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Property - Rights of Riparian Owners to Alluvion Formed as a Result of the Works of Man

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the well did constitute good faith user sufficient to interrupt prescription.

This decision confirms the prior jurisprudence holding that good faith is required in drilling which interrupts prescription, and further holds that good faith can be found even if the avoidance of paying excess profits tax is one of the motives for drilling the well. The decision also confirms a prior holding that a well begun before but completed after prescription has run can still be a good faith user if it is drilled to a depth at which it would be reasonable to expect production.[12]

Robert F. LeBlanc

PROPERTY — RIGHTS OF RIPARIAN OWNERS TO ALLUVION FORMED AS A RESULT OF THE WORKS OF MAN

The plaintiff provoked concursus proceedings to determine ownership of royalties from oil wells draining reservoirs beneath accretion on the Mississippi River. The accretion formed on a horseshoe bend of the river when a cut-off channel was dug across the open end of the bend. The cut-off took most of the flow, but some water continued to flow around the bend depositing large amounts of silt. The riparian owners claimed the accretion as alluvion.[1] The state contended that, because the works of man were the primary cause of the formation, the accretion did not constitute alluvion. The district court held that the accretion was alluvion and thus belonged to the riparian owners. On appeal and rehearing, the Supreme Court *held*, affirmed. So long as accretion is successive and imperceptible the laws of alluvion apply, and it makes no difference that the works of man were the cause. *Esso Standard Oil Co. v. Jones*, 233 La. 915, 98 So.2d 236 (1957).

The beds of navigable bodies of water belong to the state,[2] but Article 509 of the Civil Code of 1870 provides that the land built up successively and imperceptibly by deposits of soil along the bank of a river or stream is called alluvion and belongs to

12. McMurrey v. Gray, 216 La. 904, 45 So.2d 73 (1949).

1. LA. CIVIL CODE art. 509 (1870).

2. *Id.* art. 453; State v. Bozeman, 156 La. 635, 101 So. 4 (1924); State v. Capdeville, 146 La. 94, 83 So. 432 (1919); State v. Richardson, 140 La. 329, 72 So. 984 (1916); State v. Bayou Johnson Oyster Co., 130 La. 604, 58 So. 405 (1912).

the riparian owners.[3] No mention is made as to whether alluvion must have resulted ultimately from natural or artificial cause. While the Louisiana courts have dealt extensively with questions involving accretion formed by nature,[4] they have examined the problem of accretion caused by the acts of man in only a few instances. Two early cases arose under a statute allowing riparian owners to recover batture[5] in excess of that needed by a city for public purposes.[6] In *Heirs of Leonard v. Baton Rouge*,[7] the Supreme Court held that, since the land in dispute was kept above water solely by a high embankment built by a railroad with city authority, this land was not batture formed by accretion within the meaning of the statute. In the second case, *St. Anna's Asylum v. New Orleans*,[8] the court found that a large portion of the land claimed by defendant to be batture had actually been filled in with dirt brought in by the city to speed up the extension of the landing line and thus could not be considered batture. In another case[9] the Supreme Court said in dictum that there was no such thing as a right of alluvion on lands reclaimed by artificial process financed with public money, citing as authority the two cases mentioned above. Therefore, until the decision in the instant case, the only cases dealing with the question of whether the laws of alluvion apply to accretion formed as a result of the acts of man consisted of two cases concerning land which was not alluvion at all and one statement of dictum erroneously citing those two cases.[10]

3. "The accretions formed successively and imperceptibly to any soil situated on the shore of a river or other stream, are called alluvion.

"The alluvion belongs to the owner of the soil situated on the edge of the water, whether it be a river or stream, and whether the same be navigable or not, who is bound to leave public that portion of the bank which is required by law for the public use." LA. CIVIL CODE art. 509 (1870).

4. For a review of the Louisiana jurisprudence on this subject see the opinion in California Co. v. Price, 225 La. 706, 74 So.2d 1 (1954).

5. The term batture is used to mean alluvion. Producers Oil Co. v. Hanszen, 132 La. 691, 61 So. 754 (1913). *Cf.* Morgan v. Livingstone, 6 Mart.(O.S.) 19 (La. 1819).

6. LA. R.S. 9:1102 (1870): "Whenever the riparian owner of any property in incorporated towns or cities is entitled to the right of accretion, and more batture has been formed in front of his land than is necessary for public use, which the corporation withholds from him, he shall have the right to institute action against the corporation for so much of the batture as may not be necessary for public use. . . . [I]t shall decree that the owner is entitled to the property, and shall compel the corporation to permit him to enjoy the use and the ownership of such portion of it."

7. 39 La. Ann. 275, 4 So. 241 (1887).

8. 104 La. 392, 29 So. 117 (1900).

9. Bruning v. New Orleans, 165 La. 511, 526, 115 So. 733, 738 (1928).

10. The cases of Bank of Coushatta v. Yarborough, 139 La. 510, 71 So. 784 (1916); Slattery v. Arkansas Natural Gas Co., 138 La. 793, 70 So. 806 (1916); McDade v. Bossier Levee Board, 109 La. 625, 33 So. 628 (1902) are often cited

The holding in the instant case is based on a literal interpretation of Article 509. The text of the article makes no reference to the cause producing the alluvion, but describes only the manner in which it is to be formed. The court thus reasoned that to require that the cause be a natural one would add to the article a new restrictive condition without authority of law. This rationale is supported by the French commentators Laurent and Dalloz[11] and conforms to the historical practice of construing Article 509 literally.[12] The court also indicated a test to be used in determining when in fact the formation was successive and imperceptible.[13] Accretion is to be considered formed successively and imperceptibly if witnesses are unable to observe the process while it is actually going on, even though they may have observed from time to time that land was being built up. Applying this test to the facts of the instant case, the court found that, although the formation occurred over relatively few years,[14] witnesses standing on the bank could not have actually seen the formation taking place. The land was therefore alluvion within the meaning of Article 509.

