

## **RIPARIAN RIGHTS AND ACCRETION**

---

There are no written laws or specific rules published pertaining to the division of accretion and beds of the streams in the State of Nebraska. It is, therefore, one of the primary duties of the state surveyor as such officer, to prepare and issue instructions and advice to the county surveyors relative to the establishment of boundary lines where the rights of the riparian proprietors are involved. In the following discussion of this subject, the rules set forth are based upon a digest of Supreme Court decisions, in this and other states where the English common law rule prevails, and are in harmony with the practice of the surveying service of the United States General Land Office. Modification of these rules will sometimes be necessary in unusual or exceptional cases, but the surveyor should bear in mind the fundamental principles on which these rules are based, that the results of his survey may be in harmony therewith.

It is the universal rule in the United States that, after a state has been admitted to the Union, the law of that state determines the title and ownership of the beds of meandered lakes and streams as between the riparian owner and the state. That each State must settle for itself the title to lands formed by accretion within its boundaries; *Barney V. Keokuk* (94 U. S. 324). And that, after the United States has patented its rights to lands lying along the shores of waters It will be held, in absence of fraud or mistake, that the government has parted with all of its rights to such shore and the beds of such waters; *Lamprey v. State*, (53 Minn. 181, 53 N. W.).

The Department of Justice of the State of Nebraska in an opinion dated March 26, 1932, holds that, "The Missouri River is a navigable stream. The Platte River and its tributaries are legally classified as non-navigable. However, we do not understand that the rights of the riparian owner are judged by the fact of whether or not the stream is navigable. In either case the adjoining land owner owns to the thread of the stream. The English common law rule prevails in Nebraska. It is only in tide water streams that the riparian proprietor owns only to the edge of the stream."

Therefore, in the State of Nebraska, the title of a riparian owner to land bordering on a stream not navigable at common law but navigable in fact, extends to the middle or thread of the stream. The Supreme Court of Nebraska has held: "That the rights of riparian owners upon the Missouri River to land formed by accretion are the same as if the river were not navigable." Gill v. Lydick, (40 Nebr. 508, 59 N. W. 104; Kinkead v. Turgeon, 74 Nebr. 573, 104 N. W, 1061} 109 N. W. 744, 1 L. R. A. (N.S.) 762.) So it appears conclusively established that the riparian proprietor owns the bed to the "thread of the stream" or center line of both navigable and non-navigable streams, subject of course, to the rights of the public to navigate and use said streams legally classified as navigable or which are navigable in fact.

How to find or determine the thread of the stream is a problem worthy of much consideration. The courts do not all agree on this subject, some holding that the thread of the stream is the geographical center line; while others hold that the central thread of the stream is the center of the main channel as it flows naturally. In applying one or the other of the foregoing rules, there are a number of essential facts to be considered. Among the rights of the riparian owner is access to the water front. This would bear considerable weight if the river were a navigable stream, in fact, the riparian owner would be entitled to his share of the navigable waters. Therefore, it is the opinion of the author, that where a navigable stream such as the Missouri River is involved, the thread of the stream means the "center of the main channel" thereof. But if the course of the stream changes abruptly by the process of avulsion, cutting a new channel and in so doing cuts off a point of land forming an Island, such island belongs to the original owner. Should the old deserted river bed gradually fill up forming new land therein, such newly formed land belongs to opposite riparian proprietors respectively to the thread of the old river. To find the thread of a deserted river bed, it would be necessary to determine the geographical center line of such bed prior to the sudden change. The original meander lines may be used as a basis for determining this geographical center line if the stream were approximately confined to its original bed prior to the change by avulsion. However, if the stream had wandered far from its original location by the

gradual and imperceptible action of the water before this sudden change took place, it would be necessary to determine its actual location just before the time of the sudden change, by identifying the high banks or shore line.

Where the stream is straight, the division lines between riparian owners on the same side of the stream, will be run at right angles with the thread of the stream, protracted until they reach the point where the surveyed boundary line intersects the original meander line. When the stream curves the same principle applies, and the lines running from the original shore would converge or separate, according as the land lay within or without the curve.

Another rule for the division of land formed by accretion to an old shore line is as follows: Measure the ancient bank and compute the number of feet of shore line owned by each proprietor. Divide the new bank into as many parts as there were feet in the old bank and draw lines from the old point of division to the new ones. *Conkey v. Knudson*. (141 Nebr. 517). In applying this rule to the old shore lines, the general trend of the lines should be taken and not the actual length, where the old line has deep indentations and sharp projections. The measurements of both new and old banks should be initiated from the nearest point of intersections of the two banks and terminate at the next similar intersection. In running the partition lines between riparian owners, same should be extended to navigable waters or thread of the stream, giving to each owner the same proportional measurement along the new shore line that his lot line bore to the old shore line. The results obtained by the two different methods outlined above would be approximately the same if the shore were straight or on a curve, whether the accreted land lay within or without the curve.

In establishing a rule, little choice exists between these two methods as applying to navigable waters. The choice of methods should be made by the surveyor in the field after an examination of existing conditions in each particular survey, choosing of course, the method which seems to apply more equitably.

