SAULET *v.* SHEPHERD.

1. Under the practice prevailing in the Circuit Courts of the United States the finding of the facts by the court makes a case in the nature of a special verdict and is conclusive as to those facts; and this although the petition sets forth a different state of facts which are neither confessed nor denied by the answer.
2. The right to alluvion depends upon the fact of contiguity of the estate to the river. Hence where 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.

ERROR to the Circuit Court for the Eastern District of Louisiana.

This was a suit by the heirs of one Saulet for a lot of alluvion (or "batture" as it is called in Louisiana) fronting the city of New Orleans, on the Mississippi. It is marked on the sketch opposite, in shade and as within the letters F G H L.

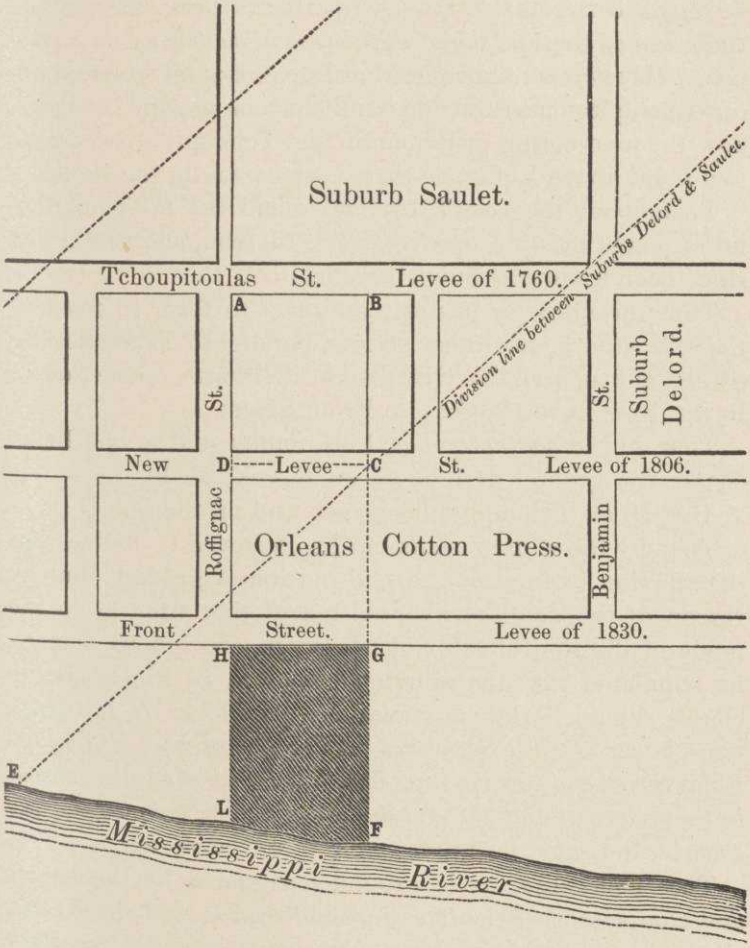
The petition of the heirs set forth:

That their ancestor, Saulet, bought, in 1763, a certain piece of ground (being part of an estate previously known as the Jesuits' Plantation), and that the same was cultivated as a plantation up to the year 1810. [The tract thus purchased is in the region marked on the sketch as "Suburb Saulet."]

That in 1763 the river ran close to and parallel to Tchoupitoulas Street, which was then the public road on the bank of the river, and that there was, outside of the road and close to the river, a dyke or levee running along the whole length of the Jesuits' Plantation, protecting the same from overflow during the annual rise of the Mississippi River.

That outside of the dyke or levee, an alluvial deposit, designated by the name of batture, was afterwards formed, the ownership of which gave rise to much litigation, until the year 1841, when it was finally adjudicated that the said alluvion belonged to the owners of the lands fronting the river.

Sketch showing the lot.



Statement of the case.

That the system according to which the division of such alluvions should be made between contiguous riparian proprietors, was also a matter of considerable doubt until recently, when it was adjudicated that such divisions should be made between contiguous riparian owners according to the *extent of the front line of each owner at the time of the formation of the alluvion;* that the front line of Saulet's plantation, on Tchoupitoulas Street, extended from a point which is now the west corner of Benjamin and Tchoupitoulas Streets, to a point above Roffignac Street, as shown on the sketch.

That about the year 1810, Saulet laid out his plantation into squares and lots, opened streets thereon, and that it had since been known as Suburb Saulet.

