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# Real Property -- Discontinuance of Dedicated Streets -- Disposition of Property

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Furthermore, it is far from certain that the effect of the present holding will be confined to union activity within the purview of the Railway Labor Act. Neither the Court<sup>38</sup> nor the National Labor Relations Board<sup>39</sup> has hesitated to cite cases involving the act as authority in otherwise unrelated areas of labor law. Thus the instant decision may serve as precedent for similar appeals in other industries, especially if they are found to be charged with a public duty.

But regardless of future expansion, it is submitted that the instant case creates an imbalance<sup>40</sup> in the railway labor process that unions are unlikely to overcome.<sup>41</sup> If taking such a step is truly necessary to maintain the vital function of carrier operations in the present economic complex, it would seem to be a congressional rather than judicial prerogative.

WILLIAM H. FAULK, JR.

#### Real Property—Discontinuance of Dedicated Streets— Disposition of Property

Having been established by dedication, a street retains its status as a public way until it is discontinued in a manner provided by law.<sup>1</sup> Generally, statutes provide that streets may legally cease to exist

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*Id.* at 228. In light of the Court's reasoning, should conduct that discourages union membership be treated differently if the employer is able to secure the approval of a lower court? This situation may arise in various areas of labor law if the *Florida East Coast* decision is not limited to the confines of the Railway Labor Act. For a consideration of such possibility see note 39 *infra* and the accompanying text.

<sup>38</sup> *E.g.*, *Syres v. Oil Workers Int'l Union*, 223 F.2d 739 (5th Cir. 1955), *rev'd and remanded per curiam*, 350 U.S. 892 (1956), in which the Supreme Court cited *Steele v. Louisville & Nashville R.R.*, 323 U.S. 192 (1944) as authority for reversing the lower court finding of "no jurisdiction" in a racial discrimination case against the unions.

<sup>39</sup> *E.g.*, *Hughes Tool Co.*, 147 N.L.R.B. 1573 (1966), in which the board cited *Steele* as authority for application of the duty of fair representation in labor law.

<sup>40</sup> For the proposition that a balancing process is in order, *i.e.* weighing the right to strike against the right of the employer to maintain his business, see *NLRB v. Mackay Radio & Tel. Co.*, 304 U.S. 333 (1938).

<sup>41</sup> Mr. Justice White considered the majority opinion "very close to a judgment that there shall be no strikes in the transportation business, a judgment which Congress rejected in drafting the Railway Labor Act." 384 U.S. at 250.

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<sup>1</sup> 11 McQUILLAN, MUNICIPAL CORPORATIONS § 30.182, at 101 (3d ed. 1964) [hereinafter cited as McQUILLAN].

upon vacation by the direct action of the public authorities or by withdrawal from dedication in the case of non-use or abandonment by the public.<sup>2</sup> Discontinuance of a street by either method effectually extinguishes the public rights in it.<sup>3</sup> At this point a question arises as to the ownership of the property within the boundaries of the street.<sup>4</sup> Two conflicting answers are found in the North Carolina statutes, both of which are applied by the North Carolina Supreme Court without regard to the inconsistency.

The North Carolina statutory scheme for vacation of a dedicated street<sup>5</sup> embodies the majority rule<sup>6</sup> that when a street is vacated, title to the street vests in those persons owning land abutting on it.<sup>7</sup> A different answer obtains when a street is withdrawn from dedication in North Carolina,<sup>8</sup> as the dedicator, not the abutting landowner, is presumed to own the fee.<sup>9</sup> However, where a street sought to be withdrawn was dedicated by a now-extinct corporation, the abutting landowners take the property.<sup>10</sup> The North

<sup>2</sup> 2 ELLIOT, ROADS AND STREETS § 1172 (4th ed. 1926); 11 McQUILLAN §§ 30.184, .185.

<sup>3</sup> 2 AMERICAN LAW OF PROPERTY § 9.55, at 500 (Casner ed. 1964) [hereinafter cited as AMERICAN LAW OF PROPERTY]; 11 McQUILLAN § 30.202(a).

<sup>4</sup> See generally 2 AMERICAN LAW OF PROPERTY § 9.55, at 500-02; 11 McQUILLAN § 30.202(a).

