

speaking, it is just as much a part of commerce and of the admiralty jurisdiction as if these vessels were carrying cargoes of merchandise. *Gibbons v. Ogden*, 9 Wheat. 1, 215 *et seq.* The conclusion sought to be drawn by counsel for the Commission from the *Rohde* and other cases is that workmen's compensation acts will apply unless their application would interfere with the uniformity of the general maritime law in interstate and foreign commerce, and there is neither here. But this omits one of the grounds for making an exception—that it shall not be prejudicial to the characteristic features of the maritime law. That is just what it would be here, for here we have a transaction on the navigable waters of the United States which in every respect covers all the characteristic features of maritime law and has no other features but those. To apply to such a case a state compensation law would certainly be prejudicial to those features. We must hold, therefore, that it was a violation of the exclusive maritime jurisdiction conferred by the Constitution to apply in this case the California Compensation Act.

The judgment of the Supreme Court of California is

*Reversed.*

MR. JUSTICE BRANDEIS dissents.

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## SUTTER BUTTE CANAL COMPANY v. RAILROAD COMMISSION OF CALIFORNIA.

ERROR TO THE SUPREME COURT OF CALIFORNIA.

No. 403. Argued March 6, 7, 1929.—Decided April 8, 1929.

1. The record does not disclose any substantial evidence that would impeach the findings of the Railroad Commission upon the subject of a fair rate-base and a proper return to the petitioner Company. P. 134.
2. Contracts between a public utility water company and its consumers are subject to modification in respect of their duration as well

as their rates through a proper exercise of the state police power. P. 137.

3. A California corporation, which owned a water right dedicated to public use and, under the state constitution and laws, was a public utility whose rates and service were subject to regulation by the State Railroad Commission, served the water to two classes of consumers: (1) consumers who, in virtue of early contracts, were entitled to water in perpetuity for designated tracts and were under a continuing obligation to pay service and water charges each season on the acres for which they desired water and also to pay the service charges on the remaining acres for which, in any season, they did not desire it; and (2) consumers who obtained water at these same rates under periodical applications defining the lands to be served but limiting the obligation to pay service charges on acres not irrigated to three years from date of application. For the purpose of preventing this discrimination against contract consumers, and resulting difficulties of administration, the Commission made an order under which they might release themselves from the continuing obligation to pay charges on lands not irrigated and acquire a status like that of the consumers under applications. *Held* that the order did not deprive the water company of contract rights in violation of the Fourteenth Amendment. Pp. 134-137.
  4. Upon review of a judgment of the Supreme Court of California upholding, on certiorari, an order of the State Railroad Commission affecting the rates and contracts of a water company, *held* that a construction of the order made by that court and which the counsel for the Commission, in the oral argument here, declared to be regarded by the Commission as binding, should not be given an independent construction by this Court. P. 139.
- 202 Cal. 179, affirmed.

ERROR to review a judgment of the Supreme Court of California affirming an order of the State Railroad Commission relating to the rates and contracts of the Canal Company, and the valuation of its property for rate-fixing purposes.

*Mr. Isaac Frohman*, with whom *Mr. Douglas Brookman* was on the brief, for plaintiff in error.

The Commission has attempted to preserve what might be found desirable by the contract holders, and to de-

stroy what they deem undesirable. The right to do this very thing was involved in the *Live Oak Water Users' Ass'n* case, 192 Cal. 132. See also *Butte County Water Users' Ass'n v. R. R. Comm'n*, 185 Cal. 218, where it is recognized that the right of a consumer "is a vested right of which he cannot be deprived by the diversion of water to others." *Stanislaus Water Co. v. Bachman*, 152 Cal. 716; *Southern Pacific Co. v. Spring Valley Water Co.*, 173 Cal. 291; *Palermo L. & W. Co. v. R. R. Comm'n*, 173 Cal. 380; *Henrici v. South Feather Land Co.*, 177 Cal. 442; *Allen v. R. R. Comm'n*, 179 Cal. 68.

The right of the Company to reasonable compensation for its duty to hold itself in readiness to serve water to the contract holders as provided in the contracts, at such times as they desire to use it, is likewise a vested property right which cannot, under the Constitution, be made subject to the right of the contract holders to say, at their option, whether they want to pay at all, or at intervals only. The Commission is not vested with the power to deal with the contracts in any of these ways. It cannot interpolate optional rights in favor of either of the parties. Its orders must be germane to its power to control and regulate, and must necessarily not be violative of rights guaranteed by the Constitution of the United States; and it must regularly pursue its authority.

