

Yates Vs. Milwaukee

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Court : US Supreme Court

Decided On : 1870

Appeal No. : 77 U.S. 497

Appellant : Yates

Respondent : Milwaukee

Judgement :

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Yates v. Milwaukee

77 U.S. (10 Wall.) 497

APPEAL FROM THE CIRCUIT COURT,

DISTRICT OF WISCONSIN

SYLLABUS

1. The owner of land bounded by a navigable river has certain riparian rights whether his title extend to the middle of the stream or not.

2. Among these are free access to the navigable part of the stream and the right to make a landing, wharf, or pier for his own use or for the use of the public.
3. These rights are valuable and are property, and can be taken for the public good only when due compensation is made.
4. They are to be enjoyed subject to such general rules and laws as the legislature may prescribe for the protection of the public right in the river as a navigable stream.

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5. But a statute of a state which confers on a city the power to establish dock and wharf lines and to restrain encroachments and prevent obstructions to such a stream does not authorize it to declare by special ordinance a private wharf to be an obstruction to navigation and a nuisance and to order its removal when in point of fact it was no obstruction or hindrance to navigation.
6. The question of nuisance or obstruction must be determined by general and fixed laws, and it is not to be tolerated that the local municipal authorities of a city declare any particular business or structure a nuisance in such a summary mode and enforce its decision at its own pleasure.

In the year 1856, Shepardson, who was the owner of a lot in Milwaukee fronting on the Menomonee and Milwaukee Rivers in the said city and who had begun to build a wharf at the junction of those rivers, conveyed the interest that he had in the wharf and in the front of the lot to the center of the Milwaukee River to one Yates, with the right and privilege of docking, dredging out, and making a waterfront on the Milwaukee River. Between the margin of the water, which for the purposes of this case may be assumed to be the eastern boundary of Shepardson's lot, and the navigable channel of the Milwaukee River, a space intervened which was covered with water more or less, but which was of no use for purposes of navigation. The title of this was supposed by Shepardson and Yates to be conveyed by the deed from the former to the latter, and over it Yates

built a wharf of the width of the lot and extending one hundred and ninety feet, in order to reach the navigable part of the river.

An act of the Wisconsin Legislature approved March 31, 1854, had authorized the Common Council of Milwaukee

" *by ordinance* to establish dock and wharf lines upon the banks of the Milwaukee and Menomonee Rivers, restrain and prevent encroachments upon said rivers and obstructions thereto, . . . and also to cause the said Milwaukee River to be dredged"

&c.,, and in 1864, the city by an ordinance declared this wharf an obstruction to navigation and a nuisance and ordered it to be abated. On the refusal of

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Yates to abate it himself, the city entered into a contract with one Miller, to remove it, and thereupon Yates filed the bill in the court below against the city and Miller, to restrain them from doing so.

image:a

There was no evidence to show that the wharf was an actual obstruction to navigation or was in any other sense a nuisance.

It appeared, however, by the record of the case of *Judd*

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v. Yates in the Supreme Court of Wisconsin, [[Footnote 1](#)] that sometime before this bill, Yates sued one Judd (a stranger to this suit) alleging that he, Yates, was the owner of the wharf in question and that Point Street, which was originally laid out to the low and unnavigable waters of the river, had been filled in on the north half thereof, adjacent to the wharf of the plaintiff; that the defendant had wrongfully entered upon that portion of Point Street which had been filled in and graded, and had excavated the same, [[Footnote 2](#)] and that in consequence thereof, the

wharf of the plaintiff had been undermined &c.;, and he claimed damages for this consequential injury.

The answer set up that the former owners of the premises had made a plat; that, in subsequent partition suit between the owners, the court had adopted the plat and divided the lots among the owners with reference to the plat, that the plat represented the premises as a portion of Milwaukee River, and that "*the premises became thereby a highway by water.*"

The defense was sustained by the Supreme Court of Wisconsin upon the doctrine of dedication, it conceiving that the premises for the injury to which the plaintiff complained were devoted by the original proprietors to the public use as a highway by water, and consequently that the grading, filling, and other works of the plaintiff within the line of such highway, by which it is blocked up and destroyed, were a public nuisance.

The court, in its opinion in the case, speaking of the plat, said:

"Highways by land and highways by river, wherever clearly delineated and their boundaries fixed, *stand on the same footing*, and it is immaterial whether they are actually passable in the whole extent or not. *If not passable, the public have the right to make them so,* "

&c.;

In the present suit, the court below, relying perhaps on

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the decision referred to, dismissed the bill. The complainant appealed.

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MR. JUSTICE MILLER delivered the opinion of the Court.

The defendants, in support of their right to remove the wharf, seem to rely 1st, upon the want of title in the plaintiff to the *locus in quo* and 2d, upon the absolute power of the City of Milwaukee, as the repository of the public authority on the subject of wharves, piers, and other matters affecting the navigation of the river within the city limits, to determine the character and location of such structures.

As to the first of these propositions, it does not seem to be necessary to decide whether the title of the lot extends to

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the thread of the channel of the river, though if the soil was originally part of the public lands of the United States, as seems probable, the case of *Railroad Company v. Schurmier* [[Footnote 3](#)] would limit the title to the margin of the stream.

