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ALLUVION—ACQUISITION OF SUBMERGED LAND BY RELICTION AND ACCESSION. *Widdecombe* v. *Chiles*, 73 S. W. 444 (Supreme Court of Missouri, March 18, 1903). Where the Missouri River, after washing away a riparian lot belonging to the United States, encroached upon the remoter lot of a private individual, and then changed its movement in the opposite direction, gradually restoring not only what it had taken from the remoter lot, but also the entire government lot and several hundred acres additional, the whole belonged to the owner of the formerly remote, but now riparian lot, and a patent for the government lot containing, in the words of the patent, "eight acres and sixty-eight hundredths of an acre," given after the lot had been reclaimed from the river, passed no title to the patentee. Both parties in this case were grantees of the United States.

The patentee's claim, as to part of the land in dispute, rested on the ground that it occupied the space where the federal lot had been before its inundation, and therefore be-

longed to the government, and as to the remainder, that it necessarily became the property of the United States as an accretion to land already owned by it. The defendant contended that the whole was an accretion to his land and therefore belonged to him.

Whether land lost by erosion or submersion is regained to the original owner of the fee when by reliction or accretion the water recedes and the land emerges, is a question upon which the few decisions are evenly divided. In the West the question is one of practical interest to owners of land near rapid-shifting streams like the Missouri or the Mississippi, and in the East to hotel proprietors and land associations at seashore resorts.

All American cases opposing the Missouri rule are based on an extract from Lord Hale, "*De Juri Maris*," "If a subject hath land adjoining the sea, and the violence of the sea swallow it up, but so that yet there be reasonable marks to continue the notice of it, or though the marks be defaced; yet if by situation and extent of quantity, and boundary upon firm land, the same can be known though the sea leave the land again, or it be by art or industry regained, the subject does not lose his property, and accordingly it was held by *Cooke* v. *Forbes*, M. 7 Jac. C. B., though the inundation continue for forty years. . . . But if it be freely left again by the reflex and recess of the sea, the owner may have his land again as before, if he can make out where and what it was, for he cannot lose his propriety of the soil, though it for a time became part of the sea."

Mulrey v. *Norton*, 100 N. Y. 424 (1885), involved the title to a portion of a sand bar opposite Far Rockaway Beach and separated from the mainland by a narrow lagoon. The owner of the nucleus of the bar claimed it as an accretion to his land. The owner of the mainland claimed it as being within the original boundaries of his tract which had been partly submerged since his purchase. The court held that even though the addition was formed against the nucleus of the bar its owner could not claim beyond the original boundaries of the mainland tract. The decision was based partly upon an unreported Delaware case. The court remarks, "It is not every disappearance of land by erosion or submergence that destroys the title of the true owner and enables another to acquire it, for the erosion must be accompanied by a transportation of the land to effect that result, or the submergence followed by such a lapse of time as will preclude the identity of the property from being established by its reliction." Accord: *Murphy* v. *Norton*, 61 How. Pr. 197 (1881).

Gilbert v. *Eldridge*, 47 Minn. 210 (1891). The plaintiff purchased an inland lot and the defendant a shore block from the owner of a lake tract, both conveyances being made with reference to a map of the grantor platting his entire tract, together with the shallows beyond the shore, into town blocks and streets. The plaintiff's lot became riparian by the inundation of the defendant's square. The court refused to enjoin the defendant from filling up the submerged lot and cutting off the plaintiff from the lake, on the ground (1) that even if the defendant had lost his title to the submerged lot, the state and not the plaintiff had acquired it; (2) that the effect of the conveyances with reference to the platting was to reserve to the grantor the riparian right of reclamation, and riparian rights not passing to the grantee of the original shore lot, the gradual retirement of the shore line would not be incidentally attended with the consequence of vesting such right in the plaintiff. *Gilbert* v. *Eldridge* has been cited as being in opposition to the principle asserted in *Widdecombe* v. *Chiles;* the case, however, seems to be authority only for its own facts, and if in Minnesota, as in some states, the title of a riparian owner extended to the centre of navigable streams and lakes, the decision might very possibly have been different.

