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Riparian Rights - Inland Waters - Right of an Owner of Land Abutting on Inter-Tract Lake to the Use of the Entire Surface

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must be made by petition, stating that the applicant is a resident of the county, and giving the cause for which the change is sought.[6]

In the absence of fraud an application for change of name should be granted.[7] But in one instance, petitioner's allegation of "un-Americanism", as his reason for desiring change, had to be stricken from the petition before it would be granted.[8] This seems to be rather technical. Without a showing of fraud the court should offer a speedy and recorded change of name — any name of the petitioner's choice.[9]

D. M. DELABARRE.

RIPARIAN RIGHTS — INLAND WATERS — RIGHT OF AN OWNER OF LAND ABUTTING ON INTER-TRACT LAKE TO THE USE OF THE ENTIRE SURFACE. — Plaintiff brought an action to enjoin the defedant from constructing and maintaining a fence through and across two lakes and from taking water from one of the lakes for irrigation purposes. The trial court found that the waters overlying each owner's portion of the lake beds were the private property of the owner and subject to his exclusive control. It further found that the defendant's use of the lake water for irrigation was reasonable. On appeal, the Supreme Court of Minnesota reversing the judgment in part *held* that the plaintiff was entitled to an injunction against the defendant who had erected the fence across the lake. *Johnson v. Seifert*, 100 N.W.2d 689 (Minn. 1960).

Title to the unmeandered, intertract land in controversy was conveyed to Minnesota by the Swamp Land Act.[1] An individual may be vested with a fee simple title to this subaqueous land.[2] The English rule that non-navigable lake bottoms are susceptible of private ownership has been applied in most jurisdictions.[3] In the jurisdictions recognizing private ownership, it has been held that an owner of a segment of the lake bed was restricted to the use of the water overlying his land while he pursued the usual recreations of

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6. N.D. Rev. Code § 32-2802 provides: "Any person desiring to change his or her name may file a petition in the district court of the county in which such person may be a resident, setting forth: 1) That the petitioner has been a bona fide resident of such county for at least six months . . . 2) The cause for which the change of the petitioner's name is sought; and 3) The name asked for. . . ."

7. See *In re* Ross, 8 Cal.2d 608, 67 P.2d 94 (1937); *In re* Slobody, 173 N.Y. Supp. 514 (Sup. Ct. 1918); Bates, *Change of Name, Legitimation, and Adoption*, 19 Tenn. L. Rev. 418 (1946); Note, 26 Calif. L. Rev. 268 (1938); Note, 24 Tul. L. Rev. 496 (1950); Comment, 16 N.C. L. Rev. 187 (1938).

8. *In re* Cohen, 142 Misc. 852, 255 N.Y. Supp. 616 (Sup. Ct. 1932).

9. See Petition of Buyarsky, 322 Mass.. 335, 77 N.E.2d 216, 218 (1948); *In re* Slobody, 173 N.Y. Supp. 514 (Sup. Ct. 1918).

1. Swamp Land Act, 9 Stat. 519 (1850), 43 U.S.C. § 982-988 (1958) "To enable the several States . . . to construct the necessary levees and drains, to reclaim the swamp and overflowed lands therein — the whole of the swamp and overflowed lands, made unfit thereby for cultivation, and remaining unsold on or after the 28th day of September, A.D. 1850, are granted and belong to the several States respectively . . ."

2. 43 U.S.C. § 983 (1958) ". . . at the request of the governor of any State in which said swamp and overflowed lands may be, to cause patents to be issued to said State therefor, conveying to said State the fee simple of said land."

