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Tidelands and Riparian Rights in Florida

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The State of Florida, by virtue of its 1398 miles of coastline,\(^1\) the longest of any state in the Union, has been and will continue to be faced with many problems concerning ownership and property rights in tidal and submerged lands within its jurisdictional limits.

This article attempts to cover: First, the applicable rules of law under the common law: the influence of the common law on the law of the United States; the sovereign character of the thirteen original colonies with respect to tidal and submerged lands at the time of union; rights acquired by states subsequently admitted into the union; and the rights of the United States Government in submerged lands within the jurisdictional limits of the states as well as tidal and submerged lands bordering upon the states. In order to clarify the position of the State of Florida, some discussion is made with regard to the Spanish law which the territory that subsequently became the State of Florida was subject to prior to its admission into the Union. Second, the decisions of the State of Florida with respect to the subject matter involved, the common law and the decisions of other jurisdictions concerning matters upon which the courts of the State of Florida have not yet ruled. Third, a present existing example of a cause now pending concerning property bordering upon the Atlantic Ocean and the City of Miami Beach in which many of the questions of law reviewed in this article are being tested and will be determined.

I

THE COMMON LAW STORY

The rule of law regarding public and private ownership of the shore, both on navigable and non-navigable waters, is discussed exhaustively in a decision of the Supreme Court of the United States. The opinion was rendered by Mr. Justice Horace Gray.\(^2\) In that case it was stated that "by the common law, both the title and the dominion of the sea, and of the rivers and arms of the sea, where the tide ebbs and flows, and of all lands below high water mark, within the jurisdiction of the Crown of England, are in the King. Such waters, and the lands which they cover, either at all times, or at least when the tide is in,

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\(^1\) Member of the Florida Bar.

are incapable of ordinary and private occupation, cultivation and improvement; and their natural and primary uses are public in their nature, for highways of navigation and commerce, domestic and foreign, and for the purpose of fishing by all the King's subjects. Therefore the title, *jus privatum*, in such lands, as of waste and unoccupied lands, belongs to the King as the sovereign; and the dominion thereof *jus publicum*, is vested in him as the representative of the nation and for the public benefit.

"In England, from the time of Lord Hale, it has been treated as settled that the title in the soil of the sea, or of arms of the sea, below ordinary high water mark, is in the King, except so far as an individual or a corporation has acquired rights in it by express grant, or by prescription or usage 3 and that this title, *jus privatum*, whether in the King or in a subject, is held subject to the public right, *jus publicum*, of navigation and fishing. 4 The same law has been declared by the House of Lords to prevail in Scotland. . . .

"By the law of England, also, every building or wharf erected, without license, below high water mark, where the soil is the King's, is a purpuresture, and may, at the suit of the King, either be demolished, or be seized and rented for his benefit, if it is not a nuisance to navigation. . . . 6

"The English possessions in America were claimed by right of discovery. Having been discovered by subjects of the King of England, and taken possession of in his name, by his authority or with his assent, they were held by the King as the representative of and in trust for the nation; and all vacant lands, and the exclusive power to grant them, were vested in him. The various charters granted by different monarchs of the Stuart dynasty for large tracts of territory on the Atlantic coast conveyed to the grantees both the territory described and the powers of government, including the property and the dominion of lands under tide waters. And upon the American Revolution all the rights of the Crown and of the Parliament vested in the several states, subject to the rights surrendered to the national government by the Constitution of the United States." 7

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Mr. Justice Gray, in that same decision, in making reference to the rights of the public in the soil under navigable waters, and the reasons therefor, cited Chief Justice Taney: 8 "Indeed, it could not well have been otherwise; for the men who first formed the English settlements could not have been expected to encounter the many hardships that unavoidably attended their emigration to the new world, and to people the banks of its bays and rivers, if the land under the waters at their very doors was liable to immediate appropriation by another as private property; and the settler upon the fast land thereby excluded from its enjoyment, and unable to take a shell fish from its bottom, or fasten there a stake, or even bathe in its waters, without becoming a trespasser upon the rights of another." 9

Title to the soil under navigable waters, under the common law, except so far as private rights in such soil had been acquired by express grant or by prescription, was in the sovereign. The rule was applied to the territory of the United States and to the thirteen original states.10

II

The United States Story

"The new states admitted into the Union since the adoption of the Constitution have the same rights as the original states in the tide waters, and in the lands below the high water mark, within their respective jurisdictions." 11

The term "navigable waters" had a different connotation in England than in the United States: In England no waters are deemed navigable except those in which the tide ebbs and flows. In the United States, generally, all waters are deemed navigable which really are navigable.12

Caution must be taken in applying the rule of law of one state as precedent for cases in another. There is no uniform law on the subject throughout the United States. The confusion resulting from each state dealing with the problems involved can readily be observed from an examination of the holdings of the thirteen original states.

"By the old laws of Massachusetts, a littoral proprietor of land owned down to low water mark, subject, however, to the condition that, until he occupied the space between high and low water mark the public had a right to use it for the purposes of navigation." 13 Massachusetts holds that the title to land adjoining tidal water extends from high water mark to low water mark, provided the ebb and flow does not exceed one hundred rods. The right thus

9. See Deering v. Martin, 95 Fla. 224, 116 So. 54 (1928).
10. 6 THOMPSON ON REAL PROPERTY 633 (1924).
12. Ibid.
created is a property right which can be conveyed by its owner together with or separate from the upland.\textsuperscript{14} New Hampshire holds title to the shore in the upland owner.\textsuperscript{15} Rhode Island gives title to the upland owner only to the high water mark. However, the upland owner may build structures over the foreshore provided they do not impede navigation, and provided the legislature of the state has not specifically prohibited such construction.\textsuperscript{16} Connecticut also vests title below the high water mark in the state. But the upland owner may wharf out over the foreshore provided he does not impede navigation. The right in the foreshore may be conveyed by the upland owner separate from the upland.\textsuperscript{17}

New York holds that the upland owner has title only to the high water mark, that he has no right to wharf out except with legislative authority but that he does have a right of access to the water.\textsuperscript{18}

New Jersey holds the submerged lands, including the foreshore on the tide waters of the state, to belong absolutely to the state. It further holds that the state has the power to grant the submerged land and the foreshore to any one, free from the rights of any riparian owner in them. But a riparian owner may erect a wharf or dock over the adjoining submerged land. By such improvement he will acquire title to such portion, subject, however, to the state's right of eminent domain.\textsuperscript{19}

Pennsylvania holds that the owner of land abutting upon navigable waters has title in the soil between high and low water marks, subject to the public right of navigation and the authority of the legislature to make public im-


\textsuperscript{15} Nudd v. Hobbs, 17 N.H. 524, 526 (1845); Clement v. Burns, 43 N.H. 609, 621 (1862); Concord Mfg. v. Robertson, 66 N.H. 1, 26, 27 (1890).