<sup>5</sup> N.C. GEN. STAT. § 153-9(17) (Supp. 1965) authorizes the county boards of commissioners "to close any street or road or portion thereof . . . that is now or may hereafter be opened or dedicated, either by recording of a subdivision plat or otherwise." Similar power is given to cities to "close any street or alley that is now or may hereafter be opened. . . ." N.C. GEN. STAT. § 160-200(11) (1964). These statutes must be construed together "so as to produce a harmonious body of legislation. . . ." *Town of Blowing Rock v. Gregorie*, 243 N.C. 364, 371, 90 S.E.2d 898, 904 (1956).

<sup>6</sup> Cases cited note 26 *infra* and accompanying text.

<sup>7</sup> Upon the closing of a street or road in accordance with the provisions hereof, all right, title and interest in such portion of such street or road shall be conclusively presumed to be vested in those persons, firms or corporations owning lots or parcels of land adjacent to such portion of such street or road, and the title of each . . . shall, for the width of the abutting land . . . extend to the center of such street or road.

N.C. GEN. STAT. § 153-9(17) (Supp. 1965).

<sup>8</sup> N.C. GEN. STAT. § 136-96 (1964). Withdrawal of a dedicated street is appropriate if the street "shall not have been actually opened and used by the public within fifteen (15) years from and after the dedication thereof. . . ." N.C. GEN. STAT. § 136-96 (1964).

<sup>9</sup> *Ibid.*

<sup>10</sup> [T]hat where any corporation has dedicated any strip . . . of land . . . and said dedicating corporation is not now in existence, it shall be conclusively presumed that the said corporation has no further right, title or interest in said strip . . . the right, title and interest in

Carolina court has expressly endorsed statutory disposition of street property to the dedicator, as well as the principles underlying this result,<sup>11</sup> but by enforcing the statutory formula that allows the abutting landowners to take the fee, the court has impliedly endorsed a conflicting rationale and result.<sup>12</sup>

Disposition of street property to the dedicator is predicated on the assumption that when a street is dedicated, the dedicator grants easements of passage in the street to two distinct classes of persons,<sup>13</sup> but does not part with his title to it.<sup>14</sup> When he<sup>15</sup> divides and plats a tract of land into lots and streets, and sells lots with reference to the plat,<sup>16</sup> the sales operate as the dedicator's offer<sup>17</sup> of the streets to the public.<sup>18</sup> If the offer is accepted,<sup>19</sup> the public acquires ease-

said strip . . . shall be conclusively presumed to be vested in those persons, firms or corporations owning lots . . . adjacent thereto. . . . N.C. GEN. STAT. § 136-96 (1964). The statute doesn't provide how the fee should vest in the adjacent landowners, that is, as tenants in common or individually for the width of the abutting property. For a suggested answer, see Lancaster, *Withdrawal from Dedication and Closing of Roads*, 13 N.C.B.A. BAR NOTES 5, 11 (Feb. 1962).

<sup>11</sup> See note 43 *infra* and accompanying text.

<sup>12</sup> See note 45 *infra* and accompanying text.

<sup>13</sup> Technically, the result of a common law dedication was an easement in the public, and not some particular person, though the term is used today to encompass both public and private rights resulting from dedication of a street. 4 TIFFANY, REAL PROPERTY §§ 1099, 1103 (3d ed. 1939) [hereinafter cited as TIFFANY].

<sup>14</sup> "A common-law dedication . . . does not affect the ownership of the land. . . ." *Id.* § 1112, at 366; 11 McQUILLAN §§ 33.03, at 635, 33.66, at 807, 33.68, at 809.

<sup>15</sup> Only the owner can dedicate land, and he must evidence a clear and unequivocal intent to do so. 4 TIFFANY §§ 1100-01.

<sup>16</sup> The plat does not have to be recorded to effect a valid dedication. *Somersette v. Stanaland*, 202 N.C. 685, 163 S.E.2d 804 (1932).

<sup>17</sup> The offer is revocable before acceptance by the public. *Steadman v. Town of Pinetops*, 251 N.C. 509, 112 S.E.2d 102 (1960); *Rowe v. City of Durham*, 235 N.C. 158, 69 S.E.2d 171 (1952).

