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Avulsion Plus Accretion Does Not Equal Reversion

By R. Clark Musser

The purpose of this paper is to provide a framework from which the title attorney can construct the answer to many questions he or she may have regarding the effects that the movement of a body of water has upon the ownership of contiguous land. This author has attempted to provide a balanced meal of practicalities and analyses, with only a slight flavor of academia.

DEFINITION OF TERMS

Riparian and Riparian Owner

Riparian means belonging or relating to the bank of a river. A riparian owner is one who owns land on the bank of a river. BLACK'S LAW DICTIONARY, (4th ed. 1951).

Accretion

This is the addition to or increase in riparian lands by forces of nature in a manner that is gradual and imperceptible. *Goins v. Merryman*, 183 Okl. 155, 80 P.2d 268 (1938). It denotes the act of depositing soil and silt gradually. BLACK'S LAW DICTIONARY (4th ed. 1951).

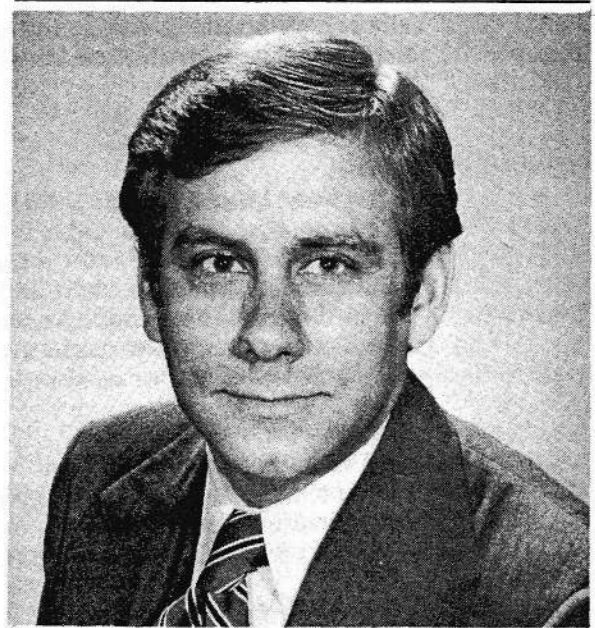
Alluvion

According to Oklahoma case law, it appears that this term has been used synonymously with accretion. *Willett v. Miller*, 176 Okl. 278, 55 P.2d 90 (1936). The U.S. Supreme Court has defined it as the material deposited by flowing water. *St. Clair v. Lovington*, 90 U.S. (23 Wall) 46 (1874).

Alluvium

This is the material deposited by flowing

Easy Go, Or



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water. BLACK'S LAW DICTIONARY (4th ed. 1951).

Reliction and Dereliction

These terms are synonymous and refer to the withdrawal of waters exposing land previously under water. BALLENTINE'S LAW DICTIONARY (3rd ed. 1969). The land left uncovered by the gradual receding of waters. *Brown*, BOUNDARY CONTROL AND LEGAL PRINCIPLES, Sec. 10.2 (2nd ed. 1969)

Avulsion

The sudden or perceptible change in riparian lands, either by increase or diminution, is avulsion. *Goins v. Merryman*, supra; *Mapes v. Neustadt*, 197 Okl. 585, 173 P.2d 442 (1946); *Commissioners of the Land Office v. Warden*, 200 Okl. 613, 198 P.2d 402 (1948). It is also defined as the sudden change of banks of a stream such as occurs when a river forms a new course by going

through a bend, the sudden abandonment by a stream of its old channel and the creation of a new one, or a sudden washing from one of its banks of a considerable quantity of its deposit to the opposite bank. *Buchheit v. Glasco*, 361 P.2d 838 (Okla. 1961).

Littoral

This word is pronounced lit' o' ral and pertains to the shore of the sea. *BALLENTINE'S LAW DICTIONARY* (3rd ed. 1969). In Clark, *LAW OF SURVEYING AND BOUNDARIES* (3rd ed. 1959), this term is expanded to include water that is not flowing, as in the case of a pond, lake, or ocean and the abutting owner is a "littoral" owner.

Erosion

This is the gradual eating away of the soil by the operation of currents or tides. *BLACK'S LAW DICTIONARY* (4th ed. 1951).

Thread of the Stream

The line formed equidistant from the shores (i.e., geographical center) of the stream at the ordinary or medium stage of the water, disregarding slight exceptional irregularities in the banks, is the thread of the stream. *Bade, Title Points and Lines in Lake and Streams*, 24 Minn. L. Rev. 305 (1940). This is not to be confused with the center of the main channel which may be closer to the bank than to the other. *Brown, BOUNDARY CONTROL AND LEGAL PRINCIPLES*, Sec. 10.2 (2nd Ed. 1969).