\textsuperscript{16} ANGELL, TIDE WATERS (2d ed.) 236, 237; Folsom v. Freeborn, 13 R.I. 200 (1881).

\textsuperscript{17} Ladies' Seamen's Friend Society v. Halstead, 58 Conn. 132 (1892); Walz v. Bemett, 95 Conn. 537, 111 Atl. 834 (1920); Orange v. Resnick, 94 Conn. 573, 109 Atl. 864 (1920); Rochester v. Barney, 117 Conn. 462, 169 Atl. 45 (1913).


provements upon it, and to regulate his use of it. The State of Delaware has declared state ownership of all navigable waters. Maryland holds that the owner of land bounded by tide water may build wharves and other improvements over the flats in front of his land, and may acquire a right in the land so improved.

The upland owner of lands bounded by tide waters in Virginia has title to ordinary low water mark. The title to the bed of a navigable river between low water mark and the line of navigability is in the state, held for the benefit of its citizens. The riparian owner has the right of access to the water and the right to wharf out.

The State of North Carolina holds that the state owns the land between high and low water mark but may make grants of said land. The owners of the upland, however, have a right to wharf out subject to legislative regulations for the protection of the public rights of navigation and fishing.

South Carolina holds title to land under tide waters in the state.

In Georgia the common law rule is in force except as to the statutory provision to the effect that the ownership of lands adjacent to navigable streams extends to low water mark in the bed of the stream.

It should be noted that each of the thirteen original states, with Pennsylvania as the one exception, borders on the Atlantic Ocean.

The recent California Tideland case was given considerable publicity in the nation's press. There seems to be a popular misconception that the Supreme Court of the United States, in that case, changed the law of the land as previously laid down. There can be little doubt that it holds contra to the intimations of all previous holdings of the same court and the rules.


laid down by the highest courts of the individual states, but the majority opinion in that case held that the state-federal conflict arose in this case for the first time, that the Supreme Court of the United States was never before called upon to decide and had never before ruled upon the issue involved. The case was one in which the State of California had entered into oil leases with persons and corporations authorizing them to enter upon land underlying the Pacific Ocean extending seaward three nautical miles from ordinary low water mark of the coast of California to take petroleum, gas and other mineral deposits therefrom. California was realizing large sums of money from rents and royalties being paid by the lessees. This suit by the United States sought to decree property rights in the described ocean area in the United States as against the State of California.

Mr. Justice Black, in his opinion for the Court, laid great stress upon the fact that the position of the State of California was that of a mere property owner, while the position of the United States was, first, that of a nation clothed with the "responsibility to exercise whatever power and dominion are necessary to protect this country against dangers to the security and tranquillity of its people incident to the fact that the United States is located immediately adjacent to the ocean," and second, as a member of the family of nations, clothed with the additional responsibility of dealing with other nations. The decision of the Court made it clear that in the latter capacity the nation would be burdened and encumbered by state commitments in the event that the state was held to be the title holder of the lands within the marginal belt. The Court pointed out the fact that previous decisions of the United States Supreme Court had recognized qualified ownership of lands under inland navigable waters, "and even tidelands down to the low water mark." However, the Court expressed a reluctance to extend this rule to apply to lands under the ocean.

The decision makes it clear that it is the opinion of the Court that the thirteen original colonies, in their sovereign capacity, did retain title to the tidelands and submerged lands to waters within their territorial jurisdictions but that those jurisdictional limits did not include the waters in the marginal belt bordering upon the states.

In his strong dissenting opinion, Mr. Justice Frankfurter points out that title in the United States was not actually established in the decision of the Court "except by sliding from absence of ownership by California to ownership by the United States." In that same dissenting opinion, Mr. Justice Frankfurter makes the further point that if, as a matter of fact, the title to the disputed land is not in the State of California, the land is if anything unclaimed land and the appropriate questions of policy under those circumstances are "for the determination of which Congress and not this Court is the appropriate agency."
In the majority opinion Mr. Justice Black unequivocally stated: "Now that the question is here, we decide for the reasons we have stated that California is not the owner of the three-mile marginal belt along its coast, and that the Federal Government rather than the state has paramount rights in and power over that belt, an incident to which is full dominion over the resources of the soil under that water area, including oil."

The California Tideland decision did not change the rule that states own the tideland and soil under navigable waters so far as inland waters are concerned. Nor did it change the established law to the effect that the foreshore on all navigable waters, whether inland or not, is the property of the state.

There will probably be additional litigation to determine the rights of the United States in tidelands under the ocean bordering upon the other states in the nation.

In a well written article in the Yale Law Journal discussing claims of title in submerged lands of the continental shelf, it was intimated that the right to withdraw minerals and other valuable resources from under the bottom of the sea might give rise to conflicting national claims and questions of each nation's territorial limits in the adjoining waters of the sea.

Several recent decisions of the Supreme Court have indicated that the decision in the California Tideland case will not be construed to mean that the state bordering upon the adjacent ocean area will be completely barred from jurisdictional control over ocean waters. In one such case, involving a South Carolina statute regulating commercial shrimp fishing in the marginal belt area along the South Carolina coast, certain Georgia citizens brought suit challenging the constitutionality of the South Carolina statute. Although the statute was held unconstitutional on grounds other than the jurisdictional right of control of the State of South Carolina over the coastal waters, the decision is significant in that the Court held that the State of South Carolina did have power, in the absence of conflicting federal claim, to regulate fishing in the marginal sea.

The Court, in that case, stated: "In the court below, United States v. California, 332 U.S. 19 (1947), was relied upon for this proposition. Here appellants seem to concede, and correctly so, that such is neither the holding nor the implication of that case; for in deciding that the U. S., where it asserted its claim, had paramount rights in the three-mile belt, the Court pointedly quoted and supplied emphasis to a statement in Skeriotes v. Florida, 313 U.S. 69, 75 (1941), that, 'It is also clear that Florida has an interest in the proper maintenance of the sponge fishery and that the (state) statute so far as applied to conduct within the territorial waters of Florida, in the absence of conflicting federal legislation, is within the police power of the state.'

"Since the present case evinces no conflict between South Carolina's
regulatory scheme and any assertion of federal power, the district court properly concluded that the state has sufficient interests in the shrimp fishery within three miles of its coast so that it may exercise its police power to protect and regulate that fishing."

