If, since the commencement of this suit, the plaintiff has acquired a title to the land, as he insists, that title can be asserted only in a new action.* After the decision by this court, the court below had no power but to enter a judgment according to the mandate, and to carry that judgment into execution. This was the end of the case.†

The judgment before us is REVERSED. The cause will be remanded to the Circuit Court, with directions to enter a judgment

IN CONFORMITY TO THIS OPINION.

RAILROAD COMPANY *v.* SCHURMEIR.

1. The meander-lines run in surveying fractional portions of the public lands bordering upon navigable rivers, are run, not as boundaries of the tract, but for the purpose of defining the sinuosities of the banks of the stream, and as the means of ascertaining the quantity of the land in the fraction, and which is to be paid for by the purchaser.
2. Congress, in providing, as it does, in one or more acts relating to the survey and sale of public lands bordering upon rivers—that navigable rivers, within the territory to be surveyed, should be deemed to be public highways, and that where the opposite banks of any stream, not navigable, should belong to different persons, the stream and the bed thereof should become common to both—meant to enact that the common law rules of riparian ownership should apply in the latter case, but that the title to lands bordering on navigable streams should stop at the stream, and not come to the *medium filum*.
3. But such riparian proprietors have the same right to construct suitable landings and wharves, for the convenience of commerce and navigation, as riparian proprietors on navigable waters, affected by the ebb and flow of the tide.
4. A government grant of land in Minnesota (9.28 acres), bounded on one side by the Mississippi, was *held* to include a parcel (2.78 acres) four feet lower than the main body, and which, at very low water, was separated from it by a slough or channel twenty-eight feet wide, through which no water flowed, but in which water remained in pools; where, at medium water, it flowed through the depression, making an island of the parcel; and where, at high water, the parcel was submerged; the whole place

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* McCool *v.* Smith, 1 Black, 459.

† Ex parte Dubuque and Pacific Railroad Co., 1 Wallace, 73.

having, previous to the controversy, been laid out as a city, and the municipal authorities having graded and filled up the place to the river edge of the parcel.

5. If, by the laws in force in Minnesota, in 1859, the recording of a town or city plot, indicating a dedication, for a public purpose, of certain parts of the land laid out, operated as a conveyance, in fee, to the town or city, yet, it could operate only as a conveyance of the fee, subject to the purpose indicated by the dedication, and subject to that it must be held by any future claimant.

ERROR to the Supreme Court of Minnesota.

Schurmeir filed a bill in one of the inferior courts of Minnesota, to enjoin the St. Paul and Pacific Railroad Company from taking possession, and building its railroad upon, certain ground in the city of St. Paul, Minnesota, bordering on the Mississippi, and originally a fractional section of the public lands. The place was alleged, by Schurmeir, to be a public street and landing.

The railroad company justified their entry, as owner, in fee of the *locus in quo*. The issues between the parties were tried by a referee, who found both facts and law in favor of Schurmeir. The facts, so found, being undisputed, the case was removed, for decision on them, to the Supreme Court of the State. That court affirming the referee's judgment, the case was here for review.

The case—to understand which well, it is necessary to refer, in a preliminary way, to certain statutes of the United States governing the surveys and descriptions of public lands—was thus:

Certain statutes enact,* that the public lands shall be subdivided into townships, sections, and quarter sections, and that these subdivisions shall be bounded by north and south and east and west lines, unless where this is rendered impracticable *by meeting a navigable water-course*, &c. The boundaries, and contents of the several sections and quarter sections, are to be ascertained in conformity to the following principles:

* Acts of May 18, 1796, 1 Statutes at Large, 446; May 10, 1800, 2 Id. 73; and February 11th, 1805, 2 Id. 313.

Statement of the case.

