Uri L. Lamprey et al. vs. The State of Minnesota et al.

SUPREME COURT OF MINNESOTA

52 Minn. 181*; *53 N.W. 1139

November 15, 1892, Submitted on briefs
January 10, 1893, Decided

OPINION

Mitchell, J. In 1853, at the time of making the United States survey of sections four, (4,) five, (5,) eight, (8,) and nine, (9,) township twenty-eight, (28,) range twenty-two, (22,) there was in the center of these four sections a shallow, nonnavigable lake, comprising about three hundred acres, which the government surveyor meandered, in accordance with the rules and instructions of the department, "to meander all lakes and deep ponds of the area of twenty-five acres and upwards," (1 Lester Land Laws 714,) and in doing so ran the meander lines substantially along the margin of the lake. The lake and the meanders thereof appear on the official plat of the survey, and are referred to in the field notes. By this survey the lands bordering on the lake were subdivided into fractional governmental subdivisions and lots, the lake forming the boundary thereof on one side. The survey and plat were approved by the secretary of the interior in 1854. Subsequently, and prior to 1856, the United States, by patents, conveyed, without reservation or restriction, to various parties, all of these lands, which were described in the patents by their governmental subdivision or lot, according to the plat and survey, which were referred to in, and made part of, the patents. By sundry mesne conveyances from the patentees, the plaintiffs and defendant Metcalf have become the owners of all these riparian lands. Since the survey in 1853 the lake has been, through natural causes, gradually and imperceptibly drying up, until now its former bed is all dry land.

In 1860, after the lake had partially dried up, the United States land department caused a survey to be made of the land constituting that part of the former bed of the lake situate between the original meander line and the then existing margin of the lake, and in 1873 assumed to issue a patent therefor to one Gilmore, who subsequently conveyed to plaintiffs and Metcalf, who assert title to the former bed of the lake both as grantees of the riparian lands according to the original survey of 1853, and also, in part, under the Gilmore patent. The state, on the other hand, claims that the Gilmore patent is void, and that the patents, according to the original United States survey, only conveyed the land to the margin of the lake, as it then existed, and that the former bed of the lake belongs to the state, in its sovereign capacity. In the pleadings the state also asserted title under the "swamp-land grant" from the United States; but this claim was abandoned on the trial, and very properly so, because, for manifest reasons, it was entirely untenable.

It will be thus seen that the question presented is, what rights in or to the soil under water does the patentee of land bounded by a meandered inland lake acquire by his patent? The same question was suggested in *Huntsman v. Hendricks, 44 Minn. 423, (46 N.W. 910,)* but not decided, in view of its great importance, and the fact that it was not fully argued by counsel.

The importance of the question, both to the public and to riparian owners, is apparent, when we consider that there are many thousands of such lakes in this state, which, although most of them

may not be adapted for navigation, in its ordinary, commercial sense, have been, from the earliest settlement of the state, resorted to and used by the people as places of public resort, for purposes of boating, fishing, fowling, cutting ice, etc., and the further fact that observation teaches that the waters of many of these lakes are, from natural causes, slowly but imperceptibly receding, so that a part of what was their bed, when surveyed, has, or in time will, become dry land.

The right of the public to use these lakes for the purposes referred to, as well as the right of riparian owners to these relicted lands, and consequently their right of access to the water after such reliction occurs, are therefore all involved in the question presented. The question ought to be approached and considered from a practical, as well as legal, standpoint; and as the common law is a body of principles, and not of mere arbitrary rules, the effort should be to apply the spirit and reason of these principles to the state of facts presented.