In another case the Court seemed to draw a distinction between ownership of the tide waters themselves and fish within them as distinguished from the tidelands and resources below them, as was ruled upon in the California Tideland case. This case was one in which the constitutionality of a California statute, excluding aliens from pursuing commercial fishing in the marginal waters, was tested. The Court recognized the previously established doctrine to the effect that the citizens of the state collectively owned the tide waters "and the fish in them, so far as they are capable of ownership while running." The Court, in effect, held, that the nature of the ownership in the State of California was not sufficiently adequate to justify the said state from excluding "any or all aliens who are lawful residents of the state from making a living by fishing in the ocean off its shores while permitting all others to do so."

III

THE FLORIDA STORY

The country known as Florida prior to 1783, during British occupancy, was divided into East and West Florida, with the Chattahoochee and Apalachicola rivers as the eastern boundaries of West Florida. After Florida reverted to Spain under the Treaty of Paris of 1783, the designations of East and West Florida were retained. However, the northern boundary of West Florida eventually became the line of thirty-one degrees north latitude and the western boundary was located at the Perdido River. Between 1783 and 1821 the provinces of East and West Florida were subject to Spanish dominion. Although the country was largely inhabited by Indians during that period, they could grant lands only pursuant to the Spanish laws by and with the consent of the proper Spanish authorities.

The law of Spain at that time provided that grants could not be made of tidal and submerged lands except by the king or by express authority of the king. Under the civil law of Spain those owing allegiance to the crown were equally entitled to the right to fish in the public waters of the kingdom. The common law, like the civil law of Spain, held that the waters of the sea and the shores thereof are subject to public use. However, the essential difference rests

31. Torao Takahashi v. Fish and Game Comm'n, 334 U.S. 420 (1948); see Note, 3 MIAMI LQ. 50 (1948).
32. Apalachicola Land & Development Co. v. McRae, Commissioner of Agriculture, 86 Fla. 393, 98 So. 505 (1923); Ex parte Powell, 70 Fla. 363, 70 So. 392 (1915); State v. Gerbing, 56 Fla. 603, 47 So. 353 (1908); State v. City of Tampa, 88 Fla. 196, 102 So. 336 (1924); Pembroke v. Peninsular Terminal Co., 108 Fla. 46, 146 So. 249 (1933).
in the civil law doctrine that such waters are the property of no one. The policy
of the common law, on the contrary, was to assign everything capable of occu-
pancy and susceptible of ownership to a legal and certain proprietor. The
latter theory of ownership makes those things which from their nature cannot be
exclusively occupied and enjoyed, the property of the sovereign. Hence, upon
the cession of the territory now constituting the State of Florida the land and
the people living within the territory became subject to the laws of the United
States, and the cession involved no reservation to persons collectively or sever-
ally of fishing rights in the public waters. 33

By treaty with Spain there was ceded to the United States all territories
then belonging to Spain, known by the name East and West Florida. 34

"The original 13 states, that formed the federal Union as the United
States of America, were distinct and independent sovereignties, and as such
severally owned and held in trust for the whole people within their respective
borders the navigable waters in the states and the lands thereunder, including
the shore or land between high and low water marks. Proprietary rights in
the lands of this character within the states were not passed to the United States
by the federal Constitution, under which the Union was founded, and no power
to dispose of such lands was delegated to the United States. Therefore all pro-
noprietary rights in and power to dispose of lands under navigable waters in the
states, including the shore between high and low water marks, were reserved
to the states severally or to the people thereof . . .

"The navigable waters in the states and the lands under such waters, in-
including the shore or lands between ordinary high and low water marks, are the
property of the states, or of the people of the states in their united or sovereign
capacity. They are held, not for the purposes of sale or conversion into other
values, or reduction into several or individual ownership, but for the use of all
the people of the states, respectively, for purposes of navigation, commerce,
fishing, and other useful purposes afforded by the waters in common to and for
the people of the states. The title to the lands of this character was withheld by
the original states of this Union as essential to the sovereignty of the states, to
the welfare of the people of the states, and to the proper exercise of the police
powers of the states. A state may make limited disposition of portions of such
lands, or of the use thereof, in the interest of the public welfare, where the
rights of the whole people of the state as to navigation and other uses of the
waters are not materially impaired. The states cannot abdicate general control
over such lands and the waters thereon, since such abdication would be incon-

33. Ex parte Powell, supra note 32.
34. Treaty of Amity, Settlement and Limits between the United States of America and
His Catholic Majesty the King of Spain, concluded February 22, 1819, ratifications ex-
changed at Washington, D.C., U.S.A., February 22, 1821, proclaimed February 22, 1821;
Brickell v. Trammell, 77 Fla. 544, 82 So. 221 (1919); Apalachicola Land & Development
Co. v. McRae, 86 Fla. 393, 98 So. 505 (1923); State v. City of Tampa, 88 Fla. 196, 102 So.
336 (1924).
sistent with the implied legal duty of the states to preserve and control such lands and the waters thereon and the use of them for the public good.”

In order to understand and appreciate the nature of the right and title acquired by the State of Florida from the United States, certain terms should be clearly defined. “Uplands” are lands bordering on bodies of water. These lands, above the high water mark, are subject to private ownership. The “foreshore” is that land bordering upon navigable waters between the ordinary high water mark and the ordinary low water mark. These lands which are covered and uncovered by the ordinary daily tides of public navigable waters are also known as shore or tidelands. Overflowed lands, as distinguished from tidelands, are those that are covered by non navigable waters. Swamp lands, as distinguished from overflowed lands, are such as require drainage to dispose of needless water or moisture on or in the lands, in order to make them fit for successful and useful cultivation.

Subsequent to the acquisition by the United States of the territory known as East and West Florida, the lands under navigable waters, including the shores, were held by the United States for the use and benefit of all the people, eventually to go to the future State of Florida for the use and benefit of the whole people of the said state.

Under Act of Congress the territory of Florida was admitted “into the Union on equal footing with the original States, in all respects whatsoever.” The Act of Congress admitting Florida into the Union of States specifically provided that the new State “never interfere with the primary disposal of the public lands lying within them.”

The Supreme Court of Florida made it clear that the restriction in the act of admission referring to “the primary disposal of the public lands lying within” the state of Florida “has reference to lands within the territorial limits of the state, the title to which was in the United States for its own purposes, as distinguished from lands held in trust for the people, such as lands under navigable waters, including the shore between high and low water marks, which passed to the sovereign state, to be held by it in trust for the people thereof.”