<sup>18</sup> *Wofford v. Highway Comm'n*, 263 N.C. 677, 140 S.E.2d 376 (1965); *Steadman v. Town of Pinetops*, 251 N.C. 509, 112 S.E.2d 102 (1960); *Town of Blowing Rock v. Gregorie*, 243 N.C. 364, 90 S.E.2d 898 (1956); *Broocks v. Muirhead*, 223 N.C. 227, 25 S.E.2d 889 (1943); *Home Real Estate Loan & Ins. Co. v. Town of Carolina Beach*, 216 N.C. 778, 7 S.E.2d 13 (1940). This method of dedicating streets is by far the most common method of doing so. 11 McQUILLAN § 33.22. Compare *Todd v. White*, 246 N.C. 59, 97 S.E.2d 439 (1957). There the court held that a sale with reference to a plat did not effect a dedication where the dedicator expressly reserved the right to control the streets.

<sup>19</sup> The majority rule and the rule in North Carolina is that there must be an offer and an acceptance by the public to constitute a valid dedication of land to public use. *E.g.*, *Steadman v. Town of Pinetops*, 251 N.C. 509, 112 S.E.2d 102 (1960); *Town of Blowing Rock v. Gregorie*, 243 N.C. 364, 90 S.E.2d 898 (1956); 11 McQUILLAN § 33.02, at 628, and cases cited therein.

ments<sup>20</sup> in the streets lasting until the streets are discontinued.<sup>21</sup> The sale of lots with reference to a plat also vests in every purchaser an easement in any street shown on the plat necessary for reasonable access to his property.<sup>22</sup> Regardless of acceptance or abandonment of public rights in a particular street,<sup>23</sup> a purchaser's easement terminates only when the use of that street is no longer needed as an access route.<sup>24</sup> Though the street property is subject to these

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In North Carolina, acceptance by the public can be shown by the public authority's exercising acts of control over the streets, such as opening, improving, or maintaining them. *Steadman v. Town of Pinetops*, 251 N.C. 509, 112 S.E.2d 102 (1960); *Town of Blowing Rock v. Gregorie*, 243 N.C. 364, 90 S.E.2d 898 (1956).

<sup>20</sup> In North Carolina, the dedicator "is equitably estopped . . . in reference to the public . . . from denying the existence of the *easement* thus created." *Green v. Miller*, 161 N.C. 25, 30, 76 S.E. 505, 507 (1912). (Emphasis added.) See 11 McQUILLAN §§ 33.66, .68; 4 TIFFANY § 1112. Statutes in a few states provide that the public acquires the title to the streets when they are dedicated. *E.g.*, CAL. CIV. CODE § 670; COLO. REV. STAT. ANN. § 139-1-7 (1963); OHIO REV. CODE ANN. § 711.07 (Page 1954); OKLA. STAT. ANN. tit. 11, § 515 (1959). See generally 11 McQUILLAN §§ 33.03, at 635, 33.69.

<sup>21</sup> "[N]o person shall have any right, or cause of action . . . [after a street is withdrawn from dedication], to enforce any public . . . easement therein." N.C. GEN. STAT. § 136-96 (1964). To the same effect is N.C. GEN. STAT. § 153-9(17) (Supp. 1965) which implies that public rights are extinguished upon vacation of the street, by giving "all right, title and interest in . . . the street . . ." to the abutting landowners.

<sup>22</sup> The purchaser

has a right in the street beyond that which is enjoyed by the general public, or by himself as a member of the public, and different in kind, since egress from and ingress to his own property is a necessity peculiar to himself. The right is in the nature of an easement appurtenant to the property. . . .

*Sanders v. Town of Smithfield*, 221 N.C. 166, 170, 19 S.E.2d 630, 633 (1942). *Accord*, *Wofford v. Highway Comm'n*, 263 N.C. 677, 14 S.E.2d 376 (1965); *Steadman v. Town of Pinetops*, 251 N.C. 509, 112 S.E.2d 102 (1960); *Town of Blowing Rock v. Gregorie*, 243 N.C. 364, 90 S.E.2d 898 (1956); *Broocks v. Muirhead*, 223 N.C. 227, 25 S.E.2d 889 (1943); *Home Real Estate Loan & Ins. Co. v. Town of Carolina Beach*, 216 N.C. 778, 7 S.E.2d 13 (1940). See generally 2 AMERICAN LAW OF PROPERTY § 9.54, at 493-94; 28 C.J.S. *Easements* §§ 39, 88 (1941); 11 McQUILLAN § 33.73; 3 TIFFANY § 800. Abridgment or destruction of this easement by the public is a compensable property taking. *Sanders v. Town of Smithfield*, 221 N.C. 166, 170, 19 S.E.2d 630, 633 (1945).