"The boundary line actually run, and marked in the surveys returned, shall be established as the proper boundary lines of the sections or subdivisions for which they were intended; and the length of such lines, as returned, shall be held and considered as the true length thereof; and the boundary lines which shall not have been actually run and marked as aforesaid, shall be ascertained by running straight lines from the established corners to the opposite corresponding corners; but, in those portions of the fractional townships where no such opposite corresponding corners have been, or can be fixed, the said boundary lines shall be ascertained by running from the established corners, due north and south or east and west lines (as the case may be), *to the water-course, . . . or other external boundary of such fractional township.*"

There is apparently no law which requires what is hereafter spoken of, and called the "meandering" of water-courses; but the acts of Congress, above referred to, do require the *contents* of each subdivision to be returned to, and a *plat of the land surveyed*, to be made by the surveyor-general; and this makes necessary an accurate survey of the meanderings of the water-course, where a water-course is the external boundary; the line showing the place of the water-course, and its sinuosities, courses, and distances, is called the "meander-line."*

The original act of 17th May, 1796, providing for the sale of these lands, enacts, "that all navigable rivers within the territory to be disposed of, shall be deemed to be, and remain public highways; and in all cases where the opposite banks of any stream, not navigable, shall belong to different persons, the stream and the bed thereof shall be common to both."†

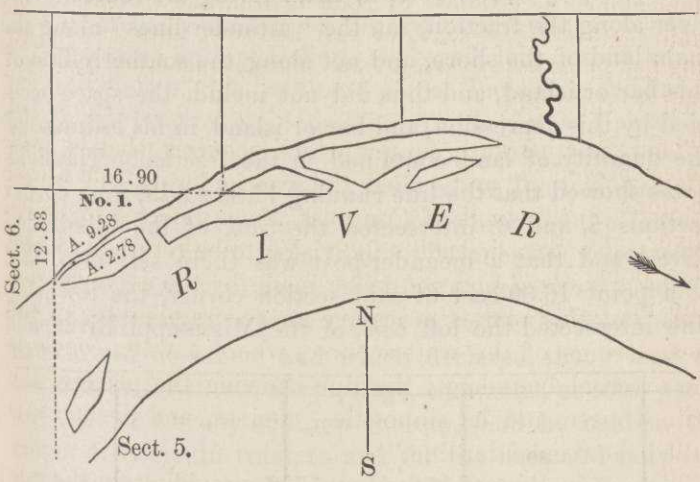
The premises on which the railroad company sought to enter, were situated upon a fractional section, duly surveyed by the government surveyor, in October, 1847; the survey

* See the able opinion of Wilson, C. J., in 10 Minnesota, 99, 100, from which this account is extracted.

† And see act of April 16, 1814, 3 Statutes at Large, 125, as explained by act of February 27, 1815, Ib. 218.

Statement of the case.

duly approved in March, 1848, and returned to the General Land Office. This fractional section was designated by this survey as lot 1, in section 5, township 28, north of range 22, west of the fourth principal meridian. It was represented by the plat thereof, as bounded on the north by the east and west sectional line, on the west by the north and south sectional line, and on the only other remaining side by the Mississippi River. It was this river that interposed and made this section a fractional one.



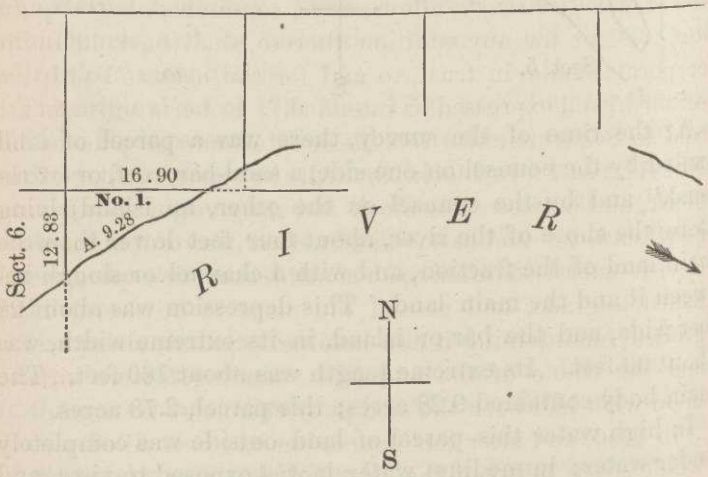
At the time of the survey, there was a parcel of land (called by the counsel on one side, a sand-bar, reef, or "tow-head," and by the counsel on the other, an island) lying along the shore of the river, about four feet lower than the main land of the fraction, and with a channel or slough between it and the main land. This depression was about 28 feet wide, and the bar or island, in its extreme width, was about 90 feet. Its extreme length was about 160 feet. The main body contained 9.28 acres; this parcel, 2.78 acres.