Therefore, at the time of the admission of Florida into the Union, the

35. State v. Gerbing, 56 Fla. 603, 47 So. 353 (1908); Pembroke v. Peninsular Terminal Co., 108 Fla. 46, 146 So. 249 (1933).
38. State v. Gerbing, 56 Fla. 603, 47 So. 353 (1908); Apalachicola Land & Development Co. v. McRae, 86 Fla. 393, 98 So. 505 (1923); Brickell v. Trammell, 77 Fla. 544, 82 So. 221 (1919); Thiesen v. Gulf, F. & A. Ry. Co., 75 Fla. 28, 78 So. 491 (1917); Miller v. Bay-To-Gulf Inc., 141 Fla. 452, 193 So. 425 (1940).
40. State v. Gerbing, supra note 38; Pembroke v. Peninsular Terminal Co., supra note 35; Brickell v. Trammell, supra note 38; Apalachicola Land & Development Co. v. McRae, supra note 38.
41. S. STAT. 742 (1845).
42. State v. Gerbing, 56 Fla. 603, 47 So. 353 (1908).
state became vested with and assumed title to the tidelands and lands covered by all navigable waters in the state, which lands are called sovereignty lands as distinguished from ordinary public lands. The latter are subject to sale and are subject to private ownership in fee simple absolute. The sovereignty lands have limitations of tenure and uses for public purposes.43

We will not dwell upon nor attempt to develop the law as applied to submerged land under non navigable waters but, in passing, it might be noted that the swamp and overflowed lands within the State of Florida were granted to the state by act of Congress approved September 28, 1850.44 Non navigable waters may be the subject of private ownership.45

It is settled law within the State of Florida that the state, having acquired title to the lands over navigable waters, and the foreshore thereof, by virtue of its sovereignty, such title is held by the state in trust for the use and benefit of all of the people of the State of Florida for purposes of navigation, commerce, fishing, bathing, as well as other useful purposes afforded by the waters; that such title is not held by the state for purposes of sale or conversion into other values, or for reduction into several or individual ownership.46 However, the state is not completely barred from making grants of rights therein. The state may, in the public interest, grant rights in such lands within the state, or may permit the use thereof by individuals provided the rights of all people in the State of Florida as to navigation, commerce, bathing and other useful purposes which the waters afford, are not materially impaired. The state in making such limited grants must abide by the principle laid down that the rights of the people of the state in the navigable waters and the lands thereunder, as well as the foreshore, are principally designed for the public welfare. In effecting such grants the state cannot be relieved of control and regulation of the uses afforded by the said lands and the waters thereon.47

The trust doctrine to the effect that the state holds the title to the lands under the navigable waters in trust for the people of the state was held not to bar the state from granting legal title to submerged lands in Biscayne Bay in the case of Pembroke v. Peninsular Terminal Co.48 There it was demonstrated that the deed conveyed the legal title, subject to the state's police power and to the paramount power of Congress over navigable waters.

By statute the trustees of the internal improvement fund are vested with

43. State v. City of Tampa, 88 Fla. 196, 102 So. 336 (1924).
44. See note 42 supra.
45. Miller v. State, 75 Fla. 136, 77 So. 669 (1918).
47. Merrill-Stevens Co. v. Durkee, 62 Fla. 549, 57 So. 428 (1912); Martin v. Busch, 93 Fla. 535, 112 So. 274 (1927); Brickell v. Trammell, 77 Fla. 544, 82 So. 221 (1919); Thiesen v. Gulf, F. & A. Ry. Co., 75 Fla. 28, 78 So. 491 (1917); Pembroke v. Peninsular Terminal Co., 108 Fla. 46, 146 So. 249 (1933); Hicks v. State, 116 Fla. 603, 156 So. 603 (1934); Perky Properties Inc. v. Felton, 113 Fla. 432, 151 So. 892 (1934).
48. 108 Fla. 46, 146 So. 249 (1933).
the administration and control of tidal lands. As has heretofore been shown grants could be made in the public interest under certain conditions. But conveyances made by the trustees of the internal improvement fund of sovereignty lands, as distinguished from other public lands, either by mistake or otherwise are ineffectual for lack of authority from the state.

It is well established law in this state that, with few exceptions, private ownership of lands bordering on navigable waters extends only to the high water mark. Persons claiming private ownership in such property below the high water mark have the burden of establishing adequate proof of the source of their title, presumption being that title thereto is in the state.

As has been shown, the property rights of a riparian owner of land on navigable waters are determined and established by the decisions of the state within whose boundary the particular land lies. The riparian rights of land bordering on navigable waters in this state include the right of ingress and egress in the riparian owner over the foreshore to and from his property and the adjoining waters. In addition, the riparian owner has the right to an unobstructed view over the waters from his property. In common with the public he enjoys the right of navigation, bathing and fishing in such waters as well as the use of the foreshore. Title to the foreshore, as against the State of Florida, cannot be acquired by prescription. Inasmuch as the title is held by the state in trust for the use and benefit of the public, the statute of limitations does not run. Title cannot be acquired by adverse possession against the public.

49. Fla. Stat. § 253.03 (1941): "The trustees of the internal improvement fund of the State of Florida are vested and charged with the administration, management, control, supervision, conservation and protection of all land and products on, under, or growing out of, or connected with, lands owned by, or which may hereafter inure to, the State of Florida, not vested in some other state agency. Such lands shall be deemed to be:
All swamp and overflowed lands held by the State of Florida, or which may hereafter inure to said state.
All lands owned by the state by right of its sovereignty.
All internal improvement lands proper.
All tidal lands.
All lands covered by shallow waters of the ocean, gulf, or bays or lagoons thereof, and all lands owned by the state covered by fresh water.
All parks, reservations, or lands or bottoms set aside in the name of the state not under the supervision and control of some other agency of said state, or of the United States, or other governmental agency.
All lands which have accrued, or which may hereafter accrue, to the state from any source whatsoever, unless or until vested in some other state agency."
50. See note 47 supra.
51. State v. Gerbing, 56 Fla. 603, 47 So. 353 (1908); Deering v. Martin, 95 Fla. 224, 116 So. 54 (1928).
54. Apalachicola Land & Development Co. v. McRae, 86 Fla. 393, 98 So. 505 (1923); Brickell v. Trammell, supra note 53; Williams v. Guthrie, 102 Fla. 1047, 137 So. 682 (1931); Martin v. Busch, supra note 53.
56. Thiesen v. Gulf, supra note 55; White v. Hughes, 139 Fla. 54, 190 So. 446 (1939).
57. Thiesen v. Gulf, supra note 55; Brickell v. Trammell, 77 Fla. 544, 82 So. 221 (1919).
the case of *Freed v. Miami Beach Pier Corporation*,

although it was held that the right of the plaintiff to enjoin the invasion of certain of his riparian rights, particularly the right to an unobstructed view of the waters, had been lost by laches, the sovereign rights of the state or the powers of Congress were not affected by the adjudication between the parties. It is curious to note that the court in this case did not attempt to determine or adjudicate the rights of the state in the property involved. It may be that the court made no such determination or adjudication because no question of title to submerged or tidal lands was asserted or claimed in this case of action, the cause being one seeking an injunction. In a later case, in which private parties were asserting title to submerged lands in Sarasota Bay, the court held that "when it appears that the rights of the state in lands sued for are involved, and the state is not a party before the court, it is the duty of the courts to take notice of the rights of the state and make appropriate orders to preserve such rights from impairment, even though none of the parties to the cause raise such questions, nor make any objections with respect to the state's rights involved."

