

JOSE V. HILARIO, JR., PLAINTIFF-APPELLANT, VS. THE CITY OF MANILA, DEFENDANT-APPELLEE, DIRECTOR OF PUBLIC WORKS, CITY ENGINEER OF MANILA, FERNANDO BOSUEGO AND EUGELIO SESE, DEFE...

G.R. No. L-19570. April 27, 1967

Ponente: BENGZON, J.P., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/d951881a61ed/>

BENGZON, J.P., J.:

Dr. Jose Hilario was the registered owner of a large tract of land - around 49 hectares in area - located at Barrio Guinayang, in San Mateo, Rizal.[1] Upon his death, this property was inherited by his son, herein plaintiff-appellant Jose Hilario, Jr., to whom a new certificate of title[2] was issued.

During the lifetime of plaintiff's father, the Hilario estate was bounded on the western side by the San Mateo River.[3] To prevent its entry into the land, a bamboo and lumber post dike or ditch was constructed on the northwestern side. This was further fortified by a stonewall built on the northern side. For years, these safeguards served their purpose. However, in 1937, a great and extraordinary flood occurred which inundated the entire place including the neighboring barrios and municipalities. The River destroyed the dike on the northwest, left its original bed and meandered into the Hilario estate, segregating from the rest thereof a lenticular piece of land. The disputed area is on the eastern side of this lenticular strip which now stands between the old riverbed site and the new course."[4]

In 1945, the U.S. Army opened a sand and gravel plant within the premises[5] and started scraping, excavating and extracting soil, gravel and sand from the nearby areas along the River. The operations eventually extended northward into this strip of land. Consequently, a claim for damages was filed with the U.S. War Department by Luis Hidalgo, the then administrator of Dr. Hilario's estate. The U.S. Army paid.[6] In 1947, the plant was turned over to herein defendants-appellants and appellee who took over its operations and continued the extractions and excavations of gravel and sand from the strip of land along an area near the River.

On October 22, 1949, plaintiff filed his complaint[7] for injunction and damages against the defendants City Engineer of Manila, District Engineer of Rizal, the Director of Public Works, and Engr. Bosuego, the Engineer-in-charge of the plant. It was prayed that the latter be restrained from excavating, bulldozing and extracting gravel, sand and soil from his property and that they solidarily pay to him P5,000.00 as damages. Defendants' answer alleged, in affirmative defense, that the extractions were made from the riverbed while counterclaiming with a prayer for injunction against plaintiff who, it was claimed, was preventing them from their operations.

Subsequently, the Bureau of Mines and Atty. Maximo Calalang were respectively allowed to join the litigation as intervenors. The former complained that the disputed area was within the bed of the River so that plaintiff should not only be enjoined from making extractions there from but should also be ordered to pay the fees and penalties for the materials taken by him. On the other hand, the latter claimed that he was authorized by plaintiff to extract

materials from the disputed area but this not with standing, the Provincial Treasurer of Rizal collected from him a sand and gravel fee which would be an illegal exaction if the disputed area turns out to be of private ownership. Answers to the two complaints in intervention were duly filed by the affected parties.

On March 14, 1954, defendants filed a petition for injunction against plaintiff and intervenor Calalang in the same case, alleging that the latter have fence off the disputed area in contravention of an agreement[8] had between the latter and the Director of Public Works where-in the defendants were allowed to continue their operations but subject to the final outcome of the pending suit. It was prayed that plaintiff and intervenor Calalang be ordered to remove the fence and allow defendants' men to continue their operations unhampered. Opposition to this petition was filed by the other side, with a prayer for counter injunction. On March 23, 1954, the lower court issued an order maintaining the status quo and allowing the defendants to continue their extractions from the disputed area provided a receipt[9] in plaintiff's favor be is-sued for all the materials taken.

On May 13, 1954, plaintiff amended his complaint. Impleaded as additional defendants were the City of Manila,[10] the Provincial Treasurer of Rizal,[11] and Engr. Eu-logio Sese, the new Engineer-in-charge of the plant. Plaintiff also converted his claim to one purely for damages directed against the City of Manila and the Direc-tor of Public Works, solidarily, in the amount of P1,000,000.00, as the cost of materials taken since 1949, as well as those to be extracted there from until defen-dants stop their operations.

Came the separate amended answers of the several defendants. Manila City denied ownership of the plant and claimed that the City Engineer acted merely as a deputy of the Public Works Director. The other defendants[12] put up, as special defense, the agreement between plaintiff and the Public Works Director, and asserted a P1.2 million counterclaim for damages against plaintiff. The rest[13]renewed the same defense: that the disputed area was part of the public domain, since it was situated on the river-banks.

On November 3, 1954, the defendant City Engineer of Manila filed a petition to delimit the area of excavation and asked the lower court to authorize his men to extend their operations west of the camachile tree in the dispu-ted area. This met vigorous opposition from plaintiff and intervenor Calalang. On May 27, 1955, the petition was denied.

Finally, on December 21, 1956, the lower court ren-dered its decision on the merits. The dispositive portion provided:[14]

"WHEREFORE, judgment is hereby rendered against the defendants City of Manila and the Director of Public Works, to pay solidarily the herein plaintiff the sum of P376,989.60, as the cost of gravel and sand extracted from plaintiff's land, plus costs. Judgment is likewise hereby rendered against the defen-dant Provincial Treasurer of Rizal, ordering him to reimburse to intervenor Maximo Cala-lang the amount of P236.80 representing gra-vel fees illegally collected. Finally, defen-dants herein are perpetually enjoined from extracting any sand or gravel from plaintiff's property which is two-fifths northern portion of the disputed area.

"IT IS SO ORDERED."

