

Civil Law Property - Apportionment of Alluvion Between Riparian Owners

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persons for *any* act of negligence, unless there is a *duty* owing from the agent to the third person.

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CIVIL LAW PROPERTY — APPORTIONMENT OF ALLUVION
BETWEEN RIPARIAN OWNERS

Over a period of years alluvion formed along the shore of the adjacent riparian properties of plaintiff and defendant. At one time the Mississippi River made a large loop around the alluvion, but its course was diverted in 1933, and from that time the main channel of the river has lain along only one side of the alluvion. Plaintiff sought a declaratory judgment apportioning the alluvion, contending it should be divided by the acreage method which would mean that each riparian owner would be given acreage in the alluvion in proportion to the original river frontage that each owned. In rejecting this contention the district court held that each proprietor should receive new river frontage in the same proportion as each proprietor's old river frontage had borne to the total old river frontage. The district court's holding¹ was affirmed by the court of appeal but on writ of certiorari to the Louisiana Supreme court, *held*, reversed. When alluvion which has formed in front of the estates of riparian proprietors is to be divided the court must take each case as it is presented and order apportionment by the method which will most nearly give each owner a fair proportion of the new acreage and a fair proportion of the new frontage. This can best be accomplished here by giving each riparian owner acreage in the alluvion in proportion to the original river frontage that each owned. *Jones v. Hogue*, 129 So.2d 194 (La. 1961).

By the principle of accession, the accretions which form successively and imperceptibly to the soil situated on the shore of

1. Another issue of considerable interest in the case was the question of the time at which the apportionment should be made. The extent of the alluvion at various periods of its growth was described by five successive surveys made by the United States Corps of Engineers and the defendant contended that the alluvion should be divided as it was represented in the various surveys. The trial court adopted the defendant's increment method of division. The court of appeal reversed the holding on this issue and the Supreme Court affirmed the holding of the court of appeal stating: "It is our opinion that courts must and should accept the extent and area of an alluvial deposit as it exists, be it much or little, at the time the apportionment between riparian owners is sought." *Jones v. Hogue*, 129 So.2d 194, 199 (La. 1961).

a river belong to the owner of the shore on which they form.² This principle is incorporated in Roman law,³ the French Civil Code,⁴ and the Louisiana Civil Code.⁵ Article 516 of the Civil Code⁶ is unique, however, in that it is the first reference to the division of alluvion embodied in any of the above mentioned codes.⁷ However, this article, while referring to the method of division, was vague in its meaning and application.⁸ The two methods which have received attention in the Louisiana cases are the acreage and frontage methods.⁹ Under the acreage

2. LA. CIVIL CODE art. 509 (1870): "The accretions, which are 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."

3. INSTITUTES 2.1.20: "And further, what a river adds to your field by alluvio is by the Jus Gentium acquired by you. And by alluvio is meant a latent increase; and an addition by alluvio is an addition so gradual as to be at each moment imperceptible."

4. FRENCH CIVIL CODE arts. 556-558 (Cachard transl. 1930).

5. See note 2 *supra*.

6. LA. CIVIL CODE art. 516 (1870). Adopted without comment in the *Projet of the Revised Civil Code of 1825*, 1 LOUISIANA LEGAL ARCHIVES 48 (1937).

7. LA. CIVIL CODE art. 516 (1870): "If an alluvion be formed in front of the property of several riparian proprietors, the division is to be made according to the extent of the front line of each at the time of the formation of the alluvion." Also compare the original French version of the corresponding LA. CIVIL CODE art. 508 (1825): "*S'il se forme une alluvion en face de plusieurs propriétés riveraines, le partage s'en fera entre leurs propriétaires, suivant l'étendue ou la face de l'héritage que chacun d'eux possédait sur la rivière, lors de la formation de cette alluvion.*"

8. See Zengel, *Elements of the Law of Ownership*, in 3 WEST'S L.S.A. — CIVIL CODE 1, 14 (1950), which states: "[T]he new land formed by alluvion is divided among the riparian owners according to the extent of the front line of each at the time of the formation of the alluvion." This language is susceptible of at least four applications. The portion of the new area to be allocated to each adjoining landowner could be determined (1) by applying to the total new area the ratio of the frontage of each tract to the total frontage along which the new area is formed; or (2) by projecting the boundary lines of each tract along their existing directions into the new area; or (3) by projecting the boundary lines of each tract into the new area in directions which are perpendicular to the thread of the river or stream; or (4) by dividing the water edge of the new area in the same proportions as the original bank of the stream, and by joining with straight lines the corresponding segments of the new and old banks.

