tion.[295] On the other hand, in *Pennsylvania Coal Co. v. Mahon*,[296] a Pennsylvania statute that forbade the mining of coal under private dwellings or streets of cities by a grantor that had reserved the right to mine was viewed as too restrictive on the use of private property and hence a denial of due process and a "taking" without compensation.[297] Years later, however, a quite similar Pennsylvania statute was upheld, the Court finding that the new law no longer involved merely a balancing of private economic interests, but instead promoted such "important public interests" as conservation, protection of water supplies, and preservation of land values for taxation.[298]

A statute requiring the destruction of cedar trees within two miles of apple orchards in order to prevent damage to the orchards caused by cedar rust was upheld as not unreasonable even in the absence of compensation. Apple growing being one of the principal agricultural pursuits in Virginia and the value of cedar trees throughout the state being small as compared with that of apple orchards, the state was constitutionally competent to require the destruction of one class of property in order to save another which, in the judgment of its legislature, was of greater value to the public.[299] Similarly, Florida was held to possess constitutional authority to protect the reputation of one of its major industries by penalizing the delivery for shipment in interstate commerce of citrus fruits so immature as to be unfit for consumption.[300]

Water, Fish, and Game.—A statute making it unlawful for a riparian owner to divert water into another state was held not to deprive the property owner of due process. "The constitutional power of the State to insist that its natural advantages shall remain unimpaired by its citizens is not dependent upon any nice estimate of

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[295] Gant v. Oklahoma City, 289 U.S. 98 (1933) (statute requiring bond of $200,000 per well-head, such bond to be executed, not by personal sureties, but by authorized bonding company).

[296] 260 U.S. 393 (1922).

[297] The "taking" jurisprudence that has stemmed from the Pennsylvania Coal Co. v. Mahon is discussed, *supra*, at "Regulatory Takings," under the Fifth Amendment.

[298] Keystone Bituminous Coal Ass'n v. DeBenedictis, 480 U.S. 470, 488 (1987). The Court in *Pennsylvania Coal* had viewed that case as relating to a "a single private house." 260 U.S. at 413. Also distinguished from *Pennsylvania Coal* was a challenge to an ordinance prohibiting sand and gravel excavation near the water table and imposing a duty to refill any existing excavation below that level. The ordinance was upheld; the fact that it prohibited a business that had been conducted for over 30 years did not give rise to a taking in the absence of proof that the land could not be used for other legitimate purposes. Goldblatt v. Town of Hempstead, 369 U.S. 590 (1962).

[299] Miller v. Schoene, 276 U.S. 272, 277, 279 (1928).

[300] Sligh v. Kirkwood, 237 U.S. 52 (1915).