

Sec. 8—Powers of Congress

Cl. 3—Power to Regulate Commerce

United States, Congress has acquired the right to develop hydroelectric power and the ancillary right to sell it to all takers. By a long-standing doctrine of constitutional law, the states possess dominion over the beds of all navigable streams within their borders.⁸²⁵ Because of the servitude that Congress' power to regulate commerce imposes upon such streams, however, the states are unable to use their prerogative for power-development purposes without the assent of Congress. Expressing no doubt that controlling power to this end must be attributed to some government in the United States and that "in such matters there can be no divided empire,"⁸²⁶ the Court held in *United States v. Chandler-Dunbar Co.*,⁸²⁷ that in constructing works for the improvement of the navigability of a stream, Congress was entitled, as part of a general plan, to authorize the lease or sale of such excess water power as might result from the conservation of the flow of the stream. "If the primary purpose is legitimate," it said, "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."⁸²⁸

Since the *Chandler-Dunbar* case, the Court has come, in effect, to hold that it will sustain any act of Congress that purports to be for the improvement of navigation whatever other purposes it may also embody, nor does the stream involved have to be one "navigable in its natural state." Such, at least, seems to be the sum of its holdings in *Arizona v. California*,⁸²⁹ and *United States v. Appalachian Power Co.*⁸³⁰ In the former, the Court, speaking through Justice Brandeis, said that it was not free to inquire into the motives "which induced members of Congress to enact the Boulder Canyon Project Act," adding: "As the river is navigable and the means which the Act provides are not unrelated to the control of navigation . . . the erection and maintenance of such dam and reservoir are clearly within the powers conferred upon Congress. Whether the particular structures proposed are reasonably necessary, is not for this Court to determine. . . . And the fact that purposes other than navigation will also be served could not invalidate the exercise of the au-

⁸²⁵ *Pollard v. Hagan*, 44 U.S. (3 How.) 212 (1845); *Shively v. Bowlby*, 152 U.S. 1 (1894).

⁸²⁶ *Green Bay & Miss. Canal Co. v. Patten Paper Co.*, 172 U.S. 58, 80 (1898).

⁸²⁷ 229 U.S. 53 (1913).

⁸²⁸ 229 U.S. at 73, citing *Kaukauna Water Power Co. v. Green Bay & Miss. Canal Co.*, 142 U.S. 254 (1891).

⁸²⁹ 283 U.S. 423 (1931).

⁸³⁰ 311 U.S. 377 (1940).