The right of the upland owner to pursue construction of docks, wharfs, piers or other improvements over the foreshore and over the submerged lands is one of obvious importance both to the upland owner as well as to the public. By legislative enactment, the state divested itself of title to submerged lands and vested full title therein to the riparian proprietors. It is significant to note that the state, in divesting itself of such title, did so "subject to any inalienable trust under which the state holds all submerged lands and water privileges within its boundaries," and vested such title in the riparian proprietors "subject to said trust." The act itself dates back to 1856. It was not until the Act of 1921 that the reference to the "inalienable trust under which the state holds said

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58. 93 Fla. 888, 112 So. 841 (1927).
59. Williams v. Guthrie, 102 Fla. 1047, 137 So. 682 (1931).
60. Fla. Stat. § 271.01 (1941); "The State of Florida, subject to any inalienable trust under which the state holds all submerged lands and water privileges within its boundaries, divests itself of all right, title and interest to all lands covered by water lying in front of any tract of land owned by the United States or by any person, natural or artificial, or by any municipality, county or governmental corporation under the laws of Florida, lying upon any navigable stream or bay of the sea or harbor, as far as to the edge of the channel; and vests the full title to the same, subject to said trust in and to the riparian proprietors, giving them the full right and privilege to build wharves into streams or waters of the bay or harbor as far as may be necessary to affect the purposes described, and to fill up from the shore, bank or beach as far as may be desired, not obstructing the channel, but leaving full space for the requirements of commerce, and upon lands so filled in to erect warehouses, dwellings or other buildings and also the right to prevent encroachments of any other person upon all such submerged land in the direction of their lines continued to the channel by bill in chancery or at law, and to have and maintain action of trespass in any court of competent jurisdiction in the state, for any interference with such property, also confirming to the riparian proprietors all improvements which may have heretofore been made upon submerged lands; provided, that the grant herein made shall apply to and affect only those submerged lands which have been, or may be hereafter, actually bulkheaded, filled in, or permanently improved, continuously, from high water mark in the direction of the channel, or as near in the direction of the channel as practicable to equitably distribute the submerged lands, and shall in no wise affect such submerged lands until actually filled in or permanently improved."
lands" was incorporated into the act. However, even without the qualification with respect to the trust doctrine, there can be little doubt but that the title of any riparian owner would be subject to the trust in which the state holds such property as well as subject to the paramount power of Congress over navigable waters. The act specifically provides that nothing therein "shall be construed to prohibit any person from boating, bathing or fishing in water covering the submerged lands of this state or from exercising any of the privileges heretofore allowed by law as to such submerged land and water covering the same, until such submerged lands shall be filled in or improved by the riparian owner as herein authorized." 62 In the case of Holland v. Ft. Pierce Financing & Const. Co.63 it was held that under the subject statute the title which vested in the riparian owner was a qualified one which became absolute when and if the upland owner bulkheaded and filled in from the shore. The decision of the court indicates that the trust doctrine was in no way altered by the statute, that the grant of sovereignty land must not substantially impair the interest of the public in the remaining lands and waters and that the bulkheading and filling in toward the channel must leave ample space for purposes of navigation and commerce. The case was one involving property on the Indian River. The court did unequivocally state: "The incidental use by the public of the foreshore and adjacent waters of a navigable stream such as the one here under consideration must yield to the paramount proprietary right of the riparian owner, when and if he constructs the improvements specified in the Act, and within the limitations prescribed." The construction in this case, of course, is based upon legislative authority. In the light of subsequent discussion herein, it should be observed that so far as the public is concerned the primary uses of the waters here involved were navigation and commerce. It has consistently been held in this state that a riparian proprietor whose lands extend to navigable waters has no right to build out over the foreshore and upon the submerged lands except with express authority and consent of the state. Such construction, pursued without proper consent of the state, has been held to be purpures in law or nuisances if the construction amounts to a damage to the port or navigation.64 In Williams v. Guthrie,65 it was held that construction upon tidelands without proper authority was deemed an encroachment upon the property of the sovereign, a purpurement which the sovereign may remove at pleasure, whether it tends to obstruct navigation or otherwise. The riparian act referred to specifically excepts

62. Fla. Stat. § 271.08 (1941): "Nothing in this chapter shall be construed to prohibit any person from boating, bathing or fishing in water covering the submerged lands of this state or from exercising any of the privileges heretofore allowed by law as to such submerged land and water covering the same, until such submerged lands shall be filled in or improved by the riparian owner as herein authorized."
63. 157 Fla. 649, 27 So. 2d 76 (1946).
64. Thiesen v. Gulf, F. & A. Ry. Co., 75 Fla. 28, 78 So. 491 (1917); Freed v. Miami Beach Pier Corporation, 93 Fla. 888, 112 So. 841 (1927).
65. 102 Fla. 1047, 137 So. 682 (1931).
beaches customarily used by the public as bathing beaches. The Supreme Court of Florida, on this subject, stated: "The Riparian Acts of 1856 (Laws 1856, c. 791) and 1921 (Laws 1921, c. 8537) are applicable only to 'any navigable stream or bay of the sea or harbor.' The locus in quo here is on the ocean front." 

Riparian rights, whether they include the right to wharf out or bulkhead and fill below the upland or not, are property rights. As such they cannot be taken from the upland owner for public use without just compensation.

It has been observed herein that the legislature and the courts have set up certain distinctions with regard to the applicable rules of law for non navigable waters as compared with navigable waters and with regard to navigable inland waters as compared with the ocean front. Considerably greater freedom and leeway in asserting title and erecting improvements has been given the riparian owner on non navigable waters than upon navigable waters, and considerably more freedom and leeway has been given the riparian owner on inland navigable waters as compared with those on the ocean front.

The primary use of the ocean front beaches has been established for the purposes of bathing, recreation, fishing and navigation. The incursion or curtailment of any of these uses on the ocean front has largely been frowned upon by the Florida courts. However, the ocean front has not been wholly restricted to those primary uses. By legislative enactment some of the ocean front beaches have been established as public highways. It has been made clear, however, that the use of the foreshore or beach on the ocean which is held by the sovereign in trust for the public, for purposes other than the primary uses, is subject to the paramount right of the public to use those beaches for bathing and recreation. The right of the public to use the beach for bathing and recreational purposes has been held to be superior to that of motorists driving automobiles on authorized highways on such beaches.