If, as is declared in the case at bar by the court below, it is within the power of the Commission to release the contract holders, or to go to the extent of ordering an "out-and-out termination" of the contracts, notwithstanding what has been previously held by that court in cases involving these types of contracts, the fact remains that the Commission has left the contracts in effect, but operative only when and if the contract holders, at their option, want them to be operative. It is admitted in the opinion below that "it is true that the contracts may be retained at the election of the consumer." This, we

contend, is not "regulation" in any proper sense of the word.

The decision is plainly inconsistent with *Live Oak Water Users' Ass'n* case, 192 Cal. 132.

As to discrimination, it was held in the *Live Oak* case, and it is correct to say now, that the classification into contract and non-contract consumers was neither unfair nor unreasonable, and that there was no unlawful discrimination as between them.

It is suggested by the court below in its opinion that "any contract consumer who elects to avail himself of the status of a non-contract consumer may not, if petitioner [plaintiff in error] properly protests, return to his former status under the contract." It is manifest that the order of the Commission does not so provide, and the controversy here necessarily concerns that order. It must be kept in mind that plaintiff in error is subject to the orders of the Commission in so far, of course, as its orders are lawful and do not violate rights guaranteed by the Constitution.

It cannot be said that the Commission can change, limit and modify the contracts so as to strip them of their mutual, dependent and concurrent conditions and convert them into unilateral contracts, or mere options or privileges, in favor of the contract holders.

It was error to exclude the so-called Sutter County Extension donations from the valuation of property of the Company for the purpose of fixing water rates. The failure of the Commission to give any consideration to reproduction cost of the physical properties of the Company was likewise erroneous.

Rates yielding a net return of less than 5½% are confiscatory.

*Messrs. Arthur T. George and Carl I. Wheat* were on the brief for defendant in error.

Under the rules, non-contract consumers pay a service charge of \$1.25 per acre and fixed irrigation charges per acre (dependent upon the water use) on all lands covered in their respective applications—so long as the water is used for active irrigation. The service charge of \$1.25 on such acreage continues for a period of two years after such use is discontinued. Such consumers, of course, are under no obligation to take water or pay service charges except as obligated by their respective applications.

In an effort to terminate all discrimination in rates between contract and non-contract consumers, it is provided that the contract consumers, if they so elect, can avail themselves of the same rate schedule as is applicable to non-contract consumers, and once such contract consumer so elects to abide by such rate schedule, no provision is made in the rules or otherwise for his return to the rate schedule provided for those who remain contract consumers.

Under this rule any contract consumer so electing to obtain water under his contract must pay the service charge of \$1.25 per acre and the other charges fixed in the schedule of rates (dependent upon the nature of the use) on all land for which service is desired in any particular year, and, for a period of two years, the service charge of \$1.25 per acre on the land covered by the contract as to which no service is desired. This service charge of \$1.25 per acre is also payable on the land for which service is desired—for a period of two years after said service is discontinued.

Either class of consumer under the new rules may elect to discontinue using water and by following the requirements of the rules, effect his release from further payments.

Thus, it appears that the various objections which are urged as to the alleged options open to the contract users are more apparent than real, and that the contract and

non-contract rate schedules are, for the first time, truly comparable.

The California Supreme Court has repeatedly held that the Commission, in the exercise of its jurisdiction, is vested with authority to alter, modify or abrogate contracts existing between such utility companies and consumers. *Law v. R. R. Comm'n*, 184 Cal. 737; *Limoneira Co. v. R. R. Comm'n*, 174 Cal. 232; *Southern Pacific Co. v. Spring Valley Water Co.*, 173 Cal. 291; *Traber v. R. R. Comm'n*, 183 Cal. 304; *Market Street Ry. Co. v. Pacific Gas Co.*, 6 F. (2d) 633.

All waters covered by the contracts in question are waters impressed with a public use. *King v. R. R. Comm'n*, 190 Cal. 321.

*Dicta* in *Allen v. R. R. Comm'n*, 179 Cal. 68, that might well be construed to hold that contracts for the use of waters devoted to public use create vested rights which cannot be altered by the State in the exercise of its police power, do not represent the law in California today. *Leavitt v. Lassen Irrigation Co.*, 157 Cal. 82.

It is now well established that the owner of water devoted to public use cannot, by contract or otherwise, carve out of the public trust a preferential private right; that any contracts purporting to grant permanent and continuous rights to such waters "of course, would not technically attach it to the land as an appurtenance. It would do nothing more than bring the land within the territory to which the public use extended and establish its status as land permanently entitled to share in the public use." *Glenn-Colusa Irrigation District v. Paulson*, 75 Cal. App. 57; *Southern Pacific Co. v. Spring Valley Water Co.*, 173 Cal. 291.

