

ANNOTATION

DEEDS: DESCRIPTION OF LAND CONVEYED BY REFERENCE  
TO RIVER OR STREAM AS CARRYING TO THREAD OR  
CENTER OR ONLY TO BANK THEREOF—MODERN STATUS

by

*George A. Locke, J.D.*

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**TOTAL CLIENT-SERVICE LIBRARY® REFERENCES**

12 Am Jur 2d, Boundaries §§ 20-26, 28  
5 Am Jur Pl & Pr Forms (Rev Ed), Boundaries, Forms 11-20  
3 Am Jur Legal Forms 2d, Boundaries § 44:82  
2 Am Jur Proof of Facts 649, Boundaries  
2 Am Jur Trials 669, Preparing and Using Maps; 3 Am Jur Trials 1,  
Preparing and Using Photographs in Civil Cases  
43 USCS § 931  
US L Ed Digest, Boundaries §§ 29, 30  
ALR Digests, Boundaries §§ 15-17  
L Ed Index to Annos, Boundaries; Deeds; Water Power  
ALR Quick Index, Bank of Stream; Boundaries; Deeds; Navigable  
Waters; Riparian Owners; Waters and Watercourses  
Federal Quick Index, Boundaries; Deeds; Navigable Waters; Riparian  
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Consult POCKET PART in this volume for later cases

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**TABLE OF JURISDICTIONS REPRESENTED**  
 Consult POCKET PART in this volume for later cases

US: §§ 2[b], 3	Neb: §§ 2[a], 3
Ala: §§ 4, 5	NH: §§ 2[a], 5, 6[b]
Ariz: § 3	NY: §§ 4, 6[a]
Ark: §§ 5, 7[a]	Okla: § 3
Colo: § 6[a]	Or: §§ 2[a, b], 4
Ga: §§ 3, 5	SC: § 3
Ky: §§ 2[a], 4, 7[b]	Tex: § 5
Miss: § 3	Wash: §§ 2-4, 8
Mont: §§ 4, 9	

I. Preliminary matters

§ 1. Introduction

[a] Scope

This annotation<sup>1</sup> examines repre-

sentative<sup>2</sup> cases in an attempt to ascertain the modern<sup>3</sup> status of the principle<sup>4</sup> under which a conveyance<sup>5</sup> of land abutting<sup>6</sup> a river or stream<sup>7</sup> is deemed to pass title to the bed of the

1. The broader annotation, "Specific description with reference to water, in conveyance of riparian land, as marking the extent of grantee's ownership of the submerged land and the shore," at 74 ALR 597, need no longer be consulted as to matters included within the scope of the present annotation unless a more exhaustive treatment, including older cases, is required.

2. No attempt has been made herein to treat the subject matter exhaustively.

3. Only representative cases decided since 1955 are collected herein.

4. Cases which apply or limit the principle under specific factual circumstances

(see §§ 3-9, *infra*) are included herein regardless of whether the principle itself is expressly stated or referred to by the court.

5. Cases involving public grants of land have been excluded from the coverage of this annotation; only cases involving private grants and reservations are examined.

6. The conveyed land must be riparian in order to fall within the scope of this annotation. The description of the land in the deed must, in other words, extend the boundary at least as far as the outer confines of the watercourse.

waterway as far as the thread or center<sup>8</sup> thereof, rather than to limit the conveyance to the bank or to some other point short of the bed.

In order to fall within the scope of this annotation, a case must involve a conveyance referring either to a river or stream itself or to some natural, topographical feature thereof, such as the bank or low-water mark, as a boundary. Accordingly, cases involving calls for artificial monuments, such as trees and stakes, on banks of watercourses are not included herein.<sup>9</sup> Nor are cases involving boundaries designated in terms of "meander lines" included within the scope of this annotation.<sup>10</sup>

For purposes of this annotation, it is assumed that the riverbeds under controversy are subject to private ownership and were owned by the grantors prior to the conveyances at issue. Thus, cases involving questions as to the ownership of the beds of navigable waterways not subject to private ownership are not included herein. Since title to the beds of all navigable rivers is regarded as vested in the state in many jurisdictions,<sup>11</sup>

most of the cases collected in this annotation therefore involve conveyances of land abutting nonnavigable streams.

Since relevant statutes are discussed herein only to the extent that they are reflected in the reported cases within the scope of this annotation, the reader is advised to consult the latest enactments in his jurisdiction.

#### [b] Related matters

Right to accretion built up from one tract of land and extending laterally in front of adjoining tract without being contiguous thereto. 61 ALR3d 1173.

Boundaries: measurement in horizontal line or along surface or contour. 80 ALR2d 1208.

Rights and remedies of one purchasing at judicial or execution sale where there was misrepresentation or mistake as to acreage or location of boundaries of tract sold. 69 ALR2d 254.

