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Accretion -- A New Slant

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not automatically rise to full cash value as a result of either the *Sproul* or *Cosen* judicial determinations. Whatever the reason, be it political expediency or administrative difficulty, the fact remains that assessments, at least in Dade County, are still far below the statutory requirement of full cash value. The *Sproul* and *Cosen* courts refused to accept the fact that all property was being assessed at a figure below full cash value. Owners who alleged discrimination in assessment were brushed aside by the non sequitur statement that assessments were now being made at full cash value.[26] If the courts repeat the hollow statements of the *Sproul* and *Cosen* cases, they will allow discrimination to continue. On the other hand, to lower an assessment which is not above full cash value to the actual level of valuation would be a violation of the statute. The hiatus of this dichotomy can be reconciled by assessing all property at its full cash value in accordance with the statutory requirement. The court announced this remedy in *State ex rel. Kent Corp. v. Board of County Comm'rs*.[27] The reluctance of the *Kent* court to order compliance with the strict wording of the statute, because of an inability to show that assessments were in fact below full cash value, should be sufficiently negated on the basis of the statements of the circuit court judges and the administrative officers of the county.

THEODORE KLEIN

ACCRETION—A NEW SLANT

The parties in this action to quiet title were owners of adjacent tracts of land, separated by a channel, on the Gulf of Mexico. Over a period of years, the plaintiff's land increased in size, growing out into the Gulf over sovereign land,[1] until it extended in front of, but did not touch, the land of the defendant, almost completely blocking him from the Gulf (see map). *Held*: Accretions belong to the land to which they are joined, regardless of the fact that they also extend in front of other lands. *Ford v. Turner,* 142 So.2d 335 (Fla. 2d Dist. 1962).

The law concerning accretions has been considered settled for a long time.[2] An accretion is usually defined as the natural addition of soil, sand, and sediment to land adjacent to water, so gradual that no one can perceive how much is added at any one time.[3] In most cases, the formations belong to the owner of the land against which they form.[4]

26. See note 12 *supra* and accompanying text.
27. 160 Fla. 900, 37 So.2d 252 (1948).

1. See FLA. STAT. § 253.12 (1961).
2. See, *e.g.*, INSTITUTES 2.1.20.
3. BOYER, FLORIDA REAL ESTATE TRANSACTIONS, § 13.07(3) (1961).
4. Paxson v. Collins, 100 So.2d 672 (Fla. 3d Dist. 1958); Mexico Beach Corp. v. St. Joe Paper Co., 97 So.2d 708 (Fla. 1st Dist. 1957).

