

Glover, 302 S.W. 2d 757 (Tex. Civ. App. 1957); *Masonic Temple Ass'n v. Banks*, 94 Va. 695, 27 S.E. 490 (1895). *Roberts v. Martin*, *supra*. In the *Masonic Temple* case, *supra*, the Virginia court enjoined the defendant from maintaining a dam which obstructed a stream flowing by plaintiff's building, causing the stream to overflow and flood plaintiff's cellar, on the ground that the flooding constituted irreparable harm.

In the *Roberts* case, *supra*, the court enjoined an upstream proprietor from diverting a perceptible portion of the flow of the watercourse from a downstream mill.

It may not always be necessary to wait until the injury occurs before an injunction will issue. *Noe v. Benguey*, *supra*. In the *Noe* case the court held that equity had jurisdiction to enjoin the building of a wall which would narrow the width of a stream to two-thirds its normal width. The proposed construction would have increased the velocity of the stream which would have washed away the loamy soil of the owner of land on the opposite shore.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SOLICITOR,
Washington, D.C., June 25, 1964.

MEMORANDUM

To: Associate Regional Director, National Capital Region, National Park Service.

From: Assistant Solicitor, National Parks.

Subject: Supplementary Memorandum: Legal principles applicable to effect on National Park Service land resulting from proposed fill and construction at Hunting Creek.

1. A riparian owner has a right of access to the navigable part of the stream from the front of his lot. *Yates v. Milwaukee*, 77 U.S. (10 Wall) 497 (1870); *Gucher v. Town of Huntington*, 268 N.Y. 43, 196 N.E. 737 (1935); *Taylor v. Commonwealth*, 102 Va. 759, 47 S.E. 875 (1904). He also has the right to make a landing, wharf, or pier in the watercourse opposite his land to the line of navigability. Va. Code Ann. 62-139; *Yates v. Milwaukee*, *supra*; *Gucher v. Town of Huntington*, *supra*; *Taylor v. Commonwealth*, *supra*. No person, not even the owner of the bed of the stream can interfere with this right. *Yates v. Milwaukee*, *supra*. Furthermore, the owner of the bed of the stream cannot justify an obstruction of these rights on the ground that the injured riparian owner can reach navigable water by going around the obstruction. *Gucher v. Town of Huntington*, *supra*.
2. The owner of land fronting on a watercourse in Virginia has a right to dredge for sand and gravel out to the bed of the stream. Va. Code Ann. 62-178-181; *United States v. Smoot Sand and Gravel Corp.*, 248 F. 2d 822 (4th Cir. 1957). It has been held that this right is a valuable property right which cannot be taken away from a private citizen without just compensation by the United States in the exercise of eminent domain. *United States v. Smoot Sand & Gravel Corp.*, *supra*. However, the right of a riparian owner vis-a-vis the Commonwealth's right to interfere with the bed of that stream is less clear. While a Virginia appellate court has never decided this issue, the trial court in the *Smoot* case and the attorney general of Virginia both opined that the statute conferred "upon riparian owners a right in the nature of a license or *profit a prendre*, revocable by the Virginia Legislature. . . ." *Id.* at 828 n. 4. The Court of Appeals for the Fourth Circuit indicated it agreed with this position. *Id.* at 827, 828. The court appeared to be influenced by an earlier decision of the Maryland Court of Appeals, which in considering a Maryland statute similar to that of Virginia, held that the legislature could revoke the right to dredge sand and gravel at any time. *Smoot Sand and Gravel Corp. v. Columbia Granite and Dredging Corp.*, 146 Md. 384, 126 Atl. 91 (1924). Accordingly, we believe that the extinguishing of the rights of the United States to dredge sand and gravel by the Commonwealth's sale of the bed of the creek would not give rise to a cause of action.

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