Medial or Median Line of the Channel

This is similar to, if not synonymous with, thread of the stream insofar as Oklahoma case law is concerned. The medial line channel of a river extending from one cut bank to the other is the middle of the main channel and the boundary of the tract, though during high-water, there are rapid changes in the bank. *Commissioners of the Land Office v. Warden*, supra. It is noteworthy that the left and right banks of a stream are determined by facing downstream.

Meander Line

A meander line is a line run by the government for the purpose of defining the sinuosities of the bank of a body of water and as a means of ascertaining the quantity of land in adjoining fractional areas subject to sale by the government. It is not for the purpose of limiting title to the grantees to such meander line. Clark, *LAW OF SURVEYING AND BOUNDARIES* (3rd ed. 1959).

DOCTRINES OF ACCRETION AND AVULSION

If one owns land contiguous to a body of water, such person acquires by virtue of that fact certain rights. These riparian rights include the right to use it for recreational purposes such as swimming and fishing, docking, navigation buildings, use of the water itself and the right to the alluvium deposited by the water. This right to alluvium involves the doctrines stated above.

Doctrine of Accretion

The owner of land bounded by water is entitled to the additions to his land caused by the process of accretion. Accretions become the property of the owner of the adjoining land. *Stone v. McFarlin*, 249 F.2d 54 (10th Cir. 1957); *Johnson v. Butler*, 206 Okla. 632, 245 P.2d 720 (1952).

This doctrine has its roots in the common law and has long since been considered a universal rule. *Shively v. Bowlby*, 152 U.S. 1, 35 (1893). Justinian in his treatise on civil law recognized the rule, as did Blackstone. 2W. BLACKSTONE, COMMENTARIES, 152. The rationale for such a doctrine is interesting and varied. One justification for a doctrine which permits a boundary to follow the changing stream is the desirability of keeping the land riparian which was riparian under earlier facts, thus, the upland owners are assured of access to the water and the advantages of such access. 7 POWELL, ON REAL PROPERTY, Section 983. The U.S. Supreme Court has based the doctrine on "natural law", i.e., to the owner of the tree belong the fruits. *St. Clair v. Lovington*, supra. 2 W. BLACKSTONE, COMMENTARIES, 376 (Gavit ed. 1941) states that since an owner is subject to the risk of loss by erosion, he should be entitled to the additions by accretion.

Title to riparian land may be lost by the process of erosion just as it is gained by the process of accretion. This author calls this the "easy come, easy go" theory. Public policy established by custom is the rationale in 2 WALSH, COMMENTARIES ON THE LAW OF REAL PROPERTY, 538 (1947). For an opposite opinion, see 4 TIFFANY, REAL PROPERTY, Section 1220 (3d ed. 1939). Perhaps, much of the accretion doctrine comes from the abhorrence in the law to leave dangling pieces of land. 5A, THOMPSON ON REAL PROPERTY, Section 2563 (1957 Replacement).

AVULSION

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Fortunately, in Oklahoma we can disregard the above theories and recognize them for what they are, i.e., pontifications relevant only to law professors, law students who take exams under law professors, and the author of this paper.

The rationale for the application of the doctrine of accretion in Oklahoma is simple. Oklahoma has codified the common law, *Stone v. McFarlin*, supra. In 1910 the legislature enacted 60 Okl. St. Ann. Section 335 which reads as follows:

"Where from natural causes land forms by imperceptible degrees upon the bank of a river or stream, navigable or not navigable, either by accumulation of material or the recession of the stream, such land belongs to the owner of the bank, subject to any existing right of way over the bank."

Notice that this statute makes no distinction as to whether or not the river is navigable and whether the build up is by accumulation of material (i.e., accretion) or by the recession of the stream (i.e. reliction).

If the effect of the accretion is the formation of an island, 60 Okl. St. Ann. Section 338 would apply. This statute provides:

"An island or accumulation of land, formed in a stream which is not navigable, belongs to the owner of the shore on that side where the island or accumulation is formed, or if not formed on one side only, to the owners of the shore on the two sides, divided by an imaginary line drawn through the middle of the river."

If such an island should be formed in a navigable stream, 60 Okl. St. Ann. Section 337 provides that ownership of the island is in the state.

The doctrine of accretion would probably apply to lakes as well as streams in Oklahoma, although this author could find no cases to this effect and the statute refers only to rivers and streams. See *Jones v. Johnson*, 59 U.S. (18 How.) 150 (1855); 3 AMERICAN LAW OF PROPERTY, Section 15.33 (A.J. Casner ed. 1952); 1 Farnham, WATER AND WATER RIGHTS, 329 (1904).

Doctrine of Avulsion

Avulsion, the sudden change of a stream's

banks or sudden abandonment by a stream of its old channel and the creation of a new one, does not result in a change of boundary. *Nolte v. Sturgeon* 376 P.2d 616, (Okl. 1963); *Buchheit v. Glasco*, supra; *Mapes v. Neustadt*, supra; *Goins v. Merryman*, supra.