<sup>23</sup> *Owens v. Elliot*, 258 N.C. 314, 128 S.E.2d 83 (1962); *Janicki v. Lorek*, 255 N.C. 53, 120 S.E.2d 413 (1961); *Russell v. Coggin*, 232 N.C. 674, 62 S.E.2d 70 (1950); *Broocks v. Muirhead*, 223 N.C. 227, 25 S.E.2d 889 (1943).

<sup>24</sup> *Janicki v. Lorek*, 255 N.C. 53, 120 S.E.2d 413 (1961); *Evans v. Horne*, 226 N.C. 581, 39 S.E.2d 612 (1946). The withdrawal statute has "no application in any case where the continued use of any strip of land dedicated for street . . . purposes shall be necessary to afford convenient ingress or egress to any lot . . . sold . . . by the dedicator of such street. . . ." N.C.

easements, the dedicator's title is unaffected except to the extent that the easements, for their duration, are encumbrances on it.<sup>25</sup> Hence, if the dedicator grants only easements, he obviously should be entitled to the reversion when the easements cease.

However, in most jurisdictions the property reverts to the abutting landowners instead of the dedicator.<sup>26</sup> The rationale of such disposition is based on the widely recognized principle that when a dedicator sells a lot abutting on a street, he is presumed, in the absence of express words to the contrary,<sup>27</sup> to convey with the lot the title to the center of the street.<sup>28</sup> Thus, it is the abutting land-

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GEN. STAT. § 136-96 (1964). Similarly, a street cannot be vacated unless it appears "that no individual owning property in the vicinity of said street . . . will thereby be deprived of reasonable means of ingress and egress to his property. . . ." N.C. GEN. STAT. § 153-9(17) (Supp. 1965). However, adverse possession can run against the holder of the access easement as well as against the holder of the fee in the street if the public has not accepted the street or if it has abandoned an accepted street. *City of Salisbury v. Barnhardt*, 249 N.C. 549, 107 S.E.2d 297 (1959); *Gault v. Town of Lake Waccamaw*, 200 N.C. 593, 158 S.E.2d 104 (1931).

<sup>25</sup> See note 14 *supra*.

<sup>26</sup> *E.g.*, *Main v. Legnitto*, 230 Cal. App. 2d 667, 41 Cal. Rptr. 223 (Dist. Ct. App. 1964); *Gorby v. McEndarfer*, 135 Ind. App. 74, 191 N.E.2d 786 (1963); *Board of Comm'rs v. Clark*, 157 Kan. 132, 138 P.2d 449 (1943); *Valoppi v. Detroit Eng'r & Mach. Co.*, 339 Mich. 674, 64 N.W.2d 884 (1954); *American Steel & Wire Co. v. City of St. Louis*, 354 Mo. 692, 190 S.W.2d 919 (1945); *Greenberg v. L.I. Snodgrass Co.*, 161 Ohio St. 351, 119 N.E.2d 292 (1954); *Fenton v. Cedar Lumber & Hardware Co.*, 17 Utah 2d 99, 404 P.2d 966 (1965); *Bond v. Green*, 189 Va. 23, 52 S.E.2d 169 (1949); *Woehler v. George*, 65 Wash. 2d 519, 398 P.2d 167 (1965). See generally 2 AMERICAN LAW OF PROPERTY § 9.55, at 501; 11 McQUILLAN § 30.202(a), at 161-63; 3 TIFFANY § 931.

<sup>27</sup> *E.g.*, *Standard Oil Co. v. Milner*, 275 Ala. 104, 152 So. 2d 431 (1962); *Rahn v. Hess*, 378 Pa. 264, 106 A.2d 461 (1954); *Williams v. Miller*, 184 Va. 274, 35 S.E.2d 127 (1945).

