

A Batture Laid Out for the Particular Use of the Public

WHO OWNS BIG MUDDY'S MUD?

On May 23, 1807, an audience at the superior courthouse of the Territory of Orleans waited to hear the outcome of the case *John Gravier v. Mayor, Aldermen, and Inhabitants of the City of New Orleans*. Among the onlookers, three men were especially interested. One of them, Edward Livingston, attorney for the plaintiff and a renowned New York City politician, had arrived in Louisiana just three years earlier. The other two, Louis Moreau-Lislet and Pierre Derbigny, both prominent members of New Orleans's Creole (in this book meaning Louisiana-born) elite, provided counsel for the city. After a short wait, the court's decision was likely evident in Livingston's barely concealed glee and the fury that Moreau-Lislet and Derbigny struggled to contain. The three presiding judges ruled unanimously: Jean Gravier's title to the batture—defined as the part of the Mississippi's banks remaining covered in times of high water and uncovered during low—fronting the Faubourg (false city or suburb) St. Mary was secure.¹

Perhaps the justices believed that such an unwavering verdict would silence controversy surrounding what was becoming known as the batture case. If so, they underestimated people's investment in the dispute, largely because they misunderstood the significance of the Mississippi and its waterfront for New Orleanians. Rather than settling the issue, by ruling for Gravier the court inflamed an array of interests resolved to

fight for the batture. The concerned parties included New Orleanians who valued the batture as a public space; riparian proprietors who feared for their land values; New Orleans's Conseil de ville (city council), which hoped to consolidate its control over the riverfront; and President Thomas Jefferson, who believed that the batture was a key part of his plans for what was then known as the West. Because of the high stakes and the characters involved in the case, what might have been a local legal and land-use dispute spilled outside the confines of the territorial courtroom into the streets of New Orleans, and eventually found its way to Washington, D.C.

The origins of the batture case can be traced to several conflicts simmering in New Orleans in the years immediately before and after the Louisiana Purchase. For instance, the cultural and diplomatic disputes that flared between the French, Spanish, and Americans vying for control of the Mississippi fueled the discord.² The contested nature of property rights in New Orleans also contributed to the dispute, because adherents to the civil-law tradition predominating in Louisiana and the common-law-influenced legal system in place throughout the rest of the United States fought over the city's waterfront. Additionally, clashing perceptions of the Mississippi, and what people called nature, played a role in the controversy. The fight also centered on competing notions of the proper use of urban space in New Orleans, as the combatants involved in the case were concerned with controlling the riverfront at a time when shifting definitions of public rights transformed that landscape into a battleground. Finally, the batture case serves as a reminder that the Mississippi has played a key role in shaping space in New Orleans, because the river, through its geomorphological processes, was an active participant in the conflict. Indeed, the Mississippi had touched off the hostilities when it deposited the disputed terrain—the batture itself.

Although people founded New Orleans, the city could not have existed without the river. Through dynamic sedimentation, the Mississippi built not only its delta, but also its natural levee (from the French *lever*, to raise), and on the river's levee New Orleanians built their city (figure 3). Levee formation occurs when alluvial rivers, which periodically leave their beds, stretch out on their flood plains. In the years prior to the construction of the artificial levees that line the Mississippi today, when the river overtopped its banks, its muddy water, after spreading out, lost current. Without a current keeping sediment suspended, heavy material dropped out first, leaving lighter sediment in suspension, to be deposited farther from the river's bed. As a result of