In high water this parcel of land outside was completely under water; in medium water it was exposed to view, and the water flowed through the depression; but, at very low water there was no *flow* of water through the depression.

It lay in pools in the depression. Very low water-mark was thus the exterior part of the bar or island, and the landing-place for boats plying on the Mississippi had always been the south or river side of the island.

In the government survey, no mention of, or reference to, this bar or island, was in any way made in the field-notes, plat, or map. The fractional parcel, as already said, was represented as lying immediately upon, and bounded by, the Mississippi River.

The surveyor, however, in meandering the course of the river along the fraction, ran the "meander-lines" along the main land of the shore, and not along the southerly line of this bar or island, and thus did not include the space occupied by this depression, and bar or island, in his estimate of the quantity of land contained in the fraction. The field-notes showed that the line running 12.83 south, from corner sections 5 and 6, intersected the *bank* of the Mississippi River, and that a meander-post was there set; also, that at a point 16.90 east of said section corner, the township line intersected the left *bank* of the Mississippi River, and



that a meander-post was there also set. The meander-line was run, beginning at last-mentioned meander-post, "*thence*

up stream, south 61, west 6.50; south 54, west 6.00; south 46, west 5.00; south 40, west 3.96, to line of sections 5 and 6, at lower end of St. Paul."

In March, 1849, the United States sold and conveyed the land to one Roberts; the patent describing the lot (along with another fractional section, styled No. 2, not connected with this case) as containing so many acres, "according to the official *plat* of the survey;" a plat which, as already said, did not present the bar or island, in any way, nor the channel or slough between, but presented the river as the boundary; much as in the map on the page opposite (page 276).

In the same spring, Roberts surveyed, laid out, and platted the whole of this fractional parcel (including the bar or island, and intervening depression, in his plat, and as a part of the grant of his patent) into towns, blocks, lots, streets, &c., constituting a part of the town of St. Paul, and caused said plat to be duly recorded; an act which, by the laws of Wisconsin (at that time in force in Minnesota), operated to vest the fee simple of every donation or grant to the public, or any corporation or body politic, in it, for the uses therein named, and no other; and which declared, that "land *intended* to be for *streets*, alleys, *ways*, commons, or *other public use*, . . . or for any addition thereto, shall be held in the corporate name, in trust, to and for the uses and purposes set forth, and expressed or intended." Roberts subsequently sold to Schurmeir two lots, designated on the plan as lots Nos. 11 and 12, in block 29. All the space in front of this block, and between this block and the river, was designated as "*Landing;*" and as soon as St. Paul was organized into a city, it exercised municipal control over the space, established a grade, and caused the place to be more or less graded; maintaining it as a landing. Schurmeir's two lots, and the whole of the so-called "landing," were situated upon what had been the slough or channel.

In 1856, and after this depression had been filled, and the whole space between the lots and the river, including the depression, and the bar or island, had been graded by the city, and traces of both had been effaced, the space origi-

nally occupied by this bar or island, was surveyed by a government surveyor, and platted and mapped as "Island No. 11," in said section 5.

By virtue of this survey, the railroad company claimed the title under a Congressional land grant of May 22, 1857.

The important question in the case was, therefore, this: By what exact line was the grant bounded on the river side? Was it—

1. By either the *medium filum* of the Mississippi, or the outside of the sand-bar or island? Or was it—

2. By the meander-lines run by the surveyor?

If by either of the former, the railroad company had no right.

If by the latter, Schurmeir had none.

A minor question was, whether—supposing Roberts to have owned the parcel originally—he had, or had not, under the statutes then in force in Minnesota, divested himself of such right by recording his town plot?

