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United States Supreme Court Hands Down Decision of Great Importance to Water Power Development

Decision in Regard to the Chandler-Dunbar Water Company Will Have Great Influence in Securing Other Water-Power Developments—Regarded as Epoch Making Episode.

WASHINGTON, D. C., Sept. 6.—(Special)—A Supreme court decision which will cut the claws of any water power trust, whether present or prospective, and may finally carry the control of the federal government over water-ways clear to the spring-brook in the mountains—a decision which with one stroke of the pen wiped out all title to property for which a value of \$3,450,000 was claimed and an award of \$550,000 had been made by a lower court—seems to have been almost entirely overlooked by the press of the country.

Not since the far-seeing and epoch-making opinion of Chief Justice Marshall, delivered nearly ninety years ago in the case of Gibbons vs. Ogden, which has come to be considered by bench and bar the leading case on the powers granted by the commerce clause of the constitution, has a more important opinion relating to water-ways been handed down by the Supreme court than the one rendered in the case of the United States vs. Chandler-Dunbar Water Power company.

The government found it necessary to condemn the property of the water power company in order to provide for the astounding growth of commerce at the outlet of Lake Superior. Three locks are already in use, two on the American side and one on the Canadian. During 1912 there were carried through these locks 2,472,676 tons of freight, and the indications are that this amount will be largely exceeded this year. To provide for the further increase of tonnage which is certain to come, a third American lock, 1250 feet long and 80 feet wide, is now under construction and will be opened for traffic in 1914, and a fourth lock of the same dimensions has already been authorized.

Senator Theodore E. Burton, who for years was chairman of the rivers and harbors committee of the house of representatives, and is now a member of the upper branch of the national legislature and an authority upon the navigable waterways of the country, believes that the decision of the Supreme court "sustains the views of the most advanced advocates of federal control of water power. It establishes not merely the paramount control of the federal government for purposes of navigation, but also, the right of congress to control and dispose of such water power as may be developed in the improvement of navigation. In view of other decisions...

river to the bed of the river is at best a qualified one. It is a title which inheres in the ownership of the shore, and unless reserved or excluded by implication, passed with it as a shadow follows a substance, although capable of distinct ownership. It is subordinate to the public right of navigation, and, however helpful in protecting the owner against the acts of third parties, is of no avail against the exercise of the great and absolute power of congress over the improvement of navigable rivers. That power of use and control comes from the power to regulate commerce between states and with foreign nations. It includes navigation, and subjects every navigable river to the control of congress. All means having some positive relation to the end in view which are not forbidden by some other provision of the constitution are admissible.

"If on the judgment of congress, the use of the bottom of the river is proper for the purpose of placing therein structures in aid of navigation, it is not thereby taking private property for a public use, for the owner's title was in its very nature subject to that use in the interest of public navigation. If its judgment so that structures placed in the river and upon such submerged land are an obstruction or hindrance to the proper use of the river for purposes of navigation, it may require their removal and forbid the use of the bed of the river by the owner in any way which in its judgment is injurious to the dominant right of navigation. So, also, it may permit the construction and maintenance of tunnels under or bridges over the river, and may require the removal of every such structure placed there with or without its license, the element of contract out of the way, which it shall require to be removed or altered as an obstruction to navigation."

Another Matter Settled. Another matter settled by this decision—the importance of which will be increasingly evident as time goes on—is the right of the government not only to use for its own purposes any excess of water power which results from works which the government may construct in the improvement of navigable rivers, but to sell, lease or otherwise dispose thereof to other parties. The Chandler-Dunbar Water power company claimed that such use of water not actually needed for navigation would be a taking of private property for commercial uses and not for the improvement of navigation, but the court after pointing out that the 12th section of the act of 1890 declares that conservation of the flow of the river, while primarily for the benefit of navigation, is incidentally for the purpose of having water power developed, either for the direct use of the United States or by lease through the secretary of war, says:

