C

Court of Appeals of Maryland.
WESTERN MARYLAND TIDEWATER R. CO.
v.
MAYOR, ETC., OF **CITY** OF **BALTIMORE** et al.

Nov. 13, 1907.

Appeal from Baltimore City Court; Henry Stockbridge, Judge.

Suit by the Western Maryland Tidewater Railroad Company against the mayor and city council of Baltimore and others. From an order for defendants, plaintiff appeals. Affirmed.

West Headnotes

Accession 1
7k1 Most Cited Cases

Navigable Waters 44(3)
270k44(3) Most Cited Cases
Where land lies adjacent or contiguous to a navigable river, any increase of soil formed by the waters gradually or imperceptibly receding, or any gain by alluvion in the same manner, belongs to the proprietor of the adjacent land.

Municipal Corporations 23
268k23 Most Cited Cases
Code Pub.Gen.Laws, art. 54, §§ 47-49, give to proprietors of lands bordering on navigable waters the accretions thereto and the exclusive right to make
improvements into the waters in front of their respective land, which improvements shall pass to the successive owners of the land to which they are attached as incident thereto, etc. A railroad owning land bordering on a navigable river erected permanent piers, resting on piles and extending beyond highwater mark, and attached to the land which was in the city of Baltimore, whose boundaries, as fixed by Acts 1816, p. 160, c. 209, ran with the river. Held, that the boundaries of the city were coincident with those of the piers, and they were taxable as a whole by the city.

Municipal Corporations 23
268k23 Most Cited Cases
The same rules of construction are applied to the boundaries of a municipality bordering on navigable or nonnavigable water as are applied to a description in a grant to an individual of land so situated.

Municipal Corporations 24
268k24 Most Cited Cases
Acts 1816, p. 160, c. 209, fixing the boundaries of the city of Baltimore as "running with and bounding on" a navigable river, does not fix the limits of the city as they existed at the time of the adoption of the act, and does not deprive the city of the water front; but the rights of the city are similar to the rights of owners of land whose deeds describe the land as bounding on such river.

Municipal Corporations 25
268k25 Most Cited Cases
The limits of a city which is bounded on navigable water may be extended by natural accretion and embrace what is actually made land, wharves, permanently filled in with earth, and the like, unless its charter clearly prohibit such extension, and no distinction should be made between such wharves and piers which rest on piles; a pier being a projecting landing place, made either as a solid structure or on piles driven into the soil at the bottom of the water.

Municipal Corporations 25
268k25 Most Cited Cases
In determining how far the boundaries of a city on navigable water follow those of proprietors of land originally within the city, but extended under statutory provisions, the facts that without the right to use the original land the improvements would be useless, that the improvements are incident to the land and dependent on it, and that

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the improvements are so situated as to be dependent on the city for police and fire protection, are matters for consideration.

Navigable Waters 38
270k38 Most Cited Cases
Under Code Pub.Gen.Laws, art. 54, §§ 47-49, providing that proprietors of lands bordering on navigable waters shall be entitled to all accretions and to the exclusive right of making improvements into the waters in front of their land, which improvements shall pass to the successive owners of the land to which they are attached as incident thereto, and that no patents shall impair the rights of riparian proprietors, a riparian owner has the right to reclaim land and to make improvements into the water in front of his original land; but, until he does so, the title to the land under the water is in the state.
***7** Argued before BOYD, SCHMUCKER, BURKE, and ROGERS, JJ.

Osborne I. Yellott and Leon E. Greenbaum, for appellant.

Joseph S. Goldsmith and Albert C. Ritchie, for appellees.

BOYD, C. J.