Waterfront properties pose unique problems not common to other lands. The waters often perform in strange fashion, sometimes creating new land, sometimes causing an increment to the adjoining property and sometimes causing losses of land to the adjoining property.

Accretion is the term commonly employed to denote the action of the waters in depositing material so as gradually to cause an increase in the riparian land. This waterborne sand or other material which forms the deposit and creates additional dry land which was previously covered by water is re-

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66. Fla. Stat. § 271.07 (1941): “Nothing in this chapter shall be construed to apply to beaches customarily used by the public as bathing beaches.”
67. Freed v. Miami Beach Pier Corporation, 93 Fla. 888, 112 So. 841 (1927).
69. White v. Hughes, 139 Fla. 54, 190 So. 446 (1939); Adams v. Elliott, 128 Fla. 79, 174 So. 731 (1937).
70. Adams v. Elliott, supra note 69.
71. White v. Hughes, supra note 69.
ferred to as "alluvion." Hence, the accretion is the act of depositing and the alluvion the deposit itself. At times, instead of the water building up the shore by making deposits which gradually displace the water, the water itself recedes, leaving dry land where the water previously was. Additional land created in this manner is generally referred to as reliction or dereliction. A loss or addition to land occasionally occurs by a sudden and perceptible natural reaction of the water. Such a sudden loss or addition is referred to as "avulsion." The constant action of the water will sometimes wash away the land if artificial means of some character are not employed to prevent such loss. Such gradual loss of land is termed "erosion." It can be stated as a general rule of law that where a gradual and imperceptible change occurs on riparian land by virtue of accretion, reliction or erosion, the land as so changed remains the boundary line of the upland owner. Thus the riparian owner, under such circumstances, would acquire title to all additional land so acquired and would suffer the loss of title to such portions of the land as may be encroached upon or washed away by the water. This rule of law, however, does not generally apply where the change takes place suddenly and perceptibly as by reliction or avulsion. The accretion is generally deemed to be imperceptible if it is so gradual that the process itself cannot be perceived by witnesses. The fact that it subsequently becomes obvious that there has been an accretion does not prevent it from being imperceptible.

The Supreme Court of Florida recognized the doctrine of accretion and reliction and the rights of the riparian owner as described herein. The court stated: "At common law, all navigable waters and the lands thereunder were held by the sovereign for the benefit of the whole people, and the owner of land abutting on navigable waters had no exclusive right in the waters, below ordinary highwater mark or in the lands under the waters, except the right of access to and from the navigable waters, and rights in the land growing out of accretion or reliction." A different rule is generally applied where the change in the land due to the action of the water takes place as a result of artificial conditions which are created by third persons, by the state, or even by the upland owner himself. Where the riparian owner deliberately creates the accretion by means of artificial structures, it is generally held that he cannot claim title to the land added in that manner. However, many authorities hold that the upland owner may acquire title to the land so added by some artificial obstruction where the arti-

73. See 56 Am.Jur. § 476.
74. See 56 Am.Jur. § 476.
75. See 56 Am.Jur. § 476.
77. See 56 Am.Jur. § 484.
78. Merrill-Stevens Co. v. Durkee, 62 Fla. 549, 57 So. 428 (1912).
ficial condition is created or erected by third persons and where the upland owner had no part in that activity. 79

The Supreme Court of Florida, in considering the question of title to property created by reliction, stated: "If to serve a public purpose, the state, with the consent of the federal authority, lowers the level of navigable waters so as to make the water recede and uncover lands below the original high-water mark, the lands so uncovered below such high-water mark, continue to belong to the state. Reliction is the term applied to land that has been covered by water, but which has become uncovered by the imperceptible recession of the water.

"The doctrine of reliction is applicable where from natural causes water recedes by imperceptible degrees, and does not apply where land is reclaimed by governmental agencies as by drainage operations." 80

The rule of law concerning title to land created by imperceptible accretion was well stated by the United States Supreme Court as follows:

"The rule, everywhere admitted, that where the land encroaches upon the water by gradual and imperceptible degrees, the accretion or alluvion belongs to the owner of the land, is equally applicable to lands bounding on tide waters or on fresh waters, and to the King or the state as to private persons; and is independent of the law governing the title in the soil covered by the water." 81

In view of the development of the law as set out in the California Tideland case, it is interesting to note that the Supreme Court of Florida, in a recent case,82 reported prior to the decision in the California Tideland case, held that the trustees of the Internal Improvement Fund did have authority, under certain legislative enactments, to execute oil leases on sovereign lands of the state located in tidal waters. However, it appears from the reported decision that no question was raised with regard to ocean waters. The case does not reveal any particular properties involved. Under the circumstances, it can be assumed that in the event the question subsequently arises, the Florida court can decide that the words "sovereign lands of the state located in tidal waters" do not include the ocean bottom. It is presumed, of course, that the court might arrive at such a finding only if the Florida court construes the California Tideland decision to apply, so far as title in the United States is concerned, to Florida's marginal belt in the same manner as it was applied to California's marginal belt.

IV

The Miami Beach Story

The writer has singled out Miami Beach first, because of the physical aspects of the ocean front, second, because it represents an illustration of what

79. See Note, 134 A.L.R. 467 (1941).
appears to be encroachments upon the sovereign land both of the state and the federal governments, and third, because a suit is now pending in the Circuit Court in and for Dade County, Florida. This suit, in effect, seeks to enjoin, as a nuisance, purported encroachments upon the foreshore and upon the ocean bottom. The upland property in the disputed area is composed of hotel sites. As will be shown, the upland hotel owners have improved their property seaward in such fashion that the construction has encroached upon and over the tidelands and the submerged lands of the Atlantic Ocean.

In order to clarify the picture effectively, it is necessary to define two terms which will be employed, to-wit: "groyne" and "bulkhead."

A groyne is a steel wall projected into the ocean, perpendicular to the shore, for a distance of approximately two to three hundred feet. Primarily, it is employed as a means of protecting the beach from being washed away. It also performs the important function of trapping waterborne sand, thus causing artificial accretion, adding to and building up the beach.

A bulkhead is also a wall but it extends on a horizontal line with the sea. It separates the sea from the mainland and endeavors to protect the landward property from the force of the sea. On the ocean at Miami Beach these bulkheads are built of steel sections and, when completed, stand about eight feet high. As the groynes trap the sand, the beach builds up. The bulkheads gradually diminish in height as the sand accumulated by accretion packs into a gentle slope leading from the bulkhead to the sea. The foregoing description is, of course, conditioned upon accretion.