"If the primary purpose is legitimate, we can see no sound objection to leasing any excess of power over the needs of the government. The practice is not unusual in respect to similar public works constructed by state governments. In *Kaukauna Co. vs. Green Bay, etc. Canal* (142 U. S. 254, 273), respecting a Wisconsin act to which this objection was made, the court said: "But, if in the erection of a public dam for a recognized public purpose, there is necessarily produced a surplus of water which may properly be used for manufacturing purposes, there is no sound reason why the state may not retain to itself the power of controlling or disposing of such water as an incident of its right to make such improvement. Indeed, it might become necessary to retain the disposition of it in its own hands in order to preserve at all times a sufficient supply for the purpose of navigation. If the riparian owners were allowed to tap the pond at different places and draw off the water for their own use, serious consequences might arise not only in connection with the public demand for the purposes of navigation but between the riparian owners themselves as to the proper proportion each was entitled to draw—controversies which could only be avoided by the state reserving to itself the immediate supervision of the entire supply. As there is no need of the surplus running to water, there was nothing objectionable in permitting the state to let out the use of it to private parties and thus reimburse itself for the expense of the improvement."

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That the right to derive a revenue from the sale of water power will have a most important bearing upon the development of the great connected system of waterways advocated by the national rivers and harbors congress would seem to be beyond all doubt or question. It is easy to see that it may operate both to hasten the completion of works already projected and allow the extension of navigation to portions of streams which would otherwise remain unutilized because the expense of improvement would be so great as to be prohibitory. It is probable that this far-reaching decision will be the subject of an interesting discussion at the tenth convention of the national rivers and harbors congress, which is to be held in this city in December next.

TO INVADE PARIS.

NEW YORK, Sept. 6.—A wonderful string of American fighters, in point of numbers, at least, sailed for the other side today in charge of Al Lippe. Included in the party were Johnny Daly and Joe Hyland of New York, Bobby Scanlon, Charlie Thomas and Barney Ford, of Philadelphia, Bis Mackey, of Cleveland, and Jeff Smith, the New Jersey middleweight. The objective point of the bunch of ringsters is Paris where the fight game is said to be flourishing like a green bay tree and where the Americans expect to reap a bigger harvest of dollars, for the French equivalent than could be hoped for under the present conditions in this country.

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Colorado's Splendid System of Convict Built Roads Was Inspected by Twenty-Two Governors

Trip Proved a Revelation to Most of the Governors, and all Were so Favorably Impressed That the Installation of the Same System in Many Other States is Now Contemplated.

COLORADO SPRINGS, Sept. 6.—Having selected Colorado Springs for the 1913 conference in order that they might study at first hand Colorado's wonderful highway system, constructed in large measure by convict labor, governors of twenty-two states and their staffs, in attendance at the sessions of the House of Governors in this city, on Friday, August 29, made a trip of inspection over the Lincoln highway in the pass and over the Colorado Springs-Canon City state highway, two of the most perfect roads in the United States and two of the best examples of the results of convict labor.

Fine Road.

The Colorado Springs-Canon City highway is one of the best examples of scientific road building in the state; perhaps the country. For a distance of twenty miles or more south of Colorado Springs the road winds around the mountains, practically the entire road bed having been cut out of the hillside and in many places blasted out of solid rock. For the remaining twenty-five miles to Canon City the way is over foothills and undulating country. Besides being a marvel in engineering, the road is one of the most scenic and picturesque in the west, passing as it does through Red Rock canon, Dead Man's canon and many other beautiful mountain beauty spots. It culminates in the far-famed highway to the top of the Royal Gorge and the Sky Line Drive, at Canon City.

The road averages eighteen feet in width and is perfectly crowned and drained. Although the route offered a succession of climbs so skillfully was the engineering work done that heavy grades have been practically eliminated and the motorist is confronted with only one single grade of six per cent.