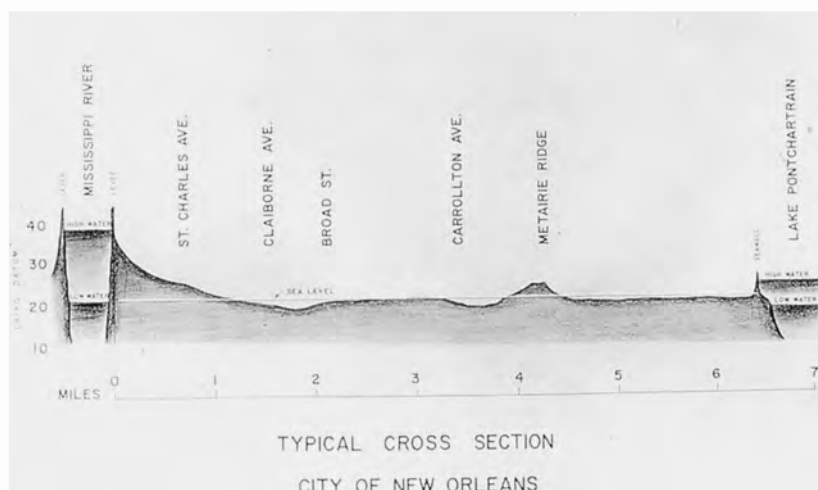


Figure 3. This cross section of the city demonstrates how the terrain slopes away from the Mississippi. Through the turn of the twentieth century, the city extended only to the vicinity of Claiborne Avenue. Note how high above the city the river flows, confined only within its levee, particularly at times of high water. Adapted from the *Report on the Drainage of the City of New Orleans* (1895), courtesy of G. Joseph Sullivan, General Superintendent, Sewerage and Water Board of New Orleans.

this deposition pattern, over millennia, alluvial ridges formed, flanking the Mississippi, sloping gently away from the stream like long sedimentary ramps: the river's natural levees.³

This topography helps explain part of the waterfront's significance throughout New Orleans's history. Rare high ground has always held great value in the city, because prior to the advent of sophisticated drainage technologies, the river's levee provided the only suitable foundation for building in the delta's soggy environment. Early planners took advantage of this geological gift, placing the city on the river's eastern levee. At that time, New Orleans was composed of what we now call the French Quarter, a grid six blocks deep from the river and twelve blocks wide along the waterfront. The highest point of the natural levee was approximately twenty feet above sea level, and from that apex the local terrain sloped back to a cypress wetland at the city's rear (figure 4). Beyond what New Orleanians called the "backswamp," which lay as much as ten feet below sea level, stood Lake Pontchartrain.⁴ Because New Orleans is nestled in the crook of one of the river's crescent-shaped meanders, to the west, east, and south the city is bounded by the river's levee. The shore of Lake Pontchartrain stands to the north. Like anywhere else

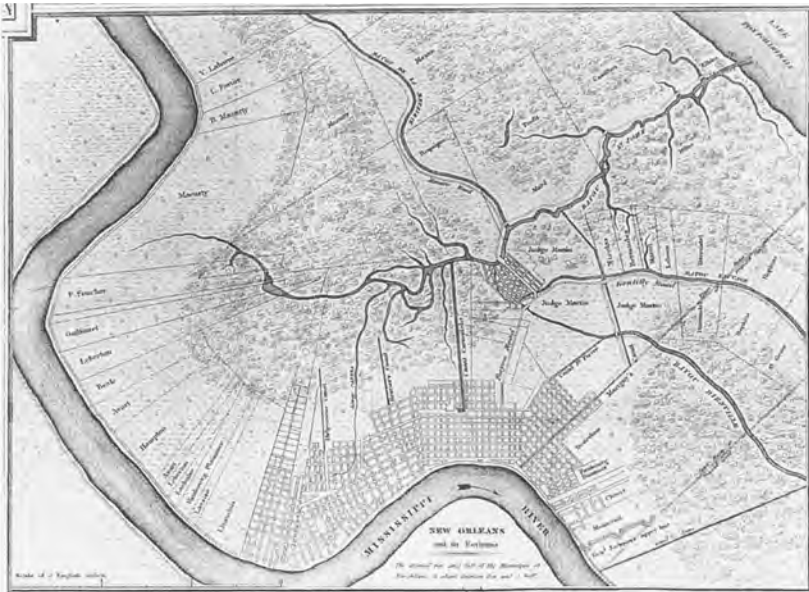


Figure 4. Until the end of the nineteenth century, when powerful drainage pumps reclaimed the swamps at the city's rear, New Orleans backed to massive wetlands (map dated 1829). Courtesy of The Historic New Orleans Collection.

in the Mississippi's delta, New Orleans is surrounded by a wet world composed of terrain that is not quite land.