<sup>28</sup> *E.g.*, *Taylor v. Continental Southern Corp.*, 104 Cal. App. 2d 425, 233 P.2d 577 (Dist. Ct. App. 1951); *St. Clair Co. Housing Authority v. Southwestern Bell Tel. Co.*, 387 Ill. 180, 56 N.E.2d 357 (1944); *Hylton v. Belcher*, 290 S.W.2d 475 (Ky. 1956); *Kreamer v. Harmon*, 336 S.W.2d 561 (Ky. Ct. App. 1960); *Burkett v. Ross*, 227 Miss. 315, 86 So. 2d 33 (1956); *Skrmetta v. Moore*, 202 Miss. 585, 30 So. 2d 53 (1947); *Luneau v. MacDonald*, 103 N.H. 273, 173 A.2d 44 (1961); *Snyder v. County of Monroe*, 2 Misc. 2d 946, 153 N.Y.S.2d 479 (Sup. Ct. 1956); *Perkins v. Village of Mexico*, 200 Misc. 2d 294, 102 N.Y.S.2d 60 (Sup. Ct. 1950); *Finlaw v. Hunter*, 87 Ohio App. 543, 96 N.E.2d 319 (1949); *McLaughlin v. Cybulski*, 192 Pa. Super. 7, 159 A.2d 14 (1960); *Rahn v. Hess*, 378 Pa. 264, 106 A.2d 461 (1954); *Newman v. Mayor of City of Newport*, 73 R.I. 385, 57 A.2d 173 (1948); *State v. Williams*, 161 Tex. 1, 335 S.W.2d 834 (1960); *City of Houston v. Hughes*, 284 S.W.2d 249 (Tex. Civ. App. 1955); *Heller v. Woodley*, 202 Va. 994, 121 S.E.2d 527 (1961). See generally 3 AMERICAN LAW OF PROPERTY § 12.112; Annot., 49 A.L.R.2d 982 (1956).

owner and not the dedicator whose property is subject to the private access<sup>29</sup> and public<sup>30</sup> easements created by dedicating a street. Consequently, when a street is no longer needed as an access route and when the public surrenders its rights in it, the abutting landowner is entitled to the fee in that portion of the street adjacent to his property.<sup>31</sup>

The point of divergence of the North Carolina statutes is the determination of whether to accept the majority rule that abutting landowners acquire title or to assume that they acquire only access easements. The withdrawal statute,<sup>32</sup> excluding that portion dealing with dedication by now-extinct corporations,<sup>33</sup> apparently codifies the view that the abutting landowner has only an access easement. Hence, title to the dedicated street remains in the dedicator,<sup>34</sup> and the unencumbered fee necessarily reverts to him when the public<sup>35</sup> and private<sup>36</sup> easements cease. But both the vacation statute<sup>37</sup> and the provision in the withdrawal statute relating to streets dedicated by now-extinct corporations<sup>38</sup> embody the majority rule that the abutting landowner is entitled to the reversion.<sup>39</sup> The implication is that he, not the dedicator, held the title to the street during the continuance of the public and private easements.

The inconsistency, however, is not confined to the statutes, for the North Carolina Supreme Court has enforced statutory disposition of street property both to the dedicator<sup>40</sup> and to the abutting landowner<sup>41</sup> but on the basis of reasoning that militates against anyone other than the dedicator taking the property.<sup>42</sup> The court has

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<sup>29</sup> See note 22 *supra*. Similarly, the abutting landowner acquires not only his title to the street adjacent to his property, but also an access easement over the other abutting landowners' fees in whatever streets he needs for purposes of ingress to and egress from his property.

<sup>30</sup> See note 20 *supra*.

<sup>31</sup> See note 26 *supra*.

<sup>32</sup> N.C. GEN. STAT. § 136-96 (1964).

<sup>33</sup> *Ibid.*

<sup>34</sup> See note 14 *supra*.

<sup>35</sup> See note 21 *supra*.

<sup>36</sup> The private access easement must have terminated before the street can be discontinued. See note 24 *supra*.

<sup>37</sup> N.C. GEN. STAT. § 153-9(17) (Supp. 1965).

<sup>38</sup> N.C. GEN. STAT. § 136-96 (1964).

<sup>39</sup> See notes 7 & 10 *supra*.

<sup>40</sup> *Russell v. Coggins*, 232 N.C. 674, 62 S.E.2d 70 (1950); *Sheets v. Walsh*, 217 N.C. 32, 6 S.E.2d 817 (1940).

<sup>41</sup> *Steadman v. Town of Pinetops*, 251 N.C. 509, 112 S.E.2d 102 (1960).