That the alluvion having continued to form in front of the said suburb, two other streets, parallel to Tchoupitoulas Street, and nearer the river, were afterwards opened on it, to wit, New Levee Street and Front Street.

That on the 3d September, 1807, Saulet sold to one Bellechasse the ground designated on the sketch by the letters A B C D, on Tchoupitoulas Street, and on the line C D.

That by the same instrument he conveyed to Bellechasse the alluvion in front of the said portion of ground; but by reason of the doubts which existed at that time as to the mode of division of alluvions between contiguous owners, he stipulated that the alluvion conveyed by him to Bellechasse should be taken *between lines parallel to the line of division between Suburb Saulet and Suburb Delord, back of Tchoupitoulas Street, and that the lower line of Bellechasse's batture should be the prolongation of the said line of division between the said two suburbs*, indicated by the letters C E of the sketch.

That hence the whole ground designated by the letters and comprised between the lines C F and C E of the sketch, situated in front of Suburb Saulet, never was sold or alienated by the said Saulet, nor by his legal representatives, and was the property of the petitioners.

That the portion of the said ground indicated on the sketch as that on which the Orleans Cotton Press is built, was now held and possessed under the aforesaid act of sale to Belle-

Statement of the case.

chasse, by one Shepherd, who had probably acquired the same by prescription.

That the portion of the said ground designated by the letters F G H L is now vacant and unoccupied, and under the administration of the city of New Orleans, according to the laws of Louisiana, but that the said Shepherd claims the same, and also the whole ground comprised between the prolongations of Roffignac and Benjamin Streets to the water's edge.

The petitioners prayed, therefore, that Shepherd might be cited; that after due proceedings had, they themselves might be recognized as the owners of the ground between Front Street, the River Mississippi, the prolongation of Roffignac Street, and the line G F of the sketch, and Shepherd be forever enjoined from asserting title to the said alluvial ground.

Shepherd answering the petition, and denying the title of Saulet's heirs, set up among other things, that he had been in uninterrupted and peaceable possession, in good faith and under just titles, for more than thirty years, of the property or estate to which the said property sued for was attached and belonged, and of the said property or batture as long as the same had existed; and that by reason of such possession under the said titles, he pleaded the prescription of ten, twenty, and thirty years.

And further, that he was a *bonâ fide* purchaser of the said property, without notice; and that all those under whom he claims, for a series of more than thirty years, had been *bonâ fide* purchasers of the principal estate to which the batture sued for belongs.

The cause came on to be heard before the court upon the pleadings, and a large body of evidence, and was argued by counsel, and thereupon the court, under a practice usual in Louisiana, found the following, among others, *as facts proved in the cause:*

That the petitioners were the heirs of Saulet.

That, in the year 1763, the Jesuits' Plantation, situated,

&c., was sold, and that one lot, as described, became the property of the said Saulet, and of his heirs at his death, except in as far as he legally disposed of it in his life.

That, in the year 1763, the Mississippi River was close to and parallel with Tchoupitoulas Street, which was then a public road on the bank of that river. That, between this road and this river there was a levee to protect the plantation, and extending along its river boundary, and between the river and the levee there was a batture. That this batture continued to exist from that time until 1810, without experiencing much change. But that by the improvement of the country, and from natural causes, it had, since that time, been raised and extended, and had become the subject of profitable ownership, and that the maps produced in evidence [from one of which the sketch given opposite p. 502, is taken], would show, with sufficient certainty, the changes that the *locus* had undergone since 1763.

That, from the year 1763, until a period subsequent to 1809, the proprietor, Saulet, and the successive proprietors of the adjacent lot, now known as the Delord suburb, *acquiesced in and acted upon the opinion, that the division-line between their plantations extended on a right line across the batture, without experiencing any deflection in consequence of the change made by alluvium.* That the claimants under Saulet had acted on the same opinion, and had made improvements in front of their lots, had sustained expensive suits, and borne the charges of such property to the present time, and that this suit was the first legal contestation of that right by the heirs of Saulet.

That the defendant had connected himself with Saulet, and his heirs, by means of deeds which were read in evidence [and which the court specified], and which showed that the defendant was entitled to all the estate, rights, and privileges which were confirmed by the said deeds, or *ensue* from those granted to the parties named in them.

That all the land between the levee, as now possessed by the city of New Orleans and administered for the public use, and the river boundary in 1763 and in 1810, between the

Delord plantation and the farther external line of the lots,—conveyed to Bellechasse, continued to the same,—had been held by the persons claiming under the deeds of Saulet, mentioned before; and that neither Saulet nor his heirs have, at any time before this suit, contested their right.

