2-1-1953

Criminal Law -- Suspension of Sentence

Morton L. Union

Follow this and additional works at: http://scholarship.law.unc.edu/nclr

Part of the Law Commons

Recommended Citation

Available at: http://scholarship.law.unc.edu/nclr/vol31/iss2/6

This Note is brought to you for free and open access by Carolina Law Scholarship Repository. It has been accepted for inclusion in North Carolina Law Review by an authorized editor of Carolina Law Scholarship Repository. For more information, please contact law_repository@unc.edu.
stances outside the actual drawing and delivery of a check, apparently attaching no significance whatever to the words "check of itself" in the statute.\(^3\) The new Uniform Commercial Code has dealt directly with this problem and, if adopted in North Carolina, will expressly overrule this position of the court.\(^3\) It does not appear that a case has arisen in this state wherein a holder sought preference over a garnishing creditor where the surrounding facts show an intent to appropriate the deposit to the payment of the outstanding check. When such a case is presented, it is hoped the court will be less reluctant to allow the action since the drawee bank would be actually a mere stakeholder.

J. ALLEN ADAMS, JR.

Criminal Law—Suspension of Sentence

Although early decisions of the North Carolina Supreme Court held the suspended sentence illegal,\(^1\) in 1894 the Court gave its complete approval to this type of judgment.\(^2\) Subsequent decisions have held that the power to suspend the imposition (the pronouncing of the terms of punishment) or execution (the putting into effect of the punishment as pronounced) of sentence in a criminal case is within the inherent powers of a court.\(^3\) In addition, the use of the suspended sentence has been ex-

\(^3\) See note \(6\) supra. Notes, 6 N. C. L. Rev. 325 (1928) and 8 N. C. L. Rev. 201 (1930) take the same attitude.

\(^3\) Uniform Commercial Code § 3-409 (Official Draft 1952).

"DRAFT NOT AN ASSIGNMENT.

(1) A check or other draft does not of itself operate as an assignment of any funds in the hands of the drawee available for its payment; and the drawee is not liable on the instrument until he accepts it. (2) Nothing in this section shall affect any liability in contract, tort or otherwise arising from any letter of credit or other obligation or representation which is not an acceptance."

The comment states:

"1. . . . The assignment may, however, appear from other facts, and particularly from other agreements, express or implied; and when the intent to assign is clear the check may be the means by which the assignment is effected."

"2. The language of the original section 189 that the drawee is not liable to the holder, is changed as inaccurate and not intended. . . ."

"3. Subsection (2) is new. It is intended to make it clear that this section does not in any way affect any liability which may arise apart from the instrument itself. The drawee who fails to accept may be liable . . . to the holder for breach of the terms . . . of any . . . agreement by which he is obligated to accept. He may be liable in tort or upon any other basis because of his representation that he has accepted, or that he intends to accept. The section leaves unaffected any liability of any kind apart from the instrument."

It is understood that this new act has been introduced for the first time, in the current session of the Massachusetts Legislature.

\(^1\) State v. Hatley, 110 N. C. 522, 14 S. E. 751 (1892); State v. Bennett, 20 N. C. 170 (1838).


\(^3\) The phraseology most often used by our court is "inherent power . . . to suspend judgment or stay execution." State v. Gibson, 233 N. C. 691, 698, 65 S. E. 2d 508, 513 (1951); State v. Stallings, 234 N. C. 265, 66 S. E. 2d 822 (1951);
pressly authorized by statute in all cases except those where the crime of which the defendant was convicted is punishable by life imprisonment or death. Consequently the suspended sentence is now very frequently employed by the courts of this state as a method of introducing greater flexibility into the administration of the criminal law and reforming a defendant without actually imprisoning him.

Normally the judge must have the defendant's consent, either express or implied, before he can order a suspended sentence. Even without consent, however, imposition of sentence may be set aside until the next term if no conditions are attached. Where an objection is raised to the suspension and the imposition of conditions, the court should proceed to give final judgment and allow an appeal if one is desired. If the defendant accepts the terms of suspension, he waives his right of appeal on the issue of his guilt or innocence.

State v. Lewis, 226 N. C. 249, 37 S. E. 2d 691 (1946); State v. Jackson, 226 N. C. 66, 36 S. E. 2d 706 (1945); State v. Graham, 225 N. C. 217, 34 S. E. 2d 146 (1945). Justice Barnhill pointed out in State v. Miller, 225 N. C. 213, 215, 34 S. E. 2d 143, 144 (1945); "When either judgment or sentence is suspended on condition, the ultimate purpose is the same."