Mr. T. A. Hendricks, for the railroad company, plaintiff in error:

The land system of the United States was designed to provide, in advance, with mathematical precision, the ascertainment of boundaries. The purchaser takes by metes and bounds. These rules are settled, and accordingly the township line at the north, the section line at the west, and the meander-line on the remaining side—a line beginning and ending at posts, and running by courses, described between them—must constitute the boundary here. In no other way can the rules be conformed to. By the pretensions of the opposite counsel, the purchaser would pay for a little more than nine acres, and get but little less than twelve. The lines marked on the ground must thus control.*

But, admit that the land comes to the bank edge. This is the most the other side can pretend; for the pretension of

* Bates *v.* Railroad Company, 1 Black, 204; Walker *v.* Smith, 2 Pennsylvania State, 43; Younkin *v.* Cowan, 34 Id. 198; Hall *v.* Tanner, 4 Id. 244.

carrying the grant to the middle line of a vast river, is untenable in our country, even at common law,* and plainly in the face of the statute of May 17, 1796, and other statutes. What, then, is the bank of a river? It is decided in Pennsylvania,† to be "the continuous margin, where vegetation ceases." The *shore* is, on the other hand, decided to be "the pebbly, sandy, or rocky space between that and low water-mark." This island, when it was an island, and not bottom of the river, was four feet below the bank. When in the condition most favorable to the case of the other side, it was "sandy space," between *very* low water-mark and the bank; not bank, but shore.

In fact, however, it was not, rightly considered, even shore. In one condition of the river, it was river bottom; in another —the ordinary condition—an island in the river; and only in a third, and rare condition—"very low water"—did it approach even the character of shore.

We may add, that Roberts, by his dedication of the land for a landing, parted with his property, and that his grantee, Schurmeir, has no title in it, and cannot now restrain the railroad from entering on it.

Mr. Allis, contra:

1. The meander-lines are *not* boundaries. They are not even known to the laws or acts of Congress. The term "meander" is simply used to designate certain lines, run by the surveyors, along the windings of water-courses, bounding fractions, for the purpose of ascertaining and returning the quantity of land in such fractions. There is no provision in the acts of Congress for meandering a water-course, or running any line along its bank. But the *quantity* of land in a fraction must be returned; hence, alone, the surveyor runs lines along the bank.

* Carson *v.* Blazer, 2 Binney, 475; Bullock *v.* Wilson, 2 Porter (Alabama), 436; People *v.* Canal Appraisers, 33 New York, 461; McManus *v.* Carmichael, 3 Clark (Iowa), 1.

† McCullough *v.* Wainright, 2 Harris, 171; and see Storer *v.* Freeman, 6 Massachusetts, 435; and Lewen *v.* Smith, 7 Porter (Alabama), 428.

2. If the surveyor make an error in his return, as to the quantity of the land, or if the quantity is erroneously stated in the patent, this will not affect the grant. The grantee will take according to the *boundaries* of the land described.*

3. Whether the grant extends to the *medium filum* of the river, is a point not in the least necessary to be considered; though we believe it does. Most of the authorities which would deny this proposition, concede that the riparian owner takes to *low water-mark.*† That is all that we need maintain.

4. The record of the town-plot did not make a *dedication* of land intended for "streets, alleys, ways, commons, or other public uses," equivalent to a grant in fee, whatever it might do by a "donation or grant" marked on the plot. Even if the plot did so make it, the town was bound to hold it for the purpose specified—in this case a "landing" —and Schurmeir, if interested as a citizen, might file his bill.

Mr. Justice CLIFFORD delivered the opinion of the court.

Complainant alleged that he was the owner in fee, and in the actual possession of the real estate described in the bill of complaint, together with the stone warehouse thereon erected. As described, the premises are situated in the city of St. Paul, county of Ramsey, and State of Minnesota; and the allegation is, that the lot extends to, and adjoins the public street and levee which run along the left bank of the Mississippi River in front of that city; that the said street and levee constitute the public landing for all steamboats and other vessels bound to that port, and the place where all such vessels receive and discharge their freight and passengers; that the street, levee, and public landing, occupy the whole space between this lot and the bank of the river, in front of the same, and that he is the owner in fee of that

* Lindsey *v.* Hawes, 2 Black, 554.