The batture case, one of the most intense and enduring of the conflicts over the waterfront in the city's history, focused on a portion of muddy sediment deposited on the river side of the levee just upstream from the French Quarter (figure 5). The Mississippi inundated that parcel of muck for much of the year, leaving it dry only during periods of low water. Like the river's natural levee and delta, the batture also was a product of dynamic sedimentation. To understand how the batture came to be, imagine New Orleans situated within a quarter-moon crescent. The French Quarter lies cupped in the lower portion of the crescent, with the Mississippi represented by the C shape itself. As the Mississippi flowed by the city in an era before concrete bank revetment, it scoured out sediment from the shore opposite the French Quarter, the so-called West Bank, because that terrain faced the brunt of the current as the river turned along the lower part of the crescent. Meanwhile, on the East Bank, particularly just upstream from the French Quarter, the river deposited material in relatively calm water, slowly forming what became known as the batture. With the power of its current, and the sediment

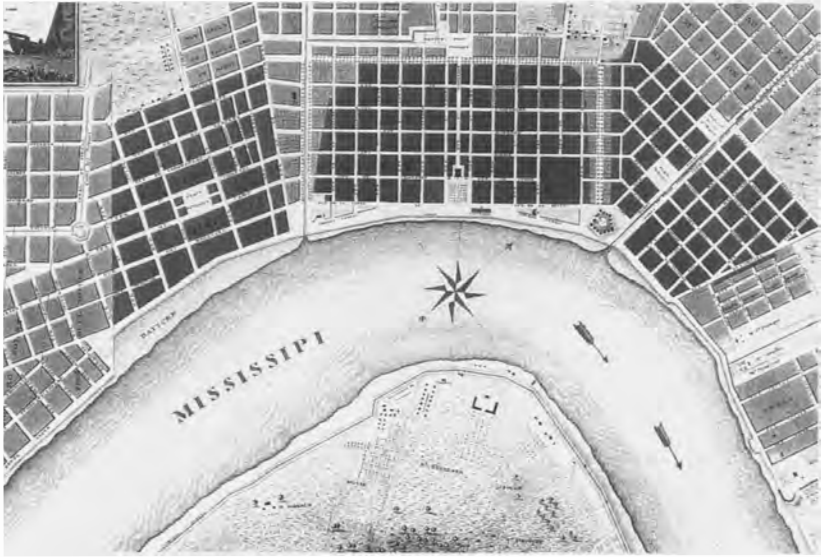


Figure 5. The disputed batture terrain lay just upstream from the French Quarter, fronting the Faubourg St. Mary (map dated 1817). Courtesy of The Historic New Orleans Collection.

staining its waters, the Mississippi eroded vast chunks of earth from one part of its banks while depositing new land at another spot—the river gaveth and the river tooketh away.

To casual observers, the batture might have seemed like an anonymous stretch of mud, but its history heralded the controversy swirling around it after the Purchase. The St. Mary batture abutted a parcel of land the Jesuit order had owned for much of the French colonial period in Louisiana. When the Jesuits were expelled from the colony in 1763, the French administration subdivided and sold off their lands, with the terrain fronting the batture falling into the hands of Bertrand Gravier in 1785. After further dividing his holdings into smaller plots, Gravier sold them in the 1790s. He named the *faubourg* he founded after his late wife, Mary. When Gravier died in 1797, his brother Jean acquired the remaining unsold portion of the Faubourg St. Mary.⁵ The tale might have ended there, with the foundation of one of the city's first suburbs, but the story grew more complex in the wake of the Louisiana Purchase.

In 1803, Gravier gazed at the accreting batture in front of the Faubourg St. Mary and saw profit potential in the silt. No seer, Gravier was a savvy speculator who recognized the value of land in postcolonial New Orleans. But his plan for the batture was complicated because he

owned none of the riparian lots in the *faubourg*. Nonetheless, he reclaimed a portion of the batture in front of the settlement by erecting an artificial levee to keep approximately four hundred square feet of sediment dry year-round. Gravier later justified his behavior by noting that he had never sold off the batture itself, though buyers had snapped up the riparian lots years earlier.⁶ This plan to reclaim the deposited land seems to have progressed until Gravier attempted to prohibit people from using the St. Mary batture. His actions, which likely had seemed harmless or eccentric until then—why bother a respected member of the community while he wanders in the riverside muck?—suddenly aroused protests from New Orleanians, who, in dry seasons, were accustomed to using the batture for storage, landfill, and a promenade.