Under the above cited authorities, the Commission has complete authority to modify the rate provisions of the contracts or to establish new rates and rules in their stead.

The order now in question concerns only rates and the computation of rates. No attempt was made to adjudicate the rights of the parties under the contracts in any particular other than in the matter of rates. These rights, in the light of the order, could not be litigated in this proceeding, but only before some other tribunal and in some other proceeding which properly puts them in issue.

In fixing the rate base the Commission properly excluded sums contributed to the development of the so-called Sutter County Extension, and refused to be controlled by an alleged reproduction cost estimate submitted by plaintiff in error.

There is no basis in the record for the claim that the rates fixed by the Commission will not yield a full and fair return.

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

This is a writ of error to an order of the Supreme Court of California reviewing on certiorari an order of the Railroad Commission of the State fixing water rates and contracts. 202 Cal. 179. The Sutter Butte Canal Company, a corporation of the State, petitioned for a review and the annulment of an order of the Railroad Commission designated as decision No. 16289, made on March 20, 1926, relating to water rates, the valuation of its property for rate-fixing purposes, the rate of return thereon and the modification and practical abrogation of certain continuous contracts for the furnishing of water held by it with a certain class of consumers.

The history of the Company as a public utility engaged in the business of appropriating water from the Feather River and selling and distributing it for irrigation purposes in Butte and Sutter counties, is set forth in *Butte County Water Users Association v. Railroad Commission*,

185 Cal. 218; *King v. Railroad Commission*, 190 Cal. 321, and *Live Oak Water Users Association v. Railroad Commission*, 192 Cal. 132, s. c. 269 U. S. 354.

The Canal Company is a public utility subjected by law to the power and direction of the State Railroad Commission and is in possession of a water right dedicated to the public use. Its consumers are divided into two classes—contract consumers and non-contract consumers. The water was originally furnished to the contract consumers under water right contracts which were continuous supply contracts, whereby the consumer paid an initial amount, which varied somewhat, and agreed to pay a stipulated rate for irrigation water service each year thereafter upon the total acreage covered by the contract, and the Company on its part agreed to furnish water as required for all of the acres covered thereby. Non-contract consumers, or applicants, pursuant to the order of the Commission made in March, 1918, were served upon the basis only of applications for water made from year to year.

In December, 1924, a decision, numbered 14422, on application by the Company, further increased the water rates over those allowed under a decision of 1922, and abolished the differential in rates which had theretofore existed between contract and non-contract consumers. It created what was called a stand-by or service charge, of \$1.25 per acre, payable by both classes, effective as to non-contract holders for all of their lands covered by their applications during such time as they should continue thereunder, and in any event for not less than three years, and to be continuously effective as to contract holders for all of the lands covered by their contracts; provided that if such contract holder did not desire to use in any year the whole or any part of said water to which he was entitled, and filed with the Company on or before February 1st of that year notice in writing of what he did not desire in respect to the service of the water, he should then

be obligated to pay in that year, and in each year thereafter, on or before February 1st thereof, the service charge of \$1.25 per acre of the land for which no water was desired, as specified in the notice, and as to the remainder of his land he was to pay such rates or charges based upon the extent and character of the use of the water which he desired to use as were in effect.

This, however, was not a satisfactory adjustment, as the Commission ultimately determined, and in 1925 there was a completely new investigation by the Commission of the rates, charges, classifications, contracts, rules, regulations and service of the Canal Company, in view of existing protests and dissatisfaction. This led to a hearing of all parties in interest covering the main question as to the jurisdiction of the Commission, under the California law, to modify the obligations of the parties, not only by use of the rates, but by direct variation of the terms between the Canal Company and the owners of so-called continuous contracts; and also to a consideration of the fairness and equity of the rates to be fixed for the payment for water furnished by both contract and non-contract users, and other details involved in a broad investigation.

The proceedings resulting in decision No. 16289, modified the previous rules so as to give each continuous contract holder the right, at his option, either (1) to obtain water under applications for so much of his land as he desired to irrigate, similarly with applicants generally who were not holders of continuous contracts, or (2) to obtain water under his continuous contract, provided that if he so elected, he might still, by notifying petitioner that he did not desire to use in any year the whole or any of the water which he was so entitled to receive, and filing with the Company on or before February 1st of that year notice in writing of what he did desire in respect to the non-service of water, be obligated in that year, and in the next succeeding year thereafter, but for no further period in

which said notice remained in effect, to pay, on or before February 1st thereof, the service charge of \$1.25 per acre of the land for which no water was desired, as specified in said notice; or (3) to release himself from any obligation to pay any charges to petitioner under his continuous contract by giving notice that he did not desire any water for his land in any year, or to give notice or use the water.

