that state, not as controlling but as an aid to the interpretation of our inheritance tax statutes on the issues here involved. The Washington statute provided that debts shall not be deducted unless the same are allowed or established within the time provided by law, unless otherwise ordered by the judge or court of the proper county. There was in that case a compromise agreement between creditors and heirs. For this reason there were no probate proceedings. However, deductions for funeral expenses and expenses of last illness were allowed by the superior court. That court was affirmed, based upon the following reason (112 Wash. 649, 192 P. 1020):

> "* * * it is true that the provisions of [the statute] * * * do in terms provide that the 'debts shall not be deducted unless allowed or established within the time provided by law,' *which, if read entirely apart from the other provisions of the section, might seem to suggest that such debts must be established in a formal probate proceeding* * * *." (Italics supplied.)

The court reached the conclusion that the words "unless otherwise ordered by the judge or court of the proper county" indicated formal proceedings were unnecessary.

The Supreme Court of Illinois in People v. Tatge, 267 Ill. 634, 636, 108 N.E. 748, dealt with a situation where there were no probate proceedings. A deduction for inheritance tax purposes was claimed. The Illinois court allowed the deduction saying:

> "* * * It is not material that the claim was not presented to and allowed by the probate court. If the claim was an actual indebtedness of the estate and the beneficiaries of the estate actually paid it, then the amount of the estate to which the beneficiaries actually succeeded was reduced [by] the amount paid." [6]

The Washington statute differs somewhat in language from our statute, § 291.07. The State of Illinois had no statute at the time the aforesaid opinion was rendered specifically allowing deductions. However, the aforesaid decisions indicate how other jurisdictions have resolved the problem regarding the necessity of probate proceedings.

The state cites In re Estate of Marshall, 179 Minn. 233, 228 N.W. 920, and In re Estate of Walker, 184 Minn. 164, 238 N.W. 58, in support of their contention that deductions must in all cases first be allowed by the probate court. There were probate proceedings in both of those cases and the property in question was subject to the jurisdiction of the probate court. Those cases are not determinative of the issues here.

The state also cites In re Estate of Siljan, 233 Wis. 54, 288 N.W. 775, as a case being directly in point in support of its contention that the clear purport of § 291.07 must be that funeral expenses, expenses of last illness, and allowances to a surviving spouse cannot be allowed as deductions without such items having been submitted to and allowed by the probate court having jurisdiction; that they are only deductible if properly filed and allowed by the probate court. The Wisconsin court disallowed the deductions, but in that case the beneficiaries had not paid the claims involved and the court reasoned that (233 Wis. 60, 288 N.W. 777) "What is taxed is the amount that the beneficiary receives." We do not have that situation here. Furthermore, the estate under the Minnesota Inheritance Tax Law is not taxed as such but the statute imposes a tax upon the succession and upon what in fact is received by the beneficiary.

In the instant case the respondent paid the funeral expenses and expenses of last illness out of the property she and her husband had set aside for those purposes out of an estate consisting of jointly owned property, an estate which the Inheritance Tax Law recognizes as a legal form of estate subject to a succession tax, a tax in fact imposed upon what the beneficiary receives.

6. Also see, People v. Beckers, 413 Ill. 102, 105, 108 N.E.2d 5, 6.

The relator relies upon In re Jones' Estate, 99 Utah 373, 104 P.2d 210, and In re Estate of Beckman, 91 Ohio App. 42, 107 N.E.2d 538, in support of its contention that the deductible items here involved must first be allowed by the probate court. We view these cases as not persuasive for the reason that our statutory provisions are not the same as those of the states of Utah and Ohio, and since in both of those cases there were probate proceedings.

Several New York cases have been cited by relator in support of the views which he urges upon the court. These cases, however, largely involve an interpretation of what is known as the New York Estate Tax Law, which specifically provides that deductions are limited to the value of the property included in the estate which is subject to the claims of creditors. New York Tax Law, § 249–s. The factors involved in the New York decisions are quite immaterial to an intepretation of the distinctly different provisions in Minnesota.

In In re Estate of Bowlin, supra, a situation was presented where the assets of the estate had decreased in value during the administration and where the legatees contended that the decrease should be deducted as an expense of administration. The solution of that problem involved a construction of the Minnesota Inheritance Tax Law. The state argued for an assessment of the inheritance tax against the original value at date of death of the assets. This court allowed the deduction saying in part, as hereinbefore noted (189 Minn. 198, 248 N.W. 742):

> "* * * Our inheritance tax is a tax upon the succession * * * a tax upon what in fact is received by the beneficiary."

No justification exists in the language of our state Inheritance Tax Law when construed as a whole for ignoring the fundamental principle that the inheritance tax is in this state a succession tax on the amount that is in fact received by the beneficiary.