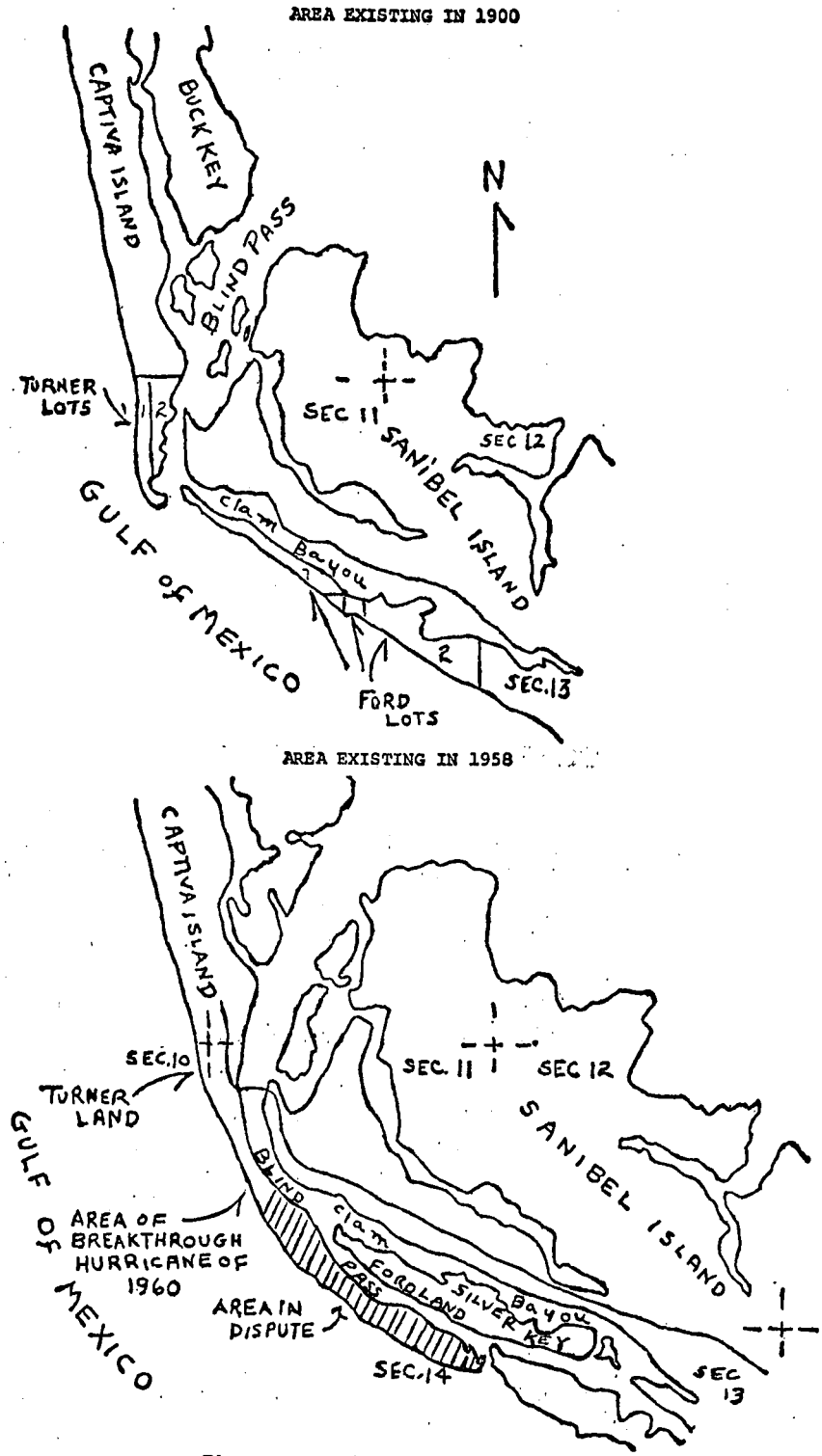

Plate courtesy of WEST PUBLISHING COMPANY

In cases involving rivers,[5] an accretion touching the land of several riparian owners is divided among them as fairly as possible.[6] Occasionally, an accretion lengthwise in a river in front of several riparian tracts will be contiguous to only one of them. In order to decide who owns the formation, it is necessary to determine who has title to the bed of the stream.[7] If the bed belongs to the riparian owners, each owns the portion of the accretion that is over his portion of the river bottom, regardless of where it touches the bank.[8] But where the state owns the bed of the river, accretions probably belong to the owner of the bank they form against, even when they extend lengthwise in the river in front of the land of others.[9]

Underlying these rules for dividing accretions is the leading case of *Deerfield v. Arms*,[10] in which it was held that there are two main objects to be kept in view when dividing accretions: first, that the parties should have the same proportional share of the new land that they have of the old;[11] and second, that *each should retain his access to the water.*[12] It is this second objective that seems to have been uppermost in the mind of the Supreme Court of Maryland when, in a decision concerning a fact pattern *exactly* like the one in the instant case, the court said:

> To hold that the land involved in this case belonged to the appellant [in a similar position as the instant plaintiff] would entirely exclude the appellees from the bay, at least to the extent the land has formed off their shore, and would deprive them of their riparian rights in respect thereto.[13]

Also, the Supreme Court of Florida, in *Hayes v. Bowman*,[14] an excellent opinion concerning the riparian rights of two adjoining waterfront

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5. The instant case does not involve a river, but the court failed to notice that distinction.

6. See generally Annot., 65 A.L.R.2d 143 (1959); 56 AM. JUR. *Waters* § 477 (1947); 93 C.J.S. *Waters* § 76 (1956); 65 C.J.S. *Navigable Waters* § 82 (1950).