3. Crutchfield v. F. A. Sebring Realty Co., 69 So.2d 328 (Fla. 1954); Bannon v. Logan, 66 Fla. 329, 63 So. 454 (1913); Sanders v. DeRose, 207 Ind. 90, 191 N.E. 331 (1934); State Game & Fish Commission v. Louis Fritz Co., 187 Miss. 539, 193 So. 9 (1940); Walden v. Pines Lake Land Co., 126 N.J. Eq. 249, 8 A.2d 581 (1939).

fishing,[4] boating,[5] and swimming.[6] This conclusion is a literal extension of the common law theory that an owner exercise absolute dominion over his property.[7]

When the Federal test of navigability[8] is applied, if waters were navigable in Minnesota at the date of its admission to the Union, the absolute riparian ownership will be set at the high water mark.[9] However, if the waters are non-navigable under the State and Federal test,[10] the riparian proprietor owns to the center of the lake.[11] This right exists as a natural and inherent incident of the ownership of riparian land. The use of the water is limited to what is reasonable, and necessary for the use and enjoyment of the property, and is not to be employed to the detriment of other riparian proprietors.[12]

In the instant case the court adopted the liberal attitude,[13] holding that the riparian owner has the right to the use of the entire surface of the lake. This right is to include fishing, boating, swimming, and other uses, both domestic and recreational, to which our lakes are ordinarily put in common with other abutting owners.[14] This right of property in water is usufructuary.[15] and as such consists not of the water, but to the advantages of its use. The landowner retains the right of private ownership of the subaqueous land, subject to a common usage of the water by all abutting riparian owners.

The court is to be commended for its definition of the respective rights of the owners. For centuries reasonable men have adhered to a mode of social intercourse which permitted, even demanded, a reasonable sharing of the

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4. Sanders v. DeRose, *supra* note 3, at 333 ". . . each owner has the right to the free and unmolested use and control of his portion of the lake bed and water thereon for boating and fishing . . ."

5. Taylor Fishing Club v. Hammett, 88 S.W.2d 127 (Tex. Civ. App. 1935) (the owner has the exclusive right to boat and fish in the water area over his land).

6. Commonwealth Water Co. v. Brunner, 175 App. Div. 153, 161 N.Y.Supp. 794 (1916) ". . . no right to fish, boat, bathe, — or do any other act in or upon any part of said lake under which they do not own the land."

7. See Smoulter v. Boyd, 209 Pa. 146, 58 A. 144 (1904).

8. State v. Adams, 251 Minn. 521, 89 N.W.2d 661, 664 (1957) "The rule is that streams which are navigable in fact are navigable in law; that they are navigable in fact when they are used or are susceptible of use in their ordinary and natural condition as highways for commerce; that ordinary and natural conditions refer to volume of water, and gradients, and the regularity of flow; and that a waterway otherwise suitable for navigation is not barred from that classification merely because artificial aids must make the highway suitable for use before commercial navigation may be undertaken."

9. Hanford v. St. Paul & Duluth R. Co., 43 Minn. 104, 44 N.W. 1144 (1890); State v. Korrer, 127 Minn. 60, 148 N.W. 617, 623 (1914). "In this state it has been settled for nearly 50 years that the title of the riparian owner extends to low water mark. While the title of a riparian owner in navigable or public waters extends to ordinary low-water mark, his title is not absolute except to ordinary high-water mark. As to the intervening space his title is limited or qualified by the right of the public to use the same for purpose of navigation or other public purposes."

10. State v. Longyear Holding Co., 224 Minn. 451, 29 N.W.2d 657 (1947) (determinable as of date of admission to the Union, and under Federal decisions with reference thereto).

11. See Rooney v. Stears County Bd., 130 Minn. 176, 153 N.W. 858 (1915).

12. See Beach v. Hayner, 207 Mich. 93, 173 N.W. 487 (1919).

13. Improved Realty Corp. v. Sowers, 195 Va. 317, 78 S.E.2d 588 (1953); Snively v. Jaber, 48 Wash.2d 815, 296 P.2d 1015 (1956) (where several owners held land bordering a non-navigable lake, boating, fishing, and other similar rights were owned in common and any proprietor or his licensee could use the entire lake).