There are certain matters which are so well settled that they may be summarily disposed of at the outset. Without troubling ourselves to consider what were the rights of the United States in these waters before they conveyed the lands bordering on them, it is well settled that, having disposed of lands bordering on a meandered lake by patent, without reservation or restriction, they have nothing left to convey, and consequently the land department was thereafter without jurisdiction, and the Gilmore patent, issued in 1873, was inoperative and void; also that a meander line is not a boundary, but that the water whose body is meandered is the true boundary, whether the meander line in fact coincides with the shore or not; also, that grants by the United States of its public lands bounded on streams or other waters, made without reservation or restriction, are to be construed according to the law of the state in which the lands lie; and, consequently, whether the land forming the beds of these lakes belongs to the state, or to the owners of the riparian lands, is a question to be determined entirely by the laws of Minnesota. In support of these propositions, we need only cite *Hardin v. Jordan, 140 U.S. 371, (11 Sup. Ct. Rep. 808, 838, 35 L. Ed. 428*,) and *Mitchell v. Smale, 140 U.S. 406, (11 Sup. Ct. Rep. 819, 840, 35 L. Ed. 442*.)

In *St. Paul, S. & T. F. R. Co. v. St. Paul & P. R. Co., 26 Minn. 31, (49 N.W. 303*,) this court was led, from certain *dicta* in *Railroad Co. v. Schurmeir, 74 U.S. 272, 7 Wall. 272, 19 L. Ed. 74*, to suppose that the supreme court of the United States meant to hold otherwise as to patents of public lands bordering on navigable streams; but that no such doctrine has been adopted by that court is evident from *Barney v. Keokuk, 94 U.S. 324, 24 L. Ed. 224*, and subsequent cases.

We therefore approach the question in this case untrammeled by the binding authority of any federal decisions, or even by any direct decisions in this state, in which this is still an open question. What the relative rights of the state and of riparian owners in the waters and beds of these lakes are, largely depends upon the question whether the rules of law as to the rights of grantees of lands bordering on running streams are applicable to grants of land bordering on lakes. The early English decisions, dealing, as they did, mainly with arms of the sea and rivers in which the tide ebbed and flowed, furnish but little light on this subject. In many of the states of the Union, this branch of the law is still somewhat unsettled, and, as said in *Huntsman v. Hendricks, supra*, the decisions are somewhat conflicting. The subject was recently very ably and exhaustively considered by that eminent jurist, the late Justice Bradley, in *Hardin v. Jordan, supra*, in which all the authorities -- Roman, English, and American -- are collected and reviewed; and we think we may fairly say of the decision in that case that the result and logic of it is that, at common law, the rules governing riparian rights on streams apply, *mutatis mutandis*, to grants of land bordering on lakes; consequently, if they are nonnavigable the grantees, (if their grants are without reservation or restriction,) take to the

center of the lake, but that if they are navigable the grantees take the fee only to high water, but with all the riparian rights incident to the ownership of riparian land, including the right to accretions and relictions. It is true that case was controlled by the law of Illinois, and the only question was what the law of that state was; but, having determined that the courts of Illinois had adopted the common law on the subject, it became necessary to ascertain what the common law was; and in that point of view the conclusion arrived at on that question is pertinent here.

As has been already suggested, there are but few authorities on the question in England; for in England proper there are but few lakes, and in Scotland the civil law prevails. The case of *Bristow* v. *Cormican*, 3 App. Cas. 641, goes far towards sustaining the conclusion reached in *Hardin* v. *Jordan*, although it must be admitted that it is left in some doubt as to whether the presumption of ownership to the thread of the stream, which exists with regard to owners of land on the banks of nontidal streams of running water, exists also on inland lakes, navigable in fact, but nonnavigable in the common-law sense.

Coulson & Forbes, in their work on the Law of Waters, (page 98,) say that it does not appear that by the English law there is any difference as to the ownership of the soil between land covered with still and running water, except, perhaps, in the case of large inland lakes or seas, where the rule that the adjoining riparian owner is owner *admedium filum aquae* might cause inconvenience.

The decisions in Massachusetts, (of which Maine was a part,) and which have been followed in most of the New England states, are not particularly in point, for the reason that they have their foundation in the colonial ordinance of 1641-47, prohibiting towns from granting away ponds containing more than ten acres, called "great ponds," and providing that such ponds should be free to the public for fishing and fowling.