None of the parties litigants seemed satisfied with this decision and they all sought a reconsideration of the same. On August 30, 1957, the lower court resolved the motions to reconsider with an order, the dispositive portion of which provided:[15]

"WHEREFORE, the court hereby denies the motion for reconsideration filed by plaintiff and intervenor Calalang; dismisses the com-plaint with respect to defendant City of Ma-nila; holds that the northern two-fifths por-tion of the area in controversy belongs to the plaintiff with right to the immediate pos-session thereof and hereby enjoins the defen-dants and intervenor Bureau of Mines to vacate the same and to stop from extracting gravel thereon. The Court however hereby dismisses the case against the defendant Bureau of

Pu-blic Works and its agents and employees inso-far as the claim for money is concerned with-out prejudice to plaintiffs taking such action as he may deem proper to enforce said claim against the proper party in accordance with law.

"IT IS SO ORDERED."

Still unsatisfied, plaintiff and intervenor Calalang filed a second motion for reconsideration. The lower court stood firm on its ruling of August 30, 1957.[16]

Hence, this appeal.[17] The defendants Director of Public Works, City Engineer of Manila, and Engrs. Bosue-go and Sese have also appealed from the declaration made by the lower court that the northern two-fifths of the disputed area belongs to plaintiff Hilario.

The parties herein have presented before this Court mixed questions of law and fact for resolution and adju-dication. Foremost among them is this legal query: when a river, leaving its old bed, changes its original course and opens a new one through private property, would the new riverbanks lining said course be of public ownership also?[18]

The defendants answer in the affirmative. They claim that under the law of Waters of August 3, 1866, the river-banks are, by definition, considered part of the riverbed which is always of public ownership. On the other hand, plaintiff would have the question resolved in the negative. He maintains that not all riverbanks are of public owner-ship because: (1) Art. 372 of the old Civil Code, which governs this particular case, speaks only of the new bed; nothing is said about the new banks; (2) Art. 73 of the Law of Waters which defines the phrase "banks of a river" cannot be applied in the case at bar in conjunction with the other articles cited by defendants since that article applies only to banks of natural riverbeds and the present River is not in its natural bed; and (3) if all banks were of public ownership, then Art. 553 of the old Civil Code and the second sentence, first paragraph of Art. 73 of the Law of Waters can never have any application.

Since the change in the course of the River took place in 1937, long before the present Civil Code took effect,[19] the question before Us should be determined in accordance with the provisions of the old Civil Code and those of the Law of Waters of August 3, 1866.

We agree with defendants that under the cited laws, all riverbanks are of public ownership - including those formed when a river leaves its old bed and opens a new course through a private estate. Art. 339 of the old Ci-vil Code is very clear. Without any qualifications, it provides:

"Property of public ownership is -

"1. That devoted to public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, riverbanks, shores, roadsteads, and that of a similar character;" (Underscoring supplied)

x x x x

Moreover, as correctly contended by defendants, the riverbank is part of the riverbed. Art. 73 of the Law of Waters which defines the phrase "banks of a river" provides:

"By the phrase 'banks of a river' is understood those lateral strips of zones of its bed which are washed by the stream only during such high floods as do not cause inundations. x x x" (Underscoring supplied)

Thee use of the words "of its bed [de sus alveos]" clearly indicates the intent of the law to consider the banks - for all legal purposes - as part of the riverbed. The lower court also ruled - correctly - that the banks of the River are part of its bed.[20] Since undeniably all beds of rivers are of public ownership,[21] it follows that the banks,

which form part of them, are also of public ownership.

Plaintiff's contention that Arts. 70 and 73 of the Law of Waters cannot apply because Art. 372 of the old Civil Code mentions only the new bed but omits the banks, and that said articles only apply to natural - meaning original - bed and banks is untenable. Art. 70, which defines beds of rivers and creeks, provides:

"The natural bed or channel of a creek or river is the ground covered by its waters during the highest [ordinary] floods." [22] (Underscoring supplied)

Art. 372 of the old Civil Code which provides that -

"Whenever a navigable or floatable river changes its course from natural causes and opens a new bed through a private estate, the new bed shall be of public ownership, but the owner of the estate shall recover it in the event that the waters leave it dry again either naturally or as the result of any work legally authorized for this purpose." (Underscoring supplied)

did not have to mention the banks because it was unnecessary. The nature of the banks always follows that of the bed and the running waters of the river. A river is a compound concept consisting of three elements. (1) the running waters, (2) the bed and (3) the banks. [23] All these constitute the river. American authorities are in accord with this view:

"'River' consists of water, bed and banks." [24]

"A 'river' consists of water, a bed and banks, these several parts constituting the river, the whole river. It is a compound idea; it cannot exist without all its parts. Evaporate the water, and you have a dry hollow. If you could sink the bed, instead of a river, you would have a fathomless gulf. Remove the banks, and you have a boundless flood." [25]

Since a river is but one compound concept, it should have only one nature, i.e., it should either be totally public or completely private. And since rivers are of public ownership, [26] it is implicit that all the three component elements be of the same nature also. As Manresa commented:

"Realmente no puede imaginarse un rio sin alveo y sin ribera; de suerte que al decir el Código Civil que los rios son de dominio publico, parece que debe ir implicito el dominio publico de aquellos tres elementos que integran el rio." [27]

However, to dispel all possible doubts, the law expressly makes all three elements public. Thus, river-banks and beds are public under Arts. 339 and 407, respectively, of the Code, while the flowing waters are declared so under Art. 33, par. 2 of the Law of Waters of 1866.

Articles 70, 72 and 73 of the Law of Waters speak of natural beds and their banks. Plaintiff now equates the term "natural" with the word "original" so that a change in the course of a river would render those articles inapplicable. However, the premise is incorrect. Diccionario De La Real Academia Española defines the word "natural" as follows:

"NATURAL - perteneciente a la naturaleza o conforme a la calidad o propiedad de las cosas; nativo, originario de un pueblo o nacion; hecho con verdad, ni artificio, mezcla ni composicion alguna; ingenuo y sin doblez en su modo de proceder; dicese tambien de las cosas que imitar a la naturaleza con propiedad; regular y que comunmente sucede, y por eso, facilmente creible; que se produce por solas las fuerzas de la naturaleza, como contrapuesto a sobre natural y milagroso." (Underscoring supplied)

"Natural" is not made synonymous to "original" or "prior condition". On the contrary, even if a river should leave its original bed so long as it is due to the force of nature, the new course would still fall within the scope of the

definition provided above. Hence, the law must have used the word "natural" only because it is in keeping with the ordinary nature and concept of a river always to have a bed and banks.

