

remembered that road and could speak of its boundaries, and of the erosion of the beach causing the road to be carried away north to its present position, many rods north of its original situs.

The evidence is overwhelming (I disregard the curious evidence of Samuel Cooper) and I find it to be the fact that the locus now in controversy is part of the lot 178 north of the old Talbot road.

Having come to this conclusion, it follows that if plaintiffs' contention in law is well founded it is quite immaterial whether or not the construction of the derrick is entirely in the water, or partly in the water and partly on the beach—the fact being that it is on Carr's property.

In "Gould on Waters," 3rd ed., par. 155, pp. 306, to 310, inclusive, after stating the general rule that "land formed by alluvion, or the gradual and imperceptible accretion from the water, and land gained by reliction, or the gradual and imperceptible recession of the water, belong to the owner of the contiguous land to which the addition is made: and that conversely land gradually encroached upon by navigable waters ceases to belong to the former owner," quoting the maxim *Qui sentit onus debet sentire commodum*, the author proceeds (p. 309). "But when the line along the shore is clearly and rigidly fixed by a deed or survey, it will not, it seems, afterwards be changed because of accretions, although as a general rule, the right to alluvion passes as a riparian right."

In *Sauley v. Shepherd* (1866), 4 Wall. S. C. U. S. 502, it was held that the right to alluvion depends upon the fact of continuity of the estate to the river—when the accretion is made before a strip of land bordering on a river the accretion belongs to it and not to the larger parcel behind it and from which the strip when sold was separated, citing at length the judgment in a case of *Gravier v. City of New Orleans*, which is in some little known report not to be found in the library at Osgoode Hall. In *Chapman v. Hoskins* (1851), 2 Md. Ch. at p. 485, the general rule is stated as follows (par. 2, head-note): "Owners of lands bordering upon navigable waters are as riparian proprietors, entitled to any increase of the soil which may result from the gradual recession of the waters from the shore, or from accretion by alluvion, or from any other