State v. Tripp, 168 N. C. 758, 66, 62 S. E. 2d 495 (1950) when the defendant has been convicted for abandoning his wife or child or both. The purpose of such a suspension is to provide support for the wife and/or child or children. State v. Johnson, 230 N. C. 743, 55 S. E. 2d 690 (1949); State v. Henderson, 207 N. C. 258, 176 S. E. 758 (1934); State v. Vickers, 197 N. C. 62, 147 S. E. 673 (1929). N. C. GEN. STAT. §§ 14-7 to 14-32 (1943) when the defendant has been convicted for supporting his illegitimate child. In State v. Bowser, 232 N. C. 414, 61 S. E. 2d 98, 99 (1950) the court held that these two statutes empower the suspension "of sentences upon condition that offending parents make contributions of money for the maintenance of such children."

State v. Stallings, 234 N. C. 265, 66 S. E. 2d 822 (1951) ("the more humane concept... of punishment"); State v. Smith, 233 N. C. 68, 62 S. E. 2d 495 (1950); State v. Tripp, 168 N. C. 150, 83 S. E. 630 (1914) (to ameliorate the condition of the defendant); State v. Everitt, 164 N. C. 399, 79 S. E. 274 (1913). "At common law a court could suspend judgment temporarily for some special purpose such as to allow the defendant time in which to move for a new trial or to show that he was entitled to the benefit of clergy or to apply for a pardon or to take some other step in the ordinary procedure of the case." State v. Jackson, 226 N. C. 66, 68, 36 S. E. 2d 706, 707 (1945). For a brief history of suspended sentences see State v. Everitt, 164 N. C. 399, 402-407, 79 S. E. 274, 275-277 (1913).


During the term at which the defendant was convicted his status may remain somewhat uncertain. Apparently the trial judge may revoke his decision to suspend and immediately impose punishment; or he may substitute new or additional terms; it would seem that he may even decide to release an imprisoned defendant under a suspended execution of sentence.\textsuperscript{10} Once the term has ended, however, the court can make no further changes in the judgment, nor can it levy any punishment so long as there is adherence to the condition.\textsuperscript{11}

Where a defendant has been released under suspended sentence, the trial judge has discretionary authority to compel him to appear so that it can be determined whether the terms of the sentence have been violated.\textsuperscript{12} No other officer can exercise this power.\textsuperscript{13} Whether or not

\textsuperscript{10} The original rule was that if the defendant had undergone part of his punishment, then only a sentence in mitigation could be substituted, since it was considered that any other change would have been subjecting the defendant to punishment twice for the same offense. State v. Warren, 92 N. C. 855 (1885); In re Brittain, 93 N. C. 587 (1885); State v. Manly, 95 N. C. 661 (1886); State v. Crook, 115 N. C. 760, 20 S. E. 513 (1894). In State v. Whit, 117 N. C. 804, 23 S. E. 452 (1895); however, the supreme court ostensibly distinguished the Warren case, as holding merely that a different sentence could not therein be subsequently imposed because the court had revoked the prior sentence. The supreme court then held that even though the defendant in the case before it had served six days of the punishment levied, he could be brought before the trial judge and the sentence could be changed as long as such change was made during the term at which the defendant was convicted. Subsequent cases have followed this general rule. State v. Stevens, 146 N. C. 679, 61 S. E. 629 (1908) (although defendant was in jail, change of sentence during term at which he was convicted was proper, since counsel for defendant had requested that the matter of punishment be kept in fieri); State v. McLamb, 203 N. C. 442, 166 S. E. 507 (1932) (defendant was in jail with appeal pending, and sentence was raised during term). Court held that sentence could not be changed if defendant had undergone even an incon siderable part of sentence, but determined that he had not yet undergone any punishment); State v. Godwin, 210 N. C. 449, 187 S. E. 584 (1936) (proper to increase the amount of imprisonment during term, where no part of imprisonment had been served). Justice Seawell, in State v. Lewis, 226 N. C. 294, 251, 37 S. E. 2d 691, 693 (1946), declared: "After a defendant has begun the service of his term, or at least when that takes place after the adjournment of the court, it is beyond the jurisdiction of the judge to alter it or interfere with it in any way." The following statement is found in State v. Gross, 230 N. C. 734, 739, 55 S. E. 2d 517, 521 (1949): "Whether the latter [sentence] was intended to clarify and render certain the sentence previously given or whether it was intended to operate independently or supplant the former sentence, we need not inquire. As the term had not expired the whole matter was in fieri and the right of the judge to modify, change, alter or amend the prior judgment, or to substitute another judgment for it, cannot be challenged."