In a paper prepared by Morris N. Lipp, City Engineer for the City of Miami Beach, Florida, it was stated: "The function of a groyne is to reclaim and stabilize beaches and that of the bulkhead to establish a final barrier against the encroachment of the ocean."

Surveys and plats are available which show the ordinary high water mark and the ordinary low water mark over the years on the ocean front in the City of Miami Beach. The records indicate that there were periods of time when the upland owners enjoyed imperceptible accretions and that there were other times when they suffered imperceptible erosion. The records further indicate that in or about the year 1927, at the instance of the City Council of the City of Miami Beach, the Engineering Department of the City established a bulkhead line along the high water mark on the ocean front in the city. Inasmuch as the line was a meandering line, for the sake of uniformity, a straight line was established which, in most instances, gave the upland owner the benefit of every doubt. Along this line, during 1927 and 1928, bulkheads were erected and filled on the landward side thereof. It may eventually prove significant that the City of Miami Beach, at its own expense, with no assess-

84. City Engineer's Office, City of Miami Beach, City Hall, Miami Beach, Florida.
ments against the abutting property owners, also installed a series of groynes so that additional beach area might possibly accrue over the years. The records indicate that the money which was used by the city for this purpose was paid out of proceeds of a bond issue floated in 1926 for parks and docks.

These bulkheads and groynes represented the first large scale construction to preserve and create beach artificially.

In appraising the application of the law in this section of this article so far as the City of Miami Beach is concerned, the reader should bear in mind that the application is being made on the presumption that the facts as set forth herein are correct. It is not intended to intimate that the facts are not correct but merely to make it clear that a cause of action hereinafter referred to, now pending in the Circuit Court, has not progressed sufficiently to have established these facts as the facts of the case.

The established law has been shown herein to be first, that where a gradual and imperceptible change occurs on riparian land by virtue of accretion, reliction or erosion, the land so changed remains the boundary line of the upland owner 85 and that the title to the land so changed does not vest in the riparian owner where the change has been artificially induced. Therefore, it seems that:

85. See note 76 supra.

The 1928 bulkhead line seaward of an unimproved hotel site on the ocean at Miami Beach.
The same 1928 bulkhead line with property landward of line, improved with a hotel.

The 1948 bulkhead line extended about 75 feet seaward of the 1928 line, filled and improved with swimming pool, cabanas and dining terrace.
First: The 1927 bulkhead line, being the high water mark of that date, was the line where private property ended, that public property extended east thereof.

Second: Accretion of the beach east of the said 1927 bulkhead line to the low water mark is the property of the State of Florida.

The City Council of the City of Miami Beach passed a series of ordinances which, in effect, authorized the owners of property abutting the ocean, within the City of Miami Beach, to extend their existing bulkhead lines a distance seaward of approximately seventy-five feet. The riparian owners were further authorized, by ordinances, to fill the area landward of the newly erected bulkheads. The upland owners were also granted the right, by ordinances, to improve the extended area with private swimming pools, cabanas and dining terraces. It should be noted that the bulkheads which were authorized by the said ordinances, some of which have been constructed and are the subject of the aforesaid pending litigation, are built of steel sections and when completed stand about eight feet high. In practically every instance along the ocean front where these extensions have been installed seaward of the old bulkhead line, the new bulkheads extend over the tidal land of the foreshore, beyond the present ordinary high water mark and, in many instances, extend beyond the present ordinary low water mark. Hence, the extended bulkhead construction effectively bars the public and serves to establish an exclusive beach for the guests of the hotels on the abutting upland property. To clarify the picture it should be understood that these bulkheads actually constitute an open steel box, eight feet high, filled with sand. Mere physical observation makes it apparent that many of the new bulkheads stand in deep water even at low tide and that in some instances the 1927 bulkhead stands in deep water. There would be no point at this stage in reiterating the law as set forth in the previous section of this article which clearly establishes the fact that the tidal lands on navigable waters are sovereignty lands which are held by the State of Florida for the use and benefit of the people of that state.

The upland owners have indicated that they propose to sustain their position that the extended bulkheads and the construction thereon do not constitute a purpresture and a nuisance, first, on the ground that they have acquired the right to the exclusive use of the property by prescription through long and continued use, second, on the ground that in each instance, before the improvements were placed on the land, permits were procured from the Secretary of War, and third, that a decision of the court wherein the public and the state would prevail would result in so great a pecuniary loss to the private upland owners, not only in the Miami Beach area but in other areas throughout the state where riparian owners are similarly situated, as to shock the conscience.
It has previously been shown herein that title as against the public cannot be acquired by adverse possession, or by prescription, that title in sovereignty lands, being in the state held in trust for the use and benefit of the people of the State of Florida, the statute of limitations cannot run against it. With regard to the argument that permits have been granted by the War Department for construction over the submerged lands, it should be made clear that these permits are really nothing more or less than an expert opinion on the part of the United States Army Engineers to the effect that the planned construction will not impede navigation. The Supreme Court of Florida, on the subject, stated: "A permit from the Secretary of War amounts to no more than a certificate from that department that the proposed construction will not interfere with navigation in interstate or foreign commerce. Thus it was held that a permit by the Secretary of War for the construction of a tunnel under the Hudson river merely expressed the assent of the Federal Government so far as concerned public rights of navigation. Sullivan v. Booth, 210 App. Div. 347, 206 N.Y.S. 360. And a permit from such authority does not give the party to whom it is issued the right to construct a wharf over submerged lands not owned by him." 

In the California Tideland case the question of the right of government agencies, such as the War Department in this instance, to bind the United States Government in the disposition of federal properties, was raised. The Court stated: "And even assuming that Government agencies have been negligent in failing to recognize or assert the claims of the Government at an earlier date, the great interests of the Government in this ocean area are not to be forfeited as a result. The Government, which holds its interests here as elsewhere in trust for all the people, is not to be deprived of those interests by the ordinary court rules designed particularly for private disputes over individually owned pieces of property; and officers who have no authority at all to dispose of Government property cannot by their conduct cause the Government to lose its valuable rights by their acquiescence, laches, or failure to act." 

