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STAFFORD LAKE OR SANDY LAKE—EXAMINATION OF ABSTRACT  
OF TITLE—STATE OF OHIO HOLDS NO PROPRIETARY INTEREST.

COLUMBUS, OHIO, January 14, 1929.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—There has been submitted for my examination abstract of title relating to Stafford Lake, formerly known as Sandy Lake in Rootstown Township, Portage County, Ohio, as well as a transcript of legislative and other proceedings relating to the Pennsylvania and Ohio Canal operated by the Pennsylvania and Ohio Canal Company, a private corporation, which used for feeder purposes the waters of Sandy Lake and those of "Muddy Lake", which it was and now is connected. The examination of the above and other files submitted has been made with the view of determining whether or not the State of Ohio has any proprietary interest in said Stafford Lake or the waters thereof, which it may assert by appropriate action in a court of competent jurisdiction. The examination of the files submitted to me in this connection has entailed a very considerable amount of work and attention, but in this opinion I shall do little more than to state my conclusions in the matter.

Stafford Lake is a part of lot 44, township 2, range 8 of Connecticut Western Reserve lands, which township came into the exclusive ownership and possession of one Ephraim Root by deed of conveyance from the Connecticut Land Company through trustees appointed for the purpose to said Ephraim Root and others, and by quit claim deed to said Ephraim Root by his tenants in common in said lands.

As above noted the lands here in question were a part of the Connecticut Western Reserve lands, so called, sovereignty over which passed first to the United States by cession from the State of Connecticut and thence to the State of Ohio, when said State was carved out of the Northwest Territory and established as an independent commonwealth. If proprietary right and title of the State of Connecticut in said lands passed from said state on its cession of the jurisdiction and sovereignty of said lands to the United States, the proprietary rights and title to said lands reverted to the State of Connecticut pursuant to the Act of Congress passing title to the lands of the "Western Reserve" to the State of Connecticut. It is quite clear therefore that the State of Ohio by virtue of its sovereignty and jurisdiction over these lands acquired no proprietary interest therein.

Likewise speaking more directly of Stafford Lake, which is a non-navigable inland body of water, it is likewise to be observed that the State of Ohio merely by virtue of its sovereignty and its representation of the interests of the public, has no proprietary interest in said Lake or in the lands on which the waters thereof stand. *Lembeck vs. Nye*, 47 O. S. 336.

As above noted the waters of Stafford Lake, then known as "Sandy Lake", were used for feeder purposes by the Pennsylvania and Ohio Canal Company. It appears from the abstract of title submitted that the Pennsylvania and Ohio Canal Company obtained rights in the waters of Sandy Lake for use in the operation of said Pennsylvania and Ohio Canal, under and by virtue of a contract entered into by and between said company and one Seth Day, at the time of said contract, to wit, January 5, 1846, then the owner in fee simple of all of lot 44 in Rootstown Township in which lands said Sandy Lake was located. It is not at all clear what rights the Pennsylvania and Ohio Canal Company obtained in the waters of Sandy Lake

other than those obtained by it under said contract with Seth Day. In any event, however, it is clear that the Pennsylvania and Ohio Canal Company, as a private corporation, obtained no title to said Lake other than an easement in the use thereof, which easement expired upon the abandonment of said Canal. *Corwin vs. Corwin*, 12 O. S. 629; *Voight vs. Railway Company*, 58 O. S. 123.

In this connection it does not appear that the Pennsylvania and Ohio Canal except a small part thereof in the City of Akron, Ohio, was ever taken over by the State of Ohio as a part of its canal system; but even if this had been the case, the easement of said Canal Company and of the State in the use of said Lake for feeder purposes, expired upon the abandonment of said canal. *Corwin vs. Corwin* and *Voight vs. Railway Company*, supra; *Müller vs. Wisenberger*, 61 O. S., 561, 584.