It is our view that the legislature must have intended, as the Board of Tax Appeals found, that the class of deductions involved in the case at bar should be granted as allowable whether the gross estate consists solely of probate assets or nonprobate assets, or a mixture of the two. We therefore conclude that the findings and decision of the Board of Tax Appeals have a reasonable basis in the law and should not be disturbed.

Affirmed.

Perry N. JOHNSON, Appellant,

v.

Frank L. SEIFERT and R. Gail Seifert, Respondents.

No. 37692.

Supreme Court of Minnesota.

Jan. 8, 1960.

Rehearing Denied Feb. 3, 1960.

Action between plaintiff and defendants, riparian owners of lake shore, to enjoin defendants from restricting plaintiff's use of lake surface and from withdrawing irrigation water. The District Court, Washington County, Rollin G. Johnson, J., rendered judgment for defendants, and plaintiff appealed. The Supreme Court, Matson, J., held that where lake was suitable for uses to which lakes are ordinarily

put, in common among abutting owners, owner of portion of shore was, as a riparian right, entitled to use of entire surface, in common with other abutting owners and regardless of navigability of lake or ownership of lakebed, and was entitled to injunction against fence erected through lake on property line of defendants who owned most of shore line.

Reversed in part and affirmed in part.

1. Navigable Waters ⟹1(3)

The Federal test of navigability is designed for the narrow purpose of determining ownership of lakebeds and for additional purpose of identifying waters over which Federal government has paramount authority in regulation of navigation, and test does not determine riparian rights to water.

2. Navigable Waters ⟹39(2)

Riparian rights arise from ownership of the shore, rather than ownership of the lakebed and do not depend upon navigability of the waters.

3. Navigable Waters ⟹39(2)

Riparian rights are subject to state regulation for public purposes, such as the regulation of navigation.

4. Navigable Waters ⟹40

If a lake is navigable, a riparian owner has the right to use the entire surface for all suitable purposes in common with all riparian owners, both as a member of the public and as a riparian owner.

5. Navigable Waters ⟹40

An abutting or riparian owner of a lake, suitable for fishing, boating, hunting, swimming, and other uses, domestic or recreational, to which our lakes are ordinarily put in common with other abutting owners, has a right to make such use of the lake over its entire surface, in common with all other abutting owners, provided such use is reasonable and does not unduly interfere with exercise of similar rights on part of other abutting owners, regardless of navigable or public character of the lake and regardless of ownership of bed thereof, but same rule does not apply to minor bodies of water which have no over-all utility. (Overruling Lamprey v. Danz, 86 Minn. 317, 90 N.W. 578.)

6. Navigable Waters ⟹40

Where lake was suitable for uses to which lakes are ordinarily put in common among abutting owners, owner of portion of shore was, as a riparian right, entitled to use of entire surface, in common with other abutting owners and regardless of navigability of lake or ownership of lakebed, and was entitled to injunction against fence erected through lake on property line of defendants who owned most of shore line. (Overruling Lamprey v. Danz, 86 Minn. 317, 90 N.W. 578.)

7. Navigable Waters ⟹40

Riparian owner has obligation to do nothing to affect water level of lake so as to do substantial harm to another riparian owner.

8. Navigable Waters ⟹40

Each riparian lake owner has privilege to use water for beneficial purposes, such as irrigation, provided such use is reasonable in respect to other riparian owners and does not unreasonably interfere with their beneficial use.

9. Navigable Waters ⟹40

In action between plaintiff and defendants, riparian owners of lake shore, to enjoin defendants from removing water for irrigation, evidence supported finding that irrigation was a reasonable use of the riparian waters.

10. Navigable Waters ⟹40

Under circumstances presented in action by one riparian owner to enjoin another from interfering with use of surface and from withdrawing irrigation water from lakes, plaintiff-owner had acquired no prescriptive rights in the use of lakes or their beds.

Syllabus by the Court

1. Riparian rights are an incident, not of ownership of the bed of the lake, but of the ownership of the shore.

2. An abutting or riparian owner of a lake, suitable for fishing, boating, hunting, swimming, and other domestic or recreational uses to which our lakes are ordinarily put in common with other abutting owners, has a right to make such use of the lake over its entire surface, in common with all other abutting owners, provided such use is reasonable and does not unduly interfere with the exercise of similar rights on the part of other abutting owners, regardless of the navigable or public character of the lake and regardless also of the ownership of the bed thereof.

3. A minor body of water which by its nature and character reasonably has no overall utility common to two or more abutting owners would fall outside the foregoing rule.

4. Each riparian owner has the privilege to use the water for any beneficial purpose, such as irrigation, provided such use is reasonable in respect to other riparian owners and does not unreasonably interfere with their beneficial use.

5. Taking of water for irrigation purposes under the facts found here was a reasonable use.

Thoreen, Thoreen & Lawson and Chester S. Wilson, Stillwater, for appellant.