As stated above, one of the justifications for the doctrine of accretion in the common law was that the riparian quality of a tract may be its most valuable feature; however, the doctrine of avulsion seems to contradict this reasoning. If avulsion occurs, title to soil thus affected remains in the former owners. Although there have been attempts to explain why the quality of being riparian is a consideration when the change is by accretion, but not when it is by avulsion, *Bonelli Cattle Co. v. Arizona* 414 U.S. 313 (1973), the legal distinction between the processes indicates that the common law doctrine of accretion was based on the risk presented by erosion, categorized by this author as "easy come, easy go".

The doctrine of avulsion also has its roots in the common law, *Goins v. Merryman*, 183 Okl. 155, 80 P.2d 268 (1938) and has been codified in Oklahoma. Thus, once again we can leave the realm of the academician and return to the confines of reality, within which the practicing attorney must labor. 60 Okl. St. Ann. Section 336 states:

"If a river or stream carries, by sudden violence, a considerable and distinguishable part of a bank, and bears it to the opposite bank, or to another part of the same bank, the owner of the part carried away may reclaim it within a year after the owner of the land to which it has been united takes possession thereof.

Various tests have been espoused by the Oklahoma Supreme Court as to whether the movement of a body of water was by avulsion or accretion. In *Goins v. Merryman*, supra, the court states that it is a question of fact and in determining the question of fact, these tests were proffered:

a) To constitute avulsion, rather than accretion, so as to preclude change in boundary by riparian owners, it is not necessary that soil washed away be identifiable; it being sufficient that change is so sudden that the owner of land washed away is able to point out approximately

as much land added to the opposite bank as he had washed away.

b) The test is not whether witnesses might see from time to time that progress has been made, but whether witnesses can perceive change while it is going on.

Under the common law, the doctrine of avulsion applies where flood waters of a river suddenly and perceptibly cut away the bank of a river at the same time land is formed on the opposite side of the river. *Nolte v. Sturgeon*, 376 P.2d 616 (Okla. 1963). Rapidly, easily perceived, violent shifts of land incident to floods, storms, or channel breakthroughs constitute avulsion. *Olsen v. Jones*, 412 P.2d 162 (Okla. 1966).

Thus, the Oklahoma Supreme Court has declared that it is a question of fact as to whether movement was by avulsion or accretion and has aided us by setting forth various tests for making such a determination. The Oklahoma Supreme Court has also determined who has the burden of proving this question of fact. In *Chase v. Cheatham* 194 Okl. 1 146 P.2d 585 (1943), the plaintiffs contended that the change in a river bed was by avulsion rather than accretion. The court stated that the plaintiff had the burden of showing by a preponderance of the evidence that the changes were violent and subject to being perceived while they were going on.

When the facts present a close question, the movement of the river should be presumed to be by accretion rather than by avulsion. 3 AMERICAN LAW OF PROPERTY, Section 15.29 (A.J. Casner ed. 1952). This author could find no Oklahoma cases precisely on this point.

BOUNDARIES

Where a river or a stream is the natural boundary, its gradual movement carries the owner's line with it. *Goins v. Merryman*, 183 Okl. 155, 80 P.2d 268 (1938). In the event of a movement by avulsion, the boundary line remains at the old water line and becomes fixed thereby, not subject to the further caprice of the river, and the ownership of the old stream bed remains with its former owner. *Mapes v. Neustadt*, 197 Okl. 585, 173 P.2d 442 (1946). Such is the rule whether the stream is navigable or non-navigable. *Goins v. Merryman*, supra. This rule is equally applicable to boundary disputes between states. *Arkansas v. Tennessee* 246 U.S.

158 (1918); *Stark v. Meriwether*, 98 Kans. 10, 107 P. 438 (1916). For a good discussion of the problems involved in determining the boundary line between Oklahoma and Kansas, see 99 TEXAS LAW REVIEW, 309.

Navigable Rivers and Streams

A riparian owner upon a navigable stream takes only to the high water mark, the title to the bed being in the state. *TIDEMAN, REAL PROPERTY* 688 (3d ed. 1906). Title to land bordering on navigable streams should stop at the stream and all such streams should be deemed to be and remain public highways. *Paul & P. R. Co. v. Schurmeir*, 7 Wall. 272, 200, 10 L. Ed. 74 (1869). The question of whether a particular stream is in fact and in law navigable or non-navigable is a local question to be determined by the decision of the courts in the states where subject streams are located. *United States v. Champlin Refining Co.*, 156 F. 2d 760 (10th Cir. 1946), affirmed, 331 U.S. 788 (1947); *United States v. Brewer-Elliott Oil & Gas Co.*, 340 F. 609 (W. D. Okla. 1918), affirmed 260 U.S. 77, 43 Sup. Ct. 60, (1922). However, as is pointed out by Mr. C. E. Barnes in his article appearing in 17 OKLAHOMA LAW REVIEW 159 this rule is subject to two important exceptions:

1. Where the land originally belonged to the federal government and was vested in Indian tribes or allottees under federal rules or treaties prior to statehood, the state laws must yield to the rights acquired before statehood under federal laws or treaties. *United States v. Brewer-Elliott Oil & Gas Co.*, supra.

