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Navigable Waters - Riparian and Littoral Rights - Title to Islands Formed by Accretion

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NAVIGABLE WATERS — RIPARIAN AND LITTORAL RIGHTS — TITLE TO ISLANDS FORMED BY ACCRETION — In 1904, the formation of a sand bar in the Missouri River resulted in a shifting of the currents which caused the river to begin to erode away the east bank mainland lots held under federal patent by the defendant's predecessors. Over the course of years, these lots were entirely eroded away while the sand bar grew to island size. In 1928, the state land department assumed authority over the island. As accretions to the island caused it to build up in the direction of the east bank of the river, the deposit of alluvion took place also on the mainland bank. These accretions met, and what had been a channel separating the western shore of the island from the eastern bank of the river became fast dry land. Plaintiffs, holding by grant from the state, sought to quiet their title to the island. Defendants contended that restoration of lands through accretion in the exact location of the lands held by their predecessors in interest re-established title in them paramount to that of plaintiffs. The court *held* that title to an island formed in the bed of a stream by deposit of alluvial accretions is vested in the state; that accretions to an island accrue to the island owner in the same manner that accretions to the mainland accure to the riparian owner; and that if accretions to the island and the mainland meet, ownership extends to the line of contact. *Hogue v. Bourgois*, 71 N. W. 2d 47 (N. D. 1955).

At common law, the holder of land along a non-navigable stream owned the stream bed to its center; hence ownership of an island forming in such a stream depended on its location with reference to the center line. On the other hand, title to islands arising in the sea or in a navigable stream vested at once in the crown.[1] These rules for navigable[2] and non-navigable[3] streams are included in the statutes of this state, and have been a part of our law since territorial days.[4] In accord with North Dakota statutes, the United States Supreme Court has held that lands underlying navigable streams are vested in the state upon admission into the Union.[5] Where an island is formed *after* admittance to the Union, the exception contemplated by the words ". . . if there is no title or prescription to the contrary. . ."[6] cannot be applied with reference to any federal patent, and the reservation in the state is controlling.[7] It has been recognized that the boundaries of lands bordering on a navigable stream extend to the low water mark[8] without regard to how that line shifts,[9] a result required by the concept of ownership by the state of the stream bed.

Accretion is defined as "the act of growing to a thing, usually applied to the gradual and imperceptable accumulation of land by natural causes, as out of a sea or river".[10] Avulsion, in contrast, is "the removal of a considerable

1. 2 Blackstone Commentaries *261.
2. N. D. Rev. Code §47-0608 (1953 Supp.): "Islands and accumulations of land formed in the beds of streams which are navigable belong to the state, if there is no title or prescription to the contrary . . .".
3. N. D. Rev. Code §47-0609 (1943): "An island or accumulation of land formed in a stream which is not naviable 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.".
4. Civil Code of Dakota Territory §586, 587 (1877).
5. Scott v. Lattig, 227 U. S. 229 (1913).
6. N. D. Rev. Code §47-0608 (1953 Supp.).
7. Roberts v. Taylor, 47 N.D. 146, 181 N.W. 622 (1921).
8. State v. Loy, 74 N.D. 182, 20 N.W.2d 668 (1945).
9. Jefferis v. East Omaha Land Co., 134 U. S. 178 (1890).
10. Black's Law Dictionary 36 (4th ed. 1951).

quantity of soil from the land of one man, and its deposit upon or annexation to the land of another, suddenly and by the perceptible action of water".[11]

Where land is lost through avulsion, the property remains in the original proprietor.[12] At common law,[13] and by statute in North Dakota,[14] land formed by accretion belongs to the riparian owner on whose land the deposit occurs. This result is based on the doctrine of *de minimas non curat lex*[15] and that the gain flows to the riparian owner as a reciprocal consideration for the loss he often sustains without remedy to the river or sea.[16] This entitlement has also been based on the right of the riparian owner to continued access to the water.[17] The right of such landowners to take is superior to that of the state[18] and the owner of an island is entitled to accretions accruing to it in the same manner as a shore owner.[19]

As title to accretions is thus vested in the riparian owner, so also does the owner lose his title when the property is gradually eroded away.[20] Where the process of erosion is arrested and is followed by the deposit of new lands through accretion, title to the new lands thus formed vests according to the ownership of the lands to which the accretion occurs.[21] Therefore, under the Connecticut rule which is followed by the a majority of the Mississippi and Missouri River states,[22] if riparian land completely eroded away, making what was formerly inland land riparian, the owner of the latter becomes entitled to the accretions, to the complete exclusion of the former owner.[23] Under contrary view, as enunciated in *Ocean City Association v. Shriver*,[24] title to land subsequently formed by accretion which extends over the original boundaries of the former riparian owner's tract is re-vested in him. In this decision, the court cited with approval a rule intially set forth in *De Juris Maris*, a work ascribed to Lord Hale. It has been suggested that this rule was intended to relate only to sudden changes by avulsion or submergence, and that the New Jersey court erred in applying it to a case involving accretion.[25] South Dakota, however, which is firm in its support of the *Ocean City* case, contends that the Connecticut rule was based on the inability to re-locate boundary lines, and that where boundaries of the restored land can be fixed, title will re-vest in the former owner.[26]