Raymond A. Haik and Erickson, Popham & Haik, Minneapolis, amici curiae.

Karl G. Neumeier, Neumeier, Rheinberger & Eckberg, Stillwater, for respondents.

MATSON, Justice.

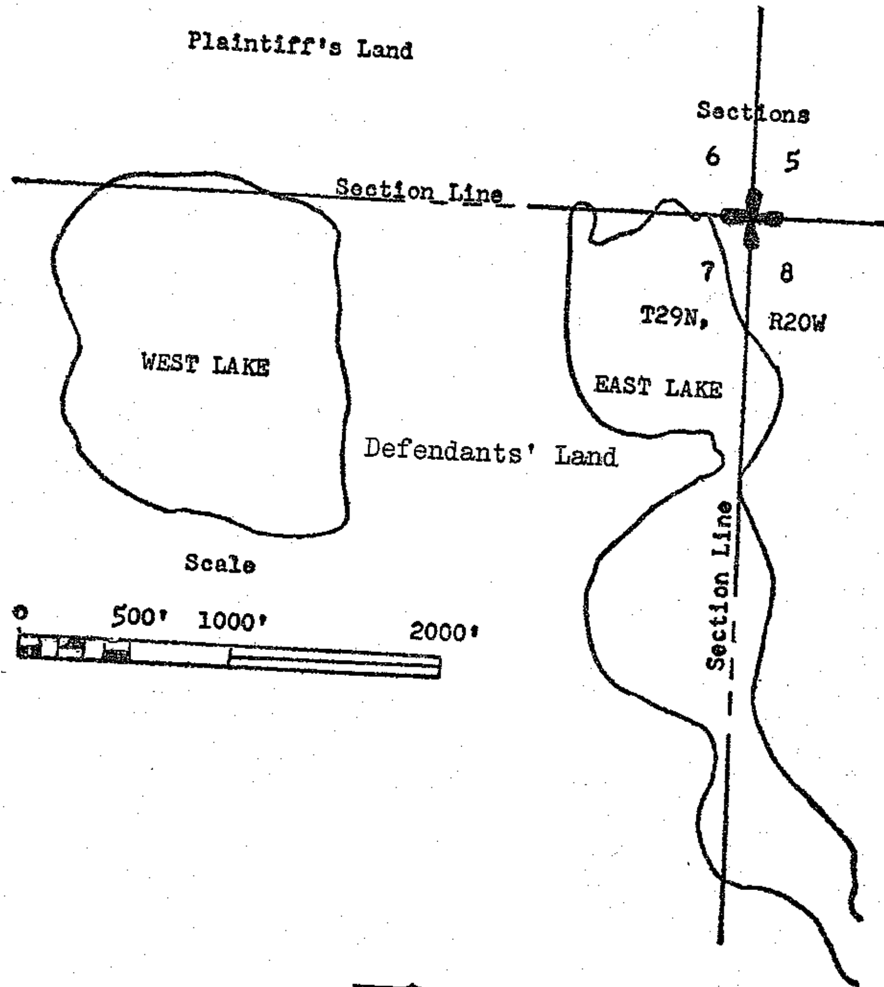
Appeal from a judgment determining rights of riparian owners to use of waters of intertract lakes.

The principal question raised by this appeal is whether the owner of a tract abutting on a lake, suitable for fishing, boating, hunting, swimming, and other domestic or recreational uses to which our lakes are ordinarily put in common with other abutting owners, has a right to make use of the lake over its entire surface, irrespective of whether the lake is navigable and irrespective of the ownership of the lakebed.

This was an action by plaintiff—appellant—to enjoin defendants 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 of each lake border partly on the land of plaintiff and partly on the land of defendants. Both lakes are unmeandered. Each lake is approximately 35 acres in area and neither has an inlet or outlet. The depth of one of the lakes, referred to in the record as the west lake, is approximately 32 feet at its deepest part. The depth of the other lake, referred to as the east lake, is not shown. The west lake contains several species of fish, and the east lake is used for duck hunting. The section line dividing the property of plaintiff from that of defendants runs near the northern shoreline of each lake, so that approximately 5 percent of the water area of each lake is on plaintiff's side of the section line. Defendants own all the land surrounding the west lake, except as noted above, and own much of the land surrounding the east lake, although there are several parcels of land owned by others also abutting on that lake. There is no public access to either lake. Defendants have constructed a fence along the section line common to them and plaintiff through the bodies of both lakes so as to prevent plaintiff from having free access to the main body of either lake. The rela-

tive location of plaintiff's and defendants' land with respect to the two lakes is illustrated by the outline map herein reproduced as figure 1.