7. In the majority of states, including Florida (see statute cited note 1 *supra*), title to the bed of navigable streams is in the state, while in the other states, riparian owners have title to the bed. See generally Annot., 54 A.L.R.2d 643, 646-650 (1957); 56 AM. JUR. *Waters* § 453 (1947).

8. St. Louis v. Rutz, 138 U.S. 226 (1891); see Annot., 54 A.L.R.2d 643 (1957).

9. This rule can only be found by examining the cases concerning accretions to *islands* in rivers, as research has not unearthed any reported cases involving this set of facts along the *banks* of a river whose bed is state owned. *E.g.*, Van Dusen Inv. Co. v. Western Fishing Co., 63 Ore. 7, 124 Pac. 677, *aff'd on rehearing*, 63 Ore. 7, 126 Pac. 604 (1912); see generally Annot., 54 A.L.R.2d 643 (1957). We shall see more of this dubious rule later. See also McGill v. Thrasher, 221 Ky. 798, 299 S.W. 955 (1927); Archer v. Southern Ry., 114 Miss. 403, 75 So. 251 (1917). See generally Annot., 54 A.L.R.2d 643, 654 (1957).

10. 17 Pick. 41, 28 Am. Dec. 766 (Mass. 1853).

11. This objective may not apply to the instant case, where the accretion does not come in contact with the defendant's land.

12. This is one of the basic riparian rights. See FLA. STAT. § 271.09 (1961); 6 POWELL, REAL PROPERTY 589 n.37 (1958).

13. Waring v. Stinchcomb, 141 Md. 569, 572, 119 Atl. 336, 340 (1922).

14. 91 So.2d 795 (Fla. 1957).

owners, said that in any given case concerning riparian or littoral rights, the court must necessarily *give due consideration to the correlative rights of adjoining upland owners.*[15]

Yet, in holding for the plaintiff in the instant case, the court looked solely to the fact that the state owned the submerged land in front of the property, using a rule that has thus far been used only to determine ownership of accretions to islands in rivers, rather than along the shore of an open sea. If the court is correct, this indicates that riparian rights such as ingress and egress are now determined by ownership of the submerged land. It is difficult to reconcile this concept with the well-established rule, mentioned in *Hayes*, that, "[L]ittoral or riparian rights are appurtenances to ownership of the uplands. They are not founded on ownership of the submerged lands."[16]

It is submitted that the court erred in the following respects: First, a rule which applies only to islands in a river was applied to the shore of the Gulf of Mexico; second, the defendant's riparian rights were completely disregarded; third, the rationale provided by the Supreme Court of Maryland[17] was ignored.

It is expected that when the sea washes the land, the results will be arbitrary, but one expects more than caprice from a court of law.

WARREN M. SALOMON

INSURANCE—EFFECTIVE DATE DETERMINED BY PREMIUM PAYMENT AND DELIVERY

The plaintiff's husband applied for a life insurance policy from the defendant. The date of issue[1] was October 28, 1959. The policy was delivered to the plaintiff and her husband on November 24, 1959, when one month's premium was paid. On December 30, 1959, the insured died. The defendant contended that the effective date of the policy was October 28, 1959, as stated on the face of the policy, and that the policy lapsed on December 28th,[2] two days before the insured died.[3] The trial court

15. *Id.* at 802.
16. *Ibid.*
17. Note 13 *supra.*

1. 44 C.J.S. *Insurance* § 262 (1945). "The words 'issue,' 'issuance,' and 'issued,' in reference to an insurance policy, are used in different senses, sometimes as meaning the preparation and signing of the instrument by the officers of the company, as distinguished from its delivery to the insured, and sometimes as meaning its delivery and acceptance whereby it comes into full effect and operation as a binding mutual obligation."

2. Sixty days after October 28, 1959—thirty days coverage for which premium had been paid plus the thirty-day grace period usually found in the standard life insurance policy.

3. Carolina Life Ins. Co. v. DuPont, 141 So.2d 624, 625 (Fla. 1st Dist. 1962). But in