Where accretions to an island and the mainland meet, the boundary line between them is established as at the line of contact. Obviously the establish-

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11. Id. at 173.
12. Rees v. McDaniel, 115 Mo. 145, 21 S.W. 913 (1893).
13. 2 Blackstone Commentaries *262.
14. N. D. Rev. Code §47-0605 (1943): "Where from natural causes land forms by imperceptable degrees upon the bank of a river or stream, navigable or not navigable, either by the accumulation of material or by the recession of the stream, such land belongs to the owner of the bank, subject to any existing right-of-way over the bank.".
15. The law takes no cognizance of small things.
16. 2 Blackstone Commentaries *262.
17. Lamprey v. Metcalf, 52 Minn. 181, 53 N.W. 1139, 1142 (1893) (dictum).
18. Stevens v. Arnold, 262 U. S. 266 (1923).
19. Roberts v. Taylor, 47 N.D. 146, 181 N.W. 622 (1921).
20. Oberly v. Carpenter, 67 N.D. 495, 274 N.W. 509 (1937).
21. 19 Tenn. L. Rev. 862 (1947).
22. 19 Tenn. L. Rev. 864 (1947).
23. Welles v. Bailey, 55 Conn. 992, 10 Atl. 565 (1887).
24. 64 N.J.L. 350, 46 Atl. 690 (1900).
25. Yearsley v. Gipple, 104 Nebr. 88, 175 N.W. 641 (1919).
26. Allard v. Curran, 41 S.D. 73, 168 N.W. 761 (1918).

ment of such a line of contact is essential to the determination of the rights of the parties[27].

In the instant case, the court appears to have correctly applied the law. While it is true that land was restored to the location of that lost, the restoration was the result of accretion to the island, which was formed initially in the bed of the Missouri River, title to which was by statute vested in the state.

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SCHOOLS AND SCHOOL DISTRICTS — SCHOOL DISCIPLINE — REASONABLENESS AND VALIDITY — The principal of a public school promulgated the following rule: "No one while in school shall be allowed to enter the restaurant of Mr. Russell or any other business establishment in the town from 8:15 A.M. until 3:00 P.M. without permission." Children who lived near the school were permitted to go home for lunch upon request of their parents. All other students were required to eat in the school operated lunch room, which fed indigent pupils without charge. Appellee, who had two children in school, persisted in taking them or allowing them to go to Mr. Russell's cafe for lunch. The two children were suspended from school, but were to be automatically reinstated upon compliance with the school regulation. The lower court held the regulation void as being arbitrary and unreasonable, but on appeal it was *held* that the regulation, promulgated within the general discretionary powers of the school authorities, was neither unreasonable nor arbitrary, and appeared to be for the common good of all the children attending the school. *Casey County Board of Education* v. *C. T. Luster,* 282 S.W. 2d 333 (Ky. 1955).

The conduct of students, relating to and affecting the management of a school, is within the proper regulation of school authorities.[1] However, every school regulation must be reasonable,[2] and if so can not be invalidated.[3]

School regulations have been deemed reasonable that regulate the type of clothing to be worn,[4] the use of cosmetics,[5] and the time when pupils can leave the school grounds.[6] Conversely, school regulations have been considered

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27. Waldner v. Blachnik, 65 S.D. 449, 274 N.W. 837 (1937) (Plaintiff who failed to establish the line of contact between island and mainland accretions could not prevail).

1. Kinzer v. Directors of Independent School Dist. of Marion, 129 Iowa 441, 105 N.W. 686 (1906) (dictum).

2. See Richardson v. Braham, 125 Neb. 142, 249 N.W. 557 (1933).

3. Satan Fraternity v. Board of Public Instruction for Dade County, 156 Fla. 222, 22 So.2d 892, 893 (1945) (dictum).

4. Jones v. Day, 127 Miss. 136, 89 So. 906 (1921) (Court held a school regulation reasonable which required pupils in an agricultural high school to wear khaki uniforms while attending school and when visiting public places within five miles of the school).

5. Pugsley v. Sellmeyer, 158 Ark. 247, 250 S.W. 538 (1923) (Court, with one judge dissenting, held a regulation reasonable which prohibited students from using face paint or cosmetics. The court in arriving at its decision considered whether there was any humiliation or oppression to the student and what consumption of time or expenditure was neccessary to comply with it).

6. Christian v. Jones, 211 Ala. 161, 100 So. 99 (1924); Richardson v. Braham, 125 Neb. 142, 249 N.W. 557 (1933) (School rule was upheld that prohibited students from leaving school grounds between 9:00 A. M. and 3:05 P. M. except students who lived close to the school and whose parents requested in writing that they be permitted to go home for lunch).