Figure 1



The trial court found that both lakes are and were in 1858 nonnavigable and that the beds thereof are privately owned. It decreed that the waters overlying each party's portion of the bed are the private property of the owner of the bed and subject to his complete and exclusive control, and that plaintiff had no right to fish, hunt, swim, water cattle, or otherwise trespass on the waters overlying that part of the beds belonging to defendants. It further found that defendants' sole obligation to plaintiff in connection with the lakes was not to lower or raise the level thereof so as to materially harm plaintiff's use thereof. It found that defendants' use of lake water for irrigation was reasonable. It further found that plaintiff had not established any right to use the lakes by reason of prescriptive easement.

Plaintiff contends that he has a right to use the entire surface of both lakes for such purposes as watering cattle, boating, swimming, fishing and hunting. With commendable foresight and prudence, plaintiff throughout this litigation has based his contention on more than one theory. His claim is based on the assertion, first, that the lakes are navigable and the beds thereof are owned by the state; second, that if the lakes are not navigable under the Federal test, the state test should be applied; third, that regardless of ownership of the bed, he has a riparian right to use the entire surface of the lakes for such purposes in common with other riparian owners; and fourth, that he has acquired a right to use the lakes for such purposes by reason of prescriptive use.

In view of our conclusion as to the applicability and the nature of the intertract riparian rights involved herein, it does not matter whether the beds of these lakes are privately owned, and therefore it does not matter whether the Federal or the state test of navigability should be applied to determine such ownership and the incidents thereof.

1. The principal question relates therefore to the nature of the rights of one owner of land abutting on a portion of an unmeandered, intertract lake to the use and enjoyment of the water and entire surface of such lake as against the rights of another such owner. No public rights are involved. The trial court cited as authority for its decision Lamprey v. Danz, 86 Minn. 317, 90 N.W. 578, and State, by Burnquist, v. Bollenbach, 241 Minn. 103, 63 N.W.2d 278. Lamprey v. Danz, supra, was a suit to enjoin the defendant from shooting ducks over that part of a large but relatively shallow lake overlying lands owned by plaintiff, and from operating a boat on the surface thereof for the purpose of picking up ducks shot. In upholding the injunction order, this court stated that (86 Minn. 321, 90 N.W. 580):

> "It is elementary that every person has exclusive dominion over the soil which he absolutely owns; hence such an owner of land has the exclusive right of hunting and fishing on his land, and the waters covering it."

During the nearly 60 years intervening since the Lamprey decision this question has not again arisen until the present case. The Lamprey case has been cited in only one subsequent Minnesota case involving lakes, that case being State, by Burnquist, v. Bollenbach, supra, which involved the right of the state, under a condemnation statute, to condemn a public access to a lake completely surrounded by the land of one owner. This court there held that the lake was nonnavigable and that the bed was owned by the abutting landowner. From this it was concluded, following the Lamprey case, that the waters thereof were also private property, and that the lake was not a public lake to which the state had power to condemn such an access. No question of riparian rights was involved since there was but one owner. This is clear from the statement of the issue in that case (241 Minn. 118, 63 N.W.2d 288):

> "Thus the issue in its simplest terms is whether, under the federal test, the evidence sufficiently established Five Lake to be navigable in fact in 1858, for, if it was not navigable in fact at that time, it conclusively and correctly follows that Five Lake is not navigable at law; that respondent Bollenbach is the owner of the fee to the bed of Five Lake; *and that those waters are private waters upon which the public has no right to hunt and fish.*" (Italics supplied.)

The citation of the Lamprey case in the Bollenbach case was solely for the proposition that the right to hunt and fish is an incident of ownership of the soil. The quotation from that case was particularly apt because it also involved the question of rights in waters overlying privately owned lakebed land, and thus was in point as authority for the proposition that the waters, as well as the land, were privately owned. But there was no question in the

Bollenbach case as to the respective *private* hunting and fishing rights of two or more shore owners in an intertract lake since all the land surrounding and underlying the lake was owned by one person.

In view of the pronouncements of this court in other decisions,[1] as well as in view of the ever-increasing significance of the customary use of lake waters of this state (irrespective of whether the lakes are meandered or unmeandered[2] and irrespective of whether they be navigable or nonnavigable), it becomes desirable to reexamine the theory upon which Lamprey v. Danz, supra, was decided in 1902. That case involved the right of use of an unmeandered and shallow 500-acre body of water known as Howard Lake. Danz, as lessee, was in possession of 6 acres which included a part of the lake. Lamprey's lands embraced the remainder of the lake. According to unchallenged findings of fact, it appears that it was always possible to pole or row a small boat on the lake, but owing to the character of the shores and the bottom, and because of the heavy growth of wild rice therein, it was impracticable if not impossible for the public to use the lake for boating, sailing, bathing, or skating, and it had never been used by the public except for the purpose of hunting ducks. Despite the fact that the sole issue involved the respective rights of two abutting landowners to the use of the entire waters of the lake, this court held that *no riparian rights were involved,* and then concluded that Lamprey as owner of the soil beneath the lake waters had absolute supremacy and control of the waters as if they were solid land and that he had therefore the exclusive right of hunting and fishing in and on said waters. The basic error of the Lamprey case—irrespective of whatever other errors are embraced therein —is that no riparian rights were involved.