\textsuperscript{11} State v. Lewis, 226 N. C. 249, 37 S. E. 2d 691 (1946); State v. Miller, 225 N. C. 213, 34 S. E. 2d 143 (1945); State v. McLeod, 222 N. C. 142, 22 S. E. 223 (1942); State v. Rogers, 221 N. C. 462, 20 S. E. 2d 297 (1939); State v. Phillips, 185 N. C. 614, 115 S. E. 893 (1923); State v. Hilton, 151 N. C. 687, 55 S. E. 1011 (1901).

\textsuperscript{12} N. C. GEN. STAT. § 15-200 (1943), State v. Pelley, 221 N. C. 487, 20 S. E. 2d 850 (1942); State v. Shepherd, 187 N. C. 609, 122 S. E. 467 (1924); State v. Phillips, 185 N. C. 614, 115 S. E. 893 (1923); State v. Greer, 173 N. C. 759, 92 S. E. 149 (1917). The defendant must appear, and if he fails to do so the five year statute of limitations of the effective duration of conditions imposed stops running. Thus a defendant who fails to appear cannot later claim that the five year period has run and that therefore the conditions are void. State v. Pelley, supra.

\textsuperscript{13} Upon finding the defendant guilty of the offense charged and fixing the terms
there has been a breach is a question of fact for the judge alone to
determine, not an issue of fact for the jury. This finding must be made
in open court, and the state has the burden of showing violation.
Such evidence as the state may introduce is not used to punish for any
subsequent offense but rather to determine what punishment to impose
under the original suspension. Unless there is proof showing other-
wise, the finding of the judge is presumed correct.

The means of securing review of a court’s decision to reimpose
sentence for violation of conditions varies with the position which such
court occupies in the judicial hierarchy. By virtue of a 1951 amend-
ment, where the sentence is ordered into effect by an inferior court, a
defendant is guaranteed a right of appeal to the superior court for a
hearing de novo “only upon the issue of whether or not there has been
a violation of the terms of the suspended sentence.” Where the decree
was handed down by the superior court, the defendant’s remedy is
limited to applying for a writ of certiorari from the supreme court,
alone of imprisonment, some judges have directed that capias issue on motion of the
solicitor, or the clerk or the sheriff. This delegation of authority to execute sen-
tence is a procedural error and void. However, this is held to amount to no more
than a delay in the execution of the sentence. Since the time at which execution is
to be imposed is not an essential part of the sentence, such a delegation is con-
sidered to be no part of the judgment of the court. Thus the validity of the
sentence is not affected. In re Smith, 218 N. C. 462, 11 S. E. 2d 317 (1940); State v. McAfee, 189 N. C. 320, 127 S. E. 204 (1925); State v. Phillips, 185
N. C. 614, 115 S. E. 893 (1923); State v. Vickers, 184 N. C. 516, 114 S. E. 168
(1922).

14 State v. Marsh, 225 N. C. 648, 36 S. E. 2d 244 (1945); State v. Miller, 225
N. C. 213, 34 S. E. 2d 143 (1945); State v. Pelley, 221 N. C. 487, 20 S. E. 2d
850 (1942); State v. Smith, 196 N. C. 438, 146 S. E. 73 (1928).

15 State v. Rhodes, 208 N. C. 241, 180 S. E. 84 (1935); State v. Smith, 196 N. C.
438, 146 S. E. 73 (1928); State v. Phillips, 185 N. C. 614, 115 S. E. 893 (1923)
(private determination in chambers is invalid); State v. Greer, 173 N. C. 759, 92
S. E. 147 (1917) (finding of breach in private office is void). See State v.


17 State v. Pelley, 221 N. C. 487, 20 S. E. 2d 850 (1942); State v. Hardin, 183
N. C. 815, 112 S. E. 593 (1922); State v. Everitt, 164 N. C. 399, 79 S. E. 274
(1915).

18 State v. Smith, 233 N. C. 68, 62 S. E. 2d 495 (1950); State v. Johnson, 230
N. C. 743, 55 S. E. 2d 690 (1949); State v. Everitt, 164 N. C. 399, 79 S. E. 274
(1913); State v. Hilton, 151 N. C. 687, 65 S. E. 1011 (1901).

