

STATES RULE WATERS

COLORADO WINS SUIT.

Great Legal Battle Over Irrigation Decided by Supreme Court.

Washington, May 13.—The case of the State of Kansas against the State of Colorado, by which the former sought to have the latter enjoined from diverting the waters of the Arkansas River for irrigation purposes or permitting its citizens to do so, was dismissed by the Supreme Court of the United States to-day. The opinion was by Justice Brewer, who said that the decision was without prejudice to the right of Kansas to renew its petition whenever it can be shown that that state is being substantially injured. The intervening petition of the United States also was dismissed.

The case has been on the docket since 1901, when Kansas first filed its bill of complaint. In that document it was alleged that the numerous irrigation ditches in Colorado had caused such a great and permanent diminution of the volume of water as to render a once navigable stream almost dry, greatly to diminish the power for manufacturing purposes, to lower to the extent of about five feet the surface of the underflow of the stream, and to cut off the supply of water for irrigation in Western Kansas. The loss was represented to be incalculable. Kansas asked for an injunction, to be directed especially against future appropriations, and to recognize the principle of priority of right on the part of the Kansas ditches constructed before ditches in Colorado. The doctrine that a riparian owner has a right to the full natural flow of the stream was a strong dependence of the complaining state, and it was strenuously urged that under this right waters of the river could not be diverted to distant lands, as is done under such extensive systems of irrigation as prevail along the Arkansas in Colorado. Colorado, on the other hand, contended that she had exclusive control of the waters within her borders, refused to acknowledge the navigability of the Arkansas at any time, pleaded the practice of diversion under irrigation law the world over, dwelt on the immense interests that had accumulated unquestioned by Kansas, and urged that through seepage much of the irrigation water found its way back into the body of the stream. The United States was represented in the hearing in the case as an intervener. Almost a year was spent in taking testimony. Three hundred and fifty witnesses were heard. Not only the two states and the national government but many private corporations were heard. The case has been regarded as one of the most important proceedings before the United States Supreme Court in a quarter of a century, for the principles involved in it, dealing with relations between the states and of the states to the federal government, went to the deepest foundations of the organic law. It was also recognized as the first great legal battle over irrigation.

JUSTICE BREWER'S OPINION.

Justice Brewer's opinion closed as follows: Summing up our conclusions, we are of the opinion that the contention of Colorado of two streams cannot be sustained; that the appropriation of the waters of the Arkansas by Colorado for purposes of irrigation has diminished the flow of water into the State of Kansas; that the result of that appropriation has been the reclamation of large areas in Colorado, transforming thousands of acres into fertile fields and rendering profitable their occupation and cultivation, when otherwise they would have continued barren and uncultivated; that, while the influence of such diminution has been perceptible in Kansas to portions of the Arkansas Valley in Kansas, particularly those portions closest to the Colorado line, yet to that great body of the valley it has worked little, if any, detriment, and regarding the interests of both states and the right of each to receive benefits through irrigation and in any other manner from the waters of this stream, we are not satisfied that Kansas has made out a case entitling it to a decree. At the same time it is obvious that if the depletion of the waters of the river by Colorado continues to increase, there will come a time when Kansas may justly say there is no longer an equitable division of benefits, and may rightfully call for relief against the action of Colorado, its corporations and citizens in appropriating the waters of the Arkansas for irrigation purposes.

The decree which, therefore, will be entered will be one dismissing the petition of the intervenor, without prejudice to the right of the United States to take such action as it shall deem necessary to preserve or improve the navigability of the river. The decree will also dismiss the bill of the State of Kansas against all the defendants, without prejudice to the right of the plaintiff to institute new proceedings whenever it shall appear that through a material increase in the depletion of the waters of the Arkansas by Colorado, its corporations and citizens the substantial interests of Kansas are being injured to the extent of destroying the equitable apportionment of benefits between the two states resulting from the flow of the river. Each party will pay its own costs.

FEDERAL GOVERNMENT POWERS.

With reference to the power of the government in interstate controversies involving irrigation questions, the opinion held that no rights could be exercised that had not been granted to the federal authority. "While," he said, "arid lands are to be found mainly, if not only, in the Western and newer states, yet the powers of the national government within the limits of those states are the same (no greater and no less) as those within the limits of the original thirteen, and it would be strange if, in the absence of a definite grant of power, the national government could enter the territory of the states along the Atlantic and legislate in respect to improving by irrigation or otherwise the lands within their borders. Nor do we understand that hitherto Congress has acted in disregard to this limitation. . . . But it is useless to pursue the inquiry further in this direction. Enough for the purposes of this case that each state has full jurisdiction over the lands within its borders, including the beds of streams and other waters. It may determine for itself whether the common law rule in respect to riparian rights or that doctrine which obtains in the arid regions of the West of the appropriation of waters for the purposes of irrigation shall control. Congress cannot enforce either rule on any state."