9. See note 10 *infra* and accompanying text. The frontage method has generally been adopted by the common law jurisdictions of the United States. *Johnston v. Jones*, 66 U.S. (1 Black) 209 (1862); *Stull v. United States*, 61 F.2d 826 (8th Cir. 1932); *Hamilton v. Horan*, 193 Ark. 85, 97 S.W.2d 637 (1936); *Malone v. Mobbs*, 102 Ark. 542, 145 S.W. 193 (1912); *Kehr v. Snyder*, 114 Ill. 313, 2 N.E. 68 (1885); *Deering v. Gahm*, 248 Iowa 100, 84 N.W.2d 223 (1957); *Soloman v. Sioux City*, 243 Iowa 634, 51 N.W.2d 472 (1952); *Todd v. Murdock*, 230 Iowa 1121, 300 N.W. 284 (1941); *Stark v. Meriwether*, 98 Kan. 10, 157 Pac. 438 (1916); *Allen v. Wood*, 256 Mass. 343, 152 N.E. 617 (1926); *Board of Supervisors v. Giles*, 219 Miss. 245, 68 So.2d 483 (1953); *Doebbeling v. Hall*, 310 Mo. 204, 274 S.W. 1049 (1925); *Batchelder v. Keniston*, 51 N.H. 496 (1872); *Gardner v. Green*, 67 N.D. 268, 271 N.W. 775 (1937); *O'Donnell v. Kelsey*, 10 N.Y. 412 (1852); *Goihns v. Merryman*, 183 Okla. 166, 80 P.2d 268 (1938); *Hathaway v. Milwaukee*, 132 Wis. 249, 111 N.W. 570 (1907); *Graham*

method each riparian proprietor would receive an area of the alluvion in the same proportion that each owned original river frontage. The frontage method distributes to each riparian owner the same proportionate frontage that he owned on the original shore line. *Heirs of Delord v. New Orleans*,¹⁰ the earliest reported Louisiana case to interpret Article 516 of the Civil Code, prescribed the acreage method of division. Although the acreage method was utilized in that case, the court stressed the fact that both of the parties' access to the river should be maintained.¹¹ When presented with this question again in *Newell v. Leathers*,¹² the court applied the frontage method of division, stating that it did not consider this method as being different from that prescribed in the *Delord* case.¹³ However, in the more

v. Knight, 240 S.W. 981 (Tex. Civ. App. 1922). See 2 WALSH, COMMENTARIES OF THE LAW OF REAL PROPERTY 543, § 227 (1947). However, a substantial number of common law jurisdictions have held that apportionment is to be made by extending a line from the point of intersection of the original property line and the bank perpendicular to the shore line or to the thread of the stream. *Wells v. Bailey*, 55 Conn. 292, 10 Atl. 565 (1887); *Turk v. Wilson's Heirs*, 266 Ky. 78, 98 S.W.2d 4 (1936); *Tappan v. Boston Water-Power Co.*, 157 Mass. 24, 31 N.E. 703 (1892); *State v. 6.0 Acres of Land*, 101 N.H. 228, 139 A.2d 75 (1958); *Manchester v. Point Street Iron Works*, 13 R.I. 355 (1881); *Jansky v. City of Two Rivers*, 227 Wis. 228, 278 N.W. 527 (1938); *Cunningham v. Prevow*, 28 Tenn. App. 643, 192 S.W.2d 338 (1945). A minority of cases have extended the property line to the alluvial shore line, regardless of the direction of the property line. *Stockley v. Cissna*, 119 Fed. 812 (6th Cir. 1902); *Gorton v. Rice*, 153 Mo. 676, 55 S.W. 241 (1900); *Cramer v. Perine*, 241 N.Y. 177, 167 N.E. 213 (1929); *Hubbard v. Manwell*, 60 Vt. 235, 14 Atl. 693 (1888); *McCamon v. Staggs*, 2 Kan. App. 479, 43 Pac. 86 (1896). Many common law jurisdictions have supported the principle that one method of division will not be followed when the result is inequitable. See *Stark v. Meriwether*, 98 Kan. 10, 15, 157 Pac. 438, 442 (1916), where the court stated: "[T]he proper method or rule for apportioning accretions on rivers . . . depends upon varying circumstances and conditions so that it is impracticable to state a general rule that will apply in all cases." *Accord*, *Peoria v. Central National Bank*, 224 Ill. 43, 79 N.E. 296 (1906); *Elgin v. Beckwith*, 119 Ill. 367, 10 N.E. 558 (1887); *Smith v. Leavenworth*, 101 Miss. 238, 57 So. 803 (1911); *Frederitzie v. Boeker*, 193 Mo. 228, 92 S.W. 227 (1907); *Cramer v. Perine*, 241 N.Y. 177, 167 N.E. 213 (1929); *Thornton v. Grant*, 10 R.I. 477 (1873).

10. 11 La. Ann. 699 (1856).

11. *Id.* at 700.

12. 50 La. Ann. 162, 23 So. 243 (1897).

13. There seems to be some doubt as to the meaning of the *Delord* case by virtue of the language in the *Newell* case, which states: "We do not interpret *Delord v. City of New Orleans* . . . as establishing a different rule." 50 La. Ann. 162, 165, 23 So. 243, 246 (1897). Compare with the language of the *Delord* case, which prescribes that "the line of such division must be drawn in such manner as that each . . . shall have such a proportion of the alluvial soil as the total extent of his front line bears to the total quantity of the alluvial soil to be divided." 11 La. Ann. 699, 700 (1856).

recent case of *Akard v. Shreveport*,¹⁴ the court, without mentioning the *Newell* decision, reverted to the acreage method applied in the *Delord* case.