Apportionment and division of area of river as between riparian tracts fronting on same bank, in absence of

7. For purposes of this annotation, "river or stream" means a natural watercourse with a bed and banks and with evidences of a permanent stream of running water. See generally 12 Am Jur 2d, Boundaries § 20. Cases involving grants of land abutting oceans, lakes, ponds, canals, and swamps are excluded from this annotation. See generally 12 Am Jur 2d, Boundaries §§ 14-19. See also the broader annotation, "Specific description with reference to water, in conveyance of riparian land, as marking the extent of grantee's ownership of the submerged land and the shore," at 74 ALR 597.

8. The thread of a stream, as the term is used in the cases collected herein, might be defined either as the middle line between the shores of the watercourse, irrespective of the depth of the channel,

or as the point at which the water in the stream reaches its lowest depth. See generally 12 Am Jur 2d, Boundaries § 28.

9. See generally 12 Am Jur 2d, Boundaries § 27. See also the broader annotation, "Specific description with reference to water, in conveyance of riparian land, as marking the extent of grantee's ownership of the submerged land and the shore," at 74 ALR 597.

10. See generally 12 Am Jur 2d, Boundaries § 29. See also the broader annotation, "Specific description with reference to water, in conveyance of riparian land, as marking the extent of grantee's ownership of the submerged land and the shore," at 74 ALR 597.

11. § 2[a], *infra*.

agreement or specification. 65 ALR2d 143.

Description with reference to highway as carrying title to center or side of highway. 49 ALR2d 982.

Validity of zoning regulations, with respect to uncertainty and indefiniteness of district boundary lines. 39 ALR2d 766.

Tacking adverse possession of area not within description of deed or contract. 17 ALR2d 1128.

## § 2. Summary and comment

### [a] Generally

It would appear that there exists a certain amount of confusion and uncertainty over the proper location of boundaries of land bordering on rivers and streams, arising in large measure from conflicting views as to whether the state or private individuals hold title to the soil under the waters of a particular river.<sup>12</sup> This question of ownership may turn on whether the waters under consideration are tidal or nontidal and, if nontidal, whether they are navigable or nonnavigable.<sup>13</sup> Under the English common law, the beds of all rivers as far as the flow of the tide extends is in the Crown, whereas the beds of all fresh-water rivers above the ebb and flow of the tide is vested in the riparian owners.<sup>14</sup> The courts in many American jurisdictions follow this rule,<sup>15</sup> but the courts in a number of others regard the beds of all naviga-

ble, though nontidal, rivers as vested in the state.<sup>16</sup>

Once the issue of public ownership versus private ownership is resolved in favor of the latter, the location of boundary lines becomes primarily a matter of the intent of the grantor in the conveyance whereby the boundaries were, at one locus or another, established.<sup>17</sup> No problems arise if the grantor expresses his intent clearly, of course, but where the grantor is silent or ambiguous as to his intent it becomes necessary for the courts to apply certain rules and presumptions as to the location of boundaries.<sup>18</sup> In general, it is presumed that the grantee acquires whatever land under the watercourse was owned by the grantor,<sup>19</sup> and, in the absence of language expressly or impliedly reserving from the operation of the deed some portion of the grantor's land, the boundary line will be deemed to be fixed by, and located coextensive with, the boundary line of the grantor.<sup>20</sup>

Where it is undisputed that the grantor held title at least to the thread or center of a river dividing his land from that of his neighbor, courts frequently have applied the corollary principle that a conveyance in which a river or stream is referred to as a boundary generally passes title to the bed of the waterway as far as its thread or center.<sup>21</sup> In some cases, this principle too has been stated as a

12. See 12 Am Jur 2d, Boundaries § 12.

13. See 12 Am Jur 2d, Boundaries § 12.

14. See 12 Am Jur 2d, Boundaries § 20.

15. See, for example, *New Hampshire Water Resources Board v Lebanon Sand & Gravel, Inc.* (1967) 108 NH 254, 233 A2d 828, *infra* § 5.

16. See 12 Am Jur 2d, Boundaries § 20.

17. See 12 Am Jur 2d, Boundaries § 12.

18. See 12 Am Jur 2d, Boundaries § 12.

19. See, for example, *Knutson v Reichel* (1973) 10 Wash App 293, 518 P2d 233, 78 ALR3d 598, *infra* § 4.

20. See 12 Am Jur 2d, Boundaries §§ 12, 20.

21. §§ 3, 4, *infra*.

presumption,<sup>22</sup> but in other cases it has appeared as a rule of construction, either because the court has expressly so designated it or because the court has failed to characterize it specifically as a "presumption."<sup>23</sup> Where the principle is regarded as a presumption, it has been held that it can be rebutted by an express exception or a clear and unequivocal declaration of an intent to limit the grant.<sup>24</sup> Even where it is stated as a rule of construction, the principle is apparently not absolute but is subject to an exception where there is evidence of an intent to limit the grant.<sup>25</sup>