19 N. C. GEN. STAT. § 15-200.1 (Supp. 1951). The statute, as read literally,
appears to limit the grounds upon which the defendant can contest reimpos-
3 position of punishment to the issue of whether there has been a breach of the conditions.
Prior to this amendment, the defendant had to seek recordari to get a review of the
decision of the inferior court and, if this was granted, he could contest the reim-
position by attacking the reasonableness of the conditions and sufficiency of the
evidence to support a finding of breach. State v. Stallings, 234 N. C. 265, 66
S. E. 2d 822 (1951). It would seem, in spite of the literal meaning of the
amendment, that those defenses available under recordari could still be urged on
appeal from an inferior court.

20 State v. Stallings, 234 N. C. 265, 66 S. E. 2d 822 (1951); State v. Maples,
232 N. C. 732, 62 S. E. 2d 52 (1950); State v. Peterson, 228 N. C. 736, 46 S. E.
2d 852 (1948); State v. Farrar, 226 N. C. 478, 38 S. E. 2d 193 (1946); State
though the latter body occasionally deviates from this procedure to hear cases, though improperly presented by appeal, which it feels might result in a serious denial of rights.\textsuperscript{21}

In seeking certiorari from the supreme court to review the superior court action there are two grounds upon which a review of the decision to reimpose punishment may be obtained. The defendant may contest the decision on the ground that "there is no evidence to support a finding that the conditions have been breached,"\textsuperscript{22} or that "the conditions are unreasonable and unenforceable, or are for an unreasonable length of time."\textsuperscript{23}

In reality the defendant has little chance of success in attacking the reasonableness of the conditions, since the trial judge has almost unlimited discretion. Perhaps the only definite limitation on this discretion is that a suspension can be for no longer than five years.\textsuperscript{24} G. S. 15-199 specifically authorizes definite terms of suspension to which the obedience of the defendant may be commanded,\textsuperscript{25} and, in addition, the

\textsuperscript{21} The authority for this action is found in N C. Const. Art. IV, § 8, State v. Phillips, 185 N. C. 609, 115 S. E. 893 (1923); State v. Tripp, 168 N. C. 150, 83 S. E. 630 (1914).

\textsuperscript{22} State v. Stallings, 234 N. C. 265, 66 S. E. 2d 822 (1951); State v. Smith, 233 N. C. 68, 62 S. E. 2d 495 (1950); State v. Robinson, 232 N. C. 418, 61 S. E. 2d 106 (1950); State v. Miller, 225 N. C. 213, 34 S. E. 2d 143 (1945); State v. Johnson, 169 N. C. 311, 84 S. E. 2d 767 (1915). See also State v. Sullivan, 227 N. C. 680, 44 S. E. 2d 81 (1947) (facts not sufficient to show that defendant left training school without permission, that he escaped, broke rules or was not of good behavior); State v. Rogers, 221 N. C. 462, 464, 20 S. E. 2d 297, 298 (1942) (finding insufficient to show that condition requiring that no woman be allowed to work at any business place owned or operated by defendant, or at which defendant is employed, or live on any farm defendant controls unless she resides "with mentally competent male members of her family" was violated); State v. Hardin, 183 N. C. 815, 112 S. E. 593 (1922) (possession of 150 gallons of wine is only prima facie evidence of guilt and not a sufficient finding of breach—finding insufficient if it only permits an inference of breach).


\textsuperscript{24} N. C. Gen. Stat. § 15-200 (1943); State v. Gibson, 233 N. C. 691, 65 S. E. 2d 508 (1951) (suspension for ten years is invalid). The terms of suspension may run for five years even though punishment for the offense is less. State v. Stallings, 234 N. C. 265, 66 S. E. 2d 822 (1951); State v. Miller, 225 N. C. 213, 34 S. E. 2d 143 (1945). However, five years is the maximum no matter what the authorized term of imprisonment may be. State v. Wilson, 216 N. C. 130, 4 S. E. 2d 440 (1939). Prior to 1937, the only restriction on the effective duration of conditions imposed was that they be "for a determinate period and for a reasonable length of time." State v. Gibson, 233 N. C. 691, 698, 65 S. E. 2d 508, 513 (1951); State v. Miller, 225 N. C. 213, 215, 34 S. E. 2d 143, 145 (1945). An indefinite suspension was illegal. State v. Hilton, 151 N. C. 687, 65 S. E. 1011 (1909).