Plaintiff's third point is not lightly to be taken. Indeed, it would seem possible to acquire private ownership of banks under Art. 553 of the old Civil Code which provides:

"Las riberas de los rios, aun cuando sean de dominio privado, estan sujetas en toda su extension y en sus margenes, en una zona de tres metros, a la servidumbre de use publico en interes general de la navegacion, la flotacion, la pesca y el salvamento." (Underscoring supplied)

And plaintiff is not without jurisprudential backing for in *Commonwealth vs. Gungun*,^[28] it was said that the private ownership of the banks was not prohibited. His point is then neatly brought home with the proposition that it is precisely when a river changes its course and opens a new bed through a private estate that there can be private ownership of the banks.

A study of the history of Art. 553 will however reveal that it was never intended to authorize the private acquisition of riverbanks. That could not have been legally possible in view of the legislative policy clearly enunciated in Art. 339 of the Code that all riverbanks were of public ownership. The article merely recognized and preserved the vested rights of riparian owners who, because of prior law or custom, were able to acquire ownership over the banks. This was possible under the *Siete Partidas* which was promulgated in 1384 yet.^[29] Under Law 6, Title 28, Partida 3, the banks of rivers belonged to the riparian owners, following the Roman Law rule.^[30] In other words, they were privately owned then. But subsequent legislation radically changed this rule. By the Law of Waters of August 3, 1866, riverbanks became of public ownership, albeit impliedly only because considered part of the bed - which was public - by statutory definition.^[31] But this law, while expressly repelling all prior inconsistent laws, left undisturbed all vested rights then existing.^[32] So privately owned banks then continued to be so under the new law, but they were subjected by the latter to an easement for public use. As Art. 73 provides:

"Se entienden por riberas de un rio las fajas o zonas laterales de sus alveos que solamente son bañadas por las aguas en las crecidas que no causan inundacion. El dominio privado de las riberas esta sujeto a la servidumbre de tres metros de zona para uso publico, en el interes general de la navegacion, la flotacion, la pesca y el salvamento." x x x x (Underscoring supplied)

This was perhaps the reconciliation effected between the private ownership of the banks, on the one hand, and the policy of the law on the other hand, to devote all banks to public use.^[33] The easement would preserve the private ownership of the banks and still effectuate the policy of the law. So, the easement in Art. 73 only recognized and preserved existing privately owned banks; it did not authorize future private appropriation of riverbanks.

The foregoing observation is confirmed by the still subsequent Law of Waters of June 13, 1879, which was principally based on the Law of August 3, 1866.^[34] Art. 36 of the new law, which was a substantial reenactment of Art. 73 of the Law of Waters of August 3, 1866, reads:

"Las riberas, aun cuando sean de dominio privado en virtud de antigua ley o de custumbre, estan sujetas en toda su extension y las margenes en una zona de tres metros, a la servidumbre de use publico en interes general dela navegacion, la flotacion, la pesca y el salvamento." x x x x (Underscoring supplied)

The new law also affirmed the public ownership of rivers and their beds, and the treatment of the banks as part of the bed.^[35] But nowhere in the law was there any provision authorizing the private appropriation of the banks. What it merely did was to recognize the fact that at that time there were privately owned banks pursuant to the *Siete Partidas*, and to encumber these with an easement for public use.

However, the public nature of riverbanks still obtained only by implication. But with the promulgation of the Civil Code of 1889, this fact was finally made explicit in Art. 339 thereof. Riverbanks were declared as public property since they were destined for public use. And the first paragraph of Art. 36 of the Law of Waters of 1879 was substantially reenacted in Art. 553 of the Code.[36] Hence, this article must also be understood not as authorizing the private acquisition of riverbanks but only as recognizing the vested titles of riparian owners who already owned the banks.

The authority, then, for the private ownership of the banks is neither the old Civil Code nor the Law of Waters of 1866 but the Siete Partidas. Unfortunately, plaintiff cannot invoke it. Law 6, Title 28, Partida 3, which provides for private ownership of banks, ceased to be of force in this jurisdiction as of 1871 yet when the Law of Waters of August 3, 1866, took effect.[37] Since the change in the course of the River took place in 1937, the new banks which were formed could not have been subjected to the provisions of the Siete Partidas which had already been superseded by then.

Coming to the factual issues: both parties assail the conclusion made by the lower court that only the northern two-fifths of the disputed area remained as plaintiff's private property. This conclusion was apparently based on the findings that the portion where rice and corn were found[38] in the ocular inspection of June 15, 1951, was on the northern two-fifths of the disputed area; that this cannot be a part of the bed because of the existence of vegetation which could not have grown underwater, and that this portion is man-made. However, there is no evidentiary basis for these findings. The area indicated by Nos. 1 and 2 in Exh. D-1 where no excavations had been made, appears to be more on the south-western one-fourth of the disputed area. The American cases[39] cited by the lower court cannot apply here. Our Law of Waters, in defining "beds" and "banks", considers the latter as part of the former. Those cited cases did not involve a similar statutory provision. That plants can and do grow on the banks which otherwise could not have grown on the bed which is constantly subjected to the flow of the waters proves the distinction between "beds" and "banks" in the physical order. However, We are dealing with the legal order where legal definitions prevail. And apart from these considerations, We also note the considerable difficulty which would attend the execution of the ruling of the lower court. The latter failed to indicate fixed markers from which an exact delimitation of the boundaries of the portion could be made. This flaw is conducive to future litigations.