Various rationales have been articulated for the application of such a principle to conveyances of riparian land: (1) calls of lines to monuments in general are considered to run to the center thereof; (2) it is desirable as a matter of policy to prevent the existence of innumerable strips and gores of land within rivers and streams to which title may remain in abeyance for generations; and (3) such isolated strips are ordinarily of much greater value to the adjoining or upland owner—the grantee—than they are to a grantor who has disposed of the abutting property.<sup>26</sup>

Whether the principle, as a rule or as a presumption, will be applied to a particular boundary dispute often depends on the specificity of the grantor's reference to the river or stream

in the deed. Where the reference is simply to the waterway itself (such as "to the creek," "up the creek," "lying south of the stream," or "along the river") and contains no mention of any specific part thereof, it has been held frequently that the principle should apply and that the boundary line should be placed at the thread or center of the river.<sup>27</sup> Where the grantor pinpoints more precisely the frontier of his conveyance, referring to some topographical feature of the river or stream, the courts have appeared less disposed to find an ambiguous expression of intent and to apply the rule or presumption that the grantee takes to the thread.<sup>28</sup> Thus, where the reference in the deed is to the bank of the river, it has been held that the conveyance is limited to the bank and does not extend to the thread,<sup>29</sup> although there has been some authority to the contrary.<sup>30</sup> Similarly, where the reference in the deed is to the low-water mark of the river, it has been held that the conveyance is limited to the low-water mark,<sup>31</sup> although it has also been held that a conveyance does extend to the thread of the waterway notwithstanding a call to the low-water mark where the deed otherwise indicates such an intent on the part of the grantor.<sup>32</sup> Where the deed contains a reference both to the river or stream itself and to the bank thereof, it has been held that the general principle

22. § 4, *infra*.

23. § 3, *infra*.

24. See, for example, *Hough v Ohio River Sand Co.* (1956, Ky) 288 SW2d 655, *infra* § 4.

25. See, for example, *Oliver v Thomas* (1961) 173 Neb 36, 112 NW2d 525, *infra* § 3.

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26. See, for example, *McAdam v Smith* (1960) 221 Or 48, 350 P2d 689.

27. § 5, *infra*.

28. §§ 6-9, *infra*.

29. § 6[a], *infra*.

30. § 6[b], *infra*.

31. § 7[a], *infra*.

32. § 7[b], *infra*.

should apply, and that the conveyance should be deemed to extend to the thread, on the ground that the parties to the conveyance were mutually mistaken in their designation of the bank as a boundary;<sup>33</sup> but where the reference is both to the waterway itself and to the "other side" thereof, it has been held, in a case involving a dispute over the boundary of land excepted and reserved from a grant, that the designation of the "other side" should prevail as an expression of intent to exclude from the conveyance any part of the riverbed.<sup>34</sup>

Submerged lands are considered to have the same general incidents, as property, as are attributed to other real estate, and the owner of such lands is said to have a right to the use and enjoyment thereof without trespass by others.<sup>35</sup> Ownership of a riverbed to its thread or center does not necessarily provide the upland owner with exclusive domain over the waters flowing past, however; in the case of a navigable waterway, ownership of the riverbed soil has been held subject to a public easement to use the waters for purposes of navigation, floating, and fishing.<sup>36</sup>

#### [b] Practice pointers

In any boundary dispute case involving the question whether a conveyance of riparian land extends to the thread or center of a river, it is important to bear in mind that there is disagreement among the courts as

to the method of establishing a thread. Some courts have held that the thread is the middle of the river as measured when the water is at its lowest stage, while other courts have held that the thread is a line drawn equidistant from the ordinary high-water marks on the opposite sides of the waterway.<sup>37</sup> Where it is determined that an upland owner does have title to the adjoining riverbed as far as the thread, the precise location of his boundary may well vary depending on which approach is recognized in counsel's own jurisdiction.

In advancing his client's interest, counsel should be aware that questions of disputed boundaries may be presented and determined in various proceedings at law, such as an action in ejectment (where title is disputed) or an action in trespass (where the complainant has not been dispossessed).<sup>38</sup> A judicial determination of the correctness of a particular boundary, not requiring a finding as to where the true boundary is otherwise located, may also be obtained in an action for damages arising out of misrepresentation as to, or negligence in prior determination of, boundary location.<sup>39</sup>

In the absence of statutory authorization, courts of equity may not assume jurisdiction over a boundary dispute or controversy unless there exists, in addition to the dispute, some special ground for equitable interposition, such as mutual mistake

33. § 8, *infra*.