So far, I have outlined methods to be employed along a navigable stream. These would apply in cases where the Missouri River was involved. It is true in this state that the rights of the riparian owner are the same whether the stream is navigable or non-navigable. But the problems confronting the land surveyor in the execution of surveys in and along the Platte River, are very different from those along the Missouri. In the first place, the nature of these two streams is entirely different. The Platte River is broad and shallow, its many channels winding in and out among both old and newly formed islands and sand bars. Many of its ancient channels have been built up with new land until now only in times of high water does water flow therein. The use of the headwaters of this river for irrigation purposes has had its effect. Since the date of the original survey of the public lands of Nebraska, the Platte River, generally speaking, has remained confined to its original banks. True, the various channels shift from time to time to different parts of the river bed, but seldom do they cut beyond the original meander lines.

Therefore, in establishing the division lines between the various riparian owners along this stream, the surveyor should generally employ the same principles as if the stream were entirely dry. That is to say, the geographical center line between opposite original meander lines will constitute the "thread of the stream". The division lines between proprietors on the same side of the bed of the stream, should be projected perpendicular to this geographical center line, from the point of intersection of the surveyed property or division lines of the main land and the original meander line. Only where there is a well defined main channel should exception be made to this rule, in which case the center line of the main channel as it flows naturally would constitute the "thread of the stream".

In cases where a well defined main channel is proven to have been in existence, and where the main channel has moved around built up land (not by accretion and reliction) to another location (even within limits of the original meander lines) the boundary line does not change but remains in the first named main channel. *State v. Ecklund*, (147 Nebr. 508). All small seasonable channels or

chutes should be ignored in the establishment of the center line or boundary between owners of opposite shores.

One desirable feature in favor of the geographical center line based upon the original meanders, is that this method furnishes an actual basis for mathematical calculation. The surveyor may make these calculations before going to the field, may use these computed courses and distances in running the random lines. Discrepancies between the original record and actual field measurements can be corrected by applying same to the corner moves at the time the corners are monumented. Another feature is that the geographical center line and partition lines between owners of the same shore, once established in this manner are unchangeable. Partition lines, if based upon the center of the main channel as it flows naturally, are subject to change with the changes in the channel.

If access to the water front from a standpoint of navigation were one of the primary objects, changes in these partition lines would not be material, but along the Platte River, which is neither legally classified as navigable nor navigable in fact, the primary object of the riparian proprietor in having such surveys made is so he may fence the land that rightfully belongs to him as such proprietor.

My attention has been called to surveys in which the surveyor attempted to establish partition lines between riparian owners by extending the surveyed property lines straight east, west, north or south as the case may be, without regard for either the geographical center line or actual thread of the stream. This method is entirely wrong and has absolutely no foundation.

## ISLANDS

---

The same rules which apply to the division of the beds of streams and accretions to surveyed mainland apply to islands which have been surveyed as part of the public lands of the United States. While in some cases the courts have ruled the opposite, it is generally accepted as the rule that the rights of the riparian owner to accretion to an island cannot be extended lengthwise of the river. Should the owners of surveyed islands have the right to accretion up and down streams, what would be the result when two islands (owned by different parties) become joint by accretion? The owner of such island is entitled to that part of the river bed to the thread of the stream between the island and the mainland. Lateral lines at right angles to the general course of the river, (thread of the stream), should be extended from the head and foot, (upper and lower meander points), of the island as a partition between the accretions, or the like, to the island and to the mainland. Even though this a contradiction to many court rulings, it is the opinion of the author that this method should be used.

There are many islands in our rivers which have not been surveyed as part of the public lands of the United States. Most of those islands have formed since the date of the original survey or since the date of the admission of the State into the Union, 1867, where the original surveys were made prior to that date. All such islands belong to the riparian owner opposite whose surveyed land they are located. *Haney v. Hewitt*, (105 Nebr. 746). If such an island is located entirely on one side of the thread of the stream, it belongs to the owner or owners of the surveyed land on that side of the stream. If it is located in or near the center of the stream, the thread of the stream above and below the island is produced across the island as though it did not exist and said thread of the stream so produced establishes the boundary line between the owners of the surveyed land on the opposite sides of the stream. In other words, the division of the bed of the stream is the same whether the bed of the stream is covered by water, partly covered by water or entirely dry, excepting where access to the main or navigable channel of the river is the paramount issue, such as in the case of a navigable stream.

In the progress of the regular surveys of the public lands of the United States, the U. S. Deputy Surveyors were instructed to survey and show upon the official plat every island above mean high-water elevation of any meanderable body of water, excepting only those islands which may have been formed in navigable bodies of water after the date of the admission of the State into the Union.

In the survey of the mainland fronting on any non-navigable body of water, any island opposite thereto, above mean high-water elevation was subject to survey. Also, even though the United States may have parted with its title to the adjoining mainland, an island in any meandered body of water, navigable or non-navigable, known or proven to have been in existence at the date of the admission of the State into the Union, and at the date of the survey of the mainland, if omitted from said original survey, remains public land of the United States, and as such the island is subject to survey. Mean high-water elevation is defined as the line where permanent vegetation ceases. Willow brush, weeds, swamp grasses and other vegetation may exist below the line of mean high-water elevation, but is not classed as permanent vegetation. Native grasses and trees are classed as permanent vegetation as they exist only on land above what is termed the line of mean high-water elevation. In order that islands referred to in this paragraph may be recognized as public lands of the United States, proof of their existence at the time of the original survey of the mainland must be submitted to the Bureau of Land Management at Washington, D.C.