[1-3] Any assumption that a lake—whether it be meandered or not—whose shore is owned by more than one tract owner does not involve riparian rights unless it is navigable under the Federal test of navigability is wholly untenable and must be rejected. It is not to be overlooked that the Federal test of navigability is designed for the narrow purpose of determining the ownership of lakebeds,[3] and for the additional purpose of identifying waters over which the Federal government is the paramount authority in the regulation of navigation.[4] Whether waters are navigable has no material bearing on riparian rights[5] since such rights do not arise from the ownership of the lakebed but as an incident of the ownership of the shore.[6]

That riparian rights do not stem from the ownership of the lakebed but from shore ownership, and that the ownership of the lakebed does not carry with it a right of control over the overlying waters, has been clearly indicated by our more recent decisions. In Petraborg v. Zontelli, 217 Minn. 536, 547, 15 N.W.2d 174, 180, which involved a navigable lake, we said:

"As to a public lake, a mutual right of enjoyment exists between and is shared by riparian owners and the public generally. Insofar as such recreational benefits as boating, hunting, and fishing therein, the riparian proprietor has no exclusive privileges. Sanborn v. People's Ice Co., 82 Minn. 43, 50, 84 N.W. 641, 642, 51 L.R.A. 829, 83 Am.St.Rep. 401, where we said, however, with reference to the vested interests of the shore owners:

"'* * * There are certain interests and rights vested in the shore owner which grow out of his special connection with such waters as an owner. *These rights are common to all riparian owners on the same body of water, and they rest entirely upon the fact of title in the fee to the shore land.*'

"To say that a shore owner does not have additional private rights and interests distinct from the public is to ignore completely those rights which attach by reason of his shore ownership." (Italics supplied.)

In discussing the Petraborg case in State v. Adams, supra, this court speaking through Mr. Commissioner Magney stated (251 Minn. 546, 89 N.W.2d 678):

"* * * The decision was based exclusively upon the ground that riparian owners had the right to the maintenance of the waters in their natural condition. *That right must exist whether a body of water be navigable or nonnavigable.* * * * *The ownership of beds of streams and lakes is quite a different matter from the right to control waters.*" (Italics supplied.)

Upon petition for rehearing in the Adams case, Mr. Justice Thomas Gallagher made it clear again (251 Minn. 560, 89 N.W.2d 687) that a determination of the ownership of the lakebed did not involve a determination of the right of control of the overlying waters.

[4] Under our decisions there could be no dispute that if the lakes involved herein were navigable or public lakes plaintiff would have the right to use the entire surface of the lake for all suitable purposes in common with all other riparian owners. This right would not be his merely as a member of the public but as a riparian owner of the shoreland. We can see little logic in a rule of law which would restrict such riparian rights because the riparian owner happens to own not only shoreland but also a part of the bed of the lake. Illogical as the rule may be, it must be conceded that a few states have taken the position that ownership of the bed of a nonnavigable or private lake carries with it complete and exclusive control and ownership of the overlying waters, but for the most part these states have few lakes or rivers of any value either to the public or to riparian owners. Significantly, however, states which like Minnesota have extensive waters of recreational or commercial value hold that an abutting or riparian owner has a right of reasonable use of the entire overlying water, and no distinction is made between navigable and nonnavigable, meandered or unmeandered, or public or private lakes.

The Supreme Court of Michigan in Beach v. Hayner, 207 Mich. 93, 95, 173 N.W. 487, 488, 5 A.L.R. 1052, which involved an injunction to prevent trespass, stated the issue as follows:

"The important legal question involved in the case is whether or not, where more than one person owns the bed of an inland pond with neither outlet nor inlet, can one owner exclusively use and control his property against the trespass of the public who claim to have a license from the other

1. See, Petraborg v. Zontelli, 217 Minn. 536, 15 N.W.2d 174; State v. Adams, 251 Minn. 521, 546, 560, 89 N.W.2d 661, 678, 687, certiorari denied, 358 U.S. 826, 79 S.Ct. 45, 3 L.Ed.2d 67.

2. The existence or nonexistence of meander lines has no bearing upon the issue of navigability. As to the true purpose of meander lines, see State v. Adams, 251 Minn. 521, 560, 89 N.W.2d 661, 687, certiorari denied, 358 U.S. 826, 79 S.Ct. 45, 3 L.Ed.2d 67; Lamprey v. State, 52 Minn. 181, 192, 53 N.W. 1139, 1140, 18 L.R.A. 670; Poch v. Urlaub, 357 Mich. 261, 98 N.W.2d 509; 24 Minn.L.Rev. 305, 306.