The court, upon a construction of the deeds above mentioned, declared:

That all the accretions to those lots between the Delord plantation and the external line of the Bellechasse lots had, of right, ceased to be the property of Saulet or his heirs.

That the plea of prescription was available in this case, in the favor of the defendant.

Judgment was therefore given to dismiss the petition.

Mr. Janin, for the plaintiffs in error; Mr. Mason Campbell, contra.

Mr. Justice GRIER delivered the opinion of the court.

The statement of the evidence made by the court below is in the nature of a special verdict, and conclusive as to the facts of the case.

The only question for our consideration is whether the judgment of the court thereon is erroneous.

The plaintiffs claim, as the heirs of Saulet, a parcel of land now forming a part of the batture, in New Orleans, and a part of the levee of the city.

The defendant, in his answer, "claims to have been in uninterrupted and peaceable possession in good faith and under just title for more than twenty years, of the property or estate to which the said land sued for is attached and belongs, as long as the same has existed, and, under the said titles, he pleads the prescription of ten, twenty, and thirty years." The court below finds the facts to be as stated in this plea, and decide the plea of prescription in favor of the defendant.

The civil code of Louisiana declares that the accretions which are formed successively and imperceptibly to any

soil situated on the shores of any creek or run, are called alluvions.

The right to alluvion depends upon the fact of the contiguity of the estate to the river. Before there can be a right to accession or accretion there must be an estate to which the accession can attach. The plaintiffs' claim seems to be founded on the notion that the right to alluvion adhered to the original plantation, and not to the particular portion of it that borders on the river. They assume that it stretches over the lots that have been sold fronting on the river, and debars them from any extension from improvements or natural causes. The case of *Gravier* v. *The City of New Orleans*, quoted in the record, has the following statement of the law on this subject. The court in that case says:

"If Gravier had continued proprietor of the whole tract on which the faubourg has been established, there would have been no difficulty in determining his title to the alluvion. But Gravier has divested himself of all title to that part of his tract on which the faubourg is situated, by the establishment of the faubourg, and by selling the lots fronting and adjoining the highway. It is, therefore, important to inquire what was the situation of the batture or alluvion in question at the time when the faubourg was established, or at least when the front lots were sold, for if no alluvion existed at the time when Gravier ceased to be the owner of the land adjoining the highroad, then it is the opinion of the court that an alluvion subsequently formed would not become the property of Gravier. The reason of this opinion is, that if Gravier could be considered as the proprietor of the road after selling the adjacent land, or of the levee lying between this road and a public river, he would nevertheless, not possess that kind of property which gives the right of alluvion, for the destruction of this property by the encroachments of the river would be a public and not a private loss, since it could not be appropriated to the private use of any individual, and the said road and levee would have become necessarily liable to be kept in repair at the public expense."

Opinion of the court.

The case stated by the court brings this case within the principles established by the court in that.

The matter of fact decided by the court was that the defendant had possessed the property for the full period required by the laws of the State under all the conditions which those laws demand: a possession of thirty years under claim; a possession of ten years under just titles and in good faith. The map will show that the division-line between the De Lord and Saulet suburbs which had been established in 1763, and acquiesced in by the parties, passed through the upper corner of the lands of the Orleans Cotton Press, and did not touch the land in dispute, which is an accession in front of the said lots. The facts as found sustain, therefore, the defendant's plea, and the judgment of the Circuit Court is

AFFIRMED ACCORDINGLY.

BENTLEY *v.* COYNE.

1. Where a vessel has the wind free, or is sailing before or with the wind, she must keep out of the way of the vessel which is closehauled by the wind or sailing by or against it. Those closehauled on the wind, or sailing on the starboard tack, must keep their course.
2. But these established rules of navigation do not apply after a vessel advancing in violation of them is so near another vessel that by such other vessel's adhering to them a collision would be inevitable. A departure from them, under such circumstances, by a vessel otherwise not in fault, will not impair her right to recover for injuries occasioned by the collision.

THESE were appeals from the Circuit Court of the United States for the Eastern District of Michigan, in a libel and cross-libel for collisions of vessels on Lake Michigan; the questions involved being of fact chiefly, and the cases being submitted.

Mr. Hibbard, for the appellants; Mr. Newbury, contra.

Mr. Justice CLIFFORD delivered the opinion of the court.