Plaintiff's theory is that the disputed area, although covered at times by flood waters, cannot be considered as within the banks of the River because: (1) such floods are only accidental, and (2) even if they are regular, the flooding of the area is due to the excavations and extractions made by defendants which have caused the widening of the channel.[40] Defendants claim, however, that the area is always covered by the normal yearly floods and that the widening of the channel is due to natural causes.

There is a gravel pit[41] located along the west side of the River. This is about 500 meters long.[42] A greater part of this pit occupies a portion of the strip of land that was sliced by the River from the rest of the Hilario estate. As shown in Exhs. D and D-1, this strip of land is that western segment of the Hilario estate bounded on the west by the same lines connecting stakes 23 through 27, which form part of the western boundary of the estate, and on the east, bounded by the western waterline of the River.

Now, the disputed area, general speaking,[43] is only that part of the gravel pit which is within the strip of land. Its northern tip is that point where the so-called "secondary bank" line intersects the west River waterline up north; its southern boundary is along the line connecting stakes 23 and 24. From these two ends, the disputed area measures approximately 250 meters long. The eastern boundary is the western River waterline at low tide and the western boundary is the "secondary bank" line, a line passing near stake 24 and running almost parallel to the line connecting stakes 25 and 26. Around the later part of 1949, the disputed area was about 150 to 160 meters

wide.[44] This increased to about 175 to 180 meters by the later part of 1950. And by January, 1953, the distance from the "secondary bank" line to the west waterline was about 230 meters.[45]

This increasing width of the disputed area could be attributed to the gradual movement of the River to the east. Since it entered into the Hilario estate, the River has not stayed put.[46] Vicente Vicente, plaintiff's witness, declared[47] that after the River changed its course in 1937, the distance between the old and the new river sites was about 100 meters. Exh. D-2 shows that in 1943, the south end of the River was about 5 meters southeast of stake 24.[48] Honorato Sta. Maria, another witness for plaintiff, indicated the flow of this course with a blue line in Exh. D-1.[49] This blue line is about 120 meters from the line connecting stakes 25 and 26, which was also the east boundary of the old River.[50] Around 1945 to 1949, the River was about 193 meters[51] east of this line. This measurement is based on the testimonies of two defense witnesses[52] who stated that during that period, the River passed along the Excavated Area and the New Accretion Area[53] sites, as shown in Exh. 54. By the later part of 1949 up to November 1950, the west waterline was from 248 to 270 meters[54] east of the aforesaid boundary line. And finally in January, 1953, based on the scale in Exh. 3-Calalang, the west waterline was from 300 to 305 meters away already. Hence, from 100 meters in 1937, the River had moved to 305 meters eastward in 1953.

There are two questions to be resolved here. First, where on the strip of land are the lateral borders of the western riverbank? And second, where have defendants made their extractions?

Anent the first question, the key is supplied by Art. 73 of the Law of Waters which defines the limits of banks of rivers -

"By the phrase 'banks of a river' is understood those lateral strips or zones of its bed which are washed by the stream only during such high floods as do not cause inundations. x x x" (Underscoring supplied)

The farthest extremity of the bank on the west side would, therefore, be that lateral line or strip which is reached by the waters during those high floods that do not cause inundations. In other words, the extent reached by the waters when the River is at high tide.

However, there is a difference between the topography of the two sides immediately adjoining the River. The line indicated as "primary bank"[55] in Exh. 3-Calalang, which is on the east, is about 3 meters high and has a steep grade right at the edge where it drops almost vertically to the watercourse level. The precipice here, which is near the east waterline, is very easily detectible. But the opposite side has no such steep acclivity. In fact, it is almost flat with the bed of the River, especially near the water edge, where it is about 30 to 50 cms. high only. But it gradually slopes up to a height of about 2 to 2-1/2 meters along the line indicated as "secondary bank", which is quite far from the waterline. This "bank" line is about 1-1/2 meters higher than the level of the gravel pit and there are erosions here. This is about 175 meters west from the November 1950 waterline, and about 100 meters west from the camachile tree.[56]

During the dry season, the waterlevel of the River is quite low - about knee-deep only. However, during the rainy season, the River generally becomes swollen, and the water-level rises, reaching up to the neck.[57] However, considering the peculiar characteristics of the two sides banking the river, the rise in the waterlevel would not have the same effect on the two sides. Thus, on the east, the water would rise vertically, until the top of the "primary bank" is reached, but on the west, there would be a low-angled inclined rise, the water covering more ground until the "secondary bank" line is reached. In other words, while the water expansion on the east is vertical, that on the west is more or less lateral, or horizontal.

The evidence also shows that there are two types of floods in the area during the rainy season.[58] One is the so-called "ordinary" flood, when the river is swollen but "the flowing water is kept within the confines of the

"primary" and "secondary" banks. This occurs annually, about three to four times during the period. Then there is the "extraordinary" flood, when the waters overflow beyond the said banks, and even inundate the surrounding areas. However, this flood does not happen regularly. From 1947 to 1955, there were only three such floods.[59] Now, considering that the "ordinary" floods easily cover the west side - since any vertical rise of the waterlevel on the east would necessarily be accompanied by a lateral water expansion on the west - the "inundations" which the law mentions must be those caused by the "extraordinary" floods which reach and overflow beyond both "primary" and "secondary" banks. And since the "primary" bank is higher than the "secondary" bank, it is only when the former is reached and overflowed that there can be an inundation of the banks - the two banks. The question therefore, may be stated thus: up to what extent on the west side do the highest flood waters reach when the "primary" bank is not overflowed?