In New Jersey, which adhered strictly to the old common-law definition of "navigable waters," it was held that a lake (which, according to the English common law, was nonnavigable) was the private property of the riparian owner; thus applying the same rule that would be applied in case of a nonnavigable stream. *Cobb v. Davenport, 32 N.J.L. 369*.

Whatever doubt once existed as to the law in New York would seem to be fully set at rest by the recent decision of the court of appeals (second division) in *Gouverneur v. National Ice Co., 134 N.Y. 355, (31 N.E. 865*,) in which, after reviewing all the decisions of the state on the subject, the court holds "that a deed of land bordering on a small, nonnavigable lake or pond is *prima facie* presumed to convey title to the center," saying there would seem to be no substantial reason for the application of a different rule in the legal construction of grants of land bounded on them than is applied to conveyances bounding premises on fresh-water streams, and that the difficulty in locating lines, under this rule, of different proprietors, is not an objection to its general application, as the same difficulties would be met with in the bays or bends of rivers. Substantially the same views are expressed in *Lembeck v. Nye, 47 Ohio St. 336, (24 N.E. 686*;) the court saying that no solid ground is readily perceived for limiting a grant of land bordering on a nonnavigable lake to the water's edge, when, in the case of a nonnavigable stream, its operation extends to the center.

In *Ridgway v. Ludlow, 58 Ind. 248*, it was held that the owner of land bordering on a nonnavigable lake, lying within the congressional survey, is the owner of the bed of the lake to the thread thereof, or a line along the middle of the lake; the court adding that they could see no difference between nonnavigable lakes and nonnavigable rivers, although later, as will be seen, the court somewhat limited this common-law right.

In *Rice v. Ruddiman, 10 Mich. 125*, the rule of riparian ownership previously applied to the Detroit river was applied to Lake Muskegon; the court saying that they were not able to discover any fact or circumstance sufficient to make a substantial difference in principle between the two cases, and that the general understanding and common usage of the country have as clearly recognized the principles of riparian ownership with reference to lakes as to rivers within the state, and repudiated any distinction as arbitrary, having no foundation in the nature of things. The same court, in *Clute v. Fisher, 65 Mich. 48, (31 N.W. 614*,) followed in *Stoner v. Rice, 121 Ind. 51, (22 N.E. 968*,) limited this common-law right by holding that the riparian owner of a fractional lot bounded by a nonnavigable lake could only take so much of the lake as is required to fill out the subdivision of the section which he owned. The court seemed to think that they were required to so hold, under the decision in *Brown's Lessee v. Clements, 44 U.S. 650, 3 HOW 650, 11 L. Ed. 767*, but which, with due deference, does not seem to us to have the least application to the question of riparian rights under a grant of land bordering on water. But, having held that the bed of a nonnavigable lake belonged neither to the state nor the United States, the court was compelled to the somewhat peculiar position of holding that if the lake was so large that the lines of the granted lots or fractional subdivisions would not, when extended, embrace the whole of it, then the riparian ownership would extend to the center. We are compelled to the conclusion that this attempted limitation upon riparian ownership is illogical, purely arbitrary, and impracticable.

The same question has been before the courts of Wisconsin in several cases. *Delaplaine v. Chicago & Northwestern Ry. Co., 42 Wis. 214*; *Boorman* v. *Sunnuchs*, *Id. 233*, and *Diedrich* v. *Northwestern Union Ry. Co.*, *Id. 248*.

The general result of these decisions is that, while the courts of that state hold that, whether a stream is navigable or nonnavigable in fact, the title of the bed to the center of the current is in the owner of the bank, but that as to lakes a different rule applies, and that the owner of the land bordering on any *meandered* lake, whether navigable in fact or not, takes the land only to the water's edge; but no special reason is given why a different rule should be applied.