2. Whether an interstate river or lake is navigable or non-navigable involves interpretation of the United States Constitution and laws, and hence a question within the jurisdiction of the federal courts. 41 Stat. 1003, Section 3 (1935), 16 U.S.C. Section 796 (8) (1958); *Grand River Dam Authorities v. Going* 20 F. Supp. 316 (N.D. Okla. 1939).

As stated above, the doctrine of accretion applies to reliction, both by the common law and 60 Okl. St. Ann. 335. Reliction is particularly important when discussing navigable waters because unqualified riparian ownership extends only to the high water mark. Thus, the recession of water has a significant effect on ownership. 3 AMERICAN LAW OF PROPERTY, Section 12.32 (A.J. Casner ed. 1952).

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In Oklahoma, all of the major rivers have been judicially determined as non-navigable except the portion of the Arkansas River between the confluence with the Grand River and the Arkansas state line which was determined navigable. *Vickery v. Yahola Sand & Gravel Co.*, 158 Okl. 120, 12 P.2d 881 (1932). Thus, questions involving navigability are of minor significance in Oklahoma.

Non-Navigable Rivers and Streams

As to non-navigable rivers and streams, all states follow the English rule, PATTON ON TITLES, Section 132 (2d ed 1957) which states that the owner on either side of a non-navigable river or stream owns to the center or the thread of the stream. *Stone v. McFarlin*, C. A. Okl., 249 F. 2d 54 (1957). Thus, accretion or relicton does not change title until it extends from one side beyond the center. This author notes that if for some reason title extends to the bank on the other side, then it is immediately affected by accretion or avulsion.

Having determined that the thread of the stream is the boundary line where a river or stream is the natural boundary of a tract of land, let us next consider the lateral boundaries of the tract contiguous to the river or stream. In determining the lateral boundaries, let us suppose that a surveyor is called in to run the lines delimiting the title. If the stream does NOT meander, the government survey lines will cross the stream in a straight line. Unmeandered streams are not boundaries of anything so far as government surveys are concerned. Hence, a conveyance of land crossed by an unmeandered stream, according to the U.S. government survey, incorporates government sub-division lines as shown by the government plats, and where these lines cross the stream, they indicate the boundary in and across the stream. If waters are not meandered, the section is not a fractional section. See *Bade, Title, Points and Lines in Lakes and Streams*, 24 Minn. L. R. 305 (1940).

If the stream DOES meander, the thread is still the boundary between opposite riparian owners, but a different rule will apply to the running of the side lines in the stream. The east, west, north and south survey lines do not run across the stream. They run to the meander line and stop there, although the thread of the stream is the exterior boundary at this point. 43. U.S.C.A. Section 751, 752; *Manual of Instructions*

(1930 Ed.) 182, 216. The effect of meandering is to make the section or other government sub-division in or through which the waters extend, a fractional sub-division. These fractional sub-divisions are disposed of as such by the United States government. *Jefferis v. East Omaha Land Co.*, 134 U.S. 178, (1890).

Now that we have determined that the upland sideline boundary lines run to the meander line, what about from the meander line to the thread of the stream? Should they be projected into meandered waters in a straight line to form the boundary between the meander line and the thread of the stream? No. The angle at which the upland boundaries approach a water boundary is of no consequence in determining the direction of the lateral lines of the bed. A straight projection would "sectionize" the beds of meandered waters, whereas the United States government surveys did not run its lines into or through such beds. 43 U.S.C.A. Sec. 752.

The rule is set forth in the case of *Rector v. United States*, 20 F.2d 845 (C.C.A. 8th Cir. 1927) and *United States v. Hayes*, 20 F.2d 873 (C.C.A. 8th Cir. 1927), certiorari denied at 275 U.S. 552, 555 (1927), wherein the rule was stated as follows:

"The riparian rights of the abutting lot owners are to be determined by dropping a perpendicular from where the meander line intersects the boundary line, to the thread of the stream and these perpendiculars mark the boundaries of the riparian rights from the meander line to the thread of the stream, and also include the land between the river and the meander line.

"In dropping the perpendiculars from the intersections of the meander line with the boundary lines of the various lots, the thread of the stream is to be considered as a straight line and the perpendiculars dropped to that straight line."

To illustrate this rule, the diagram of the River of No Return appearing in Section 00 somewhere in Okie County (Diagram I) is provided. The solid lines represent the application of the rule above stated and the hash marks represent the inequitable straight line projection method.