Defendants have presented several witnesses who testified on the extent reached by the ordinary flood waters. David Ross, a bulldozer operator at the plant since 1945, testified[60] that from 1945 to 1949, when the River was still passing along the site where the camachile tree is located, the annual flood waters reached up to the "secondary bank" line. These floods usually took from 3 to 5 days to recede, during which time their work was suspended. Corroboration is supplied by Macario Suiza, a crane operator in the plant since 1945, and by Fidel Villafuerte, a plant employee since 1946. Suiza stated[61] that from 1947 to 1949, the area enclosed within the blue lines and marked as Exh. 54-B - which includes the New Accretion Area was always covered by water when it rained hard and they had to stop work temporarily. The western extremity of this area reaches up to the "secondary bank" line. Villafuerte stated[62] that in the ordinary floods when the water was just 50 cm. below the top of the "primary bank", the waters would go beyond the camachile tree by as much as 100 meters westward and just about reach the "secondary bank" line. Further corroboration is supplied by plaintiff's own evidence. Exh. 1-Calalang states that from 1947 to 1949, based on the casual observations made by geologist David Cruz, the area between the "primary" and "secondary" banks were always covered by the non-inundating ordinary floods.

From 1950 to 1952, We have the testimony of Ross who stated[63] that there were still floods but they were not as big anymore, except one flood in 1952, since the River had already moved to the east. Engr. Ricardo Pacheco, who made a survey of the disputed area in November 1952, and who conducted actual observations of the extent of the water reach when the river was swollen, testified[64] that the non-inundating floods regularly reached up to the blue zigzag line along the disputed area, as shown in Exh. 1-City Engineer Manila. This blue line, at the point where it intersects line BB,[65] is about 140 meters west of the waterline and about 20 meters west of the camachile tree. His testimony was based on three floods[66] which he and his men actually recorded. Corroboration is again supplied by Exh. 1-Calalang. According to Cruz' report, the floods in 1950 and 1951 barely covered the disputed area. During the normal days of the rainy season, the waters of the swollen river did not reach the higher portions of the gravel pit which used to be submerged. One cause for this was the lesser amount of rainfall from 1949 to 1951. But two floods occurred from October 16 to 28, 1952, which overflowed the whole area and inundated the banks.

From 1953 to 1955, when the River was farther away to the east, the flood waters still covered the west side.[67] Testifying on the extent reached by the water during the rainy season in 1954, Ross stated[68] that it reached up to the camachile tree only. The last and latest data comes from Engr. Magbayani Leaño the Engineer-in-charge of the plant from August 1954. He testified[69] that as of December 1955, when the disputed area was underwater, the water reach was about 20 meters or less to the east from the camachile tree.

From all the foregoing, it can be safely concluded: (1) that from 1945 to 1949, the west bank of the River extended westward up to the "secondary bank" line; (2) that from 1950 to 1952, this bank had moved, with the River, to the east, its lateral borders running along a line just 20 meters west of the camachile tree; and (3) that

from 1953 to 1955, the extremities of the west bank further receded eastward beyond the camachile tree, until they lay just about 20 meters east of said tree.

To counteract the testimonies of the defense witnesses, plaintiff presented two rebuttal witnesses[70] who told a somewhat different story. However, their testimonies are not convincing enough to offset the dovetailing testimonies of the defense witnesses who were much better qualified and acquainted with the actual situs of the floods. And said defense witnesses were corroborated by plaintiffs' own evidence which contradicts the aforesaid rebuttal witnesses.

However, plaintiff maintains that the floods which cover the area in question are merely accidental and hence, under Art. 77 of the Law of Waters,[71] and following the ruling in *Government vs. Colegio de San Jose*,[72] he is deemed not to have lost the inundated area. This is untenable. Plaintiff's own evidence[73] shows that the River floods with annual regularity during the rainy season. These floods can hardly be called "accidental". The *Colegio de San Jose* case is not exactly in point. What was mainly considered there was Art. 74 of the Law of Waters relating to lakes, ponds and pools. In the case at bar, none of these is involved.

Also untenable is plaintiff's contention that the regular flooding of the disputed area was due to the continuous extraction of materials by defendants which had lowered the level of said area and caused the consequent widening of the channel and the river itself. The excavations and extractions of materials, even from the American period have been made only on the strip of land west of the River.[74] Under the "following-the-nature-of-things" argument advanced by plaintiff, the River should have moved westward, where the level of the ground had been lowered. But the movement has been in the opposite direction instead. Therefore, it cannot be attributed to defendants' operations. Moreover, plaintiff's own evidence indicates that the movement eastward was all due to natural causes. Thus, Exh. I-Calalang shows that the movement eastward of the channel by as much as 31 meters, from 1950 to 1953, was due to two typhoons which caused the erosion of the east bank and the depositing of materials on the west side which increased its level from as much as .93 to 2 meters.

Plaintiff's assertion that the defendants also caused the unnatural widening of the River is unfounded. Reliance is made on the finding by the lower court that in 1943, the River was only 60 meters wide as shown in Exh. D-2, whereas in 1950, it was already 140 meters wide as shown in Exh. D. However, Exh. D-2 only shows the width of the River near the southwestern boundary of the Hilario estate. It does not indicate how wide it was in the other parts, especially up north. And Eligio Lorenzo, plaintiff's own witness, admitted[75] on cross-examination that the width of the new river was not uniform. This is confirmed by Exhs. D and D-1 which show that the new river was wider by as much as 50% up north than it was down south. The 140-meter distance in Exh. D was at the widest part up north whereas down south, near the mouth of the Bulobok River, it was only 70 meters wide. Lastly, the scale in Exh. 3-Calalang will show that in January 1953, the River, near the same point also, was less than 50 meters wide.

The only remaining question now is to determine if the defendants have really confined their operations within the banks of the River as alleged by them. To resolve this, We have to find out from what precise portion in the disputed area the defendants have extracted gravel and sand since they did not extract indiscriminately from within the entire area. None of the parties' briefs were very helpful but the evidence on record discloses that defendants made their extractions only within specified areas during definite periods.