The courts of that state do, however, hold that the riparian proprietor has, as such, the exclusive right of access to and from the lake in front of his land, and of building his piers and wharves in aid of navigation, not interfering with the public easement where the lake is navigable; also, that he has the accretions formed upon or against his land, and those portions of the bed of the lake adjoining his land which may be uncovered by the recession of the water; there being no distinction, in respect to the rights of riparian owners, between accretions and relictions. With these rights conceded to the riparian owner, the question whether the fee of the bed of the lake, while it remains covered with water, is in him or in the state, is more speculative than practical. In most cases where a distinction has been made between riparian rights on streams and on lakes it seems to have been merely assumed, without much consideration, that the rules applicable to running water were not applicable to lake or ponds. The only reasons we have ever seen suggested for a distinction are -- *First*, the supposed difficulty of running the lines between adjoining riparian owners of lands bordering on lakes, and, *second*, the supposed injustice that might result, in some cases, in giving the owner of a very small estate on the shore of a lake a very large reliction in front of it.

But it seems to us that neither of these is an adequate reason for departing from a well-settled principle. Both of them are more imaginary than real, and would occur only in exceptional or extreme cases, and are almost as likely to occur in the case of riparian ownership on a tortuous river, with an ill-defined or changeable channel, as in the case of such ownership on the borders of a lake.

The owner of a mere "rim" on the bank of a river may sometimes acquire an accretion or reliction much larger than the parent estate, but that is an incident to all riparian ownership; and it was never suggested, in the case of a stream, that such a state of facts furnished any reason for making the case an exception to the general rule.

Courts and text writers sometimes give very inadequate reasons, born of a fancy or conceit, for very wise and beneficent principles of the common law; and we cannot help thinking this is somewhat so as to the right of a riparian owner to accretions and relictions in front of his land. The reasons usually given for the rule are either that it falls within the maxim, *de minimis lex non curat*, or that, because the riparian owner is liable to lose soil by the action or encroachment of the water, he should also have the benefit of any land gained by the same action. But it seems to us that the rule rests upon a much broader principle, and has a much more important purpose in view, viz. to preserve the fundamental riparian right -- on which all others depend, and which often constitutes the principal value of the land -- of *access to the water*.

The incalculable mischiefs that would follow if a riparian owner is liable to be cut off from access to the water, and another owner sandwiched in between him and it, whenever the water line had been changed by accretions or relictions, are self-evident, and have been frequently animadverted on by the courts. These considerations certainly apply to riparian ownership on lakes as well as on streams. Take the case in hand, of our small inland lakes, the waters of many of which are slowly but gradually receding.

The owners of lands bordering on them have often bought with reference to access to the water, which usually constitutes an important element in the value and desirability of the land. If the rule contended for by the appellants is to prevail, it would simply open the door for prowling speculators to step in and acquire title from the state to any relictions produced in the course of time by the recession of the water, and thus deprive the owner of the original shore estate of all riparian rights, including that of access to the water. The endless litigation over the location of the original water lines, and the grievous practical injustice to the owner of the original riparian estate, that would follow, would, of themselves, be a sufficient reason for refusing to adopt any such doctrine. That the state would never derive any considerable pecuniary benefit, -- certainly, none that would at all compensate for the attendant evils, -- we may, in the light of experience, safely assume.

Our conclusion, therefore, is that upon both principle and authority, as well as consideration of public policy, the common law is, that the same rules as to riparian rights which apply to streams apply also to lakes, or other bodies of still water.

In this state, we have adopted the common law on the subject of waters, with certain modifications, suited to the difference in conditions between this country and England, the principal of which are that navigability in *fact*, and not the ebb and flow of the tide, is the test of navigability, and that we have repudiated the doctrine that the state has any private or proprietary right (as had the king) in navigable waters, but that it holds them in its sovereign capacity, as trustee for the people, for public use.

In accordance with the rules of the common law, we therefore hold that where a meandered lake is nonnavigable in fact, the patentee of land bordering on it takes to the middle of the lake; that where the lake is navigable in fact, its waters and bed belong to the state, in its sovereign capacity, and that the riparian patentee takes the fee only to the water's edge, but with all the rights incident to riparian ownership on navigable waters, including the right to accretions or relictions formed or

produced in front of his land by the action or recession of the water. Of course, it is a familiar principle that these riparian rights rest upon title to the bank or shore, and not upon title to the soil under the water.