† Dovaston *v.* Payne, 2 Smith's Leading Cases, 224–6.

whole space, subject to the public right to use and occupy the same as such street, levee, and public landing.

Based upon these preliminary allegations, the charge is, that the corporation respondents were then engaged, without his license or consent, in extending and constructing their railroad over and along the said public street, levee, and landing, in front of his premises, with the design and purpose of running their cars on the same for the transportation of freight and passengers; and the complainant alleged that the effect would be, if the design and purpose of the respondents should be carried out, that the said public street, levee, and landing, could not be occupied and used for the purposes for which they were constructed, and to which they were dedicated, and that his premises would be rendered useless and valueless.

Two defences were set up by the respondents in their answer.

First. They denied that the fee of the land described in the bill of complaint, as a public street and levee, or public landing, was ever in the complainant, or that he ever had any right, title, or interest in the land between his premises and the main channel of the river.

Secondly. They alleged that all the land between the premises of the complainant and the river in front, were part and parcel of the lands surveyed by the United States, and granted by the act of Congress of the 3d of March, 1857, to the Territory of Minnesota, and that they were the owners of the same in fee, as the grantees of the Territory and State, to aid in the construction of their railroad.

Defence of the other respondents is, that all the acts charged against them were performed by the direction and under the authority of the respondent corporation.

Prayer of the bill of complaint was, that the respondent might be restrained from extending and constructing their railroad over and along said public street, levee, or landing, and from obstructing and impeding the free use of the same by the public.

By consent of parties, it was subsequently ordered by the

court, that the cause be referred to a sole referee, to hear and determine all the issues in the pleadings, and that he should report his determination to the court. Such a report was subsequently made by the referee, and the record shows that the court, in pursuance of the same, enjoined the respondents as prayed in the bill of complaint, and ordered, adjudged, and decreed that the respondents should remove from the street, levee, and landing in front of the complainant's premises, all tracks, trestleworks, embankments, buildings, and obstructions of every kind erected or constructed thereon by them for railroad purposes.

Appeal was taken by the respondents from the decree, as rendered in the District Court for that county, to the Supreme Court of the State, where the decree was in all things affirmed, and the respondents removed the cause into this court, by a writ of error, sued out under the twenty-fifth section of the Judiciary Act.

1. Express finding of the referee was, that the premises in question were included in that part of section five, township twenty-eight north, in range twenty-two west of the fourth principal meridian, which is situated on the north side of the centre line of the Mississippi River. He also found that the survey of that part of section five was made by the deputy surveyor, October 27, 1847; that the field-notes of the survey were duly communicated to the surveyor-general, and that the latter officer, on the 15th of March following, duly approved the survey as made by the deputy surveyor. Same report also shows that a plat of that part of section five was duly prepared and certified by the surveyor-general, on the same day, and that it was duly transmitted to the land office of the district where the land was situated. By that plat it appears that the land, as surveyed, consisted of two separate parcels, called lots 1 and 2, in the report of the referee, exhibited in the record. Lot 1, the tract in question, is situated in the northwest corner of the section, and contains the quantity of land described in the official survey and plat. Particular description of lot 2 is unnecessary, as it is not in controversy in this case.

Both of those lots were purchased by Lewis Roberts, and on the 24th of March, 1849, a patent, in due form of law, was issued to him, for the same, by the proper officers of the United States. Possessed of a full title to all the land described in the patent, the purchaser caused lot 1 to be surveyed and laid out into town blocks, lots, streets, &c., as a part of the town of St. Paul, and the finding of the referee is, that the plat, as recorded, describes the land as extending to the main channel of the river. Block 29, as exhibited on that plat, includes lots 11 and 12, described in the bill of complaint, and the report of the referee shows that they are a part of the triangular fraction of land situated in the northwest corner of section 5, as delineated on the official plat.

Claim of the complainant is to lots 11 and 12, in block 29, and the finding of the referee is, that he holds the same through certain mesne conveyances, from the original grantee under the patent.