The appellant owns several lots of ground in the city of Baltimore, which bound on the north side of the main branch of the Patapsco river, together with the riparian rights appurtenant thereto. It constructed what are spoken of in the record as a "freight pier" and a "coal pier." The former is about 840 feet long and 120 feet wide, and consists of a wooden platform resting upon piles, with a steel shed, one story high, for freight purposes. The latter is 729 feet on one side and 700 on the other, and is a wooden structure, which also rests upon piles. They were projected from the bulkhead line into the water to the pierhead line, and the water flows under them. The Patapsco is a navigable river at the place in controversy, in which the tide ebbs and flows. The eastern and southern boundaries of the city are those fixed by Acts 1816, p. 160, c. 209. After describing the northern and eastern boundaries, the act describes the southern boundary as follows: "On the south by a line drawn from the Patapsco river, at the termination of the last-mentioned line" (which is the last one on the east), "to the most southern part of Whetstone Point, on the main branch of the Patapsco river, and running with and bounding on the said main branch, excluding the land ceded to the United States on Whetstone Point, for the uses of a fort, to the place called the 'Ferry Point,' being the junction of the said main branch with the middle branch aforesaid," etc. These piers project from the boundary of the city which is included in the description "running with and bounding on the said main branch," and it is conceded that they are for the most part constructed in a portion of the river which was originally outside of and beyond the limits of the city. The evidence tends to show that, including the boiler room, engine, machinery, etc., the cost connected with the local pier within the bulkhead line was about $35,000 and the whole cost of the two piers was about $400,000. The petition for appeal of the appellant states that it is properly assessable for $35,000 in the city, but that the rest is illegal and void, because the property on which the assessment is made is not within the city, or within the assessing powers of the appeal tax court. The contention of the appellee is that inasmuch as the piers are attached to and project from the land of the appellant, which ***8** borders on this navigable river, and are immovable structures, permanent in their character, they are taxable by the city of Baltimore.

It is well settled that the same rules of construction will be applied to the boundaries of a municipality bordering on navigable or nonnavigable water as will be to a description in a grant to an individual for land so situated. Fort

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Smith & Van Buren Bridge Co. v. Hawkins, 54 Ark. 509, 16 S. W. 565, 12 L. R. A. 487; Perkins v. Oxford, 66 Me. 545; State, etc., v. Columbia, 27 S. C. 137, 3 S. E. 55; and a number of cases cited in the notes on page 1149 of 20 Am. & Eng. Ency. of Law. In Giraud v. Hughes, 1 Gill & J. 249, our predecessors thus stated the rule as to the rights of proprietors of land on navigable waters: "The principle seems to be well settled that, where a tract of land lies adjacent or contiguous to a navigable river or water, any increase of soil formed by the waters gradually or imperceptibly receding, or any gain by alluvion in the same manner, shall, as a compensation for what it may lose in other respects, belong to the proprietor of the adjacent or contiguous land." In this state, where we have so much navigable water, many cases have been before the courts involving the rights of riparian owners, and as at common law those rights were limited in some important respects statutes were very early passed concerning them. Acts 1729, c. 10, creating Baltimore Town, shows that the General Assembly then had in mind the importance of establishing a town on the Patapsco river; and section 10, c. 69, of the Acts of 1745, whereby Baltimore Town and Jones' Town were consolidated, under the name of "Baltimore Town," provided that "all improvements, of what kind soever, either wharves, houses or other buildings, that have or shall be made out of the water, or where it usually flows, shall (as an encouragement to such improvers) be forever deemed the right, title and inheritance of such improvers, their heirs and assigns forever." Then Acts 1796, c. 68, gave the city powers to provide for "the preservation of the navigation of the basin and Patapsco river, within the limits on the city of Baltimore, and four miles thereof," and declared that the powers granted to it should extend to Deep Point "and to all wharves and other grounds heretofore made and extended into the basin of Baltimore Town, or which shall hereafter be made or extended into the same, which shall be considered and taken as part of the said city; and the said corporation may provide for the exercise of such powers in the same manner as if the said wharves and reclaimed lands were originally condemned as part of the said town." Other acts were passed, and there is now in section 6 of the charter of the city full power and authority "to provide for the preservation of the navigation of the Patapsco river and tributaries, including the establishment of lines outside the limits of said city and within four miles thereof, beyond which no pier, bulkhead or wharf may be built or extended," and other powers and authority over the Patapsco river and branches thereof are given to the city authorities. These and other provisions made by the statutes of this state tend to show that the Legislature never intended that the city of Baltimore should be deprived of the water front, which is so valuable to it, by limiting it to the shore line as it existed in 1816. A plat filed with the record shows that that line is a considerable distance from the present bulkhead line, near the property now before us.