The substance of this was to release all contract consumers. The contracts might be retained at the election of the consumer, but the whole plan was really to get rid of the troublesome dual situation and to abolish all distinction between the two classes of consumers and put them on a parity, in order that there might be removed from controversy this source of friction and trouble. The Commission said:

“Rates fixed herein will, therefore, be on the basis that all service be charged for under a uniform schedule of rates and under application forms which will exclude any consideration of the continuous contract and preclude the making of charges for unirrigated lands under such contracts, as such.”

In view of the finding of the Supreme Court that the record does not disclose any substantial evidence which would impeach the findings of the Railroad Commission upon the subject of a fair rate-base and a proper return to the Company, with which we agree, our decision will be limited to a consideration of the charge that the decision here under review is a violation of the Fourteenth Amendment by taking away from the Company its contract rights and depriving it of payment to it for water service for all the lands which under the original contract the land owners were to pay for, whether the water was used or not.

The case made on behalf of the Commission and its decision is that there has been delegated by the State to the Commission the regulation for the public benefit of the

rates and revenue to be received by the public utility for the service it renders to the public; that included in such power of regulation is the modification and qualification of the original contracts held by the public utility corporation in this public service; that in being a public utility under the California Constitution it necessarily submits itself to the police power of the State for the benefit of the public; that the ordinary rules that apply to the protection of contracts as between private persons under the Constitution of the United States, or to the maintenance of due process of law under the Fourteenth Amendment and the rights of property as between individuals, do not apply, but that, by the acquisition of such contracts and property, knowing that the police power controls in their regulation, the owner holds them without the usual sanctions of the Fourteenth Amendment of the Federal Constitution between individuals. This power is said to operate upon property and property rights, including contracts, to the extent necessary for the protection of the public health, safety, morals and welfare, and its exercise has been committed to the Railroad Commission in regulating the public utilities in California.

The State Constitution of 1879, Article 14, § 1, provides:

"The use of all water now appropriated, or that may hereafter be appropriated, for sale, rental, or distribution, is hereby declared to be a public use, and subject to the regulation and control of the State, in the manner to be prescribed by law. . . ."

Article 12, by § 23, an amendment added in 1911, provides:

"Every private corporation, and every individual or association of individuals, owning, operating, managing or controlling any . . . canal, pipe-line, plant or equipment, or any part of such . . . canal, pipe-line, plant or equipment within this state, . . . for the production, generation, transmission, delivery or furnishing of heat, light,

water or power . . . to or for the public . . . is hereby declared to be a public utility subject to such control and regulation by the Railroad Commission as may be provided by the legislature, and every class of private corporations, individuals, or associations of individuals hereafter declared by the legislature to be public utilities, shall likewise be subject to such control and regulation. The Railroad Commission shall have and exercise such power and jurisdiction to supervise and regulate public utilities in the State of California, and to fix the rates to be charged for commodities furnished, or services rendered by public utilities as shall be conferred upon it by the legislature, and the right of the legislature to confer powers upon the Railroad Commission respecting public utilities is hereby declared to be plenary and to be unlimited by any provision of this Constitution."

Section 67 of the Public Utilities Act, enacted in 1911, provides that the exercise of the power thus conferred upon the Railroad Commission is to be reviewed only by the Supreme Court, to determine whether the Commission has regularly pursued its authority, including a determination of whether the order or decision under review violates any right of the petitioner under the Constitution of the United States or of the State of California. The findings and conclusions of the Commission on questions of fact shall be final and shall not be subject to review. Such questions of fact shall include ultimate facts and the findings and conclusions of the Commission on reasonableness and discrimination. The Commission and each party to the action or proceeding before the Commission shall have the right to appear in the review proceeding, and upon the hearing the Supreme Court shall render judgment either affirming or setting aside the order or decision of the Commission. (Deering's Gen. Laws of 1923, p. 2734.)

Without now affirming or denying all that is claimed for them, we think that the above recited clauses from the constitution and statute are sufficient to subject the contracts in question to the regulating action of the Commission upheld by the decision under review.