But whether the title of the owner of such a lot extends beyond the dry land or not, he is certainly entitled to the rights of a riparian proprietor whose land is bounded by a navigable stream, and among those rights are access to the navigable part of the river from the front of his lot, the right to make a landing, wharf or pier for his own use or for the use of the public, subject to such general rules and regulations as the legislature may see proper to impose for the protection of the rights of the public, whatever those may be. This proposition has been decided by this Court in the cases of *Dutton v. Strong* [[Footnote 4](#)] and *Railroad Company v. Schurmier*, just cited. The Supreme Court of Wisconsin has gone further, and asserts the doctrine that the title of the owner of such a lot extends to the center of the stream, subject to the easement of the public in its use for navigation, and that he

"may construct docks or landing places for goods or passengers, taking care that vessels employed in navigating the stream are not impeded in their passage, nor prevented from the use of all parts of the stream which are navigable. [[Footnote 5](#)]"

This riparian right is property, and is valuable, and though it must be enjoyed in due subjection to the rights of the public, it cannot be arbitrarily or capriciously destroyed or impaired. It is a right of which, when once vested, the owner can only be deprived in accordance with established law, and if necessary that it be taken for the public good, upon due compensation.

The act of the Wisconsin Legislature, approved March 31, 1854, confers upon the City of Milwaukee the authority to establish dock and wharf lines on the banks of the Milwaukee and Menomonee Rivers and restrain and prevent encroachments upon said rivers and obstructions thereto,

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and it is by this statute that the summary proceedings for the removal of appellant's wharf are supposed to be authorized. But the mere declaration by the City Council of Milwaukee that a certain structure was an encroachment or obstruction did not make it so, nor could such declaration make it a nuisance unless it in fact had that character. It is a doctrine not to be tolerated in this country that a municipal corporation, without any general laws either of the city or of the state within which a given structure can be shown to be a nuisance, can, by its mere declaration that it is one, subject it to removal by any person supposed to be aggrieved, or even by the city itself. This would place every house, every business, and all the property of the city at the uncontrolled will of the temporary local authorities. Yet this seems to have been the view taken by counsel who defended this case in the circuit court, for that single ordinance of the city declaring the wharf of Yates a nuisance and ordering its abatement is the only evidence in the record that it is a nuisance or an obstruction to navigation or in any manner injurious to the public.

It is true that it is said in argument that the city council has established a wharf and dock line under the authority of the statute we have cited, and that Yates's dock projects beyond that line.

No such defense is set up in the answer, and the existence of such a line being a matter of which the court could not take judicial notice, it cannot be taken into account here, though there is some testimony on the subject as to two different dock lines, one made before and the other after Yates's wharf was built. But however this may be, we are of opinion that the City of Milwaukee cannot, by creating a mere artificial and imaginary dock line hundreds of feet away from the navigated part of the river, and without making the river navigable up to that line, deprive riparian owners of the right to avail themselves of the advantage of the navigable channel by building wharves and docks to it for that purpose.

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The case of *Yates v. Judd*, [[Footnote 6](#)] is much relied on as conclusive of the one before us. Not as a technical estoppel, though one of the parties is grantor of the lot in question to the present plaintiff, and the suit embraced some of the points mooted here. But it is said that, as a case establishing the law of the State of Wisconsin on the questions necessarily involved in the present suit, we are bound to follow it in this Court.

We do not see in that case any legal proposition decided in conflict with what we have said in the previous part of this opinion. The court held that from the plat made by the original owners, who had laid out the lots they would infer a dedication of the space covered with water in front of the dry land of the lots to public use, and that Yates' wharf was an invasion of that public right. This question of dedication, on which the whole of that case turned, was one of fact, to be determined by ascertaining the intention of those who laid out the lots, from what they did, and from the application of general common law principles to their acts. This does not depend upon state statute or local state law. The law which governs the case is the common law, on which this Court has never acknowledged the right of the state courts to control our decisions except perhaps in a class of cases where the state courts have established by repeated decisions a rule of property in regard to land titles peculiar to the state.

This is not such a case. In every instance where the question of a dedication might arise, it would be decided on the special facts of each case even in the Wisconsin courts, and the case of *Yates v. Judd* lays down no principle of law which would govern all such cases. The supreme court inferred from the facts as presented in that case a dedication of the land between the lot, as ascertained by its given dimensions, and the navigable channel of the river. That question does not arise here, because, as we have already seen, the case of *Railroad Company v. Schurmier* decided

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that if the lot, as thus described, came to the margin of the stream, no title to the precise locality supposed to be dedicated ever passed from the United States.

Much, however, as we respect that court, we feel at liberty to hold, as we do, that there is no valid dedication as the case is presented to us.

On the whole, we are of opinion that Shepardson, as riparian owner of a lot bounded by a navigable stream, had a right to erect this wharf, and that Yates, the appellant, whether he be regarded as purchaser or as licensee, has the same right, and that if the authorities of the City of Milwaukee deem its removal necessary in the prosecution of any general scheme of widening the channel and improving the navigation of the Milwaukee River, they must first make him compensation for his property so taken for the public use.

The decree of the circuit court is therefore reversed, with instructions to enter a decree enjoining the defendants below from interfering with plaintiff's wharf, reserving, however, the right of the city to remove or change it so far as may be necessary in the actual improvement of the navigability of the river, and upon due compensation made.

[[Footnote 1](#)]

18 Wis. 118.

[[Footnote 2](#)]

The star on the diagram on p. <77 U.S. 499|>499 represents apparently this spot.

[[Footnote 3](#)]

[74 U. S. 7](#) Wall. 272.

[[Footnote 4](#)]

[66 U. S. 1](#) Black 25.

[[Footnote 5](#)]

Walker v. Shepardson, 4 Wis. 486.

[[Footnote 6](#)]

18 Wis. 118.

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