The Legislature in 1862 passed an act which is embraced in sections 47, 48, and 49 of article 54 of the Code of Public General Laws, by which it greatly enlarged and defined the rights of proprietors of lands bordering on any of the navigable waters of this state. Section 47 enacted that such proprietor "shall be entitled to all accretions to said land by the recession of said water, whether heretofore or hereafter formed or made by natural causes or otherwise, in like manner and to like extent as such right may or can be claimed by the proprietor of land binding on water not navigable"; and section 48 provided that such proprietor "shall be entitled to the exclusive right of making improvements into the waters in front of his said land," and "such improvements and other accretions as above provided for shall pass to the successive owners of the land to which they are attached, as incident to their respective estates. But no such improvement shall be so

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made as to interfere with the navigation of the stream of water into which the said improvement is made." Section 49 provides that "no patent hereafter issued out of the land office shall impair or affect the rights of riparian proprietors, as explained and declared in the two preceding sections; and no patent shall hereafter issue for land covered by navigable waters." Judge Alvey said, in a concurring opinion in Hess v. Muir, 65 Md. 603, 5 Atl. 540, 6 Atl. 673, in speaking of that act, that "the right given to improve out from the shore into the water was designed, manifestly, to embrace only structural improvements, such as wharves, piers, warehouses, or the filling out from the shore and reclaiming the land from the inundation of the water." It is not shown in this case just how the land was formed between the line of 1816 and the present bulkhead line; but the proprietors had the right to fill out from the shore and reclaim the land, and it may have been done in that way, or it may have been formed by natural causes. But, however that may be, it is certain that the Legislature of 1816 never intended, when it called for the limits of the city as "running with and binding on the said main branch" of the river, that a strip of land so formed should deprive the ***9** city of the right to reach the water. It cannot be supposed that, when the Legislature called for the southern lines of the city running with and binding on something, which it was presumed to know might and probably would change, it intended to fix the limits as they existed at that date (1816). The owners of lands whose deeds made similar calls were not limited to the high-water mark of the river as it then existed, and surely the city should not be. It is clear, therefore, that the second prayer of the appellant, which undertook to so limit the city, was properly rejected, regardless of the admission made by the appellant in its petition for an appeal above referred to.

That brings us to the consideration of the first prayer, which asked the court to rule that such portions of the property of the appellant as are located beyond the bulkhead line established by the city are not subject to taxation by it, or to assessment by the appeal tax court. There can be no doubt that the right of the appellant to construct the piers depended upon its ownership of the contiguous land, which we have said was within the city limits, and, under section 48 above quoted, "such improvements and other accretions as above provided for shall pass to the successive owners of the land to which they are attached, as incident to their respective estates." Because the appellant owned this land, which was in the city, it had the "exclusive right" to make these improvements, and there would seem, therefore, to be at least very strong equity in favor of the contention of the city. If, instead of making piers such as those described in this case, the appellant had filled out from the shore with earth, stone, or other solid material, and reclaimed the land over which the piers are, and had then erected valuable improvements upon them, there would seem to be no doubt that the city limits would have been extended so as to include that property. If that be not so, then if every owner of land bordering on the river in that neighborhood reclaimed the land in front of his lot, the city would be cut off from the water, which manifestly was not contemplated by the Legislature. It should not be forgotten that, although the riparian owner has the right to reclaim the land and to make improvements into the water in front of his original land, yet until he does so the title to the land under the water is in the state, and hence is not subject to taxation. Baltimore county will not, therefore, be deprived of property on which it has been collecting taxes by treating the limits of Baltimore city as including these piers.

