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EDITORIAL

## LIEUTENANT McCLELLAND'S PACE-SETTER.

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**I**T was Lieutenant McClelland, one of the plug-uglies of the Mine Owners' Association in Colorado, who declared in 1904: "To hell with the Constitution!" A sentiment of such legal originality can hardly have sprung up spontaneously from the breast of the redoubtable warrior; it may have shot up into the luxuriant growth and foliage of application from his chest and mind, but to have started there is not likely. Theory at least, pointing to the legal fragrance of the maxim, searches for the capitalist legal flowerbed that must have given the maxim its start. Nor is the theory at fault in this instance. The source of Lieutenant McClelland's revelation was not the man in uniform but the man in the Judge's gown—the Supreme Court of the State of Colorado.

In the year 1895 the Legislature of Colorado was pressed by the working class of the State, the miners leading, to enact an 8-hour law. As a true devotee of the "Law," the Legislature, however, devoted to the workingman, could not think of taking a step in any direction without first being certain of its lawfulness. Animated by such constitutional views, it inquired from the Supreme Court of its State whether a law "providing that eight hours shall constitute a day's labor in all mines, factories and smelters" would be "constitutional and legal." The Supreme Court answered the question in the negative, pronouncing such a law "class legislation." That ended the matter in Colorado—for the time being.

The scene now shifts to Utah. The very next year, 1896, the Legislature of that State enacted an 8-hour law for workingmen in all underground mines or workings, smelters and all other institutions for the reduction or refining of ores or metals. The law contained a punitive clause. This law was resisted and a contest immediately arose over it. One Albert F. Holden, the owner of the Old Jordan mine in Bingham Canyon, employed a miner for the period of ten hours a day. Holden

was arrested under the law upon a warrant issued by the Justice of the Peace. He pleaded not guilty; his defense was the unconstitutionality of the law, being “repugnant to the Constitution of the United States,” etc., etc. The court upheld the constitutionality of the law; it found Holden guilty, and ordered him imprisoned in the county jail for a term of fifty-seven days, or until the fine and costs were paid. Holden then sued out a writ of habeas corpus and prayed for his discharge. The matter came before the Supreme Court of the State, and again was the law sustained. Holden then appealed to the Supreme Court of the United States on a writ of error, and, in 1897, for the third time the law was pronounced constitutional. Some of the passages in this decision of the Supreme Court of the United States deserve reproduction—they are explicit answers to the contention that such a law interfered with the “freedom of contract,” was “class legislation,” etc., and was therefore unconstitutional and void. Here are two of the passages:

“The proprietors of these establishments and their operatives do not stand upon an equality, and their interests are, to a certain extent, conflicting. The former naturally desire to obtain as much labor as possible from their employes, while the latter are often induced BY FEAR OF DISCHARGE to conform to regulations which their judgment, fairly exercised, would pronounce to be detrimental to their health or strength. In other words, THE PROPRIETORS LAY DOWN THE RULES AND THE LABORERS ARE PRACTICALLY CONSTRAINED TO OBEY THEM.”

“The fact that both parties are of full age and competent to contract does not necessarily deprive the State of the power to interfere where the parties do not stand upon an equality.”

Thus the highest legal authority in the land, the Supreme Court of the United States, which can repeal the Acts of Congress itself, sustained the 8-hour law of Utah. The decision was a reversal of the opinion delivered by the Supreme Court of Colorado to the Legislature of the State. The Legislature so understood it, and in 1899 it enacted an 8-hour law copied verbatim from the one of Utah, which had stood the tests of the courts of the State and the final test of the Supreme Court of the United States. In that same year the Supreme Court of Colorado, a case being promptly brought up before it, GAVE A UNANIMOUS OPINION DECLARING THE COLORADO STATUTE UNCONSTITUTIONAL. The Supreme Court of

Colorado thereby stood up in rebellion against the supreme judicature of the land, the Supreme Court of the United States; and it emphasized its rebellion by lecturing the Legislature and roundly rating it for insubordination to itself, the Supreme Court of the State. In its decision annulling the statute as unconstitutional, the Supreme Court of Colorado referred to the fact that the Legislature had asked its opinion four years previous, and to the answer or decision that it gave stating such a statute would be unconstitutional, and it closed that passage saying: "But wholly disregarding these decisions, binding alike on all departments of government, it [the Legislature] proceeded to enact the measure now before us."—In other words: The Supreme Court of Colorado is supreme in the State, supreme even above the Supreme Court of the United States, which is tantamount to a decision sending the Constitution of the United States to hell.

The flowerbed where the Colorado capitalist maxim—"To hell with the Constitution"—was incubated was the Supreme Court of the State. The Supreme Court of Colorado was the pace-setter for Lieut. McClelland. The Lieut. himself is, as we always suspected, a law-abiding citizen submissive to the "stare decisis" of the Supreme Court of his own State—which sends to hell the Constitution of the land.

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