At this early stage of the dispute, two distinct views of the riverfront emerged: on the one hand, Gravier's vision of neatly divided plots of real estate, reclaimed land commodified and rationalized by private-property rights; on the other, an open waterfront, available for common use, as had been customary throughout the city's history. There was a choice, in other words, between capitalizing on the waterfront's new-found economic potential and maintaining the community's venerable rights to use that space in a variety of commercial and noncommercial ways. In response to a series of protests from aggrieved New Orleanians, the Conseil de ville backed the latter position, proclaiming the area open to the "public," though it failed to account for who or what was included in such a broad conceptual category.⁷ Following that resolution, Gravier, seemingly chastened, abandoned his improvements—for a while.

The council's declaration arose out of a combination of factors: Louisiana's civil-law heritage, local custom, and the legislators' desire to consolidate control of the waterfront. When the United States purchased Louisiana, French and Spanish laws were in place in New Orleans.⁸ Those two nations drew much of their legal scholarship, particularly on the subject of riparian law, from ancient Roman sources. Although the batture's rightful ownership ultimately evolved into a hotly contested topic, in 1804 the council simply followed local laws, which stated that the banks of navigable rivers were publicly held. That portion of the civil law hinged on what is called a servitude, defined as the "limitations on ownership established by law for the benefit of the general public."⁹ In the batture's case, the applicable servitude stated that while a landowner could hold title to the property abutting a navigable river, the public retained access to the riverbanks. This servitude had shaped custom in New Orleans, and the waterfront had remained open from the city's founding, though the appro-

pritate public had always been defined by the French and Spanish authorities. All public lands, after all, had belonged to the crown throughout the city's colonial period. With the American purchase of Louisiana, however, the people became sovereign, and the council had to compete with other parties in the city for the role of guardian of the public's best interests.

Early in the batture controversy, few residents of New Orleans knew of the legal scholarship designating the banks of Louisiana's navigable rivers as public. What New Orleanians did know was the meaning that the riverbanks held for them. The waterfront was the border where the human and nonhuman worlds mingled, the center of New Orleans's urban-riparian environment. Every day, people interacted with one another and with the Mississippi at the riverbanks. In many ways the waterfront defined the city. Market, municipal entryway, port, and promenade, in post-Purchase New Orleans, it provided the city's most important public space, a landscape from which people marveled at the city's commerce, multicultural character, and relationship with the Mississippi.

Although located on the city's margin, the waterfront stood at the core of life in New Orleans. It was the key to orienting oneself in the city not only because of the myriad uses New Orleanians made of the riverbanks, but also because of the city's layout. At the time of the Purchase, New Orleans was home to fewer than ten thousand people, and pedestrians could stroll the city's length and breadth in a morning, going about their business in a town marked by architectural uniformity with a European flair, and straight but muddy streets. Huge fires had swept through New Orleans in 1788 and 1794, and few structures of more than four stories tall stood in the rebuilt city. With no architectural monuments save for St. Louis Cathedral, in what is now known as Jackson Square (figure 6), and the Ursuline Convent, the massive Mississippi hugging New Orleans in its crescent embrace dwarfed all human constructions, making the riverfront the city's most noteworthy feature.¹⁰

The waterfront dominated New Orleans physically not just because of the prominent place it occupied in people's mental maps of the city, but also because of the region's topography. All of New Orleans lay on the river's natural levee, but the high ground immediately adjacent to the Mississippi took on special significance. The highest point of the river's natural levee in New Orleans stood between ten and twenty feet above sea level. Twenty feet may sound paltry, but when compared with neighboring terrain, much of it below sea level, New Orleans's levee had always been a great mountain in the delta's flatlands. Then, shortly after the city's founding, the threat of flooding had forced New Orleanians to augment the natural levee, rais-