34. § 9, *infra*.

35. See 78 Am Jur 2d, Waters § 376.

36. See, for example, *New Hampshire Water Resources Board v Lebanon Sand & Gravel, Inc.* (1967) 108 NH 254, 233 A2d 828, *infra* § 5.

37. See generally *Belmont v Umpqua Sand & Gravel, Inc.* (1975, Or) 542 P2d 884, not directly within the scope of this annotation.

38. See generally 12 Am Jur 2d, Boundaries § 91.

39. See generally 12 Am Jur 2d, Boundaries § 91.

or fraud.<sup>40</sup> However, statutes have been enacted in some states granting to courts of equity special jurisdiction to determine and establish boundaries through summary proceedings.<sup>41</sup> In addition, many states have special statutory proceedings for the ascertainment and settling of disputed boundaries.<sup>42</sup> These vary in nature from one state to another and should be investigated locally by counsel.

Actions for the determination of boundary lines may be brought and maintained by the owner or part owner of the property the line of which is in dispute; the parties defendant should include all persons interested as landowners, whether their estates are present or future.<sup>43</sup>

Counsel is reminded that the burden of proof on an issue as to a boundary is on the party having the affirmative of that issue, and that the burden must ordinarily be fulfilled by a preponderance of the evidence.<sup>44</sup> Where the case involves a boundary abutting on a river or stream, meeting the burden may be facilitated by the general rule of construction or the rebuttable presumption that the conveyance extends to the center of the waterway.<sup>45</sup>

As a rule, any competent evidence, whether documentary or parol, which

is admissible generally and which tends to identify the location of the disputed boundary may be received as part of the client's case.<sup>46</sup> Among the kinds of evidence which have been held admissible where a deed employs a call to a river and does not specifically mention the thread or center thereof is parol evidence to the effect that the parties to the conveyance intended the bank of the river to be the boundary.<sup>47</sup> Where appropriate, counsel might also consider the evidentiary use of surveys, field notes, and maps prepared by surveyors,<sup>48</sup> as well as the testimony of the surveyor who originally established the boundary as to its exact location.<sup>49</sup> Courts tend to be liberal in allowing the use of hearsay evidence in boundary dispute cases; this may take the form of declarations of persons disinterested at the time of the declaration and now deceased, of declarations and admissions against interest, and of evidence of common repute.<sup>50</sup>

As in any other case, counsel can, of course, save himself time and effort by requesting that judicial notice be taken of matters which do not require for their proof the presentation of evidence, such as the variation of the magnetic from the true meridian and the fact that the bank of a river is a more convenient place for

40. See generally 12 Am Jur 2d, Boundaries § 92.

41. See generally 12 Am Jur 2d, Boundaries § 93.

42. See generally 12 Am Jur 2d, Boundaries § 94.

43. See generally 12 Am Jur 2d, Boundaries § 95. See also the annotation, "Necessary or proper parties to suit or proceeding to establish private boundary line," at 137 ALR 723.

44. See generally 12 Am Jur 2d, Boundaries § 99.

45. §§ 3, 4, *infra*.

46. See generally 12 Am Jur 2d, Boundaries § 100.

47. See, for example, *Knutson v Reichel* (1973) 10 Wash App 293, 518 P2d 233, 78 ALR3d 598, *infra* § 8.

48. See generally 12 Am Jur 2d, Boundaries §§ 111-115.

49. See generally 12 Am Jur 2d, Boundaries § 102.

50. See generally 12 Am Jur 2d, Boundaries §§ 106-110.

monuments than the center of the stream.<sup>51</sup> Judicial notice is taken of the navigability of the more important rivers and streams, but the navigability of smaller, less significant waterways must be established in the same manner as any other question of fact.<sup>52</sup>

In an action involving a boundary dispute, the functions of the court and jury are essentially the same as in trials of other civil causes; the probative value of a witness' testimony is for the jury to determine, as is the incidental location of a boundary line of conveyed land, whereas the construction and legal effect of a deed are questions of law for the court to decide.<sup>53</sup>

In conclusion, it would appear from many of the decisions within the scope of this annotation that a grantor ought to be as precise in the deed as possible as to which topographical feature of the river bordering the land to be conveyed he wishes to establish as the boundary, at least where he does not intend to convey to the thread.<sup>54</sup> Where the thread is the intended boundary, rather than the bank or low-water mark, it is probably safe to refer simply to the waterway by name in reliance on the rule or presumption that title is passed as far as the thread;<sup>55</sup> even then, however, greater specificity can do no harm as long as counsel is

familiar with the appropriate terminology.

