

47 A.2d 50

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<KeyCite History>

BARNES

v.

STATE.

No. 120.

Court of Appeals of Maryland.

April 11, 1946.

In 1856, it was held that under the eighth article of the Compact no act of the General Assembly of Maryland could have any operation in the Potomac River, affecting the fishing therein, unless such act had been assented to by the State of Virginia. *State v. Hoofman*, 9 Md. 28. In 1885, Governor Lloyd asked **I. Nevitt Steele**, a distinguished member of the Maryland Bar, for an opinion on the status of the Compact. He received from **Mr. Steele**, a thorough and comprehensive discussion of the Compact, and of the various acts of assembly passed up to that time. The question he was asked was whether, after the lapse of \*300 a century, and after the concurrent legislation passed with respect to fishing, the Compact had been superseded by the Constitution of the United States. **Mr. Steele** held that it was in full force and effect. He notes that the Compact has been upheld in *Binney's Case*, supra, and in *State v. Hoofman*, supra, and also by Virginia in the case of *Hendricks v. Commonwealth*, 75 Va. 934, and by the Supreme Court of the United States in the case of *City of Georgetown v. Alexandria Canal Co.*, 12 Pet. 91, 9 L.Ed. 1012, and *Potomac Steam-Boat Co. v. Upper Potomac Steam-Boat Company*, 109 U.S. 672, 3 S.Ct. 445, 27 L.Ed. 1070. He also cites the fact that the Maryland Act of 1878, Chap. 274, by which the Black-Jenkins Boundary Award was accepted, contains the proviso that neither of the States nor the citizens thereof should thereby 'be deprived of any of the rights and privileges enumerated and set forth in the Compact between them, entered into in the year 1785, but that the same shall remain to and be enjoyed by the said States and the citizens thereof forever.' **Mr. Steele** then passes to the question upon which he states he understands the opinion is desired, namely, the right of oyster fishery by the states and their respective citizens in the waters of the Potomac River and of Pocomoke Sound and the Pocomoke River. He held that there was no right of fishery given by the Compact in Pocomoke Sound, and Pocomoke River, within the limits of Virginia, and therefore the exclusive right of fishery there belonged to the citizens of Virginia, but the opposite was the case with respect to the Potomac River. This is a construction different from that suggested in the case of *Hendricks v. Commonwealth*, supra, where the Virginia court was concerned with the right of fishing in the Potomac, but in the course of its opinion said that this right also existed in the Pocomoke. **Mr. Steele** disagreed with this and it is interesting to find this his entire opinion and his conclusion on this point was sustained with reference to the Pocomoke River by the Supreme Court in the case of *Wharton v. Wise*, 153 U.S. 155, 14 S.Ct. 783, 38 L.Ed. 669, already referred to.