Congress granted to the Territory of Minnesota, by the act of the 3d of March, 1857, for the purpose of aiding in the construction of certain railroads, every alternate section, designated by odd numbers, for six sections in width, on each side of the respective railroads therein mentioned, and their branches, and the respondents claim title to the premises described in the pleadings under that act of Congress, as the grantees of the State.*

Title claimed by the complainant, being of prior date to that set up by the respondents, will be first examined, because, if it be sustained as including the premises in controversy, an examination of the title of the respondents will not be necessary.

Since the town of St. Paul was organized under her city charter, passed March 4, 1854, the city government has exercised municipal authority and control over the entire parcel of land lying between the main channel of the river and

* 11 Stat. at Large, 195; State Session Laws, 1857, 70; Gen. Laws, 1858, 9; Session Laws, 1862, 226.

block twenty-nine, where the complainant's warehouse is situated. Claiming entire control over the premises, as a street, levee, or landing, the city authorities have established a grade for the same, and, long before any attempt was made by the respondents to controvert the title of the complainant, they had made large progress in the work of reducing the surface of the land to the established grade.

Appellants contend that the river is not a boundary in the official survey; that the tract, as surveyed, did not extend to the river, but that the survey stopped at the meander-posts and the described trees on the bank of the river. Accordingly, they insist that lot 1 did not extend to the river, but only to the points where the township and section lines intersect the left bank of the river, as shown by the meander-posts.

The finding of the referee also shows that the meander-line of lot 1 was run, in the official survey, along the left or north bank of a channel which then existed between that bank and a certain parcel of land in front of the same, afterwards designated as Island 11, but which was not mentioned in the field-notes of the official survey, nor delineated on the official plat.

Conceded fact is, that those field-notes constituted the foundation of the official plat, and that that plat was the only one in the local land office at the time the patent was issued under which the appellee claims. When the water in the river was at a medium height, there was a current in the channel, between what is called the island and the bank, where the meander-posts were located, but when the water was low, there was no current in that channel, and, when the water was very high in the river, the entire parcel of land, designated as the island, was completely inundated.

No mention is made of any such channel in the official survey, under which the patent was issued; but the deputy surveyor, under the instructions of the land office, on the 13th of March, 1856, made a new survey of the parcel of land lying between that channel and the main channel of the river, and the field-notes of the same were subsequently

approved by the surveyor-general. Duplicates of that survey were communicated to the General Land Office, and the finding of the referee shows that the plat exhibits the true relation which that tract bears to lot 1 in that section. Prior to that survey, however, the city of St. Paul had filled the channel, and reclaimed the land at the west end of the same, and extended the grade of the street and levee, or landing, entirely across the island to the main channel of the river. Besides, the uncontradicted fact is, that the landing for boats and vessels, touching at that port, was always on the river-side of the island, and the finding of the referee shows that the front wall of the complainant's warehouse is not more than four feet north of the southerly line of the lot on which it is erected.

Surveyors were directed by the act of Congress of the 20th of May, 1785, to divide the territory, ceded by individual States, into townships of six miles square, by lines running due north and south, and others crossing these at right angles, ... "unless where the boundaries of the tracts purchased from the Indians rendered the same impracticable."*

Congress preserved the same system also in the act of the 18th of May, 1796, in respect to the survey and sale of the lands northwest of the Ohio River, but the latter act recognizes two other necessary exceptions to the general rule.† Public lands therein described were required to be divided by north and south lines running according to the true meridian, and others crossing them by right angles, so as to form townships of six miles square, "unless where the line of the late Indian purchase, or of the tracts of land heretofore surveyed or patented, or the course of navigable rivers, may render it impracticable." By the ninth section of that act, it is provided that all navigable rivers within the territory mentioned in that act, should be deemed to be, and remain, public highways, and that, in all cases where the opposite banks of any stream, not navigable, shall belong to different

* 1 Land Laws, 19.

