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WATERS AND WATERCOURSES - EXTENT OF RIPARIAN LAND -COMPENSATION ON CONDEMNATION

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WATERS AND WATERCOURSES — EXTENT OF RIPARIAN LAND — COMPENSATION ON CONDEMNATION — In a recent case compensation was sought for the taking of riparian land for public use. The Supreme Court of Nebraska held that the award should be limited to damages to those sections of land (by the government plat) bordering on the stream.¹ A decision note² in this REVIEW criticized that ruling. It was there said that proximity to riparian land might add value even to non-riparian land. Later a rehearing of the case was granted and a new opinion filed. *Held*, “damages . . . are not limited to governmental sections a part of which is included in the land actually taken, where depreciation in the value of the remainder extends beyond those sections.” *McGinley v. Platte Valley Power & Irrigation District*, (Neb. 1937) 275 N. W. 593.

The opinion on rehearing withdraws what was said before about the extent of riparian land³ and decides the case on other grounds.⁴ It would seem, however, that the question of riparian rights is a proper one to consider. Its effect may be seen by thus analyzing some elements of the value of land damaged but not taken: (1) value of riparian land due to riparian rights⁵ being incident thereto; (2) value of riparian land due to access to the stream or to proximity to the land taken; (3) value of non-riparian land due to access to the stream or to proximity to the land taken. The earlier decision left (3) out of account; the present lumps all together. Since (1) will vary according to the rules of riparian rights adopted, a decision on them would ordinarily seem necessary in cases similar to the present.

G. M. Stevens

¹ *McGinley v. Platte Valley Power & Irrigation District*, 132 Neb. 292, 271 N. W. 864 (1937).

² 36 MICH. L. REV. 346 (1937).

³ The note in 36 MICH. L. REV. 346 (1937) was concerned chiefly with this question. There is no reason to believe the court intended to adopt rules of riparian rights different from those laid down by the earlier opinion. But if the court should desire to change its view, the *McGinley* case should no longer be an obstacle.

⁴ The ground of the decision was that the evidence raised no question for the jury on damage to a large part of the land.

⁵ “Riparian right,” as here used, is confined to the right of a riparian owner to make a use of the stream which would be actionable if made for the benefit of non-riparian land or persons. See 36 MICH. L. REV. 346 (1937), notes 5 to 9.