In attempting to apportion the alluvion equitably, the court in the instant case utilized the acreage method of division.¹⁵ It is emphasized in the decision that, in the division of alluvion between riparian proprietors, two objects are to be attained: "(1) each owner should receive a fair proportion of the area of the alluvion, and (2) each should receive a fair proportion of the new frontage on the water."¹⁶ Considering these two objects and stating that it did not regard Article 516 of the Civil Code as prescribing an exclusive method for the apportionment of alluvion,¹⁷ the court considered the acreage method of division to be most equitable.¹⁸

Thus it seems that although the Louisiana cases have applied different methods of division, they are not in conflict since they accomplish the basic principle of the article "to do justice between the parties."¹⁹ Furthermore, it would seem that the court's reluctance to prescribe an exclusive method for the apportionment of alluvion is most fortunate because of the different objects that must be considered in cases of this nature. Alluvion formations will differ from one case to another; add to this the changing interests of the riparian property owners and it can readily be seen that inequitable results would attach to any exclusive rule that the court might adopt.²⁰ In view of the

14. 196 La. 714, 200 So. 14 (1941).

15. *Jones v. Hogue*, 129 So.2d 194, 203 (La. 1960): "We think it would be equitable and proper in this case to order a division of the alluvion on the area basis in proportion to the respective frontage of each of the riparian owners." (Emphasis added.)

16. *Id.* at 202: "Because of the varying conditions which obtain in different cases, no one method of effecting a division can be prescribed . . . [T]he courts can therefore do no more than take each case as it is presented and order an apportionment by the method which will most nearly attain these two objects and do justice between the parties to the particular case."

17. See note 16 *supra*.

18. *Id.* at 203: "In the instant case river frontage, for all practical purposes, is not of much importance . . . [T]he U.S. engineers in 1933 diverted the main channel of the river to some extent away from the properties . . . [T]here is no showing that river frontage here has any importance for commerce or navigation."

19. See note 16 *supra*.

20. In the instant case the Mississippi River had been diverted and the parties had little or no interest in maintaining their access to the river, but where

interests of the riparian owners and the diversity of circumstances that attach to problems of this nature, it is felt that the court's liberal interpretation of Article 516 of the Civil Code will bring about more just and equitable results in allocation of alluvion between riparian proprietors in the future.

D. Mark Bienvenu

CONSTITUTIONAL LAW — CENSORSHIP OF MOTION PICTURE FILMS

A Chicago ordinance required submission of motion picture films to the Commissioner of Police in order to obtain a permit for public exhibition.¹ Petitioner was denied a permit for public exhibition of the film "Don Juan" on refusal to submit the film to the Commissioner. Petitioner challenged the ordinance on the grounds that requiring submission of all films prior to public exhibition rendered the ordinance an unconstitutional prior restraint,² contending that all prior restraints on motion picture

riparian property is on a major navigable body of water the property owners' interest in maintaining access to such a watercourse can be significantly valuable.

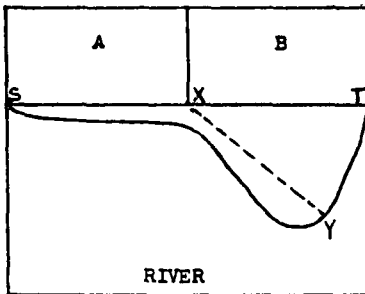


Figure 1

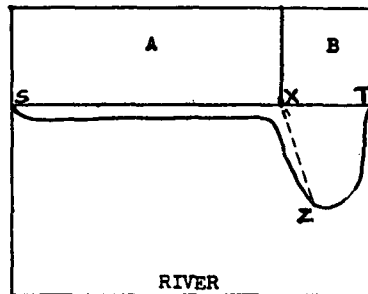


Figure 2

In Figure 1 riparian proprietors A and B own equal portions of original shore line. It can readily be seen that by using the area method of division, as represented by line xy, B's access to the river is substantially decreased, while A's shoreline is substantially increased. In Figure 2 riparian proprietor A has three times as much shoreline as B. Using the frontage method of division, as represented by line xz, will result in an inequitable distribution of the alluvial area.

1. MUNICIPAL CODE OF THE CITY OF CHICAGO § 155-4 authorizes the Commissioner of Police to refuse to issue a permit when a film is "immoral or obscene, or portrays depravity, criminality, or lack of virtue of a class of citizens of any race, color, creed, or religion and exposes them to contempt, derision, or obloquy, or tends to produce a breach of the peace or riots, or purports to represent any hanging, lynching, or burning of a human being."

2. A prior restraint is generally defined as interfering "by censorship or injunction before the words are spoken or printed." 2 SELECTED ESSAYS ON CONSTITUTIONAL LAW 1030 (1938).