## II. Principle that conveyance by reference to river or stream as boundary carries to thread or center thereof

### § 3. Principle expressed as rule of construction

In the following cases, involving a variety of factual circumstances, it was held or recognized that, as a general rule, a conveyance of land bounded upon a river or stream carries with it title to the bed of the river or stream as far as the thread or center thereof.<sup>56</sup>

**Ariz**—*State v Bonelli Cattle Co.* (1971) 107 Ariz 465, 489 P2d 699, *supp op* 108 Ariz 258, 495 P2d 1312, *revd on other grounds* 414 US 313, 38 L Ed 2d 526, 94 S Ct 517 (recognizing rule).

**Ga**—*Outlaw v Outlaw* (1969) 225 Ga 100, 165 SE2d 845.

**Miss**—*Reynolds v Refuge Planting Co.* (1957) 231 Miss 585, 97 So 2d 101 (recognizing rule).

**Neb**—*Oliver v Thomas* (1961) 173 Neb 36, 112 NW2d 525; *Krumwiede v Rose* (1964) 177 Neb 570, 129 NW2d 491.

**Okla**—*Bauman v Choctaw-Chickasaw Nations* (1964, CA10 Okla) 333 F2d 785, *cert den* 379 US 965, 13 L Ed 2d 559, 85 S Ct 658 (apparently applying Oklahoma law; recognizing rule).

51. See generally 12 Am Jur 2d, Boundaries § 98.

52. See generally *Re River Queen* (1967, DC Ark) 275 F Supp 403, *affd* (CA8 Ark) 402 F2d 977, not directly within the scope of this annotation.

53. See generally 12 Am Jur 2d, Boundaries § 116.

54. See, for example, 3 Am Jur Legal Forms 2d, Boundaries § 44:82, dealing

analogously with conveyances of land abutting lakes.

55. §§ 3, 4, *infra*.

56. In some of these cases, the rule was expressly characterized as subject to an exception where there is evidence of an intention on the part of the grantor to exclude the riverbed from the grant. See, for example, *Oliver v Thomas* (1961) 173 Neb 36, 112 NW2d 525, *infra*.



SC—State v Hardee (1972) 259 SC 535, 193 SE2d 497 (recognizing rule).

Wash—Powell v Schultz (1971) 4 Wash App 213, 481 P2d 12.

The beds of streams not navigable belong to the owner of the adjacent land, and if the stream of water is the dividing line, each owner is entitled to the thread or center of the main current, stated the court, in *Outlaw v Outlaw* (1969) 225 Ga 100, 165 SE2d 845, adding that it was well settled that, where land is bounded by a nonnavigable stream, the boundary extends to the center or thread of the stream. Thus, the court held that a conveyance included soil under water as far as the thread of the waterway where the pertinent deeds referred simply to the waterway by name.

Grants of land bounded upon rivers carry with them the exclusive right and title of the grantees to the center or thread of the stream, unless the terms of the grant clearly denote an intention to stop at the bank or margin of the river, stated the court, in *Oliver v Thomas* (1961) 173 Neb 36, 112 NW2d 525, observing that a landowner whose property abutted a river to the south was probably entitled to protection from encroachment south of the north bank, though noting as well that the record was lacking in evidence as to the location of the legally recognizable channel and its thread or center.

Where a stream is a boundary, the division follows the thread of this nonnavigable waterway, stated the court, in *Powell v Schultz* (1971) 4

Wash App 213, 481 P2d 12,<sup>57</sup> holding that the trial court, where it determined on the basis of substantial evidence that the more southerly of two creeks was the boundary intended by the grantor, should have described the dividing line in its judgment so as to follow the center line of that creek as closely as possible.

#### § 4. Principle expressed as presumption

In the following cases, involving a variety of factual circumstances, it was held or recognized that, where there is a conveyance of land bounded upon a river or stream, there exists a presumption that title to the bed of the river or stream as far as the thread or center thereof is included in the conveyance.<sup>58</sup>

Ala—*Rollan v Posey* (1961) 271 Ala 640, 126 So 2d 464.

Ky—*Hough v Ohio River Sand Co.* (1956, Ky) 288 SW2d 655.

Mont—*Montgomery v Gehring* (1965) 145 Mont 278, 400 P2d 403.

NY—*Meadvin v State* (1965) 22 App Div 2d 326, 255 NYS2d 357.

Or—*McAdam v Smith* (1960) 221 Or 48, 350 P2d 689 (recognizing rule).

Wash—*Knutson v Reichel* (1973) 10 Wash App 293, 518 P2d 233, 78 ALR3d 598.

Where land bordering on a stream is conveyed, a very strong presumption exists that the grantor intended to convey the bed of the stream toward the center as far as he owns, and to rebut this presumption there must be an express exception or a

57. But see *Knutson v Reichel* (1973) 10 Wash App 293, 518 P2d 233, 78 ALR3d 598, *infra* § 4, in which a similar principle was stated as a presumption.

