopened streets is swept away, and in all cases the grantee's title will go to the middle. It is conceded that such a result is desirable and will tend to uniformity and clearness, but it does not tend to clearness to have cases overruled and doctrines overthrown without the slightest reference being made to them by the later cases.*

In passing, reference may be made to several corollaries resulting from *Paul* v. *Carver.* Thus, where land is sold at a certain price per acre, the bed of a boundary street is to be included in the acreage in estimating the purchase price. *Timstone* v. *Sparte,* 150 Pa. St. 616 (1892). It is also possible to limit the grantee's title

*Yet in *Neely* v. *Phila.* 212 Pa. St. 551, (1905) the Court says that on an open street the grantor takes fee to middle, while on a plotted but unopened one "grantor takes the fee in the land *bounded by the street* and by implication acquires an easement over the bed."

to the side, though to do so the conveyancer must bear in mind the description in *Cox* v. *Freedly* and leave no stone unturned to make certain the reservation of the street bed. Thus an intention to so retain may be seen from the grant of a right of way to the grantee over the street by the same conveyance. *Hobson* v. *Philadelphia*, 150 Pa. St. 595 (1892). But in general as is said by Mr. Justice Dean in *Fitzell* v. *Philadelphia*, 211 Pa. St. 1 (1905), to limit the boundary to the side

"There must be an express reservation, or the lines must be stopped short of the middle of the street or highway by a permanent natural or artificial monument."

II. CASES IN COVENANT OR TRESPASS.

While the practical working out of the decision in the Bellinger case, viz., that the grantor became possessed of the vacated street bed, may be assumed to be now reversed since the result of the Dobson case was exactly the opposite, yet the Bellinger case is still authority for the proposition that where a grantor refers to a street plotted but unopened he does not thereby covenant that the municipality will later open the street, for the evident reason that he cannot so bind the public authorities. But where a grantor refers to a street which he himself lays out he does covenant, wholly apart from the question of the fee, that the grantee shall have a right of way over the street. Thus in *Trutt* v. *Spotts*, 87 Pa. St. 339 (1878), the defendant sold a lot bounded by streets described in a plan of a large tract of which the lot was a part. Failing to sell the balance of the tract, he enclosed it with a fence, thereby depriving plaintiff of any egress. The Court properly held that the case was unlike the Bellinger case, and that the reference in the plan and deed to the streets was not merely descriptive but a covenant as to the existence of the streets. To the same effect is *Transue* v. *Sell*, 105 Pa. St. 604 (1884). But that the right that the grantee thus obtains is not the fee to the bed, but an easement of way, is shown by *Speckman* v. *Steidel*, 88 Pa. St. 453 (1879), an action

of trespass for obstruction to an alleged right of way. Both plaintiffs and defendant took title from the same grantor. The plaintiffs' deed called for the western boundary along a "20-feet-wide street." This street was never plotted or opened, and existed only in the description in the deed, and was in effect a "blind alley." The plaintiffs' title from the common grantor was more than twenty-one years old prior to suit, and no use had ever been made by the plaintiffs or their predecessor in title of the alley. Mercur, J. held that—

"the complaint of the defendants in error is not for the disturbance of an easement once enjoyed, but substantially to recover in an action *ex delicto* for damages to a right based on an implied covenant, of which they never had any possession. After this great lapse of time we think the present action cannot be sustained;"

This decision was manifestly on the ground that the twenty-foot street was never a public highway, and hence, as stated in the opinion, the grantee did not take title to the center, but took only an easement which was gone after twenty-one years and more of abandonment.

Bliem v. *Daubenspeck*, 169 Pa. St. 282 (1895), greatly restricts the doctrine of the Bellinger case. One R. owned certain land through which an alley was projected and plotted in 1870. In 1871 he sold a portion of the land, situate on the east side of the alley, to plaintiff's predecessor, describing the line of the alley as the western line. The alley was never formally opened, though it was used by the abutting owners as a way, their fences being built on the line, and in 1887 it was vacated by the municipality. The grantor then sold his rights in the bed to defendants, who proceeded to build on it. Plaintiff brought trespass. The case was treated as if the alley had been formally opened, and plaintiff recovered on the basis of *Paul* v. *Carver*. While it is true that the deed in the Bellinger case described the street "as the same shall be opened," yet in *Bliem* v. *Daubenspeck* the street was not formally opened. The Court, however, chose to greatly narrow the scope of the decision in the