Both the Supreme Court of the State of Florida and the Supreme Court of the United States have had something to say with regard to the argument that private interests stand to lose many millions of dollars in the event that they fail to prevail in litigation of the character involved in the Plissner case. In the case of Pembroke v. Peninsular Terminal Co. the court held: "The mere importance of the case does not affect the application of legal principles. In determining these questions, grave and far reaching as they may be in their

86. Brickell v. Trammell, 77 Fla. 544, 82 So. 221 (1919).
90. See note 83 supra.
91. 108 Fla. 46, 146 So. 249 (1933).
effect upon the titles to other properties, we must of course 'hew to the line' of the law as we find it and understand it to be, as applied to the property and the questions involved in this particular case, 'let the chips fall where they may.' But in the decision of any particular case, the courts must be careful to act in accordance with sound legal principles, so that the particular decision will not only correctly define and apply the law to the particular case, but will also furnish a safe and just precedent and guide to be followed in similar cases which may arise in the future. There is food for thought, for courts as well as individuals, in Kant's categorical imperative: 'Act on a maxim which thou canst will to be law universal.' Further, the Supreme Court of the United States, in the California Tideland case, stated: "We have not overlooked California's argument, buttressed by earnest briefs on behalf of other states, that improvements have been made along and near the shores at great expense to public and private agencies. And we note the Government's suggestion that the aggregate value of all these improvements is small in comparison with the tremendous value of the entire three-mile belt here in controversy. But however this may be, we are faced with the issue as to whether state or nation has paramount rights in and power over this ocean belt, and that great national question is not dependent upon what expenses may have been incurred upon mistaken assumptions." 92

The ruling in the California Tideland case makes it appear that the bulkhead extensions into the ocean, beyond the low water mark, constitute purprestures and encroachments upon the property of the United States.

The Supreme Court of Florida left no question with regard to the nature and character of improvements over tidal and submerged sovereignty lands in a reference to the common law, "any intrusion by the owner of the upland upon the shore between high and low water mark was unlawful, and was treated either as a purpresture or a nuisance." 98 Wrongful invasion, interference with or obstruction of, the rights of the public or the rights of a riparian owner constitutes a nuisance and may be abated as such.94

There can be no question but that the construction over the tidal and submerged lands on the ocean front by private interests for private use and benefit, to the exclusion of the public generally, constitutes a violation and a breach of the primary uses of bathing, recreation, fishing and navigation.95

The court will certainly accept as common knowledge the fact that the beaches at Miami Beach are regularly employed, throughout the year, by thousands of people for bathing and recreational purposes. In one supreme

92. See note 89 supra.
95. White v. Hughes, 139 Fla. 54, 190 So. 446 (1939); Adams v. Elliott, 128 Fla. 79, 174 So. 731 (1937); Sallas v. State, 98 Fla. 464, 124 So. 27 (1929).
court case\textsuperscript{96} it was stated: "The fact that Atlantic and Jacksonville Beaches have been made public highways by legislative enactment in no way modifies or restricts the use and right of the pedestrian public in the use of them for lawful purposes, and we think that right equal to, if not superior to, that of the motorist. Bathing and recreation constitute the primary uses of most of our beaches. It is common knowledge that during the summer season men, women and children by the thousands flock to Atlantic and Jacksonville Beaches for this purpose." In view of the millions of dollars involved it seems difficult to believe that although a permit was sought from the War Department and action was taken to secure permission through the city authorities in the City of Miami Beach, no record appears anywhere of any application ever having been made to any state authority for the right to create the improvements on state property.

Mr. Justice Brown in the case of \textit{White v. Hughes} \textsuperscript{97} stated: "There is probably no custom more universal, more natural or more ancient on the seacoasts, not only of the United States, but of the world, than that of bathing in the salt waters of the ocean and the enjoyment of the wholesome recreation incident thereto. . . . The constant enjoyment of this privilege of thus using the ocean and its fore-shore for ages without dispute should prove sufficient to establish it as an American common law right, similar to that of fishing in the sea, even if this right had not come down to us as a part of the English common law, which it undoubtedly has. See \textit{Brickell v. Trammell}, 77 Fla. 544, 82 So. 221. Private ownership stops at high-water mark. The State holds the fore-shore in trust for its people for the purpose of navigation, fishing and bathing. It is difficult indeed to imagine a general and public right of fishing in the sea, and from the shore, unaccompanied by a general right to bathe there, and of access thereto over the fore-shore for that purpose. Universal and habitual practice in England for many years has established this right and it is also recognized by a statute. . . . Small inland streams and lakes, which are not navigable and not subject to the tides, may under certain circumstances become private property to all intents and purposes. But not so the sea, or its shore." In the same decision the Supreme Court of Florida succinctly stated the law of the state as follows: "The beach of the Atlantic Ocean between high and low-water marks is the property of the state, held in trust for the use of all the people of the state."

\textbf{Conclusion}

The controversy over the title to and riparian rights in the beaches and the ocean bottom at Miami Beach will serve to settle many important ques-
tions of law. These questions will go to the Supreme Court of Florida for final determination. It is conceivable, in view of the California Tideland decision, that the Federal Government will eventually become an interested party to the cause or causes.

The law as it is established in this case will affect all ocean front land in the state of Florida.

It is perhaps unfortunate that the pending litigation was brought by a private citizen to abate a nuisance. The better procedure would have been by a suit instituted by the Trustees of the Internal Improvement Fund, as plaintiffs, against all ocean front property owners in the state. There has been an intimation that such a suit might eventually be brought in Leon County.

The boldness with which the City Council at Miami Beach has passed ordinances and granted permits for the construction over what appears too obviously to be public land is frightening. It is even more frightening to observe that the city is affirmatively opposing the plaintiff in the pending litigation. In effect, it becomes the public versus the City of Miami Beach and the riparian owners. The ill-advised municipal legislation may eventually lead to expensive and serious consequences. The action of the city administration amounts to approval of state land grants to private interests for private gain. If an inland freeholder was authorized to extend his property lines to the center line of a public street in order to give him available space to construct a swimming pool and cabanas, the situation would be an analogous one. Where the extension into a public street would amount to the grant of city property, the extension of the bulkhead line amounts to a grant of state and perhaps federal property.

If the riparian owners eventually prevail and are permitted to build out, the beaches themselves, as we know them, throughout most of the city, will be eliminated. In their place will arise formidable steel walls. Bathing in the ocean itself will have to be accomplished by descending a set of steps leading from the top of the wall to the water. Such steps have already been installed wherever such construction has been completed.

Miami Beach depends upon tourists for its living. The ocean front is studded with luxury hotels. However, there are thousands of accommodations in off-the-ocean-front hotels, apartments and rooming houses. There are also many tourists and retired people who dwell in residences throughout the city. The greatest attraction that Miami Beach has been able to offer has unquestionably been the beach and the ocean. If the courts should hold that the riparian owners could effectively bar all but those who dwell in the ocean front properties, the economic collapse of the off-the-ocean-front properties seems assured. If the courts are seriously influenced, on the one hand, by the millions
of dollars invested by the riparian owners in construction over public land, then the consciences of the courts will also have to be influenced, on the other hand, by the millions of dollars invested in off-the-ocean-front properties.

The final decisions in this controversy will probably be more far reaching in their effect upon real property in this state than any decisions previously rendered.