58. In some of these cases, the pre-

sumption was expressly characterized as subject to rebuttal by evidence of an intent on the part of the grantor to exclude the riverbed from the grant. See, for example, *Hough v Ohio River Sand Co.* (1956, Ky) 288 SW2d 655, *infra*.

clear and unequivocal declaration of an intent to limit the grant, stated the court, in *Hough v Ohio River Sand Co.* (1956, Ky) 288 SW2d 655, holding that a conveyance of land bounded by the low-water mark of a river extended to the thread or center of the waterway notwithstanding the reference to this mark where there was other language in the deed evincing an intent on the part of the grantor not to retain title to any portion of the riverbed.

If property is bounded by a stream, the grantee takes to the thread, and if the grantor desires to retain title to any of the land under water, there must be express words overcoming the effect of the presumption that he intended to convey such property, or the description must thoroughly exclude it, stated the court, in *Meadvin v State* (1965) 22 App Div 2d 326, 255 NYS2d 357, holding that grantees seeking compensation for property taken by condemnation owned none of the soil below the bank of a river bordering their land where a deed in their chain of title referred to the left bank of the river as the boundary.

There exists a presumption that, when a private individual grants property belonging to him and bounds it generally upon a natural stream, he does not intend to reserve any land between the upland and the stream, and the grant will carry title to the grantee so far as the grantor owns unless the shoreland or bed of the stream are expressly reserved from the grant, stated the court, in *Knutson v Reichel* (1973) 10 Wash App 293, 518 P2d 233, 78 ALR3d 598,<sup>59</sup> holding that a conveyance described in a deed as running to a named river

included the submerged soil as far as the thread of the stream despite the fact that the deed also mentioned the bank of the stream as the boundary.

### III. Application or limitation of principle under specific descriptions

#### § 5. References solely to river or stream itself

In the following cases, a reference in a deed solely to a river or stream itself as one of the boundaries was held to have included within the conveyance the bed of the river or stream as far as its thread or center.

By a deed in which the boundaries of the conveyed property were described in part as running "to Autauga Creek, thence up Autauga Creek," a nonnavigable waterway, a grantor was held to have conveyed to the thread or center of the creek, in *Rollan v Posey* (1961) 271 Ala 640, 126 So 2d 464, the court upholding the trial court's determination in this respect although reversing the decree, awarded to the grantee in an equitable proceeding brought to establish the disputed line, for failure to join an indispensable party. Citing the general presumption arising in the case of a boundary line on a river or stream (see § 4, supra), which was said to have become a rule of property the effect of which can be negated only by express wording or by such description as clearly excludes the land under water from the property conveyed, the court held that the description at issue in no way evinced an intent on the part of the grantor to exclude the submerged land from the conveyance.

A conveyance of property described in the deed as "lying South of Hurri-

<sup>59</sup> But see *Powell v Schultz* (1971) 4 Wash App 213, 481 P2d 12, supra § 3, in

which a similar principle was stated without being characterized as a presumption.

cane Creek," a nonnavigable stream, was held to include the land lying between the south bank and the thread of the creek, in *Council v Clark* (1969) 246 Ark 1110, 441 SW2d 472, the court affirming a judgment in an action brought by the vendee against the vendors, who retained land adjoining the conveyed parcel and situated to the north of the creek, to determine the location of the boundary separating the parties' properties. Rejecting the vendors' contention that the deed, on its face, showed that the vendee was to receive only that portion of real estate lying south of the creek, the court ruled that the vendors had acted improperly when they erected a fence along the top of the south bank of the creek.

Where the plaintiff landowner, in an action to determine a disputed boundary line, claimed under a deed to him and his brother in which the subject property was described as lying "north of Beaver Dam Bay" and under a later deed from his brother to him in which the land conveyed was described as being "bounded on the south by Beaver Dam Bay," the southern boundary of the property was held to be the thread or center of the waterway, in *Outlaw v Outlaw* (1969) 225 Ga 100, 165 SE2d 845, the court affirming a judgment in favor of the plaintiff landowner and citing evidence that Beaver Dam Bay was in part a nonnavigable stream with a run or thread. In ruling against the defendant landowners, who argued that the boundary was situated on the north side of the swampy area included within the designation "Beaver Dam Bay," the court relied on the language in the plaintiff landowner's deeds, noting as well that there were no inconsistencies between those documents and the deeds under which

the defendant landowners claimed, since the latter described the defendant landowners' property as bounded by a line running "along" Beaver Dam Bay. The conclusion reached by the court was that the general rule with respect to boundaries placed on rivers and streams (see § 3, supra) should be applied.

