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## AGRI LIMITATI

BY McCUNE GILL

*In agris limitatis jus alluvionis locum non habere constat; idque et Divus Pius constituit.* So wrote one Florentinus in the *Digest*.<sup>1</sup> "In limited fields the right of accretion is certainly held to have no place; and the Divine (Emperor) Pius has so decreed."

It is a far cry from the shores of the Tiber in the year 140, to the banks of the Missouri in July, 1931. But we find that on the latter date the case of *Ancona v. Frazier*,<sup>2</sup> was decided on the authority of the ancient dogma of the (more or less) pious Antonine. In this Missouri case, it was held that a description, "running to the high bank" of a river, describes an *ager limitatus*, and not a riparian property, and that the owner is not entitled to accretions.

In *Sweringen v. St. Louis*,<sup>3</sup> the Supreme Court held that twenty-five blocks of valuable industrial property in North St. Louis covered with factory buildings, did not belong to the people who had owned them for seventy-five years, but belonged to the School Board. This on the theory that, while the land was actually an accretion to an original shore tract, it was legally an island, due to the fact that the descriptions in the conveyances of the shore tract began "at a stake set on the right bank of the Mississippi River between high and low water mark, thence (by courses and distances) between high and low water mark," etc. The School Board immediately quitclaimed its new found interest back to the real owners.

The starting point for these decisions in Missouri is *Smith v. Public Schools*.<sup>4</sup> The land was held to be limitatious, and not arcifinious or riparian. The original French concession described the property as *du cote du Mississippi faisant face au fleuve par devant la grande rue, i. e.*, on the side of (or toward) the Mississippi on which river it faces and in front of which is the main street (or wharf). The easement for the wharf was held to deprive the owner of any claim to accretions. This early

<sup>1</sup> Florentinus in Dig. 41, 1, 16.

<sup>2</sup> (Mo. 1931) 41 S. W. (2d) 820.

<sup>3</sup> (1899) 151 Mo. 348, 52 S. W. 346.

<sup>4</sup> (1860) 30 Mo. 290.

decision was followed in the later cases of *Ellinger v. Railway*,<sup>5</sup> and *City v. Railway*,<sup>6</sup> and by the Supreme Court of the United States in *Schools v. Risley*.<sup>7</sup>

But other cases with very similar facts have been decided the other way, (perhaps as an object lesson for over-confident title examiners). In *Frank v. Goddin*,<sup>8</sup> a description of an island was by the surveyor's courses and distances; nevertheless it was held to be riparian. And in *Dumm v. Cole County*,<sup>9</sup> a description "bounded by the Main channel of the Missouri River," but with a surveyor's course and distance description along low water mark, was also held to be riparian and not limited.

The doctrine of limited fields is in no way confined to Missouri. On the contrary, it will be found in the decisions of most of our States.

As early as 1827, Justice Story in a Maine case held that "beginning at a stake on the west bank of the Penobscot River, thence to a stake and stones on the bank" described only a limited field and conveyed no title to the flats beyond the monuments.<sup>10</sup> The same rule obtains where the description runs along "the west bank" of a creek.<sup>11</sup>

In New York the leading case is *Cook v. McClure*,<sup>12</sup> where the description commenced at "a stake near the high water mark of a pond thence along the high water mark of said pond" and it was held that the owner was not entitled to accretions. Forty years later we find the Court of Appeals still holding that a description "along Westchester Creek and a certain stone wall" on the bank of the creek bed, conveyed no interest in the bed of the creek.<sup>13</sup>

Massachusetts has similar ideas. Thus a description "bounded by the beach" does not convey the shore below high water mark.<sup>14</sup>

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<sup>5</sup> (1892) 112 Mo. 525, 20 S. W. 800.

<sup>6</sup> (1893) 114 Mo. 13, 21 S. W. 202.

<sup>7</sup> (1869) 10 Wall. 91.

<sup>8</sup> (1905) 193 Mo. 390, 91 S. W. 1057.

<sup>9</sup> (1926) 315 Mo. 568, 287 S. W. 445.

<sup>10</sup> *Dunlap v. Stetson* (Me. 1827) 4 Mason 349.

<sup>11</sup> *Bradford v. Cressey* (1858) 45 Me. 9.

<sup>12</sup> (1874) 58 N. Y. 437.

<sup>13</sup> *Opening West Farms Road* (1914) 212 N. Y. 325, 106 N. E. 102.

<sup>14</sup> *Litchfield v. Ferguson* (1886) 141 Mass. 97, 6 N. E. 721.

Passing to the other side of the continent, we find in California, a deed describing a lot as extending "to the bank of Cache Creek," which description was held to convey to the bank only and not to the center of the creek.<sup>15</sup> And in a decision in 1895, the Supreme Court held that a numbered lot ran only to a bluff along the Los Angeles River even though the deed did not refer to the bluff and it was shown on the plat merely as a dotted line.<sup>16</sup>

In Oregon, we have a description by lot number, where the lot was actually located under the surface of the ocean; still it was held that the deed carried no riparian rights.<sup>17</sup> In a more recent case,<sup>18</sup> it was held that a description "commencing on the right bank of the Willamette River on the north side of a cottonwood tree, etc., thence to the banks of the river, thence by the bank to beginning" did not convey to the water's edge.

Illinois also takes the position that a lot platted and numbered as bounded by a lake carries to the lot line only and gives no rights in the bed of the lake.<sup>19</sup> In *Hardin v. Jordan*,<sup>20</sup> concerning a tract in South Chicago, three of the judges of the United States Supreme Court agreed with this decision; but six did not agree.