earlier case, and in doing so laid down the rule that the intention of the grantor in describing plaintiff's western line as on the alley was to give them title to the middle, in the absence of a reservation of it to himself. This is the rule of *Paul* v. *Carver* as to an opened street, and the Court here extends it to an alley which was in actual use though never formally opened,—on the same principles as controlled the Court in deciding *Paul* v. *Carver*. It therefore follows that on vacation of a street the grantee takes to the middle where (1) the street had been formally opened and in actual use as such, where (2) the street has never been formally opened but was in actual use; and the grantor retains title only where (3) the street was never formally opened and in fact never used, on the authority of the Robinson and Bellinger cases, to which the later case of *Dobson* v. *Hohenadel* is contrary. But the dictum in the recent Neely case supports the earlier decisions.

III. CASES AS TO DAMAGES ON OPENING.

Where one sells land and the deed describes the lot as bounded by certain streets which are wholly the creation of the deed, or where a plan showing such streets accompanies the deed, it is not only a covenant that the grantee shall have a way over such streets but it is also a dedication of the bed of such streets to the use of the public. And when later such streets are formally opened the grantor is not entitled to any damages, as his dedication was, as is said in some of the cases, in effect a contract with the public. This point is decided in a *per curiam* opinion in *In re Pearl Street*, 111 Pa. St. 565 (1886), affirming an opinion by the present Chief Justice, then in the court below, and has been uniformly followed. Where, however, there is no other evidence of dedication than the mere fact of public user, the right is purely prescriptive, and an uninterrupted adverse use for twenty-one years must be shown. *Weiss* v. *Borough of South Bethlehem*, 136 Pa. St. 294 (1890).

And a grantor is not estopped from claiming damages

on opening because a predecessor in title sold land on another block of the street before it was plotted by a deed calling for the line of said street. *Easton* v. *Rinek*, 116 Pa. St. 1 (1887). Of this case it is said in *Scranton* v. *Thomas*, 141 Pa. St. 4, (1891)—

"The single sale of a lot or lots in the same block might be evidence of the dedication of the street in that particular block, but not of the dedication of such street to the whole extent of the plot."

This estoppel or "contract with the public," would of course remain a permanent bar were it not for the Act of May 9th, 1889 (P. L. 173), which provides that any street, etc., laid out by any person in any village or town plan, which has not been opened to or used by the public within twenty-one years, shall be of no effect. By this Act the servitude imposed is removed if not acted on within twenty-one years. In *Quicksall* v. *Philadelphia*, 177 Pa. St. 301 (1896), the act was held to cover the case of a dedication by reference in deed or plan of the grantor, where the street was never used as such and never formally opened. This is followed in *Woodward* v. *Pittsburg*, 194 Pa. St. 193 (1899), and in *Cotter* v. *Philadelphia* id. 496. These decisions cover only the point that the servitude is removed by the statute, and do not affect, as pointed out by Mr. Justice Fell,—

"the right of those who by purchase of lots within the tract have acquired the right of the use of all the streets marked on the plan."

This question arose in *Barner* v. *Railroad Company*, 27 Super. Ct. 84 (1905). In that case the plaintiff's predecessor had bought land from one Young, the deed calling for a certain street as the western boundary. This street existed only by force of such deed, which therefore, under the authorities, was a dedication of it to the use of the grantee and the public at large. Being technically unopened, however, the fee remained in the grantor. The street never had any other existence, and more than twenty-one years after the plaintiff brought ejectment. It was held, in giving judgment for the