STATES AND COMMON LAW.

As to the application of the common law, he said:

When the states of Kansas and Colorado were admitted into the Union they were admitted with the full powers of local sovereignty which belonged to other states, and Colorado by its legislation has recognized the right of appropriating the flow of the river for the purposes of irrigation. Now, the question arises between the two states, one recognizing generally the comprehensive doctrine of the riparian rights, and the other asserting the right of ownership of flowing water. Neither state can legislate for or impose its own policy upon the other. It does not follow, however, that because Congress cannot determine the rule which shall neither state can enforce its own or because the other that the controversy exists to be one of a justifiable nature, or that there is no power which can take cognizance of the controversy and determine the relative rights of the two states. Indeed, the disagreement, coupled with

its effect upon a stream passing through the two states, makes a matter for investigation and determination by this court.

THE EFFECTS ON KANSAS.

As to just what the court might decide, Justice Brewer said:

Colorado could not be upheld in appropriating the entire flow of the Arkansas River on the ground that it is willing to give, and does give, to Kansas something else which might be considered of equal value. That would be equivalent to this court's making a contract between the two states, and that it is not authorized to do. But we are justified in looking at the question not narrowly and solely as to the amount of the flow in the channel of the Arkansas River, but simply whether any portion thereof is appropriated by Colorado, but we may properly consider what, in case a portion of that flow is appropriated by Colorado, are the effects of such appropriation upon Kansas territory.

As Kansas thus recognizes the right of appropriating the waters of a stream for the purposes of irrigation, subject to the condition of an equitable division between the riparian proprietors, she cannot complain if the same rule is administered between herself and a sister state. And this is especially true when the waters are, except for domestic purposes, practically useful only for purposes of irrigation.

If the extreme rule of the common law were enforced, Oklahoma having the same right to the Byram River, should be no diversion of the stream in Kansas for the purpose of irrigation that Kansas has in respect to Colorado, the result would be that the waters, except for the meagre amount required for domestic purposes, would flow through Eastern Colorado and Kansas with comparatively little advantage to either state, and both would lose the great benefit which comes from the use of the water for irrigation.

Further along he said: It cannot be denied, in view of all the testimony, that the diminution of the flow of water in the river by the irrigation of Colorado has worked some detriment to the southern part of Kansas, and yet, when we compare the amount of this detriment with the great benefit which has obviously resulted to the counties in Colorado, it would seem that equality of right and equity between the two states forbids any interference with the present withdrawal of water in Colorado for purposes of irrigation.

It might affect New York. This City's Water Supply and Interstate Streams.

Professor William H. Burr, of Columbia, who was chairman of the Commission on Additional Water Supply that drew up the plan now being followed by the city, said last night that the Supreme Court's decision in the Kansas-Colorado case would affect New York, should the city take water from any of the streams that run into Connecticut. He said, however, that the only interstate stream included in the water supply system is the Byram River, and that the complaints of some citizens of Connecticut as to injury from this source were met years ago by a satisfactory result.

Professor Burr said that when his commission was at work five years ago, George L. Rivers, who was the corporation counsel, advised it to avoid, if possible, taking water from interstate streams, since such action might lead to litigation. The commission followed Mr. Rivers' advice, with the result that, except for the small quantity taken from the Byram, all of New York City's water is found within the boundaries of New York State.

FRENCH CABINET FIRM.

M. Briand Defines Attitude Toward Federation of Labor.

Paris, May 13.—When the Chamber of Deputies reassembled to-day M. Briand, the Minister of Education, replied to further interpellations of the government on the latter's policy toward labor. He said that the ministers had acted in the true interests of both the republic and the working people in suppressing the violence and tyranny of the revolutionary General Federation of Labor, and expressed his determination, with the fullest approval of his colleagues, not to permit any attempt at insubordination on the part of school teachers or other state officials.

GERMAN FLEET SOCIETY MEETS.

Message to Emperor Urges Strong Navy as Surest Guarantee of Peace.