The injustice that would result from the application of a straight projection of the upland

side lines is easily demonstrated by reference to the diagram below. By the rule of straight projection of the upland side lines, the owners of government lots 3 and 7 would get a relatively large area of the riverbed. The owners of lots 2, 5, and 15 would never reach the thread of the stream at all, and would by this rule cease to be riparian owners when the waters receded, contrary to the law of accretion and the general rule applicable to riparian rights. Lot 15, although it has a short water boundary according to the government survey, would to all intents and purposes be non-riparian according to this rule. Again, the rule of straight projection results in conflicts and may leave parts of the bed without an owner. Thus, we can see that

projecting side lines straight into the bed does not, except by accident, promote the best use of the bed and give each riparian owner his fair share of his land on the water.

Another reason for projecting the lateral line at a right angle to the stream is that most improvement in the beds of water are located along such lines. For instance docks, wharves, dams and bridges are commonly placed at right angles to the thread of the stream. Thus, this rule promotes the best use of the bed in waters.

When we consider the possibility that such riparian lands may have producing oil and gas wells, the importance of a just and non-

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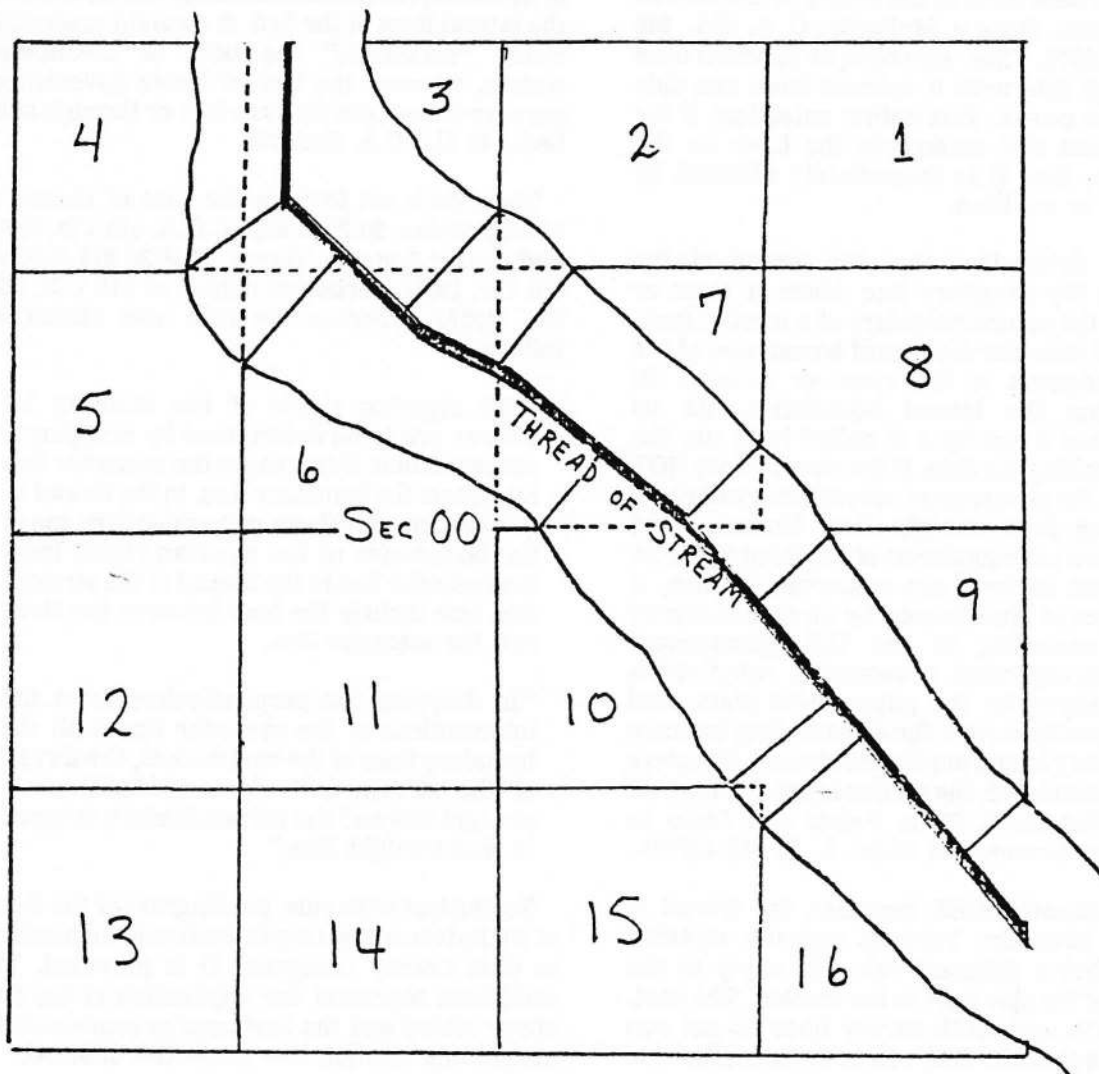


DIAGRAM 1

conflicting boundary in the bed is apparent. If certain owners get too much or too little as is the case in the straight line projection, royalty payments are inequitably distributed.