In a Wisconsin deed the description was "extending eastwardly to the west bank of the mill pond on Fox River at low water mark." This was held to carry no title to the bed of the river.<sup>21</sup>

And in Iowa, the same conclusion was reached where the description ran "up the west bank of Pine Creek."<sup>22</sup>

In Florida, it was held that a platted lot No. 1 shown as containing 21.73 acres and bounded on two sides by a lagoon was a limited lot and did not include any other adjacent land in the lagoon.<sup>23</sup> And a description "to the shore of Orange Lake" was held not to be a boundary on the lake, nor to confer any riparian rights.<sup>24</sup>

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<sup>15</sup> *Hutton v. Yolo* (1928) 203 Cal. 704, 265 Pac. 933.

<sup>16</sup> *Hostetter v. Railway* (1895) 108 Cal. 38, 41 Pac. 330.

<sup>17</sup> *Grant v. Oregon Co.* (1907) 49 Ore. 324, 90 Pac. 1099.

<sup>18</sup> *Richards v. Page* (1924) 112 Ore. 507, 228 Pac. 937.

<sup>19</sup> *Trustees v. Schroll* (1887) 120 Ill. 509, 12 N. E. 243.

<sup>20</sup> (1891) 140 U. S. 371.

<sup>21</sup> *Allen v. Weber* (1891) 80 Wis. 531, 50 N. W. 514.

<sup>22</sup> *Murphy v. Copeland* (1879) 51 Iowa 515, 1 N. W. 691.

<sup>23</sup> *Lord v. Curry* (1916) 71 Fla. 68, 71 So. 21.

<sup>24</sup> *Axline v. Shaw* (1895) 35 Fla. 305, 17 So. 411.

Along Lake Erie in Ohio, it was held that a meandered line along a marsh was limited to the upland property, the owner of which took no title to the marsh or flats.<sup>25</sup> The United States Supreme Court came to the same conclusion in *Niles v. Cedar Point Club*.<sup>26</sup>

Michigan and Indiana have two interesting cases indicating that a tract may be partly arcifinious and partly limitatious.<sup>27</sup> These cases hold that the riparian owner of a fractional section bounded by a nonnavigable lake will take the bed of the lake but only out as far as the lines of the section extended into the lake.

In New Jersey, we see another compromise case where the conveyance was to a street bordering the ocean. It was held that if the street was under water (at high tide) when the deed was made, the lot was riparian and was entitled to accretions; but otherwise if the street was dry at high tide.<sup>28</sup>

One of our newest States, in one of its latest decisions, continues to follow the statute of the father of Marcus Aurelius. A plat showed a dedicated street which abutted lots on one side and abutted a nonnavigable river on the other, all of which were owned by the platter. She sold the lots by number only, but using an acreage that would extend to the center of the river. The grantor paid no taxes on the river bed and made no claim to it for twenty-three years, until an oil company proposed to drill a well there. The court held that the deed described a tract limited by the center line of the street and not by the center line of the river.<sup>29</sup>

But it is in the Louisiana Reports that one may find a veritable storehouse of the lore of *agri limitati*. And something of our national history as well. For these "batture" cases, as they are called, are closely linked with such names as Jefferson, Livingston, Madison, Monroe, and others of equal fame. Now, "batture" means a strip of ground that is "battered" by the waves, just as "beach" is a strip that is "beatian" by the same sort of waves; that is, the shore or, in other words, accretions. The

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<sup>25</sup> *James v. Howell* (1885) 41 Ohio 696.

<sup>26</sup> (1899) 175 U. S. 300.

<sup>27</sup> *Clute v. Fisher* (1887) 65 Mich. 48, 31 N. W. 614; *Stoner v. Rice* (1889) 121 Ind. 51, 22 N. E. 968.

<sup>28</sup> *Ocean City Hotel Co. v. Sooy* (1909) 77 N. J. L. 527, 73 Atl. 236.

<sup>29</sup> *Anderson v. Key* (Okla. 1931) 299 Pac. 850.

best of the cases are *Morgan v. Livingston*,<sup>30</sup> (the report of which fills 237 pages), and *Municipality No. 2 v. Cotton Press*,<sup>31</sup> (with 156 pages). In the first case Judge Martin thinks that a description *frente al rio*, or "fronting on the river," (to use the phrase of the Spanish grants), gives the proprietor the ownership of the accretions, and in the other he thinks it does not, the property in each case being separated from the river by a street or road. The land involved in the latter case, the "Suburb Ste. Marie" is now the principal business section of New Orleans—on the "other" side of Canal Street. That the Louisiana Court still has the same opinion it had in the "batture" cases is shown in an oil land case in 1913, where it was held that a description to a meandered line did not carry accretions.<sup>32</sup>

All of this means two things to a title examining attorney: he must write descriptions in new deeds so that they run to the thread of the river, or to the middle of the ocean, or to some other place so wet that no court can say that only a limited field was intended to be conveyed; and he must vest with extreme care all titles through old deeds with descriptions running to banks, shores, beaches, streets, stakes and stones, as well as water lines, high, low or medium.

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<sup>30</sup> (1819) 6 Mar. O. S. 19.

<sup>31</sup> (1841) 18 La. O. S. 122.

<sup>32</sup> *Producers Oil Co. v. Hanszen* (1913) 132 La. 691, 61 So. 674.