The other portion of the trip was over the Lincoln highway in the pass. The pass is one of the historic gateways of the mountain country and down its sides the Ute Indians centuries before Columbus discovered America had worn their soft moccasined tread a plainly distinguished trail. It building the first road across the mountains to freight supplies to Leadville, Aspen and the other mining camps the white men followed the trail of the Indians. A few years ago the main portion of this road between Manitou and Cascade was entirely rebuilt by convict labor. It has been pronounced one of the splendid examples of road building. It has a wide well crowned road bed surfaced with finely disintegrated granite from the mountain side. Grades have been reduced and although the road overcomes an elevation of 1,125 feet in a distance of five miles the climb is gradual and is easily negotiated. It is over the Ute Pass road that the Lincoln highway of Colorado enters the mountains after striking straight across the plains of central Colorado to Colorado Springs and Manitou. Thence it continues westward through South Park over Tennessee pass down the valleys of the Eagle and Grand rivers to Grand Junction and the Utah line.

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SAW GARDEN OF GODS. The governors on this trip visited also the famous Garden of the Gods, which is probably the most unique park owned by an American municipality. This famous garden of wonderful fantastic sandstone formations was given as a Christmas present to the city of Colorado Springs in 1909 by the children of Charles Elliott Perkins in carrying out his expressed wish that it become a public park forever free to the world.

WHILE THE COLORADO SPRINGS-CANON CITY road with the Sky Line drive and the road to the top of the Royal Gorge and the Lincoln highway in Ute pass are the best known examples of Colorado's convict labor system of roads there are many miles of splendid roads constructed under this method in other sections of the state. Since the passage of the law about six years ago making possible the employment of convict labor on state highways, through cooperation with various counties, the system has been generally employed. Particularly with the last three or four years it has been adopted and the results which have been achieved have been highly satisfactory.

This applies more especially to the beneficial results to the convicts themselves. Under the Colorado system, the convict is allowed ten days off from his sentence for each month of labor on the roads. This is in addition to the usual reductions for good behavior. Besides in Colorado the employment of convicts on the roads has been singularly successful because of the fact that the cost of building many of its mountain roads would have been almost prohibitive if the state would be compelled to construct these under ordinary conditions. The entire country has reaped the benefits of Colorado's work in this regard because it has given to travelers from all sections of the country some of the most splendid of its mountain scenery, it has furthermore set the example for many of the other states in the advancement of some system for the employment of convicts on state and country roads.

The trip for the governors was arranged for by the Colorado Springs chamber of commerce and was personally conducted by Leonard E. Curtis, president of the Colorado Good Roads association and a member of the state highway commission, and by Warden Thomas J. Tyman of the Colorado state penitentiary under whose administration a great portion of these roads has been built. Upon the return to Colorado Springs, the governors listened to an address by Warden Tyman on convict road building in which he explained clearly and concisely the methods employed, gave statistics to show the comparative cost of building highways by convict labor and by contract labor, demonstrated the superiority of convict built roads and set forth the excellent results that may be obtained by their states from the adoption of the convict plan. Mr. Tyman also showed several films of moving pictures illustrating the convicts at work and also showing the completed roads.

Favorably Impressed. Many of the governors whose states have not yet adopted this plan were so favorably impressed with the results secured in Colorado that they will make further study with a view to recommending to their legislatures the adoption of similar systems. In speaking of what can be accomplished in the way of road building by the use of convict labor, Warden Tyman says: "The benefits of this or any other state resulting from a broad and scientific system of convict road building can scarcely be estimated. Considering the situation in Colorado, and basing our figures on actual experience, we are confident that we can construct more than 5,000 miles of the very finest roadways in the next ten years for less than \$500,000, and this without adding anything whatever to the burden of the taxpayers."

During a period of ten years the internal revenue fund of Colorado should amount to \$2,000,000. After deducting \$500,000 for road construction, the remaining amount should be wisely expended in bridge building, road repairing and similar purposes. Add to this the financial assistance from the different counties which would enable us to construct not less than 10,000 miles of the finest roadways in the next ten years. It can be done in Colorado, why should not the same conditions apply to other states under more favorable conditions in view of the fact that the roads are naturally better and it would not cost nearly so much for construction?

To better illustrate the great saving to the taxpayers on this class of work and its possibilities, let me quote a few figures from one of our road camps. During the month we worked 55 men on the road, not including the camp help. The number of days employed was 2434. Each of the men rendered to the state, labor with a value equivalent to \$2 to \$3 a day per man. The labor for each of these men cost the state exactly 25 cents per day. Had this number of men been employed at the regular

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