\textsuperscript{25} "(a) Avoid injurious or vicious habits; (b) Avoid persons or places of disreputable or harmful character; (c) Report to the probation officer as directed; (d) Permit the probation officer to visit at his home or elsewhere; (e) Work faithfully at suitable employment as far as possible; (f) Remain within a specified area; (g) Pay a fine in one or several sums as directed by the court; (h) Make reparation or restitution to the aggrieved party for the damage or loss caused by his offense, in an amount to be determined by the court; (i) Support his dependants." N. C. Gen. Stat. § 15-199 (1943).
statute permits "any other." Some of the conditions to which the court has required obedience are: "not to violate [the] prohibition laws for two years," not to drive a car for one year and to drive during the next year only if the probation officer so recommends; "not to talk about young girls in any way except complimentary remarks," to pay a worthless check and the costs of the action, to be committed to a training school and remain of good behavior and obedient to the rules, to "apply himself to [a] legitimate, gainful occupation" and "support and maintain his wife and minor child or children according to his reasonable ability," to pay $10.00 per week to support a minor child, to cease publication of material pertaining to stock sales, to appear for twelve months on the first Tuesday of each month and show good behavior, to appear for two years at every term of criminal court and prove that he has been law abiding, and to refrain from libel or slander. If, however, the conditions attached conflict with the defendant's right of appeal as to the validity of the conditions, the entire judgment is void.

Perhaps the condition most commonly attached is that of "good behavior," which has been defined as "conduct conforming to law." One writer suggests that this presents the question whether a violation of the federal penal code is just as much a breach of this stipulation as is an infraction of the North Carolina criminal law. Some cases have held that only local law is contemplated, but it seems that it would not comply with two of the terms because they contained a time element requiring immediate performance. Two justices, in dissent, argued that, pending appeal, the conditions of suspension were stayed, the time element was in abeyance, and thus there was no conflict. 

31 State v. Smith, 196 N. C. 438, 146 S. E. 73, 74 (1929).
34 State v. Lewis, 226 N. C. 249, 251, 57 S. E. 2d 691, 693 (1946).
37 State v. Tripp, 168 N. C. 150, 83 S. E. 630 (1914).
41 State v. Calcutt, 219 N. C. 545, 15 S. E. 2d 9 (1941). The conditions, as read literally, were such that if the defendant wished to appeal the judgment he could not comply with two of the terms because they contained a time element requiring immediate performance. Two justices, in dissent, argued that, pending appeal, the conditions of suspension were stayed, the time element was in abeyance, and thus there was no conflict.

44 Note, 1 N. C. L. Rev. 116 (1922).
be better to include both the federal and state laws. Of course the obvious way to avoid this problem is for the judge to expressly state that "no State or Federal penal laws" shall be violated.

Because the defendant must consent to a suspended sentence, the court may require some conditions which would be of doubtful legality if enforced in a direct sentence. Thus, although alternative judgments are void, a suspended sentence (the practical effect of which is to give the defendant a choice between freedom or jail) is not alternative albeit the suspension requires payment of a fine and adherence to certain stipulations.

Enforcement of the punishment which has been suspended after the defendant has agreed to reimburse and has reimbursed private prosecutors for attorney's fees is not double punishment, nor is imposition of sentence after payment of costs. A sentence suspended on condition that defendant leave the county or state and remain away is not a void sentence of banishment, but rather a matter of voluntary exile.

It is not uncommon for the court to require as a term of suspension that the defendant pay damages to the party he has injured. This, in effect, results in the settlement of a potential civil action in a criminal proceeding. In a recent case, just such a compensation provision caused the defendant to raise the question of imprisonment for debt.

Note, 1 N. C. L. REV. 116 (1922) (the federal law is equally effective in governing a citizen in North Carolina).


A judgment "for one thing or another" which makes its enforcement a matter of the discretion of the court is void. The judgment must be such that it can be enforced by ministerial action. State v. Wilson, 216 N. C. 130, 133, 4 S. E. 2d 440, 443 (1939). See also State v. Hatley, 110 N. C. 522, 14 S. E. 751; In re Deaton, 105 N. C. 59, 11 S. E. 244 (1890); Strickland v. Cox, 102 N. C. 410, 9 S. E. 414 (1889).

This type suspension is specifically sanctioned by N. C. GEN. STAT. § 15-197 (1943), State v. Pelley, 221 N. C. 487, 20 S. E. 2d 850 (1942) (fine and suspension on terms not alternative); State v. Wilson, 216 N. C. 130, 4 S. E. 2d 440 (1939) (fine and suspension on condition that defendant remain law abiding not alternative).