The words, "thence Down the river," in a deed of riparian lands, were held to have conveyed ownership of the bed of the Connecticut River, a navigable waterway, as far as its thread or center, in *New Hampshire Water Resources Board v Lebanon Sand & Gravel, Inc.* (1967) 108 NH 254, 233 A2d 828, the court determining ownership of the disputed submerged land after the question thereof had been reserved and transferred by the trial court without a ruling. A bill in equity had been brought by an administrative representative of the State of New Hampshire seeking an accounting and recovery of compensation for gravel removed from the river bed to the east of the thread and adjacent to property owned by the defendant landowner. After noting that under local law the beds of navigable rivers were subject to private ownership, subordinate to a public easement to utilize the waterways for navigation, floating, and fishing, the court rejected the representative's assertion that the defendant landowner's title was limited to the property adjoining the river and ruled that the grant on which the defendant landowner relied was so worded as to convey to the owner of the riparian uplands title to the submerged land from which gravel had been removed.

Land under the Leon River, apparently a nonnavigable stream, was held conveyed as far as the thread of the waterway by a deed containing a call

apparently to the river, in *McDonald v Alexander* (1965, Tex Civ App) 388 SW2d 725, the court affirming a judgment fixing the boundary of the parties' adjoining riparian properties at the center of the river, and rejecting the plaintiff landowner's contention that the boundary should be fixed along the north bank of the river, in an action in trespass to try title. Irrespective of the fact that the plaintiff landowner's deed contained no call for the center of the Leon River specifically, the court ruled that a call simply to a river or stream is accepted as a call to the thread or center thereof.

**§ 6. References solely to bank of river or stream**

**[a] Conveyance held limited to bank**

In the following cases, a reference in a deed solely to the bank of a river or stream as one of the boundaries was held to have limited the conveyance to the bank and to have excluded from the conveyance any portion of the bed of the river or stream.

Where certain conveyed land was described in a deed as "situate, lying and being North of the North bank of Beaver Creek," a nonnavigable waterway, the grantees were held to own up to the bank of the creek only, in *Alexander Dawson, Inc. v Fling* (1964) 155 Colo 599, 396 P2d 599, the court reversing a judgment in which it was held that the grantees were entitled to fish in the creek adjacent to their property. Ruling that the language in the deed with respect to the creek was unambiguous, and that a conveyance referring in such precise terms to the bank of a river or stream does not pass title to the thread or center of the waterway, the court concluded that the grantees did not, by their conveyance, acquire the right to fish in the stream.

Persons seeking compensation for land taken by condemnation, asserting that they received title to the center of the bed of an apparently nonnavigable creek bordering the parcels in question, were held to own no further than the bank of the stream, where a conveyance in their chain of title described the land as extending "to the left bank of the Onondaga Creek," in *Meadvin v State* (1965) 22 App Div 2d 326, 255 NYS2d 357, the court modifying a judgment entered in reliance on the fact that the claimants were successors in title to the original patentee of the state, which had transferred title by language signifying an intent to convey to the thread of the creek. Observing that the patent to the first grantee did describe the property in question as bounded by lines running "east to the Onondaga Creek; thence along the said creek as it winds and turns," the court ruled that, even if the patent succeeded in passing title to the thread, the language subsequently used by the original grantee in its own conveyance of the property to another, quoted above, clearly did not operate to pass title to any portion of the bed of the creek. Language specifically limiting a grant to the left bank of a creek, the court held, does not convey the fee to the center of the waterway.

**[b] Conveyance held not limited to bank**

In the following case, a reference in a deed solely to the bank of a river or stream as one of the boundaries was held to have included within the conveyance the bed of the river or stream as far as its thread or center.

Deeds containing runs "by the bank" of Beaver Brook, a nonnavigable stream, were held not to limit the conveyance to the bank in the ab-

sence of a clear expression of such intent, in *Sheldon v Seigny* (1970) 110 NH 419, 272 A2d 134, the court upholding the decree in a proceeding stemming from a boundary line dispute between the owners of two adjacent riparian lots. Rejecting the plaintiff landowner's contention that the surveyor of the properties committed error in beginning certain measurements from the thread of the brook rather than from the bank, the court reasoned that an intent to retain title to soil in a river on the part of a grantor no longer owning the abutting real estate is so improbable that it requires an express exception in the conveyance or some clear and unequivocal declaration to limit the grantee's title to the edge of the river.

**§ 7. References solely to low-water mark of river or stream**

**[a] Generally; conveyance held limited to low-water mark**

In the following case, a reference in a deed solely to the low-water mark of a river or stream as one of the boundaries was held to have limited the conveyance to the low-water mark and to exclude from the conveyance any portion of the bed of the river or stream.