† 1 Stat. at Large, 464.

persons, the stream and the bed thereof should become common to both.*

Provision was made by the act of February 11, 1805, that townships should be "subdivided into sections, by running straight lines from the mile corners, marked as therein required, to the opposite corresponding corners, and by marking on each of the said lines intermediate corners, as nearly as possible equidistant from the corners of the sections on the same." Corners thus marked in the surveys, are to be regarded as the proper corners of sections, and the provision is, that the corners of half and quarter sections, not actually run and marked on the surveys, shall be placed, as nearly as possible, equidistant from the two corners standing on the same line.† Boundary lines actually run and marked on the surveys returned, are made the proper boundary lines of the sections or subdivisions for which they were intended, and the second article of the second section provides, that the length of such lines, as returned, shall be held and considered as the true length thereof. Lines intended as boundaries, but which were not actually run and marked, must be ascertained by running straight lines from the established corners to the opposite corresponding corners; but where no such opposite corresponding corners have been, or can be fixed, the boundary lines are required to be ascertained by running from the established corners due north and south, or east and west, as the case may be, to the water-course, Indian boundary line, or other external boundary of such fractional township.

Express decision of the Supreme Court of the State was, that the river, in this case, and not the meander-line, is the west boundary of the lot, and in that conclusion of the State court we entirely concur.‡

Meander-lines are run in surveying fractional portions of the public lands bordering upon navigable rivers, not as boundaries of the tract, but for the purpose of defining the

* 1 Stat. at Large, 468. † 2 Id. 313.

‡ Schurmeier *v.* The Railroad, 10 Minnesota, 82.

sinuosities of the banks of the stream, and as the means of ascertaining the quantity of the land in the fraction subject to sale, and which is to be paid for by the purchaser.

In preparing the official plat from the field-notes, the meander-line is represented as the border-line of the stream, and shows, to a demonstration, that the water-course, and not the meander-line, as actually run on the land, is the boundary.

Proprietors, bordering on streams not navigable, unless restricted by the terms of their grant, hold to the centre of the stream; but the better opinion is, that proprietors of lands bordering on navigable rivers, under titles derived from the United States, hold only to the stream, as the express provision is, that all such rivers shall be deemed to be, and remain public highways. Grants of land bounded on rivers above tide-water, says Chancellor Kent, carry the exclusive right and title of the grantee to the centre of the stream, unless the terms of the grant clearly denote the intention to stop at the edge or margin of the river, and the public, in cases where the river is navigable for boats and rafts, have an easement therein, or a right of passage, subject to the *jus publicum*, as a public highway.*

The views of that commentator are, that it would require an express exception in the grant, or some clear and unequivocal declaration, or certain and immemorial usage, to limit the title of the riparian owner to the edge of the river, because, as the commentator insists, the stream, when used in a grant as a boundary, is used as an entirety to the centre of it, and he consequently holds that the fee passes to that extent. Decided cases of the highest authority, affirm that doctrine, and it must, doubtless, be deemed correct in most or all jurisdictions where the rules of the common law prevail, as understood in the parent country. Except in one or two States, those rules have been adopted in this country, as applied to rivers not navigable, when named in a grant or deed as a boundary to land. Substantially the same rules

* 3 Commentaries, 11th ed. 427.

are adopted by Congress as applied to streams not navigable; but many acts of Congress have provided that all navigable rivers or streams in the territory of the United States, offered for sale, should be deemed to be, and remain public highways.*

Irrespective of the acts of Congress, it should be remarked, that navigable waters, not affected by the ebb and flow of the tide, such as the great lakes, and the Mississippi River, were unknown to courts and jurists, when the rules of the common law were ordained; and even when the learned commentaries were written, to which reference is made, it was still the settled doctrine of this court, that the admiralty had no jurisdiction except where the tide ebbed and flowed.†

Extended discussion of that topic, however, is unnecessary, as the court decides to place the decision, in this case, upon the several acts of Congress making provision for the survey and sale of the public lands bordering on public navigable rivers, and the legal construction of the patents issued under such official surveys. Such a reservation, in the acts of Congress, providing for the survey and sale of such lands, must have the same effect as it would be entitled to receive if it were incorporated into the patent, especially as there is nothing in the field-notes, or in the official plat or patent, inconsistent with that explicit reservation. Rivers were not regarded as navigable in the common law sense, unless the waters were affected by the ebb and flow of the tide, but it is quite clear that Congress did not employ the words navigable, and not navigable, in that sense, as usually understood in legal decisions. On the contrary, it is obvious that the words were employed without respect to the ebb and flow of the tide, as they were applied to territory situated far above tide-waters, and in which there were no salt-water streams.