The power to increase charges for service had been twice exercised by the Railroad Commission at the behest of the Canal Company, and the times and terms of payment under the contracts had been changed by the same power, and so far as the petitioner was concerned, its privileges and emoluments under the contract had been greatly increased. So far as the consumer was concerned, the contract has slight, if any, benefit to him left in it. The consumer of water who came in last, and who had no contract, was really served with water upon less onerous terms than the contract consumer, and he might satisfy all demands made against him in three years, if not sooner, and be completely released. This the Supreme Court held was a discrimination. It decided that it was within the power of the Commission to remove it. The only provision of the contract which had not been theretofore modified by the Commission or the Court was the one with respect to the duration of the contract. As the contract was necessarily made in view of the power of the Commission to change its terms, to avoid discrimination in dealing with the consumers of water of a public utility, it is very difficult to see why the situation may not be reduced to a uniform one under the power of the Commission, if that body deems it equitable and fair to do so in the interest of the public. The record shows with much clearness the complicated situation that must continue unless the duration of the obligations of the so-called contract and non-contract consumers be made the same. This change would seem to be well within the police power, subject to which these contracts were made, and there is no such difference between the fixing of rates

and the modification of the duration of a contract as would prevent the application of the police power to the one and not to the other. There are a number of authorities that leave no doubt that such an exercise of the police power under the Constitution of 1879 must be sustained. *Limoneira Co. v. Railroad Commission*, 174 Cal. 232, 237; *Law v. Railroad Commission*, 184 Cal. 737, 740; *In re Murray*, 2 Cal. R. R. Comm. Dec. 465, 494; *Sausalito v. Marin Water Co.*, 8 Cal. R. R. Comm. Dec. 252, 261. The same question was before the Supreme Court of the State of Washington in the case of *Raymond Lumber Co v. Raymond Light & Water Co.*, 92 Wash. 330. The power of the Commission to abrogate the contract between a utility and its consumers was upheld. An admirable statement of the principle is to be found in *Re Guilford Water Co.'s Service Rates*, 118 Me. 367. The general principle supporting such an exercise of the police power under the Fourteenth Amendment is sustained in *Louisville & Nashville Railroad Co. v. Motley*, 219 U. S. 467. In this case it was held that the power of Congress to regulate commerce among the States, which is analogous to the police power of the States in regulating public utilities, extended to rendering impossible enforcement of contracts made between carriers and shippers, although valid when made, because they were all made subject to the possibility that, even if valid when made, Congress might, by exercising its power, render them invalid. That is exactly the situation presented here. Those who made these contracts for water made them subject to the power of the Commission to change them for the benefit of the public, and that is all that has been done in this case by the Commission's order. See also *Manigault v. Springs*, 199 U. S. 473, 480; *Hudson County Water Co. v. McCarter*, 209 U. S. 349, 357; *Chicago, B. & Q. R. R. Co. v. McGuire*, 219 U. S. 549, 567; *Atlantic Coast Line R. R. Co. v. Goldsboro*, 232 U. S. 548, 558; *Union Dry Goods Co. v. Georgia Corp.*, 248 U. S.

372, 375; *Producers' Transportation Co. v. Railroad Commission*, 251 U. S. 228, 232.

At the bar counsel for the appellant expressed some anxiety lest the Commission might not accept the interpretation put on the order in question by the Supreme Court of the State, and for that reason he asked that we interpret the order independently. But the decision of the Supreme Court of the State is conclusive on us as to the interpretation of the order, that being a state question; and counsel for the Commission announced at the bar that the Commission regarded that decision as binding on them. Thus it is apparent that an independent interpretation by us of the Commission's order cannot and ought not to be attempted.

The judgment of the Supreme Court of California is  
*Affirmed.*

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ALBERTO v. NICOLAS.

CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE  
ISLANDS.

No. 364. Argued March 6, 1929.—Decided April 8, 1929.

1. A judgment of the Supreme Court of the Philippine Islands based upon a construction of an Act of the Philippine Legislature, which construction was in turn based upon a construction of the Organic Act, is reviewable by this Court under § 7 of the Act of Congress of February 13, 1925, providing that a certiorari may issue to that court in any case "wherein the Constitution or any statute or treaty of the United States is involved." P. 142.
2. The Court takes judicial notice of the fact that the power of the Governor General of the Philippines to remove, suspend or transfer justices of the peace and to merge their districts, is intended for the prevention of abuses of their offices resulting from the ease with which their authority lends itself to the creation of caciques, or local bosses, exercising oppressive control over ignorant neighborhoods. P. 147.