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Real Property - Accretion and Avulsion

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Turner, 75 Tex. 324, 12 S.W. 626, 7 L.R.A. 189 (1889); a contract of insurance, *Gettleman et al.* v. *Commercial Union Assurance Co.,* 97 Wis. 237, 72 N.W. 627 (1897); a promissory note, *Miller* v. *Horton,* 69 Okla. 147, 170 Pac. 509, L.R.A. 1918C 625 (1918); accounts receivable *Goldstein* v. *Rusch,* 56 F. (2d) 10, Certiorari denied 287 U.S. 604, 53 Sup. Ct. 9, 77 L.ed. 526 (1932); a certificate of deposit from a bank, *Larson* v. *National Surety Co.,* 60 N.D. 538, 235 N.W. 495 (1931).

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Real Property—Accretion and Avulsion.—In an action to quiet title the plaintiff claimed that the land in controversy was an accretion to property admittedly that of the plaintiff. The plaintiff's deed had purported to convey the described property plus any accretions thereto. The plaintiff contended that the lands covered by the defendant's title were erroded by the action of the Missouri river and ceased to exist as lands in place, and that their ownership terminated when such property became a part of the Missouri river; and that they became his property by right of accretion. It was undisputed that the property was covered with water from 1904 to 1915. The defendant, however, claimed the property was covered only during periods of highwater and that during low water the land reappeared and remained a part of his property. The trial court held that the mere fact that the land may have disappeared for a time would not be sufficient to destroy the defendant's ownership. The court found further that none of the land had become an accretion to the land of the plaintiff. *On appeal,* the holding of the lower court was affirmed. *Sheldon* v. *Chambers* (Iowa 1938) 281 N.W. 438.

An accretion has been universally held to be a gradual increase of land by an imperceptible accumulation of land, or the increase or growth of property by external accessions, as by alluvium naturally added to land situated on the bank of a river or on the seashore. In *Bigelow* v. *Herrink,* 200 Iowa 830, 205 N.W. 531 (1925), the court held that accretions are the gradual and imperceptible additions of soil to the shore line by action of water to which the land is contiguous, but the mere presence of swales and sloughs in land thrown up against the shore line does not necessarily determine its character as an accretion. However, in *Yutterman* v. *Grier,* 112 Ark. 366, 166 S.W. 749 (1914), it was held that land formed by the shifting of the river, and the banks caving in on one side, and the receding waters forming land by the deposit of sediment is accretion, notwithstanding the fact that the greater part was formed during one overflow, and that the caving in of the opposite bank was perceptible at times; the test being not the rapidity of the change, but whether the land formed can be identified as the land of the former owner.

To prove an accretion it must be shown that the added soil was deposited entirely by the action of the water. When the change is sudden or so rapid that its occurrence may be seen as it progresses, it is an avulsion rather than an accretion and does not change title. This distinction was applied in *Missouri* v. *Nebraska,* 196 U.S. 23, 25 Sup. Ct. 155, 49 L.ed. 372 (1904) where the court held that an avulsion was the sudden and rapid change in the course of a river and that if such river was the boundary line between private properties, states, or nations the avulsion does not work any change in the boundary line which remains, as it was, in the center of the old channel. In this case, the melting snows of the Missouri River cut a new bed between the states of Nebraska and Missouri in twenty-four hours. It was held that the boundary line between the

two states had not changed. In *Attorney General ex rel. Becker* v. *Bay Boom Wild Rice & Fur Co.,* 172 Wis. 363, 178 N.W. 569 (1920), the court adhered to this definition, holding that an avulsion is the removal of a considerable quantity of soil from the land of one and deposited upon or annexed to the land of another, suddenly and by the perceptible action of the water.

In the instant case, a question was raised as to whether land, because it was covered by water for several years, lost its identity as land in place. In *Mulry* v. *Norton,* 100 N.Y. 424, 3 N.E. 581 (1885) it was held that while the title of a proprietor is liable to be lost by erosion or submergence it may be re-established by accretion or reliction, unless the submergence has been followed by such a lapse of time as precludes the identity of the land from being established. Thus the mere fact that the land may have disappeared for a limited time because of the volume of water that came down a river totally covered the land was held not to be sufficient to destroy the ownership thereto as land in place. *Payne* v. *Hall,* 192 Iowa 780, 185 N.W. 912 (1920); *St. Louis* v. *Rutz,* 138 U.S. 226, 11 Sup. Ct. 337, 23 L.ed. 941 (1900); *Ocean City Ass'n.* v. *Shriver,* 64 N.J.L. 550, 46 Atl. 690, 51 L.R.A. 425 (1900).

There is some difference of opinion as to where the accretion is to begin. In *Hohl* v. *Iowa Cent. R. R. Co.,* 162 Iowa 66, 143 N.W. 850 (1913), the court ruled that accretions must begin from the land of the owner claiming the addition and grow therefrom, and not from some point finally extending to his land. However, in *Melvin* v. *Schlesinger,* 138 Md. 337, 113 Atl. 875 (1921) the court held that accretions are not confined to those which in their formation start at the shore and extend outward to the channel, but also embrace those which originate in the channel and lie between the shore and the channel.

The status of an accretion caused by artificial means varies with the circumstances. The general rule is that one cannot on his own initiative create artificial structures whereby accretions to his property would result. Thus it was held that one cannot extend his possession by building artificial structures into a lake which caused water to recede. *Menominee River Lumber Co.* v. *Seidle,* 149 Wis. 316, 135 N.W. 854 (1912). A Wisconsin case, however, held that where the accretion is caused by artificial structures employed by another party, the owner of the property upon which the soil was deposited could acquire title to the added land. Hence in *Prieve* v. *Wisconsin State Land & Imp. Co.,* 93 Wis. 534, 67 N.W. 918, 33 L.R.A. 645 (1896) where a strip of land was uncovered by the lowering of the waters of the lake caused by an artificial drainage program authorized by an act of the legislature, the right of possession to property followed the recession of the water.

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