Cologne, May 13.—The German Fleet Society, which is holding its national convention here, to-day sent a dispatch to Emperor William, saying that the aims of the society were to create a strong navy for the homeland, "which in the hands of your majesty will be the surest guarantee of peace."

JOHN MORLEY SPEAKS ON INDIA.

Confirms Reports of Grave Unrest, and Justifies Action of Officials.

London, May 13.—The Secretary for India, Mr. Morley, in the House of Commons to-day confirmed the press reports of the grave condition of unrest in India, and justified the arrest and deportation of agitators against whom there are grounds for believing to place them on trial before the courts. The Secretary added that he disliked to adopt such measures, but they must be judged from the point of view of the emergency and the risk of losing the Indian executive of a weapon which the law placed in its hands for the suppression of dangerous agitations.

GEN. CASTRO ACCUSED.

MURDER CHARGE MADE.

Brother of Slain Leader Paredes Appeals to Venezuelan Tribunal.

Seeking the punishment of the persons responsible for the killing of his brother, General Antonio Paredes, the Venezuelan insurgent leader, on February 15, Hector Luis Paredes, acting under advice of counsel, has forwarded to the High Federal Court and Court of Cassation at Caracas a petition accusing President Cipriano Castro of murder and demanding that he be placed on trial. The petitioner, acting for his family, is now in Berlin, and the petition and documents in the case were forwarded by Nicanor Bolet, who represented General Paredes in New York, on the steamer Philadelphia, which sailed from this port on Saturday. Mr. Bolet also had first obtained the advice of one of Venezuela's foremost constitutional lawyers, who assured him that the accusation before the courts was the proper mode of procedure and that the family of General Paredes had a good case to present.



HECTOR LUIS PAREDES, Brother of General Paredes and accuser of President Castro.

General Paredes led a small force of his compatriots to Venezuela from the West Indies to organize a revolution against President Castro. He and his companions were captured within a week after landing in the country and were summarily put to death. The shooting of the general and his subordinates while they were prisoners aroused a protest from Venezuelans in all parts of the world, not only because of the good reputation of General Paredes as a soldier and patriot and the position of his family, but on account of the flagrant violation of the constitution of Venezuela, which forbids capital punishment for any offence. Not for half a century had there been an execution for a political offence. It was learned that President Castro had issued the order under which his enemies were killed, and as Hector Luis Paredes has sworn by the memory of his brother that the author of the latter's death shall be punished, he now proceeds according to the Venezuelan laws, even though the person charged with responsibility is the President of the republic.

SAYS CASTRO IS AMENABLE.

The documents of accusation show first, that capital punishment being abolished Article 17 of the constitution of Venezuela guarantees the inviolability of life; second, that the President of the republic can be punished for common crimes, and third, that President Castro ordered the killing of General Paredes and so is amenable to Article 15 of the penal code.

The documents show further, by Article 95 of the constitution that the High Federal Court and Court of Cassation is the tribunal to receive and act upon such an accusation.

Before taking the present step Señor Paredes had addressed a letter to President Roosevelt, asking the latter to use his influence to bring to justice the persons responsible for his brother's death. His friends in this city, however, whom he charged with the duty of bringing the case to the attention of President Roosevelt, advised him that the plan was impracticable and suggested the present proceeding.

Señor Paredes has also written a letter to Señora Zola de Castro, wife of President Castro, and through this communication it is learned for the first time that she had pleaded with the Chief Executive to spare the lives of General Paredes and his companions, but with what success is known from the current history of affairs in Venezuela.

Señora de Castro, who has often used a restraining influence for good with her husband in matters of state importance, is a popular and beloved by her people as the President is unpopular, hated and feared.

GRATITUDE TO SENORA CASTRO.

The letter of gratitude to her from the bereaved brother for her efforts to save the lives of the unfortunate political prisoners is filled with deep pathos. The letter reads:

You will see through this letter that in my heart there is more room for thankfulness than for rancor. I know that when General Castro gave the order for the death of the unfortunate General Paredes you opposed him, you tried to save the life of my excellent brother, and I want to thank you for it, to manifest to you how grateful I am for a moment my horrible thoughts and the frightful tenacity of the grief in which I live. My brother was an honest man; he had never harmed anybody; he was the pride and future of his family, as well as a hope for Venezuela because his energy and greatness of mind would have brought him to work for our country in the sense of good, and he would have achieved with his great heart the reconciliation of the whole Venezuelan people. It is longer than two months that the horrible drama on board of the steamer Socorro happened, and day by day, hour by hour, I have before my eyes the frightful picture of my brother with his neck fixed on his assassin's sword, and the frightful tenacity of the grief which I live. My brother was an honest man; he had never harmed anybody; he was the pride and future of his family, as well as a hope for Venezuela because his energy and greatness of mind would have brought him to work for our country in the sense of good, and he would have achieved with his great heart the reconciliation of the whole Venezuelan people.