From 1947 to the early part of 1949, the defendants conducted their operations only in the New Accretion Area along a narrow longitudinal zone contiguous to the water-course then. This zone, marked as Exh. 2-City Engineer Manila, is about one (1) km. long and extends northward up to pt. 50.35 in Exh. 54. However, no extractions nor excavations were undertaken west of this zone, i.e., above the "temporary bank" line.[76] These facts are

corroborated by plaintiff's witnesses. That the extractions were near the river then finds support in Vicente's testimony[77] while Leon Angeles and Mrs. Salud Hilario confirm the fact that defendants have not gone westward beyond the "temporary bank" line.[78] This line is located east of the "secondary bank" line, the lateral extremity of the west bank then.

In the later part of 1949, plaintiff prohibited the defendants from extracting along the New Accretion Area and constructed a fence across the same. This forced the defendants to go below - southeast of - the "Excavated Area" and the New Accretion Area sites in Exh. 54.[79] Engr. Bosuego, testifying[80] in 1952, indicated their area of extraction as that enclosed within the red dotted line in Exh. D-1 which lies on the south end of the strip of land. Only a small portion of the southeastern boundary - of the disputed area is included. The ocular inspection conducted on June 15, 1951, confirms this.[81] Exh. 4-Cala-lang shows the total amount of materials taken from within the area from 1949 to 1951.[82] Thus, from 1950 up to 1953, although the defendants were able to continue their operations because of the agreement between the plaintiff and the Director of Public Works,[83] they were confined on-ly to the southeastern portion of the disputed area. On the other hand, the lateral extremities of the west bank then ran along a line about 20 meters west of the camachile tree in the New Accretion Area.

From 1954 to 1955, defendants' area of operation was still farther east of the New Accretion Area. They were working within a confined area along the west waterline, the northern and western boundaries of which were 20 meters away east from the camachile tree.[84] Ross indicated[85] this zone in Exh. 54 as that portion on the southern end of the disputed area between the blue lines going through the words "MARIKINA RIVER BED" and the red zigzag line indicating the watercourse then. Engr. Leaño even stated[86] that they got about 80% of the materials from the river itself and only 20% from the dry bed. The sand and gravel covered by Exhs. LL to LL-55 were all taken from here. The foregoing facts are not only corroborated by Mrs. Hilario[87] but even admitted by the plaintiff in his opposition[88] to defendants' petition to extend their area of operation west of the camachile tree. And because their petition was denied, defendants could not, and have not,[89] gone beyond the lateral line about 20 meters east from said tree, which has already been established as the lateral extremity of the west bank during the period.

It appears sufficiently established, therefore, that defendants have not gone beyond the receding western extremities of the west riverbank. They have confined their extraction of gravel and sand only from within the banks of the River - which constitute part of the public domain - wherein they had the right to operate. Plaintiff has not presented sufficient evidence that defendants have gone beyond the limits of the west bank, as previously established, and have invaded his private estate. He cannot, therefore, recover from them.

As a parting argument, plaintiff contends that to declare the entire disputed area as part of the riverbanks would be tantamount to converting about half of his estate to public ownership without just compensation. He even adds that defendants have already exhausted the supply in that area and have unjustly profited at his expense. These arguments, however, do not detract from the above conclusions.

First of all, We are not declaring that the entire channel, i.e., all that space between the "secondary bank" line and the "primary bank" line, has permanently become part of the riverbed. What We are only holding is that at the time the defendants made their extractions, the excavations were within the confines of the riverbanks then. The "secondary bank" line was the western limit of the west bank around 1945 to 1949 only. By 1955, this had greatly receded to the line just 20 meters east of the camachile tree in the New Accretion Area. All that space to the west of said receding line[90] would still be part of plaintiff's property - and also whatever portion adjoining the river is, at present, no longer reached by the non-inundating ordinary floods.

Secondly, it is not correct to say that plaintiff would be deprived of his property without any compensation at all. Under Art. 370 of the old Civil Code, the abandoned bed of the old river belongs to the riparian owners either fully or in part with the other riparian owners. And had the change occurred under the Civil Code of the Philippines, plaintiff would even be entitled to all of the old bed in proportion to the area he has lost.[91]

And, lastly, defendants cannot be accused of unjustly profiting at plaintiff's expense. They were not responsible for the shifting of the River. It was due to natural causes for which no one can be blamed. And defendants were extracting from public property then, under proper authorization. The government, through the defendants, may have been enriched by chance, but not unjustly.

Considering the conclusions We have thus reached, the other questions involved in the remaining assignments of errors - particularly those apropos the doctrine of state immunity from suit and the liability of defendant City of Manila - are rendered moot.

WHEREFORE, the decision and orders appealed from are hereby set aside and another judgment is hereby entered as follows:

(1) Defendants City of Manila and the Director of Public Works and his agents and employees are hereby absolved from liability to plaintiff since they did not extract materials from plaintiff's property, but from the public domain.

(2) All that portion within the strip of land in question, starting from the line running parallel to the western waterline of the river and twenty meters east from the camachile tree in the New Accretion Area measured along line AA in Exhs. 3-Calalang, 13 and 54, and going to the west up to the western boundaries of the Hilario estate, is hereby declared as not part of the public domain and confirmed as part of plaintiff's private property. No costs.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Regala, Makalintal, Zaldivar, Sanchez, and Castro, JJ., concur.

[1] The boundaries of this property [Lot 89-J-2] are fully shown in the maps marked as Exhs. D, D-1 and D-3.

[2] T.C.T. No. 14994 (Exh. A-1).

[3] See Exh. D-3. Also known as the Marikina River; for short, referred to as "the River".

[4] This strip of land is marked with the red "X" in Exh. D.

[5] See Exh. 1-M City Engr. Manila; Pacheco, Session of Oct. 13, 1955, T.s.n., p. 160; Bosuego, Session of Jan. 30, 1952, T.s.n., pp. 40-41.

[6] This fact was admitted by Atty. Calalang, plaintiff's counsel, during the course of trial (Session of May 25, 1955, T.s.n., p. 21).