3. See, State v. Adams, supra.

4. See, Nelson v. DeLong, 213 Minn. 425, 433, 7 N.W.2d 342, 347.

5. Riparian rights are of course subject to state regulation for public purposes such as the regulation of navigation. Nelson v. DeLong, 213 Minn. 425, 7 N.W.2d 342; State v. Korrer, 127 Minn. 60, 148 N.W. 617, 1095, L.R.A.1916C, 139; Meyers v. Lafayette Club, Inc., 197 Minn. 241, 266 N.W. 861; Petraborg v. Zontelli, 217 Minn. 536, 15 N.W.2d 174; 56 Am.Jur., Waters, § 289.

6. State v. Korrer, supra; Collins v. Gerhardt, 237 Mich. 38, 211 N.W. 115; 56 Am.Jur., Waters, §§ 273, 274.

owners of land in the lake, to go thereon?"

The Michigan court then quoted with approval from a dissenting opinion in a prior Michigan case, Sterling v. Jackson, 69 Mich. 488, 508, 37 N.W. 845, 856, as follows:

"It is the law of this state that the riparian owner on any kind of water has presumptively the right to such uses in the shores and bed of the stream as are compatible with the public rights, if any exist, or with private rights, connected with the same waters. * * * if, which does not often happen, there is any occasion for making partition of the surface, it can only be reached by some measure of proportion requiring judicial or similar ascertainment, and not by running lines from the shore. Small and entirely private lakes are sometimes divided up for such purposes as require separate use; but for uses like boating, and similar surface privileges, *the enjoyment is almost universally held to be in common.* This was held by the house of lords in Menzies v. Macdonald, 36 Eng. Law & Eq. 20. It was there held that for all purposes of boating and fishing, the whole lake was open to every riparian owner; while for such fishing as required the use of the shore, each was confined to his own land for drawing seines ashore, and the like uses." (Italics supplied.)

The court went on to say (207 Mich. 98, 173 N.W. 489):

"* * * we are of the opinion that the judge was right in holding that, where there are several riparian owners to an inland lake, such proprietors and their lessees and licensees may use the surface of the whole lake for boating and fishing, so far as they do not interfere with the reasonable use of the waters by the other riparian owners."

A recent Florida decision, Duval v. Thomas, Fla.App., 107 So.2d 148, affirmed, Fla., 114 So.2d 791, involved, as in the instant case, the issue of whether the owner of a portion of the bed of a nonnavigable, landlocked lake has the right to exercise *exclusive* dominion and control of the overlying waters. One of the defendants had built a fence through the lake along the boundary line of plaintiffs' property and the other defendant had built an obstruction along the other boundary line in the lake so as to effectively prevent the plaintiffs from gaining access to that part of the lake overlying the lands of the defendants. In holding that the plaintiffs had the right to use the entire lake for boating and fishing, the court stressed the practical necessity and desirability of reasonable common use among riparian owners in a state which has over 30,000 lakes.[7]

Other jurisdictions likewise hold that an abutting owner on a nonnavigable lake has the right to use the entire surface of the lake for all suitable and reasonable purposes in common with all other riparian owners.[8]

[5, 6] 2–3. In the light of the foregoing we expressly overrule Lamprey v. Danz, 86 Minn. 317, 90 N.W. 578,[9] and hold that an abutting or riparian owner of a lake, suitable for fishing, boating, hunting, swimming, and other uses, domestic or recreational, to which our lakes are ordinarily put in common with other abutting owners, has a right to make such use of the lake over its entire surface, in common with all other abutting owners, provided such use is reasonable and does not unduly interfere with the exercise of similar rights on the part of other abutting owners, regardless of the navigable or public character of the lake and regardless of the ownership of the bed thereof.[10] It does not follow that the foregoing riparian-rights rule applies to every pothole or swamp frequented by wild fowl and over which a small boat might be poled to retrieve game, but which as a practical matter does not lend itself in any substantial degree to the customary propulsion of boats by outboard motors or oars. A minor body of water which by its nature and character reasonably has no overall utility common to two or more abutting owners would fall outside the rule. No hard-and-fast line can be drawn and each case must be determined according to its own peculiar facts.[11]

[7–9] 4–5. The trial court found that there was a duty to maintain the water level of the west lake and not to unreasonably lower such water level by irrigation use. The court stated that this was not a riparian right but rather something akin to the right of lateral support. While we cannot agree with the trial court's basis for this duty, we do agree that such a duty exists as a riparian obligation. One of the incidents of riparian ownership is the obligation to do nothing which affects the water level of the lake so as to do substantial harm to another riparian owner. See, Petraborg v. Zontelli, supra. Each riparian owner has the privilege to use the water for any beneficial purpose, such as irrigation, provided such use is reasonable in respect to other riparian owners and does not unreasonably interfere with their beneficial use.[12] We hold that the evidence supports the trial court's conclusion that the use made here for irrigation was in all respects a reasonable use of riparian waters.