Ocean City Association v. *Shriver*, 64 N. J. Law 550 (1900). The plaintiff here owned shore land on which he platted a street running parallel with the ocean several hundred feet from the high-water line. He conveyed an inland lot to defendant's grantor, describing the block as fronting easterly on this street, and making the sale with reference to the platting. When this land was conveyed to the defendant by the same description, the ocean extended over the street to the granted lot. Afterwards the water receded. The land in controversy was the result of this reliction. It was held by a divided court (three judges dissenting) that the land belonged to the plaintiff. The fact that the call in the deed was for a fixed monument was not regarded as decisive. The decision was ultimately based squarely on these two propositions: (1) that as against any claim that might be made under the title of plaintiff's grantee, the right of the plaintiff must be determined as of the time when it conveyed the land and not as of the time of the platting; and (2) that by the submergence of the land the owner did not entirely lose his property in the soil.

The only case in the federal courts involving the principal question here seems to be *Stockley* v. *Cissna*, 119 Fed. 812 (C. C. A., Ninth Circuit), (1902), in which the facts and decision are identical with *Mulrey* v. *Norton*, *supra*. *St. Louis* v. *Rutz*, 138 U. S. 247, was a case concerning avulsion, not accretion,

but the court there cites *Mulrey* v. *Norton* with approval, saying, "It is well settled that the owner in fee of the bed of a river, or other submerged land, is the owner of any bar, island, or dry land which may be subsequently formed thereon."

The rule announced by the Missouri court originated in a dictum of a Connecticut case, *Welles* v. *Bailey*, 55 Conn. 292; 10 Atl. 565 (1889), where the court remarked, "If a particular tract was entirely cut off from a river by an intervening tract, and that intervening tract should be gradually washed away until the remoter tract became reached by the river, the latter tract would become riparian as much as if it had been originally such. This follows necessarily from the ordinary application of the principle. All original lines submerged by the river have ceased to exist, the river is in itself a natural boundary, and every changing condition of the river in relation to adjoining lands is treated as a natural relation and is not affected in any manner by the relations of the river and land in a former period. If after washing away the intervening tract, it should encroach upon the remoter lot, and should then begin to change its movement in the other direction, gradually restoring what had been taken from the remoter lot and finally all that had been taken from the intervening lot, the whole by the law of accretion would belong to the remoter, but now proximate lot. Having become riparian it has all riparian rights."

This dictum has been strictly followed in the Missouri decisions. The rule in that state, even if not correct, is clear and has the advantage of being readily applied to any particular state of facts. In accordance with the principal case are *Naylor* v. *Cox*, 114 Mo. 232; *Cox* v. *Arnold*, 129 Mo. 337; *Price* v. *Hallett*, 38 S. W. 451; *Buse* v. *Russell*, 86 Mo. 209; *Rees* v. *McDaniel*, 115 Mo. 145; *Crandall* v. *Allen*, 118 Mo. 403.

The Missouri rule is followed in *Wallace* v. *Driver*, 61 Ark. 429 (1896) (one judge dissenting), and in *Peuker* v. *Canter*, 62 Kans. 363 (1901). In the latter case *Ocean City Association* v. *Shriver* is noticed and heartily disapproved.

The correct solution of the principal question must be determined from the reason of the familiar rule that accretions belong to the owner of the land against which they formed. Blackstone attributes the rule to the principle "*De minimis non curat lex*" and to the principle of natural justice that he who sustains the burden of the losses ought to receive whatever benefits they may bring by accretion. Most courts regard the latter reason as the true explanation of the rule. *Attorney-General* v. *Chambers*, 4 DeG. & J. 55 (1859); *Gifford* v. *Yarborough*, 5 Bing. 163 (1828). Others attribute the rule to the principle of public policy that it is to the interest

of the community that all land shall have an owner, and most convenient that gradual additions to the shore should follow the title to the shore itself. *Bank* v. *Ogden*, 69 U. S. 67 (1864).

If the principle "*De minimis non curat lex*" is the true explanation of the general rule, *Widdecombe* v. *Chiles* is a correct decision. Its ruling is also proper if the reason of the general doctrine regarding accretion is one of public policy and convenience. If the reason is one of equity and compensation, *Ocean City Association* v. *Shriver* is probably the more logical.

The question is one of so much doubt that it is by no means certain how it would be decided in jurisdictions that have not yet passed upon it.

M. G. R.