

You submit with your letter a plat and letter furnished by Major T. B. Larkin.

The general rules for determining the ownership of islands in navigable and non-navigable waters within this state are set forth in opinion No. 445, dated February 7, 1934.

From the papers submitted it appears that one George Nichol was the owner of a certain island in the Missouri River. If we take the position that the Missouri River is and was a navigable stream, the bed of the stream is owned by the State of Montana and not by the riparian owner or the United States. (*Shively v. Bowlby*, 152 U. S. 1, 58; *Scott v. Lattig*, 227 U. S. 229.) This rule appears to be fully settled by these and other cases, decisions of the Supreme Court of the United States.

When we consider the question of who becomes the owner of the dry bed of a navigable river which suddenly changes its course, however, the authorities are not so clear. The following authorities held that the abandoned river bed becomes the property of the State: *Rees v. McDaniel*, 115 Mo. 145, 21 S. W. 913; *Nothstine v. Feldmann*, 298 Mo. 365, 250 S. W. 589; *Cooley v. Golden*, 117 Mo. 33, 23 S. W. 100, 21 L. R. A. 300; *Stockley v. Cissana*, 119 Tenn. 135, 104 S. W. 792; *State v. Munice Pulp Co.*, 119 Tenn. 47, 104 S. W. 437.

This change suddenly made in the course of a stream is called an avulsion and the law differs from the ordinary law of accretion. In two cases, *Kinkead v. Turgeon*, 74 Neb. 573, 104 N. W. 1061, 109 N. W. 744, 1 L. R. A. (N. S.) 762, 7 L. R. A. (N. S.) 316, 121 Am. St. Rep. 740, 742, 13 Ann. Cas. 43, and *Manry v. Robison*, 56 S. W. (2d) 438, a case decided in Texas in 1932, the conclusion is reached that the abandoned river bed belongs to the riparian owner instead of to the State. In the first case the absence of a statute is one of the important grounds on which the decision is based. In the second of these cases the provisions of the civil law and special Texas statutes are applied. In this latter case the subject is very fully discussed but same can not be considered entirely an authority for the reason that the civil law and peculiar statutes are applied.

Section 6674, Revised Codes of Mon-

Opinion No. 519

Waters and Water Rights—Navigable Rivers—Dry Bed—Islands—Avulsions.

HELD: The bed of a navigable stream is owned by the State and not by the riparian owner or by the United States.

A sudden change of the course of a stream is called an avulsion and the law differs from the ordinary law of accretion.

In case of avulsion the State of Montana has title to the abandoned river bed. The same rule might apply to the increase of an island caused by an avulsion (as distinguished from accretion).

April 27, 1934.

You inquire as to the right of the State of Montana to the abandoned bed of the Missouri River which is now dry and lies west of the lands of George Nichol in Lot 8, Section 22 and Lots 2, 5, and 8, Section 27, Township 26 North, Range 41 East, Montana Meridian, and also certain lands which have been added to the eastern portion of the island owned by Mr. Nichol by reason of the change in the stream.

tana, 1921, provides: "The state is the owner of all land below the water of a navigable lake or stream." Section 6822, Revised Codes of Montana, 1921, provides: "Islands and accumulations of land, formed in the beds of streams which are navigable, belong to the state, if there is no title or prescription to the contrary." These statutory provisions would tend to constitute an adoption of the rule as adopted in the states of Tennessee and Missouri. From the decisions by the supreme courts of those states, and the statutes, we would conclude that the state might have title to the abandoned river bed.

On the question of prescription or loss of title by adverse possession, same would depend upon facts not fully submitted.

As to that portion of the island formed on the east thereof, if same was an avulsion, rather than an accretion, the same principles might apply and govern.

In writing this opinion, we have not sought to discuss the rights of parties other than the State of Montana.