Volume 35 | Issue 2 Article 15

February 1929

Interstate Commerce--State of Export of Resources--Shrimp

R. Paul Holland
West Virginia University College of Law

W. 57; *Boyle* v. *Manufacturers Liability Insurance Company*, 96 N. J. L. 380, 115 Atl. 383.

It was urged by the plaintiff's counsel in the instant case that the situation was anomalous, the plaintiff having a right but no remedy. The court's reply was that the plaintiff waited too long to sue. This, of course, is not a satisfactory answer in view of the fact that the statute of limitations on tort actions gives the plaintiff a year. BARNES' CODE, chapter 104, section 12. Even if the action had been begun in the lifetime of the insured, under the Woodford Case, *supra*, there would be no remedy unless judgment had been given prior to his death. The injured party is thus confronted on the one hand with this rule that his action does not survive the defendant's death, and on the other hand with the rule in the O'Neal Case, *supra*.

This case emphasizes the need for an amendment to Section 62 of Chapter 6, Acts of 1923, providing expressly for a direct right against the insurer. This is especially desirable as long as West Virginia has no statute providing for the survival of tort actions against the estates of deceased tort-feasors.

—JAMES E. HOGUE, JR.

INTERSTATE COMMERCE—STATE PROHIBITIONS OF EXPORT OF RESOURCES—SHRIMP.—The petitioners, shrimp packers, of Mississippi, sue to have the State of Louisiana enjoined from enforcing a statute which prohibits the selling of shrimp in other states before the shells and heads are removed. The statute is formally aimed to secure for the state the benefit of the heads and shells for fertilizer. Petitioner claims that this is a feigned motive and that the real purpose is to prevent the Mississippi packers from buying shrimp taken in Louisiana waters and so give this industry to Louisiana. It is shown that only a very small part of the shrimp taken are consumed in Louisiana and that, instead of being used for fertilizer, the heads and hulls are a nuisance to packers, being worth less than one per centum of the value of the edible meat. The statute does not prohibit the sale of shrimp out of the state, but fixes the amount of preparation which they must have before such sale. The injunction is granted on the ground that this statute is in violation of the interstate com-

merce clause. *Foster-Fountain Packing Company, Inc., et al.* v. *Haydel, et al.*, 49 Sup. Ct. Rep. 1 (1928).

In *Geer* v. *Connecticut*, 161 U. S. 519, 16 Sup. Ct. Rep. 600, it was held that the state control over animals *ferae naturae* extended far enough to permit regulation and control over their capture to the point of forbidding entirely their sale out of the state. This was based on the theory that such animal resources were the common property of all the people and that the government of the state could administer it as a trust for them. Also, that the police power extended to protection and conservation of this source of food. This result was allowed even though it prevented interstate commerce. The present case is differentiated from the Geer Case by showing that this Louisiana statute does not aim at conservation of the shrimp for intrastate consumption but rather intends that the shrimp shall find an out of state market, *after* being prepared for sale by intrastate industry, and that the conservation of the heads and hulls is adopted to give color to the main purpose. The court takes the position that having made of shrimp an article of commerce, the state is without power to further restrain that commerce.

It has been argued that the states had power to reserve to their own inhabitant the oil and gas resources of the state by an analogy to the game cases. The court has denied this power. The ground of difference was stated to be that there was no common property in the oil and gas such as that which the people had in the natural game resources. The point was argued before the court in the case of *Ohio Oil Company* v. *Indiana*, 177 U. S., 190, 20 Sup. Ct. Rep. 576. In that case, it was held that the state could prohibit one owner from waste of the underlying mineral pool. This was based on the rights of other property owners who had an equal right to the resources under the land. But here, it is plainly seen, the right of extraction is not public, but private. Hence, it was a natural consequence only when the court denied the right of West Virginia to reserve to its inhabitants the gas supply, so far as needed for intrastate use, preventing export until that demand was fully satisfied. *Pennsylvania* v. *West Virginia*, 262 U. S. 553, 43 Sup. Ct. Rep. 658. Again, the Federal Courts negatived the taxes imposed on volume of business of the pipe line carriers serving principally interstate needs. The underlying principle seems to be that the owner of land acquires a title in oil or gas on its extraction which the state has no power to

limit, so far as its entry into interstate commerce is concerned. *United Fuel Gas Company* v. *Hallanan,* 257 U. S. 277, 42 Sup. Ct. Rep. 105. The holding which allows a state to prevent the exportation of water from its important streams is thought to be consistent with this distinction on the basis of property, for the public has a general right in navigable streams, while the riparian owners are to be protected in their rights in others. *Hudson Water Company* v. *McCarter,* 209 U. S. 349, 28 Sup. Ct. Rep. 529. This decision was expressly held inapplicable in cases of natural gas. *West* v. *Kansas Gas Co.,* 221 U. S. 229, 31 Sup. Ct. Rep. 564.

In view of these cases, it would seem that the power of the state over natural resources which are not subject to the "trust" in favor of the general public is limited to that which will not operate to burden commerce between the states. The power over resources wherein the public has this "trust" interest extends to a conservation for the people as a whole, but not to a regulation or restriction which will burden such articles *after* they are permitted by the state to enter general commerce, or which will operate for the benefit of one class as against the whole body of the people. For an expression of other views on a somewhat similar topic, see Thomas Porter Hardman's articles in 26 W. VA. L. QUAR. 1, 224.

—R. PAUL HOLLAND.

MASTER AND SERVANT—SCOPE OF AUTHORITY OR EMPLOYMENT—PROSECUTION OF MASTER'S BUSINESS.—An employee of defendant company requested decedent, age eleven, to help transport powder. The decedent, while so engaged, took some of the powder. While later playing with the powder, he threw it on a fire and was so severely burned that he died. The plaintiff brought action for wrongful death. *Held,* for D. The Supreme Court of Appeals, in affirming a judgment for D, stated that the test of a master's responsibility for the conduct of his servant is not whether the servant deviated from, or exceeded, his authority but whether the negligence occurred in the prosecution of the master's responsibility for the conduct of his servant is not whether the negligence occurred in the prosecution of the master's business. *Wellman* v. *Fordson Coal Co.,* 143 S. E. 160 (W. Va. 1927).

The scope of this note is confined to the test above given. It