Any other result would have created a rule almost impossible to apply. The Mississippi and Atchafalaya Rivers as well as all other major rivers in Louisiana are held in check by artificial banks or levees. Accretion formed along these rivers can logically be traced directly to the works of man. To hold that

for authority on this problem. But these cases all dealt with lakes which dried up because of the removal of the log jam on the Red River. Since they were lakes, the laws of alluvion did not apply, nor were any deposits formed since the lakes were simply drying up.

11. 38 DALLOZ, REPERTOIRE DE LEGISLATION, DE DOCTRINE ET DE JURISPRUDENCE, PROPERIETE, 280, 289 (1885); 6 LAURENT, PRINCIPES DE DROIT CIVIL FRANÇAIS 365, § 283 (2d ed. 1876).

12. See Sapp v. Frazier, 51 La. Ann. 1718, 20 So. 378 (1899); Zeller v. Southern Yacht Club, 34 La. Ann. 837 (1882). It should be noted here that Article 509 does not mention lakes, but uses the phrase "river or other stream." Louisiana courts have interpreted this to mean the laws of alluvion do not apply to lakes. Doiron v. O'Bryan, 218 La. 1069, 51 So.2d 628 (1951); State v. Aucoin, 206 La. 787, 20 So.2d 136 (1944); Amerada Petroleum Corp. v. State Mineral Board, 203 La. 473, 14 So.2d 61 (1943); Slattery v. Arkansas Natural Gas Co., 138 La. 793, 70 So. 806 (1916); Zeller v. Southern Yacht Club, 34 La. Ann. 837, 839 (1882) (dictum).

13. The court here was apparently relying on the case of County of St. Clair v. Lovingston, 90 U.S. (23 Wall.) 46, 68 (1874), in which the court said: "The test as to what is gradual and imperceptible in the sense of the rule is, that though the witnesses may see from time to time that progress has been made, they could not perceive it while the process was going on. Whether it is the effect of natural or artificial causes makes no difference. The result as to the ownership in either case is the same."

14. Prior to the digging of the cut-off there was no alluvion being formed. The cut-off was dug in 1933 and the land in dispute was formed, according to the evidence of the riparian owners, by 1942.

accretion so formed does not belong to the riparian owners would remove hundreds of acres from private use and ownership to lie idle until the state should see fit to make some use of them. The criterion announced by the court in the instant case provides a fair, workable guide for future litigation on this subject.[15]

Sidney D. Fazio

PROPERTY — THIRTY-YEAR PRESCRIPTION IN BOUNDARY ACTION

In accordance with an informal survey defendant's author in title erected a fence in 1904 between his land and that now belonging to the plaintiff. Upon discovering that this fence encroached on his land, plaintiff brought suit under Article 823 which provides for judicial determination of boundaries in certain situations. Defendant contended that the fence line should be recognized as the boundary under the provisions of Article 852 relative to thirty year boundary prescription.[1] After reversing the trial court on original hearing, the court of appeal reversed itself on rehearing and affirmed judgment for the plaintiff, holding that under Article 852 mutual consent was necessary to establish a boundary.[2] The Supreme Court granted writs and *held,* on rehearing, reversed for defendant. Uninterrupted possession of land for thirty years beyond title and up to a visible separation is sufficient under Article 852 to establish a boundary at the line of the visible separation. Mutual consent to such a boundary is not necessary. *Sessum v. Hemperley,* 233 La. 444, 96 So.2d 832 (1957).

At French law[3] any possessor may have his ideal rural bounds judicially determined at any time, provided there has been no written agreement between the parties fixing a bound-

15. This case is also noted in 32 TUL. L. REV. 319 (1958).

1. "Whether the titles, exhibited by the parties, whose lands are to be limited, consist of primitive concessions or other acts by which property may be transferred, if it be proved that the person whose title is of the latest date, or those under whom he holds, have enjoyed, in good or bad faith, uninterrupted possession during thirty years, of any quantity of land beyond that mentioned in his title, he will be permitted to retain it, and his neighbor, though he have a more ancient title, will only have a right to the excess; for if one can not prescribe against his own title, he can prescribe beyond his title or for more than it calls for, provided it be by thirty years possession."

2. Sessum v. Hemperley, 83 So.2d 546 (La. App. 1955).

3. 1 ENCYCLOPÉDIE DALLOZ, DROIT CIVIL, "*Bornage*" nos 40-47 (1951); 2 CODE CIVIL ANNOTÉ art. 646, p. 81, n. 100 (1935). See also AUBRY ET RAU, COURS DE DROIT CIVIL FRANÇAIS, "*Du bornage,*" § 199 (6th ed. 1935); 3 PLANIOL ET RIPERT, TRAITÉ PRATIQUE DE DROIT CIVIL FRANÇAIS 431-42 (2d ed. 1952).