

In *Re Hull and Selby Railway* (1839), 5 M. & W. 327, the general law as to gradual accretion or recession is stated. Alderson, B., says, p. 333: "The principle laid down by Lord Hale, that the party who suffers the loss shall be entitled also to the benefit, governs and decides the question. That which cannot be perceived in its progress is taken to be as if it never had existed at all"

See also *Giraud's Lessee v. Hughes* (1829), 1 Gill & Johnson (14 C. A. Reports, Md., 115.)

Defendants' counsel, in the course of a very elaborate and careful argument, cited numerous authorities in support of the view that the plaintiff Carr had lost the land by the encroachment of the water. I do not cite all of these because they are set out at large in the extended report of the argument, but I do not think there is any case in which it has been expressly held that a person in the position of this individual plaintiff loses his property because of the gradual encroachment of the water past the land in front of the road, past the road and past the fixed boundary of plaintiffs' land. He could not have gained an inch of land by accretion even if the lake had receded for a mile and therefore it seems that the fundamental doctrine of mutuality, formulated in the civil law and adopted into the jurisprudence of many countries, cannot apply to him.

Perhaps the strongest English case cited by defendants' counsel was *Foster v. Wright* (1878), 4 C. P. D. 438: "The plaintiff was lord of a manor held under grants giving him the right of fishery in all the waters of the manor, and, consequently, in a river running through it. Some manor land on one side of, and near but not adjoining the river, was enfranchised and became the property of the defendant. The river, which then ran wholly within lands belonging to the plaintiff, afterwards wore away its bank, and by gradual progress, not visible, but periodically ascertained during twelve years, approached and eventually encroached upon the defendant's land, until a strip of it became part of the river bed. The extent of the encroachment could be defined. The defendant went upon the strip and fished there." Held, that an action of trespass against him for so doing could be maintained by the plaintiff, who had an exclusive right of fishery which extended over the whole bed of the river notwithstanding the gradual deviation of the stream on to the defendant's land."