defendant, that plaintiff's rights were limited to the covenant arising from the language of the deed, and that the Act of 1889 was not applicable, as the reference in the deed was not a "town plot or plan of lots." It is to be observed that this is a stricter construction of the statute than is had in either the Quicksall or Woodward cases, *supra*, for in neither of those cases was the plan a "town plan," but simply that of the original owner of the tract. Evidently if the remedial statute is to apply only to streets actually placed on a "town plan" its effect is greatly narrowed, yet such is the language of the act. It was ingeniously argued for the plaintiff that the effect of the Act of 1889 was to vacate the street by operation of law and that the title reverted to the plaintiff as abutting owner. The Court replied that, even assuming that the act applied, which it denied, as pointed out above,—it did not *ipso facto* vacate the street, but merely removed the servitude on the land if after twenty-one years it was not opened as a street. The same result could have been reached on the short reasoning that as the grantor had not parted with the fee of the "paper" street at the beginning, and as nothing had occurred since to change the rights of the parties, the grantee could not maintain ejectment. The running commentary of the Court in the first part of the opinion is unnecessary to the decision and wholly confusing.

It is a dedication, as discussed *supra*, only where the grantor is the creator of the street. A different problem is presented where the grantor refers as a boundary to a street already laid out by the public authorities through his land but not opened to public use. On such facts it is held that he has not thereby waived his right to damages; *Opening of Brooklyn Street*, 118 Pa. St. 640 (1888). In his opinion Mr. Justice Green points out the difference between this and *In re Pearl Street*, and cites the Bellinger case to show that there, in an action of covenant, the same distinction between actual private dedication and simply a reference to a street already

plotted by the public is recognized and acted on. It is to be borne in mind that the question in these cases is not one between grantor and grantee, but between the grantor and the public. Where the grantor dedicates the land he of course dedicates it to the public, but as said in the decision—

"when a municipal government lays out streets upon the land of a private citizen it is not the act of the owner in any sense, and hence there is no necessity for an implication of a covenant against the owner to give his land to the public without compensation."

And as to his reference to such street in his deed, "the public is not in privity with him; his dealing is not with them but with a private citizen." This case is followed in *Opening of Wayne Street*, 124 Pa. St. 135 (1889).

A curious illustration of the doctrine, first expressed in the Bellinger case, that reference by the grantor to a plotted street is no covenant by him that the municipality will open the street, occurred in *Fitzell* v. *Philadelphia*, 211 Pa. St. 1, (1905). There, the grantors sold land abutting on a street fifty feet wide, which at that time was plotted to sixty feet. They retained adjoining land on the same street, and when it was widened, they claimed damages for the ten feet taken along the front of the portion retained by them. The referee held that by deeding land on the street when plotted to sixty feet, they gave a right of way to their grantees of that width over the street, including the portion retained and that, therefore, they were not entitled to damages.

In the Supreme Court, Mr. Justice Dean held that no such right could be implied. The plotting of the street by the City implied no covenant by a grantor, for the single reason, stated by the learned Justice, that it is beyond the power of a grantor to so covenant.

While *Brooklyn Street* decides that a grantor who refers in his deed or plan to an unopened street, already plotted by the municipality, does not thereby surrender the fee to the bed of such street, neither it nor a similar case, *Whitaker* v. *Phœnixville*, 141 Pa. St. 327 (1891),

decides what the measure of damages is to such grantor when the street is actually opened.

The latter case, however, does decide that the time when damages are to be ascertained, under the Act of April 22, 1856, P. L. 525, is when the street is opened, and not when it is first established, as was the case under the Act of 1855 (see *Philadelphia* v. *Dickson*, 38 Pa. St. 247).

Hence, what the grantor did with other contiguous land at some prior time is immaterial. Thus in *Whitaker* v. *Phœnixville*, the grantor owned lots 1, 2 and 3. Lot 1 was plotted as a prospective street, and he later sold Lot 2 at an increased price as a corner property. When the street was subsequently opened, and the question of his damages for the bed arose, it was held that the amount was not to be affected by any advantage he had gained by selling Lot 2 at an increased price. The question as to the effect on the nature of the retained street bed of the fact that he sold the adjoining property as abutting on said street is only intimated in the case. This important fact, as bearing on the amount of damages, is first decided in *Gamble* v. *Philadelphia*, 162 Pa. St. 413 (1894). There the street was first plotted by the City and then referred to by the grantor. Such reference undoubtedly gave the grantees a right of way over it, and hence when opened, the amount of damages was affected by such right, the use to which the grantor could put the land being thereby greatly curtailed. The Court below left the question to the jury, carefully explaining that the land was, before opening, subject to such easement, and also to the right of the City to open the street. The jury found that the resulting value was nothing. In the language of the affirming opinion

"the Court did leave to the jury to say what was the plaintiff's land worth in view of all the circumstances, and the jury said it was worth nothing."