A vendee whose deed of certain riparian land contained a description of the property as beginning at a point at the low-water mark on the line running between two sections on the south side of the inside of the shoe of a nonnavigable brake or slough, and from there running south along the line to the low-water mark on the north side of the slough, and from there running east along the low-water mark of the slough to the point of beginning, was held to hold title only as far as the low-water mark of the waterway, in *McKee v Gay*

(1956) 226 Ark 585, 293 SW2d 450, the court affirming a judgment which held contrary to the vendee's contention that he was the owner of the slough to its center line. Remarking that the vendee was entitled to no more land than was contained within the boundaries set out in his deed, the court cited the fact that the deed at issue, by its language, made specific reference to the low-water mark as the limit of the land conveyed, and it concluded that the vendor's intent was clearly to convey only the land beginning at the low-water mark of the slough.

**[b] Grantor's intent otherwise specified; conveyance held not limited to low-water mark**

In the following case, a reference in a deed solely to the low-water mark of a river or stream as one of the boundaries was held to have included within the conveyance the bed of the river or stream as far as its thread or center, where there was other language in the deed indicating such an intent on the part of the grantor.

Where a deed described certain riparian land as being "the northwest part" of the grantor's 154-acre tract, as well as extending the boundaries of the conveyance "to low water mark on the southeast side of the Ohio River then down said river with low water mark," the conveyance was held to include the bed of the river, a navigable waterway, as far as its thread or center, in *Hough v Ohio River Sand Co.* (1956, Ky) 288 SW2d 655, the court reversing a summary judgment entered in favor of the defendant landowner, on the ground that the plaintiff landowner's title was limited to the low-water mark, in an action brought for damages and injunctive relief after digging activities carried out by the defendant land-

owner in submerged land adjoining the uplands owned by the plaintiff landowner had caused the bank of the river to cave in along the width of the uplands. After noting the existence of a "strong presumption" arising where land is conveyed with a boundary on a river or stream (see § 4, supra), the court ruled that the language used in the deed relied on by the plaintiff landowner did not clearly evince an intent to reserve for the grantor title to the riverbed between the low-water mark and the thread. Irrespective of the references in the deed specifically to the low-water mark of the Ohio River, the court reasoned that, by describing the conveyed property as encompassing "the northwest part" of his entire tract, the grantor had provided strong indication that he did not intend to retain ownership of any portion of the northwest part of his land.

#### § 8. References both to river or stream itself and to bank

In the following case, a reference in a deed both to a river or stream itself and to the bank thereof as one of the boundaries was held to have included within the conveyance the bed of the river or stream as far as its thread or center.

Boundaries of land adjoining a nonnavigable stream, described in a conveyance among heirs as running "to the DesChutes River; thence following along the North bank of the DesChutes River," were interpreted as including the bed of the stream as far as its thread or center, in *Knutson v Reichel* (1973) 10 Wash App 293, 518 P2d 233, 78 ALR3d 598, the court upholding a decree by which the deed was reformed so as to conform with the parties' apparent intent and title to the bed of the stream as far as its thread was quieted in the

grantee. Citing the rebuttable presumption applied where land is conveyed with a boundary along a river or stream (see § 4, supra), as well as textbook authority to the effect that a transfer of land implicitly gives title to the appurtenances and incidents rightfully belonging to the land and essential to full and perfect enjoyment of the property, the court distinguished from the present case one involving a deed wherein there was reference solely to the "bank" of a stream as one of the boundaries, and it affirmed the trial court's determination that, due to mutual mistake, the parties had made reference in their deed to the bank of the river when in fact they had intended the thread to constitute the boundary.

#### § 9. References both to river or stream itself and to "other side"

In the following case, a reference in the exception and reservation clause of a deed both to a river or stream itself and to the "other side" thereof as one of the boundaries was held to have included within the exception and reservation all of the bed of the river or stream and to limit the conveyance to the "edge" opposite the excepted and reserved land.

By the terms of a deed conveying certain real property to another but reserving and excepting to himself "all the land in the corner which is under fence southwest of Poorman [Creek], of which the other side of Poorman would be the boundary," a grantor was held to have established a boundary along the northeast edge of the creek, a nonnavigable waterway, in *Montgomery v Gehring* (1965) 145 Mont 278, 400 P2d 403, the court upholding the trial court's rejection of the grantee's contention that the boundary ran along either the southwest edge of the stream or

the thread. After citing the statutory presumption applicable to grants of land bordering on rivers and streams (see § 4, supra), the court ruled that the language in the deed reserving and excepting to the grantor all of the fenced land southwest of Poorman Creek "of which the other side of Poorman would be the boundary" indicated an intent other than one to place the boundary along the middle of the stream. In so holding, the court also examined the record and found ample reason why the grantor would have wanted to retain on his reserved land all of the creek: he had set aside the land as a site for a "honeymoon cottage" and was anxious to prevent cattle owned by the grantee from straying into the creek and milling around the cottage grounds.

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Consult POCKET PART in this volume for later cases