Viewed in the light of these considerations, the court does not hesitate to decide, that Congress, in making a distinction

* 1 Stat. at Large, 491; 2 Id. 235, 279, 642, 666, 703, 747; 3 Id. 349.

† The Jefferson, 10 Wheaton, 428; Genesee Chief, 12 Howard, 456; Hine *v.* Trevor, 4 Wallace, 565.

between streams navigable and those not navigable, intended to provide that the common law rules of riparian ownership should apply to lands bordering on the latter, but that the title to lands bordering on navigable streams should stop at the stream, and that all such streams should be deemed to be, and remain public highways.

Although such riparian proprietors are limited to the stream, still they also have the same right to construct suitable landings and wharves, for the convenience of commerce and navigation, as is accorded riparian proprietors bordering on navigable waters affected by the ebb and flow of the tide.*

Argument is scarcely necessary to show, in view of the definite regulations of Congress upon the subject of the survey and sale of the public lands, that the second survey of the space between block twenty-nine and the main channel of the river, cannot affect the title of the complainant as acquired from the United States under the antecedent official survey and sale.†

Attempt is also made to justify the acts of the respondents, as grantees of the State, upon the ground, that the complainant, in dedicating the premises to the public as a street, levee, and landing, parted with all his title to the same, and that the entire title vested in fee in the State. Respondents rely for that purpose upon the statute of the Territory of Wisconsin, which was then in force in the Territory of Minnesota.‡

Suppose the construction of that provision, as assumed by the respondents, is correct, it is no defence to the suit, because it is nevertheless true, that the municipal corporation took the title in trust, impliedly, if not expressly, designated by the acts of the party in making the dedication. They could not, nor could the State, convey to the respondents any right to disregard the trust, or to appropriate the prem-

* Dutton *v.* Strong, 1 Black, 23.

† Lindsey *v.* Hawes, 2 Black, 554; Bates *v.* Railroad Company, 1 Id. 204; Brown *v.* Clements, 3 Howard, 650.

‡ Statutes of Wisconsin Territory, 159.

ises to any purpose which would render valueless the adjoining real estate of the complainant.

Considered in any point of view, our conclusion is, that the decree of the State court was correct; and the decision in this case also disposes of the appeal brought here by the same appellants, from a decree rendered by the Circuit Court of the United States for the District of Minnesota, in favor of George D. Humphreys and others, which was a bill in equity against the same respondent corporation. The appeal in that case depends substantially upon the same facts, and must be disposed of in the same way. Both decrees are

AFFIRMED.

MEAD *v.* BALLARD.

1. A grant of land, "said land being conveyed *upon the express understanding and condition*" that a certain institute of learning then incorporated "shall be *permanently located* upon said lands," between the date of the deed and the same day in the succeeding year, is a grant upon condition, a condition subsequent.
2. Such permanent location was made and the condition was thus fulfilled when the trustees passed a resolution locating the building on the land, with the intention that it should be the permanent place of conducting the business of the corporation. And this, notwithstanding that the building erected in pursuance of the resolution was afterwards destroyed by fire, and the institute subsequently erected on another piece of land.

ERROR to the Circuit Court for Wisconsin.

Mead brought ejectment in the court below against Ballard to recover certain land which the ancestor of him (Mead) had conveyed for a full consideration, on the 7th September, 1847, to Amos Lawrence, of Boston, in fee. The deed contained the usual covenants of warranty, and also a clause expressed in these words:

"Said land being conveyed upon the express understanding and *condition* that the Lawrence Institute of Wisconsin, chartered by the legislature of said Territory, *shall be permanently*