[10] We also affirm that part of the trial court's determination excluding any prescriptive rights in the use of the lakes or their beds for any purpose under the facts presented. Although this question is largely immaterial under our disposition of the case, it might become significant if the lakes in question should at some time in the future recede beyond plaintiff's land so that his riparian rights would be eliminated or suspended.[13]

The judgment of the trial court is reversed in so far as it denies plaintiff the right to use the entire surface of both lakes for purposes such as fishing, boating, hunting, swimming, and other similar domestic or recreational uses. The decision is affirmed, however, in so far as it permits defendants to use the lake waters for irrigation subject to the proviso that such right of use must be exercised reasonably so as not to lower the water levels to the plaintiff's detriment.

Reversed in part and affirmed in part.

7. See 5 U. of Fla.L.Rev. 166 for excellent note on extent of private rights in nonnavigable lakes.

8. Other decisions so holding are: Snively v. Jaber, 48 Wash.2d 815, 296 P.2d 1015, 57 A.L.R.2d 560; Greisinger v. Klinhardt, 321 Mo. 186, 9 S.W.2d 978; Improved Realty Corp. v. Sowers, 195 Va. 317, 78 S.E.2d 588; State Game and Fish Commission v. Louis Fritz Co., 187 Miss. 539, 193 So. 9; Harris v. Brooks, 225 Ark. 436, 283 S.W.2d 129, 54 A.L.R. 2d 1440; Burt v. Munger, 314 Mich. 659, 23 N.W.2d 117; Kerley v. Wolfe, 349 Mich. 350, 84 N.W.2d 748; Taylor v. Tampa Coal Co., Fla., 46 So.2d 392.

9. State, by Burnquist, v. Bollenbach, supra, was not decided on any theory involving riparian rights.

10. See, 3 S.D.L.Rev. 109.

11. As to riparian rights in an artificially created body of water, see Greisinger v. Klinhardt, 321 Mo. 186, 9 S.W.2d 978; 3 Farnham, Waters and Water Rights, § 820.

12. Red River Roller Mills v. Wright, 30 Minn. 249, 15 N.W. 167; Pinney v. Luce, 44 Minn. 367, 46 N.W. 561; St. Anthony Falls Water-Power Co. v. City of Minneapolis, 41 Minn. 270, 43 N.W. 56; 21 Minn.L.Rev. 512, 522; Meyers v. Lafayette Club, Inc., 197 Minn. 241, 266 N.W. 861.

13. There may be a distinction between a riparian owner's right to accretions and relictions when the lakebed is privately owned and when the lakebed is owned by the sovereign. See, Lamprey v. State, 52 Minn. 181, 198, 53 N.W. 1139, 1143; 56 Am.Jur., Waters, § 490.

on January 6, 1947. Ryan did not appoint relator as deputy or to any other position in his office. Relator performed his duties as deputy sheriff until January 6, 1947, when Ryan dispensed with his services. Respondent, James F. Burt, was appointed deputy sheriff by Ryan and is acting as such.

Pursuant to L. 1945, c. 607, § 8, relator, feeling aggrieved, filed with the classification and salary commission of Hennepin county a notice of appeal to said commission protesting the termination of his services by Ryan. On February 11, 1947, the commission adopted a resolution as follows: "That the Commission order Ed. Ryan, the sheriff, to reinstate forthwith Emmett L. Primeau, James C. Finnegan, Michael J. Fahey, Charles W. Hamilton, Blanche M. Hamilton and Walter W. Kaminski, and that they be paid back salary to the time they were suspended."

Relator claims that respondent is not entitled to the office of deputy sheriff on the following grounds: (a) That by virtue of L. 1945, c. 607, relator continued and still continues to hold the office of deputy sheriff to which Ryan purported to appoint respondent; and (b) that the notice given relator by Ryan that he would not appoint relator to the office of deputy sheriff and his exclusion therefrom constituted a discharge of relator within the meaning of said § 8, and that the order of the classification and salary commission hereinbefore set forth operated to reinstate relator.

Respondent denies usurpation of the office. He claims (a) that relator's term of office as deputy sheriff expired with the expiration of the term of sheriff Brown, and that he was not discharged, demoted, or suspended within the meaning of L. 1945, c. 607, § 8; (b) that the classification and salary commission was without authority to act on relator's purported appeal and that therefore the order of the commission is null and void; (c) that c. 607 violates the provisions of Minn. Const. art. 4, §§ 33 and 34, in that it is a local and special law which undertakes to regulate the affairs of Hennepin county, the creation of offices for said county, and the mode of appointment thereto; and (d) that c. 607, and in particular § 8 thereof, violates the provisions of Minn. Const. art. 4, § 27, in that it embraces more than one subject and that the subject thereof is not expressed in its title.