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Madam, I am the representative of those victims; it belongs to me to solicit justice where I can obtain it. What shall I answer to the mothers of those unfortunate? What shall I answer to my mother, who has the conviction that there was no right and no law to authorize Castro to deprive her son of his life? Where are at least the mortal remains of the martyrs whose bodies were thrown into the waters of the Orinoco?

LOOKS FOR CASTRO'S SUSPENSION.

Inclosed in this letter you will find the accusation which I have made before the Federal Court and the Court of Cassation, according to the laws of our country. If those gentlemen, the judges, perform their duty, as I do not doubt they will, General Castro will be suspended from his office and condemned by the history and by the constitution of Venezuela. Whatever may be the circumstances to which the events and my duty will bring me, be confident, madame, that I will not forget your intervention for the defenceless prisoners, and that I will know how to show you my thankfulness.

In one of the documents which figure in the accusation of President Castro the accuser names fourteen witnesses whose depositions he asks the courts to procure to prove his charge. This document, in part, follows:

To the President and Members of the Federal Court and Court of Cassation, Caracas, Venezuela:

Hector Luis Paredes, native of Valencia, Venezuela, thirty-six years of age, domiciled in the city of Berlin, 12 Zimmerstrasse, and having no relationship to General Cipriano Castro, President of the United States of Venezuela, pleads as follows and with due respect before the aforesaid tribunal of justice:

On the 16th of April of this year at 3 o'clock a. m. there was committed on board of the steamship Socorro, on the Orinoco River, the

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most horrible crime which is recorded in the annals of our country. My brother, General Antonio Paredes, wishing to see his country freed from the despotism of Cipriano Castro and his few followers, went to war against him in the same way in which Castro himself made it the 23rd day of May, 1859, not with the perverse purposes of that man, who wanted only to convert Venezuela to his own ends, but with that of re-establishing law and order in the administration. General Paredes went to war almost alone and without arms, because Castro had caused his arms to be confiscated through the authorities of Trinidad, so that there remained to him no other way but that of going to Venezuela in a boat to fulfil his word and his engagements. Unfortunately for our country my brother was taken prisoner and the President of the republic, instead of having him brought before the tribunals, which was the proper course if he had committed any delinquency, ordered him to be shot down, the said President Castro thus becoming responsible for the crime of homicide perpetrated on the persons of my brother and his companions, which appeared in the investigation of the case. Besides General Paredes, two American citizens also were sacrificed. Such a heinous assassination can not and must not remain unpunished, and according to the provisions of No. 10 of Article 95 of the constitution of the United States of Venezuela, the aforesaid tribunal is the proper one to take cognizance of this accusation and impose the penalty.

EXECUTION FORBIDDEN BY LAW.

The execution of a prisoner is forbidden by the laws of Venezuela, and therefore the execution in question is clearly a case of homicide perpetrated without due regard to the law and order in the administration. The aforesaid tribunal will see from the statement of the essential circumstances of the case that the crime was committed under cover of darkness and in the midst of a forest.

My brother Antonio was taken prisoner at Rosario, and there they bound his arms and conducted him and his companions to the village of Barrancas. There the leader of the government army embarked them on the steamer Socorro, on board of which he imparted to General Paredes and his companions that he had orders from President Castro to shoot them. They thereupon put the men to death with their hands still bound, their bodies being afterwards thrown into the Orinoco. Before they killed my brother they allowed him to write to his family, but we are informed that the letter went into the hands of the Venezuelan Consul in Trinidad and that he prevented it from reaching its destination. The sublime heroism of the martyrs was too overwhelming for the assassins. The oppressors of Venezuela hastened to kill the enemy who had always fought them with valor and fortitude, and they have deprived Venezuela of the man who consecrated his powers to conduct her to another and higher ideal and a new future. I know such crime has filled the whole of Venezuela with terror, but I know, too, that above everything stands justice, and for this reason I appeal to the tribunal according to the provisions of our national constitution, and formally accuse General Cipriano Castro, President of the United States of Venezuela and domiciled in Caracas, of the crime of homicide.