[7] Civil Case No. 959 in the Court of First Instance of Rizal.

[8] Exhs. H and I-i; see also Record on Appeal, pp. 68-72.

[9] The tenor of the receipt, as approved by the Court, is as follows: "This is to certify that the City of Manila has taken _____ cubic meters of gravel and sand from the property of Jose V. Hilario, Jr., at San Mateo, Rizal, subject to the outcome of Civil Case No. 959 of the Court of First Instance of Rizal.

- [10] Because, according to plaintiff, the evidence on record then showed that the plant was owned and operated by it.
- [11] Because as representative of the Director of Mines, he had been collecting the questioned gravel fees.
- [12] The City Engineer of Manila, the Director of Public Works, Engr. Bosuego and Engr. Sese.
- [13] The Provincial Treasurer and the District Engineer of Rizal, and the Director of Mines.
- [14] Record on Appeal, p. 182.
- [15] Record on Appeal, pp. 242-243.
- [16] Order of Oct. 21, 1957, which denied the second motion for reconsideration (Record on Appeal, p. 250).
- [17] The appeal was originally directed to the Court of Appeals. However, that Court certified the case to Us since the amount involved falls within Our exclusive appellate jurisdiction.
- [18] There is no dispute regarding the new bed. Art. 372 of the old Civil Code is very clear about that.
- [19] The Civil Code of the Philippines took effect on Aug. 30, 1950. *Lara vs. Del Rosario*, 50 O.G. 1975.
- [20] Record on Appeal, p. 170.
- [21] Arts. 372 and 407, old Civil Code.
- [22] The original Spanish text reads: "Alveo o cauce natural de un arroyo y rio es el terreno que cubren sus aguas en las mayores crecidas ordinarias." (Underscoring supplied)
- [23] *Manresa*, *Codigo Civil Español*, 6th ed., p. 75.
- [24] *Gavit's Adm'rs. vs. Chambers*, 3 Ohio 493; *Stan vs. Child*, N.Y. 20 Wend. 149; 37A Words and Phrases 433.
- [25] *State vs. Richardson*, 72 So. 984, 140 La. 329; 37A Words and Phrases 493.
- [26] Old Civil Code, Arts. 339 and 407.
- [27] *Manresa*, Op. Cit., 75.
- [28] 70 Phil. 194; see however the strong dissent of Mr. Justice Imperial, at 198, who, joined by Justice to Moran, concurred on other grounds, leaving no prevailing majority on this point.
- [29] I Tolentino, Civil Code of the Phils., 1960 ed., p. 5.
- [30] 6 Scaevola, *Codico Civil Comentado*, 4th ed., p. 187; Alcubilla, I *Diccionario de la Adm. Española*, 5th ed., p. 381; Sandars, *Institutes of Justinian*, 1st Am. ed., 1876, p. 159.
- [31] Art. 73, Law of Waters of August 3, 1866.
- [32] Art. 299. The provisions of this law are without prejudice to rights legally acquired prior to its publication; also without prejudice to the private dominion enjoyed by proprietors of the waters of irrigation ditches, fountains or springs, by virtue of which they enjoy, sell or exchange the said waters as private property."
- "Art. 300. All laws, royal decrees, royal orders, and other legislation relating to matters comprised in this law and enacted prior to its promulgation and in conflict therewith, are hereby repealed." (Underscoring supplied)
- [33] See Arts. 152-165, Law of Waters of Aug. 3, 1866.

[34] 7 Scaevola, op. cit., 497; Alcubilla, op. cit., p. 271. However, this law was never applied in this jurisdiction. Kerr & Co. vs. Cauden, 6 Phil. 732.

[35] Arts. 4, 34 and 35, Spanish Law of Waters of June 13, 1879.

[36] Alcubilla, op. cit., p. 400.

[37] Kerr & Co. vs. Cauden, 6 Phil. 732.

[38] In the sites marked by Nos. 1 and 2 in Exh. D-1; trans-crypt of ocular inspection, p. 3.

[39] Gibbs vs. Williams, 25 Kan. 214, 37 Am. Rep. 241; Curtis vs. Schmidt, 237 N.W. 463, 212 Iowa 1279, and Howard vs. Ingersoll, 54 U.S. 381, 14 L. ed. 189.

[40] The "channel" means all that space between the lateral extremities of the two banks flanking the River.

[41] This is the sand and gravel deposit area.

[42] Exh. 7-Intervenor.

[43] Strictly speaking, the disputed area is only that pre-cise portion in the strip of land where the defendants have actually made their extractions and excavations. The evidence on record (see infra) discloses that defendants did not extract materials indiscriminately from said area but only from certain limited sites at certain periods of time.

[44] Sta. Maria, Session of Aug. 8, 1950, T.s.n., pp. 28-29; Exh. 7-Intervenor.

[45] As per scales in Exhs. 3-Calalang, 13, 54 and Exh. II. The first three are all duplicate copies of the plan submitted by the Bureau of Mines.

[46] Manahan, Session of Feb. 16, 1951, t.s.n., pp. 38, 46 and 55; Lorenzo, Session of Mar. 2, 1951, t.s.n., p. 6.

[47] Session of Feb. 16, 1951, t.s.n., p. 33.

[48] See Decision of lower court, Record on Appeal, p. 162.

[49] Session of Aug. 8, 1950, t.s.n., p. 26.

[50] As per scale in Exh. D-1.

[51] As per scale in Exh. 54.

[52] Ross (Session of May 31, 1955, t.s.n., p. 7) and Engr. Sese, (Session of Oct. 13, 1955, p. 186)

[53] The New Accretion Area referred to in this discussion is the one where the camachile three is located, not the other New Accretion Area which is located west of the "temporary bank" line in Exh. 54.

[54] As per scales in Exhs. 7-A-Intervenor, I, (both drawn to the same scale as Exh. 13), D-1, II and 3-Calalang.