Comparing what was said in *Schurmeier v. St. Paul & Pacific R. Co., 10 Minn. 82*, (Gil. 59,) with what is perhaps implied in *St. Paul, S. & T. F. R. Co. v. St. Paul & P. R. Co., 26 Minn. 31, (49 N.W. 303*,) it may be not entirely clear whether the doctrine of this court is that a patentee of land on navigable water takes the fee to low water, or only to high water; but this is a matter of little practical importance in any case, and of none in the present one.

What has been already said is sufficient for the purposes of the present case; but, to avoid misconception, it is proper to consider what is the definition or test of "navigability," as applied to our inland lakes. The division of waters into navigable and nonnavigable is but a way of dividing them into public and private waters, -- a classification which, in some form, every civilized nation has recognized; the line of division being largely determined by its conditions and habits.

In early times, about the only use -- except, perhaps, fishing -- to which the people of England had occasion to put public waters, and about the only use to which such waters were adapted, was navigation, and the only waters suited to that purpose were those in which the tide ebbed and flowed. Hence, the common law very naturally divided waters into navigable and nonnavigable, and made the ebb and flow of the tide the test of navigability. In this country, while still retaining the common-law classification of navigable and non-navigable, we have, in view of our changed conditions, rejected its test of navigability, and adopted in its place that of navigability in fact; and, while still adhering to navigability as the criterion whether waters are public or private, yet we have extended the meaning of that term so as to declare all waters public highways which afford a channel for any useful commerce, including small streams, merely floatable for logs at certain seasons of the year. Most of the definitions of "navigability" in the decided cases, while perhaps conceding that the size of the boats or vessels is not important, and, indeed, that it is not necessary that navigation should be by boats at all, yet seem to convey the idea that the water must be capable of some commerce of pecuniary value, as distinguished from boating for mere pleasure. But if, under present conditions of society, bodies of water are used for public uses other than mere commercial navigation, in its ordinary sense, we fail to see why they ought not to be held to be public waters, or navigable waters, if the old nomenclature is preferred. Certainly, we do not see why boating or sailing for pleasure should not be considered navigation, as well as boating for mere pecuniary profit.

Many, if not the most, of the meandered lakes of this state, are not adapted to, and probably will never be used to any great extent for, commercial navigation; but they are used -- and as population increases, and towns and cities are built up in their vicinity, will be still more used -- by the people for sailing, rowing, fishing, fowling, bathing, skating, taking water for domestic, agricultural, and even city purposes, cutting ice, and other public purposes which cannot now be enumerated or even anticipated. To hand over all these lakes to private ownership, under any old or narrow test of navigability, would be a great wrong upon the public for all time, the extent of which cannot, perhaps, be now even anticipated. When the colony of Massachusetts, two hundred and fifty years ago, reserved to public use her "great ponds," probably only fishing and fowling were in mind; but, as is said in one case, "with the growth of the community, and its progress in the arts, these public reservations, at first set apart with reference to certain special uses only, became capable of many others, which are within the design and intent of the original appropriation. The devotion to public use is sufficiently broad to include them all, as they arise." *West Roxbury* v. *Stoddard*, 7 Allen 158.

If the term "navigable" is not capable of a sufficiently extended meaning to preserve and protect the rights of the people to all beneficial public uses of these inland lakes, to which they are capable of being put, we are not prepared to say that it would not be justifiable, within the principles of the common law, to discard the old nomenclature, and adopt the classification of public waters and private waters. But, however that may be, we are satisfied that, so long as these lakes are capable of use for boating, even for pleasure, they are navigable, within the reason and spirit of the common-law rule. When the waters of any of them have so far receded or dried up as to be no longer capable of any beneficial use by the public, they are no longer public waters, and their former beds, under the principles already announced, would become the private property of the riparian owners.

Judgment affirmed.

(Opinion published *53 N.W. 1139*.)