It was decided in Giraud v. Hughes, 1 Gill & J. 249, and Casey v. Inloes, 1 Gill, 430, 39 Am. Dec. 658, "that the right to make improvements in navigable waters granted by Acts 1745, c. 9, § 10, was a mere privilege of acquiring property by

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reclaiming it from the water, and that until the improvement was completed no title was acquired by the adjacent owner." Linthicum v. Coan, 64 Md. 453, 2 Atl. 826, 54 Am. Rep. 775. And consequently it was held, in Casey v. Inloes, that a grant from the state of land covered by navigable water, bounding the property of a riparian proprietor, who had not made the improvements, "intercepted" his right to afterward make them. Under the Code the proprietor is now protected by prohibiting the issue of a patent; but until he does make the improvements he has no interest in the land under the water on which his land borders, excepting such as the act of 1862 or some other statute, if any, may give him. In Horner v. Pleasants, 66 Md. 475, 7 Atl. 691, a wharf, built under Acts 1796, c. 45, was under consideration, and it was said that it was not necessary for the state to grant a technical fee in the land covered by the water, in order to give the improver the benefits intended by the statute; "but the state did grant a perpetual use of such land for the purpose of erecting and keeping up these wharves, and this valuable license or franchise, as long as used, she can no more annual than she could a patent in fee." In that case a commission was issued for the partition of an intestate's estate, and a warehouse and lot were assigned to an heir; but no express mention was made of a wharf attached thereto in the report of the commissioners. Reference was, however, made to a deed which was before them, and by which they were governed, conveying the lot to the intestate, and which conveyed the wharf by the use of the terms "all and every the rights, privileges, appurtenances, and advantages to the same belonging or in any wise appertaining," and the court said: "We must presume that the commissioners allotted it in the same way, and that the wharf passed." It was said in that case that the statutory franchise to make the improvements in the water "was an incident or appurtenance to the lots fronting on the water," which is the substance of what is declared in section 48 of article 54. It is true it was said in Goodsell v. Lawson, 42 Md. 373, that "it does not follow from this that the title to the improvements when made may not be severed from that of the mainland, and be conveyed to and held by other persons having no interest in the original tract. The right of the riparian proprietor to such improvements necessarily carried with it such powers of alienation as owner thereof." But under section 48 they would pass by a conveyance of the original land, unless restricted by the deed. In Tome Institute v. Crothers, 87 Md. 584, 40 Atl. 261, in speaking of similar rights granted lot owners in Port Deposit, by Acts 1824, p. 21 c. 33, Judge Bryan said: "When these extensions were made, they became statutory additions to the original lots, and were held by the same title. In fact, ***10** they were the original lots made larger. Their legal identity was not changed by an increase of their dimensions." In Hess v. Muir, supra, the court said that the improvements referred to in Acts 1862, p. 136, c. 129, § 38 (now section 48 of article 54) "are plainly, we think, such structures as are subservient to the land, and which, used in connection with the land, enhance its value or enlarge its commercial or agricultural facilities, or other utility, to an extent the land alone would be incapable of, and in this way 'improve' it. They are to be made 'into' the water, a term inconsistent with entire separation from the land. Wharves, piers, and landings are examples of such improvements. *** When such improvements are made they become incident to the estate, as not inherently identical in nature with land, but, from being joined to it and contributing to its uses and value, legally identified with it, as a fixture, or a right of way, or other appurtenance that passes with land." We have already quoted above from Judge Alvey's concurring opinion, where he also speaks of the character of the improvements intended.