[55] The terms "primary" and "secondary" banks were arbitrary designations made by defendants' surveyors. (Mendoza, Session of Oct. 7, 1955, t.s.n., pp. 138-139)

[56] Sta. Maria, Session of Sept. 12, 1950, t.s.n., pp. 56-58; Session of Oct. 23, 1950, pp. 65-71; Manahan, Session of Feb. 16, 1951, t.s.n., pp. 56-57; Villafuerte, Session of May 25, 1955, t.s.n., pp. 30-32; Mendoza, Session of Oct. 7, 1955, t.s.n., pp. 121-122, 131-132; Pacheco, Session of Oct. 13, 1955, t.s.n., p.150, 1965; Ocular inspection of June 15, 1951, Exhs. 2-Calalang and 1-City Engr. Manila for cross-section view; and Exhs. 8-11, for actual photographic shots.

[57] Angeles, Session of Feb. 10, 1954, t.s.n., p. 76; Sese, Session of Oct. 13, 1955, t.s.n., pp. 188-189; Villa-fuerte, Session of May 25, 1955, t.s.n., p. 23.

[58] Vicente, Session of Feb. 16, 1951, t.s.n., p. 36; Ange-les, Session of Feb. 10, 1954; t.s.n., pp. 74-75; Ar-mas, Session of Aug. 8, 1955, t.s.n., pp. 101, 103--104; Mendoza, Session of Oct. 7, 1955, t.s.n., pp. 141--142; Pacheco, Session of Oct. 13, 1955, t.s.n., pp. 166--169, 172; Lorenzo, Session of Mar. 2, 1951, t.s.n., pp. 25, 30, 33; Villafuerte, Session of May 25, 1955, t.s.n., pp. 24, 26-28; Ross, Session of May 31, 1955, t.s.n., pp. 5, 17; Bosuego, Session of July 18, 1955, t.s.n., pp. 35-37; Dimanlig, Session of Nov. 21, 1955, t.s.n., pp. 78, 81; Exhs. I-Calalang and I City Engr. Manila.

[59] These floods occurred only in 1947, 1952 and 1954.

[60] Session of May 31, 1955, t.s.n., pp. 11-16.

[61] Session of May 25, 1955, t.s.n., pp. 7-8.

[62] Session of May 25, 1955, t.s.n., pp. 28-30.

[63] Session of May 31, 1955, t.s.n., pp. 16-18.

[64] Session of Oct. 13, 1955, t.s.n., pp. 162-172, 174.

[65] This probably coincides with line AA in Exhs. 3-Calalang, 13 and 54 since it was shot along the camachile tree line across the River.

[66] One was on Aug. 7, 1952; the second on Aug. 26, 1952 and the third, on Oct. 11, 1952.

[67] Ross, Session of May 31, 1955, t.s.n., pp. 18-.9; Suiza, Session of May 25, 1955, t.s.n., pp. 9, 12.

[68] Session of May 31, 1955, t.s.n., pp. 5-6.

[69] Session of Dec. 19, 1955, t.s.n., pp. 133, 135.

[70] De los Armas (Session of Aug. 8, 1955, t.s.n., pp. 96?114) and Eduardo Manahan (Session of Dec. 15, 1955, t.s.n., pp. 111-128).

[71] The Article provides: "Lands accidentally inundated by the waters of lakes, or by creeks, rivers and other streams, shall continue to be the property of their respective owners." (Underscoring supplied)

[72] 53 Phil. 424.

[73] Angeles, Session of Feb. 10, 1954, t.s.n., pp. 75, 77; Lorenzo, Session of Mar. 2, 1951, t.s.n., p. 24, and Exh. 1-Calalang.

[74] Vicente, Session of Feb. 16, 1951, t.s.n., pp. 7, 33; Manahan, Session of Feb. 16, 1951, t.s.n., p. 38; and Lorenzo, session of Mar. 2, 1951, t.s.n., pp. 6-8.

[75] Session of Mar. 2, 1951, t.s.n., p. 14.

[76] Sese, Session of Oct. 13, 1955, t.s.n., pp. 191, 193?194; Ross, Session of May 31, 1955, t.s.n., pp. 4-5; Villafuerte, Session of May 25, 1955, t.s.n., p. 25; Bosuego, Session of July 18, 1955, t.s.n. p. 32.

[77] Session of Feb. 16, 1951, t.s.n., p. 24.

[78] Angeles, Session of Apr. 30, 1954, t.s.n., pp. 4-5; Session of Nov. 8, 1954, t.s.n., p. 20; Mrs. Hilario, Session of Apr. 30, 1954, t.s.n., pp. 17-18.

[79] Bosuego, Session of Jan. 30, 1952, t.s.n., pp. 45, 47; Session of July 18, 1955, t.s.n., p. 30; Sese, Session of Oct. 13, 1955, t.s.n., p. 187; Ross, Session of May 31, 1955, t.s.n., pp. 6-7, 11.

[80] Session of Jan. 30, 1952, t.s.n., p. 42.

[81] Transcript of Ocular Inspection, p. 4.

[82] Sese, Session of Oct. 13, 1955, t.s.n., pp. 189-190.

[83] Bosuego Session of Jan. 30, 1952, t.s.n., p. 45; Sese, Session of Oct. 13, 1955, t.s.n., p. 188.

[84] Leaño, Session of Dec. 19, 1955, t.s.n., pp. 130-132.

[85] Session of May 31, 1955, t.s.n., pp. 9-10.

[86] Session of Dec. 19, 1955, t.s.n., p. 133.

[87] Session of Dec. 6, 1954, t.s.n., pp. 60-61.

[88] Record on Appeal, pp. 138-141.

[89] Leaño, Session of Dec. 19, 1955, p. 134.

[90] "Including the 2/5 northern portion declared by the lower court.

[91] Art. 461 provides that "River beds which are abandoned through the natural change in the course of the waters ipso facto belong to the owners whose lands are occupied by the new course in proportion to the area lost."

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.