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WATERS AND WATERCOURSES - NAVIGABLE WATERS - DRIED-UP LAKE - RELICTION

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WATERS AND WATERCOURSES — NAVIGABLE WATERS — DRIED-UP LAKE — RELICTION — A meandered lake, during periods of normal rainfall covering 3000 acres, due to years of drouth completely dried up. Plaintiff, the owner of land abutting on the lake, sued the defendant, a stranger, who entered on the dry bed and cut hay, plaintiff claiming ownership of that part of the dry bed where the hay was cut as relicted land. *Held*, that the lake which was deemed navigable before it dried up was still a navigable lake although no water was in it; that as a navigable lake the ownership of the bed was in the state in trust for the public; that there was no reliction because the lake was not permanently dry and that plaintiff, therefore, had no title to the bed by which he could bring the action. *Hillebrand v. Knapp*, (S. D. 1937) 274 N. W. 821.

South Dakota courts follow the rule adopted in many states that a riparian owner on a non-navigable lake owns to the middle of the lake, but that a riparian owner on a navigable lake owns only to the high-water mark, including with his ownership all riparian rights such as the right to accretions or relictions formed or produced in front of his land by the recession of the waters.¹ Conceding that a lake is navigable, when is there such a reliction that a riparian owner may enjoin a stranger from cutting hay on the dry bed? It is generally held that to constitute reliction the subsidence of the waters must be gradual, imperceptible and permanent. It then becomes a difficult question of fact whether there has been such a permanent recession. The court here concluded that the recession had not been permanent.² Where, as in South Dakota, lakes are alternately full or dry according to the season and in times of normal rainfall are full, the result here seems salutary because otherwise the title to a lake bed would be uncertain—sometimes in the riparian owner, sometimes not. The South Dakota court has also adopted the rule used by the Minnesota court that a lake is navigable when it is susceptible to public fishing, boating, or other public uses.³ But the Minnesota court has also held that “when the waters . . . 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 . . . become the private property of the riparian owners.”⁴ This might raise some doubt as to whether a lake completely dried up is still a navigable lake.

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¹ *Barney v. Keokuk*, 94 U. S. 324, 24 L. Ed. 224 (1876); *Hardin v. Jordan*, 140 U. S. 371, 11 S. Ct. 808 (1891); 23 A. L. R. 757 (1923).

² *Murry v. Sermon*, 8 N. C. 56 (1820); *Rex v. Yarborough*, 3 B. & C. 91, 107 Eng. Rep. 668 (1824); *Chapman v. Hoskins*, 2 Md. Ch. 485 (1851); *Warren v. Chambers*, 25 Ark. 120, 4 Am. Rep. 23 (1867); *Mulry v. Norton*, 100 N. Y. 424, 53 Am. Rep. 206 (1885); *Sapp v. Frazier*, 51 La. Ann. 1718, 26 So. 378 (1899); *Carr v. Moore*, 119 Iowa 152, 93 N. W. 52 (1903); *Anderson v. Ray*, 37 S. D. 17, 156 N. W. 591 (1916).

³ *Lamprey v. Metcalf*, 52 Minn. 181, 53 N. W. 1139 (1893).

⁴ *Ibid.* at 200.