The fact that unmeandered waters are not a boundary of anything insofar as the U.S. surveys are concerned, does not prevent such waters from being made a boundary in private conveyance. The riparian owner may convey all, or none, or any part of the bed having boundaries of his own choosing so long as he owns what he purports to convey. *Oklahoma v. Texas*, 258 U.S. 574, (1922).

APPORTIONMENT

With the above introduction to surveys and boundaries, hopefully, this portion of the paper dealing with apportionment will be relatively easy to follow. This area has long been considered a complex facet of riparian ownership.

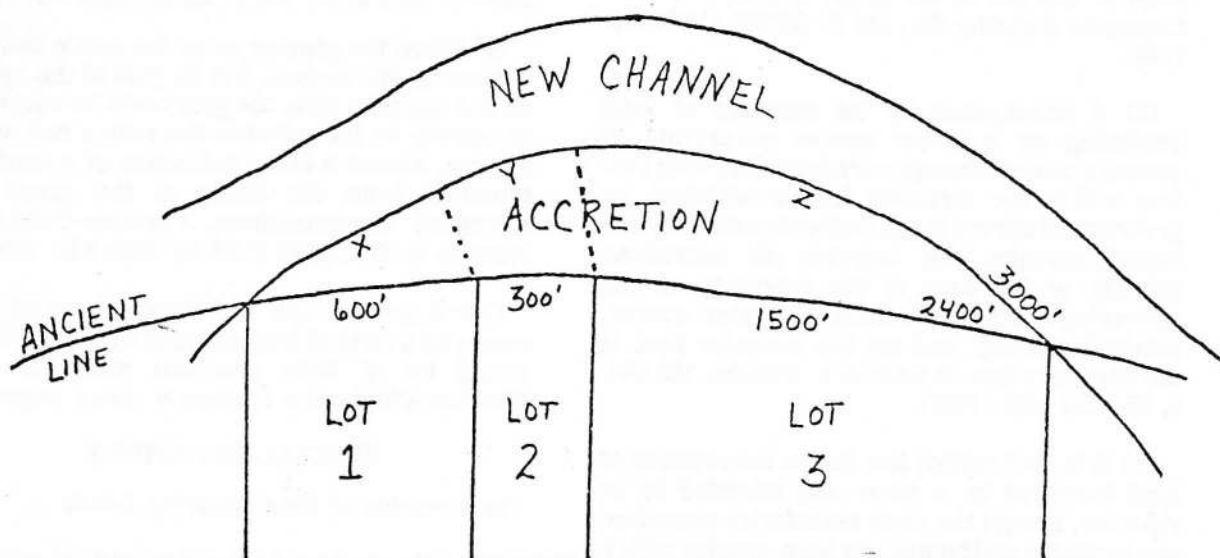
By apportionment we mean the method of

dividing accreted lands between adjoining riparian owners. Usually two objects have to be kept in mind: that parties shall have substantially their proportion of the new land; and that in cases where the water has not entirely disappeared, their share of the new water line should be proportionate to their ownership of the old water line. 3 AMERICAN LAW OF PROPERTY, Section 15.31 (A.J. Casner ed. 1952).

The rule in Oklahoma is set forth in the case of *Goins v. Merryman*, 183 Okl. 155 80 P.2d 268 (1938) as follows:

1. Measure the whole extent of the ancient line of the river and compute the feet, rods, yards that each riparian owner owned on the old river line.

2. Divide the newly formed river line into parts equal to the total feet, yards, rods thus found and give each owner the same number of parts on the new river line as he owned rods, feet, yards on the old river line.



Step 1: The length of the ancient river is $600' + 300' + 1500' = 2,400'$

Step 2: The length of the new river line is $X + Y + Z = 3,000'$. To solve for X, Y, and Z, we must set up proportions. $600'$ is to $2400'$ as X is to $3,000'$, or $600' / 2400' = X / 3000'$. By cross-multiplying ($2400' X = 600' \times 3000'$, or $2400' X = 1,800,000'$) and dividing both sides of the equation by $2400'$ ($2400' X / 2400' = 1,800,000' / 2400'$, or $X = 750'$), we determine that the owner of Lot 1 has a proportionate frontage line on the new channel of $750'$. We solve for Y and Z in the same manner. $Y = 375'$ and $Z = 1875'$.

Step 3: Lines are drawn from the lot lines on the ancient river line to the points as determined in Step 2.

DIAGRAM 2

3. To complete division, draw lines from the points at which the property of the owners bounded each other on the old river line to the points thus determined as the points of division on the newly formed shore.