Side by side with those cases announcing the right of the grantor of land on an unopened street to receive

damages when the street is later opened, there exists a line of cases holding that the grantee has a similar right, on the theory that whatever right the grantor may have in the unopened bed disappears the moment the street is opened, *eo instanti* the fee of the grantee "jumps" to the center, and he is entitled to damages.

In *Lehigh Street*, 81* Pa. St. 85 (1872) the doctrine of "jumping" is first mentioned. In that case when the grantees took title Lehigh Street was surveyed but not opened. Later when opened by the town council of Easton, the grantees claimed damages. The lower Court in dismissing exceptions to a report of viewers awarding substantial damages to the grantees held that as soon as Lehigh Street was publicly opened *eo instanti* the grantees took a fee to the center of the street. The Court granted that under *Union Burial Ground* v. *Robinson* the grantor has some sort of a reversion to the street bed as long as the street is unopened, but the moment it is opened the reversion disappears, the title of grantees jumps to the center, and a right of damages is in them.

"The incontrovertible fact is that the opening of street for public use, the right of action for damages, and the vesting of a fee in the petitioners to the center of the street, are simultaneous acts."

This was affirmed in what was practically a *per curiam*.

Lehigh Street is followed in *Hancock* v *Philadelphia*, 175 Pa. St. 124 (1896), where the Court below pointedly remarks that as no part of plaintiff's ground was taken for the opening, it is not a little difficult to see how plaintiff was injured, for, on the contrary, it was only by the opening that plaintiff took title to the middle. However, the question was left to the jury, which properly brought in a verdict for the defendant. This was affirmed in a *per curiam*.

It is unfortunate that this further confusion has crept into the Pennsylvania law on this subject. Assuming the doctrine to be settled that on an unopened street the grantee's title goes only to the side, and that on opening it jumps to the middle, it by no means follows

that the grantee thereby becomes entitled to damages. It is certainly generous measure to hold that by the opening the grantor loses title to the road bed and therefore gets damages and that by the same act the grantee gets the title so lost and therefore gets damages. The value to the grantor is naturally restricted by the rights of the public and by his covenant to the grantee of a right of way, but how can the grantee get any value of land which until the opening was not his? The jury in *Hancock* v. *Philadelphia* very properly found that the grantee had sustained no damages, but it is an anomaly to send it to the jury at all.*

If it is the law that the grantee takes title to the middle in all cases, then the decision *In re Brooklyn Street* is wrong. Both lines of decisions cannot be right. The only justification of such an illogical result is the maxim—not legal—that it is a poor rule that does not work both ways.

What has been said in this article apparently in favor of the rule of *Union Burial Ground* v. *Robinson* has been advanced *arguendo*, simply to illustrate how that case has been recognized here, over-looked there, acted on in one line of decisions and disregarded in another.

It is submitted that *Union Burial Ground* v. *Robinson* should be reversed or considered as overruled, and that the doctrine of *Paul* v. *Carver* should apply in all cases, whether the street is opened or unopened. The result would be that title to the bed vests immediately in the grantee. If the street is later officially opened he is entitled to damages. If it is never opened or is opened

*In *Cole* v. *Philadelphia*, 199 Pa. St. 464 (1901) on facts similar to the *Hancock* v. *Philadelphia* case the jury found that plaintiff had suffered no damage. The case is curious for the reason that the grantee built a fence to the middle of an unopened street, and maintained it there for over twenty-one years until the street was formally opened. On this ground he claimed adverse title against the grantor, but the Court held, per Mr. Justice Potter, that building a fence to the middle was not sufficient to break the privity existing between the grantor and the grantee. As the grantor owned the bed it is difficult to conceive of a more unequivocal and notorious way of claiming adverse title to it than to build a fence around it.

and later vacated his fee is released from the public servitude. In all cases the grantor's whole title and interest ends at the time of the conveyance. All the questions above considered would thus be reduced to an easy solution. Such a result is desirable on the ground of simplicity and is fully justifiable on principle.

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