I respectfully beg the tribunal to issue the necessary instructions through the proper body that the judge at Port of Spain, Trinidad, might take the depositions of the following witnesses domiciled in that town, conversant with the facts: General Juan P. Penaloza, Dr. Jorge Pereyra, General J. M. Betancourt Sucre, Jacobo G. Capriles, General J. M. Gonzalez, Jesus B. Alfonso, Joaquin Pildain, Antonio Espinosa, Manuel Butron, Juan Maulista Aguirre, General Simon Solano, J. R. Marciano, General Juan S. Levo and Ramon Darboza. I swear on my honor in a false or malicious case, and beg the tribunal to issue the aforesaid instructions through the proper body, to the judge of the city of Berlin, that I may ratify beforehand this oath and the contents of this document.

HECTOR LUIS PAREDES.

The brother of General Paredes and his friends here declare that the judges who constitute the court before which the proceedings are brought will be held to a strict accountability in the future for any evasion of their duty in connection with the charge against President Castro. However, with the latter's power waning, they say that they have no reason to believe that full justice will not now be done.

TO TAKE BRYAN'S PLACE.

Watterson Has a "Dark Horse" for Democratic Nomination.

Louisville, May 13.—A suggestion that he can name an available "dark horse" to take Mr. Bryan's place as a Presidential candidate next year, if the Nebraskan withdraws, is made by Henry Watterson in an editorial which will appear in "The Courier-Journal" to-morrow morning. He takes Mr. Bryan to task for drawing the line against Gold Democrats as possible leaders, saying that he is "going out of his way to make distinctions where total oblivion is necessary to perfect union and perfect union essential to carrying the country." Mr. Watterson continues:

It is frequently given out that Mr. Bryan does not want the nomination next year. Certainly, unless he can unite the party, it would do him more harm than good. If he does not crave the kingship, however, he may not be averse to playing the role of Warwick, and in that event we can tell him of a Democrat who, without entangling alliances with any of the money powers, yet without any antecedents which could drive away conservative Democrats, fills the specification made by him exactly—a good organization Democrat who supported the ticket in 1856, who in our judgment could still the discords and restore the harmonies, yea, all the loose sails of the old ship of Zion with hopeful gales, and perhaps prove an Abraham Lincoln

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PREACHER USES CLUB. His method of emphasizing his religious exhortations by pounding his hearers with a heavy cane, according to the police, caused the incident in the Alexander avenue police station last evening of a street preacher who called himself Thomas J. Donnelly. He said he was a Franciscan, and addressed every one, even those he clubbed with his cane, as "Brother." He wore an ordinary sack suit, and his only adornment of a religious character was an ebony cross about ten inches long, trimmed with silver. He wore it tied to his breast. He was not intoxicated, the police say. Emil Cassarillo, a clerk, of No. 836 East 135th street, caused Donnelly's arrest. He saw the crowd which Donnelly was haranguing at the corner of St. Ann's avenue and 135th street, and stopped to listen. Donnelly, he says, was asking his hearers to forsake the worldliness and sins of the Bronx, and struck home his point by digging his cane into Cassarillo's ribs. Preacher and clerk were both arrested after a fight. T. F. RYAN TO RETIRE. Friend Says He Wants No Political Office of Any Kind. [By Telegraph to the Tribune.] Richmond, Va., May 13.—It was said here to-day by a close personal friend of Thomas F. Ryan that the financier, in a recent conversation in Nelson County, had said positively that he would not only not accept a nomination for the Presidency, but that he was not seeking any political preferment whatever. On the other hand, it is the intention of Mr. Ryan to retire entirely from active public affairs and to settle upon his Virginia estate, where he will surround himself with his family and raise fine cattle and horses. This statement would seem to set at rest the rumors that Ryan is seeking everything in the political category from a state Senatorship to the Presidency. The most persistent of these rumors was that he coveted Senator Daniel's place. OLD PROMOTER KILLS HIMSELF. Charles M. Martin, seventy-five years old, a promoter, lately operating in Texas oil lands, suffering from an incurable disease, ended his life in the early hours of yesterday morning by taking carbolic acid. He died in terrible agony. The dead man boarded with Mrs. May J. Hills in an apartment on the top floor of No. 321 West 15th st. About 4 o'clock Mrs. Hills was awakened by groans coming from Martin's room, and, going in, found him in agony, and beside him a bottle which had contained carbolic acid. He was then unconscious. His physician, Dr. Wallace B. House, of No. 220 West 115th street, was called, but his aid came too late, and Martin died in a short time.

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