

COMPACT BY CONCURRENT LEGISLATION - FISHERIES.

Oregon and Washington by concurrent legislation entered into a compact respecting fisheries on the Columbia River. It was approved by Congress April 8, 1918 (40 Stat., 515). It has been construed, with approval in *Olin v. Kitzmiller* (268 Fed. fig 348, 259 U.S. 260, 66 L.Ed 930) and *McGowan v. VanWinkle* (21 Fed-2 D-76).

As reported in 66 L. Ed., 930, the following appears in the brief of appellant:

The issues tendered by the bill of complaint require a construction of the compact between the states of Oregon and Washington, and necessarily involve a Federal question.

*Wedding v. Meyler*, 192 U.S., 581, 48 L.Ed. 573, 66 L.R.A. 833, 24 Sup. Ct. Rep. 322.

Compacts between states are not invalid on grounds of surrendering inalienable rights of sovereignty.

*Green v. Biddle*, 8 Wheat. 1, 108, 5 L. Ed. 547, 573; *Kentucky Union Co. v. Kentucky*, 219 U.S. 162-164, 55 L.Ed. 158, 159, 31 Sup. Ct. Rep. 171.

The citizens of both states are subject to all the obligations imposed, and entitled to all the benefits conferred, by the compact. *Georgetown v. Alexandria Canal Co.* 12 Pet. 96, 9 L. Ed. 1014; *Evans v. United States*, 31 App. D. C. 551; *J. Ribas y Hijo v. United States*, 194 U.S. 324, 48 L. Ed 996, 24 Sup. Ct. Rep. 727; *Green v. Biddle*, 8 Wheat. 1, 108, 5 L. Ed. 547, 573; *Wharten v. Wise*, 153 U.S. 155, 38 L. Ed 669, 14 Sup. Ct. Rep. 783; *Virginia v. West Virginia*, 246 U.S. 565, 62 L. Ed. 883, 38 Sup. Ct. Rep. 400, Ann. Cas. 1918E, 1: 36 Cye 839; *State v. Hoofman*, 9 Md. 28.

The provisions respecting the qualification of applicants for fishing licenses, such as residence and status as to citizenship, were an integral part of the compact between the two states, pro-

viding for the establishment of the concurrent rights and concurrent jurisdiction in relation to the fishing industry in the waters of the Columbia river.

Eagle Cliff Fishing Co. v. McGowan, 70 Or. 14, 137 Pac. 766; Ex parte Desjerio 152 Fed. 1004; State v. Catholic, 75 Or. 367, 147 Pac. 372, Ann. Cas. 1917B, 913; Re Mattson, 69 Fed. 535; Nielsen v. Oregon, 212 U.S. 315, 53 L. Ed. 528, 29 Sup. Ct. Rep. 383.

The compact is a public law and inures to complainant's benefit. He claims the right to take fish from the waters of the Columbia river by virtue of the terms of the compact providing that any person who has been a resident of the state of Oregon for one year, and who has declared his intention to become a citizen, is a qualified applicant for a license to take salmon from said waters. Wharton v. Wise, 153 U.S. 155, 38 L. Ed. 669, 14 Sup. Ct. Rep. 783; Hume v. Rogue River Packing Co. 51 Or. 246, 31 L.R.A. (N.S.) 396, 131 Am. St. Rep. 732, 83 Pac. 391, 92 Pac. 1065, 96 Pac. 865.

The following is from the opinion:

Mr. Justice McReynolds delivered the opinion of the court:

The bill was dismissed upon motion by the trial court for want of equity, and the circuit court of appeals affirmed this action. 268 Fed. 348.

Appellant - a native of Russia, who has declared his intention to become a citizen of the United States-claims the right to fish in specified locations in the Columbia river, and seeks a mandatory injunction requiring the master fish warden and other officers of Oregon to issue a license therefor.

His prayer is based upon the theory that so much of chapter 292, General Laws of Oregon, 1919, as directs that no fishing license "shall be issued to any person who is not a citizen of the United States," impairs the obligation (Const. art. 1, par. 10) of

the compact and agreement between (262) the states of Washington and Oregon, ratified by an Act of Congress approved April 8, 1918 (chap. 47, 40 Stat. at L. 515, Fed. Stat. Annō. Supp. 1918, p. 179), which follows:

"The Congress of the United States of America hereby consents to and ratifies the compact and agreement entered into between the states of Oregon and Washington relative to regulating, protecting, and preserving fish in the boundary waters of the Columbia river and other waters, which compact and agreement is contained in section twenty of chapter one hundred and eighty-eight of the General Laws of Oregon for nineteen hundred and fifteen, and section one hundred and sixteen, chapter thirty-one, of the Session Laws of Washington for nineteen hundred and fifteen, and is as follows:

"All laws and regulations now existing, or which may be necessary for regulating, protecting, or preserving fish in the waters of the Columbia river, over which the states of Oregon and Washington have concurrent jurisdiction, or any other waters within either of said states, which would affect said concurrent jurisdiction, shall be made, changed, altered, and amended in whole or in part, only with the mutual consent and a approbation of both states,"

"Nothing herein contained shall be construed to affect the right of the United States to regulate commerce, or the jurisdiction of the United States over navigable waters"

The statutes in which the states accepted the compact are not identical, but each one provides:

"No license for taking or catching salmon or other food or shell fish, required by laws of this state, shall be issued to any person who is not a citizen of the United States, unless such person has

declared his intention to become a citizen, and is and has been an actual resident of the state for one year immediately preceding the application for such license, nor shall any license be issued to a corporation unless it is authorized to do business in this state." Oregon Act, par. 5; Washington Act, par 43.