Michigan Law Review

Volume 37 | Issue 8

1939

CONSTITUTIONAL LAW - DISCRIMINATORY STATE GAME LEGISLATION - CONSTITUTIONALITY AS TO NON-RESIDENT LANDOWNER

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CONSTITUTIONAL LAW — DISCRIMINATORY STATE GAME LEGISLATION — CONSTITUTIONALITY AS TO NON-RESIDENT LANDOWNER — A non-resident landowner and his assignee brought an action to enjoin enforcement of a Louisiana statute which denied them the right to secure licenses to trap fur-bearing animals or alligators on the former's land until they had resided in the state for not less than one year. *Held*, the statute, discriminating as it did against landowners purely on the basis of non-residence, was unconstitutional as a deprivation of property and a denial of equal protection of the law. *Pavel v. Patterson*, (D. C. La. 1938) 24 F. Supp. 915.

It might appear that the principal decision is in conflict with previous decisions which, in recognizing state ownership of wild life within its borders, have upheld legislation discriminating against non-residents with respect to

hunting and fishing privileges.[1] However, a study of the cases proves that they do not support such a conclusion. The state does not hold title to wild life in a proprietary sense, but only in trust for its real owners, namely the citizens of the state collectively.[2] Seen in this light, the discriminatory legislation referred to above may be viewed as merely regulatory, since its purpose is to preserve and protect this wild life for the use and consumption of the people of the state.[3] The statutes on this subject which have been held constitutional were valid exercises of the state's police power to protect either the property rights of its citizens or the property held by the state for the benefit of its citizens. The principal case differs from those cases in that here the person objecting to the statute was the owner of the land on which the animals were found. Ownership of land has been held to give the owner exclusive right to the wild animals found thereon, subject only to the dominant regulatory control of the state.[4] This is a property right inhering from ownership of the soil.[5] It was pointed out in the principal case that previous legislation in Louisiana on this subject had been adopted to exploit the fur business on a scale of national importance. Clearly, then, it was not expected that furs trapped on Louisiana land would be retained in Louisiana for the exclusive use of its citizens. It was anticipated rather that they would be used in the fur business and would be shipped out of the state for use in all parts of the world. Thus, in enacting the statute questioned in the principal case, the state was not acting as the representative of its people to retain the animals for consumption and use therein, but was acting to eliminate non-residents from the fur business. By giving this permission to export the furs, the state gave up its trust title over the wild animals.[6] As the furs were not to be held for exclusive use within the state, the state relinquished its right to exert discriminatory control on behalf of its citizens. The release of the state's trust title caused the property right of the landowner again to become dominant. The non-resident landowner is entitled, under the Constitution, to equal protection of the laws, and therefore to the same privileges as the resident landowner. Consequently, legislation discriminating against him on the basis of non-residence is uncon-

[1] In re Eberle, (C. C. Ill. 1899) 98 F. 295; McCready v. Virginia, 94 U. S. 391 (1876); Corfield v. Coryell, 4 Wash. C. C. 37, 6 Fed. Cas. 546, No. 3,230 (1823); Allen v. Wycoff, 48 N. J. L. 90, 2 A. 659 (1886); Lacoste v. Department of Conservation, 263 U. S. 545, 44 S. Ct. 186 (1923).

[2] Geer v. Connecticut, 161 U. S. 519, 16 S. Ct. 600 (1895); In re Eberle, (C. C. Ill. 1899) 98 F. 295; Manchester v. Massachusetts, 139 U. S. 240, 11 S. Ct. 559 (1890); Lawton v. Steele, 152 U. S. 133, 14 S. Ct. 499 (1893); McCready v. Virginia, 94 U. S. 391 (1876); Thompson v. Dana, (D. C. Ore. 1931) 52 F. (2d) 759; 14 MICH. L. REV. 613 (1916).

[3] Geer v. Connecticut, 161 U. S. 519, 16 S. Ct. 600 (1895); Foster Fountain Packing Co. v. Haydel, 278 U. S. 1, 49 S. Ct. 1 (1928); State v. Mallory, 73 Ark. 236, 83 S. W. 955, 67 L. R. A. 773 (1904).

[4] Geer v. Connecticut, 161 U. S. 519, 16 S. Ct. 600 (1895); Ohio Oil Co. v. Indiana, 177 U. S. 190, 20 S. Ct. 576 (1900) (dictum); State v. Mallory, 73 Ark. 236, 83 S. W. 955 (1904); Herrin v. Sutherland, 74 Mont. 587, 241 P. 328 (1925); Sterling v. Jackson, 69 Mich. 488, 37 N. W. 845 (1888).

[5] State v. Mallory, 73 Ark. 236, 83 S. W. 955 (1904).

[6] Foster Fountain Packing Co. v. Haydel, 278 U. S. 1, 49 S. Ct. 1 (1928).

stitutional.[7] It is clear, therefore, that the result in the principal case does not conflict with previous decisions upholding discriminatory game legislation under the state's police power. *Russel T. Walker*

[7] Eldridge v. Trezevant, 160 U. S. 452, 16 S. Ct. 345 (1895); State v. Mallory, 73 Ark. 236, 83 S. W. 955 (1904).