<sup>42</sup> See note 43 *infra*.

unequivocally declared that the abutting landowner acquires nothing more than a general access easement.<sup>43</sup> Thus, when a street is discontinued, the dedicator should always be entitled to the property simply because, under this view, he never parted with his title to it.<sup>44</sup> How, then, can the court give effect to a statute allowing the abutting landowners to take the street property when, on the basis of the court's own reasoning, it follows that the dedicator is thereby deprived of his property without due process of law?<sup>45</sup> Yet disposition of street property to abutting landowners was squarely upheld in *Steadman v. Town of Pinetops*.<sup>46</sup>

In trying to effectuate the different statutory mandates while simultaneously adhering to the principles it has announced, the court has produced a body of case law that is of little assistance in determining the validity of a title to street property at any given time. The statutory conflict could be resolved and a practical solution effected by an amendment to the withdrawal statute<sup>47</sup> providing that the abutting landowner takes the fee in the street upon withdrawal, regardless of who the dedicator was. The abutting landowner has an obvious interest in having the strip of land attach to his property when the street is discontinued, while the same strip of land without the lots adjacent to it would be of little practical importance to the dedicator. Assuming that lots with street frontage are more valuable than ones without, the abutting landowner probably paid more for a lot with this benefit and, consequently, should

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<sup>43</sup> "[T]he owner of *abutting property* has a right in the street . . . [which] is in the nature of an *easement* appurtenant to the property. . . ." *Sanders v. Town of Smithfield*, 221 N.C. 166, 170, 19 S.E.2d 630, 633 (1942). (Emphasis added.) "Purchasers of lots sold with reference to the recorded map . . . acquire vested rights to have all and each of the streets shown on the map kept open." *Town of Blowing Rock v. Gregorie*, 243 N.C. 364, 368, 90 S.E.2d 898, 902 (1956). "The original owners, having sold lots with reference to the plat . . . are estopped to deny, as against the purchasers of lots, the existence of the *easement* in . . . a purchaser of a lot. . . ." *Broocks v. Muirhead*, 223 N.C. 227, 232, 25 S.E.2d 889, 892 (1943). (Emphasis added.)

<sup>44</sup> See notes 14 and 22 *supra*.

<sup>45</sup> "The Legislature cannot sanction the *taking* of one's property unless (a) in satisfaction of a legal obligation, or (b) for a public purpose (citing cases); and when taken for a public purpose, just compensation must be paid." *In re Trusteeship of Kenan*, 261 N.C. 1, 8, 134 S.E.2d 85, 91 (1964). According to the reasoning of the North Carolina Supreme Court, statutory disposition of street property to the abutting landowners falls into neither of these categories.

<sup>46</sup> 251 N.C. 509, 112 S.E.2d 102 (1960).

<sup>47</sup> N.C. GEN. STAT. § 136-96 (1964).

be entitled to his money's worth when the street is discontinued.<sup>48</sup> To be certain that the abutting landowners' property rights under the statutes are protected from judicial interference,<sup>49</sup> both the withdrawal statute<sup>50</sup> and the vacation statute<sup>51</sup> could also provide that the abutting landowners take the fee in the streets unless the dedicator expressly reserved it. Such an amendment would negate the possibility of the dedicator's due process argument against the abutting landowners who statutorily would be entitled to the street property. Should the dedicator wish to retain the fee when he dedicates streets, he is required to do no more than make his desire explicit to protect his interests from application of the statutes.<sup>52</sup> These amendments would definitively resolve the existing conceptual conflict evidenced by the court's treatment of the problem, and would eliminate any necessity for time-consuming litigation of rights under the statutes as they now stand.

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<sup>48</sup> For a good discussion of the reasons why such a rule should apply, see *Finlaw v. Hunter*, 87 Ohio App. 543, 96 N.E.2d 319 (1949).

<sup>49</sup> That is, judicial interference because of the constitutional issue involved.

<sup>50</sup> N.C. GEN. STAT. § 136-96 (1964).

<sup>51</sup> N.C. GEN. STAT. § 153-9(17) (Supp. 1965).

<sup>52</sup> Such a requirement is not an unreasonable burden on the dedicator. If he has not reserved the fee, he will be presumed to have surrendered it to the abutting landowners.