It would seem, therefore, to be perfectly clear that the Legislature never intended that such improvements as these should, for the purposes of

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taxation, be cut in two at the point of high-water mark on the bank of the river when they were made, and part be taxed by the city and the rest by the county. Without the right to use the land, which is in Baltimore city, the improvements would be useless, and, as they are incident to that land and dependent upon it for their existence, it would be an anomalous condition of affairs if they were to be thus divided. They are so situated as to be dependent upon the city for police and fire protection, and if the appellant's theory be correct they would practically have neither, as this water is separated from Baltimore county and it would be impossible to furnish the appellant with proper fire or police protection on these piers, unless the county made special provision for them, which would practically be impossible without the assistance of the city. Of course, we are aware that this is not conclusive of the question before us, and that if in point of fact the piers are beyond the limits of the city they cannot be taxed by it without special authority from the Legislature, if it be conceded that it could then be done, which we need not discuss; but such considerations are very apposite in ascertaining the intention of the Legislature, and in determining how far the boundaries of a municipality on navigable water follow those of the proprietors of land originally within the municipality, but extended under the provisions of the statute.

We understand the learned counsel for Baltimore county, who also appeared in this case, to admit that a city's boundaries may be extended by natural accretion, and that they "should be construed to embrace what is actually made land, wharves permanently filled in with earth, and the like," to use the language of his brief; and we are of the opinion that such is the law, unless, of course, the provisions of a particular charter clearly prohibit such extension. That being so, why should a distinction be made between such piers as are herein involved and made land or wharves permanently filled in with earth. The piles on which the piers rest are from 50 to 85 feet long and are about 8 feet apart. The water was from 12 to 20 feet deep, and the piles are driven into the ground "to resistance," and extend about 8 feet above mean low water. The pile work cost about $120,000, and, as the total cost of the piers, including the piles, was $400,000, it can be seen that they make what should certainly be regarded as permanent structures. "A pier is defined as a projecting wharf or landing place." 22 Am. & Eng. Ency. of Law, 812. In The Haxby (D. C.) 94 Fed. 1016, it was said that: "The Century Dictionary defines a pier to be 'a projecting quay, wharf, or other landing place'; and, without some qualifying adjective, this is the ordinary meaning of the word. It may be a solid stone structure, or an outer shell of stone or wood filled in with earth; or it may be a framework formed by fastening a platform of planks upon piles driven into the soil at the bottom of the water. In either event, it is a projection of the land, and for purposes of jurisdiction it should be so treated." The opinion then goes on to distinguish between a floating pier and an immovable one. The mere fact that these piers are built upon piles, instead of on solid ground, ought not to make any difference. They are permanent structures, and as effectually monopolize the use of the land under them as if they were built in one of the other ways mentioned in The Haxby. They were probably built so as to let the water pass under them by requirement of the city, as in one of the cases we have examined such an ordinance is referred to, and they are structures of the character that this court has said was meant by the Legislature by the term "improvements" referred to in section 48 of article 54, and so far as the riparian owner is concerned he has precisely the same rights in a pier as he has in a wharf.

It has been suggested, as one reason why the contention of the appellee should prevail, that the law did not intend to give owners of property the power to extend the limits of the city by their acts;