It further appears that another lake known as Congress Lake lies south and east of the lake here in question, said Congress Lake being located partly in Portage County and partly in Stark County. It likewise appears that for many years prior to the year of 1873, there was some kind of a feed water connection between Congress Lake on the south and Sandy Lake on the north, carrying the waters of Congress Lake northwardly. On December 2, 1873, the Board of Public Works of the State of Ohio, adopted the following resolution:

“Whereas, At the meeting of this Board, held at their office, in Columbus, on the 14th day of November, 1873, it was declared that in order to maintain and protect the navigation of the Ohio Canal, and render it useful for the business done, and to be done thereon, it is necessary to appropriate the waters of Congress Lake, in Stark and Portage Counties, and the bank and fixtures at the outlet of said Lake, together with the feeder leading therefrom and also the right of way for a feeder to be conducted from said first named feeder into the water of Hale Creek; and, whereas, William S. Williams, engineer of the Northern division of the Ohio Canal, as authorized at said meeting, has surveyed and submitted to this board, a plat or plan of the premises to be appropriated; Now, therefore, for the purposes aforesaid, and as a permanent feeder to said Ohio Canal, said Board of Public Works do hereby appropriate the body and banks of Congress Lake, in Portage and Stark Counties, the outlet of said Lake, the bulkhead at said outlet, with the right of access thereto, for the purpose of repairing and improving same, the bed and banks of the stream running from said lake down to the intersection of the old feeder of the Pennsylvania and Ohio Canal in the township of Randolph, in Portage County, the bed of said feeder, from the head thereof, down to the north line of Lot No. 64, in the Township of Brimfield, in Portage County; thence a strip of land in the southwesterly direction of sufficient width for a water course or feeder, not less than fourteen feet wide, across Lots Nos. 64 and 65 in the Township of Brimfield, and Lot Numbered 15 in the Township of Suffield, into the stream known as Hale Creek, in accordance with the plat submitted by said engineer; also, the bed of Hale Creek, from thence to its intersection with the Little Cuyahoga River—as a portion of the Public Works of the State of Ohio;

And, Whereas, the waters of said feeder will necessarily pass through the race and structure of the Akron Canal and Hydraulic Company, it is therefore

*Ordered*—That said waters shall continue in the same and enter the Ohio Canal through the feeder below Lock No. 16, North of Portage Summit.”

By this resolution the Board of Public Works of the State of Ohio appropriated a part of the feeder extending from Congress Lake to Sandy Lake, but not all thereof; the part of the feeder so appropriated being that which connected with Congress Lake and not that which connected with Sandy Lake. A diligent examination of the files submitted shows no other appropriation of any waters connected with Sandy Lake and in this situation I am required to hold that said action of the Board of Public Works indicated by the resolution adopted by it, was not effective as an appropriation of Sandy Lake, or of the waters thereof. *Smith vs. State*, 59 O. S., 278; *Miller vs. Wisenberger*, supra.

Touching this point the Supreme Court in the case of *Miller vs. Wisenberger* said:

"In the case of *Smith vs. The State*, 59 Ohio St., 278, this court held that for the State to acquire a fee to lands by occupancy and use for canal purposes, it was necessary that the occupancy by the State should be exclusive, and that it should be so open and notorious as to put the owner of the land on notice that the property had been taken by the State for its own with the purpose of appropriating it as part of its canal system.

The above cases clearly point out the rule by which the State could acquire the fee to lands for canal purposes. If the entry, use and possession by the State were open and notorious so as to inform the land owner that his land had been taken by the State for canal purposes, a fee vested in the State. But if the entry, possession or use was merely incidental, constructive or indirect, and not of such character as to apprise the canal commissioners that they were making the State liable, nor the land owner that his lands were so appropriated as to give him a claim against the State for taking and using the same for canal purposes, no title or fee vested in the State.

To vest a fee in the State, the entry, possession or use must have been of such an open and notorious character as to make it fairly apparent to both the officers of the State and the owners that the lands were taken and used for canal purposes."

Appended to the transcript of the legislative and other proceeds relating to the Pennsylvania and Ohio Canal are a number of affidavits made by a number of elderly persons in Portage County tending to show that at a very early date a dredge boat belonging to the State of Ohio was in operation in Sandy Lake and that the persons operating said boat were paid by the State of Ohio. It is obvious, however, that these facts even if they could be fully and completely proven would not measure up to the requirements necessary for an effective appropriation by the State of Ohio of lands for canal purposes; and wholly aside from the effect of Section 19 of Article 1, of the Constitution of 1851, which was then in effect, I am of the opinion that there is nothing in the files submitted which shows an effective appropriation of Sandy Lake as a part of the canal system of the State, or otherwise. And by way of specific answer to your inquiry I am, therefore, of the opinion that there is nothing in the files submitted to me which shows that the State of Ohio has any proprietary interest in said Stafford Lake, formerly known as Sandy Lake which it can assert against private persons owning or claiming to own said lake or any interested therein.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*