In the event a deep indention or sharp projection in the river line results in an unfair apportionment of the land formed by accretion, the frontage line rather than actual length ought to be taken. Diagram II, coupled with the computation thereof, illustrates the above rule.

CONVEYANCES

When preparing and examining instruments of conveyance pertaining to riparian land, the attorney may find the following propositions helpful.

(1) Under the common law in the decisions of the United States Supreme Court, a grant of land bounded on a non-navigable river carries the exclusive right and title of the grantee to the center of the stream, unless the terms of the grant clearly denote the intention to stop at the edge or margin of the river. *United States v. Champlin Refining Co.*, 156 F. 2d 769 (10th Cir. 1946).

(2) A conveyance by lot numbers of land bordering on a water course purporting to convey a stated acreage corresponding with that line within the meander line established by government survey is not limited in extent by the stated acreage, but includes all accretions existing at the time of the execution of the conveying instrument, since the water course, although shifting, and not the meander line, is the boundary line. *Braddock v. Wilkins*, 182 Okl. 5, 75 P.2d 1139 (1938).

(3) It is well settled law that a conveyance of land bordered by a river and intended to be riparian, though the river boundaries described are by metes and bounds, as here, carries with it all accreted lands. *Choctaw-Chickasaw Nations v. Cox*, 251 F.2d 733 (10th Cir. 1958).

(4) An oil and gas lease of lands described by legal sub-division by operation of law conveyed accreted lands. The assignment of the lease without any reservation or exception likewise transferred accreted lands. *Pasotex Petroleum Company v. Cameron*, 283 F. 2d 63 (10th Cir. 1960).

(5) Title was to the center of the boundary

stream though the federal field plat and notes only showed the chart as running to the stream bank. *Phillips Petroleum Co. v. Davis*, 194 Okl. 84, 147 P.2d 135 (1942).

(6) Where a mineral deed refers to a fractional interest which is thereafter stated in a specific number of acres, accretions will not be considered in determining the land conveyed. *Wade v. Roberts*, 346 P.2d 727 (Okl. 1959).

(7) Accretions become part of the land to which they have been attached, and where no exception nor reservation of accretions is mentioned in an oil and gas lease, such accretions are covered by the lease. *Briggs v. Sarkeys, Inc.* 418 P.2d 620 (Okl. 1966).

(8) Where by the nature of the grant, the grantees took to the center of a non-navigable stream, it remained their boundary at all times. When the center of the stream shifted, the boundary to their tract shifted with it, and the application of 60 Okl. St. Ann. Section 335 did not constitute a violation of the Fifth Amendment. *Stone v. McFarlin*, 249 F. 2d 54 (10th Cir. 1957).

(9) When the grantor owns the entire bed of a non-navigable stream, but no part of the upland on the opposite side, the grant will be construed to convey to the grantee the entire bed of the stream, absent a clear indication of a contrary intention from the terms of the grant and attendant circumstances. *Choctaw-Chickasaw Nations v. Seay*, 235 F.2d 30 (10th Cir. 1956).

(10) A grantor will be presumed not to have reserved a strip of land covered by water, which would be of little practical value to him. *Choctaw-Chickasaw Nations v. Seay*, supra.

SPECIAL SITUATIONS

The Doctrine of Re-Appearing Lands

When land which is riparian with identifiable boundaries is submerged by the gradual movement of a river and is subsequently restored by the gradual recession of the river, the question arises as to whether title to the restored property remains in the owner of record title or vests pursuant to the law of accretion in an adjacent owner whose land was not originally riparian, but became riparian by the river's gradual movement.

In the case of *Hunzicker v. Kleeden*, 161 Okl.

102 17 P.2d 384 (1932), the land was gradually washed away and then the river abandoned its channel thus restoring the land. The court held that where the boundaries are capable of determination, the owner of lots prior to the erosion retained title when they were restored. Author's Note: We cannot be certain from the facts in this case whether the "abandonment" was by accretion or avulsion. The term "abandonment" would seem to imply an avulsion.

In *Mapes v. Neustadt*, 197 Okl. 585, 173 P.2d 442 (1946), the initial movement of the river was by avulsion, which was then followed by a gradual recession of the water and the reappearance of the submerged property. The original owner prior to the submergence was held to have retained title to the re-appearing lands.

In *Ford v. Harris*, 383 P.2d 21 (Okla. 1963), the course of the stream gradually passed over the defendant's land and the plaintiff then became riparian. Thereafter, the course of the stream gradually returned so that the defendant's boundary was capable of determination. The court held that the defendant continued to retain title to the re-appearing land.