[1] Since it is obvious to us that § 8 is unconstitutional, we are disposing of this case solely on that ground. There is no need, as we see it, to discuss and determine the other points.

1. L.1945, c. 607, carries the following title: "An act to establish a classification and salary system in all counties of this state now or hereafter having a population of 500,000 or more, creating a classification and salary commission therein; fixing salaries and sums to be appropriated and spent therefor, and suspending inconsistent laws."

Section 8 relates to the discharge or demotion of employes. There is nothing in the title of the act itself to indicate that it contains provisions for the discharge or demotion of employes. Section 8 provides in part: "No person employed in any department shall be discharged, demoted in salary or position, or suspended for more than thirty days in any year, except as hereinafter provided."

After detailing when and how an employing officer may discharge or demote an employe, said section provides for an appeal to the commission by a discharged employe, and, if the commission finds that he has been improperly discharged, for reinstatement and pay. It also sets out the cause for discharge. It is clear that § 8 cannot by any reasoning be included in the title to c. 607, purporting to establish a classification and salary system and create a classification and salary commission, and "fixing salaries and sums to be appropriated and spent therefor." Section 8 covers a separate and distinct subject not declared or suggested in the title of the act. There is nothing in the title of the act to indicate that the act itself contains tenure provisions.

Minn.Const. art. 4, § 27, provides: "No law shall embrace more than one subject, which shall be expressed in its title."

Since § 8 is not expressed in the title of c. 607, it is invalid. Palmer v. Bank of Zumbrota, 72 Minn. 266, 75 N.W. 380;

Winters v. City of Duluth, 82 Minn. 127, 84 N.W. 788; State ex rel. Day v. Hanson, 93 Minn. 178, 100 N.W. 1124, 102 N.W. 209.

In Watkins v. Bigelow, 93 Minn. 210, 222, 100 N.W. 1104, 1108, this court said: "In determining whether the subject-matter of the act here in question is embraced in its title, the distinction between a general title to a statute and a restricted one and the rules applicable to each must be observed. The rule is that the title to a statute, if it be expressed in general terms, is sufficient if it is not a cloak for legislating upon dissimilar matters, and the subjects embraced in the enacting clause are naturally connected with the subject expressed in the title. General titles to statutes should be liberally construed in a common-sense way. [Citing cases.] But if the title to a statute be a restrictive one, carving out for consideration a part only of a general subject, legislation under such title must be confined with the same limits. All provisions of an act outside of such limits are unconstitutional, even though such provisions might have been included in the act under a broader title."

[2] Relator contends that c. 607 is a complete code or revision of existing laws relating to deputies and employes in the various offices of the county, and, as such, that it is not subject to the constitutional requirement that the act shall not contain more than one subject, which shall be expressed in its title. We are unable to agree with this contention. The title to the act in question is a restricted one and does not purport to cover a complete code.

[3] 2. We are of the opinion that § 8 is clearly invalid for the reason above set forth. It does not follow that the act as a whole is void on that account. State ex rel. Anderson v. Sullivan, 72 Minn. 126, 75 N.W. 8; State ex rel. Holman v. Murray, 41 Minn. 123, 42 N.W. 858. In the Anderson case, this court said 72 Minn. at page 133, 75 N.W. at page 9: "Where a portion of a statute conflicts with the constitution, the question whether the other parts are also void must depend upon a consideration of the object of the law, and in what manner and to what extent the unconstitutional portion affects the remainder. The familiar rule on the subject is that, while a part of the statute is unconstitutional, that fact does not authorize the courts to declare the remainder void also, unless all the provisions are connected in subject-matter, depending on each other, operating together for the same purpose, or otherwise so connected together in meaning that it cannot be presumed the legislature would have passed the one without the other. Cooley, Const.Lim. 210."

We have limited our consideration to § 8.

Writ discharged.

THOMAS GALLAGHER, J., not participating.

STATE v. LONGYEAR HOLDING CO. et al.

No. 34336.

Supreme Court of Minnesota.

Aug. 8, 1947.

As Modified on Denial of Rehearing Dec. 5, 1947.

1. Navigable waters ⟹1(3)

The test of navigability to fix ownership of lake beds must be determined as of date of a state's admission to the Union and under federal decisions with reference thereto.

2. Navigable waters ⟹1(3)

Under federal law, water navigable in fact is navigable in law, and stream or lake is "navigable" in fact when used or susceptible of being used in its natural and ordinary condition as a highway of commerce over which trade and travel are or may be conducted in customary modes, irrespective of particular mode in which such use is or may be had, or of occasional difficulties.

See Words and Phrases, Permanent Edition, for all other definitions of "Navigable Water".

3. Navigable waters ⟹1(3)

Under federal law, capability of use rather than extent or manner thereof by