abling act and the state constitution, the appellate procedure is governed by the state statutes and procedures.[287]

The new state, without the express or implied assent of Congress, cannot enact that the records of the former territorial court of appeals should become records of its own courts or provide by law for proceedings based thereon.[288]

Property Rights of States to Soil Under Navigable Waters

The "equal footing" doctrine has had an important effect on the property rights of new states to soil under navigable waters[289] and tidally influenced waters.[290] In *Pollard's Lessee v. Hagan*,[291] as was observed above, the Court held that the original states had reserved to themselves the ownership of the shores of navigable waters and the soils under them, and that under the principle of equality the title to the soils beneath navigable water passes to a new state upon admission. The principle of this case, which also applies to tidally influenced waters, supplies the rule of decision in many property-claims cases.[292]

After refusing to extend the inland-water rule of *Pollard's Lessee* to the three mile marginal belt under the ocean along the coast,[293] the Court applied the principle in reverse in *United States v. Texas*.[294] Because the original states had been found not to own the soil un-

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[287] John v. Paullin, 231 U.S. 583 (1913).

[288] Hunt v. Palao, 45 U.S. (4 How.) 589 (1846). *Cf.* Benner v. Porter, 50 U.S. (9 How.) 235, 246 (1850).

[289] "Navigable waters," for equal footing purposes, are those waters used, or susceptible to use, for trade and travel at the time of statehood. PPL Montana, LLC v. Montana, 565 U.S. ___, No. 10–218, slip op. at 11–13 (2012).

[290] *E.g.*, Knight v. U.S. Land Association, 142 U.S. 161, 183 (1891).

[291] 44 U.S. (3 How.) 212, 223 (1845). *See also* Martin v. Waddell, 41 U.S. (16 Pet.) 367, 410 (1842).

[292] *See* PPL Montana, LLC v. Montana, 565 U.S. ___, No. 10–218, slip op. (2012) (Montana not able to charge rent to hydroelectric facilities located on portions of rivers that were impassable when Montana became a State); Phillips Petroleum Co. v. Mississippi, 484 U.S. 469 (1988) (confirming language in earlier cases recognizing state sovereignty over tidal but nonnavigable lands); Utah Division of State Lands v. United States, 482 U.S. 193 (1987) (applying presumption against congressional intent to defeat state title to find inadequate federal reservation of lake bed); Idaho v. United States, 533 U.S. 262 (2001) (presumption rebutted by indications—some occurring after statehood—that Congress intended to reserve certain submerged lands for benefit of an Indian tribe); Oregon ex rel. State Land Bd. v. Corvallis Sand & Gravel Co., 429 U.S. 363 (1977) (doctrine requires utilization of state common law rather than federal to determine ownership of land underlying river that is navigable but not an interstate boundary); Shively v. Bowlby, 152 U.S. 1 (1894) (whether Oregon or a pre-statehood grantee from the United States of riparian lands near mouth of Columbia River owned soil below high-water mark).

[293] United States v. California, 332 U.S. 19, 38 (1947); United States v. Louisiana, 339 U.S. 699 (1950).

[294] 339 U.S. 707, 716 (1950). *See* United States v. Maine, 420 U.S. 515 (1975) (unanimously reaffirming the California, Louisiana, and Texas cases).