

Book VII.
Title XLI.

Concerning alluvion and swamps and concerning pastures changed to another status.
(De adluvionibus et paludibus et de pascuis ad alium statum translatus.)

Bas. 50.16.

7.41.1. Emperor Gordian to Marcus.

Although it is not permitted to divert the natural course of a river by any work erected by man, still it is not forbidden to strengthen its banks against the assault of a rapid stream. And when a river abandons its former channel and makes another for itself, the field round which it flows remains that of the former owner. But if it carries the soil off gradually, adding it to another field, such added soil is acquired by the right of alluvion, by the man whose farm is thereby increased.

Promulgated November 29 (239).

Note.

Alluvion is an imperceptible addition. An addition made thereby to land became part and parcel thereof; not so if a whole parcel was swept away violently. When an island rose in the sea, it belonged to the first occupant (see headnote C. 7.32), for until it was occupied, it belonged to no one. An island arising in the middle of a river belonged to the owners on each side to the middle line, provided one was not nearer to it than the other. If the island lay nearer to one bank than the other, it belonged to the landowner on that bank only, for the owners of land on the banks owned it to, and only to, the middle line of the stream. The stream itself was public. If a river divided into two channels, and by uniting again these channels transformed a man's land into an island, the ownership of that land was in no way altered; but if a river entirely left its old channel and began to run into a new one, the old channel belonged to the landowners on either side of it in proportion to the extent of their riparian interest, while the new one acquired the same legal character as the river itself and became public. But if after a while the river returned to its old channel, the new channel again became the property of those who possessed the land along its banks. If the land was merely flooded, ownership was not changed. Inst. 2. 1. 20-24. The reason that this title is placed in its present position is that in so far as prescription is concerned, the property acquired by alluvion was treated the same as the property which was increased by alluvion. 9 Cujacius 987.

7.41.2. Emperors Arcadius, Honorius and Theodosius to Caesarius, Praetorian Prefect.

Persons whom the inundation of the river Nile makes richer, must pay tribute for the land which they possess. Those, on the contrary, who deplore the diminution of their patrimony (by that means) will be relieved from paying a tax due from another, and protected by the bounty of Our Serenity, and content with their possessions, they should devotedly pay their tribute according to the adjustment made.

Given June 11 (403).

Note.

9 Cujacius 987, explains this law as follows: Law 2 relates to inundation. If the fields in Egypt are inundated by the Nile and are thereby made richer - and a similar

situation arises in other provinces - the parties whose land are made richer pay more taxes. Those whose fields are diminished or are made worse, are relieved, and pay tribute in proportion to the quantity and quality of their land. The last sentence of the law is clumsy.

7.41.3. Emperors Theodosius and Valentinian to Cyrus, Praetorian Prefect.

We ordain by this law, to remain valid forever, that property which, in Egypt by means of the Nile and in other provinces by means of the different streams therein, is acquired by possessors by alluvion, shall not be sold by the fisc, nor claimed by anyone (in its behalf), nor shall it be separately assessed or taxes demanded for it, lest we seem not to know the defects of alluvial lands, or make them introduce something injurious to possessors. 1. Similarly, we do not permit areas which formerly belonged to swamp or pasture lands, and which have been made productive at the expense of possessors, to be sold (by the fisc) or claimed (in its behalf) or separately assessed or taxed as fertile lands, lest the diligent grieve for their pains in cultivating them, and discover their diligence turned into damage. We decree that violators of this law shall be punished by a fine of fifty pounds of gold. Among them are to be considered the members of your official staff, if they suggest anything of the kind to be done, or prepare a petition of a claimant.

Note.

The law provides that the property acquired by alluvion should not be sold by the fisc, that is to say, should not be treated as public property, since the ownership thereof belonged to the person who owned the land to which an addition was made by alluvion. Further, this ownership was evidently considered as uncertain, since the addition made by alluvion might soon be lost, and hence should not be considered as taxable property, contrary to the provision of law 2 ht. So property that was reclaimed should not be assessed separately for taxes. See Bas. 50.16.3; 9 Cujacius 988.