14. Harris v. Brooks, 225 Ark. 436, 283 S.W.2d 129 (1955); Taylor v. Tampa Coal Co., 46 So.2d 392 (Fla. 1950).

15. Rancho Santa Margarita v. Vail, 11 Cal.2d 501, 81 P.2d 533, 560 (1938), " . . . the riparian does not 'own' the water . . . , he 'owns' a unufructory right — the right of reasonable use of the water . . ."

waters. Free access to the surface of the lakes of Minnesota is desirable if the development of trade common to such areas is to be exploited.[16]

ROBERT D. HARTL.

SCHOOLS AND SCHOOL DISTRICTS — RULES AND REGULATIONS — REASONABLENESS AND VALIDITY. — The Board of Education, prior to the 1958 school term, adopted a rule which barred married high school students from participating in co-curricular activities. In a mandamus proceeding by the parents of married high school students to compel the board of education to allow the students to play football, the trial court held that the defendant school district did not violate the statute guaranteeing to all students an equal right to public educational facilities. The Supreme Court of Michigan, in a 3, 1, 4 decision, *held* that the judgment be affirmed. Four judges supported the contention that the rule, which is admitted to be punitive, is violative of public policy in attacking the married status of these students as "wrongdoing". Three judges contended public policy does not favor marriages when consummated under the ages of twenty-one for the male and eighteen for the female, and that the rule is reasonable as being within the general discretionary powers of the school board. The remaining judge affirmed the decision but only on the ground that the question was moot. *Cochrane v. Board of Ed. of Mesick Consol. Sch. Dist.*, 103 N.W.2d 569 (Mich. 1960).

As a general rule decisions of school boards affecting the good order and discipline of the school are final when they relate to the right of pupils to enjoy school privileges.[1] Courts are not concerned with errors of judgment,[2] but the reasonableness of regulations is a question of law for the courts despite the presumption that such regulations are a reasonable exercise of discretion.[3] Whether a rule is reasonable is subject to inquiry by the courts,[4] and they may compel, by mandamus, the directors of a school to admit a pupil unlawfully excluded.[5]

It has been held that to expell a student from school because of marriage is an abuse of a school board's discretionary power.[6] There is no doubt a student may be punished for a breach of discipline, or for an offense against good morals, but not for innocent acts.[7] An act penalizing the conduct of

16. Duval v. Thomas, 114 So.2d 791, 795 (Fla. 1959) Wherein the count took judicial notice of "tourism" and calculated that immeasurable damage would result if guests were restricted to fishing and swimming only in the waters within a host's property lines; State v. Adams, *supra* at note 8.

1. See Batty v. Board of Education, 67 N.D. 6, 269 N.W. 49, 50 (1936).

2. See *e. g.*, State v. Walker, 88 Ga. 413, 76 S.E.2d 852, 855 (1953).

3. Burkitt v. School Dist. No. 1, Multonomah County, 195 Ore. 471, 246 P.2d 566, 576 (1952)

4. Kinzer v. Directors of Independent School Dist., 129 Iowa 441, 105 N.W. 686, 687 (1906).

5. Perkins v. Ind. School Dist. of West Des Moines, 56 Iowa 476, 9 N.W. 356 (1880).

6. Nutt v. Board of Education, 128 Kan. 507, 278 Pac. 1065 (1929); McLeod v. State, 154 Miss. 468, 122 So. 737 (1929). *But see,* State v. Marion County Board of Education, 202 Tenn. 29, 302 S.W.2d 57, 58 (1957) (married student was expelled for remainder of term with the right to return the following term); Kissick v. Garland Independent School District, 330 S.W.2d 708 (Tex. Civ. App. 1959) (Practically the same factual situation was evident in this case as in the instant case. The court found that restricting the privileges of a married student was not an abuse of discretion).

7. Perkins v. Ind. School Dist. of West Des Moines, 56 Iowa 476, 9 N.W. 356 (1880). See also 35 Cyc. 1135, ". . . it has been held that a rule is not reasonable which will deprive a child of school privileges except as a punishment for a breach of discipline or an offense against good morals . . ."