In 1974 the 10th Circuit held that under Oklahoma law, when real property which is riparian and possessed by identifiable boundaries is submerged by gradual movement of a river, and is then subsequently restored by gradual recession of such river, title to such property remains in the owner of record title and does not vest, pursuant to the law of accretion, in an adjacent owner whose land was not originally riparian but which became riparian by the river's gradual movement. In this particular case, the defendant's land was passed over gradually by the river and then the river gradually returned so that the boundaries of the original owner prior to submergence could be determined. The court stated that whenever riparian land re-appears through a subsequent change in the course of the river, either by avulsion or by gradual movement, ownership to the re-appearing land, if it can be identified, is vested in the record title holder. Dictum indicates that this rule applies regardless of whether the movement of the river is by accretion or avulsion and whether the river is navigable or non-navigable. *Mikel v. Kerr*, 499 F.2d 1178 (10th Cir. 1974).

The rationale of the doctrine of re-appearing

lands is that where the land boundaries are capable of determination, equity dictates that the title to the restored land be retained in the original owner. Thus, from the above cases, it would appear that the doctrine of accretion in Oklahoma (60 Okl. St. Ann. Section 335) does not apply whenever a river recedes uncovering identifiable land which was formerly riparian.

However, in November of 1976, the doctrine of re-appearing land appears to have been qualified in the case of *Hodgden v. Kliever*, 557 P.2d 885 (Okl. 1976). In this particular case, the Cimarron River moved north by accretion between 1936 and 1950 destroying various tracts of land. In 1952, the river in one flood moved south by avulsion to the south side of the original channel where it remains to this date. The court found that the ownership was in the owners immediately prior to the avulsion, not the original owners prior to the movement by accretion. The court distinguished this case from *Mikel v. Kerr*, supra, because in that case the river had moved by accretion in both directions, and disregarded the dictum that the doctrine of re-appearing land applies to river changes whether by accretion or avulsion. Justice Doolin voiced a strong dissent and criticized the majority for adding confusion to this difficult area of the law by not accepting or overruling the *Mapes* Doctrine as espoused by the 10th Circuit in *Mikel v. Kerr*, supra. Justice Doolin further stated that he felt that the re-appearing land doctrine is more equitable, particularly for a river where an untrained observer can detect the meanderings and changes of banks within the old channel with comparative ease.

Accretion by Artificial Causes

60 Okl. St. Ann. Section 335, which sets forth the doctrine of accretion, states that the doctrine is limited to deposits from natural causes. However, this statute has not been interpreted literally in this respect. In the case of *Littlefield v. Nelson* 246 F.2d 956 (10th Cir. 1957), third parties conducted flood control work on the Arkansas River for several years. Such activity caused the river to recede to the north gradually. The court held that where additions to riparian lands on a navigable stream appeared gradually and were not caused by the riparian owner's own acts, but hastened by lawful acts of others, consisting of revetment and government flood control projects, the owner was entitled to the addition under the doctrine of accretion.

Application of the Statute of Limitations to the Doctrine of Avulsion

60 Okl. St. Ann. Section 336 provides that when a considerable portion of the river bank is carried away by sudden violence, the owner of the part carried away may reclaim it within a year after the owner of the land to which it has been united retakes possession thereof. The Oklahoma Supreme Court has not interpreted this provision of the avulsion statute to be a one year statute of limitation. A party claiming disputed land, about which the doctrine of avulsion has been found to be applicable, must show that he has had actual, exclusive and uninterrupted possession of the land for fifteen years, and that he went into possession and held possession under claim of title. *Willett v. Miller*, 176 Okl. 278 55 P.2d 90 (1936); *Porter v. Herron*, 295 P.2d 772 (Okl. 1956); *Nolte v. Sturgeon*, 376 P.2d 616 (Okl. 1962); *Hodgen v. Kliewer*, 557 P.2d 885 (Okl. 1976). Thus, it appears that the court's interpretation of the one year provision for reclaiming the bank in effect adds one year to the fifteen year statute of limitations for title by prescription (12 Okl. St. Ann. Section 93). Mr. Osborne M. Reynolds, Jr. discusses this provision of 60 Okl. St. Ann. Section 336 in his

article entitled *Oklahoma Real Property Law Areas the Lawmakers Might Revisit*, appearing at 41 OKLAHOMA BAR ASSOCIATION JOURNAL 2397 (1970).

Assessment for Tax Purposes

Where fractional lots of a section bordering a stream are assessed for taxation by the lot numbers designated in a government survey, with or without any designation of acreage, such assessment includes any accretions thereto. Where taxes levied pursuant to such assessment are paid by the land owner, the accretions are not subject to sale for alleged delinquent taxes separately assessed by the county assessor. *Criswell v. Wilson*, 198 Okl. 47, 175 P.2d 87 (1947).

DESSERT

In conclusion, it is obvious that the effects upon the ownership of land caused by the movement of a river or stream are myriad and frequently difficult to swallow. If this paper is of some assistance to the title examiner in his or her attempts to digest the effects, this author will feel rewarded.

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