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but it certainly did not intend that such owner could determine whether the limits should be extended, either by building a pier such as these, and thereby not extend the limits, according to the appellant's contention, or by building a solid wharf, and thereby extend them. Our conclusion is that the city's jurisdiction extends ***11** over piers constructed and located as these are for the purposes of taxation, police and fire protection, etc. There are a number of cases in New York, in which state there is, as in Maryland, a great deal of navigable water, which have in effect adopted that view. Udall v. Brooklyn, 19 John. 175; Bechtel v. Edgewater, 45 Hun, 240 (affirmed in 122 N. Y. 649, 25 N. E. 957); Luke v. Brooklyn, 43 Barb. 54 (affirmed in Orr v. City of Brooklyn, 36 N. Y. 661); Atlantic Dock Co. v. Brooklyn, 42 N. Y. 444; Tebo v. Brooklyn, 134 N. Y. 341, 31 N. E. 984. Although some of these cases show that the water had been filled up, the principle established we approve of, especially when our statutes and the peculiar location of Baltimore as to the Patapsco river are taken into consideration. New York county extended to the Brooklyn side of the river; but, notwithstanding that, the properties were held to be in Brooklyn. The cases relied on by the appellant, such as Fort Smith Bridge Co. v. Hawkins, 54 Ark. 509, 16 S. W. 565, 12 L. R. A. 487, Louisville Bridge Co. v. Louisville, 81 Ky. 189, C., B. & Q. R. R. v. Cass Co., 51 Neb. 369, 70 N. W. 955, and Sioux City Bridge Co. v. Dakota Co., 61 Neb. 75, 84 N. W. 607, involved bridges, and presented different questions from that in this case. Gilchrist's Case, 109 Pa. 600, was not unlike, in principle, Hess v. Muir, and does not reach the question now before us. Ordinarily there could be no reason for a municipality, the boundaries of which only extended to the bank of a river, being permitted to tax a bridge beyond the bank; but in this case, for reasons we have given, we are of the opinion that the city's boundaries are coincident with those of the proprietors of lands bounding on this river, which have been extended under and by virtue of the statute, and that these piers are such improvements as come within the principle referred to above.

The only remaining question we will discuss is the effect of the case of Raab v. State, 7 Md. 483, which the appellant relied on as conclusive of this case. There are expressions in the opinion which may give some foundation for the reliance on it; but, when it is carefully considered, it will be seen that there is nothing in it which is contrary to the conclusion we have reached. The question there involved was whether Anne Arundel county was "an adjoining county" to the city of Baltimore, within the meaning of the constitutional provision then in force relating to the removal of cases, and it was held that it was not, because Baltimore county still had jurisdiction over the river at the place involved, which is near where these piers are. The lines of Baltimore county originally embraced what is now a part of Anne Arundel, and was by the act of 1726 limited to the south side of the river. Our predecessors held that after the act of 1726 the river remained, as it had been for many years, within the limits of Baltimore county, except so far as affected by Acts 1704, c. 92, which provided that every county lying on any navigable river in the province should extend its jurisdiction from the shore to the channel of such river, and be divided from the other county by the channel. Our predecessors did not pass on the act of 1704, but held that the river was still in Baltimore county, at least as far as the channel, and was subject to the jurisdiction of its courts. In Action v. State, 80 Md. 547, 31 Atl. 419, we held that the jurisdiction of Anne Arundel county did extend to the channel of the Patapsco river--the question which has been left open in Raab's Case. If we were construing the act of 1704 (which is now section 147 of article 75 of the Code of Public General Laws) without regard to the decision in Raab's Case, we would be inclined to adopt a similar view to that of Judge Brewer, who decided in the lower court that by Acts 1816, p.

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160, c. 209, the jurisdiction of Baltimore city extended to the middle of the river, because he thought that, when that part of Baltimore county was added to the city, it could not have been intended by the Legislature to leave under the control of the county the water from the shore to the middle of the river, and as the policy of the state, as declared by the act of 1704, was to extend the jurisdiction of counties to the channels of navigable rivers, it should likewise be construed to apply to Baltimore city. When Baltimore city was vested with control over the land to the shore, it does seem to be singular that an important city, like it was then, with the prospect of becoming much more so, as it has, should be limited to the line on the shore, while the counties could go to the channel. But, without overruling that case, but leaving it to the further action of the Legislature if it deem it proper to change the law in reference thereto, it is clear that Raab v. State does not conflict with that we have said above. If the conditions that now exist had existed in 1855, when the Raab Case was decided, the court could have reached the same conclusion it did in that case; for there would still be an intervening jurisdiction between Anne Arundel and Baltimore city, after extending the limits of the city so as to include these piers. Indeed, we have considered this case with the concession that, up to the time the piers were constructed, the river was under the control of Baltimore county up to the high-water mark on the north side of this main branch. That case can therefore in no way be said to be in conflict with this, and we will affirm the order of the lower court.

Order affirmed; the appellant to pay the costs.

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