

Mccready Vs. Virginia

Mccready Vs. Virginia

SooperKanoon Citation : sooperkanoon.com/83122

Court : US Supreme Court

Decided On : 1876

Appeal No. : 94 U.S. 391

Appellant : Mccready

Respondent : Virginia

Judgement :

McCready v. Virginia - 94 U.S. 391 (1876)

U.S. Supreme Court McCready v. Virginia, 94 U.S. 391 (1876)

McCready v. Virginia

94 U.S. 391

ERROR TO THE SUPREME COURT OF APPEALS

OF THE STATE OF VIRGINIA

SYLLABUS

1. Subject to the paramount right of navigation, the regulation of which in relation to foreign and interstate commerce has been granted to the United States, each state owns the beds of all tidewaters within its jurisdiction, and may appropriate

them, to be used by its citizens as a common for taking and cultivating fish, if navigation be not thereby obstructed.

2. The right which the citizens of the state thus acquire is a property right, and not a mere privilege or immunity of citizenship.

3. The second section of the fourth article of the Constitution, which declares that "the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states," does not vest the citizens of one state with any interest in the common property of the citizens of another state.

4. A law of Virginia by which only such persons as are not citizens of that state are prohibited from planting oysters in the soil covered by her tidewaters is neither a regulation of commerce nor a violation of any privilege or immunity of interstate citizenship.

McCready, a citizen of Maryland, was indicted, convicted, and fined \$500, in the Circuit Court of Gloucester County, Va., for planting oysters in Ware River, a stream in which the tide

Page 94 U. S. 392

ebbs and flows, in violation of sec. 22 of the Act of the Assembly of Virginia approved April 18, 1874, c. 214, p. 243, Sess.Acts 1874. That section is as follows:

"If any person other than a citizen of this state shall take or catch oysters or any shellfish in any manner, or plant oysters in the waters thereof or in the Rivers Potomac or Pocomoke, he shall forfeit \$500, and the vessel, tackle, and appurtenances."

The supreme court of appeals of the state affirmed the judgment below, whereupon the defendant sued out this writ of error.

Page 94 U. S. 394

MR. CHIEF JUSTICE WAITE delivered the opinion of the Court.

The precise question to be determined in this case is whether the State of Virginia can prohibit the citizens of other states from planting oysters in Ware River, a stream in that state where the tide ebbs and flows, when its own citizens have that privilege.

The principle has long been settled in this Court that each state owns the beds of all tidewaters within its jurisdiction unless they have been granted away. [Pollard's Lessee v. Hagan](#), 3 How. 212; [Smith v. Maryland](#), 18 How. 74; [Mumford v. Wardwell](#), 6 Wall. 436; [Weber v. Harbor Commissioners](#), 18 Wall. 66. In like manner, the states own the tidewaters themselves and the fish in them so far as they are capable of ownership while running. For this purpose, the state represents its people, and the ownership is that of the people in their united sovereignty. [Martin v. Waddell](#), 16 Pet. 410. The title thus

Page 94 U. S. 395

held is subject to the paramount right of navigation, the regulation of which in respect to foreign and interstate commerce has been granted to the United States. There has been, however, no such grant of power over the fisheries. These remain under the exclusive control of the state, which has consequently the right, in its discretion, to appropriate its tidewaters and their beds to be used by its people as a common for taking and cultivating fish so far as it may be done without obstructing navigation. Such an appropriation is in effect nothing more than a regulation of the use by the people of their common property. The right which the people of the state thus acquire comes not from their citizenship alone, but from their citizenship and property combined. It is, in fact, a property right, and not a mere privilege or immunity of citizenship.

By Art. IV, Sec. 2, of the Constitution, the citizens of each state are "entitled to all privileges and immunities of citizens in the several states." Mr. Justice Washington, in *Corfield v. Coryell*, 4 Wash.C.C. 380, thought that this provision extended only to such privileges and immunities as are "in their nature

fundamental; which belong of right to the citizens of all free governments." And Mr. Justice Curtis, in *Scott v. Sandford*, 19 How. 580, described them as such "as belonged to general citizenship." But usually, when this provision of the Constitution has been under consideration, the courts have manifested the disposition, which this Court did in *Conner v. Elliott*, 18 How. 593, not to attempt to define the words, but "rather to leave their meaning to be determined in each case upon a view of the particular rights asserted or denied therein." This clearly is the safer course to pursue, when, to use the language of Mr. Justice Curtis in *Conner v. Elliott*,

"we are dealing with so broad a provision, involving matters not only of great delicacy and importance, but which are of such a character that any merely abstract definition could scarcely be correct, and a failure to make it so would certainly produce mischief."

Following, then, this salutary rule and looking only to the particular right which is here asserted, we think we may safely hold that the citizens of one state are not invested by this clause of the Constitution with any interest in the common property of the citizens of another state. If Virginia had by

Page 94 U. S. 396

law provided for the sale of its once vast public domain, and a division of the proceeds among its own people, no one, we venture to say, would contend that the citizens of other states had a constitutional right to the enjoyment of this privilege of Virginia citizenship. Neither if, instead of selling, the state had appropriated the same property to be used as a common by its people for the purposes of agriculture, could the citizens of other states avail themselves of such a privilege. And the reason is obvious: the right thus granted is not a privilege or immunity of general, but of special, citizenship. It does not "belong of right to the citizens of all free governments," but only to the citizens of Virginia on account of the peculiar circumstances in which they are placed. They and they alone owned the property to be sold or used, and they alone had the power to dispose of it as they saw fit. They owned it not by virtue of citizenship merely, but of citizenship

and domicile united -- that is to say, by virtue of a citizenship confined to that particular locality.

The planting of oysters in the soil covered by water owned in common by the people of the state is not different in principle from that of planting corn upon dry land held in the same way. Both are for the purposes of cultivation and profit, and if the state, in the regulation of its public domain, can grant to its own citizens the exclusive use of dry lands, we see no reason why it may not do the same thing in respect to such as are covered by water. And as all concede that a state may grant to one of its citizens the exclusive use of a part of the common property, the conclusion would seem to follow that it might by appropriate legislation confine the use of the whole to its own people alone.

Neither do we think this case is at all affected by the clause of the Constitution which confers power on Congress to regulate commerce. Art. I, Sec. 8. There is here no question of transportation or exchange of commodities, but only of cultivation and production. Commerce has nothing to do with land while producing, but only with the product after it has become the subject of trade. Virginia, owning land under water adapted to the propagation and improvement of oysters, has seen fit to grant the exclusive use of it for that purpose to the citizens of

Page 94 U. S. 397

the state. In this way, the people of Virginia may be enabled to produce what the people of the other states cannot; but that is because they own property which the others do not. Their productions do not spring from commerce, but commerce to some extent from them.

We are unable to agree with the counsel for the plaintiff in error in his argument that the right of planting may be enforced as a privilege of interstate citizenship, even though that of taking cannot. Planting means, in "oysterman's phraseology," as counsel say, "depositing with the intent that the oysters shall remain until they are fattened." The object is therefore to make use of the soil and the water above it for the improvement and growth of that which is planted. It is this use, as has

already been seen, that the state has the right, by reason of its ownership, to prohibit.

Judgment affirmed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com