

57 F. 719

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Ex parte MARSH et al.

Circuit Court, E. D. Virginia.

September 18, 1893.

On this subject, Mr. I. Nevett Steele, of the Maryland bar, in an opinion written at the request of the governor of Maryland, in respect to the present validity of the compact of 1785, remarks, after quoting section 8, as follows:

'The ordinary and grammatical construction of the section would manifestly limit the mutual or joint legislation over the river Pocomoke to the preserving and keeping open of the channel and navigation, and would not extend it to the preservation of fish in the river. If this construction be correct, there is nothing at all in the compact on the subject of fish in the Pocomoke, and consequently nothing upon which any claim of Marylanders to fish there could be founded. The compact, by its previous clauses, having given to Marylanders no right to fish in that part of the Pocomoke river belonging to Virginia, there seems to be no reason why it should give to Maryland the power to legislate for the preservation of fish in that part of the river.'

We cannot accede, therefore, to the contention that, because the state of Maryland has never consented to or approved the law *727 of Virginia under which the petitioners Wharton and Nelson were convicted, therefore that law is inoperative and invalid as against them, as citizens of Maryland, in respect to offenses committed on the Pocomoke river. We are accordingly of opinion that section 2147 of the Code of Virginia is valid as against all offenders, including depredators from Maryland, in the waters of Pocomoke river, though it has not the consent and approval of that state.

The court here refers to section 8 of the compact of 1785 without quoting it, although the mere quotation of it would have shown the fallacy of its language in respect to the Pocomoke river. So far as the Pocomoke river was concerned, the language of the court was obiter dictum, upon a point not argued or even mentioned in the case; and Mr. Steele, in his opinion written for the governor of Maryland, before referred to, very naturally says:

'I think it may well be doubted whether the court of appeals of Virginia would consider what is there said about the Pocomoke river as a binding decision of that learned tribunal.'