State v. Hardin, 183 N. C. 815, 112 S. E. 593 (1922) (this was held to be defendant's own agreement and therefore no part of the judgment).


In re Hinson, 156 N. C. 250, 72 S. E. 320 (1911) (leave the county); State v. Hatley, 110 N. C. 522, 14 S. E. 751 (1892) (leave the state). The reasoning is that the defendant is not being forced to leave; he may stay if he wishes, but if he does it means going to jail. For further discussion see Note, 8 N. C. L. Rev. 465 (1930).

This practice is authorized by N. C. GEN. STAT. § 15-199 (1943), State v. Marsh, 225 N. C. 648, 36 S. E. 2d 244 (1945); State v. Ray, 212 N. C. 748, 191 S. E. 840 (1937).

See Note, 10 N. C. L. Rsv. 389 (1932) upholding this result.

State v. Simmington, 235 N. C. 612, 70 S. E. 2d 842, 843 (1952) ("Execution was suspended . . . upon condition that he pay . . . $711.50 for the use of named persons, said sum to be paid $60 cash and the balance at the rate of $20 per month").
The supreme court agreed that there could not be confinement for failing to pay the damages, but then pointed out that this was imprisonment for failing to comply with the conditions of suspension, a criminal offense.

With the broad discretion allowed him by the supreme court, both in his decision as to whether suspension should be allowed, and in his determination of proper conditions for suspension, the trial judge has a valuable corrective device at his disposal. Care should be exercised in granting suspension, however, only in cases where there is reasonable likelihood that the defendant will reform; otherwise the release of the defendant merely offers him another opportunity to endanger society.

MORTON L. UNION

Dedication—Prerequisites of Private Rights Arising Therefrom

In the case of a sale of lots by reference to a map or plat upon which streets, alleys, parks, or other areas are indicated apparently for public use, two distinct rights may arise in such areas. They are: (1) a public right in the general public to have the areas kept open, and (2) a private right in the individual purchasers of lots to enforce the obligation. The North Carolina Supreme Court refers to each right as a dedication, although the latter is more properly termed an easement. The prerequisites for the arising of the two rights are different.

This rule has been established in Myers v. Barnhardt, 202 N. C. 49, 161 S. E. 715 (1931); State v. Whitt, 117 N. C. 804, 23 S. E. 452 (1895); State v. Warren, 92 N. C. 825 (1885).

State v. Simmington, 235 N. C. 612, 614, 70 S. E. 2d 842, 844 (1952). The court ruled that if the condition had been that the defendant post a bond to insure payment of damages, the condition would have been satisfied when the bond was posted. Thereafter, the defendant could not be forced to pay the bond by criminal action since that would be tantamount to imprisonment for debt. The only remedy would be a civil action to collect on the bond. See Myers v. Barnhardt, 202 N. C. 49, 161 S. E. 715 (1931).

The existence of the two rights is recognized in the following cases: Barnes v. Check, 84 Ga. App. 653, 67 S. E. 2d 145 (1951); Kelsoe v. Mayor and Town Council of Oglethorpe, 120 Ga. 951, 48 S. E. 366 (1904); Smith v. City of Hollister, 238 S. W. 2d 457 (Mo. App. 1951); Rove v. City of Durham, 235 N. C. 158, 69 S. E. 2d 171 (1952); Lee v. Walker, 234 N. C. 687, 68 S. E. 2d 664 (1951); Broocks v. Muirhead, 223 N. C. 227, 25 S. E. 2d 889 (1943); Gault v. Town of Waccamaw, 200 N. C. 593, 158 S. E. 104 (1931); Irvin v. City of Charlotte, 193 N. C. 109, 136 S. E. 368 (1927); Wittson v. Dowling, 179 N. C. 542, 103 S. E. 18 (1920); Hughes v. Clark, 134 N. C. 457, 46 S. E. 956 (1904).


To effect a common law dedication to public uses, there must exist: (1) intention of the donor to dedicate, and (2) acceptance by the public. People v. Sayig, 101 Cal. App. 2d 890, 225 F. 2d 702 (1951); Atlantic Ry. v. Sweatman, 81 Ga. App. 269, 58 S. E. 2d 553 (1950); Egner v. Livingston County Board of Education, 313 Ky. 168, 230 S. W. 2d 448 (1950); Chene v. City of Detroit, 262